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APPENDIX A
NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CYNTHIA WHEELER; CURTIS WHEELER, Plaintiffs-Appellants, ROGER E. NAGHASH, counsel for plaintiffs, Appellant, v. COUNTY OF ORANGE, a political subdivision of the State of California, ITS PUBLIC WORKS DIVISION, ITS CITATION PROCESSING CENTER; SHANE L. SILEBY, individually, and in his official capacity as Director, County of Orange-Public Works; SOCORRO VILLEGRAS, individually, and in her official capacity as Officer; DOES, 1 Through 100, Inclusive, Defendants-Appellees.	No. 22-55662 D.C. No. 8 :20-cv-01264- MCS-DFM MEMORANDUM* (Filed Nov. 8, 2023)
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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Central District of California
Mark C. Scarsi, District Judge, Presiding

Submitted October 19, 2023**
Pasadena, California

Before: PAEZ and H.A. THOMAS, Circuit Judges, and
R. COLLINS,*** District Judge.

Plaintiffs Cynthia Wheeler and Curtis Wheeler (“the Wheelers”) appeal the district court’s decision to take Defendants County of Orange, Shane L. Sileby, and Socorro Villegas’ (collectively, Defendants) motion to dismiss the Wheelers’ First Amended Complaint (FAC) under submission without oral argument. They also appeal the district court’s decision to dismiss some of their claims. The Wheelers’ attorney, Roger E. Naghash, appeals the district court’s decision to sanction him for failing to appear at the hearing for the motion. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

“We review de novo a district court’s order granting a motion to dismiss for failure to state a claim.” *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1175 (9th Cir. 2021) (citing *Dunn v. Castro*, 621 F.3d 1196, 1198 (9th Cir. 2010)). We review for abuse of discretion the district court’s decisions not to hold oral argument on Defendants’ motion and to impose sanctions against

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

Naghash. *See Spradlin v. Lear Siegler Mgmt. Servs. Co., Inc.*, 926 F.2d 865, 867 (9th Cir. 1991) (reviewing for abuse of discretion the denial of a request for oral argument); *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1087 (9th Cir. 2021) (reviewing for abuse of discretion the imposition of sanctions).

1. The Wheelers argue that the district court violated their notice and due process rights by taking Defendants' motion under submission without oral argument. There is no constitutional due process right to oral argument on a motion, *Toquero v. I.N.S.*, 956 F.2d 193, 196 n.4 (9th Cir. 1992), and “[b]y rule or order, [a] court may provide for submitting and determining motions on briefs, without oral hearings.” Fed. R. Civ. P. 78(b).

2. The Wheelers argue that their causes of action are not time-barred because Defendants' injuries against the Wheelers are “ongoing.” Almost all of the allegations in the FAC relate to events that occurred more than six months before the Wheelers filed a written claim under Cal. Gov't Code Section 911.2 and Plaintiffs point to no well-pleaded factual allegations in the FAC showing an ongoing violation. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”).

3. Naghash violated the Central District of California's Local Rule 7-14, which states that “[c]ounsel for the moving party and the opposing party shall be

present on the hearing date.” Sanctions may be imposed for violations of a district court’s local rules, *Smith v. Frank*, 923 F.2d 139, 142 (9th Cir. 1991), and “we give great deference to a district court’s interpretation of its own local rules.” *Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152, 1157 (9th Cir. 2018) (citing *Bias v. Moynihan*, 508 F.3d 1212, 1223 (9th Cir. 2007)).

AFFIRMED.

APPENDIX B
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CURTIS WHEELER and CYNTHIA WHEELER, Plaintiffs, v. COUNTY OF ORANGE, SHANE L. SILEBY, SOCORRO VILLEGRAS, and DOES 1-100, Defendants.	Case No. 8:20-cv- 01264-MCS-DFM JUDGMENT (Filed Jul. 11, 2022)
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Pursuant to the Court's Order Dismissing Case, it is ordered, adjudged, and decreed that judgment is entered in favor of Defendants County of Orange, Shane L. Sileby, and Socorro Villegas and against Plaintiffs Curtis and Cynthia Wheeler. The case is dismissed with prejudice, and Plaintiffs shall take nothing from this action.

IT IS SO ORDERED.

Dated: July 11, 2022

/s/ Mark C. Scarsi
MARK C. SCARSI
UNITED STATES DISTRICT JUDGE

APPENDIX CUNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CURTIS WHEELER et al.,	Case No. 8:20-cv-01264- MCS-DFM
Plaintiffs,	ORDER GRANTING MOTION TO DISMISS (ECF NO. 39) AND IMPOSING SANCTIONS
v.	
COUNTY OF ORANGE et al.,	
Defendants.	(Filed Jun. 22, 2022)

Defendants County of Orange, Shane L. Silsby,¹ and Socorro Villegas move to dismiss all ten claims in the First Amended Complaint of Plaintiffs Curtis and Cynthia Wheeler. (Mot., ECF No. 39.) The Wheelers opposed the motion, (Opp'n, ECF No. 40- 1), and Defendants replied, (Reply, ECF No. 41). The Court held a hearing on the motion but took the matter under submission after Plaintiffs' counsel failed to appear. (Mins., ECF No. 43.) The Court ordered Plaintiffs' counsel to show cause why sanctions should not be imposed. (OSC, ECF No. 44.) Counsel submitted a declaration in response. (Naghsh Decl., ECF No. 45.) The Court deems the motion, and counsel's response to the Court's order to show cause, appropriate for resolution

¹ The pleadings identify this individual as Shane L. Sileby. (E.g., FAC ¶ 7, ECF No. 38.) The Court uses the spelling provided in Defendants' brief.

without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

I. BACKGROUND

This case arises from Plaintiffs' repeated conflicts with the County of Orange (the "County") and its employees. On April 6, 2016, the Wheelers filed an application with the Southern California Gas Company and the County to relocate a gas line feeding their property in Rossmoor, California (the "Property"). (FAC ¶ 9, ECF No. 38.) In May 2016, Villegas, a code enforcement officer for the County, visited the Property and asked the person who answered the door, Plaintiffs' son, a series of "personal questions" about who he was, who lived in the house, and other questions "he was not comfortable answering." (*Id.* ¶¶ 6, 11–12.) Plaintiffs' son asked Villegas to leave, and she complied. (*Id.* ¶ 11.) Plaintiffs allege she left the Property visibly upset and with the intent to retaliate against them for denying her access to inspect the Property. (*Id.* ¶ 12.)

The FAC recounts a series of events that took place from May 2016 to February 2020. (*Id.* ¶ 13.) Plaintiffs allege, *inter alia*, that the County and its officers made unlawful visits to the Property to harass them, imposed false requirements for permits they needed to get to make renovations to the Property, issued "false and fabricated citation[s] . . . for the purpose of harassment," and produced "poor quality" pictures and "fabricat[ed]" evidence at an administrative hearing. (*Id.* ¶¶ 13–17.) One of the citations was

upheld after an administrative hearing. (*Id.* ¶ 13.) Plaintiffs sought review of the administrative decision in the Orange County Superior Court. (*Id.*) The state court denied the appeal. (RJN Ex. 3, ECF No. 39-1.)²

Plaintiffs assert ten claims: (1) violation of 42 U.S.C. § 1983; (2) taking without just and proper compensation; (3) elder abuse and financial elder abuse; (4) willful failure to enforce law and negligent supervision; (5) intentional infliction of emotional distress; (6) intentional misrepresentation and concealment; (7) abuse of power and corruption; (8) malicious prosecution and abuse of process; (9) theft by false pretenses; and (10) declaratory and injunctive relief. (FAC ¶¶ 26–102.)

II. MOTION TO DISMISS

A. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) allows an attack on the pleadings for “failure to state a claim upon which relief can be granted.” “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when

² The Court takes judicial notice of this order issued by the Orange County Superior Court. Fed. R. Evid. 201(b); *see Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (“We may take judicial notice of court filings and other matters of public record.”).

the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

The determination of whether a complaint satisfies the plausibility standard is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. Generally, a court must accept the factual allegations in the pleadings as true and view them in the light most favorable to the plaintiff. *Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017); *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). But a court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

B. Discussion

The Court deems Plaintiffs’ failure to appear through counsel of record at the hearing as their consent to the granting of the motion and grants the motion on that basis. C.D. Cal. R. 7-14. The Court also grants the motion on the merits, as set forth below.

1. Timely Government Claim Presentation

Defendants assert that California Government Code section 911.2 (“Section 911.2”) restricts Plaintiffs from pursuing any claims that accrued before September 2019 because Plaintiffs failed to timely present

them in a government tort claim. (Mot. 14–15.) Plaintiffs dispute Defendants’ position but do not offer any substantive argument. (Opp’n 9.) The Court agrees with Defendants that Section 911.2 largely bars Plaintiffs’ untimely presented claims.

The California Government Claims Act requires an individual who seek to bring tort claims against a public entity to file a written claim to the public entity at issue within six months of the date on which the cause of action accrued. Cal. Gov’t Code § 911.2. A claimant may not bring a civil suit for damages until the public entity acts upon the government tort claim. *Id.* § 945.4. Failure to present a timely government tort claim “bars a plaintiff from filing a lawsuit against that entity.” *State v. Superior Ct. (Bodde)*, 32 Cal. 4th 1234, 1239 (2004). Presenting a claim to the public entity within the statutory window is “a condition precedent to the maintenance of any cause of action against the public entity and is therefore an *element* that a plaintiff is required to prove in order to prevail.” *DiCampli-Mintz v. County of Santa Clara*, 55 Cal. 4th 983, 990 (2012) (internal quotation marks omitted).

Here, Plaintiffs offer only conclusory allegations in the FAC concerning their presentation of a government tort claim. (FAC ¶ 4 (“Plaintiffs have complied with the California Claims statue [sic] and filed two separate claims pursuant to California Government Code Sections 910 et. [sic] seq.”).) The state law claims may be dismissed on this basis. *See DiCampli-Mintz*, 55 Cal. 4th at 990; *see also Iqbal*, 556 U.S. at 678. Nonetheless, the Court considers the single government

claim in the record: a claim dated March 16, 2020 that complained of events that took place between May 2016 and February 2020. (RJN Ex. 1, ECF No. 39-1.)³ The Court assumes Plaintiffs submitted the government claim on the same day Plaintiffs' counsel signed it.⁴ In the government claim, all but one of the acts of which Plaintiffs complain took place over six months before its submission. (RJN Ex. 1 ¶ 11.)

Plaintiffs summarily argue that Defendants' wrongful conduct continued after the events described in the government claim and that Defendants' harassment "continues as of present," so their legal claims have not yet accrued. (Opp'n 8–9.) However, Plaintiffs' pleading does not describe any instance of wrongdoing

³ The Court deems the government claim incorporated by reference into the FAC. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) ("A court may consider evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion."); *see also Moore v. City of Vallejo*, 73 F. Supp. 3d 1253, 1256 (E.D. Cal. 2014) (considering a government tort claim because it "is a matter of public record and is necessarily relied on by Plaintiffs in bringing their state law claims").

⁴ Defendants assert that Plaintiffs submitted the claim on March 27, 2020. (Mot. 13.) The document supporting their position, (RJN Ex. 2, ECF No. 39-1), is not subject to judicial notice for the fact that Plaintiffs submitted the claim on that date. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) ("Just because the document itself is susceptible to judicial notice does not mean that every assertion of fact within that document is judicially noticeable for its truth."). Notwithstanding, Plaintiffs' claims for relief are barred regardless of whether Plaintiffs presented their government tort claim on March 16 or March 27.

that occurred after the events complained of in the government claim, and the FAC contains only conclusory allegations that Defendants' conduct is or was "pervasive, ongoing, and continual." (FAC ¶ 16.) The Court cannot consider new factual allegations presented for the first time in Plaintiffs' brief, *see Schneider v. Cal. Dep't. of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998), and the Court declines to accept the conclusion that Defendants' conduct is ongoing without well-pleaded factual support, *Iqbal*, 556 U.S. at 678. Plaintiffs' government claim and operative pleading both describe a series of acts that occurred up to February 2020. (FAC ¶ 13; RJD Ex. 1 ¶ 11.) The March 2020 government tort claim was untimely to the extent Plaintiffs complained of acts that took place over six months before Plaintiffs submitted the claim. Plaintiffs offer no other government tort claim in which they timely presented their grievances concerning pre-September 2019 or post-March 2020 acts.

The FAC is not a model of clarity, so the Court must consider the effect of Plaintiffs' largely untimely government claim. First, the Court determines whether the claims survive to the extent they rest on events that took place within six months of Plaintiffs' government claim—that is, events that occurred on or after September 16, 2019. The only event which Plaintiffs allege took place after that date is a February 18, 2020 "Official Notice of Delinquent Administrative Citation." (FAC ¶ 13.) Plaintiffs offer no explanation of what this notice is, how it plays a role in their claims for relief, or why it was wrongfully issued. Accordingly,

to the extent Plaintiffs' government claim was timely presented, the claims for relief in the FAC must be dismissed for failure to plead enough information to provide adequate notice to Defendants of the facts upon which the claims rest. On its own motion, the Court dismisses all the claims in the FAC to the extent they rely on the February 2020 notice for failure to comply with Federal Rule of Civil Procedure 8(a)(2). *See Martin v. Medtronic, Inc.*, 63 F. Supp. 3d 1050, 1061 (D. Ariz. 2014) (citing *Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995), for the proposition that courts may dismiss a claim *sua sponte* for failure to comply with Rule 8(a)(2)); *see also Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (approving *sua sponte* dismissal of a claim "without notice where the claimant cannot possibly win relief"); *Baker v. Dir., U.S. Parole Comm'n*, 916 F.2d 725, 726 (D.C. Cir. 1990) (adopting *Omar* and observing that *sua sponte* dismissal "is practical and fully consistent with plaintiffs' rights and the efficient use of judicial resources"). Since this was the only event upon which Plaintiffs timely presented a government claim, the claims subject to Section 911.2 may be dismissed in their entirety as untimely presented.

Second, the Court considers which claims are barred. Although Defendants appear to contend all claims were untimely presented, (see Mot. 12), Section 911.2 does not require presentation of federal claims. *See, e.g., Robinson v. Alameda County*, 875 F. Supp. 2d 1029, 1044 (N.D. Cal. 2012) ("The filing requirement [of the Government Claims Act] does not apply to . . .

causes of action based upon federal law."); *Williams v. Horvath*, 16 Cal. 3d 834, 841 (1976) (concluding that Section 911.2 is inapplicable to § 1983 claims, as "the purposes underlying section 1983 . . . may not be frustrated by state substantive limitations couched in procedural language"). Thus, Plaintiffs' claims may proceed insofar as they are brought under federal law.

The first claim for violation of 42 U.S.C. § 1983 is a federal claim on its face, so it may proceed. Plaintiffs bring the second claim under the federal and state constitutional protections against takings. The Court construes the claim as advancing two legal theories: one under state law, and one under federal law. The untimely state law component of the second claim is subject to dismissal.

The third through ninth claims rest on state law theories. Nonetheless, in a boilerplate paragraph concerning damages, the claims all reference the U.S. Constitution. (FAC ¶¶ 52, 58, 66, 73, 80, 88, 95, 102.) On its own motion, the Court dismisses the third through ninth claims insofar as they rest on federal law for failure to comply with Rule 8(a)(2). *See Martin*, 63 F. Supp. 3d at 106; *Omar*, 813 F.2d at 991; *Baker*, 916 F.2d at 726. The remaining components of the third through ninth claims are subject to dismissal.

Claims for injunctive, specific, or declaratory relief also are not subject to Section 911.2. *See Robinson*, 875 F. Supp. 2d at 1044. The tenth claim may not be dismissed for failure to timely present it, but the Court addresses the claim further below.

Third, the Court examines whether the claims against Silsby and Villegas are barred. The claim presentation requirement of Section 911.2 applies to claims brought against county employees in their official capacities. *Taylor v. Mitzel*, 82 Cal. App. 3d 665, 672 (1978); *see Cal. Gov't Code § 950.2* (applying claim presentation bar to “a cause of action against a public employee or former public employee for injury resulting from an act or omission in the scope of his employment as a public employee”). “It is unclear whether . . . a plaintiff may plead around the California Tort Claims Act by asserting a claim against a public official in his individual capacity. . . .” *Golden Day Schs., Inc. v. Pirillo*, 118 F. Supp. 2d 1037, 1048 (C.D. Cal. 2000). Plaintiffs nominally assert their claims against Silsby and Villegas in their individual and official capacities, but their pleading does not specify which claims they bring against these defendants in which capacities. (FAC ¶¶ 6–7.) Nonetheless, the FAC indicates these individuals acted “[a]t all times” as employees of the County. (*Id.*; *see id.* ¶¶ 55, 65, 83 (“Defendants, Villegas and Sileby’s [sic] wrongful and unlawful behaviors and conducts were within the scope of their employments for Defendant, County of Orange.”); *id.* at p. 27 (“Government Entities Defendants failed to adequately supervise and secure the public against the unlawful activities of individuals who were acting within the scope of their employment, employed by County of Orange.”).) Tellingly, Plaintiffs refer to Villegas and Silsby as “Government Actors” in their brief. (Opp’n 8.) Because Plaintiffs allege Villegas and Silsby acted within the scope of their employment for the County,

they had to comply with Section 911.2 to bring suit against the individual defendants. Cal. Gov't Code § 950.2. The state law claims against the individual defendants are barred.

Accordingly, the Court dismisses the third through ninth claims in their entirety and the second claim insofar as it rests on state law. The Court declines to reach Defendants' other arguments specific to the state law claims and turns to the federal claims.

2. 42 U.S.C. § 1983 Claim

“To make out a cause of action under section 1983, plaintiffs must plead that (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes.” *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986). “A government entity may not be held liable under 42 U.S.C. § 1983, unless a policy, practice, or custom of the entity can be shown to be a moving force behind a violation of constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monné v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978)). To state a cognizable claim against a government entity, a plaintiff must show “(1) that the plaintiff possessed a constitutional right of which she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff’s constitutional right; and, (4) that the policy is the moving force behind the constitutional violation.” *Id.* (cleaned up).

Plaintiffs assert Defendants violated their Fourth, Fifth, and Fourteenth Amendment rights by establishing and enforcing “a ‘Policy’ of creating and fabricating fictitious rules, regulations, and/or ordinances,” which interfered with their “constitutional rights to use, enjoyment, ownership, and privacy of the Subject Property.” (FAC ¶¶ 29–30; *see id.* ¶¶ 26–37.)⁵

Defendants contend the claim against the County must be dismissed for failure to identify a policy or custom that was the moving force behind violation of Plaintiffs’ constitutional rights. (Mot. 19–20.) Instead of responding to this argument, Plaintiffs offer a different gloss on their § 1983 claim. (Opp’n 10–11.) The Court cannot consider Plaintiffs’ new, unpled theory and declines to decide whether the theory may survive a Rule 12(b)(6) challenge. *See Schneider*, 151 F.3d at 1197 n.1. Instead, the Court examines whether Plaintiffs have articulated an actionable policy or custom and determines they have not. Plaintiffs’ allegations concerning their disputes with the County and its employees over the Property and their property rights do not give rise to an inference that the County has a policy of creating “fictitious” rules. Instead, the facts are equally open, if not more susceptible, to an interpretation that the County created permitting rules before Plaintiffs became aware of them, and that Plaintiffs failed to comply with those rules in several

⁵ Plaintiffs also rest the claim on their rights “under the laws and statutes of the State of California,” (FAC ¶ 27), but a § 1983 claim does not lie for violation of state law, *see Gibson*, 781 F.2d at 1338.

ways over several years. (See FAC ¶ 13.) *See also Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014) (“[W]hen faced with two possible explanations, only one of which can be true and only one of which results in liability, plaintiffs cannot offer allegations that are merely consistent with their favored explanation but are also consistent with the alternative explanation.” (internal quotation marks omitted)). The claim against the County must be dismissed.

Defendants contend the claim brought against Villegas and Silsby in their official capacities must be dismissed as duplicative of the claim against the County. (Mot. 20 (citing *Luke v. Abbott*, 954 F. Supp. 202, 205 (C.D. Cal. 1997).) Plaintiffs do not respond to this argument, so the Court deems it conceded and dismisses the official-capacity claim against Villegas and Silsby. *See, e.g., John-Charles v. California*, 646 F.3d 1243, 1247 n.4 (9th Cir. 2011) (deeming issue waived where party “failed to develop any argument”); *City of Arcadia v. EPA*, 265 F. Supp. 2d 1142, 1154 n.16 (N.D. Cal. 2003) (“[T]he implication of this lack of response is that any opposition to this argument is waived.”).

Defendants do not move to dismiss the first claim as asserted against the individual defendants in their individual capacities. (See Mot. 18–20.) The Court on its own motion dismisses the claim as to the individual defendants in their individual capacities. First, Plaintiffs do not offer any nonconclusory facts describing how Silsby performed *any* act relevant to their claims, let alone an act that deprived Plaintiffs of their

constitutional rights. (See FAC ¶ 7 (identifying Silsby's title and asserting he "fabricated and manufactured evidence and documents and caused significant and irreparable damage to Plaintiffs").) Second, in their pages-long timeline of "harassments, other unlawful conducts, and behaviors" attributed generally to "Defendants' Orange County 'Policies,'" Plaintiffs do not clearly articulate which defendant did which act violating which constitutional rights. (FAC ¶ 13.) For example, Plaintiffs identify several facts involving Villegas, but the FAC does not clearly indicate whether Plaintiffs attribute her acts to her individually, to her in her official capacity, or to a County policy. The individual defendants sued in their individual capacities do not have fair notice of the facts upon which Plaintiffs maintain their § 1983 claim against them, so the claim against them must be dismissed. *See Martin*, 63 F. Supp. 3d at 106; *Omar*, 813 F.2d at 991; *Baker*, 916 F.2d at 726.

The Court dismisses the first claim.

3. Taking Claim

The Takings Clause of the Fifth Amendment, made applicable to the states through the Fourteenth Amendment, provides that public property may not be taken for public use without just compensation. *Ballinger v. City of Oakland*, 24 F.4th 1287, 1292 (9th Cir. 2022). The Supreme Court recognizes two species of takings claims: physical takings, wherein the government carries out a physical appropriation of property,

and regulatory takings, wherein the government restricts a property owner's ability to use property. *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021); *CDK Glob. LLC v. Brnovich*, 16 F.4th 1266, 1281 (9th Cir. 2021).

In their second claim, Plaintiffs assert that Defendants' actions amounted to an unlawful taking of Plaintiffs' property and property rights without just and proper compensation. (FAC ¶¶ 38–44.) The Court agrees with Defendants that the FAC is uncertain as to which property or property rights Defendants wrongfully took through which conduct enforcing which regulations. The FAC does not even clearly indicate whether Plaintiffs bring their claim based on a theory of a physical or regulatory taking—or both. (See *id.* ¶ 39 (alleging an “unlawful taking of Plaintiffs’ property and property rights”); compare *id.* ¶ 42 (alleging Defendants unlawfully took “Wheeler-s’ [sic] property”), *with id.* ¶ 43 (alleging Defendants “refuse to cease and decease [sic] their unlawful taking of Plaintiffs, Wheeler-s’ [sic] property rights”)). Assuming the claim concerns a regulatory taking, (see Mot. 23–25 (applying regulatory taking doctrines); Opp’n 15 (citing Supreme Court authority on regulatory takings)), Plaintiffs do not plead facts from which the Court may infer the County rendered a final decision resolving any question about how the government actions at

issue apply to the Property. *See Pakdel v. City & County of San Francisco*, 141 S. Ct. 2226, 2228, 2230 (2021).⁶

Plaintiffs set forth a nine-page timeline recounting their interactions with the County and its employees over four years, but they leave to Defendants to decipher which of these actions amounted to a taking, and which actions constituted a final decision by the County. (See FAC ¶ 13.) This “prolix [and] confusing” style of pleading does not provide Defendants fair notice of the claim. *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996); *see Iqbal*, 556 U.S. at 678.

The Court dismisses the federal component of the second claim.

4. Claim for Declaratory and Injunctive Relief

In their tenth claim, Plaintiffs ask for declaratory and injunctive relief in the form of orders “prevent[ing] Defendants from engaging in the unlawful conducts against Plaintiffs,” “invalidating any and all citations” and related notices, and “restraining individual Defendants from entering the Subject Property” and contacting Plaintiffs. (FAC ¶ 101; *see id.* ¶¶ 96–102.) On its own motion, the Court dismisses the tenth claim on

⁶ Defendants invoke the two-prong test articulated in *Rancho De Calistoga v. City of Calistoga*, 800 F.3d 1083 (9th Cir. 2015), (Mot. 23–24), but the second prong of the test is no longer good law, *see Knick v. Township of Scott*, 139 S. Ct. 2162, 2177–79 (2019). Nonetheless, because Defendants’ motion placed the ripeness of Plaintiffs’ claims in dispute, the Court evaluates the issue.

the basis that it is not cognizable as an independent claim. The tenth claim seeks certain types of remedies without advancing an adequately pleaded, independent legal theory for which these remedies may be awarded. *See, e.g., Lopez v. Wells Fargo Bank, N.A.*, 727 F. App'x 425, 426 (9th Cir. 2018) ("[T]he district court properly dismissed Lopez's request for declaratory relief because Lopez had no claim upon which to request relief or remedies."); *A.B. Concrete Coating Inc. v. Wells Fargo Bank*, 491 F. Supp. 3d 727, 737–38 (E.D. Cal. 2020) (observing that claims for declaratory and injunctive relief are not independent causes of action); *McDowell v. Watson*, 59 Cal. App. 4th 1155, 1159 (1997) ("The gravamen, or essential nature, of a cause of action is determined by the primary right alleged to have been violated, not by the remedy sought." (citations omitted)).

The Court dismisses the tenth claim.

5. Other Issues

Although the issues identified above require dismissal of the FAC, in the interest of guiding the litigation forward, the Court briefly addresses and rejects several of Defendants' other arguments. Defendants contend that Plaintiffs' claims should be dismissed under res judicata, collateral estoppel, and *Rooker-Feldman* doctrines. (Mot. 15–18.) These arguments might have merit, but the Court lacks sufficient information to accept them. All three doctrines require a final decision or judgment. *See Furnace v. Giurbino*, 838 F.3d

1019, 1023 (9th Cir. 2016) (“In California, claim preclusion arises if a second suit involves: (1) the same cause of action (2) between the same parties or parties in privity with them (3) after a final judgment on the merits in the first suit.” (cleaned up)); *White v. City of Pasadena*, 671 F.3d 918, 927 (9th Cir. 2012) (noting that issue preclusion requires, *inter alia*, that the issue “have been necessarily decided in the former proceeding” and that “the decision in the former proceeding must be final and on the merits” (internal quotation marks omitted));⁷ *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (“The *Rooker-Feldman* doctrine . . . is confined to . . . cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.”). Although Plaintiffs acknowledge an adverse ruling in the Orange County Superior Court, (see Opp’n 12– 15), Defendants only submitted a single document from that proceeding: a one-page minute order denying Plaintiffs’ request for a writ of mandate. (RJN Ex. 3, ECF No. 39-1.) Defendants offer no authority upon which the Court may conclude this minute order constitutes a final judgment. Regardless, Defendants have not lodged the operative pleading from the superior court proceeding or any documents from the underlying administrative proceeding. The Court does not have

⁷ California preclusion doctrines apply here because Defendants seek to invoke “the preclusive effect of a state administrative decision or a state court judgment.” *White*, 671 F.3d at 926.

enough information about the prior proceedings to determine that issues or claims adjudged by the state court are identical or similar to those presented here or that Plaintiffs seek to overturn a state court judgment through this action. The Court rejects Defendants' arguments without prejudice to their renewal on a more robust record.

Defendants also argue Plaintiffs cannot plead punitive damages against the County. (Mot. 34.) Rule 12(b)(6) is not a proper vehicle for this argument. *See Saroya v. Univ. of Pac.*, 503 F. Supp. 3d 986, 1000 (N.D. Cal. 2020) (“[A] complaint is not subject to a motion to dismiss for failure to state a claim under Rule 12(b)(6) because the prayer seeks relief that is not recoverable as a matter of law.”). The Court renders no opinion on the availability of punitive damages in this action.

Defendants advance new arguments in the reply concerning the untimeliness of Plaintiffs' second, fifth, sixth, eighth, and ninth claims. (Reply 6.) The Court has not considered these arguments for dismissal. *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (“The district court need not consider arguments raised for the first time in a reply brief.”).

6. Leave to Amend

As a general rule, leave to amend a dismissed complaint should be freely granted unless it is clear the complaint could not be saved by any amendment. Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

The Court doubts Plaintiffs' dismissed state law claims can be saved by amendment. As discussed, the state law claims appear to be barred under Section 911.2. Nonetheless, Plaintiffs allege they presented a second government claim outside the record of this motion. (FAC ¶ 4.) Plaintiffs might be able to plead facts showing they timely presented a claim. Additional facts might cure the defects in the federal claims as well. In an abundance of caution, and in light of the Ninth Circuit policy of granting leave to amend with "extreme liberality," *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) (internal quotation marks omitted), the Court gives Plaintiffs leave to amend. The Court advises Plaintiffs and counsel to consider carefully whether they can submit an amended complaint consistent with Federal Rule of Civil Procedure 11 (b). Plaintiffs may file an amended complaint no later than 14 days from the date of this Order. Failure to do so will result in dismissal under Federal Rule of Civil Procedure 41(b). Leave to add new defendants or claims must be sought by a separate, properly noticed motion.

III. SANCTIONS

"All federal courts are vested with inherent powers enabling them to manage their cases and court-rooms effectively and to ensure obedience to their orders." *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1136 (9th Cir. 2001). Through these inherent powers, courts have the ability to address litigation abuses by assessing fines. *Id.* Local

Rule 83-7 expressly authorizes the Court to impose monetary sanctions for willful, grossly negligent, or reckless violation of the local rules.

Local Rule 7-14 requires counsel to be present at motion hearings. Plaintiffs' sole counsel of record, Roger E. Naghash, did not appear at the motion hearing on March 7, 2022. (Mins., ECF No. 43.) In his response to the Court's order to show cause why sanctions should not be imposed, Mr. Naghash explains that he thought he had to appear for a hearing that morning in an unrelated matter in state court. He seems to admit, however, that he was mistaken: there was no state court hearing that morning. (*See* Naghash Decl. ¶¶ 10, 15.) He directed his associate, Nicole B. Naghash, to appear in his stead in federal court. (Naghash Decl. ¶¶ 13–14, 17.)

This explanation is unsatisfactory. Ms. Naghash remains unaffiliated with Plaintiffs in the electronic case record. Parties must appear by counsel of record.⁸ Mr. Naghash did not file any document indicating Ms. Naghash had any authority to represent Plaintiffs at the hearing or for any other purpose. In any event, counsel had an obligation to timely seek relief from his perceived scheduling conflict. Counsel could have, but

⁸ The Court notes this in its standing order for civil cases. Due to the procedural history of this case, the standing order has not been filed in the case docket. Regardless, the Court expects the parties in this and every action assigned to this judicial officer to comply with the applicable rules, procedures, and standing orders publicly available on the Court's website at <https://www.cacd.uscourts.gov/honorable-mark-c-scarsi>.

elected not to, seek by stipulation or application an order continuing the hearing, authorizing Ms. Naghash to argue the motion, or granting other appropriate relief before the hearing. Instead, counsel elected to send to the hearing a stranger to this case to represent his clients. Counsel's decision risked—and resulted in—an adverse ruling on the motion.

For these reasons, the Court deems counsel's failure to appear a willful, grossly negligent, or reckless violation of Local Rule 7-14 and deems monetary sanctions appropriate. The Court sanctions Mr. Naghash \$300, which shall be paid to the Clerk of Court within 14 days of this Order.

IV. CONCLUSION

The motion is granted. Plaintiffs may file an amended complaint within 14 days. Roger E. Naghash shall remit sanctions in the amount of \$300 to the Clerk of Court within 14 days.

IT IS SO ORDERED.

Dated: June 22, 2022

/s/ Mark C. Scarsi
MARK C. SCARSI
UNITED STATES DISTRICT JUDGE

cc: Fiscal Department

APPENDIX D
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
THE HONORABLE MARK C. SCARSI,
JUDGE PRESIDING

CURTIS WHEELER, et al.,)
)
)
)
)
)
)
)
vs.)
)
COUNTY OF ORANGE, et al.,)
)
)
)
)
Defendants.)

REPORTER'S TRANSCRIPT ON APPEAL

Los Angeles, California

Monday, March 7, 2022, 9:04 A.M.

Motion to Dismiss First Amended Complaint

PAT CUNEO CSR 1600, CRR-CM
Official Reporter
First Street Courthouse
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Los Angeles, California 90012
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**APPEARANCES OF COUNSEL:
FOR THE PLAINTIFFS:**

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FOR THE DEFENDANTS:

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**[3] LOS ANGELES, CALIFORNIA; MONDAY,
MARCH 7, 2022; 9:04 A.M.**

-oOo-

THE CLERK: Calling Item No. 1, SACV 20-1264, Curtis Wheeler, et al., v. The County of Orange, et al.

Counsel state your appearance, please.

MS. MITCHELL: Good morning, Your Honor. April Mitchell on behalf of defendants County of Orange, Socorro Villegas, and Shane Sileby.

THE COURT: Good morning.

MS. NAGHASH: Good morning, Your Honor. Nicole Naghash specially appearing on behalf of Roger Naghash.

THE COURT: Okay. You know there are no special appearances in federal court; right?

MS. NAGHASH: I understand that. Mr. Naghash was ordered to appear in Superior Court in Orange County and I was the only one that was able to appear today.

THE COURT: Yes. So I think—so we have no counsel representing the plaintiff here at this point. I don't understand why counsel is not here. Calendar conflicts, you know, can easily be cleared up in advance.

So the Court will issue an order to show cause why sanctions should not be imposed on plaintiffs' counsel for not being here today and the Court will take the motion under advisement and decide the motion based on the papers.

[4] Thank you, Counsel.

MS. MITCHELL: Thank you, Your Honor.

(At 9:05 a.m., proceedings were concluded.)

-oOo-

CERTIFICATE

I, PAT CUNEO, CSR 1600, hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: July 20, 2022

/s/

**PAT CUNEO, OFFICIAL REPORTER
CSR NO. 1600**

APPENDIX E

Law Offices Of
Roger E. Naghash
Roger E. Naghash (SBN 181740)
Nicole B. Naghash (SBN 330434)
Newport Gateway Towers
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Telephone: (949) 955-1000
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Attorney for: Plaintiffs:
Curtis Wheeler and Cynthia Wheeler

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

CURTIS WHEELER AND	)	CASE NO.: 8:20-cv-
CYNTHIA WHEELER,	)	01264 MCS (DFMx)
Plaintiffs,	)	FIRST AMENDED
vs.	)	COMPLAINT FOR:
COUNTY OF ORANGE,	)	1. Violation of 42
a political subdivision of	)	U.S.C. § 1983
the State of California,	)	2. Taking Without
ITS PUBLIC WORKS	)	Just and Proper
DIVISION, ITS CITATION	)	Compensation;
PROCESSING CENTER,	)	3. Elder Abuse and
SHANE L. SILEBY,	)	Financial Elder
INDIVIDUALLY, AND IN	)	Abuse;
HIS OFFICIAL CAPACITY	)	4. Willful Failure
AS DIRECTOR, COUNTY	)	To Enforce Law
OF ORANGE – PUBLIC	)	and Negligent
WORKS, SOCORRO	)	Supervision;

VILLEGAS, ALSO KNOWN) 5. **Intentional In-**
AS CORA VILLEGAS,) **fliction of Emo-**
INDIVIDUALLY AND) **tional Distress;**
IN HER OFFICIAL) 6. **Intentional Mis-**
CAPACITY AS OFFICER,) **representation**
AND DOES 1 Through 100,) **and Conceal-**
Inclusive,) **ment (Fraud);**
Defendants.) 7. **Abuse of Power**
) **and Corruption;**
) 8. **Malicious Prose-**
) **cution and Abuse**
) **of Process;**
) 9. **Obtaining Money**
) **and Title to Real**
) **Property by**
) **False Pretenses –**
) **Violation of Pen.**
) **Code § 496**
) 10. **Declaratory and**
) **Injunctive Relief**
) **Assigned Judges:**
) **Hon. Mark C. Scarci,**
) **United States**
) **District Judge**
) **Hon. Douglas F.**
) **McCormick,**
) **Magistrate Judge**
) **Complaint Filed on**
) **July 16, 2020**

JURISDICTION AND VENUE

1. Plaintiffs have suffered injuries that are traceable to the actions of the defendants and the action is

a case or controversy over which this court has Jurisdiction under Article III of the United States Constitution.

2. This case is brought pursuant to 42 U.S.C. § 1983 and 18 U.S.C. § 1962 with pendent state claims. Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343. This court has pendent Jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) because the defendants reside in the Eastern District of California and Plaintiffs claims for relief arose in this District.

4. Plaintiffs have complied with the California Claims statue and filed two separate claims pursuant to California Government Code Sections 910 et. seq.

PARTIES

5. Plaintiffs CURTIS WHEELER and CYNTHIA WHEELER (hereinafter “**Plaintiffs**” or “**Wheeler-s**”), at all times mentioned herein were resident, in an unincorporated area of County of Orange, in Rossmoor, California.

6. Defendant, **SOCORRO VILLEGAS, ALSO KNOWN AS CORA VILLEGAS**, in their individual and official capacity as an officer duly authorized to act or behalf of County of Orange, Department of Public Works, (hereinafter, “**Villegas**” or “**Defendant**”). At all times, mentioned here. Defendant, Villegas, was responsible and assigned the task of Code Enforcement

in unincorporated area of County of Orange, and City of Rossmoor, California, and has fabricated and manufactured evidence and documents and caused significant and irreparable damage to Plaintiffs, Curtis and Cynthia Wheeler.

7. Defendant, **SHANE L. SILEBY**, in his individual and official capacity as the director of public works of County of Orange duly authorized to act on behalf of County of Orange, Department of Public Works, (hereinafter, "**Sileby**" or "**Defendant**"). At all times, mentioned here. Defendant, Sileby was responsible, assigned and directed the task of Code Enforcement in unincorporated area of County of Orange, and City of Rossmoor, California, and has fabricated and manufactured evidence and documents and caused significant and irreparable damage to Plaintiffs, Curtis and Cynthia Wheeler.

8. **COUNTY OF ORANGE, a municipal entity, ITS PUBLIC WORKS DIVISION, ITS CITATION PROCESSING CENTER, SOCORRO VILLEGAS, ALSO KNOWN AS CORA VILLEGAS, IN their INDIVIDUAL AND OFFICIAL CAPACITY AS OFFICER, SHANE L. SILEBY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY AS DIRECTOR, COUNTY OF ORANGE - PUBLIC WORKS**, (hereinafter collectively referred to as "**County of Orange**" or "**Defendants**" or "**Public Entities Defendants**").

9. On or about April 6, 2016, Plaintiffs, Wheeler-s filed all appropriate and necessary application for

permit with Southern California Gas Company and Defendant, COUNTY OF ORANGE, (hereinafter "**Orange County**") to relocate a gas line feeding the Subject Property, outside their residence, that is commonly known as 2641 Copa De Oro Drive, Rossmoor, California 90720-4909, (hereinafter referred to as "**Subject Property**").

10. On or about September 23, 2016, the permit for relocation of the gas-line, feeding the Subject Property was granted.

11. On or about May 10, 2016, Defendant, Villegas returned to the Subject Property, in disarray and their work-out cloths, without any attempt to first identify herself or produce any official identification. Plaintiffs, Wheeler-s son, Brian Wheeler answered the door. Defendant, Villegas asked Brian Wheeler numerous personal questions, such as who he was, who lived in the house, where there any renters, etc., all without first identifying herself or producing any official identification. Brian Wheeler told Defendant Villegas he was not comfortable answering those questions and inquired into identify the stranger who was asking all these personal questions about the occupants in the Subject Property. Defendant Villegas, identified herself, without showing any official identification and told Brian Wheeler that she is with the Defendant, County of Orange and she is a code-enforcement officer. Brian Wheeler, then told Defendant, Villegas to leave as he was NOT going to share any of the requested private information with Defendant, Villegas, and asked them to leave to which she complied.

12. In early May of 2016, prior to the issuance of the permit, Defendant, to relocate the gas line outside of the Subject Property, Defendant, Villegas appeared at the Subject Property, demanding access, and entry into Subject Property to inspect the plumbing inside Subject Property. Plaintiffs, Wheeler-s refused to allow Defendant, Villegas to enter the Subject Property. Defendant, Villegas visibility upset, left with the clear understanding that she was going to gain access to the Subject Property and retaliate against Wheeler-s for their refusal to allow Defendant Villegas access and entry into Subject Property, at which time, Defendant, Villegas systematic harassment, terrorizing and petrifying Plaintiffs, Wheeler-s began.

13. Other events and systematic, ongoing, and continual harassments, other unlawful conducts, and behaviors pursuant to Defendants' Orange County "Policies" are as follows:

5/17/16	Notice #1 (first allegations of unpermitted plumbing five weeks <u>before</u> sewer line work) Case #160242
5/25/16	Defendant Villegas showed up at the Wheeler's front door again to question Mr. Wheeler about "alleged unpermitted plumbing." Defendant Villegas stated she was not accusing the Wheelers of anything, but someone else was and she therefore had to inspect the plumbing inside the Wheeler's home. Mr. Wheeler would NOT allow the Defendant Villegas to enter the Subject Property.

6/16 Defendant Villegas complained to the Wheeler, about seeing the tip of a patio umbrella over some bushes, and a hose bracket on the side of the wall next to the garage. She made vague accusations of "excavation" and disturbed dirt" in the parkway of the Subject Property.

6/23-7/2/16 Sewer line at the Subject Property was being replaced. One of the plumbers informed Mr. Wheeler a lady was out front taking pictures. That lady was Defendant Villegas. She told Mr. Wheeler he needed a permit to conduct the sewer line work on the Subject Property. Mr. Wheeler had told her he did not. Shea left after taking a copious amount of pictures.

7/5/16 Defendant Villegas and a friend showed up at the Wheeler's front door. Defendant Villegas had their phone in the palm of their hand, facing toward Mr. Wheeler, apparently taking a video. Mr. Wheeler told her that Defendant Villegas is NOT permitted to be at or enter the Subject Property.

7/16 Officer Mustafa Balkais called and told the Wheelers they need to widen their driveway approach, and get a permit for it. Mr. Wheeler asked why, and Officer Balkis responded by saying "just because." Mr. and Mrs. Wheeler walked around their neighborhood, the Subject Property, and took pictures of about a dozen other properties that had greater

or worse discrepancies as far as the driveways and approaches not matching up. Mr. Wheeler then set up a meeting with Code Enforcement officers, including Officer Balkis, Sara Parsi, and two others from the “traffic department.” The Wheelers presented the pictures of their neighbors’ property at the meeting, but Officer Balkis insisted the Wheelers had to widen the approach and get a permit for it. Officer Balkis also informed the Wheelers they could complain about their neighbor’s driveways and approaches if they wanted to.

7/28/16 Southern California Gas Company’s contract for gas line work to relocate the gas meter

7/28/16 Rossmoor/Los Alamitos Sewer District letter to the Wheelers stating that the Wheelers do not need a county permit to repair the sewer line on the Subject Property.

8/16 Mr. Wheeler saw Defendant Villegas on Subject Property taking pictures again. She asked Mr. Wheeler if she could come onto the property, and he refused. Defendant Villegas then moved down to the sidewalk and yelled to him that she could “see it from here” and continued to take pictures of the Subject Property.

9/16/16 Notice #2 – Case #160242

9/23/16 Detailed permit for Wheeler job from So Cal Gas – proof that a permit for the was not needed for the gas line repair work

10/10/16 Parkway and Driveway Access Permit # 2016-00758. Orange County Public Works owe the Wheeler's a \$1000.00 refund for the insurance/surety fee.

10/17/16 Permit for encroachment work on the driveway approach – proof this was properly executed

11/1/16 Notice #3 (false and fabricated citation issued for the purpose of harassment).

11/11/16 Notice Case #160242 (false and fabricated citation issued for the purpose of harassment).

11/16 The Wheelers contacted OCPWCE head (and Defendant Villegas boss), Terry Cox, requesting the pictures from Defendant Villegas that she took of the Subject Property so they could find out what she was complaining about. He refused the request stating, "It is an ongoing investigation." The Wheelers asked to have a different code enforcement officer on their cases, and Terry Cox refused.

11/22/16 Rossmoor/ Los Alamitos Sewer District letter to the Wheelers: proof the Wheelers did not need a county permit to repair the sewer line on the Wheeler property, as demanded by OCPW-CE Defendant Villegas. Defendant, Villegas falsely alleged

under penalty of perjury that the sewer line replaced was on County Property.

11/28-30/16 Code Enforcement Officer Capalety came twice to the Subject Property to check on the driveway approach. When Mr. Wheeler told him code enforcement was forcing them to widen the approach, Officer Capalety's jaw dropped and he told Mr. Wheeler he could not believe why they would do that. Officer Capalety told Mr. Wheeler Code Enforcement had problems with Defendant Villegas in the past.

1-4/17 Email thread spanning January through April between Mr. Wheeler and Tim Whitacre, who works for County Supervisor Steele. Mr. Whitacre saw that Supervisor Steele, oversee the code enforcement and he will be glad to help, In a prior phone conversation, Mr. Whitacre offered to help the Wheelers and asked for Mr. Wheeler to send him an email. Mr. Whitacre never responded to the email First Amended Complaints made about Defendant Villegas. Mr. Wheeler made every effort contacting the Orange County bureaucracy through the chain of command to have Defendant Villegas replaced and barred from contacting or interfering with the Wheelers or their property, but to no avail.

1/3/17 Notice #4 and Citation #1 (false and fabricated citation issued for the purpose of harassment) – Civil Citation # 04558

42a

2/7/17 Citation #2 (false and fabricated citation issued for the purpose of harassment) – Delinquent Notice Citation # 04558

2/24/17 Notice #5 and Citation #1 (false and fabricated citation issued for the purpose of harassment) – Citation #4569

2/24/17 Citation #4569 Re-appeal and Denial Letter

2/24/17 Citation #4569 appeal (includes proof that the Wheelers sent a request, as instructed on the back of the citation, to contest the citation, but it was returned as “undeliverable.” Appears to be a phony address listed on the back of the citation to send the appeal to.

2/24/17 Notice #5 and Citation 4569

3/7/17 Payment for Code Enforcement Citation #4558 in the amount of \$100.

3/10/17 Delinquent Citation Notice #3 (false and fabricated citation issued for the purpose of harassment) – Citation # 04558

3/20/17 Appeal sent with tracking information. Included proof that the Wheelers sent a request, as instructed on the back of the citation to contest it. It was returned as “undeliverable” – appeared to be a phony address listed on the back of the citation to send appeal to – Citation #4569.

3/20/17 Payment for Code Enforcement Citation #4569 in the amount of \$100.

3/24/17 Notice #6 and Citation #1 (false and fabricated citation issued for the purpose of harassment) – Civil Citation # 4576

3/29/17 Citation #2 (false and fabricated citation issued for the purpose of harassment) – Citation #4569

4/4/17 Citation #4569: re-appeal and denial letter

4/20/17 Request for appeal of Citation #1 – Citation # 4576

4/20/17 Re-appeal Request – Citation #4569

4/20/17 Payment for Code Enforcement Citation #4576 in the amount of \$100.

4/20/17 Code Enforcement Notice (false and fabricated notice issued for the purpose of harassment).

4/26/17 Citation #2 (false and fabricated citation issued for the purpose of harassment) – Citation # 4576

4/26/17 Request for appeal denied for Citation # 4576

4/26/17 Appeal Denied – Citation #4569

5/5/17 Administrative Hearing Notice – Citation #4576

6/5/17 Administrative Hearing – Citation #4576

6/7/17 Administrative hearing – Case #4576 Defendant Villegas submits documents and evidence that the Wheelers were not

given an opportunity to review. Pictures Defendant Villegas submitted were from someone walking around The Subject Property. Pictures were of very poor quality, and hard to see. Defendant Villegas alleged these pictures showed where the Wheelers moved the sewer line on the Subject Property, when in reality Mr. Wheeler had moved his sprinkler line, and it was maybe a four-inch trench. Defendant Villegas alleged she had conversations with the Wheelers about a "cleanout" which is a total fabrication. Defendant Villegas falsely alleged she had phone conversations with Mr. Wheeler, and that he even left their voicemails, which he never did. Defendant Villegas complained of tarps covering vehicles on the Subject Property that "are probably inoperable." However, all the cars are registered, operable, and covered with custom made car covers. Defendant Villegas also made a vague accusation of the Wheelers having disturbed dirt and excavation on their parkway.

6/12/17	Administrative Hearing Ruling – Citation #4576 – Not signed by the officer and it was NOT on a formal letter head with virtually NO contact information. The ruling states that if want to appeal, it should be to the "Laguna Hills Facility," which has been closed for more than three (3) years.
6/20/17	Appeal of Citation #4576

6/29/17 Request for Administrative Hearing Documents (ignored) – Citation #4576

6/29/17 Letter to “Office of the Code Enforcement Hearing Officer” requesting copies of all evidence and testimony from the hearing (including proof of delivery and pickup with signature), was ignored. NO document of any kind or type whatsoever, was ever produced.

6/29/17 Notice of Appeal

6/30/17 Notice of Hearing

7/17/17 Citation #3 (false and fabricated citation issued for the purpose of harassment) – after appeal, delinquency notice – Citation # 4576

8/1/17 Response to citation #3, with tracking information, which was ignored – Citation #4576

8/7/17 Notice of Continuation with Board of County Counsel

8/8/17 Letter from County Counsel regarding continuance

8/18/17 Citation #4 (false and fabricated citation issued for the purpose of harassment) after appeal and response to citation #3 – Tax Notice Citation # 4576

12/11/17 Wheeler/Appellant: Superior Court Hearing #1; Case #: 30-2017-00929130-CL-JR-CJC

2017 WHEELERS submitted a Complaint to OC Supervisor Steel

1/8/18 WHEELER/Appellant: Superior Court Hearing #2; Case #: 30-2017-00929130-CL-JR-CJC. At the hearing, Defendant Villegas, testified under oath and penalty of perjury that the alleged violations had NO relations to the Subject Property's sides, culverts, walls, inside, etc.

2017/2018 Late 2017 or early 2018, a Code Enforcement officer calls the WHEELERS and demands they pay for a prior citation that was already paid for and litigated. Mr. Wheeler contacted their attorney, Ms. Taber, and never heard back. He assumed it was taken care of.

2/20/19 At Rossmoor Homeowners Association meeting, Code Enforcement Officer Christopher Casillas calls Mr. and Mrs. Wheeler "liars" when they complained about Defendant Villegas. Notices and Citations were issued about a month later (160420).

3/27/19 Recent citation – allegations of swimming pool, curbs, gutters, driveway approaches, sidewalks, retaining walls, storm drains, culverts are false (AGAIN). Citation #CE160242001

5/14/19 Similar to 3/27/19 citation, but different.

5/24/19 Citation Notice-Case #CE160242001 (false and fabricated citation issued for the purpose of harassment).

6/26/19 Notice – different harassment involving gas line

6/19 Mr. Wheeler sees Defendant Villegas behind Subject Property with another county employee. There is a ditch with an access road right behind the Wheeler property. Mr. Wheeler went back there to see what she was doing. There is an old, rusty pipe that is about a foot in diameter that goes under the road and to the ditch. Defendant Villegas asked Mr. Wheeler if he put it there, and he said no. She then asks to “cut it off and block it off to which Mr. Wheeler responded “it’s not my pipe. Why don’t you find out what it’s for?”

6/27/19 Citation – Case #CE160242001 (false and fabricated citation issued for the purpose of harassment).

7/19 Mr. Wheeler noticed paint marks in his parkway that appear to correspond to the locations of the gas and water lines.

7/29/19 Citation – Case #CE160242001 (false and fabricated citation issued for the purpose of harassment).

8/30/19 Citation/Tax – Case #CE160242001 (false and fabricated citation issued for the purpose of harassments).

02/18/20 Official Notice of Delinquent Administrative Citation

14. Defendants created and fabricated their own laws tailored for the sole purpose of harassing and

injuring Plaintiffs, Wheeler-s, (hereinafter “**Fictitious Laws**”), which changed frequently to inflict the maximum level harassments and injuries on Plaintiffs, Wheeler-s.

15. The aforementioned wrongful conducts were pursuant to actual laws and Factitious Laws fabricated and created by Defendants based on the level of injuries and harassments they intended to cause on Plaintiffs, Wheeler-s.

16. The affirmation wrongful conducts by Defendants have been pervasive, ongoing, and continual.

17. The validity and legitimacy of the aforementioned citations and notices have never been judicially determined or adjudicated by any court of competent jurisdiction.

Description of Injuries

18. Defendants’ purposeful and ongoing unlawful behaviors and conducts, are vindictive, unlawful, and they have been ongoing for solely to harass and injure Plaintiffs that began approximately more than ten (10) years, ago with Defendant, Villegas demanded Plaintiffs, Wheeler-s to remove their parked vehicle from the driveway of the Subject Property.

19. From about early May of 2016, until present, Defendants and each of them have continued with their ongoing, continual, systematic, intentional, unlawful, and unconstitutional campaign of terrors, to

prevent Plaintiffs who are elderly to use the Subject Property.

20. Defendants and each of them, have prevented Plaintiffs, Wheelers from using their own home for intended purposes. Plaintiffs are afraid of using their backyard in fear of Defendants appearing unannounced and take unlawful pictures without their consents and authorizations.

21. Defendants and each of them have prevented Plaintiffs, Wheelers from entering and residing in their own home, in fear of retaliations, mental, perceived, and/or physical harms at the hands of Defendants and each of them.

22. Defendants and each of them, have manufactured and fabricated evidence for the sole purpose of engaging in campaign of terror and harassment and have refused and continue to refuse to provide Plaintiffs, Wheeler, with due process of law and have a meaningful hearing to address Plaintiffs, Wheeler's grievances.

23. Plaintiffs, Wheeler live at the Subject Property in constant fear and anxiety as these hoodlums and thugs have made Plaintiffs, Wheeler-s' lives unbearable, through their systematic campaign of terror, harassment and causing fear.

24. Plaintiffs, Wheeler-s live in constant fear and anxiety and have been depressed which has prevented them from sleeping at nights and have been unable to enjoy the simplest fact of life, as these hoodlums and

thugs have been threatening to take the Subject Property from Plaintiffs, Wheeler-s, for which they have worked all their lives.

25. Plaintiffs, Wheeler-s have been terrified of living in their home, anxiously waiting for these hoodlums and thugs to appear at Subject Property or send them another false, fictitious, and fabricated notice of violation as a pretext of taking the Subject Property from Plaintiffs, Wheeler-s.

FIRST CAUSE OF ACTION

(Violation of 42 U.S.C. § 1983)

AS TO ALL DEFENDANTS

**(Denial of Rights under the Fourth, Fifth,
and Fourteenth Amendments to
the United States Constitution)**

26. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 25, inclusive, of this First Amended Complaint.

27. This is an action at law to redress the deprivation under color of statute, ordinances, regulations, custom, or usage of rights, privileges and immunities secured by Plaintiffs, Curtis and Cynthia Wheeler, by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States and arising under the laws and statutes of the State of California.

28. The Subject Property is located in an unincorporated area, and it is NOT subject to any State or City rules or regulations, except for fictitious and made belief rules created by Defendants that are selectively enforced tailored to maximize the level of harassments and injuries to Plaintiffs, Wheeler-s.

29. Defendants, had a “Policy” of creating and fabricating fictitious rules, regulations, and/or ordinances as more fully set forth herein, tailored towards, Plaintiffs, Wheeler-s’ harassments and injuries.

30. Plaintiffs, Wheeler-s have constitutional rights to use, enjoyment, ownership, and privacy of the Subject Property.

31. During all times mentioned herein, Defendants, and each of them, separately and in concert, acted under color of law, to wit, under the statutes, ordinances, regulations, customs, and usage of the State of California. Each defendant, separately and in concert, acted outside of the scope of his or her jurisdiction and without authorization of law, willfully, knowingly and pursuant to Defendants’ established “Policy” deprived Plaintiffs, of their property rights, including but not limited to Plaintiffs’ constitutional rights under Four, Fifth and Fourteenth Amendments to the United States Constitution.

32. Defendants under the direction and supervision of Defendants, County of Orange and pursuant to their established “Policy” engaged in intentional unlawful acts as set forth in paragraph 13 of this First Amended Complaint in violation of Plaintiffs’ rights

under Four, Fifth, and Fourteenth Amendments to the United States Constitution.

33. Defendants' actions as described herein were taken with the requisite degree of culpability, under the direction and supervision of Defendants, County of Orange and pursuant to their established "Policy" engaged in intentional unlawful acts as set forth in paragraph 13 of this First Amended Complaint in violation of Plaintiffs' rights under Four, Fifth, and Fourteenth Amendments to the United States Constitution.

34. Defendants' actions as described herein were taken with the requisite degree of culpability, under the direction and supervision of Defendants, County of Orange and pursuant to their established "Policies" engaged in intentional unlawful acts as set forth in paragraph 13 of this First Amended Complaint, were deliberately indifferent to Plaintiffs, Wheeler-s' constitutional rights under Four, Fifth, and Fourteenth Amendments to the United States Constitution.

35. Defendants' "Policies" as described above, were primarily the basis and reasons for violations of Plaintiffs, Wheeler-s' constitutional rights.

36. As a direct and proximate result of Defendants acts and omissions in depriving Plaintiffs' rights, privileges and immunities secured to them by the laws to this state and nation, for which Plaintiffs have sustained damages as described herein.

37. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm, emotional distress, extreme pain and injuries, all in violation of their rights under the laws and the Constitution of the United States, more specifically the Four, Fifth, and Fourteenth Amendments thereof and 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

SECOND CAUSE OF ACTION

(Taking Without Just and Proper Compensation)

AS TO ALL DEFENDANTS

38. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 37, inclusive, of this First Amended Complaint.

39. Defendants' unlawful acts as described in paragraph 13 of this First Amended Complaint, were unlawful taking of Plaintiffs' property and property rights without just and proper compensation in violation of Plaintiffs' rights under the California and United States Constitutions.

40. Defendants' frequent tripes to the Subject Property, unlawful demands, and actual entries on to

the Subject Property for the sole purpose of injuring and harassing Plaintiffs, Wheelers, preventing Plaintiffs, Wheeler-s from use, enjoyment of the Subject Property, fabricating and creating the Fictitious Laws were to deprive Plaintiffs, Wheeler-s of their property rights.

41. Defendants' unlawful actions and conducts, as more fully described herein, were to partly benefit Plaintiffs, Wheeler-s' neighbors who are personal friends with Defendant, Villegas.

42. Defendants' unlawful actions and conducts of taking Plaintiffs, Wheeler-s' property, were pursuant to the Fictitious Laws and actual laws.

43. Plaintiffs, Wheeler-s have lodged many complaints with Defendant, Orange County and sought remedy, cease and decease the continual taking and circumventing Plaintiffs, Wheeler-s' property rights. Defendants have refused and continue to refuse to cease and decease their unlawful taking of Plaintiffs, Wheeler-s' property rights.

44. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm, emotional distress, extreme pain and injuries, all in violation of their rights under the laws, the Constitutions of the United States, and California.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

THIRD CAUSE OF ACTION

(Elder Abuse and Financial Elder Abuse)

AS TO ALL DEFENDANTS

45. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 44, inclusive, of this First Amended Complaint.

46. At all times mentioned herein, Plaintiffs are elderly individuals with limited financial means and in their retirement.

47. Defendants' unlawful acts as described in paragraph 13 of this First Amended Complaint, were unlawful designed to take advantage of Plaintiffs in their golden age with limited financial ability in their retirement.

48. Defendants' frequent trips to the Subject Property, unlawful demands, and actual entries on to the Subject Property for the sole purpose of injuring and harassing Plaintiffs, Wheeler-s, preventing Plaintiffs, Wheeler-s from use, enjoyment of the Subject Property, fabricating and creating the Fictitious Laws were to deprive Plaintiffs, Wheeler-s of their property rights.

49. Defendants' unlawful actions and conducts, as more fully described herein, were to partly benefit

Plaintiffs, Wheeler-s' neighbors who are personal friends with Defendant, Villegas.

50. Defendants' unlawful actions and conducts of taking Plaintiffs, Wheeler-s' property, were pursuant to the Fictitious Laws and actual laws.

51. Plaintiffs, Wheeler-s have lodged many complaints with Defendant, Orange County and sought remedy, cease and decease the continual taking and circumventing Plaintiffs, Wheeler-s' property rights. Defendants have refused and continue to refuse to cease and decease their unlawful taking of Plaintiffs, Wheeler-s' property rights.

52. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm, emotional distress, extreme pain and injuries, all in violation of their rights under the laws, the Constitutions of the United States, and California.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

FOURTH CAUSE OF ACTION

(Willful Failure To Enforce Law, Discharge Duties,
and Negligent Supervision)

AS TO ALL DEFENDANTS

53. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 52, inclusive, of this First Amended Complaint.

54. Defendants' unlawful acts as described in paragraph 13 of this First Amended Complaint, were contrary to the actual rule of law, Fictitious Laws, and based on the established "Policy" of Defendants, Orange County and contrary to its duty to properly supervise and manage Defendants to ensure the proper enforcement of the laws.

55. Defendants, Villegas and Sileby, individually engaged in the wrongful and unlawful conducts against Plaintiffs, Wheeler-s as more fully set forth herein as more fully set forth herein. Defendants, Villegas and Sileby's wrongful and unlawful behaviors and conducts were within the scope of their employments for Defendant, County of Orange.

56. Defendants owed a duty under actual law to refrain from creating and fabricating Fictitious Laws and mis-enforce the actual laws and regulations designed solely to maximize harassment and injuries to Plaintiffs, Wheeler-s.

57. Defendants breached their duties as set forth in paragraph 13 of this First Amended Complaint.

58. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm, emotional distress, extreme pain and injuries, all in violation of their rights under the laws, the Constitutions of the United States, and California.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

AS TO ALL DEFENDANTS

59. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 58, inclusive, of this First Amended Complaint.

60. Defendants' unlawful acts as described in paragraph 13 of this First Amended Complaint, were intentional and outrageous conducts intended to cause severe emotional distress on Plaintiffs.

61. Defendants' frequent trespasses to the Subject Property, unlawful demands, and actual entries on to the Subject Property for the sole purpose of injuring and harassing Plaintiffs, Wheeler, preventing Plaintiffs, Wheeler-s from use, enjoyment of the Subject Property, fabricating and creating the Fictitious Laws

were to deprive Plaintiffs, Wheeler-s of their property rights.

62. Defendants' unlawful actions and conducts, as more fully described herein, were to partly benefit Plaintiffs, Wheeler-s' neighbors who are personal friends with Defendant, Villegas.

63. Defendants' unlawful actions and conducts of taking Plaintiffs, Wheeler-s' property, were pursuant to the Fictitious Laws and actual laws.

64. Plaintiffs, Wheeler-s have lodged many complaints with Defendant, Orange County and sought remedy, cease and decease the continual taking and circumventing Plaintiffs, Wheeler-s' property rights. Defendants have refused and continue to refuse to cease and decease their unlawful taking of Plaintiffs, Wheeler-s' property rights.

65. Defendants, Villegas and Sileby, individually engaged in the wrongful and unlawful conducts against Plaintiffs, Wheeler-s as more fully set forth herein as more fully set forth herein. Defendants, Villegas and Sileby's wrongful and unlawful behaviors and conducts were within the scope of their employments for Defendant, County of Orange.

66. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm,

emotional distress, extreme pain and injuries, all in violation of their rights under the laws, the Constitutions of the United States, and California.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

SIXTH CAUSE OF ACTION

(Intentional Misrepresentation and
Concealment (Fraud))

AS TO ALL DEFENDANTS

67. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 66, inclusive, of this First Amended Complaint.

68. Defendants' unlawful acts as described in paragraph 13 of this First Amended Complaint, were intentional misrepresentation and concealment with intent to defraud Plaintiffs.

69. Defendants' frequent trespass to the Subject Property, unlawful demands, and actual entries on to the Subject Property for the sole purpose of injuring and harassing Plaintiffs, Wheeler-s, preventing Plaintiffs, Wheeler-s from use, enjoyment of the Subject Property, fabricating and creating the Fictitious Laws were to deprive Plaintiffs, Wheeler-s of their property rights.

70. Defendants' unlawful actions and conducts, as more fully described herein, were to partly benefit

Plaintiffs, Wheeler-s' neighbors who are personal friends with Defendant, Villegas.

71. Defendants' unlawful actions and conducts of taking Plaintiffs, Wheeler-s' property, were pursuant to the Fictitious Laws and actual laws.

72. Plaintiffs, Wheeler-s have lodged many complaints with Defendant, Orange County and sought remedy, cease and decease the continual taking and circumventing Plaintiffs, Wheeler-s' property rights. Defendants have refused and continue to refuse to cease and decease their unlawful taking of Plaintiffs, Wheeler-s' property rights.

73. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm, emotional distress, extreme pain and injuries, all in violation of their rights under the laws, the Constitutions of the United States, and California.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

SEVENTH CAUSE OF ACTION

(Abuse of Power and Corruption)

AS TO ALL DEFENDANTS

74. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 73, inclusive, of this First Amended Complaint.

75. Defendants' unlawful acts as described in paragraph 13 of this First Amended Complaint, were corrupt and abuse of power by Defendants and each of them.

76. Defendants' frequent trips to the Subject Property, unlawful demands, and actual entries on to the Subject Property for the sole purpose of injuring and harassing Plaintiffs, Wheelers, preventing Plaintiffs, Wheeler-s from use, enjoyment of the Subject Property, fabricating and creating the Fictitious Laws were to deprive Plaintiffs, Wheeler-s of their Property rights.

77. Defendants' unlawful actions and conducts, as more fully described herein, were to partly benefit Plaintiffs, Wheeler-s' neighbors who are personal friends with Defendant, Defendant, Villegas.

78. Defendants' unlawful actions and conducts of taking Plaintiffs, Wheeler-s' property, were pursuant to the Fictitious Laws and actual laws.

79. Plaintiffs, Wheeler-s have lodged many complaints with Defendant, Orange County and sought

remedy, cease and desist the continual taking and circumventing Plaintiffs, Wheeler-s' property rights. Defendants have refused and continue to refuse to cease and desist their unlawful taking of Plaintiffs, Wheeler-s' property rights.

80. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm, emotional distress, extreme pain and injuries, all in violation of their rights under the laws, the Constitutions of the United States, and California.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

EIGHTH CAUSE OF ACTION

(Malicious Prosecution and Abuse of Process)

AS TO ALL DEFENDANTS

81. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 80, inclusive, of this First Amended Complaint.

82. Defendants unlawful acts as described in paragraph 13 of this First Amended Complaint, were without probable cause and used the legal process to facilitate their unlawful acts and conduct against Plaintiffs without any legal reason or justifications.

83. Defendants, Villegas and Sileby, individually engaged in the wrongful and unlawful conducts against Plaintiffs, Wheeler-s as more fully set forth herein as more fully set forth herein. Defendants, Villegas and Sileby's wrongful and unlawful behaviors and conducts were within the scope of their employments for Defendant, County of Orange.

84. Defendants' frequent trips to the Subject Property, unlawful demands, and actual entries on to the Subject Property for the sole purpose of injuring and harassing Plaintiffs, Wheelers, preventing Plaintiffs, Wheeler-s from use, enjoyment of the Subject Property, fabricating and creating the Fictitious Laws were to deprive Plaintiffs, Wheeler-s of their property rights.

85. Defendants' unlawful actions and conducts, as more fully described herein, were to partly benefit Plaintiffs, Wheeler-s' neighbors who are personal friends with Defendant, Defendant, Villegas.

86. Defendants' unlawful actions and conducts of taking Plaintiffs, Wheeler-s' property, were pursuant to the Fictitious Laws and actual laws.

87. Plaintiffs, Wheeler-s have lodged many complaints with Defendant, Orange County and sought remedy, cease and desist the continual taking and circumventing Plaintiffs, Wheeler-s' property rights. Defendants have refused and continue to refuse to cease and desist their unlawful taking of Plaintiffs, Wheeler-s' property rights.

88. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm, emotional distress, extreme pain and injuries, all in violation of their rights under the laws, the Constitutions of the United States, and California.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

NINTH CAUSE OF ACTION

(Theft by False Pretenses – Violation of
Cal. Pen. Code § 496(c))

AS TO ALL DEFENDANTS

89. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 88, inclusive, of this First Amended Complaint.

90. As more fully set forth in Paragraph 13 of this First Amended Complaint, Defendants by false pretenses obtained money from Plaintiffs by false and deceptive representations and fraud. At all times mentioned herein defendants were NOT entitled to receive any money of any kind or type whatsoever.

91. Defendants' frequent trips to the Subject Property, unlawful demands, and actual entries on to the Subject Property for the sole purpose of injuring

and harassing Plaintiffs, Wheelers, preventing Plaintiffs, Wheeler-s from use, enjoyment of the Subject Property, fabricating and creating the Fictitious Laws were to deprive Plaintiffs, Wheeler-s of their property rights.

92. Defendants' unlawful actions and conducts, as more fully described herein, were to partly benefit Plaintiffs, Wheeler-s' neighbors who are personal friends with Defendant, Defendant, Villegas.

93. Defendants' unlawful actions and conducts of taking Plaintiffs, Wheeler-s' property, were pursuant to the Fictitious Laws and actual laws.

94. Plaintiffs, Wheeler-s have lodged many complaints with Defendant, Orange County and sought remedy, cease and desist the continual taking and circumventing Plaintiffs, Wheeler-s' property rights. Defendants have refused and continue to refuse to cease and desist their unlawful taking of Plaintiffs, Wheeler-s' property rights.

95. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm, emotional distress, extreme pain and injuries, all in violation of their rights under the laws, the Constitutions of the United States, and California.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

TENTH CAUSE OF ACTION

(Declaratory and Injunctive Relief)

AS TO ALL DEFENDANTS

96. Plaintiffs hereby incorporate by reference herein each and every allegation set forth in paragraphs 1 through 95, inclusive, of this First Amended Complaint.

97. Defendants' frequent trips to the Subject Property, unlawful demands, and actual entries on to the Subject Property for the sole purpose of injuring and harassing Plaintiffs, Wheelers, preventing Plaintiffs, Wheeler-s from use, enjoyment of the Subject Property, fabricating and creating the Fictitious Laws were to deprive Plaintiffs, Wheeler-s of their property rights.

98. Defendants' unlawful actions and conducts, as more fully described herein, were to partly benefit Plaintiffs, Wheeler-s' neighbors who are personal friends with Defendant, Defendant, Villegas.

99. Defendants' unlawful actions and conducts of taking Plaintiffs, Wheeler-s' property, were pursuant to the Fictitious Laws and actual laws.

100. Plaintiffs, Wheeler-s have lodged many complaints with Defendant, Orange County and sought remedy, cease and desist the continual taking

and circumventing Plaintiffs, Wheeler-s' property rights. Defendants have refused and continue to refuse to cease and decease their unlawful taking of Plaintiffs, Wheeler-s' property rights.

101. As more fully set forth in Paragraph 13 of this First Amended Complaint, Defendants' unlawful actions and conducts, have causes and will continue to cause irreparable harm to Plaintiffs and Subject Property. Damages at law are inadequate, Plaintiffs seek this honorable court to issue preliminary and permanent injunctions to prevent Defendants from engaging in the unlawful conducts against Plaintiffs. Plaintiffs also seek an order invalidating any and all citations, notices of violations, notices of fine, notices of liens, notices of charges, and/or all other notices seeking to recover unlawful moneys from Plaintiffs. Plaintiffs also, seek a Temporary and Permanent Restraining Order, restraining individual Defendants from entering the Subject Property, and preventing individual defendants from ever having any contacts with Plaintiffs.

102. As a direct and proximate result of the above-described unlawful, malicious and sadistic acts of Defendants, committed under color of their authorities as a municipality and county of Orange and their employees, and while acting in that capacity, Plaintiffs suffered grievous property damage, bodily harm, emotional distress, extreme pain and injuries, all in violation of their rights under the laws, the Constitutions of the United States, and California.

WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

Plaintiffs' Injuries

1. As a direct and legal consequence of the foregoing, Plaintiffs, Wheeler-s were injured in their health, property, strength, and activity, sustaining injury to their body and shock and injury to their nervous system and person, all of which injuries have caused and continue to cause Plaintiffs, Wheeler-s great mental, physical and nervous pain and suffering. Plaintiffs, Wheeler-s are informed and believe, and thereon alleges, that said injuries will result in some permanent disability to Plaintiffs, Wheeler-s. By reason of the foregoing, Plaintiffs, Wheeler-s have sustained general damages in a sum as set forth above.

2. As a further direct and legal result of the foregoing, and of the injuries caused thereby to Plaintiffs, Wheeler-s, as aforesaid, Plaintiffs, Wheeler-s were required to and did employ physicians, surgeons, hospitals, and various other health care practitioners to examine, care for and treat her, and did thereby necessarily incur medical and incidental expense. Plaintiffs, Wheeler-s are informed and believe, and thereon allege, that she will continue to incur medical and incidental expense. Plaintiffs, Wheeler-s are informed and believe, and thereon allege, that she will continue to incur such expenses for an indefinite period of time in the future. The exact amount of such medical and incidental expenses is unknown to Plaintiffs, Wheeler-s at

this time. Plaintiffs, Wheeler-s will ask leave to amend this First Amended Complaint to set forth the exact amount thereof when the same has been ascertained or upon proof thereof at a later date.

3. As a further direct and legal result of the foregoing, and of the injuries caused thereby to Plaintiffs, Wheeler-s, as aforesaid, Plaintiffs, Wheeler-s have sustained injury and damage to their earnings and earning capacity, and Plaintiffs, Wheeler-s are informed and believe, and thereon allege, that she will continue to sustain such damage in the future, all to their further damage in an amount presently unknown. Plaintiffs, Wheeler-s will pray leave to amend this First Amended Complaint to insert the amount of said damages when the same have been ascertained or upon proof thereof at a later date.

4. Plaintiffs, Wheeler-s are informed and believe that Government Entities Defendants knew of the foreseeable risk of harm of violence against elderly individuals on or before May 1, 2016.

5. Despite this knowledge, Government Entities Defendants failed to adequately supervise and secure the public against the unlawful activities of individuals who were acting within the scope of their employment, employed by County of Orange. The lack of supervision decisions were made at the highest level of Government Entities Defendants management and/or were so ratified.

6. Plaintiffs have NOT been able to sleep at nights constantly in fear of these falsehoods and

fabrications manufactured by Defendant Villegas and affirmed by their superiors, management and director of County of Orange, Code Enforcement Unit.

7. In addition, Plaintiffs, Wheeler-s are informed and believe that Government Entities Defendants did not in any way discipline the employees, Defendants who had actual knowledge of the harassment and campaign of terror against Plaintiffs, Wheeler-s, which threaten their safety and failed to take adequate steps to protect Plaintiffs, Wheeler-s; thus ratifying the individuals conducts.

8. Government Entities Defendants' actions in this regard were despicable, and done willfully and with a conscious disregard of Plaintiffs, Wheeler-s's rights, with the intent to cause injuries to Plaintiffs, Wheeler-s.

9. Plaintiffs, Wheeler-s developed severe anxiety, high blood pressure, and severe distress on daily basis when they have to receiver their daily mail from the United States Postal Service, mail delivery person.

10. Wherefore, Plaintiffs, Wheeler-s seek exemplary damages against All Defendants, County of Orange, their employee' Defendants, in their individual capacities in an amount as set forth above.

PURSUANT TO FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, AND TENTH CAUSES OF ACTIONS:

I. For actual damages sustained that is in excess of \$30,500, or according to proof at trial;

- II. For incidental, and consequential damages sustained that is believed to be not less than \$600,000;
- III. For Declaratory and Injunctive relief as specified herein;
- IV. For disgorgement of all money obtained by false pretenses according to proof at trial;
- V. For Temporary and Permanent Restraining orders as specified herein;
- VI. For any and all statutory damages;
- VII. For statutory damages and Civil Penalties;
- VIII. For emotional distress according to proof at trial;
- IX. For statutory attorney's fees and legal expenses;
- X. For any and all statutory remedies pursuant to the violation of statutes as specified herein;
- XI. For general damages;
- XII. For lost earning and profit;
- XIII. For Incidental and Consequential damages;
- XIV. For special damages;
- XV. For preliminary and permanent injunctions to prevent Defendants from taking any action of any kind or type whatsoever to further Plaintiffs, Wheeler-s' loses and/or damages to their real properties.
- XVI. Order Defendants to refrain from contacting Plaintiffs;
- XVII. For lost earning and profit;

- XVIII. For present and future medical damages according to proof at trial;
- XIX. For three times actual damages that is in excess of \$1,800,000, as statutory penalty as provided by Cal. Pen. Code § 496(c);
- XX. For attorney's fees and costs of suit as provided Cal. Pen. Code § 496(c);
- XXI. For pre judgment interest at the rate of ten percent per annum from April 6, 2016;
- XXII. For cost of suit incurred herein; and
- XXIII. For such further and other relief as the court deems just and appropriate.

PURSUANT TO ALL CAUSES OF ACTION:

- XXIV. Plaintiffs demand jury trial;
- XXV. For cost of suit incurred herein;
- XXVI. For such further and other relief as the court deems just and appropriate.

Respectfully Submitted.

Dated this 3rd day of January 2022

Law Offices Of Roger E. Naghash

By: /s/ Roger E. Naghash

Roger E. Naghash, Esq.

Nicole B. Naghash, Esq.

Attorneys for Plaintiffs

Curtis Wheeler and

Cynthia Wheeler

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am employed in the County of Orange and my business address and telephone number are *19800 MacArthur Boulevard, Suite 1000, Irvine, California 92612-2433, (949) 955-1000*. I am over the age of 18 years. I am readily familiar with the practices of *Law Offices Of Roger E. Naghash* for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service or sent via E-mail-s the same day in the ordinary course of business.

On **January 17, 2022**, I served the following documents, entitled:

■ **First Amended Complaint – *Wheeler, et. al. V. County of Orange, et. al.***

on the interested parties in the action as follows:

[XX] By placing [XX] the original [] a true copy thereof
enclosed in a sealed envelope addressed as follows:

Michael L. Wroniak
Collins Collins Muir + Stewart LLP
750 the City Drive, Suite 400
Orange, California 92868
mwroniak@ccmslaw.com Iwamoto &
All Other Occupants

[] **By United States Postal Service**, I placed such envelopes for collection and to be mailed on this date following ordinary business practices.

By E-mail (ECF), I caused to be transmitted to the office of the addressee as set forth above.

By Overnight Express – Next Day Delivery, I placed such envelopes for collection and to be delivered by the U.S. Express mail carrier on this date following ordinary business practices

I declare under penalty of perjury of Federal Laws and laws of the State of California, that the foregoing is true and correct and that this declaration was executed on January 17, 2022 at Orange County, California.

By: /s/ Roger E. Naghash
Roger E. Naghash

APPENDIX F**JS-5**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case **8:20-cv-01264-MCS-**
No. **DFM** Date December 28, 2021
Title *Curtis Wheeler et al. v. County of Orange*
et al.

Present: Mark C. Scarsi,
The Honorable United States District Judge

Stephen Montes Kerr Not Reported
Deputy Clerk Court Reporter

Attorney(s) Present for Plaintiff(s): None Present Attorney(s) Present for Defendant(s): None Present

**Proceedings: (IN CHAMBERS) ORDER GRANTING LEAVE
TO FILE AN AMENDED COMPLAINT**

Defendants County of Orange, Socorro Villegas, and Shane Silsby filed a motion to dismiss on September 4, 2020. (ECF No. 15.) The Court granted the motion and dismissed Plaintiffs Cynthia and Curtis Wheeler's Complaint. (ECF No. 22.) The Court denied Plaintiffs' motion for reconsideration. (ECF No. 28.) Plaintiffs appealed the Court's dismissal and denial of the motion for reconsideration. (ECF No. 29.) Upon review of the record, the Ninth Circuit vacated the

Court's order of dismissal and remanded the case. (ECF No. 35.)

In light of the Ninth Circuit's decision and the accompanying mandate entering its judgment (ECF No. 36), the Court grants Plaintiffs leave to file an amended complaint. Plaintiffs shall file an amended complaint within 21 days of the filing of this Order.

IT IS SO ORDERED.
