

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ESTATE OF JESSIE P. CONTRERAS,
by and through his Special
Administrator LEONOR CONTRERAS;
and LEONOR CONTRERAS,
individual, mother of JESSIE
CONTRERAS, deceased,

Plaintiffs,

v.

COUNTY OF GLENN; GLENN COUNTY
SHERIFF'S DEPARTMENT; LARRY
JONES, individually and in his
official capacity as GLENN
COUNTRY SHERIFF; LT. TIM
ASBURY, LT. REVOLINSKI, LT.
WARREN, SGT. WHITE,
individually and in their
official capacities as
COMMANDERS, SUPERVISORS, AND/OR
SUPERVISORS OF PERSONNEL OF
GLENN COUNTY JAIL; DEE DEE
NELSON, individually and in her
official capacity as GLENN
COUNTY CORRECTIONAL OFFICER; E.
CHAVEZ, individually and in his
official capacity as GLENN
COUNTY CORRECTIONAL OFFICER;
GLENN MEDICAL CENTER INC;
J.A.L.A. a Minor, daughter of

Case No. 09-cv-02468-JAM-EFB

ORDER GRANTING DEFENDANTS
TIMOTHY ASBURY, PHILLIP
REVOLINSKY, RICHARD
WARREN, HAROLD WHITE, DEE DEE
NELSON AND EMMANUEL CHAVEZ'S
MOTION TO DISMISS AND MOTION TO
STRIKE

1 JESSIE CONTRERAS, and DOES 1-
2 50, Inclusive;
3 Defendants.

4 This matter comes before the Court on Defendants' Timothy
5 Asbury, Philip Revolinsky, Richard Warren, Harold White, Dee Dee
6 Nelson and Emmanuel Chavez' ("Defendants'") Motion to Dismiss
7 and Motion to Strike (Doc.11) portions of Plaintiffs' Estate of
8 Jessie P. Contreras, Leonor Contreras and Jessie Contreras'
9 ("Plaintiff's") First Amended Complaint ("FAC"). (Doc. 6).
10 Defendants ask the court to dismiss Leonor Contreras' individual
11 survivor claims in the first, second, and fourth through eighth
12 claims for relief, pursuant to Federal Rule of Civil Procedure
13 12(b)(6). Defendants also seek to dismiss the suits against them
14 in their "official capacity." Lastly, Defendants move to strike
15 all allegations of decedent's pre-death pain, suffering or
16 disfigurement, pursuant to Federal Rule of Civil Procedure
17 12(f).

21 FACTUAL AND PROCEDURAL BACKGROUND

22 Decedent Jessie P. Contreras ("Decedent") was an inmate in
23 Glenn County Jail ("the jail") at the time of his death on
24 August 6, 2008. Decedent was admitted to the jail for
25 misdemeanor offenses on July 30, 2008. Plaintiffs allege that
26 Decedent indicated at the time of his intake at the jail, and
27 thereafter, that he was mentally unstable and suicidal. Decedent
28

1 was placed in a single cell with sheets and a bed, and no video
2 camera for monitoring the cell. Plaintiffs allege that a jail
3 officer noted in a computer log that Decedent had advised he was
4 suicidal, yet no mental health or other health care was
5 provided, Decedent was not placed in a safety or isolation cell,
6 and he was not monitored on a suicide watch program. On August
7 4, 2008, Decedent was found in his cell, hanging from a bed
8 sheet. He was taken to the hospital and died in the hospital on
9 August 6, 2008. Plaintiffs brings survivor claims for civil
10 rights violations under 42 U.S.C. § 1983, and pendent state law
11 survivor claims. Additionally, Plaintiffs ask for leave to amend
12 the FAC to include Decedent's minor daughter, J.A.L.A., as a
13 plaintiff.

14 OPINION

15 I. Legal Standard

16 A. Motion to Dismiss

17 A party may move to dismiss an action for failure to
18 state a claim upon which relief can be granted pursuant to
19 Federal Rule of Civil Procedure 12(b)(6). In considering a
20 motion to dismiss, the court must accept the allegations in the
21 complaint as true and draw all reasonable inferences in favor of
22 the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1975),
23 overruled on other grounds by Davis v. Scherer, 468 U.S. 183
24
25
26
27
28

1 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). Assertions that
2 are mere "legal conclusions," however, are not entitled to the
3 assumption of truth. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950
4 (2009), citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
5 (2007). To survive a motion to dismiss, a plaintiff needs to
6 plead "enough facts to state a claim to relief that is plausible
7 on its face." Twombly, 550 U.S. at 570. Dismissal is
8 appropriate where the plaintiff fails to state a claim
9 supportable by a cognizable legal theory. Balistreri v.
10 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

13 Upon granting a motion to dismiss for failure to state a
14 claim, the court has discretion to allow leave to amend the
15 complaint pursuant to Federal Rule of Civil Procedure 15(a).
16 "Dismissal with prejudice and without leave to amend is not
17 appropriate unless it is clear . . . that the complaint could
18 not be saved by amendment." Eminence Capital, L.L.C. v. Aspeon,
19 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

22 B. Motion to Strike

24 "Rule 12(f) provides in pertinent part that the Court may
25 order stricken from any pleading any insufficient defense or any
26 redundant, immaterial, impertinent, or scandalous matter. . .
27 Motions to strike are disfavored and infrequently granted. A
28 motion to strike should not be granted unless it is clear that

1 the matter to be stricken could have no possible bearing on the
2 subject matter of the litigation." Bassett v. Ruggles et al.,
3 2009 WL 2982895 at *24 (E.D. Cal. Sept. 14, 2009) (internal
4 citations omitted).
5

6 7 II. Standing for Survival Claims

8 Defendants argue that Leonor Contreras, in her individual
9 capacity, does not have standing to sue as a survivor in the
10 first, second, fourth, fifth, sixth, seventh, and eighth claims
11 for relief, thus her individual survivor claims in these causes
12 of action should be dismissed. Plaintiffs agree, and ask the
13 Court for leave to amend these claims for relief in the FAC to
14 clarify that Leonor Contreras brings these claims only in her
15 capacity as the Personal Administrator of the Estate of Jessie
16 P. Contreras, and not in her individual capacity as his mother.
17 Plaintiff also requests leave to amend these claims to add
18 Decedent's minor daughter as a claimant and to conform the
19 claims with the applicable law in the California Code of Civil
20 Procedure § 377.11, § 377.30 and California Probate Code § 6402.
21 Accordingly, the Court dismisses Leonor Contreras' individual
22 survivor claims in the first, second, fourth, fifth, sixth,
23 seventh, and eighth claims for relief, with prejudice, but
24 grants the remaining plaintiffs leave to amend the claims
25 consistent with this order.
26
27
28

1
2 III. Official Capacity Suits

3 Plaintiffs brought suit against Defendants both in their
4 individual and official capacities. Defendants ask the Court to
5 dismiss the suit against them in their official capacity.
6 Defendants argue that because Plaintiffs have also sued
7 Defendants' employer, a suit against Defendants in their
8 official capacity is redundant.
9

10 "1983 claims against government officials in their official
11 capacity are really suits against the government employer
12 because the employer must pay any damages awarded. In such, the
13 real party in interest is the entity for which the official
14 works." Haddox v. City of Fresno, 2008 WL 53244, at *3 (E.D.
15 Cal. Jan. 2, 2008) (internal citations omitted). When a
16 plaintiff has sued both an officer in his/her official capacity
17 and sued his/her employer, the individual capacity suit is
18 dismissed as redundant. See e.g. Haddox, supra; Rendon v. Fresno
19 Police Dept., 2005 WL 1925859 (E.D. Cal. Aug. 11, 2005);
20 Enriquez v. City of Fresno, 2010 WL 2490969 (E.D. Cal. June 16,
21 2010).
22
23
24

25 Accordingly, the suits against Timothy Asbury, Philip
26 Revolinsky, Richard Warren, Harold White, Dee Dee Nelson and
27 Emmanuel Chavez in their official capacity are dismissed as
28 redundant, with prejudice. However, this ruling in no way

1 affects the suit against these officers in their individual
2 capacity.

3
4
5 IV. Damages for Pain and Suffering

6 Defendants move to strike all allegations related to
7 Decedents pain and suffering, and to strike Plaintiffs' request
8 for damages based on Decedent's pain and suffering. Defendants
9 argue that such damages are not permitted in the Eastern
10 District.

11
12 "Section 1983 does not address survivor claims or any
13 appropriate remedies." Provencio v. Vazquez, 2008 WL 3982063,
14 at *11 (E.D. Cal. Aug. 18, 2008). If a civil rights statute is
15 "deficient in the provisions necessary to furnish suitable
16 remedies," courts must look to applicable state law. 42 U.S.C.
17 § 1988(a). However, state law may not be applied when it is
18 "inconsistent with the constitution and laws of the United
19 States." Id.; see Robertson v. Wegmann, 436 U.S. 584, 590
20 (1978). The Supreme Court has stated that the purpose behind
21 the Federal Civil Rights Act is to: (1) prevent official
22 illegality, see Robertson, 436 U.S. at 592, and (2) "compensate
23 persons for injuries caused by the deprivation of constitutional
24 rights." Carey v. Piphus, 435 U.S. 247, 254 (1978). In
25 survivor actions in California, "the damages recoverable are
26 limited to the loss or damage that the decedent sustained or
27
28

1 incurred before death, . . . and do not include damages for
2 pain, suffering, or disfigurement.” Cal. Civ. Proc. § 377.34.

3
4 There is a split of authority on the issue of the
5 applicability of Cal. Civ. Proc. § 377.34., among the District
6 Courts of California. The Eastern District has consistently
7 held that § 377.34 is not inconsistent with Section 1983, and
8 has thus barred survivor claims for pain and suffering damages
9 under Section 1983. Conversely, courts in the Southern, Central,
10 and Northern Districts have opted not to apply § 377.34, finding
11 it inconsistent with the purposes of Section 1983. See e.g.
12 Hirschfield v. San Diego Unified Port Dist., 2009 WL 3248101, at
13 *4 (S.D. Cal. Oct. 8, 2009); Garcia v. Whitehead, 961 F. Supp.
14 230, 233 (C.D. Cal. 1997); Williams v. City of Oakland, 915 F.
15 Supp. 1074 (N.D. Cal. 1996). Despite the differing opinions of
16 the district courts, the Ninth Circuit has not expressed an
17 opinion on the issue. See Mahach-Watkins v. Depee, 593 F.3d
18 1054, 1060 (9th Cir. 2010) (acknowledging that “The Ninth
19 Circuit has not addressed the question of what damages are
20 available under a Section 1983 wrongful death claim”).

21
22 The trend in the Eastern District, beginning with Venerable
23 v. City of Sacramento, 185 F. Supp. 2d 1128 (E.D. Cal. 2002),
24 has been to bar survivor claims for such damages. Reviewing the
25 legislative history of Cal. Civ. P. Code § 377.34, the Court in
26 Venerable noted, “The legislature could well conclude that
27
28

1 recovery for the decedent's pain and suffering is not the better
2 rule given: (1) the uncertainty of testimony about how someone,
3 now dead, suffered; (2) the provision for compensation to family
4 survivors under the wrongful death statute for their own
5 damages, including loss of companionship, and a natural
6 reluctance to add as "compensation" the injury actually suffered
7 by another; and (3) the adequacy of deterrence already provided
8 by the possible array of damages for negligent conduct leading
9 to death whether those damages are sought under the survival
10 statute or by way of a wrongful death action." Id. at 1132. The
11 Court declined to adopt the cynical view that officers would
12 chose to kill, rather than injure, a victim if only required to
13 pay pain and suffering damages when victims survived. Id. at
14 1133. Thus, the Court held that "In light of the damages that
15 are provided by the California survival and wrongful death
16 statutes, the court finds that state law is not inconsistent
17 with the Constitution and laws of the United States." Id.

18
19
20
21 In the instant case, Defendants cite to a line of cases
22 from the Eastern District following Venerable which consistently
23 hold that damages for a decedent's pain and suffering are not
24 recoverable in survival actions under § 1983: Provencio v.
25 Vazquez, 2008 WL 3982063, at *12 (E.D. Cal. Aug. 18, 2008)
26
27 (holding that pain and suffering claims are precluded because
28 "the statutory scheme for survivors in California still provides

1 compensatory damages for the remaining injured parties, i.e. the
2 survivors"); Rosales v. City of Bakersfield, 2007 WL 1847628
3 (E.D. Cal. June 27, 2007); Whitfield v. State of California,
4 2007 WL 496342 (E.D. Cal. Feb. 13, 2007); Moore ex rel Moore v.
5 County of Kern, 2006 WL 2190753 (E.D. Cal. Aug. 1, 2006);
6 Peacock v. Terhune, 2002 WL 459810 (E.D. Cal. Jan. 23, 2002).

7
8 Plaintiffs concede that Defendants are "correct in stating that
9 the recovery of pain and suffering damages in a survival action
10 has been disallowed in cases that have considered this issue in
11 the Eastern District." (Pl.'s Opp'n 5:18-19.) However,
12 Plaintiffs argue that other federal courts do not adopt this
13 position.
14

15 This Court finds the Court's reasoning in Venerable to be
16 persuasive, and declines to permit a survival action for damages
17 for Decedent's pain and suffering. Therefore, the Court grants
18 Defendants' motion to strike the allegations in the FAC alleging
19 Decedent's pain and suffering (¶29, ¶35, and ¶39), as damages
20 for Decedent's pain and suffering are not recoverable.
21

22 ORDER

23 For the reasons set forth above, IT IS HEREBY ORDERED THAT:

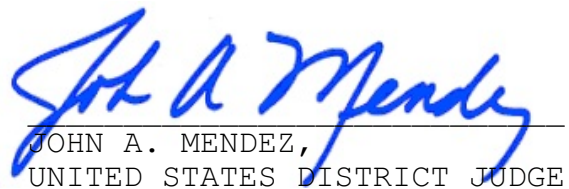
- 24
- 25 • Defendants' Motion to Dismiss Leonor Contreras' survivor
26 claims, in her individual capacity as the mother of
27 Decedent, from the First, Second, Fourth, Fifth, Sixth,
28

1 Seventh and Eighth claims for relief is GRANTED, With
2 Prejudice.

- 3 • Defendants' Motion to Strike allegations of Decedent's pain
4 and suffering is GRANTED, with Prejudice.
- 5 • Plaintiffs' request to add Decedents' minor daughter,
6 J.A.L.A., as a plaintiff is GRANTED.
7

8
9 Plaintiffs are hereby ordered to file a Second Amended
10 Complaint consistent with the Court's directions herein within
11 twenty (20) days of the Court's order on the Motion to Dismiss
12 by Glenn Medical Center (Doc. #28), scheduled to be heard on
13 August 18, 2010.
14

15
16
17
18 Dated: July 15, 2010

19 
20 JOHN A. MENDEZ,
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28