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 8 *Laurie Rose Lubiano, Vice President of the*
California Medical Board, Ryan Brooks,
 9 *Secretary of the California Medical Board,*
Reji Varghese, Executive Director of the
 10 *California Medical Board, and Marina*
 11 *O'Connor, Chief of Licensing of the*
 12 *California Medical Board, in their official*
 13 *capacities¹*

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IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

<p>17 AZADEH KHATIBI, M.D., et al.,</p> <p style="text-align: right;">18 Plaintiffs,</p> <p style="text-align: center;">19 v.</p> <p>20 RANDY W. HAWKINS, in his official</p> <p>21 capacity as President of the Medical</p> <p>22 Board of California, et al.,</p> <p style="text-align: right;">23 Defendants.</p>	<p>2:23-cv-06195-DSF-E</p> <p>DEFENDANTS’ NOTICE OF</p> <p>MOTION AND MOTION TO</p> <p>DISMISS COMPLAINT</p> <p>Date: November 20, 2023</p> <p>Time: 1:30 p.m.</p> <p>Courtroom: 7D</p> <p>Judge: The Honorable Dale S. Fischer</p> <p>Trial Date: Not set</p> <p>Action Filed: August 1, 2023</p>
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¹ Pursuant to Federal Rule of Civil Procedure 25(d), Randy W. Hawkins is automatically substituted as a defendant in place of his predecessor, former President of the California Medical Board Kristina Lawson, Laurie Rose Lubiano is automatically substituted as a defendant in place of her predecessor, former Vice President of the California Medical Board Randy W. Hawkins, and Ryan Brooks is automatically substituted as a defendant in place of his predecessor, former Secretary of the California Medical Board Laurie Rose Lubiano.

1 TO THE CLERK OF THE COURT, ALL PARTIES, AND THEIR
2 COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on November 20, 2023, at 1:30 p.m., at the
4 United States District Court, Central District of California, First Street Courthouse,
5 350 West 1st Street, Los Angeles, California, courtroom 7D, Defendants Randy W.
6 Hawkins, in his official capacity as President of the California Medical Board,
7 Laurie Rose Lubiano, in her official capacity as Vice President of the California
8 Medical Board, Ryan Brooks, in his official capacity as Secretary of the California
9 Medical Board, Reji Varghese, in his official capacity as Executive Director of the
10 California Medical Board, and Marina O’Connor, in her official capacity as Chief
11 of Licensing of the California Medical Board, will move to dismiss without leave to
12 amend the complaint under Federal Rule of Civil Procedure 12, because the
13 complaint fails to state a claim upon which relief may be granted.

14 This motion is based upon this Notice of Motion and Motion to Dismiss, the
15 Complaint, the concurrently filed Memorandum of Points and Authorities, all the
16 pleadings, files, and records in this action, and such additional evidence and
17 arguments as may be presented at the hearing of this motion.

18 This motion is made following the conference of counsel pursuant to Local
19 Rule 7-3, which took place on October 2, 2023.

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Dated: October 10, 2023

Respectfully Submitted,
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Attorney General of California
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Supervising Deputy Attorney General

/s/ Stephanie Albrecht
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 9 *California Medical Board, Reji Varghese,*
 10 *Executive Director of the California Medical*
 11 *Board, and Marina O'Connor, Chief of Licensing*
of the California Medical Board, in their official
capacities¹

12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 14

15 **AZADEH KHATIBI, M.D., et al.,**
 16
 17 Plaintiffs,
 18
 19 **RANDY W. HAWKINS, in his official**
capacity as President of the Medical
 20 **Board of California, et al.,**
 21 Defendants.

2:23-cv-06195-DSF-E

**MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT
 OF DEFENDANTS' MOTION TO
 DISMISS COMPLAINT**

Date: November 20, 2023
 Time: 1:30 p.m.
 Courtroom: 7D
 Judge: The Honorable Dale S.
 Fischer
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INTRODUCTION

1
2 California law requires all continuing medical education courses to include
3 discussion of implicit bias as part of their curriculum, if the courses will be used to
4 satisfy a licensed physician's minimum continuing educational requirement for
5 licensure. Plaintiffs, who teach continuing medical education courses, claim that
6 this requirement burdens their free speech rights because it compels them to teach
7 on a subject on which they would otherwise remain silent. But the requirement that
8 these courses cover certain subjects necessary for state licensure does not implicate
9 Plaintiffs' free speech rights at all. Therefore, Plaintiffs' claims fail as a matter of
10 law and should be dismissed without leave to amend.

11 Under Supreme Court and Ninth Circuit precedent, the content of educational
12 courses that are subject to oversight by the government constitutes government
13 speech that is not subject to First Amendment protection. "[U]nder the Supreme
14 Court's precedents, the curriculum of a public educational institution is one means
15 by which the institution itself expresses its policy, a policy with which others do not
16 have a constitutional right to interfere." *Brown v. Li*, 308 F.3d 939, 951 (9th Cir.
17 2002). Here, discussion of implicit bias is speech that the State Legislature requires
18 to be included in continuing medical education courses used to qualify for
19 licensure. And as Plaintiffs acknowledge, the Medical Board of California "is
20 responsible for regulating and licensing the practice of medicine in California," and
21 the Board's Chief of Licensing is responsible "for enforcing state requirements for
22 continuing medical education." (ECF No. 1 at ¶¶ 8-12.) Accordingly, the speech at
23 issue constitutes government speech. As a matter of law, government speech is not
24 subject to scrutiny under the First Amendment.

25 Even if the speech at issue were private speech entitled to First Amendment
26 protection, the complaint is facially and incurably defective. Plaintiffs do not allege
27 that discussion of implicit bias in the courses they teach would be readily associated
28 with them, a requirement for any compelled speech claim.

1 Defendant Ryan Brooks is the Board’s Secretary,² Defendant Reji Varghese is the
2 Board’s Executive Director, and Defendant Marina O’Connor is the Board’s Chief
3 of Licensing responsible “for enforcing state requirements for continuing medical
4 education.” (*Id.* at ¶¶ 9-12.) Defendants are sued in their official capacities. (*Id.* at
5 ¶¶ 8-12.)

6 **II. STATE LAWS AND REGULATIONS GOVERN THE CURRICULUM OF**
7 **CONTINUING MEDICAL EDUCATION COURSES**

8 California requires licensed physicians to complete 50 hours of approved
9 continuing medical education every two years. Cal. Code Regs. tit. 16, § 1336(a).
10 Effective January 1, 2022, California law requires that continuing medical
11 education courses used to satisfy the licensure requirement cover implicit bias:

12 On and after January 1, 2022, all continuing medical education
13 courses shall contain curriculum that includes the understanding of
14 implicit bias. . . . In order to satisfy [these] requirements . . . ,
15 continuing medical education courses shall address at least one or
16 a combination of the following: (1) Examples of how implicit bias
17 affects perceptions and treatment decisions of physicians and
18 surgeons, leading to disparities in health outcomes. (2) Strategies
19 to address how unintended biases in decisionmaking may
20 contribute to health care disparities by shaping behavior and
21 producing differences in medical treatment along lines of race,
22 ethnicity, gender identity, sexual orientation, age, socioeconomic
23 status, or other characteristics.

24 Cal. Bus. & Prof. Code § 2190.1(d)(1), (e).

25 This implicit bias requirement does not apply to continuing medical education
26 courses dedicated solely to research or courses offered by a provider not located in
27 California. Cal. Bus. & Prof. Code § 2190.1(d)(2). Associations that accredit
28 continuing medical education courses are responsible for developing standards for

25 ² As noted above, pursuant to Federal Rule of Civil Procedure 25(d), Randy
26 W. Hawkins is automatically substituted as a defendant in place of his predecessor,
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former Secretary of the California Medical Board Laurie Rose Lubiano.

1 compliance with the implicit bias requirements. Cal. Bus. & Prof. Code §
2 2190.1(d)(3).

3 **III. ALLEGATIONS IN THE COMPLAINT**

4 The complaint alleges that Plaintiffs should be able to choose the topics they
5 teach. (ECF No. 1 at ¶ 2.) Specifically, Plaintiffs allege that they should not be
6 compelled to include discussion of implicit bias in their continuing medical
7 education courses because “the efficacy of implicit bias training in reducing
8 disparities and negative outcomes in healthcare is controversial in the medical
9 community and lacks evidence,” because Plaintiffs prefer to teach different topics,
10 and because they “do not want to espouse the government’s view on implicit bias.”
11 (*Id.* at ¶ 1.) Plaintiffs further allege that their ability to offer continuing medical
12 education courses cannot be conditioned on the requirement that they “espouse the
13 government’s favored view on a controversial topic.” (*Id.* at ¶ 2.)

14 Plaintiff Khatibi allegedly wishes to continue teaching continuing medical
15 education courses “but does not want to be compelled to include discussion of
16 implicit bias in her courses when there is no relevance to her topics, or discussion
17 of other topics is more relevant to minimize treatment outcome disparities,”
18 particularly given the “lack of evidentiary support for implicit bias trainings and the
19 significant time constraints usually present in delivering continuing medical
20 education courses, which limit the amount of information capable of being
21 discussed.” (*Id.* at ¶¶ 31-32.) Because of time constraints in teaching courses,
22 Khatibi is “limited to only discussing the government’s preferred topic and
23 viewpoints” on implicit bias, rather than having a more robust and appropriate
24 discussion of the topic. (*Id.* at ¶ 33.) However, without including a discussion of
25 implicit bias in her courses, the courses would not qualify for continuing medical
26 education credit in California and physicians likely would not take her courses. (*Id.*
27 at ¶ 34.)
28

1 Similarly, Plaintiff Singleton alleges that “[i]ncluding discussion of implicit
2 bias in her courses would require her to change a portion of the talk to include
3 information on implicit bias at the expense of other information she would prefer to
4 include.” (*Id.* at ¶¶ 39-40.) Singleton does not want to include discussion of
5 implicit bias in her courses because she does not think the topic is “helpful and
6 important” but instead “believes that such trainings are harmful to physicians and
7 patients.” (*Id.* at ¶ 41.) Singleton believes that informing students of her
8 disagreement with teachings on implicit bias “would be insufficient to make clear
9 that the government’s required message is not her own.” (*Id.* at ¶ 41.) Without
10 including a discussion of implicit bias in her courses, the courses would not qualify
11 for continuing medical education credit in California and physicians likely would
12 not take them. (*Id.* at ¶ 42.)

13 Plaintiff Do No Harm has at least one member who does not want to include
14 discussion of implicit bias in the continuing medical education courses she teaches
15 because such trainings have not been shown to be effective and “instead risk
16 infecting healthcare decisions with divisive and discriminatory ideas.” (*Id.* at ¶ 46.)
17 But for the requirements under Section 2190.1, she would not include a discussion
18 of implicit bias in the courses she teaches. (*Id.* at ¶ 47.)

19 Plaintiffs contend that Section 2190.1 burdens their right to free speech
20 because it “compels Plaintiffs and their members to include discussion of implicit
21 bias in continuing medical education courses taught by them when they would
22 otherwise remain silent about implicit bias” (*id.* at ¶¶ 51-52) and “[c]ondition[s] the
23 eligibility for courses taught by Plaintiffs and their members to confer continuing
24 education credit on the requirement that Plaintiffs and their members include
25 discussion of implicit bias” (*id.* at ¶ 62). Plaintiffs seek a declaration that Section
26 2190.1, on its face and as applied to them, violates the First and Fourteenth
27 Amendments of the United States Constitution, a permanent injunction restricting
28

1 the enforcement of Section 2190.1, and an award of fees, costs, and expenses. (*Id.*,
2 Prayer at ¶¶ A-B, D.)

3 LEGAL STANDARD

4 Under Federal Rule of Civil Procedure 12(b)(6), a complaint may be
5 dismissed for failure to state a claim upon which relief can be granted. “A Rule
6 12(b)(6) dismissal may be based on either a ‘lack of a cognizable legal theory’ or
7 ‘the absence of sufficient facts alleged under a cognizable legal theory.’” *Johnson*
8 *v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008) (citation
9 omitted). “To survive a motion to dismiss, a complaint must contain sufficient
10 factual matter, accepted as true, to state a claim to relief that is plausible on its
11 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and
12 citation omitted). However, “[a] pleading that offers ‘labels and conclusions’ or ‘a
13 formulaic recitation of the elements of a cause of action’” cannot survive a motion
14 to dismiss. *Id.* at 678 (citation omitted).

15 Dismissal without leave to amend is appropriate when the court “determines
16 that the pleading could not possibly be cured by the allegation of other facts.”
17 *Watison v. Carter*, 668 F.3d 1108, 1117 (9th Cir. 2012) (internal quotation marks
18 and citation omitted).

19 ARGUMENT

20 I. PLAINTIFFS FAIL TO STATE A FREE SPEECH CLAIM

21 Plaintiffs claim that Section 2190.1 burdens their right to free speech because
22 it compels them and their members to include discussion of implicit bias in the
23 continuing medical education courses they teach when they would otherwise
24 remain silent about implicit bias. (ECF No. 1 at ¶¶ 51-52.) But the speech at issue
25 here—discussion of implicit bias—does not implicate Plaintiffs’ free speech rights
26 at all. Instead, it is speech that the State Legislature requires to be included in
27 continuing medical education courses used to qualify for state licensure and thus
28 constitutes government speech. As a matter of law, government speech is not

1 subject to scrutiny under the First Amendment. And even if the speech at issue
2 here implicated Plaintiffs’ free speech rights, Plaintiffs fail to state a compelled
3 speech claim because they do not allege that the speech at issue is readily
4 associated with them.

5 **A. The Speech at Issue Is Government Speech Not Subject to First**
6 **Amendment Protection**

7 “When government speaks, it is not barred by the Free Speech Clause from
8 determining the content of what it says.” *Walker v. Texas Div., Sons of*
9 *Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015) (citing *Pleasant Grove City*
10 *v. Summum*, 555 U.S. 460, 467-68 (2009)). “Were the Free Speech Clause
11 interpreted otherwise, government would not work It is not easy to imagine
12 how government could function if it lacked the freedom to select the messages it
13 wishes to convey.” *Id.* at 208 (internal quotation marks and citation omitted).
14 Government speech is thus “not subject to scrutiny under the Free Speech Clause.”
15 *Summum*, 555 U.S. at 464.

16 In *Walker*, the Supreme Court considered three factors in determining that
17 specialty license plates constituted government speech: (1) whether the government
18 has historically used the medium to speak to the public; (2) whether the message is
19 closely identified in the public mind with the State; and (3) the degree of control the
20 State maintains over the messages conveyed. 576 U.S. at 210-13. All three factors
21 weigh in favor of finding that the content of continuing medical education
22 courses—including discussion of implicit bias—constitutes government speech.

23 The medical profession is a highly regulated profession, and the Legislature
24 has historically used continuing education curriculum requirements as a way to
25 ensure that licensed physicians are adequately trained in subjects the State considers
26 essential to maintaining competence in the profession. *See* Cal. Bus. & Prof. Code,
27 § 2190 (continuing education standards are designed “to ensure the continuing
28 competence of licensed physicians and surgeons”). For instance, between 1992 and

1 2021, curriculum geared toward the business of a medical practice, such as
2 “medical office management, billing and coding, and marketing” has expressly not
3 qualified for licensure credit as continuing medical education. Cal. Bus. & Prof.
4 Code § 2190.1(f). In 2021, the Legislature changed the law to allow up to 30
5 percent of the total hours of continuing medical education to include content on
6 practice management designed to provide better service to patients or have
7 management content designed to support managing a healthcare facility, including,
8 but not limited to, coding or reimbursement in a medical practice. Cal Bus. & Prof
9 Code § 2190.15. Since 2001, licensed physicians must complete mandatory
10 continuing education in the subjects of pain management and the treatment of
11 terminally ill and dying patients, or they may alternatively complete a course in the
12 treatment and management of opiate-dependent patients. Cal. Bus. & Prof. Code,
13 §§ 2190.5, 2190.6. And since 2006, all continuing medical education courses must
14 contain curriculum on cultural and linguistic competency. Cal. Bus. & Prof. Code,
15 § 2190.1(b)(1). Accordingly, the Legislature has historically used continuing
16 education course curriculum requirements to ensure that the content of the courses
17 adequately train physicians in subjects the Legislature considers necessary for
18 licensure.

19 Second, as Plaintiffs acknowledge, the Medical Board of California “is
20 responsible for regulating and licensing the practice of medicine in California,
21 including enforcing the Medical Practice Act.” (ECF No. 1 at ¶ 8.) Licensed
22 physicians are required to complete 50 hours of continuing medical education every
23 two years, and the Medical Board determines which courses are acceptable for
24 credit. (*Id.* at ¶¶ 13-15; *see also* Cal. Bus. & Prof. Code § 2190 (“the board shall
25 adopt and administer standards for the continuing education of [licensed physicians
26 and surgeons]”).) Continuing medical education providers must be approved by the
27 Medical Board. (*See* ECF No. 1 at ¶¶ 30, 37.) The Medical Board requires that
28 course content “be directly related to patient care, community health or public

1 health, preventive medicine, quality assurance or improvement, risk management,
2 health facility standards, the legal aspects of clinical medicine, bioethics,
3 professional ethics, or improvement of the physician-patient relationship.” (*Id.* at ¶
4 15.) Generally, “[o]nly those courses and other educational activities that meet the
5 requirements Section 2090.1 of the [Business and Professions] code” and are
6 offered by specified organizations are acceptable for credit toward licensure. Cal.
7 Code Regs. tit. 16, § 1337(b). The Chief of Licensing for the Medical Board of
8 California “has principal responsibility for enforcing state requirements for
9 continuing medical education.” (ECF No. 1 at ¶ 12.) And the Medical Board
10 regularly “audits physicians for compliance with the continuing education
11 requirement” and “audit[s] courses to determine whether the course is approved for
12 credit.” (*Id.* at ¶ 17.)

13 Given that the Legislature and the Medical Board set the standards for
14 continuing medical education and control the content of continuing medical
15 education courses, discussion of implicit bias as part of these courses’ curriculum is
16 clearly government speech. And it makes sense that it is government speech. The
17 medical profession, including the licensing of physicians and surgeons, is a matter
18 of grave public concern, and the State seeks to ensure that members of the public
19 entrust their health only to physicians who have the necessary education and
20 training.

21 The Supreme Court and courts in the Ninth Circuit have consistently held that
22 the content of educational courses constitutes government speech over which states
23 have broad discretion. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271
24 (1988) (educators are entitled to exercise greater control over expressive activities
25 designed to impart particular knowledge or skills to participants that students,
26 parents, and members of the public might reasonably perceive to bear the
27 imprimatur of the school); *Brown v. Li*, 308 F.3d 939, 951 (9th Cir. 2002)
28 (“[U]nder the Supreme Court’s precedents, the curriculum of a public educational

1 institution is one means by which the institution itself expresses its policy, a policy
2 with which others do not have a constitutional right to interfere.”); *Riley’s*
3 *American Heritage Farms v. Claremont Unified*, No. EDCV 18-2185 JGB (SHKx),
4 2019 WL 3240105 (C.D. Cal. Mar. 6, 2019), *6 (“the government speech doctrine
5 affords Defendants wide discretion in designing curriculum”); *California Parents*
6 *for the Equalization of Educational Materials v. Torlakson*, 267 F.Supp.3d 1218,
7 1234 (N.D. Cal. 2017) (“the State has the discretion to determine the content of its
8 curriculum”); *California Parents for the Equalization of Educational Materials v.*
9 *Noonan*, 600 F.Supp.2d 1088, 1111 (E.D. Cal. 2009) (same).

10 “A public’s school curriculum . . . is an example of the government opening
11 up its own mouth, because the message is communicated by employees working at
12 institutions that are state-funded, state-authorized, and extensively state-regulated.”
13 *Nampa Classical Academy v. Goesling*, 447 Fed. Appx. 776, 778 (9th Cir. 2011)
14 (internal quotation marks and citation omitted) (affirming dismissal of school’s,
15 teachers’, student’s, and student parent’s First and Fourteenth Amendment claims
16 challenging state’s policy prohibiting use of certain texts). Similarly here, the State
17 authorizes and heavily regulates the medical profession, including continuing
18 medical education requirements; it determines which curricula will be approved for
19 continuing medical education credit and who can teach courses for such credit.
20 Thus, just like a high school’s bulletin board’s postings that were subject to the
21 oversight of school principals constituted government speech (*Downs v. Los*
22 *Angeles Unified School Dist.*, 228 F.3d 1003, 1011 (9th Cir. 2000)), here the
23 subject of continuing medical education courses subject to oversight by the State’s
24 Medical Board is attributable to the State and thus constitutes government speech.

25 The fact that private instructors like Plaintiffs teach the continuing medical
26 education curriculum set by the Legislature and Medical Board does not change the
27 analysis. As the *Walker* Court explained, “[t]he fact that private parties take part in
28 the design and propagation of a message does not extinguish the governmental

1 nature of the message” 576 U.S. at 217. “Simply because the government
2 uses a third party for speech does not remove the speech from the realm of
3 government speech. . . . A government entity may . . . express its views even when
4 utilizing assistance from private actors for the purpose of delivering a government-
5 controlled message.” *Burwell v. Portland School District No. 1J*, No. 3:19-cv-
6 00385-JR, 2019 WL 9441663, *5 (D. Or. Mar. 23, 2010) (citing *Johanns v.*
7 *Livestock Mktg. Ass’n*, 544 U.S. 550, 562 (2005) [where the government controls
8 the message, “it is not precluded from relying on the government-speech doctrine
9 merely because it solicits assistance from nongovernmental sources”]). And
10 “[w]hen the government is formulating and conveying its message, “it may take
11 legitimate and appropriate steps to ensure that its message is neither garbled nor
12 distorted” by its individual messengers. *Downs v. Los Angeles Unified School*
13 *Dist.*, 228 F.3d 1003, 1013 (9th Cir. 2000 (school board may advocate gay and
14 lesbian awareness and tolerance and restrict the contrary speech of one of its
15 representatives).

16 For the same reasons, Plaintiffs’ role in delivering the State-prescribed
17 continuing education materials to medical professionals as a precondition to state
18 licensure does not transform teachings of implicit bias from government speech into
19 private speech. Although instructors may exercise some discretion in how they
20 teach continuing medical education courses, this does not change the principal
21 function of the Legislature or the Medical Board in setting curriculum standards for,
22 and overseeing, these courses. Just like parents do not have the right to dictate the
23 curriculum in their children’s public schools (*California Parents for the*
24 *Equalization of Educational Materials v. Torlakson*, 267 F.Supp.3d 1218, 1224
25 (N.D. Cal. 2017)), instructors of continuing medical education courses do not have
26 the right to dictate these courses’ curriculum.

1 **B. Even if the Speech at Issue Were Protected, Plaintiffs Fail to**
2 **State a Compelled Speech Claim**

3 To allege a compelled speech claim, Plaintiffs must allege (1) speech; (2) to
4 which they object; (3) that is compelled; and (4) that is readily associated with
5 Plaintiffs. *Burwell*, 2019 WL 9441663, at *3; *see also Johanns*, 544 U.S. at 568
6 (Thomas, J., concurring) (“The government may not, consistent with the First
7 Amendment, associate individuals . . . involuntarily with [government] speech by
8 attributing an unwanted message to them . . .”).

9 Nowhere does the complaint allege that teaching an understanding of implicit
10 bias as part of the continuing medical education courses that Plaintiffs teach would
11 be readily associated with them. It is medical professionals that attend these
12 courses to comply with their continuing medical educational requirements to
13 maintain their State-issued license. Undoubtedly these professionals understand
14 that it is the Legislature and the Medical Board that set the standards for these
15 courses and determine which courses . . . are eligible for credit. Indeed, Plaintiffs
16 allege that the Medical Board “is responsible for regulating and licensing the
17 practice of medicine in California” (ECF No. 1 at ¶ 8) and determines which
18 continuing medical education courses are acceptable for credit (*id.* at ¶¶ 13-15).
19 Plaintiffs further acknowledge that the Chief of Licensing for the Medical Board
20 “has principal responsibility for enforcing state requirements for continuing medical
21 education” (*id.* at ¶ 12) and that the Medical Board regularly “audits physicians for
22 compliance with the continuing education requirement” (*id.* at ¶ 17). By Plaintiffs’
23 own allegations, therefore, any discussion of implicit bias will be understood as
24 coming from the Medical Board. Nor do Plaintiffs allege that Section 2190.1
25 requires them to endorse the subject of implicit bias or that it prevents them from
26 presenting their own messages on the topic. Thus, Plaintiffs fail to allege that
27 discussion of implicit bias would be associated with them.
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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AZADEH KHATIBI, M.D., *et al.*,
Plaintiffs,

v.

**RANDY W. HAWKINS, in his official
capacity as President of the Medical
Board of California, *et al.*,**
Defendants.

2:23-cv-06195-DSF-E

**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS
COMPLAINT**

1 This matter came before the Court on November 20, 2023 for a hearing on
2 Defendants’ Motion to Dismiss the Complaint (“Motion”). The Court has reviewed
3 and considered the Motion, the papers filed in support of and in opposition to the
4 Motion, and the arguments of counsel.

5 The Court finds good cause to grant the Motion. Plaintiffs fail to state a claim
6 under Federal Rule of Civil Procedure 12(b)(6). Leave to amend the complaint
7 need not be granted if “it is clear that the complaint could not be saved by any
8 amendment.” *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940,
9 946 (9th Cir. 2005). Here, the complaint cannot be amended to save Plaintiffs’
10 claims.

11 The Motion is hereby **GRANTED** and this action is **DISMISSED**
12 **WITHOUT LEAVE TO AMEND.**

13 **IT IS SO ORDERED.**

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Dated: _____

The Honorable Dale S. Fischer
United States District Judge