UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

THOMAS LEE WILLIAMS, by and through his Guardian ad litem, Darius Williams,

Plaintiff,

v.

CITY OF WEED, CHRIS YOUNG, an individual, STEVEN SHANNON, an individual, MARTIN NICHOLAS, an individual

Defendants.

Case No. 2:07-CV-1787-FCD-EFB

MEMORANDUM AND ORDER

----oo0oo----

This matter is before the court on defendants City of Weed, Chris Young ("Young"), Steven Shannon ("Shannon"), and Martin Nicholas' ("Nicholas") (collectively "defendants") motion to dismiss plaintiff's First, Second, Fourth, and Fifth Causes of Action pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff Estate of Thomas Lee Williams[1] ("plaintiff") opposes

[1] On April 22, 2008, the Estate of Thomas Lee Williams was substituted as the plaintiff in this litigation due to plaintiff Thomas Lee Williams' ("Williams") death. (See Mem. &

the motion. For the reasons set forth below,[2] defendants' motion is GRANTED in part and DENIED in part.

BACKGROUND

This is a civil rights action in which plaintiff alleges that Williams was beaten by defendant police officers, whose failure to provide him necessary medical care resulted in death. Plaintiff alleges that on or about September 6, 2006, defendants Young and Shannon performed a traffic stop on Williams, who was driving a vehicle without a functioning licence plate light. (First Am. Compl. ("FAC"), filed Oct. 15, 2008, ¶ 11.) According to Shannon's report, Williams placed something in his mouth and began to chew; Shannon suspected that Williams was attempting to swallow contraband and ordered him to spit the item out and exit the vehicle. (Id. ¶ 12.) Williams did not respond and reached down to unbuckle his seat belt. (Id.) Plaintiff alleges that Young subsequently reached into the vehicle through a driver's side window, grabbed Williams by the neck, and slammed Williams' head into the steering wheel, rendering him unconscious. (Id. ¶ 13.) Young and Shannon then pulled Williams from the vehicle, threw him to the ground, and dropped a knee onto Williams' head. (Id.) Williams was subsequently handcuffed behind his back and dragged to the location of the officers' patrol vehicle. (Id.)

Plaintiff further alleges that during the time that Shannon and Young were with Williams, Williams stopped breathing and

---

Order [Docket #38], filed Apr. 22, 2008.)

[2] Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

suffered irreversible brain damage when Shannon and Young allowed him to lie unconscious on the road without attempting to remove the item from his mouth or timely obtain emergency medical assistance. (Id. ¶ 14.) Plaintiff alleges that Williams laid unconscious and not breathing on the roadway before emergency medical aid was eventually summoned. (Id.) Williams was transported to a hospital, where it was discovered that he had suffered a catastrophic anoxic brain injury. (Id.) Subsequently, when Williams' condition did not improve, he was transferred to a sub-acute hospital, where he remained in a coma. (Id.) On November 24, 2007, Williams died. (Notice of Suggestion of Death [Docket #19], filed Feb. 14, 2008.)

STANDARD

On a motion to dismiss, the allegations of the complaint must be accepted as true. Cruz v. Beto, 405 U.S. 319, 322 (1972). The court is bound to give plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. Retail Clerks Int'l Ass'n v. Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff need not necessarily plead a particular fact if that fact is a reasonable inference from facts properly alleged. See id.

Nevertheless, it is inappropriate to assume that the plaintiff "can prove facts which it has not alleged or that the defendants have violated the . . . laws in ways that have not been alleged." Associated Gen. Contractors of Calif., Inc. v. Calif. State Council of Carpenters, 459 U.S. 519, 526 (1983). Moreover, the court "need not assume the truth of legal conclusions cast in the form of factual allegations." United

States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986).

Ultimately, the court may not dismiss a complaint in which the plaintiff has alleged "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007). Only where a plaintiff has not "nudged [his or her] claims across the line from conceivable to plausible," is the complaint properly dismissed. Id. "[A] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002) (quoting Hudson v. King & Spalding, 467 U.S. 69, 73 (1984)).

ANALYSIS

Defendants move to dismiss plaintiff's First, Second, Fourth, and Fifth Causes of Action on the basis that plaintiff's claims for relief under 42 U.S.C. § 1983 are not founded upon a cognizable constitutional right.

Pursuant to 42 U.S.C. § 1983:

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

Section 1983 confers no substantive rights itself, but rather, "provides remedies for deprivations of rights established elsewhere." City of Oklahoma City v. Tuttle, 471 U.S. 808, 816 (1985).

"To state a section 1983 claim, the plaintiff must allege that (1) the conduct complained of was committed by a person acting under color of state law; and (2) the conduct deprived the plaintiff of a constitutional right." L.W. v. Grubbs, 974 F.2d 119, 120 (9th Cir. 1992) ("Grubbs I"). Plaintiff alleges that defendants were acting under color of state law. Defendants, however, contend that their conduct did not deprive Williams of a constitutional right; specifically, they argue that Williams was not entitled to a constitutional right to receive medical care from defendant police officers.[3]

I. Claims Against Police Officers

In its first and second claims for relief, plaintiff alleges that defendant police officers' actions and inaction in failing to provide medical care were done in disregard of Williams' due process rights under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution[4] and resulted in physical and

---

[3] In its opposition to defendant's motion, plaintiff mischaracterizes the court's order allowing plaintiff to amend its complaint. (Pl.'s Opp'n to Defs.' Mot. ("Opp'n") [Docket # 63], filed Dec. 26, 2008.) Plaintiff states, "While the defendants oppose the motion on the basis that the defendants had no duty to provide medical care to the prostrate and unconscious Mr. Williams, the court disagreed by allowing plaintiff to file the amendment." (Id.) However, the court did not rule upon the sufficiency of plaintiff's claims in its order permitting amendment of plaintiff's complaint. Rather, the court expressly provided that "nothing in this order precludes defendants from testing the legal or factual sufficiency of plaintiff's claims at a later stage in the litigation." (Mem. & Order [Docket # 59], filed Oct. 14, 2008.)

[4] The court's order is limited to the sufficiency of plaintiff's claims under the Fourteenth Amendment. In its amended complaint, plaintiff alleges that Williams was constitutionally entitled to receive medical assistance pursuant to the Fourth, Fifth, and Fourteenth Amendments. (FAC ¶¶ 17, 26.) In its Opposition to Defendant's Motion to Dismiss,

unnecessary injury, severe and needless pain, suffocation, mental and emotional anguish, and death.[5] (FAC ¶¶ 14-15, 17, 23-26.)

In general, the state is not liable for its omissions. DeShaney v. Winnebago County Dep't of Soc. Servs., 489 U.S. 189, 195 (1989). The Due Process Clause is a "limitation on the State's power to act," but does not impose an affirmative "guarantee of certain minimal levels of safety and security." Id. Consistent with these principles, the Supreme Court has "recognized that the Due Process Clause[] generally confer[s] no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual." Id. at 196. However, there are exceptions to the general rule that a state's failure to protect and provide aid does not constitute a violation of the Due Process Clause. Huffman v. County of Los Angeles, 147 F.3d 1054, 1058-59 (9th Cir. 1998) (addressing the danger creation exception and the special circumstances exception).

---

however, plaintiff did not provide any argument or authority for the proposition that a party is constitutionally entitled to receive medical assistance pursuant to either the Fourth or Fifth Amendment. The court interprets plaintiff's silence as non-opposition to defendant's motion to dismiss plaintiff's Fourth and Fifth Amendment claims to the extent they arise out of the failure to provide medical care. Accordingly, defendants' motion to dismiss plaintiff's Fourth and Fifth Amendment claims regarding an alleged constitutional right to receive medical assistance under the circumstance in this case is GRANTED.

[5] Plaintiff's first claim for relief also seeks relief for alleged excessive force used in violation of the Fourth Amendment; however, since defendants limit their motion to the alleged failure of the officers to provide medical care, the court does not address the sufficiency of plaintiff's claim regarding excessive force.

The danger creation exception exists where the state affirmatively places the plaintiff in a dangerous situation. Grubbs I, 974 F.2d at 121. In examining whether an officer places an individual in danger, the court focuses primarily on whether the officer left the individual in a situation that was more dangerous than the one in which he found the individual. Munger v. City of Glasgow Police Department, 227 F.3d 1082, 1086 (9th Cir. 2000). "The critical distinction is not . . . an indeterminate line between danger creation and enhancement, but rather the stark one between state action and inaction in placing an individual at risk." Penilla v. City of Huntington Park, 115 F.3d 707, 710, (9th Cir. 1997) (holding that plaintiff sufficiently pled a constitutional claim where officers found plaintiff in need of emergency care, but subsequently cancelled a call to the paramedics, dragged plaintiff into his home, and left him unsupervised).

It is not sufficient for the plaintiff to demonstrate that the state official was grossly negligent. L.W. v. Grubbs, 92 F.3d 894, 899-900 (9th Cir. 1996) ("Grubbs II"). Rather, "the plaintiff must show that the state official participated in creating a dangerous situation, and acted with deliberate indifference to the known or obvious danger in subjecting the plaintiff to it." Id. at 900. "'Deliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his actions." Kennedy v. City of Ridgefield, 439 F.3d 1055, 1064 (9th Cir. 2006) (quoting Christie v. Iopa, 176 F.3d 1231, 1240 (9th Cir. 1999)).

Where an officer places an individual in a more dangerous position and acts with deliberate indifference with respect to the individual's physical security, the officer intrudes upon the individual's liberty interest protected by the Due Process Clause of the Fourteenth Amendment. Wood v. Ostrander, 879 F.2d 583, 588-90 (9th Cir. 1989) (holding that officer could be held liable under § 1983 where he left stranded, in a high-crime area, a female passenger of a car who subsequently accepted a ride from a stranger and was raped); see also Munger, 227 F.3d 1082 (holding that officers could be held liable for the hypothermia death of a drunk patron of a bar who was ejected from the bar on a cold night and ordered not to drive anywhere).

Assuming the allegations of the complaint are true, and giving plaintiff the benefit of every reasonable inference to be drawn from the allegations of the complaint, plaintiff has sufficiently alleged that defendant police officers placed Williams in a more dangerous situation and acted with deliberate indifference with respect to Williams' physical security. Specifically, plaintiff alleges that defendant police officers slammed Williams' head into the steering wheel, dropped a knee onto his head, and handcuffed him behind his back. Plaintiff asserts that defendants' conduct rendered him unconscious, unable to breathe, and unable to remove the bag from his mouth. Further, defendant police officers did not attempt to remove the bag from Williams' mouth, did not attempt to resuscitate him, and did not immediately call for emergency assistance. Plaintiff asserts that defendant police officers failed to take these actions even though it was clear that Williams was unconscious,

not breathing, and in the midst of a catastrophic anoxic brain injury. Taking plaintiff's allegations as true and drawing all reasonable inferences therefrom, defendant police officers placed Williams in a more dangerous situation and acted with deliberate indifference in failing to provide medical care to Williams, ignoring a known or obvious consequence of their actions by allegedly standing idle as Williams suffocated on the bag of contraband.

In their motion to dismiss, defendants rely on Estate of Amos v. City of Page, 257 F.3d 1086, 1091 (9th Cir. 2001), in arguing that there is no constitutional right to competent rescue services. However, the facts in Amos are distinguishable from the facts of our case. In Amos, police officers responded to the site of an auto accident that decedent fled from on foot, and decedent's estate sought to hold police officers liable for their failed rescue attempt to locate decedent. Id. at 1089-90. The Ninth Circuit found that the police officers in Amos did not take any type of affirmative action that placed decedent in greater danger, as there was no interaction between the officers and decedent; before the police arrived at the accident scene, decedent wandered away from the scene and into the desert under his own recognizance. Id. at 1091. The Court held that the lack of affirmative action on behalf of the officers precluded application of the danger creation exception. Id. at 1091-92. However, unlike Amos, in this case plaintiff sufficiently alleged that due to direct, physical contact between defendant police officers and Williams, Williams was placed in a more dangerous situation than the one in which the officers found him.

Accordingly, defendants' motion to dismiss plaintiff's Fourteenth Amendment claim against defendant police officers is DENIED.[6]

II. Claims Against City of Weed & Police Chief Nicholas

Plaintiff's fourth claim alleges that defendants City of Weed and Police Chief Nicholas ("Nicholas") created, adopted, instituted, or maintained practices, customs or policies of failing to educate its police officers in emergency life saving procedures, how and when to request emergency medical care for detainees with serious needs, and techniques used by law enforcement to remove objects from the throat and mouth of detainees. (FAC ¶ 36.) Plaintiff's fifth claim alleges that the City of Weed and Nicholas created, adopted, instituted, and maintained a custom, policy, or practice of failing to budget funds to provide Weed police officers with training and education in proper use of force against detainees and/or how to provide or call for timely medical care to detainees with serious medical needs. (Id. ¶ 40.)

A plaintiff may hold a municipality liable under section 1983 if his injury was inflicted pursuant to city policy,

[6] Plaintiff also argues that the special relationship exception is applicable to the facts alleged in the complaint. Because the court concludes that plaintiff has sufficiently pled a claim under the danger creation exception, it does not reach the merits of this argument. Moreover, the court notes that its holding is limited to the specific facts of this case; the court does not reach the issue of whether an individual has a general, constitutional right to medical assistance.

regulation, custom, or usage.[7] See Monell v. Department of Social Services of New York, 436 U.S. 658, 690-91, 694 (1978). A policy of inadequate police training may serve as the basis for section 1983 liability only where "the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact," and where the identified training deficiencies are "closely related" to the plaintiff's ultimate injury. See City of Canton v. Harris, 489 U.S. 378, 388-91 (1989).

The Ninth Circuit has explicitly stated that "a claim of municipal liability under section 1983 is sufficient to withstand a motion to dismiss 'even if the claim is based on nothing more than a bare allegation that the individual officers' conduct conformed to official policy, custom, or practice.'" Lee v. City of Los Angeles, 250 F.3d 668, 682-83 (9th Cir. 2001) (quoting Karim-Panahi v. Los Angeles Police Dep't, 831 F.2d 621, 624 (9th Cir. 1988).

Plaintiff alleges that defendant police officers' conduct conformed to the *practices, customs, or policies* of failing to educate and train its police officers. (FAC ¶ 36) (emphasis added.) Further, plaintiff alleges that defendant police officers' conduct conformed to the *custom, policy, or practice* of failing to budget sufficient funds to provide City of Weed police officers with training and education. (Id. ¶ 40) (emphasis added.) In short, plaintiff's claims of municipal liability

---

[7] To the extent plaintiff asserts a claim against Chief Nicholas in his official capacity, that claim is, as a matter of law, asserted against the City of Weed itself. Brandon v. Holt, 469 U.S. 464, 471-72 (1985).

against the City of Weed allege that the individual officers' conduct conformed to an official policy, custom, or practice that was the moving force behind Williams' injuries. Accepting the allegations of the complaint as true and drawing all reasonable inferences therefrom, plaintiff has pled sufficient facts to allege that the City of Weed has a practice, custom, or policy of failing to budget and train its police officers to adequately respond to emergency situations where an officer has, through his affirmative actions, placed an individual at risk of greater harm. As such, defendants' motion to dismiss plaintiff's claims against defendants' City of Weed and Nicholas is DENIED.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss plaintiff's claims is GRANTED in part and DENIED in part.

IT IS SO ORDERED.

DATED: February 3, 2009

FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE