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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALBA MARROQUIN DE PORTILLO,  
individually and as successor in interest to  
her deceased son, Lester Daniel  
Marroquin,  
  
Plaintiff,  
  
v.  
  
COUNTY OF SAN DIEGO and DOES 1–  
20, inclusive,  
  
Defendants.

Case No.: 3:23-cv-0978-WQH-SBC

**ORDER**

HAYES, Judge:

The matter before the Court is the Motion to Dismiss Complaint (ECF No. 5) filed by Defendant County of San Diego.

**I. PROCEDURAL BACKGROUND**

On May 26, 2023, Plaintiff initiated this action by filing a Complaint alleging that Defendants’ failure to adequately care for Plaintiff’s son, Lester Daniel Marroquin (“Decedent”), while he was housed at the San Diego County Central Jail, resulted in his death from acute water intoxication. (ECF No. 1.) The Complaint brings three causes of action under 42 U.S.C. § 1983 and one cause of action for wrongful death under California state law.

1 On June 21, 2023, Defendant County of San Diego (the “County”) filed the Motion  
2 to Dismiss Complaint, which requests that the Court dismiss the wrongful death claim  
3 brought against the County pursuant to Federal Rule of Civil Procedure 12(b)(6).<sup>1</sup> (ECF  
4 No. 5.) On July 10, 2023, Plaintiff filed a Response in opposition to the Motion. (ECF No.  
5 7.) On July 17, 2023, the County filed a Reply. (ECF No. 8.)

## 6 **II. ALLEGATIONS IN THE COMPLAINT**

7 “From December 18, 2020, through May 30, 2021, [Decedent] was a pretrial  
8 detainee in the County’s custody at the Central Jail.” (ECF No. 1 ¶ 17.) Defendants are the  
9 County and the unnamed jail employees “who substantially contributed to the acts and  
10 omissions giving rise” to Plaintiff’s claims. *Id.* ¶ 16.

11 Prior to his incarceration, Decedent “struggled with mental health issues,” including  
12 “persistent delusions and hallucinations.” *Id.* ¶ 18. “Shortly after his booking in Central  
13 Jail, in December 2020,” Decedent had an interaction with jail deputies during which he  
14 was “shot with a taser” and “attempt[ed] to hurt himself.” *Id.* ¶ 21. As a result, Decedent  
15 “was placed into a safety cell,” “the most restrictive type of cell in which an individual who  
16 is a danger to themselves might be placed.” *Id.* ¶¶ 21–22. Safety cells have rubberized  
17 walls, lack furniture, are illuminated at all times, and are subject to remote observation by  
18 jail staff. Decedent was again placed in a safety cell on or about January 9, 2021, after  
19 reporting self-harming auditory hallucinations.

20 On February 3, 2021, a state court “ordered [Decedent] to undergo a psychiatric  
21 evaluation to be conducted on March 4, 2021,” but “[t]he Sheriff’s Department did not  
22 make [Decedent] available for this evaluation.” *Id.* ¶ 24.

23 Between March 13, 2021, and May 30, 2021, Decedent “was repeatedly transferred  
24 to safety cells because of [his] self-harming behavior.” *Id.* ¶ 34. In particular, “[t]hroughout  
25 this period, [Decedent] was experiencing delusions and auditory hallucinations that  
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28 <sup>1</sup> The Motion to Dismiss Complaint does not request dismissal of the federal claims or of any claim brought against the Doe Defendants.

1 resulted in him putting his head in the toilet” and “uncontrollably drinking water from the  
2 toilet.” *Id.* ¶ 33. “These symptoms worsened as jail staff cut off contact” between Decedent  
3 and Plaintiff. *Id.* Over the same timeframe, jail staff failed to produce Decedent for court-  
4 ordered psychiatric evaluations on three separate occasions. “Had [Decedent] been  
5 properly evaluated, it is more likely that not he would have been sent to a state mental  
6 health hospital for treatment and stabilization . . .” *Id.* ¶ 44.

7 “On May 30, 2021, Defendants Does 1–20 made the decision to transfer, and then  
8 transferred, [Decedent] from the jail’s psychiatric floor to an Ad-Seg cell.” *Id.* ¶ 37. The  
9 transfer “occurred on a Sunday when the staff who usually treated [Decedent] . . . were off  
10 work,” and was approved by a “clinician with little to no actual knowledge of [Decedent’s]  
11 condition” despite Decedent having “been under near constant observation for weeks.” *Id.*  
12 ¶ 38. The “Ad-Seg cell” to which Decedent was transferred was “obviously unsafe” for  
13 Decedent because it was “equipped with running water and a toilet” and “required only  
14 one-hour safety checks.” *Id.* ¶¶ 39–40.

15 “During unchecked time in his Ad-Seg cell, [Decedent] predictably stuck his head  
16 into the toilet and began drinking, uncontrollably.” *Id.* ¶ 41. Deputies later discovered  
17 Decedent dead in his cell from acute water intoxication.

18 Despite knowing Decedent “was suffering from psychosis and was actively engaged  
19 in self-harming and suicidal behaviors,” “Does 1 through 20 failed to appropriately house  
20 and monitor [Decedent] . . . by failing to, among other things, provide him with access to  
21 adequate psychiatric care, diligently monitor him, and ensure that he did not have access  
22 to the means to harm himself.” *Id.* ¶ 77. “Does 1 through 20 . . . acted recklessly” by  
23 transferring Decedent to the Ad-Seg cell, “knowing he faced a grave risk of death in that  
24 situation.” *Id.* ¶ 78. “As an actual and proximate result of Defendants’ deliberate and  
25 reckless indifference to [Decedent’s] safety and wellbeing,” Decedent and Plaintiff  
26 suffered damages. *Id.* ¶ 79.

27 Following Decedent’s death, Plaintiff served the County with a timely filed  
28 Government Tort Claim, which the County denied by letter on November 29, 2021. *Id.* ¶

1 13. On May 24, 2022, Plaintiff filed suit against the County, which was then dismissed  
2 without prejudice. *Id.* Plaintiff alleges that she voluntarily dismissed the case due to the  
3 “incapacitating grief [she] felt over the death of her son, followed by a severe case of  
4 pneumonia that required Plaintiff to be hospitalized from November 11, 2022, through  
5 January 18, 2023, and subsequently placed in a rehabilitation facility.” *Id.* In February,  
6 2023, “[o]nce no longer incapacitated by grief or illness[,] ... Plaintiff immediately  
7 resumed prosecution of her case.” *Id.* Plaintiff alleges that from March 2023 through May  
8 19, 2023, she “diligently arranged and participated in pre-litigation mediation efforts,” and  
9 “[w]hen those efforts were unsuccessful, [she] filed this complaint.” *Id.*

10 Plaintiff brings three federal claims against Defendants under 42 U.S.C. § 1983—  
11 two Fourteenth Amendment claims against the Doe Defendants and one *Monell* claim  
12 against the County. Plaintiff further brings one state-law wrongful death claim against all  
13 Defendants. Plaintiff requests compensatory and punitive damages, attorneys’ fees, costs,  
14 and expenses, and all other relief which the Court deems just and proper.

### 15 **III. CONTENTIONS**

16 In its Motion, the County contends that it is “immune from liability for the wrongful  
17 death claim for relief.” (ECF No. 5-1 at 4.) The County contends that “[w]hile California  
18 Government Code [Section] 815.2 allows the County to be vicariously liable for the acts  
19 of its employees, immunities set forth in [Sections] 844.6, 845.6, and 845.2, immunize the  
20 County from liability for the allegation set forth in the [C]omplaint.” *Id.* The County further  
21 contends in the alternative that Plaintiff’s wrongful death claim “is untimely because the  
22 instant action was not filed within six months of the rejection of [her] tort claim.” *Id.* at 5.

23 In her Response, Plaintiff contends that “[w]hile the County may be generally  
24 immune from liability to prisoners under California Government Code [S]ection 844.6,”  
25 there is an exception under Section 845.6 for a knowing failure to provide immediate  
26 medical care that precludes immunity in this case. (ECF No. 7 at 5.) Plaintiff further  
27 contends that she has adequately pleaded facts to support equitable and statutory tolling of  
28 the statute of limitations in this case.

1 In its Reply, the County contends that the Complaint’s allegations that Defendants  
2 “failed to provide [Decedent] appropriate housing or medication to treat his condition” are  
3 distinct from “facts that would support a claim for failure to immediately summon medical  
4 care” under Section 845.6. (ECF No. 8 at 2.) Specifically, the County contends that the  
5 Complaint is “devoid of any specific factual allegations that any County employee  
6 observed something that should have put them on notice to summon immediate medical  
7 care.” *Id.* at 3. The County further contends that tolling of the statute of limitations is not  
8 appropriate.

#### 9 **IV. LEGAL STANDARD**

10 Rule 12(b)(6) of the Federal Rules of Civil Procedure permits dismissal for “failure  
11 to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In order to state  
12 a claim for relief, a pleading “must contain ... a short and plain statement of the claim  
13 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule  
14 12(b)(6) “is proper only where there is no cognizable legal theory or an absence of  
15 sufficient facts alleged to support a cognizable legal theory.” *Shroyer v. New Cingular*  
16 *Wireless Servs., Inc.*, 622 F.3d 1045, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*, 250  
17 F.3d 729, 732 (9th Cir. 2001)).

18 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
19 accepted as true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.  
20 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim  
21 has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
22 the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*  
23 However, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
24 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
25 cause of action will not do.” *Twombly*, 550 U.S. at 555 (alteration in original) (quoting Fed.  
26 R. Civ. P. 8(a)). While a pleading “does not require ‘detailed factual allegations,’” Rule 8  
27 nevertheless “demands more than an unadorned, the defendant-unlawfully-harmed-me  
28 accusation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). A court is not

1 “required to accept as true allegations that are merely conclusory, unwarranted deductions  
2 of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988  
3 (9th Cir. 2001). “In sum, for a complaint to survive a motion to dismiss, the non-conclusory  
4 factual content, and reasonable inferences from that content, must be plausibly suggestive  
5 of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th  
6 Cir. 2009).

## 7 **V. DISCUSSION**

### 8 **A. Statutory Immunity**

9 “In California, all governmental tort liability must be based on statute.” *Becerra v.*  
10 *County of Santa Cruz*, 68 Cal. App. 4th 1450, 1458 (1998). While California Government  
11 Code Section 815.2 provides that a public entity may generally be held vicariously liable  
12 for the acts or omissions of its employees, Section 844.6 specifically immunizes public  
13 entities against liability for “[a]n injury to any prisoner.” Cal. Gov’t Code § 844.6(a)(2);  
14 *see Lawson v. Superior Court*, 180 Cal. App. 4th 1372, 1383 (2010) (“Although a public  
15 entity may be vicariously liable for the acts and omissions of its employees (Gov.Code, §  
16 815.2), that rule does not apply in the case of injuries to prisoners.”).

17 Wrongful death actions like the one alleged in this case “are generally subject to the  
18 immunity stated in [S]ection 844.6.” *May v. County of Monterey*, 139 Cal. App. 3d 717,  
19 720 (1983). However, Section 845.6 provides a limited exception to this rule, stating:

20 Neither a public entity nor a public employee is liable for injury proximately  
21 caused by the failure of the employee to furnish or obtain medical care for a  
22 prisoner in his custody; but, except as otherwise provided by Sections 855.8  
23 and 856, a public employee, and the public entity where the employee is acting  
24 within the scope of his employment, is liable if the employee knows or has  
reason to know that the prisoner is in need of immediate medical care and he  
fails to take reasonable action to summon such medical care.

25 Cal. Gov’t Code § 845.6. Under this provision, a public entity is not immune from liability  
26 “when an employee, acting within the scope of his employment, fails to provide medical  
27 care to a prisoner and has reason to know that need for medical care is immediate.” *Lawson*,  
28 180 Cal. App. 4th at 1384. “In order to state a claim under [Section] 845.6, a prisoner must

1 establish three elements: (1) the public employee knew or had reason to know of the need  
2 (2) for immediate medical care, and (3) failed to reasonably summon such care.” *Jett v.*  
3 *Penner*, 439 F.3d 1091, 1099 (9th Cir. 2006). Thus, a plaintiff may bring a wrongful death  
4 action to the extent the claim is based upon a violation of Section 845.6 for failure to  
5 summon medical care. *See Lucas v. City of Long Beach*, 60 Cal. App. 3d 341, 349–50  
6 (1976).

7 In this case, the Complaint alleges that Decedent’s death was the result of the failure  
8 of jail staff “to appropriately house and monitor [Decedent],” including by failing to  
9 “provide [Decedent] with access to adequate psychiatric care, diligently monitor him, and  
10 ensure that he did not have access to the means to harm himself.” (ECF No. 1 ¶ 77.)  
11 Specifically, the Complaint alleges that jail staff repeatedly failed to produce Decedent for  
12 court-ordered psychiatric evaluations in the months leading up to his death, transferred  
13 Decedent to an “Ad-Seg cell” that was unsafe for Decedent and not properly monitored,  
14 and did not check on Decedent until after he had died from acute water intoxication.

15 The County contends that while these facts would be sufficient to support a medical  
16 malpractice claim, they are “distinct from facts that would support a claim for failure to  
17 immediately summon medical care.” (ECF No. 8 at 2.) The Court of Appeals for the Ninth  
18 Circuit rejected a similar argument in *Jett v. Penner*, 439 F.3d at 1099. There, the Ninth  
19 Circuit held that the term “immediate medical care” includes “both diagnosis and  
20 treatment,” and therefore “the need for ‘immediate medical care’ can arise more than once  
21 in relation to an ongoing serious medical condition.” *Id.* Accordingly, although the plaintiff  
22 in *Jett* had initially received medical care for his bone fracture, the jail staff’s failure to  
23 produce him for follow-up orthopedic appointments amounted to a failure to summon  
24 immediate medical care. *See id.*

25 In *Horton by Horton v. City of Santa Maria*, 915 F.3d 592 (9th Cir. 2019), a pretrial  
26 detainee attempted suicide shortly after he was booked into city jail, and later died from  
27 his injuries. *Id.* at 598. The Ninth Circuit held that the city and a police officer were not  
28 immune because the officer failed to request a “prompt psychiatric evaluation or otherwise

1 [summon] psychiatric care” after being informed of the detainee’s suicidal ideation. *Id.* at  
2 607. Relying on *Jett*, the Ninth Circuit reasoned that an “immediate” medical need does  
3 not mean an “urgent” medical need. *Id.* at 608. Instead, “the obligation to summon  
4 immediate medical care requires that the public employee act in a ‘timely’ manner, so as  
5 to prevent further injury.” *Id.*

6 Here, the Complaint alleges that jail staff repeatedly discovered Decedent engaging  
7 in self-harming behaviors, including dunking his head in the toilet and attempting to  
8 strangle himself. It further alleges that jail staff knew of Decedent’s worsening mental  
9 condition, yet failed to produce Decedent for any of his court-ordered psychiatric  
10 examinations. These allegations, when accepted as true, are sufficient to allege that jail  
11 staff knew or should have known that Decedent was in need of immediate medical care,  
12 and failed to summon such care. *See id.*; *see also Jett*, 439 F.3d at 1099. Although the  
13 Complaint alleges that Decedent was “treated” by staff and was seen by a “clinician,” ECF  
14 No. 1 ¶ 38, the need for immediate medical care “can arise more than once in relation to  
15 an ongoing serious medical condition.” *Jett*, 439 F.3d at 1099; *see also Horton*, 915 F.3d  
16 at 608.<sup>2</sup>

17 In its Reply, the County contends that there are no allegations that jail staff knew  
18 Decedent was in need of *immediate* medical care. (*See* ECF No. 8 at 2–3.) However, as  
19 explained in *Horton*, the “immediacy standard is, under the applicable case law, relaxed.”  
20 *Horton*, 915 F.3d at 608. Thus, although Decedent’s psychiatric evaluations were often  
21 scheduled weeks in advance, jail staff still had an obligation to furnish Decedent for the  
22 evaluations in a “timely manner.” *Id.* at 608 (internal quotations omitted).

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25 <sup>2</sup> The Ninth Circuit’s decision in *Jett* was criticized in *Castaneda v. Dep’t of Corrs. & Rehab.*, 212 Cal.  
26 App. 4th 1051 (2013) which stated, “[w]ere we to conclude the duty under [S]ection 845.6 includes  
27 furnishing, monitoring, followup, or subsequent care for the same condition, as the [plaintiff] argues *Jett*  
28 does, we would be expanding the liability of the public entity beyond that contemplated by the  
Legislature.” *Id.* at 1074. At this time, the Court need not address the disagreement between the cases  
because the Complaint adequately alleges that jail staff had “actual or constructive knowledge that the  
prisoner [was] in need of immediate medical care.” *Id.* at 1070 (internal quotations omitted).



1 The County further contends in the Reply that it is specifically immune under  
2 Section 855.8 and Section 856. (*See* ECF No. 8 at 2.) Under Section 855.8, a public entity  
3 is not liable for “injury resulting from diagnosing or failing to diagnose that a person is  
4 afflicted with mental illness or addiction or from failing to prescribe for mental illness or  
5 addiction.” Cal. Gov’t Code § 855.8(a). Under Section 856, a public entity is also immune  
6 for “any injury resulting from determining ... [t]he terms and conditions of confinement  
7 for mental illness.” Cal. Gov’t Code § 856(a)(2). Because these arguments were raised for  
8 the first time in the Reply, they are waived for the purposes of this motion. *See Graves v.*  
9 *Arpaio*, 623 F.3d 1043, 1048 (9th Cir. 2010).

### 10 **B. Equitable and Statutory Tolling**

11 Under the California Tort Claims Act, “no suit for money or damages may be  
12 brought against a public entity ... until a written claim therefor has been presented to the  
13 public entity and has been acted upon.” Cal. Gov’t Code § 945.4. If the claim is rejected, a  
14 plaintiff must initiate a lawsuit within six months of written notice of the rejection. Cal.  
15 Gov’t Code § 945.6(a)(1).

16 The parties do not dispute that Plaintiff complied with Section 945.4 by filing a  
17 written claim with the County of San Diego. Nor do they dispute that Plaintiff did not  
18 comply with Section 945.6 by voluntarily dismissing the original suit, and then failing to  
19 refile within six months of the County’s rejection letter. At issue here is whether Plaintiff  
20 is entitled to equitable or statutory tolling.

21 The Complaint alleges that Plaintiff has “pursued this lawsuit as diligently as  
22 humanly possible.” (ECF No. 1 ¶ 13.) After the original complaint was voluntarily  
23 dismissed, the Complaint alleges that Plaintiff was unable to refile within the six-month  
24 statutory period due to “incapacitating grief” from the death of her son, which was followed  
25 by a “severe case of pneumonia.” *Id.* Once Plaintiff was “no longer incapacitated by grief  
26 or illness,” she “immediately resumed prosecution of her case.” *Id.* In the Motion to  
27 Dismiss, the County contends that “[p]ermitting tolling of a statute of limitations based on  
28 grief would render the limitation unenforceable.” (ECF No. 5-1 at 6.) The County further

1 contends that Plaintiff has not “alleged sufficient facts that she was completely unable to  
2 file the instant action.” (ECF No. 8 at 4.)

3 Equitable tolling is a “judicially created, nonstatutory doctrine that suspends or  
4 extends a statute of limitations as necessary to ensure fundamental practicality and  
5 fairness.” *Saint Francis Memorial Hosp. v. State Dep’t of Pub. Health*, 9 Cal. 5th 710, 720  
6 (2020) (cleaned up). The purpose of the doctrine is to “soften the harsh impact of technical  
7 rules which might otherwise prevent a good faith litigant from having a day in court.” *Id.*  
8 (quoting *Addison v. State*, 21 Cal. 3d 313, 316 (1978)). Equitable tolling is applied where  
9 three factors are met: (1) timely notice to the defendant; (2) lack of prejudice to the  
10 defendant in gathering evidence; and (3) good faith and reasonable conduct by the plaintiff.  
11 *See Hatfield v. Halifax PLC*, 564 F.3d 1177, 1185 (9th Cir. 2009) (citing *Collier v. City of*  
12 *Pasadena*, 142 Cal. App. 3d 917, 923 (1983)); *Addison*, 21 Cal. 3d at 319 (applying  
13 equitable tolling to Section 945.6). “The burden of alleging facts which would give rise to  
14 tolling falls upon the plaintiff.” *Hinton v. Pac. Enters.*, 5 F.3d 391, 395 (9th Cir. 1993).

15 Plaintiff alleges timely notice to the County. (ECF No. 1 ¶ 13.) There is no indication  
16 in the Complaint or in the record that the County suffered prejudice in gathering evidence  
17 due to Plaintiff’s delay. Resolution of the reasonableness of the reasons for Plaintiff’s delay  
18 requires the Court to look beyond the Complaint to resolve factual matters. Accordingly,  
19 the Court finds that determination of the statute of limitations issue is not appropriate at  
20 this stage of the proceedings. *See Cervantes v. City of San Diego*, 5 F.3d 1273, 1276 (9th  
21 Cir. 1993) (“[T]he question [of equitable tolling] ordinarily requires reference to matters  
22 outside the pleadings, and is not generally amenable to resolution on a Rule 12(b)(6)  
23 motion, where review is limited to the complaint alone.”); *see also Emrich v. Touche Ross*  
24 *& Co.*, 846 F.2d 1190, 1199 (9th Cir. 1988) (reversing dismissal because deciding equitable  
25 tolling issues in the first instance requires the district court to “resolve certain disputed  
26 factual matters.”); *see also Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1207 (9th  
27 Cir. 1995) (The Ninth Circuit has “reversed dismissals where the applicability of the  
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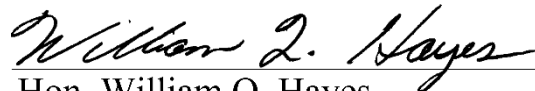
1 equitable tolling doctrine depended upon factual questions not clearly resolved in the  
2 pleadings.”).<sup>3</sup>

3 The Motion to Dismiss is therefore denied.

4 **VI. CONCLUSION**

5 IT IS HEREBY ORDERED that the Motion to Dismiss Complaint (ECF No. 5) filed  
6 by Defendant County of San Diego is denied. Defendant County of San Diego shall file an  
7 answer to the Complaint pursuant to Federal Rule of Civil Procedure 12(a).

8 Dated: November 20, 2023

  
Hon. William Q. Hayes  
United States District Court

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<sup>3</sup> The Court declines to address whether statutory tolling is applicable pursuant to California Code of Civil Procedure Section 352.