



Masterson et al v. County of Alameda et al

2019 | Cited 0 times | N.D. California | July 22, 2019

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

TIFFANY MASTERSON, et al.,

Plaintiffs, v. COUNTY OF ALAMEDA, et al.,

Defendants.

Case No. 19-cv-01625-PJH

ORDER GRANTING MOTIONS TO DISMISS WITH LEAVE TO AMEND Re: Dkt. Nos. 44, 52

Defendants Melynda Logan, Jane Mwangi, and Savitha Quadros Nurses motion to dismiss came on for hearing before this court on July 17, 2019. Dkt. 44. Defendants Gregory J. Ahern, Carol Burton, Bobbie Cook, Kim Curtis, Hayley Holland, Nicholas Lagorio, and Joshua Pape Alameda) motion to strike came on for hearing before this court on the same date. Dkt. 52. Plaintiffs appeared through their counsel, Jamie Goldstein. The CFMG Nurses appeared through their counsel, Peter Bertling. The Alameda Defendants appeared through their counsel, Denise Billops-Slone. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows, for the reasons stated at the hearing and for the following reasons.

BACKGROUND See Compl., Dkt. 1 ¶ 1. 1

Plaintiffs Tiffany Masterson (in her personal capacity, and as executor of (through their respective guardians ad litem), bring claims against the County of Alameda

(the J. Ahern; Deputy Nicholas Lagorio; Sergeant Joshua Pape; Carol Burton, Interim Director of the Alameda County Behavioral Health Care

Therapist Bobbie 2

the Jane Mwangi, and Melynda Logan (Quadros, Mwangi, and Logan CFMG

Nurses oyed by the County of Alameda and CFMG.



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Plaintiffs assert eight causes of action: (1) 42 U.S.C. § 1983, Failure to Provide Medical Care in Violation of the Fourteenth Amendment (alleged against all defendants); (2) 42 U.S.C. § 1983, Failure to Protect from Harm in Violation of the Fourteenth Amendment (alleged against all defendants); (3) 42 U.S.C. § 1983, Deprivation of Substantive Due Process in Violation of the First and Fourteenth Amendments (alleged against all defendants); (4) medical malpractice under California law (alleged against the County, Burton, BHCS Providers, CFMG, CFMG Nurses, and Doe defendants); (5) failure to furnish medical care under California law (alleged against all defendants); (6) negligent supervision under California law (alleged against the County, Ahern, CFMG, and Doe defendants); (7) wrongful death under Cal. Code Civ. Proc. § 377.60 (alleged against all defendants); and (8) negligence under California law (alleged against all defendants).

The County of Alameda contracts with CFMG to provide medical and mental

1 For the purposes of these motions, this order recounts facts as alleged in the complaint. 2 3 Plaintiffs have agreed to dismiss claim five against the CFMG Nurses. Therefore, claim five as alleged against the CFMG Nurses is DISMISSED. during his detention Masterson. Id. Quadros, Mwangi, and Logan were registered nurses and CFMG employees during Id. ¶¶ 28 30.

When a prisoner is newly booked into SRJ, as a general matter the first step of the by conducting Id. ¶ 69. After the initial screening, newly booked prisoners are typically interviewed by medical staff. Id. Id.

prisoners with psychiatric disabilities[.] Id. ¶ 43. As a result, prisoners with psychiatric

Id. ¶ 52. Defendants also allegedly failed to provide mentally disabled prisoners with adequate Id. Id. psychotropic

medication, therapy, and suicide intervention. Id. ¶ 66. They failed to adequately train Id.

matter failed to provide appropriate mental health screening (id. ¶ 68), adequately identify, track, and respond to prisoners at risk for suicide (id. ¶¶ 75 77), properly administer psychotropic medications (id. ¶ 67), and house prisoners with serious mental illness in the least restrictive setting (id.).

Masterson was arrested and brought to SRJ on April 4, 2018. Id. ¶¶ 1, 87. He was initially placed in a safety cell on suicide watch. Id. ¶ 88. Suicide watch was discontinued, and on the morning of April 6, 2018, he was rehoused in Administrative Id. ¶ 89. There, he asked for mental health assistance, but no one responded. Id. ¶ 90.

On April 8, 2018, at about 2:45 PM, custody officers observed decedent engage in and/or sink Id. ¶¶ 1, 92. Instead of contacting



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mental health staff or otherwise intervening, they ordered the water to be turned off in his cell. Id. Logorio had only an obstructed view inside the cell. Id. ¶ 93. Over an hour passed without a subsequent welfare check, and at 4:29 PM, Masterson was found dead in his cell. Id. ¶¶ 1, 94.

The CFMG Nurses now bring a motion to dismiss claims one, two, and three asserted against them. The Alameda Defendants bring a motion to strike the portions of the complaint claiming punitive damages against them.

DISCUSSION A. Legal Standard

1. Federal Rule of Civil Procedure 12(b)(6) A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the claims alleged in the complaint. *Ileto v. Glock*, 349 F.3d 1191, 1199 1200 (9th Cir. 2003).

P. 8(a)(2), a complaint may be dismissed under Rule 12(b)(6) if the plaintiff fails to state a

cognizable legal theory, or has not alleged sufficient facts to support a cognizable legal theory. *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013).

While the court is to accept as true all the factual allegations in the complaint, legally conclusory statements, not supported by actual factual allegations, need not be accepted. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 79 (2009). The complaint must proffer sufficient facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 558 59 (2007).

the court to draw the reasonable inference that the defendant is liable for the misconduct

Iqbal -pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged but it Id. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Where dismissal is warranted, it is generally without prejudice, unless it is clear the complaint cannot be saved by any amendment. *Sparling v. Daou*, 411 F.3d 1006, 1013 (9th Cir. 2005).

2. Federal Rule of Civil Procedure 12(f) strike from a pleading an insufficient defense or any redundant, immaterial, impertinent,

[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983).

ion of the Federal Rules of Civil Procedure begins with the relevant

claim for lost profits and consequential damages was: (1) an insufficient defense; (2) redundant; (



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Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 74 (9th Cir. 2010) (internal quotation marks and citation omitted). B. Analysis

owed by the motion to strike.

1. To state a claim against an individual under U.S.C. § 1983, a plaintiff must allege (1) that the conduct complained of was committed by a person acting under the color of state law; and (2) that this conduct deprived them of rights, privileges, or immunities secured by the Constitution or laws of the United States. *Pistor v. Garcia*, 791 F.3d 1104, 1114 (9th Cir. 2015). ight, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (internal quotation marks omitted).

Iqbal, 556 U.S. at 677.

Iqbal emphasizes that a constitutional tort plaintiff must allege that every government defendant supervisor or subordinate acted with the state of mind required by the *OSU Student All. v. Ray*, 699 F.3d 1053, 1070 (9th Cir. 2012). *Cour Dunson v. Cordis Corp.*, Case No. 16-

cv-03076-SI, 2016 WL 3913666, at *3 (N.D. Cal. July 20, 2016) (internal quotation marks omitted); see also *Pierce v. Nekamoto*, Case No. 18-cv-07279-SI, 2019 WL 1370357, at *1 (N.D. Cal. Mar. 26, 2019) (It is not sufficient to identify [defendants] as a group, e.g., the medical staff, and instead [plaintiff] must provide the names and acts or omissions of individual persons.).

Here, the institutional policies and practices. See, e.g., Compl. ¶¶ 50, 75, 79. Such general policy and practice allegations fail to identify the individual CFMG Nurses. Moreover, the remainder of the complaint likewise fails to allege any particular actions or omissions undertaken by the individual CFMG Nurses.

Such undifferentiated pleading does not allow the court to reasonably determine which actions belong to which defendant, particularly here where the complaint lists at least twelve separate defendants. allegations against the general categories of The court cannot reasonably infer that any individual CFMG Nurse is liable for any misconduct based on the complaint as alleged. first, second, and third claims as alleged against the CFMG Nurses are DISMISSED WITH LEAVE TO AMEND.

2. The Alameda The Alameda be stricken because they are precluded from recovering such damages as a matter of

does not authorize district courts to strike claims for damages on the ground that such claims are precluded *Whittlestone*, 618 F.3d at 974 75. Recognizing this error, the Alameda Defendants now request that the court consider their motion to strike as a motion to dismiss. Because the briefing



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addressed the relevant issues regarding dismissal under Rule 12(b)(6), the court will consider the motion to strike as a motion to dismiss. See generally *Consumer Sols. REO, LLC v. Hillery*, 658 F. Supp. 2d 1002, 1021 (N.D. Cal. 2009) here a motion is in substance a Rule 12(b)(6) motion, but is incorrectly denominated as a Rule 12(f) motion, a court may convert the improperly . The Alameda Defendants make three arguments. First, they argue that California Code of Civil Procedure § 425.13 precludes plaintiffs from seeking punitive damages they argue that California Government Code § 818 prevents plaintiffs from seeking punitive damages from certain defendants. Third, they argue that plaintiffs do not allege facts sufficient to state claims against them. First, California Code of Civil Procedure § 425.13(a) requires that in actions damages shall be included in a complaint or other pleading unless the court enters an

order allowing an amended pleading that includes a claim for punitive damages to be Cal. Civ. Proc. Code § 425.13(a). The rule further provides that a court may allow

Id.

Section court prior to pleading punitive damages is procedural rather than substantive, and as such does not apply to actions in federal court. See *Doe 1 v. Xytex Corp.*, Case No. 16-cv-02935-WHA, 2017 WL 1112996, at *8 (N.D. Cal. Mar. 24, 2017); *George v. Sonoma Cty. Sheriff's Dep't*, 732 F. Supp. 2d 922, 951 (N.D. Cal. 2010) 425.13 is a procedural rule *McKay v. Hageseth*, Case No. 06-cv-1377-MMC, 425.13(a) is a state law *Burrows v. Redbud Cmty. Hosp. Dist.*, 188 F.R.D. 356, 361 (N.D. Cal. 1997); *Jackson v. E. Bay Hosp.*, 980 section 425.13 is a procedural requirement and does not warrant special exception, it is therefore inapplicable, and plaintiff's punitive

Moreover, Federal Rule of Civil Procedure 8 conflicts with requiring a party to seek leave to state a damages theory. Rule claim for relief must contain . . . a demand for the relief sought, which may include relief

in the alternative or different types of relie prevents a pleading that states a claim for relief from containing a demand for punitive

request in her initial complaint all the relief she seeks, it says implicitly, but with

unmistakable clarity that a plaintiff is not required to wait until a later stage of the litigation to include a prayer for punitive damages, nor is she required to proffer evidence or obtain leave o *Cohen v. Office Depot, Inc.*, 184 F.3d 1292, 1298 99 (11th Cir. 1999) (internal quotation marks omitted), vacated in part on other grounds, 204 F.3d 1069 (11th Cir. 2000).

Second, Alameda Defendants argue for the first time on reply that California Government Code § 818 precludes plaintiffs from seeking punitive damages against certain defendants as a matter of law. Because the argument was raised for the first time on reply, the court declines to consider it. See,



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e.g., *Bazuaye v. I.N.S.*, 79 F.3d 118, 120 (9th Cir. 1996) Issues raised for the first time in the reply brief are waived. *Cedano- Viera v. Ashcroft*, 324 F.3d 1062, 1066 n.5 (9th Cir. 2003) we decline to consider new issues raised for the first time in a reply brief *Dytch v. Yoon*, Case No. 10-cv-02915- MEJ, 2011 WL 839421, at *3 (N.D. Cal. Mar. 7, 2011) Defendant's argument . . . was raised for the first time in her reply brief. As a result, it is improper for the Court to consider it.

Third, the Alameda Defendants argue that against each particular Alameda Defendant under Rule 8(a). against the CFMG Nurses, plaintiffs plead facts supporting their request for punitive

damages only generally attributed to any of the individual Alameda Defendants. For the same reasons described above with respect to the CFMG allegations supporting punitive damages against the Alameda Defendants are insufficiently-specific with respect to the acts or omissions undertaken by each of the individual Alameda Defendants, and all requests for punitive damages asserted against them are accordingly DISMISSED WITH LEAVE TO AMEND.

3. Leave to Amend Because the complaint may be saved by amendment, plaintiffs are granted leave to amend their complaint. See *Malibu Textiles, Inc. v. Label Lane Int'l, Inc.*, 922 F.3d 946, 954 (9th Cir. 2019).

When Ninth Circuit opinion in *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124 25 (9th Cir. 2018). In *Gordon*, the Ninth Circuit established an objective standard for medical care and failure-to- pretrial detainees against individual defendants under the *Id.* That opinion explained:

[T]he elements of a pretrial detainee's medical care claim against an individual defendant under the due process clause of the Fourteenth Amendment are: (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved making the consequences of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries. With respect to the third element, the defendant's conduct must be objectively unreasonable, a test that will necessarily turn on the facts and circumstances of each particular case. The mere lack of due care by a state official does not deprive an individual of life, liberty, or property under the Fourteenth Amendment. Thus, the plaintiff must prove more than negligence but less than subjective intent something akin to reckless disregard. *Id.* at 1125 (internal quotation marks and citations omitted).

CONCLUSION first, second, and third claims as alleged against the CFMG Nurses are DISMISSED WITH LEAVE TO AMEND. All of p requests for punitive damages against the Alameda Defendants are DISMISSED WITH LEAVE TO AMEND. Plaintiffs may file an amended complaint on or before August 16, 2019, and any response shall be filed within 28 days of the filing of complaint. No new parties or claims may be added without leave of court.



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IT IS SO ORDERED. Dated: July 22, 2019

PHYLLIS J. HAMILTON United States District Judge

