

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GEOFFREY GRAY et al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION et al.,

Defendants.

CASE NO. 3:23-cv-05418-DGE

ORDER GRANTING IN PART
MOTION TO DISMISS (DKT. NO.
16)

I INTRODUCTION

This matter comes before the Court on Defendants’ motion to dismiss. (Dkt. No. 16.) For the reasons discussed herein, the Court GRANTS Defendants’ motion to dismiss Plaintiffs’ federal claims and declines to exercise supplemental jurisdiction over Plaintiffs’ state law claims. The Court DISMISSES Plaintiffs’ state law claims without prejudice.

1 **II BACKGROUND¹**

2 This instant matter is one of several recent cases challenging either the facial legality or
3 the implementation of Washington’s COVID-19 vaccine mandate for state employees.²
4 Plaintiffs are 60 former state employees who worked for various agencies within the Washington
5 State Department of Transportation (“WSDOT”). (Dkt. No. 1 at 2.) Nearly all Plaintiffs were
6 terminated on or around October 18, 2021 for failure to comply with the State’s COVID-19
7 vaccine mandate for state employees. (See Dkt. No. 1 at 7–23.) Most Plaintiffs sought either a
8 religious or medical exemption from the vaccine requirement. (*Id.*) Plaintiffs otherwise share
9 little in common with one another and worked in distinct roles for WSDOT such as Region
10 Biologist, Oiler, Maintenance Technician, and Senior Secretary.

11 Governor Jay Inslee issued Proclamation 21-14 (“Proclamation”) on August 9, 2021. (*Id.*
12 at 40.) The Proclamation, which was amended multiple times, required state employees to
13 become fully vaccinated against COVID-19 and directed state agencies to provide religious and
14 medical accommodations as required by the Washington Law Against Discrimination
15 (“WLAD”), Title VII of the Civil Rights Act of 1964 (“Title VII”), and the Americans with
16 Disabilities Act of 1990 (“ADA”). (*Id.* at 2, 40.) Plaintiffs assert that WSDOT and the
17 Individual Defendants³ refused to engage in the accommodation process anticipated by federal

18 _____
19 ¹ For purposes of this motion, the Court takes all well-pleaded factual allegations as true.

20 ² See, e.g., *Ahmann v. Washington State Dep’t of Transportation*, No. 2:23-CV-0140-TOR, 2023
21 WL 4847336 (E.D. Wash. July 28, 2023); *Rolovich v. Washington State Univ.*, No. 2:22-CV-
22 0319-TOR, 2023 WL 3733894 (E.D. Wash. May 30, 2023); *Pilz v. Inslee*, No. 3:21-CV-05735-
23 BJR, 2022 WL 1719172 (W.D. Wash. May 27, 2022); *Bacon v. Woodward*, No. 2:21-CV-0296-
24 TOR, 2021 WL 5183059 (E.D. Wash. Nov. 8, 2021); *Wise v. Inslee*, No. 2:21-CV-0288-TOR,
2021 WL 4951571 (E.D. Wash. Oct. 25, 2021).

³ The Individual Defendants are Roger Millar, Secretary of Transportation for WSDOT; Jeff
Pelton, Human Resources Director for WSDOT; Kimberly Monroe Flaig, Deputy Human
Resources Director for WSDOT; and Mark Nitchman, Staff Chief Engineer for WSDOT.

1 and state law and as directed by the Proclamation. (*Id.* at 41–45.) The Defendants approved
2 almost every plaintiff’s religious or medical exemption request,⁴ but then allegedly denied each
3 of these plaintiffs a reasonable accommodation. (*Id.* at 45.) According to Plaintiffs, “Defendants
4 sent the exact same form letter to each Plaintiff notifying them that their exemption was
5 approved but accommodation was denied. There was no discussion that took place after
6 Plaintiffs sent requests for an exemption but before notification that they would be terminated.”
7 (*Id.*) While Plaintiffs were offered the possibility of reassignment (*see* Dkt. No. 1-2 at 3),
8 Plaintiffs assert that “Plaintiffs who applied for a reassignment were universally either ignored,
9 sent a form denial without consideration, or weren’t even told about positions that were
10 available.” (Dkt. No. 1 at 80.) Some Plaintiffs were subsequently rehired to their same roles, but
11 with a religious accommodation from the vaccine requirement. (*Id.* at 85–87.) Others were
12 hired as outside contractors to perform “the same exact work” they did while employed for the
13 State. (Dkt. No. 1 at 50.) Plaintiffs also assert that certain Defendants, such as Defendant Flaig,
14 mocked, belittled, or otherwise showed hostility to those who refused to get vaccinated. (*See id.*
15 at 35, 97.)

16 Plaintiffs filed suit on May 9, 2023. Plaintiffs’ voluminous complaint contains a variety
17 of allegations, but their primary claims can be distilled as follows. Plaintiffs allege that the
18 Defendants violated WLAD under several theories such as failure to accommodate and disparate
19 impact. (*Id.* at 98–99). Plaintiffs also claim the Defendants violated their right to privacy under

20 _____
21 Plaintiffs do not specify whether they are suing the Individual Defendants in their official or
22 individual capacities.

22 ⁴ Five plaintiffs (Stacy Katyryniuk, Nicholas Auckland, Rodney Pelham, Todd Humphreys, and
23 Wendy Punch) did not submit an exemption request because they “were specifically told the
24 process was futile.” (*Id.* at 24.) Five other plaintiffs (Joe DeGroat, Ronald Vessey, Daniel
Hjelmeseth, Todd Humphreys, and David Lawton) were forced into early retirement in lieu of
termination. (*Id.*)

1 the Washington Constitution (*id.* at 99), violated their procedural due process rights under the
2 Fifth and Fourteenth Amendments and the Washington Constitution (*id.* at 102), violated the
3 federal and state Equal Protection Clause (*id.* at 103, 115), deprived the Plaintiffs of religious
4 freedom under the First Amendment (*id.* at 109) and the Washington Constitution (*id.* at 104),
5 engaged in wage theft (*id.* 105), violated the federal and state Contracts Clause (*id.* at 106),
6 engaged in arbitrary and capricious action (*id.* at 112), and engaged in tortious behavior in
7 violation of public policy (*id.* at 113).

8 On June 30, 2023, Defendants moved to dismiss all claims for failure to state a claim.
9 (Dkt. No. 16). Plaintiffs filed a response in opposition (Dkt. No. 18) and Defendants filed a
10 timely reply (Dkt. No. 19).

11 III DISCUSSION

12 A. Legal Standard

13 Defendants move to dismiss Plaintiffs’ claims for failure to state a claim pursuant to
14 Federal Rule of Civil Procedure 12(b)(6).

15 “Motions to dismiss brought under Rule 12(b)(6) may be based on either the lack of a
16 cognizable legal theory or the absence of sufficient facts alleged under such a theory.” *Clift v.*
17 *United States Internal Revenue Serv.*, 214 F. Supp. 3d 1009, 1011 (W.D. Wash. 2016). “To
18 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true,
19 to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
20 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While the Court must
21 accept as true all well-pleaded factual allegations in the complaint, the Court need not accept
22 conclusory legal assertions. *Id.*

23 B. Federal Constitutional Claims

24

1 **a. Sovereign Immunity**

2 Before addressing Plaintiffs’ federal constitutional claims, the Court must address
3 Defendants’ argument that Plaintiffs have failed to properly plead any constitutional claims
4 against WSDOT. (*See* Dkt. No. 16 at 20–21.)

5 Defendants argue that Plaintiffs’ federal constitutional claims against WSDOT fail
6 because WSDOT is not a “person” for purposes of 42 U.S.C. § 1983 and cannot be sued for
7 monetary damages. (*Id.* at 21.) Plaintiffs respond to this argument by conceding that their
8 claims for damages against WSDOT fail but argue they can amend their complaint to seek
9 reinstatement, a form of prospective relief available pursuant to *Ex Parte Young*. (Dkt. No. 18 at
10 28.) Defendants, in reply, point out that such an amendment would be futile as the *Ex Parte*
11 *Young* exception does not apply to a state or state agencies. (Dkt. No. 19 at 9.)

12 The Court agrees with Defendants. While Plaintiffs’ complaint only specifies that they
13 are bringing one of their federal constitutional claims pursuant to 42 U.S.C. § 1983 (*see* Dkt. No.
14 1 at 109), “a litigant complaining of a violation of a constitutional right must utilize 42 U.S.C.
15 § 1983.” *Azul-Pacífico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992). The
16 Court therefore construes the rest of Plaintiffs’ federal constitutional claims as brought pursuant
17 to § 1983, *see also Khazali v. Washington*, No. C23-0796JLR, 2023 WL 3866767, at *1 (W.D.
18 Wash. June 7, 2023). A state agency, however, is not a person for purposes of 42 U.S.C. § 1983,
19 *see Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989), and cannot be sued for
20 constitutional violations unless they affirmatively waive their sovereign immunity. *Ex Parte*
21 *Young* provides an exception to Eleventh Amendment sovereign immunity and permits
22 prospective injunctive and declaratory relief against state officials. *See Pennhurst State Sch. &*
23 *Hosp. v. Halderman*, 465 U.S. 89, 102 (1984). “*Ex parte Young*, however, only provides an
24

1 exception to Eleventh Amendment immunity when suit is brought against the officers
2 themselves, rather than against the state or its agencies.” *Am. C.L. Union of Nevada v. Nevada*
3 *Comm'n on Jud. Discipline*, 156 F. App’x 933, 934 (9th Cir. 2005); *see also Jenkins v.*
4 *Washington*, 46 F. Supp. 3d 1110, 1118 (W.D. Wash. 2014) (noting that the *Ex Parte Young*
5 “exception applies only where a suit is maintained against a state official”).

6 Plaintiffs do not argue that WSDOT waived its sovereign immunity and therefore fail to
7 state a claim against WSDOT on all of their federal constitutional claims. Since it is clear to the
8 Court that no amendment could resolve the fact that the State has not waived sovereign
9 immunity, the Court DISMISSES Plaintiffs’ federal constitutional claims against WSDOT
10 without prejudice. *See Freeman v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th Cir.
11 1999)

12 **b. Qualified Immunity**

13 Defendants next assert that the Individual Defendants are entitled to qualified immunity
14 for Plaintiffs’ federal constitutional claims.

15 “Qualified immunity ‘shields government officials performing discretionary functions
16 from liability for civil damages insofar as their conduct does not violate clearly established
17 statutory or constitutional rights of which a reasonable person would have known.’” *Saved Mag.*
18 *v. Spokane Police Dep’t*, 19 F.4th 1193, 1198 (9th Cir. 2021) (quoting *Scott v. Henrich*, 39 F.3d
19 912, 914 (9th Cir. 1994)), *cert. denied*, 142 S. Ct. 2711, (2022). Courts should use the “doctrine
20 of qualified immunity to dispose of ‘insubstantial claims at the earliest stage of litigation
21 possible.’” *A.D. v. California Highway Patrol*, 712 F.3d 446, 456 (9th Cir. 2013).

22 To overcome an assertion of qualified immunity, a plaintiff must plead “facts showing (1)
23 that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly
24

1 established’ at the time of the challenged conduct.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 735
2 (2011). A court may exercise its discretion to decide which of these prongs to address first. *See*
3 *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). “A right is ‘clearly established’ for purposes of
4 the second prong of the qualified immunity analysis if, ‘at the time of the challenged conduct, the
5 contours of [the] right are sufficiently clear that every reasonable official would have understood
6 that what he is doing violates that right.’” *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th
7 867, 886 (9th Cir. 2022) (alteration in original) (quoting *Al-Kidd*, 563 U.S. at 741).

8 **i. Free Exercise Claim**

9 Defendants argue that the facts as alleged “do not plausibly support the inference that
10 Plaintiffs were separated because of their religion.” (Dkt. No. 16 at 25.) Instead, Defendants
11 argue that Plaintiffs were terminated because of their failure to get vaccinated. Additionally,
12 Defendants argue that “the Individual Defendants’ implementation of the Proclamation does not
13 violate a clearly established right.” (*Id.* at 26.) Plaintiffs do not directly respond to Defendants’
14 qualified immunity arguments.

15 Assuming without deciding that the Individual Defendants’ behavior, as alleged, sufficed
16 to impinge on the Plaintiffs’ right to free exercise of their religion, Plaintiffs point to no case law
17 indicating that Defendants’ actions violated a clearly established right. Indeed, the caselaw
18 suggests the opposite. *See Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 25, 25 S.
19 Ct. 358, 361, 49 L. Ed. 643 (1905) (“[T]he police power of a state must be held to embrace, at
20 least, such reasonable regulations established directly by legislative enactment as will protect the
21 public health and the public safety.”); *Kheriaty v. Regents of the Univ. of California*, No. 22-
22 55001, 2022 WL 17175070, at *1 (9th Cir. Nov. 23, 2022) (holding that plaintiff failed to put
23 forward evidence to “establish a ‘fundamental right’ to be free from a vaccine mandate at a
24

1 workplace”); *Schmidt v. City of Pasadena*, No. LACV2108769JAKJCX, 2023 WL 4291440, at
2 *10 (C.D. Cal. Mar. 8, 2023) (“The current caselaw supports the view that there is no
3 fundamental right to be free of vaccination.”). Other courts have also held that the State did not
4 discriminatorily apply the Proclamation when it offered only the possibility of reassignment
5 rather than a plaintiff’s preferred accommodation to the vaccine requirement. *See Wise v. Inslee*,
6 No. 2:21-CV-0288-TOR, 2021 WL 4951571, at *3 (E.D. Wash. Oct. 25, 2021) (“[M]any of the
7 named Plaintiffs applied for and received an exemption based on their sincerely held religious
8 beliefs. Plaintiffs cannot demonstrate a discriminatory application solely because they disagree
9 with the availability of accommodations.”) (internal citations omitted).

10 The Court therefore finds the Individual Defendants are entitled to qualified immunity as
11 to Plaintiffs’ Free Exercise claims and DISMISSES these claims with prejudice.

12 **ii. Procedural Due Process Claim**

13 Defendants also assert they are entitled to qualified immunity on Plaintiffs’ procedural
14 due process claim. (Dkt. No. 16 at 28.) Defendants argue that Plaintiffs’ complaint fails to
15 plausibly articulate how the Individual Defendants violated Plaintiffs’ constitutional rights and
16 that Plaintiffs fail to identify a clearly established right that the Individual Defendants should
17 have known they were violating. (*Id.*)

18 Plaintiffs, in response, argue that Defendants failed to provide an opportunity for notice
19 and to be heard prior to their termination. (Dkt. No. 18 at 29.) Plaintiffs further argue that since
20 they were only dischargeable for cause they were entitled to their vested pensions and to “non-
21 sham *Loudermill* hearings.” (*Id.*) Finally, Plaintiffs argue that the Individual Defendants
22 violated Plaintiffs’ clearly established right to privacy under the Washington constitution and
23
24

1 that the Court should not look to federal law to determine what clearly established right was
2 violated. (*Id.* at 32–34.)

3 The Individual Defendants are entitled to qualified immunity as Plaintiffs have failed to
4 identify any right that was clearly established. Plaintiffs bizarrely argue that the Court should
5 find that the Individual Defendants violated Plaintiffs’ clearly established right to privacy under
6 the Washington Constitution. However, federal qualified immunity “is a doctrine of *federal*
7 common law and, as such, has no application to state law claims.” *See Cousins v. Lockyer*, 568
8 F.3d 1063, 1072 (9th Cir. 2009) (emphasis in original). Plaintiffs must assert that the Individual
9 Defendants violated a clearly established federal right in order to surmount their qualified
10 immunity defense. *See Lindsey v. Shalmy*, 29 F.3d 1382, 1384 (9th Cir. 1994) (noting that the
11 doctrine of qualified immunity does not apply to “clearly established *federal* rights.”) (emphasis
12 added). The canon of constitutional avoidance has no applicability here.

13 Plaintiffs’ focus on Washington state privacy law alone is enough to doom their argument
14 that qualified immunity does not apply to their procedural due process claim. However, even
15 were the Court to construe their brief as arguing that the Individual Defendants actions violated
16 Plaintiffs’ federal right to privacy, their argument would still fail. As Defendants point out, the
17 federal right to privacy is based on substantive, not procedural, due process. *See Marsh v. Cnty.*
18 *of San Diego*, 680 F.3d 1148, 1153 (9th Cir. 2012). Plaintiffs have therefore not pleaded that the
19 Individual Defendants have violated a clearly established federal right.⁵

21 ⁵ Plaintiffs’ repeated citations to *Loudermill* are also not sufficient to convince the Court that
22 Plaintiffs had clearly established due process rights not to be terminated for failing to become fully
23 vaccinated where the employer determined that a reasonable accommodation could not be made.
24 “Qualified immunity is not meant to be analyzed in terms of a ‘general constitutional guarantee,’
but rather the application of general constitutional principles ‘in a particular context.’” *Gordon v.*
Cnty. of Orange, 6 F.4th 961, 969 (9th Cir. 2021). *Loudermill* involved two plaintiffs with distinct

1 Plaintiffs argue they should instead be granted leave to amend their complaint should the
2 Court find they have failed to adequately state their federal due process claim, but granting leave
3 to amend this claim would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d
4 1034, 1041 (9th Cir. 2011). Plaintiffs have not adequately pled that any actions by the Individual
5 Defendants violated their federal due process rights. As other courts have recognized, “when a
6 policy is generally applicable, employees are not ‘entitled to process above and beyond the
7 notice provided by the enactment and publication’ of the policy itself.” *Bacon*, 2021 WL
8 5183059, at *3; *see also Pilz*, 2022 WL 1719172, at *7 (finding adoption of Proclamation and
9 notice of the vaccine requirement sufficient to provide procedural due process); *Harris v. Univ.*
10 *of Massachusetts, Lowell*, 557 F. Supp. 3d 304, 312 (D. Mass. 2021) (finding university’s
11 adoption of COVID-19 vaccine mandate to provide sufficient notice and process to satisfy
12 potential due process challenges); *Valdez v. Grisham*, 559 F. Supp. 3d 1161, 1178 (D.N.M.
13 2021) (finding procedural due process rights satisfied where state enacted general COVID-19
14 vaccine mandate that included a religious exemption provision and the mandate applied
15 generally to all employees), *aff’d*, No. 21-2105, 2022 WL 2129071 (10th Cir. June 14, 2022).
16 Whether or not Plaintiffs’ challenge to the State’s religious accommodation exemption is an as
17 applied challenge or a facial challenge is irrelevant because the enactment of the Proclamation
18 itself was generally applicable and therefore provided all the procedural due process due to state
19

20
21 _____
22 facts. First, Mr. Loudermill sued after he was terminated from a for-cause security guard position
23 after his employer discovered he had previously been convicted of grand larceny. *Cleveland Bd.*
24 *of Educ. v. Loudermill*, 470 U.S. 532, 535 (1985). The other plaintiff, Mr. Donnelly, was a public
sector bus mechanic who was fired after failing an eye exam and failed to retake the exam. *Id.* at
536. Neither of these cases involved the application of a vaccine requirement in the context of the
greatest public health emergency in modern memory and the Court does not find that *Loudermill*
clearly established that the Individual Defendants’ actions violated Plaintiffs’ constitutional rights.

1 employees. The Court is also not convinced that Plaintiffs can establish that the Individual
2 Defendants violated a clearly established federal due process right.

3 Accordingly, the Individual Defendants are entitled to qualified immunity as to Plaintiffs’
4 procedural due process claims and these claims are DISMISSED with prejudice.

5 **iii. Equal Protection Claim**

6 Defendants also assert they are entitled to qualified immunity as to Plaintiffs’ Equal
7 Protection Clause claims. (Dkt. No. 16 at 30.) Plaintiffs offer a one-line response to this
8 assertion, noting that “Defendants’ qualified-immunity defense to this claim fails for essentially
9 the same reasons discussed *supra* as to Due Process.” (Dkt. No. 18 at 38.) Plaintiffs fail to
10 substantively rebut Defendants’ qualified immunity argument and therefore concede they have
11 merit. *See, e.g., Brenda H. v. Comm’r of Soc. Sec.*, No. 2:19-CV-00108-DWC, 2019 WL
12 13198863, at *1 (W.D. Wash. July 17, 2019); *see also Rice v. Providence Reg’l Med. Ctr.*
13 *Everett*, No. C09-482 RSM, 2009 WL 2342449, at *3 (W.D. Wash. July 28, 2009). Plaintiffs
14 cite no case law indicating that the Individual Defendants’ actions violated their clearly
15 established federal rights under the Equal Protection Clause.⁶

16 Accordingly, the Court DISMISSES Plaintiffs’ Equal Protection Clause claims against
17 the Individual Defendants with prejudice.

18
19 _____
20 ⁶ An equal protection claim is distinct from a procedural due process clause claim and caselaw
21 clearly establishing a procedural due process right will rarely suffice in itself to establish an equal
22 protection right. “To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection
23 Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent
24 or purpose to discriminate against the plaintiff based upon membership in a protected class.”
Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998). By contrast, to make out a procedural
due process claim a plaintiff must establish “(1) a liberty or property interest protected by the
Constitution; (2) a deprivation of the interest by the government; (3) lack of process.” *Armstrong*
v. Reynolds, 22 F.4th 1058, 1066 (9th Cir. 2022) (quoting *Portman v. County of Santa Clara*, 995
F.2d 898, 904 (9th Cir. 1993)).

1 **iv. Contracts Clause Claim**

2 Defendants raise a defense of qualified immunity as to Plaintiffs’ Contracts Clause
3 claims. (Dkt. No. 16 at 30–31.) Plaintiffs, in response, argue that *Eagan v. Spellman*, 581 P.2d
4 1038, 1042 (Wash. 1978) clearly established that the Individual Defendants’ actions violated
5 their rights under the Contracts Clause of the Constitution. (Dkt. No. 18 at 39.)

6 In assessing whether a Plaintiff has adequately stated a claim for a violation of the
7 Contracts Clause, a court must determine “whether the state law [at issue] has ‘operated as a
8 substantial impairment of a contractual relationship.’” *Sveen v. Melin*, 138 S. Ct. 1815, 1821–22
9 (2018) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978)). If the state
10 law has substantially impaired a contractual relationship, the Court then determines “whether the
11 state law is drawn in an ‘appropriate’ and ‘reasonable’ way to advance ‘a significant and
12 legitimate public purpose.’” *Id.* at 1822 (quoting *Energy Reserves Group, Inc. v. Kansas Power
13 & Light Co.*, 459 U.S. 400, 411–412 (1983)).

14 Plaintiffs’ briefing fails to address Defendants’ argument that they have not alleged facts
15 sufficient to meet the two-part test for a Contract Clause claim. (*See* Dkt. No. 16 at 30–31.) The
16 Court therefore finds Plaintiffs have failed to establish substantial impairment, *see Pilz*, 2022
17 WL 1719172, at *6, and that the Individual Defendants are therefore entitled to qualified
18 immunity. Additionally, even had Plaintiffs established a constitutional violation, they failed to
19 show that Defendants violated a clearly established right. *Eagan*, the only case Plaintiffs cite for
20 such a position, did not involve a Contracts Clause claim. Rather, the Washington Supreme
21 Court addressed whether King County’s changes to their mandatory retirement age were
22 consistent with state law. *See Eagan*, 581 P.2d at, 1040–43.

1 Accordingly, the Court finds the Individual Defendants are entitled to qualified immunity
2 and DISMISSES Plaintiffs' Contract Claims against them with prejudice.

3 **v. Takings Claim**

4 Finally, Defendants argue the Individual Defendants are entitled to qualified immunity for
5 any Takings Claim brought by the Plaintiffs.⁷ (Dkt. No. 16 at 31.) Plaintiffs do not respond to
6 this argument and the Court considers the lack of response to be a concession of merit. *See Rice*,
7 2009 WL 2342449, at *3. Plaintiffs do not point to any caselaw, and the Court is not aware of
8 any, clearly establishing that either a state mandate for employees to obtain the COVID-19 vaccine
9 or certain state employees' alleged policy of denying religious accommodations to the mandate
10 constituted an unconstitutional taking.

11 The Court therefore DISMISSES Plaintiffs' Takings Claims with prejudice.

12 **C. State Law Claims**

13 Having dismissed all claims over which the Court has original jurisdiction, the Court
14 declines to exercise jurisdiction over Plaintiffs' supplemental state law claims. *See* 28 U.S.C. §
15 1367(c)(3); *see also Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001) ("A court may decline to
16 exercise supplemental jurisdiction over related state-law claims once it has 'dismissed all claims
17 over which it has original jurisdiction.'"). The Court DISMISSES these claims without
18 prejudice.

19
20
21
22


⁷ The Court also agrees that Plaintiffs may not bring a takings claim against the Individual
23 Defendants in their individual capacity. *See Untalan v. Stanley*, No. 219CV07599ODWJEMX,
24 2020 WL 6078474, at *9 (C.D. Cal. Oct. 15, 2020) (compiling cases where courts have found that
"takings claim[s] cannot be brought against individuals sued in their personal capacities).

1 **IV CONCLUSION**

2 Accordingly, and having considered Defendants’ motion (Dkt. No. 16), the briefing of
3 the parties, and the remainder of the record, the Court finds and ORDERS as follows:

- 4 1. Defendants’ motion to dismiss is GRANTED in part. Plaintiffs’ federal
5 constitutional claims against WSDOT are DISMISSED without prejudice.
6 Plaintiffs’ federal constitutional claims against the Individual Defendants are
7 DISMISSED with prejudice.
- 8 2. The Court declines to exercise supplemental jurisdiction over Plaintiffs’ state law
9 claims and DISMISSES these claims without prejudice.

10 Dated this 11th day of October 2023.

11
12
13 
14 _____
15 David G. Estudillo
16 United States District Judge
17
18
19
20
21
22
23
24