FILED

DEC 13 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES CONERLY; MARILYN TILLMAN-CONERLY; CARINA CONERLY; M. T.,

Plaintiffs-Appellants,

v.

KAISER PERMANENTE; SABRINA V. KO; ANDREW K. LEE; TERI L. TROLIO; LIEN QUOC TRAN; STATE COMPENSATION INSURANCE FUND; CALHR; MAKAY BUTZ; ERAINA ORTEGA; SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO; NORA WILLIAMS; JUNE D. COLEMAN; LAURI DAMRELL; CME; VERACITY RESEARCH COMPANY; SHAW LAW GROUP, PC; SHARIF ROLDAN TARPIN; CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM; DEREK DANIELS; NICOLE NADDY; DARCY MASLOW; CHRISTINE MARTINEZ; JOSHUA GOLDSMITH; BIANCA NOVOA; ANA JESSICA MOSQUEDA; LESLIE CARTER-PADILLA; STEPHANIE HILL;

No. 21-16603

D.C. No. 2:19-cv-02535-JAM-DB

MEMORANDUM*

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

MELISSA NORCIA; DEREK BONDURANT; CASSANDRA LICHNOCK; SEIU LOCAL 1000; LEZLIE UKODE; BRANDI LOPES; LABOR RELATIONS; SEIU INTERNATIONAL; MARY KAY HENRY; AMERICA RENOVATIONS CENTER; BESSIDA TAONDA; LASSANE BONKOUNGOU; JOGINDER DHILLON; CHARMAINE ACEITUNO; KARLA YVONNE BROUSSARD-BOYD; STACY MIRANDA, DAVID TODD WALTON; ANGELA M. DIAZ; KRISTY MICHELLE TORAIN; TRISH HIGGINS; PEDRO LEON; YVONNE R. WALKER; TIFFANY MORRIS,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted December 9, 2022[**]
San Francisco, California

Before: WALLACE, FERNANDEZ, and SILVERMAN, Circuit Judges.

James Conerly, Marilyn Tillman-Conerly, Carina Conerly, and M.T. (collectively, Appellants) appeal pro se from the district court's judgment

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

dismissing their Second Amended Complaint (SAC) without leave to amend. We affirm.

Reviewing de novo, we agree with the district court that the SAC failed to state a claim. *See* Fed. R. Civ. P. 8(a)(2), 12(b)(6); *Gingery v. City of Glendale*, 831 F.3d 1222, 1226 (9th Cir. 2016); *see also Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006).[1] While the SAC makes passing reference to a variety of constitutional and statutory provisions, it does not allege facts that "plausibly give rise to an entitlement to relief"[2] on those grounds, or that support the elements of a cause of action pursuant to any of those provisions.[3] *See Iqbal*, 556 U.S. at 678–80, 129 S. Ct. at 1949–50; *Jones v. Cmty. Redevelopment Agency*, 733 F.2d

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[1] Because we affirm the dismissal of the SAC on this ground, we need not and do not consider alternative grounds for dismissal. *See Gingery*, 831 F.3d at 1226.

[2] *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009).

[3] *See, e.g.*, *Knick v. Township of Scott*, __ U.S. __, __, 139 S. Ct. 2162, 2167, 204 L. Ed. 2d 558 (2019) (Fifth Amendment); *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1186 (9th Cir. 2015) (Fourth Amendment);*Crowe v. County of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010) (conspiracy); *Beck v. United Food & Com. Workers Union*, 506 F.3d 874, 882 (9th Cir. 2007) (Title VII); *Thornton v. City of St. Helens*, 425 F.3d 1158, 1164, 1166 (9th Cir. 2005) (equal protection and due process); *Williams v. Woodford*, 384 F.3d 567, 584–85 (9th Cir. 2004) (Sixth Amendment).

646, 649–50 (9th Cir. 1984). Courts must liberally construe pro se complaints,[4] but are not required to supply essential elements of claims that were not pled. *See Byrd v. Maricopa Cnty. Sheriff's Dep't*, 629 F.3d 1135, 1140 (9th Cir. 2011) (en banc).

The district court did not abuse its discretion[5] in dismissing the SAC without leave to amend on the ground that granting further leave to amend would have been futile. *See Lockheed Martin Corp. v. Network Sols., Inc.*, 194 F.3d 980, 986 (9th Cir. 1999). Appellants were given guidance to remedy the deficiencies of their original complaint at the time that pleading was dismissed,[6] but they failed to follow that advice. *See Jones*, 733 F.2d at 650–51. Appellants' continued inability to comply with the Federal Rules showed that granting further leave to amend was futile, particularly when Appellants did not (and do not) suggest how they would or could amend the complaint to state a claim. *See Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 356 (9th Cir. 1996); *see also Cafasso*, 637 F.3d at 1058–59.

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[4] *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012).

[5] *Cafasso ex rel. United States v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011); *United States v. Hinkson*, 585 F.3d 1247, 1261–63 (9th Cir. 2009) (en banc).

[6] *Akhtar*, 698 F.3d at 1212.

We do not consider arguments raised for the first time on appeal or matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985–86, 985 n.2 (9th Cir. 2009).

AFFIRMED.