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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN DOE, a minor, by his)	Case No. 2:11-CV-01767 JAM-JFM
Guardian Ad Litem, KATHRYN)	
CLARK,)	<u>ORDER GRANTING IN PART AND</u>
)	<u>DENYING IN PART DEFENDANTS'</u>
Plaintiff,)	<u>MOTION TO DISMISS</u>
)	
v.)	
)	
SACRAMENTO DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES-CHILD)	
PROTECTIVE SERVICES OF)	
SACRAMENTO COUNTY, et al.,)	
)	
Defendants.)	

This matter is before the Court upon Defendants County of Sacramento and Ann Edwards' (collectively "Defendants") Motion to Dismiss For Failure to State A Claim (Doc. #20). Plaintiff John Doe ("Plaintiff") opposes the motion (Doc. #23). Defendants filed a reply (Doc. #24).

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

This action originated when Plaintiff filed a complaint with this Court on July 5, 2011 (Doc. #1). Plaintiff then filed an amended complaint (the "Amended Complaint") (Doc. #13) on August 26, 2011, which Defendants now seek to partially dismiss. The

1 Amended Complaint names Sacramento Department of Health and Human
2 Services-Child Protective Services of Sacramento County and Ann
3 Edwards, the director of that department, as defendants. The
4 Amended Complaint also asserts claims against multiple Doe
5 defendants.

6 The allegations in the Amended Complaint concern injuries
7 allegedly sustained by Plaintiff when he was in the care of Non-
8 relative Extended Family Members ("NREFMs"). Plaintiff was
9 declared a dependent child of Sacramento County Juvenile Court in
10 January, 2009. Plaintiff was placed with two different caregivers
11 before he was placed with NREFMs Fernando Ramirez and Lace Robinson
12 ("Ramirez/Robinson"). The placement with the NREFMs was in an
13 apartment, not a single family home.

14 Plaintiff alleges that Defendants failed to ensure that his
15 placement with the NREFMs was safe because Defendants apply lower
16 safety standards for apartment placements and placements with
17 NREFMs. Plaintiff alleges that Defendants did not properly ensure
18 that the Ramirez/Robinson home met federal and state health and
19 safety standards. Plaintiff also alleges that Defendants failed to
20 conduct proper background checks on Robinson and Ramirez.
21 Plaintiff alleges that there was no effort to ensure that the water
22 temperature in the Ramirez/Robinson home was regulated to avoid
23 burns to young children.

24 In early July, 2009, Plaintiff alleges that he sustained
25 second degree burns to 12% of his body when he was left unattended
26 in the bathtub. The burns were allegedly to his groin, scrotum,
27 buttocks, posterior trunk, and lower abdominal wall. Plaintiff was
28 hospitalized after the incident. Plaintiff alleges that he suffers

1 from permanent physical and psychological injuries as a result of
2 the incident.

3 Plaintiff alleges that he would not have been injured if
4 Defendants had ensured that the water temperature was properly
5 regulated prior to placing Plaintiff in the home. Further,
6 Plaintiff alleges that the injuries would not have been sustained
7 if Defendants had properly investigated the NREFMs's backgrounds.

8 Plaintiff asserts claims pursuant to 42 U.S.C. § 1983 and
9 attorney's fees pursuant to 42 U.S.C. § 1988. Plaintiff's Amended
10 Complaint also references several state laws that were allegedly
11 violated by Defendants. This Court has jurisdiction over
12 Plaintiff's federal claims pursuant to 28 U.S.C. § 1331 and
13 jurisdiction over Plaintiff's state law claims pursuant to 28
14 U.S.C. § 1367.

16 II. OPINION

17 A. Legal Standard

18 1. Motion to Dismiss

19 A party may move to dismiss an action for failure to state a
20 claim upon which relief can be granted pursuant to Federal Rule of
21 Civil Procedure 12(b)(6). In considering a motion to dismiss, the
22 court must accept the allegations in the complaint as true and draw
23 all reasonable inferences in favor of the plaintiff. Scheuer v.
24 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by
25 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319,
26 322 (1972). Assertions that are mere "legal conclusions," however,
27 are not entitled to the assumption of truth. Ashcroft v. Iqbal,
28 129 S. Ct. 1937, 1950 (2009) (citing Bell Atl. Corp. v. Twombly,

1 550 U.S. 544, 555 (2007)). To survive a motion to dismiss, a
2 plaintiff needs to plead "enough facts to state a claim to relief
3 that is plausible on its face." Twombly, 550 U.S. at 570.
4 Dismissal is appropriate where the plaintiff fails to state a claim
5 supportable by a cognizable legal theory. Balistreri v. Pacifica
6 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

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

14 B. Discussion

15 1. Defendant Ann Edwards

16 Defendants seek dismissal of all claims against Defendant Ann
17 Edwards ("Defendant Edwards") because she is sued only in her
18 official capacity as the director of a county agency, and as such,
19 the suit is in actuality against the County of Sacramento, the
20 governmental entity that employs her. Plaintiff does not dispute
21 that Defendant Edwards is sued in her official capacity, but argues
22 that the suit should proceed against her on a Monell theory of
23 liability.

24 When officials of a public entity are sued in their official
25 capacity, it is not a suit against the official, but rather a suit
26 against the entity itself. Brandon v. Holt, 469 U.S. 464, 471-72
27 (1985). Monell liability attaches to a municipality such as a city
28 or county when constitutional deprivations occur as a result of a

1 governmental custom or formal policy. Monell v. Dep't of Soc.
2 Servs. of N.Y., 436 U.S. 658, 690-91 (1978).

3 In this case, Defendant Edwards is sued in her official
4 capacity, which amounts to a suit against the County of Sacramento
5 under Brandon. Plaintiff's argument that discovery under a Monell
6 theory of liability should proceed is not without merit, but it is
7 inapplicable to the present situation. Allowing discovery on a
8 Monell theory to proceed against Defendant Edwards is the same as
9 permitting it to proceed against the County. Therefore, Defendant
10 Edwards' inclusion in this lawsuit is duplicative of the County's
11 insofar as her liability is predicated upon a Monell theory of
12 liability. The Amended Complaint contains no allegations that
13 indicate that Defendant Edwards is liable on any other theory of
14 liability under § 1983 or otherwise, and she is therefore dismissed
15 from this action. It is clear that further amendment would be
16 futile and, therefore, the dismissal is with prejudice.

17 2. Plaintiff's 14th Amendment Substantive Due Process
18 Claim

19 Plaintiff generally claims that as a dependent child of the
20 County of Sacramento, he may assert a claim under the 14th
21 Amendment for his alleged injuries. Defendants do not seek to
22 dismiss his 14th Amendment substantive due process claim in their
23 motion, and accordingly, this claim is not dismissed and will
24 proceed.

25 3. Plaintiff's Eighth Amendment Claim

26 The Amended Complaint seeks damages for the imposition of
27 cruel and unusual punishment in violation of the Eighth Amendment
28 to the U.S. Constitution. Defendants argue that this claim is

1 inadequately pled because the Eighth Amendment only applies post-
2 conviction. Plaintiff agrees that this claim is not appropriate
3 given the allegations in the Amended Complaint. Accordingly,
4 Plaintiff's Eighth Amendment claim is dismissed with prejudice.

5 4. Plaintiff's State Law Claims

6 Defendants move to dismiss any state law tort claims in the
7 Amended Complaint on the grounds that state law presentment
8 prerequisites were not met pursuant to the California Government
9 Tort Claims Act. Plaintiff responds that state law cannot place
10 presentment requirements upon a federal 42 U.S.C. § 1983 cause of
11 action.

12 Plaintiff does not respond to the substance of Defendants'
13 argument, but instead argues that insofar as his claims are based
14 on 42 U.S.C. § 1983, they cannot be burdened by additional state
15 law requirements. The Court interprets Plaintiff's argument as an
16 admission that the Amended Complaint does not contain separate or
17 distinct tort claims under state law, and no such claims were
18 intended. Accordingly, any state law tort claim predicated solely
19 on liability arising from a state law cause of action is dismissed
20 with prejudice and Plaintiff is barred from any recovery under
21 California law.

22 5. Plaintiff's Equal Protection Claim

23 Plaintiff's final claim is for denial of the equal protection
24 guaranteed by the 14th Amendment to the U.S. Constitution.
25 Plaintiff argues that he is a member of three suspect classes:
26 (1) a dependent child of a governmental entity, (2) a dependent
27 child placed with NREFMs, and (3) a dependent child placed in an
28 apartment. Plaintiff further argues that he was denied the equal

1 protection of the laws in comparison with non-dependent children.
2 Plaintiff also argues that Defendants denied him equal protection
3 of the laws as a dependent child placed with NREFMs as compared to
4 dependent children not placed with NREFMs. Finally, Plaintiff
5 asserts that he was denied equal protection by Defendants when
6 compared to dependent children placed in single family homes rather
7 than apartments. Defendants seek to dismiss this claim on the
8 grounds that Plaintiff makes no allegation in the Amended Complaint
9 that he was treated differently because he was a member of a
10 suspect class.

11 The "Equal Protection Clause of the Fourteenth Amendment
12 commands that no State shall 'deny to any person within its
13 jurisdiction the equal protection of the laws,' which is
14 essentially a direction that all persons similarly situated should
15 be treated alike." City of Cleburne v. Cleburne Living Ctr, Inc.
16 473 U.S. 432, 439 (1985) (internal citations omitted). Generally,
17 state action is valid under the Equal Protection Clause so long as
18 it is rationally related to a legitimate state interest. Id.

19 When a suspect class is implicated by state action, however, a
20 higher level of scrutiny is used to determine if the Equal
21 Protection Clause is violated. Id. To state such a claim, a
22 plaintiff "must show that the defendant acted with an intent or
23 purpose to discriminate against the plaintiff based upon membership
24 in a protected class." T.A. ex rel. Amador v. McSwain Union
25 Elementary Sch. Dist., 2009 WL 1748793, at *8 (E.D. Cal. Jan. 18,
26 2009). A plaintiff may satisfy this showing by alleging four
27 separate elements: (1) that the defendants treated plaintiff
28 differently from others similarly situated; (2) this unequal

1 treatment was based on an impermissible classification; (3) the
2 defendants acted with discriminatory intent in applying this
3 classification; and (4) plaintiff suffered injury as a result of
4 the discriminatory classification. Id.

5 The Amended Complaint clearly alleges that Plaintiff, as both
6 a dependent child placed with NREFMs and as a dependent child
7 placed in an apartment, was treated differently from those
8 dependent children who were respectively placed with related family
9 members and those placed in single family homes. The Amended
10 Complaint also alleges that Plaintiff suffered injury. The claim
11 can then proceed only if (1) Plaintiff alleges that he was a member
12 of a suspect classification and Defendants intentionally treated
13 him unequally on that basis, or in the absence of a suspect
14 classification (2) Plaintiff alleges that Defendants treated
15 Plaintiff differently from others similarly situated without a
16 rational basis founded in a legitimate state interest.

17 (a) Suspect Classification

18 A suspect classification is one that is "more likely than
19 others to reflect deep-seated prejudice rather than legislative
20 rationality in pursuit of some legitimate objective." Plyler v.
21 Doe, 457 U.S. 202, 218 n.14 (1982). Such classes have, as a
22 historical matter, often been subject to discrimination; they may
23 exhibit immutable characteristics that identify them as a member of
24 a particular group; or they may be a politically powerless
25 minority. Lyng v. Castillo, 477 U.S. 635, 638 (1986) (citing
26 Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 313-314,
27 96 S. Ct. 2562, 2566-2567, 49 L.Ed.2d 520 (1976)).

28 In this case, the Amended Complaint is devoid of allegations

1 to support a finding that Plaintiff is a member of a suspect
2 classification. While it is clearly alleged that Plaintiff
3 received certain treatment based on his placement with NREFMs and
4 in an apartment, there is simply no basis upon which the Court can
5 find that it was due to his membership in a suspect class.
6 Further, there are no grounds in the Amended Complaint upon which
7 the Court can find that dependent children placed with NREFMs or in
8 apartment buildings constitute a suspect class. Accordingly,
9 Plaintiff has not stated an equal protection claim based on
10 membership in a suspect class.

11 (b) Plaintiffs Claim and Rational Basis Review

12 Defendants argue that this claim should be dismissed because
13 it was the NREFMs who were treated differently based on state
14 classification, not Plaintiff. Plaintiff responds that Defendants
15 treated him differently based on his placement with NREFMs and in
16 an apartment.

17 The Court finds that Plaintiff clearly alleges that he was
18 placed in an unsafe home because Defendants do not ensure the same
19 level of safety for those placed with NREFMs or in apartments as
20 they do for those placed in single family homes or with close
21 relatives, pursuant to their customary practices or policies.
22 Amended Compl., at 5. At this stage it is not proper for the Court
23 to determine whether or not the alleged practices of Defendants
24 actually pass a rational basis review. First of all, at the motion
25 to dismiss stage, the Court is required to accept the allegations
26 as true. Secondly, Defendants have not yet had the opportunity to
27 deny the allegations or even proffer a legitimate state interest
28 for a two-class safety policy for dependent children, if they

1 indeed adhere to one. If Plaintiff, however, is able to prove that
2 the County arbitrarily and without basis provides lower levels of
3 safety to individuals in Plaintiff's position, such state action
4 would be prohibited by the 14th Amendment. Schweiker v. Wilson,
5 450 U.S. 221, 230 (1981) (state action that creates a
6 classification must, at the minimum, be rationally related to a
7 legitimate state interest.).

8 The Court's holding is supported by the Ninth Circuit's
9 holding in Fajardo v. Cnty. of L.A. 179 F.3d 698 (9th Cir. 1999).
10 In that case, the Ninth Circuit found that the Plaintiffs had
11 stated a claim pursuant to the equal protection clause by alleging
12 that a sheriff gave priority to non-domestic violence 911 calls
13 over domestic violence related calls. The classification created
14 by state-action was not related to a suspect class, but the Fajardo
15 court ruled that if there was no rational basis upon which the
16 distinction between the classes was made by the sheriff, it was
17 constitutionally impermissible. Id. at 701. The Fajardo 911 call
18 classification is directly analogous to the classification alleged
19 in this case.

20 Accordingly, the Court denies Defendants' motion to dismiss
21 Plaintiff's Equal Protection Claim.

22 23 III. ORDER

24 After careful review of all of the documents filed in support
25 of and in opposition to this motion, the Court rules as follows:

- 26 1. All claims against Defendant Ann Edwards in her official
27 capacity are dismissed without leave to amend;
- 28 2. Plaintiff's Eighth Amendment claim is dismissed without

1 leave to amend;

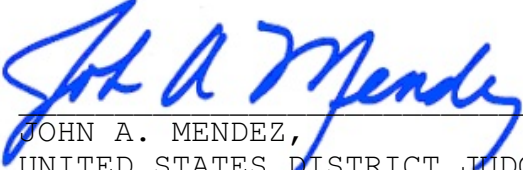
2 3. Plaintiff's state law tort claims are dismissed without
3 leave to amend; and

4 4. Defendants' motion to dismiss Plaintiff's Equal
5 Protection claim is denied.

6 Defendants must file an answer to the Amended Complaint within 20
7 days of this order.

8 IT IS SO ORDERED.

9 Dated: March 9, 2012



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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