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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIELLE SARMIENTO, et al.,
Plaintiffs,
v.
RUBY MARQUEZ, et al.,
Defendants.

Case No. 21-cv-06712-PJH

ORDER OF DISMISSAL

Re: Dkt. No. 56

Defendants' motion to dismiss the second amended complaint came on for hearing before this court on November 3, 2022. Plaintiffs appeared through their counsel, David P. Morales. Defendants appeared through their counsel, Melissa C. Shaw. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS defendants' motion, for the following reasons.

BACKGROUND

This is a § 1983 case involving alleged religious discrimination and deprivation of Due Process by the Santa Cruz County Human Services Department over the course of several administrative and judicial proceedings. Plaintiffs Danielle Sarmiento and Michael Sanchez are the former foster parents and de facto parents of a child who they hoped to formally adopt. Second Amended Complaint ("SAC") ¶ 20. Defendants include the County of Santa Cruz, California, and several of its employees involved in the proceedings. SAC ¶¶ 9–16.

United States District Court
Northern District of California

1 **A. Alleged Religious Discrimination**

2 Plaintiffs contend that, as they were proceeding toward adoption of the child in
3 their care, County social worker Luz Sanclemente asked Sarmiento whether she
4 “[believed] in God,” and whether she “[believed] in Jesus Christ.” SAC ¶¶ 20–21.¹
5 Plaintiffs allege that defendants thereafter sought to remove the child from their care in
6 “retaliation for not appearing to be Christians.” SAC ¶ 21. Plaintiffs allege that
7 defendants’ reasons for attempting to remove the child from plaintiffs’ care appeared
8 wholly pretextual. SAC ¶ 23.

9 **B. State Court Proceedings**

10 **1. Dependency Action & Family Maintenance**

11 After a 12-day trial in September 2019 challenging the pretextual removal (the
12 “Dependency Action”), plaintiffs prevailed, and the child remained with plaintiffs following
13 the trial. SAC ¶ 30. The child remained with plaintiffs pursuant to the trial verdict for
14 another eight months. During this time, the child’s biological father was located, and
15 reunification with him became possible through the procedure of “Family Maintenance.”
16 Request for Judicial Notice (“RJN”), Ex. I, p. 9: In re: J.C., Minute Order of May 28, 2020,
17 reuniting the minor with his biological father via “Family Maintenance” (Dkt. 56-4 at 165).
18 The reunification and Family Maintenance was well after, and completely unrelated
19 procedurally, to the Dependency Action regarding the interim placement. See id.; Ex. I,
20 pp. 14–15: May 28, 2020, Order Re: Commencing Family Maintenance (Dkt. 56-4 at
21 170–71).

22 **2. Writ Action**

23 Plaintiffs challenged the basis for the interim child placement by filing a petition for
24 writ of mandate related to the Dependency Action (the “Writ Action”) on September 19,
25 2019. RJN, Ex. A (Dkt 56-4 at 5–20). In the Writ Action, plaintiffs sought to have the
26

27 _____
28 ¹ Sanclemente was named as a defendant in the SAC, but the court dismissed her with
prejudice in its order dismissing the first amended complaint. Dkt. 52 at 9–12.
Sanclemente remains dismissed with prejudice.

1 Civil Division of the Santa Cruz Superior Court find that the County's actions to remove
2 the child (the child was never actually removed) were "arbitrary and capricious" and
3 otherwise not supported by evidence. See RJN, Ex. A, at 3 (Dkt. 56-4 at 7). The
4 Superior Court sustained the County's demurrer without leave to amend and dismissed
5 the Writ Action finding, inter alia, that both actions (the Dependency and the Writ Actions)
6 sought to address the same primary rights, and that the Writ Action, having emanated
7 from the Dependency Action, was completely barred by lack of jurisdiction, res judicata,
8 and the claims splitting doctrine. RJN, Ex. B (Dkt. 56-4 at 22–26). Further, where
9 plaintiffs' available relief under California Welfare and Institutions Code § 388 was
10 litigated in the Dependency Action, there was a lack of any justiciable controversy
11 because the decision to remove the child had already been vacated and plaintiffs' claims
12 were moot. RJN, Ex. B (Dkt. 56-4 at 22–26). The court found in the Writ Action, "It
13 appears to the court that [plaintiffs'] continued litigation of this petition is an attempt to
14 circumvent the Dependency Court's placement order[.]" RJN, Ex. B, at 2–3 (Dkt. 56-4 at
15 23–24).

16 **3. State Court Appeals**

17 In addition to filing the Writ Action, plaintiffs also appealed the trial verdict and
18 several orders issued in the Dependency Action. There are five appeals in the California
19 Court of Appeal involving that matter, including Case No's. H047579, H048081,
20 H048305, H048495 and H048740, all of which arise from the interim placement decision
21 and the Dependency Action. RJN, Ex. C, D, E, F, and G (Dkt. 56-4 at 28, 30, 32, 34, 36).
22 Cases H048305, H048495, and H048740 are still active as of the filing of this motion.
23 Plaintiffs take issue with the way the County handled the investigation, assessment,
24 determination, and interim placement decision.

25 **C. Procedural History in this Case**

26 Plaintiffs filed their initial complaint in this case on August 30, 2021, and the case
27 was assigned to Magistrate Judge Cousins. Dkt. 1, Dkt. 4. On August 31, 2021, plaintiffs
28 were instructed to file a summons with the name and addresses of the defendants who

1 must be served. Dkt. 4. Plaintiffs did not respond to multiple requests from the clerk's
2 office and the court regarding proof of service. Dkt. 8. On November 30, 2021, the court
3 ordered plaintiffs to file proof of service by December 29, 2021, or else it would dismiss
4 the case without prejudice, and specifically warned that a continued failure to serve could
5 result in a dismissal for failure to prosecute and for failure to comply with court orders.
6 Dkt. 8. Plaintiffs failed to respond.

7 On January 4, 2022, Judge Cousins issued an order requesting reassignment of
8 the case to a district judge with a recommendation to dismiss without prejudice for failure
9 to serve defendants and for failure to prosecute. Dkt. 9 at 2. The case was assigned to
10 this court on January 4, 2022. Dkt. 11. On January 7, 2022, the court ordered plaintiffs
11 to serve defendants by January 21, 2022. Dkt. 18. On January 28, 2022, the court
12 granted plaintiffs' late request to extend the deadline for service until February 4, 2022.
13 Dkt. 21.

14 On February 9, 2022, plaintiffs filed their FAC, also late. Dkt. 25. Plaintiffs'
15 counsel declared that on February 9, 2022, he personally delivered a copy of the FAC
16 and the summons to the clerk of the Board for the County for all defendants. See
17 "Certificate[s] of Service" (Dkt. 26–34). During a case management conference held on
18 March 17, 2022, the parties informed the court that plaintiffs had only properly served the
19 County. Dkt. 39. Counsel for the County informed the court that she had no authority to
20 accept service on behalf of the individual defendants. Dkt. 39. The court extended
21 plaintiffs' service deadline by 30 days to serve the remaining defendants. Dkt. 39. No
22 proofs of service were filed by April 17, 2022.

23 On May 2, 2022, defendants Marquez, Sullivan, De la Peña, Timberlake, Crisman,
24 Vikati, and the County of Santa Cruz moved to dismiss plaintiffs' FAC in its entirety. Dkt.
25 41 at 8. Plaintiffs' counsel did not appear at the hearing to oppose the motion. Dkt. 51.
26 On July 25, 2022, the court granted the motion to dismiss, and dismissed with prejudice
27 defendants Keith Bostick and Luz Sanclemente in light of plaintiffs' repeated failure to
28 serve them. Dkt. 52. The court otherwise granted leave to amend, but it issued specific

1 drafting instructions to improve the clarity of any amended pleading. Dkt. 52 at 9.

2 Plaintiffs filed the now-operative SAC on August 22, 2022. Dkt. 53. Plaintiffs
3 enumerate eight causes of action, which they describe as follows:

- 4 1. Religious Discrimination,
- 5 2. Violation of Federal Civil Rights,
- 6 3. Monell,
- 7 4. Intentional Infliction of Emotional Distress,
- 8 5. Negligent Infliction of Emotional Distress,
- 9 6. Unfair Business Practices Under California's Business and Professions Code
10 § 17200,
- 11 7. Violation of California Civil Rights laws, and
- 12 8. for Injunctive and Declaratory Relief.

13 SAC ¶¶ 36–105.

14 In the instant motion, defendants ask the court to dismiss the amended complaint
15 in its entirety. Dkt. 56-3. Defendants also submit (1) a motion to seal the documents
16 from the administrative and state court proceedings to protect the identity of the minor
17 involved, (2) a request for judicial notice of several documents from the underlying
18 administrative proceedings and state court appeals. For the reasons stated at the
19 hearing, both the administrative motion to seal (Dkt. 56) and the request for judicial notice
20 (Dkt. 56-4) are GRANTED.

21 In their opposition to the motion, plaintiffs made a few specific requests. As stated
22 at the hearing, the court DENIES plaintiffs' request to submit additional materials to
23 counter those submitted by defendants in their request for judicial notice as there was
24 nothing preventing plaintiffs from also requesting judicial notice of appropriate materials
25 in their opposition; the court DENIES plaintiffs' request for Rule 11 sanctions against
26 counsel for defendants because they failed to comply with the procedural requirements of
27 both the Local Rules and the Federal Rules of Civil Procedure and on the merits; and the
28 court DENIES plaintiffs' request for reconsideration of the order dismissing Luz

1 Sancllemente with prejudice because plaintiffs again failed to comply with the Local Rules
2 and on the merits.

3 DISCUSSION

4 A. Legal Standard

5 A complaint must contain “a short and plain statement of the claim showing that
6 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual
7 allegations are not required,” a complaint must include sufficient facts to “state a claim to
8 relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal
9 quotation marks omitted). A claim is facially plausible “when the pleaded factual content
10 allows the court to draw the reasonable inference that the defendant is liable for the
11 misconduct alleged.” Id.

12 A motion to dismiss a complaint under Rule 12(b)(6) tests the legal sufficiency of
13 the claims alleged in a complaint. See Fed. R. Civ. P. 12(b)(6). Dismissal under Rule
14 12(b)(6) may be based either on the “lack of a cognizable legal theory” or on “the
15 absence of sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica
16 Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

17 When evaluating such a motion, the court must accept all material allegations in
18 the complaint as true, even if doubtful, and construe them in the light most favorable to
19 the non-movant. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

20 “[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a
21 motion to dismiss for failure to state a claim.” Epstein v. Wash. Energy Co., 83 F.3d
22 1136, 1140 (9th Cir. 1996).

23 A court’s review is generally limited to the contents of the complaint, although the
24 court may also consider documents “whose contents are alleged in a complaint and
25 whose authenticity no party questions, but which are not physically attached to the
26 plaintiff’s pleading.” Knievel v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005) (internal
27 quotation marks and alteration omitted). The court may also consider matters that are
28 properly the subject of judicial notice, Lee v. City of Los Angeles, 250 F.3d 668, 688-89

1 (9th Cir. 2001), and documents referenced extensively in the complaint and documents
2 that form the basis of plaintiffs' claims, No. 84 Emp'r-Teamster Jt. Council Pension Tr.
3 Fund v. Am. W. Holding Corp., 320 F.3d 920, 925 n.2 (9th Cir. 2003).

4 Where dismissal is warranted, it is generally without prejudice, unless it is clear the
5 complaint cannot "be saved by any amendment." Sparling v. Daou, 411 F.3d 1006, 1013
6 (9th Cir. 2005) (internal quotation marks omitted). "Leave to amend may also be denied
7 for repeated failure to cure deficiencies by previous amendment." Abagninin v. AMVAC
8 Chem. Corp., 545 F.3d 733, 742 (9th Cir. 2008).

9 **B. Analysis**

10 The court first addresses the overall pleading deficiencies of the SAC, then turns
11 to the merits of the federal claims before addressing jurisdiction over the claims arising
12 under state law.

13 **1. Federal Rule of Civil Procedure 8**

14 A complaint does not suffice "if it tenders naked assertions devoid of further factual
15 enhancement." Iqbal, 555 U.S. at 678. Allegations must "provide sufficient notice to all
16 of the Defendants as to the nature of the claims being asserted against them," including
17 "what conduct is at issue." Villalpando v. Exel Direct Inc., No. 12-CV-04137 JCS, 2014
18 WL 1338297, at *5 (N.D. Cal. Mar. 28, 2014). Generally, a complaint's "failure to allege
19 what role each Defendant played in the alleged harm makes it exceedingly difficult, if not
20 impossible, for individual Defendants to respond to Plaintiffs' allegations." In re iPhone
21 Application Litig., No. 11-MD-02250-LHK, 2011 WL 4403963, at *8 (N.D. Cal. Sept. 20,
22 2011).

23 In the previous order of dismissal, the court expressly instructed that plaintiffs'
24 amended pleading must, for each cause of action, "(1) set forth what right has been
25 violated, (2) name the defendant or defendants who have committed the violation,
26 (3) recite the elements for each violation, (4) describe the specific conduct that amounts
27 to a violation, that is, conduct that meets those elements." Dkt. 52 at 9. Plaintiffs did not
28 comply with that instruction in the SAC.

1 As was the case with the first amended complaint, the SAC fails to put any single
2 individual or entity on notice. For example, though plaintiffs bring a claim for religious
3 discrimination, they do not specify any particular defendant who committed the violation,
4 they do not articulate the necessary elements for discrimination, and the only conduct
5 described is that Sanclemente “questioned Plaintiffs regarding their religious beliefs, then
6 she (together with defendants Crisman and Vikati) decided to remove the child from
7 Plaintiffs’ care for discriminatory and pretextual reasons.” SAC ¶¶ 37. As with the
8 previous complaint, plaintiffs again generally fail to describe any specific conduct by any
9 individual defendant amounting to a claim. By copying/pasting a list of averments of
10 individual conduct as support for nearly every claim, plaintiffs again fail to differentiate
11 which allegations support which cause of action, and they again fail to explain how the
12 described conduct amounts to a violation. SAC ¶¶ 38, 46, 63, 74, 86. Plaintiffs fail to
13 provide even a formulaic recitation of the elements of their causes of action. And it is not
14 the court’s duty to guess what conduct plaintiffs believe amounts to a violation or which
15 defendant committed the violation, regardless of plaintiffs’ request for the court to strike
16 surplusage. Therefore, plaintiffs’ SAC is dismissed for the failure to provide a short and
17 plain statement of facts giving rise to defendants’ liability.

18 2. Federal Claims

19 Plaintiffs enumerate three federal claims based on purported constitutional
20 violations, including: (1) religious discrimination in violation of the First Amendment to the
21 U.S. Constitution as well as Article I, Section 4 of the California Constitution, alleged
22 against all individual defendants; (2) violation of Title 42 U.S.C. § 1983 and § 1985 for
23 preventing plaintiffs from exercising their First and Fourteenth Amendment rights, alleged
24 against all individual defendants; and (3) “Monell-related claims” for practices or policies
25 that caused the violations of plaintiffs’ First and Fourteenth Amendment rights, alleged
26 against the County of Santa Cruz. These claims are discussed in turn, with the § 1985
27 claim discussed separately.

28

1 In relevant part, § 1983 provides that:

2 Every person who, under color of any statute . . . of any State
3 or Territory or the District of Columbia, subjects . . . any citizen
4 of the United States or other person within the jurisdiction
5 thereof to the deprivation of any rights, privileges, or immunities
6 secured by the Constitution and laws, shall be liable to the party
7 injured....

8 42 U.S.C. § 1983. “To establish § 1983 liability, a plaintiff must show both (1) deprivation
9 of a right secured by the Constitution and laws of the United States, and (2) that the
10 deprivation was committed by a person acting under color of state law.” Tsao v. Desert
11 Palace, Inc., 698 F.3d 1128, 1138 (9th Cir. 2012); see also West v. Atkins, 487 U.S. 42,
12 48 (1988).

13 **a. Religious Discrimination**

14 Plaintiffs potentially advance three bases for their first cause of action, religious
15 discrimination. First, they aver that defendants’ conduct interfered with their Free
16 Exercise rights under the First Amendment to the U.S. Constitution. SAC ¶ 40. Second,
17 they aver that defendants’ conduct was designed to retaliate against plaintiffs “for not
18 appearing to be Christians.” SAC ¶ 21. Third, they aver that defendants infringed on
19 their right to free exercise of religion under the California Constitution. SAC ¶ 41. These
20 theories are discussed in turn to determine whether plaintiffs have stated a claim under
21 any of them.

22 **1. Free Exercise**

23 A state actor violates the Free Exercise Clause of the First Amendment when it
24 “substantially burdens the person’s practice of their religion.” Jones v. Williams, 791 F.3d
25 1023, 1031 (9th Cir. 2015). This standard requires “more than an inconvenience on
26 religious exercise; it must have a tendency to coerce individuals into acting contrary to
27 their religious beliefs or exert substantial pressure on an adherent to modify his behavior
28 and to violate his beliefs.” Id. at 1031 (cleaned up).

Here, plaintiffs allege that Sanclemente’s religious bias, as demonstrated through
her questioning of whether plaintiffs were adherents of Christianity, led to a joint effort

1 along with all defendants to remove the child from plaintiffs' care. SAC ¶¶ 21, 38.
 2 Sanclemente's query into plaintiffs' beliefs, however, did not at all "coerce [them] into
 3 acting contrary to their religious beliefs or exert substantial pressure on [plaintiffs] to
 4 modify [their] behavior and to violate [their] beliefs." Jones, 791 F.3d at 1031. Plaintiffs
 5 do not identify any action they took differently based on Sanclemente's questioning.
 6 Plaintiffs do not represent that Sanclemente offered a quid pro quo, such as continued
 7 custody of the child in exchange for plaintiffs' conversion to Christianity. Even if the court
 8 accepted that plaintiffs were injured by being compelled to engage in administrative and
 9 legal proceedings to preserve their custody of the child, they fail completely to allege how
 10 such injury arose from a violation of their constitutional right to Free Exercise of religion.
 11 Therefore, to the extent plaintiffs' First Amendment claim is premised on a Free Exercise
 12 violation, the claim must be dismissed.

13 2. Retaliation

14 A First Amendment claim for retaliation requires a "substantial causal relationship"
 15 between a plaintiff's "constitutionally protected activity" and "adverse [government] action
 16 . . . that would chill a person of ordinary firmness from continuing to engage in the
 17 protected activity." Blair v. Bethel Sch. Dist., 608 F.3d 540, 543 (9th Cir. 2010).

18 Here, the SAC only speculates that there was a relationship between (1) plaintiffs'
 19 response to Sanclemente that they are not Christians and (2) defendants' actions to
 20 remove the child from plaintiffs' care. Plaintiffs allege in conclusory fashion that
 21 defendants' actions to remove the child were admittedly pretextual. Dkt. 57 at 7 (citing
 22 SAC ¶¶ 22–23, 27). But plaintiffs provide no factual support for such admissions of
 23 pretext, and they fail to plead facts supporting the existence of religious animus. They fail
 24 even to plead a causal relationship where they do not allege a nexus between
 25 Sanclemente's religious questioning and the alleged harm they suffered throughout the
 26 administrative and legal proceedings to preserve their custody of the child. Plaintiffs do
 27 not adequately plead retaliatory conduct that breaches their First Amendment rights.

28 Further, plaintiffs fail to identify any constitutionally-protected activity from which

1 they were barred based on defendants' conduct. As discussed more in-depth below,
 2 plaintiffs do not hold a constitutionally-protected interest in their relationship with the child
 3 in this case, and they do not hold a constitutionally-protected interest in any of the child
 4 custody procedures. Plaintiffs, as de facto parents, only have certain rights enshrined in
 5 state Rules of Court to participate in dependency proceedings, rights which are not
 6 protected by the U.S. Constitution. Plaintiffs fail to plead that defendants took "adverse
 7 action" based on Sarmiento's response to a religious inquiry with a sufficiently
 8 "substantial causal relationship" to chill plaintiffs' participation in a constitutionally-
 9 protected activity. To the extent plaintiffs' religious discrimination claim is based on a
 10 theory of retaliation, it must be dismissed on this ground as well.

11 **3. State Constitutional Claim**

12 Plaintiffs' claim for violation of Article I, Section 4 of the California Constitution
 13 cannot advance as part of this § 1983 claim. State constitutional claims are not
 14 cognizable under § 1983 because they fail to satisfy the first element, i.e., that a right
 15 secured by the Constitution or laws of the United States was violated. West, 487 U.S. at
 16 48. Therefore, plaintiffs' religious discrimination claim also fails on this third basis.

17 **b. Due Process**

18 To establish a "substantive due process claim, a plaintiff must . . . show a
 19 government deprivation of life, liberty, or property." Costanich v. Dep't of Soc. & Health
 20 Servs., 627 F.3d 1101, 1110 (9th Cir. 1010) (quoting Nunez v. City of L.A., 147 F.3d 867,
 21 871 (9th Cir. 1998)). However, "before turning to the question of whether [plaintiffs'] due
 22 process rights were violated, [the court] must first determine whether there has been a
 23 deprivation of life, liberty, or property." Id. "State law can create a right that the Due
 24 Process Clause will protect only if the state law contains (1) substantive predicates
 25 governing official decisionmaking, and (2) explicitly mandatory language specifying the
 26 outcome that must be reached if the substantive predicates have been met." James v.
 27 Rowlands, 606 F.3d 646, 656 (9th Cir. 2010) (citations and quotation marks omitted). "To
 28 create a right protected by the Due Process Clause, the state law must provide more

1 than merely procedure; it must protect some substantive end.” Id. at 656–57 (citing Olim
2 v. Wakinekona, 461 U.S. 238, 250 n.12 (1983)) (citations and quotation marks omitted).

3 The U.S. Supreme Court has recognized that “choices to enter into and maintain
4 certain intimate human relationships must be secured against undue intrusion by the
5 State because of the role of such relationships in safeguarding the individual freedom
6 that is central to our constitutional scheme.” Roberts v. U.S. Jaycees, 468 U.S. 609,
7 617–18 (1984). “In protecting certain kinds of highly personal relationships, the Supreme
8 Court has most often identified the source of the protection as the due process clause of
9 the fourteenth amendment, not the first amendment’s freedom to assemble.” IDK, Inc. v.
10 Cnty. of Clark, 836 F.2d 1185, 1192 (9th Cir. 1988)).

11 Flowing from this right to familial association, the Ninth Circuit has made clear that
12 “there is no question that *parents* have a constitutionally protected liberty interest in
13 making decisions about the care, custody, and control of their children.” Miller v.
14 California, 355 F.3d 1172, 1175 (9th Cir. 2004) (emphasis in original). Under California
15 law, however, a “de facto” parent has a distinct interest—a de facto parent is one who “on
16 a day-to-day basis, assumes the role of parent, seeking to fulfill both the child’s physical
17 needs and his psychological need for affection and care.” Id. at 1175 (quoting In re
18 Crystal J., 92 Cal.App.4th 186, 190 (2001)). “De facto parents do not have the same
19 substantive rights and preferences as parents or even legal guardians.” In re A.F., 227
20 Cal.App.4th 692, 700 (2014). The rights of de facto parents are procedurally limited
21 under state law to the context of dependency hearings, where they have “(1) the right to
22 be present at hearings, (2) the right to be represented by retained counsel, and in the
23 discretion of the court, appointed counsel, and (3) the right to present evidence and be
24 heard.” Id. at 700; see also Cal. Rule of Court 5.534. Thus, the asserted interest a foster
25 parent has is only “in a potential, still undeveloped familial relationship with prospective
26 adopted children . . . and whatever claim a prospective adoptive parent may have to a
27 child, we are certain that it does not rise to the level of a fundamental liberty interest.”
28 Mullins v. Oregon, 57 F.3d 789, 795 (9th Cir. 1995).

1 Related to procedural rights in the dependency context, the Ninth Circuit
2 acknowledged there is a clearly established right “not to suffer a deprivation of liberty
3 based on fabricated evidence and false representations in child custody
4 proceedings.” Huk v. Cnty. of Santa Barbara, 650 F. App’x 365, 366 (9th Cir. 2016). The
5 court found, however, that there exists no protected liberty interest in the continued
6 custody of a foster child and thus rejected the plaintiffs’ procedural and substantive due
7 process claims. The panel stated, “Even if it can be established that [the plaintiffs] were
8 deprived of their custody of their foster child through allegedly deceptive means and
9 without any opportunity to contest the validity or reason behind the removal, they have
10 not and can not demonstrate that their custody of their foster child was a liberty interest
11 protected by the Due Process Clause.” Id. at 366.

12 Here, plaintiffs advance that they were deprived of Due Process where defendants
13 provided a sham administrative proceeding related to custody of the child. SAC ¶¶ 29.
14 Plaintiffs emphasize a laundry list of alleged misdeeds in the course of the administrative
15 proceeding, the grievance process arising from the administrative proceeding, and their
16 appeals. Id. Plaintiffs allege that defendants’ conduct undermined their procedural rights
17 as de facto parents to participate as a party at hearings in violation of California Rule of
18 Court 5.534. SAC ¶¶ 33; Dkt. 57 at 13–14 n.2. The right to participate under Rule of
19 Court 5.534 is not one that the Due Process Clause will protect, however. That Rule only
20 provides procedural protections: (1) to be present at the hearing, (2) to be represented by
21 counsel, and (3) to present evidence. Id. The rule does not include any substantive
22 predicates or include any “mandatory language specifying the outcome.” Cf. Rowlands,
23 606 F.3d at 656. Plaintiffs therefore cannot establish a procedural right protected by the
24 Due Process Clause.

25 Further, the Huk rationale is applicable to this case. Plaintiffs here, like those in
26 Huk, argue that the Due Process Clause protects them against false representations in
27 custody proceedings. They contend that defendants violated their due process rights by
28 committing a laundry list of misleading acts, including misrepresenting facts to the court.

1 See, e.g., SAC ¶ 29. But plaintiffs here, like those in Huk, similarly fail to establish that
 2 any purported misrepresentations resulted in the deprivation of a constitutionally
 3 protected liberty interest, namely, the right to familial association. Plaintiffs do not plead
 4 and cannot establish a deprivation of that right because, as de facto parents, they are not
 5 entitled to its protections.² Therefore, even if plaintiffs established that defendants'
 6 misleading conduct in the Dependency Action deprived them of the opportunity to
 7 participate in those proceedings, plaintiffs have not and cannot establish that they were
 8 deprived of any right to familial association. Therefore, the court must dismiss plaintiffs'
 9 § 1983 claim for violation of Due Process.³

10 **c. Monell-based Claims**

11 "A government entity may not be held liable under 42 U.S.C. § 1983, unless a
 12 policy, practice, or custom of the entity can be shown to be a moving force behind a
 13 violation of constitutional rights." Dougherty v. City of Covina, 654 F.3d 892, 900 (9th Cir.
 14 2011) (citing Monell v. Dep't of Soc. Servs. of the City of New York, 436 U.S. 658, 694
 15 (1978)). "In order to establish liability for governmental entities under Monell, a plaintiff
 16 must prove '(1) that [the plaintiff] possessed a constitutional right of which [s]he was
 17 deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate
 18 indifference to the plaintiff's constitutional right; and, (4) that the policy is the moving force
 19 behind the constitutional violation.'" Dougherty, 654 F.3d at 900 (citation omitted).

20 Within the second prong, "There are three ways to show a policy or custom of a
 21 municipality: (1) by showing a longstanding practice or custom which constitutes the
 22 standard operating procedure of the local government entity; (2) by showing that the
 23 decision-making official was, as a matter of state law, a final policymaking authority
 24 _____

25 ² It is also difficult to understand the foundation of plaintiffs' asserted deprivation given
 26 that they prevailed in the very trial in which they argue they were denied Due Process.
 SAC ¶ 30.

27 ³ By this ruling, the court does not countenance allegations of false statements made in
 28 the course of legal and administrative proceedings. The allegations, rather, simply do not
 suffice to establish a Due Process violation. If defendants made false representations in
 the course of litigation, the remedy was to be sought in that litigation or through perjury
 charges, not through this separate federal suit.

1 whose edicts or acts may fairly be said to represent official policy in the area of decision;
 2 or (3) by showing that an official with final policymaking authority either delegated that
 3 authority to, or ratified the decision of, a subordinate.” Menotti v. City of Seattle, 409 F.3d
 4 1113, 1147 (9th Cir. 2005) (internal quotation marks and citation omitted).

5 At the pleading stage, “it is not enough for a § 1983 plaintiff merely to identify
 6 conduct properly attributable to the municipality.” Bd. of Cnty. Comm’rs v. Brown, 520
 7 U.S. 397, 404 (1997). Rather, the plaintiff must “demonstrate that, through its deliberate
 8 conduct, the municipality was the ‘moving force’ behind the injury alleged.” Id. at 404. A
 9 plaintiff’s Monell claim “may not simply recite the elements of a cause of action, but must
 10 contain sufficient allegations of underlying facts” to provide the opposing party with fair
 11 notice so it can defend itself—merely alleging that a policy exists does not suffice. See
 12 AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012) (quoting Starr
 13 v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)).

14 Here, plaintiffs’ claim fails on the first prong of the Monell test. As discussed
 15 above, plaintiffs did not possess a constitutional right to participate in the child custody
 16 proceedings or a constitutional right to familial association, and they were accordingly not
 17 deprived of Due Process.

18 For the second prong, plaintiffs allege the existence of 10 potential policies that
 19 caused the alleged violations of their constitutional rights. SAC ¶ 54. Plaintiffs’
 20 descriptions do not target any particular policy in existence, however, and none of them
 21 provide sufficient allegations of underlying facts that would enable the opposing party to
 22 defend itself. None of the alleged policies provide sufficient allegations of underlying
 23 facts to even support a plausible claim. For example, plaintiffs allege that the County
 24 maintains:

- 25 • a “policy that does not protect foster parents from religious discrimination,”
- 26 • a “policy of deciding to remove children from foster parents’ care without
- 27 conducting a best-interest analysis,”
- 28 • a “policy that does not require its staff to act in the best-interests of children for

1 whom they are responsible,”

- 2 • a “policy of using trickery, duress, fabrication and false testimony, false evidence,
3 and misrepresentation of law (Judicial Deception) in preparing and presenting
4 reports and documents to the Court,” and the converse,
- 5 • a “policy that does not require its employees not to use trickery, duress, fabrication
6 and false testimony, false evidence, and misrepresentation of law (Judicial
7 Deception) in preparing and presenting reports and documents to the Court.”

8 SAC ¶ 54. The contentions that these policies exist are not supported by factual
9 allegations. The contentions that these policies exist are nonsensical, contradictory, and
10 appear to be entirely concocted by plaintiffs. These cursory assertions are insufficient to
11 plausibly plead that the County has a policy or custom designed to violate the law in the
12 ways plaintiffs advance. The SAC does not contain factual allegations that would support
13 an inference tying defendants’ conduct to a widespread custom or practice by County
14 employees, and the Monell claim accordingly fails on the second prong.

15 There is no need to reach the third or fourth prongs. For both the failure to allege
16 a constitutional deprivation and the failure to plausibly allege the existence of a policy or
17 practice, plaintiffs’ third cause of action, seeking to impose § 1983 liability on the County
18 for alleged violations of their constitutional rights under Monell, must be dismissed.

19 **d. Section 1985**

20 Plaintiffs aver that defendants engaged in a conspiracy to deprive them of their
21 civil rights, giving rise to a claim under Title 42 U.S.C. § 1985. The elements of
22 conspiracy under § 1985(3) are (1) a conspiracy; (2) “for the purpose of depriving . . . any
23 person or class of persons of the equal protection of the laws, or of equal privileges and
24 immunities under the laws”; (3) an “act in furtherance” of the conspiracy; and (4) an injury
25 or deprivation of rights. Life Ins. Co. of N. Am. v. Reichardt, 591 F.2d 499, 502 (9th Cir.
26 1979) (quoting Griffin v. Breckenridge, 403 U.S. 88, 102–03 (1971)). Because the
27 purpose of § 1985 is “only to protect against deprivations of equal protection,” Hickman
28 v. Block, 81 F.3d 168 (9th Cir. 1996), a plaintiff must also show “[5] some racial, or

1 perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the
 2 conspirators' action" and [6] that the conspiracy "aimed at interfering with rights" that are
 3 "protected against private, as well as official, encroachment," Bray v. Alexandria
 4 Women's Health Clinic, 506 U.S. 263, 267–68 (1993). "A mere allegation of conspiracy
 5 without factual specificity is insufficient to support a claim." Sanchez v. City of Santa
 6 Ana, 936 F.2d 1027, 1039 (9th Cir. 1990).

7 Here, plaintiffs fail to plausibly allege a conspiracy to deprive anyone "of the equal
 8 protection of the laws, or of equal privileges and immunities under the laws." Life Ins. Co.
 9 of N. Am., 591 F.2d at 502. Plaintiffs do not advance any equal protection claim. They
 10 do not identify a discriminatory animus on the part of defendants. Plaintiffs imply animus
 11 on the basis of Sanclemente's religious questioning (SAC ¶ 21), but as discussed above,
 12 they do not establish a nexus between Sanclemente's religious questioning and the
 13 alleged harm they suffered throughout the administrative and legal proceedings to
 14 preserve their custody of the child. Even if the court accepts the laundry list of
 15 misleading acts offered as "acts in furtherance" of a conspiracy (see, e.g., SAC ¶ 46),
 16 plaintiffs fail to establish that these were aimed at interfering with a constitutional right.
 17 Plaintiffs' conclusory allegation of conspiracy (SAC ¶ 49) lacks factual specificity and is
 18 thus insufficient to support a claim. Plaintiffs' § 1985 claim must also be dismissed.

19 3. Supplemental Jurisdiction

20 The court, under Title 28 U.S.C. § 1367(c), may decline to exercise supplemental
 21 jurisdiction under circumstances that include when "the district court has dismissed all
 22 claims over which it ha[d] original jurisdiction[.]" 28 U.S.C. § 1367(c)(3). As the court has
 23 dismissed the federal claims before it, which provided the only basis for its original
 24 jurisdiction, the court exercises its discretion to decline jurisdiction over the remaining
 25 state law claims. The court thus does not reach defendants' special motion to strike
 26 under California Code of Civil Procedure section 425.16, the "anti-SLAPP" statute.

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CONCLUSION

For the reasons stated above, the court GRANTS defendants' motion to dismiss for failure to state a claim. The SAC fails to comply with the court's prior order and does not correct the deficiencies noted in that order, it fails to provide a short and plain statement of facts giving rise to defendants' liability as required by Rule 8, and it fails to state a claim for any of the causes of action arising under federal law. The federal claims are hereby DISMISSED WITH PREJUDICE, and the state law claims are dismissed without prejudice to filing in state court.

IT IS SO ORDERED.

Dated: November 10, 2022

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON
United States District Judge

United States District Court
Northern District of California

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