Devore v. United States Department of Defense

Decided Apr 5, 2021

SACV 20-0563-ODW (KS)

04-05-2021

DAWN DEVORE, et al, Plaintiffs, v. UNITED STATES DEPARTMENT OF DEFENSE, et al, Defendants.

KAREN L. STEVENSON UNITED STATES MAGISTRATE JUDGE

MEMORANDUM AND ORDER VACATING REPORT AND RECOMMENDATION (Dkt. No. 35) AND DISMISSING THIRD AMENDED COMPLAINT WITH LEAVE TO AMEND

KAREN L. STEVENSON UNITED STATES MAGISTRATE JUDGE

I. INTRODUCTION

Plaintiffs, California residents proceeding *pro se*, commenced this civil rights action more than a year ago, on March 19, 2020. (Dkt. No. 1.) In the original Complaint, Plaintiffs alleged that the Obama Administration, "using NASA, " coordinated with Russia, China, "and more" to implement a global nonconsensual remote medical research program pursuant to which "nanosensor devices" were implanted in the bodies of Plaintiff Devore and her children. (*Id.*)

On May 18, 2020, the Court dismissed the Complaint with leave to amend and ordered Plaintiffs to file a First Amended Complaint. (Dkt. No. 5.) On June 22, 2020, Plaintiffs filed [*1] a First Amended Complaint (Dkt. No. 6), which the Court also dismissed with leave to amend (Dkt. No. 23). On September 9, 2020, Plaintiffs filed a Second Amended Complaint (Dkt. No. 27) and a Motion to Supplement their Second Amended Complaint (Dkt. No. 28). On October 27, 2020, the Court granted Plaintiffs one final opportunity to file an amended complaint correcting the defects identified by the Court, thereby effectively granting Plaintiffs' Motion to Supplement. (Dkt. No. 29.) The Court ordered Plaintiffs to file their Third Amended Complaint no later than December 8, 2020. (*Id.*) On December 7, 2020, United States Magistrate Judge Patricia Donahue recused herself and the case was reassigned to United States Magistrate Judge Karen L. Stevenson. (Dkt. No. 31.)

On December 30, 2020, after more than three weeks had passed since Plaintiffs' deadline for filing a Third Amended Complaint ("TAC") and no TAC had been filed, the Court issued an Order to Show Cause re: Dismissal, requiring Plaintiffs to show cause no later than January 13, 2021 why the Court should not recommend dismissal for failure to prosecute based on Plaintiffs' failure to comply with the Court's prior orders. (Dkt. No. 33.) On February 5, 2021, after more than three weeks had passed without any communication from Plaintiffs, the Court issued a Report and Recommendation in which it recommended dismissal for failure to prosecute. (Dkt. No. 35.) Plaintiffs were ordered to file objections, if any, no later than February 26, 2021. (Dkt. No. 36.)

On February 8, 2021, Plaintiffs filed a Response to the Court's December 30, 2020 Order to Show Cause in which they asked the Court to continue the deadlines for filing a Third Amended

Complaint. (Dkt. No. 36.) Out of an extraordinary abundance of caution and in the interests of justice, the Court granted Plaintiffs a one week extension of the deadline-through the close of business on March 5, 2021-to file either objections to the Court's Report and Recommendation or a Third Amended Complaint correcting the defects in pleading previously identified by the Court. *2

2

On March 8, 2021, three days after the March 5, 2021 deadline, Plaintiffs filed a Third Amended Complaint (the "TAC") (Dkt. No. 44) and, separately, a signature page (Dkt. No. 45). In the TAC, Plaintiffs continue to allege, *inter alia*, that Congress authorized the implantation of medical monitoring devices in U.S. citizens' bodies without their knowledge or consent, and Plaintiff Devore had three of these devices surgically removed from her body. (*Id.* at 9, ¶¶ 27-30.) In the interests of justice and out of an abundance of caution, **IT IS ORDERED that the Court's February 5, 2021 Order Report and Recommendation is VACATED**, and the Court will screen the Third Amended Complaint as though it had been timely filed.

Under Federal Rule of Civil Procedure 12(b)(6) a trial court may dismiss a claim *sua sponte* and without notice "where the claimant cannot possibly win relief." *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987); *see also Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (same); *Baker v. Director, U.S. Parole Comm'n*, 916 F.2d 725, 726 (D.C. Cir. 1990) (*per curiam*) (adopting Ninth Circuit's position in *Omar* and noting that in such circumstances a *sua sponte* dismissal "is practical and fully consistent with plaintiffs' rights and the efficient use of judicial resources"). The court's authority in this regard includes *sua sponte* dismissal of claims against defendants who have not been served and defendants who have not yet answered or appeared. *See Abagnin v. AMVAC Chemical Corp.*, 545 F.3d 733, 742-43 (9th Cir. 2008); *see also Reunion, Inc. v. F.A.A.*, 719 F.Supp.2d 700, 701 n.1 (S.D.Miss. 2010) ("[T]he fact that [certain] defendants have not appeared and filed a motion to dismiss is no bar to the court's consideration of dismissal of the claims against them for failure to state a claim upon which relief can be granted, given that a court may dismiss any complaint *sua sponte* for failure to state a claim for which relief can be granted pursuant to Rule 12(b)(6).").

In determining whether a complaint should be dismissed at screening, the Court applies the standard of Federal Rule of Civil Procedure 12(b)(6): "[a] complaint must contain *3 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015). Thus, the plaintiff's factual allegations must be sufficient for the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011) (citation and internal quotation marks omitted); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level.").

3

When a plaintiff appears *pro se* in a civil rights case, the court must construe the pleadings liberally and afford the plaintiff the benefit of any doubt. *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012); *see also Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." (citations and internal quotation marks omitted)). In giving liberal interpretation to a *pro se* complaint, however, the court may not supply essential elements of a claim that were not initially pled, *Byrd v. Maricopa County Sheriff's Dep't*, 629 F.3d 1135, 1140 (9th Cir. 2011), and the court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences, " *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

If the court finds that a *pro se* complaint fails to state a claim, the court must give the *pro se* litigant leave to amend the complaint unless "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Akhtar*, 698 F.3d at 1212 (internal quotation marks omitted); *Lira v. Herrera*, 427 F.3d 1164, 1176 (9th Cir. 2005). However, if amendment of the pleading would be futile, leave to amend may be denied. *See Gonzalez v. Planned Parenthood of Los Angeles*, 759 F.3d 1112 1116 (9th Cir. 2014) ("'Futility of amendment can, by itself, justify the denial of a motion for leave to amend,' *Bonin v. Calderon*, *4 59 F.3d 815, 845 (9th Cir. 1995), [a]nd the district court's discretion in denying amendment is 'particularly broad' when it has previously given leave to amend.").

For the following reasons, the Court finds that the Third Amended Complaint fails to state a cognizable claim for relief under federal law and must be dismissed.[1] However, the Court grants Plaintiffs one final opportunity to amend.

[1] Magistrate judges may dismiss a complaint with leave to amend without approval of the district judge. *See McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

II. ALLEGATIONS OF THE COMPLAINT

The two Plaintiffs are Dawn Devore and her adult daughter, Steffini Sellers. (TAC at 5, ¶ 14.) Plaintiffs identify the following defendants: (1) the United States Department of Defense ("DOD"); (2) the Federal Communications Commission ("FCC"); (3) Dr. Hildegarde Staninger, PhD, and her two companies, Integrative Health Systems LLC and HIS Institute of Toxic Genomics & Bioethno Life Systems; (4) the Boeing Company ("Boeing"); and (5) Insitu, Inc., a subsidiary company of Boeing. (TAC at 5-6.) Though not mentioned in the section discussing the parties to the action, the caption of the TAC also lists "Does 1-20" as defendants.

The TAC asserts that the United States, through the 21st Century Cures Act, P.L. 114-255, and the Congressionally Directed Medical Research Program, authorized the implantation of nanodevices into human subjects without their informed consent. (TAC at 9, ¶¶ 28, 29.) The TAC asserts that "these devices were implanted in [Plaintiffs'] bodies during surgeries and were detected later by professionals . . . Plaintiff Devore had 3 of them surgically removed." (TAC at 9, ¶ 30.) The devices were later determined to be laced with "forever chemicals, " which caused Plaintiff Devore severe pain and illness. (TAC at 9-10, ¶ 30.) The TAC does not assert any facts about how the devices came to be implanted in Plaintiffs' bodies. *5

The TAC asserts that, in mid-2017, Plaintiffs hired Defendant Staninger to help them with their "unexplained illnesses." (TAC at 10, ¶ 31.) Plaintiffs paid Defendant Staninger $38,000, and Defendant Staninger determined that Plaintiffs had been "used for medical research, via telemedicine, by the government and private actors." (TAC at 10, ¶ 31.) An electrical engineer, John Kingston, identified the medical monitoring devices in Plaintiffs' bodies, and Defendant Staninger referred Plaintiff Devore to a surgeon in Georgia, Dr. Susan Kolb, who removed "three specimens" from Plaintiff Devore's body. (TAC at 10-11, ¶¶ 32-33.) Kingston, the electrical engineer, also identified a monitoring device at the brain stem of Plaintiff Devore's granddaughter, Summer Sellers. (TAC at 14, ¶ 46.)

Defendant Staninger took microphotographs of the devices removed from Plaintiff Devore's body and sent them to an independent laboratory, which determined that they were indeed "medical monitoring devices used in telemedicine." (TAC at 11, ¶ 34.) The TAC asserts that the devices contained forever chemicals, provides details about other properties of the devices, and describes one as a "particle accelerator on a chip" made by Stanford University and the University of California - Los Angeles. (TAC at 11-12, ¶¶ 35-

37.) The TAC alleges that the device in Summer Sellers' brain stem operated at a signal of 224.9MHz, a frequency licensed to Defendant Boeing. (TAC at 14, ¶ 46.) The children also had a device with a radio signal at 116MHz, another frequency licensed to Defendant Boeing. (TAC at 15, 47.)

The TAC asserts that Plaintiff Devore discovered that she felt electrical currents passing through her while she was in her home. (TAC at 12, ¶ 40.) She discovered that the currents operated at the same "range" as a microwave oven and, further, that Defendant DOD was conducting "microwave testing" in residential areas across the country. (TAC at 12, ¶ 40.) The TAC asserts that expert testimony will establish that "RF (radio frequency) Arc Technology" operated continuously in Plaintiffs' homes for several
6 months. (TAC at 13, ¶ *6 41.) According to the TAC, this technology also operated in Plaintiff Devore's office. (TAC at 13, ¶ 42.)

The TAC asserts that Plaintiff Devore learned that Defendant Boeing created a Contraband Cell Phone Program. (TAC at 14, ¶ 44.) Plaintiff Devore "believes" there is a "massive cover up." (TAC at 14, ¶ 45.) She "was advised" that Plaintiffs had been labeled as "assets" in investment portfolios. (TAC at 15, ¶ 48.) Plaintiffs also "discovered" that Defendant Staninger sent an email to nine other persons, but, when Plaintiffs' asked about the email, Defendant Staninger refused to identify the recipients. (TAC at 16, ¶ 49.)

The TAC asserts that "Plaintiff Sellers' test results were ALL licensed to the 'FCC Public Safety and Homeland Security Bureau, '" and it describes Exhibit 29 as a copy of the "FCC License for the frequencies found transmitting to Plaintiff Sellers." (TAC at 16, ¶ 50) (emphasis in original). In paragraph 51 of the TAC, Plaintiffs state: "WE DEMAND TO KNOW WHY THESE 'INDEPENDENT' FEDERAL AGENCIES AND 'BUREAUS' ARE SURVEILLING OUR CHILDREN." (TAC at 16, ¶ 51.)

The TAC asserts that Defendant Staninger is trying to get out of being Plaintiffs' expert even though her degree in "electrophilics" means that she "knew exactly what was happening to [Plaintiffs] and why." (TAC at 17, ¶ 52.) Further, Defendant Staninger has been using Plaintiffs for her own purpose to advance a medical device called "ARC-Hg1." (TAC at 17, ¶ 53.) The TAC states, "Hg1 is mercury [and Plaintiff] Devore was diagnosed with mercury poisoning." (TAC at 17, ¶ 53.) "Plaintiffs believe that [Defendant] Staninger is the leading member of the group carrying out research on Plaintiffs and can provide the names of the other members." (TAC at 17, ¶ 55.)

Based on the foregoing observations, assumptions, and beliefs, Plaintiffs assert the following four claims: (1) a Fourth Amendment claim against all
7 five Defendants for *7 transmitting frequencies into the homes and bodies of Plaintiffs and their children (TAC at 18-19, ¶¶ 56-61); (2) a state tort claim for trespass against all Defendants for transmitting their frequencies into the homes and bodies of Plaintiffs and their children (TAC at 19-20, ¶¶ 62-70); (3) a claim for nonconsensual human experimentation "against ALL" in violation of California Health & Safety Code Sections 24170-24179.5 (TAC at 21-22, ¶¶ 71-79); and (4) a state tort claim for the infliction of emotional distress "against ALL" based on Defendants' acts, including the "criminal activity of child trafficking" resulting from an unidentified person or entity monitoring the children (TAC at 23-24, ¶¶ 80-86). Plaintiffs request a permanent injunction against Defendants to prohibit them from doing "the acts described herein" and damages. (TAC at 24-25; *see also Id.* at 7.)

Plaintiffs attached nearly 150 pages of exhibits to their 25-page complaint. (TAC at 26-164.) Exhibit 1, written by Rima E. Laibow, MD, a New York state psychiatrist, relates primarily to a dispute

between Plaintiff Devore and her employer in connection with Plaintiff Devore's concern that she was a victim of human experimentation. (TAC at Ex. 1.) Exhibit 2 is a confidentiality contract between Plaintiff Devore and Defendant Staninger. (TAC at Ex. 2.) Exhibit 3 is a fact sheet from the Environmental Protection Agency about a global stewardship program aimed at reducing the emissions of, and, ultimately, eliminating, per and polyfluoaroalkyl substances from products by 2015. (TAC at Ex. 3.) Exhibit 4 is a summary of the 21st Century Cures Act. (TAC at Ex. 4.) Exhibit 5 is summary of the Joint Warfighter Medical Research Program. (TAC at Ex. 5.) Exhibit 6 is an affidavit of Defendant Staninger, describing her qualifications, which was filed in a lawsuit in the Eastern District, *Devore v. California Department of Corrections and Rehabilitation*, No. 2:18-cv-2487-KJM AC PS (Sep. 8 2020). Exhibit 7 is an affidavit of Kingston, the electrical engineer. (TAC at Ex. 7.) Exhibit 8 is an August 1, 2017 operative report from Dr. Kolb who reported removing a "symptomatic foreign body in [Plaintiff Devore's] left sub-mammary area." (TAC at Ex. 8.) Exhibit 9 is a Specimen Analysis Report from Defendant Staninger. (TAC at Ex. 8.) Exhibit 10 is a photograph and a chart. (TAC at Ex. 10.) Exhibit 11 is the "findings of a computational *8 electronic advanced subject analysis of data/signals collected during a non-linear junction scan." (TAC at Ex. 11.) Exhibit 12 is an article from *www.sciencedirect.com* about the electrochemical degradation of perfluorooctanoic acid. (TAC at Ex. 12.) Exhibit 13 is a toxic element exposure profile for Plaintiff Devore's hair. (TAC at Ex. 13.) Exhibit 14 is a Science Daily report concerning a photocatalyst that can destroy "forever" chemicals in laboratory tests on polluted water. (TAC at Ex. 14.) Exhibit 16 is a blank page. (TAC at Ex. 16.) It is unclear what Exhibits 17-19 are and who wrote them. (TAC at Exs. 17, 19.) Exhibit 20 is Kingston's affidavit in Plaintiff Devore's closed Eastern District case against the California Department of Corrections and Rehabilitation. (TAC at Ex. 20.) Exhibit 21 is an application for modification of a radio station filed with the Defendant FCC. (TAC at Ex. 21.) Exhibit 22 is an excerpt from an Appendix to an unidentified document that identifies members of the "CCST Contraband Cell Phones in Prison Project." (TAC at Ex. 22.) Exhibit 23 is the biography of Patrick Diamond, Ph.D., with the Fusion and Astrophysical Plasma Physics Group at the University of California - San Diego. (TAC at Ex. 23.) Exhibit 24 is an application for a new license of a radio station filed with the Defendant FCC. (TAC at Ex. 24.) Exhibit 25 reflects an aviation radionavigation license owned by Defendant Boeing in 2010 through 2013. (TAC at Ex. 25.) Exhibit 26 is a "Confidential Limited Distribution" "Level 9 Communication" dated October 20, 1995 and purportedly written by Intelliconnection, "a security division of IBM, " which indicates that neural chips had been implanted in a number of prisoners. (TAC at Ex. 26.) Exhibit 27 is a March 1, 2018 email from Defendant Staninger to unidentified recipients about Plaintiff Devore and "the use of man-made materials within an individual's body to create a whole-body area network (WBAN) into various multiplexing energy formats for transmissions." (TAC at Ex. 27.) Exhibit 28 is information about PIMCO StocksPlus International Fund. (TAC at Ex. 28.) Exhibit 29 is a Radio Station Authorization by Defendant FCC for the State of California. (TAC at Ex. 29.) Exhibit 30 is a Direct Laboratory Services report for Plaintiff Devore. (TAC at Ex. 30.) Exhibit 31 is an affidavit of Dr. Laibow that was filed in Plaintiff Devore's closed Eastern District case. (TAC at Ex. 31.) *9

III. DISCUSSION

Plaintiffs sue both federal government entities (the DOD and FCC) and private actors for damages and injunctive relief. As discussed extensively *infra*, the Third Amended Complaint fails to state a claim against any Defendant because it is devoid

of factual allegations establishing a plausible inference that any Defendant took any action that caused the alleged harm to Plaintiffs.

A. The Complaint Fails to Assert a Claim Against the Doe Defendants

The Court begins its analysis with the 20 Doe Defendants. Local Rule 19-1 prohibits the filing of any complaint or petition that includes more than ten Doe, or fictitiously named, parties. Further, the TAC is devoid of any allegations against any Doe, or unknown, defendant. Further, the Court cannot determine from the TAC whether the Doe Defendants are individuals or entities-or merely placeholders representing Plaintiffs' misguided attempt to preserve the possibility of adding additional defendants in the future. "The Ninth Circuit has long held that the use of John Doe defendants is frowned upon, " and "[t]he proper method of adding new parties in the federal courts is in [Rule 15 of the Federal Rules of Civil Procedure]." *Coleman v. Fed. Intermediate Credit Bank*, 600 F.Supp. 97, 101 (D. Or. 1984) (citing *Fifty Associates v. Prudential Insurance Co. of America*, 446 F.2d 1187, 1191 (9th Cir. 1970)). For all of the foregoing reasons, the Doe Defendants are DISMISSED.

If Plaintiffs elect to file a Fourth Amended Complaint, it must include no more than 10 Doe Defendants, and it must articulate specific factual allegations against each Doe Defendant establishing their involvement in, or responsibility for, the alleged legal harms. *10

B. The Complaint Fails to Assert a Fourth Amendment Claim Against the Private Actors: Defendants Staninger and her companies; Boeing; and Insitu

Plaintiffs also asserts that a number of private actors-Dr. Hildegarde Staninger, PhD, and her limited liability companies, Integrative Health Systems LLC and HIS Institute of Toxic Genomics & Bioethno Life Systems; Boeing; and Insitu, Inc., a subsidiary company of Boeing-violated their Fourth Amendment rights. The United States Constitution protects individual rights only from government action, not from private action." *Single Moms, Inc. v. Montana Power Co.*, 331 F.3d 743, 746 (9th Cir. 2003). Accordingly, it is only when the *government* is responsible for the plaintiffs' complaints that their individual constitutional rights are implicated. *See Id.* at 746-47 (citing *Brentwood Academy v. Tennessee Secondary School Athletic Assoc*., 531 U.S. 288, 295 (2001)) (emphasis in original omitted). Nevertheless, a private party may be treated as a government actor where the alleged infringement of the plaintiffs' federal rights is "fairly attributable" to the government. *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) (quoting *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir.1999)). Additionally, the liability of individual defendants for a constitutional violation must be based on the personal involvement of the defendant. *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998); *see also Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). Specifically, to demonstrate a civil rights violation against a government official, a plaintiff must show either direct, personal participation of the official in the harm or some sufficient causal connection between the official's conduct and the alleged constitutional violation. *See Starr v. Baca*, 652 F.3d 1202, 1205-06 (9th Cir. 2011).

Defendant Staninger, and her companies, as well as Boeing, and Insitu are all *private entities*, not government actors, and there are no factual allegations that would permit a reasonable inference that they took some action that (a) infringed Plaintiffs' Fourth Amendment rights and (b) is fairly attributable to the federal government. Indeed, the TAC is devoid of allegations that would permit a reasonable inference that these Defendants took any *11 action that caused a violation of Plaintiffs' Fourth Amendment rights, and it is similarly devoid of allegations that would permit a reasonable inference that their actions

were fairly attributable to the government. Plaintiff Devore's "discovery" of a program created by a private company (*see* TAC at 14, ¶ 44) cannot, without more, support an inference that the private company at issue (Boeing) created this program for or on behalf of the federal government-much less that Boeing actually implanted devices in (or otherwise experimented upon) the bodies of Plaintiffs and their children. Similarly, the assertions that Boeing attended FCC hearings or worked with the California Council of Science and Technology, a nonprofit organization established via the California State Legislature, also provide no support for the view that Boeing performed an action that is attributable to the government and caused a Fourth Amendment deprivation. Accordingly, Plaintiffs' claims against Defendants Staninger, and her companies, Boeing, and Insitu all must be DISMISSED.

If Plaintiffs elect to file a Fourth Amended Complaint, they shall either (1) omit their Fourth Amendment claim against these private actors or (2) articulate specific factual allegations that support a reasonable inference that both of the following are true: (a) each of these actors personally participated in, or otherwise caused, an unreasonable search or seizure of Plaintiffs; and (b) their conduct can be fairly attributable to the government. Plaintiff's beliefs and speculation are insufficient. *See Twombly*, 550 U S at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level."); *Sprewell*, 266 F.3d at 988 (court need not accept as true allegations that are "conclusory, unwarranted deductions of fact or unreasonable inferences").

C. The Complaint Fails to Assert a Fourth Amendment Claim Against the Federal Government Entities: the DOD and the FCC

With regards to the federal government entities, under the doctrine of sovereign immunity Plaintiff is barred from asserting constitutional claims for damages against the *12 United States, its agencies, and federal employees in their official capacity. *See Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 260 (1999); *F.D.I.C. v. Meyer*, 510 U.S. 471, 486 (1993); *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985). Pursuant to the doctrine of sovereign immunity, "a *Bivens* action can be maintained against a defendant in his or her individual capacity only." *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1988); *see also Nurse v. United States*, 226 F.3d 996, 1004 (9th Cir. 2000). Accordingly, Plaintiff's Fourth Amendment claim against the DOD and FCC for monetary damages must be dismissed. If Plaintiffs elect to file a Fourth Amended Complaint, they shall omit claims for damages against the United States or any of its agencies or entities, including the DOD and FCC.

Plaintiffs may proceed on their Fourth Amendment claim for injunctive relief against the DOD and FCC, but only if they can demonstrate that these entities maintained a policy or custom that played a part in the violation of federal law. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991); *Hartmann v. Cal. Dept' of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013). Here, there are allegations that "Plaintiff Sellers' test results were ALL licensed to the 'FCC Public Safety and Homeland Security Bureau, '" (TAC at 16, ¶ 50) but no allegations that the FCC maintained a custom or policy that caused an unreasonable search or seizure of Plaintiff's bodies. Similarly, there is a demand to know "why these 'independent' federal agencies and 'bureaus' are surveilling our children" (TAC at 16, ¶ 51), but no specific facts from which a reasonable reader would infer that either federal defendant-the FCC and the DOD-actually maintained a custom or policy of surveilling Plaintiffs and their children.

Accordingly, the Fourth Amendment claim against the DOD and the FCC must be DISMISSED. If Plaintiffs elect to file a Fourth Amended Complaint, they shall either (1) omit their Fourth Amendment claims against the United States and any federal agencies or (2) both clarify that they are suing these entities for injunctive relief only

and articulate specific factual allegations that support a reasonable inference that each defendant agency maintained a custom or policy that *caused* the alleged Fourth Amendment violation. *13

D. The Complaint Fails to State a Tort Claim for Trespass or Intentional Infliction of Emotional Distress

1. The TAC Fails to State a Claim for Trespass

In addition to their Fourth Amendment claim, Plaintiffs assert state tort claims for trespass and the infliction of emotional distress. The elements of a cause of action for trespass or injury are the following: (1) the plaintiffs' lawful possession or right to possession of described property; (2) the defendants' wrongful act of trespass on the property; and (3) damage to the plaintiffs proximately caused by the trespass. 5 Witkin, Cal. Proc. 5th Plead § 631 (2020). Plaintiffs have failed to articulate specific factual allegations that would support an inference that (a) Defendants performed a "wrongful act of trespass" on their property and (b) Defendants' act of trespass proximately caused damage to Plaintiffs.

The TAC alleges that various devices implanted in Plaintiffs' bodies emitted at signals that were licensed to Defendant Boeing. Without more, however, the fact that Defendant Boeing had a license to emit radio signals at the same frequency as the signals emitting from Plaintiff Sellers does not support a reasonable inference that Defendant Boeing implanted medical devices in Plaintiff Sellers' body.

Similarly, the TAC asserts that Plaintiff Devore, while in her home, felt electrical currents pass through her that were in the same range as a microwave oven and discovered that Defendant DOD was conducting microwave testing in residential areas. Again, Plaintiffs assume that, because Defendant DOD was allegedly conducting microwave testing in residential areas nationwide and Plaintiff Devore's home was emitting electrical currents like a microwave oven, it must have been Defendant DOD that transmitted the electrical currents through Devore's house. However, this is an assumption-a leap of logic-and not a specific *14 factual allegation, and, therefore, falls short of the *Iqbal* and *Twombly* pleading standard in federal court. *See Twombly*, 550 U.S. at 555; *Sprewell*, 266 F.3d at 988.

2. The TAC Fails to State a Claim for Intentional Infliction of Emotional Distress

Finally, to state a claim for intentional infliction of emotional distress, Plaintiffs must allege sufficient facts to support an inference that all of the following are true: (1) there was "extreme and outrageous conduct by the defendant[s] with the intention of causing, or reckless disregard of the probability of causing, emotional distress;" (2) the plaintiffs suffered "severe or extreme emotional distress;" and (3) the defendants' outrageous conduct was the "actual and proximate causation of the emotional distress." *Wilson v. Hynek*, 207 Cal.App.4th 999, 1009, 144 Cal.Rptr.3d 4, 11 (2012); *see also* 5 Witkin, Cal. Proc. 5th Plead § 768 (2020) (plaintiffs must plead that the defendants' conduct was intentional and unreasonable and likely to result in illness). However, the TAC is devoid of factual allegations that support an inference that any Defendant engaged in conduct-any conduct-that was the actual and proximate cause of Plaintiffs' emotional distress. Plaintiffs cite a series of statutes, licensing mechanisms, and government programs as evidence that it is theoretically possible that Defendants implanted medical devices in Plaintiffs' bodies and turned their homes and offices into veritable human microwaves, but Plaintiffs provide zero concrete factual allegations of Defendants' actual involvement. At most, Plaintiffs' Internet research and their communications with Kingston, Kolb, and Staninger create a possibility that *someone* implanted devices in Plaintiffs' bodies and sent radio signals through their homes and offices. It does not, however, state a claim for liability

against *Defendants*. Accordingly, Plaintiffs' claim for intentional infliction of emotional distress must be DISMISSED.

Plaintiffs are granted leave to amend their state tort claims. In any Fourth Amended Complaint, they must either omit these claims or articulate specific facts that, if true, would establish that *each Defendant* performed an act that caused the
15 alleged harm. Plaintiffs have *15 yet to offer any specific and concrete factual allegations that would explain how Defendants are responsible for Plaintiffs' distress.

E. The TAC Fails to State a Claim Under Cal. Health & Safety Code § 24176 and Related Provisions on Human Experimentation.

Finally, Plaintiffs' claim for a violation of California Health & Safety Code Sections 2410-2417 concerning medical experimentation also fails. Section 24176 of the California Health & Safety Code prescribes the civil and criminal penalties for persons who conduct a medical experiment on another human being without obtaining the subject's informed consent. Inherent in any cause of action under this provision of the California Code is that the defendant conducted a medical experiment or was "primarily responsible for the conduct of a medical experiment." *See* Cal. Health & Safety Code §§ 24170-24179. Plaintiffs, however, have not pled specific facts that would support a reasonable inference that any Defendant conducted- or was primarily responsible for the conduct of-a medical experiment on Plaintiffs. As with their other claims, Plaintiffs' allegations are purely conclusory and speculative, devoid of factual detail that could link Defendants' actions to Plaintiffs' suffering. *See Twombly*, 550 U.S. at 555; *Sprewell*, 266 F.3d at 988 (court need not accept as true allegations that are "conclusory, unwarranted deductions of fact or unreasonable inferences").

In commencing this lawsuit, Plaintiffs have placed at issue *Defendants' conduct*, but it is the subject mentioned the most infrequently in their pleadings. Instead, the TAC focuses on the harm Plaintiffs have suffered, as supported by the findings and opinions of the various professionals in whom Plaintiffs have placed their trust: Defendant Staninger; Kingston, the electrical engineer; and Drs. Kolb and Laibow. Although allegations of a plaintiff's damages are critical to a well-pled complaint, alone they are insufficient to state a claim upon which relief can be granted. A well-pled complaint also must articulate specific facts that identify the *specific* actions that the named defendants took that caused the plaintiffs to
16 suffer the legal *16 deprivations alleged. In the absence of that critical link between the defendants' conduct and the plaintiffs' harm, a complaint may invoke sympathy for the plaintiffs but nevertheless be dismissed for failure to state a claim.

IV. CONCLUSION

For the reasons stated above, the Third Amended Complaint fails to state a claim upon which relief can be granted and is dismissed with leave to amend. If Plaintiffs still wish to pursue this action, they are granted fourteen (14) days from the date of this Memorandum and Order within which to file a Fourth Amended Complaint. In any amended complaint, Plaintiffs shall cure the defects described above.

Plaintiffs shall not include new defendants or new allegations that are not reasonably related to the claims asserted in the original complaint. Further, the Fourth Amended Complaint, if any, shall be complete in itself and shall bear both the designation "Fourth Amended Complaint" and the case number assigned to this action. It shall not refer in any manner to Plaintiffs earlier pleadings, and claims and defendants that are not expressly included in the Fourth Amended Complaint shall be deemed abandoned.

In any amended complaint, Plaintiffs may not rely on conclusory allegations, assumptions, speculation, suspicions, leaps of logic, or formulaic recitations of applicable law. Plaintiffs

shall clearly and concisely explain the factual and legal basis for each Defendant's liability and articulate specific concrete facts establishing each Defendant's involvement in, or responsibility for, the alleged wrongdoing. It is not sufficient to allege that Defendants *could* have or might have caused Plaintiffs harm. Plaintiffs must allege specific facts showing that Defendants *did* cause Plaintiffs harm. Plaintiffs shall omit allegations of wrongdoing or suspicious conduct by individuals who are not named as defendants as well as statements, requests, and attachments that are not
17 relevant to Plaintiffs' claims for relief. *See* *17 *United States ex rel Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) ("[D]istrict courts are busy enough without having to penetrate a tome approaching the magnitude of War and Peace to discern a plaintiffs claims and allegations.").

Finally, when filing an amended complaint, Plaintiff is strongly encouraged to either utilize the Central District's standard civil rights complaint form, a copy of which is attached, or comply with the Central District's Local Rules governing the format of pleadings.

Plaintiffs now have received multiple opportunities to correct the defects in their pleadings and file a viable complaint. Accordingly, *if Plaintiffs do not timely comply with this Order and correct the defects identified by the Court, the Court may find that additional opportunities for amendment would be futile and recommend dismissal* of the case, in whole or in part.

If Plaintiffs no longer wish to pursue this action, in whole or in part, they may voluntarily dismiss it, or any portion of it, by filing a signed document entitled "Notice of Dismissal" in accordance with Federal Rule of Civil Procedure 41(a)(1).

THIS MEMORANDUM IS NOT INTENDED NOR IS IT INTENDED TO BE INCLUDED IN OR SUBMITTED TO ANY ONLINE SERVICE SUCH AS WESTLAW OR LEXIS.
18 *18