

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Yates v. Sonoma County

Yates · No. 23-cv-01812-HSG · Decided March 10, 2025

SUMMARY

The United States District Court for the Northern District of California granted in part and denied in part defendants’ motions to dismiss Zachary Yates’s amended complaint. The court dismissed claims against former Sheriff Mark Essick, the state-law claims, the § 1983 claims concerning recorded attorney calls, and the Monell claims, without leave to amend. The court denied dismissal of the standalone Federal Wiretap Act claim concerning allegedly recorded and disclosed privileged jail calls.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Haywood S. Gilliam, Jr.
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 10, 2025
DOCKET	23-cv-01812-HSG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's First Amended Complaint was challenged by Defendants' second round of motions to dismiss under Federal Rule of Civil Procedure 12(b)(6).
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the Court accepts factual allegations as true and construes the pleadings in the light most favorable to the nonmoving party, but disregards conclusory allegations, unwarranted factual deductions, and unreasonable inferences. A complaint must contain sufficient factual matter to state a facially plausible claim for relief.
PRECEDENTIAL VALUE	Unpublished district court order; persuasive rather than binding outside the case.
PARTIES	Zachary Yates v. Sonoma County, Mark Essick, Laura Consiglio, Brandon Bannister, DPO Chastain, Legacy

TOPICS

motions to dismiss

section 1983

statute of limitations

municipal liability

civil procedure

PRACTICE AREAS

Civil procedure

Civil rights

Constitutional law

Municipal liability

Federal Wiretap Act

QUESTIONS PRESENTED

1. Whether the First Amended Complaint plausibly alleged personal participation by former Sheriff Mark Essick in the asserted constitutional and statutory violations.
2. Whether Plaintiff's California false-arrest-and-imprisonment and unlawful-wiretap claims were barred by the applicable statute of limitations despite asserted tolling theories.
3. Whether the allegations sufficiently stated a standalone claim under the Federal Wiretap Act and whether the law-enforcement exception required dismissal at the pleading stage.
4. Whether the allegations plausibly established § 1983 liability against Sonoma County and Legacy under Monell and related state-action principles.
5. Whether dismissal of the deficient claims should be without leave to amend because further amendment would be futile.

HOLDINGS

1. The First Amended Complaint failed to plausibly allege Essick's personal participation in the alleged rights deprivations. His status as Sheriff and conclusory allegations that he had knowledge of the conduct or was the final policymaker were insufficient. All claims against Essick were dismissed.
2. The state-law claims were untimely. Plaintiff failed to establish tolling based on the bankruptcy proceeding, incarceration under California Code of Civil Procedure § 352.1(a), defendants' alleged absence from California under § 351, or equitable tolling based on the related Hoffman action.
3. The standalone Federal Wiretap Act claim was sufficiently pleaded to survive the motions to dismiss. The Court declined to apply the law-enforcement exception at the pleading stage because Plaintiff alleged that privileged attorney-client jail calls were recorded and disclosed to prosecutors, and Defendants had not identified authority establishing that such conduct falls within the exception.
4. The § 1983 claim against the County Defendants was dismissed because, after dismissal of the claims against Essick, no individual County Defendant remained whom Plaintiff had plausibly alleged could be held personally liable.
5. The First Amended Complaint failed to plausibly allege Monell liability against Sonoma County or Legacy. The Court dismissed the Monell and related § 1983 claims against those defendants.
6. The deficient claims were dismissed without leave to amend because Plaintiff had already received an opportunity to amend and failed to add the necessary factual particularity, making further amendment futile.

KEY QUOTATIONS

“Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” (opinion at 1)

“To survive a Rule 12(b)(6) motion, a plaintiff need only plead “enough facts to state a claim to relief that is plausible on its face.”” (opinion at 1)

“The fact that Defendant Essick was the Sheriff at the time of the events, without more, is insufficient to state a claim against him.” (opinion at 2)

“Defendants of course disagree with many of Plaintiff’s allegations, but the Court is not empowered to decide questions of fact at this stage in the case.” (opinion at 5)

“Plaintiff has had ample opportunity to amend these claims, but has failed to do so.” (opinion at 7)

FACTUAL BACKGROUND

Yates alleged that Sonoma County probation officers issued unlawful flash-incarceration orders and that jail telephone calls, including privileged calls with his attorneys, were recorded and provided to a Sonoma County investigator and prosecutor. He sued Sonoma County, former Sheriff Mark Essick, county probation personnel, and Legacy, the private entity operating the inmate telephone system. The state-law claims concerned false arrest and imprisonment and unlawful jail-call wiretapping; the federal claims included claims under 42 U.S.C. § 1983, the Fourth and Sixth Amendments, the Federal Wiretap Act, and Monell municipal-liability theories.

PROCEDURAL HISTORY

The Court had previously granted Defendants' motions to dismiss in part, dismissed some claims, and granted Plaintiff leave to amend. Plaintiff filed the First Amended Complaint, adding allegations concerning the defendants' involvement in the alleged conduct. Defendants again moved to dismiss. The Court granted the motions in part, denied them in part as to the standalone Federal Wiretap Act claim, dismissed specified claims without leave to amend, and allowed the remaining wiretap claim to proceed.

DISPOSITION

other

CASES CITED

- *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008)
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008)
- *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)
- *Sprell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)
- *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002)
- *Hoffman v. Sonoma County*, Case No. 22-cv-05446-HSG (N.D. Cal.), Dkt. No. 37 at 6-9

- *Abramson v. Brownstein*, 897 F.2d 389, 391-92 (9th Cir. 1990)
- *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 891 (1988)
- *Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th Cir. 1993)
- *Addison v. State of California*, 21 Cal. 3d 313, 317 (1978)
- *United States v. Van Poyck*, 77 F.3d 285, 287, 290-92 (9th Cir. 1996)
- *Evans v. Skolnik*, 637 F. App'x 285, 287 (9th Cir. 2016)
- *Monell v. N.Y. City Dep't of Social Servs.*, 436 U.S. 658 (1978)
- *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139-40 (9th Cir. 2012)
- *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009)

OPINION

Yates v. Sonoma County

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 ZACHARY YATES, Case No. 23-cv-01812-HSG 8 Plaintiff, ORDER GRANTING IN PART
AND

DENYING IN PART MOTIONS TO

9 v. DISMISS

10 SONOMA COUNTY, et al., Re: Dkt. Nos. 37, 38 11 Defendants. 12 13 Pending before the
Court are Defendants' motions to dismiss.¹ See Dkt. Nos. 37, 38. The 14 Court finds these matters
appropriate for disposition without oral argument and the matters are 15 deemed submitted. See
Civil L.R. 7-1(b). For the reasons discussed below, the Court GRANTS 16 IN PART and DENIES
IN PART Defendants' motions to dismiss.

17 I. LEGAL STANDARD

18 Federal Rule of Civil Procedure 8(a) requires that a complaint contain "a short and plain 19
statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A 20
defendant may move to dismiss a complaint for failing to state a claim upon which relief can be 21
granted under Rule 12(b)(6). "Dismissal under Rule 12(b)(6) is appropriate only where the 22
complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory."
23 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a
Rule 24 12(b)(6) motion, a plaintiff need only plead "enough facts to state a claim to relief that is
plausible 25 1 The operative complaint names Sonoma County and Sonoma County Sheriff Mark
Essick, as 26 well as Sonoma County Probation Officers Laura Consiglio, Brandon Bannister, and
"DPO Chastain." See Dkt. No. 36 ("FAC") at ¶¶ 5–9. For ease of reference, the Court refers to all
of the 27 Defendants associated with Sonoma County as the "County Defendants" unless
otherwise 1 on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially

plausible 2 when a plaintiff pleads “factual content that allows the court to draw the reasonable inference that 3 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 4 In reviewing the plausibility of a complaint, courts “accept factual allegations in the 5 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” 6 *Manzarek*, 519 F.3d at 1031. Nevertheless, courts do not “accept as true allegations that are 7 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead* 8 *Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting *Sprewell v. Golden State Warriors*, 9 266 F.3d 979, 988 (9th Cir. 2001)).

10 II. DISCUSSION

11 This is the second round of motions to dismiss in this case.² The Court previously granted 12 in part Defendants’ motions to dismiss, dismissing some but not all of Plaintiff Zachary Yates’s 13 claims. See Dkt. No. 34. The Court granted Plaintiff an opportunity to amend the complaint to 14 address the deficiencies that the Court identified with these claims. See *id.* Plaintiff filed an 15 amended complaint, adding additional allegations. See generally FAC. Defendants urge that the 16 FAC remains deficient. See Dkt. Nos. 37, 38. 17 A. Claims against Defendant Mark Essick (Claims One through Five) 18 In the FAC, Plaintiff continues to allege several causes of action against Defendant Mark 19 Essick, the former Sonoma County Sheriff, related to Plaintiff’s flash incarceration and the 20 recording of jail telephone calls. See FAC at ¶¶ 8, 28–53. The Court previously found that 21 Plaintiff had failed to plead facts to plausibly allege Defendant Essick’s liability as to any of the 22 claims. See Dkt. No. 34 at 7, 11–12. In an effort to provide more detail about Defendant Essick’s 23 alleged involvement, Plaintiff added just one paragraph to the FAC. See FAC at ¶ 8.1; see Dkt.

24 No. 41 at 4, 11–12. In it, Plaintiff asserts that Defendant Essick “had knowledge” that the Sonoma

25 County Main Adult Detention Facility “routinely enforced unlawful flash incarceration orders 26 2 The parties are familiar with the facts alleged in this case, and the Court does not recite them 27 here. The Court previously discussed the complicated background in a prior but related case, 1 issued by Sonoma County probation officers” and “had knowledge” that outgoing inmate 2 telephone calls were “routinely intercepted, recorded, and provided to prosecutors.” See FAC at 3 ¶ 8.1. Plaintiff does not provide any factual content to support these conclusory assertions. 4 In his opposition, Plaintiff states that he “is not privy to secret operational detail within the 5 exclusive knowledge of the Sonoma County Sheriff’s department.” See Dkt. No. 41 at 11. But 6 Plaintiff appears to acknowledge that he does not have any new information, and he may not rely 7 on bare speculation to support his claim. The fact that Defendant Essick was the Sheriff at the 8 time of the events, without more, is insufficient to state a claim against him. See *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (“In order for a person acting under color of law to be 10 liable under section 1983 there must be a showing of personal participation in the alleged rights 11 deprivation: there is no respondeat superior liability under section 1983.”). Plaintiff’s repeated 12 suggestion in

his opposition brief that Defendant Essick was the “final Sonoma County 13 policymaker” who authorized the alleged conduct is similarly unavailing. See Dkt. No. 41 at 4, 14 11. The Court GRANTS the motion to dismiss all claims against Defendant Essick. 15 B. State Law Claims (Claims Three and Five) 16 The Court previously found that Plaintiff’s two state law claims for (1) false arrest and 17 imprisonment and (2) unlawful jail call wiretapping were barred by the one-year statute of 18 limitations. See Dkt. No. 34 at 7–10. Out of an abundance of caution, the Court granted Plaintiff 19 leave to amend. Id. at 10. In response, Plaintiff has cited several theories—some recycled and 20 some new—why his claims are nonetheless timely. See Dkt. No. 41 at 5–11. The Court is not 21 persuaded by any of these scattershot arguments. 22 First, Plaintiff repeats arguments that the Court has already considered and rejected. He 23 again asserts that a three-year statute of limitations should apply to his wiretapping claims under 24 California Penal Code §§ 636 and 637.2. See Dkt. No. 41 at 8–9. But the Court rejected this 25 argument in its prior order, and Plaintiff has offered nothing new for the Court’s consideration. 26 See Dkt. No. 34 at 7–9, & n.4. Plaintiff similarly reiterates that the bankruptcy proceeding 27 somehow tolled the statute of limitations. See FAC at ¶¶ 15.1–15.2; see also Dkt. No. 41 at 6, 9– 1 arguments he already raised. The Court finds it telling that despite the serial briefing on this issue, 2 Plaintiff has yet to provide a single case in which the statute of limitations has been tolled under 3 similar circumstances. At bottom, Plaintiff simply disagrees with the Court’s previous decisions. 4 See Dkt. No. 34 at 7–10; see also *Hoffman v. Sonoma County*, Case No. 22-cv-05446-HSG (N.D. 5 Cal.), Dkt. No. 37 at 7–9. The Court continues to believe its analysis is correct and that Plaintiff is 6 not entitled to any tolling because of the bankruptcy proceeding. The Court declines the invitation 7 to revisit the issue again. 8 Second, Plaintiff asserts that California Code of Civil Procedure § 352.1(a) tolled the 9 statute of limitations while Plaintiff was incarcerated. See Dkt. No. 41 at 5–6. Under this statute: 10 If a person entitled to bring an action . . . is, at the time the cause of 11 action accrued, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life, the 12 time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years. 13 14 Cal. Civ. Proc. Code § 352.1(a) (emphasis added). Plaintiff contends that he was continuously 15 incarcerated from when he discovered in early September 2021 that his privileged phone calls 16 were allegedly recorded to September 23, 2021.³ See FAC at ¶ 16.3. Even if the statute of 17 limitations were tolled during this timeframe, that would mean Plaintiff had one year from 18 September 23, 2021, to file his claims—or until September 23, 2022. However, Plaintiff did not 19 file this case until April 13, 2023. See Dkt. No. 1. 20 Third, Plaintiff contends that the statute of limitation was tolled under Cal. Code of Civil 21 Procedure § 351 when individual County Defendants may have been out of state. See Dkt. No. 41 22 at 9. Neither the FAC nor Plaintiff’s opposition brief offers any factual allegations about 23 Defendants’ alleged travel during the relevant time period. Plaintiff suggests that discovery may 24 25 3 Plaintiff appears to acknowledge that § 352.1, even if somehow applicable, would only toll the statute of limitations as

to Defendant Legacy. See Dkt. No. 41 at 5 (arguing that “California Code 26 of Civil Procedure § 352.1 tolls the running of the statute of limitations as to defendant Legacy for the time when Plaintiff Yates was ‘imprisoned on a criminal charge’”) (emphasis added); see also 27 Cal. Civ. Proc. Code § 352.1(b) (“This section does not apply to an action against a public entity 1 show some of the individual Defendants traveled outside of California for some period of time. 2 This is pure speculation. And moreover, the application of § 351 under these circumstances is 3 likely unconstitutional. See, e.g., *Abramson v. Brownstein*, 897 F.2d 389, 391–92 (9th Cir. 1990) 4 (citing *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 891 (1988)). 5 Lastly, Plaintiff urges that equitable tolling should apply to toll the statute of limitations 6 during the pendency of the related *Hoffman v. Sonoma County* case, which was filed on September 7 23, 2022. See Dkt. No. 41 at 7–8; see also FAC at ¶ 16.2. “Under California law, equitable 8 tolling ‘reliev[es] plaintiff from the bar of a limitations statute when, possessing several legal 9 remedies he, reasonably and in good faith, pursues one designed to lessen the extent of his injuries 10 or damage.’” *Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th Cir. 1993) (quoting *Addison 11 v. State of California*, 21 Cal. 3d 313, 317 (Cal. 1978)). Equitable tolling requires three factors: 12 “1) timely notice to the defendants in filing the first claim; 2) lack of prejudice to the defendants in 13 gathering evidence for the second claim; and 3) good faith and reasonable conduct in filing the 14 second claim.” *Id.* 15 This is the unusual case in which it is clear from the face of the complaint that equitable 16 tolling does not apply. Plaintiff did not file the *Hoffman* case: the bankruptcy trustee did. And 17 the Court ultimately found that as of September 26, 2022, the bankruptcy trustee had abandoned 18 the legal claims in the *Hoffman* case. See *Hoffman v. Sonoma County*, Case No. 22-cv-05446- 19 HSG (N.D. Cal.), Dkt. No. 37 at 6. The Court further rejected the attempt to substitute Plaintiff 20 into that case, calling out the “transparent gamesmanship” and inequity in attempting to 21 unilaterally extend the statute of limitations in this way. See *Hoffman v. Sonoma County*, Case

22 No. 22-cv-05446-HSG (N.D. Cal.), Dkt. No. 37 at 6–9. Because § 352.1(a) did not toll the claims

23 against the County Defendants while Plaintiff was incarcerated, see *supra*, Plaintiff only had until

24 September 2, 2022, to bring those claims. See Dkt. No. 34 at 9 (discussing notice of recorded 25 calls). The *Hoffman* case was not filed until after this limitations period had run. Moreover, 26 according to the FAC, Defendant Legacy did not have notice of the *Hoffman* case until it waived 27 service “on or about 24 October 2022,” again after the statute of limitations had run. See FAC at 1 * * * 2 Even construing the facts in the light most favorable to Plaintiff, as the Court must at this 3 stage, Plaintiff has failed to plead that his state law claims are timely. The Court accordingly 4 GRANTS the motion to dismiss these claims. 5 C. The Federal Wiretap Act Claim (Claim Four) 6 Plaintiff’s “Fourth Claim for Relief” is premised on the recording of privileged jail calls, 7 and is styled as both a claim under § 1983 for violations of the Fourth and Sixth Amendments, and 8 as a

standalone claim under the Federal Wiretap Act. See FAC at ¶¶ 40–44. Because the Court has 9 dismissed all claims against Defendant Essick, there is no individual County Defendant remaining 10 in the case who could be held liable under § 1983. The Court therefore DISMISSES this claim 11 against the County Defendants to the extent it is premised on § 1983. See *Jones*, 297 F.3d at 934 12 (requiring a defendant’s “personal participation” for liability under § 1983). The Court addresses 13 the § 1983 claim against Defendant Legacy in Section II.D.ii below. Here, therefore, the Court 14 only considers whether Plaintiff has sufficiently pled a standalone claim against Defendants under 15 the Federal Wiretap Act, 18 U.S.C. §§ 2511 and 2520. 16 The Court previously denied the motion to dismiss this claim except as to Defendant 17 Essick. See Dkt. No. 34 at 11–12, & n.8. Defendants now urge that the Court failed to consider 18 whether the law enforcement exception applies to bar the claim. See Dkt. No. 37 at 11–12; Dkt.

19 No. 38 at 7–8. Under the law enforcement exception “oral communications may be intercepted by

20 investigative and law enforcement officers acting in the ordinary course of their duties.” *United* 21 *States v. Van Poyck*, 77 F.3d 285, 292 (9th Cir. 1996) (citing 18 U.S.C. § 2510(5)(a)); cf. *Evans* 22 *v. Skolnik*, 637 F. App’x 285, 287 (9th Cir. 2015) (upholding grant of summary judgment as to 23 private telecommunication companies and extending the law enforcement exception to these 24 government contractors).⁴ In *Van Poyck*, the Ninth Circuit concluded that the law enforcement 25 exception applied to the jail’s “routine taping policy.” *Id.* The Ninth Circuit suggested in a 26 footnote, however, that it would be improper to record “properly placed” phone calls between a 27 1 defendant and his attorney. See *id.* at 290–91, n.9. This was not at issue in *Van Poyck*, however, 2 because the policy did not record such properly placed calls and the calls at issue were placed to 3 friends rather than attorneys. See *id.* at 287. 4 Here, Plaintiff alleges that Defendant Legacy “operated the inmate telephone system” and 5 recorded jail calls under contract with Sonoma County. See FAC ¶ 10. He alleges that neither 6 Defendant Legacy nor Defendant Sonoma County “made known or available to Zachary Yates or 7 any of his attorneys or legal team any practice or procedure to allow then inmate Yates’ 8 confidential, unrecorded, or unmonitored outgoing telephone calls to his attorney of record [] or 9 any other attorney, or any non-attorney member of his legal teams.” See *id.* at ¶ 26.2. And 10 Defendants “provided a log and [] recordings of Zachary Yates[’s] jail calls to a Sonoma County 11 investigator and a Sonoma County prosecutor for their use in then pending criminal PCRS charges 12 against Zachary Yates.” See *id.* at ¶ 26.3. Defendants have not cited any case in which sharing 13 attorney-client privileged jail calls with prosecutors in this way fell within the law enforcement 14 exception. The unpublished memorandum disposition in *Evans* provides no factual background 15 and little analysis. But even if the Court found it persuasive, the Ninth Circuit there only stated 16 that the law enforcement exception could apply when the defendants “screened [] attorney-client 17 calls.” *Evans*, 637 F. App’x at 287. Plaintiff here alleges that Defendants did more than just 18 “screen” his calls. 19 Defendants of course disagree with many of Plaintiff’s allegations, but the Court is not 20

empowered to decide questions of fact at this stage in the case. Defendants are free to raise this 21 argument again at the summary judgment stage, once an actual factual record has been developed. 22 But for now, the Court DENIES the motions to dismiss on this basis. 23 D. Monell Claims 24 The Court previously found that Plaintiff had failed to allege municipal liability under 25 Monell v. N.Y. City Dep't of Social Servs., 436 U.S. 658 (1978), against either Defendant Sonoma 26 County or Defendant Legacy. See Dkt. No. 34 at 12–14. The FAC fails to adequately address 27 these issues. 1 i. Defendant Sonoma County (Claim Six) 2 Plaintiff did not add any allegations to the complaint in support of his Monell claim against 3 the County. In his opposition brief, Plaintiff states that “it is obvious that failure to train probation 4 officers and jail staff in the applicable legal principles will necessarily result in constitutional 5 violations.” See Dkt. No. 41 at 12. But as the Court already explained, it is not enough to 6 generically plead that the County “was well aware” of the allegedly wrongful conduct. See FAC 7 at ¶¶ 60–60.2. The Court GRANTS the motion to dismiss the Monell claim against Defendant 8 Sonoma County. 9 ii. Defendant Legacy (Claims Four and Six) 10 As before, Plaintiff alleges that Defendant Legacy “operated the inmate telephone system 11 at the Sonoma County Main Adult Detention Facility under contract and in close collaboration 12 with defendant Sonoma County and former Sonoma County Sheriff Mark Essick.” See FAC at 13 ¶ 10. Plaintiff attempts to plead that Defendant Legacy is responsible under § 1983 for violations 14 of the Fourth and Sixth Amendments because it “unlawfully intercepted, recorded, and disclosed 15 the content” of Plaintiff’s privileged jail calls with his attorneys. See, e.g., id. at ¶¶ 10, 25–26.4, 16 40–44, 60.4. Although a private entity can, in some circumstances, be held liable under § 1983, a 17 plaintiff must show that (1) the defendant acted under color of state law, and (2) the constitutional 18 violation was caused by an official policy or custom of the defendant. See *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139–40 (9th Cir. 2012). In the first motion to dismiss order, the Court 20 concluded that Plaintiff had failed to allege facts sufficient to plausibly plead these two elements. 21 Dkt. No. 34 at 14. 22 Plaintiff did not add any new allegations to the FAC in support of this claim, and the Court 23 continues to find the FAC deficient. In his opposition brief, Plaintiff attempts to bridge some of 24 the gap by urging that “[i]t is reasonable to infer that Legacy knew that many Sonoma County 25 inmates had pending criminal cases in which they were represented by out-of-county attorneys.” 26 See Dkt. No. 41 at 13; see also FAC at ¶¶ 8.1, 10.1. Plaintiff suggests that it was therefore equally 27 reasonable to infer that Defendant Legacy “knew that if it recorded each and every outgoing jail 1 Plaintiff asks the Court to accept unsupported supposition instead of substantive allegations. This 2 || is improper. The Court GRANTS the motion to dismiss the § 1983 claims against Defendant 3 Legacy.

4 || I. CONCLUSION

5 The Court GRANTS IN PART the motions to dismiss as to all claims brought against 6 Defendant Essick, the state law claims against all Defendants, the § 1983 claim for violations of 7 the Fourth and Sixth Amendments against Defendants, and the Monell claim against Defendants. 8

See Dkt. Nos. 37, 38. Plaintiff has had ample opportunity to amend these claims, but has failed to
9 || do so. The Court finds that granting leave to amend would be futile, and therefore DISMISSES
10 these claims without leave to amend. See *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d
981, 11 1007 (9th Cir. 2009) (“[W]here the Plaintiff has previously been granted leave to amend
and has 12 || subsequently failed to add the requisite particularity to its claims, [t]he district court’s
discretion to 13 || deny leave to amend is particularly broad.” (quotation omitted)). However, the
Court DENIES 14 || the motions to dismiss the Federal Wiretap Act claim against Defendants. 3 15
The Court SETS a case management conference on April 1, 2025, at 2:00 p.m. The a 16 || hearing
will be held by Public Zoom Webinar. All counsel, members of the public, and media 3 17 may
access the webinar information at <https://www.cand.uscourts.gov/hsg>. The parties are further 18
DIRECTED to file a joint case management statement by March 25, 2025. The joint case 19
management statement should discuss how to expeditiously move this now much more limited 20
|| case forward. The Court anticipates that the parties should be able to file motions for summary
21 || judgment within a few months. 22 IT IS SO ORDERED. 23 Dated: 3/10/2025
24 Abaupreod 5 bl).
HAYWOOD S. GILLIAM, JR. 25 United States District Judge 26 27 28