

SEP 08 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK McDOWELL; DEBORAH  
McDOWELL,

Plaintiffs - Appellants,

v.

CITY AND COUNTY OF SAN  
FRANCISCO; et al.,

Defendants - Appellees.

No. 13-16274

D.C. No. 3:12-cv-03192-JSW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Jeffrey S. White, District Judge, Presiding

Submitted August 25, 2015\*\*

Before: McKEOWN, CLIFTON, and HURWITZ, Circuit Judges.

Frank and Deborah McDowell appeal pro se from the district court's  
judgment dismissing their 42 U.S.C. § 1983 action alleging violations of federal

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

and state law arising out of their employment with the City and County of San Francisco. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Fed. R. Civ. P. 12(b)(6). *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm.

The district court properly dismissed the McDowells' § 1983 claims against the City and County of San Francisco because the McDowells failed to allege facts sufficient to state any plausible claim. *See AE ex rel. Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 636-37 (9th Cir. 2012) (pleading requirements for a *Monell* liability claim against a municipality); *see also O'Connor v. Ortega*, 480 U.S. 709, 715-16 (1987) (requirements of Fourth Amendment privacy violation claim).

The district court properly dismissed the McDowells' age discrimination claim because the McDowells failed to allege facts sufficient to state a discriminatory treatment claim or to identify a specific test, requirement, or practice that had an adverse impact on older employees. *See Smith v. City of Jackson*, 544 U.S. 228, 241 (2005) (requirements of age discrimination claim).

The district court properly dismissed the McDowells' Fair Labor Standards Act claim because the McDowells failed to allege any facts in support of their claim. *See Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (court may not supply essential elements of a claim that were not pled).

The district court did not abuse its discretion in denying the McDowells' motions for appointment of counsel because their underlying claims were meritless. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (standard of review and exceptional circumstances requirement); *Johnson v. U.S. Dep't of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991) (relevant factors for appointment of counsel in Title VII actions).

We do not consider the McDowells state law claims because they failed to “present a specific, cogent argument for our consideration.” *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

**AFFIRMED.**