

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUANITA ALLEN,)	1:09-cv-00767-AWI-GSA
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
v.)	THAT DEFENDANTS' MOTION TO
)	DISMISS BE GRANTED AND THAT
CALIFORNIA DEPARTMENT OF)	DEFENDANT CDCR BE DISMISSED
CORRECTIONS AND)	WITH PREJUDICE
REHABILITATION, an agency of the)	
State of California, a public entity;)	(Doc. 21)
KEN CLARK, individually; and)	
DOES 1 - 10, Inclusive,)	
)	
Defendants.)	

I. FINDINGS

A. Procedural History

On April 28, 2009, Plaintiff Juanita Allen filed a complaint for damages. (Doc. 1.) The Complaint states that Plaintiff is the mother, next of kin, and heir to decedent Carl Smith ("Smith"). The Complaint alleged that Defendant California Department of Corrections and Rehabilitation ("CDCR"), Warden Ken Clark, and Does 1 through 10 failed to furnish medical care for Smith in violation of California Government Code § 845.6, and that Smith's Eighth and Fourteenth Amendment rights were violated by Defendants failing to provide Smith with medical care and depriving Smith of life and liberty without due process of law. On June 3, 2009, Defendants filed a motion to dismiss which was granted with leave to amend. (Docs. 8, 14.)

On October 6, 2009, Plaintiff filed the First Amended Complaint. (Doc. 19.)

1 On October 9, 2009, Defendants filed another motion to dismiss, seeking dismissal of the
2 First Amended Complaint without leave to amend, arguing that CDCR is immune from all of
3 Plaintiff's claims under the Eleventh Amendment; that the First Amended Complaint fails to
4 state a claim against CDCR; and that Plaintiff's claims under 42 U.S.C. § 1983 based on
5 respondeat superior against CDCR are barred. (Doc. 21.)

6 On October 30, 2009, Plaintiff filed an opposition arguing that Plaintiff's claims under
7 California Government § 845.6 are not barred by the Eleventh Amendment; that all claims
8 alleged in the First Amended Complaint are sufficiently plead; and that CDCR is vicariously
9 liable for the acts of its employees under California Government Code § 845.6. (Doc. 23.)

10 Defendants filed a reply arguing that Eleventh Amendment Immunity is an absolute bar to
11 Plaintiff claims against CDCR and that Plaintiff's claims against CDCR do not meet current
12 pleading standards citing Ashcroft v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937 (2009). (Doc. 24.)

13 The Court finds that the Eleventh Amendment bars Plaintiff's claims against CDCR.

14 **B. Legal Standard**

15 Under Federal Rule of Civil Procedure 12(b)(6) a claim may be dismissed because of a
16 plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A
17 dismissal under Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the
18 absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside
19 Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008); Navarro v. Block, 250 F.3d 729, 732 (9th
20 Cir. 2001). In reviewing a complaint under Rule 12(b)(6), the complaint's material allegations of
21 fact are accepted as true and construed in the light most favorable to the non-moving party.
22 Marceau v. Blackfeet Hous. Auth., 540 F.3d 916, 919 (9th Cir. 2008); Vignolo v. Miller, 120
23 F.3d 1075, 1077 (9th Cir. 1999). The Court must also assume that general allegations embrace
24 the necessary, specific facts to support the claim. Smith v. Pacific Prop. and Dev. Corp., 358
25 F.3d 1097, 1106 (9th Cir. 2004). However, the Court is not required "to accept as true
26 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
27
28

1 inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1056-57 (9th Cir. 2008); Sprewell v.
2 Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). Although they may provide the
3 framework of a complaint, legal conclusions are not accepted as true and “[t]hreadbare recitals of
4 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
5 Ashcroft v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949-50 (2009); see also Warren v. Fox Family
6 Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). As the Supreme Court has explained:

7 While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not
8 need detailed factual allegations, a plaintiff’s obligation to provide the
9 ‘grounds’ of his ‘entitlement to relief’ requires more than labels and
10 conclusions, and a formulaic recitation of the elements of a cause of action
11 will not do. Factual allegations must be enough to raise a right to relief
12 above the speculative level, on the assumption that all the allegations in
13 the complaint are true (even if doubtful in fact).

14 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Thus, “a complaint must contain
15 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
16 Iqbal, 129 S.Ct. at 1949. “A claim has facial plausibility when the plaintiff pleads factual content
17 that allows the court draw the reasonable inference that the defendant is liable for the misconduct
18 alleged.” Iqbal, 129 S.Ct. at 1949.

19 The plausibility standard is not akin to a probability requirement, but it
20 asks more than a sheer possibility that a defendant has acted unlawfully.
21 Where a complaint pleads facts that are merely consistent with a
22 defendant’s liability, it stops short of the line between possibility and
23 plausibility of entitlement to relief.

24 ...

25 Determining whether a complaint states a plausible claim for relief will . .
26 . be a context specific task that requires the reviewing court to draw on its
27 judicial experience and common sense. But where the well-pleaded facts
28 do not permit the court to infer more than the mere possibility of
29 misconduct, the complaint has alleged – but it has not shown – that the
30 pleader is entitled to relief.

31 Iqbal, 129 S.Ct. at 1949-50 (internal cites and quotes omitted). “In sum, for a complaint to
32 survive a motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from
33 that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v.
34 United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

1 through 10 for violation of the Eighth Amendment.

2 **D. Discussion**

3 **(1) Eleventh Amendment Immunity**

4 Defendants argue that Eleventh Amendment Immunity bars all of Plaintiff’s claims
5 against CDCR. (Doc. 21, MTD, 5:16-22.) Plaintiff contends that CDCR is not immune from
6 Plaintiff’s claims under California Government Code section 845.6. (Doc. 23, Opp to MTD, 3:1-
7 9.)

8 “The Eleventh Amendment bars suits against a state or its agencies, regardless of the
9 relief sought, unless the state unequivocally consents to a waiver of its immunity.” Wilbur v.
10 Locke, 423 F.3d 1101, 1111 (9th Cir. 2005); Romano v. Bible, 169 F.3d 1182, 1185 (9th Cir.
11 1999). The State of California has not waived its Eleventh Amendment immunity with respect to
12 claims brought under Section 1983 in federal court. Dittman v. California, 191 F.3d 1020,
13 1025-26 (9th Cir. 1999) (citing Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985)).
14 Further, “[t]he Eleventh Amendment bars suits for money damages in federal court against a
15 state, its agencies, and state officials in their official capacities” Aholelei v. Dept. of Public
16 Safety, 488 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted) and precludes the adjudication of
17 pendent state law claims against non-consenting state defendants in federal courts. Cholla Ready
18 Mix, Inc. v. Civish, 382 F.3d 969, 973-74 (9th Cir. 2004) ref. Pennhurst State Sch. & Hosp. v.
19 Halderman, 465 U.S. 89, 106, (1984); Raygor v. Regents of Univ. of Minn., 534 U.S. 533,
20 540-541 (2002); Ashker v. Cal. Dep’t of Corr., 112 F.3d 392, 394 (9th Cir.1997).

21 In the First Amended Complaint, it appears that Plaintiff refrained from pursuing CDCR
22 under the Section 1983 causes of action, but attempted to pursue CDCR on a pendent state law
23 claim under California Government Code section 845.6. However, CDCR is immune under the
24 Eleventh Amendment as to Plaintiff’s claims raised against it – whether under Section 1983
25 and/or pendent state law. Accordingly, Defendant CDCR should be dismissed with prejudice
26 from this action. In light of this finding, the Court does not address Defendants further

1 arguments that Plaintiff fails to state a claim against CDCR under Section 1983 and that CDCR
2 is not liable under respondeat superior for any violations under Section 1983 by its employees.

3 **II. RECOMMENDATION**

4 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 5 (1) the motion to dismiss filed by Defendant CDCR, on October 9, 2009, be
6 granted and that Defendant CDCR be DISMISSED from this action with
7 prejudice; and
8 (2) this matter be referred back to the Magistrate Judge to open discovery for
9 the limited purpose of identifying Defendants Doe 1 through 10.

10 These findings and recommendations will be submitted to the Honorable Anthony W.
11 Ishii pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after being
12 served with these findings and recommendations, the parties may file written objections with the
13 Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
14 Recommendations.” The parties are advised that failure to file objections within the specified
15 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
16 (9th Cir. 1991).

17 IT IS SO ORDERED.

18 **Dated: November 23, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE