2026 WL 931542
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United States District Court, C.D. California.

LEONARD COLBERT, Plaintiff,
v.
COUNTY OF RIVERSIDE, et al., Defendants.

Case No. 5:25-cv-01655-SP
|
Filed 03/31/2026

Editor's Note: This decision contains discussion of citation references that are incorrect or do not actually exist. These invalid citations appeared in the original court opinion and have been preserved as written since they are part of the official record. Any links to these invalid citations have been removed.

Attorneys and Law Firms

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Allen Christiansen, Cole Huber LLP, Ontario, CA, for Defendant County of Riverside.

MEMORANDUM OPINION AND ORDER GRANTING MOTION TO DISMISS COMPLAINT, BUT GRANTING LEAVE TO AMEND IN PART

SHERI PYM United States Magistrate Judge

I.

INTRODUCTION

***1** On April 14, 2025, plaintiff Leonard Colbert filed a Complaint in Riverside County Superior Court against defendants County of Riverside; Riverside County Sheriff Chad Bianco, in his individual and official capacities; Doe Deputy 1; Doe Maintenance Worker; and Does 2-25. Plaintiff alleges he suffered injuries after slipping on water in his cell at Cois Byrd Detention Center.

Plaintiff asserts seven causes of action: (1) negligence; (2) premises liability; (3) negligent infliction of emotional distress; (4) intentional infliction of emotional distress; (5) violation of the Eighth and Fourteenth Amendments; (6) violation of Government Code § 835; and (7) *Monell* liability.

On July 11, 2025, defendant County filed a Motion to Dismiss the Complaint. Defendant Bianco filed a joinder to County's Motion to Dismiss on October 10, 2025. Plaintiff filed an Opposition to the motion on October 27, 2025. Defendants County and Bianco filed a Reply on October 28, 2025.

For the reasons that follow, the court grants the Motion to Dismiss the Complaint, but also grants plaintiff leave to amend in part.

II.

ALLEGATIONS OF THE COMPLAINT

On September 18, 2024, plaintiff was arrested and booked into Robert Presley Detenion Center. Compl. ¶ 13. Plaintiff informed law enforcement that he was disabled and needed medical attention for his knee condition, but was denied care. *Id.* Plaintiff was later transferred to a Riverside County jail, where he again requested and was denied medical treatment for his knee. *Id.* ¶ 14.

On or about September 24, 2024, plaintiff was transferred to Cois Byrd Detention Center. *Id.* ¶ 15. The following day, plaintiff slipped and fell in water leaking from a toilet in his cell. *Id.* ¶ 16. Plaintiff was injured and transported by wheelchair for medical evaluation. *Id.* Plaintiff was prescribed medication and given an ice pack. *Id.*

On September 28, 2024, plaintiff slipped again in his cell due to the same unrepaired leak. *Id.* ¶ 17. Plaintiff had been told the toilet had been repaired, but there was still a leak. *Id.* Plaintiff was again taken to medical, where he was given a CT scan and ultrasound after reporting severe knee and back pain. *Id.*

On September 30, 2024, plaintiff filed a grievance and requested a transfer. *Id.* ¶ 18. A maintenance worker claimed he would fix the toilet by flushing the system, but did not provide plaintiff any follow up. *Id.*

On October 1, 2024, plaintiff fell a third time due to the still-leaking toilet. *Id.* ¶ 19. Medical took x-rays and treated

him with ice, medication, and a knee brace. *Id.* Afterwards, plaintiff returned to the same cell. *Id.*

Plaintiff filed another grievance. [1] *Id.* ¶ 20.

On October 3, 2024, plaintiff was released from custody. *Id.* As of the date of his release, the toilet had not been repaired. *Id.*

III.

STANDARD OF REVIEW

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a defendant may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001) (as amended). Dismissal for failure to state a claim "can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990) (as amended). A court may not dismiss a complaint under Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief." *Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994).

***2** "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). A claim "has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. This plausibility standard does not amount to a probability requirement, "but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

"[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). The complaint must both "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively ... [and] must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

IV.

DISCUSSION

A. The Complaint Fails to State a Claim Against Bianco

Plaintiff alleges state law claims and a federal civil rights claim against defendant Bianco in his individual and official capacities.

1. It Is Redundant to Name Bianco in His Official Capacity

Official capacity suits are "another way of pleading an action against an entity of which an officer is an agent." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 n.55, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). As such, an "official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985); *see also Brandon v. Holt*, 469 U.S. 464, 471-72, 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985); *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991). Because County is named as a defendant, the court dismisses all claims against Bianco in his official capacity. *See Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles Cnty. Sheriff Dep't*, 533 F.3d 780, 799 (9th Cir. 2008) ("When both a municipal officer and a local government entity are named, and the officer is named only in an official capacity, the court may dismiss the officer as a redundant defendant.").

2. Plaintiff Fails to State a Claim Against Bianco in His Individual Capacity

Other than a conclusory allegation that Bianco knew or reasonably should have known about jail conditions, plaintiff fails to allege any facts specifically against Bianco. *See* Compl. ¶ 54. Therefore, plaintiff fails to state any claim – federal or state – against Bianco.

Regarding Claim Five specifically, plaintiff appears to argue Bianco is liable in his individual capacity for any personal

actions taken by him under the color of law. Opp. at 3. "In order for a person acting under color of state law to be liable under section 1983 there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability under section 1983." *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (citations omitted); *see also Roberts by and through Robinson v. City of San Francisco*, 2019 WL 6036652, at *2 (N.D. Cal. Nov. 14, 2019) (§ 844.6(d) does not hold a sheriff vicariously liable for injury to a prisoner). A supervisor is liable for the constitutional violations of a subordinate only "if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Here, plaintiff does not allege any facts about Bianco whatsoever, much less any factual allegations that Bianco personally participated in the alleged constitutional violation or knew about it and failed to prevent it.

***3** Accordingly, the court dismisses all claims against Bianco.

B. The Tort Claims Act Bars the State Law Claims

Plaintiff asserts various state law claims – negligence (Claim One), premises liability (Claim Two), and negligent infliction of emotional distress (Claim Three) against defendants; and Government Code § 835 (Claim Six) against County. Plaintiff also asserts an intentional infliction of emotional distress (Claim Four) against Doe Deputy 1 and Doe Maintenance Worker, which County interprets as seeking to impose respondeat superior liability on County. And indeed, because Bianco is being dismissed and the other individual defendants are merely Doe defendants, County is the only remaining defendant to any of these claims. County moves to dismiss the state law claims on the basis that the claims are barred by the Tort Claims Act (Cal. Gov't Code § 810 et seq.). Mtn. at 3-6.

"Public entities in California are not liable for tortious injury unless liability is imposed by statute." *Castaneda v. Dep't of Corrs. and Rehab.*, 212 Cal. App. 4th 1051, 1069, 151 Cal. Rptr. 3d 648 (2013). Section 844.6(a)(2) of the California Government Code provides that a public entity is not liable for an injury to any prisoner. Cal. Gov't Code § 844.6(a)(2). A prisoner is defined as "an inmate of a prison, jail, or penal or correctional facility." Cal. Gov't Code § 844. "For the purposes of this chapter, a lawfully arrested person who is brought into a law enforcement facility for the purpose of being booked, as described in Section 7 of the Penal Code, becomes a prisoner, as a matter of law, upon his or her initial entry into a prison, jail, or penal or correctional facility, pursuant to penal processes." *Id.* At all relevant times, plaintiff was incarcerated at a Riverside County detention facility and was therefore a prisoner during the time at issue. Compl. ¶ 4. Thus, unless a statutory exception exists, County is immune from liability for the state law claims.

1. Government Code § 845.6 Does Not Apply

Plaintiff argues County is not immune from liability because § 845.6 creates affirmative liability when a public employee fails to summon medical care. Opp. at 4-5. Plaintiff has not alleged a violation of Cal. Gov't Code § 845.6. Thus, § 845.6 is wholly inapplicable here.

Moreover, leave to amend to add a claim for violation of § 845.6 would be futile. Section 845.6 provides, with certain exceptions:

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

Cal. Gov't Code § 845.6. "In order to state a claim under § 845.6, a prisoner must establish three elements: (1) the public employee knew or had reason to know of the need (2) for immediate medical care, and (3) failed to reasonably summon such care." *Jett v. Penner*, 439 F.3d 1091, 1099 (9th Cir. 2006).

***4** Here, plaintiff alleges County provided medical care after each of his falls. Compl. ¶¶ 16-17, 19. At most, plaintiff alleges County staff did not provide treatment when he complained about knee pain and swelling after he was arrested. Compl. ¶¶ 13-14. But "[l]iability under section 845

is limited to serious and obvious medical conditions requiring immediate care," and knee pain and swelling are not indicia of the need for immediate medical care. *Watson v. State of Cal.*, 21 Cal. App. 4th 836, 841, 26 Cal. Rptr. 2d 262 (1993) (the government was not liable under § 845.6 because although appellant complained about tenderness in his ankle, he was able to walk so the state did not have reason to know he required surgery). Accordingly, § 845.6 provides no avenue for liability here.

2. Government Code § 845.4 Does Not Apply

Plaintiff contends § 845.4 provides liability for negligent or wrongful omissions by custodial staff. Opp. at 5. Specifically, plaintiff asserts § 845.4 "provides that 'it does not exonerate a public entity or employee from liability for injury proximately caused by negligent or wrongful acts or omissions of an employee in furnishing or failing to furnish medical care to prisoners.' " *Id.* As with § 845.6, § 845.4 is inapplicable because plaintiff does not allege a violation of it.

Moreover, it would be futile to grant plaintiff leave to amend to add a claim for violation of § 845.4. Contrary to plaintiff's assertion, § 845.4 does not concern negligent acts. Instead, § 845.4 provides an exception to public entity immunity for "injury proximately caused by the employee's intentional and unjustifiable interference with" "the right of a prisoner to obtain a judicial determination or review of the legality of his confinement." Cal. Gov't Code § 845.4. The Complaint contains no allegations about any interference with plaintiff's right to obtain a judicial determination or review of the legality of his confinement. Nor does plaintiff allege his detention was illegal. *See id.* ("no cause of action ... shall be deemed to accrue until it has first been determined that the confinement was illegal"). [2]

3. Government Code § 835

Plaintiff argues County is not immune from Claim Six – a violation of Government Code § 835 – because plaintiff was a "pre-arraignment detainee" and not a prisoner. Opp. at 5-6.

Section 835 provides for premises liability for dangerous conditions. Cal. Gov't Code § 835. But as stated above, § 844.6(a)(2) provides for immunity from an injury to any prisoner. Indeed, § 844.6(c) specifically bars a prisoner's claim for a dangerous condition of public property. Cal. Gov't Code § 844.6(c). And contrary to plaintiff's assertion, pretrial detainees are prisoners under this chapter of the Government Code. Cal. Gov't Code § 844; *see Lowman v. Los Angeles Cnty.*, 127 Cal. App. 3d 613, 616, 179 Cal. Rptr. 709 (1982) (citing *Datil v. City of Los Angeles*, 263 Cal. App. 2d 655, 69 Cal. Rptr. 788 (1968)). As such, County is immune from Claim Six, the § 835 claim. [3]

4. Respondeat Superior Liability Does Not Apply to Government Code § 844.6

***5** Plaintiff argues that because § 844.6(d) does not provide public employees immunity for injuries proximately caused by their negligence or wrongful act or omission and § 815.2(a) provides for vicarious liability, County is liable for the negligent acts of its employees. Opp. at 6. Plaintiff is incorrect.

As stated above, § 844.6(a)(2) provides that a public entity cannot be liable for an injury to a prisoner. Cal. Gov't Code 844.6(a)(2). Indeed § 844.6(d) expressly states that a public entity "is not required to pay any judgment ... or indemnify any public employee, in any case where the public entity is immune from liability under this section." Cal. Gov't Code § 844.6(d). Plaintiff cannot get around this immunity by invoking § 815.2. *Stewart v. Cnty. of Los Angeles*, 2019 WL 13244542, at *7 (C.D. Cal. Mar. 4, 2019). Section 815.2 "does *not* apply in the case of injuries to prisoners." *Lawson*, 180 Cal. App. 4th at 1383. Thus, County is immune from the negligence claims. [4]

5. Assembly Bill 2693 (2023) Does Not Remove Immunity

Plaintiff argues the California Legislature's passage of A.B. 2693 in 2023 limited § 844.6 "by removing immunity for claims arising from sexual assault in correctional or juvenile facilities" and demonstrates a legislative intent to ensure accountability for custodial misconduct. Opp. at 6. Plaintiff contends this means the court should construe § 844.6 narrowly and allow his claims under §§ 845.4 and 845.6 to proceed. *Id.* at 6-7.

Plaintiff's argument is utterly unconvincing. First, notwithstanding the fact that A.B. 2693 was vetoed by the governor, it concerned the revival of time-barred claims for sexual assaults. [5] Plaintiff does not allege any sexual assault claim. Second, even if A.B. 2693 had been enacted, it would not limit § 844.6 and remove immunity from the state law claims alleged in the Complaint. Finally, as already discussed above, plaintiff does not allege violations of §§ 845.4 and 845.6.

Accordingly, County is immune from liability for the state law claims. Plaintiff has not identified any statutory exception to this immunity.

C. The Complaint Fails to State a Federal Claim

Plaintiff alleges Doe Deputy 1, Doe Maintenance Worker, and Bianco, in his individual capacity violated his rights under the Eighth and Fourteenth Amendments by failing to ensure safe conditions of confinement and County is liable under *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978) for having a custom or policy of deliberate indifference to the health and safety of inmates. County argues the claims should be dismissed because they fail to state a claim.

1. Plaintiff Fails to State a Constitutional Violation

Plaintiff fails to clearly oppose defendants' motion to dismiss Claim Five, unless his conclusory assertion that he has stated a claim counts. *See* Opp. at 2. For this reason alone, Claim Five is subject to dismissal. *See Torres v. Deutsche Bank Nat'l Trust Co.*, 2012 WL 12885116, at *4-*5 (C.D. Cal. Dec. 26, 2012) (plaintiffs' failure to oppose the motion to dismiss particular claims is deemed to be a consent to the motion); *Qureshi v. Countrywide Home Loans, Inc.*, 2010 WL 841669, at *9 (N.D. Cal. Mar. 10, 2010) (dismissing claim after plaintiff failed to oppose its dismissal); *but see Johnson v. Meta Platforms, Inc.*, 2023 WL 5021784, at *3 (N.D. Cal. Aug. 4, 2023) (declining to find plaintiff had abandoned claim unaddressed in opposition to motion to dismiss and evaluated the motion to dismiss on the merits).

***6** In any event, with Claim Five, plaintiff fails to state a claim. As an initial matter, the Eighth Amendment applies to prisoners while the Due Process clause of the Fourteenth Amendment applies to conditions of confinement claims for pretrial detainees. *See Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1246 n.5 (9th Cir. 2016) ("Eighth Amendment protections apply only once a prisoner has been convicted of a crime, while pretrial detainees are entitled to the potentially more expansive protections of the Due Process Clause of the Fourteenth Amendment."); *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1067-68 (9th Cir. 2016) ("Inmates who sue prison officials for injuries suffered while in custody may do so under the Eighth Amendment's Cruel and Unusual Punishment Clause or, if not yet convicted, under the Fourteenth Amendment's Due Process Clause."). Plaintiff fails to allege whether he was a pretrial detainee or prisoner, but given the dates of his arrest and falls, the court assumes plaintiff was a pretrial detainee. *See* Compl. ¶¶ 13, 16-17, 19; *see also* Opp. at 6. Accordingly, the court evaluates Claim Five as a Fourteenth Amendment due process violation. Regardless, plaintiff fails to state a claim under either Amendment.

As discussed above, there is no respondeat superior liability under 42 U.S.C. § 1983. *Jones*, 297 F.3d at 934. Bianco cannot be liable for a violation of the 14th Amendment unless he personally participated in the violation or knew of it and failed to act. *Taylor*, 880 F.2d at 1045. Plaintiff alleges no facts showing Bianco personally participated in the decisions concerning plaintiff's leaky toilet and conditions of confinement. Instead, plaintiff simply alleges in conclusory fashion that Bianco knew or reasonably should have known about the jail conditions and failed to provide proper oversight. Compl. ¶ 54. But conclusory allegations of knowledge unsupported by facts are not sufficient to withstand a motion to dismiss. *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982); *see also Jones v. Cmty. Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (finding conclusory allegations unsupported by facts insufficient to state a claim under § 1983).

To bring a pretrial detainee's conditions of confinement claim under the Fourteenth Amendment, a plaintiff must establish the following elements:

> (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved – making the consequences of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries.

Gordon v. Cnty. of Orange, 888 F.3d 1118, 1125 (9th Cir. 2018). Even if plaintiff were able to assert factual allegations

of Bianco's knowledge, a leaky toilet does not rise to the level of a Fourteenth Amendment violation because it is not a condition that puts plaintiff at substantial risk of suffering serious harm. *See Bell*, 441 U.S. at 539 n.21 (de minimis levels of imposition do not rise to a constitutional violation). Plaintiff alleges he suffered from an unspecified knee condition, but without more, the court cannot infer from the Complaint's allegations that plaintiff was at substantial risk of serious harm from water on the floor. The temporary or short term exposure – here, nine days – to the condition further indicates it does not amount to a constitutional violation. *See Curley v. Clark*, 2023 WL 8021516, at *4 (E.D. Cal. Nov. 20, 2023) ("temporarily unconstitutional conditions of confinement do not necessarily rise to the level of constitutional violations"). Moreover, plaintiff alleges that someone was sent to repair the toilet after his falls and thus cannot establish that Bianco or anyone else failed to take reasonable measures to abate the condition or acted with reckless disregard. *See* Compl. ¶¶ 17, 18, 43-44.

***7** As such, even if plaintiff had opposed the motion to dismiss Claim Five, it would still be dismissed for failure to state a claim.

2. Plaintiff Fails to State a Claim for *Monell* Liability

In Claim Seven, plaintiff alleges County is liable for the violation of his Eighth and Fourteenth Amendment rights because it has an official policy, custom, or practice of permitting unconstitutional conditions of confinement in its detention facilities.

A local government entity such County "may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is only when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Monell*, 436 U.S. at 694. Thus, County may not be held liable for the alleged actions of its employees unless "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers," or if the alleged constitutional deprivation was "visited pursuant to a governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." *Id.* at 690-91.

Monell liability is foreclosed because there is no constitutional violation. *Lockett v. Cnty. of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020) ("*Monell* claims [ ] require a plaintiff to show an underlying constitutional violation."). Moreover, plaintiff does not allege any facts to support his claims that County has a policy or longstanding practice of failing to fix leaky toilets. Conclusory allegations are insufficient to state a *Monell* claim. *See, e.g., Correa v. Whittier City Police Dep't*, 2023 WL 4409118, at *5 (C.D. Cal. Mar. 14, 2023) (conclusory allegations of policies and customs are insufficient to state a claim). Finally, plaintiff's allegations reflect a single leaky toilet that was not adequately repaired. A single incident is insufficient to establish a custom or practice. *See Hunter v Cnty. of Sacramento*, 652 F.3d 1225, 1233 (9th Cir. 2011) (a custom or practice may be inferred from evidence of repeated constitutional violations); *Davis v. City of Ellensburg*, 869 F.2d 1230, 1233 (9th Cir. 1989) ("A plaintiff cannot prove the existence of a *municipal* policy or custom based solely on the occurrence of a single incident of unconstitutional action by a non-policymaking employee.").

Accordingly, the Complaint fails to state a Fourteenth Amendment or *Monell* claim.

D. Does 10-25 Are Dismissed

Local Rule 19-1 limits the number of fictitious defendants in a complaint to ten. L.R. 19-1. In addition to Doe Deputy 1 and Doe Maintenance Worker, plaintiff names Does 2-25 as defendants. Accordingly, the court grants defendants' motion to dismiss Does 10-25. [6]

E. Leave to Amend Is Granted in Part

Whether leave to amend should be granted here is a close question, despite plaintiff having had only one opportunity to plead so far. First, County is immune from liability for the state law claims, and there is no indication plaintiff can plausibly allege liability against any individual for those claims. Second, plaintiff has alleged no facts specific to Bianco and there is no indication plaintiff is able to allege his personal participation. Third, plaintiff failed to oppose the motion to dismiss the Fourteenth Amendment claim, and there is no indication he can allege such a claim given the facts presented here. *See also Bulan v. JPMorgan Chase Bank*, 2011 WL 13266527, at *7 (N.D. Cal. Apr. 6, 2011) ("Because Plaintiffs failed to oppose the motion to dismiss, the dismissal should be without leave to amend."). Fourth, absent a constitutional violation, plaintiff cannot state a *Monell* claim, and nor is there any indication of an applicable

policy or custom or practice that would permit such a claim to go forward. And fifth, nothing in the allegations in the Complaint suggests there is a basis for plaintiff to state a claim against a deputy or a maintenance worker simply because they tried but failed to immediately fix a leaky toilet, even if plaintiff were able to identify these Doe defendants.

***8** Nonetheless, because the court is unable to determine conclusively at this juncture that amendment would be futile, leave to amend is granted to the extent set forth below.

V.

ORDER

For the foregoing reasons, defendants' Motion to Dismiss the Complaint (docket no. 5) is GRANTED. Defendants Bianco and Does 10-25 are dismissed. Plaintiff's state law claims against defendant County (Claims One, Two, Three, Four, and Six) are dismissed without leave to amend. Plaintiff's federal civil rights claims (Claims Five and Seven) are dismissed with leave to amend. Plaintiff may file a First Amended Complaint on or before **April 21, 2026**.

All Citations

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Footnotes

1 Plaintiff alleges this was his third grievance but the Complaint only contains mentions of two grievances. *See* Compl. ¶¶ 13-20.

2 Plaintiff's Opposition includes a quotation of purported language from § 845.4 (Opp. at 5); however, the court could not locate the quoted statutory language in § 845.4 or any other section of the California Government Code. Nor could the court find any case, federal or state, containing the quoted language. This suggests counsel may have used artificial intelligence to draft the opposition memorandum and failed to confirm the accuracy of the citations and quotes.

All counsel who appear before this court must comply with the California Rules of Professional Conduct and Federal Rules of Civil Procedure and, among other things, not make false statements of fact or law. *See, e.g.*, Cal. R. Prof. Conduct 3.3(a)(1); Fed. R. Civ. P. 11(b)(2). Although this court has not yet enacted rules or orders specifically addressing the use of artificial intelligence, this does not permit counsel to submit a brief with non-existent authority. *Cf. Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 461 (S.D.N.Y. 2023) ("A fake opinion is not 'existing law' and ... [a]n attempt to persuade court or oppose an adversary by relying on fake opinions is an abuse of the adversary system."). Counsel has a duty to "read, and thereby confirm the existence and validity of, the legal authorities on which they rely." *Park v. Kim*, 91 F.4th 610, 615 (2d. Cir. 2024).

3 Before bringing a suit against a public entity, the California Government Tort Claims Act requires the timely presentation of a written claim and a rejection in whole or part. Cal. Gov't Code § 905; *Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1477 (9th Cir. 1995) (citation omitted). A plaintiff must allege facts demonstrating either compliance with the GTCA requirement or an excuse for noncompliance. *Cal. v. Super. Ct. (Bodde)*, 32 Cal. 4th 1234, 1243-44, 13 Cal. Rptr. 3d 534, 90 P. 3d 116 (2004). Plaintiff alleges she presented Claim Six, but it is unclear whether she presented all of the state law claims. Compl. ¶ 63.

4 Plaintiff asserts claims of negligence (Claim One) and negligent infliction of emotional distress (Claim Three). In California, there is no independent tort of negligent infliction of emotional distress. *Bates v. Hartford Life*

and Acc. Inc. Co., 765 F. Supp. 2d 1218, 1222 (C.D. Cal. 2011) (citing *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 984, 25 Cal. Rptr. 2d 550, 863 P. 2d 795 (1993)). The tort is negligence.

5 *See* https://legiscan.com/CA/bill/AB2693/2023.

6 Defendants move to dismiss Does 11-25, but Doe Deputy 1, Doe Deputy Maintenance Worker, and Does 2-9 amount to 10 fictitious defendants.