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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SANDRA ORTIZ, et al.,
Plaintiffs,
v.
GERARDO ALVAREZ, SUPT., et al.,
Defendants.

No. 1:15-cv-0535-KJM-EPG

ORDER

Having reviewed the allegations of the Second Amended Complaint and the parties' briefing, the court orders as follows:¹

I. YOUTH CENTERS OF AMERICA (YCA) AND ISRAEL LARA

A. Negligent Infliction of Emotional Distress

In light of the plaintiffs' statement of non-opposition, ECF No. 52, the claims for negligent infliction of emotional distress are DISMISSED with prejudice.

¹ In an effort to streamline resolution of motions to dismiss in cases where the parties have counsel, when the court is granting leave to amend it is adopting a shortened form of order consistent with the order issued here.

1 B. Wrongful Termination

2 The plaintiffs do not address the YCA’s and Lara’s arguments that the complaint
3 states no claim against them for state-law wrongful termination in violation of public policy. The
4 plaintiffs’ brief in opposition to the YCA’s and Lara’s motion focuses solely on the YCA’s and
5 Lara’s municipal liability under federal law. *See* Opp’n YCA Mot. 3–4, ECF No. 51. By
6 omitting any argument on this point, the plaintiffs implicitly concede dismissal of this claim. *See*,
7 *e.g.*, *Silva v. U.S. Bancorp*, No. 10-01854, 2011 WL 7096576, at *3 (C.D. Cal. 2011). This claim
8 is therefore DISMISSED with leave to amend. The plaintiffs are again reminded of their
9 obligations under Federal Rule of Civil Procedure 11.

10 C. 42 U.S.C. § 1983

11 Section 1983 imposes liability only a defendant who acts under color of law. *See*,
12 *e.g.*, *Stein v. Ryan*, 662 F.3d 1114, 1118 (9th Cir. 2011). “[P]rivate parties are not generally
13 acting under color of state law” *Price v. State of Hawaii*, 939 F.2d 702, 707–08 (9th Cir.
14 1991). But “[u]nder familiar principals, even a private entity can, in certain circumstances, be
15 subject to liability under section 1983.” *Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950,
16 954 (9th Cir. 2008) (en banc). This is true only when “the conduct allegedly causing the
17 deprivation of a federal right [is] fairly attributable to the State.” *Lugar v. Edmondson Oil Co.*,
18 457 U.S. 922, 937 (1982).

19 Here, the complaint’s theory of YCA’s and Lara’s liability as private entities under
20 § 1983 is incoherent. The complaint alleges both (1) Alfonso Padron was an employee of YCA
21 and worked under a contract YCA had negotiated with the PUSD, *see, e.g.*, Second Am. Compl.
22 ¶¶ 5, 35, 40, Ex. B, ECF No. 33; and (2) Padron was employed by the PUSD, *see, e.g., id.* ¶¶ 35–
23 36, 40. It is also unclear whether Padron’s employment was terminated or whether only the
24 PUSD contract was terminated. *See id.* ¶¶ 135–136. The claims under § 1983 are DISMISSED
25 with leave to amend to clear up this confusion, if possible in light of the authorities cited above
26 and the requirement that defendants can only be liable under § 1983 for actions undertaken
27 “under color of state law.”

1 II. PARLIER UNIFIED SCHOOL DISTRICT (PUSD), ET AL.

2 The stipulation at ECF No. 59 is approved in part as follows. Because not all
3 defendants stipulated to the filing of a third amended complaint, and that pleading was filed
4 without leave of court, it is STRICKEN. *See* Fed. R. Civ. P. 15(a)(2). The plaintiffs are however
5 GRANTED leave to file a fourth amended complaint, which may (1) address the matters
6 discussed above with respect to the YCA's and Lara's motion; and (2) implement the changes
7 made in the stricken third amended complaint with respect to the PUSD defendants. The PUSD
8 motion to dismiss is therefore DENIED AS MOOT, and the PUSD defendants may file a renewed
9 motion to dismiss, including to dismiss any claim under 42 U.S.C. § 1983, once an amended
10 complaint is on file.

11 III. AMENDMENT

12 A fourth amended complaint shall be filed within fourteen days of the date this
13 order is filed.

14 IT IS SO ORDERED.

15 DATED: January 12, 2016.

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19 UNITED STATES DISTRICT JUDGE
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