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OPINIONS AND ORDERS

REHEARING ORDER

MEMORANDUM* OPINION, U.S COURT OF APPEALS FOR THE NINTH CIRCUIT (JULY 2, 2025)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEBORAH COONEY,

Plaintiff-Appellant,

v.

MOLLY C. DWYER, Clerk of Court, United States Court of Appeals for the Ninth Circuit, Individually and in Her Official Capacity; et al.,

Defendants-Appellees.

No. 23-15236

D.C. No. 4:21-cv-01721-YGR

Appeal from the United States District Court
for the Northern District of California
Yvonne Gonzalez Rogers, District Judge, Presiding

Submitted June 18, 2025**

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, Cooney's motion for oral argument is denied. *See* Dkt. No. 68.

Before: WALLACE, O'SCANNLAIN, and N.R. SMITH, Circuit Judges.

MEMORANDUM

Deborah Cooney ("Cooney") appeals pro se from the district court's judgment dismissing her action against more than 140 defendants, including Molly Dwyer, Susan Soong, former governors, cities and counties, law firms and attorneys, state-court judges and court staff, public utilities, corporations and executives, banks, insurance companies, churches, unions, landlords, and others.

In 2012, Cooney filed a previous action, *Cooney v. California Public Utilities Commission, et al.,* Case No. 4:12-cv-06466-CWS (hereinafter, *"Cooney 1"),* in the U.S. District Court for the Northern District of California. There, Cooney asserted the State of California, the California Public Utilities Commission ("CPUC"), former California Attorney General Kamala Harris, former CPUC President Michael Peevey, and Itron, Inc. installed "harmful radiation devices" known as "Smart Meters" on her home and in her community, causing her serious harm. The district court dismissed these claims, and we dismissed Cooney's subsequent appeal as frivolous.

In 2018, Cooney filed a second action, *Cooney v. City of San Diego, et al.,* Case No. 18-cv-01860-JSW (hereinafter, *"Cooney II"),* in the Northern District of California, alleging "fraud on the court" related to the district court judgments against her in *Cooney I,* and that defendants conspired to deprive her of numerous rights. In that action, Cooney named nearly 90 defendants, including the defendants from *Cooney I,*

governors, judges, cities and counties, law firms and attorneys, public utilities, corporations and executives, and churches. The district court granted Cooney leave to amend but ultimately dismissed the action with prejudice for failure to meet federal pleading standards. Cooney appealed, and we dismissed the appeal as frivolous.

Cooney filed this action on March 11, 2021, alleging fraud regarding the judgments against her in *Cooney I, Cooney II,* and various state-court actions, among other allegations of conspiracies to deprive her of numerous rights. In her First Amended Complaint, Cooney named more than 140 defendants, including Molly Dwyer, Clerk of the Court for the Ninth Circuit, and Susan Soong, former Clerk of the Court for the Northern District of California; former governors; cities and counties; law firms and attorneys; state-court judges and court staff; public utilities; unions; corporations and executives; banks; insurance companies; churches; landlords; and others. The district court dismissed Cooney's claims and denied in part her motion for costs of service. Cooney appeals.[1]

We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal for failure to state a claim, res judicata, and personal immunity.

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[1] The parties have filed several requests for this court to take judicial notice of court records from prior proceedings and information contained on government websites. *See* Dkt. Nos. 94, 145, 149, 152. Insofar as these requests pertain to relevant court records and government websites, we grant judicial notice of the existence of such documents. *See* Fed. R. Evid. 201(d); *see also United States v. Howard,* 381 F.3d 873, 876 n.1 (9th Cir. 2004); *Ariz. Libertarian Party v. Reagan,* 798 F.3d 723, 727 n.3 (9th Cir. 2015).

See, e.g., Steinle v. City & Cnty. of San Francisco, 919 F.3d 1154, 1160 (9th Cir. 2019) (failure to state a claim); *Maldonado v. Harris,* 370 F.3d 945, 949 (9th Cir. 2004) (res judicata); *Acres Bonusing, Inc. v. Marston,* 17 F.4th 901, 907 (9th Cir. 2021) (personal immunity).

We review for an abuse of discretion the district court's denial of leave to amend. *Walker v. Beard,* 789 F.3d 1125, 1139 (9th Cir. 2015). We also review for abuse of discretion denial of motion for costs of service. *Estate of Darulis v. Garate,* 401 F.3d 1060, 1063 (9th Cir. 2005).

We affirm.

1. *Dismissal of Claims Against Dwyer and Soong.* The district court did not err in dismissing Cooney's claims against Dwyer and Soong because they are entitled to quasi-judicial immunity since Dwyer's and Soong's purported misconduct relates to tasks "inexorably connected" with a judicial function and are therefore "within the realm of activities protected by quasi-judicial immunity." *Fort v. Washington,* 41 F.4th 1141, 1146 (9th Cir. 2022) (citation and internal quotation marks omitted); *see also Acres Bonusing, Inc v. Marston,* 17 F.4th 901, 916 (9th Cir. 2021), quoting *Mullis v. U.S. Bankr. Ct. for Dist. of Nevada,* 828 F.2d 1385, 1390 (9th Cir. 1987) ("Court clerks have absolute quasi-judicial immunity from damages for civil rights violations when they perform tasks that are an integral part of the judicial process."); *In re Castillo,* 297 F.3d 940, 952-53 (9th Cir. 2002) (explaining that controlling and managing the docket, scheduling, and noticing proceedings are part of the judicial function).

2. *Dismissal for Failure to State a Claim and Based on Res Judicata.* The district court did not err in dismissing Cooney's remaining claims because they are all either insufficiently pled or barred by res judicata. Cooney's various claims are difficult to follow and are unsupported by facts. Cooney's conclusory allegations do not meet federal pleading standards and were properly dismissed, as Cooney failed to establish any plausible connection between the defendants and the events, and included no facts indicating when any event happened, which defendant caused it, or how any defendant caused her alleged injury. *See Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009), citing *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 557 (2007).

In any event, Cooney's claims are also barred by res judicata as she previously raised the same allegations against nearly all the same defendants in her prior actions, each of which resulted in a final judgment on the merits. *See Owens v. Kaiser Found. Health Plan, Inc.,* 244 F.3d 708, 713 (9th Cir. 2001), quoting *W. Radio Servs. Co. v. Glickman,* 123 F.3d 1189, 1192 (9th Cir. 1997) ("Res judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action.' The doctrine is applicable whenever there is '(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between the parties."). As such, the district court correctly dismissed her claims.

3. *Denial of Leave to Amend.* The district court did not abuse its discretion in denying Cooney leave to amend her claims because amendment would be futile. *See, e.g., Walker v. Beard,* 789 F.3d 1125, 1139 (9th Cir. 2015) (explaining that a district court does

not abuse its discretion in denying leave amend where no amendment would cure the deficiency). Indeed, there are no facts that Cooney could plead to cure her claims as they are all barred by either quasi-judicial immunity or res judicata.

4. *Denial In Part of Cooney's Motion for Costs of Service.* The district court did not abuse its discretion in denying in part Cooney's motion for costs of service because Cooney failed to meet her burden of showing that she properly served defendants with a request for waiver. *See* Fed. R. Civ. P. 4(d)(1) (setting forth requirements to serve a request for waiver of a service of a summons); *Brockmeyer v. May,* 383 F.3d 798, 801 (9th Cir. 2004) (explaining that the plaintiff bears the burden of showing that service was proper); *see also* Fed. R. Civ. P. 4(e)(1) (stating that a plaintiff may follow state law for serving a summons); Cal. Civ. Proc. Code § 415.30 (setting forth requirements for service of a summons under California law).

5. *Cooney's Remaining Arguments.* Cooney's remaining arguments that (a) her request for a preliminary injunction is not moot, (b) the district court erred in dismissing 52 defendants who had not yet appeared and in failing to enter default against these defendants, and (c) the judgment is "void" for various reasons, including lack of personal and subject matter jurisdiction, are meritless. First, the district court properly dismissed as moot Cooney's request for a preliminary injunction given that the court had dismissed all of Cooney's claims. *See Bayer v. Neiman Marcus Grp., Inc.,* 861 F.3d 853, 864 (9th Cir. 2017) ("A request for injunctive relief remains live only so long as there is some present harm left to enjoin.'" (citation omitted)). Second, the district court did not err

in dismissing various defendants and not entering judgment against them because Cooney failed to serve most, if not all, of these defendants and she was therefore not entitled to default against them. Finally, Cooney's argument that the judgment is "void" for various reasons is completely unsupported by facts and legal authority. Consequently, we reject her remaining arguments.

AFFIRMED.

ORDER ON MOTION TO AMEND JUDGMENT, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NO. 4:21-CV-01721 (JANUARY 4, 2023)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEBORAH COONEY,

Plaintiff,

v.

CITY OF SAN DIEGO, ET AL.,

Defendants.

Case No. 4:21-cv-01721-YGR

Re: Dkt. No. 295, 296, 311, 318, & 320

Before: Yvonne GONZALEZ ROGERS, U.S. District Court Judge.

ORDER RE: MOTION TO ALTER JUDGMENT

Plaintiff Deborah Cooney, proceeding pro se, moves to alter or amend judgment in this case pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. In the present motion, she challenges the Court's October 12, 2021 order dismissing defendants Molly C. Dwyer and Susan Y. Soong, the Court's June 6, 2022 order dismissing the remaining defendants and denying her motion for preliminary injunction as moot, as well as the

issuance of a final judgment in this case. (*See* Dkt. Nos. 35, 272, 276.) Having considered the record in this case and the papers submitted,[1] and for the reasons set forth below, the motion is GRANTED IN PART AND DENIED IN PART.

I. Background

The Court assumes familiarity with the background of this case and the Court's prior orders. In short, defendants Dywer and Soong were dismissed on immunity grounds since they were sued for conduct as clerks of their respective courts. (Dkt. No. 276.) The remaining defendants were subsequently dismissed because plaintiff's complaint failed to comply with Rule 8(a) of the federal rules of civil procedure, her claims were precluded in part based upon similar litigation that she has raised in this district, and the conspiracy that she attempted to state was not and could not be plausibly stated. (Dkt. No. 272.) Judgment was issued pursuant to plaintiff's request. (Dkt. No. 276.) Plaintiff now challenges the outcome of this case and the substance of the Court's orders.

II. Discussion

There is no dispute that a party may move to alter or amend a judgment no later than 28 days after the entry of judgment. Fed. R. Civ. P. 59(e). A motion

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[1] In order to control the docket and streamline the motion, the Court directed plaintiff to file a consolidated reply addressing the oppositions. Many of the oppositions echo one another. Given the clear overlapping issues, several defendants simply requested to join the motions of their co-defendants. (Dkt. Nos. 296, 311, 318, 320.) The Court finds that the arguments apply equally and grant the requests under the circumstances.

to amend or alter a previous order under Rule 59(e) is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (citation omitted). Accordingly, a motion should not be granted "absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). "[T]he district court enjoys considerable discretion in granting or denying the motion." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

While immaterial to the outcome of the case, plaintiff identified inadvertent typographical and citation errors in the Court's prior orders that are well-taken. For instance, in Docket Number 35, the Court inadvertently referred to "Cooney" when the Court intended to refer to defendant Soong (Dkt. No. 35 at 4:14-16), misspelled heightened as "heighted" in a reference to *Twombly*'s pleading standard (Dkt. No. 35 at p.3:21), used the tense "causes" instead of "caused" with respect to the defendants' conduct (Dkt. No. 272 at 3:16-17), and used the tense "disregard" instead of "disregarded" (Dkt. No. 272 at 7:23-4). For clarity of the record, the Court accepts these limited modifications to the prior orders within the record of this case.[2]

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[2] The motion argues that the Court improperly cited the text of *Sanai v. Kozinski*, No. 4:19-cv-08162-YGR, 2021 WL 1339072, at *9 (N.D. Cal. Apr. 9, 2021). While plaintiff may disagree with the quoted text, it was properly stated.

Plaintiff's remaining requests for relief are denied. To begin, the Court notes that plaintiff's motion does not seriously grapple with the Court's ruling that her complaint failed to satisfy Rule 8(a) of the Federal Rules of Civil Procedure. There is no clear legal error or manifest injustice. While she seems to argue that the Court did not read her complaint, her own motion concedes the existence of citations to the document in the order, where the Court highlighted how sprawling, confusing, inconsistent, and implausible her allegations are.

Second, plaintiff argues that the Court failed to consider that she sought to bring claims pursuant to 42 U.S.C. sections 1983, 1985, and 1986. This is not the case. As a threshold matter, plaintiff had not satisfied Rule 8 and improperly sought to attribute every allegation in the complaint to every defendant in a manner that was implausible and defied common sense. While the Court appreciates that many defendants attempted to liberally responded to plaintiff's sprawling allegations and guess as to the claims that may be asserted, Rule 8 exists to avoid these undue burdens on defendants. Indeed, plaintiff knew her burden to properly plead a case since her fraud on the court theory was previously rejected in this District and her frivolous appeal of that order was dismissed. This was an overriding pleading issue in the complaint that justified dismissal as to every defendant.

Third, plaintiff also argues that the Court did not take judicial notice of her entire litigation history that she incorporated into her complaint. Endorsing this approach would be an abuse of judicial notice and largely lacks foundation. For instance, even in the context of the present motion, plaintiff requests notice

of "all documents filed in all of the Underlying Cases, including the 2018 Case, the Four Underlying Cases, all federal and state habeas, civil, criminal, restraining order, eviction, and other proceedings related to the Complaint." (Dkt. No. 295 at 14.) The sweeping request ignores that Rule 201 of the Federal Rules of Evidence requires judicial notice where "the court is supplied with the necessary information." Fed. R. Evi. 201(c)(2). As demonstrated by the rule, there is no obligation for the Court to scour any and every docket that could exist. While motions to dismiss and oppositions in this case attempted to provide more context as to allegations concerning individual defendants,[3] the requests were moot since the pleading was deficient.

Fourth, plaintiff argues that the Court failed to consider or even mention her motions to strike motions brought by PORAC and various California defendants. Motions to strike are highly disfavored. Throughout this case, plaintiff has tried to strike many papers because she disagrees with the substance or how they were filed. The Court has judiciously focused on the merits because there is no prejudice stemming from the filings.

Fifth, plaintiff argues that the Court conflates jurisdiction and venue and tries to explain what subject matter jurisdiction is. The Court never made a determination that subject matter jurisdiction was lacking. Instead, the Court noted that given the existence of defendants outside of the forum, and little nexus to

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[3] The individual motions and oppositions further illustrated how sprawling, grasping, and inconsistent plaintiff's theory of the case was.

the district, that plaintiff's complaint appeared to have jurisdictional deficiencies. Indeed, many defendants moved to dismiss on the grounds that personal jurisdiction or that venue was improper since the complaint alleged nothing tying them to the forum.[4]

Sixth, plaintiff argues that her case was decided by a "rogue" clerk as opposed to an Article III judge, and in turn, she was denied a right to a jury trial when her case was dismissed. The orders in this case were issued by the undersigned and plaintiff's refusal to accept how judicial processing works is not a basis to set aside or alter the judgment. Plaintiff's request for a jury trial was mooted by the fact that her complaint failed as a matter of law.

Seventh, plaintiff indicates that she should have been given leave to amend the complaint that she already amended once in this action and after failing in strikingly similar litigation. Federal Rule of Civil Procedure 15(a) provides that a trial court should "freely give leave when justice so requires." Generally speaking, the rule is "to be applied with extreme liberality." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (citation omitted). That said, "leave to amend is not to be granted automatically." *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990). In deciding whether justice requires

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[4] In certain circumstances, "[a] court may assume the existence of personal jurisdiction and adjudicate the merits in favor of the defendant without making a definitive ruling on jurisdiction." *Lee v. City of Beaumont*, 12 F.3d 933, 937 (9th Cir. 1993) (emphasis added), *overruled on other grounds by Cal. Dep't of Water Res. v. Powerex Corp.*, 533 F.3d 1087 (9th Cir. 2008); *see also Koninklijke Philips N.V. v. Elec-Tech Int'l Co., Ltd.*, No. 14-cv-02737-BLF, 2015 WL 1289984, at *2 (N.D. Cal. Mar. 20, 2015).

granting leave to amend, courts weigh the following factors: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of the amendment; and (5) whether the movant has previously amended its pleadings to cure deficiencies. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); see also Johnson v. Buckley, 356 F.3d 1067, 1077 (9th Cir. 2004). Of these factors, "the consideration of prejudice to the opposing party [ ] carries the greatest weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Having considered the issue, the Court determined that plaintiff could not state her fraud on the court theory of the case such that amendment would be futile. Her litigation tactics are also unduly prejudicial to defendants, many of whom she has repeatedly and vexatiously sued. Dismissal without leave to amend was appropriate.

Finally, plaintiff argues for the first time in reply that new evidence of the defendants' ongoing criminal conduct is now available (i.e., denial of benefits, false detention, and stalking). Again, she suggests that is all defendants, but the individual incidents do not concern every defendant in this case. Having considered her new evidence, it does not change the outcome of this case to justify altering the order.

Finding no other basis to set aside or alter the judgment, plaintiff's motion is denied.

III. Conclusion

For the foregoing reasons, plaintiff's motion is granted in limited part with respect to typographical errors. The balance of the motion is denied. Plaintiff is advised that this case is closed and future filings

will not be entertained absent an order or mandate from the Ninth Circuit.

This Order terminates Docket Numbers 295, 311, and 320.

IT IS SO ORDERED.

/s/ Yvonne Gonzalez Rogers
U.S. District Court Judge

Dated: January 4, 2023

JUDGMENT, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NO. 4:21-CV-01721 (JUNE 29, 2022)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEBORAH COONEY,

Plaintiff,

v.

CITY OF SAN DIEGO, ET AL.,

Defendants.

Case No. 4:21-cv-01721-YGR

Re: Dkt. Nos. 35, 272, & 274

Before: Yvonne GONZALEZ ROGERS, U.S. District Court Judge.

JUDGMENT

On October 12, 2021, the Court dismissed defendants Molly C. Dwyer and Susan Y. Soong. (Dkt. No. 35.) On June 6, 2022, the Court dismissed the remaining defendants without leave to amend and directed the clerk to terminate the case. (Dkt. No. 272.) The case was terminated on June 6, 2022. Pursuant to Federal Rules of Civil Procedure 58, the Court hereby ENTERS judgment in favor of defendants and against plaintiff.

Given plaintiff's pro se status, the Court advises that she may consult Rule 4 of the Federal Rules of Appellate Procedure to the extent she wishes to appeal.

IT IS SO ORDERED.

/s/ Yvonne Gonzalez Rogers
U.S. District Court Judge

Dated: June 29, 2022

ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NO. 4:21-CV-01721 (JUNE 6, 2022)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEBORAH COONEY,

Plaintiff,

v.

CITY OF SAN DIEGO, ET AL.,

Defendants.

Case No. 4:21-cv-01721-YGR

Re: Dkt. Nos. 35, 272, & 274

Before: Yvonne GONZALEZ ROGERS, U.S. District Court Judge.

ORDER DISMISSING CASE WITHOUT LEAVE TO AMEND; DENYING MOTION FOR PRELIMINARY INJUNCTION AS MOOT

Pro se plaintiff Deborah Cooney has filed a motion for preliminary injunction seeking to prevent all of the defendants from wrongfully arresting, detaining, imprisoning, or involuntary hospitalizing plaintiff. (Dkt. No. 268 at 1.) In filing this sweeping motion, plaintiff requests that the Court take judicial notice of "all doc-

uments filed in [the underlying lawsuits implicated in her complaint], all federal and state habeas, civil, criminal, restraining order, eviction, and other proceedings related to the Complaint." (*Id.* at 3.)

As the parties are aware, there are over thirty pending motions to dismiss in this case. Those motions raise myriad meritorious defenses, including without limitation, lack of personal jurisdiction or improper venue, preclusion, and failure to state a claim. While plaintiff diligently responded to the motions, her oppositions extensively copied one another. Familiar with the pending motions, the allegations in the First Amended Complaint ("FAC"), and having considered plaintiffs pending motion for preliminary injunction, the motion improperly seeks to litigate the pending motions to dismiss in the guise of a motion for preliminary injunction. Since the deficiencies with plaintiff's FAC are ripe for determination, the Court HEREBY ORDERS that plaintiff's case is DISMISSED WITHOUT LEAVE To AMEND and the pending motion for preliminary injunction is denied as MOOT.[1]

I. Background

In short, plaintiff's FAC identifies over 140 defendants, including former governors, businesses, law firms, lawyers, public agencies and officials, unions, cities and counties, landlords, and judicial officers. While not entirely clear from the face of the FAC, defendants are primarily from Florida, California,

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[1] Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds that the motions are appropriate for decision without oral argument.

and West Virginia. One defendant also appears to be a resident of Mexico.

Based upon a liberal and generous construction of plaintiff's shotgun pleading, especially given her pro se status, the Court is hard-pressed to find a plausible common glue amongst the sprawling, confusing, and conclusory allegations. Plaintiff's FAC and opposition briefs demonstrate her intent to allege what she has deemed "intrinsic and extrinsic fraud on the courts." (FAC ¶ 1.) Pursuant to the FAC, "[a]ll of the Defendants participated in all of the wrongdoing and crimes stated herein" in the FAC "because all of the Defendants worked together to defraud the Courts, to injure and harm the plaintiff, and to abridge her rights." (*Id.* ¶ 33.) As alleged, those wrongdoings are extensive. For instance, "[a]ll of the defendants conspired to deprive Plaintiff of liberty, work, health, housing, mail delivery, legal representation, police protection, justice, transportation, communication, access to telephone and computer, libraries, food, gasoline, water, electricity, and other goods and services." (*Id.* ¶ 25.) How were these allegations carried out? As alleged, all defendants subjected "Plaintiff to illegal stop and frisk, false arrest, false imprisonment, malicious prosecution, battery, radiation injury, and forcible drugging" through "trespass, theft, burglary, vandalism, extortion, racketeering, [] mail fraud . . . defam[ation] and slandering, [as well as] lying about her health, words, and actions." (*Id.*)

Construing the FAC with a liberal lens, plaintiff tries to tie various categories of events together to raise an inference that there is intrinsic and extrinsic fraud on the court. Tying these categories together based upon the allegations demonstrates how sprawling

and disconnected many events are. First, plaintiff alleges that she was entitled to relief in four "Underlying Cases" that she had filed in various courts of law, including in California, Florida, and West Virginia. (*Id.* ¶ 20-24.) Some allegations suggest that there are other lawsuits, however, the scope, timing, and outcome of those proceedings are incomprehensible as alleged. Without limiting the allegations in the FAC, plaintiff alleges that court orders were unlawfully issued without authorization, false statements were made in those proceedings by the parties or their counsel, judicial officers were unduly influenced, and counsel failed to sufficiently represent her interests. Second, plaintiff challenges her prior arrests and/or prosecutions, including without limitation, that they lacked probable cause and were based upon false information. Third, plaintiff challenges the conditions of her confinement while she was incarcerated, including without limiting, being subjected to defective telephone equipment that caused her radiation injury, being deprived access to showers, being injected with unknown substances, and being exposed to other personal injury. Fourth, plaintiffs FAC alleges that various utility companies caused her harm through radiation exposure and/or denied her access to telephone services. Fifth, plaintiff asserts that retailers blocked her access to various goods and services and that she was subjected to false arrest or detention stemming from plaintiff's efforts to access or use the various services. Sixth, various insurance carriers allegedly denied plaintiff coverage for damages causes from the defendants. Seventh, plaintiff alleges that various prospective and current employers wrongfully terminated or denied plaintiff employment based upon false information concerning her background.

Eighth, landlords allegedly prevented her from using her home, which included accessing important court documents and other valuables, which plaintiff alleges were improperly retained.

In light of the foregoing, plaintiff alleges that she brings her suit pursuant to 42 U.S.C. §§ 1983, 1985, and 1986, as well as 18 U.S.C. § 1964. It also alleges that the defendants' conduct was criminal conduct proscribed by 18 U.S.C. §§ 201, 241-2, 1341, 1343, 1346, 1347, 1349, and 1961-2.

II. Legal Standard

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in the complaint. *Ileto v. Glock, Inc.,* 349 F.3d 1191, 1199 (9th Cir. 2003). To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 557, (2007)). That requirement is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inferences that the defendant is liable for the misconduct alleged." *Id.* In evaluating a motion to dismiss under Rule 12(b)(6), the Court takes all allegations of material fact as true and construes them in the light most favorable to the plaintiff. *Johnson v. Lucent Techs., Inc.,* 653 F.3d 1000, 1010 (9th Cir. 2011). Even under the liberal pleading standard of Federal Rule of Civil Procedure 8, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S. at 555 (cleaned up).

The Court will not assume facts not alleged, nor will it draw unwarranted inferences. *Iqbal,* 556 U.S. at 679 ("Determining whether a complaint states a plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.").

Claims sounding in fraud must further meet the particularity requirements of Federal Rule of Civil Procedure 9(b). *See Kearns v. Ford Motor Co.,* 567 F.3d 1120, 1125 (9th Cir. 2009). Rule 9(b) states that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Rule 9(b) "requires . . . an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP,* 476 F.3d 756, 764 (9th Cir. 2007) (internal quotation marks omitted). In other words, "[a]verments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged." *Kearns,* 567 F.3d at 1124. Furthermore, "Rule 9(b) does not allow a complaint to . . . lump multiple defendants together but require[s] plaintiffs to differentiate their allegations when suing more than one defendant." *Destfino v. Reiswig,* 630 F.3d 952, 958 (9th Cir. 2011) (citation and quotation marks omitted)

Leave to amend must be granted to a pro se litigant unless it is clear that the complaint's deficiencies cannot be cured by amendment. *Lucas v. Dep't of Corr.,* 66 F.3d 245, 248 (9th Cir. 1995).

III. Discussion

As demonstrated by many of the motions to dismiss, plaintiff's entire FAC can be dismissed for viola-

ting Federal Rule of Civil Procedure 8(a). That rule provides that a "pleading that states a claim for relief must contain . . . a short and plain statement of the claim." Fed. R. Civ. P. 8(a). Courts routinely dismiss complaints such as plaintiffs that are convoluted and difficult to follow for failure to comply with that rule. *See, e.g., McHenry v. Renne,* 84 F.3d 1172, 1179-80 (9th Cir. 1996) ("Prolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on litigants and judges."); *Knapp v. Hogan,* 738 F.3d 1106, 1110 (9th Cir. 2013) (recognizing that complaints can be dismissed for failure to comply with Rule 8(a) and noting the plaintiff's complaint had been dismissed for failure to comply); *Nevijel v. North Coast Life Ins. Co.,* 651 F.2d 671, 673-74 (9th Cir. 1981) (affirming dismissal where complaint was "verbose, confusing and almost entirely conclusory").

Notably, plaintiff is well aware of this rule. In 2018, plaintiff filed a similar complaint spanning ninety defendants, approximately ten years, three states, and one foreign country. Her complaint was dismissed against all defendants. *See, e.g., Cooney v. City of San Diego,* Case No. 18-cv-01860-JSW, 2019 WL 11340107 (N.D. Cal. March 18, 2019). The Ninth Circuit subsequently dismissed her appeal as frivolous. *Cooney v. City of San Diego,* No. 19-16180, 2019 U.S. App. LEXIS 31368 (9th Cir. Oct. 21, 2019). Disagreeing with the outcome of that case, plaintiff now seeks to attack it through subsequent litigation, claiming that it contributed to the fraud on the court. Plaintiff is precluded from relitigating her claims. "Res judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action . . . whenever

there is (1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (cleaned up). "Suits involve the same claim (or cause of action) when they aris[e] from the same transaction, or involve a common nucleus of operative facts." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 140 S. Ct. 1589, 1595 (2020) (cleaned up). The Court has no doubt that plaintiff's theory of fraud on the court is identical to her prior litigation.

Even construing plaintiff's claim liberally, her fraud on the courts claim, which the Court construes as an effort to bring a RICO claim, also fails. Under federal law, civil liability can be imposed on persons and organizations engaged in a "pattern of racketeering activity." 18 U.S.C. § 1962(c). In general, racketeering activity includes a number of generically-specified criminal acts, as well as the commission of various predicate offenses. 18 U.S.C. 1961(1). The elements of a civil RICO claim are: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to the plaintiff's 'business or property.' *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996). Plaintiff must meet Rule 9(b)'s heightened pleading standard to state a RICO claim. *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir. 1989). Plaintiff does not come remotely close to meeting this heightened standard, which even based upon the Court's experience, is exacting in the context of RICO claims.

In any event, plaintiff's conclusory and inconsistent allegations do not sufficiently allege the existence of an enterprise. The Supreme Court has defined an

associated-in-fact enterprise as "a group of persons associated together for a common purpose of engaging in a course of conduct." *United States v. Turkette,* 452 U.S. 576, 583 (1981). "To establish the existence of such an enterprise, a plaintiff must provide both 'evidence of an ongoing organization, formal or informal,' and 'evidence that the various associates function as a continuing unit.' *Odom v. Microsoft Corp.,* 486 F.3d 541, 553 (9th Cir. 2007) (en Banc) (citation omitted). Each defendant here has engaged in disparate and independent activities spread out over years. There is simply no common glue apart from plaintiff, who alleges in a sprawling fashion that she has been harmed by anything and everything.

Furthermore, to the extent plaintiff's FAC is premised upon various criminal theories, such as obstruction of justice or perjury, there is no private right of action. *See Najarro v. Wollman,* No. C 12-1925 PJH, 2012 WL 1945502, at *3 (N.D. Cal. May 30, 2012) (dismissing claims of "obstruction of laws," "obstruction of justice," and "perjury" because "there is no private right of action for any of those claims") (citing *Aldabe v. Aldabe,* 616 F.2d 1089, 1092 (9th Cir. 1980) (criminal statutes generally "provide no basis for civil liability")).

The above reasons are sufficient to dismiss plaintiff's entire claim with prejudice. There is simply no basis for her to state the fraud on the court theory she believes in. This is evident by years of litigation rejecting her claims. Amendment would be futile and such a dismissal is appropriate even as to defendants that have yet to appear due to lack of service. *See, e.g., Columbia Steel Fabricators, Inc. v. Ahlstrom Recovery,* 44 F.3d 800, 802 (9th Cir. 1995) ("We have upheld

dismissal with prejudice in favor of a party which had not yet appeared, on the basis of facts presented by other defendants which had appeared.").

IV. Conclusion

In light of the foregoing, plaintiffs FAC is DISMISSED WITHOUT LEAVE To AMEND.[2] Unable to state a claim, plaintiff's motion for preliminary injunction is DENIED As MOOT.

This Order terminates all pending motions in the case. The Clerk is DIRECTED to close the case.

IT IS SO ORDERED.

/s/ Yvonne Gonzalez Rogers
U.S. District Court Judge
Dated: June 6, 2022

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[2] Other deficiencies plague plaintiff's FAC. For instance, the dozens of judicial officers and officials that she sues are entitled to absolute judicial immunity. As to many other defendants, there is simply no nexus to this forum at all. Personal jurisdiction is lacking. The Court raised these deficiencies for plaintiff in its first order and she simply disregard them and proceeded with her frivolous claim.

The Court notes that a motion to set aside default was filed by pro se defendant Dominick Addario, M.D. (Dkt. No. 221.) That motion is GRANTED and he is similarly dismissed from the case. Doctor Addario was served through a CPA and his failure to respond was not culpable. There is a strong preference for resolving cases on their merits. *See, e.g., Falk v. Allen,* 739 F.2d 461, 463 (9th Cir. 1984); *Westchester Fire Ins. Co. v. Mendez,* 585 F.3d 1183, 1189 (9th Cir. 2009) ("As a general rule, default judgments are disfavored; cases should be decided upon their merits whenever reasonably possible.").

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, CASE NO. C 12-6466 CW (JULY 15, 2014)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEBORAH COONEY,

Plaintiff,

v.

THE CALIFORNIA PUBLIC UTILITIES COMMISSION, ET AL.,

Defendants.

No. C 12-6466 CW

Before: Claudia WILKEN, United States District Judge.

Defendants the State of California, the California Public Utilities Commission (CPUC), CPUC President Michael Peevey and California Attorney General Kamala Harris (the State Defendants) and Defendant Itron, Inc. have filed motions to dismiss in this case.[1]

[1] Plaintiff has not filed a certificate of service, indicating that she has effectively served Defendant San Diego Gas and Electric. Moreover, in Plaintiff's motion for entry of default as to San Diego Gas and Electric (SDG&E), Plaintiff states that she did not

Plaintiff opposes the motions as to Defendants Peevey, Harris and Itron. Acknowledging that her claims against the CPUC and the State of California are barred by the Eleventh Amendment, Plaintiff has filed a request that the Court dismiss her claims against the CPUC and the State of California without prejudice to refiling in state court. Having considered the parties' papers, the Court GRANTS Plaintiff's request that the Court dismiss her claims against the CPUC and the State of California (Docket No. 36), GRANTS the State Defendants' motion to dismiss (Docket No. 26) and GRANTS Itron's motion to dismiss (Docket No. 28).

BACKGROUND

This case relates to Plaintiff's claims that she was injured by radio waves released by smart meters installed on her house and in her neighborhood. Plaintiff alleges that, as a result of these injuries, she has been "forced to take refuge in the National Radio Quiet Zone in Green Bank, WV" where she "sleeps in a cabin without electricity and can tolerate being in electricity for only a few hours a day." Complaint ¶ 1. Plaintiff alleges that Defendants violated bans on human experimentation, fraudulently received federal funds, violated federal laws regulating pollutants, caused her personal injury, violated her civil rights,

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attempt to serve the complaint until July 19, 2013. *See* Docket No. 51. This action commenced on December 20, 2012, more than 120 days before Plaintiff attempted to serve the complaint. Accordingly, the Court orders Plaintiff to show cause why her claims against SDG&E should not be dismissed for failure to prosecute. *See* Fed. R. Civ. P. 4(m). If Plaintiff does not respond to this order to show cause within fourteen days of the date of this order, her claims will be dismissed.

violated her constitutional rights under the First, Fourth, Fifth, Ninth, Tenth and Fourteenth amendments, committed battery and defrauded her. Plaintiff also alleges a defective product liability claim against Defendant Itron.

Plaintiff seeks over $120 million in damages, but states that her damages will be reduced to $20 million if injunctive relief is granted such that she is able to return to live in California. In addition to monetary damages, Plaintiff seeks declaratory relief and an injunction requiring the replacement of all smart grid technology with the original analog equipment "until such time as a safe, reliable, and efficacious Smart Grid can be designed, manufactured, procured, properly tested for health and safety, and implemented; or until the people, through a referendum or through their elected representatives, decide to discard, disband, and dismantle the Smart Grid program." Complaint ¶ 125.

DISCUSSION

I. State Law Claims and Claims for Damages Against Attorney General Harris and CPUC President Peevey

Defendants Harris and Peevey argue that the claims against them are barred on several grounds. First, any claims for damages are barred by the Eleventh Amendment, which bars damages actions against state actors acting in their official capacity. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989); *Flint v. Dennison*, 488 F.3d 816, 824-25 (9th Cir. 2007). Moreover, the Eleventh Amendment bars any state law claims asserted against Defendants Harris and Peevey. *Pennhurst State School & Hosp. v.*

Halderman, 465 U.S. 89, 121 (1984). The Court grants State Defendants' motion to dismiss on these grounds and bars any claims against Harris and Peevey for state law claims or for money damages. Because amendment would be futile, dismissal is without leave to amend.

II. Claims for Injunctive and Declaratory Relief Against Defendants Harris and Peevey

A. Defendant Harris

State Defendants next argue that the Eleventh Amendment also bars claims for prospective injunctive relief against Defendant Harris. As stated above, the Eleventh Amendment generally bars federal lawsuits against a state. However, Ex parte Young provides an exception for "actions for prospective declaratory or injunctive relief against state officers in their official capacities for their alleged violations of federal law." 209 U.S. 123, 155-56 (1908).

State Defendants argue that the Ex parte Young exception to the Eleventh Amendment does not apply to Defendant Harris because she has no connection to the implementation of the Smart Grid. Ex parte Young requires that the state official sued "must have some connection with the enforcement of the act." *Id.* at 157. The California Attorney General has only a general constitutional duty "to see that the laws of the state are uniformly and adequately enforced." Cal. Const. art. V, § 13.

Plaintiff counters that she wrote letters to Defendant Harris, notifying her of Plaintiff's concerns with the Smart Grid. Plaintiff asserts, "Since the Plaintiff did send a letter describing the circumstances

to Defendant Harris personally, and Defendant Harris was and is the chief enforcer of the law in the State, responsible for ensuring that all State agencies and employees comply with law, then she had a reasonable duty to protect the Plaintiff." Plaintiff's Opposition, Docket No. 33 at 7. However, Plaintiff provides no authority for this proposition and the Court is aware of none.

Indeed, the Ninth Circuit has held that the connection "must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." *Los Angeles County Bar Ass'n v. March Fong Eu*, 979 F.2d 697, 704 (9th Cir. 1992). Here, Defendant Harris has only a generalized duty to enforce state law. She does not have any specific authority over the Smart Grid. Accordingly, Plaintiff's claims for prospective injunctive and declaratory relief against Defendant Harris are dismissed. Because amendment would be futile, the dismissal is without leave to amend.

B. Defendant Peevey

State Defendants argue that Defendant Peevey is entitled to legislative immunity because the CPUC "is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers." Docket No. 34 at 6 (quoting *Wise v. Pac. Gas & Elec. Co.*, 77 Cal App. 4th 287, 300 (1999). The Supreme Court has held that "state and regional legislators are entitled to absolute immunity from liability under § 1983 for their legislative activities." *Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998). "Absolute legislative immunity attaches to all actions taken

'in the sphere of legitimate legislative activity.'" *Id.* at 54 (quoting *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951)).

Here, Plaintiff is challenging Defendant Peevey's involvement in the implementation of the Smart Grid. For example, Plaintiff's primary contention is that "Defendants recklessly approved, mandated, facilitated, or allowed the Smart Meter roll out without conducting adequate research as to the health effects of Smart Meter radiation" and that they continue to proceed with the Smart Meter roll out "after being presented with reliable research, scientific and empirical evidence proving the detrimental health effects of Smart Meter and similar radiation on humans." Complaint ¶¶ 25, 26. Such decisions are "discretionary, policymaking decision[s]" typically granted legislative immunity. *Bogan*, 523 U.S. at 55. Plaintiff correctly notes that purely ministerial acts are not protected under legislative immunity. Notwithstanding Plaintiff's unsupported contention that "[a]ll of the misconduct described in the Complaint is non-discretionary, administrative, or ministerial in nature," Plaintiff challenges discretionary legislative activity. Plaintiff's Opposition at 11. Accordingly, the Court finds that Defendant Peevey is entitled to legislative immunity and dismisses Plaintiff's claims against him. Because amendment would be futile, the dismissal is without leave to amend.

III. Claims Against Defendant Itron

A. State Law Claims

Defendant Itron argues that Plaintiff's action is barred by both state and federal law. Itron first notes

that the California legislature authorized the CPUC to adopt rulemaking related to advanced metering technologies for the Smart Grid. Cal. Pub. Util. Code §§ 8360, 8362. Further, the CPUC has authorized the implementation of the Smart Grid and specifically authorized SDG&E to purchase smart meters from Defendant Itron. Accordingly, Defendant Itron argues that the Court lacks jurisdiction over Plaintiff's case challenging the implementation of the Smart Grid and the installation of Itron smart meters. Defendant Itron relies on California Public Utilities Code § 1759, which provides,

> No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

Cal. Pub. Util. Code § 1759. However, § 2106 of the California Public Utility Code provides,

> Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. . . . An action to recover such

> loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

Cal. Pub. Util. Code § 2106.

The California Supreme Court has held that § 1759 bars private actions against utilities where the relief granted would undermine a regulatory regime established by the CPUC. *San Diego Gas & Elec. Co. v. Superior Court (Covalt)*, 13 Cal. 4th 893, 902-03 (1996). Moreover, § 2106 is limited to "those situations in which an award of damages would not hinder or frustrate the commission's declared supervisory and regulatory policies." *Waters v. Pacific Tel. Co.*, 12 Cal. 3d 1, 4 (1974). The California Supreme Court has applied a three-part test to resolve any conflict between § 1759 and § 2106. To determine whether an action is barred by § 1759, the California courts ask: "(1) whether the PUC had the authority to adopt a regulatory policy on the subject matter of the litigation; (2) whether the PUC had exercised that authority; and (3) whether action in the case before the court would hinder or interfere with the PUC's exercise of regulatory authority." *Kairy v. SuperShuttle International*, 660 F.3d 1146, 1150 (9th Cir. 2011) (citing *Covalt*, 13 Cal. 4th at 923-35).

Here, the State Legislature has directed the CPUC to "determine the requirements for a smart grid deployment plan consistent with Section 8360 and federal law" and to implement the smart grid "in a manner that does not compromise customer or worker safety." Cal. Pub. Util. Code §§ 8362, 8363. Based on that authority, the CPUC has, among other things, specifically authorized SDG&E to purchase Defendant Itron's product. Accordingly, a finding that

Defendant Itron's products are unsafe under state law would undermine the CPUC's policy decision that installation of Itron's products as part of SDG&E's Smart Grid was consistent with the State Legislature's directive safely to implement the smart grid.

Moreover, California Public Utilities Code § 1702 creates a process by which any person may file a complaint before the CPUC regarding any rule or decision applicable to a public utility. Review of decisions on such complaints rests with the California Supreme Court and the California courts of appeal. Cal. Pub. Util. Code §§ 1703, 1759. Indeed, a group challenged the safety of the Smart Meters installed by Pacific Gas and Electric (PG&E), which was resolved by the CPUC. *See* CPUC Decision 12-05-007 (May 10, 2012); CPUC Decision 12-06-017 (June 7, 2012); CPUC Decision 10-12-001 (December 12, 2010). Plaintiff has not filed such a complaint.

Defendant Itron argues that § 1759 prohibits Plaintiff's entire action. However, Defendant Itron does not cite any cases in which a court has dismissed federal causes of action based on § 1759, and the Court is aware of none. *Cf. Kairy*, 660 F.3d at 1148 (addressing "whether a federal district court lacks subject matter jurisdiction to determine whether passenger stage corporation drivers are employees or independent contractors under California law); *Nwabueze v. AT&T Inc.*, 2011 U.S. Dist. LEXIS 8506, *33 (N.D. Cal.) (addressing contention that the "plaintiffs' state law claims should be dismissed because they are within the exclusive jurisdiction of the [CPUC]"). Accordingly, the Court will dismiss Plaintiff's state law claims against Defendant Itron for lack of subject

matter jurisdiction. Because amendment would be futile, the dismissal is without leave to amend.

B. Federal Claims

Defendant Itron further argues that Plaintiff has failed to state a federal claim. On a motion under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a claim, the court will take all material allegations as true and construe them in the light most favorable to the plaintiff. *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). However, this principle is inapplicable to legal conclusions; "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not taken as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555).

When granting a motion to dismiss, the court is generally required to grant the plaintiff leave to amend, even if no request to amend the pleading was made, unless amendment would be futile. *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment would be futile, the court examines whether the complaint could be amended to cure the defect requiring dismissal "without contradicting any of the allegations of [the] original complaint." *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990).

Plaintiff alleges two federal claims against Defendant Itron.[2] First, she alleges that Defendant Itron has violated federal prohibitions on human experimentation, citing 45 C.F.R. part 46 and 42 U.S.C. § 3515b. Section 3515b provides:

> None of the funds appropriated by this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be used to pay for any research program or project or any program, project, or course which is of an experimental nature, or any other activity involving human participants, which is determined by the Secretary or a court of competent jurisdiction to present a danger to the physical, mental, or emotional well-being of a participant or subject of such program, project, or course, without the written, informed consent of each participant or subject, or a participant's parents or legal guardian, if such participant or subject is under eighteen years of age. The Secretary shall adopt appropriate regulations respecting this section.

42 U.S.C. § 3515b. Title 45 C.F.R. part 46 sets out the Department of Health and Human Services' rules for

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[2] Plaintiff's complaint also alleges that Defendants fraudulently received federal funds. However every allegation related to that claim describes actions by Defendant SDG&E. The complaint also alleges various constitutional claims, but Plaintiff clearly states that those claims "appl[y] specifically to Defendants State, CPUC, Peevey and Harris." Complaint ¶ 80. Accordingly, the Court finds that these claims were not plead against Defendant Itron.

the "Protection of Human Subjects" in research "conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research." 15 C.F.R. § 46.101.

Plaintiff asserts that "Defendants did not properly inform Plaintiff or any other California residents that they would be the subjects of a state-wide grand experiment on the health effects of Smart Meter radiation." Complaint ¶ 38. Plaintiff further asserts that "Defendants never followed up or kept records of the health effects that they were supposed to be studying." *Id.* at ¶ 40. However, there are no allegations to support a finding that the smart meter program was an "experiment" or research project regarding the health effects of radiation. Accordingly, these statutes and regulations are not applicable to Defendants' conduct in this case. The Court dismisses Plaintiff's human experimentation claim. Because amendment would be futile, the dismissal is without leave to amend.

Plaintiff next alleges that Defendants violated the Hazardous Substances Labeling Act, which prohibits, among other things, "[t]he introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance." 15 U.S.C. § 1263. Plaintiff bases this claim on her allegation that "radiation from Smart Meter equipment qualifies as a hazardous substance based on its toxicity." Complaint ¶ 67. However, Defendant Itron has not introduced the radio frequency signals into interstate commerce. Rather, it creates Smart Meters, which are sold in interstate commerce. Moreover, the radio frequency signals emitted by

Defendant Itron's product are neither a hazardous substance requiring special labeling nor a banned hazardous substance. Indeed, the Hazardous Substances Labeling Act is concerned with items such as "[c]harcoal briquettes and other forms of charcoal in containers for retail sale and intended for cooking or heating," turpentine, fireworks, and products containing chemicals such as formaldehyde, benzene and methyl alcohol. 16 C.F.R. §§ 1500.12-1500.14. Accordingly, the Court finds that Plaintiff has failed to state a claim under the Hazardous Substances Labeling Act. Because amendment would be futile, the dismissal is without leave to amend.

CONCLUSION

For the foregoing reasons, the Court GRANTS the State Defendants' motion to dismiss (Docket No. 26) and GRANTS Defendant Itron's motion to dismiss (Docket No. 28). In addition, the Court GRANTS Plaintiff's request that the Court dismiss her claims against the CPUC and the State of California (Docket No. 36).

IT IS SO ORDERED.

/s/ Claudia Wilken
United States District Judge

Dated: 7/15/2014

ORDER DENYING PETITION FOR REHEARING EN BANC, U.S COURT OF APPEALS FOR THE NINTH CIRCUIT (SEPTEMBER 18, 2025)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEBORAH COONEY,

Plaintiff-Appellant,

v.

MOLLY C. DWYER, Clerk of Court, United States Court of Appeals for the Ninth Circuit, Individually and in Her Official Capacity; et al.,

Defendants-Appellees.

No. 23-15236

D.C. No. 4:21-cv-01721-YGR
District of Northern California

Before: WALLACE, O'SCANNLAIN, and N.R. SMITH, Circuit Judges.

ORDER

The panel has unanimously recommended denying the petition for en banc and panel rehearing.

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. 40.

The petition for en banc and panel rehearing is therefore DENIED.

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