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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

OCEAN S.; JACKSON K.; ROSIE S.; ERYKAH B.; JUNIOR R.; ONYX G.; and MONAIE T. , individually and on behalf of others similarly situated, Plaintiffs, **v.** **LOS ANGELES COUNTY; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES; LOS ANGELES DEPARTMENT OF MENTAL HEALTH; CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY; MARK GHALY, Secretary of the California Health and Human Services Agency; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; and KIM JOHNSON, Director of the California Department of Social Services; CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES; MICHELLE BAASS. Director of the California Department of Health Care Services,** Defendants	2:23-cv-06921-JAK-E **STATE DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** **[Request for Judicial Notice and Declaration of Gabriella Carnavle filed concurrently herewith]** Date: January 27, 2025 Time: 8:30 a.m. Courtroom: 10B Judge: Hon. John Kronstadt Trial Date: Not Set Action Filed: August 22, 2023

NOTICE OF MOTION AND MOTION TO DISMISS

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 27, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable John A. Kronstadt, United States District Judge, in the United States District Court, Central District of California, Courtroom 10B, located at 350 West 1st Street, Los Angeles, California 90012, California Health and Human Services Agency (CalHHS), its Secretary Mark Ghaly, California Department of Social Services (CDSS), its Director Kim Johnson, and California Department of Health Care Services (CDHCS), and its Director Michelle Baass (collectively the State Defendants (the State Defendants' Directors and Secretary are collectively the Individual State Defendants)), will and hereby do move for an order: (a) dismissing Plaintiffs' Third through Fifth Causes of Action, all brought under 28 U.S.C. 1983 (Section 1983) with prejudice as to the Individual State Defendants; and (b) dismissing the Sixth Cause of Action, brought under Section 1983 as to Director Baass; and (c) dismissing Plaintiffs First, Second, Seventh and Eighth Causes of Action, all asserting claims under the Integration Mandate of the Rehabilitation Act, 42 U.S.C. § 794, *et seq.*, (Section 504) and the Americans with Disabilities Act, 42 U.S.C. § 12102, *et seq.* (the ADA) as to the State Defendants, or in the alternative, as to the Individual State Defendants.

This Motion is brought pursuant to Rule 12(b)(6) on the grounds that: (1) Plaintiffs fail to plead any relevant facts related to supervisory liability as to the Individual State Defendants under Section 1983; and (2) Plaintiffs fail to allege any facts about the State Defendants in support of their Integration Mandate claims.

The Motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place on September 13, 2024. This Motion is based on this Notice, the State Defendants' Request for Judicial Notice, the Declaration of Gabriella Carnevale, the Memorandum of Points and Authorities in support thereof, the papers and pleadings on file in this action, and on such oral argument as may be presented at the hearing.

Dated: September 23, 2024

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs bring six claims against the State Defendants.[1] To begin, Plaintiffs' four claims under 28 U.S.C. Section 1983 (Section 1983) fail for the same reason they failed when the Court previously dismissed them. *See* June 11, 2024, Minute Order (Dkt. # 120) (the Order). There the Court held that the First Amended Complaint (FAC) lacked sufficient factual allegations to state a claim for supervisory liability under Section 1983 against the Individual State Defendants.

The Second Amended Complaint (SAC) adds five paragraphs (SAC ¶¶ 346-351) that attempt, but fail, to overcome the Section 1983 deficiencies in the FAC, as the allegations fail to establish that the Individual State Defendants were "personally aware" of "Defendants' failure to meet their legal obligations to" Transition Age Youth (TAY). SAC ¶ 346. These new allegations do not bring Plaintiffs' Section 1983 claims over the line to plausible and fail to state a claim for the following three reasons.

First, these new allegations refer exclusively to statements made in the context of the Individual State Defendants advocating for their constituencies through the political process. Specifically, Plaintiffs cite the Individual State Defendants' policy recommendations made to the Legislature and other agencies. The Individual State Defendants' policy recommendations are the only allegations in the SAC as to them and are First Amendment petitioning activity protected by the *Noerr-Pennington* immunity doctrine.

Second, even if the Court considered the Individual State Defendants' petitioning activity as a basis to hold them liable under Section 1983 (which it should not), these allegations do not state a plausible claim of deliberate

[1] The Individual State Defendants are California Health and Human Services Agency (CalHHS) Secretary Ghaly, California Department of Social Services (CDSS) Director Johnson, and California Department of Health Care Services (CDHCS) Director Baass. The Individual State Defendants and CalHHS, CDSS, and CDHCS are collectively the State Defendants.

indifference, which is the claim Plaintiffs allege. Instead, these allegations reflect the Individual State Defendants taking political action to address the very problems about which Plaintiffs complain. This is the opposite of indifference.

Third, the new allegations do not demonstrate the Individual State Defendants possessed knowledge of the specific deficiencies alleged in the SAC, as Ninth Circuit precedent holds they must. As one example, Plaintiffs bring a claim under Section 1983 for the County's alleged failure to provide early and periodic screening, diagnostic, and treatment (EPSDT) services, but the new allegations do not mention EPSDT services. SAC ¶¶ 346-351. As another example, the statements Plaintiffs summarize in the new allegations address caseworker caseloads and the legislatively set payment rate for Supervised Independent Living Placements (SILPs), but these issues are not the bases of Plaintiffs' claims, nor are they issues under the Individual State Defendants' control.

Plaintiffs' two non-Section 1983 claims allege violations of the integration mandate under the Rehabilitation Act, 42 U.S.C. § 794, *et seq.*, (Section 504) and the Americans with Disabilities Act, 42 U.S.C. § 12102, *et seq.* (the ADA). While the Court previously allowed "General Discrimination" and "Methods of Administration" claims to proceed under Section 504 and the ADA (*see* Order, pp. 27-29), the Court dismissed Plaintiffs' claims under the integration mandate (*id.*).

The Court should dismiss the integration mandate claims again because they *allege nothing about the State Defendants*. Plaintiffs do not mention the State Defendants in these claims, nor do they point to any state-level policy or practice as a cause for the claimed violation of the integration mandate. To the contrary, these claims address individualized decisions made at the local level. In other words, Plaintiffs are asking this Court to create a rule of strict liability for all six State Defendants and to hold them liable for any alleged integration mandate violation by the County without any nexus to state policy or practice. That would be unprecedented.

For these reasons, the Section 1983 claims and the integration mandate claims should be dismissed with prejudice as to the State Defendants.

RELEVANT ALLEGATIONS

I. THE SECTION 1983 CLAIMS AND THE NEW ALLEGATIONS

A. Summary

Plaintiffs' Third through Sixth Causes of Action are against the Individual State Defendants and are asserted under Section 1983. SAC ¶¶ 399-426. Specifically:

- Plaintiffs' Third Cause of Action is against Director Johnson for violation of procedural due process based on the allegation that "Defendants fail to provide adequate notice of placement decisions or notice of procedures to appeal a denial of placement." SAC ¶ 8.
- Plaintiffs' Fourth Cause of Action is against Secretary Ghaly and Director Johnson for violation of substantive due process based on the allegation that "Defendants are violating transition age foster youths' substantive due process rights by failing to have a system that, at a minimum, ensures that youth are not without shelter, reasonable safety, and medical care, thus exposing them to a substantial risk of serious harm." SAC ¶ 7.
- Plaintiffs' Fifth Cause of Action is against Director Johnson for violation of procedural due process based on the allegation that "Defendants [] force youth out of [THPP-NMD] placements without adequate notice or opportunity to be heard." SAC ¶ 8.
- Plaintiffs' Sixth Cause of Action is against Director Baass. It alleges "Defendants violate the Medicaid Act, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(43)(C), 1396d(a)(4)(B) and 1396d(r), by failing to ensure Medicaid-eligible transition age foster youth have access to medical assistance they are entitled to through [EPSDT] services." SAC ¶ 10.

B. The New Allegations Regarding the Individual State Defendants

The SAC does not allege the Individual State Defendants' "personal involvement in the constitutional deprivation" or "a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." Order at 27. This same failure prompted the Court to dismiss Plaintiffs' Section 1983 claims against the Individual State Defendants in the FAC.[2] *Id*.

The SAC adds no allegations regarding the Individual State Defendants' personal involvement, wrongful conduct, or any causal connection between the Individual State Defendants and the alleged violations. *See* Dkt. 129-1 (redline of FAC to SAC). Plaintiffs *do not mention* the Individual State Defendants when alleging facts specific to their experiences that give rise to their individual claims. *See* SAC ¶¶ 31-185. Moreover, Plaintiffs *do not mention* the Individual State Defendants when purporting to summarize Defendants' conduct underlying their Section 1983 claims.[3] Finally, Plaintiffs *do not mention* the Individual State Defendants in their various causes of action, except to identify against whom the cause of action is being asserted. *See* SAC ¶¶ 399-426.

The only new allegations regarding the Individual State Defendants are contained in paragraphs 346-351 of the SAC. These new allegations seek to hold the Individual State Defendants liable solely *for their efforts to address* California's homelessness crisis. These new allegations are summarized as follows:

1. The AB 2083 Report

In paragraph 347, Plaintiffs cite to the "AB 2083: Children and Youth System of CARE Legislative Report" ((the AB 2083 Report) (a copy of which is Exhibit A

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[2] The Court dismissed the Section 1983 claim arising out of the Medicaid Act because the Court dismissed that claim against the County (Order at 27), but the same reasoning applies to this claim as the other Section 1983 claims.

[3] *See* SAC ¶¶ 234-253 (allegations supporting Third Cause of Action do not mention Individual State Defendants); *id*. ¶¶ 200-233(allegations supporting Fourth Cause of action do not mention Individual State Defendants); *id*. ¶¶ 260-268 (allegations supporting Fifth Cause of action do not mention Individual State Defendants); *id*. ¶¶ 317-345 (allegations supporting Sixth Cause of action do not mention Individual State Defendants).

to the State Defendants' Request for Judicial Notice (RJN))) as evidence that the Individual State Defendants had personal knowledge of "Defendants' failure to meet the legal obligations to TAY." SAC ¶ 347.

Assembly Bill (AB) 2083 (Stats. 2018, Ch. 815) enacted Welfare and Institutions Code, Section 16521.6. That statute requires a team consisting of representatives from CDSS and CDHCS, among other state entities, to submit a report to the Legislature regarding ongoing issues facing foster youth. As stated in the resulting report:

> The statutes enacted by AB 2083 directed this team, in consultation with county agencies, service providers, and advocates for children and resource families, *to develop and submit recommendations to the Legislature* addressing any identified gaps in placement types or availability, needed services for children and resource families, or other identified issues for children and youth in foster care who have experienced severe trauma.

RJN Ex A, p. 2 (emphasis added); *see also* Welf. & Inst. Code § 16521.6(b)(2).

Plaintiffs assert that the statement in the AB 2083 Report that "[g]aps exist in case coordination, preventative and upstream planning, transition planning, and cross-system competencies, which impact timely access to coordinated supports and services" is evidence of the Individual State Defendants' liability for the four Section 1983 claims. This statement is made on page seven of the AB 2083 Report in the context of caseworker ratios and provides in full as follows:

> **Gap 6: Case Worker Ratios**
>
> *Gaps identified by the state's system of care related to Gap 6 include:*
>
> • County caseload ratios reflect a much higher ratio than what is recommended for children in all program areas.
>
> • Gaps exist in case coordination, preventative and upstream planning,

> transition planning, and cross-system competencies, which impact timely access to coordinated supports and services.

RJN, Ex. A, p. 7 (bold and italics in original). Notably, Plaintiffs do not base any of their Section 1983 claims on caseworker ratios, do not allege a single fact about caseworker ratios (let alone that they are deficient), nor does the SAC assert any basis to hold any of the Individual State Defendants responsible for County caseworker ratios.

Finally, for Director Baass the section of the Report cited is even more irrelevant. Caseworker ratios and the services being discussed are not health care services nor Medicaid benefits. These ratios are not related CDHCS in any way. Yet, Plaintiffs cite them as supposed proof of Director Baass's knowledge of the facts underlying Plaintiffs' Medicaid Act claim. In short, the Report does not create liability for any of the Individual State Defendants.

2. The California Interagency Council on Homelessness

In paragraph 348, Plaintiffs seek to hold the Individual State Defendants liable based on their participation in the California Interagency Council on Homelessness (IACH). Welfare and Institutions Code, Section 8257, created the IACH. The IACH's purposes include making policy and procedural recommendations to legislators and other governmental entities. *See* Welf. & Inst. C. § 8257(b)(6).

In addition to seeking to hold the Individual State Defendants liable for simply being on the IACH, Plaintiffs assert liability because the IACH's 2022-2023 Action Plan *for Preventing and Ending Homelessness* in California ((the Action Plan) (a copy of which is attached as Exhibit B to the RJN)):

> [H]ighlights the need to "continue to offer Transition Housing Placements" for TAY who are 18-21 and to "continue to support THP-Plus" for TAY who are 18-24, to assist in providing the "supports necessary to obtain more permanent housing [and because] the Council identified the need for these "supports necessary to obtain more

> permanent housing for TAY" as one of the year's "HIGHEST-PRIORITY ACTIVITIES FOR IMPLEMENTATION."

SAC ¶348 (emphasis in original).

The Action Plan is a legislatively mandated policy document outlining specified California agencies' efforts to prevent and end homelessness in California to address and solve the homelessness crisis. RJN, Ex B, p. 1. Moreover, the quote in the SAC comes from a portion of the Action Plan summarizing and *commending CDSS's efforts*:

> CDSS' Transition Housing Placements (THP-NMD) program serves youth in extended foster care ages 18 to 21. Housing models include: a host family, staffed sites, and remote sites. In addition to housing, THPP-NMD participants receive supportive services to assist the NMD in obtaining skills needed to successfully transition to independent living. Currently there are over 150 licensed THPP-NMD programs in operation in at least 45 counties statewide. Point-in-time placement data retrieved quarterly between July 2022 and April 2023 consistently shows over 2,000 NMD's placed in THPP-NMD programs each quarter. The most recent available data from county self-reports is from Federal Fiscal Year (FFY) 21-22 (October 1, 2021, through September 30, 2022) and shows over 2,800 young adults participated in THPP-NMD programs that year.

Id., p. 88. Furthermore, although Director Johnson and Secretary Ghaly are listed in the report as members of the IACH, none of the Individual State Defendants are identified as an author of this report. RJN, Ex. B, p. ii.

3. Legislative Hearing Testimony

Lastly, Plaintiffs try to hold Director Johnson liable based on her participation in a hearing before the California Legislature and her advocating for the people whom CDSS serves. SAC ¶¶ 349-351. These three paragraphs cite to testimony before the Legislature's Assembly Budget Subcommittee on Human Services (the

Subcommittee) on April 3, 2024 (the Hearing). *See* RJN Ex. C (April 3, 2024, Hearing Agenda), Ex. D (April 3, 2024, Hearing Transcript).

At the Hearing, Director Johnson and her Chief Deputy Director were testifying before the Legislature to advocate for CDSS's constituencies in response to specific questions asked by the Subcommittee. *See* RJN Ex. C (identifying issues for Hearing). Paragraph 349 of the SAC asserts, "on information and belief," that Director Johnson received materials stating that "1 in 5 youth in extended foster care experience homelessness" and that the SILP payment has increased at a rate lower than the cost of housing. SAC ¶ 349.

Paragraph 350 contains no statements from Director Johnson. SAC ¶ 350. Both statements described were made in the context of SILP rates.

The first statement in this paragraph is by another CDSS employee and provides:

> Finally, in response to questions in the agenda . . . our primary child welfare case management system does not track data in a way that allows us to know how frequently these youth experience homelessness or housing insecurity.

RJN Ex D, p. 22. Plaintiffs presumably included this quotation in an attempt to show that Director Johnson has knowledge of the lack of tracking homelessness because of the testimony of a Chief Deputy who reports to Director Johnson, and that, therefore, Director Johnson is deliberately indifferent to homelessness. The SAC, however, does not include any allegations about how the child welfare case management system allegedly not tracking this data has caused the alleged Constitutional harms to Plaintiffs or that tracking such information is possible and that Director Johnson deliberately disregarded that possibility.

The next statement in paragraph 350 is from a youth advocate to the Legislature asserting "[i]t has become commonplace for people to expect housing instability" for TAY. SAC ¶ 350; RJN Ex. C, p. 3 (identifying speaker as

"Wednesday Pope, Folsom Lake Community College Student & Youth Advocate at John Burton Advocates for Youth"); Ex. D, p. 25 (containing quoted sentence). Ms. Pope, however, was testifying about her personal experience and not offering substantiated evidence of homelessness generally. RJN Ex. D, pp. 24-26. Even assuming she was offering data driven information (which she was not) as evidence at the Hearing, the fact was relevant to the SILP payment rate, but that rate is not at issue in the SAC nor is it set by the State Defendants. *Id*.

The gravamen of the SAC is *not* that homelessness exists because *the legislatively set* SILP rate is too low. Nor is it because CDSS allegedly fails to track data about homelessness and housing insecurity. There is, therefore, no nexus between these new allegations and the causes of action in the lawsuit.

Lastly, in paragraph 351, Plaintiffs seek to hold Director Johnson liable because at the Hearing she testified that she regularly meets with current and former foster youth and an advocacy group, California Youth Connection (CYC), and that CYC published a report stating that a disproportionate amount of TAY lose their housing. Director Johnson's testimony, in context, is:

> The Committees also asked about the priorities for our child welfare system and how we go forward, how we actually engage youth in the proposals that we have. We have intentionally created numerous opportunities to hear from current and former foster youth. That includes, as I referenced, the Child Welfare Council. We also have the Complex Care Steering Committee where the California Youth [C]onnection is represented. The Directorate within the Department, myself. We have regularly quarterly check-ins with the California Youth Connection to hear directly from young people and just complete appreciation for the preparation they have, giving us recommendations specific to many areas of policy and budget. We also have quarterly meetings with advocates and youth with lived experience, regional peer

> partner hubs, and of course, the California Citizen Review Panel. What we've heard in those conversations from youth is that the biggest priorities from them are timely child and family teaming, where the youth's voice and choice is at the center of the discussion, connection to their communities of origin, school and relatives, access to enrichment activities, housing services for older foster youth, a need for peer supports, stability and consistent access to services and continuous supports across all areas of care, education and employment support, and more preparation for the transition into adulthood.

RJN, Ex. D, pp. 10-11.

In other words, Plaintiffs are asking the Court to hold Director Johnson liable for receiving policy input from the community CDSS serves, including youth who are members of the putative class, and testifying to the Legislature about that input.

II. The Integration Mandate Claim

While the Court previously allowed a claim of supervisory liability to proceed against the State Defendants based on alleged "General Discrimination" and "Methods of Administration" (Order at 27-30), at issue in this Motion are Plaintiffs' separate claims under the integration mandate of Section 504 and the ADA based on the allegation that:

> Defendants route many transition age foster youth with mental health disabilities into segregated, overly-restrictive institutional settings even though they are eligible for less-restrictive and more integrated placement options, they could be better served in these less restrictive and more integrated placement options, and they do not oppose being served in these community-based non-institutional settings.

SAC ¶ 304.

LEGAL STANDARD

Rule 8 requires a "short and plain statement" of Plaintiffs' claims and "[e]ach allegation must be simple, concise, and direct." Fed. R. Civ. P. 8. To survive a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), a complaint must contain more than a "formulaic recitation of the elements of a cause of action," it must contain factual allegations sufficient to "raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 555 (2007). The court need not accept legal conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2005). The complaint must contain sufficient factual matter, accepted as true, to plausibly – not merely possibly – allow the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* at 678-679. A complaint also "must provide the defendant with 'fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" *Dura Pharms, Inc. v. Broudo*, 544 U.S. 336, 346 (2005).

"Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679). Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between "possibility and plausibility of entitlement to relief." *Iqbal*, 556 U.S. at 678. Where "the facts alleged do not permit the court to infer more than the mere possibility of misconduct," a motion to dismiss should be granted. *Id.*, at 679.

ARGUMENT

As explained below, there is no individual Section 1983 liability, Plaintiffs fail to state a Section 504 and ADA claim against the State Defendants, and leave to amend should not be granted.

I. THE SECTION 1983 CLAIMS FAIL AGAINST THE INDIVIDUAL STATE DEFENDANTS

A. The New Allegations Are Protected Petitioning Activity

Under the *Noerr-Pennington* immunity doctrine, petitioning activity directed at any branch of government cannot be a basis of liability because of the First Amendment's guarantee of the "right of the people…to petition the Government for a redress of grievances." *United Mine Workers v. Pennington,* 381 U.S. 657, 670, (1965); *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.* 365 U.S. 127, 136-137 (1961); *see also Sosa v. DIRECTV Inc.,* 437 F.3d 923, 929 (9th Cir. 2006). "The doctrine immunizes petitions directed at any branch of government, including the executive, legislative, judicial and administrative agencies." *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1092 (9th Cir. 2000).

To determine whether a defendant's conduct, which allegedly violates a statute, is immunized under *Noerr-Pennington*, the Ninth Circuit applies a three-step analysis to determine: "(1) whether the lawsuit imposes a burden on petitioning rights, (2) whether the alleged activities constitute protected petitioning activity, and (3) whether the statute at issue may be construed to avoid that burden. If the answer at each step is 'yes,' then a defendant's conduct is immunized under *Noerr-Pennington*." *B&G Foods N. Am., Inc. v. Embry*, 29 F.4th 527, 535 (9th Cir. 2022) (internal quotations, citations removed).

The plaintiff has the burden to state factual allegations that show the defendant's conduct falls outside the protection of *Noerr-Pennington. See Boone v. Redevelopment Agency of San Jose*, 841 F.2d 886, 894 (9th Cir. 1988) ("In order not to chill legitimate lobbying activities, it is important that a plaintiff's complaint contain specific allegations demonstrating that the *Noerr-Pennington* protections do not apply."); *Sosa*, 437 F.3d at 942 (affirming order dismissing plaintiff's claims without leave to amend for failure to state a claim under Rule 12(b)(6) where the plaintiff alleged activity "arguably falling within the scope of the Petition Clause of the First Amendment").

1. This Lawsuit Burdens Petitioning Rights

The first step asks whether if this lawsuit is successful, it would burden the Individual State Defendants' petitioning rights. *B&G Foods N. Am., Inc.,* 29 F.4th at 535. Here, the burden is palpable—Plaintiffs want to hold the Individual State Defendants liable because of their statements to the Legislature (and to other state agencies) allegedly acknowledging a problem in an effort to solve it. *These are the only allegations in the SAC about the Individual State Defendants and are Plaintiffs' only basis for liability as to them*. If government employees' communications, alone, attempting to solve and address a problem, paired with an allegation that there is a problem, could suffice for Section 1983 liability, then government defendants could never request additional funding or policy changes from other government actors. That burden would be profound and debilitating.

2. The New Allegations Are Petitioning Activity

Noerr-Pennington immunity "applies to claims," like those at issue here, against government defendants brought "under 42 U.S.C. § 1983 that are based on the petitioning of public authorities." *B&G Foods N. Am., Inc.,* 29 F.4th at 535. This is because:

> [g]overnment officials are frequently called upon to be ombudsmen for their constituents. In this capacity, they intercede, lobby, and generate publicity to advance their constituents' goals, both expressed and perceived. This kind of petitioning may be nearly as vital to the functioning of a modern representative democracy as petitioning that originates with private citizens.

Manistee Town Ctr., 227 F.3d at 1093.

When a state official engages in petitioning activity before other agencies and the Legislature, that conduct is immunized. *Id.; see also B&G Foods N. Am., Inc.*, 29 F.4th at 539 ("Ninth Circuit precedent holds that government officials engaged in petitioning conduct on behalf of the public, like that present here, are entitled to *Noerr-Pennington* immunity [from Section 1983 claims]."); *Kearney v. Foley & Lardner, LLP*, 590 F.3d 638, 646 (9th Cir. 2009) (same).

Plaintiffs' allegations purporting to establish the Individual State Defendants' liability are all protected petitioning activity. Paragraph 347 of the SAC is about a policy document required by, and making recommendations to, the Legislature. *See* Relevant Facts, § I.B.1, *supra*. The Action Plan *for Preventing and Ending Homelessness* in California in paragraph 348 is also Legislatively required and is a communication between state agencies about what is being done and should be done to combat the homelessness crisis. *See* Relevant Facts, § I.B.2, *supra*. Finally, the last three paragraphs (SAC ¶¶ 349-351) all arise out of testimony at the Subcommittee Hearing addressing whether specific legislation should be passed. *See* Relevant Facts, § I.B.3, *supra.*

Plaintiffs may argue that the liability-creating conduct at issue in the SAC (*e.g.*, Plaintiffs' experiences) is not petitioning activity, and that the petitioning activity is simply evidence of the Individual State Defendants' knowledge of that *other* liability-creating conduct. Such an argument has no merit here, where Plaintiffs have alleged nothing about the Individual State Defendants other than their protected petitioning activity.[4]

3. Section 1983 May Be Construed to Avoid Burdening Petitioning Activity

"[T]he *Noerr–Pennington* doctrine stands for a generic rule of statutory construction, applicable to any statutory interpretation that could implicate the rights protected by the Petition Clause." *Sosa*, 437 F.3d at 931. "Thus, we ask at step three whether the statute—here 42 U.S.C. § 1983—can be construed to avoid burdening Defendants' Petition Clause rights." *B&G Foods N. Am., Inc.*, 29 F.4th at 540.

It is settled law in this Circuit that Section 1983 is construed to avoid

[4] *Cf. In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 497 F. Supp. 3d 552, 614 (N.D. Cal. 2020) (rejecting application of *Noerr Pennington* on the grounds that "even if the representations to Congress and the FDA are not actionable as predicate acts, they are nonetheless evidence of the alleged overall scheme to defraud," but where, as distinct from this case, the representations were just one of many allegations regarding the defendants).

"regulating this quintessentially 'political activity.'" *Manistee Town Ctr.,* 227 F.3d at 1093. One government employee "petitioning or lobbying of another governmental entity is insufficient to "subject" or "cause to be subjected" a person "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983." *Id.*; *see also B&G Foods N. Am., Inc.*, 29 F.4th at 540 ("our statements in *Manistee* show that we believed that the *Noerr-Pennington* doctrine barred § 1983 claims based on any protected petitioning conduct").

Without these new allegations of the Individual State Defendants' petitioning activity—the only allegations about them—the SAC rests on nothing more than the same allegations that the Court already held failed to state a claim. The Motion to Dismiss as to the Section 1983 claims should be granted for this reason alone.

B. Even If The New Allegations Were Not Protected Petitioning Activity, They Do Not Establish Liability

In the Order, the Court held that Plaintiffs failed to allege sufficient facts to establish liability over the Individual State Defendants. Order, pp. 26-29. The Court rejected Plaintiffs' argument that their allegation of a duty to administer the law and oversee services is sufficient to create Section 1983 liability. *Id.*

In reaching this conclusion, the Court relied on "well established" precedent holding that "a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." *Nichols v. Brown*, 859 F. Supp. 2d 1118, 1131 (C.D. Cal. 2012) citing *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir.1998); *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) ("A defendant may be held liable as a supervisor under § 1983 if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation.") (quotations omitted); *see also* Order at pp. 26-27, 29 (citing same).[5]

Plaintiffs have not changed their theory of liability as to the Individual State Defendants. Specifically, Plaintiffs' allegations confirm that their theory of Section 1983 liability for the Individual State Defendants is that they "are each personally aware of Defendants' failure to meet their legal obligations to TAY as evidenced by these Individual State Defendants'" petitioning activity advocating for their constituencies "which highlight the difficulties faced by TAY and the inadequacies of the support systems their agencies each provide to TAY." SAC ¶ 346.

Assuming for the sake of argument that the Individual State Defendants' conduct was not protected activity under *Noerr Pennington* (which it is) and even if a deliberate indifference claim were viable against a state official sued in his or her official capacity (which it is not, as discussed in n4, *supra*), Plaintiffs' allegations do not state such a claim.

First, the allegations Plaintiffs cite are of *action taken to address* the root issue about which Plaintiffs complain—homelessness—not indifference to this problem. Such activity does not create a plausible inference of deliberate indifference under the familiar *Twombly* and *Iqbal* standards.

Second, even if Plaintiffs could overcome these hurdles—*Noerr-Pennington* immunity, pleading the wrong theory of liability (*see* n.5 *supra*), and citing evidence of Defendants' activities to help people like Plaintiffs as evidence of their deliberate indifference to them—the Ninth Circuit has rejected the assertion that knowledge of "independent reports documenting the systemic failures of foster care" can state a claim for a due process violation against state officials. *Henry A. v. Wilden*, 678 F.3d 991, 1004 (9th Cir. 2012) (the "allegations that do expressly

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[5] The State Defendants respectfully maintain that a supervisory liability claim is improper against officials sued in their official capacity. *Compare Hartman v. Cal. Dep't of Corr. & Rehab.* 707 F.3d 1114, 1127 (9th Cir. 2013) (pleading requirements for official capacity claims); *with Starr*, 652 F.3d at 1207 (addressing a claim "for deliberate indifference against [defendant] in his individual capacity"); *see also* Dkt. # 50, p. 10; Dkt. # 87, p. 3.

reference the State defendants are too general to state a claim for supervisory liability"). Here, as in *Henry A.*, Plaintiffs do not allege that the Individual State Defendants "had any personal knowledge of the specific constitutional violations that led to Plaintiffs' injuries, or that they had any direct responsibility to train or supervise the caseworkers employed by" the county. *Id.* Accordingly, Plaintiffs do not state a Section 1983 claim. *Id.*

An examination of Plaintiffs' Medicaid Act and procedural and substantive due process claims highlights the inadequacy of Plaintiffs' new allegations. The crux of the Medicaid Act claim is that Plaintiffs do not receive "medically necessary Specialty Mental Health Services" (SAC ¶ 10), yet the new allegations about the Individual State Defendants do not even mention Specialty Mental Health Services, let alone that Director Baass had any control over or knowledge of issues related to this claim. SAC ¶¶ 346-355. Indeed, the new allegations have nothing to do with Director Baass, the only State Defendant named in this claim. As discussed above, paragraph 347 addresses services unrelated to Director Baass (p. 13 *supra*), paragraph 348 relates to a report Director Baass did not author, and paragraphs 349-351 relate to only Director Johnson.

Similarly, even though alleged due process rights related to THPP-NMD placements and removals are at the heart of Plaintiffs' claims (*see, e.g.,* SAC ¶ 8), THPP-NMD placement and removal criteria are not mentioned once in the new allegations (SAC ¶¶ 346-355). Lastly, the allegations about homelessness relate to testimony about the amount of the SILP rate, but such rates are neither the basis for the substantive due process claim asserting a failure to provide shelter (SAC ¶ 7) nor are those amounts set by CDSS. Rather, those rates are set by statute. *See, e.g.,* Welf. & Inst. C. § 11461 (setting rates for SILP placements).

In short, even if these new allegations were not protected speech (and they are), were even relevant to a claim against a state official sued in his or her official capacity (they are not (*see* n.5 *supra*)), and actually showed indifference (they show the opposite), the SAC does not connect the dots between these new allegations regarding the Individual State Defendants' statements and the specific grievances that underlie Plaintiffs' claims. The Motion to Dismiss must be granted as to the Section 1983 claims.

II. Plaintiffs Fail To Allege An Integration Mandate Claim Against All State Defendants

Plaintiffs base their integration mandate claim on placements the State Defendants did not make (SAC ¶¶ 307-309) and on the alleged failure of the other defendants to provide community-based and continuity of "behavioral health" care and services (*id.*, ¶¶ 310-311). These individualized determinations are not made at the state level. *See, e.g.,* Welf. & Inst. Code §§ 651, 366 (discussing county placement agency and oversight by the juvenile court). Nor do Plaintiffs make any allegation that these alleged failures of integration are the product of any policy, practice, regulation, or guideline of the State Defendants or are even something the State Defendants were aware of or should have been aware of. *See* SAC ¶¶ 304-316, 427-439. In fact, the integration mandate claims *make no specific allegations about the State Defendants*. Instead, there are only boilerplate recitations of oversight and administration and general, conclusory allegations about "Defendants'" policies. SAC ¶¶ 25-30, 198, 313, 449.

To allow this claim to proceed would amount to strict liability at the state level for any alleged error or omission at the County level. No authority supports that proposition.

In contrast, it is well-settled that Plaintiffs must allege a causal connection between injury and conduct traceable to the defendant, and that the injury can be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992); *Witherbee v. Dow*, 2022 WL 2964382, at *3 (C.D. Cal. June 15, 2022) (complaint must allege facts that "link any of the individual Defendants' conduct to the alleged [] violations"); *Flores v. EMC Mortg. Co.*, 997 F. Supp. 2d 1088, 1103

(E.D. Cal. 2014) (dismissing complaint that lacked "facts of defendants' specific wrongdoing to provide fair notice as to what each defendant is to defend"); *Fuller v. Lopez*, 2020 WL 8834791, at *5 (D. Ariz. Dec. 1, 2020) (dismissing complaint where plaintiff "does not connect these Defendants' specific conduct to a specific harm he allegedly suffered").

Here, Plaintiffs have not met their burden of tying their allegations of noncompliance with the integration mandate to the State Defendants. Therefore, these claims should be dismissed.

In the alternative, and at a minimum, the integration mandate claims should be dismissed against the Individual State Defendants. First, nothing is alleged as to them. Second "naming the individual State employees as Defendants in their official capacities is redundant" to naming the state agencies as defendants. *Enos v. Arizona*, 2017 WL 553039, at *6 (D. Ariz. Feb. 10, 2017) *(citing Center for Bio-Ethical Reform, Inc. v. Los Angeles Sheriff Department*, 533 F.3d 780, 799 (9th Cir. 2008)).

III. Leave to Amend Should Be Denied

Plaintiffs filed this lawsuit over a year ago. Dkt. #1 (Complaint filed August 22, 2023). The deadline to amend pleadings has passed. Dkt. #107 (deadline amend pleadings September 9, 2024). The SAC is Plaintiffs' fourth complaint. In addition to the original, first amended and second amended complaints, Plaintiffs filed a Corrected Second Amended Complaint to change which State Defendants were named in which causes of action. Dkt. # 130.

With the Second Amended Complaint, Plaintiffs were on notice based on the Order that they had to allege more to hold the Individual State Defendants liable under Section 1983. What they alleged does not suffice and the Court should dismiss the SAC as to these claims with prejudice. Regarding the integration mandate claims under Section 504 and ADA, Plaintiffs have likewise neglected to allege anything specific as to the State Defendants. Plaintiffs should not get a fifth try.

CONCLUSION

Plaintiffs have had ample time and notice to assert these claims against the State Defendants and have not done so. The Motion to Dismiss should be granted with prejudice.

Dated: September 23, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the State Defendants, certifies that this brief contains [6,018] words, which complies with the word limit of L.R. 11-6.1 and is fewer than 25 pages, which complies with this Court's Standing Order.

Dated: September 23, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: **Ocean S., et al. v. LA COUNTY (CalHHS)** No. **2:23-cv-06921-JAK-E**

I hereby certify that on September 23, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STATE DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT [Request for Judicial Notice and Declaration of Gabriella Carnavle filed concurrently herewith]

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 23, 2024, at San Francisco, California.

G. Guardado	*/s/ G. Guardado*
Declarant	Signature

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