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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SHIRLEY NEWMAN and ANTHONY BUTLER,

NO. CIV. 2:09-3441 WBS KJN

Plaintiffs,

MEMORANDUM AND ORDER RE:
MOTION TO DISMISS

v.

SAN JOAQUIN DELTA COMMUNITY COLLEGE DISTRICT; DANIELE RULEY; JAMES WOOD; and DOES 1 through 100, inclusive,

Defendants.

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Plaintiffs Shirley Newman and Anthony Butler brought this action under 42 U.S.C. § 1983 against defendants San Joaquin Delta Community College District ("Delta College"), Daniele Ruley, and James Wood for alleged violations of their constitutional rights. Presently before the court are defendant Wood's motion to dismiss plaintiffs' Third Amended Complaint ("TAC") pursuant to Federal Rule of Civil Procedure 12(b)(6) and

1 motion to strike portions of the TAC pursuant to Rule 12(f).

2 I. Factual and Procedural Background

3 In 2008, plaintiffs were students at Delta College.

4 (TAC ¶ 11.) Plaintiff Newman allegedly suffers from post-
5 traumatic stress disorder and spinal damage and disease. (Id. ¶
6 10.) Delta College was allegedly aware of Newman's ailments,
7 since she had suffered anxiety attacks on numerous occasions.

8 (Id. ¶ 13.) As a result of her medical conditions, Newman wears
9 a medic-alert bracelet on her wrist that lists her medical
10 ailments and Butler, Newman's husband and legally designated care
11 provider, as an emergency contact. (Id. ¶¶ 10-11.)

12 On March 13, 2008, plaintiffs were attending class at
13 Delta College. (Id. ¶ 12.) At approximately 11:30 a.m., Butler
14 was attending a writing lab class in the Holt Building on the
15 Delta College campus. (Id.) At the time, Newman was attending a
16 different class in the same building. (Id.) During her class,
17 Newman allegedly began suffering from extreme anxiety and left
18 her classroom to go to Butler's class, as she normally would
19 during an anxiety attack. (Id. ¶ 13.) Upon entering the
20 Butler's class, the class's instructor, Dr. Elizabeth Maloney,
21 allegedly escorted Newman and Butler into a private classroom.
22 (Id.) In the room, Newman allegedly knocked some items off of a
23 desk and said she was "looking for something to hurt somebody."
24 (Id.) Patti Lynn Drake, who was in the room at the time, left
25 and called the Delta College police, mentioning that Newman was
26 ill. (Id.)

27 The Delta College Police call center dispatched Delta
28 College Police Officers Ruley and Wood to investigate. (Id. ¶

1 14.) When Ruley and Wood arrived at the classroom, plaintiffs
2 were allegedly peacefully leaving. (Id. ¶ 15.) Wood allegedly
3 attacked Butler without provocation and used unreasonable force
4 in dragging him out of the classroom while Ruley grabbed Butler's
5 shirt and pulled it over his head. (Id.) Wood then took Butler
6 to the ground, restraining him face-down. (Id.) With Butler
7 restrained, Ruley allegedly threw Newman against a wall with a
8 great amount of force. (Id.) Ruley allegedly remarked that she
9 had just had "a great workout" and made racially derogatory
10 remarks. (Id. ¶¶ 15-16.) Plaintiffs were subsequently detained
11 by Ruley and Wood. (Id. ¶¶ 15, 18.)

12 On March 14, 2008, plaintiffs received a letter from
13 Delta College's Vice President of Student Services, Jose Michel,
14 temporarily suspending them for an alleged assault on a Delta
15 College police officer. (Id. ¶ 21(i).) Michel sent plaintiffs
16 another letter on March 17, 2008, suspending them through the
17 summer of 2008 for assaulting a campus police officer and causing
18 a disturbance. (Id. ¶ 21(j).) Delta College upheld the
19 suspensions on April 8, 2008, based in part on allegedly false
20 testimony from Ruley that plaintiffs were struggling with each
21 other. (Id. ¶ 21(l).)

22 On May 5, 2008, Delta College provided that Newman
23 could be reinstated for the summer 2008 session if she brought a
24 recent evaluation by a licensed psychiatrist regarding her
25 treatment plan. (Id. ¶ 21(m).) Newman was denied summer
26 enrollment after she provided a letter from a therapist instead
27 of a psychiatrist. (Id. ¶ 21(n).) On June 2, 2008, Delta
28 College contacted Newman and indicated that her fall 2008

1 enrollment would also be contingent upon receiving a letter from
2 a psychiatrist about her treatment plan. (Id. ¶ 21(o).) On July
3 21, 2008, Newman's suspension was rescinded and her student
4 record was allegedly cleared. (Id. ¶ 21(p).)

5 Plaintiffs filed this action on September 12, 2008, in
6 San Joaquin County Superior Court and subsequently filed a First
7 Amended Complaint on November 19, 2009. (Docket No. 1.)
8 Defendants removed the case to this court on December 11, 2009.
9 (Id.) Defendant Woods filed a motion to dismiss the First
10 Amended Complaint on January 5, 2010. (Docket No. 8.) In
11 response, plaintiffs filed a statement of non-opposition and
12 requested leave to file a Second Amended Complaint ("SAC")
13 (Docket No. 12), which the court granted. (Docket No. 25.)
14 After the court granted in part and denied in part Wood's motion
15 to dismiss the SAC, plaintiff filed the TAC (Docket No. 40),
16 which Wood now moves to dismiss.

17 II. Discussion

18 A. Motion to Strike

19 Pursuant to Federal Rule of Civil Procedure 12(f), a
20 court "may strike from a pleading an insufficient defense or any
21 redundant, immaterial, impertinent, or scandalous matter." Wood
22 argues that the TAC's references to "Doe" defendants should be
23 stricken. As a general rule, the use of fictitious Doe
24 defendants is not favored in federal court. See Gillespie v.
25 Civiletti, 629 F.2d 637, 641 (9th Cir. 1980) accord Turner v.
26 County of Los Angeles, 18 Fed. Appx. 592, 596 (9th Cir. 2001).
27 While plaintiffs may seek to amend the TAC to add the presently
28 unknown parties pursuant to Federal Rule of Civil Procedure 15,

1 the inclusion of Doe defendants in the TAC is inappropriate and
2 accordingly the court will grant defendant's motion to strike the
3 TAC's references to Doe defendants. See *Graziose v. Am. Home*
4 *Products Corp.*, 202 F.R.D. 638, 643 (D. Nev. 2001).

5 B. Motion to Dismiss

6 On a motion to dismiss, the court must accept the
7 allegations in the complaint as true and draw all reasonable
8 inferences in favor of the plaintiff. *Scheuer v. Rhodes*, 416
9 U.S. 232, 236 (1974), overruled on other grounds by *Davis v.*
10 *Scherer*, 468 U.S. 183 (1984); *Cruz v. Beto*, 405 U.S. 319, 322
11 (1972). To survive a motion to dismiss, a plaintiff needs to
12 plead "only enough facts to state a claim to relief that is
13 plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S.
14 544, 570 (2007). This "plausibility standard," however, "asks
15 for more than a sheer possibility that a defendant has acted
16 unlawfully," and where a complaint pleads facts that are "merely
17 consistent with" a defendant's liability, it "stops short of the
18 line between possibility and plausibility." *Ashcroft v. Iqbal*,
19 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 556-
20 57).

21 1. Newman's Claims

22 Wood contends that Newman's battery, § 1983,
23 intentional infliction of emotional distress, negligent
24 infliction of emotional distress, and false imprisonment claims
25 should be dismissed because the TAC does not allege any illegal
26 acts taken by Wood against Newman specifically.

27 a. Battery

28 Under California law, the elements of battery are "(1)

1 defendant intentionally performed an act that resulted in a
2 harmful or offensive contact with the plaintiff's person; (2)
3 plaintiff did not consent to the contact; and (3) the harmful or
4 offensive contact caused injury, damage, loss or harm to
5 plaintiff." Brown v. Ransweiler, 171 Cal. App. 4th 516, 526-27
6 (2009) (internal citations omitted). An officer "may use
7 reasonable force to make an arrest, prevent escape or overcome
8 resistance, and need not desist in the face of resistance."
9 Munoz v. City of Union City, 120 Cal. App. 4th 1077, 1102 (2004)
10 (internal citations omitted). Accordingly, when a state law
11 battery claim is brought against a police officer, "a plaintiff
12 must prove that the peace officer's use of force was unreasonable
13 The question is whether a peace officer's actions were
14 objectively reasonable based on the facts and circumstances
15 confronting the peace officer." Id. at 527; see also Blankenhorn
16 v. City of Orange, 485 F.3d 463, 486-87 (9th Cir. 2007).

17 The TAC alleges that Wood attacked Butler and that
18 Officer Ruley used force against Newman. It does not allege that
19 Wood used any force against Newman. Instead, Newman seeks
20 recovery from Wood on the theory that he and Ruley acted as joint
21 tortfeasors in bringing about the harm to Newman. California law
22 allows for joint liability of aiders and abettors to an
23 intentional tort. Austin B. v. Escondido Union Sch. Dist., 139
24 Cal. App. 4th 860, 879 (2007). Under California law,

25 [liability may . . . be imposed on one who aids and
26 abets the commission of an intentional tort if the person
27 (a) knows the other's conduct constitutes a breach of
28 duty and gives substantial assistance or encouragement to
the other to so act or (b) gives substantial assistance
to the other in accomplishing a tortious result and the
person's own conduct, separately considered, constitutes

1 a breach of duty to the third person.

2 Id. (internal citations omitted); see also River Colony Estates
3 Gen. P'ship v. Bayview Fin. Trading, 287 F. Supp. 2d 1213, 1225
4 (S.D. Cal. 2003) ("A party can be liable for aiding and abetting
5 an intentional tort if . . . an individual is aware that the
6 other's conduct constitutes a breach of duty and provides
7 substantial assistance or encouragement to the other to so
8 act."). "Mere knowledge that a tort is being committed and the
9 failure to prevent it does not constitute aiding and abetting.
10 As a general rule, one owes no duty to control the conduct of
11 another More specifically, a supervisor is not liable to
12 third parties for the acts of his or her subordinates." Fiol v.
13 Doellstedt, 50 Cal. App. 4th 1318, 1326 (1996) (citations
14 omitted).

15 Taking the allegations of the TAC in a light most
16 favorable to plaintiffs, it is plausible that Wood could be
17 jointly liable for the Ruley's use of force against Newman under
18 an aiding and abetting theory. Plaintiffs allege that Wood began
19 the altercation with them by grabbing Butler and dragging him to
20 the ground while he was peacefully exiting a Delta College
21 classroom. (TAC ¶ 15.) Ruley was allegedly a probationary
22 officer being supervised by Wood, her partner. (Id. ¶ 8.) Ruley
23 allegedly helped Wood pull Butler to the ground and then slammed
24 Newman against a wall. (Id. ¶ 15.) Under these circumstances,
25 it is plausible that Wood's use of allegedly unreasonable force
26 against Butler substantially encouraged Ruley to use similar
27 levels of force against Newman because of their supervisory
28 relationship. See Orser v. Vierra, 252 Cal. App. 2d 660, 668-69

1 (1967) (holding defendants were joint tort feasons because the
2 firing of rifle shots by one defendant encouraged other
3 defendants to fire the shots that killed decedent). Accordingly,
4 the court must deny Wood's motion to dismiss Newman's battery
5 claim.

6 b. Remaining State Law Claims

7 Wood contends that Newman's intentional infliction of
8 emotional distress, negligent infliction of emotional distress,
9 and false imprisonment claims must be dismissed because Newman
10 has not alleged conduct taken directly by Wood against her.
11 However, as explained above, taking the facts in a light most
12 favorable to Newman, she has pleaded facts sufficient to support
13 a finding that Wood may be liable as a joint tort feason for
14 Ruley's torts against her. Since the use of force at issue in
15 Newman's battery claim is the basis of liability for Newman's
16 intentional and negligent infliction of emotional distress
17 claims, defendant's motion must be denied.

18 Also, under California law, "[a]ll who take part in or
19 assist in the commission of a false imprisonment are joint tort
20 feasons, and may be joined as defendants without an allegation or
21 proof of a conspiracy." Harden v. San Francisco Bay Area Rapid
22 Transit Dist., 215 Cal. App. 3d 7, 15 (1989) (citations omitted).
23 The TAC alleges that Ruley and Wood arrested both plaintiffs and
24 detained them. (TAC ¶ 15.) Accordingly, Newman has sufficiently
25 alleged a claim for false imprisonment against Wood.

26 c. § 1983 Claim

27 In her § 1983 claim, Newman alleges that Wood violated
28 her right to be free from unreasonable seizure, "both by arrest

1 and detention absent probable cause and by the use of excessive
2 force," in contravention of the Fourth and Fourteenth Amendments.
3 (TAC ¶ 25.) Wood contends that Newman's § 1983 claim is
4 insufficient because the TAC does not plead facts that indicate
5 that Wood was directly involved in the force used against Newman
6 or her arrest and detention.

7 "In order for a person acting under color of state law
8 to be liable under section 1983 there must be a showing of
9 personal participation in the alleged rights deprivation"
10 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) (citing
11 Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978)). The TAC
12 alleges that Wood and Ruley both arrested and detained Newman
13 without probable cause. (TAC ¶¶ 15, 25.) Newman has therefore
14 alleged direct involvement by Wood in an alleged violation of her
15 Fourth Amendment rights. Accordingly, the court must deny Wood's
16 motion to dismiss Newman's § 1983 claim.

17 2. Government Claims Act Compliance

18 Wood lastly contends that all state law claims against
19 him should be dismissed because plaintiffs failed to present a
20 valid California Government Tort Claim prior to filing this
21 action. In order to bring a cause of action against a public
22 entity under California law, a plaintiff must first file a claim
23 with that public entity pursuant to the California Government
24 Claims Act, Cal. Gov't Code §§ 810-978.8. Under California
25 Government Code section 911.2, a plaintiff must file a claim for
26 money or damages with the relevant public entity within six
27 months of the accrual of the cause of action. Cal. Gov't Code §
28 911.2. The failure to do so bars the plaintiff from bringing

1 suit against the public entity. Cal. Gov't Code § 945.4; State
2 v. Superior Court, 32 Cal. 4th 1234, 1239 (2004). A plaintiff
3 may only bring a lawsuit against the public entity once the
4 public entity's board has acted upon or is deemed to have
5 rejected plaintiff's claim. Cal. Gov't Code §§ 912.4, 945.4;
6 Shirk v. Vista Unified Sch. Dist., 42 Cal. 4th 201, 209 (2007).
7 A complaint which does not allege facts demonstrating compliance
8 with the claims statute may be dismissed for failure to state a
9 claim. Id.

10 This claims presentation requirement serves several
11 purposes: "(1) it gives the public entity prompt notice of a
12 claim so it can investigate the strengths and weaknesses of the
13 claim while the evidence is still fresh and the witnesses are
14 available; (2) it affords opportunity for amicable adjustment,
15 thereby avoiding expenditure of public funds in needless
16 litigation; and (3) it informs the public entity of potential
17 liability so it can better prepare for the upcoming fiscal year."
18 Munoz v. State of Cal., 33 Cal. App. 4th 1767, 1776 (1995).

19 Plaintiffs concede that their claims are subject to the
20 claims presentation requirement, but contend that they have
21 sufficiently complied with the Government Claims Act.
22 Specifically, plaintiffs allege that they sent a letter to the
23 Chancellor's Office at Delta College describing the incident in
24 question on March 21, 2008, filed an Online Citizen's Complaint
25 form with the Delta College Police Department in April of 2008,
26 filed an unlawful discrimination complaint with the California
27 Community Colleges Chancellor's Office on May 23, 2008, and each
28 sent a statement of damages to Delta College on July 21, 2008.

1 (TAC ¶ 9.) Plaintiffs further allege that Vincent Brown, the
2 Vice Principal in charge of Human Resources and Employee
3 Relations at Delta College, refused to assist plaintiffs in
4 filing a claim with Delta College or provide plaintiffs with a
5 claim form. (Id. ¶ 9(g).)

6 Although plaintiff's communications did not comply with
7 all elements of the Government Claims Act, "[w]here there has
8 been an attempt to comply but the compliance is defective, the
9 test of substantial compliance controls. Under this test, the
10 court must ask whether sufficient information is disclosed on the
11 face of the filed claim to reasonably enable the public entity to
12 make an adequate investigation of the merits of the claim and
13 settle it without the expense of a lawsuit." Wood v. Riverside
14 Gen. Hosp., 25 Cal. App. 4th 1113, 1118 (1994). It is well-
15 recognized that courts should construe the Government Claims Act
16 liberally in favor of plaintiffs so as not to harshly deny relief
17 to injured parties. See Munoz, 33 Cal. App. 4th at 1778.

18 Plaintiffs' efforts substantially complied with the
19 Government Claims Act because plaintiffs' complaints alerted
20 Delta College to the basis of the claims against Delta College,
21 Ruley, and Wood, and the amount of damages that plaintiffs were
22 seeking. In plaintiffs' Online Citizen Complaint form, Newman
23 even specifically identified Wood and Ruley and the officers who
24 used force against her and arrested her. Under the facts as
25 alleged, Delta College should have been aware that a monetary
26 claim was being asserted against it and had sufficient
27 information such that it could thoroughly investigate plaintiffs'
28 claims. Plaintiffs accordingly have sufficiently alleged

1 substantial compliance with the claims presentation requirements
2 of the Government Claims Act.

3 IT IS THEREFORE ORDERED that Wood's motion to dismiss
4 be, and the same hereby is, DENIED.

5 IT IS FURTHER ORDERED that Wood's motion to strike the
6 TAC's reference to Doe defendants be, and the same hereby is,
7 GRANTED.

8 DATED: September 13, 2010

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11 WILLIAM B. SHUBB
12 UNITED STATES DISTRICT JUDGE
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