

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jon Persinger, et al. v. County of Placer

Persinger v. County of Placer, No. 2:24-cv-02967-DAD-CSK (E.D. Cal. Nov. 12, 2025) · No. 2:24-cv-02967-DAD-CSK · Decided November 13, 2025

SUMMARY

The United States District Court for the Eastern District of California granted Placer County’s motion to dismiss Jon and Nicole Persinger’s second amended complaint and denied the motion to strike portions of that complaint. The court dismissed the ADA and 42 U.S.C. § 1983 claims, declined supplemental jurisdiction over the state-law claims, denied further leave to amend the § 1983 claims, and granted leave to amend the ADA claim. The court ordered plaintiffs to file a third amended complaint or a notice of intent not to do so within 21 days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dale A. Drozd
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 13, 2025
DOCKET	2:24-cv-02967-DAD-CSK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs sought relief on ten federal and state-law claims in their second amended complaint. Defendant moved to dismiss the second amended complaint under Rule 12(b)(6) and to strike portions of it. The court granted dismissal, denied the motion to strike, granted limited leave to amend the ADA claim, and denied further leave to amend the Monell claims.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court tests the legal sufficiency of the complaint, accepts well-pleaded factual allegations as true, construes them in the plaintiff’s favor, and determines whether the complaint contains sufficient factual matter to state a facially plausible claim. The court may also dismiss under Rule 8 when the pleading is insufficiently clear or fails to provide a short and plain statement of the claim.

PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Jon Persinger, Nicole Persinger v. County of Placer

TOPICS

[motions to dismiss](#)
[pleadings](#)
[ada / disability](#)
[section 1983](#)
[municipal liability](#)

PRACTICE AREAS

[civil procedure](#)
[civil rights](#)
[employment law](#)
[disability discrimination](#)
[municipal liability](#)

QUESTIONS PRESENTED

1. Whether the second amended complaint stated a plausible ADA Title II claim.
2. Whether plaintiffs plausibly alleged Monell municipal liability or vicarious liability under 42 U.S.C. § 1983.
3. Whether the court should decline supplemental jurisdiction over the remaining state-law claims after dismissing the federal claims.
4. Whether portions of the second amended complaint should be stricken because they exceeded the scope of the prior leave to amend.
5. Whether plaintiffs should receive further leave to amend their claims.

HOLDINGS

1. The ADA claim was dismissed because the second amended complaint merely recited the elements of an ADA claim, failed to identify a clear theory of liability or specific denied accommodations, and did not adequately allege intentional discrimination or deliberate indifference.
2. Plaintiffs' Monell claims were dismissed because the second amended complaint did not allege more than a single course of conduct or isolated incident establishing an unconstitutional municipal policy, custom, or practice.
3. To the extent plaintiffs' § 1983 claims relied on vicarious liability for constitutional violations by County employees, those claims were dismissed because a municipality is not liable under § 1983 solely because its employees or agents violated a plaintiff's rights.
4. The court declined to exercise supplemental jurisdiction over plaintiffs' remaining state-law claims after dismissing all federal claims and dismissed those state-law claims without prejudice.
5. The motion to strike was denied because the prior order granted leave to amend without limitation, and district courts in the Ninth Circuit generally permit new claims or parties in an amended complaint when leave to amend is unrestricted.
6. Plaintiffs were granted leave to amend the ADA claim but denied further leave to amend the Monell claims because repeated failure to cure the previously identified deficiency made further amendment futile.

KEY QUOTATIONS

“A plaintiff is required to allege “enough facts to state a claim to relief that is plausible on its face.”” (p. 2)

“Rule 8 “is also violated [] when a pleading says too much.”” (p. 5)

“A municipality is not liable under § 1983 simply because its employees or agents violated a plaintiff’s right.” (p. 6)

“Because the court will dismiss plaintiffs’ federal claim for failure to state a claim, the court will also decline to exercise supplemental jurisdiction over plaintiffs’ remaining state law claims.” (p. 7)

FACTUAL BACKGROUND

Jon Persinger was employed as a deputy sheriff by the Placer County Sheriff's Office beginning in December 2018. After a civilian filed a tort claim alleging sexual misconduct, investigators searched Persinger's residence, seized his cell phone, interviewed him, and placed him on paid administrative leave. Persinger was diagnosed with PTSD, received a psychiatrist's recommendation for medical leave, did not attend a scheduled administrative interview, and was terminated on April 13, 2023. He later was arrested on four misdemeanor charges, and he and Nicole Persinger asserted ADA, constitutional, employment, tort, defamation, and privacy-related claims against Placer County.

PROCEDURAL HISTORY

Plaintiffs filed the action on October 29, 2024, filed a first amended complaint on January 17, 2025, and filed the second amended complaint on August 6, 2025, after the court dismissed the first amended complaint with leave to amend. Defendant moved to dismiss and strike portions of the second amended complaint. The court granted the motion to dismiss, denied the motion to strike, permitted amendment of the ADA claim, denied further amendment of the Monell claims, and dismissed the remaining state-law claims without prejudice after declining supplemental jurisdiction.

DISPOSITION

other

CASES CITED

- North Star International v. Arizona Corporation Commission, 720 F.2d 578, 581 (9th Cir. 1983)
- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 676, 678 (2009)
- Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)
- U.S. ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986)
- Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)
- Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001)
- Monell v. Department of Social Services, 436 U.S. 658, 691 (1978)

- Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002)
- Goodwin v. Marin County Transit District, 675 F. Supp. 3d 1016, 1025 (N.D. Cal. 2022)
- Duvall v. County of Kitsap, 260 F.3d 1124, 1138-39 (9th Cir. 2001)
- Wagon v. Rocklin Unified School District, No. 2:17-cv-01666-TLN-KJN, 2019 WL 2577336, at *4-5 (E.D. Cal. June 24, 2019)
- Prado v. City of Berkeley, No. 23-cv-04537-EMC, 2024 WL 3697037, at *22 (N.D. Cal. Aug. 6, 2024)
- Torres v. Superior Court of California, County of Riverside, No. 1:19-cv-01692-DAD-GSA (PC), 2021 WL 289383, at *6 (E.D. Cal. Jan. 28, 2021)
- Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013)
- Salazar v. County of Orange, 564 F. App'x 322, 322 (9th Cir. 2014)
- McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996)
- Klahn v. Dublin Police Department, No. 16-cv-00833-JCS, 2016 WL 5908919, at *4, 6 (N.D. Cal. Oct. 11, 2016)
- Bowers v. City of Porterville, No. 1:23-cv-01483-KES-SAB, 2024 WL 2115833, at *7 (E.D. Cal. May 9, 2024)
- Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996)
- Gonzalez v. County of Los Angeles, No. 2:22-cv-08525-MCS-AS, 2023 WL 8114381, at *5 (C.D. Cal. Aug. 2, 2023)
- Tennyson v. County of Sacramento, No. 2:19-cv-00429-KJM-EFB, 2020 WL 4059568, at *7 (E.D. Cal. July 20, 2020)
- United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966)
- Carnegie-Mellon University v. Cohill, 484 U.S. 343, 350 (1988)
- Nacarino v. Chobani, LLC, 668 F. Supp. 3d 881, 900-01 (N.D. Cal. 2022)
- Rosenberg Bros. & Co. v. Arnold, 283 F.2d 406, 406 (9th Cir. 1960)
- Foman v. Davis, 371 U.S. 178, 182 (1962)
- Intri-Plex Technologies v. Crest Group, 499 F.3d 1048, 1056 (9th Cir. 2007)
- Ascon Properties, Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989)
- Cook, Perkiss & Liehe, Inc. v. Northern California Collection Service, Inc., 911 F.2d 242, 247 (9th Cir. 1990)

OPINION

Persinger

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 JON PERSINGER, et al., No. 2:24-cv-02967-DAD-CSK 12 Plaintiffs,

13 v. ORDER GRANTING DEFENDANT'S

MOTION TO DISMISS PLAINTIFFS'

14 COUNTY OF PLACER, SECOND AMENDED COMPLAINT AND
DENYING DEFENDANT’S MOTION TO

15 Defendant. STRIKE PORTIONS OF PLAINTIFFS’
SECOND AMENDED COMPLAINT

16 (Doc. No. 26) 17 18 19 This matter is before the court on defendant’s motion to dismiss the
second amended 20 complaint (“SAC”) filed on behalf of plaintiffs Jon Persinger and his wife,
Nicole Persinger and 21 defendant’s motion to strike portions of plaintiffs’ SAC. (Doc. No. 26.)
On October 14, 2025, 22 defendant’s motion to dismiss was taken under submission pursuant to
Local Rule 230(g). (Doc.

23 No. 29.) For the reasons explained below, the court will grant defendant’s motion to dismiss the
24 SAC and deny defendant’s motion to strike portions of plaintiffs’ SAC.

25 BACKGROUND

26 On October 29, 2024, plaintiffs filed their complaint initiating this civil rights action. 27 (Doc.
No. 1.) On January 17, 2025, plaintiffs filed their first amended complaint (“FAC”). (Doc.
28 No. 10.) On July 17, 2025, the court dismissed plaintiffs’ FAC with leave to amend. (Doc. No.
1 24.) On August 6, 2025, plaintiffs filed their operative SAC in which they allege as follows.1 2
(Doc. No. 25.) 3 Plaintiff Jon Persinger was employed as a deputy sheriff by the Placer County
Sheriff’s 4 Office (“PCSO”) beginning in December 2018. (Doc. No. 25 at ¶ 13.) In January 2023,
a 5 civilian filed a tort claim against Placer County alleging that she had been the victim of sexual
6 misconduct on the part of plaintiff Jon Persinger. (Id. at ¶¶ 21–23.) On January 20, 2023, PCSO
7 executed a search warrant at plaintiff Jon Persinger’s residence to investigate the factual 8
allegations in that tort claim. (Id. at ¶¶ 25, 31.) During the execution of that warrant, plaintiff Jon 9
Persinger was interviewed and his cell phone was seized. (Id. at ¶¶ 34, 36.) On January 21, 10
2023, plaintiff Jon Persinger was placed on paid administrative leave while the tort claim 11
allegations against him were investigated. (Id. at ¶ 41.) While he was on administrative leave, 12
plaintiff Jon Persinger was diagnosed as suffering from post-traumatic stress disorder (“PTSD”) 13
and on March 2, 2023 received a medical leave of absence note from his psychiatrist 14
recommending that he be placed on medical leave until April 1, 2023. (Id. at ¶¶ 51, 55.) On
15 March 3, 2023, in keeping with his psychiatrist’s note, plaintiff did not attend a scheduled
16 administrative interview with PCSO and was thereafter provided with paperwork putting him
on 17 notice that he would be terminated from employment for not attending that interview. (Id. at
¶¶ 18 54, 64.) Plaintiff Jon Persinger was terminated from the PCSO on April 13, 2023. (Id. at ¶
89.) 19 On June 28, 2023, plaintiff Jon Persinger was arrested on four misdemeanor charges. (Id.
at ¶¶ 20 93–103.) 21 Based upon these allegations, plaintiffs assert ten claims against defendant
County of 22 Placer under state and federal law: (1) violation of the Americans with Disabilities
Act (“ADA”), 23 24 1 In its previous order, the court observed that plaintiffs’ FAC spanned over
50 pages and 173 paragraphs, many of which appeared to have no bearing on any of plaintiffs’
claims. (Doc. No. 25 24 at 2.) Rather than abbreviate their factual allegations to clearly state their

claims, plaintiffs have instead filed a SAC spanning over 55 pages and 185 paragraphs, and have attached thereto 26 190 pages of exhibits. (Doc. No. 25.) Again, the SAC contains extensive information appearing 27 to have no bearing on any of plaintiffs' claims. In the background section of this order, the court again has attempted to provide an abbreviated and coherent summary of plaintiffs' most essential 28 and potentially relevant allegations. 1 42 U.S.C. § 12102, asserted by plaintiff Jon Persinger; (2) a 42 U.S.C. § 1983 Monell² claim for 2 an unconstitutional custom, practice, or policy asserted by plaintiff Jon Persinger; (3) a 42 U.S.C. 3 § 1983 claim for violation of the Fourth Amendment asserted by plaintiff Jon Persinger; (4) a 42 4 U.S.C. § 1983 claim for retaliation in violation of the First Amendment asserted by plaintiff Jon 5 Persinger; (5) a 42 U.S.C. § 1983 claim for unlawful termination in violation of the First and 6 Fourteenth Amendments asserted by plaintiff Jon Persinger; (6) loss of consortium asserted by 7 plaintiff Nicole Persinger; (7) intentional infliction of emotional distress asserted by plaintiff Jon 8 Persinger; (8) employment discrimination in violation of California Government Code § 12940 9 ("FEHA") asserted by plaintiff Jon Persinger; (9) defamation asserted by plaintiff Jon Persinger; 10 and (10) violation of California Civil Code §§ 56.20–56.245 asserted by plaintiff Jon Persinger. 11 (Id. at ¶¶ 134–85.) 12 On August 20, 2025, defendant filed its pending motion to dismiss plaintiffs' SAC. (Doc.

13 No. 26.) On September 3, 2025, plaintiffs filed their opposition to that motion and on September

14 15, 2025, defendant filed its reply thereto. (Doc. Nos. 27, 28.)

15 LEGAL STANDARD

16 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal 17 sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 18 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of 19 sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 20 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege "enough facts to state a claim to 21 relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A 22 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw 23 the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. 24 Iqbal*, 556 U.S. 662, 678 (2009). 25 In determining whether a complaint states a claim on which relief may be granted, the 26 court accepts as true the allegations in the complaint and construes the allegations in the light 27 28 2 *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). 1 most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). However, 2 the court need not assume the truth of legal conclusions cast in the form of factual allegations. 3 U.S. ex rel. *Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). "[T]o be entitled to the 4 presumption of truth, allegations in a complaint . . . must contain sufficient allegations of 5 underlying facts to give fair notice" to the opposing party. *Starr v. Baca*, 652 F.3d 1202, 1216 6 (9th Cir. 2011). While Rule 8(a) does not require detailed factual allegations, "it demands more 7

than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Iqbal, 556 U.S. at 678. A pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Twombly, 550 U.S. at 555; see also Iqbal, 556 U.S. at 676 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). It is inappropriate to assume that the plaintiff “can prove facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not been alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 14 519, 526 (1983). 15 In ruling on a motion to dismiss under Rule 12(b)(6), the court is permitted to consider 16 material that is properly submitted as part of the complaint, documents that are not physically 17 attached to the complaint if their authenticity is not contested and the plaintiffs’ complaint 18 necessarily relies on them, and matters of public record. Lee v. City of Los Angeles, 250 F.3d. 19 668, 688–89 (9th Cir. 2001).

20 DISCUSSION

21 A. ADA Violation (Claim 1)3 22 Defendant moves to dismiss plaintiff’s first claim for violation of the ADA on the basis 23 that plaintiffs’ allegations in support thereof are wholly conclusory and that plaintiffs have not 24 3 Defendant moves to strike this and other claims as being outside the scope of the leave to 25 amend granted by the court in its July 17, 2025 order. (Doc. No. 26-1 at 8–9.) “District courts in this circuit generally allow plaintiffs to add new claims and/or parties to an amended complaint 26 where a prior order of dismissal granted leave to amend without limitation.” Nacarino v. 27 Chobani, LLC, 668 F. Supp. 3d 881, 900–01 (N.D. Cal. 2022) (cleaned up and citations omitted). The court’s July 17, 2025 order granted leave to amend without stating any limitations. (Doc.

28 No. 24 at 11.) Accordingly, the court will deny defendant’s motion to strike.

1 alleged intentional discrimination. (Doc. No. 26-1 at 7–8.) Plaintiffs argue that they have alleged 2 that plaintiff Jon Persinger suffers from PTSD, that he was refused certain accommodations and 3 medical leave, and that these allegations are sufficient to allege intentional discrimination. (Doc. 4 No. 27 at 9–10.)

5 A district court may dismiss a plaintiff’s complaint for failure to comply with Federal 6 Rule of Civil Procedure 8. See McLaughlin v. McCloud, No. 20-35339, 2023 WL 2555704, at *1 7 (9th Cir. Mar. 17, 2023).4 Rule 8 requires that a pleading must contain “a short and plain 8 statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). 9 The court’s authority to dismiss pursuant to Federal Rule of Civil Procedure 8 may be exercised 10 sua sponte. Washington v. City of Glendale Police Dep’t, No. 2:18-cv-06519-CBM-MAA, 2019 11 WL 13243998, at *1 (C.D. Cal. Apr. 4, 2019). 12 To state a claim for disability discrimination, “the plaintiff must allege four elements: (1) 13 the plaintiff is an individual with a disability; (2) the plaintiff is otherwise qualified to participate 14 in or receive the benefit of some public entity’s services, programs, or activities; (3) the plaintiff 15 was either excluded from participation in or denied the benefits of the public entity’s services, 16 programs, or activities, or was otherwise

discriminated against by the public entity; and (4) such 17 exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability." 18 *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002). "In an action for monetary relief under 19 Title II, a plaintiff must additionally allege intentional discrimination by the defendant. 20 Intentional discrimination under the ADA means that the deliberate indifference standard 21 applies." *Goodwin v. Marin County Transit Dist.*, 675 F. Supp. 3d 1016, 1025 (N.D. Cal. 2022) 22 (internal quotation marks and citations omitted) (citing *Duvall v. County of Kitsap*, 260 F.3d 23 1124, 1138 (9th Cir. 2001)). "Deliberate indifference requires both knowledge that a harm to a 24 federally protected right is substantially likely, and a failure to act upon that likelihood." *Wilkins- 25 Jones v. County of Alameda*, 859 F. Supp. 2d 1039, 1044 (N.D. Cal. 2012) (internal quotation 26 marks omitted) (quoting *Duvall*, 260 F.3d at 1139). 27 4 Citation to unpublished Ninth Circuit opinions in this order is appropriate pursuant to Ninth 28 Circuit Rule 36-3(b). 1 In their SAC, plaintiffs merely recite in conclusory fashion the elements of an ADA claim 2 but do not allege any facts in support of that claim nor even what theory of liability under the 3 ADA plaintiffs are asserting. (Doc. No. 25 at ¶¶ 134–138.) For example, it is unclear from 4 plaintiffs' SAC whether plaintiffs are asserting claims based on abusive and discriminatory 5 conduct by certain employees of defendant or whether they are instead asserting that plaintiff Jon 6 Persinger was denied some reasonable accommodation. See, e.g., *Wagon v. Rocklin Unified Sch. 7 Dist.*, No. 2:17-cv-01666-TLN-KJN, 2019 WL 2577336, at *4–5 (E.D. Cal. June 24, 2019) 8 (finding that allegations of bullying which have a nexus to an alleged disability are sufficient to 9 state a cognizable claim for relief under Title II); see also *Prado v. City of Berkeley*, No. 23-cv- 10 04537-EMC, 2024 WL 3697037, at *22 (N.D. Cal. Aug. 6, 2024) (dismissing an ADA claim 11 because the plaintiffs had failed to allege that they had requested a reasonable accommodation 12 and were denied that accommodation). Moreover, plaintiffs have not identified specific 13 accommodations that defendant failed to provide, as is required in order to state a claim of 14 intentional discrimination. See *Torres v. Super. Ct. of Cal. County of Riverside*, No. 1:19-cv- 15 01692-DAD-GSA (PC), 2021 WL 289383, at *6 (E.D. Cal. Jan. 28, 2021) ("The ADA plaintiff 16 must both 'identify "specific reasonable" and "necessary" accommodations that the state failed to 17 provide' and show that the defendant's failure to act was 'a result of conduct that is more than 18 negligent and involves an element of deliberateness.'" (quoting *Duvall v. County of Kitsap*, 260 19 F.3d 1124, 1138 (9th Cir. 2001)). 20 In their opposition to the pending motion, plaintiffs argue that they have alleged that 21 defendant deliberately refused plaintiff Jon Persinger accommodations during interviews, refused 22 him medical leave, "sent CAD detail reports in a manner calculated to re-traumatize him," and 23 "undertook retaliatory employment actions influenced by the absence of accommodations." 24 (Doc. No. 27 at 9.) This assertion in plaintiffs' opposition, listing multiple possible theories, only 25 further muddies the waters regarding what theory plaintiffs are attempting to proceed under as to 26 the ADA claim. This is exacerbated by plaintiffs' failure to specify in their opposition what 27 accommodations were denied under a reasonable accommodation theory or what retaliatory or

28 discriminatory employment actions were purportedly taken. The court recognizes that plaintiffs 1 may have alleged some fact which might be construed as supporting an ADA claim in their 57- 2 page SAC, but Rule 8 “is also violated [] when a pleading says too much.” *Knapp v. Hogan*, 738 3 F.3d 1106, 1109 (9th Cir. 2013) (emphasis in original). “A complaint should ‘fully set[] forth 4 who is being sued, for what relief, and on what theory’” *Salazar v. County of Orange*, 564 5 F. App’x 322, 322 (9th Cir. 2014) (alterations in original) (quoting *McHenry v. Renne*, 84 F.3d 6 1172, 1177 (9th Cir. 1996)). Because the SAC does not adequately identify on what theory 7 defendant is being sued with respect to plaintiffs’ ADA claim, the court will grant defendant’s 8 motion to dismiss plaintiffs’ first cause of action. 9 B. § 1983 Claims (Claims 2, 3, 4, and 5) 10 On July 17, 2025, the court dismissed plaintiffs’ § 1983 claim brought under a Monell 11 theory of municipal liability as asserted in their first amended complaint for failing to allege more 12 than a single instance of unconstitutional conduct. (Doc. No. 24 at 6–7.) Defendant now moves 13 to dismiss plaintiffs’ claims brought pursuant to § 1983 on the basis that plaintiffs have again 14 failed to allege in their SAC more than a single instance of unconstitutional conduct. (Doc. No. 15 26-1 at 6–8.) Plaintiffs contend that, in their SAC, they have now detailed “at least 15 16 interconnected incidents” which establish a pattern or policy of unconstitutional conduct by 17 defendant. (Doc. No. 27 at 8–9.) This contention is entirely unpersuasive: A review of the SAC 18 reveals that plaintiffs have not alleged even one more instance of unconstitutional conduct but 19 have rather merely subdivided defendant’s course of conduct towards plaintiff Jon Persinger into 20 what they purport to be “15 interconnected incidents.”⁵ (Doc. No. 25 at ¶¶ 153–168); see also 21 *Klahn v. Dublin Police Dep’t*, No. 16-cv-00833-JCS, 2016 WL 5908919, at *4, 6 (N.D. Cal. Oct. 22 11, 2016) (finding that the plaintiff’s failure to plausibly allege a custom was not cured upon 23 24 5 Plaintiffs’ third, fourth, and fifth claims appear to allege that defendant is vicariously liable for constitutional violations committed by its employees. (Doc. No. 25 at ¶¶ 152–69 (alleging that 25 “defendants” acted under color of state law to violate plaintiff Jon Persinger’s constitutional rights)). “A municipality is not liable under § 1983 simply because its employees or agents 26 violated a plaintiff’s right.” *Gonzalez v. County of Los Angeles*, No. 2:22-cv-08525-MCS-AS, 27 2023 WL 8114381, at *5 (C.D. Cal. Aug. 2, 2023) (citing *Monell*, 436 U.S. at 691). To the extent that plaintiffs’ § 1983 claims are based on a vicarious liability theory, the court will grant 28 defendant’s motion to dismiss. 1 amendment where the plaintiff failed to add any new factual allegations). Even if the court 2 treated plaintiffs’ SAC as a substantive amendment, “a Monell claim generally requires more than 3 ‘sporadic’ incidents.” *Bowers v. City of Porterville*, No. 1:23-cv-01483-KES-SAB, 2024 WL 4 2115833, at *7 (E.D. Cal. May 9, 2024) (citing *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) 5 (“Liability for improper custom may not be predicated on isolated or sporadic incidents.”)). 6 In short, plaintiffs’ Monell claims fail for the same reasons articulated in the court’s July 7 17, 2025 order. Accordingly, the court will grant defendant’s motion to dismiss plaintiffs’ § 1983 8 claims. 9 C. State Law Claims (Claims 6, 7, 8, 9, and 10) 10 All of plaintiffs’ remaining claims are brought pursuant to state law. “Where all federal 11 claims

are dismissed in an action containing both federal and state law claims, a federal court may 12 decline to exercise supplemental jurisdiction.” *Tennyson v. County of Sacramento*, No. 2:19-cv-13 00429-KJM-EFB, 2020 WL 4059568, at *7 (E.D. Cal. July 20, 2020) (declining to exercise 14 jurisdiction where the plaintiffs’ federal claims, including their Monell claims, were dismissed). 15 Generally, if federal claims are dismissed prior to trial, state law claims should be 16 remanded to state court “both as a matter of comity and to promote justice between the parties, by 17 procuring for them a surer-footed reading of applicable law.” *United Mine Workers v. Gibbs* of 18 Am., 383 U.S. 715, 726 (1966). The Supreme Court has found that when “federal-law claims 19 have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal 20 court should decline the exercise of jurisdiction by dismissing the case without prejudice.” 21 *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). 22 Because the court will dismiss plaintiffs’ federal claim for failure to state a claim, the 23 court will also decline to exercise supplemental jurisdiction over plaintiffs’ remaining state law 24 claims. Accordingly, the court will grant defendant’s motion to dismiss plaintiff’s state law 25 claims. 26 D. Further Leave to Amend 27 Leave to amend should be granted “freely” when justice so requires. Fed. R. Civ. 28 P. 15(a). The Ninth Circuit maintains a policy of “extreme liberality generally in favoring 1 amendments to pleadings.” *Rosenberg Bros. & Co. v. Arnold*, 283 F.2d 406, 406 (9th Cir. 1960). 2 Reasons “such as undue delay, bad faith or dilatory motive . . . repeated failure to cure 3 deficiencies . . . undue prejudice to the opposing party . . . [or] futility” may support denial of 4 leave to amend. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Dismissal without leave to amend is 5 proper if it is clear that “the complaint could not be saved by any amendment.” *Intri-Plex Techs. 6 v. Crest Grp.*, 499 F.3d 1048, 1056 (9th Cir. 2007) (citation omitted); see also *Ascon Props., Inc. 7 v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989) (“Leave need not be granted where the 8 amendment of the complaint . . . constitutes an exercise in futility . . .”). A district court “should 9 grant leave to amend even if no request to amend the pleading was made, unless it determines that 10 the pleading could not possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe, 11 Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990). 12 In light of plaintiffs’ failure to add any new allegations to support the conclusion that 13 defendant acted pursuant to an official policy or custom, the court finds that further amendment 14 of plaintiffs’ Monell claims—claims 2, 3, 4, and 5—would be futile here. Accordingly, further 15 leave to amend plaintiffs’ Monell claims will not be granted in light of plaintiffs’ failure to cure 16 the previously noted pleading deficiencies despite the benefit of the court’s guidance. See *Klahn*, 17 2016 WL 5908919, at *6 (denying leave to amend where the plaintiff had failed to add any new 18 factual allegations in his amendment); see also *Cottrell v. AT&T Inc.*, No. 19-cv-07672-JCS, 19 2021 WL 1022855 (N.D. Cal. Mar. 17, 2021) (same). However, the court cannot find that 20 amendment would be futile as to plaintiffs’ new claim asserting violation of the ADA. See 21 *Zwerling v. Ford Motor Co.*, No. 5:19-cv-03622-EJD, 2023 WL 2899524, at *7 (N.D. Cal. Apr. 22 10, 2023) (denying leave to amend as to previously alleged claims where the plaintiff failed to 23 cure defects upon

amendment but granting leave to amend as to new claims). Accordingly, the court will grant further leave to amend as to plaintiff's ADA claim.

CONCLUSION

For the reasons explained above, 1. Defendant's motion to dismiss plaintiffs' second amended complaint (Doc. No. 28 26) is GRANTED; 2. Plaintiffs are GRANTED leave to amend with respect to their ADA claim to address the deficiencies identified in this order; 3, Plaintiffs are otherwise DENIED leave to amend; 4 4. Defendant's motion to strike portions of plaintiffs' second amended complaint 5 (Doc. No. 26) is DENIED; 6 5. Plaintiffs shall file their third amended complaint, or alternatively, a notice of their 7 intent not to do so, within twenty-one (21) days from the date of entry of this 8 order. 9 IT IS SO ORDERED. Dated: November 12, 2025 Dal A. 2, □□□

DALE A. DROZD

UNITED STATES DISTRICT JUDGE

13 14 15 16 17 18 19 20 21 22 23 24 25 | If plaintiffs elect to file a third amended complaint in an attempt to assert a cognizable ADA 27 | claim, they may also include their state law claims which have been dismissed in this order based upon the court's declining to exercise supplemental jurisdiction after all federal claims have been 28 | dismissed. 10