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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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TOMEKA JUSTICE, individually and
as Guardian ad Litem for ACQUCER
HILL,

2:10-cv-0915 FCD KJN

Plaintiffs,

v.

MEMORANDUM AND ORDER

COUNTY OF YUBA AND THOMAS OAKES,

Defendants.
_____ /

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This matter is before the court on defendants County of Yuba
(the "County") and Thomas Oakes' ("Oakes") (collectively
"defendants") motion to strike plaintiffs' request for punitive
damages against defendant County and defendant Oakes in his
official capacity pursuant to Federal Rule of Civil Procedure
12(f). Plaintiffs Tomeka Justice, individually and as Guardian
ad Litem for Acqucer Hill, ("plaintiffs") do not oppose the
motion. Accordingly, defendants' motion to strike is GRANTED.

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1 Defendants also move to dismiss plaintiffs' claims against
2 the County for (1) law false arrest, imprisonment, and
3 prosecution; (2) intentional infliction of emotional distress
4 ("IIED"); and (3) negligent infliction of emotional distress
5 ("NIED") on the grounds that public entities are immune from
6 common law claims. Plaintiffs oppose the motion, clarifying that
7 they are not asserting any claims for direct liability against
8 the County, but only vicarious liability based upon the conduct
9 of its employees.

10 Under Federal Rule of Civil Procedure 8(a), a pleading must
11 contain "a short and plain statement of the claim showing that
12 the pleader is entitled to relief." See Ashcroft v. Iqbal, 129
13 S. Ct. 1937, 1949 (2009). Under notice pleading in federal
14 court, the complaint must "give the defendant fair notice of what
15 the claim is and the grounds upon which it rests." Bell Atlantic
16 v. Twombly, 550 U.S. 544, 555 (2007) (internal quotations
17 omitted). "This simplified notice pleading standard relies on
18 liberal discovery rules and summary judgment motions to define
19 disputed facts and issues and to dispose of unmeritorious
20 claims." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002).

21 While plaintiffs clarify in their opposition that their
22 common law claims against the County are based *solely* on
23 vicarious liability, the complaint fails to set forth any
24 allegations that would give defendants notice of this theory.
25 Accordingly, defendants' motion to dismiss is GRANTED with leave
26 to amend.

27 Plaintiffs shall file a second amended complaint in
28 accordance with this order within ten (10) days of the date of

1 this order. Defendants shall have twenty (20) days after service
2 thereof to file a response.

3 IT IS SO ORDERED.

4 DATED: October 22, 2010



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

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