

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

MARIA DOE, a fictitious name; CLARA
DOE, a fictitious name, and "I.D.," a
fictitious name, by and through her next
friend, MARIA DOE,

Plaintiffs,

v.

COUNTY OF SACRAMENTO;
SACRAMENTO COUNTY SHERIFF'S
OFFICE; DARRYL RODERICK;
JAGDEEP SINGH, individually and as
administrator of the Estate of Sushma
Giri; V & N ASSOCIATES, LLC; and
ALIDA ESTRADA,

Defendants.

No. 2:21-cv-01438-MCE-CKD

MEMORANDUM AND ORDER

Through the present lawsuit, Plaintiffs allege they were unlawfully evicted during the COVID-19 pandemic from an apartment in Sacramento managed by Defendant Alida Estrada and owned by Defendant Jagdeep Singh. Plaintiffs, a single mother and her two children, allege that Defendant Darryl Roderick, a Sacramento County Sheriff's Deputy, wrongfully assisted Defendant Estrada in effectuating their eviction. Plaintiffs' currently operative pleading, the Second Amended Complaint ("SAC"), contains sixteen different causes of action asserting, in addition to wrongful eviction, constitutional

1 deprivations, violations of Title VI of the Civil Rights Act 1964, 42 U.S.C. §§ 2000d,
2 et seq. (“Title VI”) and various state statutes as well as common law claims. In addition,
3 Plaintiffs assert two different claims directed against Defendants County of Sacramento
4 and the Sacramento County Sheriff’s Office alleging that those entities were responsible
5 for the acts and omissions of Deputy Roderick because said Defendants’ own conduct
6 and policies caused Roderick’s wrongful behavior.

7 Presently before the Court is a Motion to Dismiss (ECF No. 17) brought on behalf
8 of the County, the Sheriff’s Department and Deputy Roderick (collectively “Defendants”
9 unless otherwise indicated) pursuant to Federal Rule of Civil Procedure 12(b)(6), on
10 grounds that Plaintiffs fail to state viable claims as to certain of the causes of action
11 asserted in the SAC.¹ As set forth below, that Motion is GRANTED in part and DENIED
12 in part.

13
14 **BACKGROUND²**

15
16 Plaintiff Maria Doe,³ an immigrant from Mexico who resides in Sacramento
17 County, entered into an oral lease in November 2019 with Defendant Estrada to rent an
18 apartment situated behind the garage of the main house located at 5973 Vista Avenue in
19 Sacramento, California (“the apartment”). On or about November 6, 2019, Maria moved
20 into the apartment with three of her children: Plaintiff Clara Doe, a high school student,

21
22 ¹ Although Defendants’ Motion was originally filed with respect to the First Amended Complaint
23 (“FAC”), ECF No. 14, Plaintiffs since obtained permission to file the SAC by way of unopposed motion
24 (ECF No. 26). The sole purpose of the SAC, which did not change the paragraph numbering previously
25 employed by the FAC, was to address logistical changes made necessary by the death of one of the
owners of the property, Sushma Giri. Because the parties represented that the amendment was
“unrelated to the substance of the pending motion to dismiss”, (ECF No. 26, 2:10-11), and because the
paragraph sequence of the SAC remains identical, to avoid confusion the Court will cite to the currently
operative SAC.

26 ² Unless otherwise indicated, the facts set forth in this section are taken, at times verbatim, from
the allegations contained in Plaintiffs’ SAC, ECF No. 32.

27 ³ Plaintiff Maria Doe, along with her children, has elected to proceed with a pseudonym in this
28 litigation due to concern that her immigration status could be adversely affected were her true identity to
be revealed.

1 Plaintiff I.D., who was 10 years old, and Olivia, who moved out of the unit after about a
2 month.

3 Soon after the Doe family moved into the apartment, they became aware of
4 numerous maintenance issues, including heating and electrical malfunctions as well as
5 insect infestation. Those problems were largely unaddressed.

6 In March of 2020, after California Governor Gavin Newsom declared a state of
7 emergency due to the spread of COVID-19, he issued various directives which reduced
8 the capacity and function of the restaurant industry where Maria worked. When Maria
9 was ultimately laid off on March 16, 2020, from her restaurant job due to such restricted
10 operations, Maria told Defendant Estrada that she would be unable to pay rent for the
11 month of April because she had lost her job. Maria claims Estrada told her they would
12 have to move by April 8 if the \$1,100 monthly rent payment was not made.

13 On or about April 1, 2020, Estrada told Maria that because she could not pay the
14 April rent she would have to move by April 3, even sooner than Estrada had previously
15 reported. In response, Maria handed Estrada a signed form entitled “Tenant Delay of
16 Rent Payment—COVID 19” that allegedly had been furnished to her by “Sacramento
17 County Development.” Although the form attested to the fact that because Maria had
18 lost income due to a lay-off relating to COVID-19, she was protected from eviction,
19 Estrada allegedly told her the form was “worthless” and proceeded to turn off the
20 electricity to Plaintiffs’ rental unit two days later. SAC, ¶¶ 31, 33.

21 Maria called Sacramento County Code Enforcement the next day to complain that
22 Estrada had turned off the electricity, and she was subsequently confronted by Estrada
23 on or about April 7, 2020. Estrada told Maria that she had to leave the apartment that
24 day because the police would be “on their way” if she did not do so. Estrada indeed
25 proceeded to call 911 on grounds that Maria was refusing to move. In response, the
26 Sacramento County Sheriff’s Office dispatched Defendant Roderick to the apartment.

27 Deputy Roderick initially spoke to Estrada, who untruthfully claimed both that
28 Maria already been given a “30-day notice” and that the electrical provider, SMUD, had

1 deemed the apartment uninhabitable. Roderick did not ask for any evidence to
2 substantiate these false allegations and proceeded to assist Estrada in getting Maria and
3 her family to leave. When Maria told Roderick she did not speak English, rather than
4 request the assistance of a bilingual officer or interpretation service, Roderick simply
5 insisted that Maria speak English, aggressively demanding that she do so at least four
6 times. Ultimately Plaintiff Clara Doe, who was then in high school, approached the door
7 and felt intimidated by Roderick to help her mother communicate with the Deputy.

8 Maria claims she showed Roderick the above-described form that explained her
9 entitlement not to be evicted because she had lost her income due to the pandemic.
10 According to Maria, Roderick's response, in effect, was that the form was worthless
11 because she did not have a written lease—even though that distinction made no
12 difference and presentation of the form constituted proper notice of the County of
13 Sacramento's eviction moratorium. Maria goes on to claim that Roderick told her that if
14 she did not leave the apartment that same day, she would be "taken out" in a matter of
15 days and taken to court. Id. at ¶ 46.

16 Concerned that she was not correctly understanding Roderick because of Clara's
17 "nervous" interpretation, Maria decided to call her 21-year-old daughter Oliva and have
18 her translate by speakerphone. While the SAC alleges that Olivia was also reluctant to
19 serve as interpreter because she was not physically present, she allegedly felt she had
20 no choice but to help her mother communicate with Roderick, who then reiterated that
21 they had to move out that same day by midnight. When Maria did not immediately
22 agree, Roderick demanded to see her identification, and copied the information from her
23 Mexican identification card. This caused Maria to become frightened that Roderick
24 would arrest her or seek to question her immigration status.

25 The SAC alleges that Roderick never attempted to investigate Estrada's improper
26 shut-off of electricity to the apartment or sought to verify Estrada's false claim that Maria
27 had been given a 30-day notice and that SMUD had determined the apartment to be
28 uninhabitable. Instead, Roderick blocked the door to the apartment and continued "to

1 intimidate, bully and coerce Maria until she told him she would leave that day.” Id. at
2 ¶ 43. Consequently, although Maria had little money, had just lost her job, and had no
3 place to go, she packed up within a matter of hours and became homeless for an
4 extended period of time until she and her children were able to temporarily move in with
5 another family in a small apartment several miles away.

6 In addition to claims stemming directly from their wrongful eviction from the
7 apartment, the SAC alleges that Defendant Roderick’s repeated demands that Maria, a
8 non-English speaker, simply “speak English,” together with the fact that his intimidation
9 in that regard resulted in Maria enlisting her minor daughter to translate as opposed to a
10 qualified translator, violated Title VI’s prohibition against discriminating against Limited
11 English Proficient (“LEP”) persons on the basis of their national origin. See SAC at ¶ 65,
12 citing 67 FR 41455, published June 18, 2002 (U.S. Department of Justice Recipient LEP
13 Guidance). That failure, according to the SAC, shirks the responsibility of Defendants
14 County of Sacramento and its Sheriff’s Office “to ensure meaningful access to their
15 programs and activities by persons with limited English proficiency.” Id. at ¶ 66. This is
16 particularly important in Sacramento County where some 32.7 percent of residents do
17 not speak English at home, with approximately 13.8 percent of the total being Spanish
18 speakers. Id. at ¶ 61.

20 STANDARD

21
22 On a motion to dismiss for failure to state a claim under Federal Rule of Civil
23 Procedure 12(b)(6), all allegations of material fact must be accepted as true and
24 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.
25 Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) “requires only ‘a short and plain
26 statement of the claim showing that the pleader is entitled to relief’ in order to ‘give the
27 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell
28 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,

1 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require
2 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of
3 his entitlement to relief requires more than labels and conclusions, and a formulaic
4 recitation of the elements of a cause of action will not do.” Id. (internal citations and
5 quotations omitted). A court is not required to accept as true a “legal conclusion
6 couched as a factual allegation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
7 Twombly, 550 U.S. at 555). “Factual allegations must be enough to raise a right to relief
8 above the speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright &
9 Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the
10 pleading must contain something more than “a statement of facts that merely creates a
11 suspicion [of] a legally cognizable right of action”)).

12 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket
13 assertion, of entitlement to relief.” Twombly, 550 U.S. at 555 n.3 (internal citations and
14 quotations omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard
15 to see how a claimant could satisfy the requirement of providing not only ‘fair notice’ of
16 the nature of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing Wright &
17 Miller, supra, at 94, 95). A pleading must contain “only enough facts to state a claim to
18 relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . . have not nudged their
19 claims across the line from conceivable to plausible, their complaint must be dismissed.”
20 Id. However, “a well-pleaded complaint may proceed even if it strikes a savvy judge that
21 actual proof of those facts is improbable, and ‘that a recovery is very remote and
22 unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

23 A court granting a motion to dismiss a complaint must then decide whether to
24 grant leave to amend. Leave to amend should be “freely given” where there is no
25 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice
26 to the opposing party by virtue of allowance of the amendment, [or] futility of [the]
27 amendment” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.
28 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to

1 be considered when deciding whether to grant leave to amend). Not all of these factors
2 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .
3 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,
4 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that
5 “the complaint could not be saved by any amendment.” Intri-Plex Techs., Inc. v. Crest
6 Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d
7 1006, 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th
8 Cir. 1989) (“Leave need not be granted where the amendment of the complaint . . .
9 constitutes an exercise in futility . . .”)).

11 ANALYSIS

13 A. Standing

14 Defendants allege that because neither of Maria’s children, Plaintiff Clara or I.D.,
15 had a property interest in the apartment they lack Article III standing to pursue claims in
16 this lawsuit. Defendants further claim that because Clara spoke English in any event,
17 she has no standing to assert any injury arising from the lack of LEP access. Finally,
18 with respect to Plaintiff I.D., the County argues that there are no allegations with respect
19 to any LEP shortcoming at all.

20 The County correctly points out that to establish Article III standing, a plaintiff
21 must show: (1) that he or she suffered an injury in fact which is both concrete and actual
22 or imminent; (2) that the injury is caused by the defendant’s conduct; and (3) that it is
23 likely, as opposed to speculative, that the injury will be redressed by a favorable
24 decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). The County
25 nonetheless construes Plaintiffs’ claims too narrowly. First, the SAC sufficiently pleads
26 injury to the entire family, not just Maria, as a result of being evicted, as to which the LEP
27 violations played a role. SAC, ¶¶ 57-60. Maria’s children had a property interest
28 through their mother to continue occupying the premises. See Marquez-Luque v.

1 Marquez, 192 Cal. App. 3d 1513, 1518 (1987) (son had a right as a tenant at will to
2 continue occupying his father's home because his residency was consensual and for an
3 indefinite period even though there was no rental obligation). As such, they could not be
4 removed without the legal process attendant to that right. Id. Second, Defendant
5 Roderick's alleged intimidation of Maria in demanding she speak English caused her
6 minor daughter Clara to feel she had no choice but to translate, which also may
7 constitute an LEP injury.

8 Defendants' standing argument accordingly fails.

9 **B. Section 1983 Due Process Claim against Defendant Roderick**

10 Plaintiffs' Second Cause of Action, as pleaded against Defendant Roderick,
11 asserts that he deprived them of their property interest in the apartment without due
12 process of law. Plaintiffs accordingly argue that they are entitled to bring a § 1983 claim
13 under the Due Process Clause of the Fourteenth Amendment.

14 Roderick moves to dismiss on grounds that no cognizable claim against him has
15 been presented. First, to the extent that claim is premised on Maria's children lacking
16 any property interest whatsoever to which due process can attach, that argument has
17 already been rejected as set forth above. Second, while Roderick alleges that mere
18 "threats" on his part absent forcible removal is not actionable under § 1983, that
19 argument is also misplaced under the circumstances of this matter. In Harris v. City of
20 Roseburg, 664 F.2d 1121 (9th Cir. 1981), the Ninth Circuit found that a § 1983 due
21 process violation exists not when an officer assists in repossession, but also when he or
22 she "so intimidates a debtor as to cause him to refrain from exercising his legal right to
23 resist a repossession." Id. at 1127. Despite the factual differences between Harris and
24 the case at bar (repossession of a vehicle as opposed to the dispossession of an
25 apartment through eviction), the Court believes that Harris' logic is equally applicable
26 here and supports the viability of the Second Cause of Action.

27 ///

28 ///

1 **C. Viability of Monell Claims against County and Sheriff's Department**

2 In their Third Cause of Action, Plaintiffs allege that Defendants County and the
3 Sheriff's Department (the "Municipal Defendants") are liable for Defendant Roderick's
4 failure to accord the appropriate language access services to Maria, as a LEP person.
5 Plaintiffs claim that the policies of the Municipal Defendants are not adequate to prevent
6 violations in this regard by officers like Defendant Roderick when interacting with
7 members of the public who lack English proficiency. According to Plaintiffs, not only is
8 there no "written policy on language access at the Sheriff's Office," Sheriff Scott Jones'
9 "public statements in favor of stricter immigration enforcement by local police officers
10 comprised the effective 'policy' of Municipal Defendants on Sheriff's Office officers
11 interacting with immigrants, including LEP persons." SAC, ¶ 102. Similarly, the Fourth
12 Cause of Action also alleges that Defendants County and the Sheriff's Department are
13 liable for Defendant Roderick's failure to recognize Plaintiffs' rights under the protections
14 afforded to those lacking English proficiency, because "the training policies of the
15 Municipal Defendants were not adequate to train officers to handle the usual and
16 recurring situations with which they must deal, namely, interacting with members of the
17 public who are limited English proficient." SAC, ¶ 113. Given the failures identified in
18 both causes of action, Plaintiffs allege that the County and the Sheriff's Department are
19 responsible for Roderick's actions given their own independent custom/practices under
20 the rationale recognized by the Supreme Court in Monell v. Dept. of Social Services of
21 the City of New York, 436 U.S. 658 (1978). Both causes of action assert that the
22 Municipal Defendants are accordingly themselves liable for Defendant Roderick's
23 alleged deprivations of due process under the Fourteenth Amendment.

24 To state a viable Monell claim, Plaintiffs must identify not only a constitutional
25 deprivation, but a policy (or entrenched custom that amounts to same) that is both
26 "deliberately indifferent" to Plaintiffs' right and constitutes the "moving force" behind the
27 constitutional violation itself. Anderson v. Warner, 451 F.3d 1063, 1070 (9th Cir. 2006).
28 This requires considerably more proof than a single incident in order to establish both

1 fault on the part of a municipal defendant as well as the requisite causal connection
2 between the alleged “policy” and the constitutional deprivation. McMillian v. Monroe
3 County, 520 U.S. 781, 823-24 (1997).

4 Here, aside from citing statistics about the prevalence of non-English speakers in
5 Sacramento County and arguing that Sheriff Jones “has made immigration enforcement
6 a centerpiece of his public image and leadership of the Sheriff’s Office” (SAC, ¶ 71), the
7 SAC contains little detail as to what the Municipal Defendants’ policy was as to LEP
8 speakers beyond the assertion that there was not one, as well as Sheriff Jones’ own
9 views on immigration enforcement which are of questionable relevance to the issue of
10 whether appropriate language access services are provided. Nor does the SAC offer
11 any specifics as to how training as to those amorphous policies was lacking. In addition,
12 beyond the single instance underlying this particular lawsuit, no other similar examples
13 of injury caused by Defendants’ shortcomings are alleged. Because the Court
14 concludes that this is insufficient to state a viable claim, Defendants’ Motion to Dismiss
15 the Third and Fourth Causes of Action are granted, with leave to amend.

16 **D. Title VI Claim**

17 In addition to the Monell claims discussed above, Plaintiffs also assert in their
18 Fifth Cause of Action that because both Municipal Defendants are the recipients of
19 federal funding, they are independently liable under Title VI, which prohibits
20 discrimination on the basis of race, color or national origin in any “program or activity”
21 that receives federal financial assistance. Id. at ¶¶ 117-20.⁴ According to Plaintiffs,
22 Defendants’ failure to adopt an adequate language access policy for LEP persons
23 constitutes discrimination against Plaintiffs on the basis of their national origin.⁵

24 _____
25 ⁴ In addition to alleging a Title VI violation with respect to having received federal funds, the Fifth
26 Cause of Action also appears to assert that Defendants violated Title VI’s state counterpart, the Dymally-
27 Alatorre Bilingual Services Act, California Government Code §§ 7299, et seq., which prohibits
28 discrimination by entities receiving state funds. See SAC, ¶ 121b. Defendants, however, do not move to
dismiss the Fifth Cause of Action to the extent it asserts a § 7299 claim.

⁵ Plaintiffs have filed a Request for Judicial Notice (ECF No. 21), pursuant to Federal Rule of
Evidence 201, as to Department of Justice guidelines regarding Title VI’s protection against national
original discrimination affecting LEP persons. That request is unopposed and is accordingly GRANTED.

1 Defendants argue that Title VI is inapplicable because neither the County or Sheriff fit
2 within the definition of a “program or activity” for Title VI purposes.

3 Importantly, Title VI’s definition of “program or activity” sweeps broadly to include
4 “all the operations of [] a department, agency, special purpose district, or other
5 instrumentality of a State or local government; or [] the entity of such State or a local
6 government that distributes such assistance and each such department or agency (and
7 each other State or local government entity) to which the assistance is extended, in the
8 case of assistance to a State or local government.” 42 U.S.C. § 2000d-4a(1)(A)-(B).
9 This means, according to the Ninth Circuit, that “if any part of a listed entity receives
10 funds, the entire entity is covered by Title VI.” Ass’n of Mexican-American Educators v.
11 State of Cal., 195 F.3d 465, 474-74 (9th Cir. 1999); rev’d in part on reh’g en banc on
12 other grounds, 231 F.3d 572 (9th Cir. 2000).

13 Plaintiffs have alleged, as stated above, that both the County and the Sheriff’s
14 Office receive federal funding and that each are responsible for ensuring that the
15 Sheriff’s Office comply with Title VI in terms of adopting language access policies that
16 avoid discriminating against individuals due to their national origin. Given Title VI’s
17 broad mandate, this is enough to withstand Defendants’ pleadings challenge at this
18 juncture. Defendants’ Motion to Dismiss the Fifth Cause of Action is therefore denied.

19 **E. Bane Act Violation**

20 In their Sixth Cause of Action, Plaintiffs assert a violation of California’s
21 Bane Act, Cal. Civ. Code § 52.1, against all Defendants. The Bane Act civilly protects
22 individuals from conduct aimed at interfering with rights that are secured by federal or
23 state law, where the interference is carried out “by threats, intimidation or coercion.”
24 Reese v. County of Sacramento, 888 F.3d 1030, 1040 (9th Cir. 2018). The rights
25 protected against are those “secured [either] by the Constitution or laws of the United
26 States, or of the rights secured by the Constitution or laws of [the] State of California”.
27 Cal. Civ Code § 52.1(b).

28 ///

1 Defendants' argument that the Bane Act is limited to constitutional violations,
2 whereas Plaintiffs' claims are brought only under the aegis of 42 U.S.C. § 1983, a
3 federal statute, thus appears to run counter to the language of the Bane Act itself, which
4 clearly extends to both constitutional and statutory violations at both the state and
5 federal level. Even were a constitutional violation required, however, Plaintiffs' § 1983
6 claim, as articulated in the Second Cause of Action, is rooted in Defendant Roderick's
7 alleged acts depriving them of their property interest in the apartment in violation of the
8 Due Process Clause of the Fourteenth Amendment of the United States Constitution.
9 SAC, ¶¶ 91-92. Plaintiffs allege that because Defendant Roderick did this both
10 intentionally, and employed threats, intimidation and coercion to do so, a violation of the
11 Bane Act has been properly stated. The Court agrees. Defendants' request for
12 dismissal of the Sixth Cause of Action is also denied.

13 **F. Claims under Government Code § 11135**

14 Plaintiffs' Eighth Cause of Action is premised on a California's statutory prohibition
15 against discrimination in "any program or activity that is conducted, operated, or
16 administered by the state or by any state agency, is funded directly by the state or
17 receives any financial assistance from the state." Cal. Gov't Code § 11135(a). In linking
18 its anti-discrimination mandate to the receipt of state funding, § 11135 operates as the
19 state counterpart to the federal prohibition as embodied by Title VI.

20 In moving to dismiss, Defendants argue that "[n]o California court has found that
21 the County or Sheriff's Office in providing deputies to respond to civil actions in
22 landlord/tenant disputes constitutes a program or activity within the meaning of [the]
23 statute." Defs.' Mot., ECF 17-1, 9:10-12. In support of that contention, Defendants point
24 out that public safety and/or law enforcement is not specifically enumerated as a
25 "program or activity" within the definitions contained in the implementing regulations.
26 Cal. Code Regs., tit. 2, § 11150.

27 As Plaintiffs argue in opposition, however, numerous courts, including this one,
28 have applied § 11135 to law enforcement departments under a variety of fact patterns.

1 See, e.g., Jewett v. Cal. Forensic Medical Group, Inc., No. 2:13-cv-0882 MCE AC P,
2 2017 WL 980446 (Mar. 13, 2017) (certifying class certification of claims against Shasta
3 County, including those brought under § 11135 against County and Sheriff), as adopted
4 by the undersigned at 2017 WL 1356054 (E.D. Cal. Apr, 5. 2017); C.B. v. Moreno Valley
5 Unified Sch. Dist., 544 F. Supp. 3d 973, 994 (C.D. Cal. 2021) (denying motion to dismiss
6 § 11135 disparate impact claim against County and Sheriff); Meister v. City of
7 Hawthorne, No. CV-14-1096-MWF (SHx), 2015 WL 12762058 at *11 (C.D. Cal. June 10,
8 2015) (denying summary judgment as to § 11135 claim against City and Police
9 Department); Fetter v. Placer County Sheriff, No. 2:12-cv-02235-GEB-EFB, 2014 WL
10 4078638 at *6 (E.D. Cal. Aug. 14, 2014) (denying motion to dismiss § 11135 claim
11 against Sheriff). Significantly, too, even the implementing regulations, upon which
12 Defendants rest their argument that the § 11135 claims lack viability, merely state that
13 programs and activities subject to the statute “include but are not limited to” the
14 examples it proceeds to cite. Cal. Code Regs., t. 2, § 11150.

15 Because the Eighth Cause of Action clearly avers that both the County and the
16 Sheriff’s Office receive financial assistance from the State of California to support their
17 law enforcement activities and are thus subject to liability under § 11135 (see SAC,
18 ¶¶ 135, 138) and since there is no basis for concluding that the statute cannot apply to
19 the circumstances present here as a matter of law, Defendants’ challenge to the statute
20 cannot be adjudicated in the context of a motion to dismiss. Defendants’ request that
21 the Eighth Cause of Action be dismissed is therefore denied.

22 **G. Petition for Writ of Mandate**

23 Plaintiffs’ Ninth Cause of Action seeks a writ of mandate under California Code of
24 Civil Procedure § 1085 compelling Defendants to comply with their duties to provide
25 language access to LEP persons under both Title VI and the Dymally-Alatorre Bilingual
26 Services Act, California Government Code §§ 7299, et seq. Defendants seek dismissal
27 of Plaintiffs’ mandamus claim on grounds that writs of mandate under § 1085 are not
28 available in federal court.

1 Defendants' conclusion in this regard sweeps too broadly. This Court previously
2 decided to exercise supplemental jurisdiction over a § 1985 mandamus claim in Twin
3 Sisters Gun Club v. Emlen, No. 2:17-cv-01526 MCE-GGH, 2018 WL 1335394 (E.D. Cal.
4 Mar. 15, 2018). It noted that while principles of comity have led some courts to deny
5 altogether a federal court's ability to exercise supplemental jurisdiction over California
6 law-based mandamus claims under § 1085 (see Hill v. Cty. of Sacramento,
7 466 Fed. Appx. 577, 579 (9th Cir. 2012), granting supplemental jurisdiction over a
8 California mandamus claim is nonetheless not prohibited. Emlen, 2018 WL 1335394 at
9 *6, citing Fresno Unified Sch. Dist. v. K.U. ex rel. A.D.U., 980 F. Supp. 2d 1160, 1184
10 (E.D. Cal. 2013).

11 Here, Defendants have not shown that factors of comity should cause this Court
12 to refrain from exercising jurisdiction over Plaintiffs' mandamus claim. Defendants have
13 not shown that novel state law issues predominate over the federal claims. Nor have
14 they argued that this case raises "exceptional circumstances that constitute a
15 "compelling reason" for declining jurisdiction. See 28 U.S.C. § 1367c). Consequently,
16 Defendants' Motion to Dismiss the Ninth Cause of Action is denied.

17 **H. Negligence claims**

18 Defendants Roderick, as well as the Municipal Defendants, seek dismissal of
19 Plaintiffs' negligence claim as set forth in the Tenth Cause of Action, albeit on different
20 grounds. Defendants County and the Sheriff's Office argue that because California
21 Government Code § 815 abolishes common law forms of liability for public entities,
22 Plaintiffs' negligence claim necessarily fails. Defendant Roderick, for his part, argues
23 that the claim fails against him in the absence of any cognizable legal duty owed by him
24 to Plaintiffs.

25 Defendants are wrong in asserting that Officer Roderick owed no duty to Plaintiffs
26 as a matter of law, and therefore cannot possibly be liable under a negligence theory.
27 Whether or not a duty of care exists under California law depends on the consideration
28 of a number of factors, including "the foreseeability of harm to the plaintiff, the degree of

1 certainty that the plaintiff suffered injury, the closeness of the connection between the
2 defendant's conduct and the injury suffered, the moral blame attached to the defendant's
3 conduct, the policy or preventing future harm, [and] the extent of the burden to the
4 defendant and consequences to the community of imposing a duty to exercise care'." Catsouras v. Dept' of Cal. Hwy. Patrol, 181 Cal. App. 4th 856, 881 (2010), quoting
5 Rowland v. Christian, 69 Cal. 2d 108, 113 (1968). Assessing this myriad of factors as
6 applied to the present case calls for factual and policy determinations far beyond the
7 purview of a motion to dismiss.

8
9 With respect to the Municipal Defendants' liability, as indicated above they rely on
10 § 815 in arguing that no negligence claim can be asserted against them. Plaintiffs,
11 however, point by way of opposition to the fact that another statute, § 815.2, makes
12 public entities liable for injuries proximately caused by the acts or omissions of an
13 employee acting within the scope of his employment if a cognizable cause of action
14 could be asserted against the employee. Plaintiffs claim that because the County and
15 the Sheriff's Office may accordingly be held liable for Roderick's negligence, which
16 cannot be ruled out by way of a motion to dismiss, Plaintiffs' negligence claim against
17 the Municipal Defendants is proper. Since the SAC clearly alleges that Roderick, acting
18 in the scope of his employment, negligently caused injuries to Plaintiffs (SAC, ¶¶ 152-
19 58), Plaintiffs' negligence claim against the County and the Sheriff's Office also survives
20 pleadings scrutiny at this juncture.

21 I. Wrongful Eviction claim

22 Plaintiffs' First Cause of Action alleges retaliatory eviction against Defendant
23 Roderick in addition to Estrada and the owners of the property. In now moving to
24 dismiss, Roderick alleges the cause of action is factually inapplicable to his involvement
25 in the matter because one of the elements of common law wrongful eviction is "forcible
26 entry," which he claims requires unlocking a tenant's door without his or her consent, or
27 alternatively entering by other affirmative means like breaking open doors or windows, or
28 even by entering and changing locks without the tenant's permission. Defs.' Mot, ECF

1 No. 17-1, 11:109, citing Spinks v. Equity Residential Briarwood Apts., 171 Cal. App. 4th
2 1004, 1039 (2009). According to Roderick, because he engaged in no such forcible
3 entry the wrongful eviction claim against him fails.

4 While Roderick focuses on the lack of specific physical acts in arguing that liability
5 is foreclosed, plaintiffs point out that under the California statute defining forcible entry in
6 the context of obtaining possession or real property, liability is also triggered by a person
7 who enters into real property “by any kind of . . . circumstance of terror”. Cal. Code
8 Civ. P. § 1159(a)(1). The statute further extends liability to those who “turn[] out by . . .
9 threats, or menacing conduct, the party in possession.” Id. at § 1159(a)(2).

10 In Bedi v. McMullan, 160 Cal. App. 3d 272 (1984), the court was confronted with
11 the propriety of an eviction that occurred when the property owner, together with a
12 uniformed deputy, appeared at plaintiffs’ home, entered without permission once the
13 door was opened, and immediately demanded that plaintiffs leave. Although the
14 defendants in Bedi did actually “forcibly enter” the premises as described above, the
15 court noted that “the fact the Bedis bowed to the implicit threat of force posed by the
16 marshal [and left the premises] rather than precipitate a showdown in no way undercuts
17 their cause of action for forcible entry and detainer.” Id. at 275-76.

18 The Court believes that Bedi’s rationale applies equally to this case. The SAC
19 alleges that after Roderick “knocked violently” on Plaintiffs’ door and Maria answered, he
20 “blocked the door” for 30-45 minutes and prevented Plaintiffs from leaving until Maria
21 relented to his demands for vacating the apartment by agreeing to move out by midnight
22 even though she had no place to go. SAC, ¶¶ 43, 49-53. Maria claims she did this
23 because of Roderick’s “intimidation, aggressive attitude, and explicit threats” that he
24 would come back to “take her out” if she did not do so, which caused her to fear both
25 losing the apartment and potentially being deported. Id. at ¶ 55. In the Court’s
26 estimation, the fact that Roderick purportedly “blocked the door” and prevented Plaintiffs
27 from leaving is not functionally different from actually entering the apartment, especially
28 since the threats and intimidation enumerated in the SAC appear to have been the

1 salient factor in causing Plaintiffs to vacate the premises, with such threats also
2 constituting forcible entry under § 1159. Defendant Roderick's Motion to Dismiss the
3 First Cause of Action is thereby denied.

4
5 **CONCLUSION**

6
7 For all the above reasons, Defendants' Motion to Dismiss (ECF No. 17) is
8 DENIED,⁶ except with respect to the Third and Fourth Causes of Action, as to which the
9 Motion is GRANTED, with leave to amend. If Plaintiffs desire to file a Third Amended
10 Complaint, they are directed to do so not later than twenty (20) days following the date
11 this Memorandum and Order is electronically filed. Failure to do so will result in
12 dismissal of the claims already dismissed by this Order, with prejudice and without
13 further notice to the parties.

14 IT IS SO ORDERED.

15
16 Dated: September 14, 2022

17 
18 MORRISON C. ENGLAND, JR.
19 SENIOR UNITED STATES DISTRICT JUDGE

20
21
22
23
24
25
26
27
28 _____
⁶ Having determined that oral argument would not be of material assistance, the Court ordered the Motion submitted on the briefs pursuant to E.D. Cal. Local R. 230(g).