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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KAVIN MAURICE RHODES,)	NO. CV 08-6419-DDP(E)
)	
Plaintiff,)	
)	
v.)	ORDER RE DEFENDANT ANTELOPE VALLEY
)	
R. SAILOR, et al.,)	HOSPITAL'S MOTION TO DISMISS AND/OR
)	
Defendants.)	MOTION FOR JUDGMENT ON THE PLEADINGS
)	
)	AND MOTION TO STRIKE
)	

BACKGROUND

Plaintiff, a state prisoner proceeding pro se, filed this action for damages on October 1, 2008. Plaintiff alleges that prison officials at Plaintiff's former place of incarceration, the California State Prison at Lancaster ("Lancaster"), and health care providers at the Antelope Valley Hospital failed to provide adequate treatment for an injury to Plaintiff's hand. Defendants are: (1) Lancaster medical technical assistant R. Sailor; (2) Lancaster orthopedic surgeon Pierre S. Hendricks; (3) Lancaster correctional sergeant Priest; (4) Antelope

1 Valley Hospital physicians John Lynn and William Gregory; (5) Antelope
2 Valley nurse K. Hansen; (6) two Antelope Valley Hospital employees
3 sued as fictitious "John Doe" Defendants; and (7) the Antelope Valley
4 Hospital.

5
6 On November 18, 2008, Defendant "Antelope Valley Healthcare
7 District, d.b.a. Antelope Valley Hospital" ("Defendant") filed a
8 "Motion to Dismiss and/or for Judgment on the Pleadings" ("Motion"),
9 pursuant to Rules 12(b)(1), 12(b)(6) and 12(c) of the Federal Rules of
10 Civil Procedure, accompanied by declarations and an exhibit consisting
11 of a copy of the Complaint. On December 8, 2008, Plaintiff filed an
12 Opposition to the Motion. On December 10, 2008, Defendant filed a
13 Reply.

14
15 **SUMMARY OF PLAINTIFF'S ALLEGATIONS**
16

17 Plaintiff alleges that, on August 20, 2006, prison officials
18 transported Plaintiff to Defendant Antelope Valley Hospital for
19 treatment of an injury to Plaintiff's right hand (Complaint, ¶ 11,
20 pp. 4-5). There, Plaintiff allegedly received X-rays (*id.*, ¶ 12,
21 p. 5). Either Defendant Lynn or Defendant Gregory allegedly told
22 Plaintiff that Plaintiff assertedly had sustained sprains to
23 Plaintiff's wrist and fourth finger (*id.*). Defendant Hansen and "the
24 doctors" allegedly applied a cast which completely covered Plaintiff's
25 right hand, including Plaintiff's fourth and fifth fingers (*id.*, ¶ 13,
26 p. 5).

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1 Plaintiff alleges that, as Plaintiff was leaving the hospital,
2 Defendant Lynn or Defendant Gregory told Defendant Priest that
3 Plaintiff should receive follow-up care at the prison (id., ¶ 14,
4 p. 5). Plaintiff alleges he never received such follow-up care (id.).
5

6 Plaintiff alleges that, on August 24, 2006, Plaintiff received a
7 letter from Defendant Lynn assertedly stating that the Radiology
8 Department had noted a "discrepancy" and that Plaintiff's X-ray showed
9 a "possible faint fracture" of the fifth finger of Plaintiff's right
10 hand (id., ¶ 17, pp. 5-6). Plaintiff allegedly showed the letter to
11 Defendant Sailor, who assertedly began to shout at Plaintiff, accusing
12 Plaintiff of "whining," and stating that he, Sailor, had suffered a
13 similar injury (id., ¶¶ 19-20, p. 5). Plaintiff allegedly filed an
14 appeal to which Plaintiff received no response, and allegedly
15 unsuccessfully sought help from other prison officials (id., ¶¶ 21-22,
16 pp. 6-7). Plaintiff alleges that Defendant Hendricks finally saw
17 Plaintiff on October 26, 2006 (id., ¶ 25, pp. 7-8). Plaintiff alleges
18 that, when the cast was removed, Plaintiff assertedly discovered that
19 his fifth finger had been broken and had healed inside the cast
20 "severely deformed" (id., ¶¶ 26-27, p. 8). Plaintiff alleges that the
21 alleged deformity makes it difficult to write (id., ¶ 27, p. 8).
22

23 Defendant Hendricks allegedly scheduled Plaintiff for corrective
24 surgery, but Plaintiff assertedly declined the surgery, supposedly
25 believing it would interfere with Plaintiff's ability to meet
26 deadlines in a case Plaintiff was prosecuting (id., ¶¶ 28-39, p. 8).
27 On February 9, 2007, prison doctors not named as Defendants allegedly
28 told Plaintiff that the corrective surgery was elective because it

1 indicate that Defendant received any claim from Plaintiff submitted
2 pursuant to the California Government Claims Act (Schell Dec., ¶ 5).

3
4 Defendant also contends that the claims against Defendant are
5 barred by the statute of limitations applicable to professional
6 negligence actions against health care providers set forth in
7 California Code of Civil Procedure section 340.5.² Defendant finally
8 asserts that the Court should strike Claim Ten as allegedly
9 duplicative of Claim Nine, pursuant to Rule 12(f) of the Federal Rules
10 of Civil Procedure.³

11
12 Plaintiff contends that he did comply with the claims
13 presentation requirements of the California Government Claims Act, and
14 has submitted exhibits in support of that contention. Plaintiff also
15 contends that the Complaint asserts a federal civil rights claim
16 against Defendant, and that the California Government Claims Act does

17
18 ² California Code of Civil Procedure section 340.5
19 provides in pertinent part:

20 "In an action for injury or death against a health care
21 provider based upon such person's alleged professional
22 negligence, the time for the commencement of action
23 shall be three years after the date of injury or one
24 year after the plaintiff discovers, or through the use
25 of reasonable diligence should have discovered, the
26 injury, whichever occurs first. In no event shall the
27 time for commencement of legal action exceed three
28 years unless tolled for any of the following: (1) upon
proof of fraud, (2) intentional concealment, or (3) the
presence of a foreign body, which has no therapeutic or
diagnostic purpose or effect, in the person of the
injured person."

³ Defendant's Notice of Motion does not mention Rule
12(f) or a motion to strike.

1 not apply to any such claim.⁴ Plaintiff further argues that the
2 claims against Defendant are timely because the two-year limitations
3 provision of California Code of Civil Procedure section 335.1
4 allegedly applies,⁵ and contends that proper application of accrual
5 and filing principles allegedly render the claims against Defendant
6 timely. Plaintiff also alleges an entitlement to equitable tolling.
7

8 DISCUSSION

9 10 I. Governing Legal Standards

11
12 "To survive a motion to dismiss for failure to state a claim
13 under Rule 12(b)(6), a complaint generally must satisfy only the
14 minimal notice pleading requirements of [Federal] Rule [of Civil
15 Procedure] 8(a)(2)." Porter v. Jones, 319 F.3d 483, 494 (9th Cir.
16 2003). "Federal Rule of Civil Procedure 8(a)(2) requires only a
17 'short and plain statement of the claim showing that the pleader is
18 entitled to relief.'" Erickson v. Pardus, 127 S. Ct. 2197, 2200
19 (2007). "In addition, when ruling on a defendant's motion to dismiss,
20

21 ⁴ The Court does not construe the Complaint to allege any
22 federal civil rights claim against Defendant, however. Claims
23 Nine and Ten, the only claims alleged against Defendant, purport
24 to allege only claims of "professional negligence." Plaintiff
25 asserts only one federal civil rights claim, for an alleged
Eighth Amendment violation, and Plaintiff alleges that claim only
against Defendant Sailor (see Complaint, p. 10). The remainder
of Plaintiff's claims are expressly alleged as state law claims.

26 ⁵ California Code of Civil Procedure section 335.1
27 provides a two-year statute of limitations for: "An action for
28 assault, battery, or injury to, or for the death of, an
individual caused by the wrongful act or neglect of another."

1 a judge must accept as true all of the factual allegations contained
2 in the complaint." Id. (citations omitted). "Generally a court may
3 not consider material beyond the complaint in ruling on a Fed.R.Civ.P.
4 12(b)(6) motion." Intri-Plex Technologies, Inc. v. Crest Group, Inc.,
5 499 F.3d 1048, 1052 (9th Cir. 2007) (citation and footnote omitted).⁶
6 "A document filed pro se is to be liberally construed [citation], and
7 a pro se complaint, however inartfully pleaded, must be held to less
8 stringent standards than formal pleadings drafted by lawyers."
9 Erickson v. Pardus, 127 S. Ct. at 2200 (citations omitted).

10
11 Judgment on the pleadings is proper if the moving party
12 "clearly establishes on the face of the pleadings that no material
13 issue of fact remains to be resolved and that [the moving party] is
14 entitled to judgment as a matter of law." Hal Roach Studios v.
15 Richard Feiner and Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1989).
16 Where, as here, the motion for judgment on the pleadings is used to
17 raise the defense of failure to state a claim, the motion is governed
18 by the standards used to assess the sufficiency of the complaint under
19 Rule 12(b)(6) of the Federal Rules of Civil Procedure. McGlinchy v.
20 Shell Chemical Co., 845 F.2d 802, 810 (9th Cir. 1988); Ludahl v.
21 Seaview Boat Yard, 869 F. Supp. 825, 826 (W.D. Wash. 1994); see also
22 Enron Oil Trading & Transp. Co. v. Walbrook Ins. Co., 132 F.3d 526,
23 528 (9th Cir. 1997) ("A judgment on the pleadings is properly granted
24 when, taking all allegations in the pleading as true, the moving party

25
26 ⁶ A court may consider matters properly the subject of
27 judicial notice, see Intri-Plex Technologies, Inc. v. Crest
28 Group, Inc., 499 F.3d at 1052, and exhibits attached to the
complaint, see Hal Roach Studios v. Richard Feiner & Co., Inc.,
896 F.2d 1542, 1555 n.19 (9th Cir. 1989).

1 is entitled to judgment as a matter of law.") (citation and internal
2 quotations omitted). As a general rule, the court may not consider
3 material beyond the pleadings without converting the motion to a
4 motion for summary judgment. See Fed. R. Civ. P. 12(c); Heliotrope
5 General, Inc. v. Ford Motor Co., 189 F.3d 971, 979-80 (9th Cir. 1999);
6 Owest Communications Corp. v. City of Berkeley, 208 F.R.D. 288, 291
7 (N.D. Cal. 2002).

8
9 Defendant's Motion is not styled a motion for summary judgment,
10 and the Court declines to convert the Motion into a motion for summary
11 judgment. Therefore, the Court will apply the standards applicable to
12 motions to dismiss and motions for judgment on the pleadings, set
13 forth above, and will not consider the purported evidence submitted by
14 the parties. However, the Court may consider the allegations
15 contained in Plaintiff's Opposition in deciding whether to grant leave
16 to amend. See Broam v. Brogan, 320 F.3d 1023, 1026 n.2 (9th Cir.
17 2003).

18
19 **II. Plaintiff Has Failed to Allege Compliance with California's**
20 **Government Claims Act.**

21
22 Under California law, in order to allege a state tort claim
23 against a public entity or public employee, a plaintiff must allege
24 compliance with the presentment of claims requirements of the
25 California Government Claims Act. See Cal. Gov't Code §§ 945.4,
26 950.2; Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 627
27 (9th Cir. 1988). "Before a civil action may be brought against a
28 public entity, a claim must first be presented to the public entity

1 and rejected." Ocean Servs. Corp. v. Ventura Port Dist., 15 Cal. App.
2 4th 1762, 1775, 19 Cal. Rptr. 2d 750 (1993); Cal. Gov't Code § 945.4;
3 see also Brown v. Yates, 2008 WL 928119, at *3 (E.D. Cal. Apr. 4,
4 2008), adopted, 2008 WL 2915085 (E.D. Cal. July 25, 2008)
5 ("Presentation of a written claim and action on, or rejection of, the
6 claim are conditions to suit.") (citations omitted). Claims for
7 personal injury and property damage must be presented within six
8 months after accrual. See Cal. Gov't Code § 911.2(a); City of
9 Stockton v. Superior Court, 42 Cal. 4th 730, 738, 68 Cal. Rptr. 3d
10 295, 171 P.3d 20 (2007). "[F]ailure to timely present a claim for
11 money or damages to a public entity bars a plaintiff from filing a
12 lawsuit against that entity." City of Stockton v. Superior Court,
13 42 Cal. 4th at 738 (citation and internal quotations omitted).

14
15 Timely claims presentation is an "element of the plaintiff's
16 cause of action." Shirk v. Vista Unif. Sch. Dist., 42 Cal. 4th 201,
17 209, 64 Cal. Rptr. 3d 210, 164 P.3d 630 (2007) (citation omitted). A
18 plaintiff "must allege facts demonstrating or excusing compliance with
19 the claim presentation requirement." State v. Superior Court (Bodde),
20 32 Cal. 4th 1234, 1243, 13 Cal. Rptr. 3d 534, 90 P.3d 116 (2004).
21 California courts "employ a test of substantial compliance rather than
22 strict compliance in evaluating whether a plaintiff has met the
23 demands of the claims statutes." Life v. County of Los Angeles, 227
24 Cal. App. 3d 894, 899, 278 Cal. Rptr. 196 (1991).

25
26 The claims presentation requirements of the California Government
27 Claims Act are not jurisdictional. See State v. Superior Court
28 (Bodde), 32 Cal. 4th 1234, 1239 n.7, 13 Cal. Rptr. 3d 534, 90 P.3d 116

1 (2004) (noting that California Supreme Court has "long held" that
2 failure to comply with the claims presentation requirement does not
3 divest court of jurisdiction over claim against a public entity,
4 citing County of Santa Clara v. Superior Court, 4 Cal. 3d 545, 550-51
5 94 Cal. Rptr. 158, 483 P.2d 774 (1971)). Therefore, to the extent
6 Defendant seeks dismissal of the claims against it on the ground that
7 the Court lacks subject matter jurisdiction over those claims,
8 Defendant's Motion lacks merit.⁷

9
10 In Martell v. Antelope Valley Hospital Medical Center, 67 Cal.
11 App. 4th 978, 79 Cal. Rptr. 2d 329 (1998), the California Court of
12 Appeal stated that Defendant is "a district hospital covered by the
13 California Tort Claims Act." Id. at 980 (citation omitted). The
14 Complaint does not allege that Plaintiff complied with the claims
15 presentation requirements of the California Government Claims Act with
16 respect to his claims against Defendant. Therefore, the claims
17 against Defendant must be dismissed. However, because it appears from
18 Plaintiff's Opposition that Plaintiff may be able to allege facts
19 showing compliance with the claims presentation requirements of the
20 California Government Claims Act, the Court will grant leave to amend.
21 See Broam v. Brogan, 320 F.3d at 1026 n.2.⁸

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24 _____
25 ⁷ Defendant does not challenge the Court's jurisdiction
26 over the claims against it on any other ground. See generally 28
27 U.S.C. § 1367.

28 ⁸ The Court expresses no opinion regarding whether
29 Plaintiff will be able to allege, or prove, compliance with the
30 claims presentation requirements of the California Government
31 Claims Act.

1 **III. Defendant's Statute of Limitations Argument Lacks Merit.**

2
3 Under the California Government Claims Act, an action against a
4 public entity for which a claim is required to be presented must be
5 commenced not later than six months after notice of rejection of the
6 claim is personally delivered or deposited in the mail, or, if no such
7 notice was provided, within two years after accrual. Cal. Gov't Code
8 § 945.6(a). "Suits against a public entity are governed by the
9 specific statutes of limitations provided in the Government Code,
10 rather than the statute of limitations which applies to private
11 defendants." Martell v. Antelope Valley Hospital Medical Center,
12 67 Cal. App. 4th at 981 (citation and internal quotations omitted).
13 Therefore, in a medical malpractice lawsuit against a public entity,
14 the six-month statute of limitations contained in California
15 Government Code section 945.6(a) applies, rather than other general
16 statutes of limitations, including the statute of limitations for
17 negligence actions against health care providers contained in
18 California Code of Civil Procedure section 340.5. See Martell v.
19 Antelope Valley Hospital Medical Center, 67 Cal. App. 4th at 981-85;
20 Anson v. County of Merced, 202 Cal. App. 3d 1195, 1202, 249 Cal. Rptr.
21 457 (1988). Consequently, Defendant's argument that California Code
22 of Civil Procedure section 340.5 bars Plaintiff's claims against
23 Defendant lacks merit.⁹

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25 _____
26 ⁹ In light of this conclusion, the Court need not, and
27 does not, consider Plaintiff's various arguments that his claims
28 against Defendant are timely, including arguments regarding the
date of accrual, the date the Complaint should be deemed to have
been filed, and equitable tolling principles.

1 Section 945.6(a) of the California Government Code conceivably
2 might bar Plaintiff's claims, but Defendant does not so argue.
3 Moreover, the Court is granting Plaintiff leave to amend to attempt
4 to allege compliance with the claims presentation requirements of the
5 California Government Claims Act. Therefore, the Court need not, and
6 does not reach the issue of whether Plaintiff can allege or prove that
7 the claims against Defendant are timely under section 945.6(a) of the
8 California Government Code.

9
10 **IV. Defendant's Motion to Strike Claim Ten Lacks Merit.**

11
12 Defendant contends that Claim Ten is duplicative of Claim Nine
13 and subject to a motion to strike under Rule 12(f) of the Federal
14 Rules of Civil Procedure. As noted above, Defendant's Notice of
15 Motion does not state that Defendant makes any Motion to Strike.
16 Moreover, although both Claims Nine and Ten allege negligence, they do
17 not appear to be necessarily redundant. Claim Nine alleges Defendant
18 is liable because of the asserted negligence of a nurse employee,
19 while Claim Ten alleges that Defendant is liable because of the
20 alleged failure of unidentified medical personnel to obtain
21 Plaintiff's informed consent. In any event, "[m]otions to strike are
22 viewed with disfavor, and will usually be denied unless the
23 allegations in the pleading have no possible relation to the
24 controversy, and may cause prejudice to one of the parties."
25 Corrections USA v. Dawe, 504 F. Supp. 2d 924, 938 (E.D. Cal. 2007).
26 "Mere redundancy is insufficient to support a motion to strike; the
27 movant must demonstrate that prejudice would result if the offending
28 material remained in the pleadings." Ross-Simons of Warwick, Inc. v.

1 Baccarat, Inc., 182 F.R.D. 386, 398 (D.R.I. 1998) (citations omitted);
2 see also Saye v. Old Hill Partners, Inc., 478 F. Supp. 2d 248, 278 (D.
3 Conn. 2007). Defendant has not shown that the allegations in Claim
4 Ten are unrelated to the controversy, and has not shown that any
5 prejudice would occur if those allegations remain in the Complaint.
6 For these reasons, Defendant's Motion to Strike Claim Ten lacks merit.

7
8 **ORDER**

9
10 Defendant's Motion is granted in part and denied in part. The
11 Complaint is dismissed with leave to amend. If Plaintiff still wishes
12 to pursue this action, he is granted thirty (30) days from the date of
13 this Memorandum and Order within which to file a First Amended
14 Complaint. The First Amended Complaint shall be complete in itself.
15 It shall not refer in any manner to any prior complaint. The First
16 Amended Complaint should not attempt to add additional parties without
17 leave of Court. See Fed. R. Civ. P. 21. Failure to file timely a

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1 First Amended Complaint may result in the dismissal of this action.
2 Defendant's Motion is otherwise denied.

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4 IT IS SO ORDERED.

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6 DATED: 8-17-09, 2009.

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10 _____
11 DEAN D. PREGERSON
12 UNITED STATES DISTRICT JUDGE

13 Presented this 8th day of
14 January, 2009, by

15
16 
17 _____
18 CHARLES F. EICK
19 UNITED STATES MAGISTRATE JUDGE