SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

NO. SJC–12935

STEPHEN FOSTER, MICHAEL GOMES, PETER KYRIAKIDES, RICHARD O'ROURKE, STEVEN PALLADINO, MARK SANTOS, DAVID SIBINICH, MICHELLE TOURIGNY, MICHAEL WHITE, FREDERICK YEOMANS, & HENDRICK DAVIS,

Plaintiffs,

v.

CAROL MICI, Commissioner of the Massachusetts Department of Correction, GLORIANN MORONEY, Chair, Massachusetts Parole Board, THOMAS TURCO, Secretary of the Executive Office of Public Safety and Security, & CHARLES BAKER, Governor of the Commonwealth of Massachusetts,

Defendants.

On Reservation & Report from the
Supreme Judicial Court for Suffolk County, SJ-2020-0212

DEFENDANT GOVERNOR CHARLES D. BAKER'S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF MOTION TO DISMISS

Defendant Governor Charles D. Baker hereby requests leave of the Court to file the attached, four-page reply memorandum in support of his Motion to Dismiss.

The proposed reply memorandum responds to two points raised in Plaintiffs' Opposition to the Motion to Dismiss: (1) Plaintiffs' argument that this Court's rule prohibiting mandamus against the Governor has no bearing on their claim under federal law, and (2) Plaintiffs' argument that they have stated a claim for supervisory liability

against the Governor under 42 U.S.C. § 1983. The Governor submits that the attached reply memorandum will assist the Court in deciding the pending Motion to Dismiss.

WHEREFORE, Defendant Governor Charles D. Baker seeks leave to file the attached reply memorandum in support of his Motion to Dismiss.

Respectfully submitted,

GOVERNOR CHARLES D. BAKER

By his attorneys,

/s/ Ryan P. McManus
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May 6, 2020

CERTIFICATE OF SERVICE

I, Ryan P. McManus, hereby certify, under the penalties of perjury, that on May 6, 2020, I caused a true and accurate copy of the foregoing to be filed and served via email on all counsel of record.

/s/ Ryan P. McManus
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Special Assistant Attorney General

SUPREME JUDICIAL COURT
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Defendants.

On Reservation & Report from the
Supreme Judicial Court for Suffolk County, SJ-2020-0212

REPLY IN SUPPORT OF MOTION TO DISMISS OF DEFENDANT GOVERNOR CHARLES D. BAKER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

In their Opposition to Defendant Governor Charles D. Baker's Motion to Dismiss (the "Opposition"), Plaintiffs concede that the Governor's arguments regarding mandamus relief and their "inability to sue the Governor under the Declaratory Judgment Act" are "correct." Opp. to Mot. to Dismiss at 5. Indeed, they all but concede that their state-law claims against the Governor must be dismissed. They nevertheless argue that the assertion of a federal claim empowers this Court to grant mandamus relief against the Governor. And they argue that they have alleged an actionable claim against the Governor under federal law. Neither contention is correct.

I. The Rule Prohibiting Mandamus Against The Governor Applies Equally To Plaintiffs' State And Federal Claims.

Plaintiffs' argument that the Supremacy Clause of the U.S. Constitution permits (or even requires) this Court to order mandamus relief against the Governor to compel compliance with federal law is not supported by precedent. In Rice v. Draper, for example, the petitioner sought to compel the Governor to comply with a federal statute requiring him to pay certain funds to "officers and men, referred to in the act, who served in the war with Spain." 207 Mass. 577, 577 (1911). That the source of the purported obligation was a federal law made no difference to this Court, which emphatically rejected the attempt to mandamus the Governor as a violation of the separation of powers secured by art. 30. Id. at 578–79.

Nor is that holding contrary to Supreme Court precedent. The Supreme Court has recognized that "a neutral state rule regarding the administration of the courts" is not supplanted by federal law, even if application of that rule prevents a state court from adjudicating a federal claim. See Howlett v. Rose, 496 U.S. 356, 372 (1990) (collecting cases). "The general rule, 'bottomed deeply in belief in the importance of state control

of state judicial procedure, is that federal law takes the state courts as it finds them.'" Id. (quoting Henry M. Hart, Jr., The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 508 (1954)).

The Supreme Court's decision in Haywood v. Drown, 556 U.S. 729 (2009), is not to the contrary. There, a divided Court held that a New York statue shielding correctional officers from personal damages liability was preempted by federal law because it was animated by the state's disagreement with the policies underlying 42 U.S.C. § 1983. Id. at 736-37 (observing that New York's judgment that "correction officers should not be burdened with suits for damages arising out of conduct performed in the scope of their employment," which the state regards "as too numerous or too frivolous (or both)," is "contrary to Congress' judgment" in enacting 42 U.S.C. § 1983").

This Court's long-standing rule that mandamus cannot issue against the Governor bears no similarity to the New York statute at issue in Haywood. The rule prohibiting mandamus against the Governor does not discriminate against federal causes of action or reflect any animus towards or disagreement with federal policy. Rather, it arises from the separation of powers principles enshrined in the Commonwealth's Constitution. See Town of Milton v. Commonwealth, 416 Mass. 471, 475 (1993) ("Judicial unwillingness to order the Governor . . . to act is founded on separation of powers principles expressed in art. 30 of the Massachusetts Declaration of Rights."). Those separation of powers principles are neither inconsistent with nor preempted by federal law.

Yet this Court need not even venture into the intersection between the requirements of the Commonwealth's Constitution and the policies underlying federal

law because Plaintiffs' Complaint fails to state a claim against the Governor under 42 U.S.C. § 1983.

II. Plaintiffs' Theory Of Supervisory Liability Against The Governor Is Contrary To Settled Law.

Plaintiffs argue that, to state a claim under 42 U.S.C. § 1983, it is enough to allege that the Governor has a general awareness of the conditions complained of, and that he has condoned or acquiesced to inaction by subordinates. Opp. to Mot. to Dismiss at 7, 9. Yet the Supreme Court rejected precisely that theory of "supervisory liability" in Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009) (rejecting the argument that, "under a theory of 'supervisory liability,' petitioners can be liable for 'knowledge and acquiescence in their subordinates'" allegedly unconstitutional conduct).

Plaintiffs also ignore that, in addition to alleging the elements of deliberate indifference, they were required to allege facts supporting a "strong causal connection" between the Governor and the alleged constitutional violations. Ramirez-Lluveras v. Rivera-Merced, 759 F.3d 10, 19-20 (1st Cir. 2014) (describing causation as distinct from the elements of deliberate indifference); Guadalupe-Baez v. Pesquera, 819 F.3d 509, 515 (1st Cir. 2016) ("Deliberate indifference alone does not equate with supervisory liability. Causation remains an essential element, and the causal link between a supervisor's conduct and the constitutional violation must be solid." (brackets, citation, and internal quotation marks omitted)). That causal connection requires "an affirmative link between the behavior of the subordinate and the action or inaction of his supervisor such that the supervisor's conduct led inexorably to the constitutional violation." Feliciano-Hernandez v. Pereira-Castillo, 663 F.3d 527, 533 (1st Cir. 2010) (internal quotation marks and ellipsis omitted).

Plaintiffs' have not pled a causal connection (much less a strong one) between the Governor and the conditions complained of. The Governor is mentioned only 3 times in Plaintiffs' 102 paragraph Complaint. Compl. ¶¶ 4, 25, 68; see Davis v. Strickland, Civ. A. No. 2:09-cv-015, 2009 WL 2047891, at *9-10 (S.D. Ohio July 7, 2009) (dismissing Governor from suit regarding prison conditions notwithstanding plaintiffs' argument that Governor's statements on television and radio demonstrated knowledge of the conditions in Ohio's prisons). Where, as here, claims are asserted against high-ranking government officials, threadbare recitals that the defendant "knew of" and "condoned" conditions of confinement are insufficient, as a matter of law, to state a claim under § 1983. Iqbal, 556 U.S. at 680-81 (rejecting claims against high-ranking government officials based on such allegations); Feliciano-Hernandez, 663 F.3d at 534 (explaining that "after Iqbal, we have repeatedly held that similarly broad allegations against high-ranking government officials fail to state a claim" and collecting cases); Mem. in Supp. of Mot. to Dismiss at 19 n.11 (collecting cases dismissing Governor).[1]

CONCLUSION

For the foregoing reasons, and those set forth in the memorandum in support of the motion to dismiss of Governor Charles D. Baker, the Governor respectfully requests the dismissal of the claims asserted against him in this action.

[1] That Plaintiffs' resort to reliance on Brown v. Plata, 563 U.S. 493 (2011), is telling. Brown is not § 1983 case. The relief at issue there – a prisoner release order entered against the Governor of the State of California – was only available under the Prison Litigation Reform Act ("PLRA"), and only after all of prerequisites to such an order under the PLRA had been satisfied, including the convening of a three-judge federal court. Brown, 563 U.S. at 512 (observing that "[u]nder the PLRA, only a three-judge court may enter an order limiting a prison population" and only after a district court first "entered an order for less intrusive relief that failed to remedy the constitutional violation").

Respectfully submitted,

GOVERNOR CHARLES D. BAKER

By his attorneys,

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May 6, 2020

CERTIFICATE OF SERVICE

I, Ryan P. McManus, hereby certify, under the penalties of perjury, that on May 6, 2020, I caused a true and accurate copy of the foregoing to be filed and served via email on all counsel of record.

/s/ Ryan P. McManus
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Special Assistant Attorney General