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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTY MILES,
Plaintiff,
v.
COUNTY OF ALAMEDA, et al.,
Defendants.

Case No. [3:22-cv-06707-WHO](#)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS SECOND AMENDED
COMPLAINT**

Re: Dkt. No. 72

This lawsuit was filed by Christy Miles, the mother of 27-year-old Devin West, who was beaten and strangled to death by his cellmate at Santa Rita Jail in Alameda County in 2021. I previously granted Miles leave to amend some of her claims and permitted her to engage in limited discovery to ascertain the identities of various Doe defendants. She has now repleaded many claims and identified twenty individuals from the jail—including deputies and medical staff, among others—that she says played a role in violating her and West’s rights before, during, and after his death. Those individual defendants moved to dismiss all claims against them.

Based on the arguments made, this Order finds that Miles sufficiently stated claims for violations of the Eighth and Fourteenth Amendment as well as for state law negligence and violation of California’s Bane Act against twelve individual defendants. She has leave to amend her pleadings once more to plausibly allege claims against the other eight defendants, to the extent possible.

BACKGROUND

I. FACTUAL BACKGROUND

In the operative Second Amended Complaint (“SAC”), Miles asserts many of the same facts as those in the First Amended Complaint and also adds details as well as names of many Doe

1 defendants. SAC [Dkt. No. 49]. This Order assumes familiarity with the facts in the prior order
2 granting the first motion to dismiss, (“Prior Order”) [Dkt. No. 42], and recounts additional
3 relevant allegations. The named and identified officials from the Santa Rita Jail and Alameda
4 County include:

5 The “Classification” defendants: Deputy Doe Smith, SAC ¶ 7; Deputy Doe Mitchell, *id.*
6 ¶ 8; Deputy Crispino Gabriel, *id.* ¶ 9; Deputy Marc Solopow, *id.* ¶ 10; Deputy Daniel Sablan, *id.*
7 ¶ 11; and Deputy Bryan Kiss, *id.* ¶ 12;

8 The “Supervising” defendants: Supervising Lieutenant Kenneth Gemmell, *id.* ¶ 17;
9 Supervising Sergeant Devin Lorier, *id.* ¶ 18; Supervising Sergeant Victor Galindo, *id.* ¶ 19;

10 The “Medical” defendants: Forensic Behavioral Health Clinician and Social Work
11 Supervisor Tara Rocker, *id.* ¶ 20; Dr. Maria Magat, *id.* ¶ 25; Nurse Carol Stevenson, *id.* ¶ 26;
12 Nurse Mira Yune, *id.* ¶ 27; Dr. Elias Aboujaoude, *id.* ¶ 29; Dr. Teresita Pontejos-Murphy, *id.* ¶ 30;
13 and Dr. Jennifer McQuade, *id.* ¶ 31;

14 And four defendants who are not clearly categorized in the SAC: Deputy Daniel Herrera,
15 *id.* ¶ 13; Deputy Michael Teves, *id.* ¶ 14; Deputy Malik Jackson, *id.* ¶ 15; and Housing Unit
16 Technician Terrell Santiago, *id.* ¶ 16.

17 As relevant to the issues raised in the parties’ briefing and discussed in this Order, the SAC
18 asserts that West was a 27-year-old African American man who suffered from bipolar disorder,
19 schizophrenia, and depression at the time of his death at the jail. *Id.* ¶¶ 4, 37. He was housed in
20 Santa Rita Jail’s mental health housing unit. *Id.* ¶¶ 55, 56. He was also placed on the “Inmate
21 Observation Log,” a “form of suicide watch.” *Id.* ¶ 68.

22 Miles alleges that West’s mental health conditions caused him to verbally provoke and
23 disturb people, including jail staff and inmates. *See, e.g., id.* ¶¶ 68, 92. Miles asserts that because
24 of West’s mental health conditions, which aggravated other inmates and caused them to physically
25 attack him, West needed to be housed in a single cell with no cellmates for his own safety. *See,*
26 *e.g., id.* ¶ 72. She says that West was attacked by inmates on four separate occasions during a
27 prior incarceration in 2020, and that this was noted in his file. *Id.* ¶ 52. After arriving at Santa
28 Rita jail in fall of 2021, West was attacked by cellmates on five separate occasions in a six-week

1 period. *Id.* ¶¶ 59, 61, 63, 65, 67. But jail officials failed to house West in a single cell. *See id.*
2 ¶¶ 60, 62, 64, 66, 68.

3 Specifically, Miles alleges that Smith conducted West’s intake and Mitchell conducted
4 West’s booking on September 22, 2021. *Id.* ¶¶ 7-8, 50. Despite access to West’s files during that
5 process, *id.* ¶ 48, and knowledge of his prior attacks and his mental health issues, *id.* ¶¶ 51-52, 55,
6 they did not ensure he was housed in a single cell, *id.* ¶¶ 48, 51-53, 56.

7 Miles also alleges that within two days of West’s arrival at the jail, Pontejos-Murphy,
8 McQuade, and Aboujaoude medically evaluated him, and each defendant noted that West had
9 severe mental illnesses. *Id.* ¶ 49. None ensured that he was housed by himself. *Id.* ¶¶ 55-57.

10 Two days later, Stevenson also medically evaluated West, and Rocker conducted a
11 behavioral health assessment. *Id.* ¶ 50. Those evaluations found that West had “unpredictable
12 behavior,” “an altered mental state,” “mental and development disability,” and other mental health
13 conditions. *Id.* ¶ 51. Neither Stevenson nor Rocker ensured that West was housed in a single cell.
14 *Id.* ¶¶ 51, 55-57.

15 Lorier learned about one of the incidents where West was attacked by a cellmate, and he
16 added a “Keep Separate” note to West’s record. *Id.* ¶ 61. Lorier also knew that Emil Cochran, the
17 cellmate who beat and strangled West to death, was violent. *Id.* ¶ 95. Sablan also knew that
18 Cochran had attacked another inmate. *Id.* ¶ 87. Despite their knowledge of the safety risks,
19 neither Lorier nor Sablan took actions to ensure that West was alone; indeed Sablan chose to move
20 Cochran to West’s cell. *Id.* ¶ 89.

21 Miles alleges that each of these defendants—Smith, Mitchell, Pontejos-Murphy, McQuade,
22 Aboujaoude, Stevenson, Rocker, Lorier, and Sablan—knew that West should be housed separately
23 from other prisoners, including Cochran, for his safety, but failed to ensure that he was, and some
24 defendants even went so far as to ignore recommendations that he should be housed separately.
25 *See id.* ¶¶ 51-54, 60, 62, 64, 66, 82.

26 She also asserts that Herrera, Teves, and Jackson were the on-duty deputies in the mental
27 health housing unit the night that West was killed, and they were the ones responsible for
28 protecting West. *Id.* ¶¶ 13-15, 98. According to Miles, these deputies knew that prisoners in that

1 unit required health and safety checks every 15 to 30 minutes. *Id.* ¶¶ 71, 79. They also knew that
2 West was housed with Cochran and that Cochran was violent. *Id.* ¶ 97. Despite that knowledge,
3 they intentionally failed to perform those checks on the night of November 14 and the early
4 morning of November 15, during the period in which Cochran attacked West. *Id.* ¶¶ 71, 101-02,
5 117, 128-29. They later falsified records to make it look like they conducted the checks. *Id.*
6 ¶ 102. Miles says these records are false because the fight lasted more than thirty minutes and
7 could be heard throughout the cell block, so if the deputies had done their checks, they would have
8 heard it. *Id.* ¶¶ 103-07, 110.

9 According to Miles, Teves responded to the attack about an hour after it began. *Id.* ¶ 117.
10 He radioed Jackson and Herrera for assistance and took no action as he waited for them. *Id.* The
11 three deputies watched Cochran continue attacking West “for an appreciable period of time” until
12 “[f]inally” they opened the cell door. *Id.* ¶¶ 119-20. Rather than entering the cell, pulling
13 Cochran off West, or using any kind of force—including lethal force, which Miles alleges would
14 have been appropriate—the deputies continued to watch the attack until Jackson eventually
15 withdrew his taser. *Id.* ¶¶ 120-22. They did not enter the cell to physically check West’s health or
16 safety until Cochran voluntarily released his chokehold on West’s neck. *Id.* ¶¶ 121-23. By the
17 time the deputies entered the cell, West was “unresponsive,” “cyanotic,” and “blue and cold to the
18 touch.” *Id.* ¶¶ 123-24. He died from those injuries. *Id.* ¶¶ 4, 123.

19 Miles asserts many other conclusory and general allegations about the other individual
20 moving defendants. They and other allegations are discussed throughout this order.

21 **II. PROCEDURAL BACKGROUND**

22 Miles now brings the following nine claims: (1) interference with familial relationship and
23 Due Process violation under the Fourteenth Amendment and 42 U.S.C. § 1983, against Smith,
24 Mitchell, Gabriel, Solopow, Sablan, Kiss, Herrera, Teves, Jackson, Santiago, Gemmell, Lorier,
25 Galindo, Rucker, Magat, Stevenson, Yune, Aboujaoude, Pontejos-Murphy, McQuade, and Does
26 1-10, SAC ¶¶ 143-53; (2) failure to protect in violation of the Eighth Amendment and 42 U.S.C.
27 § 1983, against Smith, Mitchell, Gabriel, Solopow, Sablan, Kiss, Herrera, Teves, Jackson,
28 Santiago, Gemmell, Lorier, Galindo, Rucker, Magat, Stevenson, Yune, Aboujaoude, Pontejos-

1 Murphy, McQuade, and Does 1-10, *id.* ¶¶ 154-68; (3) denial of medical care under 42 U.S.C.
2 § 1983, against Smith, Mitchell, Gabriel, Solopow, Sablan, Kiss, Herrera, Teves, Jackson,
3 Santiago, Gemmell, Lorier, Galindo, Rocker, Magat, Stevenson, Yune, Aboujaoude, Pontejos-
4 Murphy, McQuade, and Does 1-10, *id.* ¶¶ 169-200; (4) supervisor liability under § 1983, against
5 Gemmell, Magat, and the Supervisor Does, SAC ¶¶ 201-14; (5) municipal liability – failure to
6 train under § 1983, against the County of Alameda, *id.* ¶¶ 215-25; (6) municipal liability –
7 unconstitutional custom, practice, policy under § 1983, against the County, *id.* ¶¶ 226-39;
8 (7) failure to provide reasonable accommodations under the Americans with Disabilities Act
9 (“ADA”), against the County, *id.* ¶¶ 241-64; (8) state law negligence, against Smith, Mitchell,
10 Gabriel, Solopow, Sablan, Kiss, Herrera, Teves, Jackson, Santiago, Gemmell, Lorier, Galindo,
11 Rocker, Magat, Stevenson, Yune, Aboujaoude, Pontejos-Murphy, McQuade, Does 1-10, the
12 County, and CFMG, *id.* ¶¶ 265-73; and (9) violation of the Bane Act, Cal. Civ. Code § 52.1,
13 against all defendants, *id.* ¶¶ 274-82.

14 The “Individual County Defendants” filed a renewed motion to dismiss (“Mot.”), [Dkt.
15 No. 72], and Requests for Judicial Notice, [Dkt. No. 72-1]. Miles opposed. (“Oppo.”) [Dkt. No.
16 73]. The defendants replied. [Dkt. No. 74]. I issued a tentative order, [Dkt. No. 75], and the
17 parties informed the court they agreed with the tentative and did not think a hearing would be
18 necessary. Accordingly, I vacated the hearing scheduled for December 20, 2023. [Dkt. No. 76].

19 **LEGAL STANDARD**

20 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint
21 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to
22 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its
23 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when
24 the plaintiff pleads facts that “allow the court to draw the reasonable inference that the defendant
25 is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation
26 omitted). There must be “more than a sheer possibility that a defendant has acted unlawfully.” *Id.*
27 While courts do not require “heightened fact pleading of specifics,” a plaintiff must allege facts
28 sufficient to “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555, 570.

1 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
2 Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
3 plaintiff. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court
4 is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
5 fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
6 2008).

7 If the court dismisses the complaint, it “should grant leave to amend even if no request to
8 amend the pleading was made, unless it determines that the pleading could not possibly be cured
9 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In making
10 this determination, the court should consider factors such as “the presence or absence of undue
11 delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments,
12 undue prejudice to the opposing party and futility of the proposed amendment.” *Moore v. Kayport*
13 *Package Express*, 885 F.2d 531, 538 (9th Cir. 1989).

14 **DISCUSSION**

15 **I. WRONGFUL DEATH CLAIMS**

16 First, the defendants argue that Miles improperly reasserts claims for wrongful death under
17 42 U.S.C. § 1983, which I previously dismissed with prejudice. Mot. 4:13-5:7; *see also* Prior
18 Order 8:26-10:4. In opposition, Miles points out that two of the claims that the defendants
19 challenge—causes of action 5 and 6 for theories of municipal liability—are not asserted against
20 these defendants, and so they cannot challenge the claims. Oppo. 8:28-9:2. She is correct and the
21 motion is DENIED for those causes of action.

22 The defendants also challenge Miles’ first cause of action, which is entitled “Interference
23 with Familial Relationship, Due Process—Violation of the Fourteenth Amendment (42 U.S.C.
24 § 1983) (Wrongful Death) (By Plaintiff against Defendants [Smith, Mitchell, Gabriel, Solopow,
25 Sablan, Kiss, Herrera, Teves, Jackson, Santiago, Gemmell, Lorier, Galindo, Rucker, Magat,
26 Stevenson, Yune, Aboujaoude, Pontejos-Murphy, McQuade, and Does 1 through 10]).” SAC at
27 56. The defendants cite my Prior Order and assert that plaintiffs cannot bring wrongful death
28 claims under 42 U.S.C. § 1983 because § 1983 only permits survival actions. *See* Mot. 4:14-5:7.

1 The Prior Order did not address wrongful death standing for the first cause of action.

2 To state a claim under § 1983, a plaintiff must allege, in part, a violation of a right secured
3 by the Constitution or federal law. *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted).
4 Constitutional rights generally may not be asserted vicariously on behalf of someone else. *See*
5 *Moreland v. Las Vegas Metro. Police Dep't*, 159 F.3d 365, 369 (9th Cir. 1998), *as amended* (Nov.
6 24, 1998)). In other words, plaintiffs generally may not bring a § 1983 action on behalf of others,
7 including relatives. The exception is that where a state statute authorizes survivorship actions,
8 plaintiffs may file lawsuits under § 1983 seeking to vindicate the constitutional rights of a
9 deceased relative. *Hayes v. Cnty. of San Diego*, 736 F.3d 1223, 1228-29 (9th Cir. 2013) (citing
10 *Moreland*, 159 F.3d at 369).

11 A survivorship action is, by definition, “based upon the decedent’s own individual claims
12 that he would have been entitled to file for his own injuries.” *Est. of Lopez ex rel. Lopez v. Torres*,
13 105 F. Supp. 3d 1148, 1159 n.4 (S.D. Cal. 2015) (citing Cal. Code Civ. Proc. § 377.10 et seq.). In
14 contrast, a wrongful death claim is one brought “brought by a decedent’s heirs for damages they
15 personally suffered as a result of the decedent’s death.” *Est. of Adomako v. City of Fremont*, No.
16 17-CV-06386-DMR, 2018 WL 587146, at *3 n.2 (N.D. Cal. Jan. 29, 2018) (first citing Cal. Code
17 Civ. Proc. § 377.60; and then citing *Hayes*, 736 F.3d at 1229). In California, wrongful death is a
18 cause of action under state law. *See Est. of Lopez*, 105 F. Supp. 3d at 1159 n.4 (citing Cal. Code
19 Civ. Proc. § 377.10 et seq.). But outside of the maritime context, *see Davis v. Bender*
20 *Shipbuilding & Repair Co.*, 27 F.3d 426, 428 (9th Cir. 1994), there is no federal cause of action
21 for wrongful death, nor is there apparently a direct constitutional right.

22 Because § 1983 claims require a violation of a constitutional or federal statutory right,
23 *West*, 487 U.S. at 48, a plaintiff cannot bring a specific “wrongful death” claim under § 1983,
24 *Murphy v. Cnty. of Mendocino*, No. 15-CV-04624-NJV, 2016 WL 794458, at *2 (N.D. Cal. Mar.
25 1, 2016) (citing *Est. of Lopez*, 105 F. Supp. 3d at 1159). Rather, plaintiffs may bring survivorship
26 claims on behalf of a deceased family member whose constitutional rights were allegedly violated.
27 *See, e.g., Hayes*, 736 F.3d at 1128-29 (Fourth Amendment rights); *McGinnis v. Cnty. of Sonoma*,
28 No. 21-CV-09499 SI, 2023 WL 2743578, at *2 (N.D. Cal. Mar. 30, 2023) (constitutional rights

1 via *Monell* claims).

2 A plaintiff may also bring a § 1983 action on behalf of *her* rights that were allegedly
 3 violated by the death of her family member—for example, for violation of her “liberty interest in
 4 the companionship of [her] child.” *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1106 (9th
 5 Cir. 2014) (first citing *Porter v. Osborn*, 546 F.3d 1131, 1136 (9th Cir. 2008); and then citing
 6 *Curnow ex rel. Curnow v. Ridgecrest Police*, 952 F.2d 321, 325 (9th Cir. 1991)); *see also Est. of*
 7 *Adomako*, 2018 WL 587146, at *6 (same). Such a claim may be brought as a substantive due
 8 process claim under the parent’s Fourteenth Amendment right to familial association. *See*
 9 *Chaudhry*, 751 F.3d at 1106. It is not a survivorship claim. *See Est. of Adomako*, 2018 WL
 10 587146, at *6. And because the claim is for violation of the *parent’s* constitutional right, where
 11 the parent brings the claim on behalf of her rights, the violation may form the basis for a *Monell*
 12 action. *See McGinnis*, 2023 WL 2743578, at *2 (first citing *K.C.A. by and through Purvis v. Cnty.*
 13 *of San Diego*, Case No. 20-CV-2504 W (BLM), 2021 WL 3370790, at *7 (S.D. Cal. Aug. 3,
 14 2021); then citing *Schwartz v. Lassen Cnty. ex rel. Lassen Cnty. Jail (Det. Facility)*, 838 F. Supp.
 15 2d 1045, 1058 (E.D. Cal. 2012); and then citing *Shelley v. Cnty. of San Joaquin*, 996 F. Supp. 2d
 16 921, 932 (E.D. Cal. 2014)); *see also Est. of Umana by & through B.U. v. Nat’l City*, No.
 17 22CV1657-GPC(SBC), 2023 WL 5344305, at *8 (S.D. Cal. Aug. 17, 2023) (same).

18 As addressed in a well-researched and well-reasoned order by the Honorable Gonzalo P.
 19 Curiel in the Southern District, there is some confusion within this circuit regarding “wrongful
 20 death” claims under § 1983, in part due to certain unpublished memoranda disposition referring to
 21 § 1983 claims as “wrongful death” claims. *See Est. of Lopez*, 105 F. Supp. 3d at 1159 (collecting
 22 cases). These so-called “wrongful death” claims were allowed to proceed under § 1983, though,
 23 because the underlying claim sought to vindicate the constitutional rights of the decedent, not on
 24 the theory that they vindicated the plaintiff’s constitutional or federal rights regarding wrongful
 25 death. *See id.* (collecting cases). In other words, they were survivorship claims. *Cf. Hayes*, 736
 26 F.3d at 1228-29.

27 Together these cases confirm that a plaintiff may bring a § 1983 claim for violation of her
 28 own constitutional rights based on the death of a family member—these are neither survivorship

1 nor wrongful death claims. She may also bring a § 1983 claim for violation of the decedent’s
2 constitutional rights, if permitted by state statute—these are survivorship claims. In some states,
3 she may also bring a “wrongful death” claim under state law, which vindicates her rights. She
4 may not, however, bring a standalone “wrongful death” claim under § 1983, because there is no
5 standalone “wrongful death” right. To the extent that a plaintiff seeks vindication of *her*
6 constitutional or federal statutory rights arising from the death of a family member, she may bring
7 those directly, but they should not be labeled “wrongful death” claims.

8 Perhaps because of the confusion in case law addressed by Judge Curiel, here Miles insists
9 in her opposition that her first cause of action is a “wrongful death” claim.¹ *See* *Oppo.* 9:3-11:6.
10 But while her opposition describes entitlement to “wrongful death damages under the Fourteenth
11 Amendment,” the text of the opposition—as well as her SAC—seeks damages for violation of her
12 “constitutionally protected liberty interest under the Fourteenth Amendment in the companionship
13 and society of” her son. *Id.* (quoting *Curnow*, 952 F.2d at 325). This is exactly what she is
14 allowed to seek under § 1983. *See Curnow*, 952 F.2d at 325; *Chaudhry*, 751 F.3d at 1106.
15 Despite Miles’ choice of labels, this is not a “wrongful death” claim. The first cause of action
16 properly seeks vindication of Miles’ own constitutional rights and so may be brought under
17 § 1983. The defendants’ motion is DENIED for this argument.

18 Separately, I note that in her opposition, Miles cited significant case law concerning
19 § 1983 actions, wrongful death, and survivorship claims. Because her opposition to the first
20 motion to dismiss did not include any of these citations, nor any other analysis or support for these
21 arguments, [Dkt. No. 29] 7:15-28, her new citations and arguments caused me to reexamine the
22 law, her prior opposition, and her First Amended Complaint. In the first round of motions to
23 dismiss, the defendants argued that Miles could not bring wrongful death actions under § 1983,
24 and in opposition Miles said that her *Monell* claims for municipal liability were “both survival and
25 wrongful death actions” and were based on the constitutional violations asserted in “any one of or
26

27 ¹ The Ninth Circuit has recognized that a state law wrongful death claim can be essentially
28 identical to a § 1983 claim for violation of an individual’s Fourteenth Amendment right to familial
association. *See Chaudhry*, 751 F.3d at 1106.

1 combination of Claims (1)-(4).” *Id.* Because that was the extent of her argument, and because
2 Miles cited no law, I assumed her *Monell* claims for “wrongful death” were intended as she
3 described them—as standalone claims for wrongful death. My Prior Order dismissed those claims
4 because I found that plaintiffs cannot bring § 1983 claims for wrongful death, and so “wrongful
5 death” cannot be a constitutional basis for a *Monell* claim. *See* Prior Order 9:2-10:4.

6 Upon further review, however, including of additional assertions made in the current
7 opposition brief, it seems that Miles intended her *Monell* claims for “wrongful death” to be based
8 on violations of *her* constitutional right to familial association under the Fourteenth Amendment.
9 *See* Oppo. 10:26-11:5. This was not previously made clear. Plaintiffs may bring *Monell* claims
10 for violations of their constitutional rights to familial association. *See McGinnis*, 2023 WL
11 2743578, at *2 (“[A] decedent’s survivor, including a parent, can bring a *Monell* claim based on
12 the parent’s Fourteenth Amendment right to familial association; such claims are not survivorship
13 claims.” (collecting cases)). To the extent that Miles brings *those* claims—based on violation of
14 her Fourteenth Amendment rights, not based on “wrongful death”—they may proceed. To the
15 extent that my Prior Order overstated that a § 1983 claims can “only be survival actions” and not
16 wrongful death actions, Prior Order 9:13-27, I should have more clearly explained that § 1983
17 claims may also be brought for violations of a *plaintiff’s* constitutional rights that arose from the
18 death of the decedent—though these are not called “wrongful death” claims under federal law.
19 That order is hereby AMENDED with this clarification. Miles’ *Monell* claims for violation of her
20 Fourteenth Amendment rights may proceed.

21 Accordingly, the defendants’ motion is DENIED.

22 **II. DOE DEFENDANTS**

23 In my Prior Order, I instructed the parties to engage in “an initial phase of discovery
24 narrowly aimed at determining the identities of the individual Doe defendants and other key facts
25 relevant to Miles’ claims against the individual Doe defendants.” Prior Order 10:23-11:5. They
26 did so, and Miles was able to amend her complaint to name twenty individual defendants. *See*
27 SAC. The SAC, however, still includes claims against ten Does. The defendants move to dismiss
28 those Doe defendants, arguing that Miles had an opportunity to engage in discovery, named the

1 Does involved in the incident, and now improperly asserts more Doe defendants without tying any
 2 facts to the new Does. Mot. 18-20. In opposition, Miles argues that the defendants did not
 3 provide sufficient discovery and seems to assert violations of FRCP 26 and 33(d). *See* Oppo.
 4 11:8-25.

5 “As a general rule, the use of ‘John Doe’ to identify a defendant is not favored.” *Garcia v.*
 6 *City of King*, No. 5:16-CV-06712-EJD, 2017 WL 5194519, at *9 (N.D. Cal. Nov. 9, 2017)
 7 (quoting *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). But “[t]he use of ‘Doe’
 8 defendants where a defendant’s true identity is unknown is common.” *Sullivan v. Storer Transit*
 9 *Sys.*, No. 20-CV-00143-JCS, 2020 WL 1531366, at *5 (N.D. Cal. Mar. 31, 2020) (declining to
 10 strike “boilerplate” allegations against Doe defendants that did not assert they played a role in
 11 plaintiff’s injuries). “[W]here the identity of alleged defendants will not be known prior to the
 12 filing of a complaint . . . the plaintiff should be given an opportunity through discovery to identify
 13 the unknown defendants, unless it is clear that discovery would not uncover the identities, or that
 14 the complaint would be dismissed on other grounds.” *Gillespie*, 629 F.2d at 642 (citations
 15 omitted); *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (same).

16 Miles was given the opportunity for discovery, and she was able to identify many
 17 individuals. *See Gillespie*, 629 F.2d at 642. Yet despite amending her complaint to assert that
 18 Herrera, Teves, and Jackson were the deputies who failed to conduct custodial checks and
 19 ultimately failed to rescue West from the attack, she still re-alleges those same facts against
 20 Deputy Does, without any other factual bases for the Does. *See* FAC ¶¶ 71, 129-30. The same is
 21 true of the choice to classify West and put him in a double cell—she names the individual
 22 defendants who made that choice, but also still alleges those same facts against Classification
 23 Does, without other factual bases for the Does. *Id.* ¶ 72. Indeed, aside from one allegation that
 24 West “communicated to Defendant Deputy DOES that he did not want to be housed with another
 25 person and/or requested not to be housed with another person,” *id.* ¶ 81, every other allegation in
 26 the SAC against a Doe defendant is conclusory, overbroad, general, or improperly grouped with
 27 allegations against other defendants.

28 For example, Miles alleges that the individual defendants as well as the “Classification

1 Does . . . had access to knowledge of Decedent WEST’S file to assess his relevant classification
 2 criteria including his safety and security needs,” SAC ¶ 48; *see also id.* ¶¶ 22-24, 28, 32-33
 3 (defining Does), but does not plead facts that any Doe defendant saw or reviewed the file. She
 4 asserts that West interacted with the individual defendants, the Deputy Does, the Supervisor Does,
 5 and the Medical Does and showed “obvious signs and symptoms of serious mental illness” and all
 6 those defendants “knew of his symptoms, mental illness, and need for care,” *id.* ¶ 68, but she does
 7 not plead facts that the Doe defendants ever saw West. She asserts that the individual medical
 8 defendants “and Medical DOES had a responsibility to continually monitor, evaluate, and treat”
 9 West, *id.* ¶ 83, but she does not explain further. The rest of the SAC has many similar, broadly
 10 pleaded, and grouped allegations. *See, e.g., id.* ¶¶ 84, 95-97, 144, 147, 151, etc. These general,
 11 grouped allegations fail to provide the defendants or me notice of what Miles thinks was done by
 12 whom, and they do not contain enough facts to state a facially plausible claim against any Doe
 13 defendant. *See Twombly*, 550 U.S. at 570.

14 Given the discovery period, Miles should have been able to assert factual allegations
 15 against any defendants that were involved in her and West’s injuries, even if she cannot yet
 16 determine their identities. Because she does not include such factual allegations, she fails to state
 17 a claim against any Doe defendants. She does not argue otherwise. *See Oppo*. 11:7-25.² And
 18 because the complaint “would be dismissed on other grounds”—failure to state a claim—Miles
 19 need not be given a second opportunity for preliminary discovery into the Does’ identities. *See*
 20 *Gillespie*, 629 F.2d at 642. The claims are DISMISSED without prejudice. Miles may move to
 21 amend her complaint later if she can show good cause under Rule 15, such as the discovery of
 22 facts showing the involvement of additional individuals.

23 **III. 42 U.S.C. § 1983 CLAIMS**

24 Miles brings claims for several constitutional violations under 42 U.S.C. § 1983. I address
 25

26 ² This case differs from *Sullivan*, where the district court did not strike “boilerplate” allegations
 27 against Doe defendants because there were no assertions that any Does caused any injuries, so the
 28 allegations made no difference to the case. *Sullivan*, 2020 WL 1531366, at *5. Here, the
 boilerplate Doe allegations generally assert that the Doe defendants contributed to the injuries—
 but they fail to identify the relevant facts, individuals, and actions.

1 the defendants’ arguments for dismissal as they were presented.

2 **A. “Team Liability” and Failure to Protect Under the Eighth Amendment**

3 The defendants spend a significant portion of their motion arguing that all claims against
4 all moving defendants should be dismissed because, in their view, the SAC makes only general or
5 group allegations rather than alleging anything specific about any individual defendant. *See* Mot.
6 6:12-10:24. Though I take the defendants’ point that many of Miles’ allegations are generally
7 pleaded and do not allege specific actions of specific individuals—as I discuss throughout this
8 Order—the defendants’ argument suffers from the same fault of overgeneralization. By asserting
9 that Miles failed to sufficiently plead any claim as to any individual defendant because the SAC
10 contains only conclusory or sweeping allegations, the defendants too fail to argue that any specific
11 claim is insufficiently pleaded as to any specific defendant. None of their cited case law³ stands
12 for the proposition that a court may find that a plaintiff failed to state multiple causes of action
13 without actually analyzing each cause of action.⁴

14
15 ³ The defendants cite many cases affirming that an individual may only be held liable—at a
16 dispositive stage in litigation—based on that individual’s own conduct. *See Chuman v. Wright*, 76
17 F.3d 292, 295 (9th Cir. 1996); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). In *Chuman*, 76
18 F.3d at 294-95, the Ninth Circuit reversed and remanded the case where the district court
19 instructed the jury that “all members of [a] ‘team’ may be held liable” if a constitutional violation
20 resulted from a “team effort,” regardless of “whose actions ultimately inflicted the plaintiff’s
21 injury”; the court reasoned that instruction risked assigning liability to a defendant who “had no
22 role in the conduct.” *See also Jones v. Williams*, 297 F.3d 930, 934-38 (9th Cir. 2002) (similarly
23 discussing jury instructions in § 1983 cases). Also at a late stage in litigation, the Ninth Circuit in
24 *Taylor*, 880 F.2d at 1045-46, affirmed summary judgment for the defendant where the only
25 “evidence” consisted of affidavits without facts establishing the defendant’s personal involvement
26 in the allegedly unconstitutional actions. *See also Blankenhorn v. City of Orange*, 485 F.3d 463,
27 481 n.12 (9th Cir. 2007) (similarly discussing necessity of establishing factual connection at
28 summary judgment in § 1983 cases). These cases confirm that a § 1983 plaintiff must *prove*
individual involvement of a defendant to hold them liable, but none say anything about the
sufficiency of pleadings.

Finally in *Elkins v. Novato Police Department*, No. 21-CV-07377-SI, 2022 WL 3109567, at *5
(N.D. Cal. Aug. 4, 2022), the court granted a police sergeant’s motion to dismiss an unlawful
search and seizure claim under § 1983 because the complaint contained *no* allegations that the
sergeant participated in the underlying allegedly unconstitutional actions. Though this case stands
for the proposition that there must be facts in a complaint tying each defendant to the underlying
misconduct, it is not directly on point here. As the present defendants concede, there are plenty of
allegations in the complaint that tie all the defendants to the underlying misconduct. Here the
defendants instead take issue with the fact that some of those allegations are broad and conclusory
and seem to try to assign liability to *all* defendants while only some participated in any particular
action. *Elkins* does not offer directly applicable guidance.

⁴ A court may, of course, dismiss multiple causes of action at once for reasons such as jurisdiction.

1 As best I can tell, the section of the defendants’ brief discussing “team liability” identifies
 2 only one cause of action that the defendants’ say was insufficiently pleaded as to any defendant
 3 due to conclusory or broad allegations: the second, for failure to protect under the Eighth
 4 Amendment. *See* Mot. 7:8-8:9; 10:10-24. Miles asserts this cause of action against all the
 5 individual defendants. *See* FAC at 58.

6 “The Eighth Amendment requires prison officials to protect inmates from violence.” *Wilk*
 7 *v. Neven*, 956 F.3d 1143, 1147 (9th Cir. 2020) (citing *Farmer v. Brennan*, 511 U.S. 825, 833
 8 (1994)). “It is not, however, every injury suffered by one prisoner at the hands of another that
 9 translates into constitutional liability for prison officials responsible for the victim’s safety.”
 10 *Farmer*, 511 U.S. at 834. A prison official’s failure to protect inmates from attacks by other
 11 inmates violates the Eighth Amendment only where two requirements are met: (1) an objective
 12 component, requiring a prisoner to show that that “conditions pos[e] a substantial risk of serious
 13 harm”; and (2) a subjective component, requiring a prisoner to show that the defendant was aware
 14 of the risk and disregarded it. *Id.* (citations omitted). Specifically, a prison official violates an
 15 inmate’s Eighth Amendment rights only if that official is “deliberately indifferent”—meaning “the
 16 official is subjectively aware of a substantial risk of serious harm to an inmate and disregards that
 17 risk by failing to respond reasonably.” *Wilk*, 956 F.3d at 1147 (citation omitted). A factfinder
 18 may infer subjective awareness from circumstantial evidence. *Farmer*, 511 U.S. at 842.

19 The Prior Order found that Miles sufficiently stated a claim for failure to protect against
 20 the Doe Classification defendants:

21 Miles has pleaded facts showing that the Classification defendants knew that: West
 22 suffered from serious mental health illnesses, including schizophrenia, bipolar
 23 disorder, and depression, which had led him to be placed in a special mental health
 24 housing unit, *see* FAC ¶¶ 16, 18, 22; West had exhibited signs of “serious mental
 25 illness” and “bizarre behavior,” *id.* ¶ 23; West had been involved in several fights
 26 with previous cellmates, *id.* ¶ 28; Cochran suffered from “serious mental illness”
 27 and had a “violent criminal history stemming back at least ten years,” *id.* ¶¶ 37–38;
 28 West had requested to be housed in a single cell, *id.* ¶ 34; custodial staff had
 recommended that West be placed in a single cell, *id.*, and there was space for West
 to be housed in a single cell. *Id.* ¶ 32. The Classification defendants nonetheless
 “ignored and overruled the recommendation” and placed West and Cochran in a

But that is not the arguments that the defendants make here.

1 double-cell together. *Id.* ¶¶ 36, 38. Within hours of being housed together,
2 Cochran strangled, beat, and killed West. *Id.* ¶ 39. At this early stage, and drawing
3 all reasonable inferences in Miles’ favor, these allegations suffice to demonstrate
4 that the Classification defendants knew of facts supporting an inference and drew
5 the inference of a substantial risk to West if he continued to be double celled with
6 other inmates.

7 Prior Order 13:1-15:19. Now Miles has repleaded these same and additional allegations and
8 pleads them as to specific Doe defendants. The defendants argue that these allegations are still
9 pleaded too generally and fail to identify specific individual involvement. I agree for some
10 individual defendants and disagree for others.

11 Miles clearly pleads the objective requirement of the Eighth Amendment test: that housing
12 West with any other cellmate “pos[ed] a substantial risk of serious harm.” *Farmer*, 511 U.S. at
13 834. She alleges many facts about West’s mental health issues and explains how his mental health
14 caused him to verbally provoke and disturb others, which led to them physically harming West.
15 *See, e.g.*, SAC ¶¶ 68, 72, 76-77. She points to no fewer than *five* incidents in a six-week period
16 where West was physically attacked by a cellmate allegedly due to West’s mental condition. *See*
17 *id.* ¶¶ 59, 61, 63, 65, 67. As discussed in the Prior Order, she does not allege that West started any
18 of these fights. Miles also points to at least one jail official specifically noting that West should be
19 kept separate from other prisoners. *See id.* ¶ 61. Together, this is more than enough to allege that
20 housing West anywhere but a single cell—regardless of who the cellmate might be—posed a
21 substantial risk of harm. *See Farmer*, 511 U.S. at 834.

22 And she pleads that twelve individual defendants were subjectively aware of this specific
23 risk but failed to respond reasonably—that they were deliberately indifferent. *See Wilk*, 956 F.3d
24 at 1147. She pleads that Smith conducted West’s intake and Mitchell conducted West’s booking
25 on September 22, 2021. SAC ¶¶ 7-8, 50. They had access to West’s files during that process, *id.*
26 ¶ 48, and knew that he had previously been attacked in jail and had mental health issues including
27 bipolar disorder, schizophrenia, and depression, *id.* ¶¶ 51-52, 55, but did not act reasonably to
28 ensure that he was housed by himself, *id.* ¶¶ 48, 51-53, 56. She also asserts that Pontejos-Murphy,
McQuade, and Aboujaoude medically evaluated West within the first two days that he arrived at
the jail, and each noted that West had severe mental illnesses, *id.* ¶ 49, but also failed to

1 reasonably ensure he was housed by himself, *id.* ¶¶ 55-57. Two days later, Stevenson also
2 medically evaluated West, and Rucker conducted a behavioral health assessment, *id.* ¶ 50, and
3 those evaluations found that West had “unpredictable behavior,” “an altered mental state,” “mental
4 and development disability,” and other mental health conditions, *id.* ¶ 51, but neither medical
5 professional ensured he was housed in a way that addressed the safety risks associated with his
6 mental health needs, *id.* ¶¶ 51, 55-57. Further, Lorier knew that Cochran was violent, *id.* ¶ 95, and
7 put a “Keep Separate” note on West’s record when he learned that other inmates attacked West, *id.*
8 ¶ 61, but did not otherwise ensure West was housed in a single cell for his own safety. And
9 Sablan was told that Cochran attacked another inmate, but Sablan subsequently chose to move
10 Cochran to the mental health housing unit and house him with West rather than keep him separate.
11 *Id.* ¶¶ 87, 89.

12 Each of these defendants knew that West should be housed separately from other prisoners,
13 including Cochran, for West’s safety but failed to ensure that he was, and some individuals even
14 went so far as to ignore recommendations that he should be housed separately. *See id.* ¶¶ 51-54,
15 60, 62, 64, 66, 82. These mirror the allegations I found sufficient in the Prior Order and for the
16 same reasons are sufficient to plead deliberate indifference. *See Wilk*, 956 F.3d at 1147. Miles
17 states a claim against Smith, Mitchell, Pontejos-Murphy, McQuade, Aboujaoude, Stevenson,
18 Rucker, Lorier, and Sablan. The motion against these defendants is DENIED.

19 Miles also states a claim against Herrera, Teves, and Jackson for failure to protect West
20 from Cochran during and after the fight. She asserts that these defendants were responsible for
21 protecting West in his housing unit, *id.* ¶¶ 13-15, 98; that they knew Cochran was violent, *id.* ¶ 97;
22 that they knew prisoners in the mental health unit required checks every 15 to 30 minutes for their
23 safety, *id.* ¶¶ 71, 79; that they failed to perform these checks and later falsified records to cover
24 their tracks, *id.* ¶¶ 71, 102, 129; that the fight lasted over thirty minutes and could be heard
25 throughout the cell block, *id.* ¶¶ 103-07, 110, and so would have been heard if the deputies had
26 conducted required patrols; and that when the deputies finally arrived at the cell, they intentionally
27 failed to intervene and save West, *id.* ¶¶ 117-23. Together this is enough to show that failing to
28 conduct regular checks posed a substantial risk of harm, as did housing West with a cellmate and

1 particularly Cochran, and that these three defendants were aware of these risks and specifically
2 disregarded them, so each was deliberately indifferent. *See Farmer*, 511 U.S. at 834; *Wilk*, 956
3 F.3d at 1147; *see also infra* Part III.C.2.b & n.7 (rejecting the defendants’ arguments that these
4 allegations against Herrera, Teves, and Jackson are conclusory). The motion against these
5 defendants is DENIED.

6 Miles makes similar allegations about Santiago, including that he was responsible for
7 protecting West in the mental health housing unit. SAC ¶¶ 16, 98. But she alleges that Santiago
8 was “surprised” that other defendants assigned a cellmate to West and that Santiago only let West
9 out of the cell alone, without other inmates around him, from which it can be inferred that
10 Santiago was acting reasonably with respect to West’s rights. *Id.* ¶ 99. Importantly Miles does
11 not allege that Santiago knew Cochran was violent, that he failed to conduct required checks or
12 patrols, or that he failed to intervene in the fight. Without more, she does not state a claim against
13 Santiago, and it is DISMISSED with leave to amend.

14 Miles also does not state a claim against Gabriel or Solopow because almost all allegations
15 against these individuals are wholly conclusory. For example, she pleads that “as part of [West’s]
16 evaluation, documentation, and classification,” Smith, Mitchell, Gabriel, Solopow, Rucker,
17 Aboujaoude, Pontejos-Murphy, McQuade, and Stevenson knew about West’s history of being
18 attacked and his mental health situation. *Id.* ¶ 51. Though this is plausible as to Smith, Mitchell,
19 Pontejos-Murphy, McQuade, Aboujaoude, Stevenson, and Rucker, given the specific allegations
20 about each person’s personal knowledge of and involvement with West, it is not plausible for
21 Gabriel and Solopow, given the lack of similar allegations. *See also id.* ¶¶ 52-53 (additional
22 conclusory allegations as to Gabriel and Solopow). And while Miles asserts that Solopow was
23 told about the first attack on West, *id.* ¶ 59, and Gabriel was told about the second and third, *id.*
24 ¶¶ 61, 63, she fails to non-conclusorily assert that either defendant was otherwise involved with
25 West. The allegations therefore do not assert that these defendants were subjectively aware of and
26 disregarded the risks to West. *See Farmer*, 511 U.S. at 834. Miles does not state an Eighth
27 Amendment claim against Gabriel or Solopow, and the claims against them are DISMISSED with
28 leave to amend.

1 Miles also does not state a claim against Kiss under the Eighth Amendment. Kiss
2 conducted Cochran’s intake and classification and put Cochran in a different housing unit from
3 West. SAC ¶ 85. But Miles asserts that Sablan, not Kiss, was responsible for moving Cochran to
4 same housing unit as West, so it is not clear that Kiss played any role in that decision. All other
5 allegations about his involvement with West are conclusory, and Miles does not argue otherwise
6 in opposition. Miles therefore fails to plead that Kiss was subjectively aware of and disregarded
7 any risk to West, *see Farmer*, 511 U.S. at 834, and the claim against him is DISMISSED with
8 leave to amend.

9 Miles also does not state an Eighth Amendment claim against Gemmell. The only specific
10 allegation about him was that he supervised the deputies in West’s housing unit, SAC ¶ 94, which
11 is addressed in the supervisor liability section below, *infra* Part III.D. The other allegations about
12 him are too conclusory or general to state a claim under the Eighth Amendment. Miles therefore
13 does not allege that Gemmell was subjectively aware of and disregarded a risk to West, *see*
14 *Farmer*, 511 U.S. at 834, and the claim against him is DISMISSED with leave to amend.

15 Miles also does not state an Eighth Amendment claim against Yune or Galindo. He asserts
16 that Yune medically evaluated Cochran after a fight and cleared him to be in the mental health
17 housing unit, *id.* ¶¶ 27, 89, and he says that Galindo knew about Cochran’s violence and failure to
18 comply with deputies’ orders, *id.* ¶ 88. But Miles does not say that Yune or Galindo knew
19 anything about West, and she does not otherwise—non-conclusorily—connect these individuals to
20 West. The SAC therefore does not plead that these defendants were subjectively aware of and
21 disregarded a risk to West, *see Farmer*, 511 U.S. at 834, and the claims are DISMISSED with
22 leave to amend.

23 Finally, Miles does not state an Eighth Amendment claim against Magat. She asserts that
24 Magat was a medical supervisor and failed to adequately evaluate West, SAC ¶ 54, but she does
25 not non-conclusorily or plausibly allege that Magat evaluated West at all, or even that Magat
26 interacted with him or was responsible for evaluating him, *cf. id.* ¶ 55. All other allegations about
27 Magat are nonspecific or too conclusory to state a claim. Together, Miles fails to assert that
28 Magat was subjectively aware of and disregarded a risk to West, *see Farmer*, 511 U.S. at 834, so

1 the claim against her is DISMISSED with leave to amend.

2 Accordingly, the defendants’ motion is DENIED as to Smith, Mitchell, Pontejos-Murphy,
3 McQuade, Aboujaoude, Stevenson, Rucker, Lorier, Sablan, Herrera, Teves, and Jackson. The
4 motion is GRANTED as to Santiago, Gabriel, Solopow, Kiss, Gemmell, Yune, Galindo, and
5 Magat. Miles has leave for one final opportunity to amend her complaint and assert
6 nonconclusory allegations against these defendants.

7 **B. Fourteenth Amendment Claim for Substantive Due Process and Right to**
8 **Familial Association**

9 As discussed above, Miles asserts that the individual defendants violated her Fourteenth
10 Amendment substantive due process rights to familial association by failing to properly evaluate
11 West and his various cellmates for suitability for being celled together, provide adequate mental
12 health treatment for West, adequately monitor the cells, protect West, and provide adequate and
13 prompt medical care. *See, e.g.*, SAC ¶ 147. I previously found that Miles sufficiently pleaded this
14 claim against the Classification defendants by pleading that their conduct “shock[ed] the
15 conscience.” Prior Order 15:20-16:22.

16 In their motion, the defendants argue that “[b]eyond the Classification Defendants,” Miles
17 fails to plead that the conduct of the individual defendants shocks the conscience. Mot. 12:5-
18 13:10. Their reply extends the argument to *all* individual defendants, *see* Repl. 6:14-17, though
19 they did not make such a broad argument in their motion⁵ and so Miles did not have an
20 opportunity to address it in her opposition. That said, the argument mirrors the one made for the
21 Eighth Amendment claim, which Miles did address, and for the same reasons it is viable for some
22 defendants and not for others.

23 Parents have “a Fourteenth Amendment liberty interest in the companionship and society
24 of their children.” *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010) (citing *Curnow*, 952
25 F.2d at 325). “Official conduct that ‘shocks the conscience’ in depriving parents of that interest is
26 cognizable as a violation of due process.” *Id.* (quoting *Porter*, 546 F.3d at, 1137). “In

27 _____
28 ⁵ Notably, the section of the defendants’ motion that discusses “team liability” does not discuss
this cause of action. *See* Mot. 6:12-10:24.

1 determining whether deliberate indifference is sufficient to shock the conscience, or whether the
2 more demanding standard of purpose to harm is required, ‘the “critical consideration [is] whether
3 the circumstances are such that actual deliberation is practical.”’” *Tennison v. City & Cnty. of San*
4 *Francisco*, 570 F.3d 1078, 1089 (9th Cir. 2009) (quoting *Porter*, 546 F.3d at 1137); *see also*
5 *Lemire v. Cal. Dep’t of Corr. & Rehab.*, 726 F.3d 1062, 1077-84 (9th Cir. 2013) (analyzing
6 plaintiff’s Eighth Amendment claim against prison officials and discussing whether evidence met
7 “shock the conscience” standard).

8 Here the defendants do not argue that the “purpose to harm” standard applies, nor could
9 they. All the allegations and the alleged injuries suggest that the defendants had significant time
10 to address the growing concerns—including many weeks for the Classification and Medical
11 defendants to recognize the housing issues and move West to a single cell, and over an hour for
12 Teves, Jackson, and Herrera to conduct their required patrols and protect West from Cochran’s
13 attack. Accordingly, the deliberate indifference standard applies. *See Tennison*, 570 F.3d at 1089;
14 *Wilkinson*, 610 F.3d at 554.

15 And as addressed above, Miles sufficiently alleges that Smith, Mitchell, Pontejos-Murphy,
16 McQuade, Aboujaoude, Stevenson, Rucker, Lorier, Sablan, Herrera, Teves, and Jackson acted
17 with deliberate indifference, because she alleges that each was subjectively aware of a substantial
18 risk of serious harm to West yet disregarded that risk by failing to respond reasonably. *Supra* Part
19 III.A; *see also Lemire*, 726 F.3d at 1077-84; *Wilk*, 956 F.3d at 1147. The motion is therefore
20 DENIED as to those defendants. She fails to make these allegations as to Santiago, Gabriel,
21 Solopow, Kiss, Gemmell, Yune, Galindo, and Magat, and so the motion is GRANTED as to them.
22 And because the defendants failed to properly raise this argument in their opening motion, out of
23 fairness to West she has leave to amend her claims to plead, to the extent possible, that these
24 individuals acted with deliberate indifference.

25 To the extent that the defendants wish to properly raise their argument about the remaining
26 individual defendants in an opening motion, they may do so on the next round of motions to
27 dismiss or in a dispositive motion. Miles may amend her complaint in anticipation accordingly, to
28 the extent possible.

1 **C. Eighth Amendment Claim for Denial of Medical Care**

2 Miles’ third cause of action asserts that West’s Eighth Amendment rights were violated by
3 the defendants’ wrongful denial of medical care. Her SAC appears to present two theories for this
4 claim: first that certain defendants denied West medical care before the incident with Cochran,
5 SAC ¶¶ 49-84, 92-93, 172-79, 181-99, and second that Herrera, Teves, Jackson, and possibly
6 Santiago denied West medical care during and following Cochran’s attack, *id.* ¶¶ 98-123, 128-33,
7 180. Miles’ opposition, though, only argues that Herrera, Teves, and Jackson denied West
8 medical care after the attack. *Oppo.* 20:13-18. The defendants assert that both theories should be
9 dismissed because West failed to exhaust his administrative remedies and that the allegations are
10 too conclusory to state a claim. *Mot.* 13:11-16:13.

11 **1. PLRA**

12 The defendants’ argument regarding administrative exhaustion under the Prisoner
13 Litigation Reform Act (“PLRA”) is unpersuasive. I rejected this same argument in my Prior
14 Order, finding in part that it was premature and better suited for summary judgment, *see Albino v.*
15 *Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc), and permitting the defendants to reassert the
16 argument “on a fuller factual record,” Prior Order 20:6-8. The argument remains premature.
17 Though the defendants now point to additional facts pleaded in the SAC, their construction of
18 those facts borders on bad faith. For example, they say the SAC “contains no allegations” that
19 West had a serious physical or mental illness yet acknowledge the Miles pleads that her son
20 experienced “hallucinations, delusions” and other obvious signs of mental illness. *Mot.* 14:22-
21 15:3. They assert that it is “unclear what Plaintiff means” when she says West “did not have time
22 to file a grievance” concerning denial of medical care, *Mot.* 15:11-12, yet they do not deny that
23 West was killed and so could not have filed a grievance about the lack of medical care as he lay
24 dying. For these reasons and the same raised in my Prior Order, the motion is DENIED.⁶

25
26
27 ⁶ The request for judicial notice related to this cause of action, [Dkt. No. 72-1], is similarly
28 DENIED without prejudice. The defendants may raise these documents as evidence later in
litigation, when Miles has better access to facts and evidence concerning what West did or could
have done to file a grievance.

1 **2. Sufficiency of the Pleadings**

2 With respect to the argument concerning sufficiency of the pleadings, “to maintain an
3 Eighth Amendment claim based on prison medical treatment, an inmate must show ‘deliberate
4 indifference to serious medical needs.’” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)
5 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). This two-part test requires showing: (1) a
6 “serious medical need,” meaning that “failure to treat a prisoner’s condition could result in further
7 significant injury or the ‘unnecessary and wanton infliction of pain’”; and (2) “the defendant’s
8 response to the need was deliberately indifferent,” meaning there was both “a purposeful act or
9 failure to respond to a prisoner’s pain or possible medical need” and “harm caused by the
10 indifference.” *Id.* (citation omitted).

11 **a. Medical Care Before Cochran Attack**

12 Given Miles’ lack of argument concerning the first theory for denial of medical care, it is
13 not clear if she intends to bring the argument. Generously reading her SAC, it seems possible that
14 she intended to plead that West’s mental health condition created a medical requirement for him to
15 be housed in a single cell, and so the defendants denied West adequate medical care *before*
16 Cochran’s attack by failing to provide single cell housing. *See, e.g.*, SAC ¶ 55-56, 69, 71-72, 79,
17 102, 130. But it is not clear that she makes this argument, particularly because she does not
18 address it in her opposition. For those reasons, and because the individual defendants are
19 immunized under California Government Code section 845.6, *infra* Part IV.A.6, the claim for
20 failure to provide medical care before the attack is DISMISSED. Miles has leave to amend to
21 clearly plead the claim, to the extent possible.

22 **b. Medical Care During and After Cochran Attack**

23 With respect to the second theory for denial of medical care, Miles’ claim was previously
24 dismissed because she failed to plead sufficient facts, including “the extent of the delay, the
25 circumstances surrounding the delay, or what the [defendants] could reasonably have done in the
26 interim given the alleged extent of West’s injuries.” Prior Order 21:8-22:14. She has now added
27 additional, sufficient, plausible allegations to state a claim for denial of medical care.

28 First, Miles sufficiently and plausibly alleges that West had a serious medical need during

1 and after the attack. *Jett*, 439 F.3d at 1096. She describes West’s alleged injuries in detail, *see*
2 SAC ¶¶ 112-16, and says that the attack lasted at least thirty minutes, *id.* ¶ 107. Together this
3 plausibly alleges that West had serious medical needs starting during the attack and lasting until
4 Cochran stopped his assault. The first part of the denial of medical care claim test is met. *See*
5 *Jett*, 439 F.3d at 1096.

6 Second, Miles sufficiently and plausibly alleges that the defendants’ response to West’s
7 medical needs was deliberately indifferent. *See id.* Specifically, she alleges that Herrera, Teves,
8 and Jackson denied West access to adequate medical care during and after the attack by plausibly
9 asserting these defendants knew West required frequent (15 to 30 minute) checks, SAC ¶¶ 71,
10 102; that they failed to perform those checks and instead falsified records about their performance,
11 *id.* ¶¶ 102, 129; that the fight lasted over thirty minutes and could be heard throughout the cell
12 block, *id.* ¶¶ 103-07, 110, and so would have been heard if the deputies had conducted required
13 patrols; and that when the deputies finally arrived at the cell, they intentionally failed to intervene
14 and provide needed medical assistance for a non-insignificant period of time, *id.* ¶¶ 117-23. She
15 also plausibly alleges a motive for this neglect and delay—she asserts that West’s mental health
16 conditions caused him to “trash-talk,” “insult,” and “belittle” the deputies, and so they viewed him
17 as less worthy of protection and intentionally failed to monitor him or provide prompt assistance
18 during or after the attack. *Id.* ¶¶ 92, 106, 120. And she alleges what the defendants could have
19 done differently—they could have conducted the required checks, arrived at the cell more quickly,
20 ordered Cochran to stop, entered the cell to pull Cochran off or use force to make him stop, or
21 otherwise intervened before West was choked to death. *Id.* ¶¶ 117-24. These allegations are
22 clearly more substantial and sufficient than those in *Estate of Nelson v. County of Alameda*, No.
23 21-CV-03225-CRB, 2021 WL 4804299, at *1-2, 5 (N.D. Cal. Oct. 14, 2021). There, the plaintiff
24 alleged merely that the deputies “delayed their request to paramedics” and “failed to provide any
25 care” to the decedent after an attack but did not allege anything similar about the deputies’
26 responsibilities, their motive, or any circumstances surrounding the denial of care. *Id.* This case
27 is no longer on point.

28 Accordingly, the allegations are sufficient to show that these three defendants acted

1 purposefully or failed purposefully to respond to West’s medical needs, and that West and Miles
2 suffered harm as a result. *See Jett*, 439 F.3d at 1096. Though the defendants contest the veracity
3 of the allegations,⁷ *see* Mot. 11:1-12:4; Repl. 5:6-6:7, and assert that these allegations are
4 conclusory and nonspecific, *id.* 15:21-16:12, their arguments are unavailing. These facts are
5 sufficiently detailed for this stage of litigation, before extensive discovery has been conducted,
6 witnesses have been interviewed, and body camera or surveillance camera footage have been
7 provided. And, Miles’ theory is plausible, though the defendants may later present evidence
8 contesting the truth. The motion is DENIED for the claim against Herrera, Teves, and Jackson—
9 the only defendants for which Miles provides specific and relevant factual allegations regarding
10 after the Cochran attack. The medical care claims against the other defendants are DISMISSED.

11 **D. Sufficiency of Supervisor Liability Claims**

12 Miles alleges that Gemmell, Lorier, Galindo, Rocker, Magat, Aboujaoude, Pontejos-
13 Murphy, and McQuade were all supervisors, SAC ¶¶ 17-20, 25, 29-31, though she asserts her
14 Supervisor Liability cause of action against only Gemmell, Magat, and the Supervisor Does, *id.* at
15 p.71. The defendants argue that the claims against Gemmell and the Supervisor Does should be
16 dismissed for failure to state a claim but do not challenge the claim against Magat. Mot. 16:14-
17 18:18; Repl. 10:16-11:18. The claims against the Supervisor Does are DISMISSED for the
18 reasons discussed above, *supra* Part II.

19 A supervisory official is liable under section 1983 if (1) the official is personally involved
20 in the constitutional deprivation, or (2) there is a “sufficient causal connection between the
21 supervisor’s wrongful conduct and the constitutional violation.” *Keates v. Koile*, 883 F.3d 1228,
22 1242-43 (9th Cir. 2018) 4 (quoting *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011)). “The
23 requisite causal connection can be established . . . by setting in motion a series of acts by others
24 . . . or by knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew
25

26 ⁷ The defendants frame their objections as contesting the conclusory nature of the allegations, but
27 their papers show that their objections concern the truthfulness of the allegations. *See, e.g.*, Mot.
28 11:18-19 (asserting it is “nonsensical” that the deputies would stand outside the cell without
intervening), 11:20-21 (arguing that Cochran could not have restrained and strangled West
simultaneously), 11:21-12:1 (noting the complaint does not state the time it took the defendants to
summon medical care); Repl. 5:6-6:7 (repeating same arguments).

1 or reasonably should have known would cause others to inflict a constitutional injury.” *Starr*, 652
2 F.3d at 1207-08 (internal quotation marks and citations omitted). Thus, a supervisor may “be
3 liable in his individual capacity for his own culpable action or inaction in the training, supervision,
4 or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct
5 that showed a reckless or callous indifference to the rights of others.” *Keates*, 883 F.3d at 1243
6 (quoting *Starr*, 652 F.3d at 1208).

7 “Conclusory allegations that various prison officials knew or should have known about
8 constitutional violations occurring against plaintiff simply because of their general supervisory
9 role are insufficient to state a claim under 42 U.S.C. § 1983.” *Sullivan v. Biter*, No. 15-cv-00243,
10 2017 WL 1540256, at *1 (E.D. Cal. Apr. 28, 2017) (first citing *Monell v. Dep’t of Soc. Servs.*, 436
11 U.S. 658, 691 (1978); and then citing *Starr*, 652 F.3d at 1207). In other words, to state a claim
12 against any individual defendant based on supervisory liability, Miles “must allege *facts* showing
13 that the individual defendant participated in or directed the alleged violation, or knew of the
14 violation and failed to act to prevent it.” *Richard v. Holtrop*, No. 15-cv-5632, 2016 WL
15 11520620, at *5 (C.D. Cal. May 12, 2016) (citing *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th
16 Cir. 1998) (“A plaintiff must allege facts, not simply conclusions, that show that an individual was
17 personally involved in the deprivation of his civil rights.”). In *Richard*, for instance, the
18 allegations that a supervisor “failed to make any attempt” to stop a subordinate from “behaving
19 inappropriately and knowingly allowed it to continue” were too conclusory to state a claim for
20 supervisorial liability. *Richard*, 2016 WL 11520620, at *4-5.

21 As in her prior complaint, *see* Prior Order 22:15-23:23, Miles fails to allege facts
22 demonstrating that Gemmell was either personally involved in or causally connected to the
23 constitutional deprivations that West experienced. The defendants correctly point out that all
24 allegations about Gemmell are conclusory or too broadly grouped with allegations made about the
25 actions of several other defendants. *See, e.g.*, SAC ¶ 48 (“As part of Decedent WEST’S intake
26 and classification process by Defendants SMITH, MITCHELL, GABRIEL, SOLOPOW,
27 Classification DOES, ROCKER, ABOUJAOUDE, PONTEJOS-MURPHY, MCQUADE,
28 STEVENSON and Medical DOES, said Defendants along with Defendants SABLAN, KISS,

1 HERRERA, TEVES, JACKSON, SANTIAGO, GEMMELL, LORIER, GALINDO, MAGAT,
2 and YUNE had access to knowledge of Decedent WEST’S file to assess his relevant classification
3 criteria including his safety and security need.”), ¶ 55 (asserting “SMITH, MITCHELL,
4 GABRIEL, SOLOPOW, ROCKER, ABOUJAOUDE, PONTEJOSMURPHY, MCQUADE, and
5 STEVENSON and Supervisors GEMMELL, LORIER, GALINDO, and MAGAT had interviewed
6 and medically evaluated Decedent WEST” by September 22, 2021, the first day he arrived at the
7 jail, without ever asserting that Gemmell participated in or supervised the intake or classification,
8 saw or reviewed his file, or even knew West was at the jail), ¶ 68 (asserting that West “displayed
9 obvious signs and symptoms of serious mental illness” “during [his] interactions with” the
10 individual defendants, without ever asserting that Gemmell interacted with West), etc. These are
11 too conclusory and broad and lack sufficient facts to plead a claim for supervisor liability against
12 Gemmell. The defendants’ motion is GRANTED and the claim against Gemmell is dismissed,
13 with leave to amend to clearly allege what Gemmell did, what his responsibilities were, and how
14 he was liable for any of West’s or Miles’ injuries.

15 **IV. STATE LAW CLAIMS**

16 Finally, the defendants challenge the two state law claims brought by Miles, for negligence
17 and for violation of California’s Bane Act, arguing that the individual defendants are all immune
18 and that Miles fails to state a claim. Mot. 20:10-22:2. Miles’ state law negligence claim against
19 the individual defendants is grounded in the defendants’ alleged failure to properly classify West
20 and provide appropriate housing, failure to protect West, failure to perform proper and timely cell
21 checks, failure to immediately summon medical care, failure to train, and failure to follow County
22 policy. SAC ¶¶ 266-67. Her Bane Act claim is grounded in the defendants’ alleged failure to
23 protect West, failure to provide medical care, and failure to screen and classify West and Cochran
24 properly. *Id.* ¶ 277.

25 **A. Immunity**

26 The defendants argue that they are immune for claims related to failure to provide medical
27 care under California Government Code sections 855.8, 856(a)(2); for claims related to failure to
28 adequately examine West’s physical or mental conditions under section 855.6; for claims related

1 to classifying and housing West and Cochran under section 820.2; and for claims relating to
2 failure to provide greater policing protective services under sections 845, 845.6. Mot. 20:8-21:16.
3 They also argue that the exception to immunity under section 845.6 for failure to summon
4 immediate medical care could only possibly apply to Teves, Jackson, and Herrera. *Id.* 21:17-22:2.

5 Miles' opposition is difficult to follow. She seems to try to counter each statutory section
6 cited by the defendants but mostly fails to explain any of her arguments. As a result, here I
7 analyze each of the statutes cited by the defendants to determine whether any seems to apply to
8 Miles' claims. They do not. To aid the defendants and the court, however, Miles should be sure
9 to clearly state her arguments and rationale in any amended complaint or renewed briefing.

10 **1. Section 855.6**

11 First, it seems that California Government Code section 855.6 does not apply here.⁸ It
12 provides:

13 Except for an examination or diagnosis for the purpose of treatment, neither a
14 public entity nor a public employee acting within the scope of his employment is
15 liable for injury caused by the failure to make a physical or mental examination, or
16 to make an adequate physical or mental examination, of any person for the purpose
of determining whether such person has a disease or physical or mental condition
that would constitute a hazard to the health or safety of himself or others.

17 Cal. Gov't Code § 855.6. Here, though, it seems that all relevant physical and mental evaluations
18 of West were made "for the purpose of treatment." *See, e.g.,* SAC ¶ 39 (alleging that whenever an
19 incarcerated person shows signs of serious mental illness, jail policy requires evaluation *and*
20 *treatment*). These are specifically exempted from section 855.6. *Cf. Colome v. State Athletic*
21 *Com.*, 47 Cal. App. 4th 1444, 1458 (1996) (finding that examination of boxer was not "for the
22 purpose of treatment" where it was conducted to determine his fitness for a boxing license). To
23 the extent that the defendants believe section 855.6 should preclude liability for failure to examine
24 West's mental or physical condition, they do not explain why such examinations would not be
25 "for the purpose of treatment." The motion, and immunity, is DENIED on this basis.

26
27 _____
28 ⁸ Miles asserts that 855.6 does not apply because she is not arguing that the defendants failed to
adequately examine West, but her two state law causes of action could certainly be interpreted to
make these arguments.

1 **2. Section 855.8**

2 It is also not clear that section 855.8 applies here or immunizes the defendants. This
3 section reads in relevant part:

- 4 (a) Neither a public entity nor a public employee acting within the scope of his
5 employment is liable for injury resulting from diagnosing or failing to diagnose that
6 a person is afflicted with mental illness or addiction or from failing to prescribe for
7 mental illness or addiction.
8 (b) A public employee acting within the scope of his employment is not liable for
9 administering with due care the treatment prescribed for mental illness or addiction.

10 Cal. Gov't Code § 855.8. Miles does not appear to assert that her injuries or West's injuries
11 stemmed from diagnosing or failing to diagnose West with mental illness—indeed she repeatedly
12 reasserts that he *was* diagnosed with bipolar disorder and schizophrenia, SAC ¶¶ 49, 51, 55—and
13 does not seem to assert that anyone failed to prescribe him treatment. *See* Cal. Gov't Code
14 § 855.8(a). She also does not seem to make assertions about administering treatment for his
15 mental illnesses, *id.* § 855.8(b), though as discussed above, *supra* Part III.C.2.a, it is possible that
16 her housing argument could be framed this way. But the defendants do not make this argument,
17 nor do they otherwise explain why this statute applies or even discuss it in their reply brief.
18 Accordingly, the motion is DENIED as to this argument.

19 **3. Section 856**

20 Next, it is not clear that section 856 exempts the defendants from liability, even assuming
21 without finding that this statutory section regarding confinement for mental illness applies to
22 West's confinement in the mental health housing unit of the jail. It provides that public entities
23 and employees acting within the scope of their employment are not liable for injury resulting from
24 “[t]he terms and conditions of confinement for mental illness,” Cal. Gov't Code § 856(a)(2), but is
25 immediately followed by a carveout that reads:

- 26 (c) Nothing in this section exonerates a public employee from liability for injury
27 proximately *caused by his negligent or wrongful act or omission* in carrying out or
28 failing to carry out:
29 (1) A determination to confine or not to confine a person for mental illness or
30 addiction.
31 (2) The terms or conditions of confinement of a person for mental illness or
32 addiction.

33 *Id.* § 856(c)(1)-(2) (emphasis added). This carveout appears to plainly apply to Miles' negligence

1 claim, which asserts in part that the defendants were negligent in their repeated decisions to
2 confine Miles to a double cell with a cellmate in the mental health housing unit. The defendants
3 do not argue that this carveout does not apply, nor do they address the carveout at all or even
4 discuss this statute in their reply brief. Accordingly, the motion is DENIED as to this argument.

5 **4. Section 820.2**

6 The defendants also assert that they are not liable for decisions regarding Miles' and
7 Cochran's classification and housing because these were discretionary decisions immunized by
8 California Government Code section 820.2. That statute provides:

9 Except as otherwise provided by statute, a public employee is not liable for an
10 injury resulting from his act or omission where the act or omission was the result of
11 the exercise of the discretion vested in him, whether or not such discretion be
12 abused.

13 *Id.*⁹

14 Miles appears to make two counterarguments, neither of which is persuasive. First she
15 says that this immunity does not apply because of a different section of the California Government
16 Code, section 820.8, but it discusses liability for "Acts or omissions of others," which is not
17 clearly an issue here. Second, she says section 820.2 immunity does not apply because of section
18 844.6(d).¹⁰ But section 844.6(d) simply says that the immunity afforded to public entities in
19 section 844.6 does not apply to public employees; it does not say that the immunity in 820.2 does
20 not apply in these situations.

21 With respect to immunizing defendants under section 820.2 for discretionary acts, "[a]
22 discretionary act requires a conscious balancing of risks and advantages when making basic policy
23 decisions; it does not protect operational or ministerial decisions that implement policies." *Steinle*
24 *v. City & Cnty. of San Francisco*, 230 F. Supp. 3d 994, 1020 (N.D. Cal. 2017), *aff'd*, 919 F.3d

25 ⁹ The defendants say that *Manzo v. County of Riverside*, No. EDCV-17-01165-JGB-SPX, 2017
26 WL 10544292, at *11 (C.D. Cal. Oct. 19, 2017), supports their argument that decisions regarding
27 the housing of people in jail are discretionary decisions under section 820.2. But that case only
28 discussed section 820.2 in the context of determining whether the jail staff failed to provide
sufficient staff, *id.*, which is not an allegation here and so the case is not clearly applicable.

¹⁰ The defendants also appear to argue in reply (though not in their motion) that section 844.6
renders them immune from liability. *See* Repl. 13:19. It is not clear whether they intended to
make this argument, but because it seems the statute does not apply, I am not persuaded.

1 1154 (9th Cir. 2019) (internal citations omitted) (quoting *Trujillo v. City of Ontario*, 428 F. Supp.
2 2d 1094, 1123 (C.D. Cal. 2006), *aff'd sub nom. Bernhard v. City of Ontario*, 270 F. App'x 518
3 (9th Cir. 2008)); *see also Muniz v. Pfeiffer*, No. 1:19-CV-0233-LJO-JLT, 2019 WL 4596649, at
4 *14 (E.D. Cal. Sept. 23, 2019) (same). “A ministerial act is an act pursuant to an order, or an act
5 where a person had no choice.” *Steinle*, 230 F. Supp. 3d at 1020 (quoting *Trujillo*, 428 F. Supp.
6 2d at 1123). “An operational act is one in which the person who made the decision, implemented
7 the decision.” *Id.* (quoting *Trujillo*, 428 F. Supp. 2d at 1123).

8 The defendants do not explain why the housing assignments were discretionary decisions
9 akin to basic policy decisions, and at least as alleged, I conclude that they were not. In the only
10 case I could find that is directly on point, the district court affirmed the magistrate judge’s finding
11 that reached the same conclusion as mine: the jail employee’s “decision to house Decedent and
12 [the cellmate who killed him] together ‘was a ministerial determination that is not entitled to
13 immunity under Section 820.2.’” *Cotta v. Cnty. of Kings*, 79 F. Supp. 3d 1148, 1182 (E.D. Cal.
14 2015), *aff'd in part, rev'd on other grounds in part*, 686 F. App'x 467 (9th Cir. 2017). I am
15 persuaded by that finding. Here, too, it seems plausible that the relevant decisions were
16 operational and ministerial, carried out by various prison officials to implement the basic policy of
17 housing people in proper cells. *See Steinle*, 230 F. Supp. 3d at 1020. Rather than addressing this
18 case law, the defendants point to cases with different facts written over forty years ago, with little
19 explanation; I do not find them persuasive. *See Mot. 21:9:16*. The motion is DENIED on this
20 basis.

21 **5. Section 845**

22 Next, the defendants argue that section 845 provides immunity to “claims that peace
23 officers should have provided a greater level of police protective services.” *Mot. 20:23-21:2*. The
24 defendants do not explain why they believe Miles’ negligence or Bane Act claims fall into this
25 category. As discussed, her negligence claims are grounded in the alleged failure to properly
26 classify West and provide appropriate housing, failure to protect West, failure to perform proper
27 and timely cell checks, failure to immediately summon medical care, failure to train, and failure to
28 following County policy; and her Bane Act claim is grounded in the defendants’ alleged failure to

1 protect West, failure to provide medical care, and failure to screen and classify West and Cochran
2 properly. *Id.* ¶¶ 266-67, 277. Except possibly for the failure to protect allegations, none of these
3 seem to assert that the defendants “should have provided a greater level of police protective
4 services.” The defendants do not explain otherwise.

5 And even if the allegations can be so categorized, the defendants do not show that this
6 immunity applies. Section 845 provides: “Neither a public entity nor a public employee is liable
7 for failure to establish a police department or otherwise to provide police protection service or, if
8 police protection service is provided, for failure to provide sufficient police protection service.”
9 Cal. Gov’t Code § 845. “California courts have indicated that this immunity provision ‘was
10 designed to prevent political decisions of policy-making officials of government from being
11 second-guessed by judges and juries in personal injury litigation.’” *Mackie v. Cnty. of Santa Cruz*,
12 444 F. Supp. 3d 1094, 1118 (N.D. Cal. 2020) (quoting *Mann v. State of Cal.*, 70 Cal. App. 3d 773,
13 778 (1977)). “By contrast, ‘section 845 was not intended to provide immunity against a particular
14 police officer’s negligence in the performance of his duty in a particular situation.’” *Id.* (quoting
15 *Wallace v. City of Los Angeles*, 12 Cal. App. 4th 1385, 1402 (1993)).

16 Here, as in *Mackie*, Miles’ negligence claim presents concerns about the individual
17 defendants’ negligence in the performance of their duties, not political decisions about the scope
18 of police protection provided to citizens. *See id.* The defendants argue that the SAC addresses the
19 political and policy decisions of various defendants, especially Gemmell, but this argument stands
20 in sharp contrast to their assertion (with which I agreed, *supra* Part III.D), that there are no specific
21 allegations as to Gemmell’s actions in the SAC. Accordingly, Section 845 does not provide
22 immunity, as pleaded and argued. The motion is DENIED as to this argument.

23 **6. Section 845.6**

24 I agree with the defendants that some of them are immune to a subset of the state law
25 claims under section 845.6. That section provides:

26 Neither a public entity nor a public employee is liable for injury proximately
27 caused by the failure of the employee to furnish or obtain medical care for a
28 prisoner in his custody; but, except as otherwise provided by Sections 855.8 and
856, a public employee, and the public entity where the employee is acting within
the scope of his employment, is liable if the employee knows or has reason to know

1 that the prisoner is in need of immediate medical care and he fails to take
2 reasonable action to summon such medical care.

3 Cal. Gov't Code § 845.6. To the extent that Miles argues that the defendants are liable in
4 negligence or under the Bane Act for injuries arising from failure to provide medical care,
5 including mental health care, to West before the Cochran attack, this statutory section bars those
6 claims. They are DISMISSED.

7 However, as the defendants correctly point out, the claims against Teves, Jackson, and
8 Herrera for negligence and violation of the Bane Act for failure to timely summon medical care
9 after the Cochran fight are clearly excepted from the immunity bar by the plain language of this
10 statute. The motion is DENIED as to those claims for this argument.

11 **7. Section 820.8**

12 Finally, the defendants argue—in a single sentence with no citations or explanations—that
13 the Supervisor Defendants are immune from liability for the negligence claim under section 820.8.
14 Mot. 22:5-7. That section provides: “Except as otherwise provided by statute, a public employee
15 is not liable for an injury caused by the act or omission of another person. Nothing in this section
16 exonerates a public employee from liability for injury proximately caused by his own negligent or
17 wrongful act or omission.” Cal. Gov't Code § 820.8.

18 Miles does not address this argument in opposition. To the extent that her negligence
19 claim includes allegations against supervisors, *see* FAC ¶ 266 (“Supervisory Defendants had an
20 obligation, duty, or responsibility to train and supervise subordinates.”), I do not read it as seeking
21 to hold accountable any individual “for an injury caused by the act or omission of another person.”
22 *See also Wolfsen v. Wheeler*, 130 Cal. App. 475, 482, 19 P.2d 1004, 1007-08 (1933) (holding that
23 public officers are individually liable for the acts of subordinates where they participated in,
24 directed, or cooperated in the negligence). Rather, it is clear from the pleadings that Miles seeks
25 to hold them accountable for the “direct and proximate result[s]” of their actions, including failure
26 to train. SAC ¶ 268; *see also Wolfsen*, 19 P.2d at 1008 (“[P]ublic officers are liable personally to
27 third persons who are injured by their personal neglect.”). This is specifically permitted under
28 section 820.8. The defendants do not contest this in their briefs. The motion is DENIED on this
basis.

* * *

For those reasons, the defendants’ arguments are mostly DENIED as to immunity. They are granted only regarding immunity for claims arising out of failure to provide medical care before the Cochran attack, under section 845.6. Because the defendants are largely subject to liability for the state law claims, I turn to their arguments concerning the sufficiency of the pleadings.

B. Sufficiency of the Pleadings

1. Negligence

The defendants argue that Miles fails to state a claim for negligence under California law, focusing mostly on the elements of duty and foreseeability. Mo. 22:3-24:16. Miles’ opposition is again hard to follow but seems to assert that she sufficiently pleaded each element. *See Oppo.* 23:8-24:10.

“To prevail in a negligence action, a plaintiff must show that the defendant owed a legal duty, the defendant breached that duty and the breach proximately caused injury to the plaintiff.” *J.L. v. Children’s Inst., Inc.*, 177 Cal. App. 4th 388, 396 (2009) (citations omitted). California “imposes a heightened duty of care on jailers, due to prisoners’ increased vulnerability while incarcerated.” *Edison v. United States*, 822 F.3d 510, 521 (9th Cir. 2016) (citations omitted). This special relationship between a jailer and a prisoner gives rise to a duty of care to protect the prisoner from foreseeable harm inflicted by a third party. *Giraldo v. Dep’t of Corr. & Rehab.*, 168 Cal. App. 4th 231, 246 (2008); *Matysik v. Cnty. of Santa Clara*, No. 16-cv-06223-LHK, 2018 WL 732724, at *8 (N.D. Cal. Feb. 6, 2018) (“The special-relationship exception applies when a state takes a person into its custody and holds him there against his will.” (internal quotation marks and citations omitted)). “Prison officials therefore owe a duty of reasonable care to protect prisoners and detainees from foreseeable harm.” *Weaver v. City & Cnty. of San Francisco*, No. 14-cv03654-LB, 2016 WL 913372, at *11 (N.D. Cal. Mar. 10, 2016) (citation omitted).

I begin with two preliminary notes. First, the defendants’ argument about negligent infliction of emotional distress, Mot. 22:9-13, is not clearly relevant because Miles’ negligence claim does not discuss emotional distress. Second, the defendants assert—in passing, in the first

1 sentence of this section with no additional explanation—that California Government Code section
 2 815(a) “preclude[s]” this cause of action. They are wrong. Section 815(a) applies to public
 3 entities, but the moving defendants are all individuals. For that reason, their citation to *Walker v.*
 4 *County of Santa Clara*, No. C 04-02211 RMW, 2005 WL 2437037, *9 (N.D. Cal. Sept. 30, 2005),
 5 which discusses liability for public entities under section 815, is unpersuasive.

6 Next the defendants argue that Miles’ negligence claim “is predicated upon an alleged
 7 failure to protect” but that she fails to plead a special relationship or foreseeability. Mot. 22:14-
 8 23:7. I previously addressed and rejected this argument concerning the Classification defendants
 9 based on the allegations for the Eighth Amendment claims. Prior Order 36:4-37:5. But I found
 10 that Miles had to amend her complaint to assert that individual Doe defendants breached their duty
 11 of care by pleading that they each would have understood that the harm arising from housing West
 12 with Cochran was foreseeable. *Id.*

13 The operative complaint sufficiently alleges that each individual defendant was a member
 14 of the correctional staff, SAC ¶¶ 7-20, 25-27, 29-31, and so owed West a duty of care to protect
 15 him from foreseeable harm. *Giraldo*, 168 Cal. App. 4th at 246.

16 The SAC also sufficiently alleges that the harm arising from housing West with Cochran
 17 was foreseeable to Smith, Mitchell, Pontejos-Murphy, McQuade, Aboujaoude, Stevenson, Rocker,
 18 Lorier, Sablan, Herrera, Teves, and Jackson, who each acted with deliberate indifference to the
 19 known harm that would likely arise from housing West with *any* cellmate, including Cochran
 20 specifically. *Supra* Parts III.A, B. In arguing that Miles must allege facts showing Cochran made
 21 specific threats against West, Mot. 22:26-23:3, the defendants wholly misunderstand Miles’
 22 claims. Her argument is that the attack was foreseeable because an attack on West by *any*
 23 cellmate was foreseeable. Indeed, in the weeks leading up to West’s death he was attacked by
 24 *every* cellmate assigned to him. *See* SAC ¶¶ 59, 61, 63, 65, 67, 72, 74-77. She also asserts that he
 25 had been attacked by cellmates four times during a previous incarceration at the same jail. *See id.*
 26 ¶¶ 9-11, 52. Given those defendants’ knowledge of this pattern of attacks, it was plausibly
 27 foreseeable to them that housing West with Cochran would also lead to his attack and serious
 28 injury. *See Weaver*, 2016 WL 913372, at *11.

1 And this finding is supported by the defendants’ own case citations. In *Megeff v. Doland*,
 2 the court of appeal held that “when the avoidance of foreseeable harm requires one to control the
 3 conduct of a third person,” “[t]he custodian must have knowledge of a specific risk to an
 4 identifiable and foreseeable victim.” 123 Cal. App. 3d 251, 257 (1981) (citations omitted); *see*
 5 *also Hooks v. S. Cal. Permanente Med. Grp.*, 107 Cal. App. 3d 435, 444 (1980) (“[O]ne must
 6 know that the target of the risk is an identifiable and foreseeable victim.”). Miles alleges that
 7 these defendants knew of the specific risk that having *any* cellmate would pose to West as a
 8 victim. That is sufficient to plead foreseeability. *Cf. Megeff*, 123 Cal. App. 3d at 257; *Hooks*, 107
 9 Cal. App. 3d at 444. The motion is DENIED as to these defendants.

10 But for the same reasons that Miles fails to plead an Eighth Amendment or Fourteenth
 11 Amendment claim against Santiago, Gabriel, Solopow, Kiss, Gemmell, Yune, Galindo, and
 12 Magat, she fails to plead a negligence claim against them here. *Supra* Parts III.A, B. She does not
 13 present any factual allegations as to these defendants’ knowledge of West, his mental health, or
 14 the prior attacks. Without such allegations, she does not plead foreseeable harm to West as a
 15 victim. They are DISMISSED with leave to amend.

16 **2. Bane Act**

17 Finally, the defendants argue that Miles fails to state a claim for violation of the Bane Act
 18 because, they say, she fails to plead a constitutional violation or that the violation was brought by
 19 threats, intimidation, or coercion.

20 California Civil Code section 52.1 (the “Bane Act”) “was enacted in 1987 to address hate
 21 crimes” and it creates “a cause of action for violations of a plaintiff’s state or federal civil rights
 22 committed by ‘threats, intimidation, or coercion.’” *Reese v. Cnty. of Sacramento*, 888 F.3d 1030,
 23 1040 (9th Cir. 2018) (quoting *Chaudhry*, 751 F.3d at 1105). To state claim under the Bane Act, a
 24 plaintiff must allege “both a constitutional violation and that the violation was brought about by
 25 threats, intimidation, or coercion.” *Sandoval v. Cnty. of Sonoma*, No. 11-cv-05817-TEH, 2016
 26 WL 612905, at *2 (N.D. Cal. Feb. 16, 2016), *aff’d*, 912 F.3d 509 (9th Cir. 2018); *see also Monzon*
 27 *v. City of Murrieta*, 978 F.3d 1150, 1165 (9th Cir. 2020) (“Lastly, plaintiffs’ Bane Act claim fails
 28 because the officers did not interfere or attempt to interfere with any constitutional rights using

1 threats, intimidation, or coercion.” (citations omitted)). “[T]he Bane Act does not require the
2 ‘threat, intimidation, or coercion’ element of the claim to be transactionally independent from the
3 constitutional violation alleged.” *Reese*, 888 F.3d at 1043 (citing *Cornell v. City & Cnty. of San*
4 *Francisco*, 17 Cal. App. 5th 766, 798-99 (2017), *as modified* (Nov. 17, 2017)). Rather this
5 element can be met by showing “a specific intent to violate” the constitutional rights of the injured
6 party. *Id.* (quoting *Cornell*, 17 Cal. App. 5th at 801-02). “[R]eckless disregard for a person’s
7 constitutional rights is evidence of a specific intent to deprive that person of those rights.” *Id.* at
8 1045 (quoting *United States v. Reese*, 2 F.3d 870, 885 (9th Cir. 1993)).

9 As discussed above, Miles has stated multiple constitutional violations sufficient to meet
10 the first requirement for stating a Bane Act claim. *See Sandoval*, 2016 WL 612905, at *2. The
11 defendants’ argument that Miles failed to allege that they violated a “clearly delineated and plainly
12 applicable right,” Mot. 25:3-10, is merely another way of arguing that she failed to allege a
13 constitutional violation, and so is rejected for the same reasons.

14 Further, I previously granted the defendants’ first motion to dismiss with leave to amend
15 because Miles did not address the need to allege that a defendant interfered with constitutional
16 rights using threats, intimidation, or coercion. Prior Order 37:23-28. That order did not hold that
17 Miles had to plead “transactionally independent” allegations about threats, intimidation, or
18 coercion that were separate from the underlying constitutional violations, *see Reese*, 888 F.3d at
19 1043; it merely required that she clarify her claims. The defendants now cite several cases that
20 were published before *Reese* that seem to require plaintiffs to provide such “transactionally
21 independent” allegations, but the Ninth Circuit has since clarified that is not required to state a
22 claim.

23 Instead, Miles may assert the defendants had the specific intent to violate her or West’s
24 constitutional rights. *See id.* at 1045. She does not do so for the Fourteenth Amendment claims
25 alleging violations of her own constitutional rights, and she does not argue in opposition that her
26 SAC meets this standard for this cause of action. It is DISMISSED as a basis for her Bane Act
27 Claim. But she does plead the requisite intent to violate West’s Eighth Amendment rights by
28 alleging that certain defendants acted in reckless disregard to his rights. *See id.* The Supreme

1 Court has explained that “[i]t is . . . fair to say that acting or failing to act with deliberate
2 indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly
3 disregarding that risk.” *Farmer*, 511 U.S. at 836. As discussed, the SAC plausibly alleges that
4 Smith, Mitchell, Pontejos-Murphy, McQuade, Aboujaoude, Stevenson, Rocker, Lorier, Sablan,
5 Herrera, Teves, and Jackson acted with deliberate indifference to West’s rights. *Supra* Part III.A.
6 Therefore, Miles has also pleaded that these defendants acted with reckless disregard for West’s
7 rights. *Cf. Farmer*, 511 U.S. at 836.

8 For those reasons, the motion is DENIED as to Smith, Mitchell, Pontejos-Murphy,
9 McQuade, Aboujaoude, Stevenson, Rocker, Lorier, Sablan, Herrera, Teves, and Jackson with
10 respect to the allegations that they violated West’s Eighth Amendment rights. It is GRANTED as
11 to the other individual defendants with respect to those allegations. It is also GRANTED as to all
12 defendants to the extent that the Fourteenth Amendment violations serve as a basis for the Bane
13 Act claim. Miles has leave to amend, one more time, to assert otherwise. If she chooses to do so,
14 she should more clearly explain her argument in any resulting briefing.

15 **CONCLUSION**

16 For those reasons, the motion is GRANTED in part and DENIED in part. Miles has one
17 final opportunity to replead her claims. She may submit any amended complaint by January 19,
18 2024.

19 **IT IS SO ORDERED.**

20 Dated: December 21, 2023

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23 William H. Orrick
24 United States District Judge

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