UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 23-3307 FMO (Ex)**	Date	**November 30, 2024**
Title	**Marielle Williamson, et al. v. United States Department of Agriculture, et al.**		

Present: The Honorable	Fernando M. Olguin, United States District Judge
Vanessa Figueroa	None Present
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Present	None Present

Proceedings: (In Chambers) Order Re: Motion to Dismiss

Having reviewed and considered all the briefing filed with respect to the United States Department of Agriculture's ("defendant" or "USDA") Motion to Dismiss, (Dkt. 39, "Motion"), the court finds that oral argument is not necessary to resolve the Motion, see Fed. R. Civ. P. 78(b); Local Rule 7-15, Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.[1]

PLAINTIFFS' ALLEGATIONS

This action concerns provisions of the National School Lunch Program ("NSLP") that plaintiffs allege infringe on the rights of students to engage in student speech that exposes the harms caused by consuming dairy products. Marielle Williamson ("Williamson"), the Animal Awareness Club ("Awareness Club"), and the Physicians Committee for Responsible Medicine ("Physicians Committee") (collectively, "plaintiffs") filed the operative First Amended Complaint (Dkt. 34, "FAC"), against the USDA,[2] (see id. at ¶ 39), asserting three claims under 42 U.S.C. § 1983 for violations of their rights under the First Amendment, (see id. at ¶¶ 114-41), and one claim for violation of California Education Code § 48950. (See id. at ¶¶ 142-47).

Plaintiffs' action focuses on a provision of the NSLP, 42 U.S.C. § 1758(a)(2)(C), and a

[1] Capitalization, quotation and alteration marks, and emphasis in record citations may be altered without notation.

[2] Plaintiffs settled and dismissed their claims against the Los Angeles Unified School District ("LAUSD"), Jose P. Huerta, Tony Cortez and Derek Steinorth (collectively, "LAUSD Defendants"), who were named in the original complaint. (See Dkt. 27, Court's Order of October 13, 2023).

parallel USDA regulation, 7 C.F.R. § 210.10(d)(4), (collectively, "Milk Marketing Protections"),[3] which they allege "prohibit direct or indirect restrictions of the sale or marketing of dairy milk by schools and individuals approved by schools." (Dkt. 34, FAC at ¶ 2). At the time the initial complaint was filed, Williamson was a student at Eagle Rock Junior/Senior High School ("Eagle Rock High School") in the LAUSD, (see id. at ¶ 17); (Dkt. 1, Complaint), and the president of the Awareness Club, a registered student club.[4] (Dkt. 34, FAC at ¶ 18). Williamson was also a student member of the Physicians Committee, (id. at ¶ 21), a nonprofit membership organization, which "advocates for preventive medicine through proper nutrition, encourages higher standards for ethics and effectiveness in medical research, and conducts clinical research on the relationships between food and disease." (Id. at ¶ 25).

In October 2022, Eagle Rock High School "permitted [Williamson] to engage in speech critical of dairy on schoolgrounds as part of [a]Mind Over Milk event." (Dkt. 34, FAC at ¶ 65). During the event, she distributed samples of plant-based milk, and handed out literature outside the cafeteria that was critical of the dairy industry. (See id. at ¶¶ 66-67). Williamson was not required to "hand out any materials that promoted the dairy industry." (Id. at ¶ 66).

Subsequently, Williamson became aware of the Milk Marketing Protections. (See Dkt. 34, FAC at ¶ 70). On February 8, 2023, she emailed the principal "seeking permission for . . . the Awareness Club to participate in a day of action on April 14, 2023, to 'educate students about the health and equity problems associated with serving dairy milk in schools.'" (Id. at ¶ 71). Williamson "aimed to table in the quad during lunch to distribute educational materials" regarding milk. (Id.). "To be certain that providing literature critical of dairy would not subject her to discipline by the school nor subject her school to fines by USDA," she inquired whether such an event would violate the NSLP. (Id. at ¶ 72).

On March 3, 2023, Williamson met with the principal, and "reiterated her fear that she might be punished for distributing materials critical of dairy directly outside the cafeteria." (Dkt. 34, FAC at ¶ 75). The principal stated that he would need to speak with his District supervisor before he could provide Williamson with a final answer. (See id. at ¶ 76). On March 14, 2023, the principal emailed Williamson, stating that he had spoken with his supervisor and the LAUSD's Cafeteria Branch, and had decided as follows: "You can have a table set up outside at lunch with . . . flyers on the pros and cons of drinking milk, but you should also have some literature for both sides of the debate. I am trying to get some from a LAUSD nutritionist so that burden does not fall only on you." (See id. at ¶ 78). Williamson responded that if "sharing materials that promote dairy is

[3] The parties refer to the NSLP statutory provision, 42 U.S.C. § 1758(a)(2)(C), and the applicable regulations as the Milk Marketing Protections.

[4] Williamson graduated in June 2023, before the FAC was filed. (See Dkt. 34, FAC at ¶ 17).

required in order for [them] to proceed with the event[,] . . . we would not do the event." (Id. at ¶ 79); (see also id. at ¶ 81).

On March 24, 2023, the principal sent Williamson "the USDA-generated Dairy Promotions that she would be required to distribute in conjunction with materials critical of dairy." (Dkt. 34, FAC at ¶ 82). One of the "Dairy Promotions" was published by the "National Dairy Council, the marketing arm of the National Dairy Promotion & Research Board, a program overseen by the USDA." (Id. at ¶ 83). After Williamson sent follow-up emails, the principal responded on April 13, 2023, stating: "I'm sorry. I was asked to make sure that those materials were available as well. I completely understand your point though." (Id. at ¶ 88).

Plaintiffs allege that Williamson could not proceed with the event without being subject to discipline because the LAUSD apparently confirmed that it was going to enforce a rule prohibiting her from engaging in speech critical of dairy without simultaneously distributing Dairy Promotions. (See Dkt. 34, FAC ¶ 90); (see id. at ¶ 89) (referring to school's "Referral Policy" by which students are subject to discipline for "failing to comply with school rules"). Plaintiffs allege that Eagle Rock High School did not allow Williamson to distribute literature critical of dairy without also distributing materials that promote dairy "solely because [Williamson] referenced the Milk Marketing Protections in discussions with the principal." (See id. at ¶ 91). They allege that the LAUSD does not require students to provide materials from both sides of a debate in other contexts. (See id. at ¶¶ 98-100). Finally, plaintiffs allege that the USDA oversees the NSLP. (See id. at ¶ 41).

LEGAL STANDARD

To survive a motion to dismiss based on Rule 12(b)(1) of the Federal Rules of Civil Procedure ("Rule 12(b)(1)") for lack of subject matter jurisdiction, a plaintiff bears the burden of establishing the court's jurisdiction through sufficient allegations. See Lujan v. Defs. of Wildlife, 504 U.S. 555, 561, 112 S.Ct. 2130, 2136-37 (1992). "Rule 12(b)(1) jurisdictional attacks can be either facial or factual." White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). When evaluating a motion to dismiss that argues "that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction" – a "facial" attack on jurisdiction – the court presumes the truth of the allegations in the complaint. See Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). A motion to dismiss under Rule 12(b)(1) may also pursue a "factual attack," whereby the movant "disputes the truth of the allegations" made in support of federal jurisdiction. See id. "In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment" and "need not presume the truthfulness of the plaintiff's allegations." Id.

DISCUSSION

I. THE NATIONAL SCHOOL LUNCH PROGRAM.

The National School Lunch Act established the NSLP, a federally assisted meal program operating in schools. See 42 U.S.C. §§ 1751-1769j. The USDA oversees the program, which state agencies administer pursuant to agreements with the USDA. See 42 U.S.C. §§ 1753, 1757. The USDA sets basic standards and provides funding, while the States, via agreements with local school districts, administer the program on a day-to-day basis. See 42 U.S.C. §§ 1757-1758.

"Lunches served by schools participating in the [NSLP] . . . (i) shall offer students a variety of fluid milk[;] . . . (ii) may offer students flavored and unflavored milk and lactose-free fluid milk; and (iii) shall provide a substitute for fluid milk for students whose disability restricts their diet[.]" 42 U.S.C. § 1758(a)(2)(A). "A school that participates in the [NSLP] shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place – (i) on the school premises; or (ii) at any school-sponsored event." 42 U.S.C. § 1758(a)(2)(C); see also 7 C.F.R. § 210.10(d)(4) ("A school food authority participating in the [NSLP], or a person approved by a school food authority participating in the [NSLP], must not directly or indirectly restrict the sale or marketing of fluid milk . . . at any time or in any place on school premises or at any school-sponsored event.").

II. SUBJECT MATTER JURISDICTION.

The USDA contends that the court lacks subject matter jurisdiction because plaintiffs lack standing, and/or their claims are moot. (See Dkt. 39-1, Memorandum in Support of Motion to Dismiss ("Memo") at 7-20).

A. Mootness.

Article III requires that "an actual controversy . . . be extant at all stages of review, not merely at the time the complaint is filed." Campbell-Ewald Co. v. Gomez, 577 U.S. 153, 160, 136 S.Ct. 663, 669 (2016) (internal quotation marks omitted). "If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot." Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 72, 133 S.Ct. 1523, 1528 (2013) (internal quotation marks omitted). "A case becomes moot, however, only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." Campbell-Ewald, 577 U.S. at 161, 136 S.Ct. at 669 (internal quotation marks omitted). Here, because Williamson has graduated from Eagle Rock High School, (see Dkt. 34, FAC at ¶ 17), her claims are now moot, including her claim pursuant to Cal. Educ. Code § 48950. (See id. at ¶¶ 142-47); (Dkt. 42, Plaintiffs' Opposition to Motion to Dismiss ("Opp.") at 21) ("Plaintiffs concede that because Marielle has graduated, her claims are moot in federal court.").

B. Standing.

Article III of the United States Constitution limits federal court jurisdiction to "actual, ongoing cases or controversies." Wolfson v. Brammer, 616 F.3d 1045, 1053 (9th Cir. 2010) (internal quotation marks omitted). "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341, 126 S.Ct. 1854, 1861-62 (2006). "A proper case or controversy exists only when at least one plaintiff establishes that she has standing to sue." Murthy v. Missouri, 603 U.S. 43, 57, 144 S.Ct. 1972, 1985 (2024) (cleaned up).

To establish Article III standing to sue, "a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." Food and Drug Administration v. All. for Hippocratic Medicine ("Hippocratic Medicine"), 602 U.S. 367, 380, 144 S.Ct. 1540, 1555 (2024); Lujan, 504 U.S. at 560-61, 112 S.Ct. at 2136. "[S]tanding is not dispensed in gross[.]" TransUnion LLC v. Ramirez, 594 U.S. 413, 431, 141 S.Ct. 2190, 2208 (2021). "That is, plaintiffs must demonstrate standing for each claim that they press against each defendant, and for each form of relief they seek." Murthy, 603 U.S. at 61, 144 S.Ct. at 1988 (internal quotation marks omitted).

Plaintiffs contend that the FAC alleges two distinct injuries: "(1) injury to students, whose First Amendment right[s]" have been violated, and "(2) injury to the Physicians Committee, whose mission has been frustrated." (See Dkt. 42, Opp. at 7).

1. **Restrictions on Student Speech**.

Plaintiffs allege that Eagle Rock High School's restrictions on student speech can be attributed to the USDA because "the Milk Marketing Protections induced [Williamson's] school and Physicians Committee student members' schools . . . to engage in . . . viewpoint discrimination[.]" (See Dkt. 34, FAC ¶ 118); (see also id. at ¶¶ 5-6, 103-05, 126, 145). Relying on the Supreme Court's recent decision in Haaland v. Brackeen, 599 U.S. 255, 143 S.Ct. 1609 (2023) ("Brackeen"), the USDA argues that plaintiffs' claims regarding restrictions on student speech fail because the FAC does not adequately plead redressability. (See Dkt. 39-1, Memo. at 8). The court agrees.

In Brackeen, a group of individual parents sued the United States Department of the Interior and its Secretary, the Bureau of Indian Affairs ("BIA") and its Director, and the Department of Health and Human Services and its Secretary, challenging provisions of the Indian Child Welfare Act ("ICWA"), 25 U.S.C. §§ 1901, et seq. See Brackeen, 599 U.S. at 264, 268-71, 143 S.Ct. at 1622-23, 1625-26. As relevant here, ICWA includes a hierarchy of placement preferences for custody proceedings involving Indian children, id. at 267, 143 S.Ct. at 1624, by which "non-Indian parents are generally last in line for potential placements." Id. at 292, 143 S.Ct. at 1638. "When

a state court adjudicates [a] proceeding, ICWA governs from start to finish." Id. at 266, 143 S.Ct. at 1623. Among other claims, the parents brought equal protection claims contending that ICWA injures them by placing them on unequal footing with Indian parents. Id. at 292, 143 S.Ct. at 1638. The parents sought an injunction to prevent enforcement of ICWA and a "declaratory judgment that the challenged provisions are unconstitutional." Id. at 292, 143 S.Ct. at 1639.

While the Brackeen Court found that the racial discrimination the parents alleged was sufficient to establish an Article III injury, 599 U.S. at 292, 143 S.Ct. at 1638, the parents had not shown that their "injury [was] likely to be redressed by judicial relief." Id. at 291-92, 143 S.Ct. at 1638 (internal quotation marks omitted). The Court explained that because the "state officials who implement ICWA [were] not parties to the suit," an injunction or a declaratory judgment would not give the parents "legally enforceable protection from the allegedly imminent harm." Id. at 293, 143 S.Ct. at 1639. With respect to the request for a declaratory judgment, the Brackeen Court noted that such relief "conclusively resolves the legal rights of the parties[,]" but since the state officials were not parties, a "declaratory judgment [would be] powerless to remedy the alleged harm." Id. (citations and internal quotation marks omitted) (emphasis in original). "After all, the point of a declaratory judgment is to establish a binding adjudication that enables the parties to enjoy the benefits of reliance and repose secured by res judicata. Without preclusive effect, a declaratory judgment is little more than an advisory opinion." Id. at 293, 143 S.Ct. at 1639 (citations and internal quotation marks omitted).

In response to the parents' argument that the state courts were likely to defer to a federal court's interpretation of federal law, giving rise to a substantial likelihood that a favorable judgment would redress their injury, see Brackeen, 599 U.S. at 293-94, 143 S.Ct. at 1639, the Supreme Court stated that "[r]edressability requires that the court be able to afford relief through the exercise of its power, not through the persuasive or even awe-inspiring effect of the opinion explaining the exercise of its power." Id. at 294, 143 S.Ct. at 1639 (internal quotation marks omitted) (emphasis in original).

Here, because the only party remaining in the case is USDA, the court cannot provide redress as to any actions taken against the students by Eagle Rock High School and/or the LAUSD.[5] In other words, irrespective of whether plaintiffs have standing to sue a specific school that allegedly infringed the free speech rights of the students, plaintiffs do not have standing to sue USDA to obtain relief for Eagle Rock High School's alleged actions.

[5] The FAC names the USDA as a defendant. (See Dkt. 34). Perhaps the result would be different if a student plaintiff was still litigating this action. But, as plaintiffs acknowledge, Williamson's claims are now moot. (Dkt. 42, Opp. at 1, 21).

2. **USDA Enforcement of Milk Marketing Protections Against Students.**

In addition to alleging that the Milk Marketing Protections induce schools to infringe students' free speech rights, plaintiffs allege that the Milk Marketing Protections directly regulate student speech because they "specifically apply to 'person[s] approved by a school.'" (See Dkt. 34, FAC at ¶¶ 48-49, 140); (id. at ¶ 138) (alleging that the Milk Marketing Protections "apply not just to schools but to anyone approved by the school") (emphasis omitted).

As initial matter, plaintiffs do not allege that any student has faced an enforcement action based on the Milk Marketing Protections. (See, generally, Dkt. 34, FAC); see Clapper, 568 U.S. at 409, 133 S.Ct. at 1147 (reiterating that "threatened injury must be certainly impending to constitute injury in fact, and . . . [a]llegations of possible future injury are not sufficient.") (internal quotation marks omitted) (emphasis omitted). Nor have plaintiffs sufficiently alleged any "credible threat" that the Milk Marketing Protections will be enforced against them. "[W]here a plaintiff has refrained from engaging in expressive activity for fear of prosecution under the challenged statute, such self-censorship is a constitutionally sufficient injury as long as it is based on an actual and well-founded fear that the challenged statute will be enforced." Barke v. Banks, 25 F.4th 714, 718 (9th Cir. 2022) (internal quotation marks omitted). Courts "consider three factors in determining whether a plaintiff faces a credible threat of enforcement, and thus has suffered an actual injury to a legally protected interest[:] 1) the likelihood that the law will be enforced against the plaintiff; 2) whether the plaintiff has shown, with some degree of concrete detail, that she intends to violate the challenged law; and 3) whether the law even applies to the plaintiff." Id. at 718-19 (citations and internal quotation marks omitted).

Here, plaintiffs' allegations are insufficient under the first and third factors. The first factor focuses on the government's "preliminary efforts to enforce a speech restriction[,]" including any credible threat the government intends to pursue an enforcement action, or any "past enforcement of a restriction[.]" Lopez v. Candaele, 630 F.3d 775, 786 (9th cir. 2010); id. ("a government's preliminary efforts to enforce a speech restriction or its past enforcement of a restriction" can "be strong evidence (although not dispositive[)] that pre-enforcement plaintiffs face a credible threat of adverse state action"). There are no allegations that USDA has engaged in or has threatened such enforcement. (See, generally, Dkt. 34, FAC). Nonetheless, plaintiffs point to "the diligence of the dairy industry, its unusually close ties to [the] USDA, and the actions already taken by [the] USDA," as showing credible threats of enforcement. (See Dkt. 42, Opp. at 15). But plaintiffs' conclusory assertions and allegations are insufficient to show or even suggest enforcement activity – i.e., a threat of specific future harm – by USDA against plaintiffs, let alone any high school students. See Lopez, 630 F.3d at 787("Mere [a]llegations of a subjective chill are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.") (internal quotation marks omitted).

With respect to the third factor – "whether the law even applies to the plaintiff[s,]" Barke, 25 F.4th at 718-19 (internal quotation marks omitted) – plaintiffs have failed to show that the Milk

Marketing Protections apply to students. As USDA notes, "the statute authorizing sanctions under the NSLP does not create [a] mechanism for USDA to punish students[.] (See Dkt. 39-1, Memo at 13); 42 U.S.C. §§ 1769c(a)(1), (b)(4), (e).

In short, the court finds that plaintiffs have failed to establish standing with respect to alleged injuries to students.

3. **Physicians Committee Standing**.

Plaintiffs contend that the Physicians Committee has standing on its own behalf and as a representative of its members. (See Dkt. 42, Opp. at 17). With respect to the latter ground, because the court has found that students lack standing, the Physicians Committee also lacks standing with respect to its student members.

As to the Physicians Committee, "organizations may have standing to sue on their own behalf for injuries they have sustained." Hippocratic Medicine, 602 U.S. 367, 393, 144 S.Ct. 1540, 1563 (2024) (internal quotation marks omitted). "[H]owever, organizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals." Id. at 393-94, 144 S.Ct. at 1563.

Plaintiffs contend that the Physicians Committee suffered injury in fact "by having to divert its resources from pursuit of its organization mission to navigating the unconstitutional restrictions of speech imposed by the Milk Marketing Protections and advising students members on how best to avoid the risk that they, or their schools, will be punished as a result of the Milk Marketing Protections." (Dkt. 42, Opp. at 18); (id. at 18-21); (see Dkt. 34, FAC at ¶ 38). Plaintiffs' contentions are unpersuasive. As an initial matter, plaintiffs do not address, as defendant notes, how "the Milk Marketing Protections regulate [the Physicians Committee's] activities, threaten its funding, or impair the ability of students to join the Physicians' Committee."[6] (Dkt. 45, Reply in Support of Motion to Dismiss at 6); (see, generally, Dkt. 42, Opp. at 17-21). Also, plaintiffs do not allege that the Physicians Committee "it[self] would have suffered some other injury if it had not diverted resources" to address the Milk Marketing Protections with students. See La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest, 624 F.3d 1083, 1088 (9th Cir. 2010) ("Trabajadores"); (see, generally, Dkt. 34, FAC at ¶¶ 34-35, 38). In other words, the Physicians Committee has not put forth plausible allegations that "it was forced to choose between suffering an injury and diverting resources to counteract the injury." Trabajadores, 624 F.3d 1088 n. 4. In

[6] To the extent that plaintiffs rely on Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982), the Supreme Court recently clarified that an interpretation of Havens Realty, such as the one proposed by plaintiffs, "would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies." Hippocratic Medicine, 602 U.S. at 395, 144 S.Ct. at 1564.

short, the allegations are insufficient to establish organizational standing.[7]

III. LEAVE TO AMEND.

Rule 15 provides that the court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2); see Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990) (The policy favoring amendment must "be applied with extreme liberality."). However, "[i]t is settled that the grant of leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court." Zenith Radio Corp. v. Hazeltine Rsch, Inc., 401 U.S. 321, 330, 91 S.Ct. 795, 802 (1971). This discretion is guided by an examination of several factors, including whether: (1) the amendment causes the opposing party undue prejudice; (2) the amendment is sought in bad faith; (3) the amendment causes undue delay; (4) the amendment constitutes an exercise in futility; and (5) the plaintiff has previously amended his or her complaint. See DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 & n. 3 (9th Cir. 1987).

Here, having liberally construed the allegations in the FAC, the court is persuaded that plaintiffs' claims cannot be saved through amendment, and sees no basis to give plaintiffs a third opportunity to amend their complaint. See Chodos v. West Publ'g Co., 292 F.3d 992, 1003 (9th Cir. 2002) ("[W]hen a district court has already granted a plaintiff leave to amend, its discretion in deciding subsequent motions to amend is particularly broad.") (internal quotation marks omitted); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) ("Courts are not required to grant leave to amend if a complaint lacks merit entirely."). Given that plaintiffs' claims are barred as a matter of law in that plaintiffs lack standing to pursue their claims, the court believes it would bu futile to allow further amendment of the complaint. See, e.g., Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990) (denying leave to amend where plaintiff lacked standing) Flores v. GMAC Mortg., LLC, 2013 WL 2049388, *4 (N.D. Cal.2013) ("[T]he Court finds that leave to amend here would be futile where plaintiffs will not be able to establish standing based on their core allegations."). Finally, plaintiffs provided no indication as to what additional facts they could add to cure the deficiencies in the FAC. (See, generally, Dkt. 42, Opp. at 22); see, e.g., Metzler Inv. GMBH v. Corinthian Colleges, Inc., 540 F.3d 1049, 1072 (9th Cir. 2008) ("[T]he parties' dismissal briefing below . . . confirms that [plaintiff's] prior amendments were intended to cure the deficiencies that lead us to affirm dismissal here[.] . . . [Plaintiff] points to no additional facts that it might allege to cure those deficiencies, which persisted in every prior iteration of the [complaint].").

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

[7] Plaintiffs do not separately address Awareness Club's standing. (See, generally, Dkt. 42, Opp.). In any event, for the same reasons above, Awareness Club lacks standing.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 23-3307 FMO (Ex)**	Date	**November 30, 2024**
Title	**Marielle Williamson, et al. v. United States Department of Agriculture, et al.**		

1. Defendant's Motion to Dismiss **(Document No. 39)** is **granted**. The FAC is dismissed without leave to amend.

2. Judgment shall be entered accordingly.

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