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

JIANJUN XIE ET AL.,

No. C 12-02950 CRB

Plaintiffs,

**ORDER GRANTING MOTION TO  
DISMISS AND MOTION TO STRIKE**

v.

OAKLAND UNIFIED SCHOOL DISTRICT  
ET AL.,

Defendants.

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Parent plaintiffs (“Plaintiffs”) sued *pro se* on their own behalf, and on behalf of their six-year-old daughter (“H.X.”), defendant Oakland Unified School District (“District”) and co-defendant Teresa Drenick (“Drenick”), an Alameda County Deputy District Attorney. Plaintiffs allege that District teachers subjected H.X. to racial and ethnic discrimination while she was enrolled at Franklin Elementary School (“Franklin”) by bullying, intimidating, insulting, falsely accusing, and injuring H.X. Additionally, Plaintiffs allege that the District retaliated against H.X. by forcing her to transfer schools and to be homeschooled.

Plaintiffs also allege that Drenick, in her capacity as Deputy District Attorney, “falsely, willfully and maliciously subjected [them] to prosecution on the false accusation of truancy” of their daughter H.X. based on a report from the School Attendance Review Board (“SARB”), which allegedly consists of false materials that Drenick knew to be false. The Defendants move to dismiss, arguing that all of Plaintiffs’ claims fail for one or more of the

1 following reasons: (1) lack of standing, (2) various immunities, (3) lack of a private right of  
2 action, and (4) failure to state a claim.

3 The Court GRANTS both Defendants’ Motions to Dismiss, with leave to amend. The  
4 Court also GRANTS the District’s Motion to Strike punitive damages, and Plaintiffs may not  
5 re-plead punitive damages against the District.

6 **I. BACKGROUND**

7 H.X. was enrolled in the District during the 2011-2012 school year. Plaintiffs allege  
8 that District teachers subjected H.X. to racial and ethnic discrimination by bullying,  
9 intimidating, insulting, falsely accusing, and injuring H.X. Compl. ¶ 6. Plaintiffs further  
10 allege that, after complaining about the teachers’ misconduct to Franklin Principal Jeannette  
11 MacDonald, the District retaliated by forcing H.X. to transfer out of Franklin to Cleveland  
12 Elementary School (“Cleveland”) and, later, by forcing Plaintiffs to homeschool H.X. Id.  
13 ¶¶ 7-9.

14 Plaintiffs further claim that H.X. was subjected to sexual assault, battery, and  
15 harassment by three male classmates while at Cleveland. Id. ¶ 9. Additionally, H.X.’s  
16 Cleveland teacher allegedly took H.X.’s books from her backpack and berated her in front of  
17 the classroom by claiming H.X. had stolen the books. Id. ¶ 9. The same teacher is also  
18 alleged to have insulted H.X. and failed to address Plaintiffs’ reports about bullying and  
19 sexual assault by the three male students. Id. ¶ 9.

20 Lastly, Plaintiffs claim that they filed a complaint against the District and several staff  
21 members to the Alameda County District Attorney and was allegedly ignored. Id. ¶ 15.  
22 Plaintiffs allege that Drenick conspired with the District by “maintaining false actions” tied  
23 to H.X.’s truancy record and by denying Plaintiffs their (unspecified) rights. Id. ¶ 28.  
24 Plaintiffs allege that Drenick misspelled Plaintiffs’ names on the initial complaint to trick  
25 Plaintiffs into missing court proceedings, id. ¶ 18; conveyed false and misleading  
26 information, id. ¶¶ 21-22; and committed “kidnapping and child abduction” of H.X. by  
27 “threaten[ing] the Plaintiffs with imprisonment,” id. ¶¶ 25, 28. Plaintiffs further allege that,  
28

1 in prosecuting the truancy action, Drenick “willfully” discriminated against them under color  
2 of state law. Id. ¶¶ 26, 28, 29.

3 Plaintiffs bring the following causes of action against the District premised on those  
4 facts: (I) discrimination and retaliation, (II) false imprisonment, (III) assault and battery, (V)  
5 kidnapping and child abduction, (VI) discrimination under color of law, (VII) perjury and  
6 subordination of perjury, (VIII) false information and hoax, (IX(a)) harassment, (X)  
7 oppression, fraud, and malice, (XI) defamation, (XII) intentional infliction of emotional  
8 distress, and (XIII) conspiracy. Id. ¶¶ 34-79.

9 Plaintiffs also bring the following causes of action against Drenick: (III) assault and  
10 battery, (IV) extortion, (V) kidnapping and child abduction, (VI) discrimination under color  
11 of law, (VII) perjury and subordination of perjury, (VIII) false information and hoax, (IX(a))  
12 harassment, (IX(b)) interference of academic freedom, (X) oppression, fraud, and malice,  
13 (XI) defamation, (XII) intentional infliction of emotional distress, and (XIII) conspiracy. Id.  
14 ¶¶ 39-79. Plaintiffs request injunctive relief to prevent further harassment; compensatory  
15 damages for costs and expenses associated with allegedly false actions brought against the  
16 Plaintiffs; lost earnings; emotional and physical distress, humiliation, mental anguish, and  
17 reliance damages; and punitive damages. Id. ¶¶ 80-82.

## 18 **II. LEGAL STANDARD**

### 19 **A. Standards Governing 12(b)(6) Motion to Dismiss**

20 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims  
21 alleged in a complaint. Ileto v. Glock, Inc., 349 F.3d 1191, 1199-1200 (9th Cir. 2003).  
22 “Detailed factual allegations” are not required, but the Rule does call for sufficient factual  
23 matter, accepted as true, to “state a claim to relief that is plausible on its face.” Ashcroft v.  
24 Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555,  
25 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that  
26 allows the court to draw the reasonable inference that the defendant is liable for the  
27 misconduct alleged.” Id. In determining facial plausibility, whether a complaint states a  
28 plausible claim is a “context-specific task that requires the reviewing court to draw on its

1 judicial experience and common sense.” Id. at 679. Allegations of material fact are taken as  
2 true and construed in the light most favorable to the non-moving party. Cahill v. Liberty Mut.  
3 Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996).

4 A complaint should not be dismissed without leave to amend unless it is clear that the  
5 claims could not be saved by amendment. Swartz v. KPMG LLP, 476 F.3d 756, 760 (9th  
6 Cir. 2007).

7 **B. Standards Governing 12(b)(1) Motion to Dismiss**

8 Federal Rule of Civil Procedure 12(b)(1) authorizes a party to seek dismissal of an  
9 action for lack of subject matter jurisdiction. Though the defendant makes the motion, the  
10 plaintiff bears the burden of establishing subject matter jurisdiction. See Kokkonen v.  
11 Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994); Stock W., Inc. v. Confederated Tribes  
12 of the Colville Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989).

13 A Rule 12(b)(1) jurisdictional attack may be facial or factual. See Safe Air for  
14 Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). “In a facial attack, the challenger  
15 asserts that the allegations contained in a complaint are insufficient on their face to invoke  
16 federal jurisdiction.” Id. In resolving a facial attack, a motion will be granted if the  
17 complaint, when considered in its entirety, on its face fails to allege facts sufficient to  
18 establish subject matter jurisdiction. See, e.g., Savage v. Glendale Union High Sch., 343  
19 F.3d 1036, 1040 n.2 (9th Cir. 2003).

20 **C. Standards Governing Article III Standing**

21 Under Federal Rule of Civil Procedure 12(b)(1), a complaint may be  
22 dismissed for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Article III  
23 standing is a threshold requirement for federal court jurisdiction that warrants analysis  
24 separate from the merits of the claim. See Lujan v. Defenders of Wildlife, 504 U.S. 555,  
25 559-60 (1992); Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011). Because  
26 standing implicates a federal court’s subject matter jurisdiction, Defendants may  
27 raise challenges to standing on a 12(b)(1) motion to dismiss. White v. Lee, 227 F.3d 1214,  
28 1242 (9th Cir. 2000).

1 Under Article III, the party seeking standing must show that it has “(1) suffered an  
2 injury in fact that is concrete and particularized, and actual or imminent; (2) the injury is  
3 fairly traceable to the challenged conduct; and (3) the injury is likely to be redressed by a  
4 favorable court decision.” Salmon Spawning & Recovery Alliance v. Gutierrez, 545 F.3d  
5 1220, 1225 (9th Cir. 2008); Valley Forge Christian Coll. v. Ams. United for Separation of  
6 Church & State, Inc., 454 U.S. 464, 472 (1982). The Supreme Court refined its definition of  
7 a qualifying injury in fact as one that is “distinct and palpable, as opposed to merely abstract  
8 . . . not conjectural or hypothetical.” Whitmore v. Arkansas, 495 U.S. 149, 155 (1990)  
9 (internal quotations omitted). The burden is on the party invoking federal jurisdiction to  
10 establish these elements. Lujan, 504 U.S. at 561.

11 **D. Standards Governing 12(f) Motion to Strike**

12 Rule 12(f) of the Federal Rules of Civil Procedure states a district court “may strike  
13 from a pleading an insufficient defense or any redundant, immaterial, impertinent, or  
14 scandalous matter.” Fed. R. Civ. P. 12(f). “When considering a motion to strike, a court  
15 must view the pleadings in the light most favorable to the non-moving party.” Collins v.  
16 GameStop Corp., No. C10-1210-TEH, 2010 WL 3077671, at \*2 (N.D. Cal. Aug. 6, 2010). A  
17 court must deny a motion to strike if there is any doubt whether the allegations in the  
18 pleadings might be relevant to the action. In re 2TheMart.com, Inc. Sec. Litig., 114 F. Supp.  
19 2d 955, 965 (C.D. Cal. 2000).

20 **III. DISCUSSION**

21 All of the claims against the Defendants fail for one or several of the following  
22 reasons: (1) Plaintiffs lack standing to bring claims on behalf of their minor daughter; (2) the  
23 Defendants are entitled to immunity; (3) Plaintiffs failed to properly file a governmental tort  
24 claim against Defendants for their state law claims; (4) Plaintiffs allege various causes of  
25 action without a civil remedy; and (5) Plaintiffs do not state a cognizable legal theory and/or  
26 fail to sufficiently state facts in support of these claims.

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1           **A. Plaintiffs Lack Standing to Bring Claims on Behalf of Their Daughter**

2           A plaintiff must demonstrate standing separately for each form of relief sought.  
3           Friends of the Earth, Inc. V. Laidlaw Env'tl. Servs. Inc., 528 U.S. 167, 180-81 (2000). “[A]  
4           parent or guardian cannot bring an action on behalf of a minor child without retaining a  
5           lawyer.” Johns v. Cnty. of San Diego, 114 F.3d 874, 877 (9th Cir. 1997). Plaintiffs here  
6           lack standing to bring any claims *pro se* on behalf of their daughter H.X. without licensed  
7           counsel. Accordingly, causes I, III, V, and VI pertaining to H.X. are dismissed.

8           **B. Defendants Are Entitled to Immunity**

9                   **1. The District is entitled to immunity under the Eleventh Amendment**

10           “Agencies of the state are immune from damages or suits for injunctive relief brought  
11           in federal court.” Mitchell v. L.A. Cnty. College Dist., 861 F.2d 198, 201 (9th Cir. 1988);  
12           Belanger v. Madera Unified Sch. Dist., 963 F.2d 248, 254 (9th Cir. 1992). Congress can  
13           abrogate this immunity through its express intent in the language of a specific statute or by  
14           the state’s own waiver of immunity and consent to be in federal court. See Atascadero State  
15           Hosp. v. Scanlon, 473 U.S. 234, 238 (1985) (abrogated on other grounds by Rehabilitation  
16           Act Amendments of 1986, Pub. L. No. 99-506, § 1003, 100 Stat. 1807; cf. Coleman v. Cal.  
17           Dep’t of Corr. & Rehab., 2009 U.S. Dist. LEXIS 131038, \*12 (C.D. Cal. Feb. 2, 2009).

18           Therefore, in the present case, the District, as a political subdivision of the State of  
19           California, is entitled to immunity under the Eleventh Amendment against all claims brought  
20           against it in federal court because Congress has not expressly abrogated such immunity, and  
21           the District has not consented to this lawsuit. With the exception of the Plaintiffs’ Title VI  
22           claim (a statute under which Congress did expressly abrogate immunity), Atascadero, 473  
23           U.S. at 238, all other claims against the District must be dismissed on the basis of Eleventh  
24           Amendment immunity.

25                   **2. Drenick is entitled to absolute and qualified immunity**

26           Prosecutorial immunity exists to protect government officials against unwarranted  
27           liability and demands of defending a lawsuit. Siegert v. Gilley, 500 U.S. 266, 231-33 (1991).  
28           Absolute immunity extends to acts associated with the judicial phase of the criminal process

1 or that move a case through the judicial process. Imbler v. Pachtman, 424 U.S. 409, 430  
2 (1976). A prosecutor who acts within the scope of her duties in initiating and pursuing a  
3 criminal prosecution and in presenting the State’s case is absolutely immune from a suit for  
4 damages under 42 U.S.C. § 1983. Id. at 420.

5 California state law extends the same absolute immunity to prosecutors initiating or  
6 prosecuting a judicial or administrative proceeding. Cal. Gov’t Code § 821.6. Consistent  
7 with federal law, § 821.6 is to be construed broadly as to further its purpose to protect public  
8 employees in the performance of their prosecutorial duties from threat of harassment through  
9 civil lawsuits. Strong v. State of Cal., 201. Cal. App. 4th 1439, 1461 (Ct. App. 2011).  
10 Drenick is immuned in the present case because she was performing her duties as an  
11 Alameda County Deputy District Attorney.

12 Drenick is also entitled to qualified immunity. Unless she “knew or reasonably  
13 should have known that the action [s]he took within h[er] sphere of official responsibility  
14 would violate the constitutional right of the [P]laintiff, or if [s]he took the action with the  
15 malicious intention to cause a deprivation of constitutional rights,” a government official  
16 sued individually within the scope of her office is entitled to qualified immunity. Harlow v.  
17 Fitzgerald, 457 U.S. 800, 815 (1982). In this action, Plaintiffs have not demonstrated that the  
18 truancy law under which they were prosecuted (Cal. Educ. Code § 48293) is  
19 unconstitutional, nor have they sufficiently pleaded that Drenick’s initiation and prosecution  
20 of the truancy action was in bad faith, which might conceivably support a claim for violation  
21 of constitutional due process rights.

22 **C. Plaintiffs’ State Law Claims Must be Dismissed Due to Failure to Exhaust**  
23 **Administrative Remedies**

24 A complainant seeking compensation from a public agency for injury to person or  
25 personal property is required under California law to present a written claim to the public  
26 agency within six months of the cause(s) of action for which the complainant seeks redress  
27 before initiating any civil action. See Gov’t Code §§ 905, 910, 911.2, and 915; see also State  
28 v. Superior Court (“Bodde”), 32 Cal. 4th 1234, 1239 (2004). Failure to timely do so (and  
plead accordingly) bars complaints for damages against the public agency. See Gov’t Code

1 § 945.4; Bodde, 32 Cal. 4th at 1239; Karim-Pandhi v. L.A. Police Dep't, 839 F.2d 621, 627  
2 (9th Cir. 1988). Plaintiffs do not allege administrative exhaustion, and so their state law  
3 personal injury claims (as enumerated in Section I, *supra*, p. 3-4) are barred.

4 **D. Plaintiffs Bring Various Causes of Action for Which There Is No Civil**  
5 **Remedy or for Which Specific Statutory Immunities Apply**

6 Although Plaintiffs assert many causes of action through various federal criminal  
7 statutes and California Penal Code provisions, no private right of action exists to enforce a  
8 criminal statutory provision. See Rosales v. City of L.A., 82 Cal. App. 4th 419 (2000);  
9 Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980); Alexander v. Sandoval, 532 U.S.  
10 275, 286-88 (2001). Accordingly, the following causes of action must be dismissed because  
11 they provide no civil remedy or are explicitly barred by statutory immunities:

- 12 1. Discrimination Under Cal. Penal Code § 422.6 (criminal statute)
- 13 2. False Imprisonment Under Cal. Penal Code §§ 236 and 236.1(d) (criminal  
statute)
- 14 3. Assault and Battery under Cal. Penal Code §§ 243.4(e)(1), 273(g), 266j, 288,  
15 288.3, 647.6, and 11165.1 (criminal statutes)
- 16 4. Kidnapping and Child Abduction Under Cal. Penal Code §§ 207, 209, 278.5,  
and 278.6; 18 U.S.C. §§ 1201, 1203, 1204 (criminal statutes)
- 17 5. Color of Law Under 18 U.S.C. § 242 (criminal statute)
- 18 6. Perjury and Subornation of Perjury Under 18 U.S.C §§ 1621, 1622, 1623,  
Evidence §§ 403, 1400, and 1401 and Penal Code § 118 (criminal statutes)
- 19 7. Harrassment Under 47 U.S.C. § 223 (criminal statute)
- 20 8. "Oppression, Fraud, Malice" Under Cal. Civil Code § 3294. See Brown v.  
21 Adidas Int., 938 F. Supp. 2d 628, 635 (S.D. Cal. 1996) (not a cause of action).
- 22 9. Defamation Under Cal. Civil Code Sections 44, 45, 45(a), and 46. See Cal.  
Gov't Code § 818.6 (public entity immunity for misrepresentations of public  
23 entity employees)
- 24 10. Conspiracy Under 18 U.S.C. § 241 or Cal. Penal Code § 182 (criminal statutes)
- 25 11. Intentional Infliction of Emotional Distress Under Cal. Civil Code §§ 52.1,  
1708, 1714. See Lewis v. City & Cnty. of San Francisco, No. C-11-5273, 2012  
26 WL 909801, at \*2 (N.D. Cal. Mar. 16, 2012) (no liability for public entities)
- 27 12. Extortion Under Cal. Penal Code §§ 518-24 (criminal statutes)
- 28 13. Interference of Academic Freedom Under Cal. Penal Code § 422.4 (criminal  
statute)

1 To the extent that this Court construes the above claims as asserting their common law  
2 intentional tort equivalents (e.g., assault, false imprisonment), Plaintiffs still fail to state a  
3 claim because their key allegations state that other students committed various acts intruding  
4 on H.X.'s physical integrity, and that the teachers failed to adequately respond. That does  
5 not state a claim for any intentional tort by the adult defendants.

6 **E. Plaintiffs Fail to State Sufficient Facts for Which Relief May Be Granted**

7 **1. Discrimination and retaliation**

8 Plaintiffs' claims of discrimination and retaliation under (i) Title VI; (ii) Article 1,  
9 section 31(a) of the California Constitution; and (iii) California Education Code section  
10 234.1 must be dismissed for failure to state sufficient facts for which relief may be granted.

11 **i. Title VI**

12 Under Title VI, "no person in the United States shall, on the ground of race, color, or  
13 national origin, be excluded from participation in, be denied the benefits of, or be subjected  
14 to discrimination under any program or activity receiving Federal financial assistance." 42  
15 U.S.C. § 2000d. To establish a discrimination case under Title VI, a plaintiff must establish  
16 the following elements: (1) that she is a member of a protected class; (2) that she met the  
17 school's legitimate education expectations; (3) that the school engaged in an adverse  
18 education action against her; and (4) that she incurred worse treatment than those of similarly  
19 situated students not in her protected class. See Brewer v. Bd. of Trs. of Univ. of Ill., 479  
20 F.3d 908, 921 (7th Cir. 2007) (applying the framework of Title VII employment  
21 discrimination classes to test student's claims of discrimination under Title VI).

22 Plaintiffs fail to establish both that H.X. met the District's legitimate education  
23 expectations (e.g., attendance and academic performance) and that their daughter was  
24 discriminated against based on her race and ethnicity.

25 **ii. California Constitution**

26 Under Article 1, Section 31(a), of the California Constitution, the "State shall not  
27 discriminate against, or grant preferential treatment to, any individual group on the basis of  
28 race, sex, color, ethnicity, or national origin in the operation of public employment, public

1 education, or public contracting.” Cal. Const. art. I, § 31(a). In the present matter, Plaintiffs  
2 have failed to sufficiently allege discrimination based on race and ethnicity.

3 **iii. California Education Code**

4 California Education Code Section 234.1 directs the Department of Education to  
5 monitor local education agencies, ensuring the adoption of appropriate anti-discrimination,  
6 harassment, intimidation, and bullying policies and investigatory procedures to review  
7 complaints. Cal. Educ. Code § 234.1. The Code does not describe any protection against  
8 retaliation. The Court therefore dismisses the Section 234.1 retaliation claim.

9 **2. Battery and assault**

10 California Penal Code section 11165.3 only provides the definitions of assault and  
11 battery: the “willful harming or injury of a child or the endangering of the person or health of  
12 a child). Cal. Penal Code § 11165. But Plaintiffs do not assert that the District staff engaged  
13 in physical force against H.X.; rather, they allege that the physical violence was committed  
14 by three male students. Compl. ¶¶ 9, 16, 40. Likewise, the Civil Code section 1708.5  
15 (sexual battery) claim fails because Plaintiffs allege that the other children—not these  
16 Defendants—sexually assaulted H.X. Plaintiffs’ assault and battery claim under Title 10,  
17 section 920, of the United States Code relates to military law and is not applicable to public  
18 school districts such as the District. See 10. U.S.C. § 920.

19 **3. Kidnapping and child abduction under Civil Code § 49**

20 California Civil Code section 49 provides in relevant part that the “rights of personal  
21 relations forbid: (a) the abduction or enticement of a child from a parent or from a guardian  
22 entitled to its custody.” The allegation that a prosecutor instituted truancy proceedings  
23 against a child does not state a claim for child abduction.

24 **4. False information and hoax under 18 U.S.C. § 1038**

25 Plaintiffs assert that District committed hoax by submitting false materials to the  
26 court. Compl. ¶ 41. Section 1038 authorizes “criminal and civil penalties when a person  
27 provides false information or conducts a hoax with respect to crimes . . . [of a particular  
28 military or defense nature].” However, section 1038 is limited to hoaxes regarding a narrow

1 range of military and infrastructure-related threats, see Cohen v. Nevada, No. 07-cv-00043-  
2 LRH (VPC), 2007 WL 4458174, at \*2 n.2 (D. Nev. Dec. 13, 2007), and so is inapplicable to  
3 the allegations in the present matter.

4 **5. Defamation**

5 In addition to the statutory public entity immunity for misrepresentations described  
6 above, the District is entitled to a litigation privilege under Civil Code section 47. Plaintiffs  
7 allege that District and Drenick defamed Plaintiffs by filing complaints that triggered public  
8 judicial proceedings regarding H.X.'s truancy from school. Compl. ¶¶ 17, 64. Because these  
9 documents and statements were filed in a judicial or quasi-judicial setting, they are protected  
10 by the litigation privilege. Cal. Civ. Code § 47.

11 **F. The District's Motion to Strike Is GRANTED**

12 As a matter of law in California, a plaintiff who alleges injury caused by a public  
13 entity may only be entitled to actual damages for that injury, not punitive damages, Doe v.  
14 Cnty. of San Mateo, 2008 WL 5245889, \*7 (N.D. Cal Dec. 17, 2008). The District's Motion  
15 to Strike is therefore be GRANTED and Plaintiffs may not re-plead punitive damages against  
16 the District.

17 **IV. CONCLUSION**

18 For the aforementioned reasons, the Court GRANTS both Defendants' Motions to  
19 Dismiss but permits Plaintiffs leave to amend in a manner consistent with this opinion,  
20 except Plaintiffs may not replead punitive damages against the District. If Plaintiffs wish to  
21 submit an amended pleading, they must do so by **5:00 p.m. on December 20, 2012**. Failure  
22 to submit an amended pleading by that date may result in dismissal of this case with  
23 prejudice.

24 **IT IS SO ORDERED.**

25  
26  
27 Dated: November 19, 2012

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\_\_\_\_\_  
CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE