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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

KENNETH L. CAMPBELL,  
Plaintiff,  
v.  
BARACK OBAMA, et al.,  
Defendants.

Case No. 14-cv-03071-BLF

**ORDER GRANTING REMAINING DEFENDANTS' MOTIONS TO DISMISS (ECF 129, 130, 131, 155) WITHOUT LEAVE TO AMEND; CONSTRUING MOTION TO DISMISS BROUGHT BY PREVIOUSLY DISMISSED DEFENDANT MP SHORELINE (ECF 145) AS AN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND; TERMINATING AS MOOT MOTION TO DISMISS BROUGHT BY PREVIOUSLY DISMISSED DEFENDANTS LOS ALTOS, ALVAREZ, AND BRIAN (ECF 133); DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND (ECF 126); DENYING PLAINTIFF'S OTHER MOTIONS AND REQUESTS (ECF 140, 165, 176, 180, 193, 194); AND DISMISSING ACTION WITH PREJUDICE**

Plaintiff Kenneth L. Campbell, proceeding pro se, sues Barack Obama, President of the United States, and many others for a variety of claims which include a constitutional challenge to Medicare's statutory 100-day limitation on skilled nursing facility ("SNF") care; a request to abolish the State Bar of California on the ground that all attorneys are dishonest; and claims of elder abuse and disability discrimination against Kaiser Foundation Health Plan, Inc.

This order addresses motions to dismiss brought by all defendants remaining in the case (ECF 129, 130, 131, 155); motions to dismiss brought by two defendants previously dismissed

1 from the case (ECF 133, 145); Campbell’s motion for leave to amend his pleading to add new and  
2 previously dismissed defendants (ECF 126); and several other motions and requests by Campbell  
3 (ECF 140, 165, 176, 180, 193, 194). For the reasons discussed below, the motions to dismiss  
4 brought by all remaining defendants (ECF 129, 130, 131, 155) are GRANTED WITHOUT  
5 LEAVE TO AMEND; the motion to dismiss brought by previously dismissed defendant MP  
6 Shoreline (ECF 145) is construed as an opposition to Campbell’s motion for leave to amend; the  
7 motion to dismiss brought by previously dismissed defendants Los Altos Sub Acute, Alvarez, and  
8 Brian (ECF 133) is terminated as MOOT; Campbell’s motion for leave to amend to add new and  
9 previously dismissed defendants (ECF 126) is DENIED; Campbell’s remaining motions and  
10 requests (ECF 140, 165, 176, 180, 193, 194) are DENIED; and the action is DISMISSED WITH  
11 PREJUDICE.

12 **I. BACKGROUND**

13 Original Complaint

14 Campbell, proceeding pro se, filed the complaint in this action on July 7, 2014, suing nine  
15 sets of defendants: (1) Barack Obama, President of the United States; (2) Sylvia Burwell,  
16 Secretary of Health and Human Services; (3) Kaiser Foundation Health Plan, Inc. and Venesha  
17 Clacher; (4) Los Altos Sub Acute and Rehabilitation Center, J. Alvarez, and Mark Brian; (5) SC  
18 County Welfare and Robert Brizuela; (6) SC County Welfare and Patricia Melenudo; (7) MP  
19 Shoreline Associates dba Shorebreeze Apartment and Martha Ray; (8) Senior Adults Legal  
20 Assistance (“SALA”) and Michele Schroeder; and (9) the State Bar of California. *See* Compl.,  
21 ECF 1.

22 Complaint Dismissed With Leave To Amend In Part

23 All defendants filed motions to dismiss except for Kaiser, which answered, *see* Kaiser’s  
24 Answer, ECF 84; Clacher (a Kaiser consultant), who did not respond; and Brizuela, who was not  
25 served, *see* Unexecuted Summons, ECF 77. Magistrate Judge Grewal, to whom the case then was  
26 assigned, heard the motions to dismiss on December 2, 2014. *See* Minute Entry, ECF 104. He  
27 dismissed the following defendants on the record at the hearing: MP Shoreline Associates, Martha  
28 Ray, Los Altos Sub Acute, J. Alvarez, Mark Brian, SC Social Service, Robert Brizuela, and

1 Patricia Melenudo.<sup>1</sup> *Id.* The docket reflects that those defendants were terminated from the action  
2 on December 2, 2014.

3 Judge Grewal issued a written order granting the motions to dismiss filed by Obama,  
4 Burwell, SALA, Schroeder, and the State Bar, with leave to amend. *See* Order Granting Motions  
5 to Dismiss and Denying Motions for Removal, Joinder and Vacation and Withdrawal, ECF 105.  
6 As noted above, Kaiser had answered the original complaint and Clacher had not responded.

7 Proposed Amendment to Complaint

8 On August 24, 2015, Campbell filed a “Proposed Amendment to Complaint.” *See*  
9 Proposed Amendment to Compl., ECF 111. The case was reassigned to the undersigned judge  
10 shortly thereafter, on September 1, 2015. This Court struck the “Proposed Amendment to  
11 Complaint” as defective in two respects. *See* Order Striking Campbell’s Proposed Amendment to  
12 Complaint, ECF 119. First, the Proposed Amendment to Complaint incorporated the original  
13 complaint, which violated the Court’s Civil Local Rules. *See id.* Second, it added defendants not  
14 named in the original complaint, which was outside the scope of the leave to amend granted by  
15 Judge Grewal. *See id.* The Court granted Campbell an extension of time to file an amended  
16 complaint that conformed to the Court’s Civil Local Rules and Judge Grewal’s prior order. *See id.*

17 Operative Second Amended Complaint

18 Campbell timely filed the operative Second Amended Complaint (“SAC”) on September  
19 24, 2016. *See* SAC, ECF 126. The SAC names as defendants Obama, Burwell, Kaiser, SALA,  
20 Schroeder, and the State Bar. *See* SAC at 2-3. The SAC does not name Clacher, and the docket  
21 reflects that she has been terminated from the action.<sup>2</sup>

22 The SAC also requests leave to add the following new or previously dismissed defendants:  
23 Julian Castro, Secretary of Housing and Urban Development (new); MP Shoreline Associates<sup>3</sup>

24 \_\_\_\_\_  
25 <sup>1</sup> Judge Grewal also dismissed on the record “Martyn Ray,” who does not appear to have been  
26 named in the original complaint.

27 <sup>2</sup> The docket indicates that Clacher was terminated on August 24, 2015, the date that the Proposed  
28 Amendment to Complaint was filed, presumably because Clacher did not appear in the caption or  
in the listing of defendants.

<sup>3</sup> The SAC actually seeks to add “SP” Shoreline Associates instead of “MP” Shoreline Associates.

1 (previously dismissed); Martyn Ray (previously dismissed); Maria Ivanchuk (new); Francisco  
2 Aquilar (new); Linda Wiley (new); Lidia Breslavez (new); Notashia Zaydenberg (new);  
3 Magistrate Judge Grewal (new); Karen B. Goldberg (new); Guy J. Caputo (new); and Karen B.  
4 Goldberg (new). *See* SAC at 3-4. The Court construes this portion of Campbell's SAC as a  
5 motion for leave to amend his pleading under Federal Rule of Civil Procedure 15(a).

6 Current Motions

7 All defendants remaining in the action have filed motions to dismiss the SAC. One motion  
8 has been filed on behalf of Obama and Burwell (ECF 131), a second on behalf of Kaiser (ECF  
9 155), a third on behalf of SALA and Schroeder (ECF 130), and a fourth on behalf of the State Bar  
10 (ECF 129).

11 MP Shoreline Associates, a previously dismissed defendant that Campbell now seeks to  
12 add, also has filed a motion to dismiss (ECF 145). The Court construes that motion as an  
13 opposition to Campbell's motion for leave to amend.

14 Los Altos Sub Acute and Rehabilitation Center, J. Alvarez, and Mark Brian, also  
15 previously dismissed defendants, have filed a motion to dismiss as well (ECF 133). Those  
16 defendants were dismissed from the action by Judge Grewal on December 2, 2014, and terminated  
17 from the docket on that date, and Campbell has neither named them as defendants in the SAC nor  
18 sought leave to add them back into the action. *See* SAC at 2-4. Accordingly, the motion to  
19 dismiss filed by Los Altos, Alvarez, and Brian is terminated as MOOT.

20 In addition to the motion for leave to amend presented in the body of Campbell's SAC  
21 (ECF 126), Campbell has filed the following motions and requests: Notice of Advisement (ECF  
22 140); Notice of Advisement and Discovery Request (ECF 165); Rebuttal to Los Altos Sub Acute  
23 and Application for Imposition of Sanctions (ECF 176); Amended Notice of Motions:  
24 Memorandum of Points and Authorities in Support of Plaintiff's Amended Complaint (ECF 180);  
25 Discovery Request (ECF 193); and Discovery Request (ECF 194).

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The Court presumes that to be a typographical error.

1       **II.    MOTIONS TO DISMISS FILED BY ALL REMAINING DEFENDANTS**

2           The Defendants remaining in this case – Obama, Burwell, Kaiser, SALA, and Schroeder –  
3 seek dismissal of the claims against them under Federal Rule of Civil Procedure 12(b)(6).<sup>4</sup> The  
4 SAC alleges subject matter jurisdiction based upon federal question. See SAC at 4. The Court  
5 therefore begins its analysis with Campbell’s federal claims, because absent viable federal claims  
6 the Court declines to exercise supplemental jurisdiction over Campbell’s state law claims. See 28  
7 U.S.C. § 1367(c); *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (“The Supreme  
8 Court has stated, and we have often repeated, that ‘in the usual case in which all federal-law  
9 claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise  
10 jurisdiction over the remaining state-law claims.’”) (quoting *Carnegie–Mellon Univ. v. Cohill*, 484  
11 U.S. 343, 350 n. 7 (1988)) (ellipses in original). As discussed below, the Court concludes that  
12 Campbell has not alleged a viable federal claim. Thus the Court declines to exercise supplemental  
13 jurisdiction over Campbell’s state law claims.

14           **A.    Legal Standard**

15           “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a  
16 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*  
17 *Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d  
18 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts  
19 as true all well-pled factual allegations and construes them in the light most favorable to the  
20 plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the  
21 Court need not “accept as true allegations that contradict matters properly subject to judicial  
22 notice” or “allegations that are merely conclusory, unwarranted deductions of fact, or  
23 unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)  
24 (internal quotation marks and citations omitted). While a complaint need not contain detailed

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26           <sup>4</sup> While all Defendants move to dismiss under Rule 12(b)(6), some Defendants also move under  
27 Rule 12(b)(1) (lack of subject matter jurisdiction), Rule 12(e) (more definite statement), or Rule  
28 12(f) (motion to strike). The Court need not address these additional grounds for relief in light of  
its conclusion that all claims are subject to dismissal without leave to amend under Rule 12(b)(6)  
for failure to state a claims upon which relief may be granted.

1 factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to  
2 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.  
3 Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the  
4 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

5 **B. President Obama and Secretary Burwell (ECF 131)**

6 **1. Secretary Burwell**

7 Campbell asserts federal claims against Sylvia Burwell, Secretary of Health and Human  
8 Services, based upon her final decision denying his Medicare claim for continued SNF care  
9 beyond the 100 days permitted by the Medicare Act. The Medicare Act, which sets forth a federal  
10 health insurance program for the elderly and disabled, provides for limited coverage of SNF care  
11 following a qualifying hospital inpatient stay. *See* 42 U.S.C. § 1395d(a)(2)(A). As relevant here,  
12 Medicare will cover up to 100 days of SNF care during a “spell of illness.” *Id.*

13 Campbell was a member of Kaiser Permanente’s Senior Advantage Medicare Plan.  
14 Decision of Medicare Appeals Council, Exh. 1 to De Chazal Decl., ECF 131-1.<sup>5</sup> He had a hospital  
15 inpatient stay in March 2012 relating to pain and swelling in his left foot. *Id.* He then was  
16 transferred to a skilled nursing facility. *Id.* Some months later, he was informed that he had  
17 exhausted the 100 days of SNF care provided by Medicare in June 2012. *Id.* Following  
18 Campbell’s administrative appeal of that decision, an Administrative Law Judge (“ALJ”) issued  
19 an unfavorable decision based upon a determination that Campbell had received the statutorily  
20 required 100 days of SNF care. *Id.* The ALJ’s decision was affirmed by the Medicare Appeals  
21 Council, making the ALJ’s decision the final decision of the Secretary of Health and Human  
22 Services. *Id.*

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24 <sup>5</sup> The Court takes judicial notice of the Decision of the Medicare Appeals Council. *See United*  
25 *States v. 14.02 Acres*, 547 F.3d 943, 955 (9th Cir. 2008) (judicial notice may be taken of public  
26 records, including records of administrative bodies); *Papai v. Harbor Tug and Barge Co.*, 67 F.3d  
27 203, 207 n.5 (9th Cir. 1995), *rev’d on other grounds*, 520 U.S. 548 (1997) (taking judicial notice  
28 of a decision and order of an Administrative Law Judge). The Decision of the Medicare Appeals  
Council also may be considered under the incorporation by reference doctrine, as Campbell refers  
to it expressly in his SAC. *See Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)  
(incorporation by reference doctrine permits a court to consider documents referenced in but not  
physically attached to the complaint).

1 Campbell does not challenge the determination that he received the statutory maximum of  
2 100 days of SNF care. Instead, he asserts that the 100-day limit, irrespective of medical condition,  
3 violates the Eighth and Thirteenth Amendments to the United States Constitution. SAC at 2, 9-10.  
4 The Eighth Amendment provides that: “Excessive bail shall not be required, nor excessive fines  
5 imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. Campbell  
6 appears to be invoking the “cruel and unusual punishments” clause. However, the Eighth  
7 Amendment applies only to punishments imposed after “a formal adjudication of guilt in  
8 accordance with due process of law.” *In re Grand Jury Proceedings*, 33 F.3d 1060, 1062 (9th Cir.  
9 1994). The Eighth Amendment simply is not applicable in the circumstances at issue here. The  
10 Thirteenth Amendment prohibits “slavery” and “involuntary servitude.” Campbell does not allege  
11 how the Thirteenth Amendment relates to the 100-day limitation at issue in this case.

12 The SAC appears to allege an alternative claim against Burwell which is characterized as  
13 “a right to die under the laws and Constitution of United States.” SAC at 2, 18. Campbell has not  
14 identified, and the Court has not discovered, any authority giving rise to a “right to die” claim  
15 under federal law. In those states permitting medically assisted suicide, difficult decisions  
16 regarding end of life options are made by the patient, his family, and his physicians. The federal  
17 government has no role in such decisions.

18 Burwell’s motion to dismiss is GRANTED as to all claims.

19 **2. President Obama**

20 Campbell sues President Obama on the basis of his “direct supervision and control” over  
21 the Department of Housing and Urban Development (“HUD”). SAC at 8. Campbell alleges that  
22 Obama and HUD have “aided, abetted and encouraged” Campbell’s landlord and others to  
23 discriminate against Campbell and to deprive him of federally protected rights. *Id.* Campbell may  
24 also be suing Obama with respect to the Medicare 100-day limit discussed above. SAC at 10.  
25 Campbell has not alleged any specific conduct on the part of President Obama and thus has failed  
26 to state a claim against him. Moreover, Campbell sues Obama solely for conduct taken in his  
27 official capacity as President. To the extent that Campbell seeks money damages, Obama “is  
28 entitled to absolute immunity from damages liability predicated on his official acts.” *Nixon v.*

1 *Fitzgerald*, 457 U.S. 731, 749 (1982).

2 Obama’s motion to dismiss is GRANTED as to all claims.

3 **C. Kaiser (ECF 155)**

4 The bases for Campbell’s claims against Kaiser are unclear. The only potential federal  
5 claim asserted against Kaiser is the constitutional challenge to the Medicare 100-day limit on SNF  
6 care discussed above. To the extent that claim is asserted against Kaiser, it fails for the reasons  
7 discussed above.<sup>6</sup>

8 Campbell also asserts a state law claim of elder abuse against Kaiser under California’s  
9 Elder Abuse Act, California Welfare & Institutions Code § 15600 et seq. The Court declines to  
10 exercise supplemental jurisdiction over that claim because, as discussed herein, all of Campbell’s  
11 federal claims are subject to dismissal with prejudice. The Court notes, however, that Campbell  
12 does not allege any facts in support of his elder abuse claim other than Kaiser’s denial of SNF care  
13 beyond the 100-day limit. Kaiser’s compliance with the Medicare Act is insufficient, standing  
14 alone, to state a claim of elder abuse. The Court also observes that Kaiser’s statute of limitations  
15 argument appears to be well-taken. Campbell alleges that he received notice of the coverage  
16 denial “effective 6/25/12,” SAC at 12, and he did not file suit until more than two years later on  
17 July 7, 2014. *See Benun v. Sup. Ct.*, 123 Cal. App. 4th 113, 125-26 (2004) (applying two-year  
18 statute of limitations set forth in California Code of Civil Procedure § 335.1 to an Elder Abuse Act  
19 claim based on an allegation that health care providers recklessly or intentionally neglected to  
20 provide adequate care). Thus even if the Court were to exercise supplemental jurisdiction over the  
21 elder abuse claim, it would grant Kaiser’s motion to dismiss for failure to state a claim upon which  
22 relief may be granted.

23 Kaiser’s motion to dismiss is GRANTED as to all claims.

24 **D. SALA and Schroeder (ECF 130)**

25 Campbell sues SALA and its supervising attorney, Michele Schroeder, because SALA  
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27 <sup>6</sup> Additionally, it does not appear from the face of the SAC or matters judicially noticeable that  
28 Kaiser is a state or federal actor that would be subject to suit under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).



1 declined to represent him in administrative appeals regarding Medicare and Medi-Cal benefits.  
2 Campbell attaches to the SAC a letter from SALA dated June 23, 2014, explaining SALA’s  
3 reasons for declining representation, including SALA’s lack of resources to mount a constitutional  
4 challenge to Medicare’s 100-day limit on SNF care and a potential conflict of interest. Campbell  
5 alleges no other facts against SALA and Schroeder. As Judge Grewal observed in his prior order  
6 dismissing the claims against SALA and Schroeder with leave to amend, these facts are  
7 insufficient to suggest that the denial of representation was for an improper purpose.

8 The motion to dismiss brought by SALA and Schroeder is GRANTED as to all claims.

9 **E. State Bar (ECF 129)**

10 Campbell sues the State Bar of California, asserting that it “tends to encourage & promote  
11 dishonesty including untrustworthiness among members,” and that “generally said attorney  
12 members are dishonest & untrustworthy, and thereby unqualified to practice law.” SAC at 16. As  
13 examples of the unfitness of California attorneys, Campbell states that the court-appointed  
14 attorneys who represented him in an armed robbery prosecution were rewarded by appointment as  
15 state court judges.<sup>7</sup> *Id.* Campbell also alleges that the State Bar declared Karen B. Goldberg, a  
16 proposed new defendant in this action, to be an attorney even though she did not attend or  
17 graduate law school. *Id.*

18 The State Bar moves to dismiss on the ground that Campbell’s claims are barred by the  
19 Eleventh Amendment. “The Eleventh Amendment bars suits which seek either damages or  
20 injunctive relief against a state, an ‘arm of the state,’ its instrumentalities, or its agencies.”  
21 *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995) (citation omitted). A state may waive its  
22 immunity and, in some circumstances, Congress may abrogate it by legislation. *Virginia Office*  
23 *for Protection and Advocacy v. Stewart*, 131 S. Ct. 1632, 1638 (2011). However, absent such  
24 waiver or legislation, the state is absolutely immune from suit in federal court. *Id.*

25 The State Bar of California is a state agency for Eleventh Amendment purposes. *See Hirsh*  
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27 \_\_\_\_\_  
28 <sup>7</sup> While not clear from Campbell’s allegations, the armed robbery prosecution to which he refers  
appears to have been prosecuted approximately forty years ago. *See People v. Superior Court*  
*(Campbell)*, 51 Cal. App. 3d 459 (1975).

1 *v. Justices of the Sup. Ct. of the State of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995); *Delacruz v. State*  
2 *Bar of Cal.*, 5:14-cv-05336-EJD, 2015 WL 5697365, at \*3 (N.D. Cal. Sept. 29, 2015). Thus it is  
3 immune from suit for money damages or injunctive relief. Judge Grewal previously dismissed  
4 Campbell’s claims against the State Bar on Eleventh Amendment grounds.

5 The motion to dismiss brought by the State Bar is GRANTED as to all claims.

6 **III. LEAVE TO AMEND**

7 Having determined that all of Campbell’s existing claims are subject to dismissal, the  
8 Court must decide whether to grant leave to amend those claims. Additionally, Campbell seeks  
9 leave to amend his pleading to add new and previously dismissed defendants to the action.

10 In deciding whether to grant leave to amend following dismissal, or pursuant to Federal  
11 Rule of Civil Procedure 15(a), the Court must consider the factors set forth by the Supreme Court  
12 in *Foman v. Davis*, 371 U.S. 178 (1962), and discussed at length by the Ninth Circuit in *Eminence*  
13 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048 (9th Cir. 2009). A district court ordinarily must grant  
14 leave to amend unless one or more of the *Foman* factors is present: (1) undue delay, (2) bad faith  
15 or dilatory motive, (3) repeated failure to cure deficiencies by amendment, (4) undue prejudice to  
16 the opposing party, and (5) futility of amendment. *Eminence Capital*, 316 F.3d at 1052. “[I]t is  
17 the consideration of prejudice to the opposing party that carries the greatest weight.” *Id.* However  
18 a strong showing with respect to one of the other factors may warrant denial of leave to amend.  
19 *Id.* Moreover, the proposed addition of new claims unrelated to the claims and defenses in the  
20 original complaint may be grounds for denial of leave to amend. *See, e.g., Morongo Band of*  
21 *Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (denial of leave to amend not abuse  
22 of discretion where proposed new claims would have “greatly altered the nature of the litigation”  
23 and required defendants to undertake “an entirely new course of defense”); *Jackson v. Bank of*  
24 *Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990) (affirming denial of leave to amend where additional  
25 claims “advance different legal theories and require proof of different facts”).

26 **A. Dismissed Claims**

27 Turning first to the Campbell’s existing claims, which are subject to dismissal for the  
28 reasons discussed above, the Court concludes that leave to amend must be denied based upon

1 Campbell's failure to cure the defects pointed out in Judge Grewal's prior order as well as the  
2 futility of allowing further amendment. Judge Grewal's prior order dismissing Campbell's  
3 original complaint highlighted several pleading defects which Campbell failed to address in his  
4 SAC. Campbell's briefing gives no indication that he could amend to state a viable federal claim  
5 even if given further leave to amend. Campbell's claims against Secretary Burwell are futile  
6 because the Eighth and Thirteenth Amendments simply do not provide any basis for challenging  
7 Medicare's 100-day rule. President Obama and the State Bar are immune from suit. Campbell  
8 has failed to allege facts sufficient to state a claim against Kaiser, SALA, or Schroeder, and his  
9 briefing does not suggest that he could do so.

10 Leave to amend therefore is DENIED as to all dismissed claims.

11 **B. Campbell's Motion for Leave to Amend to Add Defendants (ECF 126)**

12 Campbell seeks leave to amend to add new and previously dismissed defendants to the  
13 action. SAC at 3-4. Specifically, Campbell seeks leave to add: Julian Castro, Secretary of  
14 Housing and Urban Development (new); MP Shoreline Associates (previously dismissed); Martyn  
15 Ray (previously dismissed); Maria Ivanchuk (new); Francisco Aquilar (new); Linda Wiley (new);  
16 Lidia Breslavez (new); Notashia Zaydenberg (new); Magistrate Judge Grewal (new); Karen B.  
17 Goldberg (new); Guy J. Caputo (new); and Karen B. Goldberg (new). *Id.*

18 The SAC contains no allegations against Secretary Castro. Thus amendment is not  
19 warranted as to him.

20 MP Shoreline was dismissed from the action by Judge Grewal without leave to amend.  
21 Campbell did not seek reconsideration of that ruling. The SAC contains conclusory allegations  
22 that MP Shoreline, which appears to be Campbell's landlord, has engaged in ongoing elder abuse  
23 and disability discrimination. *See* SAC at 14-15. The SAC makes reference to an "Eviction  
24 Notice" issued by MP Shoreline, but then cites to a "Tenant Misconduct Notice," which is an  
25 email that Plaintiff wrote to the manager of his apartment complex complaining that another tenant  
26 had left a shopping cart and boxes in the hallway. The Tenant Misconduct Notice is attached to  
27 the SAC. No "Eviction Notice" is attached. The SAC suggests that MP Shoreline conspired with  
28 several of its employees, including Martyn Ray, Maria Ivanchuk, and Francisco Aquilar, and

1 several of its tenants, including Linda Wiley, Lidia Breslavez, and Notashia Zaydenberg.  
2 However, the SAC and attached exhibits contain no specific facts regarding any of these  
3 individuals except for Linda Wiley, the tenant who allegedly left the shopping cart and boxes in  
4 the hallway. These allegations are insufficient to make out a plausible claim of disability  
5 discrimination or any other wrongful conduct that could rise to the level of a federal claim.

6 With respect to Judge Grewal, the SAC alleges that while presiding over this lawsuit Judge  
7 Grewal concealed his membership in the California State Bar and conspired with other defendants  
8 to commit elder abuse and disability discrimination. SAC at 18. “Judges and those performing  
9 judge-like functions are absolutely immune from damage liability for acts performed in their  
10 official capacities.” *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). As a result,  
11 Campbell could not state a viable claim against Judge Grewal for his conduct in this case.<sup>8</sup>

12 Finally, with respect to two separate individuals named Karen B. Goldberg and an  
13 individual named Guy J. Caputo, the SAC contains no allegations that would give rise to liability.  
14 The SAC contains no allegations whatsoever regarding Guy J. Caputo. The SAC likewise  
15 contains no allegations regarding Karen B. Goldberg, allegedly a resident of San Jose, California,  
16 although a letter attached to Campbell’s briefing indicates that Campbell was Ms. Goldberg’s  
17 “right-hand assistant at St. Joseph Bingo parlor,” and that Ms. Goldberg is dishonest and  
18 untrustworthy. *See* Letter to Judge Weinstein, ECF 152. The SAC alleges that a different Karen  
19 B. Goldberg, allegedly a resident of Los Angeles, California, has nothing to do with this case and  
20 is a complete stranger to Campbell. SAC at 5. These allegations do not establish the existence of  
21 a viable federal claim against Caputo or either of the Karen B. Goldbergs.

22 Because it does not appear that Campbell could allege viable federal claims against any of  
23 the proposed additional defendants, and because any such claims would be wholly unrelated to the  
24 claims currently alleged in the FAC, Campbell’s motion for leave to amend is DENIED.

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27 <sup>8</sup> Judicial immunity does not extend to actions for prospective injunctive relief. *Ashelman*, 793  
28 F.2d at 1075. However, Campbell does not and could not assert a claim for prospective injunctive  
relief given that Judge Grewal recused himself from this case and has no further involvement in it.

1       **IV.   CAMPBELL’S OTHER MOTIONS/REQUESTS (ECF 140, 165, 176, 180, 193, 194)**

2           In addition to the request for leave to amend to add defendants, Campbell has filed the  
3 following motions and requests: Notice of Advisement (ECF 140); Notice of Advisement and  
4 Discovery Request (ECF 165); Rebuttal to Los Altos Sub Acute and Application for Imposition of  
5 Sanctions (ECF 176); Amended Notice of Motions: Memorandum of Points and Authorities in  
6 Support of Plaintiff’s Amended Complaint (ECF 180); Discovery Request (ECF 193); and  
7 Discovery Request (ECF 194).

8           **A.    Notice of Advisement (ECF 140)**

9           Campbell has submitted a Notice of Advisement (Set I) (ECF 140), which contains  
10 information regarding an unlawful detainer action filed by MP Shoreline against an individual  
11 named Nina Sidorova. The Notice of Advisement does not request any action by the Court.

12          **B.    Notice of Advisement and Discovery Request (ECF 165)**

13          Campbell has submitted a Notice of Advisement and Discovery Request (ECF 165),  
14 seeking discovery from the California State Bar and one of the Karen B. Goldbergs that Campbell  
15 seeks to add as a defendant in this action. As an initial matter, it is inappropriate for Campbell to  
16 seek discovery by making a request to the Court. The discovery process is governed by Federal  
17 Rules of Civil Procedure 26 through 37, which explain how a party may seek discovery during  
18 civil litigation. Moreover, with respect to the particular discovery requested by Campbell, it is  
19 clear that there is no basis for the discovery because Campbell’s claims against the State Bar are  
20 dismissed without leave to amend and Campbell’s request to add Karen B. Goldberg as a  
21 defendant is denied.

22          Campbell’s Discovery Request is DENIED.

23          **C.    Rebuttal to Los Altos Sub Acute/Application for Sanctions (ECF 176)**

24          Campbell has submitted a document titled Rebuttal to Los Altos Sub Acute and  
25 Application for Imposition of Sanctions (ECF 176). Campbell complains that he was not served  
26 with the Motion to Dismiss filed by Los Altos Sub Acute, but only with the proposed order on that  
27 motion. Campbell requests sanctions against Los Altos Sub Acute. In response, Los Altos Sub  
28 Acute points to the Certificate of Service filed on October 13, 2015, stating that Campbell was

1 served with the Motion to Dismiss. *See* Certificate of Service, ECF 137. Both sides devote  
2 extensive briefing to the question of whether and when Campbell was served with Los Altos Sub  
3 Acute’s Motion to Dismiss and the briefing thereon.

4 Campbell requests sanctions under Federal Rule of Civil Procedure 11. Rule 11 provides  
5 for sanctions when an attorney or pro se party makes a representation to the Court for an improper  
6 purpose or without reasonable basis. *See* Fed. R. Civ. P. 11(b), (c). A motion for sanctions under  
7 Rule 11 must be served upon the opposing party at least twenty-one days before the sanctions  
8 motion is filed. Fed. R. Civ. P. 11(c)(2). The sanctions motion may not be filed if the contested  
9 paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within twenty-  
10 one days after service. *Id.* It does not appear from the record that Campbell complied with the  
11 Rule 11 notice provision. “Failure to provide the required notice precludes an award of Rule 11  
12 sanctions.” *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 826 (9th Cir. 2009).

13 While Campbell’s motion for sanctions references only Rule 11, his Rebuttal to Los Altos  
14 Sub Acute Response (ECF 187) requests sanctions under 28 U.S.C. § 1927. Section 1927 grants  
15 courts authority to impose sanctions on an attorney who unreasonably and vexatiously multiplies  
16 the proceedings. Campbell’s citation to a new statutory basis for his sanctions request in his  
17 Rebuttal is inappropriate and will not be considered by the Court.

18 Even if the Court were to consider Campbell’s sanctions request on the merits, that request  
19 would be denied. Campbell has not made an adequate showing that Defendants did not serve him  
20 with the Motion to Dismiss. While Campbell claims that he did not receive the Motion to  
21 Dismiss, Defendants have submitted a Certificate of Service stating that the Motion to Dismiss  
22 was mailed to him. Based upon this record, the Court cannot make a factual finding that  
23 Defendants engaged in any misconduct.

24 Campbell’s motion for sanction is DENIED.

25 **D. Amended Notice of Motions (ECF 180)**

26 Campbell has submitted an Amended Notice of Motions: Memorandum of Points and  
27 Authorities in Support of Plaintiff’s Amended Complaint (ECF 180). That document contains a  
28 request for disqualification, which this Court previously denied on January 21, 2016. *See* ECF

1 198. The document does not request other relief, but rather offers support for Campbell’s SAC.

2 **E. Discovery Requests (ECF 193, 194)**

3 Finally, Campbell has submitted two Discovery Requests, requesting “Admission of Facts  
4 and Genuineness of Documents” (ECF 193, 194). It is inappropriate for Campbell to seek  
5 discovery by making a request to the Court. The discovery process is governed by Federal Rules  
6 of Civil Procedure 26 through 37, which explain how a party may seek discovery during civil  
7 litigation.

8 Campbell’s Discovery Requests are DENIED.

9 **V. ORDER**

10 It is HEREBY ORDERED that:

- 11 (1) The motion to dismiss brought by Secretary Burwell and President Obama  
12 (ECF 131) is GRANTED WITHOUT LEAVE TO AMEND;
- 13 (2) The motion to dismiss brought by Kaiser (ECF 155) is GRANTED WITHOUT  
14 LEAVE TO AMEND;
- 15 (3) The motion to dismiss brought by SALA and Schroeder (ECF 130) is GRANTED  
16 WITHOUT LEAVE TO AMEND;
- 17 (4) The motion to dismiss brought by the State Bar of California (ECF 129) is  
18 GRANTED WITHOUT LEAVE TO AMEND;
- 19 (5) The motion to dismiss brought by MP Shoreline (ECF 145) is construed as  
20 opposition to Campbell’s motion for leave to amend;
- 21 (6) The motion to dismiss brought by Los Altos Sub Acute and Rehabilitation Center,  
22 J. Alvarez, and Mark Brian is terminated as MOOT;
- 23 (7) Campbell’s motion for leave to amend his pleading (ECF 126) is DENIED;
- 24 (8) Campbell’s Notice of Advisement (ECF 140) does not require action by the Court;
- 25 (9) Campbell’s Notice of Advisement and Discovery Request (ECF 165) is DENIED;
- 26 (10) Campbell’s Rebuttal to Los Altos Sub Acute and Application for Imposition of  
27 Sanctions (ECF 176) is DENIED;
- 28 (11) Campbell’s Amended Notice of Motions (ECF 180) does not require action by the

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Court;

(12) Campbell’s Discovery Requests (ECF 193, 194) are DENIED;

(13) All of Campbell’s federal claims are DISMISSED WITH PREJUDICE on the merits;

(14) The Court declines to exercise supplemental jurisdiction over Campbell’s state law claims. Those claims are DISMISSED WITH PREJUDICE from this action on that basis. This ruling is without prejudice to Campbell’s assertion of state law claims in state court; and

(15) The Clerk of the Court shall enter judgment and close the file.

Dated: March 18, 2016

  
BETH LABSON FREEMAN  
United States District Judge