

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 31 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

CASANDRA PASTORA, Deceased, by and through her Successor in interest, Saeed Toghraie; SAEED TOGHRAIE, individually,

Plaintiffs-Appellants,

v.

COUNTY OF SAN BERNARDINO, a public entity; JOHN MCMAHON, individually, and in his official capacity; SHANNON D. DICUS, in his individual/official capacity; VICTOR MORENO, in his individual/official capacity; DOES, 1-10, individually, jointly, and severally,

Defendants-Appellees.

No. 22-55617

D.C. No. 5:21-cv-01410-JGB-SP

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Jesus G. Bernal, District Judge, Presiding

Argued and Submitted March 7, 2023  
Pasadena, California

Before: WATFORD and COLLINS, Circuit Judges, and MURPHY,\*\* District Judge.

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Stephen Joseph Murphy III, United States District Judge for the Eastern District of Michigan, sitting by designation.

Plaintiff-appellant Saaed Toghraie appeals from the district court’s judgment dismissing a civil action brought upon the death of Toghraie’s daughter, Casandra Pastora, who passed away after severely injuring herself in a detention facility operated by the County of San Bernardino. We affirm in part, reverse in part, vacate in part, and remand for further proceedings.

## I

Casandra Pastora was diagnosed with schizophrenia at the age of 21. She treated her condition with medication. While in college studying to become a special education teacher, Pastora became pregnant.

Concerned about the effects of her schizophrenia medication on the baby, Pastora stopped taking her medication. She then had a mental breakdown that resulted in her father, Saeed Toghraie, calling 911. After San Bernardino County Sheriff’s deputies arrived, Toghraie explained that Pastora “had been diagnosed with schizophrenia but stopped taking her medication because she was pregnant.” Deputies ultimately arrested Pastora<sup>1</sup> and took her to a County jail. A County deputy informed Toghraie that Pastora had been placed in a “safe room” at the jail so that “she could not harm herself.” Nonetheless, while in jail, Pastora managed to attempt suicide. As a result, she sustained substantial brain damage, lost her baby, and died a few days later.

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<sup>1</sup> The crime of arrest is not identified in the operative complaint.

Toghraie sued the County of San Bernardino, as well as various County agents. The operative complaint asserts five causes of action: (1) a constitutional claim under 42 U.S.C. § 1983 for the provision of inadequate conditions of confinement and medical care; (2) a constitutional claim under 42 U.S.C. § 1983 for deprivation of the fundamental right to familial relationships; (3) a *Monell* claim against the County of San Bernardino for the two constitutional violations identified above; (4) a violation of California Civil Code § 52.1, also known as the “Bane Act”; and (5) a California state-law claim for negligence leading to wrongful death. The complaint identified three sets of defendants: (1) the County of San Bernardino; (2) three named County officers, all in supervisory positions over detention facilities in the County; and (3) a set of “Doe defendants,” who were as-yet unidentified “employees and agents” of the County responsible for supervising and caring for Pastora while she was confined at the County jail.

The district court ultimately granted a motion to dismiss all claims against all defendants with prejudice under Federal Rule of Civil Procedure 12(b)(6).

Toghraie appeals.

## II

We affirm the dismissal of all claims against the three named County officers: (1) Sheriff-Coroner John McMahon; (2) County Undersheriff Shannon Dicus; and (3) Captain Victor Moreno, head of the County’s Corrections Division.

Toghraie’s operative complaint does not “plead[] factual content that allows the court to draw the reasonable inference” that any of these defendants are “liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

We begin with the state-law negligence claim. “To prevail in an action for negligence [under California law], the plaintiff must demonstrate that the defendant owed a duty to the plaintiff, that the defendant breached that duty, and that the breach proximately caused the plaintiff’s injuries.” *John B. v. Superior Ct.*, 137 P.3d 153, 159 (Cal. 2006) (citation omitted). The operative complaint contains no non-conclusory allegations as to any of these three named defendants with respect to the issues of breach of duty or causation of injury. As such, the district court properly dismissed that claim as to these defendants. *Iqbal*, 556 U.S. at 679.

Toghraie’s remaining claims against these three named defendants all require a showing of fault that is more culpable than mere negligence. *See Gordon v. County of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018) (stating that a showing of “deliberate indifference” amounting to “reckless disregard” is necessary to prevail on claim for inadequate medical care under Fourteenth Amendment (citation omitted)); *Lemire v. California Dep’t of Corr. & Rehab.*, 726 F.3d 1062, 1068, 1075 (9th Cir. 2013) (stating that a Fourteenth Amendment claim

for deprivation of familial relationships requires a showing of official conduct that is “deliberately indifferent” in a way that “shocks the conscience” (citation omitted)); *Shoyoye v. County of Los Angeles*, 137 Cal. Rptr. 3d 839, 846 (Ct. App. 2012) (holding that a Bane Act claim under California Civil Code § 52.1 requires a showing of “threats, intimidation, or coercion”). Because the operative complaint fails to state a claim against these named defendants for negligence, it necessarily fails to state a claim under any of the other, more demanding theories of liability as well. These three defendants were properly dismissed with prejudice.

### III

We reverse the dismissal of Toghraie’s four claims against the Doe defendants. *See Gillespie v. Civiletti*, 629 F.2d 637, 642–43 (9th Cir. 1980) (holding that, where a complaint otherwise states a valid claim against specific, but as-yet unidentified defendants, “the plaintiff should be given an opportunity through discovery to identify the unknown defendants”).

Paragraph 91 of the operative complaint alleges that unknown Doe defendants “verbally harass[ed] and assault[ed] MS. PASTORA while battering her, to seek her compliance and submission to their threats and control.”

Paragraph 91 additionally alleges that the Doe defendants “further threatened, harassed, and coerced MS. PASTORA by refusing to provide her with necessary medical care when she cried, screamed, and yelled for immediate help after

injuring herself, and while she continued to harm herself.”

Although the names of the particular County employees at issue have not yet been identified, the substance of this factual allegation is not conclusory, and we are thus required to assume it to be true for purposes of evaluating a motion to dismiss under Rule 12(b)(6). *See Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 679). Taking the allegations in Paragraph 91 as true, we conclude that they state a claim for relief against the relevant Doe defendants under the four applicable claims in the complaint.

1. “Parents and children may assert Fourteenth Amendment substantive due process claims if they are deprived of their liberty interest in the companionship and society of their child or parent through official conduct,” but only if that official conduct is “deliberately indifferent” in a way that “shocks the conscience.” *Lemire*, 726 F.3d at 1075 (citation omitted). “[R]efusing to provide” a detainee who is known to be pregnant and schizophrenic “with necessary medical care when she cried, screamed, and yelled for immediate help after injuring herself,” in addition to “verbally harassing” and “battering” her, is official conduct that is “deliberately indifferent” and “shocks the conscience.” *Id.* (citation omitted).

2. “[T]he elements of a pretrial detainee’s medical care claim against an individual defendant under the due process clause of the Fourteenth Amendment are: (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*, 888 F.3d at 1125. “[R]efusing to provide” Pastora “with necessary medical care when she cried, screamed, and yelled for immediate help after injuring herself,” after which Pastora died, states a claim under this standard.

3. The allegations in paragraph 91 also support a plausible inference that the Doe defendants “owed a duty to” Pastora as a vulnerable detainee, “breached that duty,” and that “the breach proximately caused [Pastora’s] injuries,” as required to state the elements of a claim for negligence under California law. *John B.*, 137 P.3d at 159.<sup>2</sup>

4. “A defendant is liable under the Bane Act if he or she interfered with or attempted to interfere with the plaintiff’s constitutional rights by the requisite threats, intimidation, or coercion.” *Julian v. Mission Cmty. Hosp.*, 218 Cal. Rptr. 3d 38, 69 (Ct. App. 2017) (simplified). “The essence of a Bane Act claim is that

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<sup>2</sup> California has chosen not to “exonerate[] a public *employee*,” as opposed to a public *entity*, “from liability for injury proximately caused by his negligent or wrongful act or omission” leading to certain prisoner-related injuries. CAL. GOV’T CODE § 844.6(d) (emphasis added).

the defendant, by the specified improper means (*i.e.*, ‘threats, intimidation or coercion’), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.” *Austin B. v. Escondido Union Sch. Dist.*, 57 Cal. Rptr. 3d 454, 472 (Ct. App. 2007) (citation omitted). “[T]he Bane Act does not require the ‘threat, intimidation or coercion’ element of the claim to be transactionally independent from the constitutional violation alleged.”

*Rodriguez v. County of Los Angeles*, 891 F.3d 776, 802 (9th Cir. 2018) (citation omitted). Here, the complaint’s allegations that the Doe defendants “verbally harass[ed] and assault[ed] MS. PASTORA while battering her, to seek her compliance and submission to [the Doe defendants’] threats and control,” gives rise to a plausible inference that these defendants used “threats, intimidation, or coercion” in accomplishing the adequately pleaded interference with Pastora’s constitutional rights. *Julian*, 218 Cal. Rptr. 3d at 69.

#### IV

We vacate the dismissal of the *Monell* and negligence claims against the County, as well as the dismissal of Toghraie’s claim for punitive damages.<sup>3</sup>

The district court dismissed Toghraie’s *Monell* claim solely on the ground

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<sup>3</sup> Toghraie does not contest the district court’s earlier dismissal of his Bane Act claim against the County with prejudice, and the operative complaint does not reallege a Bane Act claim against the County. Any challenge to the dismissal of this claim against the County is therefore forfeited.



that “a *Monell* claim cannot survive without an underlying constitutional violation.” *See Lockett v. County of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020). Having concluded that the operative complaint does, in fact, state underlying constitutional claims against the Doe defendants, we must vacate the district court’s dismissal of the *Monell* claim against the County.

The district court similarly dismissed Toghraie’s state-law claim for negligence against the County on the ground that Toghraie had failed to plead facts supporting an allegation that any defendant was “aware of a serious and obvious medical condition requiring immediate care and that they failed to summon immediate medical care.” The County is immune from liability for “[a]n injury to any prisoner” under California Government Code § 844.6, unless, with certain exceptions, one of its employees “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. Having concluded that the allegations in Paragraph 91 suffice to plead that the Doe defendants knew or had reason to know that Pastora was “in need of immediate medical care” and “fail[ed] to take reasonable action to summon such medical care,” *id.*, we vacate the district court’s dismissal of the state-law negligence claim against the County.

Finally, the district court dismissed Toghraie’s request for punitive damages solely on the ground that “no cause of action remains against Individual

Defendants.” Having revived causes of action against the Doe defendants, we vacate the dismissal of Toghraie’s request for punitive damages.

V

We accordingly AFFIRM the dismissal with prejudice of all claims against defendants John McMahon, Shannon Dicus, and Victor Moreno. We REVERSE the dismissal of Claims 1, 2, 4, and 5 against Does 1–10. We VACATE the dismissal of Claims 3 and 5 against the County of San Bernardino, and we VACATE the district court’s dismissal of Toghraie’s request for punitive damages.

**AFFIRMED** in part, **REVERSED** in part, **VACATED** in part, and **REMANDED**.