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OTHER RELEVANT MATERIAL

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
NOV 27, 2024
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 23-55042; D.C. No. 3:21CV-01076-JO-LR
U.S. District Court for Southern Cal., San Diego

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,
v.
COUNTY OF IMPERIAL et al.,
Defendants-Appelees.

MANDATE

The Judgment of this Court, entered September 19, 2024 takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:
MOLLY C. DWYER
CLERK OF THE COURT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
NOV. 19, 2024
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 23-55042
D.C. No. 3:21CV-01076-JO-LR
Southern District of California, San Diego

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,
v.

COUNTY OF IMPERIAL etal.,
Defendants

ORDER

Before: O'SCANNLAIN, KLEINFELD, and SILVERMAN, Circuit Judges.

The panel votes to deny the petition for panel rehearing. The panel recommends denial of the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. Appellants ' petition for rehearing and petition for rehearing en banc are denied.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
SEP. 19, 2024
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 23-55042
D.C. No. 3:21CV-01076-JO-LR

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,

v.

COUNTY OF IMPERIAL; GILBERT OTERO, Imperial County District Attorney; RAYMOND LOERA, Imperial County Sheriff; KATHERINE TURNER, Imperial County Counsel; ADAM GREGORY CROOK, Imperial County Counsel; TONY ROUHOTAS, Jr., Imperial County CEO; ESPERANZA COLIO-WARREN, Imperial County Vice-CEO; RAYMOND CASTILLO, Imperial County Supervisor; RYAN KELLEY, MICHAEL

KELLEY, LUIS PLANCARTE, and JESUS ESCOBAR, Imperial County Supervisors; BLANCA ACOSTA, Imperial County Clerk of The Board of Supervisors; CLIFTON ERRO and RENE MCNISH, Imperial County Sheriff Deputies; PALO VERDE COUNTY WATER DISTRICT, sub-agency of Imperial County; RONALD WOODS, JESS PRESTON, JAN AYALA, and DAVID KHOURY, Palo Verde County Water Board Directors; KATHI FRICE- SANDERS; BARBARA HOPTON; DONNA LORD; CATHY SMITH ADAMS;

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3

CELESTE PRESTON; DAVID AYALA; THOMAS CALVERT; PATSY CALVERT; ANNE MARIE DELCASTILLO; NONI RICHARDS; CATHY BROADWELL; JENNIFER POLLARD; LINDA SANCHEZ; JAMES HARRIGAN; YUMA SUN, INC., DBA Palo Verde Valley Times; URIEL AVENDANO; LISA REILLY ; FRED MIRAMONTES, Imperial County UnderSheriff; DOES, 1-6; Imperial County Sheriff Deputies,

Defendant-Appellees,

Appeal from the United States District Court for the Southern District of California
Jinsook Ohta, District Judge, Presiding
Submitted September 19, 2024**

MEMORANDUM*

Before: O'SCANNLAIN, KLEINFELD, and SILVERMAN, Circuit Judges.

Gilda and Joseph Ryan appeal pro se from the district court's judgment dismissing their action under 42 U.S.C. §1983 and state law against Imperial County, its sub-agency Palo Verde County Water District, various individuals associated with the County in their individual and official capacities ("County Defendants" or "Water District Defendants"), private citizens who attended a County Board of Supervisors meeting ("Private Defendants"), and a local newspaper and its employees who published a news article about the County Board

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

of Supervisors meeting ("Media Defendants"). We have jurisdiction under 28 U. S.C. § 1291. We review de novo. *Naffe v. Frey*, 789 F.3d 1030, 1035 (9th Cir. 2015). We affirm.

The district court properly dismissed, as precluded by California's two-year statute of limitations, the Ryans' § 1983 claims against County Defendants for an alleged violation of their right not to be separated from their children without due process. See Cal. Code Civ. Proc. §

335; *Holt v. County of Orange*, 91 F.4th 1013, 1018 (9th Cir. 2024) (applying the state's personal injury limitations period for § 1983 actions).

The district court properly dismissed the Ryans' § 1983 claims against Private and Media Defendants because they failed to allege facts showing state action. See *Naffe* , 789 F.3d at 1035-36 (requiring violation of a constitutional right by a person acting under color of law); *Howerton v. Gabica*, 708 F.2d 380, 382-83 (9th Cir. 1983) (requiring "significant" state involvement); see also *O 'Handley v. Weber*, 62 F.4th 1145, 1159 (9th Cir. 2023) (explaining that joint action requirement is "intentionally demanding and requires a high degree of cooperation" between private parties and state officials to rise to level of state action).

The district court properly dismissed the Ryans' §1983 claims against County Defendants in their official capacities because those defendants could not

be held vicariously liable under *Monell v. Dep't of Social Servs. of City of New York*, 436 U. S. 658, 691 (1978). See *Price v. Sery*, 513 F.3d 962, 966 (9th Cir. 2008) (requiring allegations showing either 1) an unconstitutional custom or "longstanding practice . . . which constitutes the standard operating procedure of the local government entity" behind the violation of rights, 2) that the unconstitutional act was committed by an official whose acts fairly represent official

policy, or 3) a final policymaker's involvement in, or ratification of, the conduct underlying the violation of rights).

Additionally, the Rules of Conduct for County Board of Supervisors meetings did not constitute an unlawful official policy under *Monell*. See *Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010) (explaining that government board meeting is a limited public forum where reasonable time, place, and manner regulations and content-based regulations are permissible if they are viewpoint neutral and enforced that way); see also *White v. City of Norwalk*, 900 F.2d 1421, 1424 (9th Cir. 1990) (upholding a City Council ordinance that provided for removal of a person who makes "personal, impertinent, slanderous or profane remarks" to any member of a city council, and whose remarks actually disturb or impede the meeting).

The district court properly dismissed the Ryans' remaining § 1983 claims for damages against the individual County Defendants because those defendants were

shielded by qualified immunity. See *Mattos v. Agarano*, 661 F.3d 433, 440 (9th Cir. 2011) (en banc) (protecting government officials from liability if their conduct did not violate clearly established rights of which a reasonable person would have known) see also *Acosta v. City of Costa Mesa*, 718 F.3d 800, 823-24 (9th Cir. 2013) (per

curiam) (extending qualified immunity to officers enforcing an ordinance, because they were entitled to assume duly enacted ordinance was constitutionally valid).

The district court properly concluded that the Ryan's had not alleged a violation of the Unruh Act, Cal. Civ. Code § 51, because they did not allege that any defendant, including the County, was acting as a business establishment. See *Harrison v. City of Rancho Mirage*, 243 Cal. App. 4th 162, 173-75 (2015) (holding that defendant city was not functioning as a business establishment for purposes of Unruh Act when it enacted an ordinance).

The district court properly granted Media Defendants ' motion to strike under Cal. Code Civ. Proc. § 425.16(b), because the only allegations in the complaint involved the protected conduct of publishing a newspaper article concerning a local government board meeting. See *Sarver v. Chartier*, 813 F.3d 891, 897 n.1 (9th Cir. 2016) (reviewing de novo) *Hilton v. Hallmark Cards*, 599 F.3d 894, 903 (9th Cir. 2010) (as amended) (explaining that, to prevail on an anti-SLAPP motion, defendants must first show that their acts were taken in furtherance of their right of

petition or free speech in connection with a public issue, and then plaintiffs must show probability of prevailing on their claim); see also *Manzari v. Associated Newspapers Ltd.*, 830 F.3d 881, 887 (9th

Cir. 2016) (holding that publishing article on a topic of public interest can satisfy initial burden).

The district court did not abuse its discretion in concluding that amendment of the complaint would be futile. See *Coronavirus Rep. v. Apple, Inc.*, 85 F.4th 948, 958 (9th Cir. 2023) (granting court discretion to deny leave to amend).

The district court did not abuse its discretion in setting aside its entry of default against the Water District Defendants for good cause under Fed. R. Civ. P. 55(c), when the court found no evidence of bad faith or culpable conduct on the part of defendants. See *Franchise Holding II, LLC. v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004) (reciting rule and standard of review).

The district court did not abuse its discretion in denying the Ryans' motions for sanctions, in the absence of misstatements of the law or other litigation misconduct. See Am. *Unitesfor Kids v. Rousseau*, 985 F.3d 1075, 1087-88 (9th Cir. 2021) (reciting standard of review).

Neither the magistrate judge nor district judge abused their discretion in the denying the Ryans' motions for their recusal, after each judge determined that their impartiality reasonably could not be questioned. See *Leslie v. Grupo ICA*, 198 F.3d 1152, 1157, 1160 (9th Cir. 1999) (reciting rule and standard of review).

Dkt. Entry: 54-1, Page 7 of 7

Plaintiffs' motion to correct the record

(Dkt. Entry Nos. 40 & 41) is **DENIED**.

AFFIRMED.

Court seal text:
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FILED
DEC. 07, 2022

Civil Action No. 21-cv-01076-JO-LR

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,
v.

COUNTY OF IMPERIAL etal.,
Defendant,

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:
Imperial County Defendants' motion to dismiss [Dkt. 67] is granted and the claims against them are Dismissed. The Court dismisses the § 1983 claims against the County without prejudice and dismisses the § 1983 claims against the Individual County Defendants with prejudice. The Court dismisses the Unruh Act claims with prejudice.

Private Defendants' motion to dismiss [Dkt. 101] is GRANTED and the section 1983 and Unruh Act claims against them are DISMISSED with prejudice. Case is closed.

Date: 12/7/22

CLERK OF COURT
JOHN MORRILL, Clerk of Court
By: s/ L Sotelo
L. Sotelo, Deputy

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA
(ATTACHMENT)
Civil Action No. 21cv-01076-JO-LR

County of Imperial, a general law county, Gilbert Otero, Imperial County District Attorney Raymond Loera, Imperial County Sheriff Katherine Turner, Imperial County Counsel Adam Crook, Imperial County Counsel Tony Rouhotas, jr., Imperial County CEO Esperanza Colio-Warren, Imperial County Vice-CEO Raymond Castillo, Imperial County Supervisor Ryan Kelley, Imperial County Supervisor Michael Kelley, Imperial County Supervisor Luis Plancarte, Imperial County Supervisor Jesus Escobar, Imperial County Supervisor Blanca Acosta, Imperial County Clerk of The Board of Supervisors Clifton Erro, Imperial County Sheriff Deputy Rene McNish, Imperial County Sheriff Deputy Palo Verde County Water District, sub-agency of lmperial County Ronald Woods, Palo Verde County Water Board Director Jess Preston, Palo Verde County Water Board Director Jan Ayala, Palo Verde County Water Board Director David Khoury, Palo Verde County Water Board Director Kathi Price-Sanders Barbara Hopton Donna Lord, Cathy Smith Adams Celeste Preston, Raymond Castillo, Imperial

County Imperial County Supervisor David Ayala, Thomas Calvert Patsy Calvert, Anne Marie Delcastillo, also known as Annie Mackie Noni Richards, Cathy Broadwell, Jennifer Pollard, also known as Jeni Pollard Linda Sanchez, James Harrigan, Yuma Sun Incorporated dba The Palo Verde Valley Times Uriel Avendano, Does 1-6, Imperial County Sheriff Deputy, Doe video technician 1, Imperial County Agent

Document 152, Page ID. 1951, Page 3 of 3

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA
(ATTACHMENT)
Civil Action No. 21cv-01076-JO-LR

Doe videographer 1, Imperial County agent Doe Rout Participants 1-5, Doe Text message sender 1, Doe 1-2, Yuma Sun Incorporated agent Lisa Reilly, Fred Miramontes, Imperial County UnderSheriff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
DEC. 07, 2022

Case No.: 3:21CV-01076-JO(LR)

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,
v.

COUNTY OF IMPERIAL etal.,
Defendants

Before honorable Magistrate Lupe Rodriguez

ORDER DENYING PLAINTIFFS' RECUSAL MOTION [ECF No. 144]

Presently before the Court is Plaintiffs Gilda and Joseph Ryan's Recusal Motion, which argues that under 28 U.S.C. § 455(a), the undersigned magistrate judge should recuse himself from this case. (ECF No. 144 or "Recusal Mot."). For the reasons set forth below,

Plaintiffs' Motion is **DENIED.**

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are residents of Imperial County, proceeding pro se, whose claims arise from the events that unfolded at a Palo Verde Water District board meeting on May 17, 2018, and a subsequent Imperial County Board of Supervisors meeting on June 4, 2019. [1].

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[1] The factual background and procedural posture of this case are well-known to the parties such that the Court need not describe them at length. More detail can be found in Judge Ohta's order on Defendants' motions to dismiss Plaintiffs' amended complaint. See (ECF No. 134.)

Plaintiffs filed an amended complaint on September 14, 2021, alleging eighty-one "counts" under 42 U.S.C. §1983 against over forty defendants for numerous constitutional violations under the First, Fourth, and Fourteenth Amendments. (See ECF, No. 9 at 24-28.). The instant Recusal Motion was filed after Judge Ohta issued an order granting the Imperial County defendants, the private citizen defendants, and the media defendants' respective motions to dismiss. (See ECF No. 134.) The case was transferred to this Court's docket on October 6, 2022, and Plaintiffs have since filed separate motions requesting that Judge Ohta and the undersigned

recuse themselves from this action. (See ECF Nos. 140; 144.) Plaintiffs' arguments that the undersigned should recuse himself from this matter are based on two events: (i) introductory remarks made by the undersigned at an October 11, 2022, Imperial County Board of Supervisors meeting ("Board Meeting") made in the presence of several county officials who are named defendants in this action, which Plaintiffs contend demonstrate this Court's bias against them as litigants (see Recusal Mot. at 11.); 2. and (ii) the disappearance of Plaintiffs' reply documents related to another motion, which Plaintiffs aver occurred at the same time that records of the Board meeting vanished from the county's website-demonstrating a conspiracy between court employees and the defendants in this action to cover up the County defendants' misconduct. (See Recusal Mot. at 11-12.) The motion was taken under submission on the papers without oral argument on November 30, 2022.

II. LEGAL STANDARD

A judge "shall disqualify himself in any proceeding where his impartiality might be reasonably be questioned" or where "he has a personal bias or prejudice concerning a party." 28 U.S.C. 455(a)-(b)(1); see generally *Liteky V. United States*, 510 U.S. 540 (1994) (discussing 28 U.S.C. 144), under the two recusal statutes, §§, 144

2. Unless otherwise noted, the Court cites to CM/ECF generated pagination.

and 455, the substantive question is "[w]hether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *United States v. McTiernan*, 695 F.3d 882, 891 (9th Cir. 2012) (quoting United States v. Hernandez, 109 F.3d 1450, 1453 (9th Cir. 1997) (per curiam)). A "reasonable person" is defined as a "well-informed, thoughtful observer," as opposed to a "hypersensitive or unduly suspicious person." Clemons v. U.S. Dist. Ct. for the Cent. Dist. of Cal., 428 F.3d 1175, 1178 (9th Cir. 2005) (internal quotations and citation omitted). "Rumor, speculation, beliefs, conclusions, innuendo, suspicion, opinion, and similar nonfactual matters" are not enough to require recusal. Id. (citing *Nicholas v. Alley*, 71 F.3d 347, 351 (10th Cir. 1993)).

Section 455(a) is also "limited by the 'extrajudicial source' factor which generally requires as the basis for recusal something other than rulings, opinions formed or statements made by the judge during the course of trial." United States v. Holland, 519 F.3d 909, 913-14 (9th Cir. 2008). An extrajudicial source, however, is neither necessary nor sufficient to establish bias, Liteky 510 U.S. at 544, and "in the absence of a legitimate

reason to recuse himself, a judge should participate in the cases assigned." *United States v. Holland*, 519 F.3d 909, 912 (9th Cir. 2008) (quotations omitted). Courts are similarly cautioned to "take special care in reviewing recusal claims so as to prevent parties from abus[ing] §455 for a dilatory and litigious purpose based on little or no substantiated basis." *In re Golden*, Case Nos. 19-cv-2178 DMS (NLS), 2020 WL 4260771, at *2 (S.D. Cal. July 24, 2020) (quoting *Sensley v. Albritton*, 385 F.3d 591, 598 (5th Cir. 2004)) (internal quotations omitted).

III. DISCUSSION

Plaintiffs argue that the undersigned should recuse himself from this case under §455(a). (See Recusal Mot. at 16.) Although Plaintiffs' assertions are wide-ranging and

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suggest the involvement of many individuals, the Recusal Motion appears to have been precipitated by the undersigned's introductory comments about the importance of the relationship between the federal court and the local community at the October 11, 2022 Board Meeting-made approximately two weeks after the undersigned was sworn in as a magistrate judge and attended by several named defendants in this case. (See id. at 10 (noting that the Motion is "based upon" the undersigned's remarks at the Board Meeting).)

Apart from quoting the undersigned's remarks at the Board Meeting, and rather than advancing a colorable argument about how the Court is in fact or could even be perceived as biased against Plaintiffs, the Recusal Motion then attempts to weave together statements and disparate facts to characterize the undersigned as an impartial actor, "pitting his friends . . . against the politically unconnected, geographically isolated Plaintiffs who have no access to media in Imperial County . . ." (Id.). These conclusory statements amount to little more than rumormongering against the Court and fail to meet the objective observer standard for disqualification. See *Carr v. Grand Canyon University, Inc.*, No. CV-19-05214-PHX-MTL, 2019 WL 5718032, at *4 (D. Ariz. Nov. 5, 2019) (introductory meeting between judge and a party with a perceived interest in the litigation insufficient to disqualify). Absent brief introductory remarks and a photograph with the County Board of Supervisors taken at the Board Meeting, the undersigned has had no contact with any named defendants or entities in this action for any purpose-let alone about this case-and such communications are insufficient to warrant recusal. See, *In re Golden*, 2020 WL 4260771, at *5-6 (communications that did not involve the merits of the pending case did not warrant recusal) see also *Moran v. Clarke*, 247 F.3d 799, 806 (8th Cir. 2001) ("[t]he district judge's appearances at

the same social events as

3 Plaintiffs' Recusal Motion, ostensibly one that argues for the undersigned to recuse from this matter, is also rife with contentions about Judge Ohta's alleged misconduct. Because Plaintiffs have elected to file a separate motion arguing that Judge Ohta should recuse from the case, (see ECF No. 140), the Court will endeavor to address only the parts of the Motion that address the undersigned's conduct.

Clarke and Smith books little mention. Judges, attorneys, and public officials will often share public appearances. This does little to create the appearance of impropriety."), reh'g granted, vacated on other grounds, 258 F.3d 904 (8th Cir. 2001). Although the undersigned takes allegations of favoritism or the appearance of impropriety very seriously, baseless and conclusory statements that the Court is biased against Plaintiffs will not be countenanced. The undersigned accordingly declines to recuse from this matter.

IV. CONCLUSION

The Recusal Motion (.ECF No. 144) is **DENIED**.

IT IS SO ORDERED.

Dated: December 7, 2022

/s/ Lupe Rodriguez jr.
Honorable Lupe Rodriguez jr.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
DEC. 07, 2022

Case No.: 3:21CV-01076-JO-LR

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,

v.

COUNTY OF IMPERIAL etal.,
Defendants

By Honorable, District Judge Jinsook Ohta

ORDER DENYING PLAINTIFF JOSEPH RYAN'S MOTION FOR RECUSAL

Plaintiff Joseph Ryan filed a motion for Judge Ohta's recusal pursuant to 28 U.S.C. § 455 and the Due Process clause of the Constitution. Dkt. 140 ("Mot."). Plaintiff bases the recusal motion on the "content of the orders issued by Judge Ohta on September 29, 2022.". Id. at 13. He "does not allege that the honorable Judge has engaged in any misconduct that might defile the

Court's processes or interfere with its due administration of matters." Id. Instead, Plaintiff alleges only that a reasonable observer would conclude from the Court's orders dismissing Plaintiffs' complaint that the undersigned is conspiring with Defendants against Plaintiffs.

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The Supreme Court has recognized that due process confers the right to an impartial and disinterested judge. See *Marshall v. Jerrica, Inc.*, 446 U.S. 238, 242 (1980). A judge should recuse herself when "the probability of actual bias is too high to be constitutionally tolerable." *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). 28 U.S.C. §455 further instructs that a federal judge must recuse herself from any proceeding in which her "impartiality might reasonably be questioned" or if she has a personal bias or prejudice concerning a party. 28 U.S.C. §455(a). The provisions of 28 U.S.C. §455 "require recusal only if the bias or prejudice stems from an extrajudicial source and not from conduct or rulings made during the course of the proceeding." *Leslie v. Grupo ICA.*, 198 F.3d 1152, 1160 (9th Cir. 1999) (quoting *Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381, 1388 (9th Cir. 1988)).

Aside from his disagreement with the Court's orders, Plaintiff has not identified any grounds for a reasonable person to question the undersigned's bias, personal prejudice, or partiality. Instead, Plaintiff's arguments for

recusal hinge solely on the Court's adverse rulings; from these, he argues, "[a]n objective observer would have to conclude that ---on the face---- the record made by Judge Jinsook Ohta in the three [orders] issued on September 29, 2022, is so replete with outright misrepresentations of Plaintiff's facts, and facts presented grossly without candor by the Judge, that any objective observer might conclude that it is the product of a wholly dishonest, sneaky Judge acting for corrupt reasons." Mot. 19, at 22. This logic is not sufficient to demonstrate that this judge has a bias or prejudice stemming from an extrajudicial source. Because Plaintiff does not point to any facts that would lead one to reasonably question the undersigned's impartiality, his motion for recusal pursuant to 28 U.S.C. §455 and the due process clause is DENIED.

IT IS SO ORDERED.

Dated: December 7, 2022

/s/ Jinsook Ohta
Honorable Jinsook Ohta
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
DEC. 07, 2022

Case No.: 3:21CV-01076-JO-LR

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,

v.

COUNTY OF IMPERIAL etal.,
Defendants

By honorable District Judge Jinsook Ohta

ORDER DENYING PLAINTIFFS' MOTION FOR SANCTIONS [ECF No. 127, 128, 139]

Plaintiffs Joseph and Gilda Ryan filed three motions for sanctions against Defendants Imperial County and its officials; Patsy Calvert, Thomas Calvert, and Annie Mackie; Yuma Sun Incorporated, Uriel Avendano, and Lisa Reilly; and their respective counsel in this action. Dkts. 128, 131, 139. Plaintiffs request that the Court exercise its

inherent powers to sanction Defendants and counsel for their alleged litigation misconduct such as intentionally misstating the law, making false factual allegations, and deceiving the Court.

Federal courts have certain "inherent powers" not conferred by rule or statute, "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."

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Goodyear Tire & Rubber Co. v. Haeger, 137 S. a. 1178, 1186 (2017). This authority includes the ability, among other things, to dismiss a case in its entirety, bar witnesses, award attorneys' fees, or assess fines. *America Unites for Kids v. Rousseau*, 985 F.3d 1075, 1088 (9th Qr. 2021). "Because of their very potency, inherent powers must be exercised with restraint and discretion." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991).

Here, the Court finds no grounds to exercise its authority, inherent or otherwise, to order sanctions against Defendants. Upon review of their motions and related filings, the Court does not find any instances where Defendants deceived the Court either by misstating the law or facts or engaging in any other litigation misconduct meriting sanctions. Accordingly, the Court DENIES the motions [Dkts. 128, 131,139).

IT IS SO ORDERED.
Dated: December 7, 2022

/s/ Jinsook Ohta
Honorable Jinsook Ohta
`United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
SEP. 29, 2022

Case No.: 3:21CV-01076-JO-LR

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,
v.
COUNTY OF IMPERIAL etal.,
Defendants

By honorable District Judge Jinsook Ohta

ORDER GRANTING MOTIONS TO DISMISS

Plaintiffs Gilda and Joseph Ryan filed a civil rights action under 42 U. S.C. § 1983, against the County of Imperial; the Palo Verde County Water District (a sub-agency of County of Imperial); various individuals associated with these entities in their official and individual

capacities; private citizens who attended an Imperial County Board of Supervisor's meeting; and a local newspaper and associated employees who published a news article about the Board meeting.

Defendants County of Imperial ("County") and its officials and employees Blanca Acosta, Raymond Castillo, Esperanza Colio-Warren, Adam Crook, Clifton Erro, Jesus Escobar, Michael Kelley, Ryan Kelley, Raymond Loera, Rene McNish, Fred Miramontes, Luis Plancarte, Tony Rouhotas, Jr., and Katherine Turner ("Individual County Defendants") (collectively, "Imperial County Defendants") filed a motion to dismiss for failure to state a claim. Dkt. 67. Defendants Patsy Calvert, Thomas Calvert, and Anne Marie Delcastillo, private citizens who were present at the same Imperial County Board of Supervisors meeting that Plaintiffs attended (collectively, "Private Defendants"), filed a motion to dismiss for

failure to state a claim. Dkt. 101. Defendants Yuma Sun Incorporated, Uriel Avendano, and Lisa Reilly, the newspaper and employees who published a news article about the Imperial County Board of Supervisors meeting (collectively, "Media Defendants"), filed a motion to dismiss for failure to state a claim. Dkt. 88.2

For the reasons discussed below, the Court GRANTS the defendants' motions to dismiss.

I. BACKGROUND

Plaintiffs are residents of Imperial County who attended a Palo Verde Water District Board meeting on May 17, 2018, and an Imperial County Board of Supervisors meeting on June 4, 2019. Their claims arise from the events which unfolded during these meetings.

The first incident took place at a Palo Verde Water District Board meeting on May 17, 2018 (the "May 2018 Meeting"). That morning, Plaintiffs attended the meeting with their two-year-old child and voiced their water concerns to the Board members. FAC ¶1. According to Plaintiffs, the exchange became increasingly heated and culminated in Board member Jess Preston throwing a crumpled piece of paper at Mr. Ryan, screaming insults, threatening to "unilaterally seize" Plaintiffs ' child, and trying to physically attack Mr. Ryan. FAC ¶¶2-3. Following Mr. Preston's attempted attack, Plaintiffs allege that Mr. Preston conspired with Palo Verde County Water District Board members and employees David Ayala, Ronald Woods, David Khoury, Barbara Hopton, and Kathy Frice-Sanders ("Water District Defendants") to deny that Mr. Preston did anything more than throw a piece of paper at Mr. Ryan. FAC ¶4. Plaintiffs further allege that various Imperial

1. Defendant Gilbert Otero filed a notice of joinder in Imperial County Defendants' motion to dismiss. Dkt. 97.

2. Media Defendants also filed a concurrent anti-SLAPP motion to strike the state claims against them. Dkt.87. The Court has concurrently issued a separate order on the anti-SLAPP motion.

County law enforcement, counsel, and employees-specifically, County Supervisor Raymond Castillo, County Sheriff Raymond Loera, Undersheriff Fred Miramontes, County Counsel Katherine Turner, assistant County Counsel Adam Crook, and County Vice CEO Esperanza Colio-Warren-joined a conspiracy to cover up Mr. Preston's actions by "coach[ing], advis[ing], approv[ing], and provid[ing] illegal aid and support" to the Board members and employees. FAC ¶ 5.

The second incident occurred during a County Board of Supervisors meeting on June 4, 2019 (the "June 2019 Meeting"). Plaintiffs formally requested to speak at the Board meeting, and the Board granted their request. Plaintiffs intended to speak about Mr. Preston's alleged attempt to "seize" Plaintiffs' child during the May 2018 Meeting. FAC ¶11. During the Board meeting's public comment period, Ms. Ryan took the podium to speak. FAC ¶15. Based on the video recording of this event, Ms. Ryan began her remarks with the comment, "You know, we had a problem in here, right? We had a problem in here when-- on May 17, we had a meeting in there. Your member, Mr. Preston, he came-- he

came for this little girl to kidnap her--" while gesturing to the young girl with her. See RJN, Ex. B (56:08-56:30). This personal charge against the Board member caused audience members to start making inaudible comments. At this point, Mr. Ryan began shouting and pointing toward people in the audience. While the contents of his comments are largely unintelligible, Mr. Ryan can be heard repeating the word "kidnapping" in the video recording. Id. at 56:39.

In their complaint, Mr. and Ms. Ryan describe the aftermath of their comments as follows: Private Defendants and others in the crowd "started yelling a steady stream of insults and epitaphs" and made "loud, gratuitous" noises, which "had a negating effect upon the ability of [Ms. Ryan] to be heard." FAC ¶16. Board Supervisor Ryan Kelley announced that Plaintiffs broke the Board meeting rules and admonished Plaintiffs that this public meeting is not the appropriate forum for charges of this nature. See FAC p. 25; Ex. A to FAC at 89; RJN, Ex. B (56:44-57:04). Law enforcement officers Rene McNish and other unidentified officers then publicly escorted Plaintiffs out of the Board meeting and

"blocked [them] in the street." FAC ¶18. After these events occurred, Plaintiffs allege that Imperial County Defendants conspired together to "use a software program to remove some specific audio tracks" from the official video recording of

the June 2019 Meeting in order to "obscure noise made by [Mr. Preston's wife]," while leaving the rest of the video "unaffected." FAC ¶40. Plaintiffs further allege that Media Defendants published a defamatory newspaper article about them to ruin their reputation and that they did this in concert with other defendants. Plaintiffs allege that news reporter, Uriel Avendano, attended the Board meeting and wrote a news article for the Palo Verde Valley Times (a local newspaper owned by Defendant Yuma Sun Incorporated). See FAC ¶¶ 30, 42-43. By reporting on the events of the Board meeting, Media Defendants "deliberately assisted" the government officials "with perpetuating a false narrative about what happened," "in order to intentionally and purposefully tar [Plaintiffs] with a badge of infamy, and to discredit their speech by harming Plaintiffs' reputations." FAC §E. Plaintiffs further allege that Media Defendants "agreed to adopt and embrace the goals of the conspiracy" with government officials to ruin Plaintiffs' reputations and deny them their constitutional rights. Id.

Based on the above events, Plaintiffs assert a wide-ranging conspiracy by (1) the Palo Verde County Water District and its Board members and employees; (2) the County and its officials and employees; (3) County law enforcement officials; (4) private citizens who attended the June 2019 meeting; and (5) Media Defendants to separate Plaintiffs from their child,

deny Plaintiffs their constitutional right to speak at a local government Board meeting, and publicly destroy their reputations.

Plaintiffs filed their initial complaint on June 4, 2021, and the operative amended complaint on September 14, 2021, alleging eighty-one "counts" under section §1983 for numerous constitutional violations under the First, Fourth, and Fourteenth Amendments.

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See Dkt. 9 (FAC) at pp. 24-283. Based on the same conduct, Plaintiffs also allege state law claims for defamation and violation of California's Unruh Civil Rights Act. Id. Plaintiffs concurrently filed a document challenging the County Board meeting rule governing the June 2019 Board meeting as unconstitutional and seeking injunctive and declaratory relief. Dkt. 9-1.

II. LEGAL STANDARD

A motion to dismiss under Federal Rule 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. Fed. R. Civ. P. 12(b)(6) *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). A court must accept all factual allegations pleaded in the complaint as true and draw all reasonable inferences from them in favor of the nonmoving party. *Cahill v. Liberty Mut. Ins.* Co., 80 F.3d 336, 337-38 (9th Cir. 1996). However, a court need not accept conclusory allegations as true, but "examine whether conclusory allegations

follow from the description of facts as alleged by the plaintiff.". *Holden v. Hagopian*, 978 F.2d 115, 1121 (9th Cir. 1992). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal* , 556 U. S. 662, 678 (2009). To avoid a Rule 12(b)(6) dismissal, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." Id. (quoting *Bell Atl. Corp. v. Twombly*, 550 U. S. 544, 547 (2007)).

A claim is facially plausible when the factual allegations permit "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. While a plaintiff need not give "detailed factual allegations," a plaintiff must plead sufficient facts that, if true, "raise a right to relief above the speculative level." *Twombly*, 550 U. S. at 545. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556.). Plausibility requires pleading facts as opposed to

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3. The paragraphs in the FAC are not consistently numbered and so the Court cites to the page number where necessary.

conclusory allegations, which rise above the mere conceivability or possibility of unlawful conduct. *Twombly*, 550 U.S. at 555.

Although pro se pleadings are construed liberally to determine whether a claim has been stated, see *Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001), a plaintiff must still present factual and non-conclusory allegations to state a claim. *Twombly*, 550 U.S. at 555; *Hebbe v. Pliler*, 627 F.3d 338, 341--41 (9th Cir. 2010). A pro se plaintiff still "must allege with at least some degree of particularity overt acts which defendants engaged in that support the plaintiff s claim." *Jones v. Cmty. Redev. Agency of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984).

When a complaint fails to state a claim as set forth above, a plaintiff may seek leave to amend to cure its deficiencies. Federal Rule 15(a) provides that a district court should "freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a). In deciding whether to grant leave to amend, the court considers the following factors: the presence or absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of the proposed amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

A district court has discretion to deny leave to amend when a proposed amendment would be futile. *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 725-26 (9th Cir. 2000). Amendment is futile "if no set of facts can be proved under the amendment

to the pleadings that would constitute a valid and sufficient claim or defense." *Miller v. Rykoff-Sexton*, Inc., 845 F.2d 209, 214 (9th Cir. 1988). Thus, leave to amend should be denied where "the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *New v. Armour Pharm. Co.*, 67 F.3d 716, 722 (9th Cir. 1995); *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 297 (9th Cir. 1990) (amended complaint may not contradict prior pleadings). Repeated failure to cure deficiencies by amendment previously allowed is also a reason to deny leave to amend. *Foman*, 371 U.S. at 182. "[W]hen a district court has already granted a plaintiff leave to amend, its discretion in deciding

subsequent motions to amend is particularly broad." *Chodos v. West Publishing Co.*, 292 F.3d, 992, 1003 (9th Cir. 2002).

III. DISCUSSION

Imperial County Defendants, Private Defendants, and Media Defendants move to dismiss on various grounds, including that (1) the statute of limitations bars Plaintiffs' claims arising from the May 2018 Meeting; (2) Plaintiffs fail to allege that Private Defendants or Media Defendants engaged in state action as required for a § 1983 claim; (3) Plaintiffs fail to state a § 1983 claim against the County; and (4) qualified immunity shields Individual County

Defendants from Plaintiffs' § 1983 claims.

The Court will address each of these arguments in turn.

A. Requests for Judicial Notice

Prior to addressing the arguments, the Court first examines the parties' requests for judicial notice. First, Plaintiffs filed a request for judicial notice of Imperial County's Rules for the Conduct of Board Meetings (the "Rules for Conduct"). Dkt. 9-1; See https://board.imperialcounty.org/wpcontent/uploads/2019/09/BOSRules.pdf. Second, Plaintiffs and Media Defendants both filed a request for judicial notice of an official video excerpt of the June 2019 Meeting ("June 2019 Video"). Dkt. 9; Dkt. 88-1 (RJN, Ex. B). A court may "consider certain materials-documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice- without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); see also Fed. R. Evid. 201. A court may take judicial notice of matters that are "not subject to reasonable dispute" because they "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Materials that may be judicially noticed include "the undisputed and publicly available information displayed on government websites." *King v. Cty. of Los Angeles*, 885 F.3d 548, 555 (9th Cir. 2018); *Lee*

v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001) (taking judicial notice of any facts not subject to reasonable dispute).

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Here, the Board of Supervisor's Rules for Conduct and the June 2019 Video are public records available on Imperial County 's Board of Supervisors website, and, therefore, are not subject to reasonable dispute. See, e.g., *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 (9th Cir. 2006) (affirming judicial notice of documents on government's official website because their accuracy cannot reasonably be questioned). Plaintiffs dispute a specific portion of the June 2019 Video's audio, alleging that an unidentified person "remove[d] some specific audio tracks" from the video in order to "obscure noise made by [Mr. Preston's wife]." FAC ¶ 40. They admit in their pleading, however, that the rest of the recording is "unaffected." FAC ¶ 40. As Plaintiffs do not otherwise dispute the contents of the June 2019 Video, the Court takes judicial notice of the events as captured in the undisputed portions of the June 2019 Video. *Lee*, 250 F.3d at 689. The Court also grants Plaintiff s request for judicial notice of the Board of Supervisor's Rules for Conduct.

B. The Statute of Limitations Bars Plaintiffs' Claims Arising from the May 2018 Meeting

Based on the events that occurred during

the May 17, 2018, meeting, Plaintiffs allege that all defendants conspired together to violate their Fourteenth Amendment right not to be separated from their children without due process. See *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Campbell v. Burt*, 141 F.3d 927 (9th Cir. 1998). Before turning to the substance of these claims, the Court first examines whether the statute of limitations bars Plaintiffs' §1983 claims arising from the May 17, 2018, Water Board meeting.

For claims under section 1983, the applicable limitations period is the state law limitations period for personal injury actions. *Wallace v. Kato*, 549 U.S. 384, 387-88 (2007); *Lucchesi v. Bar-0 Boys Ranch*, 353 F.3d 691, 694 (9th Cir. 2003). Because the California statute of limitations for personal injury actions is two years, Cal. Code. Civ. Proc. §335.1, the statute of limitations for a § 1983 claim arising in California is two years. See *Wallace*, 549 U. S. at 397. When "'the running of the statute is apparent on the face of the complaint,'" "a claim may be dismissed under Rule 12(b)(6) on the ground that it is

barred by the applicable statute of limitations." VonSaher v. *Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006)).

Here, the Court concludes that the statute of limitations bars Plaintiffs' Fourteenth Amendment

and other claims arising from the May 2018 Meeting. These claims arise from the incident on May 17, 2018, where Water District Board member Mr. Preston allegedly threatened to "unilaterally seize" Plaintiffs' child, and other Board members and County employees conspired to cover up Mr. Preston's conduct. FAC ¶3. Plaintiffs filed the initial complaint on June 4, 2021, over two years after the May 2018 incident occurred. Plaintiffs appear to argue that the statute of limitations began to run on June 4, 2019, because this conspiracy was finalized and carried out during the June 2019 Meeting. Dkt.106 (Opposition) at 22-23. However, Plaintiff's First Amended Complaint contains no factual allegations regarding how the May 2018 threat to seize their child came to fruition during the June 4, 2019, County Board of Supervisors meeting. Plaintiffs similarly fail to allege facts connecting the conspiracy to cover up Mr. Preston's conduct during the May 2018 meeting to being denied the right speak at the June 2019 Meeting. Thus, after construing the First Amended Complaint liberally and in the light most favorable to Plaintiffs, the Court concludes that Plaintiffs fail to allege facts that would plausibly establish that the May 2018 incident was part of a larger conspiracy that culminated in the wrongs they suffered at the June 2019 Meeting. The Fourteenth Amendment and related conspiracy claims arising from the May 2018 Meeting alleged against all the defendants

are therefore barred by the statute of limitations. Accordingly, the Court dismisses these claims. The Court also dismisses from the case the following defendants who are associated only with the May 2018 incident: the Palo Verde Water District, Kathi Frice-Sanders, Barbara Hopton, Donna Lord, and County Vice CEO Esperanza Coho-Warren.

The Court dismisses the above claims and defendants with prejudice because amendment is futile to cure the statute of limitations bar. Given the unrelated nature of the allegations arising from the May 2018 Meeting and the June 2019 Meeting, Plaintiffs could

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not plead facts plausibly showing a connection between the two separate incidents and establishing that the two events were part of the same conspiracy. Miller, 845 F.2d at 214 (amendment is futile "if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim").

C. Plaintiffs Fail to Allege State Action to State a Section 1983 Claim Against Private Defendants and Media Defendants

Plaintiffs allege that Private Defendants, in violation of section 1983, conspired with County government officials and law enforcement to deny their rights at the June 2019 Board meeting by making loud noises while Ms. Ryan spoke. FAC ¶ 16. Plaintiffs also allege that Media

Defendants conspired with County government officials to deny their constitutional rights by publishing the news article on the June 2019 Meeting. FAC ¶ 43. Private Defendants and Media Defendants argue that Plaintiffs cannot show they acted under the color of state law as required to state a § 1983 claim. To state a claim under section 1983, a plaintiff must "(1) allege the violation of a right secured by the Constitution and laws of the United States; and (2) show that the alleged deprivation was committed by a person acting under the color of state law." *Naffe v. Frey*, 789 F.3d 1030, 1035-36 (9th Cir. 2015) (internal quotations omitted). Courts presume that private conduct does not constitute action under the color of state law. See *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999). However, § 1983 actions "can lie against a private party when 'he is a willful participant in joint action with the State or its agents." *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) (quoting Dennis v. Sparks, 449 U.S. 24, 27 (1980)). "One way the 'joint action' test is satisfied is if a 'conspiracy ' is shown." *Howerton v. Gabica*, 708 F.2d 380, 383 (9th Cir. 1983). In other words, "[a] private party may be considered to have acted under color of state law when it engages in a conspiracy or acts in concert with state agents to deprive one's constitutional rights." *Fonda v. Gray*, 707 F.2d 435, 437 (9th Cir. 1983). Alleging a viable §1983 claim against private parties,

however, takes more than just conclusory allegations of a conspiracy. *Woodrum v. Woodward County*, 866 F.2d 1121.

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1126 (9th Cir. 1989). Instead, a plaintiff must show (1) an agreement between the defendants to deprive the plaintiff of a constitutional right, (2) an overt act in furtherance of the conspiracy, and (3) a constitutional violation. See *Gilbrook v. City of Westminster*, 177 F.3d 839, 856-57 (9th Cir. 1999). A plaintiff must allege an "'agreement or meeting of the minds' to violate constitutional rights" between a private party and the government. *Fonda*, 707 F.2d at 438 (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970)). "To be liable as a co-conspirator, a private defendant must share with the public entity the goal of violating a plaintiff's constitutional rights" and demonstrate a "substantial degree of cooperation" with the government to violate those rights. *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002).

The Court first examines Plaintiffs' claims against Private Defendants. Because Private Defendants are three private citizens who attended the June 2019 Board meeting, the Court examines whether Plaintiffs sufficiently allege that Private Defendants conspired or acted jointly with a state actor. Plaintiffs merely allege that Private Defendants attended the June 2019 Board meeting and acted as a "mob of noisemakers" in the audience by yelling insults. FAC ¶¶ 16, 33.

Plaintiffs include conclusory allegations that Private Defendants were part of a conspiracy with state actors but allege no facts to support the inference that a meeting of the minds or substantial cooperation occurred between Private Defendants and government officials. FAC ¶¶ 21, 28. Because Plaintiffs fail to provide factual, non-conclusory allegations against Private Defendants that support a conspiracy or joint action with a state actor, the Court dismisses the § 1983 claims against Private Defendants. *Twombly*, 550 U.S. at 555.

The Court now turns to Plaintiffs' claims against Media Defendants. Similarly, the Court examines whether Plaintiffs have sufficiently alleged that Media Defendants, a private local newspaper and private employees-conspired or acted jointly with a state actor. Plaintiffs base their conspiracy allegations solely on Mr. Avendano's presence at the June 2019 Board meeting and the newspaper article that he published. FAC ¶43. Plaintiffs provide no additional factual allegations to support the existence of an agreement

to violate constitutional rights between Media Defendants and a state actor or substantial cooperation between them. *Twombly*, 550 U.S. at 555 (plausibility requires pleading facts, as opposed to conclusory allegations). The only other allegations regarding Media Defendants are

conclusory in nature. See e.g., FAC ¶ 30 (alleging Media Defendants "knowingly agreed to embrace and adopt the goals of the conspiracy described"). Plaintiffs thus fail to allege sufficient facts to support a conspiracy or joint action between Media Defendants and a state actor, as required to state a §1983 claim. After construing the complaint liberally and in the light most favorable to Plaintiffs, the Court finds that Plaintiffs have failed to allege the requisite state action to state a §1983 claim against Media Defendants.

The Court dismisses these §1983 claims against Private Defendants and Media Defendants with prejudice because amendment would be futile. The entirety of Plaintiffs' allegations against Private Defendants who attended the June 2019 Meeting consists of complaints about their noisemaking and yelling insults. Given that the crux of Plaintiffs' grievance against Private Defendants is their loud and heckling behavior during Ms. Ryan's comments, Plaintiffs could not plausibly allege facts to establish a meeting of the minds and substantial cooperation with a state actor required to state a §1983 claim against private actors. As to Media Defendants, the entirety of Plaintiffs' allegations is that Mr. Avendano attended the June 2019 Meeting and wrote a news article published by a local newspaper. Because Plaintiffs' complaints against Media Defendants rest solely on the publication of the newspaper article about them, Plaintiffs could

not amend to plausibly allege facts establishing the requisite meeting of the minds and substantial cooperation between Media Defendants and a state actor to state a §1983 claim against these private actors. Granting leave to amend would thus be futile. *Miller*, 845 F.2d at 214.

D. Plaintiffs Fail to Allege a Monell Claim against the County and Individual County Defendants in their Official Capacities

Plaintiffs allege §1983 claims against the County of Imperial and various County officials and employees in their official capacities. Because Plaintiffs do not adequately

plead a Monell claim against these defendants, the Court dismisses their claims against them.

Municipalities and officials sued solely in their official capacities may not be held vicariously liable under section 1983 for the unconstitutional acts of its employees under the theory of respondeat superior. *Monell v. Dep 't of Social Servs.*, 436 U.S. 658, 691 (1978); *Fuller v. City of Oakland*, 47 F.3d 1522, 1534 (9th Cir. 1995). Instead, a county is liable only when it maintains a policy or custom that causes the deprivation of a plaintiff's federally protected rights. *Monell*, 436 U.S. at 690. To prevail on a *Monell* claim, a plaintiff must show that defendants expressly adopted an official policy, longstanding practice, or custom that was the "moving force" behind his injuries. Id. at 694. To establish an official policy

that would give rise to *Monell* liability, a plaintiff must allege facts to support one of the following: (1) an unconstitutional custom or policy behind the violation of rights; (2) a deliberately indifferent omission, such as a failure to train or failure to have a needed policy; or (3) a final policy-maker's involvement in, or ratification of, the conduct underlying the violation of rights. *Clouthier v. Cty. of Contra Costa* , 591 F.3d 1232, 1249-50 (9th Cir. 2010), overruled on other grounds by *Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016).

Here, Plaintiffs appear to base their section 1983 municipal and official capacity claims against these defendants on either (1) the actions of various County officials and employees; or (2) on the County's Rules for Conduct as the unlawful policy underpinning their Monell claim. If the former, Plaintiffs' § 1983 claims against the County and official-capacity defendants fail because they cannot be directly liable for actions of County employees under a respondeat superior theory. *Monell*, 436 U. S. at 690, 691 n.55. If, however, Plaintiffs intended to bring a Monell claim based on the County Rules for Conduct, the Court will examine whether Plaintiffs have alleged that these rules were the unconstitutional policy behind the violation of their rights. *Clouthier*, 591 F.3d at 1249- 27, 50.

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It is well established that rules placing reasonable restrictions on speech during

government meetings are constitutional. A government board meeting is a limited public forum. *Kindt v. Santa Monica Rent Control Ed.*, 67 F.3d 266, 270 (9th Cir. 1995). A government entity can regulate a limited public forum by placing reasonable restrictions on the time, place, and manner of speech. Id. As long as the regulations are "viewpoint neutral and enforced that way," the regulations can even restrict the content of speech. *Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010). In *White v. City of Norwalk*, the Ninth Circuit upheld the constitutionality of a council meeting's rule of decorum proscribing conduct that disturbs "the orderly conduct of any Council meeting" and allowing the presiding officer to use her discretion to bar the disrupting individual "from further audience before the Council during that meeting." 900 F.2d 1421, 1424 (9th Cir. 1990). The court reasoned that the rule of decorum sought to further the government's legitimate interest in conducting orderly and efficient council meetings by prohibiting actual disruptive comments and behavior. Id. at 1425.

Upon review of the County's Rules for Conduct, it appears that these rules are constitutional because their restrictions promote the orderly conduct of the Board meetings in a viewpoint neutral manner. Imperial County's Rules for Conduct provide that "[i]n the event that any meeting of the Board is willfully interrupted

or disrupted by a person or by a group or groups of persons so as to render the orderly conduct of the meeting unfeasible, the Chairperson may recess the meeting or order the person, group or groups of persons willfully interrupting the meeting to leave the meeting or be removed from the meeting, or in appropriate circumstances, order the meeting room cleared and continue in session." County of lmperial Board of Supervisors Rules for the Conduct of Board Meetings. Section II(D)(3), https://board.imperialcounty.org/wp-content/uploads/2019/09/BOSRules.pdf.

Like the meeting rules of decorum in White, the Court finds that the Rules for Conduct governing the Board meetings are constitutional. Because the Rules for Conduct proscribe conduct that renders an orderly meeting infeasible and permits the removal of individuals who have disrupted the meeting, these rules further the County's legitimate interests in

conducting an efficient and orderly Board meeting. Moreover, the Rules for Conduct are viewpoint neutral because they do not restrict the position that a speaker may take on any issue; instead, they simply prohibit disruptive conduct and provide a mechanism for removing from meetings the individuals who have created a disruption. Accordingly, the Court finds that Plaintiffs have failed to plead the unconstitutionality of the policy underpinning their *Monell* claim. For these

reasons, the Court dismisses Plaintiffs' *Monell* claim against the County and official-capacity defendants based on the County's Rules for Conduct without prejudice.

Plaintiffs also concurrently filed a document characterized as a facial and as-applied constitutional challenge to the Rules for Conduct seeking declaratory and injunctive relief. Dkt. 9-1. A plaintiff must bring a § 1983 claim against the appropriate entity for a facial and as-applied constitutional challenge to a County ordinance or rule. See, e.g., *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1054 (9th Cir. 2002) (providing that section 1983 is the method for vindicating constitutional violations including challenges to ordinances). Plaintiffs have failed to do so here. Accordingly, the Court also dismisses Plaintiffs' facial and as-applied constitutional challenge to the Board of Supervisors' Rules for Conduct without prejudice.

E. Qualified Immunity Bars Plaintiffs' §1983 Claims Against County Officials in their Individual Capacities

Plaintiffs also brought § 1983 claims against the members of the County Board of Supervisors and various County law enforcement officials and employees in their individual capacities ("Individual County Defendants ") for removing them from the June 2019 Meeting. Plaintiffs allege that by removing them from the public meeting, these defendants violated the following

constitutional rights: (1) Fourteenth Amendment right to speak, associate, assemble, and petition the government, (2) Fourteenth Amendment right to be free from detention and to movement, (3) Fourteenth Amendment right under the state-created danger doctrine, (4) Fourteenth Amendment right to a liberty interest in their reputation not being stigmatized, and (5) Fourteenth Amendment right to be free from

discriminatory denial of speech rights, police, and prosecution services. Individual County Defendants argue that they removed Plaintiffs from the Board meeting according to the County's Rules for Conduct; qualified immunity, therefore, shields them from §1983 liability because they did not violate a clearly established constitutional right. Qualified immunity shields government officials from personal liability for civil damages unless their conduct "violated a clearly established constitutional right." *Williamson v. City of Nat'l City*, 23 F.4th 1146, 1151 (9th Cir. 2022) (quoting *Monzon v. City of Murrieta*, 978 F.3d 1150, 1156 (9th Cir. 2020)). To determine whether an official is entitled to qualified immunity, the court examines "(1) whether the official's conduct violated a constitutional right, and (2) whether that right was clearly established at the time of the events at issue." Id. (internal quotation marks omitted). A court must determine whether the plaintiff has alleged the deprivation of a clearly

established right such that it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. See *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Because officers have the right to assume that an ordinance or rule is constitutional, they are entitled to qualified immunity when their allegedly unconstitutional action" was simply to enforce "an ordinance which was duly enacted" by the government. *Acosta v. City of Costa Mesa*, 718 F.3d 800, 823-824 (9th Cir. 2013) (citing *Grossman v. City of Portland*, 33 F.3d 1200, 1209 (9th Cir. 1994)). It would not be clear to a reasonable officer that his conduct was unlawful if a statute or ordinance authorized such conduct. *Grossman*, 33 F.3d at 1209.

Here, the Court examines Plaintiffs' allegations and the judicially noticed June 2019 Video to determine whether Defendants simply enforced the County's Rules for Conduct in ejecting Plaintiffs from the meeting. If so, they are entitled to qualified immunity. As set forth above, the County's Rules for Conduct for its local government meetings provide that if any meeting is disrupted, the Chairperson may order the removal of the people causing the disruption. Here, it appears from Plaintiffs' allegations and the judicially noticed June 2019 Video that Plaintiffs did indeed cause a disruption at the June 2019 Board of Supervisors Meeting. Ms. Ryan took the podium and made the accusation

that Board member Jess Preston tried to "kidnap" her daughter. RJN, Ex. B (56:08-56:30). This caused an immediate hubbub among the audience members. Id. at 56:31. Mr. Ryan then followed up with pointing at and directing comments to various audience members; while his comments are largely inaudible, the Court could discern the word "kidnapping." Id. at 56:39.

Plaintiffs' own allegations demonstrate that Individual County Defendants acted pursuant to the County's Rules for Conduct in halting Ms. Ryan's speech and removing Plaintiffs once a disruption ensued. As provided for in the Rules, Board Supervisor Ryan Kelley halted Plaintiffs' speech and announced that Plaintiffs broke the Board meeting rules. FAC p. 26. (According to the June 2019 Video, Mr. Kelley appears to admonish Plaintiffs that this meeting was not the appropriate place to make a charge of this nature. RJN, Ex. B at 56:40. Subsequently, law enforcement officers Rene McNish and other unidentified officers removed Plaintiffs from the meeting. See FAC ¶¶ 16-18;p. 26. Based on the above, the Court finds that Individual County Defendants are thus entitled to qualified immunity because they were following the County's Rules for Conduct to remove persons who cause a disruption in the Board meeting. See FAC ¶¶ 15; *Grossman*, 33 F.3d at 1209. Given these duly enacted rules, reasonable public officials would not have known

that it was unlawful to remove Plaintiffs from the Board meeting after their conduct sparked loud noises and shouting by the crowd. FAC ¶ 16; *White*, 900 F.2d at 1425-26. Accordingly, the §1983 claims against Individual County Defendants are dismissed on grounds of qualified immunity.

The Court dismisses these claims with prejudice because amendment would be futile. The judicially noticed June 2019 Video shows that Mr. and Ms. Ryan's conduct during the public comment period caused an actual disruption at the Board meeting and Individual County Defendants removed them from the meeting as a result of the disruption. RJN, Ex. B. The occurrences depicted in the June 2019 Video are consistent with the allegations in Plaintiffs ' complaint. Thus, the Court concludes that Plaintiffs could not

plausibly plead facts consistent with the complaint and the June 2019 Video to cure the deficiencies. *Armour Pharm. Co.*, 67 F.3d at 722.

F. Plaintiffs Fail to State an Unruh Act Claim

Finally, Plaintiffs allege an Unruh Act, Cal. Civ. Code § 51, claim against all defendants. Plaintiffs allege no additional facts to support this claim and proceed instead "on the same set of facts" that "depend upon proving the same elements" as their §1983 claims. FAC § J, p. 28.

The Unruh Civil Rights Act prohibits a "business establishment" from discriminating against any person based on "their sex, race, color,

religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation." Cal. Civ. Code §51. The Unruh Act imposes liability only on business establishments. *Brennon B. v. Sup. Ct. of Sup. Ct. of Contra Costa Cty.*, 57 Cal. App. 5th 367, 369 (Cal. Ct. App. 2020). An entity qualifies as a business establishment for purposes of the Unruh Act when it "appears to have been operating in a capacity that is the functional equivalent of a commercial enterprise." *Warfield v. Peninsula Golf & Country Club*, Cal. 4th 594, 622 (1995). Although government entities may constitute "business establishments," courts have declined to impose liability under the Unruh Act when the alleged wrongful acts did not relate to a business function. *Harrison v. City of Rancho Mirage*, 243 Cal. App. 4th 162, 173 (2015) (holding the city did not act as "business establishment" when engaging in legislative function) *Ramstad v. Contra Costa Cnty.*, 41 Fed. Appx. 43, 46 (9th Cir. 2002) (concluding that county social services department does not qualify as "business establishment").

Here, Plaintiffs have alleged no facts to support an essential element of their Unruh Act claim that defendants were acting as a business establishment. In particular,

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4. The Court addresses the Unruh Act and defamation claim against Media Defendants in the Court's separate order on their anti-SLAPP (under California's Strategic Lawsuit Against Public Participation statute) motion to strike.

Plaintiffs fail to allege facts to show that the County, the Water District, the Board of Supervisors, and their associated officials and employees were acting as a commercial enterprise, rather than engaging in public service, when conducting or attending the Board meetings at issue. See *Cooley v. City of Los Angeles*, 2019 WL 3766554, at *6 (C.D. Cal. Aug. 5, 2019) (dismissing Unruh Act claim against city because Plaintiffs failed to show that allegedly unlawful activity are a "business-like activity" as opposed to "a public service"). Plaintiffs also do not allege facts showing how Private Defendants, private citizens attending a local government meeting, are acting as a commercial enterprise. Accordingly, the Court dismisses Plaintiffs' Unruh Act claims against Imperial County Defendants and Private Defendants. The Court dismisses these claims with prejudice because Plaintiffs could not plausibly allege facts to show that the County and its government officials conducting a public Board meeting, and private individuals attending such meeting, are operating as a commercial enterprise to constitute a business establishment.

IV. CONCLUSION

For the reasons discussed above, the Court hereby orders the following:

- Imperial County Defendants ' motion to dismiss [Dkt. 67] is GRANTED and the claims against them are DISMISSED.
- The Court dismisses the §1983 claims against the County without prejudice and dismisses the §1983 claims against the Individual County Defendants with prejudice. The Court dismisses the Unruh Act claims with prejudice.
- Private Defendants ' motion to dismiss [Dkt. 101] is GRANTED and the section 1983 claims against them are DISMISSED with prejudice.

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- Media Defendants' motion to dismiss (Dkt. 88] is GRANTED with respect to the §1983 claims and the §1983 claims are DISMISSED with prejudice.

IT IS SO ORDERED,

Dated: September 19th, 2022

/s/ Jinsook Ohta
Honorable Jinsook Ohta
US DISTRICT Court Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
SEP. 29, 2022

Case No.: 3:21CV-01076-JO-LR

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,
v.

COUNTY OF IMPERIAL etal.,
Defendants,

By Honorable District Judge Jinsook Ohta

ORDER GRANTING MEDIA DEFENDANTS' ANTI-SLAPP MOTION TO STRIKE

Plaintiffs Gilda and Joseph Ryan filed a wide-ranging complaint alleging state and federal claims against Defendants Yuma Sun

Incorporated, Uriel Avendano, and Lisa Reilly (collectively, "Media Defendants") as well as numerous other defendants. Media Defendants filed a motion to strike Plaintiffs' state law claims for violations of the Unruh Act and defamation pursuant to California's anti-SLAPP statute. Dkt. 87.1. For the reasons

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[1] Media Defendants concurrently filed a motion to dismiss for failure to state a claim. Dkt.88. The Court has issued a separate order on their motion to dismiss.

discussed below, Media Defendants' motion to strike is GRANTED as to Plaintiffs' state law claims.

I. BACKGROUND

Plaintiffs are residents of Imperial County who attended a Palo Verde Water District Board meeting on May 17, 2018, and an Imperial County Board of Supervisors meeting on June 4, 2019. Their claims arise from the events which unfolded during these meetings.

The first incident took place at a Palo Verde Water District Board meeting on May 17, 2018 (the "May 2018 Meeting"). That morning, Plaintiffs attended the meeting with their two-year-old child and voiced their water concerns to the Board members. FAC ¶1. According to Plaintiffs, the exchange became increasingly heated and

culminated in Board member Jess Preston throwing a crumpled piece of paper at Mr. Ryan, screaming insults, threatening to "unilaterally seize" Plaintiffs' child, and trying to physically attack Mr. Ryan. FAC¶¶ 2-3. Following Mr. Preston's attempted attack, Plaintiffs allege that Mr. Preston conspired with Water District Board members and employees to deny that Mr. Preston did anything more than throw a piece of paper at Mr. Ryan. FAC ¶4. Plaintiffs further allege that various Imperial County law enforcement, counsel, and employees joined a conspiracy to cover up Mr. Preston's actions by "coach[ing], advis[ing], approv[ing], and provid[ing] illegal aid and support" to the Board members and employees. FAC ¶ 5.

The second incident occurred during a County Board of Supervisors meeting on June 4, 2019 (the "June 2019 Meeting "). Plaintiffs formally requested to speak at the Board meeting regarding the May 2018 Meeting and the Board granted their request. During the Board meeting's public comment period, Ms. Ryan took the podium to speak. Following Ms. Ryan's remarks, individuals in the crowd allegedly "started yelling a steady stream of insults and epitaphs" and made "loud, gratuitous" noises, which "had a negating effect upon the ability of [Ms. Ryan] to be heard." FAC ¶ 16. Board Supervisor Ryan Kelley announced that Plaintiffs were breaking the board meeting rules. See FAC ¶ 16. Law

enforcement officers Rene McNish and other unidentified officers then publicly escorted Plaintiffs out of the board meeting and "blocked [them] in the street." FAC ¶18.

Plaintiffs allege that news reporter Uriel Avendano attended the June 2019 Board meeting and wrote a news article about this meeting for the Palo Verde Valley Times (a local newspaper owned by Defendant Yuma Sun Incorporated). See FAC ¶¶ 30, 42-43, Dkt. 87-2 (Ex. A to RJN). Based on this attendance and newspaper article about the meeting, Plaintiffs allege that Media Defendants "agreed to adopt and embrace the goals of the conspiracy" with government officials to ruin Plaintiffs' reputations and deny them their constitutional rights. Id. Plaintiffs allege that Media Defendants "deliberately assisted" the government officials "with perpetuating a false narrative about what happened" during the June 2019 Board meeting, "in order to intentionally and purposefully tar [Plaintiffs] with a badge of infamy, and to discredit their speech by harming Plaintiffs' reputations." FAC § E.

Plaintiffs initiated this action on June 4, 2021 against Media Defendants and various other government officials, law enforcement, and private citizens who attended the June 2019 Meeting. On September 14, 2021, Plaintiffs filed their First Amended Complaint which alleges the following claims against the Media Defendants: 42 U.S.C.

§1983 claims, Unruh Act claims, and defamation. Dkt. 9 (FAC). Media Defendants filed a motion to strike the Unruh Act and defamation claims pursuant to California's anti-SLAPP statute, and a motion to dismiss all claims, state and federal, for failure to state a claim. Dkts. 87, 88. [2]. This Order addresses only Media Defendants' motion to strike.

II. LEGAL STANDARD

California's anti-Strategic Lawsuit Against Public Participation ("anti-SLAPP") statute provides an efficient way to dispose of filed for the purpose of silencing free speech rights. The statute allows a defendant to bring a "special motion to strike" a

2. The Court has ruled on media defendants' 'motion to dismiss in a separate order issued on the same day as this order.

Plaintiff's state law claims arising from certain protected conduct. Cal. Code Civ. Proc. § 425.16(b)(l); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1109 (9th Cir. 2003). In federal court, a defendant may bring this anti-SLAPP special motion to strike supplemental state law claims. See *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 5 F.3d 1268, 1272 (9th Cir. 2013).

In evaluating an anti-SLAPP motion, the district court conducts a two-part inquiry. "First, a defendant must make an initial prima facie

showing that the plaintiff's suit arises from an act in furtherance of the defendant's rights of petition or free speech." *Vess*, 317 F.3d at 1110. Second, once the defendant has made a prima facie showing, the burden shifts to the plaintiff "to establish a reasonable probability that it will prevail on its claim in order for that claim to survive dismissal." *Makaeff v. Trump Univ. LLC*, 715 F.3d 254, 261 (9th Cir. 2013). Where, as here, an anti-SLAPP motion challenges the legal sufficiency of a complaint, the district court applies the Federal Rule l 2(b)(6) standard and considers whether a claim is properly stated. *Planned Parenthood Federation of America, Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018). Accordingly, under the Federal Rule 12(b)(6) standard, a plaintiff s complaint must plead "enough facts 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, 547 (2007)). A plaintiff must plead facts, as opposed to conclusory allegations or the "formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. If the plaintiff fails to satisfy the Federal Rule 12(b)(6) pleading standard, the court must strike the causes of action and award the moving defendants their attorneys' fees. *Planned Parenthood Federation of America, Inc.*, 890 F.3d at 834; Cal. Civ. Code §425.16(b)(l), (b)(2), (c)(l).

III. DISCUSSION

Media Defendants argue that Plaintiffs' state law claims must be stricken pursuant to the anti-SLAPP statute because (1) the claims arise from the protected conduct of news reporting on a public government meeting and (2) Plaintiffs have not shown a reasonable

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probability of prevailing on each of these claims. Plaintiffs argue that the anti-SLAPP motion is not timely. The Court examines each of these three arguments below.

A. Request for Judicial Notice

Prior to addressing the arguments, the Court first examines the Media Defendants' request for judicial notice. Media Defendants filed a request for judicial notice of the news article at issue written and published by Media Defendants. Dkt. 87-1 (Ex. A to RJN). A court may "consider certain materials-documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice-without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); see also Fed. R. Evid. 201. A document "may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff s claim." *Ritchie*, 342 F.3d at 908. A court can also take judicial notice of facts that are not subject to reasonable dispute because they

are either generally known or can be readily determined by reference to sources whose accuracy cannot be reasonably questioned. Fed. R. Evid. 201(b).

Here, Plaintiffs base their claims against Media Defendants on the news article. The Court concludes that it is appropriate to deem the news article incorporated into Plaintiffs' complaint. Accordingly, the Court denies Media defendants' request for judicial notice as moot but will consider the news article as incorporated into the pleading as necessary.

B. The Media Defendants Anti-SLAPP motion to strike is timely

The Court next examines whether Media Defendants' anti-SLAPP motion is untimely because they filed it over 60 days after Plaintiff's served their initial complaint. Section 425.16(f) provides that an anti-SLAPP motion "may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time on terms it deems proper". Cal.Civ.Code 425.16(l). The Ninth Circuit has held, however, that California's timing provision does not apply in federal Court because it is a procedural device that may conflict directly with

the Federal Rules. See *Sarver v. Chartier*, 813 F.3d 891, 900 (9th Cir. 2016). Here, the Court granted Plaintiffs' and Media Defendants' stipulated joint motion to extend time to answer or otherwise

respond to the complaint to November 29, 2021. Dkt. 64. Pursuant to the Court order granting the stipulated joint motion, Media Defendants filed their anti-SLAPP motion to strike and motion to dismiss on November 29, 2021. The Court, therefore, finds that Media Defendants' anti-SLAPP motion was timely filed.

C. Plaintiffs' Claims Against Media Defendants Arise from the Protected Activity of News Reporting on a Public Government Meeting

Having determined that the motion is timely, the Court now turns to the first step inquiry of whether Plaintiffs' causes of action against Media Defendants arise from protected conduct. In order to prevail on an anti-SLAPP motion, the defendant must show that the plaintiff's suit arises from the defendant's "protected conduct" made in connection with "a public issue in furtherance of the defendant's free speech rights." *Hilton v. Hallmark Cards*, 599 F.3d 894, 901, 903 (9th Cir. 2010). The anti-SLAPP statute provides categories of such "protected conduct," including writings made in connection with "an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law," or "made in a place open to the public or in a public forum in connection with an issue of public interest." Cal. Civ. Proc. Code §425.16(e)(2),(e)(3). This protected conduct covers newspaper articles concerning local

government board meetings, *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.*, 37 Cal. App. 4th 855, 863 (1995), and extends to all news reporting generally. *Manzari v. Associated Newspapers Ltd.*, 830 F.3d 881, 887 (9th Cir. 2016) (finding that publishing an article on a topic of public interest "easily" constituted protected conduct in public forum on issue of public interest).

Here, Plaintiffs base their claims against Media Defendants on allegations that Mr. Avendano attended the June 2019 Board meeting and published a newspaper article summarizing the events of the meeting. FAC ¶¶ 42-43; see also RJN, Ex. A. Plaintiffs' claims therefore arise out of a journalist's reporting on a public government meeting.

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Lafayette Morehouse, Inc., 37 Cal. App. 4th at 863. Accordingly, the Court finds that Media Defendants have carried their burden to make a *prima facia* showing that Plaintiff's causes of action against Media Defendants arise from protected conduct.

D. The Plaintiffs have not demonstrated a probability of prevailing on the claims.

Having concluded that claims against media defendants are based upon protected conduct, the Court must now determine whether Plaintiffs can show a reasonable probability of prevailing on their claims by satisfying the Federal Rule 12(b)(6)

standard. Construing Plaintiffs' complaint liberally, Plaintiffs appear to bring state claims for (1) Unruh Act violations and (2) defamation against Media Defendants based on their conduct.

The Court first examines whether Plaintiffs have sufficiently pled their Unruh Act claim and, thus, demonstrated a probability of prevailing on the claim. The Unruh Civil Rights Act prohibits a "business establishment" from discriminating against any person based on "their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation." Cal. Civ. Code § 51. The Unruh Act imposes liability only on business establishments. *Brennon B. v. Sup. Ct. of Sup. Ct. of Contra Costa Cty.*, 57 Cal. App. 5th 367, 369 (Cal. Ct. App. 2020). To state a claim under the Unruh Act, a plaintiff must show "(I) they were denied full and equal services; (2) a substantial motivating reason for defendants' conduct was an actionable characteristic; (3) plaintiffs were harmed; and (4) defendants' conduct was a substantial factor in causing plaintiff s harm." Jud. Council of Cal. Civil Jury Instructions, CACI No. 3060 (Unruh Civil Rights Act-Essential Factual Elements) (2021); see also Cal. Civ.Code § 51(b). Intentional discrimination is required for violations of the Unruh Act. *Harris v. Capital Growth Invs. XIV*, 52 Cal. 3d 1142, 1149 (1991), superseded by statute on other grounds as stated in *Munson v. Del Taco, Inc.*, 46 Cal. 4th 661, 664--

65 (2009).

Here, Plaintiffs provide no specific factual allegations against Media Defendants to support the required elements of an Unruh Act claim. Plaintiffs merely allege that their Unruh Act claims rest on "the same set of facts" that support their federal civil rights claims, but do not plead any additional facts to support the elements of an Unruh claim.

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FAC § J. For example, Plaintiffs fail to allege that Media Defendants discriminated against them due to a protected characteristic, or that this discrimination was intentional. After construing the complaint liberally and in the light most favorable to Plaintiffs, the Court finds that Plaintiffs have failed to satisfy their Rule 12(b)(6) requirement to allege facts that support a claim for relief under the Unruh Act. Thus, by the same token, Plaintiffs fail to meet their burden to establish they will prevail on the merits of their Unruh Act claims against Media Defendants.

The Court next examines whether Plaintiffs have demonstrated a reasonable probability of prevailing on their defamation claim. Defamation "involves the intentional publication of a statement of fact which is false, unprivileged, and has a natural tendency to injure or which causes special damage." *Gilbert v. Sykes*, 147 Cal. App. 4th 13 (quoting *Ringler Assocs. Inc. v. Md. Cas. Co.*, 80 Cal. App. 4th 1165 (2000)). Under California law,

the statute of limitations for a defamation action is one year. Cal. Civ. Code §340(c). A defamation action based on a statement in a newspaper accrues when the "newspaper is first generally distributed to the public." *Hebrew Academy of San Francisco v. Goldman*, 42 Cal. 4th 883, 891 (2007). In this case, the Palo Verde Valley Times published Mr. Avendano 's news article on June 12, 2019. Ex. A to RJN. Plaintiffs did not bring a defamation action until nearly two years later, when they filed their initial complaint on June 4, 2021. Dkt.1. For this reason, the statute of limitations bars Plaintiffs' defamation claim. Plaintiffs have thus failed to meet their burden to establish they will prevail on the merits of their defamation claims against Media Defendants.

Based on Plaintiffs' allegations, the Court concludes that the state claims must be stricken without leave to amend. A district court properly grants an anti-SLAPP motion and dismisses the suit with prejudice without leave to amend where "amendment would have been futile." *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1161 (9th Cir. 2021). Moreover, the purpose of the anti-SLAPP statute is "the expeditious weeding out of meritless claims before trial." *U.S. ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 971 (9th Cir. 1999). Here, Plaintiffs' amendment of the complaint would be

Futile to save their stricken claims. First,

amendment cannot cure the fact that the statute of limitations bars Plaintiffs' defamation claims as a matter of law. Second, Plaintiffs cannot allege facts to plausibly show how the Yuma Sun Incorporated publishing a news article describing the events of a local government meeting constitutes intentional discrimination based on an actionable characte1istic. Accordingly, the claims are stricken without leave to amend.

IV. CONCLUSION

For the reasons discussed above, the Court GRANTS Media Defendants' motion [Dkt. 87) to strike Plaintiffs' Unruh Act and defamation claims pursuant to Cal. Code. Civ. Proc. §425.16. Because the Court grants the motion to strike, Media Defendants may file a motion for attorneys' fees and costs. *See* Cal. Civ.Proc.Code §425.16(c)(l) (if the movant prevails on a special motion to strike, it is "entitled to recover [its] attorney's fees and costs").

IT IS SO ORDERED

Dated: September 19th, 2022

/s/ Jinsook Ohta
Honorable Jinsook Ohta
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
SEP. 29, 2022

Case No.: 3:21CV-01076-JO-LR

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,

v.

COUNTY OF IMPERIAL etal.,
Defendants

By honorable Judge Jinsook Ohta

ORDER GRANTING WATER DISTRICT DEFENDANTS' MOTION TO SET ASIDE DEFAULT

Plaintiffs Gilda and Joseph Ryan filed a civil rights action under 42 U.S.C. §1983 against Palo Verde County Water District ("Water District") and the following individuals associated with the Water District: Ronald Woods, Jess

Preston, Jan Ayala, David Khoury, Kathi Frice-Sanders, Barbara Hopton, Donna Lord, Celeste Preston, and David Ayala (collectively, "Water District Defendants"), in addition to numerous other defendants. Water District Defendants filed a motion to set aside default. Dkt. 115. For the reasons discussed below, the motion is GRANTED.

Document 132, Page ID. 1549, Page 2 of 3

I. Discussion

On September 14, 2021, Plaintiffs filed their operative First Amended Complaint seeking to recover compensatory and punitive damages against Water District Defendants. Dkt. 9 (FAC). Plaintiffs served Water District Defendants with the FAC on October 13, 2021. On November 12, 2021, Plaintiffs requested entries of default against Water District Defendants for failure to answer, plead, or otherwise defend against the FAC. Dkts. 68-70. The Clerk filed entries of default as to Water District Defendants. Dkts.71, 86.

The court has broad discretion to set aside an entry of default for "good cause." Fed. R. Civ. P. 55(c); *O'Conner v. Nevada* , 27 F.3d 357, 364 (9th Cir. 1994). The court examines three factors when determining whether such good cause exists: "(l) whether the party seeking to set aside the default engaged in culpable conduct that led to the default; (2) whether it had no meritorious defense; or (3) whether reopening the default judgment would prejudice" the other party. *United States v. Signed Personal Check No. 730 of Yubran S. Mesle*,

615 F.3d 1085, 1091 (9th Cir. 2010). The defaulting party bears the burden of showing the default should be set aside. *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 926 (9th Cir. 2004). In making this determination, however, the court must keep in mind that "judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." *Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d at 1091 (quoting Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984)).

After examining the three factors set forth above, the Court finds that Water District Defendants have established that good cause exists to set aside the entries of default. First, the Court finds no evidence of bad faith or culpable conduct in Water District Defendants' failure to timely respond to the FAC. Orlando Foote, counsel for Water District Defendants, explained that he was aware that Plaintiffs filed a complaint but inadvertently failed to respond. He attributes his oversight to his confusion regarding the operative complaint, various medical emergencies, and the substantial restructuring of his law firm. See generally Dkt. 115-1 (Declaration of Orlando B. Foote in support of Motion to Set

Document 132, Page ID. 1549, Page 2 of 3

Aside Defaults). The Court concludes that Water District Defendants have established that the failure to respond was solely the mistake of

counsel and not the bad faith or culpable conduct of Water District Defendants. *TCI Group Line Ins. Plan v. Knoebber*, 244 F.3d 691, 698 (9th Cir. 2001) (explaining that culpable conduct requires intentional failure to respond), overruled on other grounds by *Egelhojf v. Egelhoff ex. rel .Breiner*, 532 U.S. 141 (2001). Second, based on its review of the motions to dismiss filed by the other defendants in this case, the Court finds that Water District Defendants have meritorious defenses. See *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986) (holding default judgments are generally disfavored because "cases should be decided on their merits whenever reasonably possible"). In fact, in its "Order Granting Motions to Dismiss," the Court finds that Plaintiffs' claims against these Water District Defendants are barred by the statute of limitations. Finally, the Court finds no prejudice to Plaintiffs in setting aside entry of default. The case was still in its early stages when Water District Defendants inadvertently failed to respond and it does not appear that Plaintiffs relied on this default to their detriment.

Accordingly, Water District Defendants' motion to set aside entry of default (Dkt. 115) is GRANTED.

IT IS SO ORDERED.
Dated: September 29, 2022

/s/ Jinsook Ohta
Honorable Jinsook Ohta
United States District Judge

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1. The court has issued a separate order granting the motions to dismiss brought by other defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
JUL. 14, 2021

Case No.: 3:21CV-01076-JO-LR

GILDA RYAN; JOSEPH M. RYAN,
Plaintiff-Appellants,
v.
COUNTY OF IMPERIAL etal.,
Defendants

By honorable District Judge Larry A. Burns

ORDER OF DISMISSAL WITH LEAVE TO AMEND [Dkt. 1]

Plaintiffs Gilda and Paul Ryan, purporting to bring suit on behalf of their minor children and themselves, filed their Complaint in this case on June 4, 2021. The Complaint consists of 380 numbered paragraphs and 90 claims, spread across 145 pages. In other words, it's not the "short and plain statement" that a pleading must be. Fed. R. Civ. P. 8(a)(1).

Nor can Gilda and Paul Ryan bring suit on behalf of their minor children. There's no indication that either parent is an attorney, and courts in the Ninth Circuit don't permit non-attorney parents to bring suit on behalf of their children. *Johns v. County of San Diego*, 114 F.3d 874, 876-77 (9th Cir. 1997) ("It goes without saying that it is not in the interest of minors . . . that they be represented

by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected.")

The Court **DISMISSES** the Complaint **WITHOUT PREJUDICE AND WITH LEAVE TO AMEND** for failure to set forth a short and plain statement of the Plaintiffs' claims and because it purports to bring claims on behalf of individuals who can't represent themselves but aren't represented by counsel. Any amended pleading should be no longer than 30 pages and must be filed no later than September 14, 2021. Any claims on behalf of the Ryans' minor children must be filed by those children's counsel.

IT IS SO ORDERED.

DATED: July 14, 2021

/S/ Larry A. Burns
Hon, Larry Alan Burns
United States District Court Judge

Case 3:21-cv-01076-JO-LR, Document 142, Filed 10/26/22. Minute Order by Judge Ohta. Page 1 of 1

Minute Order by Judge Jinsook Ohta: The Court resets the hearing date on Plaintiffs' motion for sanctions against Media Defendants and counsel [Dkt. 139] for 1l/9/2022 at 9:00 AM. There shall be no oral argument and no personal appearances. No response is necessary from Media Defendants and counsel on the motion. Should they wish to file one, however, they must do so by l l/4/22.
Signed by Judge Jinsook Ohta on 10/26/2022. (All non-registered users served via U.S. Mail Service) (no document attached) (sjc) (Entered: 10/26/2022)

Case 3:21-cv-01076-JO-LR, Document 141, Filed 10/26/22. Minute Order by Judge Jinsook Ohta. Page 1 of 1

Minute order by Judge Jinsook Ohta: The Court orders counsel for Defendants Yuma Sun Incorporated, Uriel Avendano, and Lisa Reilly to file a one-line submission no later than 10/31/22 notifying the Court whether Defendants intend to file a motion for attorney fees pursuant to anti-SLAAP, Cal. Civ. Proc. Code § 425.16.
Signed by Judge Jinsook Ohta on 10/26/22 (all non-registered users served via US Mail Service)(no document attached) (sjc)

IV. CONSTITUTIONAL PROVISIONS AND SPEECH ORDINANCES AT ISSUE

1ST AMENDMENT:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. *U.S. Const. amend. 1.*

14TH AMENDMENT: Section One:

> .... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *U.S. Const. amend. XIV.*

IMPERIAL COUNTY PUBLIC MEETING ORDINANCE

§II. ROLE OF BOARD CHAIRPERSON

D. Public Participation In Meetings:

> 3. In the event that any meeting of the Board is willfully interrupted or disrupted by a person or by a group or groups of persons so as to render the orderly conduct of the meeting unfeasible, the Chairperson may recess the meeting or order the person, group or groups of persons willfully interrupting the meeting to leave the meeting or be removed from the meeting, or in appropriate circumstances, order the meeting room cleared and continue in session.

See IMPERIAL COUNTY RULES FOR THE CONDUCT OF BOARD MEETINGS, §II. ROLE OF BOARD CHAIRPERSON, §D. Public Participation In Meetings (3). Amended and republished without changes to relevant text on Feb.5th, 2024. Short form citation: ICRCBM(II)(D)(3).

CITY OF NORWALK'S PUBLIC MEETING ORDINANCE: WARNING CLAUSE

2-1.1(d) Enforcement of Decorum. The rules of decorum set forth above shall be enforced in the following manner:

1. Warning. The presiding officer shall request that a person who is breaching the rules of decorum be orderly and silent. If, after receiving a warning from the presiding officer, a person persists in disturbing the meeting, the presiding officer shall order him to leave the Council meeting. If such person does not remove himself, the presiding officer may order any law enforcement officer who is on duty at the meeting as sergeant-at-arms of the Council to remove that person from the Council chambers. . . .

See White v. City of Norwalk, 900 F.2d 1421, 1424 (9th Cir. 1990). Bold emphasis added. Also in Petitioner's excerpts of record at 6-ER-997.

Ryan v. Imperial County
23-55042
Appeals Ct. Dkt. #
Pet.'s exhibit #1 attached to Petitioner's motion to correct record ____, which illustrates removal of word 'only' from caselaw ruling, in order issued by Judge Ohta on 9/29/21.
- Also Available at Pet. Excerpts at 6-ER-914

1) ACTUAL CASELAW-TEXT QUOTE FROM PLANNED PARENTHOOD RULING:
"Where as here", "an anti-SLAPP motion to strike challenges only the legal sufficiency of a claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is properly stated" *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018).

2) ACTUAL CASELAW-TEXT FROM JUDGE OHTA'S ORDER GRANTING ANTI-SLAPP MOTION, WITH 'ONLY' REMOVED:
"Where as here", "an anti-SLAPP motion to strike challenges the legal sufficiency of a claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is properly stated" *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018).

Ryan v. Imperial County
23-55042
Dkt. # 40, 41, pg. ___
- Also available at Pet. Excerpts at 2-ER-52
Description: Pet.'s exhibit #1 attached to motion to correct record; a compilation of text alterations attributable to attorneys appearing in action

APPELLANT'S EX # 1,
Ryan v. Imperial County Etal, 23-55042

LIST OF CHANGES TO CASELAW TEXT BY ATTORNEYS APPEARING IN THIS ACTION

IN COUNTY'S REPLY (DKT. 122) TO THE PLAINTIFF'S OPPOSITION (DKT. # 106) TO THE COUNTY'S MOTION TO DISMISS (DKT. # 122)

I. The words "legislative choices" were replaced with the words "governmental action". See 3-ER-506, lines 18-20, see and compare to F.C.C. v. Beach Communications Inc. 508, U. S. 307, at 313.

2. The word 'classification' changed into the words " . . . difference in treatment.". See 3-ER-506, lines 20-22, and compare to F.C.C. v. Beach Communications. Inc . 508, U. S. 307, at 313.

IN INVESTOR DEFENDANT"S MOTION PAPERS (DKT. # 101-1)

3. The words A) 'unless it appears beyond doubt Plaintiff can prove'. And "
B) . . . if it cannot be said' were replaced with the phrase " . . there are". See 3-ER-323, line 9; 3-ER-318, Plaintiff 'sexhibitfiled in District Court.

4. The words 'On which respondent would be entitled to relief replaced with "that could be proven". See 3-ER-323, line 9, and see 3-ER-318.

5. The words "Factual content" replaced/turned into with "factual context". See 3-ER-323, line 16; and see 3-ER-318 (reference to caselaw)

6. The words 'some person' changed into "named defendant". See 3-ER-323, line 14; and 3-ER-318 (reference to caselaw)

7. The words 'must show' substituted for "raises a plausible inference". 3- ER-326, line 15; and 3-ER-318 (reference to caselaw).

IN MEDIA DEFENDANT'S MOTION PAPERS (DKT. #87)

8. 'True and Fair' report privilege, turned into "fair report" privilege twice and used that way in related argument. See 3-ER-280, lines 3-8. See Cal.Civ. Code §47(d).

Ryan v. Imperial County
3:21cv-01076-JO-LR
Dkt. #9.1: Plaintiff's facial and as-applied meeting-ordinance challenges
Select Text from Petitioner's ordinance challenges Available in Pet. Excerpts at 2-ER-97-98, 100, 110-113.

15. IMPERIAL COUNTY'S MEETING RULE HANDS THE POWER AND TOOLS OF A MEETING HECKLER TO THE BOARD OF SUPERVISORS TO WIELD IN DISCRIMINATORY MANNER TO STOP SPEECH THEY DISAPPROVE OF

The law concerning 'The Heckler's Veto' hasn't been materially altered since it was handed down by The Supreme Court of The United States in *Terminiello V. Chicago*. In *Terminiello*, the petitioner was arrested for his speech after he made comments to his 800 followers that enraged a crowd outside of the Auditorium where the speech was made; and that crowd became violent and caused many disturbances and clashes with police guarding the auditorium. "Petitioner in his speech, vigorously, if not viciously, criticized various political and racial groups ...". *Terminiello v. Chicago*, 337 U.S. 1, 3 (1949). The petitioner was charged with breaching the peace and quiet by speaking words (misbehavior) arousing alarm. Misbehavior under the statute consisted of 'stirring the public to anger; 'inviting disputes', 'bringing about a condition of unrest', or

engaging in misbehavior that 'creates a disturbance'. Ultimately, In Terminiello the Court struck down the statute at issue because it reasoned that the government couldn't give veto power over the exercise of Constitutional rights to persons upset and excited by the petitioner's lawful speech. In Terminiello, Justice Douglass wrote this about public speech:

> It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may . . . have profound unsettling effects ... ". That is why freedom of speech, though not absolute ... is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. There is no room under our Constitution for a more restrictive view.

Terminiello v. Chicago, 337 U.S. 1, 4-5 (1949). Internal quotation marks omitted.

Here, defendant Chairperson Ryan Kelley used the wide discretion the ordinance grants him to ignore actual disruptions, and to define terms on the spot to suit his whims, to disregard the interruptions and disruptions coming from the members of the

public who had not been granted any right to speak at the time in question, and instead, using authority vested in him thru the County's meeting-law regimen, he ratified the bad conduct of people reacting boisterously to speech; and he thereby provided support for the aims of a mob of meeting hecklers through the use of physically oppressive officers of the law.

5. GILDA RYAN'S SPEECH WAS ON APPROPRIATE SUBJECTS AND THE FORUM SHE SPOKE IN WAS PROPER FOR THOSE SUBJECTS

Nothing Plaintiff Gilda Ryan said or intended to say was outside of the bounds of acceptable subject matter according to the law of California. In *Dibb V. County of San Diego* the Court noted the language in California Government Code §25303 and found the elected governing Board of The County of San Diego was required by law to "supervise the official conduct of all County officers, and officers of all districts and other subdivisions of the county"1; and the court further noted that other courts have found "the statute permits the Board of Supervisors to insure they faithfully perform their duties". *Dibb V. County of San Diego*, 8 Cal 4th, 1200, quoting People v. Langdon, (1976) 54 Cal. App. 3rd, 384-390.

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[1] The Palo Verde County Water District is a sub-agency of Imperial County; although the PVCWD Board members claim private corporation status whenever its convenient.

All the subjects Plaintiff Gilda Ryan intended to speak about were within the jurisdiction of the Board of Supervisors according to Dibbs. She wanted to complain about the conduct of an official working for a County District (The Palo Verde County Water District), the conduct of The Sheriff and the employees he supervises, and the individual and collective conduct of members of the Board she attempted to address.

As for Chairman Ryan Kelley's assertion that Gilda Ryan had chosen an improper forum to air her grievances; Here, the Plaintiff Gilda Ryan was complaining about subject matter within the County Supervisors field of required supervision that was not related to an item listed on the meeting agenda, after requesting in writing to speak, as required.

6. SPEECH DOES NOT LOSE CONSTITUTIONAL PROTECTION MERELY DUE TO CONTENT THAT DISPLEASES THE GOVERNMENT'S MINDERS

In *NCAAP v. Claiborne Hardware* the Court stated: "Speech does not lose its protected character, however, simply because it may embarrass others ....". *Naacp v. Claiborne Hardware Co.*, 458 U.S. 886, 910 (1982).

More clearly and to the point, in Norse the Court stated, "Speech cannot be . . . punished or banned simply because it might offend a hostile member of the Santa Cruz City Council [or here, The Palo Verde County Water District or The Imperial

County Board of Supervisors]). (reference to local legislative boards added by plaintiff). *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 134-35, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992); "The council members should have known that the government may never suppress view-points it doesn't like". See *Rosenberger v. Rector Visitors of the Univ. of Va.*, 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). *Norse v. City of Santa Cruz*, 629 F.3d 966, 977 (9th Cir. 2010). In Near v. Minnesota, the Supreme Court made it clear that statements accusing public officials of crimes are protected speech under 1st Amendment jurisprudence. See *Near v. Minnesota*, 283 U.S. 697, 722 (1931).

6. THE IMPERIAL COUNTY MEETING RULE AT ISSUE IS AN ALTERED VERSION OF CALIFORNIA GOVERNMENT CODE SECTION 54954, WITH SOME TEXT DELETED AND SOME TERMS ADDED, TO CREATE THE COUNTY ORDINANCE CHALLENGED HEREIN

Imperial County created its meeting law from the State of California's Brown Act statute (§54957.9) which governs conduct at public meetings covered by the Act.

> BROWN ACT: GOV CODE §54957.9:
> In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such

meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

See Cal. Gov. Code §54957.9.

COUNTY ORDINANCE (ICBSR (II)(D)(3))
DERIVED FROM BROWN ACT

In The Event that any meeting of the Board is willfully interrupted or disrupted by a person or a group of persons so as to render the orderly conduct of the meeting unfeasible, the Chairperson may recess the meeting or order the person group or group of persons willfully interrupting or disrupting the meeting to leave the meeting or to be removed from the meeting, or in appropriate circumstances, order the meeting room cleared and continue in session. See ICBSR (II)(D)(3).

Here, Imperial County deleted the words "AND ORDER CANNOT BE RESTORED BY REMOVAL OF INDIVIDUALS WHO ARE WILFULLY WHO ARE WILFULLY INTERRUPTING THE MEETING" from the Brown Act statute text. This deletion eliminates the safeguard for "individuals" that protected association and assembly rights of persons who might be considered to be part of a group – due to their presence in the vicinity of other identified persons or because they might be wearing identical uniforms or advocate for the same cause – from being removed from the meeting by force when they may have not done any act that could remotely be considered to be disruptive.

Second, the text deleted from the statute allows the Chairman of the Board of Supervisors (acting for all supervisors) to unilaterally and arbitrarily eliminate all the rights of all members of the public automatically without appeal or hesitation upon a finding that a single person or any number of persons in a single group did some act that "disrupted" or that "interrupted" the meeting, and without any requirement that the Board make any effort to quiet or stop the disruption by as few as one person, before every other member of the public attending a particular meeting can have all their association, assembly and speech rights eliminated in one quick swoop; as the law allows the Board to 'recess the meeting' without and before taking any

steps whatsoever to control a single person causing disorder. In effect the heckler may be granted veto power over the whole meeting's existence as a public forum; and one heckler might be able to get all members of the public removed from the meeting without any due process whatsoever for those removed. In contrast, the Brown Act statute the County meeting law was derived from requires an effort be made to quiet or remove "individuals" causing a disruption before all rights of all members of the public might be eliminated by a blanket edict from one member of the legislative body.

8. TERMS & CLAUSES ADDED TO BROWN ACT TO CREATE COUNTY LAW

The County also added the following text – not contained in the Brown Act - to the meeting law (ICBSR (II)(D)(3)) its agents authored:

> the Chairperson may recess the meeting or order the person group or group of persons willfully interrupting or disrupting the meeting to leave the meeting or to be removed from the meeting, or in appropriate circumstances, [clear the room and continue is session]. (Original Brown Act text in brackets for context)

See Imperial County Meeting rule ICBSR (II)(D)(3).

This addition to the text of The Brown Act statute allows the Imperial County Board of

Supervisors to order whole 'groups' of persons to leave the meeting, after a whole 'group' of persons are identified as disrupters en-masse regardless of their individual conduct at the meeting. The added text, has the potential to create a circumstance where individual rights could be carelessly and casually eliminated by a instantaneous, on-the-spot determination by the Board acting under one person (The Chairman of The Board) who determines the intent of up to 20 or more people at once, while he simultaneously records in his mind the individual conduct of each and every group member at one moment in time; so he can identify to the police, who is subject to the order and who is not. Plaintiffs allege that this scenario represents a situation wherein the statute in question allows for sensory-based determinations to be made by one person that plaintiffs aver are clearly beyond the sensory capabilities of any single human.

9. CRITICAL FIRST AMENDMENT SAFEGUARDS FOUND IN BROWN ACT LAW GOVERNING CONDUCT OF MEMBERS OF THE PUBLIC ATTENDING OR SPEAKING AT PUBLIC MEETINGS IN CALIFORNIA, WERE ELIMINATED BY COUNTY WHEN ORDINANCE WAS CREATED

The County Statute also eliminated the following words from the text of the Brown Act statute it is derived from:

> ... Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. See Cal. Gov. Code §54957.9.

The elimination of the aforementioned text obliterates the safeguard that protects the public's right to attend the meeting in question, even where non-agenda items are discussed; and the media's right to continue to attend a meeting where a disturbance – not perpetrated or joined by members of the press – occurred.

The eliminated text also granted any legislative body solely relying on The Brown Act's text alone to regulate public meetings, the ability to safeguard the rights of persons who were forced to leave the meeting unjustly; a stipulation necessary since Imperial County's meeting-rule ordinance has additional text (added by the County to the Brown Act text) that allows for the removal of loosely identified 'groups' of persons or individuals identified on-the-spot as members of a group. The text added by the county concerning group-rights being

eliminated before and/or without requiring any effort to silence actual, individual meeting disrupters, makes it imperative that the County's statute establishes "a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting" just like the State's Brown Act meeting law does (See Cal. Gov. Code §54957.9), in order for the statute to not be unconstitutionally restrictive of established 1st Amendment constitutional rights.

14. UNDEFINED, MYSTERIOUS VENUE-REMOVAL PROCESS FORCES SPEAKERS TO RISK LIFE AND LIMB TO PETITION PUBLIC

There's no text in the County's meeting ordinance (see plaintiff's exhibit #1, a copy of Imperial County's meeting rules) that describes what process might be involved in a removal of a citizen from the meeting. While there exists an old maxim 'Ignorance of the law is no excuse for breaking the law; it's hardly disputable that most members of the public are not intimately familiar with the elements of criminal statutes and The State of California's CACI jury instructions on a variety of statutes that might come into play immediately after an arbitrary decision is made to have a particular member of the public removed from a meeting; so most persons, and especially a speaker who was invited to the podium by the Clerk of the Board, who might be ordered 'removed' from a meeting, would likely have little cognizance of the fact that the

moment they stay at the podium for even one second after they have been ordered to leave the room by The Board Chairman, they could be physically accosted by one or more police officers who might inflict great bodily injury upon the speaker without hesitation, and without regard for any speaker's pre-existing skeletal or heart related health conditions.

It would require reading multitudes of California appellate Court decisions before one would know at what point in time their conduct might be considered to be 'disobedience of a lawful order from a police officer' after a Chairman's edict is announced. Is continuing to attempt to address the Board with speech after a removal order is made constitute disobedience of an officer? What laymen would know? Being suddenly, physically accosted by necessarily aggressive officers is quite a risk to take and ultimately quite a price to pay for straying off topic, or for saying something negative about a public official's performance in office.

10. INSTANTANEOUS FINDING THAT 'DISRUPTION' OR 'INTERRUPTION' OCCURRED WAS PRETEXT FOR REMOVAL OF PLAINTIFFS FROM VENUE

When Ryan Kelley declared to the crowd "So, everyone, there are some rules in regards to these public comments, and they are that we make no derogatory comments against any individuals or that we attack ..... (unintelligible)", it was like being in the middle of a bad Monty Python skit, because no

such rule existed. He just made that up!

In a case with many circumstances analogous to this matter, a 9th Circuit Court found that the definition of 'disruption' can't be decided by fiat and then used against an unsuspecting public speaker. In Norse the Court clearly annunciated that "Actual disruption means actual disruption". "It does not mean constructive disruption, technical disruption, virtual disruption, nunc pro tunc disruption, or imaginary disruption". "The City cannot define disruption so as to include non-disruption to invoke the aid of Nor-walk"2. Norse v. City of Santa Cruz, 629 F.3d 966, 976 (9th Cir. 2010).

Extrapolating from the non-existent rule he fabricated out of thin air, Ryan Kelley then somehow morphed making a 'personal attack' or 'disparaging' someone into a reason to find that either a meeting 'disruption' or 'interruption' had occurred. That finding was then used to terminate the associated 1st amendment rights of both Plaintiff Gilda Ryan and Plaintiff Joseph Ryan.

Here, the plaintiffs allege the County actors translated Plaintiff Gilda Ryan's protected speech about and concerning the on-duty conduct of a public official into a "constructive", "technical", "virtual", and, or "imaginary" 'disruption', in clear

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[2] In Norwalk it was established that protected speech could be regulated through the use of reasonable and content neutral restrictions that were enforced only in a manner consistent with the aforementioned restrictions. *White v. City of Norwalk, 900 F.2d at 1424-26.*

contravention of clearly established law they knew about or any reasonable officer – involved in planning, carrying out, deciding order issues, or providing physical muscle to enforce rules at public meetings - should have known about before June 4th, 2019.

Here like in *Norse*, the plaintiffs allege that a "calm assertion of .... constitutional rights" (Gilda Ryan and Joseph Ryan's extremely limited speech on June 4th, 2019)) was not the least bit disruptive. In *Norse* the Court appropriately categorized conduct by public officials whereby they order the immediate arrest or removal of their critics attending a public meeting and stated that "The First Amendment would be meaningless if Councilman Fitzmaurice's petty pique justified Norse's arrest and removal." *Norse v. City of Santa Cruz, 629 F.3d 966, 979 (9th Cir. 2010).* Here, the plaintiff's allege that it was "the pretty pique' of the policymakers of Imperial County like defendants Raymond Castillo, Michael Kelley, Ryan Kelley, Raymond Loera, as well as the Palo Verde County Water Board, and especially its vice-president, defendant Jess Preston and his wife, that caused Gilda Ryan's speech to be halted.

Ryan v. Imperial County
3:21cv-01076-JO-LR
Dkt. #9, Pg. 3, § I. COMPLAINT INTRODUCTION
Available in Pet. Excerpts at 2-ER-52
Description: Select Text from Petitioner's FAC wherein defendants are informed why being sued

I. COMPLAINT INTRODUCTION

Plaintiffs, Gilda and Joseph Ryan attempt to hold the policymakers of Imperial County accountable for setting the whole Ryan family like four bowling pins; Inviting the plaintiffs to speak at the podium during a County Supervisor's meeting held in Palo Verde California, just so they could entertain themselves by arranging to have Ryan family members accosted in front of the community by a team of Sheriff Deputy's and a mob of animus driven government allies.

This case also involves the so-called 'Guardians of The 1st Amendment' operating a criminal enterprises that coordinated its agent's coverage of relevant events to intentionally provide support for a fake, government created propaganda-narrative designed to obscure and destroy the truth about events at issue in this action

Ryan v. Imperial County
3:21cv-01076-JO-LR
Dkt. #9, Pet. FAC, page 8, § V. (L)
Available in Pet. Excerpts at 2-ER-57
Description: Select Text from Petitioner's FAC describing why details regarding events occurring in 2018 were included in FAC to illustrate defendant's motivation to stop speech in 2019, and to support allegations concerning longterm Monell policy (not as the basis of any claims for damages).

V. ASSERTIONS, CLARIFICATIONS, ARGUMENTS EXTENSION OF LAW

L) Facts concerning alleged wrongful conduct occurring on May 17th,. 2018 are offered because plaintiffs allege that conduct occurring on that date was a motivating factor that caused all defendants present in Palo Verde on June 4th, 2019, to cause harm to Ryan family members in the process of depriving them of guaranteed Constitutional rights on June 4th, 2019. Facts concerning alleged wrongful conduct occurring on May 17th, 2018, are also (and alternatively) offered in this pleading as evidence of the policy (s) alleged herein that resulted in the deprivation of the Plaintiff's rights June 4th, 2019.

Ryan v. Imperial County
3:21cv-01076-JO-LR
Dkt. #9
Select Text: Monell grounds based upon description of Imperial County Policy
- In Pet excerpts at 2-ER-69-72

VII. IMPERIAL COUNTY & PVCWD's COORDINATED POLICY (s)

48. Over the last several years, Imperial County and its sub-agency, The Palo Verde County Water District, have acted in concert to maintain coordinated, largely identical policies that revolve around ensuring that these entities and the policymakers and their agents who run these entities are never embarrassed or otherwise held to account for their conduct in office - in any forum - by the words or conduct of Joseph Ryan or his wife Gilda Ryan.

49. The persons carrying out these policies for the County of Imperial and The PVCWD act in concert to collectively burden the plaintiff's speech using violence and threats of violence; And to punish without tolerance the speech of either or both Plaintiff Joseph and Gilda Ryan, if and when either plaintiff critiques or might attempt to critique any of the Imperial County policymakers, any of The Palo Verde County Water District's policymakers, or either group's agents and, or associates.

50. The Imperial County Sheriff, defendant Raymond Loera and Undersheriff Fred Miramontes acted in concert with The Imperial County Supervisors (Ryan Kelley, Raymond Castillo, Michael Kelley) and they either assisted in the creation of this policy or they individually adopted the creation of this policy after it was created. Luis Plancarte, & Jesus Escobar adopted the policy almost immediately after they entered office as County Supervisors in 2019.

51. Defendant PVCWD's Board members Ronald Woods, and David Khoury acted in concert with Imperial County policymakers and their agents in creating this policy, or they adopted the creation of this policy after January 1st, 2012. Defendant PVCWD's Board members Jess Preston, and Jan Ayala embraced and adopted the policy immediately after they started representing themselves as PVCWD Board members in the year 2015.

52. Pursuant to this policy, final policymaking authority of The Imperial County Supervisors and The County Sheriff Raymond Loera was delegated to County Counsel Katherine Turner; who adopted the creation of this policy before April 22nd, 2018; and acting in her official capacity and as an agent of the County Policymakers, directed and controlled the actions of Deputy Sheriff officers on

June 4th, 2019, in Palo Verde California, before said officers engaged with Plaintiffs Gilda and Joseph Ryan at a meeting of The Imperial County supervisors.

53. Pursuant to carrying-out the policies of Imperial County and PVCWD the defendants decided to seize upon an opportunity to injure Plaintiff Gilda Ryan and Joseph Ryan's liberty interests in their reputations by subjecting the Ryan family members to a potentially violent encounter with the police and other degrading public opprobrium on June 4th, 2019; to discredit Ryan family members and to harm them.

54. The policy (s) described above (and (IHBR)), was carried out on June 4th, 2019, at the direction of Imperial County and PVCWD supervisors Ryan Kelley, Raymond Castillo, Michael Kelley, Luis Plancarte, County Counsel Katherine Turner, and PVCWD Board members Ronald Woods, Jan Ayala, and David Khoury. Each of these defendants participated directly in the Constitutional violations plaintiffs allege occurred on that date.

55. Defendants District Attorney Gilbert Otero, Sheriff Raymond Loera, Under-Sheriff Fred Miramontes, County Supervisor Jesus Escobar, & PVCWD Board member Jess Preston worked in concert to intentionally set in motion a series of acts they knew would cause subordinates and

other County agents to act unlawfully pursuant to their policies, & cause all Ryan family members to be subjected to a risk of harm that an objective, person acting reasonably would not subject another person to.

56. Defendants intentionally exposed the plaintiff Ryan family members to such risk of harm on June 4th, 2019 and at all relevant times thereafter, without regard for the consequences that might befall Ryan family members subjected to this policy.

57. The Policy's of Imperial County described and alleged herein ((IHBR)) represent a choice to pursue a particular course of conduct from many available alternatives that would not have subjected either plaintiff or any of their minor children to an unreasonable risk of harm on June 4th, 2019.

58. Plaintiffs aver that the immunity guarantee alleged and described above as well as the existence of the County and PVCWD policies described herein was a moving factor that caused all defendants to agree to act in concert with other defendants and to act unlawfully and to violate the rights of Ryan family members on June 4th, 2019.

VIII. EXPRESS POLICY THROUGH CREATION, & MAINTENANCE OF ORDINANCE THAT IS UNCONSTITUTIONAL ON ITS FACE

59. Imperial County has an express policy represented by the fact that The Imperial County Supervisors, acting as a legislative body have created, or adapted after its creation, an ordinance that is unconstitutional on its face (ICBSR (II)(D)(3). It is the policy of The County to keep the statute at issue active without any amendments or changes being undertaken after June 4th, 2019 in order that the statute in question may be available for use if the body wants to have a critic detained or removed from a County meeting venue without due process.

60. The plaintiffs allege the existence of the ordinance at issue was a moving force behind the detention and physical herding of The Ryan family members on June 4th, 2019, and violations and deprivations of the plaintiff's Constitutional Rights to assemble, speak, associate, and petition the government on that date, in and around the meeting venue at issue.

61. The County Supervisors have – by their conduct in maintaining said ordinance without changes – have expressly signaled that they approve of its use on June 4th, 2019 in Palo Verde, and that they agree with the basis of its use on

that date; and the many available alternative options involving changing the ordinance terms in various ways so that it is not unconstitutional on it's face have not and will not be considered.

Ryan v. Imperial County
3:21cv-01076-JO-LR,
Dkt., Document #9
- Available at 2-ER-76-77
Description: Select Text from FAC illustrating that petitioners intended to plead and did plead a Paul Stigma action based upon federal law, and did not intend to plead, or actually plead any pendant state cause of action for defamation, whatsoever.

IX. PLAINTIFF'S CAUSES OF ACTION:
STIGMA PLUS CONNECTION: Plaintiffs allege that all reputational harm inflicted on Gilda and Joseph Ryan alleged herein is closely and inherently connected to other violations of the plaintiffs Constitutional rights that occurred on May 17th, 2018, and on June 4th, 2019 (and at all relevant times thereafter), as alleged in plaintiff's complaint and overbreadth challenge to the County's meeting ordinance (IBRH).
PENDANT STATE CLAIMS: UNRUH ACT
Plaintiffs Joseph and Gilda Ryan:
1. All allegations, averments, facts and incorporations contained in counts 1-85 and in Plaintiff's as-applied and facial challenges to The County ordinance, filed simultaneously with this action are Incorporated herein to all Unruh counts.
2. For conspiring to violate plaintiff's civil rights in violation of The Unruh Act
3. Which caused harm to all Ryan family members on June 4th, 2019.

Ryan v. Imperial County
3:21cv-01076-JO-LR,
Dkt. #1, page 128, section 379, ex. #10
- Available in Pet. Excerpts at 2-ER-238-239
Description of exhibit: Text from local newspaper article where County Supervisor Luis Plancarte discusses his attitude or stance regarding how speech from critics of public officials should not be "tolerated" in communities where they live.

> "I feel saddened that somebody that has any kind of influence over any group or any sector of our community would irresponsibly and falsely accuse another individual without merit," Plancarte said. "This should not be tolerated, should not be tolerated by this board, should not be tolerated by our community. It should not be tolerated by those who have those accusers as leaders of their communities. They should also hold them accountable as well."

See *Imperial County Supervisors Defend County Officials Against Racism Complaints September 4, 2020 Elizabeth Varin*

Ryan v Imperial County
3:21cv-01076-JO-LR,
Dkt. #1, First complaint, page 128, section 379.
- Located in Pet. Appeal Excerpts at 2-ER-230-231
Description: Text from Plaintiff's initial complaint describing allegations made in claims process concerning emotional damage caused to minor child from being yelled at by an adult reacting violently to lawful speech during a public meeting

> Plaintiffs allege that they included details of the damage to MP#3 that plaintiffs allege came from being yelled at by Jess Preston at the offices of The PVCWD Board on May of 5 2018, which included a bad nightmare just after said event happened. Not to be deterred, when County and PVCWD policymakers found out on June 3rd that the Ryan family would be addressing a County Supervisor's meeting in Palo Verde, the defendants named in this action, as a group that they would stomp out the Ryan's speech rights, humiliate them, subject them to threats of violence and possible violence and arrest, right in front of MP#3 by yelling aggressively at The Ryan family as soon as they tried to speak, and then subjecting the whole family to threats of violence and arrest as this was done

Respectfully Submitted on 4/29/2025 by:

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Joseph Ryan _____

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