UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RANDALL STEVENS,

Plaintiff,

v.

PIERCE COUNTY,

Defendant.

CASE NO. C22-5862 BHS

ORDER

THIS MATTER is before the Court on plaintiff Randall Stevens's motion for reconsideration, Dkt. 33, of the Court's Order, Dkt. 32, granting in part defendants' motion to dismiss, Dkt. 23; Stevens's motion to certify a question to the state supreme court, Dkt. 35; Stevens's motion to amend his first amended complaint, Dkt. 37; and his alternate motion for an extension of time to file an amended complaint, Dkt. 41.

Stevens's motion to certify asks the Court to ask the Washington Supreme Court "whether a contract between a jail and a corporation, for provision of medical services to jail detainee-patients, could confer third-party beneficiary status upon the detainee-patients." Dkt. 35 at 3. Stevens argues that this is an important question without a clear

answer[1] and asserts that both sides have unsuccessfully[2] "scoured the nation" for persuasive authority. *Id*.

The Court dismissed Stevens's breach of contract claim for two reasons. First, Stevens had not plausibly pled facts supporting the conclusion that he was an intended third party beneficiary of the contract between Pierce County and NaphCare, under Washington's objective test. He instead simply stated that he was an intended third party beneficiary. Such conclusory allegations are not sufficient. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Second, Stevens seeks to impose on NaphCare and its employees a contractual duty to provide him medical care him consistent with the standard of care, and consistent with their constitutional obligations. But these duties are already imposed by Washington tort law and the Constitution.

Stevens has already asserted medical negligence and § 1983 deliberate indifference claims. He has already alleged that NaphCare is vicariously liable for its employees' negligence. Stevens's breach of contract claim therefore was and is redundant. There is nothing for Stevens or the Court to gain by certifying the proposed question to the Washington Supreme Court. The question is not complex or unclear, and

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[1] In contrast, Stevens's motion for reconsideration asserts that the Court's dismissal of his contract claim was manifest error, because it is "exactly 180 degrees opposite of the law in Washington State." Dkt. 33 at 8.

[2] Defendants' motion to dismiss included a lengthy string cite to opinions from other jurisdictions flatly rejecting the claim that a detainee was an intended third party of a contract for the provision of medical care. Dkt. 23 at 6. Stevens has not acknowledged or addressed this persuasive authority.

it is not germane to the outcome of the case. Certification to the Washington Supreme Court is not necessary. Stevens's motion to certify, and the portion of his motion for reconsideration aimed at his third party beneficiary contract claim, are **DENIED**.

Stevens's motion for reconsideration also asserts that the Court's dismissal of his *Monell* claim against NaphCare was manifest error, because it "triangulated" on the "supposedly implausible" "policy motive" of profit over care. Dkt. 33 at 8. Stevens misapprehends the Court's Order and his pleading burden in the face of a Rule 12(b)(6) motion.

Under Local Rule 7(h)(1), motions for reconsideration are disfavored, and will ordinarily be denied unless there is a showing of (a) manifest error in the ruling, or (b) facts or legal authority which could not have been brought to the attention of the court earlier, through reasonable diligence. Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Marlyn Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). A motion for reconsideration is not intended to provide litigants with a second bite at the apple. A motion for reconsideration should not be used to ask a court to rethink what the court had already thought through—rightly or wrongly. *Defs. of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995).

A plaintiff's complaint must allege facts to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Although the Court must accept as true the complaint's well-pled facts, conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper Rule 12(b)(6) motion to dismiss. *Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. This requires a plaintiff to plead "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

The Court dismissed Stevens's *Monell* claim because he did not plausibly allege facts supporting his conclusory claim that NaphCare had a "policy of seeking profits to the detriment of standards of care." Dkt. 17 at 3, ¶7; *see also* Dkt. 17 at 14, ¶69; *Id*. at 15, ¶73; *Id*. at 16, ¶76; *Id*. at 22. The "profit motive" referenced in the Court's Order was based on the repeated allegations in Stevens's amended complaint. He has alleged no other policy.

Stripped of its motive, Stevens's *Monell* claim—that NaphCare had a policy of violating the Constitution by being deliberately indifferent to detainees' serious medical

needs—is *less* plausible. It is no more than a formulaic recitation of the elements of a *Monell* claim. But labels and conclusions are insufficient to state a plausible claim under Rule 12(b)(6).

Stevens's more detailed allegations about NaphCare's culpability are instead about the deficiencies in the care its defendant employees provided to him. He alleges that all of them violated his constitutional rights and committed medical malpractice by denying him medical care and falsifying his records. The plausibility of his § 1983 claims against the individual defendants is addressed below. But plausibly alleging (and ultimately proving) that the individual defendants were deliberately indifferent to his serious medical needs does not establish a *Monell* claim against NaphCare: there is no vicarious § 1983 liability for constitutional violations. Stevens cannot prevail on a *Monell* claim against NaphCare simply because he prevailed on a § 1983 claim against its employees.

A plaintiff alleging municipal[3] liability for civil rights violations must prove three elements: (1) a violation of his constitutional rights, (2) the existence of a municipal policy or custom, and (3) a causal nexus between the policy or custom and the constitutional violation. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 691 (1978). A plaintiff must show that the municipality acted with the requisite degree of culpability, and he must demonstrate a direct causal link between the municipal action and the deprivation of federal rights. *Bd. of County Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 404 (1997). In other words, the municipality's actions must be the "moving

[3] The Court assumes without deciding that NaphCare is effectively a municipality for purposes of this claim.

force" behind the rights deprivation. *Id*. On the other hand, § 1983 liability cannot be vicarious or premised on respondeat superior. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981); *Monell*, 436 U.S. at 690-94.

Stevens has not plausibly alleged facts supporting the conclusion that a NaphCare policy was a moving force behind his constitutional injury, and the Court will not reconsider its dismissal of that claim. Stevens's motion for reconsideration on this point is **DENIED**.

The remainder of Stevens's motion for reconsideration asserts that the Court arbitrarily "set a medical cutoff date," before his experts have weighed in. Dkt. 33 at 4. This is inaccurate. The Court logically concluded that defendant medical care providers who first saw Stevens *after* his broken leg had healed improperly could not plausibly have *caused* that injury to heal improperly.

The timeline in Stevens's complaint is not clear about who saw him, when, nor about who he alleges[4] caused his injury, or how. He has yet to articulate how falsifying his records, for example, caused his injury. Nor does Stevens's amended complaint or motion account for the 94 days between the date he initially "bailed out" and the date he returned to the jail. Stevens does not articulate who should have done what, when, or allege what would have been different if each individual defendant had done what he claims they should have done. The Court will not reconsider its determination that

[4] A Rule 12(b)(6) motion tests the plaintiff's allegations, not his evidence. The plaintiff is obligated to plausibly plead facts supporting a claim, but he does not have to prove his claim to survive a motion to dismiss. Stevens's anticipated expert testimony has no impact on the motion to dismiss.

Stevens has failed to state a plausible claim against some of the individual defendants, but it will consider whether he could amend his complaint to do so.

Under Local Civil Rule 7(h), the Court cannot grant a motion for reconsideration unless the opposing party has an opportunity to respond.

The Court **REQUESTS** Defendants to file a Response to this portion of Stevens's motion for reconsideration. The Response need not address Stevens's third party beneficiary claim, nor his *Monell* claim, but it should address the timeline and whether Stevens could amend his complaint to state a plausible claim against any medical provider defendant.

It should not exceed 12 pages and it should be filed by October 31, 2023. Stevens may file a Reply not exceeding 8 pages by November 3, 2023. It too should address whether Stevens could amend his complaint to state a plausible claim. Stevens's motion for reconsideration of the Order dismissing his § 1983 claims against individual defendants, Dkt. 33, is **RE-NOTED** for November 3, 2023.

Stevens's related motion for leave to file an amended complaint, Dkt. 37, is **DENIED** without prejudice. His alternative motion for an extension of time to file an amended complaint, Dkt. 41, is **DENIED** as moot. The Court will resolve the motion for reconsideration after the briefing is complete. The Court will address in that Order whether and how Stevens should be permitted to amend his complaint.

IT IS SO ORDERED.

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Dated this 16th day of October, 2023.

BENJAMIN H. SETTLE
United States District Judge