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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Jonathon Alan Farnham, Sr. and David
Lewis,

No. CV-11-01520-PHX-DGC

10 Plaintiffs,

ORDER

11 v.

12 Jan Brewer, Governor of Arizona; Will
13 Humble, Department of Health Services;
John Cooper, Former CEO of State
14 Hospital; Anne Froio, Current CEO of State
Hospital; Vicki Davis, Current Director of
15 ACPTC; Stephen Forster, Chief of Security
at ACPTC; Michelle Burlin, Therapist;
16 Daren Tutek, Therapist; Steven Gray, Civil
Commitment Evaluator; and Thomas C.
17 Horne, Asst. Attorney Gen. for
Defendant(s); et al.,

18 Defendants.
19

20 Plaintiffs Jonathon Alan Farnham, Sr. and David Lewis are residents of the
21 Arizona State Hospital and have been committed to the Arizona Community Protection
22 and Treatment Center (“ACPTC”), a facility for the housing and treatment of sexually
23 violent persons. On August 8, 2011, Plaintiffs filed a complaint pro se, alleging that a
24 number of restrictions placed on them by Defendants in the ACPTC violate their
25 constitutional rights under the First, Fourth, Eighth, and Fourteenth Amendments. Doc. 1.
26 Plaintiffs make twelve claims (*Id.* at 4-15) and request relief of \$5,000 in compensatory
27 and punitive damages and an injunction that Defendants cease enacting and enforcing
28 punitive policies in violation of less restrictive alternative laws. *Id.* at 16.

1 The Court has dismissed Plaintiffs' claims against Defendants Steven Grey, Civil
2 Commitment Evaluator, (claim eight) and Thomas C. Horne, Attorney General, (claim
3 eleven) pursuant to previously-filed motions to dismiss. Doc. 28; *see* Docs. 20 & 24.
4 Defendants Jan Brewer, Governor of Arizona; Will Humble, Department of Health
5 Services; John Cooper, Former CEO of State Hospital; Anne Froio, Current CEO of State
6 Hospital; Vicki Davis, Current Director of ACPTC; Stephen Forster, Chief of Security at
7 ACPTC; Michelle Burlin, Therapist; and Daren Tutek, Therapist, have filed a motion to
8 dismiss the remaining claims for lack of jurisdiction and failure to state a claim upon
9 which relief can be granted. Doc. 34. The motion has been fully briefed (Docs. 35, 38)
10 and no party has requested oral argument. For the reasons stated below, the Court will
11 grant Defendants' motion and dismiss Plaintiffs' complaint without prejudice.¹

12 **I. Legal Standard.**

13 When analyzing a complaint for failure to state a claim under Rule 12(b)(6), the
14 well-pled factual allegations are taken as true and construed in the light most favorable to
15 the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009) (citation
16 omitted). Legal conclusions couched as factual allegations are not entitled to the
17 assumption of truth, *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), and therefore are
18 insufficient to defeat a motion to dismiss for failure to state a claim, *In re Cutera Sec.*
19 *Litig.*, 610 F.3d 1103, 1108 (9th Cir. 2010) (citation omitted). To avoid a Rule 12(b)(6)
20 dismissal, the complaint must plead enough facts to state a claim to relief that is plausible
21 on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This plausibility
22 standard "is not akin to a 'probability requirement,' but it asks for more than a sheer
23 possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting

24
25 ¹Plaintiffs have also filed "Plaintiff's Request to the Court, that Defendant's
26 Provide Copies of Their Case Law Citations" (Doc. 36) and "Plaintiff's Response and
27 Rebuttal to Defendants Brewer, Humble, Cooper, Froio, Davis Forster, Burlin, and
28 Tutek's Reply in Support of Their Motion to Dismiss" (Doc. 38) which the Court
construes as an attempt to file a sur-reply. Neither the request for copies of case law
citations nor the unauthorized sur-reply are permitted under the Federal Rules of Civil
Procedure or the Court's Local Rules. The Court will deny Plaintiffs' request and will
not consider Plaintiffs' sur-reply arguments.

1 *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to
2 infer more than the mere possibility of misconduct, the complaint has alleged – but it has
3 not ‘show[n]’ – ‘that the pleader is entitled to relief.’” *Id.* at 1950 (quoting Fed. R. Civ.
4 P. 8(a)(2)).

5 “In determining the propriety of a Rule 12(b)(6) dismissal, a court *may not look*
6 beyond the complaint to a plaintiff’s moving papers, such as a memorandum in
7 opposition to a defendant’s motion to dismiss. . . . The focus of any Rule 12(b)(6)
8 dismissal . . . is the complaint.” *Schneider v. Cal. Dep’t of Corr.*, 151 F.3d 1194, 1197
9 n.1 (9th Cir. 1998) (internal citations omitted; emphasis in original). As the Ninth Circuit
10 has instructed, courts must “continue to construe *pro se* filings liberally.” *Hebbe v.*
11 *Pliler*, 627 F.3d 338, 342 (9th Cir.2010). A complaint filed by a *pro se* litigant must be
12 held to less stringent standards than formal pleadings drafted by lawyers. *Id.* (quoting
13 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

14 **II. Discussion.**

15 Defendants argue that Plaintiffs have failed to allege sufficient facts to state a
16 cognizable claim under 42 U.S.C. § 1983. Doc. 34 at 2, 3-4. In addition, they argue that
17 Defendants are protected by qualified immunity, that the Eleventh Amendment bars
18 claims against them in their official capacities as well as the injunctive relief sought, and
19 that any claims for monetary damages are time-barred under Arizona’s notice of claim
20 statute, A.R.S. § 12-821.01(A). *Id.* at 2.

21 **A. Plaintiffs’ § 1983 Claims.**

22 Plaintiffs assert that they have not filed suit under § 1983, but under *Bivens v. Six*
23 *Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). Doc. 35 at 1, 2, 9. Section 1983
24 pertains to actions that deprive an individual of “some right, privilege or immunity
25 protected by the Constitution of the United States” that are taken “under color of state
26 law.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th Cir. 2005); 42 U.S.C.
27 § 1983. An action brought under *Bivens*, is the equivalent of a § 1983 action, but against
28 federal officials. *Ashcroft v. Iqbal*, 556 U.S. 662, 675-76 (2009) (stating that a *Bivens*

1 action “is the federal analog to suits brought against state officials under . . . 42 U.S.C.
2 § 1983.”) (internal quotation marks and citation omitted). Plaintiffs’ complaint pertains
3 only to state officials or those performing official duties within the state hospital. The
4 Court will therefore construe Plaintiffs’ claims as § 1983 claims.

5 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants
6 (2) under color of state law (3) deprived him of federal rights, privileges or immunities
7 and (4) caused him damage. *Thornton*, 425 F.3d at 1163-64 (quoting *Shoshone-Bannock*
8 *Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d 1278, 1284 (9th Cir.1994). “Section
9 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a method for
10 vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271
11 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979)). It is well settled
12 that section 1983 imposes liability for violations of rights protected by the Constitution,
13 not for violations of duties of care arising out of tort law. *Johnson v. Barker*, 799 F.2d
14 1396, 1399 (9th Cir. 1986); *Baker*, 443 U.S. at 146. Mere negligence is not sufficient to
15 support a § 1983 claim. *Daniels v. Williams*, 474 U.S. 327, 330-331 (1986).

16 Suits under § 1983 may be brought against state officials in their personal or
17 official capacities. “[T]o establish *personal* liability in a § 1983 action, it is enough to
18 show that the official, acting under color of state law, caused the deprivation of a federal
19 right.” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (emphasis in original). Thus, “a
20 plaintiff must plead that each Government-official defendant, through the official’s own
21 individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 1948. An official-
22 capacity suit, by contrast, requires that the entity itself be a “moving force” behind the
23 deprivation – the entity’s “policy or custom” must have played a part in the violation of
24 federal law. *Graham*, 473 U.S. at 166. A suit against a public official in his official
25 capacity makes the public entity liable to the extent it has received notice and an
26 opportunity to respond. *Brandon v. Holt*, 469 U.S. 464, 471-72 (1985).

27 Plaintiffs have identified each Defendant in the caption of the complaint by his or
28 her name and official position. Plaintiffs repeat the relevant names and official

1 designations throughout the body of the complaint. This suggests that Plaintiffs seek to
2 bring claims against Defendants in both their personal and official capacities. Plaintiffs
3 filed a motion requesting that the Court modify their complaint to sue Defendants “in
4 their individual capacity, and the relief they seek, to comply with the court’s and Judge
5 Wake’s guidance and instructions.” Doc. 32 at 1. This is an apparent reference to the
6 fact that Judge Wake dismissed Plaintiffs’ claims against individuals in a related suit
7 titled “Resident Farnham’s Complaint Against Arizona State Hospital Mr. Cooper and
8 ACPT Security Chief” because no individuals were named as parties in the caption of the
9 complaint and the complaint lacked any factual details related to specific individuals. *See*
10 Case No. 2:11-CV-00192-PHX-NVW, Doc. 6. Plaintiffs have not failed to name
11 individuals in the caption of the complaint in this case, and the Court therefore will deny
12 Plaintiffs’ motion as moot, treat the complaint as an attempt to assert claims against
13 Defendants in both their personal and official capacities, and evaluate whether Plaintiffs
14 have alleged sufficient facts to state a claim.

15 **1. Claim One.**

16 Plaintiffs allege that Defendants Cooper, Froio, Davis, and non-party Lee Guyco
17 violated their First Amendment rights by not permitting them to exchange letters with
18 “surrogate sons and other close friends because they are in prison.” Doc. 1 at 4. They
19 also allege that they must get phone numbers cleared before making personal calls, some
20 of their calls to a business or organization have been denied, and mail does not go out or
21 get delivered daily. *Id.* Plaintiffs also allege that Defendant Cooper and other staff have
22 referred to them as “inmates,” which violates the double-jeopardy clause because it
23 shows that the ACPTC treatment program is punitive in nature. *Id.*

24 Defendants argue that Plaintiffs fail to allege sufficient facts to state a First
25 Amendment claim against any Defendant. Doc. 34 at 5-6. The Court agrees. The only
26 action tied to a specific defendant is Plaintiffs’ allegation that Defendant Cooper refers to
27 residents as “inmates.” As Defendants argue, however, this is not a violation of
28 Plaintiffs’ first amendment rights because it involves the speech of others, not that of

1 Plaintiffs. It also does not show that the ACPTC treatment program is punitive and that
2 Plaintiffs' confinement therefore constitutes double jeopardy. The Supreme Court has
3 stated that "the mere fact that a person is detained does not inexorably lead to the
4 conclusion that the government has imposed punishment." *United States v. Salerno*, 481
5 U.S. 739, 746 (1987). Neither does it follow that because a person is called an inmate for
6 purposes of civil confinement that the confinement is punitive. Even if the term "inmate"
7 is consistent with the term used in penal institutions, Plaintiffs have alleged no specific
8 punitive actions on the part of Defendant Froio or others who allegedly refer to them this
9 way. Without more, the Court cannot plausibly infer that Plaintiffs have suffered
10 punitive treatment and are entitled to relief.

11 The restriction on Plaintiffs' ability to communicate with friends and family in
12 prison may constitute a First Amendment or due process violation, but Plaintiffs have
13 failed to allege facts connecting any Defendant to the creation or implementation of this
14 alleged restriction or to describe specific incidents from which the Court could plausibly
15 infer an intentional constitutional violation or implementation of an unconstitutional
16 policy. It is not clear from the facts presented that the restriction Plaintiffs allege is even
17 the result of a particular ACPTC policy and not that of the prisons where Plaintiffs seek
18 to send correspondence.

19 Similarly, Plaintiffs have failed to allege sufficient facts for the Court to infer that
20 the alleged phone call restrictions constitute First Amendment or other constitutional
21 violations. Plaintiffs have alleged no actions on the part of any Defendant, and have cited
22 no specific incidents or policies from which the Court can infer that Plaintiffs' phone
23 access was denied improperly rather than for legitimate, non-punitive purposes. *See*
24 *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997) ("The State may take measures to restrict
25 the freedom of the dangerously mentally ill. This is a legitimate nonpunitive
26 governmental objective and has been historically so regarded"); *Jones v. Blanas*, 393
27 F.3d 918, 933-34 (9th Cir. 2004) (stating that under Ninth Circuit precedent, "a
28 restriction is 'punitive' where it is intended to punish, or where it is 'excessive in relation

1 to [its non-punitive] purpose.’’’) (internal citation omitted). Absent facts showing the
2 circumstances under which specific phone calls were denied, Plaintiffs have raised no
3 more than the mere possibility of misconduct – they have not plausibly shown that they
4 are entitled to relief. *See* Fed. R. Civ. P. 8(a)(2); *Iqbal*, 556 U.S. at 678.

5 Finally, the allegation that mail does not go out or get delivered to residents on a
6 daily basis is not a sufficient ground for a constitutional claim. Plaintiffs have not alleged
7 that mail service is denied them or that mail is being withheld, and a temporary delay in
8 mail service does not violate a detainee’s First Amendment rights. *See Crofton v. Roe*,
9 170 F.3d 957, 961 (9th Cir. 1999).

10 **2. Claim Two.**

11 Plaintiffs allege that Defendants Brewer, Cooper, Froio, Davis, and Forster have
12 violated their Eight Amendment right to be free of cruel and unusual punishment because
13 their building and grounds are surrounded by razor wire, they are unable to go outside
14 without a staff member, and their movements within grounds are more regimented than
15 those of prisoners in a prison setting. Doc. 1 at 5. Plaintiffs also allege that mold in the
16 showers, walls, and ceilings have caused Plaintiff Farnham to have “a persistent cough,
17 trouble swallowing, chest pains to center of chest, and coughs up mucus/flem?” *Id.*

18 Plaintiffs again fail to link any of the allegations with specific actions or inactions
19 by any Defendant. With regard to mold, Plaintiffs do not allege that any Defendant was
20 made aware of these conditions and failed to take action. Nor do they allege that Plaintiff
21 Farnham sought or received a medical diagnosis for his alleged mold-related physical
22 ailments. Thus, even if Plaintiffs had linked their allegations to individual defendants,
23 the connection between the mold and Plaintiff Farnham’s alleged injury is speculative
24 and therefore insufficient to show that he is entitled to relief. *See Twombly*, 550 U.S. at
25 545 (“Factual allegations must be enough to raise a right to relief above the speculative
26 level on the assumption that all of the complaint’s allegations are true.”).

27 Plaintiffs’ allegations regarding ACPTC’s security measures fail more
28 fundamentally because the Supreme Court has held that placing restraints on sexually

1 violent persons is not unconstitutional. *See Kansas v. Hendricks*, 521 U.S. at 363; *c.f.*
2 *Revels v. Vincenz*, 382 F.3d 870, 874 (9th Cir. 2004) (“Although an involuntarily
3 committed patient of a state hospital is not a prisoner per se, his confinement is subject to
4 the same safety and security concerns as that of a prisoner”); *Allison v. Snyder*, 332 F. 3d
5 1076, 1079 (7th Cir. 2003) (“detainees [under the Illinois Sexually Violent Person’s Act]
6 may be subjected to conditions that advance goals such as preventing escape and assuring
7 the safety of others, even though they may not be punished.”). The Court cannot
8 plausibly infer that the use of razor wire and staff attendants is improper in light of the
9 ACPTC’s legitimate safety and security concerns.

10 **3. Claim Three.**

11 Plaintiffs allege that Defendants violated their Fourth Amendment rights because
12 they seized Plaintiffs’ television and gaming systems and destroyed other personal
13 property without due process of law. Doc. 1 at 7. Plaintiffs once again provide no
14 connection between these allegations and the actions of any Defendant. Indeed, Plaintiffs
15 provide no detail about what happened to deprive them of their possessions. Plaintiffs
16 allege generally that “state officials . . . told him directly that he was burnt and they did
17 not want to discuss the issue with him.” *Id.* They also allege that they complained in
18 writing to Defendant Froio and received no response or attempt to address the issue. *Id.*
19 Absent any details showing who took or destroyed their property and under what
20 circumstances, Plaintiffs fail to provide a basis from which the Court can plausibly infer
21 either that Plaintiffs’ property loss or Defendant Froio’s lack of response constitute a
22 constitutional violation.

23 **4. Claim Four.**

24 Plaintiffs allege that Defendants have violated their Fourteenth, Eighth, and Fourth
25 Amendment rights because they have failed to adhere to Arizona’s Less Restrictive
26 Alternative (“LRA”) Laws. Doc. 1 at 8. Specifically, Plaintiffs allege that Defendants
27 have placed “several restrictions” on Plaintiffs, including “restricting Community
28 Activities” and “forcing them to live in buildings that are more restrictive than some

1 prisons.” *Id.* Plaintiffs also allege that only one man has been released from the program
2 in the last three years, and the program was revamped “so [Plaintiffs] had to restart
3 everything after [they] had already done a year of treatment.” *Id.*

4 Defendants argue, and the Court agrees, that Plaintiffs’ repeated allegations that
5 the ACPTC is more restrictive than most prisons are conclusory and thus insufficient to
6 state a claim. Plaintiffs generally allege prison-like security measures – such as secured
7 buildings and restrictions on activities – that courts have recognized as constitutionally
8 legitimate restraints for the civil confinement of sexually violent persons. In addition,
9 Plaintiffs fail to identify the particular restraints that they claim violate Arizona’s LRA
10 laws. Finally, violations of state law that do not amount to constitutional violations are
11 insufficient to state a § 1983 claim. *Lovell v. Poway Unified Sch. Dist.*, 90 F.3d 367, 370
12 (9th Cir. 1996).

13 Plaintiffs’ allegations of having to restart their treatment program are also lacking
14 in any factual detail. Like the previous claims, the allegations do not identify specific
15 actions or inactions taken by any Defendant, and thus fail to state a claim.

16 **5. Claim Five.**

17 Plaintiffs’ fifth cause of action merely reasserts Plaintiffs’ general allegations
18 regarding their treatment as “inmates” and having to restart their treatment program.
19 Doc. 1 at 6. The Court has dealt with these allegations above.

20 Plaintiffs also allege that the therapists who run classes in the ACPTC are not
21 properly licensed and do not hold degrees or licenses as Psychologists or Psychiatrists.
22 *Id.* Defendants argue that Arizona law requires a person running classes to be a
23 “competent professional” approved by the superior court according to approved
24 guidelines. Doc. 34 at 9; see A.R.S. § 36-3701(2). Even if true, this claim fails to allege
25 a violation of the Constitution or federal law as required to state a valid claim under
26 § 1983. Plaintiffs have alleged no facts showing that the therapists employed by ACPTC
27 have rendered improper treatment or otherwise violated Plaintiffs’ federally-protected
28 rights.

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6. Claim Six.

Plaintiffs assert that Defendants have violated their First Amendment rights because they are not permitted to voice opinions contrary to those of Defendant therapists Burlin and Tutek in group settings. Doc. 1 at 9. Plaintiffs allege that if they disagree with the therapists they are labeled “anti-social,” punished for voicing disagreement, and held back in therapy, causing them to be “incarcerated” longer. *Id.* They also allege that Defendants Burlin and Tutek show favoritism to some residents, and that Burlin, Tutek, and non-party therapists Eric Pearson and Dr. Mitchell lack proper licensing and accreditation. *Id.*

Plaintiffs’ claims that they are punished for voicing disagreement and that therapists show favoritism are completely unsupported by specific factual allegations. The allegation that therapists are not properly licensed or accredited fail for the reasons already stated above with regard to claim five.

7. Claim Seven.

Plaintiffs assert that Defendants have violated their Eighth Amendment rights because they are not permitted food visits with family members, and visits are terminated if anyone during the visit needs to use the restroom. Doc. 1 at 10. Plaintiffs assert that these restrictions are more restrictive than those placed on prison inmates. *Id.*

Again, Plaintiffs fail to allege facts concerning any specific incidents or to connect the allegations with specific Defendants. Plaintiffs attempt to remedy these deficiencies in their response (Doc. 35 at 6), but the Court may only look to what is stated in the complaint. *Schneider*, 151 F.3d at 1197 n. 1.

8. Claim Nine.

Plaintiffs assert that Defendants have violated their Eighth Amendment rights because they hold Plaintiff Lewis’s lifetime probation status against him. Defendants argue, and the Court agrees, that this claim does not rise above the speculative level because it is completely devoid of any factual or legal basis.

1 **9. Claim Ten.**

2 Plaintiffs assert that Defendants have violated their Eighth Amendment rights
3 because they knowingly hire Department of Correction (“DOC”) staff who implement
4 DOC policies and rules, and that working conditions in the ACPTC result in a higher
5 turn-over of staff with therapeutic backgrounds. Doc. 1 at 13. Plaintiffs also allege that
6 they face daily threats to their safety and health due to hostile residents who “snap”
7 without warning and “talk about killing,” and residents who have bad hygiene. *Id.*

8 Plaintiffs allege no facts showing how those hired with DOC backgrounds have
9 acted in violation of their constitutional or federally-protected rights, and they have
10 alleged no incidents in which they were harmed by other residents’ threats or bad hygiene
11 or in which Defendants observed or knew of potential harms but failed to take action.
12 More fundamentally, Plaintiffs have failed to connect any alleged violations with any
13 specific Defendant.

14 **10. Claim Twelve.**

15 Plaintiffs assert that Defendants have violated their Eighth Amendment rights by
16 having and enforcing a non-smoking policy. Doc. 1 at 15. In response to Defendants’
17 motion, Plaintiffs drop this claim. Doc. 35 at 7.

18 **B. Qualified Immunity.**

19 In determining whether a state actor is entitled to qualified immunity, the Court
20 first asks whether the plaintiff has made a *prima facie* showing that the state actor
21 violated plaintiff’s constitutional rights. *Orin v. Barclay*, 272 F.3d 1207, 1214 (9th Cir.
22 2001); *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If the facts alleged show a
23 constitutional violation, the Court next determines whether the law was clearly
24 established. *Saucier*, 533 U.S. at 201. Finally, even if the law was clearly established,
25 the state actor is entitled to qualified immunity if he or she made a reasonable mistake
26 regarding what the law required. *Id.* at 205.

27 Defendants argue that even if Plaintiffs had alleged enough facts to state a
28 constitutional claim, the law regarding conditions of confinement for SVPs is not “clearly

1 established” and that Defendants are therefore protected from personal liability. Doc. 34
2 at 13-14. Because the Court has dismissed Plaintiffs’ complaint without prejudice and
3 Plaintiffs may yet allege sufficient facts and legal theories to state a constitutional claim,
4 it is premature for the Court to determine whether the law regarding specific
5 constitutional violations is “clearly established.” Plaintiffs are advised that if they seek to
6 sue Defendants in their personal capacity in an amended complaint, they must plead
7 sufficient facts to show constitutional violations and – to withstand a defense of qualified
8 immunity – the law upon which these violations are based must be clearly recognized.
9 This is so because government officials “generally are shielded from liability for civil
10 damages insofar as their conduct does not violate clearly established statutory or
11 constitutional rights of which a reasonable person would have known.” *Harlow v.*
12 *Fitzgerald*, 457 U.S. 800, 818 (1982).

13 **C. Eleventh Amendment.**

14 **1. Money Damages.**

15 The Eleventh Amendment does not permit Plaintiffs to sue the state of Arizona (or
16 its agencies, such as the state hospital) for money damages. *See Alden v. Maine*, 527 U.S.
17 706 (1999); *Hans v. Louisiana*, 134 U.S. 1 (1890). Plaintiffs’ complaint is therefore
18 dismissed without leave to amend to the extent it seeks money damages from the state.

19 **2. Injunctive Relief.**

20 Plaintiffs ask the Court to require Defendants to “cease enacting and enforcing
21 policies that are punitive and violate established LRA laws.” Doc. 1 at 16. The Court
22 interprets this as a request for an injunction. The Eleventh Amendment does not bar suits
23 for injunctions against state officials. *See e.g. Ex Parte Young*, 209 U.S. 123, 158 (1908);
24 *Mayweathers v. Newland*, 314 F.3d 1062, 1069-70 (9th Cir. 2002).

25 The Eleventh Amendment does, however, bar federal courts from granting
26 injunctive relief against state officials based solely on violations of state law. *See*
27 *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 122 (1984). Plaintiffs’
28 complaint is therefore dismissed without leave to amend to the extent it seeks an

1 injunction based solely on violations of Arizona’s LRA laws. To the extent Plaintiffs
2 wish to amend their complaint to seek an injunction for specific constitutional violations,
3 Plaintiffs are advised that they must (1) allege sufficient facts to establish the specific
4 violations against them, and (2) allege sufficient facts to show that future injury to
5 Plaintiffs absent an injunction is likely to occur and is not merely a possibility. *See, e.g.,*
6 *Olaques v. Russoniello*, 770 F.2d 791, 799 (9th Cir. 1985) (“the mere possibility of future
7 injury is insufficient to enjoin official action.”).

8 **D. A.R.S. § 12-821.01.**

9 A.R.S. § 12-821.01(A) requires that claims for damages against a public entity or
10 public employee be filed within 180 days of the time the action accrued. A.R.S. § 12-
11 821.01(A). The statute defines accrual as “when the damaged party realizes he or she has
12 been damaged and knows or reasonably should know the cause, source, act, event,
13 instrumentality or condition which caused or contributed to the damage.” A.R.S. § 12-
14 821.01(B).

15 Defendants argue that Plaintiffs’ claims should be dismissed as untimely. Doc. 34
16 at 16. Plaintiffs argue that their claims were brought in a timely manner because the
17 violations are on-going. Doc. 35 at 9. The Court has already dismissed Plaintiffs claims
18 for money damages against the state with prejudice on Eleventh Amendment grounds.
19 To the extent Plaintiffs seek to bring claims against Defendants in their personal
20 capacities, the Court is unable to discern from the complaint when the alleged violations
21 accrued. Plaintiffs are advised that if they seek to bring damages claims against
22 individual defendants in their amended complaint, they must allege sufficient facts to
23 state a claim against each defendant, including facts showing when the claimed violations
24 occurred or when and under what circumstances Plaintiffs became aware of the actions
25 giving rise to their alleged injuries.

26 **IT IS ORDERED:**

27 1. Defendants Brewer, Humble, Cooper, Froio, Davis, Forster, Burlin, and
28 Tutek’s motion to dismiss (Doc. 34) is **granted**.

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2. Plaintiffs' complaint (Doc. 1) is **dismissed with leave to amend** as set forth in this order.

3. Plaintiffs remaining motions (Docs. 32, 36) and attempt to file a sur-reply (Doc. 38) are **denied**.

4. If Plaintiffs choose to file an amended complaint, they must do so on or before **July 27, 2012**.

Dated this 3rd day of July, 2012.



David G. Campbell
United States District Judge