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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE GRAY PANTHERS OF SAN FRANCISCO, et al.,

Plaintiffs,

No. C 09-2307 PJH

v.

**ORDER GRANTING MOTION TO DISMISS**

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

Before the court is the motion of defendants Arnold Schwarzenegger, Governor of California (“Schwarzenegger”), and Bill Lockyer, Treasurer of the State of California (“Lockyer”), for an order dismissing them from the above-entitled action.<sup>1</sup> Having read the parties’ papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS the motion. The dismissal is without leave to amend, as the court finds that amendment would be futile.

The background of the case is as set forth in the court’s order denying plaintiffs’ motion for preliminary injunction, filed concurrently with the present order. Briefly, plaintiffs bring a challenge California Welfare & Institutions Code § 14131.10(b)(1), which eliminates

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<sup>1</sup> The present motion to dismiss was filed by four of the original six defendants – Arnold Schwarzenegger, Kim Belshé, Bill Lockyer, and Michael Genest. Plaintiffs subsequently dismissed Belshé and Genest from the case.

1 certain optional Medicaid services in the State of California, and which was enacted by the  
2 California Legislature in 2009 as part of ABX3 5.

3 The first and second causes of action in the first amended complaint (“FAC”) seek to  
4 enjoin implementation of the cuts mandated by § 14131.10 on the ground that the cuts are  
5 preempted by the “purposes” clause of the federal American Recovery and Reinvestment  
6 Act of 2009 (“ARRA”), ARRA § 5000(a), and that the proposed cuts are also preempted by  
7 ARRA § 5001(f)(1), which prohibits the deposit of any amounts attributable to ARRA’s  
8 enhanced Federal Medical Assistance Percentage (“FMAP”) into a state reserve or “rainy  
9 day” fund. The third cause of action has been dismissed, and the fourth cause of action  
10 seeks, in the event that injunctive relief is denied, a declaration that § 14131.10 is contrary  
11 to and is preempted by ARRA.

12 Plaintiffs seek relief in this action not only against David Maxwell-Jolly, the Director  
13 of the California Department of Health Care Services (“DHCS”), the State agency that is  
14 solely responsible for the administration of the Medi-Cal program, and against John  
15 Chiang, the Controller of the State of California, but also against Schwarzenegger and  
16 Lockyer.

17 In the FAC, plaintiffs allege that as Governor, Schwarzenegger has duties under the  
18 California Government Code to “supervise all executive and administrative officers of the  
19 State of California and see that their official duties are performed.” FAC ¶ 9. They assert  
20 further that under provisions of the Government Code, Lockyer “receives and keeps all  
21 moneys of the State of California, and may only pay out State moneys upon warrants  
22 drawn by the Controller.” FAC ¶ 13. Plaintiffs also allege generally that both defendants  
23 bear responsibility for the allegedly wrongful acts of eliminating the discontinued optional  
24 services pursuant to the challenged § 14131.10, and allowing “savings resulting to the  
25 State from the use of enhanced FMAP funds” to be used as a rainy day fund. FAC ¶ 41.

26 Schwarzenegger and Lockyer seek an order dismissing the claims asserted against  
27 them, pursuant to Rule 12(b)(6) and Rule 12(b)(1). They argue that they are immune from  
28 suit under the Eleventh Amendment because they have no direct role in the implementation

1 of § 14131.10, and that plaintiffs therefore cannot state a claim for injunctive or declaratory  
2 relief. They also assert that because plaintiffs cannot allege a sufficient connection with the  
3 implementation of § 14131.10, there is therefore no “case or controversy” as required to  
4 meet the jurisdictional limitations of Article III of the United States Constitution.

5 A suit against a state official for prospective injunctive or declaratory relief is barred  
6 by the Eleventh Amendment’s guarantee of state immunity from suit in federal court unless  
7 the official has “some connection with the enforcement of the act.” Ex Parte Young, 209  
8 U.S. 123 (1908); see National Audubon Soc’y v. Davis, 307 F.3d 835, 847 (9th Cir. 2002)  
9 (finding action for injunctive and declaratory relief against California Governor and  
10 Secretary of Resources barred by Eleventh Amendment in absence of showing that they  
11 had requisite enforcement connection to challenged ballot proposition).

12 Where a plaintiff fails to establish an official’s connection with the allegedly wrongful  
13 act, the suit merely makes the official a party as a representative of the state, constituting in  
14 effect an attempt to make the state a party. Ex Parte Young, 209 U.S. at 157. The  
15 official’s connection required to overcome Eleventh Amendment immunity “must be fairly  
16 direct; a generalized duty to enforce state law or general supervisory power over the  
17 persons responsible for enforcing the challenged provision will not subject an official to  
18 suit.” Snoeck v. Brussa, 153 F.3d 984, 986 (9th Cir. 1998) (citation and quotation omitted).

19 Here, the FAC does not allege facts showing that either Schwarzenegger or Lockyer  
20 has any direct connection with the enforcement of § 14131.10. The allegation that  
21 Schwarzenegger has the duty to “supervise all executive and administrative officers of the  
22 State of California and see that their official duties are performed” simply asserts that  
23 Schwarzenegger has general supervisory power over the persons responsible for enforcing  
24 provisions of the Medi-Cal program. Such general responsibilities are insufficient under the  
25 Eleventh Amendment. Were it otherwise, a state governor would be subject to suit in every  
26 case in which a plaintiff in his or her state seeks prospective injunctive or declaratory relief  
27 against an official in that state.

28 Similarly, the allegation that Lockyer has certain responsibilities with respect to State

1 finances and payments does not state any facts that would establish that Lockyer has a  
2 direct connection with the enforcement of § 14131.10, or any responsibility regarding the  
3 disposition of amounts attributable to the enhanced FMAP reimbursements attributable to  
4 ARRA. Lockyer's responsibilities, as State Treasurer, to "receive and keep" State funds  
5 and to pay out funds on warrants issued by the Controller have nothing to do with enforcing  
6 reductions to optional Medi-Cal benefits or determining whether to place State funds into a  
7 reserve. Cal. Gov't Code §§ 12320, 12324. Thus, Lockyer has no direct connection to the  
8 implementation or enforcement of § 14131.10.

9 Moreover, DHCS is the "single state agency" designated as the agency responsible  
10 for administering the Medicaid program in California. See Cal. Welf. & Inst. Code  
11 §§ 10740, 14000, et seq. Other agencies are barred by the "single state agency"  
12 requirements from having any discretionary authority over enforcement of § 14131.10 and  
13 the disposition of federal Medicaid enforcement. See 42 C.F.R. § 431.10(e); San Lázaro  
14 Ass'n, Inc. v. Connell, 286 F.3d 1088, 1092-93 (9th Cir. 2002) (single state agency under  
15 Medicaid is barred from delegating administrative discretion in administration or supervision  
16 of state Medicaid plan).

17 In their opposition to the motion, plaintiffs contend that Schwarzenegger has the  
18 requisite direct connection with the alleged injury because, as Governor, he approved (or  
19 did not veto) ABX3 5. Thus, plaintiffs assert, Schwarzenegger "created" or "enacted"  
20 § 14131.10, and thereby caused the injury alleged. They also assert that he is the very  
21 officer of the State over whom the court must have personal jurisdiction in order to effect  
22 the requested injunctive relief.

23 However, the signing of the bill does not show a connection with the enforcement of  
24 § 14131.10, which is the act that is at issue. See, e.g., Sweat v. Hull, 200 F.Supp. 2d 1162  
25 (D. Ariz. 2001) (Arizona governor's general authority to execute laws and her action of  
26 signing a particular piece of legislation that repealed an emissions testing program were  
27 insufficient to establish a connection with the enforcement of the state implementation plan  
28 that included the testing program).

1 Plaintiffs assert further that per California Government Code § 12012, the Governor  
2 of California is the sole, official organ of communication between the State government and  
3 the government of the United States. Again, however, this general provision in the  
4 California Government Code fails to establish that Schwarzenegger has sufficient direct  
5 connection with the enforcement of § 14131.10.

6 Plaintiffs also contend that under ARRA, the Governor of a state that receives the  
7 enhanced FMAP funds is required, no later than 45 days after the date of enactment of  
8 ARRA, to certify that the state will request and use funds provided by ARRA (citing Sec.  
9 1607 of Title XVI of Division A of ARRA). However, this section of ARRA is not at issue in  
10 this case. Moreover, the certification, which was provided by California months ago (in  
11 March 2009) has no connection with enforcing § 14131.10, nor does it establish that an  
12 injunction against the Governor would provide any part of the relief sought by plaintiffs in  
13 this action.

14 As to Lockyer, plaintiffs assert only that “the Treasurer is also an indispensable party  
15 due to the fact that he has the power to deliver funds from the Treasury of the State, if the  
16 defendants are ordered to restore the 9 Medicaid programs in question, to the State’s  
17 Medicaid program” and that Lockyer “therefore cannot be dismissed from the case.”

18 Plaintiffs fail to demonstrate that Lockyer has any connection with enforcement of  
19 § 14131.10. While plaintiffs appear to be suggesting that the Treasurer may refuse to  
20 release funds if the court issues the requested injunction, but the Controller issues a  
21 warrant for payment of state funds that contravenes the court’s order, the court notes that  
22 under the California Constitution, a warrant from the Controller is required before state  
23 funds may be released. “[M]oney may be drawn from the Treasury only through an  
24 appropriation made by law and upon a Controller’s duly drawn warrant.” Cal. Const. art.  
25 XVI, § 7. However, the Treasurer is required by law to release funds upon a warrant issued  
26 by the Controller. Cal. Gov’t Code § 12324 (“The Treasurer shall pay warrants drawn by  
27 the Controller except warrants canceled pursuant to law.”).

28 Because the court finds that Schwarzenegger and Lockyer must be dismissed

1 because they are immune from suit under the Eleventh Amendment, the court finds it  
2 unnecessary to also address the second ground for the motion to dismiss – that there is no  
3 “case or controversy” as required under Article III for the exercise of jurisdiction.

4 The date for the hearing on the motion, previously set for Wednesday, September 2,  
5 2009, is VACATED.

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7 **IT IS SO ORDERED.**

8 Dated: September 1, 2009



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11 PHYLLIS J. HAMILTON  
12 United States District Judge

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