NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 19 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GILDA RYAN; JOSEPH M. RYAN,

Plaintiffs-Appellants,

v.

COUNTY OF IMPERIAL; GILBERT OTERO, Imperial County District Attorney; RAYMOND LOERA, Imperial County Sheriff; KATHERINE TURNER, Imperial County Counsel; ADAM GREGORY CROOK, Imperial County Counsel; TONY ROUHOTAS, Jr., Imperial County CEO; ESPERANZA COLIO-WARREN, Imperial County Vice-CEO; RAYMOND CASTILLO, Imperial County Supervisor; RYAN KELLEY, MICHAEL KELLEY, LUIS PLANCARTE, and JESUS ESCOBAR, Imperial County Supervisors; BLANCA ACOSTA, Imperial County Clerk of The Board of Supervisors; CLIFTON ERRO and RENE MCNISH, Imperial County Sheriff Deputies; PALO VERDE COUNTY WATER DISTRICT, sub-agency of Imperial County; RONALD WOODS, JESS PRESTON, JAN AYALA, and DAVID KHOURY, Palo Verde County Water Board Directors; KATHI FRICE-SANDERS; BARBARA HOPTON; DONNA LORD; CATHY SMITH ADAMS;

No. 23-55042

D.C. No.
3:21-cv-01076-JO-LR

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

CELESTE PRESTON; DAVID AYALA; THOMAS CALVERT; PATSY CALVERT; ANNE MARIE DELCASTILLO; NONI RICHARDS; CATHY BROADWELL; JENNIFER POLLARD; LINDA SANCHEZ; JAMES HARRIGAN; YUMA SUN, INC., DBA Palo Verde Valley Times; URIEL AVENDANO; LISA REILLY; FRED MIRAMONTES, Imperial County UnderSheriff; DOES, 1-6; Imperial County Sheriff Deputies,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of California
Jinsook Ohta, District Judge, Presiding

Submitted September 19, 2024[**]

Before: O'SCANNLAIN, KLEINFELD, and SILVERMAN, Circuit Judges.

Gilda and Joseph Ryan appeal pro se from the district court's judgment dismissing their action under 42 U.S.C. § 1983 and state law against Imperial County, its sub-agency Palo Verde County Water District, various individuals associated with the County in their individual and official capacities ("County Defendants" or "Water District Defendants"), private citizens who attended a County Board of Supervisors meeting ("Private Defendants"), and a local newspaper and its employees who published a news article about the County Board

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

of Supervisors meeting ("Media Defendants"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Naffe v. Frey*, 789 F.3d 1030, 1035 (9th Cir. 2015). We affirm.

The district court properly dismissed, as precluded by California's two-year statute of limitations, the Ryans' § 1983 claims against County Defendants for an alleged violation of their right not to be separated from their children without due process. *See* Cal. Code Civ. Proc. § 335.1; *Holt v. County of Orange*, 91 F.4th 1013, 1018 (9th Cir. 2024) (applying the state's personal injury limitations period for § 1983 actions).

The district court properly dismissed the Ryans' § 1983 claims against Private and Media Defendants because they failed to allege facts showing state action. *See Naffe*, 789 F.3d at 1035-36 (requiring violation of a constitutional right by a person acting under color of law); *Howerton v. Gabica*, 708 F.2d 380, 382-83 (9th Cir. 1983) (requiring "significant" state involvement); *see also O'Handley v. Weber*, 62 F.4th 1145, 1159 (9th Cir. 2023) (explaining that joint action requirement is "intentionally demanding and requires a high degree of cooperation" between private parties and state officials to rise to level of state action).

The district court properly dismissed the Ryans' § 1983 claims against County Defendants in their official capacities because those defendants could not

be held vicariously liable under *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 691 (1978). *See Price v. Sery*, 513 F.3d 962, 966 (9th Cir. 2008) (requiring allegations showing either 1) an unconstitutional custom or "longstanding practice . . . which constitutes the standard operating procedure of the local government entity" behind the violation of rights, 2) that the unconstitutional act was committed by an official whose acts fairly represent official policy, or 3) a final policymaker's involvement in, or ratification of, the conduct underlying the violation of rights).

Additionally, the Rules of Conduct for County Board of Supervisors meetings did not constitute an unlawful official policy under *Monell*. *See Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010) (explaining that government board meeting is a limited public forum where reasonable time, place, and manner regulations and content-based regulations are permissible if they are viewpoint neutral and enforced that way); *see also White v. City of Norwalk*, 900 F.2d 1421, 1424 (9th Cir. 1990) (upholding a City Council ordinance that provided for removal of a person who makes "personal, impertinent, slanderous or profane remarks" to any member of a city council, and whose remarks actually disturb or impede the meeting).

The district court properly dismissed the Ryans' remaining § 1983 claims for damages against the individual County Defendants because those defendants were

shielded by qualified immunity. *See Mattos v. Agarano*, 661 F.3d 433, 440 (9th Cir. 2011) (en banc) (protecting government officials from liability if their conduct did not violate clearly established rights of which a reasonable person would have known); *see also Acosta v. City of Costa Mesa*, 718 F.3d 800, 823-24 (9th Cir. 2013) (per curiam) (extending qualified immunity to officers enforcing an ordinance, because they were entitled to assume duly enacted ordinance was constitutionally valid).

The district court properly concluded that the Ryans had not alleged a violation of the Unruh Act, Cal. Civ. Code § 51, because they did not allege that any defendant, including the County, was acting as a business establishment. *See Harrison v. City of Rancho Mirage*, 243 Cal. App. 4th 162, 173-75 (2015) (holding that defendant city was not functioning as a business establishment for purposes of Unruh Act when it enacted an ordinance).

The district court properly granted Media Defendants' motion to strike under Cal. Code Civ. Proc. § 425.16(b), because the only allegations in the complaint involved the protected conduct of publishing a newspaper article concerning a local government board meeting. *See Sarver v. Chartier*, 813 F.3d 891, 897 n.1 (9th Cir. 2016) (reviewing de novo); *Hilton v. Hallmark Cards*, 599 F.3d 894, 903 (9th Cir. 2010) (as amended) (explaining that, to prevail on an anti-SLAPP motion, defendants must first show that their acts were taken in furtherance of their right of

petition or free speech in connection with a public issue, and then plaintiffs must show probability of prevailing on their claim); *see also Manzari v. Associated Newspapers Ltd.*, 830 F.3d 881, 887 (9th Cir. 2016) (holding that publishing article on a topic of public interest can satisfy initial burden).

The district court did not abuse its discretion in concluding that amendment of the complaint would be futile. *See Coronavirus Rep. v. Apple, Inc.*, 85 F.4th 948, 958 (9th Cir. 2023) (granting court discretion to deny leave to amend).

The district court did not abuse its discretion in setting aside its entry of default against the Water District Defendants for good cause under Fed. R. Civ. P. 55(c), when the court found no evidence of bad faith or culpable conduct on the part of defendants. *See Franchise Holding II, LLC. v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004) (reciting rule and standard of review).

The district court did not abuse its discretion in denying the Ryans' motions for sanctions, in the absence of misstatements of the law or other litigation misconduct. *See Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1087-88 (9th Cir. 2021) (reciting standard of review).

Neither the magistrate judge nor district judge abused their discretion in the denying the Ryans' motions for their recusal, after each judge determined that their impartiality reasonably could not be questioned. *See Leslie v. Grupo ICA*, 198 F.3d 1152, 1157, 1160 (9th Cir. 1999) (reciting rule and standard of review).

Plaintiffs' motion to correct the record (Dkt. Entry Nos. 40 & 41) is **DENIED**.

AFFIRMED.