United States Court of Appeals
for the Ninth Circuit

Case Nos.
22-15132, 22-15133, 22-15134,
22-15135, 22-15136, 22-15137

Tiffany Phommathep, et al.,

Plaintiffs-Appellants,

v.

County of Tehama, et al.,

Defendants-Appellees.

Appeal from the U.S. District Court
for the Eastern District of California
The Honorable Troy L. Nunley Presiding

Appellants' Consolidated Opening Brief

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INTRODUCTION

This is a civil-rights action arising out of yet another mass shooting in America. Here, a shooter armed with an AR-15 shot and killed five people and injured over a dozen more in the close-knit community of Rancho Tehama, California.

But *this* mass shooting differs from others in one critical respect: Law enforcement not only failed to stop the shooter; they *emboldened* him. Long before Kevin Neal began shooting residents of Rancho Tehama, Neal terrorized his neighbors by firing guns in his yard at all hours of the day on a nearly daily basis. Often, Neal shot at his neighbors' homes; occasionally, Neal would *shoot at his neighbors*.

But because the sheriff leadership were strong supporters of the right to bear arms—and regarded Rancho Tehama as an impoverished community undeserving of much protection—the sheriff's office mostly ignored the many calls from Neal's terrified neighbors. When sheriff deputies did have contact with Neal, it was only to advise him he was within his Second Amendment rights to shoot guns on his property, and to confirm they would take no action in response to violations of gun laws.

Plaintiffs are six individuals and families whose lives have been permanently altered by the Rancho Tehama shooting. Plaintiffs brought this action to hold Defendants accountable for the foreseeable consequences of their unconstitutional approach to law enforcement in Rancho Tehama, in violation of the Due Process Clause, the Equal Protection Clause, and *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

Defendants moved to dismiss Plaintiffs' complaints. The district court granted Defendants' motions and eventually dismissed all three federal causes of action.

That was error. First, the district court used the wrong legal standard when it evaluated Plaintiffs' due process claim. Second, the court ignored factual allegations that establish a plausible equal protection violation. Third, the court improperly dismissed Plaintiffs' *Monell* claim when it erroneously found no underlying constitutional violations.

Ultimately, Plaintiffs have pleaded sufficient factual allegations to show all three constitutional claims are plausible. This Court should therefore reverse.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over Plaintiffs' claims under 28 U.S.C §§ 1331 and 1343(a)(3) since they present federal questions. The district court had supplemental jurisdiction over Plaintiffs' state-law claims under 28 U.S.C. § 1367(a).

This Court has jurisdiction over Plaintiffs' consolidated appeals under 28 U.S.C. § 1291. *See* 9th. Cir. Docket No. 12 (granting Plaintiffs' motion to consolidate). The district court entered final orders dismissing Plaintiffs' federal causes of action on December 9, 2021. 1-ER-3–4 (Phommathep Plaintiffs); 1-ER-51–52 (Plaintiff A.H.); 1-ER-99–100 (Woods Plaintiffs); 1-ER-147–48 (McFadyen Plaintiffs); 1-ER-195–96 (Elliott/Steele Plaintiffs); 1-ER-243–44 (McHugh Plaintiffs). The district court subsequently entered judgments in all the Plaintiffs' cases on December 9, 2021, except for the Woods Plaintiffs' case, in which the district court entered judgment on December 13, 2021. 1-ER-2 (Phommathep Plaintiffs); 1-ER-50 (Plaintiff A.H.); 1-ER-98 (Woods Plaintiffs); 1-ER-146 (McFadyen Plaintiffs); 1-ER-194 (Elliott/Steele Plaintiffs); 1-ER-242 (McHugh Plaintiffs).

On January 27, 2022, the district court found good cause to grant Plaintiffs' motions for an extension of time to file their notices of appeal. *See* Fed. R. App. P. 4(a)(5); 2-ER-450 (Phommathep Docket #73); 3-ER-654 (AH Docket #66); 4-ER-861 (Woods Docket #64); 5-ER-1078 (McFadyen Docket #67); 6-ER-1383 (Elliott/Steele Docket #77); 7-ER-1557 (McHugh Docket #53). The notices of appeal Plaintiffs filed on January 24, 2022, are therefore timely. 2-ER-260 (Phommathep Plaintiffs); 2-ER-452 (Plaintiff A.H.); 3-ER-655 (Woods Plaintiffs); 4-ER-863 (McFadyen Plaintiffs); 5-ER-1079 (Elliott/Steele Plaintiffs); 7-ER-1385 (McHugh Plaintiffs).

ISSUES PRESENTED FOR REVIEW

1. It is a due process violation for a state actor to *increase* an individual's exposure to a preexisting harm. Here, Plaintiffs alleged that Defendants fostered Neal's sense of impunity and thereby *increased* the risk he would use his guns to harm others. Did the district court err in dismissing Plaintiffs' due process claims?

2. It is an equal protection violation for a municipality to administer police services in a discriminatory fashion. Here, Plaintiffs alleged Defendants had a policy of withholding police services from Rancho Tehama residents, whom they viewed contemptuously as lowlifes and drug users, and providing diminished police protection against gun-related incidents; that such a policy lacked a rational basis; that the policy was motivated at least, in part, by Defendants' bias against the Rancho Tehama community and in favor of guns; and that the policy caused Plaintiffs harm. Did the district court err in dismissing Plaintiffs' equal protection claims?

3. Under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), municipalities may be held liable for damages resulting from unconstitutional customs or policies. Here, the district court found Plaintiffs did not allege underlying equal protection or due process violations. Did the district court err in dismissing Plaintiffs' *Monell* claims on that basis?

ADDENDUM

Pursuant to Ninth Circuit Rule 28–2.7, the following pertinent constitutional provisions and statutes are contained in the Addendum to this brief: U.S. Const. amend. XIV, § 1; 42 U.S.C. § 1983; Fed. R. Civ. P. 8; Fed. R. Civ. P. 12(b)(6); Cal. Penal Code § 136.2; *id.* § 646.91(m); *id.* § 29825; Cal. Civ. Proc. Code § 527.6(u); *id.* § 527.8; *id.* § 527.9.

STATEMENT OF THE CASE

1. Defendants, staunch gun-rights defenders, expressed their disdain for Rancho Tehama by allowing gun violence there to go unchecked.[1]

The mass shooting at issue in this case occurred in Rancho Tehama, a small town in rural Tehama County, California. 2-ER-357.

Rancho Tehama is not only isolated, but poor: Nearly half its 2,100 residents live below the poverty line. 2-ER-357.

The Tehama County Sheriffs' Office was responsible for enforcing the law in Rancho Tehama. 2-ER-358. But the Assistant Sheriff (Phil Johnston) held two personal opinions that colored his office's approach to law enforcement in Rancho Tehama. 2-ER-364–65.

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[1] Because these are consolidated appeals from the district court's orders of dismissal, the facts in the Statement of the Case "are taken from [Plaintiffs'] [operative] complaint[s]." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1100 n.1 (9th Cir. 2008). The factual allegations in the operative complaints are largely the same across all six cases. Therefore, for ease of reference, Plaintiffs use the operative complaint filed by the Phommathep Plaintiffs (2:18-cv-02916-TLN-DMC; 9th Cir. No. 22-15132) when citing common allegations. For any case-specific allegations, Plaintiffs cite the corresponding complaint. Similarly, the parties submitted virtually identical briefing in all six cases below, and the district court issued identical orders in each case. Therefore, to avoid redundancy, Plaintiffs cite to the briefing and orders in the Phommathep case (2:18-cv-02916-TLN-DMC; 9th Cir. No. 22-15132).

First, Johnston was a fierce defender of gun rights. To Johnston, no constitutional guarantee was more sacred than the Second Amendment right to bear arms. 2-ER-407. As a result, Johnston's office refused to enforce so-called "red flag" orders (i.e., restraining orders issued under California laws directing people who pose a threat to public safety to relinquish their firearms to law enforcement). *See* Cal. Penal Code §§ 136.2(a)(1), (d); *id.* § 646.91(m); *id.* § 29825; Cal. Civ. Proc. Code § 527.6(u); *id.* § 527.8; *id.* § 527.9; 2-ER-359; 2-ER-372.

Second, Johnston viewed Rancho Tehama with contempt. To Johnston, Rancho Tehama's residents were "lowlifes" and drug users undeserving of police protection. 2-ER-358; 2-ER-408–09. Not coincidentally, Johnston's office was generally apathetic about 911 calls from Rancho Tehama. 2-ER-359; 2-ER-372.

2. Defendants emboldened Neal to shoot guns with impunity and under-enforced the gun laws.

As a result of these views, Johnston's office ignored—and, indeed, *emboldened*—Rancho Tehama's most notorious gun owner: Kevin Neal.

Neal's house was hard to miss: His fence was riddled with bullet holes, and his yard was a carpet of spent shell casings. 2-ER-359; 2-ER-

373; 2-ER-379; 2-ER-385. Neal owned many guns, including an AR-15 assault rifle he had extensively—and *illegally*—modified. 2-ER-359; 2-ER-375; 2-ER-384. Neal liked to shoot his guns almost every day, at all hours of the day, and fire hundreds of rounds at a time. 2-ER-359; 2-ER-374; 2-ER-376; 2-ER-380; 2-ER-385. Often, Neal would use his own yard for target practice; other times he would arc his shots over his neighbors' homes. 2-ER-385.

Neal's neighbors routinely called 911 to complain about him. 2-ER-359–360; 2-ER-370. For the most part, Johnston's office ignored those calls. 2-ER-359; 2-ER-370–72.

On the rare occasions deputies responded, they would briefly knock on Neal's front door, then quickly leave when no one answered. 2-ER-372–80. The officers continued these ineffective measures even though they knew Neal had learned to actively avoid them. 2-ER-377; 2-ER-381. He would run inside once he saw patrol cars coming toward his house, dim the lights, and refuse to answer the door until the officers left. 2-ER-377; 2-ER-381. Once the coast was clear, Neal could resume shooting. 2-ER-377; 2-ER-381.

Eventually, Neal's violence escalated from gun shots to physical assaults. In November 2016, Neal punched a neighbor in her face, then fired several shots in her direction. 2-ER-374. Although Johnston's deputies responded to that particular 911 call, they left without making any arrests. 2-ER-374.

Later that same day, another neighbor (Diana Steele) called 911 to report Neal was out shooting guns and yelling in his yard again. 2-ER-374. As usual, the deputy who responded quickly left Neal's house when no one answered the front door. 2-ER-374.

Later that same month, Steele called 911 yet again to report Neal was shooting and shouting in his front yard. 2-ER-360; 2-ER-371; 2-ER-374–75; 2-ER-394. This time, deputies were able to interact with Neal directly, and they told him his neighbors had called to complain about him. 2-ER-371; 2-ER-374–75.

Initially, Neal was—or, at least, *acted*—apologetic. 2-ER-374–75. But Johnston's deputies quickly put him at ease: Rather than a reprimand, the deputies "explicitly" advised Neal he was within his legal rights to "continue to own *and discharge* firearms in the community." 2-ER-375 (emphasis added); *see also* 2-ER-360; 2-ER-371; 2-ER-394. The

deputies then turned, strolled back across the yard strewn with shell casings, past the fence riddled with bullet holes, got into their patrol car, and drove away. 2-ER-375; 2-ER-379.

After the deputies left, Neal continued to terrorize his neighbors by shooting and shouting in his yard. 2-ER-360; 2-ER-371; 2-ER-375; 2-ER-383.

In January 2017—three months after Johnston's deputies shared their expansive view of Second Amendment rights with Neal—Neal got violent with neighbors yet again.

This time, Neal confronted Steele, the elderly neighbor who frequently called 911 to complain about him. 2-ER-375; 6-ER-1187. When Neal saw Steele and her companion (Hailey Poland) collecting firewood near Neal's house, Neal fired six shots from his AR-15 at them. 6-ER-1187. The shots missed, but Neal then approached the two women, punched Steele, and stabbed Poland with a knife. 2-ER-375; 6-ER-1187. Even Johnston's deputies had to arrest Neal that time. 2-ER-375. Neal soon posted bail and was back home again. 2-ER-375; 6-ER-1188.

In February 2017, a judge in the Superior Court for Tehama County issued a *criminal* restraining order against Neal in light of the January

2017 incident. 2-ER-360; 2-ER-375; 6-ER-1187–88. Among other things, the order barred Neal from possessing any guns or ammunition on the grounds that he posed an "unacceptably high risk" of "misus[ing] firearms to harm … members of the Rancho Tehama community." 2-ER-361; *see also* 2-ER-360; 2-ER-375–76. The restraining order also directed law enforcement to arrest Neal if they had probable cause to believe he had violated the order. 2-ER-376 (citing Cal. Pen. Code § 836(c)(1)).

In April 2017, a second judge in the Superior Court for Tehama County added a *civil* restraining order against Neal. That order barred Neal from (1) having any contact with Steele, Poland, or members of Steele's family, and (2) possessing any guns or ammunition. 2-ER-360; 2-ER-375–76.

Johnston's deputies served the civil restraining order on Neal. 2-ER-375. But because there were few things Johnston hated more than enforcing gun restrictions *anywhere*, let alone in Rancho Tehama, 2-ER-359; 2-ER-372, his deputies made no effort to enforce the civil or criminal order. 2-ER-376. Thus, Johnston's deputies mostly ignored the near daily 911 calls from Neal's neighbors that he was flagrantly violating the

restraining orders by openly shooting guns in his yard. 2-ER-359; 2-ER-370–73; 2-ER-384–85.

At some point, even *ignoring* the 911 calls from Neal's concerned neighbors proved too tiresome for Johnston's office. Thus, deputies who responded to those calls—and dispatchers fielding them—often threatened *Neal's neighbors* that *they* might be arrested if they continued to call 911 about Neal. 2-ER-371; 2-ER-385.

By July 2017, it was quite apparent to Neal he could violate the restraining orders with impunity. 2-ER-361; 2-ER-373–74; 2-ER-387–88. If Neal harbored any doubt about that, it was surely erased on the few occasions Neal called Johnston's office *himself*. For example, in July 2017, Neal called Johnston's office to report he had video evidence of a known felon (presumably a neighbor) in possession of a firearm. 2-ER-382–83. Johnston's dispatcher told Neal there was nothing "they could do" about that, then ended the call. 2-ER-382.

In August 2017, Neal resumed shooting at his neighbors' houses. For example, in mid-August 2017, Steele called 911 to report that Neal was firing a shotgun at her house, in violation of the restraining orders. 2-ER-377. She reported 20 to 30 shotgun blasts. 2-ER-377. Johnston's

deputies responded, but only went through the motions: They briefly knocked on Neal's front door, then quickly left when no one answered, reporting the incident as "[q]uiet upon arrival." 2-ER-378.

Steele called 911 again two days later. 2-ER-378. This time, she reported Neal was firing a gun at her house. 2-ER-378. She described hearing the cracks of bullets whizzing past her house. 2-ER-378. The dispatcher at Johnston's office suggested Neal was just doing "target practice." 2-ER-378. Steele explained that definitely was not the case: any time someone went outside, including her seven-year-old grandson, Neal began to shoot. 2-ER-378. One of Johnston's deputies finally responded, but because it was quiet when he arrived, he quickly drove away. 2-ER-378.

In late August 2017, Neal called Johnston's office himself once again. This time he claimed Steele's adult son (Daniel Elliott II) violated a restraining order Neal obtained against *him*. 2-ER-383. The dispatcher told Neal it was not a matter for Johnston's office and ended the call. 2-ER-383.

In early October 2017, Neal called Johnston's office a third time, again alleging Elliott violated a restraining order. 2-ER-383. Once again, Johnston's office shrugged it off. 2-ER-383.

In late October 2017, a neighbor called 911 to report gunshots—followed by sounds of "a woman screaming"—coming from Neal's house. 2-ER-379. Johnston's deputies came out to the neighborhood, but quickly left the area without speaking to Neal. 2-ER-379.

In November 2017, several of Neal's family members called Johnston's office to express their concern that Neal was mentally unstable, getting worse by the day, and still in possession of numerous firearms. 2-ER-379–80; 2-ER-393.

Also in November 2017, Steele called 911 to report a woman screaming in the area again. 2-ER-380. One of Johnston's deputies drove out there, but because it was quiet when he arrived, he quickly drove away without further investigation. 2-ER-380.[2]

[2] Soon after, Johnston's deputies would discover a recently deceased body under Neal's floorboards; it belonged to Neal's girlfriend. 2-ER-379.

Four days later—November 14, 2017—Neal was finally emboldened enough to start shooting at anyone and everyone he encountered in Rancho Tehama. 2-ER-361.

The carnage began that morning when Neal went to Steele's house and shot and killed Steele's son, Elliott, who was in the front yard. 6-ER-1190. When Steele ran out of the house to see what all the commotion was about, Neal shot and killed her too. 6-ER-1190. Steele's husband was inside and heard the shots that killed his wife and son, as well as their dying screams. 6-ER-1190.

Neal quickly moved on and encountered Joseph McHugh, who was standing on the side of the road outside his truck. 7-ER-1491. Neal pulled a handgun from his waistband and fired at least six shots directly into McHugh. 7-ER-1491. McHugh died instantaneously. 7-ER-1491. Neal then grabbed the car keys off McHugh's dead body and stole his pickup truck. 7-ER-1491.

Once in the stolen truck, Neal began driving toward the local elementary school with the intent to kill Steele's grandson. 6-ER-1190. While en route, Neal encountered Plaintiff Tiffany Phommathep, who was driving her three children to school. 2-ER-367. Neal rear-ended the

Phommatheps' car and continued to drive away. 2-ER-367. At that point, Phommathep turned her head to figure out what happened and saw Neal pointing a large gun toward her face. 2-ER-367. Phommathep immediately ordered her kids to duck and threw herself on top of her son in the front passenger seat. 2-ER-367.

Still, all four of them sustained severe injuries. Neal shot Phommathep four times in the shoulder, resulting in five different fractures and shrapnel embedded in her body. 2-ER-367–68. One of the children, J.P. II, was shot twice in his calf and also had shrapnel left behind. 2-ER-368. The second child, J.P., was shot in his left foot. 2-ER-368. And the third child, N.P., was injured in multiple places and had cuts from broken glass. 2-ER-368.

J.P., J.P. II, and N.P. were not the only children Neal harmed. Plaintiff A.H. was a child too. As Neal continued to make his way toward the elementary school, the school secretary was able to lock down the campus and prevent him from entering the building. 6-ER-1190. But Neal still fired multiple rounds of bullets toward the school and shot A.H. in the chest and foot. 3-ER-559. To this day, A.H. has bullet fragments lodged in his chest because it is too risky to remove them. 3-ER-559.

The McFadyen Plaintiffs also fell prey to Neal's violence. Troy McFadyen was driving with his wife, Michelle McFadyen, on the day of the shooting. 5-ER-971. Neal was driving on the opposite side of the road, when he swerved directly into the McFadyens, hit their car, and pushed them into a drainage ditch. 5-ER-971.

As the McFadyens tried to get out of their car and the ditch, they heard gunshots and saw Neal walking down the road shooting in their direction. 5-ER-971. Neal shot both of them. 5-ER-971. Michelle died on the scene. 5-ER-972. Meanwhile, a bystander rescued Troy and took him to the hospital, where he was treated for severe injuries. 5-ER-972.

The Woods Plaintiffs were yet another casualty of Neal's murderous spree. James Woods, Jr. was driving his father, James Woods, Sr., around Rancho Tehama to run errands. 4-ER-762. When Woods, Jr. stopped at a stop sign, he felt something hit his car. 4-ER-762. Woods, Sr. looked back and saw Neal drive past them. 4-ER-763. Gun in hand, Neal shot at the Woods' car. 4-ER-763.

Woods, Jr. sustained a severe gunshot wound to his face: The bullet entered the left side of his face, traveled through his mouth, and exited the right side. 4-ER-763. As a result, Woods, Jr. had extensive damage to

his mouth, gums, and face, lost portions of his teeth and tongue, and experienced permanent scarring. 4-ER-763.

Meanwhile, Woods, Sr. suffered injuries to his eye, shin, and elbows and had shrapnel embedded in his eyes and ears. 4-ER-763.

In the end, Neal killed five people and wounded at least a dozen more. 1-ER-6; 2-ER-361.

3. The district court dismissed Plaintiffs' claims against Defendants for due process and equal protection violations.

Plaintiffs are six individuals and families who fell victim to the Rancho Tehama shooting: the Phommathep Plaintiffs; A.H.; the Woods Plaintiffs; the McFadyen Plaintiffs; the Elliott/Steele Plaintiffs; and the McHugh Plaintiffs.

Plaintiffs filed this civil rights lawsuit to seek "justice against [Defendants] for [their] role in" heightening the danger Neal posed to the Rancho Tehama community and under-enforcing the gun laws. 2-ER-362. The operative complaints[3] under 42 U.S.C. § 1983 named Sheriff Dave Hencratt, Assistant Sheriff Johnston, the Tehama County Sheriff's

[3] Some Plaintiffs filed first amended complaints, while other Plaintiffs filed second amended complaints. This brief employs the term "operative complaints" to refer to the pleadings at issue in this appeal.

Office, and other law-enforcement entities and persons as defendants (hereinafter collectively, "Defendants"). Plaintiffs asserted three federal causes of action and several supplemental claims under California law. 2-ER-362.

In count one of the operative complaints, Plaintiffs raised a claim under the Fourteenth Amendment's Due Process Clause. 2-ER-389–408. The basis of this claim was the state-created danger doctrine, which imposes liability on state actors who "create or increase a known or obvious danger to an individual that he or she would otherwise not face." *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1067 (9th Cir. 2006). Drawing on this doctrine, Plaintiffs alleged that Defendants engaged in affirmative conduct that emboldened Neal and led him to believe he enjoyed impunity for dangerously and illegally shooting his guns. 2-ER-389–408. As a result of these acts, Defendants, Plaintiffs pleaded, enhanced the danger Neal posed to the Rancho Tehama community. 2-ER-389–408.

In count two, Plaintiffs sought relief under the Fourteenth Amendment's Equal Protection Clause. 2-ER-408–16. The thrust of Plaintiffs' claim on this count was that Defendants withheld from the

Rancho Tehama community reasonable police protection because of their biases and prejudices. 2-ER-408–16. As evidence, Plaintiffs alleged that Defendants had a discriminatory policy or custom of according lower priority to callers from Rancho Tehama and those reporting the discharge of firearms—a policy lacking a rational basis. 2-ER-410; 2-ER-414.

And in the third cause of action, Plaintiffs claimed Defendants were liable for failing to properly train and supervise their officers. 2-ER-416–23. This count was predicated on *Monell v. Department of Social Services*, 436 U.S. 658 (1978), "which allows local governments to be sued under § 1983 for constitutional deprivations effected pursuant to a governmental custom." *Green v. City & Cnty. of San Francisco*, 751 F.3d 1039, 1053 (9th Cir. 2014).

Defendants moved to dismiss the operative complaints under Federal Rule of Civil Procedure 12(b)(6). 2-ER-329–55. In their motion, Defendants did not contest the legal viability of Plaintiffs' federal claims. 2-ER-329–55. Rather, Defendants argued only that Plaintiffs had alleged inadequate facts to support their cognizable theories of liability. 2-ER-339.

Plaintiffs opposed the motion. 2-ER-278–328. They maintained that their operative complaints plausibly alleged all elements of each cause of action, such that dismissal was unwarranted. 2-ER-289–90.

The district court decided the motion on the papers without oral argument. 2-ER-449 (Phommathep Docket #57). In its written order, the district court granted Defendants' motion and dismissed all three federal causes of action. 1-ER-5–18.

On the first cause of action under the state-created danger doctrine, the district court ruled that Plaintiffs had "fail[ed] to allege affirmative action by" Defendants "that *created* the danger posed by Neal." 1-ER-13 (emphasis added). The district court did not consider whether Defendants' alleged conduct *increased* Neal's risk to the community. Ultimately, in the district court's view, Plaintiffs could not make out a due process claim because "'Neal was, and would have remained, a dangerous individual prone to violent behavior' regardless of [Defendants'] conduct." 1-ER-13. On those grounds, the district court dismissed count one without leave to amend. 1-ER-14.

As to Plaintiffs' equal protection claim, the district court found two deficiencies in the pleadings. First, according to the district court, there

were no allegations of "different treatment from others similarly situated." 1-ER-16. Second, the district court concluded there were no allegations Defendants "withheld police services . . . because of any bias or prejudice." 1-ER-16. The district court thus dismissed the second cause of action but granted Plaintiffs an opportunity to amend. 1-ER-16.

Turning to the *Monell* cause of action, the district court likewise determined Plaintiffs had failed to state a claim. 1-ER-16–17. Because a *Monell* theory of liability requires an underlying constitutional violation and because the district court found Plaintiffs had failed to plead either a due process or equal protection violation in the prior two counts, the district court dismissed this claim. 1-ER-17. It, however, granted leave to amend. 1-ER-17.

Finally, the district court addressed Plaintiffs' claims under state law. 1-ER-17–18. Having "dismissed all claims over which it ha[d] original jurisdiction" (i.e., the federal causes of action in counts one through three), the district court "decline[d] to" exercise supplemental jurisdiction and refrained "from rul[ing] on Defendants' challenges to Plaintiffs' remaining state law claims." 1-ER-17.

After the district court's order granting Defendants' motion to dismiss, Plaintiff indicated their intent to stand on the operative complaints, rather than seek further amendment. 1-ER-3. Consistent with Plaintiffs' intent, the district court entered final orders and judgments dismissing the three federal causes of action without leave to amend. 1-ER-2–4.

Plaintiffs now seek review of the district court's orders of dismissal. On appeal, this Court has ordered all six cases consolidated for purposes of briefing and oral argument.

SUMMARY OF ARGUMENT

The district court erred in dismissing Plaintiffs' three federal causes of action. After the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), "[t]he standard for surviving a motion to dismiss under" Rule 12(b)(6) "is that the plaintiff must provide a short and plain statement of the claim showing the pleader is entitled to relief which contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Disability Rights Montana, Inc. v. Batista*, 930 F.3d 1090, 1096 (9th Cir. 2019) (alteration in original; quotations omitted). All of Plaintiffs' constitutional claims meet that standard.

Starting with count one of their operative complaints, Plaintiffs adequately pleaded all three elements under the state-created danger doctrine. As to the first element, Plaintiffs alleged that Defendants engaged in two affirmative acts—one before Neal became subject to the restraining orders; one after—that exposed Rancho Tehama residents to greater peril.

Prior to the restraining orders taking effect, Defendants allegedly told Neal he was within his legal rights to discharge his guns in the

community, despite numerous complaints he was doing so recklessly and dangerously. Then, after the restraining orders took effect, Defendants communicated to Neal on three different occasions that they would do nothing in response to credible reports of restraining order and gun violations by others.

Taken together, it was plausible Defendants' affirmative conduct emboldened Neal to believe he could use his guns to terrorize the town with impunity. The district court only concluded otherwise because of legal error: It mistakenly believed Plaintiffs had to allege facts showing Defendants *created* the danger Neal posed; case law, however, makes clear that state action *aggravating* a preexisting danger suffices.

As to the second element, the factual allegations here make it plausible Defendants foresaw Plaintiffs' injuries. Among other things, the operative complaints stated that Neal was a notorious gun owner; Defendants received countless complaints from neighbors about his reckless and later illegal shooting; Defendants knew about his criminal history involving an illegally modified assault rifle; Defendants served the civil restraining order on him prohibiting him from owning guns; Defendants admitted they knew he was armed and violent; Defendants

explicitly referred to Neal as a "firearms owner" with "reality issues;" and shortly before the shooting, Defendants received a warning call from Neal's family that he was decompensating.

As to the third element, Plaintiffs sufficiently alleged Defendants acted with deliberate indifference. The operative complaints depicted Defendants' inaction in the face of abundant evidence of Neal's escalating violence and worsening mental health. That is all Plaintiffs needed to allege to withstand dismissal.

Turning to count two of the operative complaints, Plaintiffs likewise set forth enough facts to make out a plausible equal protection violation. The operative complaints contained at least eight different examples of Defendants withholding police services in response to gun-related incidents, particularly in Rancho Tehama. These numerous instances plausibly showed that when it came to guns in general and guns in Rancho Tehama, Defendants had a pattern and practice of discriminatory law enforcement. While the district court disagreed, it ignored several relevant allegations—something it was not permitted to do on a Rule 12(b)(6) motion.

In addition to pleading differential treatment, Plaintiffs adequately pleaded the other elements of an equal protection violation. According to the operative complaints, Defendants' policy of selectively under-enforcing gun laws lacked any rational basis—an allegation Defendants have not even attempted to counter.

Plaintiffs further alleged that Defendants' discriminatory policy was motivated, at least, in part by their bias in favor of guns. To support that allegation, Plaintiffs proffered direct evidence (Defendants explicitly authorized Neal to continue discharging guns in the community, regardless of the dangerous consequences) and circumstantial evidence (Defendants chastised a Rancho Tehama resident to "mind her own damn business" after she called to report gun violence).

Plaintiffs also put forth ample allegations of how Defendants' unequal law enforcement harmed them. Most directly, had Defendants properly enforced the gun laws, Neal either would not have had guns in his possession on the day of the shooting, or he would have been incapacitated in custody. Either way, Plaintiffs alleged, Neal would have been unable to commit an atrocity on the Rancho Tehama community.

The operative complaints therefore created a plausible picture of Defendants' discriminatory administration of police services.

Finally, Plaintiffs were entitled to proceed on their *Monell* claims as well. While the district court dismissed count three of the operative complaints, its ruling—no allegations of an underlying constitutional violation—was ultimately derivative of its ruling on the first two counts. Because those first two rulings are erroneous, the court's *Monell* ruling is equally flawed.

As a result of these errors, this Court should reverse the district court's order granting Defendants' motions to dismiss.

STANDARD OF REVIEW

The district court dismissed Plaintiffs' operative complaints under Rule 12(b)(6) for failing to state causes of action. In reviewing a Rule 12(b)(6) dismissal, this Court proceeds in two steps. *U.S. Commodity Futures Trading Comm'n v. Monex Credit Co.*, 931 F.3d 966, 972 (9th Cir. 2019). First, the Court "identif[ies] all the factual allegations in the complaint and accepts them as true." *Id.* Then, "reading all the allegations in the light most favorable to the non-moving party," the Court "asks whether the facts state a claim for relief." *Id.* In addressing those questions, this Court "gives no deference to" the district court's decision. *Id*. Rather, it conducts *de novo* review. *Id.*

A complaint satisfies Rule 12(b)(6) if it "provid[es] 'a short and plain statement of the claim showing the pleader is entitled to relief' which 'contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Disability Rights Montana, Inc. v. Batista*, 930 F.3d 1090, 1096 (9th Cir. 2019) (second alteration in original) (quoting *Sheppard v. David Evans & Assoc.*, 694 F.3d 1045, 1048 (9th Cir. 2012)); *see also* Fed. R. Civ. P. 8(a). Although a plaintiff "must provide more than 'a formulaic recitation of the elements of a cause

of action,'" the complaint "need not contain detailed factual allegations." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

ARGUMENT

"[G]un violence is a serious problem" in this country. *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008). "Since the start of this year (2022)" alone, "there have been" at least "277 reported mass shootings—an average of more than one per day." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2163 (2022) (Breyer, J., dissenting).

That number compounds significantly when one zooms out to recent history: "[n]ewspapers report mass shootings occurring at an entertainment district in Philadelphia, Pennsylvania (3 dead and 11 injured); an elementary school in Uvalde, Texas (21 dead); a supermarket in Buffalo, New York (10 dead and 3 injured); a series of spas in Atlanta, Georgia (8 dead); a busy street in an entertainment district of Dayton, Ohio (9 dead and 17 injured); a nightclub in Orlando, Florida (50 dead and 53 injured); a church in Charleston, South Carolina (9 dead); a movie theater in Aurora, Colorado (12 dead and 50 injured); an elementary school in Newtown, Connecticut (26 dead); and many, many more." *Id.* at 2165.

All in all, "firearms in public . . . are responsible for many deaths and injuries in the United States." *Id.* at 2190. The "tragic circumstances" of the Rancho Tehama massacre are no different. 1-ER-25.

"[T]o address some of the dangers of gun violence," "[m]any States" have "pass[ed] laws that limit, in various ways, who may purchase, carry, or use firearms of different kinds." *Id.* at 2163. California, for example, has numerous laws aimed at curbing gun violence. Among them, California courts may order those who pose a threat to public safety to relinquish their guns to law enforcement. *See, e.g.,* Cal. Penal Code §§ 136.2(a)(1), (d); *id.* § 646.91(m); *id.* § 29825; Cal. Civ. Proc. Code § 527.6(u); *id.* § 527.8; *id.* § 527.9. This interlocking web of civil and criminal laws is "an integral part of the legislative intent to prevent threatened injury" by guns in the state. *Bornemann v. Gamboa*, No. E055494, 2013 WL 6482420, at *10 (Cal. Ct. App. Dec. 13, 2013).

For Rancho Tehama's residents, however, the protections of California's red-flag laws proved hollow. That is because Defendants defiantly flouted those laws and encouraged Neal, a prohibited user, to continue threatening the community with his dangerous and illegal gun

use. Ultimately, Defendants' actions facilitated Neal's violent and deadly attack on Rancho Tehama.

When Plaintiffs sought to hold Defendants accountable for their unconstitutional approach to law enforcement, the district court cut them off at the pleading stage. The district court did not dispute that Plaintiffs' due process and equal protection claims presented "cognizable legal theor[ies]." *Mendiondo*, 521 F.3d at 1104; 1-ER-27 (district court noting in first order granting motion to dismiss that "'danger creation' exception" is a viable theory under Due Process Clause); 1-ER-9 (setting out elements of due process claim in second order granting motion to dismiss); 1-ER-14–15 (stating that "[t]he denial of police protection to disfavored persons stemming from discriminatory intent or motive violates the Equal Protection Clause."). Moreover, there was no dispute below that Defendants were acting "under color of state law" for purposes of § 1983 liability.

Rather, the district court found that Plaintiffs did not allege sufficient facts to support their claims that Defendants deprived them of their constitutional rights to due process and equal protection. As

explained below, the district court erred: Plaintiffs have alleged sufficient facts to support both claims and, by extension, a *Monell* claim as well.

1. Plaintiffs' due process claims survive Defendants' motions to dismiss.

The Fourteenth Amendment's Due Process Clause provides that "[n]o State shall . . . deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1.

The general rule is that the Due Process Clause does *not* impose an affirmative duty on the state to protect an individual from a third party. *See DeShaney v. Winnebago Cnty. Dep't of Social Servs.*, 489 U.S. 189, 195–96 (1989). But "[t]here are several exceptions to this rule." *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082, 1086 (9th Cir. 2000).

The one "[r]elevant here is the 'danger creation' exception." *Id.* "Under the state-created danger doctrine, a [state actor] may be liable for actions that create or increase a known or obvious danger to an individual that he or she would otherwise not face." *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1067 (9th Cir. 2006). Although case law refers to this exception as the "danger-*creation*" doctrine, that nomenclature is misleading. The doctrine applies not only when the state "create[s]" a risk

but also when it "aggravate[s]" a preexisting one. *Id.*; *see also Henry A. v. Willden*, 678 F.3d 991, 1002–03 (9th Cir. 2012) (due process violation occurs when state exposes an individual to a preexisting danger; requiring the state to create a danger that did not already exist "would render the state-created danger doctrine meaningless.").

Plaintiffs invoked this theory in their operative complaints. 2-ER-388–89 (alleging Defendants "violated [their] constitutional rights, grounded in the Fourteenth Amendment's Due Process Clause, to be free of state-created danger.").

To make such a claim, Plaintiffs must plausibly allege three elements. *See Martinez v. City of Clovis*, 943 F.3d 1260, 1271 (9th Cir. 2019). "First," they must allege Defendants' "affirmative actions created or exposed [them] to an actual, particularized danger that [they] would not otherwise have faced." *Id.* "Second," they must allege "the injur[ies] [they] suffered w[ere] foreseeable." *Id.* "Third," they must allege Defendants "were deliberately indifferent to the known danger." *Id.*

In its ruling, the district court addressed only the first element of the danger-creation doctrine; it did not reach the second or third elements. 1-ER-9–14. Plaintiffs argued they met that element by alleging

that Defendants' words and conduct "embolden[ed] NEAL to believe he could act with impunity in relation to reckless and/or unlawful misconduct involving firearms." 2-ER-389; 2-ER-405; *see also* 2-ER-372. The district court disagreed, finding "Plaintiffs fail[ed] to allege affirmative action by County Defendants or any particular officer that created the danger posed by Neal." 1-ER-13.

As explained below, "the district court's reasoning" on the first element was "erroneous." *Willden*, 678 F.3d at 1002. Under the correct legal standard, Plaintiffs' allegations were sufficient to state a claim that Defendants exacerbated the risk Neal would harm others with his guns.

Moreover, Plaintiffs' allegations on the second and third elements, "if true, demonstrate the [Defendants] 'act[ed] with deliberate indifference to [the] known [and] obvious danger'" they created by emboldening Neal. *Hernandez v. City of San Jose*, 897 F.3d 1125, 1137 (9th Cir. 2018) (second and fourth alterations in original) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 971–72 (9th Cir. 2011)).

Accordingly, Plaintiffs "adequately claimed a due process violation pursuant to the state-created danger doctrine," *Hernandez*, 897 F.3d at 1137, and the district court erred in reaching a contrary conclusion.

1.1 Plaintiffs sufficiently alleged Defendants emboldened Neal.

To plead a "state-created danger due process claim," "[f]irst, a plaintiff must [allege] that the state engaged in 'affirmative conduct' that placed him or her in danger." *Pauluk v. Savage*, 836 F.3d 1117, 1124 (9th Cir. 2016) (quoting *Patel*, 648 F.3d at 974). Here, reading the operative complaints in the light most favorable to Plaintiffs, it is plausible Defendants' affirmative acts "left [Plaintiffs] in a situation that was more dangerous than the one in which [Defendants] found [them]." *Munger*, 227 F.3d at 1086.

At bottom, Plaintiffs alleged that Defendants "actively communicat[ed] explicit . . . assurances to" Neal that "he could continue to recklessly use . . . firearms without arrest or consequence and despite the enhanced risk of gun violence this posed to members of the Rancho Tehama community." 2-ER-358. Plaintiffs alleged that Neal, in turn, "received and understood" the message that "he could persist in recklessly using and/or illicitly possessing firearms without fear of punishment." 2-ER-387. He thus derived "a sense of impunity . . . from . . . [D]efendants' affirmative, encouraging acts." 2-ER-359.

In particular, Plaintiffs identified two sets of actions Defendants took—one before the restraining orders prohibiting Neal from using and possessing guns; one after—that amplified the risk he would cause them harm.

The *first* occurred in November 2016, when Defendants informed Neal his neighbors were calling law enforcement to complain he was yelling and recklessly shooting guns on his property. 2-ER-360; 2-ER-371; 2-ER-374–75; 2-ER-394. Defendants told Neal this even though Plaintiffs feared retribution from Neal if he learned of their complaints. 2-ER-387; 2-ER-392; 2-ER-404. Defendants amplified the danger to Neal's neighbors when, rather than instruct Neal to stop his dangerous behavior, they "explicitly" advised him he was within his legal rights to "continue to own *and discharge* firearms in the community." 2-ER-375 (emphasis added).

Through these affirmative statements, Defendants conveyed to Neal they "would take no action to prevent, stop or punish [him] for recklessly and dangerously discharging his firearms in the community" 2-ER-375. Their words made clear Neal "would be able to continue to own and recklessly use weapons to terrorize the surrounding community

without repercussions." 2-ER-360; *see also* 2-ER-361; 2-ER-373–75; 2-ER-390–92; 2-ER-394; 2-ER-398.

The *second* set of Defendants' affirmative acts that emboldened Neal arose in 2017, after Neal was subject to the restraining orders prohibiting him from owning or using guns. According to the operative complaints, between the time the restraining orders took effect in early 2017 and Neal's shooting spree in November 2017, Defendants communicated to Neal that they "d[id] not take [p]rotective and [r]estraining [o]rder violations and violations of federal and/or state gun laws seriously and would not take any steps to prevent, stop, or punish [such] violations." 2-ER-400; *see also* 2-ER-382.

The first such communication took place on July 27, 2017, when Neal contacted Defendants to report that a prohibited felon was brandishing a weapon. 2-ER-382–83; 2-ER-401. Defendants told Neal they could not do anything without video evidence. 2-ER-382–83; 2-ER-401. When Neal submitted a video to Defendants, Defendants continued to dodge the matter, saying the video "was not clear enough and there was nothing they could do." 2-ER-382–83; 2-ER-401. Defendants proceeded to quickly close the case. 2-ER-382–83; 2-ER-401.

Defendants told Neal a similar story when he contacted them two more times—on August 28, 2017 and October 3, 2017—to report that Elliott was violating a restraining order. Both times, Defendants deflected responsibility by stating it was a civil issue and they would not respond. 2-ER-383; 2-ER-401.

Defendants' three conversations with Neal served to confirm that Defendants "d[id] not take . . . brandishing of firearms, . . . possession of firearms by a felon, . . . [or] violations of [c]ourt orders, [r]estraining [o]rders and [c]riminal [p]rotective [o]rders seriously, even in light of credible evidence of a violation." 2-ER-382–83; 2-ER-401. In other words, Defendants gave Neal active assurances that, despite being subject to restraining orders himself, he was free to brandish weapons, illegally possess guns, and otherwise violate the orders with impunity.

"Taking these" extensive allegations on the first element "as true, as [this Court] must on a motion to dismiss," *Hernandez*, 897 F.3d at 1133, Plaintiffs plausibly alleged that Defendants helped foster Neal's sense of invincibility, and thereby "enhanced the danger . . . [he] would commit an act of gun violence against one or members or travelers through the Rancho Tehama community." 2-ER-383; *see* also 2-ER-387–

88; 2-ER-390–91. Accordingly, Plaintiffs "sufficiently alleged that [Defendants] placed them 'in a more dangerous position' than the one in which they found themselves." *Id.* (quoting *Penilla v. City of Huntington Park*, 115 F.3d 707, 710 (9th Cir. 1997) (per curiam)).

Indeed, the factual allegations here are at least as strong as the facts this Court found adequate to defeat summary judgment in *Martinez v. City of Clovis*, 943 F.3d 1260 (9th Cir 2019).

Martinez was a § 1983 action brought by Desiree Martinez, a victim of domestic violence. 943 F.3d at 1265. In her lawsuit, Martinez alleged that police violated her right to due process under the state-created danger doctrine by affirmatively "plac[ing] her at greater risk of future abuse" from her abuser, Kyle Pennington, a police officer himself. *Id.* at 1265–66, 1269. The district court granted summary judgment to the police, and Martinez appealed. *See id.* at 1269.

On appeal, this Court held "the first requirement of the state-created danger doctrine [wa]s satisfied." *Id.* at 1273. The Court rested its conclusion on two affirmative acts the police undertook.

The first conduct occurred when police responded to Martinez's 911 call reporting Pennington's physical abuse. *See id.* at 1266. After

speaking to Martinez, an officer next spoke to Pennington and told him Martinez had made allegations of prior abuse at his hands. *See id.* at 1267, 1272. The officer then asked Pennington why he was dating someone like Martinez and expressed that Martinez was not "'necessarily a good fit'" for Pennington. *Id.* That same night, after the officer left, "Pennington physically abused Martinez" again, "called her a 'leaky faucet,'" "asked her what she had told" the officer, and indicated "she was trying to get him in trouble." *Id.*

From this evidence, the Court found it reasonable to infer that the officer's "disclosure" of Martinez's prior allegations "provoked Pennington." *Id.* The evidence further suggested the officer's "disparaging comments [about Martinez] emboldened Pennington to believe that he could further abuse Martinez, including by retaliating against her for her testimony, with impunity." *Id.*

The second affirmative act transpired roughly a month later when police responded to another 911 call. *See id.* at 1267–69. Although one of the responding officers intended to arrest Pennington and told Martinez as much, a supervising officer arrived and ordered that Pennington not be arrested. *See id.* at 1268. Upon declining to arrest Pennington, the

supervisor, who knew Pennington's father, said on the way out that "the Penningtons were 'good people.'" *Id.* at 1269. After the officers left, Pennington beat and sexually assaulted Martinez yet again. *See id.*

Given those facts, this Court determined that the supervisor's "positive remarks about the Penningtons placed Martinez in greater danger." *Id.* at 1273. "[A]gainst the backdrop that" Pennington, as a police officer, knew he could have been arrested but was given a pass by his fellow officers, the supervisor's praise of the Pennington family "emboldened [Pennington] to continue his abuse with impunity." *Id.*

Plaintiffs' allegations are strikingly similar, if not stronger, than those in *Martinez*. In *Martinez*, 943 F.3d at 1272, while responding to a 911 call, one of the officers disclosed Martinez's prior abuse allegations to Pennington. Unsurprisingly, Pennington, upon learning of Martinez's complaints, retaliated against her with further abuse. *See id.* Likewise, here, while responding to Steele's 2016 complaint, Defendants disclosed to Neal that neighbors had been reporting him to the authorities. 2-ER-371; 2-ER-374–75. Unsurprisingly, Neal subsequently retaliated against Steele by violently attacking her with his illegally modified rifle. 2-ER-375; 6-ER-1187.

And in *Martinez*, 943 F.3d at 1272–73, this Court found that a single officer's disparaging remarks about Martinez and another officer's laudatory remarks about Pennington's family "emboldened Pennington to believe that he could" continue his abuse "with impunity." *Id.* at 1272–73. Here, Defendants *outright told* Neal in 2016 that he could continue shooting his guns with impunity. 2-ER-360; 2-ER-375; 2-ER-391; 2-ER-394.

Then, the following year, after the restraining orders took effect, Defendants repeatedly *told* Neal there was nothing they could do about unlawful use of guns or violations of restraining or protective orders. 2-ER-382–83; 2-ER-401. These affirmative statements "emboldened [Neal] to believe that he could" persist in his illegal and dangerous gun use "with impunity." *Id.* at 1272.

As in *Martinez*, then, it is plausible Defendants "placed [Plaintiffs] in greater danger" and thereby exposed them to an actual, particularized harm. *Id.* at 1273; *see also Kennedy*, 439 F.3d at 1063 (first element of state-created danger satisfied where police created an opportunity for neighbor to assault plaintiff by "notif[ying] [the neighbor] of the [plaintiff's] allegations against" him and thereby provoking "his violent

response to the news."); *accord Dwares v. City of New York*, 985 F.2d 94, 99 (2d Cir. 1993), *overruled on other grounds by Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163 (1993) (first element adequately alleged where police "conspired with the 'skinheads' to permit the[m] . . . to beat up flag burners with relative impunity, assuring the 'skinheads' that unless they got totally out of control they would not be impeded or arrested."); *Lipman v. Budish*, 974 F.3d 726, 746 (6th Cir. 2020) (first element sufficiently pleaded where police interviewed child abuse victim in front of alleged abusers and thereby increased the risk abusers would retaliate against the child).

Under the controlling authority of *Martinez* and *Kennedy* and the persuasive authority of *Dwares* and *Lipman*, "[t]he [Defendants'] alleged conduct . . . clearly placed [Plaintiffs] in a more dangerous position." *Penilla*, 115 F.3d at 710.

In reaching a contrary conclusion, the district court held that "Plaintiffs' allegations d[id] not lend even a reasonable inference that officers 'affirmatively *created* an actual, particularized' danger to Plaintiffs." 1-ER-12 (emphasis added) (quoting *Kennedy*, 439 F.3d at 1063); *see also* 1-ER-13 ("Plaintiffs fail[ed] to allege affirmative action by

County Defendants or any particular officer that created the danger posed by Neal."). Rather, the district court concluded "Neal was, and would have remained, a dangerous individual prone to violent behavior regardless of the officers' conduct." 1-ER-13. In other words, the district court believed Plaintiffs could not state a claim under the first element of the danger-creation doctrine because Defendants did not "create" Neal; his menacing disposition was a preexisting danger.

"The district court's reasoning was erroneous." *Willden*, 678 F.3d at 1002. If Defendants "could avoid liability because [Neal] was already dangerous and" prone to "hurt[ing]" others, then most of this Court's state-created danger cases would have come out the other way. *Hernandez*, 897 F.3d at 1135.

Stated somewhat differently, the state-created danger doctrine is not limited to situations where the state "creates" a danger; worsening a preexisting danger suffices. *See Martinez*, 943 F.3d at 1272 ("That Martinez was already in danger from Pennington does not obviate a state-created danger when the state actor enhanced the risks."); *Maxwell v. Cnty. of San Diego*, 708 F.3d 1075, 1082 (9th Cir. 2013) (danger-creation exception applies where officers found plaintiff "facing a

preexisting danger from her gunshot wound" and "affirmatively increased that danger by preventing her ambulance from leaving."); *Penilla*, 115 F.3d at 710 ("The critical distinction is not . . . an indeterminate line between danger creation and enhancement, but rather the stark one between state action and inaction in placing an individual at risk.").

That is because "by its very nature, the doctrine only applies in situations where the plaintiff was directly harmed by *a third party*—a danger that, in every case, could be said to have 'already existed.'" *Willden*, 678 F.3d at 1002. "The fact that" a danger "'already existed' is [thus] irrelevant." *Id.* at 1003.

Ultimately, then, the district court held Plaintiffs' operative complaints to the wrong legal standard by requiring them to plead Defendants' creation of a danger that did not already exist. Espousing this legally flawed view, "[t]he district court erroneously concluded that Defendant[s] . . . did not commit an affirmative act." *Ogbechie v. Covarrubias*, No. 20-16936, 2021 WL 3523460, at *1 (9th Cir. 2021).

Analyzing Plaintiffs' allegations under the correct standard, however, it is plausible Defendants' actions "reasonably embolden[ed]

[Neal] to continue" dangerously shooting his guns "with impunity." *Martinez*, 943 F.3d at 1277. Plaintiffs have thus "sufficiently alleged that [Defendants'] affirmative acts increased the danger they faced." *Hernandez*, 897 F.3d at 1133.

1.2 Plaintiffs sufficiently alleged their injuries were foreseeable to Defendants.

The second element of the danger-creation doctrine asks whether the harm "to which [Defendants] exposed [Plaintiffs] was known or obvious." *Kennedy*, 439 F.3d at 1064. While the district court did not address this element in its order of dismissal, Plaintiffs' showing was sufficient to withstand a Rule 12(b)(6) dismissal.

On the foreseeability front, Plaintiffs alleged that Neal was "a well-known danger to [D]efendants for *over* a year preceding his deadly rampage in November 2017." 2-ER-389; *see also* 2-ER-370. Even before Neal was arrested and charged with multiple violent crimes in January 2017, Defendants had "knowledge that [he] was shooting in a reckless manner." 2-ER-359.

After January 2017, Defendants clearly understood Neal was armed and dangerous. 2-ER-360; 2-ER-372–73; 2-ER-392. Indeed, it was

one of Defendants' deputies who served the civil restraining order on Neal. 2-ER-375.

Furthermore, Defendants "receive[ed] numerous complaints" from community members about Neal's illegal gun use. 2-ER-360. At least nine different people called Defendants and informed them Neal "continue[d] to possess firearms;" "shot them repeatedly on a near daily basis;" "shot them in a reckless manner;" "was known to be violent, erratic and dangerous;" and "had casings scattered throughout his property, and bullet holes riddling the fence." 2-ER-359; *see also* 2-ER-370–73; 2-ER-384–85; 2-ER-389; 2-ER-393.

Given all these complaints, Defendants "admitted . . . they knew NEAL continued to possess and shoot guns and was a dangerous and violent individual, who was prohibited from owning them." 2-ER-373; *see also* 2-ER-376; 2-ER-392. Indeed, Defendants deterred firefighters from responding to a call from Neal on the grounds that he was armed and dangerous. 2-ER-382; 2-ER-391; 2-ER-397; 2-ER-413 (Defendants describing Neal as a person with "'reality issues and . . . also a firearms owner'").

And "shortly before the shooting," Neal's family members called Defendants to "inform[] them that [he] was mentally unstable, deteriorating and was illegally in possession of firearms." 2-ER-379; 2-ER-393.

"On the[se] facts alleged, it was obvious" to Defendants "that [Neal] had a predilection for violence and was capable of the attack he in fact perpetrated on" Plaintiffs. *Kennedy*, 439 F.3d at 1064. "Indeed, [Neal's] attack was the very" type of "act" the restraining orders "had sought to protect . . . against." *Id.* Moreover, Defendants' "actions are in some ways even more culpable" because "they received reports of" Neal's deterioration and instability from his family shortly before the massacre. *Hernandez*, 897 F.3d at 1137. Defendants were therefore "on notice" that Neal was a ticking time bomb who posed an *imminent* danger to the community. *Pauluk*, 836 F.3d at 1125.

In arguing otherwise in the district court, Defendants asserted there were no allegations they "'knew' [Neal] was going to go on a shooting spree." 2-ER-345. But that is the wrong standard. The second element of the state-created danger doctrine "does not" require "the exact injury [to] be foreseeable." *Martinez*, 943 F.3d at 1273. That is,

Defendants did not need to know precisely how Neal would harm the community (i.e., by going on a mass shooting rampage). All Defendants needed to foresee was a "danger of injury given the particular circumstances." *Kennedy*, 439 F.3d at 1064 n.5.

Here, that is "a matter of common sense": it is obvious that emboldening Neal—a mentally unstable, deteriorating individual with a criminal history of gun violence—to continue misusing guns would endanger his community. *Martinez*, 943 F.3d at 1274; *see also Maxwell*, 708 F.3d at 1083 ("It was obvious that delaying a bleeding gun shot victim's ambulance increased the risk of death."); *Wood v. Ostrander*, 879 F.2d 583, 590 (9th Cir. 1989) ("[T]he inherent danger facing a woman left alone at night in an unsafe area is a matter of common sense."). Plaintiffs have therefore plausibly pleaded the second element.

1.3 Plaintiffs sufficiently alleged Defendants were deliberately indifferent.

The final element Plaintiffs must plead to state their due process claim is that Defendants "acted with deliberate indifference." *Willden*, 678 F.3d at 1002. Here, Plaintiffs raised a plausible inference that Defendants "disregarded a known or obvious consequence of [their] action." *Martinez*, 943 F.3d at 1274.

Plaintiffs alleged Defendants "showed egregious, conscious-shocking indifference" despite signs of Neal's persistent and escalating violence involving firearms and his decompensating mental health. 2-ER-362; 2-ER-370; 2-ER-372; 2-ER-383; 2-ER-387; 2-ER-391; 2-ER-402; 2-ER-405; 2-ER-407–08. In the face of that knowledge, Defendants ratified Neal's impression that he had free rein to terrorize the community without consequence.

This was not a situation where Defendants simply had "a lapse in judgment." *Patel*, 648 F.3d at 976. Rather, Defendants knew "something [wa]s going to happen," *L.W. v. Grubbs* (*Grubbs II*), 92 F.3d 894, 900 (9th Cir. 1996), as a result of Neal terrorizing the community but "chose to do nothing about it." *Bracken v. Okura*, 869 F.3d 771, 780 (9th Cir. 2017). Plaintiffs have thus adequately "alleged facts demonstrating official deliberate indifference in creating the danger." *L.W. v. Grubbs* (*Grubbs I*), 974 F.2d 119, 123 (9th Cir. 1992).

* * *

In short, Plaintiffs are "not seeking to hold Defendants liable for [Neal']s violent proclivities." *Grubbs I*, 974 F.2d at 122. "Rather, [Plaintiffs] seek[] to make Defendants answer for their acts that

independently created the opportunity for and facilitated" Neal's murderous rampage. *Id.* "[B]ecause Defendants affirmatively" enhanced "the dangerous situation which resulted in" Plaintiffs' injuries, "the district court erred in dismissing [Plaintiffs'] [due process] claim." *Id.*

2. Plaintiffs' equal protection claims survive Defendants' motions to dismiss.

The Fourteenth Amendment's equal protection guarantee "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Over 30 years ago, the Supreme Court made clear that "[t]he State may not . . . selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause." *DeShaney*, 489 U.S. at 197 n.3.

Following *DeShaney*, this Court has reaffirmed that principle several times.[4] *See, e.g., Elliot-Park v. Manglona*, 592 F.3d 1003, 1008

[4] So too has virtually every other circuit court to have addressed the issue. *See Soto v. Flores*, 103 F.3d 1056, 1066 (1st Cir. 1997); *Shipp v. McMahon*, 234 F.3d 907, 914 (5th Cir. 2000), *overruled in part on other grounds by McClendon v. City of Columbia*, 305 F.3d 314 (5th Cir. 2002) (en banc); *Jones v. Union Cnty.*, 296 F.3d 417, 426 (6th Cir. 2002); *McCauley v. City of Chicago*, 671 F.3d 611, 618 (7th Cir. 2011); *Ricketts v. City of Columbia*, 36 F.3d 775, 779 (8th Cir. 1994). The Third and

(9th Cir. 2010) ("The right to non-discriminatory administration of [police] protective services is clearly established."); *Est. of Macias v. Ihde*, 219 F.3d 1018, 1026 (9th Cir. 2000) ("There is a constitutional right . . . to have police services administered in a nondiscriminatory manner—a right that is violated when a state actor denies such protection to disfavored persons.").

To raise an equal protection claim that the police discriminated in their provision of protective services, a plaintiff must allege (1) the defendant has a policy or custom of differential treatment; (2) the differential treatment cannot pass the appropriate standard of review; (3) the defendant's policy or custom is motivated, at least in part, by a discriminatory purpose; and (4) the plaintiff suffered harm from the policy or custom. *See Navarro v. Block*, 72 F.3d 712, 714–17 (9th Cir. 1995); *see also Soto*, 103 F.3d at 1066–67; *Shipp*, 234 F.3d at 913–14; *Dalton v. Reynolds*, 2 F.4th 1300, 1308 (10th Cir. 2021).

Tenth Circuits articulated that principle even before *DeShaney*. *See Hynson By and Through Hynson v. City of Chester Legal Dep't*, 864 F.2d 1026, 1030–31 (3d Cir. 1988); *Watson v. City of Kansas City*, 857 F.2d 690, 694 (10th Cir. 1988).

Here, Plaintiffs alleged that Defendants violated their "constitutional rights, grounded in the Fourteenth Amendment's Equal Protection Clause b[y] providing diminished services to Rancho Tehama, being slow and reluctant to respond, not taking complaints about firearms being discharged . . . seriously . . . and/or responding in a non-serious and disinterested manner." 2-ER-388.

The district court dismissed Plaintiffs' cause of action, concluding they did not plausibly plead the first or second elements of an equal protection claim. Plaintiffs' "allegations," however, "contain sufficient facts" to support all four elements of an equal protection claim and thus "survive dismissal under Rule 12(b)(6)." *Mendiondo*, 521 F.3d at 1105. "Accordingly, [Plaintiffs'] claim should not have been dismissed." *Id.*

2.1 Plaintiffs sufficiently alleged Defendants had a policy of providing fewer services to Rancho Tehama residents and less protection against gun-related incidents.

To state an equal protection claim for a discriminatory withholding of police services, plaintiffs must first allege the defendant had a policy or practice of differential treatment. *See Navarro*, 72 F.3d at 714–15.

Here, Plaintiffs alleged that Defendants engaged in discriminatory police practices in two ways.

First, because they harbored disdain for Rancho Tehama as an impoverished community full of lowlifes and drug users, 2-ER-358, "[D]efendants responded less frequently, less effectively, and more antagonistically toward Rancho Tehama residents and their calls," in general. 2-ER-359; *see also* 2-ER-372; 2-ER-382–83; 2-ER-399; 2-ER-410.

Second, because of their deep affection for individual gun rights, Plaintiffs alleged that, of all the calls for service in Rancho Tehama, Defendants responded least effectively to calls involving the illegal possession or use of firearms. 2-ER-359; 2-ER-372; 2-ER-382–83; 2-ER-410.

To support this pattern and practice, Plaintiffs put forth at least eight specific facts.

First, in their operative complaints, Plaintiffs pleaded that during the year leading up to the massacre, at least nine of Neal's neighbors lodged frequent complaints with Defendants about his dangerous use of firearms. 2-ER-370–71. Defendants, however, largely ignored these complaints. 2-ER-370–71. Defendants' refusals took the form of declining "to log numerous calls;" declaring they "could not respond to 'he said/she said' reports;" "stating that the complaints only amounted to 'civil

disputes;'" responding that as long as Neal was shooting safely, there was nothing they could do; "insisting callers needed photographic proof" or a firsthand view of Neal's illegal gun use; warning the callers "to mind their own business;" and "threatening to arrest and jail [community members] for calling . . . for help." 2-ER-370–71; *see also* 2-ER-384–87; 2-ER-409; 2-ER-413.

Second, Plaintiffs alleged that on November 13, 2016, Defendants "responded to an incident where NEAL punched a neighbor in the nose, then fired shots at her and another person." 2-ER-374. Defendants, however, did not arrest Neal. 2-ER-374. When Steele called hours later to report that Neal was shooting and yelling in his yard again, Defendants knocked on Neal's door and quickly left when he did not answer. 2-ER-374; 2-ER-394.

Third, Plaintiffs alleged that in November 2016, in response to Steele's complaint about Neal yelling and shooting guns in his yard, Defendants affirmatively assured Neal he had a legal right to shoot his guns on his property without consequence. 2-ER-360; 2-ER-371; 2-ER-375; 2-ER-383; 2-ER-394.

Fourth, Plaintiffs alleged that in February 2017, after Neal was subject to restraining orders prohibiting him possessing guns, his girlfriend called Defendants to report she was missing a gun. 2-ER-376. Defendants called Neal's girlfriend back, but she did not pick up. 2-ER-376. At that point, Defendants abandoned any further investigation into the incident. 2-ER-376; *see also* 2-ER-392.

Fifth, Plaintiffs alleged that Defendants likewise conducted perfunctory investigations in response to complaints about Neal dangerously shooting guns on August 21, 2017, August 23, 2017, August 25, 2017, October 27, 2017, November 5, 2017, and November 10, 2017. 2-ER-377–80; 2-ER-383–84; 2-ER-395–96. This reflected Defendants' policy of "[a]ccording lower priority [to] callers reporting the discharge of firearms in the Rancho Tehama Community." 2-ER-411.

Sixth, Plaintiffs alleged that shortly before the mass shooting, Neal's family members called Defendants and informed them that Neal "was mentally unstable, deteriorating and was illegally in possession of firearms." 2-ER-379–80. Defendants ignored this call and did nothing in response. 2-ER-379–80; *see also* 2-ER-393.

Seventh, Plaintiffs alleged Defendants admitted "they were aware that NEAL still owned and was discharging firearms in the community after the [restraining orders] were issued and that they allowed him to continue with this behavior." 2-ER-376; *see also* 2-ER-381; 2-ER-393.

Eighth, Plaintiffs alleged Defendants did not respond to gun-related incidents involving people other than Neal. 2-ER-382–83; 2-ER-401. When Neal, for instance, called Defendants to report firearm use by a prohibited felon, Defendants refused to respond without video evidence. 2-ER-382–83; 2-ER-401. Even after Neal produced video evidence, Defendants "said the video was not clear enough and there was nothing they could do." 2-ER-382–83; 2-ER-401. Defendants thus closed the case without any further investigation. 2-ER-382–83; 2-ER-401.

Taken together, these well-pleaded factual allegations plausibly suggest Defendants had a policy of under-enforcing gun laws and abdicating their protective role when it came to gun-related incidents, particularly in Rancho Tehama.

Indeed, these "numerous facts," which, "if proven, would tend to establish" the first element of Plaintiffs' equal protection "theory," are comparable to allegations this Court has previously found sufficient to

withstand dismissal under Rule 12(b)(6) in other cases. *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 590, 590 n.5 (9th Cir. 2008) (holding plaintiffs adequately alleged defendants discriminated between bidders with ties to conservationists and those without such ties based on five categories of evidence); *compare with McCauley*, 671 F.3d at 618–19 (finding complaint did "not plausibly suggest that the City maintained a policy or practice of selective withdrawal of police protection" where plaintiffs alleged only that "the City failed to have particularized practices in place for the *special* protection of domestic violence victims, . . . not that the City denied this class of victims *equal* protection.").

Defendants contended below there was no plausible pattern of discrimination because Neal "was arrested and charged for his actions in 2017" when he menacingly shot at Steele and Poland and because once Neal "went on his murder spree, the law enforcement response was swift and efficacious." 2-ER-347. In other words, Defendants insisted they gave Plaintiffs equal protection from gun violence simply because they responded to Neal's most extreme gun-related incidents.

But this Court rejected a similar argument in *Elliot-Park v. Manglona*, 592 F.3d 1003 (9th Cir. 2010). There, the plaintiff brought a

§ 1983 equal protection claim against the police in Saipan, Micronesia, for refusing to investigate a drunk-driving crash in which she was injured. *See Elliot-Park*, 592 F.3d at 1006. Specifically, the plaintiff alleged the police discriminated against her because she was Korean and had a bias in favor of the driver because he was Micronesian. *See id.*

In moving to dismiss the claim under Rule 12(b)(6), the police "claim[ed] that [the plaintiff] was not denied [her] right [to equal protection] because they provided her with *some* police services," such as calling an ambulance and interviewing bystanders. *Id.* at 1007. The officers' position was that "only a complete withdrawal of police protective services violates equal protection." *Id.* In no uncertain terms, this Court disagreed:

> But diminished police services, like the seat at the back of the bus, don't satisfy the government's obligation to provide services on a non-discriminatory basis. *See Navarro v. Block*, 72 F.3d 712, 715–17 (9th Cir. 1995) (alleged policy to treat domestic violence 911 calls less urgently could form the basis for an equal protection claim). Certainly the government couldn't constitutionally adopt a policy to spend $20,000 investigating each murder of a white person but only $1,000 investigating each murder of a person of color. Likewise, it doesn't matter that [the plaintiff] received some protection; what matters is that she would allegedly have received more if she weren't Korean and [the driver] weren't Micronesian.

Id.

As in *Elliot-Park*, here, Defendants cannot negate Plaintiffs' plausible showing of their policy under-enforcing gun violations simply because Plaintiffs "received some protection" against guns in egregious circumstances. *Id.* "[W]hat matters," here, "is that [Plaintiffs] would allegedly have received more" protection if they were calling to report incidents not involving guns. *Id.* Ultimately, then, Defendants' "alleged discriminatory failure" to protect against gun-related incidents "violate[s] equal protection." *Id.* at 1008.

Relatedly, the district court erred when it faulted Plaintiffs for not adequately alleging that Defendants "treated . . . Plaintiffs[] worse" than others. 1-ER-16. From the district court's perspective, Plaintiffs' allegations at most suggested Defendants withheld police services in gun-related incidents "involving Neal specifically," not in gun-related incidents more widely. 1-ER-16. Based on this perceived deficiency, the district court held Plaintiffs failed to state "the first element for such a claim—different treatment from others similarly situated." 1-ER-16.

But in reaching that conclusion, "the district court ignored many of the allegations in [Plaintiffs'] [operative] complaint[s] that . . . are relevant to the sufficiency of" their pleading of the first element. *Schwake*

v. Arizona Bd. of Regents, 967 F.3d 940, 948 (9th Cir. 2020). For example, the district court ignored Plaintiffs' allegations that Defendants failed to protect against gun violence by other prohibited users besides Neal. 2-ER-382–83; 2-ER-401. Likewise, the district court ignored Plaintiffs' allegation that Defendants' withdrawal of protective services reflected Johnston's "own, radical opinion in favor of unlimited Second Amend[ment] rights." 2-ER-407.

"The district court was not free to ignore th[ese] … relevant factual allegation[s]." *Schwake*, 967 F.3d at 949. Had the district court properly considered them, it would have found that Plaintiffs "'nudged'" their showing of the first element "'across the line from conceivable to plausible.'" *Compton v. Countrywide Fin. Corp.*, 761 F.3d 1046, 1057 (9th Cir. 2014) (quoting *Twombly*, 550 U.S. at 570).

2.2 On this record, Defendants' discriminatory approach to gun crimes in Rancho Tehama lacks a rational basis.

The second element Plaintiffs must allege to raise a viable equal protection claim is that "the state actor's differential treatment [of them] . . . cannot pass the appropriate standard of scrutiny." *Dalton*, 2 F.4th at 1308. Here, since Plaintiffs maintain that Defendants "discriminated on the basis of a non-suspect classification," namely, gun-related incidents,

that "calls for rational basis scrutiny." *Id.* The Court thus "ask[s] whether the government's classification bears a rational relation to some legitimate end." *Id.* (quotations omitted).

Notably, "rational basis review … is not toothless." *Id.* at 1309. That is especially true at the pleading stage. *See Whitemire v. Arizona*, 298 F.3d 1134, 1136 (9th Cir. 2002). A district court may dispose of an equal protection claim under Rule 12(b)(6) "without requiring any evidence corroborating . . . a rational connection . . . *only* when a common-sense connection exists between [the policy or custom] and the asserted, legitimate governmental interest." *Id.* (emphasis added).

Here, Plaintiffs' "equal protection claim . . . survives because they" adequately pleaded that Defendants' discriminatory withholding of police protection "fails even the rationality test." *Navarro*, 72 F.3d at 717. Specifically, Plaintiffs alleged that because of Defendants' "biases and prejudices," Defendants, "without any rational basis, . . . provided at best diminished services to the [Rancho Tehama] community and its residents in response to dangerous incidents and complaints of dangerously illegal conduct, threats, and violence." 2-ER-409; *see also* 2-ER-414 (alleging "there is no rational basis for [D]efendants' conduct.").

In response to Plaintiffs' allegations, Defendants have not proffered any basis—let alone a "common-sense" one—for their policy of responding less seriously to gun-related incidents. *Whitemire*, 298 F.3d at 1136. Nor is one apparent from the record. *See Dalton*, 2 F.4th at 1309 ("Here, the Officers have offered no rational reason to decline police protection to certain domestic violence victims [whose assailants are police officers] but to afford it to others, and we can think of none."); *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1114 (10th Cir. 2008) ("But Brooks has not asserted, and we cannot discern on this record, a rational reason to provide less protection to lesbian victims of domestic violence than to heterosexual victims of domestic violence."). Plaintiffs have thus plausibly alleged Defendants' practice lacked a rational basis sufficient to withstand dismissal of their operative complaints.

2.3 Plaintiffs sufficiently alleged Defendants' bias in favor of guns was a motivating factor underlying their policy.

As the third element of their equal protection claim, Plaintiffs must plausibly allege that a discriminatory purpose was a motivating factor underlying Defendants' differential police services. *See Watson*, 857 F.2d at 694. Plaintiffs did so by proffering facts that, if true, would constitute

both direct and circumstantial evidence of Defendants' discriminatory intent. *See generally Avenue 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016) (discriminatory motive may be shown directly or circumstantially).

Regarding the direct evidence, Plaintiffs alleged Defendants implemented their policy and practice, in part, "because Assistant Sheriff JOHNSTON substituted his own, radical opinion in favor of unlimited Second Amend[ment] rights for good, sound, rational[], safe, and legal policy." 2-ER-407. To substantiate that allegation, Plaintiffs alleged a conversation between Neal and Johnston's deputies in which the deputies, rather than reprimand Neal for dangerously discharging firearms toward his neighbors, "explicitly" advised Neal he was within his legal rights to "continue to own *and discharge* firearms in the community." 2-ER-374–75 (emphasis added).

Since code words may be enough to evince discriminatory intent, *see Avenue 6E Invs., LLC*, 818 F.3d at 505–06, Defendants' reference to gun rights was enough to suggest a policy that elevated the right to bear arms over the right to be secure from gun violence. *Cf. Dominguez-Curry v. Nevada Transp. Dep't*, 424 F.3d 1027, 1039 (9th Cir. 2005) (noting that

in the Title VII context, "a single discriminatory comment by a plaintiff's supervisor or decisionmaker is sufficient to preclude summary judgment for the employer.").

Regarding the circumstantial evidence, Plaintiffs alleged that on one occasion, a neighbor lodged a complaint with Defendants that Neal was dangerously shooting guns. 2-ER-385. In response, Defendants told the neighbor "'to mind [her] own damn business.'" 2-ER-385 (alteration in original); *see also* 2-ER-403; 2-ER-413.

Considered collectively, these allegations plausibly suggest Defendants provided less protection against gun-related incidents because of their bias in favor of firearms.

Indeed, Plaintiffs' evidence of intent is akin to that the Court found sufficient to survive Rule 12(b)(6) dismissal in *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696 (9th Cir. 1988). There, the plaintiff raised an equal protection claim like the one here—namely, that the police provided discriminatory protective services by failing to take seriously complaints of domestic violence. *See Balistreri*, 901 F.2d at 700–02.

To buttress that claim, the plaintiff alleged "that an officer responding to her 1982 assault complaint allegedly stated that he 'did not

blame plaintiff's husband for hitting her, because of the way she was 'carrying on.'" *Id.* at 701. "Such remarks," this Court said, "strongly suggest an intention to treat domestic abuse cases less seriously than other assaults." *Id.* Given this convincing allegation of intent, the Court held that the district court erroneously dismissed the plaintiff's equal protection claim. *See id.* at 701–02.

As in *Balistreri*, here, Defendants' remark to the neighbor "to mind [her] own damn business,'" 2-ER-385; 2-ER-403; 2-ER-413, in response to her complaint about Neal's dangerous gun use "*strongly* suggest[s] an intention to treat [gun] cases less seriously than other [cases]." *Id.* (emphasis added). While Plaintiffs only needed to raise a plausible suggestion to avoid dismissal, their strong suggestion of intent means the district court should not have "dismiss[ed] [their] equal protection claim." *Id.* at 702.

The district court offered several reasons for reaching a contrary conclusion; none have merit.

First, the district court found that "Plaintiffs fail[ed] to cite any factual allegations that officers withheld police services . . . because of any bias." 1-ER-15. But in so holding, the district court ignored the

factual allegations recounted above. Again, the "district court was not free to ignore th[ese] non-conclusory and relevant factual allegation[s]." *Schwake*, 967 F.3d at 949

Second, based on the allegations it did consider, the district court found these facts merely showed Defendants "responded to complaints about Neal in a particular way because of [his] specific characteristics." 1-ER-16.

This logic was doubly flawed. To start, the district court "failed to draw all reasonable inferences . . . in [P]laintiffs' favor," as it was required to do on a Rule 12(b)(6) motion. *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001). That Defendants ratified and provided less protection against Neal's gun misconduct gives rise to several inferences: they did so because of their views about Neal, and/or they did so because of their views about guns. The district court, however, improperly chose to "dr[aw]" the innocuous, non-discriminatory inference "in [Defendants'] favor." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 595 (8th Cir. 2009).

Moreover, even assuming Defendants' diminished protective services were due, in part, to "Neal's specific characteristics," 1-ER-16, that does not mean their permissive attitude toward guns was not

another motivating factor. In requiring Plaintiffs to allege that Defendants' bias in favor of guns was the *sole* purpose behind their discriminatory policy, the district court held Plaintiffs to the wrong legal standard. *See Avenue 6E Invs., LLC*, 818 F.3d at 504.

As a whole, then, Plaintiffs' allegations plausibly suggest Defendants had a discriminatory intent in how they approached law enforcement in Rancho Tehama. These were "not simply bare conclusions devoid of facts supporting them." *Nayab v. Capital One Bank (USA), N.A.*, 942 F.3d 480, 497 (9th Cir. 2019).

While the district court seemed to want more facts showing Defendants' discriminatory purpose, Plaintiffs were not required to provide them at this stage. *See Schwake*, 967 F.3d at 949 ("The absence of this level of detail from Schwake's complaint does not render Schwake's allegation conclusory or insufficient."). In demanding that Plaintiffs provide more, the district court "overstate[d] what needs to be alleged to state a claim at the beginning of a lawsuit before discovery." *Disability Rights Montana, Inc.*, 930 F.3d at 1098.

2.4 Plaintiffs sufficiently alleged they were harmed by Defendants' policy.

The final element Plaintiffs must allege to make out their equal protection claim is that they "were injured by operation of [Defendants'] policy or custom." *Watson*, 857 F.2d at 694.

Defendants did not challenge this element below, and the district court did not address this element in its order. For good reason: Even if Plaintiffs did not suffer injury, "that speaks more to whether [they] can recover anything beyond nominal damages than to whether [they] ha[ve] an equal protection claim" in the first instance. *Elliot-Park*, 592 F.3d at 1008; *see also Est. of Macias*, 219 F.3d at 1028 ("Appellants may prevail on their claim and receive at least nominal damages if they can prove that the Appellees violated Mrs. Macias's right to equal protection, irrespective of whether the Appellees' conduct caused Mrs. Macias's death.").

Nevertheless, Plaintiffs adequately pleaded harm as a result of Defendants' discriminatory police services based on the following allegations:

- "But for" Defendants' "misconduct . . . in actively sanctioning [Neal's] misconduct, NEAL would not have had firearms on November 14, 2017, would have been deterred from recklessly using/and or illegally possessing firearms and/or would have been in custody." 2-ER-362.

- Had Defendants responded to the multiple calls reporting Neal's illegal and dangerous gun use, "he likely would have remained in jail on November 14, 2017, such that he would not have been able to kill and injure so many people, including Plaintiffs and/or their loved ones, on that day." 2-ER-381; *see also* 2-ER-397.

- "[T]he carnage that NEAL caused on November 14, 2017, including the injuries to Plaintiffs . . . could have been avoided" if not for Defendants' policy and custom. 2-ER-389.

- "Defendants' conduct in withholding ordinary and reasonable police services from the Rancho Tehama community had the discriminatory effect of exposing its residents, including Plaintiffs, [to] the danger . . . posed by NEAL, and this deadly rampage on November 14, 2017 that left Plaintiffs gravely injured, and others dead and injured." 2-ER-409–10.

- Plaintiffs suffered harm in the form of physical, mental, and emotional injuries; emotional distress; medical expenses; lost wages; consequential and incidental damages; and attorney's fees. 2-ER-368–70.

Together these sections of the operative complaints "plausibly allege[] that . . . [D]efendants[']" policy harmed Plaintiffs and "allege[] specific facts to support" the causation "element." *Disability Rights*

Montana, Inc., 930 F.3d at 1098; *cf. Compton*, 761 F.3d at 1057 ("[W]e conclude for the purpose of a motion to dismiss Compton's allegations that BAC's deceptive conduct caused her to waste two years of effort and incur multiple transaction costs are sufficient to state an injury that caused damages); *Jenkins v. Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 799 (9th Cir. 1996) ("Jenkins' allegation that he has, as a 'direct and proximate result' of Commonwealth's violation, 'sustained special and general damages' suffices to withstand a motion to dismiss under Rule 12(b)(6).").

* * *

In sum, Plaintiffs' operative complaints "make[] detailed factual allegations that go well beyond reciting the elements of a[n] [equal protection] claim." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). These allegations, in turn, "plausibly suggest" Defendants engaged in "unconstitutional conduct" by withholding police services in response to gun-related incidents and calls from Rancho Tehama. *Id.* Therefore, Plaintiffs "ha[ve] adequately stated a claim." *Id.* at 1204.

3. Plaintiffs' *Monell* claims survive Defendants' motions to dismiss.

As their third cause of action, Plaintiffs raised a federal claim for failure to train/supervise and ratification of procedures. 2-ER-416–23. This claim was "premised on *Monell* liability, which allows local governments to be sued under § 1983 for constitutional deprivations effected pursuant to a governmental custom." *Green v. City & Cnty. of San Francisco*, 751 F.3d 1039, 1053 (9th Cir. 2014).

The district court, however, summarily dismissed Plaintiffs' *Monell* claim because, from its perspective, they "fail[ed] to allege an underlying due process or equal protection violation" in counts one and two. 1-ER-17.

As explained above, however, the district court's conclusion was erroneous; Plaintiffs adequately pleaded both due process and equal protection violations. This Court should therefore "vacate the district court's judgment" of dismissal and "remand so that the district court can examine the other elements of the *Monell* claim in the first instance." *Burke v. Cnty. of Alameda*, 586 F.3d 725, 734 (9th Cir. 2009); *Cf. Green*, 751 F.3d at 1053 ("remand[ing] Green's *Monell* claim for further resolution" because there were genuine factual disputes "as to the

constitutional violations alleged by Green" precluding summary judgment).

CONCLUSION

For the foregoing reasons, this Court should vacate the judgments entered against Plaintiffs, reverse the district court's orders granting Defendants' motions to dismiss, and remand for further proceedings, including whether Plaintiffs may proceed on their *Monell* and state-law claims.[5]

August 1, 2022

Respectfully submitted,

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[5] Plaintiffs asserted both federal and state-law claims in their operative complaints. The district court "decline[d] to rule on Defendants' challenges to Plaintiffs' remaining state law claims" once it "dismissed all [the federal] claims." 1-ER-17. As set forth above, the district court was wrong to dismiss Plaintiffs' federal claims. Consequently, its "reason" for declining to address "the remaining supplemental [state-law] claims no longer exists." *Fang v. United States*, 140 F.3d 1238, 1244 (9th Cir. 1998). This Court should thus order the district court to "determine whether it should retain jurisdiction over the state law claims" on remand. *Id.*; *see also Watison v. Carter*, 668 F.3d 1108, 1117–18 (9th Cir. 2012) ("On remand, the district court will have original jurisdiction over Watison's First Amendment claim and shall decide anew whether to exercise supplemental jurisdiction over the state-law claims.").

STATEMENT OF RELATED CASES

Besides the six cases consolidated in this appeal, counsel for Plaintiffs is unaware of any related cases pending in this Court.

August 1, 2022

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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ADDENDUM

INDEX TO ADDENDUM
TIFFANY PHOMMATHEP, ET. AL. V. COUNTY OF TEHAMA, ET. AL.
NOS. 22-15132, 22-15133, 22-15134, 22-15135, 22-15136, 22-15137

U.S. Const. amend XIV, § 1

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

42 U.S.C. § 1983

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights [Statutory Text & Notes of Decisions subdivisions I to IX]

Effective: October 19, 1996
Currentness

<Notes of Decisions for 42 USCA § 1983 are displayed in multiple documents.>

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

42 U.S.C.A. § 1983, 42 USCA § 1983
Current through P.L. 117-160. Some statute sections may be more current, see credits for details.

End of Document

Fed. R. Civ. P. 8

United States Code Annotated
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)
Title III. Pleadings and Motions

Federal Rules of Civil Procedure Rule 8

Rule 8. General Rules of Pleading

Currentness

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) ***In General.*** In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) ***Denials--Responding to the Substance.*** A denial must fairly respond to the substance of the allegation.

(3) ***General and Specific Denials.*** A party that intends in good faith to deny all the allegations of a pleading--including the jurisdictional grounds--may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) ***Denying Part of an Allegation.*** A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) ***Lacking Knowledge or Information.*** A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) ***Effect of Failing to Deny.*** An allegation--other than one relating to the amount of damages--is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) ***In General.*** In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) ***Mistaken Designation.*** If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) ***In General.*** Each allegation must be simple, concise, and direct. No technical form is required.

(2) ***Alternative Statements of a Claim or Defense.*** A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) ***Inconsistent Claims or Defenses.*** A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

CREDIT(S)

(Amended February 28, 1966, effective July 1, 1966; March 2, 1987, effective August 1, 1987; April 30, 2007, effective December 1, 2007; April 28, 2010, effective December 1, 2010.)

Fed. Rules Civ. Proc. Rule 8, 28 U.S.C.A., FRCP Rule 8
Including Amendments Received Through 7-1-22

End of Document

Fed. R. Civ. P. 12(b)(6)

United States Code Annotated
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)
Title III. Pleadings and Motions

Federal Rules of Civil Procedure Rule 12

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing [Rule Text & Notes of Decisions subdivisions I, II]

Currentness

<Notes of Decisions for 28 USCA Federal Rules of Civil Procedure Rule 12 are displayed in multiple documents. >

(a) Time to Serve a Responsive Pleading.

(1) ***In General.*** Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) ***United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.*** The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) ***United States Officers or Employees Sued in an Individual Capacity.*** A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) ***Effect of a Motion.*** Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed--but early enough not to delay trial--a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court

orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) ***Right to Join.*** A motion under this rule may be joined with any other motion allowed by this rule.

(2) ***Limitation on Further Motions.*** Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) ***When Some Are Waived.*** A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) ***When to Raise Others.*** Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) ***Lack of Subject-Matter Jurisdiction.*** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)-(7)--whether made in a pleading or by motion--and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

CREDIT(S)

(Amended December 27, 1946, effective March 19, 1948; January 21, 1963, effective July 1, 1963; February 28, 1966, effective July 1, 1966; March 2, 1987, effective August 1, 1987; April 22, 1993, effective December 1, 1993; April 17, 2000, effective December 1, 2000; April 30, 2007, effective December 1, 2007; March 26, 2009, effective December 1, 2009.)

Fed. Rules Civ. Proc. Rule 12, 28 U.S.C.A., FRCP Rule 12
Including Amendments Received Through 7-1-22

End of Document

Cal. Penal Code § 136.2

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 1. Of Crimes and Punishments (Refs & Annos)
Title 7. Of Crimes Against Public Justice (Refs & Annos)
Chapter 6. Falsifying Evidence, and Bribing, Influencing, Intimidating or Threatening Witnesses (Refs & Annos)

West's Ann.Cal.Penal Code § 136.2

§ 136.2. Protective orders available in response to good cause belief of harm to, intimidation of, or dissuasion of victim or witness; hearings; findings and consent of law enforcement required; transmission of orders and modified orders; effect of emergency protective orders; restrictions on firearms possession; forms; electronic monitoring

Effective: January 1, 2022
Currentness

(a)(1) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following:

(A) An order issued pursuant to Section 6320 of the Family Code.

(B) An order that a defendant shall not violate any provision of Section 136.1.

(C) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provision of Section 136.1.

(D) An order that a person described in this section shall have no communication whatsoever with a specified witness or a victim, except through an attorney under reasonable restrictions that the court may impose.

(E) An order calling for a hearing to determine if an order described in subparagraphs (A) to (D), inclusive, should be issued.

(F)(i) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim, witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

(ii) For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(G)(i) An order protecting a victim or witness of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the California Restraining and Protective Order System.

(ii)(I) If a court does not issue an order pursuant to clause (i) when the defendant is charged with a crime involving domestic violence as defined in Section 13700 of this code or in Section 6211 of the Family Code, the court, on its own motion, shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(ia) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(ib) The defendant shall relinquish ownership or possession of any firearms, pursuant to Section 527.9 of the Code of Civil Procedure.

(II) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to Section 29825.

(iii) An order issued, modified, extended, or terminated by a court pursuant to this subparagraph shall be issued on forms adopted by the Judicial Council of California that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(iv) A protective order issued under this subparagraph may require the defendant to be placed on electronic monitoring if the local government, with the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy to authorize electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order electronic monitoring to be paid for by the local government that adopted the policy to authorize electronic monitoring. The duration of electronic monitoring shall not exceed one year from the date the order is issued. The electronic monitoring shall not be in place if the protective order is not in place.

(2) For purposes of this subdivision, a minor who was not a victim of, but who was physically present at the time of, an act of domestic violence, is a witness and is deemed to have suffered harm within the meaning of paragraph (1).

(b) A person violating an order made pursuant to subparagraphs (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, a person held in contempt shall be entitled to credit for punishment imposed therein against a sentence imposed upon conviction of an offense described in Section

136.1. A conviction or acquittal for a substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c)(1)(A) Notwithstanding subdivision (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(i) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(ii) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in clause (i).

(iii) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in clause (i).

(B) An emergency protective order that meets the requirements of subparagraph (A) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(2) Except as described in paragraph (1), a no-contact order, as described in Section 6320 of the Family Code, shall have precedence in enforcement over any other restraining or protective order.

(d)(1) A person subject to a protective order issued under this section shall not own, possess, purchase, or receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish ownership or possession of any firearms, pursuant to Section 527.9 of the Code of Civil Procedure.

(3) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while the protective order is in effect is punishable pursuant to Section 29825.

(e)(1) When the defendant is charged with a crime involving domestic violence, as defined in Section 13700 of this code or in Section 6211 of the Family Code, or a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence or a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, shall be marked to clearly alert the court to this issue.

(2) When a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, or a violation of Section 261, 261.5, or former Section 262, or a crime that requires

the defendant to register pursuant to subdivision (c) of Section 290, has been issued, except as described in subdivision (c), a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over a civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and the defendant's minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and, if there is not an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c), or a no-contact order, as described in Section 6320 of the Family Code, acknowledge the precedence of enforcement of, an appropriate criminal protective order. On or before July 1, 2014, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for ensuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) An order that permits contact between the restrained person and the person's children shall provide for the safe exchange of the children and shall not contain language, either printed or handwritten, that violates a “no-contact order” issued by a criminal court.

(2) The safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h)(1) When a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, has been filed, the court may consider, in determining whether good cause exists to issue an order under subparagraph (A) of paragraph (1) of subdivision (a), the underlying nature of the offense charged, and the information provided to the court pursuant to Section 273.75.

(2) When a complaint, information, or indictment charging a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, the defendant's relationship to the victim, the likelihood of continuing harm to the victim, any current restraining order or protective order issued by a civil or criminal court involving the defendant, and the defendant's criminal history, including, but not limited to, prior convictions for a violation of Section 261, 261.5, or former Section 262, a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, any other forms of violence, or a weapons offense.

(i)(1) When a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, a violation of subdivision (a) of Section 236.1, Section 261, 261.5, former Section 262, subdivision (a) of Section 266h, or subdivision (a) of Section 266i, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a victim of the crime. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail or subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of a restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of a victim and the victim's immediate family.

(2) When a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or former Section 262, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a percipient witness to the crime if it can be established by clear and convincing evidence that the witness has been harassed, as defined in paragraph (3) of subdivision (b) of Section 527.6 of the Code of Civil Procedure, by the defendant.

(3) An order under this subdivision may include provisions for electronic monitoring if the local government, upon receiving the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring. The duration of the electronic monitoring shall not exceed one year from the date the order is issued.

(j) For purposes of this section, “local government” means the county that has jurisdiction over the protective order.

Credits

(Added by Stats.1980, c. 686, p. 2077, § 2.2. Amended by Stats.1988, c. 182, § 1, eff. June 15, 1988; Stats.1989, c. 1378, § 1; Stats.1990, c. 935 (A.B.3593), § 6; Stats.1996, c. 904 (A.B.2224), § 2; Stats.1997, c. 48 (A.B.340), § 1; Stats.1997, c. 847 (A.B.45), § 1.5; Stats.1998, c. 187 (A.B.1531), § 2; Stats.1999, c. 83 (S.B.966), § 136; Stats.1999, c. 661 (A.B.825), § 9; Stats.2001, c. 698 (A.B.160), § 4; Stats.2003, c. 498 (S.B.226), § 6; Stats.2005, c. 132 (A.B.112), § 1; Stats.2005, c. 465 (A.B.118), § 2; Stats.2005, c. 631 (S.B.720), § 3; Stats.2005, c. 702 (A.B.1288), § 1.7; Stats.2008, c. 86 (A.B.1771), § 1; Stats.2010, c. 178 (S.B.1115), § 42, operative Jan. 1, 2012; Stats.2011, c. 155 (S.B.723), § 1; Stats.2012, c. 162 (S.B.1171), § 121; Stats.2012, c. 513 (A.B.2467), § 2; Stats.2013, c. 76 (A.B.383), § 145; Stats.2013, c. 291 (A.B.307), § 1; Stats.2013, c. 263 (A.B.176), § 4, operative July 1, 2014; Stats.2013, c. 291 (A.B.307), § 1.5, operative July 1, 2014; Stats.2014, c. 71 (S.B.1304), § 115, eff. Jan. 1, 2015; Stats.2014, c. 638 (S.B.910), § 1, eff. Jan. 1, 2015; Stats.2014, c. 665 (A.B.1498), § 1, eff. Jan. 1, 2015; Stats.2014, c. 673 (A.B.1850), § 1.3, eff. Jan. 1, 2015; Stats.2015, c. 60 (S.B.307), § 1, eff. Jan. 1, 2016; Stats.2016, c. 86 (S.B.1171), § 220, eff. Jan. 1, 2017; Stats.2017, c. 270 (A.B.264), § 1, eff. Jan. 1, 2018; Stats.2018, c. 805 (A.B.1735), § 1, eff. Jan. 1, 2019; Stats.2019, c. 256 (S.B.781), § 6, eff. Jan. 1, 2020; Stats.2021, c. 626 (A.B.1171), § 14, eff. Jan. 1, 2022.)

West's Ann. Cal. Penal Code § 136.2, CA PENAL § 136.2
Current with urgency legislation through Ch. 134 of 2022 Reg.Sess. Some statute sections may be more current, see credits for details.

Cal. Penal Code § 646.91(m)

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 1. Of Crimes and Punishments (Refs & Annos)
Title 15. Miscellaneous Crimes
Chapter 2. Of Other and Miscellaneous Offenses (Refs & Annos)

West's Ann.Cal.Penal Code § **646.91**

§ **646.91**. Stalking; emergency protective orders; issuance; expiration; service; filing; enforcement; liability; scope of section; punishment

Effective: January 1, 2015
Currentness

(a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order if a peace officer, as defined in Section 830.1, 830.2, 830.32, or subdivision (a) of Section 830.33, asserts reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family, within the meaning of Section 646.9.

(b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it.

(c) An emergency protective order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the protected party resides.

(4) The following statements, which shall be printed in English and Spanish:

(A) “To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application.”

(B) “To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with

the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application. You may not own, possess, purchase, or receive, or attempt to purchase or receive, a firearm while this order is in effect."

(d) An emergency protective order may be issued under this section only if the judicial officer finds both of the following:

(1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists.

(2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity.

(e) An emergency protective order may include either of the following specific orders as appropriate:

(1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure.

(2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure.

(f) An emergency protective order shall be issued without prejudice to any person.

(g) An emergency protective order expires at the earlier of the following times:

(1) The close of judicial business on the fifth court day following the day of its issuance.

(2) The seventh calendar day following the day of its issuance.

(h) A peace officer who requests an emergency protective order shall do all of the following:

(1) Serve the order on the restrained person, if the restrained person can reasonably be located.

(2) Give a copy of the order to the protected person, or, if the protected person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child.

(3) File a copy of the order with the court as soon as practicable after issuance.

(4) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

(i) A peace officer shall use every reasonable means to enforce an emergency protective order.

(j) A peace officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.

(k) A peace officer described in subdivision (a) or (b) of Section 830.32 who requests an emergency protective order pursuant to this section shall also notify the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located after issuance of the order.

(*l*) "Judicial officer," as used in this section, means a judge, commissioner, or referee.

(m) A person subject to an emergency protective order under this section shall not own, possess, purchase, or receive a firearm while the order is in effect.

(n) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the laws of this state or by the United States or activities occurring during a labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including, but not limited to, picketing and hand billing.

(*o*) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section.

(p) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven.

Credits

(Added by Stats.1997, c. 169 (A.B.350), § 2. Amended by Stats.1999, c. 659 (S.B.355), § 2; Stats.2003, c. 495 (A.B.1290), § 1; Stats.2013, c. 145 (A.B.238), § 3; Stats.2014, c. 71 (S.B.1304), § 124, eff. Jan. 1, 2015; Stats.2014, c. 559 (S.B.1154), § 1, eff. Jan. 1, 2015.)

West's Ann. Cal. Penal Code § **646.91**, CA PENAL § **646.91**
Current with urgency legislation through Ch. 134 of 2022 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

Cal. Penal Code § 29825

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 9. Special Firearm Rules Relating to Particular Persons (Refs & Annos)
Chapter 2. Person Convicted of Specified Offense, Addicted to Narcotic, or Subject to Court Order (Refs & Annos)
Article 1. Prohibitions on Firearm Access (Refs & Annos)

West's Ann.Cal.Penal Code § **29825**

§ **29825**. Persons restricted from purchasing, receiving, owning, or possessing firearm by temporary restraining order, injunction, or protective order; punishment for violation; probation; notice of restriction on protective order

Effective: January 1, 2020
Currentness

(a) A person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so in any jurisdiction by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order specified in this subdivision, that includes a prohibition from owning or possessing a firearm, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) A person who owns or possesses a firearm knowing that the person is prohibited from doing so in any jurisdiction by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order specified in this subdivision, that includes a prohibition from owning or possessing a firearm, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) If probation is granted upon conviction of a violation of this section, the court shall impose probation consistent with Section 1203.097.

(d) The Judicial Council shall provide notice on all protective orders issued within the state that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that a firearm owned or possessed by the person shall be relinquished to the local law enforcement agency for that jurisdiction, sold to a licensed firearms dealer, or transferred to a licensed firearms dealer pursuant to Section 29830 for the duration of the period that the protective order is in effect, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

Credits

(Added by Stats.2010, c. 711 (S.B.1080), § 6.77, operative Jan. 1, 2012. Amended by Stats.2013, c. 739 (A.B.539), § 3; Stats.2019, c. 726 (A.B.164), § 1, eff. Jan. 1, 2020.)

West's Ann. Cal. Penal Code § **29825**, CA PENAL § **29825**

Current with urgency legislation through Ch. 134 of 2022 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

Cal. Civ. Proc. Code § 527.6(u)

West's Annotated California Codes
Code of Civil Procedure (Refs & Annos)
Part 2. Of Civil Actions (Refs & Annos)
Title 7. Other Provisional Remedies in Civil Actions (Refs & Annos)
Chapter 3. Injunction (Refs & Annos)

West's Ann.Cal.C.C.P. § 527.6

§ 527.6. Harassment; temporary restraining order and order after hearing; procedure; allegations or threats of violence; support person; costs and attorney fees; punishment; confidentiality of information relating to minors

Effective: January 1, 2022
Currentness

(a)(1) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.

(2) A minor, under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, shall be permitted to appear in court without counsel for the limited purpose of requesting or opposing a request for a temporary restraining order or order after hearing, or both, under this section as provided in Section 374.

(b) For purposes of this section, the following terms have the following meanings:

(1) “Course of conduct” is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(2) “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for the person's safety or the safety of the person's immediate family, and that serves no legitimate purpose.

(3) “Harassment” is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

(4) “Petitioner” means the person to be protected by the temporary restraining order and order after hearing and, if the court grants the petition, the protected person.

(5) “Respondent” means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person.

(6) "Temporary restraining order" and "order after hearing" mean orders that include any of the following restraining orders, whether issued ex parte or after notice and hearing:

(A) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls, as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner. On a showing of good cause, in an order issued pursuant to this subparagraph in connection with an animal owned, possessed, leased, kept, or held by the petitioner, or residing in the residence or household of the petitioner, the court may do either or both of the following:

(i) Grant the petitioner exclusive care, possession, or control of the animal.

(ii) Order the respondent to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

(B) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).

(7) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but does not include lawful acts of self-defense or defense of others.

(c) In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members.

(d) Upon filing a petition for orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides an inconsistent rule. The temporary restraining order may include any of the restraining orders described in paragraph (6) of subdivision (b). A temporary restraining order may be issued with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm would result to the petitioner.

(e) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court. If the petition is filed too late in the day to permit effective review, the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(f) A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 21 days, or, if the court extends the time for hearing under subdivision (g), not to exceed 25 days, unless otherwise modified or terminated by the court.

(g) Within 21 days, or, if good cause appears to the court, 25 days from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If a request for a temporary order is not made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(h) The respondent may file a response that explains, excuses, justifies, or denies the alleged harassment, or may file a cross-petition under this section.

(i) At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.

(j)(1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of no more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The order may be renewed, upon the request of a party, for a duration of no more than five additional years, without a showing of any further harassment since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. A request for renewal may be brought any time within the three months before the order expires.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order before the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified before the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive the protected party's right to notice if the protected party is physically present in court and does not challenge the sufficiency of the notice.

(k) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(*l*) In a proceeding under this section, if there are allegations of unlawful violence or credible threats of violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges they are a victim of violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges they are a victim of violence in feeling more confident that they will not be injured or threatened by the other party during the proceedings if the person who alleges the person is a victim of violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(m)(1) Except as provided in paragraph (2), upon the filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(2) If the court determines at the hearing that, after a diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the respondent is evading service or cannot be located, then the court may specify another method of service that is reasonably calculated to give actual notice to the respondent and may prescribe the manner in which proof of service shall be made.

(n) A notice of hearing under this section shall notify the respondent that if the respondent does not attend the hearing, the court may make orders against the respondent that could last up to five years.

(*o*) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(p)(1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing, or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(q)(1) If a respondent named in a restraining order issued after a hearing has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, additional proof of service is not required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, the restraining order or protective order issued at the hearing may be served on the respondent by first-class mail sent to the respondent at the most current address for the respondent available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

“If you have been personally served with this temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this temporary restraining order except for the expiration date is issued at the hearing, a copy of the restraining order will be served on you by mail at the following address: ____.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court."

(4) If information about a minor has been made confidential pursuant to subdivision (v), the notice shall identify the information, specifically, that has been made confidential and shall include a statement that disclosure or misuse of that information is punishable as a contempt of court.

(r)(1) Information on a temporary restraining order or order after hearing relating to civil harassment issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of an order issued under this section, or reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to a law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of orders issued under this section to law enforcement officers responding to the scene of reported harassment.

(5) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for purposes of this section and for purposes of Section 29825 of the Penal Code. Verbal notice shall include the information required pursuant to paragraph (4) of subdivision (q).

(s) The prevailing party in an action brought pursuant to this section may be awarded court costs and attorney's fees, if any.

(t) Willful disobedience of a temporary restraining order or order after hearing granted pursuant to this section is punishable pursuant to Section 273.6 of the Penal Code.

(u)(1) A person subject to a protective order issued pursuant to this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued pursuant to this section to relinquish any firearms the person owns or possesses pursuant to Section 527.9.

(3) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm or ammunition while the protective order is in effect is punishable pursuant to Section 29825 of the Penal Code.

(v)(1) A minor or the minor's legal guardian may petition the court to have information regarding the minor that was obtained in connection with a request for a protective order pursuant to this section, including, but not limited to, the minor's name, address, and the circumstances surrounding the request for a protective order with respect to that minor, be kept confidential.

(2) The court may order the information specified in paragraph (1) be kept confidential if the court expressly finds all of the following:

(A) The minor's right to privacy overcomes the right of public access to the information.

(B) There is a substantial probability that the minor's interest will be prejudiced if the information is not kept confidential.

(C) The order to keep the information confidential is narrowly tailored.

(D) No less restrictive means exist to protect the minor's privacy.

(3)(A) If the request is granted, except as provided in paragraph (4), information regarding the minor shall be maintained in a confidential case file and shall not become part of the public file in the proceeding or any other civil proceeding involving the parties. Except as provided in subparagraph (B), if the court determines that disclosure of confidential information has been made without a court order, the court may impose a sanction of up to one thousand dollars ($1,000). A minor who has alleged harassment, as defined in subdivision (b), shall not be sanctioned for disclosure of the confidential information. If the court imposes a sanction, the court shall first determine whether the person has or is reasonably likely to have the ability to pay.

(B) Confidential information may be disclosed without a court order only in the following circumstances:

(i) By the minor's legal guardian who petitioned to keep the information confidential pursuant to this subdivision or the protected party in an order pursuant to this division, provided that the disclosure is necessary to prevent harassment or is in the minor's best interest. A legal guardian or a protected party who makes a disclosure under this clause is subject to the sanction in subparagraph (A) only if the disclosure was malicious.

(ii) By a person to whom confidential information is disclosed, provided that the disclosure is necessary to prevent harassment or is in the best interest of the minor, no more information than necessary is disclosed, and a delay would be caused by first obtaining a court order to authorize the disclosure of the information. A person who makes a disclosure pursuant to this clause is subject to the sanction in subparagraph (A) if the person discloses the information in a manner that recklessly or maliciously disregards these requirements.

(4)(A) Confidential information shall be made available to both of the following:

(i) Law enforcement pursuant to subdivision (r), to the extent necessary and only for the purpose of enforcing the order.

(ii) The respondent to allow the respondent to comply with the order for confidentiality and to allow the respondent to comply with and respond to the protective order. A notice shall be provided to the respondent that identifies the specific information that has been made confidential and shall include a statement that disclosure is punishable by a monetary fine.

(B) At any time, the court on its own may authorize a disclosure of any portion of the confidential information to certain individuals or entities as necessary to prevent harassment, as defined under subdivision (b), including implementation of the protective order, or if it is in the best interest of the minor.

(C) The court may authorize a disclosure of any portion of the confidential information to any person that files a petition if necessary to prevent harassment, as defined under subdivision (b), or if it is in the best interest of the minor. The party who petitioned the court to keep the information confidential pursuant to this subdivision shall be served personally or by first-class mail with a copy of the petition and afforded an opportunity to object to the disclosure.

(w) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a petitioner from using other existing civil remedies.

(x)(1) The Judicial Council shall develop forms, instructions, and rules relating to matters governed by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section is mandatory.

(2) A temporary restraining order or order after hearing relating to civil harassment issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(y) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, stalked the petitioner, or acted or spoken in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking, future violence, or threats of violence, in an action brought pursuant to this section. A fee shall not be paid for a subpoena filed in connection with a petition alleging these acts. A fee shall not be paid for filing a response to a petition alleging these acts.

(z)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall not be a fee for the service of process by a sheriff or marshal of a protective or restraining order to be issued, if either of the following conditions apply:

(A) The protective or restraining order issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The protective or restraining order issued pursuant to this section is based upon unlawful violence or a credible threat of violence.

(2) The Judicial Council shall prepare and develop forms for persons who wish to avail themselves of the services described in this subdivision.

Credits

(Added by Stats.2013, c. 158 (A.B.499), § 2, operative July 1, 2014. Amended by Stats.2015, c. 401 (A.B.494), § 1, eff. Jan. 1, 2016; Stats.2015, c. 411 (A.B.1081), § 1.5, eff. Jan. 1, 2016; Stats.2016, c. 86 (S.B.1171), § 24, eff. Jan. 1, 2017; Stats.2017, c. 384 (A.B.953), § 1, eff. Jan. 1, 2018; Stats.2019, c. 294 (A.B.925), § 1, eff. Jan. 1, 2020; Stats.2021, c. 156 (A.B.1143), § 1, eff. Jan. 1, 2022.)

West's Ann. Cal. C.C.P. § 527.6, CA CIV PRO § 527.6
Current with urgency legislation through Ch. 134 of 2022 Reg.Sess. Some statute sections may be more current, see credits for details.

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Cal. Civ. Proc. Code § 527.8

West's Annotated California Codes
Code of Civil Procedure (Refs & Annos)
Part 2. Of Civil Actions (Refs & Annos)
Title 7. Other Provisional Remedies in Civil Actions (Refs & Annos)
Chapter 3. Injunction (Refs & Annos)

West's Ann.Cal.C.C.P. § 527.8

§ 527.8. Employees subject to unlawful violence or threat of violence at the workplace; temporary restraining order; order after hearing; constitutional protections for speech and activities

Effective: January 1, 2016
Currentness

(a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an order after hearing on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

(b) For purposes of this section:

(1) “Course of conduct” is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, facsimile, or computer email.

(2) “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) “Employer” and “employee” mean persons defined in Section 350 of the Labor Code. “Employer” also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. “Employee” also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, “employee” also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.

(4) “Petitioner” means the employer that petitions under subdivision (a) for a temporary restraining order and order after hearing.

(5) “Respondent” means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person.

(6) "Temporary restraining order" and "order after hearing" mean orders that include any of the following restraining orders, whether issued ex parte or after notice and hearing:

(A) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the employee.

(B) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).

(7) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(c) This section does not permit a court to issue a temporary restraining order or order after hearing prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members, or other persons employed at the employee's workplace or workplaces.

(e) Upon filing a petition under this section, the petitioner may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the petitioner also files a declaration that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the respondent, and that great or irreparable harm would result to an employee. The temporary restraining order may include any of the protective orders described in paragraph (6) of subdivision (b).

(f) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(g) A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 21 days, or if the court extends the time for hearing under subdivision (h), not to exceed 25 days, unless otherwise modified or terminated by the court.

(h) Within 21 days, or if good cause appears to the court, 25 days from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(i) The respondent may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence.

(j) At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the respondent is a current employee of the entity requesting the order, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the respondent. If the judge finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence, an order shall issue prohibiting further unlawful violence or threats of violence.

(k)(1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed, upon the request of a party, for a duration of not more than three years, without a showing of any further violence or threats of violence since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice.

(*l*) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(m) Upon filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(n) A notice of hearing under this section shall notify the respondent that, if he or she does not attend the hearing, the court may make orders against him or her that could last up to three years.

(*o*) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(p)(1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(q)(1) If a respondent, named in a restraining order issued under this section after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the person does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the person by first-class mail sent to that person at the most current address for the person available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

“If you have been personally served with this temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this restraining order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the following address: ____.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court.”

(r)(1) Information on a temporary restraining order or order after hearing relating to workplace violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(5) At the request of the petitioner, an order issued under this section shall be served on the respondent, regardless of whether the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported unlawful violence or a credible threat of violence involving the parties to the proceedings. The petitioner shall provide the officer with an endorsed copy of the order and proof of service that the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of unlawful violence or a credible threat of violence that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the petitioner or the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order and obtain the respondent's address. The law enforcement officer shall at that time also enforce the order, but may not arrest or take the respondent into custody for acts in violation of the order that were committed prior to the verbal notice of the terms and conditions of the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and constitutes sufficient notice for the purposes of this section and for the purposes of Section 29825 of the Penal Code. The petitioner shall mail an endorsed copy of the order to the respondent's mailing address provided to the law enforcement officer within one business day of the reported incident of unlawful violence or a credible threat of violence at which a verbal notice of the terms of the order was provided by a law enforcement officer.

(s)(1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable pursuant to Section 29825 of the Penal Code.

(t) Any intentional disobedience of any temporary restraining order or order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(u) This section shall not be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(v)(1) The Judicial Council shall develop forms, instructions, and rules for relating to matters governed by this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(2) A temporary restraining order or order after hearing relating to unlawful violence or a credible threat of violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(w) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoken in any other manner that has placed the employee in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(x)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process by a sheriff or marshal of a temporary restraining order or order after hearing to be issued pursuant to this section if either of the following conditions applies:

(A) The temporary restraining order or order after hearing issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The temporary restraining order or order after hearing issued pursuant to this section is based on unlawful violence or a credible threat of violence.

(2) The Judicial Council shall prepare and develop forms for persons who wish to avail themselves of the services described in this subdivision.

Credits

(Added by Stats.1993-94, 1st Ex.Sess., c. 29 (A.B.68), § 2, eff. Nov. 30, 1994. Amended by Stats.1998, c. 581 (A.B.2801), § 3; Stats.1999, c. 661 (A.B.825), § 2; Stats.2000, c. 688 (A.B.1669), § 6; Stats.2002, c. 1008 (A.B.3028), § 3; Stats.2003, c. 498 (S.B.226), § 3; Stats.2005, c. 467 (A.B.429), § 1; Stats.2006, c. 476 (A.B.2695), § 2; Stats.2010, c. 178 (S.B.1115), § 21, operative Jan. 1, 2012; Stats.2010, c. 572 (A.B.1596), § 2, operative Jan. 1, 2012; Stats.2011, c. 285 (A.B.1402), § 2; Stats.2011, c. 101 (A.B.454), § 2; Stats.2012, c. 162 (S.B.1171), § 13; Stats.2015, c. 411 (A.B.1081), § 2, eff. Jan. 1, 2016.)

West's Ann. Cal. C.C.P. § 527.8, CA CIV PRO § 527.8
Current with urgency legislation through Ch. 134 of 2022 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

Cal. Civ. Proc. Code § 527.9

West's Annotated California Codes
Code of Civil Procedure (Refs & Annos)
Part 2. Of Civil Actions (Refs & Annos)
Title 7. Other Provisional Remedies in Civil Actions (Refs & Annos)
Chapter 3. Injunction (Refs & Annos)

West's Ann.Cal.C.C.P. § 527.9

§ 527.9. Relinquishment of firearms; persons subject to protective orders

Effective: January 1, 2012
Currentness

(a) A person subject to a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 or subject to a restraining order issued pursuant to Section 136.2 of the Penal Code, or Section 15657.03 of the Welfare and Institutions Code, shall relinquish the firearm pursuant to this section.

(b) Upon the issuance of a protective order against a person pursuant to subdivision (a), the court shall order that person to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6 of the Penal Code. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 48 hours after receiving the order. In the event that it is necessary to continue the date of any hearing due to a request for a relinquishment order pursuant to this section, the court shall ensure that all applicable protective orders described in Section 6218 of the Family Code remain in effect or bifurcate the issues and grant the permanent restraining order pending the date of the hearing.

(c) A local law enforcement agency may charge the person subject to the order or injunction a fee for the storage of any firearm relinquished pursuant to this section. The fee shall not exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, “actual cost” means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Section 26700 of the Penal Code or to the person relinquishing the firearm.

(d) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (b) shall state on its face that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. Nothing in this section shall limit a respondent's right under existing law to petition the court at a later date for modification of the order.

(e) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (b) shall prohibit the person from possessing or controlling any firearm for the duration of the order. At the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the respondent, within five days after the expiration of the

relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the respondent is prohibited from possessing a firearm because the respondent is in any prohibited class for the possession of firearms, as defined in Chapter 2 (commencing with Section 29800) and Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code, or (3) another successive restraining order is issued against the respondent under this section. If the local law enforcement agency determines that the respondent is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm, the respondent shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 26700 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

(f) The court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. In any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.

(g) During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to this section. A licensed gun dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the respondent that are in the possession of the local law enforcement agency have been sold by the respondent to the licensed gun dealer, shall be given possession of those firearms, at the location where a respondent's firearms are stored, within five days of presenting the local law enforcement agency with a bill of sale.

Credits

(Added by Stats.2003, c. 498 (S.B.226), § 4. Amended by Stats.2006, c. 474 (A.B.2129), § 1; Stats.2010, c. 178 (S.B.1115), § 23, operative Jan. 1, 2012; Stats.2010, c. 572 (A.B.1596), § 5, operative Jan. 1, 2012; Stats.2011, c. 285 (A.B.1402), § 4.)

West's Ann. Cal. C.C.P. § 527.9, CA CIV PRO § 527.9
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