UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

EUREKA DIVISION

BARBARA HOWE, et al.,

Plaintiffs, v. COUNTY OF MENDOCINO, et al.,

Defendants.

Case No. 21-cv-00935-RMI

ORDER RE: MOTION TO DISMISS Re: Dkt. No. 11

Complaint (dkt. 1). Plaintiffs have filed a response in opposition (dkt. 14), Defendants have

replied (dkt. 15), and the Parties have appeared before the court for oral argument (dkt. 22). The Complaint in this case is voluminous in that it spans 91 pages, encompasses 14 claims, and yet, despite all of its sound and fury, it ultimately offers nearly nothing of significance by way of pertinent factual allegations. Instead, the Complaint amasses mountains of irrelevant information which are then dotted and punctuated by a plethora of baseless conclusory statements, a number of ad hominem attacks, a series of mere labels, and a wealth of unreasonable inferences. Further, aside from being overwhelmed with irrelevant statements and conclusory assertions, the Complaint seems to go out of its way to make the ferreting out of its relevant factual allegations then further subdivided into sections whose titles indicate that the

contents are related to allegations addressing the respective roles of the County of Mendocino, and each individually named Plaintiff. See generally Compl. (dkt. 1) at 10-18. However, the bulk of the allegations (relevant and otherwise) pertaining to each of these Plaintiffs are all lumped

together elsewhere and are intertwined in a non-linear fashion that appears designed to cause confusion because of being presented in what can only be described as a stream of consciousness format with no discernible method of organization. See id. at 21-56. In short, the Complaint reads , showing that these Plaintiffs are entitled to relief that is required by Rule 8. In any event, for the reasons to Dismiss (dkt. 11) is granted and this case is dismissed with prejudice.

Howe et al v. County of Mendocino et al

2021 | Cited 0 times | N.D. California | September 7, 2021

PROCEDURAL BACKGROUND The instant Complaint was filed on February 2, 2021 (dkt. 1), however, the history of this case predates this particular iteration. Last year, these same Plaintiffs filed previous iterations of this same lawsuit before the Hon. Susan Illston who dismissed their operative complaint twice, and upon being admonished that they likely would have only one more chance at amending, Plaintiffs dismissed their case and refiled their amended complaint as a new case while, this time, consenting to proceed before a magistrate judge. See generally Howe et al v. Mendocino County et al, 3:20-cv-02622-SI (Filed 04/15/2020) (hereafter, Howe-I). The first complaint in Howe-I was filed only by Barbara Howe and Jani Sheppard, and named the County of Mendocino, Tammy Moss Chandler and William Schurtz (in their individual capacities), as well Does 1 through 50, as defendants. See Howe-I (dkt. 1). In that iteration of their complaint, despite spanning 131 pages, and pleading 13 federal claims and 9 additional state-law claims, Judge Illston dismissed the entire complaint with leave to amend (except for two state law

Sheppard filed a 130+ page complaint that, despite its volume says surprisingly little. See Howe- I, Order (dkt. 28) at 1. Plaintiffs then filed a first amended complaint in Howe-I, through which they added a Plaintiff (Carol Morgan) and two Defendants (Sharon Convery and Katherine Fengler, in their individual capacities), while reducing the overall length of the amended complaint to about 85 pages. See Howe-I, FAC (dkt. 31). This time, Plaintiffs pleaded 4 federal claims and another 7 state-law claims. See id. Once again, Judge Illston dismissed the FAC and it was once again noted

that [d]espite over 80 pages of allegations . . . the allegations are conclusory and not plead with See Howe-I, Order Dismissing FAC (dkt. 43) at 8. In both dismissal orders, Judge Illston undertook the onerous task of separating the mountains of irrelevant statements and conclusory statements from the very few pertinent factual allegations that were buried throughout the voluminous complaint. No doubt, a great deal of effort was expended in searching for needles in a very large haystack only to ultimately realize that the haystack contained no needles at all. Because Judge Illston was skeptical as to whether or not Plaintiffs would ever be able to adequately plead what was now reduced to four federal claims (three of which were pleaded through four alternative theories), the court focused its second dismissal order on the four

Id. at 4. The claims were: (1) illegal intrusion on free speech rights under the First Amendment; (2) a municipal liability claim for retaliation for exercising free speech brought under Monell 1

; (3) another municipal liability claim for wrongful termination / adverse employment action in violation of equal protection pursuant to Monell; and, (4) wrongful termination in violation of due process pursuant to Monell. See Howe-I, Order (dkt. Monell claims were pleaded under the following four alternative theories: (a) based on official policy, practice, or custom; (b) based on the act of a final policymaker; (c) based on ratification; and (d) based on the failure to train or supervise. Id. As detailed below, Judge Illston meticulously parsed the contents of the 85-page complaint in order to separate the allegations pertinent to each Plaintiff as detailed below. Pertinent Facts from the FAC in Howe-I: Plaintiff Barbara Howe is a former employee Ser HHSA where she worked from October of 2017 until

May 30, 2019; Ms.

Howe alleged compelled speech when she was asked to

1 , 436 U.S. 658, 691 (1978) (providing plaintiffs a method to sue municipalities for policies, practices, or customs that caused specified types of constitutionally cognizable harm to an individual or group).

sign a resignation letter under duress threat of termination. Id. at 1. Ms. Howe also alleged that she made certain comments on May 15, 2019 to certain affiliates and emergency response partners of Mendocino County who were involved in the Public Health Emergency Preparedness Program (PHEPP); specifically, Ms. Howe alleges that she stated that ambulances likely would not be available during the next major disaster, such as a wildfire, because her disrupted a flexible, multi- company ambulance system [in order] to Id. at 1-2. Additionally, Ms. Howe and co-plaintiff Jani Sheppard also alleged that they gave a subordinate HHSA employee, Ms. Heidi Corrado, who the FAC chose to refer negative performance review on May 20, 2019. Id. at 2. Ms. Howe and Ms. Sheppard then alleged

that their supervisors, Defendants William Schurtz and Tammy Moss Chandler, demanded that they change the performance evaluation in question to reflect a more positive outlook. Id. Defendant Chandler then reportedly told both Ms. Howe and Ms. Sheppard to stop raising issues Id. On this basis, Ms. Howe alleged that she was retaliated against for her speech and actions when several days later, on May 24, 2019, she decided to sign a resignation letter presented to her by Defendant Chandler under threat of termination if she did not voluntarily resign. Id. Following her signing of the resignation letter, Ms. Howe alleged that Defendants later sought baseless temporary restraining orders against her as part of a campaign to destroy her reputation, which she suggested was further retaliation for her exercise of her alleged free speech rights. Id. At bottom, Ms. Howe alleged she was the subject of discrimination because she is heterosexual, because of her gender, her age, and due to her having engaged in protected activity in support of which, she cited comments (without context) attributed to Ms. Chandler about how older employers are incapable of making good decisions, multitasking, and how they struggle with technology. Id. Ms. Sheppard has been employed by HHSA from May 2018 to the present. Id. Ms. Sheppard also alleged retaliation, surmising that the cause was Defendant Chandler belief that Ms. Sheppard was the person who provided evidence in the TRO hearings against the

County and in favor of Ms. Howe. Id. As a result, Ms. Sheppard alleged that she was subjected to

a sham discrimination investigation concocted by Defendant Katherine Fengler and two other employees, Ms. Meredith Reinhard (who reports directly to Ms. Sheppard) and Ms. Carol Mordhorst, who is alleged to have stated at some point that Id. at 2-3. The discrimination investigation allegedly c funds to underserved communities, which she was allegedly authorized and directed to do by State

law. Id. at 3. Ms. Sheppard also alleges that Ms. Mordhorst told her that Ms. Reinhard and certain

other persons who are also subordinates of Ms. Sheppard reportedly called her Id. n initiative about tobacco use that she was supervising; in which regard, she alleged that Defendant Chandler prohibited HHSA staff from speaking with members of the County Board of Supervisors about the initiative. Id. At a meeting pertaining to this initiative in September of 2019, Ms. Sheppard alleges that she stated publicly that she was not permitted to speak with supervisors and that Defendant Chandler was not able to engage in formal strategic planning; further, Ms. Sheppard voiced her own frustration about an overall departure. Id. Ms. Sheppard then alleged that she was retaliated against for her association with Ms. Howe by being excluded from certain meetings, by being subjected to a discrimination investigation, and by being demoted twice. Id. The FAC then alleged that Defendant William Schurtz justified the demotion by stating that Ms. Sheppard had not completed her probationary periods. Id. Plaintiff Carol Morgan has worked for HHSA from December 2017 to the present as a Senior Nurse Care Manager. Id. ly involved the conduct of Defendant Sharon Convery, who allegedly attempted to have Ms. Morgan falsify an HR questionnaire after the interview of Ms. Hashimoto, a job candidate, on January 30, 2020. Id. Ms. Morgan also alleged that she has spoken up against the backlog of case histories and the failure of the County managing agents to execute strategic plans that meet with her approval, a condition which she alleged has prevented foster children from receiving medical services. Id. at 3-4. Ms. Morgan claimed she was retaliated against for her actions and speech in this regard by being denied a promotion. Id. at 4. //

Pertinent Holdings from the Second Dismissal Order in Howe-I: plead their federal claims resulted in an analysis of only those claims such that if Plaintiffs proved

unable to properly plead a single federal claim, the state-law claims would be better situated in a state court. Id. As for the municipal claims brought against the County of Mendocino under 42 U.S.C. § 1983, pursuant to Monell above, plaintiffs have failed to adequately plead and articulate the alleged official policy, practice, or custom . . . [instead, whereas] like the original complaint, the FAC is replete with general , distilling what Id. at 6. Plaintiffs § 1983 claims against individual defendants fared no better as Judge Illston found that Plaintiffs had failed to allege a causal connection for each defendant sued in an individual capacity. Id. at 7. More specifically, regarding endment right to free speech Judge Illston construed this as plaintiffs have not alleged what actions, if any, Id. at allegations for the first cause of action are virtually identical to those of the second cause of

exercising free speech, Monell Id. ystematically go through an analysis for each plaintiff bringing

this cause of action alleging how each plaintiff was treated differently based on their membership Id. at 9. ed due to plaintiff Id. In granting Plaintiffs leave to amend once more, Judge Illston mentioned the last time the Court grants plaintiffs leave Id. Following the dismissal of the FAC in

Howe-I, rather than filing another amended pleading, Plaintiffs instead chose to voluntarily dismiss their case without prejudice in November of 2013. See Howe-I (dkt. 50) at 1.

FRACTUAL ALLEGATIONS IN THE COMPLAINT AT BAR This is essentially the third attempt at pleading the same claims for Plaintiffs Howe and Sheppard (and the second attempt for Plaintiff Morgan), and because the claims are still not properly pleaded, the undersigned will do that which Judge Illston indicated she would do that is, dismiss the case with prejudice. As mentioned above, because the operative complaint is replete with irrelevant statements, conclusory assertions, and statements that constitute unreasonable inferences, fishing through the 91-page Complaint for pertinent factual allegations has been unreasonably laborious. Nevertheless, the court has carefully parsed through the Complaint in order to identify each statement that constitutes a pertinent allegation of fact a recitation of which follows. Suffice it to say, all that has changed from the previous iterations of this complaint is that Plaintiffs have added still more conclusory statements, labels, and unreasonable inferences to the same basic factual allegations that were previously dismissed. Following a description of the Parties involved, the Complaint begins with an introductory section that consists of one irrelevant statement (stating that Plaintiffs have over 100 years of le inference (stating that public concern, and resisted unlawful practices engaged in by the County; thereafter they were

subjected to adverse employment act

health, welfare and safety programs and services, damaging the health, safety and welfare of the communi See Compl. (dkt. 1) at 1-7. Allegations Related to the County of Mendocino The Complaint then ventures to list a number of generic and mundane County Ordinances, under the heading, ions or omissions that would implicate them in setting forth a Monell claim. See id. at 7-9. Specifically, one ordinance provides that upon its establishment, the Mendocino County Department Public Health shall, in the administration of its affairs, conform to the minimum requirements of the State

departments. Id. at 7. Another ordinance provides that County employees in the Health Department shall have first priority for filling vacancies for higher positions so long as they meet

appointments, and dismissals shall be memorialized in writing. Id. at 7-8. The third cited ordinance again provided that employee dismissal, suspension, or reductions in rank or compensation must be memorialized in writing attended with the specific reasons for the action taken. Id. at 8. Plaintiffs also cite to two provisions of state law, the first of which provides that -centered, culturally competent and fully

falsification concerning work, work records, and time cards. Id. at 8-9. consist of nothing more than mere labels, conclusory statements, and unreasonable inferences

because nowhere in the Complaint are any of these alleged practices borne out by associated factual allegations. See id. at 9- d of Supe

failing to formally establish and monitor policies to address county-wide issues of public safety, Id. at

9. The essence of the

conclusory statement to the effect that the managing agents of the Board of Supervisors have benefitting their individual and collective interests. Id. at 9-10. The essence of this entire lawsuit, apart from being rooted in some petty and routine workplace bickering, seems to boil down to assertion that HHSA managers operated the agency in a manner that rendered it into because of their

heterosexuality, or at times because of and promote a person Id. at 31; see also id. at 34

(where Plaintiffs allege being frustrated in the discharge of their duties due to the assertion that they were not permitted to take any adverse actions against a person due to the assertion see also id. at 45 (where Ms. Howe baselessly proclaims

that, inter alia HHSA); see also id. at 49 (where tes, Ms. Corrado to whom the C once complained about Ms. Sheppard to a higher ranking manager, described by the Complaint as such: and, see also id. at 53 cabal . This is the true essence Monell allegations to wit, Plaintiffs contend that

due to an unwritten of not enacting policies, a power vacuum came into existence at HHSA, and certain high ranking HHSA managers reportedly coopted the agency and used it for their personal purposes by creating . However, as discussed below, these statements are mere conjecture and hyperbole, and more importantly, these statements are devoid of any allegations through which a causal connection can be established between , Putting this issue aside momentarily, this Complaint also fails to allege any actionable harm by any of these Plaintiffs because it simply repeats its pattern of labeling things in patently incorrect but seemingly advantageous ways however, mere labels cannot substitute for pertinent factual allegations in resisting a motion to dismiss. For example, as shown below, the Complaint details certain insubordination by Plaintiffs but then labels those insubordinate acts and statements as n labels the ensuing employee illegal retaliation Elsewhere in the Complaint, four pages are dedicated to discussing two reports alleged to have issued from the Mendocino County Civil Grand Jury

statements (see id. at 18-21) that boil down to alleged findings from which Plaintiffs seek to bolster their narrative that -making subordinates the public at

large to Defendants Id. at 18. Allegations Related to Plaintiff Barbara Howe Ms. Howe begins her allegations by noting that she identifies as a female heterosexual above the age of 40. Id. at 10. She then alleges that she was employed as an Assistant Director for HHSA between October 16, 2017 and May 24, 2019. Id. at 11. Thereafter, Ms. Howe recites a series of past achievements that are of little to no consequence in that they are unrelated to any of her federal claims. See id. at 11-12. In short, after Ms. Howe started working for HHSA, she became there to be a lack of clear policies and proto Id. at 12.

The Complaint notes that before her resignation, Ms. Howe, together with Ms. Sheppard, and a non-party referred to as Dr. Pace were about to establish a centralized communication system to serve as a command and control center for controlling certain emergency resources such as ambulances and certain other first responders. Id. at 22. At some point in time (ostensibly some time in 2019) Ms. Howe publicly disparaged her bosses when she informed a group of people

probability that ambulance service would not be available[] because [County] CEO Carmel Angelo by and through [Defendant Chandler] had disrupted a flexible, multi-company ambulance system [in order] Id. at 29. The Complaint then states that instead of being rewarded for

Id. at 30-31. The Complaint also proclaims that when her superiors at

Id. at 31-32. The Complaint then dedicates five full pages to describing events that boil down to the following: (1) Ms. Howe and Ms. Sheppard viewed their subordinate Ms. Corrado to be insubordinate and unsuitable for her position; (2) as a result, they refused to give her a positive evaluation and declared that Ms. Corrado had failed to satisfactorily

complete her probationary period; (3) in their capacities as persons in charge, Defendants Chandler and Schurtz mandated that Ms. Corrado be given a satisfactory performance appraisal (which the Complaint repeatedly labels do nothing and stop raising and discussing the issue and that Ms. Corrado, a lesbian, was and, (4) Ms. Sheppard and Ms. Howe (in a twist of irony) decided to make a show of their own insubordination by rejecting their bosses mandates and giving Ms. Corrado a negative

Id. at 31-35. As a result, in May of 2019, Ms. Howe was offered an opportunity to resign upon threat of being fired and when she was presented with a resignation

reafter, consistently re- Id. at 35.

As for the details associated with that was offered to her in lieu of being fired, a later portion of the Complaint provides that information, as well as some information about what happened after Ms. Howe signed her resignation letter. See id. at 40-46. In ns only provide that, one day, Defendant Chandler entered Ms. Id. 40. Ms. Howe was reportedly told that she

Id. at 41. Ms. Howe -call on the HHSA campus and he would escort Ms. Howe, by force if necessary, if she refused to leave . . . [therefore] under duress and under threats by [Defendant Chandler and Ms. Heidi Dunham, a non-party] Ms. Howe did not act freely, but Id. However, in the very next paragraph, the Complaint contradicts itself by stat she absorbed and implemented [various programs

staff, peers, Id. at 41. The insistence on including this contradictory assertion in

insistence on filling their complaints with bluster and ranting rather than providing This same stark contradiction (being fired for being too good at her job, as opposed to being fired because her heterosexuality supposedly posed a threat to the office power structure) appeared in both previous iterations of this complaint as well. See Howe-I, Case No. 20-cv-2622-SI, FAC (dkt. 31) at 46; see also id., Compl. (dkt. 1) at 22-23. What is strange about its reappearance in the instant Complaint is that Judge Illston actually noted this discrepancy. See Howe-I, Order (dkt. 28) at 2.

In any event, following the signing of the resignation letter, Ms. Howe began to send various text messages to Defendant Chandler. See Howe-II, Compl. (dkt. 1) at 42-43. In one but in another message she - e meant that Defendant Chandler and certain other County - Id. Because Defendant Chandler interpreted this text message as stating or implying

ituted to secure a temporary restraining order against Ms. Howe. Id. at 43-44. However, in classic conclusory fashion, the Complaint re-use of the - Id. at 43. The restraining order proceedings, however, did not come to fruition Id. at 45. This is the sum

of the allegations related to Ms. Howe, the totality of which is the foundation on which the Complaint rests the ability to empower, engage and mobilize others, her sexual orientation and progress building a

network of county resources to effect real change were a threat to the existing power struId. Allegations Related to Plaintiff L. Jani Sheppard Plaintiff Sheppard describes herself as an African American heterosexual woman over the age of 40. Id. at 13. Ms. Sheppard is currently still employed by the County. Plaintiffs allege that

suspect in -ease

Id. at 13-15. The Complaint then alleges that in the Fall of 2019,

Sheppard based on something undescribed that appears to have happened during a particular training session overseen by Ms. Sheppard (the Complaint leaves out those details, merely Id. at 15. A law firm was recruited to conduct the investigation, and the Complaint alleges that Ms. Sheppard was cleared of any wrongdoing in January of 2020. Id. at 15-16. The Complaint then notes that Ms. Sheppard was (at some point in time) demoted, but then adds that the demotion was attended with that she was not Id. at 16. The Complaint, however, does not detail any of these statements; instead, they are only referenced in on the same page. See id. Initially, it is important to note that Ms. Sheppard was an equal stakeholder with Ms. Howe in the episode rec from giving Ms. Corrado a bad performance review. See id

Corrado her performance evaluation with the marks Ms. Sheppard and Ms. Howe [made, which] accurately reflected her sub- allegations (which are still littered with conclusory content,

unreasonable inferences, and missing

causal connections) appears in Paragraphs 98 and 99. In this regard, the Complaint notes that

Id. at 17. The Complaint then referring vaguely to: Ms. Sheppard joining a government complaint filed by Ms. Howe; Ms.

Sheppard making certain complaints about discrimination based apparently on a single double-hearsay comment by one of her subordinates which she casually re-labels as her Id.

d Id. at 22. From 2018 until y basis. Id. at 23. At one

of these events, Ms. Sheppard spoke with a member of the County Board of Supervisors and asked Id. at 22-23. While the timelines in the Complaint are far from clear, it appears that either before or after this conversation, but sometime in early 2019, Defendant Chandler informed her subordinates, including Ms. Sheppard, that they were prohibited from speaking with members of the Board of Supervisors about matters related to the Tobacco Retail License Ordinance issue. Id. at 23. Despite -enforced the prohibition that Public Health staff . . . not speak with [members of the County Board of] Supervisors . . . Ms. Sheppard arranged a lunch with the [m]ayors of each [c]ity and a member of the [Board of Id. at 23- 24. Given that this event had been organized Id. at 24. At

subsequent meetings of the tobacco coalition, Ms. Sheppard (by her own account) reportedly told

ove forward. Id. at 25. Despite the express prohibition, Ms. Sheppard continued to try to communicate (directly and indirectly) with members of the County Board of Supervisors by, for example, attempting to inject her views into the agendas for upcoming meetings of the Board. Id. Thereafter, Ms. Sheppard was reportedly demoted by two levels, but upon hiring an attorney, her two-level demotion was reduced to a one-level demotion. Id. In fact, the Complaint makes it clear that Ms. Sheppard disparaged Ms. Chan various coalition associates and partners of the County. See id. at 25-26. It was after one of these meetings, that Ms.

Sheppard co , and the Id. at 26.

De wrongly, with the dissemination of information about the falsehoods [that Defendant Chandler] Id. at 46. In this regard, the

Id. at 47. While the connection seems u

which culturally i Id. at 47, 50.

Also, (and similarly without any details) the Complaint notes that certain programs that were at

would evolve into an absurd investigation of Ms. Sheppard for discrimination based upon dishonest and Id. at 47-48. Once again, where the Complaint should include details and facts that show an entitlement to relief under the claims asserted, there is little offered aside from mere labels, baseless legal conclusions, a pervasive and illiberal innuendo coupled with scurrilous the equation. See id. at 47-49. Again without details, the Complaint notes that, as part of some sort of lesbian conspiracy to force Ms. LGBTQ advocate[,] and Julie Beardsley, the union representative . . . [who] are uninformed about

cultural (sic) and uninformed about cultural competence, [all of whom] devised the uninformed discrimination allegations against Ms. Sheppard [and] [u]pon information and belief, Ms. Fengler Id. at 49. The investigation eventually cleared Ms. Sheppard of wrongdoing. Id. at 51.

more conclusory statements for good measure. The bare-bones conclusory allegation merely states

that (at some point) Mr. Sheppard was denied a position for which she applied and was qualified, and the position was given to a person named Mr. Johnson, a less-qualified non-African-American individual. Id. at 52. Plaintiffs add nothing more in this regard except to note in conclusory fashion

cronyism ensure that the hiring practices promote those persons whom [Defendants] [] can control, Id. Allegations Related to Plaintiff Carol Morgan Ms. Morgan, a registered nurse, was employed by HHSA in December of 2017 as a Senior Id. at 17-18. In one portion, the

position [but] [i]n violation of law, Defendants promoted a less-qualified preferred candidate over one selected pursuant the (s Id. at 18 (emphasis added). Then, elsewhere in the Complaint it becomes apparent that the gist of entail another

immediate supervisor

See id. at 35-39. In early 2020, when HHSA announced a job vacancy, Defendant Convery asked Ms. Morgan to participate in the interview process. Id. at 36. During the interview, Defendant Convery reportedly told Ms. Morgan that management had already decided to promote the candidate then being interviewed (Ms. Hashimoto); that interviews would no longer be necessary; and, that there was no need for the formality of Ms. Hashimoto completing a certain questionnaire from the human resources department. Id. at 37. The Complaint then asserts that the reason the questionnaire is ordinarily used is such that interviewers can have some basis on which to compare the merits of the various candidates meaning that if a decision had already been made by management to promote Ms. Hashimoto, the questionnaire would be superfluous. Id. At this point, the Complaint

Hashimoto through the interview process such as to maximize her salary; the County never disciplined Defendant Convery; the County refused to assign a new supervisor for Ms. Morgan;

characteristic . . . [that] allowed [m]anaging [a]gents to leverage the employees for their desired Id. 37-38. Sifting through what can only be described as the bombastic meandering that dominates this Complaint in search of allegations about facts of consequence that is, things that actually happened, one finds a relatively simple series of events that appear to have been profoundly obfuscated Defendant Convery repeatedly instructed Ms. Morgan to complete a questionnaire on Ms.

See id. at 38-39. This was something that Ms. Morgan did not wish to do. Id. Without anything further, and building only on the flawed foundation describe above (to wit, Defendant Convery asked Ms. Morgan to complete some undescribed questionnaire on Ms. , the Complaint makes the following series of conclusory statements: (1) if uld t] employees engage in

compelled speech, with viewpoint discrimination and with the fraudulent goal to falsify indifferent to their violations of well-established constitutional rights and the negative professional

impact Id. at 38-39. The lack of any causal connection between the only pertinent factual

allegation (Ms. Convery directed Ms. Morgan to complete a questionnaire for Ms. Hashimoto) and materially changed since the previous iteration of this Complaint that was dismissed by Judge

Illston. See Howe-I, Case No. 20-cv-2622-SI (dkt. 31) at 39-43. //

Other Allegations The Complaint then dedicates nearly three pages in complaining about an allegedly hostile work environment experienced by a non-party named Anne Molgaard, presumably to bolster See id. at 52-54. Lastly, the factual allegations portion of the Complaint finishes with nearly three pages of generalized conclusory statements, a few examples of which are as follows: to thwart the development of Ms. Howe and Ms. Sheppard, and to thwart Ms. Morgan in

providing medical services to foster children; (2) Defendants divert financial and other resources to no-work contracts and acceptance of low or non-performing employees all in return for loyalty ex-felon

public health officer who was chased out of Nevada after years of malfeasance, non-performance [i]llegal [policies and procedures] based upon the terms of cronyism, nepotism, corruption, retaliation, abuse, grant diversion, and depriving meritorious employees of their constitutional rights, due process, and the Id. at 54-56.

LEGAL STANDARDS Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss should be granted in Bell Atl. Corp. v. Twombly

lege a quantum of facts that combine to constitute Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). While courts are not so inflexible as to require heightened fact pleading attended with minute levels of

detail, a plaintiff must nevertheless allege enough actual facts such as to Twombly, 550 U.S. at 555, 570. In the course of this inquiry, complaints are to be construed in a light most favorable to the plaintiff and all properly pleaded factual allegations are to be accepted as true. See e.g., Jenkins v. McKeithen, 395 U.S. 411, 421 (1969); see also Everest & Jennings, Inc. v. American Motorists Ins. Co., 23 F.3d

226, 228 (9th Cir. 1994). All reasonable inferences, therefore, s favor. Jacobson v. Hughes Aircraft, 105 F.3d 1288, 1296 (9th Cir. 1997). As opposed to properly pleaded factual allegations, courts are not required to presume the truth of unreasonable inferences or conclusory legal statements that might be cast in the form of factual allegations. See Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Miranda v. Clark County, Nev., 279 F.3d 1102, 1106 (9th Cir. 2002) ([C]onclusory allegations of law and unwarranted inferences will not defeat a motion to dismiss for failure to state a claim.); see also Sprewell v. Golden State Warriors, 266 F.3d 979, 987 (Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.), as amended, 275 F.3d 1187 (9th Cir. 2001). Courts may also disregard allegations in a complaint if they are contradicted by other allegations in a complaint, or by facts established by exhibits attached to the complaint. See Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987). Furthermore, courts are not required to accept as true allegations that contradict facts which may be judicially noticed. See Mullis v. United States Bankruptcy Ct., 828 F.2d 1385, 1388 (9th Cir. 1987). In adjudicating a motion to dismiss, courts may also consider matters of public record, including pleadings, orders, and other papers filed with the court. Mack v. South Bay Beer Distributors, 798 F.2d 1279, 1282 (9th Cir. 1986). As for the type of dismissal to be entered, when a complaint is dismissed for failure to state a claim, leave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency. Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986). In the course of this inquiry, courts should consider factors such as the presence or absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party and futility of the proposed amendment. Moore v. Kayport Package Express, 885 F.2d 531, 538 (9th Cir. 1989). Among these factors, prejudice to the opposing party is given the greatest weight. See Jackson v. Bank of Hawaii, 902 F.2d 1385, 1387 (9th Cir. 1990) (citing Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330-31 (1971)). Lastly, dismissal

with prejudice is also suitable in situations where the amendment would be futile. DeSoto v. Yellow Freight Sys., 957 F.2d 655, 658 (9th Cir. 1992).

DISCUSSION ious two iterations consisted of 86 and 131 pages respectively; and, when the irrelevant statements, conclusory assertions, and all of the labels and epithets are excised and distilled, the instant Complaint (dkt. 1) suffers from the same exact defects tha , s state-law claims as the relevant considerations of judicial economy, convenience, and fairness to the litigants counsel in favor of leaving the California claims to the sound judgment of a California court. 2 § 1983 Claims Against

the County of Mendocino In order to properly articulate a § 1983 claim against a municipality, it is incumbent on plaintiffs to official custom, pattern, or policy that violates the plaintiff's civil rights. See Monell, 436 U.S. at

690-91. Therefore, liability does not automatically attach to a municipal entity simply by virtue of having employed one or more alleged wrongdoers; thus, the doctrine of respondeat superior does

2 The purposes underlying discretionary supplemental jurisdiction are rooted in considerations of judicial economy, convenience and fairness to litigants. See United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966); see also Carnegie-Mellon University v. Cohill, 484 U.S. 343, 350 (1988) (the doctrine of pendent jurisdiction . . . is a doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodates a range of concerns). However, in 1990, when Congress enacted 28 U.S.C. § 1367 in order to codify the standard governing supplemental jurisdiction in civil actions, it was noted that one circumstance in which § 1367(c)(3) permits the rejection of supplemental jurisdiction over a state-law claim when a district court has dismissed all claims over which it has original jurisdiction. In Gibbs, the Supreme Court noted two situations in which the factors of judicial economy, convenience and fairness to litigants will generally weigh strongly in favor of the dismissal of supplemental state law claims. See Gibbs, 383 U.S. at 726-27. Thus, long before the codification of § 1367, the Gibbs Court stated that as a general rule, courts should not exercise supplemental jurisdiction over state law claims if all federal claims have been dismissed before trial. Id. at 726 (Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state cla); see also Wren v. Sletten Const. Co., 654 When the state issues apparently predominate and all federal claims are dismissed before trial, the proper exercise of discretion requir); but see Carnegie-Mellon, 484 U.S. at 350 n. 7 (noting that this is not a mandatory rule, but merely a recognition that, when all federal claims are dismissed, the balance often tips in favor of dismissal).

not trigger municipal liability under § 1983. See Monell, 436 U.S. at 691; Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). In the § 1983 context, for liability purposes, local governments are when an official policy, practice, or custom causes a constitutional tort. See Monell, 436 U.S. at 690. More specifically, a municipality may be held liable based on an unconstitutional policy even where it is not an express municipal policy that has been formally adopted, as the Supreme Court has recognized that a municipality may be held liable on the basis of an unconstitutional policy if widespread practice that, although not authorized by written law or express municipal policy, is

City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) (quoting Adickes v. S.H. Kress & Co., 398 U.S. 144, 167-168 (1970)). Thus, to withstand a motion to dismiss for failure to state a claim, a Monell claim must consist of something more than the mere formulaic recitations of the existence of unlawful policies, conduct or habits. See e.g., Dougherty v. City of Covina, 654 F.3d 892, 900-01 (9th Cir. 2011) (affirming dismissal where complaint lacked any factual allegations . . . demonstrating that [the] constitutional deprivation was the result of a custom or practice [] or that the custom or practice

was the moving force behind [ ). In the instant action, Plaintiffs have repeatedly failed to show that the County of Mendocino, the municipal defendant, had or now has employees or agents who acted pursuant to an official policy, custom, pattern, or practice that caused a violation of P y claim, Plaintiffs d of that allows the directors and managers of HHSA to act in ways tha multiple attempts at pleading this claim are teeming with labels such as the pleadings say nothing about what exactly those policies, practices, or customs are, let alone how those caused any constitutionally cognizable harm. Instead, Plaintiffs merely mention failing to formally establish and monitor policies to address county-wide issues of public safety,

health, economic and other needs of the community . . . [and that] [t]he Managing Agensts of the County filled the vacuum created by the established practice of the county [] to fail to formally establish and monitor policies by establishing discriminatory and unlawful practices to benefit See Compl. (dkt. 1) at 9-10. As Judge Illston noted, this is not enough, nor is that defect cured by referring to and quoting from some alleged Civil Grand Jury Reports (see id. at 18-21) that include a few generalized statements that supposedly offer does not have policies that would prevent HHSA management from doing things with which Plaintiffs disagree is not enough to establish an official policy, practice, or custom, that operated to cause Plaintiffs to suffer constitutionally cognizable harms. For the third time, Plaintiffs have failed to tether their allegations together, and therefore, Plaintiffs have failed yet again to properly plead any Monell claims. § 1983 Claims Against Defendants in their Individual Capacity A plaintiff may sue defendants in their individual capacity under § 1983. Hafer v. Melo, 502 U.S. 21, 31 (1993). Under § 1983, a supervisor can be held liable in his or her individual capacity when it can be shown that either (1) he or she was personally involved in the constitutional deprivation, or (2) a sufficient causal connection can be established between the Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989). However, it should be noted that -capacity suits and personal-capacity suiMcAllister v. Los Angeles Unified School Dist., 216 Cal. App. 4th 1198, 1212 (2013) (citing Hafer, 502 U.S. at 27) (internal . . . by setting in motion a series of acts by others or by knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to Starr v. Baca, 652 F.3d 1202, 1207-08 (9th Cir. 2011). Thus, a [or her] individual capacity for his [or her] own culpable action or inaction in the training, supervision, or control of his [or her] subordinates; for his [or her] acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous

Keates v. Koile, 883 F.3d 1228, 1243 (9th Cir. 2018) (quoting Starr, 652 F.3d at 1208). Through three iterations of their complaint, Plaintiffs have failed to allege either a constitutional depravation, or any causal connection for each defendant sued in an individual capacity. First Cause of Action: Illegal Intrusion on First Amendment Right Against Individuals While Plaintiffs have pleaded six ostensibly separate federal causes of action, there is a great deal of overlap and repetition. See Compl. (dkt. 1) at 56- brought pursuant to § 1983, asserts that Defendants Chandler, Schurtz, Convery, Fengler, and Does 4- Amendment rights. See Compl. (dkt. 1) at 56-59. In support of this claim, Plaintiffs reiterate much of the essence of what was recited above, wherein they have re-labeled their workplace Id. at

57-58. At bottom compelled speech was a substantial motivating factor for the adverse employment actions taken Id. at 58. Plaintiffs seem to labor under the misapprehension that the First Amendment gives them s and, then to couch their own insubordinate actions as constitutionally protected speech. That is not the case. See Connick v. Myers, 461 U.S. 138, 149 presume that all matters which transpire within a government office are of public concern would mean that virtually every remark and certainly every criticism directed at a public official would plant the seed of a constitutional case. While as a matter of good judgment, public officials should be receptive to constructive criticism offered by their employees, the First Amendment does not require a public office to be run as a roundtable for employee complaints is precisely the outcome that Plaintiffs seek they seek to fashion a weapon from the First Amendment such that they can effectively use it to transform their workplace into a roundtable where they may be equal partners with their managers and supervisors.

In order to properly plead a claim for an incident of free speech intrusion under § 1983, a protected speech and such deterrence was a substantial or motiva conduct. See Menotti v. City of Seattle, 409 F.3d 1113, 1155 (9th Cir. 2005) (citing Sloman v.

Tadlock, 21 F.3d 1462, 1469 (9th Cir. 1994)); Mendocino Envtl. Ctr. v. Mendocino Cnty., 192

order to survive dismissal of their first cause of action for illegal intrusion speech rights, it was incumbent on Plaintiffs to allege specific facts showing the individual

speech; and, as mentioned above, conclusory statements are simply not enough. See Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Here, Plaintiffs have largely filled their Complaint with conclusory statements and mere

See e.g., Compl. (dkt. 1) at 6, 9, 17.

Public employees suffer a constitutional violation when they are wrongfully terminated or disciplined for making protected speech. Marable v. Nitchman, 511 F.3d 924, 929 (9th Cir. 2007) (citing Pickering v. Board of Education, 391 U.S. 563 (1968)). In order o state a First Amendment claim against a public employer, an employee must show: (1) that the employee engaged in constitutionally protected speech; (2) that the employer took adverse employment action against the employee; and (3) s speech was a substantial or motivating factor for the adverse action. Marable, 511 F.3d at 929. To qualify as constitutionally protected the employee must have uttered the speech in question as a citizen, not as an employee; because when public employees make statements in pursuit of their official duties, those statements do not receive First Amendment protection. See Marable, 511 F.3d at 929 (citing Garcetti v. Ceballos, 547 U.S. 410 (2005)). Whether or not an episode of particular speech is constitutionally protected is a legal question. Marable, 511 F.3d at 930.

Here, -protected is to simply label it as such. See e.g., id. at 58 (mentioning how the treatment of a non-party, Ms. Carol Mordhorst, In reality, each instance described in the Complaint (as recited

above) where Plaintiffs

something they said (such as when Plaintiffs Howe and Sheppard publicly undermined their supervisors by speaking ill of them) constituted speech in their capacity as employees, and because those statements were all made as part of the discharge of their duties as employees, they do not qualify as constitutionally-protected speech. Aside from failing to show that any of the speech discussed in this Complaint was constitutionally protected, despite using over 300 pages in three iterations, Plaintiffs have similarly failed to allege what actions, if any, Defendants took to chill even un-protected speech, let alone alleging facts to establish that such deterrence was a substantial or motivating factor in the Defe . Accordingly, because of its failure to state a DISMISSED. Second Cause of Action: Illegal Intrusion on First Amendment Right Against County As mentioned, there is a great deal of over formulation and presentation of their claims. The second cause of action asserts a § 1983 claim

Amendment. See Compl. (dkt. 1) at 59-64. This claim entirely rests on a foundation of conclusory legal statements. See id. However, as stated above, Plaintiffs have failed to show: (1) that any of the speech identified in their Complaint was constitutionally-protected, or (2) (assuming their speech was protected) any causal connection between such speech and any harm that has been alleged, or (3) that any policy, practice, or custom instituted by the County caused them to suffer any of the alleged harms. Accordingly, because it fails to state a cognizable Monell claim, DISMISSED. Third Cause of Action: Retaliation Claim Against Individuals -recited factual allegations (that is, the properly pleaded allegations that have been distilled and separated from the irrelevant matter, the labels, the bluster,

and the conclusory legal statements) also make out a claim against the individually-named Defendants for retaliation under the First Amendment. See Compl. (dkt. 1) at 64-68. In order to survive a dismissal motion on this cause of action, Plaintiffs must competently allege that (1) they spoke on a matter of public concern; (2) that they spoke as a private citizen rather than a public employee; (3) that the Plaintiffs ensuing adverse employment action; (4) that the municipal employer did not have an adequate justification for treating the employee differently from other members of the general public; and (5) that the municipal employer would not have taken the adverse employment action even absent the protected speech. Eng v. Cooley one of [these factors] is fatal to the plaintiff Dahlia v. Rodriguez, 735 F.3d 1060, 1091 n.4

(9th Cir. 2013) (en banc). It is axiomatic that the state or a municipality may not abuse its position as an employer in order to stifle the First Amendment rights [its employees] would otherwise enjoy as citizens to comment on matters of public interest. Pickering, 391 U.S. at 568. Acknowledging the existence of reasonable limits on a state s ability to silence its employees, the Supreme Court has explained that [t]he problem in any case is to arrive at a balance between the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.

Id. As mentioned above, Plaintiffs bear the burden of showing that the speech in question addressed an issue of public concern. See generally Connick, 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983); see also Bauer v. Sampson, 261 F.3d 775, 784 (9th Cir. 2001). Speech involves a matter of public concern when it can fairly be considered to relate to any matter of political, social, or other concern to the community. Johnson v. Multnomah County, 48 F.3d 420, 422 (9th Cir. 1995) (quoting Connick, 461 U.S. at 146). But individual pe and that would be of s evaluation of the perfo public concern. Coszalter v. City of Salem, 320 F.3d 968, 973 (9th Cir. 2003) (quoting McKinley v. City of Eloy, 705 F.2d 1110,

1114 (9th Cir. 1983)). Whether an employee s speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record. Johnson, 48 F.3d at 422 (quoting Connick, 461 U.S. at 147-48). The public concern inquiry is purely a question of law. t of Soc. Servs., 447 F.3d 642, 648 (9th Cir. 2006) (citing Hyland v. Wonder, 972 F.2d 1129, 1134 (9th Cir. 1992)). If the speech in question does not address a matter of public concern, then the speech is unprotected, ending the inquiry. Some, but not all, of the speech at issue in this case does fit this description. Second, Plaintiffs bear the burden of showing the speech was spoken in the capacity of a private citizen and not a public employee. See Garcetti, 547 U.S. at 421-22; Posey v. Lake Pend Oreille School Dist. No. 84, 546 F.3d 1121, 1126-27 (9th Cir. 2008). Statements are made in the s capacity as citizen if the speaker to make the questioned statements, or if the performing the tasks the employee was paid to perform. Posey, 546 F.3d at 1127 n.2 (internal quotations and alterations omitted) (quoting, respectively, Marable v. Nitchman, 511 F.3d 924, 932-33 (9th Cir. 2007), and Freitag v. Ayers, 468 F.3d 528, 544 (9th Cir. 2006)). the question of the s s job responsi ultimate constitutional significance of the facts as is a question of law. Id. at 1129-30. In evaluating whether a plaintiff spoke as a private citizen, courts must therefore assume the truth of the facts as alleged by the plaintiff with respect to employment responsibilities; and if as is the case here the allegations demonstrate an official duty to utter the speech at issue, then the speech is unprotected. Eng, 552 F.3d at 1071. As stated course of employment duties and not

in any of their capacities as private citizens a conclusion that is bolstered by the fact that too good at their jobs (conclusively indicating that the speech discussed in the Complaint was uttered in their capacities as employees, not as private citizens). See Compl. (dkt. 1) at see id. at 23-26 (Ms. Sheppard was directed not to speak directly with members of the County Board of Supervisors, something which she continued to do after being directed not to; and, Ms. Sheppard similarly spoke ill of her supervisors publicly due to concerns she developed in her official capacity as an employee, stating that Defendant Chandler responsive ; see also id. at 17-39 not that she

suffered an adverse employment action due to any purportedly protected speech). Accordingly, this claim fails on the second prong for Ms. Howe and Ms. Sheppard, and on all prongs for Ms. Morgan. In any event, the third prong of this inquiry requires Plaintiffs to show that the state took adverse employment action . . . [and that the] speech was a substantial or motivating factor in the adverse action. Freitag, 468 F.3d at 543 (quoting Coszalter v. City of Salem, 320 F.3d 968, 973 (9th Cir. 2003));

see also Marable, 511 F.3d at 930, n.10 (s burden to show that his [or her] constitutionally protected speech was a m s adverse employment action.). However, this inquiry is unnecessary due to the fact that Plaintiffs have failed to show that there was any constitutionally-protected speech involved in this case; consequently, they have also failed to show any causal connection between any protected speech and any adverse employment action. As stated above, each and every adverse employment action described in this Complaint was a result of insubordination that is clear from the face of the Complaint, or routine workplace disagreements and bickering that are of no constitutional significance. The fourth prong of this inquiry is only undertaken if a plaintiff were to pass the first three steps, in which case, the burden would shift to Defendants to show that under the balancing test established by [Pickering s legitimate administrative interests outweigh the employee's First Amendment rights Thomas v. City of Beaverton, 379 F.3d 802, 808 (9th Cir. 2004); see also CarePartners, 545 F.3d at 880. This inquiry, known as the Pickering balancing test, asks whether the relevant government entity had an adequate justification for treating the

employee differently from any other member of the general public. Garcetti, 547 U.S. at 418. However, given that none of the Plaintiffs have passed the first three prongs, it is unnecessary for the court to undertake a Pickering balancing test. Thus, Plaintiffs have not adequately pleaded the existence of protected speech in this case, and even if they had, they have failed to allege facts showing that any putatively protected speech nt actions they describe, nor have they adequately alleged a causal link between what would have been protected speech and any alleged retaliation. Once again, despite three amendments, conclusory and not pleaded with sufficient particularity. Accordingly, Plaintiffs third cause of action similarly fails to state a claim and is therefore DISMISSED. Fourth Cause of Action: Retaliation Claim Against County ndocino County for See Compl. (dkt. 1) at 68-71. Once again, this claim rests exclusively on a foundation of conclusory legal statements. See id. However, as stated above, Plaintiffs have failed to show (1) that any of the speech identified in their Complaint was constitutionally-protected, or (2) that (assuming it was protected), Plaintiffs have failed to allege any causal connection between such speech and any harm that has been alleged, or (3) that any policy, practice, or custom instituted by the County caused them to suffer any of the alleged constitutional depravations. Accordingly, because it fails to state a cognizable Monell is DISMISSED. Fifth Cause of Action: Wrongful Termination or Reduction Claim Against Individuals In this regard, the Complaint provides a single sentence dedicated to each Plaintiff that simply states that each respective plaintiff was denied a property interest in her employment, and was harassed and discriminated against. See Compl. (dkt. 1) at 72-73. The entirety of the factual allegations contained the in the Complaint as recited above do not come anywhere close to pleading either a property claim or an equal protection claim under the Fourteenth Amendment. Fourteenth Amendment commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a

direction that all persons similarly situated should be treated alike. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). To state a § 1983 claim for violation of the Equal Protection Clause[,] a plaintiff must show that the defendants acted with an intent or purpose to discriminate

against the plaintiff based upon membership in a protected class. Thornton v. City of St. Helens, 425 F.3d 1158, 1166 (9th Cir. 2005) (citation and internal quotation marks omitted). see Howe-I, Case. No. 20-cv-2622-SI, Order (dkt. 43) at 8-9. However, that instruction appears to have fallen on deaf ears because neither has anything of substance been added to the instant Complaint in this regard, nor have the claims been removed. Compare Howe-I, FAC (dkt. 31) at 68-69, with Howe-II, Compl. (dkt. 1) at 72-73. Additionally, Plaintiffs allege (quite literally by repeatedly using various formulations of the phrase nothing more) (see Compl. (dkt. 1) at 72-73) that the adverse actions they claim to have suffered also implicated their property rights in their employment, however in order to assert such a claim, plaintiffs must establish the basis for their claimed property interest in her continued employment something which these Plaintiffs have failed to do through several iterations of their complaints. See generally Bd. of Regents v. Roth, 408 U.S. 564, 567-76 (1972). In any event, because Plaintiffs have failed to allege anywhere near the requisite quantum of facts to support either an equal protection claim, or the denial of a property interest in continued employment claim particularly since being expressly warned in that regard prior to the previous dismissal of their FAC by Judge Illston must likewise be dismissed due to the failure to plead any facts that might support any cognizable legal theory in these regards. The rote and is proper when the complaint either lacks a cognizable legal theory, or fails to allege sufficient

facts to support a cognizable legal theory. Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008); see also Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013). DISMISSED. //

Sixth Cause of Action: Wrongful Termination or Reduction Claim Against County wrongful termination against Ms. Howe and wrongful reduction against Ms. Sheppard and Ms.

Morgan in what they assert to have been a violation of their due process rights. See Compl. (dkt. 1) at 73-74. Once again, this claim rests exclusively on a foundation of conclusory legal statements. See id. First, the court will note that this cause of action was pleaded in a virtually identical manner in Howe-I Compare Howe-I, Case No. 20-cv-2622-SI, FAC (dkt. 31) at 6-70, with Howe-II, Compl. (dkt. 1) at 73-74. The court must also note that once again, Plaintiffs appear to have ign was previously dismissed he Court is not clear what

process each respective plaintiff was allegedly denied. See Howe-I, Case No. 20-cv-2622-SI, Order (dkt. 43) at 9. Notwithstanding that dismissal, Plaintiffs have simply parroted those same rote recitations about being denied notice and hearings prior to their adverse employment actions. See Compl. (dkt. 1) at 73-74. However, it is unclear what sort of notice or hearing would be required prior to Ms. Howe signing a resignation letter (nor is there any explanation to that effect in this Complaint); Ms. Sheppard was demoted and then re-promoted by at least one level after she id. at 25) which indicates something other than the denial of process; and, as for Ms. Morgan, it is not even clear what, if any, adverse employment action she suffered and what sort of process or notice would have been required under the circumstances. Therefore, Plaintiffs have once again failed to plead enough facts to support a cognizable legal theory. See Somers, 729 F.3d at 959. Much more

importantly, however, is the fact that Plaintiffs have directed their sixth cause and as stated above, to show exactly what was the process to which they were entitled and which was denied, they have failed to show that any policy, practice, or custom instituted by the County was the cause of any alleged constitutional depravation. Accordingly, because Plaintiffs fail to state a cognizable Monell claim, sixth cause of action is DISMISSED. //

Nature of Dismissals Given that Plaintiffs have already been effectively granted leave to file two amended pleading and yet they have consistently failed to cure any of the defects identified by Judge Illston in their prior complaints, it that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency[s] [described herein] Schreiber Distrib. Co., 806 F.2d at 1401. In deciding this question, the court has considered all of the pertinent factors. The court has considered the undue delay that would be occasioned by permitting Plaintiffs to file another complaint. Also, the court has considered failures to cure deficiencies through their prior amendments, despite clear instructions from the

court. Most importantly, the court has considered the resulting prejudice to Defendants if they were made to answer which would most assuredly be followed by another motion seeking the dismissal of yet another

episode federal constitutional claims. In other words, the court finds that granting Plaintiffs leave to once again amend their pleading would be an exercise in futility. See Moore, 885 F.2d at 538; Bank of Hawaii, 902 F.2d at 1387; and, Yellow Freight Sys., 957 F.2d at 658. Furthermore, given that the court has dismissed based on the considerations of considerations of judicial economy, convenience, and fairness to the litigants, as described above) now exercise its discretion to also -law claims such that they can be adjudicated, if Plaintiffs so choose, by a state-court judge.

CONCLUSION Accordingly, for reasons stated herein is GRANTED and the entirety of the Complaint (dkt. 1) is DISMISSED WITH PREJUDICE. A separate judgment will issue.

IT IS SO ORDERED. Dated: September 7, 2021

ROBERT M. ILLMAN United States Magistrate Judge