

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

S. ORTIZ, et al.,

No. 1:15-cv-00535-KJM-GSA

Plaintiffs,

## ORDER

GERARDO ALVAREZ, et al.,

## Defendants.

This matter is before the court on the motion by defendants Israel Lara and Youth Centers of America, Inc. (Youth Centers) to dismiss plaintiffs' second, ninth, and twelfth claims. (ECF No. 5.) Plaintiffs oppose the motion. (ECF No. 16.) The court submitted the matter without a hearing, and now, as explained below, GRANTS it.

## I. SUBJECT MATTER JURISDICTION

It is axiomatic that the first question a federal court must ask before reaching the merits of a case is whether it has the authority to adjudicate the controversy at hand. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (Ginsburg, J.) (“Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case.”). Subject matter limitations on federal courts serve institutional interests: “The rule of federal jurisdiction within the bounds of the Constitution and Congress, as ‘circumscribed’ by the Constitution, is a rule of federal law.” *Id.*

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1        “For a court to pronounce upon [the merits] when it has no jurisdiction to do so,” “is for a court to  
2        act ultra vires.” *Id.* (internal quotation marks omitted, alteration in original).

3               Section 1331 of Title 28 of the United States Code provides district courts with  
4        original jurisdiction over all civil actions “arising under the Constitution, laws, or treaties of the  
5        United States.” In addition, section 1343 of Title 28 provides federal courts with original  
6        jurisdiction over any civil action arising under federal civil rights statutes. One such statute is  
7        section 1983 of Title 42 of the United States Code. And it is the statute upon which plaintiffs rely  
8        in litigating the instant case in this court. (ECF No. 1.) Accordingly, this court is satisfied of its  
9        subject matter jurisdiction and thus proceeds to the merits.

10        **II. BACKGROUND**

11               **A. Procedural Background**

12        Plaintiffs commenced this action in the Fresno County Superior Court on  
13        November 19, 2014. (ECF No. 1, Ex. A.) On April 7, 2015, defendants removed it to the Fresno  
14        Division of this District. (ECF No. 1.) On April 14, 2015, defendants Youth Centers and Israel  
15        Lara moved to dismiss plaintiffs’ second, ninth, and twelfth claims. (ECF No. 5.) Plaintiffs filed  
16        a document titled “Supplement to the Notice of Removal,” which attaches plaintiffs’ opposition  
17        to a motion to dismiss filed in the state court. (ECF No. 16.) Defendants have replied. (ECF  
18        No. 23.)

19               **B. Facts<sup>1</sup>**

20        On April 14, 2015, defendants Youth Centers and Israel Lara moved to dismiss  
21        plaintiffs’ second, ninth, and twelfth claims. (ECF No. 5.) Plaintiffs filed a document titled  
22        “Supplement to the Notice of Removal” which has attached to it plaintiffs’ opposition to a  
23        motion to dismiss filed in the state court. (ECF No. 16.) Defendants have replied. (ECF No. 23.)

24        Plaintiff Juan Sandoval worked as an assistant superintendent for Parlier United  
25        School District (PUSD) from July 2013 to December 2014. (Pls.’ First Am. Compl. ¶¶ 2, 16,  
26        ECF No. 1-4.) Plaintiff Gudelia Sandoval worked as principal of Chavez Elementary School and

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27        <sup>1</sup> On a motion to dismiss, the court “accept[s] as true all of the factual allegations  
28        contained in the complaint.” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508 n.1 (2002).

1 was employed by PUSD. (*Id.* ¶ 3.) Plaintiff Raul Villanueva was the head custodian of Chavez  
2 Elementary and was employed by PUSD. (*Id.* ¶ 4.) Plaintiff Alfonso Padron worked as a  
3 counselor for Youth Centers of America, Inc. (Youth Centers) and was employed under a contract  
4 with PUSD. (*Id.* ¶ 5.) Plaintiff Luis Ramos was employed with the Community Union Parenting  
5 Center at PUSD. (*Id.* ¶ 6.) Plaintiff Elida Padron was a retired principal for the PUSD and was  
6 under a contract to provide consulting services. (*Id.* ¶ 7.) Plaintiff Sandra Ortiz worked with  
7 Juan Sandoval to review PUSD's compliance with Title VI of the Civil Rights Act of 1964. (*Id.*  
8 ¶¶ 16–17.)

9 Defendant Gerardo Alvarez was a managerial employee and was the  
10 superintendent of PUSD. (*Id.* ¶ 8.) PUSD is a public education institution for kindergarten  
11 through grade 12 in Fresno County, California. (*Id.* ¶ 9.) The PUSD Board of Trustees is the  
12 agent of PUSD. (*Id.* ¶ 10.) Defendant Youth Centers is a California corporation. (*Id.* ¶ 11.)  
13 Defendant Israel Lara was Youth Centers' agent. (*Id.* ¶ 12.) Because numerous parties are  
14 involved in this case, the court sets forth the complaint's allegations as to each named individual  
15 plaintiff under separate headings.

## 1. Plaintiff Juan Sandoval

17 During the 2013 and 2014 school years, Mr. Sandoval worked with co-plaintiff  
18 Ms. Ortiz to review PUSD's compliance with Title VI of the Civil Rights Act of 1964. (Compl.  
19 ¶¶ 16–17.) Mr. Sandoval endorsed Mr. Raul Villanueva for the PUSB. (*Id.* ¶ 30.) When Ms.  
20 Ortiz discovered that PUSD was not in compliance and reported her findings to Mr. Sandoval and  
21 defendant Alvarez, Mr. Alvarez demoted her. (*Id.* ¶ 17.) When Mr. Sandoval told Mr. Alvarez  
22 that the decision to demote Ms. Ortiz was unlawful, Mr. Alvarez threatened “to do the same to  
23 Mr. Sandoval” if he reported that information to PUSD’s board members. (*Id.* ¶ 18.)  
24 Nonetheless, Mr. Sandoval notified two PUSD board members of Mr. Alvarez’s action against  
25 Ms. Ortiz; as a result, plaintiffs allege Mr. Alvarez placed Mr. Sandoval on administrative leave  
26 on December 19, 2013. (*Id.* ¶ 19.) Mr. Sandoval remained on administrative leave until March  
27 12, 2014, when the Board directed him to return to his position because Mr. Alvarez did not  
28 provide documentation substantiating his decision to place Mr. Sandoval on leave. (*Id.* ¶ 20.) On

1 or about March 14, 2014, Mr. Alvarez asked Mr. Sandoval to recommend that the Board deny  
2 another employee's contract for 2014 and 2015. (*Id.* ¶ 21.) Mr. Sandoval responded that he  
3 could not comply with that directive because "the employee had provided excellent service."  
4 (*Id.*) Because Mr. Alvarez continued to harass Mr. Sandoval, Mr. Sandoval filed a complaint  
5 with PUSD on June 10, 2014. (*Id.* ¶ 22.) Also on June 19, 2014, Mr. Sandoval was again placed  
6 on administrative leave and was eventually terminated on December 8, 2014. (*Id.* ¶ 23.)

7                   2. Plaintiff Gudelia Sandoval

8                   Mrs. Gudelia Sandoval is Juan Sandoval's wife and principal at Chavez  
9 Elementary. (*Id.* ¶ 26.) During the period when Mr. Sandoval was contesting Mr. Alvarez's  
10 actions, Mrs. Sandoval was being accused of "failing to fulfill mandated child abuse reporting  
11 duties." (*Id.*) She was placed on administrative leave by Mr. Alvarez on October 29, 2014. (*Id.*  
12 ¶ 28.)

13                   3 Plaintiff Raul Villanueva<sup>2</sup>

14                   Mr. Villanueva was a candidate for the PUSD Board and was endorsed by Mr.  
15 Sandoval. (*Id.* ¶ 30.) In November 2014, Mr. Alvarez asked Mr. Villanueva to meet with him,  
16 but when Mr. Villanueva requested that he be accompanied by Mr. Sandoval, Mr. Alvarez then  
17 refused to meet with him. (*Id.*) On the day of the PUSD Board election, Mr. Alvarez assigned  
18 Mr. Villanueva to a remote school location. (*Id.* ¶ 31.) Mr. Villanueva has been on medical leave  
19 for stress and anxiety allegedly caused by Mr. Alvarez since November 2014. (*Id.*)

20                   4. Plaintiff Alfonso Padron

21                   Mr. Padron was an employee of Youth Centers, providing counseling services for  
22 PUSD. (*Id.* ¶ 34.) In May 2014, Mr. Alvarez discussed with Mr. Padron the possibility of hiring  
23 Mr. Padron as a PUSD employee. (*Id.*) Mr. Alvarez's brother, Raul Alvarez, a PUSD employee,  
24 contacted Mr. Padron "to begin negotiations to start a contract for full time employment." (*Id.*)  
25 In August 2014, Raul Alvarez told Mr. Padron, "now that we're handling employment for you,  
26 what are you going to do for me?" (*Id.* ¶ 35.) "Mr. Gerardo Alvarez continued to push his

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27                   2 The complaint is unclear as to what position Mr. Villanueva held at the time, although  
28 he must have been a PUSD employee.

1 political direction on Mr. Padron as terms of employment.” (*Id.*) A week before the election, Mr.  
2 Padron’s e-mail access for PUSD was disconnected. (*Id.* ¶ 36.) Gerardo Alvarez contacted Mr.  
3 Padron and told him he was “disappointed in him” for using his personal computer to create a  
4 flyer, and endorsing a candidate for PUSD board who was opposed to Mr. Alvarez. (*Id.*) On or  
5 about November 3, 2014, Israel Lara notified Mr. Padron that his contract was terminated with  
6 PUSD. (*Id.* ¶ 38.) He was the only person terminated from Youth Centers who was working on a  
7 contract with PUSD. (*Id.*) When Mr. Padron inquired about the reasons behind his termination,  
8 Mr. Lara told him “that the contract termination was a personal attack . . .” (*Id.* ¶ 39.) Mr. Lara  
9 told Mr. Padron that he would not save one employee, only to lose the rest. (*Id.*)

10                   5. Plaintiff Luis Ramos

11                   Mr. Luis Ramos was a volunteer with the Parent Resource Center (PRC) in PUSD.  
12 (*Id.* ¶ 40.) On or about October 7, 2014, when Mr. Ramos turned on his computer, he saw a blank  
13 screen; he was told that a technician had accessed his computer and copied all of the files on the  
14 computer. (*Id.*) One day, Mr. Alvarez entered the PRC and demanded Mr. Ramos’s keys and  
15 computer modem, stating that he had found a campaign flyer on Mr. Ramos’s computer  
16 endorsing a board candidate whom Mr. Alvarez did not support. (*Id.* ¶ 41.) Subsequently,  
17 e-mails and flyers were distributed “targeting Mr. Ramos and depicting him in false light and  
18 defaming his character . . .” (*Id.* ¶ 42.)

19                   6. Plaintiff Elida Padron

20                   In July 2002, Ms. Elida Padron worked as a vice principal, and in 2005 she  
21 became a principal with PUSD. (*Id.* ¶ 45.) After she retired in August 2012 (*id.*), Ms. Padron  
22 became a consultant with PUSD and obtained a contract for January 2013 to June 2014. (*Id.*  
23 ¶ 46.) She “would then provide [sic] a contract for the following year.” (*Id.*) That contract,  
24 however, was postponed “due to her political affiliations with Mr. Juan Sandoval.” (*Id.*) At one  
25 of the monthly board meetings, when the Board verbally attacked the members of the public, Ms.  
26 Padron “shook her head at some of the comments . . . which she found to be unprofessional  
27 responses to questions from the public.” (*Id.* ¶¶ 47–48.) At the end of the meeting, when Ms.  
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1 Padron approached the Board President, he told her that her “body language was not supportive  
2 of the Board,” which “could cause some issues in your continued contract.” (*Id.* ¶ 49.)

3 During the election season, Ms. Padron attended a campaign meeting for Mr.  
4 Sandoval. (*Id.* ¶ 51.) Mr. Alvarez was aware of Ms. Padron’s attendance. (*Id.*) Some days after  
5 the election, Mr. Alvarez confronted Ms. Padron about her political affiliations and asked why  
6 she had gone to Mr. Sandoval’s election meeting. (*Id.*) In July 2014, Ms. Padron submitted her  
7 contract for the following year and sought to have it placed on the agenda for the Board’s review.  
8 (*Id.* ¶ 52.) However, Mr. Alvarez did not place it on the agenda. (*Id.*) Then in October 2014,  
9 Ms. Padron again requested that the contract question be placed on the agenda, and as of October  
10 6, 2014, the matter was on the agenda. (*Id.* ¶ 53.) As of October 11, 2014, Mr. Alvarez had  
11 removed the matter from the agenda. (*Id.*) “Ms. Padron’s contract renewal was never placed  
12 before the . . . Board for review and she was not paid for the 30 days of work performed for  
13 [PUSD] while she was awaiting review of the contract.” (*Id.*)

14 C. Claims

15 The operative complaint alleges twelve claims:

- 16 1. Intentional infliction of emotional distress by all plaintiffs against defendants  
17 Mr. Alvarez and PUSD Board of Trustees;
- 18 2. Negligent infliction of emotional distress by all plaintiffs against all defendants;
- 19 3. Defamation by Juan Sandoval, Gudelia Sandoval, Raul Villanueva and Luis  
20 Ramos against defendants Mr. Alvarez and PUSD Board of Trustees;
- 21 4. Invasion of privacy based on false light theory by Juan Sandoval, Gudelia  
22 Sandoval, Raul Villanueva, Luis Ramos against Mr. Alvarez and PUSD Board  
23 of Trustees;
- 24 5. Invasion of privacy based on publication of private facts theory by Juan  
25 Sandoval, Gudelia Sandoval, Raul Villanueva and Luis Ramos against Mr.  
26 Alvarez and PUSD Board of Trustee;
- 27 6. Misrepresentation by Alfonso Padron and Elida Padron against defendants Mr.  
28 Alvarez and PUSD Board of Trustee;

17 || (ECF No. 1-4.)

### 18 || III. LEGAL STANDARD

19                   Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a  
20 complaint for “failure to state a claim upon which relief can be granted.” A court may dismiss  
21 “based on the lack of cognizable legal theory or the absence of sufficient facts alleged under a  
22 cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

23                   Although a complaint need contain only “a short and plain statement of the claim  
24 showing that the pleader is entitled to relief,” FED. R. CIV. P. 8(a)(2), to survive a motion to  
25 dismiss this short and plain statement “must contain sufficient factual matter . . . to ‘state a claim  
26 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*  
27 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint must include something  
28 more than “an unadorned, the-defendant-unlawfully-harmed-me accusation” or “‘labels and

1 conclusions’ or ‘a formulaic recitation of the elements of a cause of action . . . .’” *Id.* (quoting  
2 *Twombly*, 550 U.S. at 555). Determining whether a complaint will survive a motion to dismiss  
3 for failure to state a claim is a “context-specific task that requires the reviewing court to draw on  
4 its judicial experience and common sense.” *Id.* at 679. Ultimately, the inquiry focuses on the  
5 interplay between the factual allegations of the complaint and the dispositive issues of law in the  
6 action. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

7 In making this context-specific evaluation, this court “must presume all factual  
8 allegations of the complaint to be true and draw all reasonable inferences in favor of the  
9 nonmoving party.” *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). This rule  
10 does not apply to “a legal conclusion couched as a factual allegation,” *Papasan v. Allain*, 478  
11 U.S. 265, 286 (1986), *quoted in Twombly*, 550 U.S. at 555, to “allegations that contradict matters  
12 properly subject to judicial notice,” or to material attached to or incorporated by reference into the  
13 complaint, *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

14 **IV. DISCUSSION**

15 Defendants Youth Centers and Israel Lara move to dismiss plaintiffs’ second,  
16 ninth, and twelfth claims. (ECF No. 5-1.) In essence, plaintiffs request denial of defendants’  
17 motion. (ECF No. 16.) Plaintiffs’ opposition does not make any substantive arguments for denial  
18 of defendants’ motion. Nonetheless, in the interest of justice, this court will “examine the  
19 complaint itself to see whether it is formally sufficient to state a claim.” *Vega-Encarnacion v.*  
20 *Babilonia*, 344 F.3d 37, 41 (1st Cir. 2003). In so doing, the court finds unpersuasive defendants’  
21 argument that the court should dismiss plaintiffs’ complaint for lack of proper opposition. (ECF  
22 No. 23.)

23 **A. Plaintiffs’ Second Claim: Negligent Infliction of Emotional Distress**

24 Defendants argue the complaint does not allege the required elements of a  
25 negligence claim. (ECF No. 5-1 at 4–5.)

26 The negligent causing of emotional distress is not an independent tort, but is a  
27 species of negligence. *See Marlene F. v. Affiliated Psychiatric Med. Clinic, Inc.*, 48 Cal. 3d 583,  
28 588 (1989). Accordingly, the traditional elements for negligence apply with equal force. *Id.*

1 These are: (1) a duty of care on the defendant’s part; (2) the defendant’s breach of that duty of  
2 care; (3) causation; and (4) harm. *Mendoza v. City of Los Angeles*, 66 Cal. App. 4th 1333, 1339  
3 (1998).

4 In “direct victim” cases, as in this case, California allows recovery even in the  
5 absence of impact and physical injury. *Molien v. Kaiser Found. Hosps.*, 27 Cal. 3d 916, 919  
6 (1980) (“emotional injury may be fully as severe and debilitating as physical harm, and is no less  
7 deserving of redress,” therefore, “the refusal to recognize a cause of action for negligently  
8 inflicted injury in the absence of some physical consequence is . . . an anachronism”).

9 In California, “courts will generally enforce the breach of a contractual promise  
10 through contract law, except when the actions that constitute the breach violate a social policy  
11 that merits the imposition of tort remedies.” *Erlich v. Menezes*, 21 Cal. 4th 543, 552 (1999).  
12 Even then, “a preexisting contractual relationship, without more, will not support a recovery for  
13 mental suffering where the defendant’s tortious conduct has resulted only in economic injury to  
14 the plaintiff.” *Id.* at 554–55; *Mercado v. Leong*, 43 Cal. App. 4th 317, 324 (1996) (noting “a  
15 breach of the duty must threaten physical injury, not simply damage to property or financial  
16 interests”). Moreover, “where the conduct alleged is intentional, it cannot be used as a basis for a  
17 negligent infliction of emotional distress claim.” *Edwards v. U.S. Fid. & Guar. Co.*, 848 F. Supp.  
18 1460, 1466 (N.D. Cal. 1994).

19 Here, plaintiff Alfonso Padron was an employee of Youth Centers providing  
20 parenting and counseling services for PUSD. (Compl. ¶ 34.) On November 3, 2014, Israel Lara  
21 notified Mr. Padron his contract with PUSD was terminated. (*Id.* ¶ 38.) His contract was the  
22 only contract terminated. (*Id.*) When Mr. Padron inquired about the decision to terminate, Mr.  
23 Lara told him the “termination was a personal attack on Mr. Padron.” (*Id.* ¶ 39.) Further, Mr.  
24 Lara did not try to save Mr. Padron’s contract, stating, “why would [he] save one employee and  
25 lose 50.” (*Id.*) From these allegations, it is apparent plaintiff’s injury stems from a contractual  
26 relationship, and the complaint alleges economic harm without any physical injury. The  
27 complaint is devoid of any allegations of physical harm caused by Youth Centers’ conduct and of  
28 allegations showing an exception to the general requirement of physical harm. Moreover, as

1       alleged, Mr. Lara's conduct in terminating Mr. Padron's contract was intentional; plaintiffs do not  
2       plead any negligence in Mr. Lara's conduct.

3               The court GRANTS defendants' motion. Plaintiffs are granted leave to amend if  
4       they can do so consonant with Rule 11.

5               B.       Plaintiffs' Ninth Claim: 42 U.S.C. § 1983

6               Section 1983 provides, in pertinent part:

7               Every person who, under color of any statute, ordinance, regulation,  
8       custom, or usage, of any State or Territory or the District of  
9       Columbia, subjects, or causes to be subjected, any citizen of the  
10      United States or other person within the jurisdiction thereof to the  
11      deprivation of any rights, privileges, or immunities secured by the  
12      Constitution and laws, shall be liable to the party injured in an  
13      action at law, suit in equity, or other proper proceeding for redress  
14      . . . .

15      42 U.S.C. § 1983

16               Congress enacted § 1983 under its power provided in section 5 of the Fourteenth  
17      Amendment to pass "appropriate legislation" enforcing the Fourteenth Amendment. *Crumpton v.*  
18      *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Section 1983 does not serve as an independent  
19      source of substantive rights; rather it provides "a method for vindicating federal rights elsewhere  
20      conferred." *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). The Ninth Circuit has described  
21      the requirements of a § 1983 claim as: "(1) a violation of rights protected by the Constitution or  
22      created by federal statute, (2) proximately caused (3) by conduct of a 'person' (4) acting under  
23      color of state law." *Crumpton*, 947 F.2d at 1420. "[Section] 1983 . . . contains no state-of-mind  
24      requirement independent of that necessary to state a violation of the underlying constitutional  
25      right." *Daniels v. Williams*, 474 U.S. 327, 329–30 (1986).

26               On a fundamental level, plaintiffs' ninth claim does not specify what federal rights  
27      they are seeking to vindicate against defendants Youth Centers and Mr. Lara. In addition, the  
28      ninth claim does not allege Youth Centers and Mr. Lara were acting under color of state law in  
29      terminating the contract at issue. The court GRANTS defendants' motion, while giving plaintiffs  
30      leave to amend if they can do so consonant with Rule 11.

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1                   C.     Plaintiff's Twelfth Claim: Wrongful Termination in Violation of Public Policy

2                   Under California law, “an employer’s traditional broad authority to discharge an  
3 at-will employee may be limited . . . by considerations of public policy.” *Tamency v. Atl. Richfield*  
4 *Co.*, 27 Cal. 3d 167, 172 (1980) (quoting *Petermann v. Int’l Bhd. of Teamsters, Chauffeurs,*  
5 *Warehousemen & Helpers of Am., Local 396*, 174 Cal. App. 2d 184, 188 (1959)). To establish a  
6 claim for wrongful termination in violation of public policy, a plaintiff must prove the following:  
7 (1) an employer-employee relationship; (2) termination of the employee’s employment; (3) the  
8 termination violated public policy; and (4) the termination caused plaintiff harm. *Haney v.*  
9 *Aramark Unif. Servs., Inc.*, 121 Cal. App. 4th 623, 637 (2004). Here, only Mr. Padron, Mr. Lara,  
10 and Youth Centers are implicated by the instant motion.

11                   1.     Israel Lara

12                   Mr. Padron’s claim cannot proceed against his alleged supervisor Mr. Lara. “As a  
13 matter of law, only an employer can be liable for the tort of wrongful discharge in violation of  
14 public policy.” *Khajavi v. Feather River Anesthesia Med. Grp.*, 84 Cal. App. 4th 32, 53 (2000).  
15 An individual supervisor cannot be sued for wrongful discharge in violation of public policy.  
16 *Reno v. Baird*, 18 Cal. 4th 640, 664 (1998); *Bruin v. Mills Coll.*, No. 06-05209, 2007 WL 419783,  
17 at \*8 (N.D. Cal. Feb. 6, 2007) (noting “the Court of Appeal of California unequivocally holds that  
18 mere supervisors cannot be held liable for non-FEHA based *Tamency* claims”).

19                   Accordingly, the court GRANTS defendants’ motion with prejudice to the extent  
20 plaintiffs seek to bring a *Tamency* claim against Mr. Lara.

21                   2.     Youth Centers

22                   Mr. Padron’s *Tamency* claim against Youth Centers cannot proceed as pled because  
23 the allegations do not establish Youth Centers took adverse action against Mr. Padron. The  
24 relevant allegation states merely that when Mr. Lara informed Mr. Padron that PUSD had  
25 terminated Mr. Padron’s contract, Mr. Padron asked why Youth Centers “failed to intervene on  
26 his behalf . . .” (Compl. ¶ 39.) It appears, therefore, the adverse employment action plaintiff  
27 Padron seeks to attribute to Youth Centers is a “failure to intervene.” The allegations, however,  
28 are too conclusory to put Youth Centers on notice of the alleged misconduct attributed to it. It is

1 not the province of this court to guess what plaintiffs allege. Accordingly, the court GRANTS  
2 defendants' motion to dismiss Mr. Padron's twelfth claim against Youth Centers. Mr. Padron is  
3 granted leave to amend if he can do so consonant with Rule 11.

4 V. CONCLUSION

5 For the foregoing reasons, the court orders as follows:

- 6 1. Plaintiffs' second claim for negligent infliction of emotional distress is  
7 DISMISSED with leave to amend.
- 8 2. Plaintiffs' ninth claim brought under 42 U.S.C. § 1983 is DISMISSED with  
9 leave to amend.
- 10 3. Plaintiffs' twelfth claim for wrongful termination in violation of public policy  
11 is DISMISSED with prejudice as alleged against Mr. Lara.
- 12 4. Plaintiffs' twelfth claim for wrongful termination in violation of public policy  
13 is DISMISSED with leave to amend as alleged against Youth Centers.
- 14 5. Plaintiffs' amended complaint is due within twenty-one (21) days of the date  
15 of this order.
- 16 6. This order resolves ECF No. 5.
- 17 7. Plaintiffs' motion to amend the complaint (ECF No. 25) is denied as MOOT.

18 IT IS SO ORDERED.

19 DATED: August 26, 2015.

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22 UNITED STATES DISTRICT JUDGE  
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