

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MIKAL JONES and ANGELA ANDERSON

Case No. 1:17-cv-1260-SKO

Plaintiffs,

**ORDER RE MOTION FOR SUMMARY  
JUDGMENT**

v.

(Doc. 16)

COUNTY OF TULARE, CALIFORNIA, et al.,

Defendants.

---

### I. INTRODUCTION

On October 15, 2018, Defendants County of Tulare, Tulare County Sheriff Michael Boudreaux, and Tulare County Deputy Sheriff Michael Torres (collectively, “Defendants”) filed a motion for summary judgment or, in the alternative, partial summary judgment. (Doc. 16.) After denial of their motion to amend the complaint (Doc. 24), Plaintiffs Mikal Jones (“Plaintiff Jones”) and Angela Anderson (collectively, “Plaintiffs”) filed an opposition brief on February 20, 2019 (Doc. 27), and Defendants filed a reply brief on February 26, 2019 (Doc. 28).

The adjudication of the present motion was stayed pending resolution of the state court case *Dilday v. Jones.*, which was finalized on May 1, 2023, when the United States Supreme Court denied Plaintiffs’ petition for certiorari (*see* Docs. 30, 50, 57). *See Dilday v. Jones*, No. F077682, 2022 WL 108617, at \*1, 6 (Cal. Ct. App. Jan. 12, 2022), *review denied* (Apr. 20, 2022), *cert. denied sub nom. Bi Rite Auto Transp. v. Dilday*, No. 22-752, 2023 WL 3158368 (U.S. May 1, 2023). The matter was thereafter taken under submission on May 19, 2023. (Doc. 58.)

1 For the reasons set forth below, Defendants’ motion for summary judgment or, alternatively  
2 for partial summary judgment, will be granted in part and denied in part.

## 3 II. BACKGROUND

### 4 A. Summary of Relevant Evidence<sup>1</sup>

#### 5 1. Prior State Court Litigation

6 Pursuant to a state court judgment entered in 2013 (the “2013 Judgment”) (Doc. 16-6 at 9–  
7 14; Doc. 27-1 at 10–15)<sup>2</sup>, non-party Pleasant Valley Canal Company (“PVCC”) holds an  
8 irrevocable license granting conditional access to enter property owned by Plaintiffs to fulfill  
9 PVCC’s duty to maintain, service, and repair the Pleasant Valley Canal (the “Canal”), which  
10 provides water to some of the neighboring farms. (Doc. 16-3 at 2. *See also* Doc. 16-6 at 9–14;  
11 Doc. 27-1 at 10–15.) Subject to several express conditions, PVCC is permitted to access the  
12 property at all reasonable times, without advance notice, for ordinary operations and emergency  
13 repairs. (*Id.*) The 2013 Judgment provides that PVCC may access Plaintiffs’ property at the  
14 following locations:

- 15 a. At the gate along the easterly boundary of [Plaintiffs’] real property to the north and  
16 east of where the Canal enters [Plaintiffs’] real property (“Gate A”);
- 17 b. At the gate at the north westerly portion of [Plaintiffs’] real property where the Canal  
18 exits [Plaintiffs’] real property (“Gate B”);
- 19 c. At the gate in the southeasterly portion of [Plaintiffs’] real property approximately  
20

---

21 <sup>1</sup> The evidence adduced by the parties in conjunction with this motion comprises: (i) Defendant Tulare County Deputy  
22 Sheriff Michael Torres’ declaration and its attached Tulare County Sheriff’s Incident Report (Doc. 16-5); (ii)  
23 declaration of Richard Van Waller, Water Master for Pleasant Valley Canal Company (“PVCC”), and its attached  
24 “Incident Report” (Doc. 16-6 at 1–7); (iii) *Dilday v. Bi-Rite Auto Transport, Inc.*, No. 09-232667, Judgment (Sup. Ct.  
25 Tulare Cty. June 18, 2013) (the “2013 Judgment”) (Doc. 16-6 at 9–14; Doc. 27-1 at 10–15); (iv) *Dilday v. Jones*, No.  
26 PCU261738, Proposed Tentative Decision and Statement of Decision After Court Trial (Sup. Ct. Tulare Cty. Oct. 18,  
2017) (the “Tentative Decision”) (Doc. 16-6 at 16–46); (v) *Dilday v. Jones*, No. PCU261738, Ruling on Defendants’  
27 Objections to Proposed Tentative Decision and Statement of Decision and Motion to Reconsider (Sup. Ct. Tulare Cty.  
28 May 10, 2018) (Doc. 16-6 at 48–54); (vi) *People v. Jones*, No. VCM322004, Terms of Probation (Sup. Ct. Tulare Cty.  
May 1, 2018) (Doc. 16-6 at 56–58); (vii) Plaintiff Mikal Jones’ declaration in opposition to Defendants’ motion for  
summary judgment (Doc. 27-1 at 1–8); and (viii) a joint statement of undisputed material facts (Doc. 16-3). In addition,  
Defendants refer to certain allegations in the Complaint. (Doc. 16-2 at 2.) The summary of relevant evidence is  
distilled from these sources.

27 <sup>2</sup> A court “may take judicial notice of proceedings in other courts, both within and without the federal judicial system,  
28 if those proceedings have a direct relation to the matters at issue.” *United States ex rel. v. Robinson Rancheria Citizens  
Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169,  
1172 (10th Cir. 1979). *See also* Fed. R. Evid. 201.

1 400 feet north of Avenue 176 (“Gate C”);and

2 d. At what is commonly referred to as the Switzer gate along the westerly boundary of  
3 [Plaintiffs’] real property (“Gate D”).

4 (*See* Doc. 16-6 at 10; Doc. 27-1 at 11.)

5 In 2015, Plaintiffs filed a cross-complaint in *Dilday v. Jones*, No. PCU261738, in Tulare  
6 County Superior Court. (Doc. 16-3 at 2.) The cross-complaint impleaded PVCC as a cross-  
7 defendant and alleged that PVCC violated the conditions of its irrevocable license as set forth in  
8 the 2013 Judgment and trespassed on the property that is the subject of the license. (*Id.*) The case  
9 was tried to the court from October 26, 2016, to May 18, 2017. (*Id.*)

10 On October 18, 2017, the court issued its “Proposed Tentative Decision and Statement of  
11 Decision After Court Trial” (the “Tentative Decision”), finding in favor of PVCC on Plaintiffs’  
12 cause of action for trespass. (Doc. 16-6 at 16–46. *See also* Doc. 16-3 at 2.) On February 26, 2018,  
13 the court entered final judgment.<sup>3</sup>

14 2. Present Lawsuit

15 The incident giving rise to the instant litigation occurred on May 13, 2017, five days before  
16 trial in *Dilday v. Jones* concluded. (Doc. 16-3 at 3.) That morning, Defendant Tulare County  
17 Deputy Sheriff Michael Torres (“Deputy Torres”) was dispatched for a “Keep the Peace” call in  
18 the 32000 block of Avenue 176 in Springville. (*Id.*) Plaintiffs’ neighbor, Russell Dilday, had  
19 called because he wanted a sheriff dispatched to keep the peace while he contacted his neighbor,  
20 Plaintiff Jones, regarding access to the property to fix a water flow problem. (*Id.* at 3–4. *See also*  
21 Doc. 16-5 at 6–9.) As a sworn peace officer for the Sheriff’s Department, Deputy Torres has “a  
22 statutory duty to enforce the laws of the state and maintain public order and safety pursuant to  
23 Government Code sections 26600 and 26602.” (Doc. 16-3 at 4.) Tulare County Sheriff’s Deputies  
24

---

25 <sup>3</sup> Following entry of final judgment, on May 10, 2018, the court ruled on Plaintiffs’ objections to the Tentative  
26 Decision (“Ruling on Objections”). (*See* Doc. 16-6 at 48–54.) Plaintiffs filed an appeal on May 24, 2018, contending  
27 that the Ruling on Objections “reset” the time for filing an appeal from February 26, 2018, such that the appeal was  
28 timely. The Court of Appeal, Fifth Appellate District, rejected Plaintiffs’ argument and dismissed the appeal as  
untimely, holding that “the final judgment filed on February 26, 2018, was not revoked, vacated or suspended and,  
therefore, that it remained in effect from the date it was filed.” *Dilday v. Jones*, No. F077682, 2022 WL 108617, at  
\*1, 6 (Cal. Ct. App. Jan. 12, 2022), *review denied* (Apr. 20, 2022), *cert. denied sub nom. Bi Rite Auto Transp. v. Dilday*,  
No. 22-752, 2023 WL 3158368 (U.S. May 1, 2023).

1 have been dispatched to Plaintiffs' property on several occasions to keep the peace for issues  
2 relating to Jones and the neighbors in that area. (Doc. 27-2 at 3.)

3 Deputy Torres arrived at the property and met with Mr. Dilday, who advised Deputy Torres  
4 that he and Plaintiff Jones had been having an ongoing legal dispute about access to the Canal.  
5 (Doc. 16-3 at 4.) The Canal feeds water to Mr. Dilday's property from a "cement covert pipe"  
6 located on Plaintiffs' property and 100 yards east of Mr. Dilday's property. (*Id.*) Mr. Dilday  
7 advised that he had attempted to "snake out" the pipe, to no avail. (*Id.*)

8 About a half hour later, Richard Van Waller, the "Water Master" for PVCC, arrived.<sup>4</sup> (Doc.  
9 16-3 at 4.) Mr. Van Waller advised Deputy Torres that he had had problems with Plaintiffs  
10 allowing him access to the Canal, and that he had a court ruling that stated he had been granted  
11 access to Plaintiffs' property to maintain, service, and repair the Canal. (*Id.*) Mr. Van Waller  
12 advised that he was granted access to Plaintiffs' property at various locations, including gates "A,  
13 B, C, or D." (*Id.*) Mr. Van Waller indicated to Deputy Torres that he was concerned Plaintiff Jones  
14 would cause problems, as Plaintiff Jones "had made threats to him about entering the property"  
15 and he "feared for his safety." (*Id.*)

16 Deputy Torres followed Mr. Van Waller in his Sheriff's vehicle to access Gate C. (Doc. 16-  
17 5 at 8; Doc. 16-6 at 3; Doc. 27-2 at 1.) The parties disagree about whether Gate C was locked or  
18 unlocked. (*See* Doc. 27-2 at 2.) According to Plaintiffs, Gate C, which was unlocked, "allowed  
19 access to the Canal by a roadway that traveled North to the Canal." (*Id.*) There also existed on the  
20 property another gate "immediately adjacent" to Gate C (the "Adjacent Gate"), which "allowed  
21 access to the Canal only by crossing pasture land that was then and there being used for husbanding  
22 horses and cattle." (*Id.*) Plaintiffs contend that it was this Adjacent Gate—and not Gate C—that  
23 had been locked with a padlock by Plaintiff Jones. (Doc. 27-1 at 5.)

24 Deputy Torres and Mr. Van Waller then proceeded to a so-called "cowboy gate." (Doc. 16-  
25 3 at 5.) Mr. Van Waller opened the gate and attempted to get through with his truck, but the truck  
26 "was too wide and would not be able to access through the gate without damaging the vehicle."

---

27 <sup>4</sup> The parties' Joint Statement of Undisputed Material Facts refers to the PVCC Water Master as "Richard Waller"  
28 (*see* Doc. 16-3 at 4), but the supporting declaration makes clear that the correct name is "Richard *Van* Waller" (Doc.  
16-6).

1 (*Id.*) Deputy Torres and Mr. Van Waller “then backed out and re-locked the gates.” (*Id.*)

2 At approximately noon, Deputy Torres “pulled up in front of [Plaintiffs’] residence,” at  
3 which time Plaintiff Jones exited the residence and met Deputy Torres outside. (Doc. 16-3 at 5.)  
4 Deputy Torres advised Plaintiff Jones that “per the court order in [Deputy] Torres’ possession,  
5 [Plaintiff] Jones was violating the order by locking [G]ate C and denying Richard [Van] Waller  
6 access.” (*Id.*) Deputy Torres also informed Plaintiff Jones that Mr. Van Waller attempted to go  
7 through the “cowboy gate,” but his vehicle did not fit through. (Doc. 16-3 at 5.)

8 Plaintiff Jones avers that he “painstakingly” showed Deputy Torres the 2013 Judgment, and  
9 “pointed out where the Judgment expressly provided that while PVCC was able to enter the  
10 property by Gate C, its use of the Canal and access thereto must be done in a manner that has the  
11 least amount of potential harm to the property.” (Doc. 27-2 at 2; Doc. 27-1 at 6.) Plaintiff Jones  
12 further avers that he explained to Deputy Torres he had “locked the gate to prevent potential harm  
13 to the pasture by PVCC using it as a shortcut to drive their machinery to the Canal.” (Doc. 27-2 at  
14 2; Doc. 27-1 at 7.) According to Plaintiffs, Deputy Torres demanded entry and threatened to “arrest  
15 and incarcerate” Plaintiff Jones. (Doc. 27-1 at 7.) Plaintiff Jones avers that he then gave Deputy  
16 Torres a key for the padlock to the Adjacent Gate. (*Id.*; Doc. 27-2 at 2.)

17 Deputy Torres then returned to Mr. Van Waller and together they “opened the gate.” (Doc.  
18 16-3 at 6.) Deputy Torres followed Mr. Van Waller, who was driving a pick-up truck, onto  
19 Plaintiffs’ property in his Sheriff’s vehicle; they traveled at less than five miles per hour across an  
20 open dirt field to reach the location of the weir, where Mr. Van Waller completed the necessary  
21 repairs “without incident.” (*Id.*) It took approximately 45 minutes to enter the property, reach the  
22 weir location, complete the repairs, and exit the property. (*Id.*)

23 Deputy Torres exited Plaintiffs’ property and secured the gate by placing the lock back in its  
24 original location. (Doc. 16-3 at 6.) He then returned the key to Plaintiff Jones at his residence.  
25 (*Id.*) According to Plaintiff Jones, Deputy Torres told him that “it was the policy of the Tulare  
26 County Sheriff Department that he could interpret the [2013 Judgment] however he saw fit and  
27 under that policy he did not need a warrant to entry the [p]roperty, or permit anyone else to enter  
28 the property.” (Doc. 27-1 at 8.)

1 **B. Relevant Procedural History**

2 Plaintiffs filed their complaint in this case on September 17, 2017, against Defendants  
3 seeking damages and injunctive relief under 28 U.S.C. § 1983 (“Section 1983”). (Doc. 1.)  
4 Defendant Tulare County Sheriff Michael Boudreaux (“Sheriff Boudreaux”) is sued “in his  
5 capacity as Sheriff, County of Tulare, California,” while Deputy Torres is sued “[i]ndividually and  
6 in his capacity as Deputy Sheriff, County of Tulare, California.” (*Id.* at 1.)

7 The complaint alleges three causes of action: 1) Deprivation of Plaintiffs’ Right to Property  
8 Without Due Process of Law, 2) Interference with the Exercise or Enjoyment of Civil Rights, and  
9 3) Trespass to Land Used or Intended to be Used to Raise Livestock. (Doc. 1 ¶¶ 22–44.) Plaintiffs  
10 allege that as a result of the above-described incident, Defendants violated Plaintiffs’ due process  
11 rights by unlawfully demanding Plaintiffs permit PVCC to cross Plaintiffs’ property through a  
12 locked gate after Plaintiffs represented to Deputy Torres that there were other, less disruptive routes  
13 for PVCC to access the Canal on Plaintiffs’ property. (Doc. 1 ¶¶ 15–26.) Additionally, in denying  
14 Plaintiffs their right to exclude PVCC and Deputy Torres from entering their property through the  
15 locked gate, Plaintiffs allege Defendants interfered with Plaintiffs’ constitutional rights by “threat,  
16 intimidation or coercion.” (Doc. 1 ¶¶ 30–33.) Plaintiffs further allege Deputy Torres trespassed  
17 on Plaintiffs’ property when he entered Plaintiffs’ property and escorted PVCC to the Canal  
18 through the locked gate. (Doc. 1 ¶¶ 39–40.)

19 On October 15, 2018, Defendants filed the instant motion for summary judgment and noticed  
20 the motion for hearing on December 5, 2018. (Doc. 16.) On that same date, Plaintiffs also filed a  
21 motion to amend the complaint and noticed the motion for hearing on December 5, 2018. (Doc.  
22 17.) Following a telephonic conference, the Court set a briefing schedule for Plaintiffs’ motion to  
23 amend the complaint and vacated the hearing on Defendants’ motion for summary judgment in  
24 light of Plaintiffs’ pending motion to amend the complaint. (Doc. 19 at 2.)

25 The Court denied the motion to amend on November 30, 2018, and set the hearing on the  
26 instant motion for March 6, 2019. (Doc. 24.) Following the hearing, the Court stayed this case  
27 pending the resolution of *Dilday v. Jones*, which was finalized on May 1, 2023, when the United  
28 States Supreme Court denied Plaintiffs’ petition for certiorari (*see* Docs. 30, 50, 57). *See Dilday*

1 v. *Jones*, No. F077682, 2022 WL 108617, at \*1, 6 (Cal. Ct. App. Jan. 12, 2022), *review denied*  
2 (Apr. 20, 2022), *cert. denied sub nom. Bi Rite Auto Transp. v. Dilday*, No. 22-752, 2023 WL  
3 3158368 (U.S. May 1, 2023). The matter was thereafter taken under submission on May 19, 2023.  
4 (Doc. 58.)

### 5 III. LEGAL STANDARD

6 Summary judgment/adjudication is appropriate when the pleadings, disclosure materials,  
7 discovery, and any affidavits provided establish that “there is no genuine dispute as to any material  
8 fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A material  
9 fact is one that may affect the outcome of the case under the applicable law. *See Anderson v.*  
10 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine “if the evidence is such that a  
11 reasonable jury could return a verdict in favor of the nonmoving party.” *Id.* (internal quotation  
12 marks and citation omitted).

13 The party seeking summary judgment/adjudication “always bears the initial responsibility  
14 of informing the district court of the basis for its motion, and identifying those portions of the  
15 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
16 affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.”  
17 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotation marks omitted). The exact  
18 nature of this responsibility, however, varies depending on whether the issue on which summary  
19 judgment/adjudication is sought is one in which the movant or the nonmoving party carries the  
20 ultimate burden of proof. *See Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).  
21 If the movant will have the burden of proof at trial, it must demonstrate, with affirmative evidence,  
22 that “no reasonable trier of fact could find other than for the moving party.” *Id.* In contrast, if the  
23 nonmoving party will have the burden of proof at trial, “the movant can prevail merely by pointing  
24 out that there is an absence of evidence to support the nonmoving party’s case.” *Id.* (citing *Celotex*,  
25 477 U.S. at 323).

26 If the movant satisfies its initial burden, the nonmoving party must go beyond the allegations  
27 in its pleadings to “show a genuine issue of material fact by presenting affirmative evidence from  
28 which a jury could find in [its] favor.” *FTC v. Stefanchik*, 559 F.3d 924, 929 (9th Cir. 2009).

1 “[B]ald assertions or a mere scintilla of evidence” will not suffice in this respect. *Id.* at 929; *see*  
2 *also Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (“When  
3 the moving party has carried its burden under Rule 56(c), its opponent must do more than simply  
4 show that there is some metaphysical doubt as to the material facts.”). “Where the record taken as  
5 a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine  
6 issue for trial.’” *Matsushita*, 475 U.S. at 587 (citation omitted).

7 In resolving a summary judgment/adjudication motion, “the court does not make credibility  
8 determinations or weigh conflicting evidence.” *Soremekun*, 509 F.3d at 984. That remains the  
9 province of the jury or fact finder. *See Anderson*, 477 U.S. at 255. Instead, “[t]he evidence of the  
10 [nonmoving party] is to be believed, and all justifiable inferences are to be drawn in [its] favor.”  
11 *Id.* Inferences, however, are not drawn out of the air; the nonmoving party must produce a factual  
12 predicate from which the inference may reasonably be drawn. *See Richards v. Nielsen Freight*  
13 *Lines*, 602 F. Supp. 1224, 1244–45 (E.D. Cal. 1985), *aff’d*, 810 F.2d 898 (9th Cir. 1987).

#### 14 IV. DISCUSSION

##### 15 A. Federal Claims

###### 16 1. Deputy Torres

17 Deputy Torres contends that summary judgment is warranted in this case because he is  
18 entitled to qualified immunity under federal law.<sup>5</sup>

###### 19 a. *Relevant law*

20 “The doctrine of qualified immunity protects government officials ‘from liability for civil  
21 damages insofar as their conduct does not violate clearly established statutory or constitutional  
22 rights of which a reasonable person would have known.’” *Pearson v. Callahan*, 555 U.S. 223, 231,  
23 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). “Qualified immunity balances  
24 two important interests—the need to hold public officials accountable when they exercise power  
25 irresponsibly and the need to shield officials from harassment, distraction, and liability when they  
26

---

27 <sup>5</sup> Defendants’ motion refers repeatedly to the allegations of the complaint. (*See* Doc. 16-1 at 15.) “It is well settled  
28 that the sufficiency of the allegations in a complaint do not determine motions for summary judgment.” *Dreisbach v.*  
*Murphy*, 658 F.2d 720, 729 n.9 (9th Cir. 1981). Consequently, the Court analyzes whether the evidence Plaintiffs have  
adduced is sufficient to defeat Defendants’ motion.



1 perform their duties reasonably.” *Id.* “The protection of qualified immunity applies regardless of  
2 whether the government official's error is ‘a mistake of law, a mistake of fact, or a mistake based  
3 on mixed questions of law and fact.’” *Id.* (quoting *Groh v. Ramirez*, 540 U.S. 551, 567 (2004)  
4 (Kennedy, J., dissenting)).

5 “Qualified immunity is applicable unless the official's conduct violated a clearly established  
6 constitutional right.” *Id.* at 232. “Officials must have ‘fair warning’ that their actions are  
7 unconstitutional.” *Chappell v. Mandeville*, 706 F.3d 1052, 1056 (9th Cir. 2013) (quoting *Hope v.*  
8 *Pelzer*, 536 U.S. 730, 741 (2002)). In other words, a “public official is entitled to qualified  
9 immunity unless (1) ‘the facts . . . show that the official’s conduct violated a constitutional right;’  
10 and (2) the right at issue ‘was clearly established ‘in light of the specific context of the case’ at the  
11 time of the alleged misconduct.’” *Karl v. City of Mountlake Terrace*, 678 F.3d 1062, 1068 (9th  
12 Cir. 2012) (quoting *Clairmont v. Sound Mental Health*, 632 F.3d 1091, 1100 (9th Cir. 2011)).  
13 Courts have discretion to decide the order in which to assess these two prongs of the qualified  
14 immunity analysis. *Pearson*, 555 U.S. at 236.

15 “Because the focus is on whether the officer had fair notice that her conduct was unlawful,  
16 reasonableness is judged against the backdrop of the law at the time of the conduct.” *Brosseau v.*  
17 *Haugen*, 543 U.S. 194, 198 (2004); *see also Chappell v. Mandeville*, 706 F.3d 1052, 1056 (9th Cir.  
18 2013) (“Whether qualified immunity applies thus ‘turns on the objective legal reasonableness of  
19 the action, assessed in light of the legal rules that were clearly established at the time it was  
20 taken.’”). Although the Supreme Court “does not require a case directly on point for a right to be  
21 clearly established, existing precedent must have placed the statutory or constitutional question  
22 beyond debate.” *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (quoting *White v. Pauly*, 580 U.S.  
23 73 (2017)). The Supreme Court has “repeatedly told courts—and the Ninth Circuit in particular—  
24 not to define clearly established law at a high level of generality.” *Id.* (quoting *City & Cty. of San*  
25 *Francisco v. Sheehan*, 575 U.S. 600 (2015)). “[I]f officers of reasonable competence could  
26 disagree on [the] issue, [qualified] immunity should be recognized.” *Malley v. Briggs*, 475 U.S.  
27 335, 341 (1986).

28 In analyzing qualified immunity at the summary judgment stage, the court “resolve[s] all

1 factual disputes in favor of the party asserting the injury.” *Ellins v. City of Sierra Madre*, 710 F.3d  
2 1049, 1064 (9th Cir. 2013); *see also Chappell*, 706 F.3d at 1057.

3 *b. Analysis*

4 Plaintiffs claim that Deputy Torres interfered with their right under the due process clause  
5 of the Fourteenth Amendment to exclude Deputy Torres and PVCC from Plaintiffs’ property by  
6 demanding that he unlock the gate that permitted access to the pasture portion of the property.<sup>6</sup>  
7 (Doc. 1. ¶¶ 24, 26.) An individual’s right to exclude others from their property is the “hallmark of  
8 a protected property interest” under the due process clause of the Fourteenth Amendment.<sup>7</sup> *Coll.*  
9 *Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 673 (1999). It is “one  
10 of the most essential sticks in the bundle of rights that are commonly characterized as property.”  
11 *Id.* (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)). *See also Madison v.*  
12 *Graham*, 316 F.3d 867, 870 (9th Cir. 2002) (“The United States Supreme Court has declared that  
13 the right of landowners to exclude others from their property represents ‘one of the most essential  
14 sticks in the bundle of rights that are commonly characterized as property.’”) (quoting *Loretto v.*  
15 *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982)).

16 The “right to exclude” is not absolute. *See, e.g., PruneYard Shopping Ctr. v. Robins*, 447  
17 U.S. 74, 82 (1980). In Plaintiffs’ case, it is limited by the 2013 Judgment, which permits PVCC to  
18 access Plaintiffs’ property at Gates A, B, C, and D to maintain, service, and repair the Canal. (Doc.  
19 16-6 at 10; Doc. 27-1 at 11.) According to Plaintiffs, Gate C was unlocked at the time Deputy  
20 Torres sought entry to the property and Deputy Torres was so informed. (Doc. 27-1 at 5, 6, 7; Doc.

---

22 <sup>6</sup> Defendants’ briefing makes arguments directed to the to the Fourth and Fifth Amendments. (*See* Doc. 16-1 at 14.)  
23 Plaintiffs do not respond to these arguments, and their complaint makes clear that the basis for their Section 1983 claim  
is the Fourteenth Amendment. (*See* Doc. 1 ¶¶ 26–27.)

24 <sup>7</sup> Plaintiffs also assert that this right “is protected under settled California law.” (Doc. 27 at 6 (citing *Ralphs Grocery*  
*Co. v. Victory Consultants, Inc.*, 17 Cal. App. 5th 245, 258 (2017).) The Ninth Circuit, however, recognizes that  
25 “[w]hether the [defendants] violated a state law . . . is not the focus of our [qualified immunity] inquiry.” *Case v.*  
*Kitsap County Sheriff’s Dept.*, 249 F.3d 921, 929 (9th Cir. 2001)). Rather, to determine whether an official is eligible  
26 for qualified immunity, the Ninth Circuit focuses on “whether a reasonable [official] would have known that the  
[defendants’] conduct violated [plaintiff’s] *federal* . . . constitutional rights rather than merely a state law or policy  
27 provision.” *Id.* (emphasis added) (citing *Davis v. Scherer*, 468 U.S. 183, 194 (1984)); *see also, Sweaney v. Ada*  
*County, Idaho*, 119 F.3d 1385, 1391 (9th Cir. 1997) (“To the extent that the violation of a state law amounts to the  
28 deprivation of a state-created interest that reaches beyond that guaranteed by the federal Constitution, Section 1983  
offers no redress.”).

1 27-2 at 2.) Defendants contend Gate C was locked. (Doc. 16-5 at 2; Doc. 16-6 at 3.)

2 The status of Gate C, and Deputy Torres' awareness of it, are disputed issues of material fact  
3 precluding summary judgment. Granting summary judgment on the ground of qualified immunity  
4 is "improper if, under the plaintiff's version of the facts, and in light of the clearly established law,  
5 a reasonable officer could not have believed his conduct was lawful." *Schwenk v. Hartford*, 204  
6 F.3d 1187, 1196 (9th Cir. 2000). Here, under Plaintiffs' version of events, no reasonable officer  
7 could believe that coercing Plaintiff Jones to permit access by that officer and PVCC to Plaintiffs'  
8 property through a gate that is not specified in the 2013 Judgment (the Adjacent Gate), when that  
9 officer is aware that a gate that is expressly authorized by the Judgment (Gate C) is unlocked and  
10 available for entry, would not violate Plaintiffs' clearly established Fourteenth Amendment right  
11 to exclude others from their property.<sup>8</sup>

12 If a "genuine issue of material fact exists that prevents a determination of qualified immunity  
13 at summary judgment, the case must proceed to trial." *Bonivert v. City of Clarkston*, 883 F.3d 865,  
14 872 (9th Cir. 2018) While resolution of the factual issues may well relieve Deputy Torres of any  
15 liability in this case, a reasonable jury could conclude that Deputy Torres violated Plaintiffs'  
16 constitutional right to exclude others from their property if Plaintiffs' version of the facts were to  
17 prevail at trial. Deputy Torres is therefore not entitled to summary judgment on grounds of  
18 qualified immunity.<sup>9</sup>

19 2. County of Tulare

20 Section 1983 suits against local governments alleging constitutional rights violations by  
21 government officials cannot rely solely on respondeat superior liability. *Monell v. Dep't of Soc.*

---

22  
23 <sup>8</sup> The fact that the state court later found that a prior entry by PVCC through an area not expressly authorized in the  
24 2013 Judgment did not constitute a trespass under California law (*see, e.g.*, Doc. 47 at 6–7) does not bear on the issue  
of reasonableness, as it is "judged against the backdrop of the law *at the time of the conduct.*" *Brosseau v. Haugen*,  
543 U.S. 194, 198 (2004) (emphasis added); *see also Chappell v. Mandeville*, 706 F.3d 1052, 1056 (9th Cir. 2013)

25 <sup>9</sup> As stated above, Plaintiffs assert their claims against Deputy Torres individually and in his capacity as Deputy  
26 Sheriff. (Doc. 1 at 1.) The Eleventh Amendment bars Section 1983 suits against a State unless the state has waived  
its sovereign immunity. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989). A suit against a state official in  
27 their official capacity is treated as a suit against the State and is barred by the Eleventh Amendment. *Id.* at 71. However,  
suits against state officials in their official capacities seeking injunctive relief are not treated as against the State and  
28 thus are not barred. *Id.* at 71 n.10. Because the State has not consented to the suit, Plaintiffs' claims against Deputy  
Torres in his official capacity seeking money damages are barred by the Eleventh Amendment and must be dismissed.  
Plaintiff's claims seeking money damages against Deputy Torres in his individual capacity remain to be adjudicated,  
as does Plaintiff's request for injunctive relief against defendant in his individual and official capacities.

1 *Servs.*, 436 U.S. 658, 691 (1978). Instead, plaintiffs must establish that “the local government ‘had  
2 a deliberate policy, custom, or practice that was the ‘moving force’ behind the constitutional  
3 violation [they] suffered.’” *Whitaker v. Garcetti*, 486 F.3d 572, 581 (9th Cir. 2007) (quoting *Galen*  
4 *v. City of L.A.*, 477 F.3d 652, 667 (9th Cir. 2007)).

5 “Liability for improper custom may not be predicated on isolated or sporadic incidents; it  
6 must be founded upon practices of sufficient duration, frequency and consistency that the conduct  
7 has become a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th  
8 Cir. 1996), *holding modified on other grounds by Navarro v. Block*, 250 F.3d 729 (9th Cir. 2001);  
9 *see also Thompson v. Los Angeles*, 885 F.2d 1439, 1443-1444 (9th Cir. 1989) (“Consistent with  
10 the commonly understood meaning of custom, proof of random acts or isolated events are  
11 insufficient to establish custom.”), *overruled on other grounds by Bull v. City & Cty. of San*  
12 *Francisco*, 595 F.3d 964, 981 (9th Cir. 2010).

13 Defendant County of Tulare (the “County”) asserts, “Plaintiffs allege liability . . .  
14 presumably by claiming that the [County or Sheriff] has a policy of encouraging and permitting  
15 warrantless entries onto property without a reasonable belief their actions were lawful. The  
16 allegation has no merit and [Plaintiffs] have no evidence to support the allegation.” (Doc. 16-1 at  
17 18.) Defendants further assert, “There is no evidence of a policy or custom giving rise to  
18 [Plaintiffs’] claims, let alone promulgated by Sheriff [Boudreaux]. Sheriff [Boudreaux] took no  
19 official or other action to support a [S]ection 1983 claim against him. (*Id.* at 19.)

20 As set forth above, there is a triable issue of fact as to whether Deputy Torres violated  
21 Plaintiffs’ constitutional right to exclude him and PVCC from Plaintiffs’ property. Plaintiffs have  
22 also adduced evidence that Deputy Torres told Plaintiff Jones that that he was “acting in accordance  
23 with and in furtherance of a policy of the Tulare County Sheriff’s Department that he did not need  
24 a warrant to enter the property or allow anyone else to enter the property if he saw fit to interpret  
25 the [2013 Judgment] as he was interpreting it.” (Doc. 27-1 at 8.) Taking the evidence in the light  
26 most favorable to the non-movant Plaintiffs, there is a triable issue of fact as to whether Deputy  
27 Torres’s conduct was the result of a policy of the County. Accordingly, summary judgment will  
28 be denied as to Plaintiffs’ claims against the County.

1           3.       Sheriff Boudreaux

2           As set forth above, Plaintiff has sued Tulare County Sheriff Michael Boudreaux in his  
3 official capacity and the County of Tulare itself. (Doc. 1 at 1.) In a Section 1983 case, an “official-  
4 capacity suit is, in all respects other than name, to be treated as a suit against the entity.” *Kentucky*  
5 *v. Graham*, 473 U.S. 159, 166, (1985). In fact, “[t]here is no longer a need to bring official-capacity  
6 actions against local government officials, for under *Monell* . . . local government units can be sued  
7 directly for damages and injunctive or declaratory relief.” *Graham*, 473 U.S. at 167 n. 14. Given  
8 that an official capacity claim is treated as a claim against the local governmental entity, when a  
9 plaintiff sues an officer of a local governmental entity in his official capacity and also sues the local  
10 entity itself, the official capacity claim is redundant of the claim against the entity and the official  
11 capacity claim can be dismissed. *See Center For Bio–Ethical Reform, Inc. v. L.A. County Sheriff*  
12 *Dep’t*, 533 F.3d 780, 799 (9th Cir. 2008); *Megargee v. Wittman*, 550 F.Supp.2d 1190, 1206 (E.D.  
13 Cal. 2008); *Luke v. Abbott*, 954 F. Supp. 202, 204 (C.D. Cal. 1997).

14           As the official capacity claims against Sheriff Boudreaux are redundant of the claims against  
15 the County, summary judgment will be granted on the claims against Sheriff Boudreaux in his  
16 official capacity.

17 **B.     State Law Claims**

18           Plaintiffs plead two claims against Defendants under California law: “interference with the  
19 exercise of enjoyment of civil rights,” presumably under the Tom Bane Civil Rights Act, Cal. Civ.  
20 Code § 52.1 (the “Bane Act”)<sup>10</sup>, and “trespass to land used or intended to be used to raise livestock.”  
21 (Doc. 1 ¶¶ 30–44.) Defendants contend they are entitled to summary judgment on these claims  
22 because they are entitled to immunity under Cal. Gov’t Code §§ 820.2 and 821.8. (Doc. 16-1 at  
23 19–21.)

---

24 <sup>10</sup> The Bane Act provides in relevant part:

25           Whenever a person or persons, whether or not acting under color of law, interferes by threats,  
26 intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the  
27 exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws  
28 of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney  
General, or any district attorney or city attorney may bring a civil action for injunctive and other  
appropriate equitable relief in the name of the people of the State of California, in order to protect  
the peaceable exercise or enjoyment of the right or rights secured.

Cal. Civ. Code § 52.1(a).

1           1.       Deputy Torres

2                   a.       *Relevant law*

3           “[A] public employee is not liable for an injury resulting from his act or omission where the  
4 act or omission was the result of the exercise of the discretion vested in him, whether or not such  
5 discretion be abused.” Cal. Gov't Code § 820.2 (“Section 820.2”). “[I]nstead of interpreting  
6 ‘discretionary’ literally, the focus should be on the policy considerations underlying the  
7 governmental entity's claim of immunity.” *Steinle v. City & Cty. of San Francisco*, 919 F.3d 1154,  
8 1160-61 (9th Cir. 2019). Specifically, discretionary functions are those that involve “basic policy  
9 decisions which have been expressly committed to coordinate branches of government.” *Id.* at  
10 1161 (quoting *Caldwell v. Montoya*, 10 Cal. 4th 972, 981 (1995)). “On the other hand, there is no  
11 basis for immunizing lower level decisions that merely implement a basic policy already  
12 formulated.” *Garcia v. City of Los Angeles*, 611 F. Supp. 3d 918, 936 (C.D. Cal. 2020) (quoting  
13 *Barner v. Leeds*, 24 Cal. 4th 676, 685 (2000)).

14           Defendants rely on *Watts v. County of Sacramento*, 136 Cal. App. 3d 232 (1982), in  
15 contending that Section 820.2 applies to them. In *Watts*, the plaintiffs entered into an agreement  
16 with a landowner to grow and harvest crops on the latter's land. When the plaintiffs arrived to  
17 harvest their crop, the owner ordered them off the property. *Watts*, 136 Cal. App.3d. at 234. In the  
18 ensuing disagreement, the owner called the sheriff's department and informed them that he was the  
19 owner and the plaintiffs had no legal right to be on the property. The officers instructed the  
20 plaintiffs to leave, which they did, and the owner later converted the crops to his own use. (*Id.*)  
21 The plaintiffs sought damages for “unlawful interference with [plaintiffs'] economic or business  
22 opportunity.” (*Id.*)

23           The court found the claim barred pursuant to Section 820.2. It reasoned: “A decision to  
24 arrest, or to take some protective action less drastic than arrest, is an exercise of discretion for  
25 which a peace officer may not be held liable in tort. Settling a disagreement as to plaintiffs' right  
26 to be on the land by ordering them to leave is clearly action short of arrest for which the officers  
27 are immune from liability.” *Watts*, supra, 136 Cal. App. 3d. at 234 (internal citations and quotation  
28 marks omitted). The plaintiffs argued that the officers were liable for their failure to investigate

1 whether the plaintiffs had a legal right to be on the property. *Id.* at 235. The court disagreed,  
2 finding that the officers' determination of how to handle the dispute was discretionary: “In order to  
3 settle the dispute the officers were obliged to exercise their discretion after they had observed what  
4 was happening and had listened to the explanation of those present . . . Such intrusions are . . . a  
5 regular and necessary part of police work conducted for the preservation of public safety and order,  
6 and the decision to use this official authority on any particular occasion *is peculiarly a matter of*  
7 *judgment and discretion* for which the officers (and defendant) may not be held liable in tort.” *Id.*  
8 (internal citations and quotation marks omitted) (emphasis in original).

9 *b. Analysis*

10 As in *Watts*, once Deputy Torres made the decision to become involved in the ongoing  
11 dispute between PVCC and Plaintiffs regarding PVCC’s access to the Canal—as he could hardly  
12 fail to do given the potential for a breach of the peace—he was “obliged to exercise [his] discretion  
13 after [he] had observed what was happening and had listened to the explanation of those present.”  
14 136 Cal. App. 3d at 235.

15 Plaintiffs assert that *Watts* is inapplicable because the 2013 Judgment “did not leave open  
16 any discretion in choosing the route to the Canal across [Plaintiffs’] property” (Doc. 27 at 12), but  
17 this argument misses the mark. The relevant question is not whether the terms of the 2013  
18 Judgment afforded Deputy Torres any discretion, but rather whether Deputy Torres’ decision of  
19 whether and how to enforce the terms of Judgment—albeit in a way with which Plaintiffs  
20 disagree—was discretionary. Plaintiffs’ version of the events supports the determination that  
21 Deputy Torres acted discretionarily. According to Plaintiffs, after speaking with both Mr. Van  
22 Waller and Plaintiff Jones and reviewing the 2013 Judgment, Deputy Torres made a series of  
23 decisions to enforce the Judgment by coercing Plaintiff Jones to permit access to his property  
24 through a gate not specified in the Judgment, instead of accessing the property through an  
25 authorized gate, Gate C. (*See* Doc. 27-1 at 5, 6, 7; Doc. 27-2 at 2. *See also* Doc. 27 at 11 (“Torres  
26 identifies a route that was open and available to PVCC whereby it could access its Canal across  
27 [Plaintiffs’] property through a ‘cowboy gate,’ but *decided* that using that route would present a  
28 potential of damage to PVCC’s vehicles.) (emphasis added).) In making these decisions, Deputy

1 Torres had to exercise his discretion in determining the course of action to take; there was no preset  
2 course of action which he simply followed.

3 Accordingly, Deputy Torres' actions having been discretionary, he is entitled to immunity  
4 from liability under state law for those actions. *Johnson v. State of California*, 69 Cal. 2d 782, 793  
5 (1968); Cal. Gov't Code § 820.2.

6 2. County of Tulare and Sheriff Boudreaux

7 Having found Deputy Torres immune under Section 820.2, the County, as his employer, is  
8 likewise immune. *See Watts*, 136 Cal. App. 3d 232, 234–35 (“And, since the officers are immune  
9 from liability for their performance of a discretionary act, defendant County of Sacramento, as the  
10 officer's employer, is likewise immune.”) (citing Cal. Gov't Code § 815.2(b)). *See also Goehring*  
11 *v. Wright*, 858 F. Supp. 989, 1002 (N.D. Cal. 1994).

12 Sheriff Boudreaux, in his official capacity, is entitled to governmental immunity from  
13 liability for Plaintiffs' interference claim under the Bane Act to the same extent and for the same  
14 reasons as the County. *See Mundo v. McMahon*, No. ED CV 15-2511-AB (PLA), 2016 WL  
15 8732349, at \*8 (C.D. Cal. Sept. 6, 2016) (collecting cases holding, with respect to a Bane Act  
16 claim, that state law imposes liability on counties under the doctrine of respondeat superior). As  
17 for Plaintiffs' trespass claim, it is a claim attempting to hold Sheriff Boudreaux directly liable even  
18 though he was not personally involved in the alleged trespass by Deputy Torres. (*See Doc. 1* ¶¶  
19 39–44.) In the absence of a statutory basis for such tort liability, which Plaintiffs have not provided,  
20 their trespass claim against Sheriff Boudreaux fails.<sup>11</sup> *See Wade v. Cnty. of Sacramento*, No. CIV  
21 S-04-1711-GEB-DAD (P), 2008 WL 4104312, at \*6 (E.D. Cal. Sept. 3, 2008) (finding public entity  
22 immunity under Cal. Gov't Code § 815(a) applies to tort claims brought against sheriff in his  
23 official capacity)(citing *Munoz v. City of Union City*, 120 Cal. App .4th 1077, 1111–13 (2004)).  
24 *See also Manning v. City of Rohnert Park*, No. C 06-03435 SBA, 2006 WL 3591149, at \*8 (N.D.  
25 Cal. Dec. 11, 2006); *Megargee ex rel. Lopez v. Wittman*, No. CV F 06-0684-AWI-LJO, 2006 WL  
26 2988945, at \*10 & n.2 (E.D. Cal. Oct. 17, 2006).

27  
28 <sup>11</sup> Because the Court concludes that Defendants are entitled to summary judgment on Plaintiffs' state law claims, it does not address Defendants' additional argument of immunity under Cal. Gov't Code § 821.8.



1 **C. Punitive Damages**

2 Defendants assert that punitive damages are inappropriate as a matter of law in this case.  
3 (Doc. 16-1 at 22.)

4 Plaintiffs may not seek punitive damages against the County for alleged violations of his  
5 constitutional rights under Section 1983. *See City of Newport*, 453 U.S. at 271 (holding that  
6 municipalities are immune from punitive damages in § 1983 action); *Cook County, Ill. v. United*  
7 *States, ex rel. Chandler*, 538 U.S. 119, 129 (2003) (no punitive damages are allowed against a  
8 municipality unless expressly authorized by statute); *Mitchell v. Dupnik*, 75 F.3d 517, 526 (9th Cir.  
9 1996); *Davis v. Sacramento County Sheriff's Dept.*, No. CIV S-07-0674 LKK EFB (P), 2008 WL  
10 540614, at \*2 (E.D. Cal. Feb.25, 2008) (granting motion to strike plaintiff's demand for punitive  
11 damages because Congress has not abrogated the immunity of municipalities from punitive  
12 damages and no California law waives that immunity).

13 While punitive damages in a Section 1983 case are not available against government entities  
14 or officials acting in their official capacities, they may be awarded against officials in their  
15 individual capacities. *See Wells v. Bd. of Trustees of California State Univ.*, 393 F. Supp. 2d 990,  
16 999 (N.D. Cal. 2005). Punitive damages are appropriate where an individual's conduct is shown  
17 to be “motivated by evil motive or intent, or when it involves reckless or callous indifference to the  
18 federally protected rights of others.” *Smith v. Wade*, 461 U.S. 30, 56 (1983). In support of their  
19 claim that punitive damages are unwarranted, Defendants state only that Plaintiffs’ “fail to allege  
20 any conduct on behalf of Deputy Torres was motivated by evil motive or intent.” (Doc. 16-1 at  
21 22.) As noted above, the sufficiency of Plaintiffs’ allegations in their complaint is not the subject  
22 of a motion for summary judgment. *See* n.5, *supra*. In any event, Plaintiffs do allege that Deputy  
23 Torres acted in “reckless disregard” of their rights (Doc. 1 ¶ 44), and, at a minimum, have proffered  
24 evidence that, taken as true, would show Deputy Torres ignored the fact that Gate C, a gate  
25 expressly authorized by the 2013 Judgment, was unlocked and accessible, and instead coerced  
26 Plaintiff Jones, by threat of incarceration, to provide a key to a non-authorized gate so that he and  
27 PVCC could enter Plaintiffs’ property. A reasonable jury considering these facts could find a  
28 “reckless indifference” to Plaintiffs’ constitutionally-protected property right, such that punitive damages

1 would be warranted.

2 **V. CONCLUSION AND ORDER**

3 For the reasons set forth above, IT IS HEREBY ORDERED that Defendants’ motion for  
4 summary judgment or, in the alternative, partial summary judgment (Doc. 16) is granted in part  
5 and denied in part, as follows:

- 6 1. Defendants’ motion is GRANTED as to Plaintiffs’ Fourteenth Amendment claim  
7 against Sheriff Boudreaux;
- 8 2. Defendants’ motion is GRANTED as to Plaintiffs’ Fourteenth Amendment claim  
9 against Deputy Torres in his official capacity;
- 10 3. Defendants’ motion is GRANTED as to Plaintiffs’ state law claims for interference  
11 with the exercise or enjoyment of civil rights and trespass to land;
- 12 4. Defendants’ motion is DENIED in all other respects;
- 13 5. The Court hereby SETS a Settlement Conference on September 6, 2023, at 1:00 p.m.  
14 before Magistrate Judge Erica P. Grosjean. An Order re Settlement Conference will  
15 follow.
- 16 6. The Pretrial Conference is SET for October 11, 2023, at 2:30 p.m. in Courtroom 7  
17 before the Honorable Sheila K. Oberto, United States Magistrate Judge. The parties  
18 are ORDERED to file a Joint Pretrial Statement pursuant to E.D. Cal. Local Rules  
19 281(a)(2) and 282. The parties are further directed to submit a digital copy of their  
20 Pretrial Statement in Word format, directly to Judge Oberto’s chambers by email at  
21 [SKOorders@caed.uscourts.gov](mailto:SKOorders@caed.uscourts.gov).
- 22 7. Trial is SET for December 12, 2023, at 8:30 a.m. in Courtroom 7 before the  
23 Honorable Sheila K. Oberto, United States Magistrate Judge. Counsel’s attention is  
24 directed to E.D. Cal. Local Rule 285.

25  
26 IT IS SO ORDERED.

27 Dated: June 16, 2023

28 Is/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE