

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

KEIKO KAWAMURA,
Plaintiff,
v.
MAMMOTH HOSPITAL, et al.,
Defendants.

Case No. 1:25-cv-00789-KES-EPG

FINDINGS AND RECOMMENDATIONS THAT
THIS CASE PROCEED ON PLAINTIFF’S
EMTALA CLAIMS AGAINST DEFENDANT
MAMMOTH AND ALL OTHER CLAIMS AND
DEFENDANTS BE DISMISSED WITHOUT
FURTHER LEAVE TO AMEND

(ECF No. 24)

ORDER DIRECTING CLERK OF COURT TO
RENAME “MOTION TO AMEND” FILING

(ECF No. 24)

OBJECTIONS, IF ANY, DUE WITHIN THIRTY
(30) DAYS

Plaintiff Keiko Kawamura is proceeding *pro se* and *in forma pauperis* in this civil action filed against Defendants Mammoth Hospital, Northern Inyo Healthcare District, and their employees, with Plaintiff alleging Federal and state causes of actions stemming from the medical care provided—or lack thereof—during the birth of her minor daughter, K.N.B. (*See* ECF Nos. 5, 24).

The Court screened Plaintiff’s first amended complaint on December 2, 2025, concluding

1 that Plaintiff sufficiently alleged that Defendant Mammoth Hospital violated the Emergency
2 Medical Treatment and Active Labor Act (EMTALA) because Mammoth Hospital failed to
3 screen her under 42 U.S.C. § 1395dd(a) and failed to stabilize her under § 1395dd(b). (ECF No.
4 17). However, Plaintiff’s first amended complaint failed to state any other cognizable claims
5 against any other Defendant.

6 Plaintiff then filed a second amended complaint on February 25, 2026,¹ (ECF No. 24)
7 which is before the Court for screening.

8 Upon review, the Court once again concludes that the only cognizable claims in this case
9 are that Defendant Mammoth Hospital failed to screen Plaintiff under 42 U.S.C. § 1395dd(a) and
10 failed to stabilize her under § 1395dd(b) in violation of EMTALA. Accordingly, the Court
11 recommends that all other claims and Defendants be dismissed without further leave to amend.

12 I. SCREENING REQUIREMENT

13 As Plaintiff is proceeding *in forma pauperis*, the Court screens the complaint under 28
14 U.S.C. § 1915(e)(2)(B), which requires a court to dismiss a case that “is frivolous or malicious;”
15 “fails to state a claim on which relief may be granted; or “seeks monetary relief against a
16 defendant who is immune from such relief.”

17 II. BACKGROUND²

18 A. Plaintiff’s First Amended Complaint

19 Plaintiff filed her first amended complaint, on October 28, 2025. (ECF No. 14). The Court
20 summarizes Plaintiff’s first amended at length because the Court’s screening order addressed it in
21 depth, and Plaintiff’s second amended complaint is almost identical to her first amended
22 complaint.

23 Plaintiff’s first amended complaint named the following Defendants: (1) Mammoth
24 Hospital (aka Southern Mono Healthcare District); (2) Northern Inyo Healthcare District (NIHD),
25 which operates as Northern Inyo Hospital; (3) Tom Parker (the CEO of Mammoth Hospital); (4)

26 ¹ Plaintiff listed her second amended complaint as a “MOTION TO AMEND” in the title of her electronic
27 filing. (ECF No. 24). The Court will direct the Clerk of Court to rename the filing “SECOND AMENDED
28 COMPLAINT” on the docket. To the extent that Plaintiff asks for permission to file the second amended
complaint, *see* ECF No. 24-1, p. 2, as the Court recently advised her in its February 25, 2026 order, “the
Court already granted her [such] permission in its screening order,” (ECF No. 23, p. 4, citing ECF No. 17).

² For readability, minor alterations, like altering capitalization, have been made to some of Plaintiff’s
quotations without indicating each change.

1 Dr. Kyle Patrick Howell (an emergency room physician employed by Mammoth Hospital); (5)
2 Dr. Martha B. Kim (a physician specializing in obstetrics and gynecology employed by NIHD);
3 (6) Dr. Anne E. Gasior (a pediatrician employed by NIHD); (7) Maya Malgorzata Eismont, R.N.
4 (a registered nurse employed by NIHD)³; and (8) Patty Dickson (compliance officer at NIHD).
5 (ECF No. 14, pp. 5-6). Plaintiff also sued DOES 1–10, stating that they “are individuals, entities,
6 and/or organizations whose true names and capacities are currently unknown to Plaintiff[.]” (*Id.*
7 at 6).

8 Plaintiff stated that this Court had subject matter jurisdiction due to federal questions
9 presented under EMTALA and the Health Insurance Portability and Accountability Act of 1996
10 (HIPAA). (*Id.*). Further, she alleged that the Court has supplemental jurisdiction over her state
11 law claims. (*Id.*).

12 As for facts, Plaintiff alleged that, on or about June 30, 2023, she was three minutes from
13 Defendant Mammoth Hospital “while in advanced stages of active labor and experiencing a bona
14 fide medical emergency.” (*Id.* at 7). However, “[d]espite the immediacy and severity of Plaintiff’s
15 emergent obstetric condition, Defendant Mammoth Hospital knowingly and unlawfully refused to
16 accept or render stabilizing treatment.” (*Id.*). Plaintiff contended that, “[p]ursuant to instructions
17 allegedly originating from Defendant Mammoth Hospital, Mono County Emergency Medical
18 Services . . . personnel were directed to divert Plaintiffs to [NIHD], located more than forty-five
19 (45) miles away, resulting in a substantial and unjustifiable delay in Plaintiff[’s] access to
20 medically necessary evaluation and care.” (*Id.*).

21 Plaintiff alleged that she possesses EMS call recordings from which “it is evident that the
22 ambulance was diverted at the direction of [Defendant Howell.]” (*Id.* at 8). EMS personnel asked
23 Plaintiff “numerous non-medical questions concerning her insurance coverage and residency
24 status while she was in active labor and medical distress,” allegedly at the behest of Defendant
25 Mammoth’s employees, “indicating that financial and/or administrative considerations were
26 prioritized over the Plaintiff’s immediate medical needs in direct violation of EMTALA’s anti-
27 screening and non-discrimination provisions.” (*Id.* at 7-8). “From the time EMS personnel arrived
28

³ Plaintiff stated that Defendant Eismont “may have passed away on or about March 30, 2025.” (ECF No. 14, p. 5). Because Plaintiff fails to state a cognizable claim against Defendant Eismont, the Court need not address this issue.

1 on scene and made contact with Plaintiff, until the time she was ultimately medically evaluated
2 within NIHD, an unjustifiable delay of almost two (2) hours elapsed, during which Plaintiff
3 remained in an active obstetric emergency without physician-supervised triage, assessment, or
4 stabilization.” (*Id.* at 8). Because of this delay, “Plaintiff sustained grave physiological injury,
5 including but not limited to retained placenta, severe hemorrhage, near-fatal hypovolemia,
6 postpartum cardiomyopathy, anemia-induced cardiomyopathy, sinus arrhythmia and severe
7 obstetrics trauma.” (*Id.*).

8 Plaintiff also challenged the medical care she received at NIHD and the conduct of its
9 employees. Among other things, Plaintiff alleges that certain treatment was administered—such
10 as a Hepatitis B vaccination—to her and her child “under the directives of Defendants NIHD, DR.
11 KIM, DR. GASIOR, and carried out with the consent of their officers, directors, and/or managing
12 agents without valid informed consent and in many cases, against Plaintiff’s consent.” (*Id.* at 14).
13 She also contends that Dr. Kim mistreated her in multiple ways, including “yell[ing] obscenities
14 at Plaintiff for requesting water from her partner and subsequently scream[ing] at Plaintiff to push
15 out the placenta while lying on her back.” (*Id.* at 11).

16 Further, Plaintiff raised issues regarding her medical records. For example, she asserted
17 that “[m]edical records pertaining to [her] and her minor child were disseminated to third parties
18 by NIHD without Plaintiff’s knowledge or lawful authorization,” and that “Defendant NIHD
19 withheld and altered portions of Plaintiff’s medical records.” (*Id.* at 16).

20 Plaintiff listed the following causes of action: (1) EMTALA violations; (2) professional
21 negligence/medical malpractice; (3) birth injury to minor; (4) failure to provide medical records;
22 (5) violations under the Tom Bane Civil Rights Act; (6) battery; (7) intentional infliction of
23 emotional distress; (8) violation of Federal and state privacy laws, including HIPAA violations;
24 (9) libel; and (10) libel per se. (*Id.* at 19, 31, 37, 39, 44, 46, 48, 50, 54, 58).

25 As for relief Plaintiff, Plaintiff sought a variety of monetary damages, including no less
26 than \$75,000 for compensatory damages; declaratory relief under EMTALA; injunctive relief
27 regarding EMTALA violations; a formal written apology; attorney fees; and pre-judgment and
28 post-judgment interest. (*Id.* at 66-67).

1 **B. Screening of Plaintiff’s First Amended Complaint**

2 In its December 2, 2025 screening order, the Court concluded that Plaintiff’s first
3 amended complaint stated cognizable claims that Defendant Mammoth Hospital failed to screen
4 her under 42 U.S.C. § 1395dd(a) and failed to stabilize her under § 1395dd(b). (ECF No. 17, p.
5 8).

6 However, it concluded that she could not sue the non-hospital Defendants, *i.e.*, Dr.
7 Howell, Tom Parker, and Does 1–10, because EMTALA does not permit a private right of action
8 against individuals. (*Id.* at 7, citing *Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1256, 1259
9 (9th Cir. 1995)).

10 As to Plaintiff’s other claims, the Court concluded that she failed to comply with Federal
11 Rule of Civil Procedure Rule 8(a), which requires a complaint to contain “a short and
12 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
13 (ECF No. 17, p. 8). The Court noted that Plaintiff’s complaint contained (1) an extensive factual
14 narrative, (2) unnecessary quotations from cases, (3) numerous statements not tied to her claims,
15 and (4) multiple causes of action containing several legal claims. Generally, Plaintiff’s complaint
16 did “not make clear who she is suing for what claims based on what actions” and thus she did
17 “not give sufficient notice to each Defendant as to what claims are asserted against it and why.”
18 (*Id.* at 9).

19 The screening order also advised Plaintiff of other reasons why she failed to state any
20 claim, including that (1) HIPAA does not authorize a private right of action, and (2) Plaintiff
21 failed to allege facts that any Defendant acted under color of law necessary to state a claim under
22 42 U.S.C. § 1983. (*Id.* at 10-12).

23 After explaining the deficiencies in the first amended complaint, the Court granted
24 Plaintiff leave to file a second amended complaint, which she did on February 25, 2026. (ECF
25 No. 24).

26 **C. Plaintiff’s Second Amended Complaint**

27 Plaintiff’s second amended complaint is nearly identical to her first amended complaint.
28 Plaintiff names the same Defendants as her first amended complaint and the majority of her

1 allegations are identical to her previous complaint.⁴

2 Although Plaintiff has added some additional statements, they do not relate to new factual
3 allegations or new legal claims. For example, Plaintiff has added some allegations that relate to
4 the timeliness of her claims. (ECF No. 24, p. 36) (“The statute of limitations applicable to
5 professional negligence does not bar Plaintiff’s claims. Defendants failed and refused to timely
6 produce complete medical records for an extended period of approximately two years, thereby
7 preventing Plaintiff from discovering and verifying the factual basis of potential malpractice or
8 negligence claims.”). She has also added a statement that Court has diversity jurisdiction over this
9 case under 28 U.S.C. § 1332(a). (*Id.* at 5).

10 While Plaintiff’s legal claims and requests for relief are mostly identical, the Court notes
11 that, while her second cause of action was titled “professional negligence / medical malpractice”
12 in her first amended complaint, it is now titled “professional negligence / medical malpractice /
13 general negligence / negligence per se” in her second amended complaint. (*Compare* ECF No. 14,
14 p. 31, *with* ECF No. 24, p. 31).

15 III. ANALYSIS OF PLAINTIFF’S SECOND AMENDED COMPLAINT

16 A. EMTALA

17 The Court first evaluates Plaintiff’s claims against Defendants Mammoth Hospital, Dr.
18 Howell, Tom Parker, and Does 1-10 based on an alleged violation of EMTALA. (ECF No. 24, p.
19 18).

20 EMTALA, also known as the “Patient Anti-Dumping Act” was enacted because of
21 “concern[s] that hospitals were dumping patients who were unable to pay for care, either by
22 refusing to provide emergency treatment to these patients, or by transferring the patients to other
23 hospitals before the patients’ conditions stabilized.” *Jackson v. E. Bay Hosp.*, 246 F.3d 1248,
24 1254 (9th Cir. 2001). It permits a private right of action against a hospital.

25 Any individual who suffers personal harm as a direct result of a *participating*
26 *hospital’s violation* of a requirement of this section may, *in a civil action against*

27 ⁴ Many of Plaintiff’s allegations are identical, but the numbers of the paragraphs differ slightly. For
28 example, ¶ 23 in the first amended complaint is identical to ¶ 27 in the second amended complaint; ¶ 58 in
the first amended complaint is identical to ¶ 62 in the second amended complaint; ¶ 125 in the first
amended complaint is identical to ¶ 129 in the second amended complaint. However, other identical
allegations are more than four numbered paragraphs off, *e.g.*, ¶ 381 in the first amended complaint is
identical to ¶ 394 in the second amended complaint.

1 *the participating hospital*, obtain those damages available for personal injury
2 under the law of the State in which the hospital is located, and such equitable relief
3 as is appropriate.

42 U.S.C. § 1395dd(d)(2)(A) (emphasis added).

4 Here, Plaintiff alleges that EMTALA was violated by Defendants’ (1) failure to screen her
5 and (2) failure to stabilize her condition.

6 Under EMTALA, the screening provision provides as follows:

7 In the case of a hospital that has a hospital emergency department, if any
8 individual (whether or not eligible for benefits under this subchapter) comes to the
9 emergency department and a request is made on the individual’s behalf for
10 examination or treatment for a medical condition, the hospital must provide for an
11 appropriate medical screening examination within the capability of the hospital’s
12 emergency department, including ancillary services routinely available to the
13 emergency department, to determine whether or not an emergency medical
14 condition (within the meaning of subsection (e)(1)) exists.

42 U.S.C. § 1395dd(a).

13 “To state a claim that Defendant failed to properly screen a patient under requirements of
14 EMTALA, Plaintiff must allege that: (1) the patient had an emergency medical condition; and (2)
15 the hospital did not screen the patient in the same way it screens other patients presenting with
16 similar symptoms.” *Smith v. Fresno Cmty. Hosp. & Med. Ctr.*, No. 1:20-CV-01616-ADA-BAM,
17 2023 WL 2392847, at *2 (E.D. Cal. Mar. 7, 2023) (citation and quotation marks omitted).

18 (1) The term “emergency medical condition” means--

19 (A) a medical condition manifesting itself by acute symptoms of sufficient
20 severity (including severe pain) such that the absence of immediate
21 medical attention could reasonably be expected to result in--

22 (i) placing the health of the individual (or, with respect to a
23 pregnant woman, the health of the woman or her unborn child) in
24 serious jeopardy,

25 (ii) serious impairment to bodily functions, or

26 (iii) serious dysfunction of any bodily organ or part; or

27 (B) with respect to a pregnant woman who is having contractions--

28 (i) that there is inadequate time to effect a safe transfer to another
29 hospital before delivery, or

 (ii) that transfer may pose a threat to the health or safety of the
 woman or the unborn child.

42 U.S.C. § 1395dd(e)(1).

1 Next, EMTALA’s stabilization provision provides as follows:

2 If any individual (whether or not eligible for benefits under this subchapter) comes
3 to a hospital and the hospital determines that the individual has an emergency
4 medical condition, the hospital must provide either--

5 (A) within the staff and facilities available at the hospital, for such further
6 medical examination and such treatment as may be required to stabilize the
7 medical condition, or

8 (B) for transfer of the individual to another medical facility in accordance
9 with subsection (c).

10 42 U.S.C. § 1395dd(b)(1)(A)-(B).

11 To succeed on a failure to stabilize claim, plaintiff ultimately must show, first, [the
12 patient] had an emergency condition, and, second, the Hospital had actual
13 knowledge of [the patient’s] emergency condition. *See Eberhardt*, 62 F.3d at 1259
14 (“[T]he hospital’s duty to stabilize the patient does not arise until the hospital first
15 detects an emergency medical condition.”). Third, plaintiff must also show the
16 Hospital’s failure to stabilize took place during emergency or observational care
17 and not after [the patient] had been transitioned to inpatient care. *See Bryant v.*
18 *Adventist Health Sys./West*, 289 F.3d 1162, 1167 (9th Cir. 2002) (“We hold that
19 the stabilization requirement normally ends when a patient is admitted for inpatient
20 care.”); *see also Bryan v. Rectors and Visitors of Univ. of Va.*, 95 F.3d 349, 352
21 (4th Cir. 1996) (EMTALA only covers stabilizing treatment “in connection with a
22 possible transfer” and not “long-term care within the system”). And fourth,
23 plaintiff must show the Hospital did not provide medical treatment necessary to
24 assure a material deterioration was unlikely to result from a transfer. *See* 42 U.S.C.
25 § 1395dd(e)(3)(A).

26 *Valadez v. Sutter Health Mem’l Hosp. Los Banos*, No. 1:22-CV-00263 KJM EPG, 2025 WL
27 1866019, at *8 (E.D. Cal. July 7, 2025).

28 With these standards in mind, the Court turns to Plaintiff’s allegations in her second
amended complaint. Regarding Defendant Mammoth Hospital, Plaintiff’s second amended
complaint has plausibly alleged that Mammoth Hospital is a “participating hospital” subject to
EMTALA. Specifically, she alleges that Mammoth Hospital “maintains an Emergency
Department.” (ECF No. 24, p. 3); *see Jackson*, 246 F.3d at 1254 (noting that “EMTALA imposes
a series of obligations on a hospital emergency department”). Moreover, Plaintiff’s second
amended complaint alleges that Plaintiff was approximately three minutes from Mammoth
hospital while in labor. (ECF No. 24, p. 7). Communications between EMS services and
Mammoth Hospital indicate that Mammoth Hospital knew that Plaintiff had an emergency
medical condition, including “that Plaintiff was still in the third stage of labor, had not yet

1 delivered the placenta, was actively hemorrhaging, and that the umbilical cord remained attached
2 to the newborn.” (*Id.* at 8). Despite knowing this, Mammoth Hospital declined to screen Plaintiff
3 for medical care or provide stabilizing treatment, and instead diverted the ambulance that Plaintiff
4 was in to NIHD,⁵ resulting in an almost 2-hour delay between when EMS personnel made contact
5 with Plaintiff and the time NIHD evaluated her. (*Id.* at 7). Because of the delay in medical care,
6 “Plaintiff sustained grave physiological injury, including but not limited to retained placenta,
7 severe hemorrhage, near-fatal hypovolemia, postpartum cardiomyopathy, anemia-induced
8 cardiomyopathy, sinus arrhythmia and severe obstetrics trauma.” (*Id.* at 8). Moreover, Mammoth
9 Hospital directed EMS services to ask “about Plaintiff’s insurance coverage, residency status, and
10 other non-medical information,” indicating that “Defendant Mammoth Hospital’s decision to
11 divert the ambulance may have been motivated by financial considerations and a desire to avoid
12 treating an out-of-area or uninsured patient.” (*Id.* at 19).

13 Liberally construing the allegations in Plaintiff’s second amended complaint, the Court
14 concludes that she has sufficiently stated a claim against Defendant Mammoth Hospital for
15 violation of 42 U.S.C. § § 1395dd(a) and (b) to proceed past screening.

16 However, as noted in the Court’s previous screening order, because a private EMTALA
17 right of action is authorized as to “a participating hospital’s violation” under 42 U.S.C.A.
18 § 1395dd(d)(2)(A), Plaintiff cannot sue non-hospital Defendants, *i.e.*, Dr. Howell, Tom Parker,
19 and Does 1–10. *See Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1256, 1259 (9th Cir. 1995)
20 (citing § 1395dd(d)(2) and noting that “[t]he plain text of the EMTALA explicitly limits a private
21 right of action to the participating hospital” and that “EMTALA does not authorize a private right
22 of action against physicians”); *Stephen[s] v. St. Francis Med. Ctr.*, No. CV 15-5568 R(JC), 2018
23 WL 3655659, at *12 (C.D. Cal. June 22, 2018), *report and recommendation adopted*, 2018 WL
24 3655407 (C.D. Cal. July 30, 2018) (noting that “EMTALA does not provide a private right of
25 action against individual doctors”); (ECF No. 17, p. 7). Accordingly, Plaintiff’s EMTALA claim

26 ⁵ The fact that Plaintiff did not physically arrive at the emergency room at Mammoth Hospital does not
27 dispose of Plaintiff’s claim, as the Ninth Circuit has held, “a hospital may divert an ambulance that has
28 contacted its emergency room and is on its way to that hospital only if the hospital is in diversionary
status.” *Arrington v. Wong*, 237 F.3d 1066, 1072, 1074 (9th Cir. 2001) (discussing § 1395dd(a) and noting
that diversionary status is when a hospital does not have the staff or facilities to accept additional
emergency patients). Plaintiff alleges that, “[a]t no point has Defendant Mammoth Hospital demonstrated
it was in diversionary status.” (ECF No. 24, p. 28).

1 against these Defendants should be dismissed.

2 **B. Lack of Short and Plain Statement**

3 The remainder of Plaintiff’s second amended complaint should be dismissed for failure to
4 comply with Rule 8 of the Federal Rules of Civil Procedure.

5 Rule 8(a) requires any complaint to contain “a short and plain statement of the claim
6 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
7 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
9 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A complaint must also contain “sufficient
10 allegations of underlying facts to give fair notice and to enable the opposing party to defend itself
11 effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

12 Despite the Court’s instruction in the screening order, Plaintiff’s second amended
13 complaint fails to comply with this Rule because it does not include a short and plain statement of
14 any claim, other than the EMTALA claims discussed above. Instead, Plaintiff’s second amended
15 complaint bears all the hallmarks of shotgun pleadings, which violate Rule 8 as explained by the
16 Ninth Circuit as follows:

17 There are four main types of shotgun pleadings:

18 (1) a complaint containing multiple counts where each count adopts the allegations
19 of all preceding counts, causing each successive count to be a combination of the
20 entire complaint; (2) a complaint that is replete with conclusory, vague, and
21 immaterial facts not obviously connected to any particular cause of action; (3) a
22 complaint that fails to separate into a different count each cause of action or claim
for relief; and (4) a complaint that asserts multiple claims against multiple
defendants without specifying which of the defendants are responsible for which
acts or omissions, or which of the defendants the claim is brought against.

23 *Gibson v. City of Portland*, 165 F.4th 1265, 1288 (9th Cir. 2026) (citation omitted) (concluding
24 that shotgun pleadings violate Rule 8).

25 As did Plaintiff’s first amended complaint, Plaintiff’s second amended complaint includes
26 an 11-page chronological narrative about the events underlying the birth of her child, including
27 various factual allegations against all Defendants. (ECF No. 24, pp. 6–17). She then includes ten
28 causes of action. (*Id.* at 18, 31, 37, 40, 45, 47, 49, 51, 55, 58). Many of these causes of action are
asserted against “all Defendants,” including the second cause of action for “professional

1 negligence / medical malpractice / general negligence / negligence per se,” third cause of action
2 for “birth injury to a minor,” fifth cause of action for “violation of civil rights,” and seventh cause
3 of action for “intentional infliction of emotional distress.” (*Id.* at 31, 37, 45, 49). These causes of
4 action impermissibly purport to adopt the allegations of the entire complaint. For example,
5 Plaintiff’s tenth cause of action for libel *per se* as to some Defendants contains this statement in
6 ¶ 369: “Plaintiff reallege and incorporates herein by reference all preceding paragraphs as though
7 fully set forth herein.” Thus, this count is impermissibly a combination of the above 368
8 paragraphs of the second amended complaint.

9 Plaintiff’s second amended complaint also includes numerous statements that are not tied
10 to her claims, including sections entitled “Unlawful Withholding, Tampering, and Spoliation of
11 Evidence by Defendant Mammoth Hospital,” “Tolling of Statutory Deadlines,” and “Satisfaction
12 of Conditions Precedent.” (*Id.* at 62, 65, 68); (ECF No. 17, p. 9). These sections raise legal
13 arguments that are not relevant to her statement of her claims. *See Yould v. Barnard*, No. 5:18-
14 CV-01255-EJD, 2018 WL 4105094, at *4 (N.D. Cal. Aug. 29, 2018) (noting that complaint
15 violated Rule 8(a) where “[i]t contain[ed] extensive sections of legal argument which make it
16 nearly impossible for a defendant or the court to sort out alleged facts from opinion or
17 commentary” and that “[t]hese statements [were] unnecessary to state a claim and serve only to
18 confuse”).

19 Plaintiff’s second amended complaint also includes extensive quotations that appear to be
20 copied from other cases, such as the following:

21 In the instant case, appellees urge in their briefs that the phrase “comes to the
22 emergency department” in § 1395dd(a) plainly and unambiguously means “arrives
23 at a hospital.” At oral argument, they again acknowledged that the provision at
24 issue encompasses the entire hospital and its grounds, not just the “emergency
25 department.”

26 (ECF No. 24, p. 21). Such quotations to other cases are unnecessary and confusing. The Court
27 cannot determine what Plaintiff is claiming happened to her and what Plaintiff is quoting from an
28 unrelated case.

Plaintiff’s second amended complaint also fails to separate each cause of action or claim
into a different count. For example, her second cause of action is for “professional negligence,”
but also “medical malpractice,” “general negligence,” and “negligence per se.” (*Id.* at 31). And

1 her eighth cause of action asserts claims for “violation of federal and state privacy laws
2 unauthorized disclosure and mishandling of health records (45 C.F.R. §§ 164.502(a), 164.502(g);
3 45 C.F.R. § 164.306; Cal. Civ. Code §§ 56.10, 56.101, 56.36; 42 U.S.C. § 1983 as to Defendants
4 Mammoth Hospital, Tom Parker, NIHD, Patty Dickson, R.N. Eismont and Does 1-10,
5 Inclusive).” (ECF No. 24, at p. 51).

6 Additionally, the causes of action themselves include chronological accounts of events,
7 rather than a clear description of what each Defendant did or failed to do that violated the law at
8 issue. (ECF No. 17, p. 9).

9 For these reasons, the Court concludes that Plaintiff’s second amended complaint fails to
10 comply with Rule 8(a) and is subject to dismissal on that basis. *See McHenry v. Renne*, 84 F.3d
11 1172, 1177–80 (9th Cir. 1996) (upholding a Rule 8(a) dismissal of a complaint that was
12 “argumentative, prolix, replete with redundancy, and largely irrelevant”); *Hatch v. Reliance Ins.*
13 *Co.*, 758 F.2d 409, 415 (9th Cir. 1985) (upholding a Rule 8(a) dismissal of a complaint that
14 “exceeded 70 pages in length, [and was] confusing and conclusory”); *Nevijel v. North Coast Life*
15 *Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981) (holding that Rule 8(a) is violated when a complaint is
16 excessively “verbose, confusing and almost entirely conclusory”); *Schmidt v. Herrmann*, 614
17 F.2d 1221, 1224 (9th Cir. 1980) (upholding a Rule 8(a) dismissal of “confusing, distracting,
18 ambiguous, and unintelligible pleadings”).

19 C. HIPAA

20 In addition, Plaintiff’s claims under HIPAA are subject to dismissal because, as the Court
21 previously advised Plaintiff in the screening order, HIPAA does not authorize a private right of
22 action for HIPAA violations. *See, e.g., United States v. Streich*, 560 F.3d 926, 935 (9th Cir. 2009)
23 (“HIPAA does not provide any private right of action”); *Webb v. Smart Document Sols.,*
24 *LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007) (“HIPAA itself provides no private right of action.”);
25 *Huling v. City of Los Banos*, No. 1:11-CV-01797 LJO, 2012 WL 253251, at *7 (E.D. Cal. Jan.
26 25, 2012) (“It is beyond dispute, however, that HIPAA provides no private right of action to
27 access the federal courts.”); (ECF No. 17, p. 10).

28 Plaintiff’s second amended complaint again includes claims under HIPAA, primarily in
her fourth cause of action concerning certain Defendants’ alleged failure to provide medical

1 records. (ECF No. 24, p. 40). Plaintiff alleges that “Defendant Mammoth Hospital withheld EMS
2 call logs and diversion communications between its Emergency Room and Mono County EMS”
3 and “Defendants NIHD and PATTY DICKSON failed to provide complete labor and
4 neonatal records, including documents reflecting consent to medical procedures.” (*Id.* at 41).

5 Accordingly, all claims in Plaintiff’s second amended complaint based on HIPAA
6 violations are subject to dismissal for the additional reason that there is no private right of action
7 for violations of HIPAA.

8 **D. Section 1983**

9 Plaintiff’s second amended complaint asserts constitutional claims under 42 U.S.C.
10 § 1983. (*See, e.g.*, ECF No. 24, p. 2, 51, 61). For example, in her eighth cause of action, alleging
11 violation of Federal and state privacy laws, Plaintiff alleges that certain Defendants’ “actions . . .
12 give rise to a civil rights claim under 42 U.S.C. § 1983, as the mishandling of medical identity
13 and the refusal to properly correct the record deprived Plaintiff of protected parental rights and
14 the right to control her child’s healthcare information without due process.” (*Id.* at 52).

15 The Civil Rights Act at issue provides as follows:

16 Every person who, under color of any statute, ordinance, regulation, custom, or
17 usage, of any State or Territory or the District of Columbia, subjects, or causes to
18 be subjected, any citizen of the United States or other person within the
19 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
20 secured by the Constitution and laws, shall be liable to the party injured in an
21 action at law, suit in equity, or other proper proceeding for redress

22 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely
23 provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490
24 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). To state a
25 claim under § 1983, a plaintiff must allege that (1) the defendant acted under color of state law,
26 and (2) the defendant deprived her of rights secured by the Constitution or federal law. *Long v.*
27 *County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *see also Marsh v. County of San*
28 *Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of state law”).

As the Court explained in the screening order, such claims are subject to dismissal
because Plaintiff has not alleged facts showing that the defendants were acting under color of
state law. (ECF No. 17, p. 11). Although Plaintiff’s second amended complaint summarily alleges
that certain Defendants acted under color of law, *e.g.*, stating “Defendants NIHD and PATTY

1 DICKSON act[ed] under color of state law,” (ECF No. 24, p. 51), it does not provide any facts in
2 support of this conclusion. *See Ascherman v. Presbyterian Hospital of Pacific Medical Center,*
3 *Inc.*, 507 F.2d 1103, 1105 (9th Cir. 1974) (hospital’s “mere receipt of [public] funds, even
4 coupled with alleged tax exemptions,” was insufficient to establish state action); *Chrisman v.*
5 *Sisters of Saint Joseph of Peace*, 506 F.2d 308, 314 (9th Cir. 1974) (hospital’s receipt of public
6 funds and “exemption from taxes and regulation by the state do not provide a basis for a 1983
7 suit.”).

8 Accordingly, Plaintiff’s section 1983 claims are subject to dismissal for the additional
9 reason that Plaintiff’s second amended complaint does not allege facts that show that any
10 defendant acted under color of state law during the events at issue.

11 **IV. CONCLUSION, ORDER, AND RECOMMENDATIONS**

12 The Court has screened Plaintiff’s second amended complaint and concludes that it
13 sufficiently states a claim that Defendant Mammoth Hospital violated EMTALA, specifically that
14 it failed to screen her under 42 U.S.C. § 1395dd(a) and failed to stabilize her under § 1395dd(b).
15 However, the Court recommends that all other claims and Defendants be dismissed without
16 further leave to amend.

17 Notably, the initial screening order addressed materially identical allegations, advised
18 Plaintiff how they were deficient, provided applicable legal standards, and granted her leave to
19 amend. However, Plaintiff filed an almost identical second amended complaint with the same
20 deficiencies. Granting further leave to amend would thus be futile. *See Missouri ex rel. Koster v.*
21 *Harris*, 847 F.3d 646, 656 (9th Cir. 2017) (noting that a court does not err in denying leave to
22 amend if it would be futile).

23 Accordingly, IT IS RECOMMENDED as follows:

- 24 1. This case proceed on Plaintiff Second Amended Complaint (ECF No. 24) for claims that
25 Defendant Mammoth Hospital failed to screen her under 42 U.S.C. § 1395dd(a) and failed
26 to stabilize her under § 1395dd(b).
- 27 2. All other claims and Defendants be dismissed without prejudice and without further leave
28 to amend.

These findings and recommendations will be submitted to the United States District Judge

