



1           **I. Background**

2                   **A. Factual Background<sup>1</sup>**

3           Plaintiff Jovanna Silva (“Silva”) is an individual residing in the County of Los Angeles.  
4 Compl. ¶ 5. At the time of the incidents at issue, Silva was a 59-year-old Latina transgender woman  
5 and had lived for approximately thirty years in her female identity. *Id.*

6           On the evening of January 10, 2019, officers of the City of El Monte Police Department  
7 (“EMPDP”) directed and supervised a sting operation targeted against the transgender community  
8 based upon sexual identity-based profiling. *Id.* ¶ 14. The sting operation took place at Silva’s home  
9 located at 11208 Garvey Ave. #3, El Monte, CA 91732. *Id.* ¶ 16. At the time, Silva was home alone  
10 and preparing to go to bed. *Id.* Detective Rene Flores (“Flores”) was dressed in plain clothes and  
11 equipped with a wire to broadcast audio around him when he was sent to Silva’s door to entrap Silva  
12 into agreeing to committing a sexual act with him for money. *Id.* ¶ 17. Flores was instructed by the  
13 EMPDP to initiate contact with Silva in her home to lure her into a sexual act in exchange for money  
14 so that Silva could subsequently be arrested for prostitution. *Id.* Once the EMPDP believed that Silva  
15 had solicited prostitution, EMPDP officers rushed in from their adjacent location to effect the arrest of  
16 Silva. *Id.* ¶ 20. Guns drawn, the officers suddenly appeared in the dark and poorly lit area outside of  
17 Silva’s home and yelled at Silva in English, despite knowing that Silva only spoke and understood  
18 Spanish. *Id.* ¶ 21.

19           Without identifying themselves as law enforcement, the officers forced open her door,  
20 entered her home, and forcibly threw her onto the floor. *Id.* ¶ 23. Silva fell forcefully onto the floor  
21 chest-down, causing her pain and injury to her breasts. *Id.* Once Silva had been thrown onto the  
22 ground and pinned down, a number of officers kicked and punched Silva multiple times for no  
23 reason in her face and upper torso without limitation. *Id.* ¶ 24. Silva was subsequently arrested and  
24 charged for agreeing to receive compensation for prostitution and resisting arrest. *Id.* ¶ 28.

25           Following the arrest, EMPDP threatened her landlord, Jackson Chow (“Chow”), with criminal  
26 prosecution unless Chow took immediate action to evict Silva from her home. *Id.* ¶ 31. EMPDP sent a  
27 letter to Chow directing him to immediately commence eviction for what the letter falsely stated

28 \_\_\_\_\_  
<sup>1</sup> Plaintiff Jovanna Silva sets forth the following factual allegations in her Complaint. ECF No. 1 (“Compl.”).

1 were “confirmed” violations. *Id.* On or about January 25, 2019, Silva received an unlawful “Three  
2 Day Notice” from Chow requiring that she vacate by January 28, 2019. *Id.* ¶ 32. Chow sent this  
3 “Three Day Notice” despite the fact that Silva had paid full rent for the month of January. *Id.* Silva  
4 was evicted and forced to leave her home without her consent. *Id.* ¶ 33. Silva became homeless on or  
5 about January 28, 2019. *Id.*

### 6 **B. Procedural History**

7 On January 8, 2021, Silva filed this action against EMPD, Police Chief David R. Reynoso,  
8 Detective Jacob Burse, Sergeant Mark Snook, Detective Rene Flores, Detective Andrew Avila,  
9 Detective Roger Sardina, Detective Clayton Duran, the City of El Monte (collectively, the “El  
10 Monte Defendants”), and Chow (collectively, the “Defendants”), alleging causes of action for: (1)  
11 unreasonable search and seizure, 42 U.S.C. § 1983; (2) excessive force, 42 U.S.C. § 1983; (3)  
12 municipal liability for unconstitutional custom, practice, or policy, 42 U.S.C. § 1983; (4) municipal  
13 liability for failure to train, 42 U.S.C. § 1983; (5) violation of substantive due process and  
14 deprivation of property, 42 U.S.C. § 1983; (6) wrongful eviction; (7) protected characteristics  
15 discrimination, 42 U.S.C. §§ 1983, 2000(d); and (8) violation of the Unruh Civil Right Act, CAL.  
16 CIV. CODE §§ 51, 52. *See generally* Compl.

17 On February 14, 2022, this case was reassigned by Chief Judge Philip S. Gutierrez to this  
18 Court. ECF No. 80. On May 31, 2022, this Court issued a Civil Trial Order setting the schedule of  
19 discovery, pretrial, and trial dates. ECF No. 87. The last date to hear a motion to amend the  
20 pleadings or add parties was set for July 21, 2022. *Id.*

21 On or about February 2022, Silva’s counsel met and conferred with Defendants’ counsel  
22 regarding proposed amendments to the Complaint. ECF No. 88, Declaration of Carlos A. Hernandez  
23 (“Hernandez Decl.”), ¶ 2; *see also id.*, Ex. A. On June 23, 2022, Silva filed the instant Motion to File  
24 a First Amended Complaint (“Mot.”), set for hearing on July 21, 2022. ECF No. 88. On its own  
25 motion, the Court continued the hearing date to August 4, 2022. ECF No. 90. The Motion was fully  
26 briefed on July 25, 2022. ECF No. 92 (“Opp’n”), ECF No. 93 (“Reply”). On August 1, 2022, the  
27 Court deemed this matter appropriate for resolution without oral argument and vacated the hearing  
28 set for August 4, 2022. ECF No. 95.

1           **II.     Applicable Law**

2           Federal Rule of Civil Procedure 15(a)(2) provides that a court “should freely give leave [to  
3 amend a pleading] when justice so requires.” The Ninth Circuit has held that amendments should be  
4 granted with “extreme liberality” in order to “facilitate decision on the merits, rather than on the  
5 pleadings or technicalities.” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Accordingly,  
6 the burden of persuading the court that leave should not be granted rests with the nonmoving party.  
7 *See DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

8           There are several factors a court may consider in deciding whether to grant leave to amend a  
9 complaint: (1) whether the plaintiff has previously amended his complaint, (2) undue delay, (3) bad  
10 faith, (4) prejudice to the opposing party; and (5) futility of amendment. *Loehr v. Ventura County*  
11 *Cnty. Coll. Dist.*, 743 F.2d 1310, 1319 (9th Cir. 1984).

12           The most important of these factors is prejudice to the opposing party. *Eminence Capital,*  
13 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). The burden is on the party opposing  
14 amendment to show prejudice. *DCD Programs*, 833 F.2d at 187. Absent a showing of prejudice or a  
15 strong showing of the remaining factors, a presumption exists in favor of granting leave to amend.  
16 *Eminence Capital, LLC*, 316 F.3d at 1052.

17           **III.     Discussion**

18           Silva requests that in light of the recent January 2022 amendment to the Bane Act, CAL. CIV.  
19 CODE § 52.1, Silva should be granted leave to amend her Complaint. Silva argues that the filing of a  
20 first amended complaint should be permitted because: (1) there was no undue delay; (2) there was no  
21 bad faith or motive; (3) there have been no prior amendments; (4) there is no undue prejudice to  
22 Defendants; and (5) amendment would not be futile. Mot. at 8–10. Defendants respond that the  
23 Motion should be denied because: (1) Silva unduly delayed in bringing her Bane Act claim; (2) Silva  
24 failed to comply with the California Torts Claim Act; (3) her Bane Act claim is legally and factually  
25 futile; and (4) Silva failed to meet and confer on the amendments concerning factual allegations.  
26 Opp’n at 3–6.

27     ///

28     ///

1                   **A. The Court finds that the absence of bad faith, undue delay, prejudice to**  
2                   **Defendants, and prior attempts to amend the complaint all weigh in favor of**  
3                   **allowing the addition of Silva’s Bane Act claim.**

4                   The Court looks to the *Loehr* factors to determine whether Silva’s request for leave to amend  
5                   should be granted. First, Defendants do not argue that Silva has filed this amendment in bad faith,  
6                   nor that Silva has made improper attempts to amend, nor that there is any risk of prejudice. As such,  
7                   the Court finds that these three factors weigh in favor of permitting amendment.

8                   Next, the Court considers whether there is any undue delay. Defendants argue that Silva  
9                   unduly delayed in bringing her excessive force allegations associated with her Bane Act claim since  
10                  she was aware of such claims when she initially filed suit. Opp’n at 5. While the Court  
11                  acknowledges that Silva was aware of these allegations at the time of filing, the Court finds that  
12                  Silva has sufficiently demonstrated why amendment is necessary at this time, in light of the January  
13                  2022 amendment to the Bane Act. *See* CAL. CIV. CODE § 52.1(n). Based upon this statutory  
14                  amendment, revoking state immunity for claims brought against public entities, Silva seeks to  
15                  amend her complaint to add a claim for violation of the Bane Act. Under this cause of action, she  
16                  would be permitted to recover civil penalties and actual damages.

17                  Given that this amendment just came into effect in January 2022, the Court finds that,  
18                  contrary to Defendants’ assertion, Silva could not have known to include this additional claim at the  
19                  time of the original filing. Finally, given that Silva only seeks to add an additional claim that  
20                  contains factual allegations already contained in her initial complaint, the Court finds little risk of  
21                  prejudice to Defendants.

22                   **B. Silva’s failure to comply with the California Tort Claims Act may not be fatal to**  
23                   **her Bane Act claim.**

24                  Under the California Tort Claims Act, CAL. GOV. CODE §§ 810, *et seq.*, a plaintiff is required  
25                  to present her claim to a public entity before she may file an action for damages against a California  
26                  governmental entity or employee “for death or for injury to person or to personal property.” CAL. GOV.  
27                  CODE § 911.2; *see also* CAL. GOV. CODE §§ 905.2, 911.2, 945.4, 950.2. Here, Defendants argue that  
28                  Silva is barred from bringing her Bane Act claim against the El Monte Defendants since she did not  
29                  file a government claim with the City of El Monte. Opp’n at 3.

1           Having considered that Silva did not have a viable Bane Act claim at the time of filing—prior  
2 to the January 2022 amendment—the Court finds Silva’s failure to file an administrative claim with  
3 the City of El Monte may be reasonable under the circumstances, and may not be fatal. It appears to  
4 the Court that because Silva could not have foreseen that a Bane Act claim would no longer be barred  
5 by prosecutorial immunity, it is possible that she could not have been expected to include this claim  
6 at the time of filing and comply with the requisite administrative procedures. As such, Silva’s failure  
7 to comply with the California Tort Claims Act might not be fatal to her Bane Act claim. Defendants  
8 have not cited to any authority governing this situation—namely an intervening change in law after  
9 the deadline for claims presentation. Accordingly, this Court declines the invitation to rule on this  
10 issue at this time. As appropriate, Defendants can raise this argument on a motion to dismiss and the  
11 Court will have the benefit of more fulsome briefing on this question.

12                   **C. The Court finds that amendment is not futile.**

13           The Court considers the last *Loehr* factor, which the parties dispute: whether amendment is  
14 futile. Defendants argue that Silva’s Bane Act claim is futile because the proposed First Amended  
15 Complaint alleges that the eviction proceedings were solely initiated by Chow and thereby not  
16 attributable to the El Monte Defendants. Opp’n at 4.

17           The Court finds that Silva has sufficiently alleged that the El Monte Defendants’ conduct  
18 contributed to her eviction. Silva alleges that had El Monte Defendants not used threats,  
19 intimidation, and/or coercion described below, Silva would not have suffered constitutional  
20 violations that deprived her of her right to property.

21  
22           110. EL MONTE DEFENDANTS, and each of them, including DOES 1 through  
23 50, also caused PLAINTIFF to be deprived of, without limitation, her Fifth and  
24 Fourteenth Amendment right to live in her own home and caused her to become  
25 homeless by way of threats, intimidation, and/or coercion. Without limitation, EL  
26 MONTE DEFENDANTS threatened her landlord JACKSON CHOW with criminal  
27 prosecution unless JACKSON CHOW took immediate action to evict PLAINTIFF  
28 from her home. On said date, EL MONTE DEFENDANTS, and each of them, sent a  
letter to PLAINTIFF’S landlord JACKSON CHOW for what the letter alleged were  
violations of various codes, including Penal Code § 647(b) – Prostitution.  
PLAINTIFF’S landlord, JACKSON CHOW, was directed by DEFENDANTS to  
immediately commence eviction actions for what the letter falsely stated were  
“confirmed” violations. PLAINTIFF’S landlord, JACKSON CHOW, was to  
immediately commence eviction actions against PLAINTIFF under threat of being  
charged with a misdemeanor and monetary and punitive ramifications for failure to  
comply.

1 111. Without limitation, as a result of EL MONTE DEFENDANTS' wrongful  
2 actions, on or about January 25, 2019, PLAINTIFF received an unlawful Three Day  
3 Notice from her landlord, JACKSON CHOW, requiring that she vacate her home in 3  
4 days, by January 28, 2019 based upon the threats, intimidations, and/or coercion in  
5 EL MONTE DEFENDANTS' letter.

6 112. Under the unlawful threats and actions made by DEFENDANTS, on or about  
7 January 28, 2019, PLAINTIFF was evicted and forced to leave her home without her  
8 consent. PLAINTIFF became homeless on or about January 28, 2019. Said eviction  
9 was unlawful, discriminatory, and in violation of PLAINTIFF'S statutory,  
10 contractual, and constitutional rights.

11 Hernandez Decl., Ex. C ("Proposed FAC").

12 In their Opposition, Defendants assert that the El Monte Defendants could not institute or  
13 maintain eviction proceedings against Silva in the absence of a contractual relationship. Opp'n at 4.  
14 However, Defendants have not identified, and the Court is not aware of, any case where the Ninth  
15 Circuit has found a privity requirement under the Bane Act. Defendants have thereby failed to  
16 establish that "no set of facts can be proved under the amendment to the pleadings that would  
17 constitute a valid and sufficient claim or defense." *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214  
18 (9th Cir.1988). As such, the Court GRANTS Silva's request for leave to add her Bane Act claim.

19 **D. The Court grants Silva's request to include additional factual allegations.**

20 In addition to including a ninth cause of action, Silva seeks to amend her complaint by  
21 adding factual allegations, already alleged in her fifth cause of action, to her third and fourth causes  
22 of action. *See* Proposed FAC ¶¶ 58(e)-(j), 66, 68. Defendants argue that Silva should be barred from  
23 adding such amendments since Silva failed to properly meet and confer on these specific  
24 amendments prior to the filing of this Motion. Opp'n at 5-6. Silva concedes "that the subject of meet  
25 and confer efforts was focused on amending her operative complaint to add a Bane Act cause of  
26 action" and not these additional factual allegations. Reply at 6.

27 Under Local Rule 7-3, "counsel contemplating the filing of any motion shall first contact  
28 opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated  
29 motion and any potential resolution." C.D. CAL. L.R. 7-3. While the Court acknowledges Silva's  
30 failure to discuss these specific amendments during the meet and confer—considering the strong  
31 presumption in favor of amendment—counsel's discussion of Silva's related Bane Act claim should


1 have been sufficient to put Defendants on notice of these factual allegations.<sup>2</sup> Furthermore, the fact  
2 that there is a possibility that Silva could state a cognizable property-related claim under her third  
3 and fourth causes of action justifies granting amendment. *See* Hernandez Decl., Ex. A at 17. Finally,  
4 given that Silva only seeks to add factual allegations Defendants that are already covered by her fifth  
5 cause of action, the Court finds little risk of prejudice to Defendants. As such, the Court GRANTS  
6 Silva's request to add the proposed factual allegations to the third and fourth causes of action.

7 **IV. CONCLUSION**

8 In light of the foregoing reasons, the Court ORDERS the Motion for Leave to File a First  
9 Amended Complaint be GRANTED. Silva is ORDERED to file her First Amended Complaint within  
10 fourteen (14) days of this Order.

11  
12 **IT IS SO ORDERED.**

13  
14 Dated: August 4, 2022

15   
16 MAAME EWUSI-MENSAH FRIMPONG  
17 United States District Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>2</sup> The granting of this motion should not leave Silva with the view that the Court does not take seriously the requirements of Local Rule 7-3. Compliance with this Rule requires parties to meet and confer regarding *all* matters that are subject to a motion, not just some. Silva is sternly admonished that the Court will look unfavorably upon any future violations of this Local Rule.