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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE FETTER,

Plaintiff,

v.

PLACER COUNTY SHERIFF, EDWARD
N. BONNER, individually and
in his official capacity,
COUNTY OF PLACER, CALIFORNIA
FORENSICS MEDICAL GROUP
(CFMG), PLACER COUNTY SHERIFF
DEPARTMENT, and DOES 1
THROUGH 20,

Defendants.

No. 2:12-cv-02235-GEB-EFB

ORDER GRANTING MOTION TO DISMISS

Defendants Placer County Sheriff Edward N. Bonner,
County of Placer ("Placer County"), and Placer County Sheriff
Department ("PCSD") (collectively, "Defendants") move under
Federal Rule of Civil Procedure ("Rule") 12(b)(6) for dismissal
of certain of Plaintiff's claims alleged in the First Amended
Complaint ("FAC"). Defendants' motion challenges claims alleged
under 42 U.S.C. §§ 1983, 1985(3), Title II of the Americans with
Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act

1 ("RA"), and California law. Plaintiff did not file an opposition
2 or a statement of non-opposition to the motion as required by
3 Local Rule 230. E.D. Cal. R. 230(c).¹

4 **I. FACTUAL ALLEGATIONS**

5 The motion concerns the following factual allegations
6 in the FAC. "[P]laintiff . . . was cited for Driving while Under
7 the Influence and was jailed for that offense." (FAC ¶ 12.) Prior
8 to being jailed, "Plaintiff had fallen off a roof and injured
9 both of his legs and ankles" and "was under the care of a doctor
10 for the injuries that he had received." (Id. ¶¶ 11-12.) "During
11 [P]laintiff's . . . period of incarceration he was not allowed to
12 see a doctor or be transported to a hospital although . . .
13 Defendants knew about . . . Plaintiff's injuries and . . .
14 Plaintiff made numerous requests that he be allowed to see a
15 doctor." (Id. ¶ 14.) "While incarcerated Plaintiff['s] leg began
16 to turn black as he was suffering from compartment syndrome."
17 (Id. ¶ 15.) "Plaintiff informed . . . Defendant[s] about his leg
18 but they still refused to allow him to see a doctor or transport
19 him to the hospital." (Id. ¶ 16.)

20 "Plaintiff was ultimately released from his
21 incarceration in mid 2011[.] [He] immediately went to see a
22 doctor and was informed that the condition of his leg was so
23 severe . . . that it would have to be amputated." (Id. ¶ 17.)
24 After seeking a second opinion confirming that diagnosis,
25 "Plaintiff's right leg was . . . amputated." (Id. ¶¶ 18-19.)

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¹ Defendants seek in the alternative a more definite statement of certain
28 claims; however, the ruling on Defendants' dismissal motion renders moot this
alternative motion and therefore the alternative motion is denied.

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2 **II. LEGAL STANDARD**

3 Decision on a Rule 12(b)(6) dismissal motion requires
4 determination of “whether the complaint's factual allegations,
5 together with all reasonable inferences, state a plausible claim
6 for relief.” United States ex rel. Cafasso v. Gen. Dynamics C4
7 Sys., Inc., 637 F.3d 1047, 1054 (9th Cir.2011) (citing Ashcroft
8 v. Iqbal, 556 U.S. 662, 678-79 (2009)). “A claim has facial
9 plausibility when the plaintiff pleads factual content that
10 allows the court to draw the reasonable inference that the
11 defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
12 at 678 (citing Bell Atlantic v. Twombly, 550 U.S. 544, 556
(2007)).

13 When determining the sufficiency of a claim under Rule
14 12(b)(6), “[w]e accept factual allegations in the complaint as
15 true and construe the pleadings in the light most favorable to
16 the non-moving party.” Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th
17 Cir.2011) (internal quotation marks omitted). However, this tenet
18 does not apply to “legal conclusions . . . cast in the form of
19 factual allegations.” Id. (internal quotation marks omitted).
20 “Therefore, conclusory allegations of law and unwarranted
21 inferences are insufficient to defeat a motion to dismiss.” Id.
22 (internal quotation marks omitted); see also Iqbal, 556 U.S. at
23 678 (quoting Twombly, 550 U.S. at 555) (“A pleading that offers
24 ‘labels and conclusions’ or ‘a formulaic recitation of the
25 elements of a cause of action will not do.’ ”)

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1 III. DISCUSSION

2 a. Monell Claim

3 Defendants seek dismissal of Plaintiff's Monell claim,
4 arguing "[t]here is no factual basis alleged in the complaint"
5 from which a reasonable inference can be drawn that Placer County
6 or the PCSD² instituted the alleged policies. (Defs.' Mot. to
7 Dismiss and Mot. For a More Definite Statement ("Defs.' Mot")
8 12:11-12, ECF No. 28-1.) Defendants also argue that "[t]he plight
9 of one inmate does not give rise to a reasonable inference that
10 there is a systemic problem" and that "[i]solated failures of a
11 few employees with regard to one inmate are generally not
12 sufficient to support a Monell case." (Id. 12:17-19, 12:21-23.)

13 Allegations stating a Monell claim "must [plausibly]
14 establish that 'the local government had a deliberate policy,
15 custom, or practice that was the moving force behind the
16 constitutional violation [a Plaintiff] suffered.'" AE ex rel.
17 Hernandez v. Cnty. of Tulare, 666 F.3d 631, 636 (9th Cir.
18 2012) (quoting Whitaker v. Garcetti, 486 F.3d 572, 581 (9th Cir.
19 2007)).

20 Plaintiff's FAC contains the following Monell
21 allegations:

22 23. Based upon the principles set forth in
23 Monell . . . , COUNTY is liable for all
24 injuries sustained by Plaintiff as set forth
25 herein. COUNTY bears liability because
26 [i]ts[] policies, practices and/or customs
caused Plaintiff[']s injuries. In particular,
Defendant Sheriff Bonner has condoned an
ongoing pattern of denial of Inmate requests
for medical assistance committed by deputies

27 ² Defendants' motion is construed as a seeking dismissal of Plaintiff's Monell
28 claims against the County and the PCSD since Defendants argue that Placer
County and the PCSD are the same entity.

1 assigned to the jails. COUNTY and its
2 officials, including Sheriff Bonner,
3 maintained or permitted one or more of the
4 following official policies, customs, or
5 practices:

6 A. Failure to provide adequate training
7 and supervision to Sheriffs['] deputies with
8 respect to constitutional limits on [d]enial
9 of medical treatment, detention, and
10 provision of medical care;

11 B. Failure to adequately discipline or
12 retrain officers involved in misconduct;

13 C. Selection, retention, and assignation
14 of officers with demonstrable propensities
15 for excessive force, violence, dishonesty,
16 and other misconduct;

17 D. Condonation and encouragement of
18 officers in the belief that they can violate
19 the rights of persons such as Plaintiff with
20 impunity, and that such conduct will not
21 adversely affect their opportunities for
22 promotion and other employment benefits;

23 E. Failure to provide proper and
24 adequate medical care to inmates and
25 detainees;

26 F. Condoning, tolerating, ratifying
27 and/or encouraging it[sic] officers to treat
28 the inmates less than humane[ly], by refusing
them proper medical attention and allowing
them to justify their conduct by stating that
the Judge has to approve their getting the
requested medical treatment.

G. Retaining, assigning and selecting
officers and deputies with known propensities
for, dishonest and other misconduct and
failing to take adequate steps to discipline
such persons.

H. Permitting deputies and other law
enforcement personnel to make medical
decision regarding an inmate's health and
welfare without having adequate training in
the care and treatment o[f] inmates needing
medical treatment.

I. Failure to practice and enforce
proper reporting, investigation and
recordation of inmates[sic] request for

1 medical assistance;

2 J. Ratification by the highest levels of
3 authority of the specific unconstitutional
4 acts alleged in this complaint.

5 23. I[t] was and still is the policy and
6 practice of the Defendants to not transport
7 . . inmates to an outside medical facility
8 without an order from the Court.

9 24. It was and still is the policy of the
10 Defendants to only permit inmates to see
11 medical person[e]l that w[ere] employed by
12 the Placer County Jail while they were in
13 [c]ustody of the Defendant.

14 (FAC ¶¶ 23-24.)

15 These conclusory allegations lack "plausible facts
16 supporting . . . a policy or custom," AE ex rel. Hernandez, 666
17 F.3d at 637, and "lack[] . . . facts demonstrating that
18 [Plaintiff's alleged] constitutional deprivation was the result
19 of a custom or practice of the [County and the PCSD]." Dougherty
20 v. City of Covina, 654 F.3d 892, 900-01 (9th Cir. 2011).
21 Therefore, this portion of the dismissal motion is granted.

22 **b. Plaintiff's § 1983 Claims Against Sheriff Bonner**

23 **i. Official Capacity Suit Against Sheriff Bonner**

24 Sheriff Bonner seeks dismissal of Plaintiff's § 1983
25 official capacity claims against him, arguing that "it is
26 redundant to plead a claim against both the County of Placer and
27 Sheriff Bonner in his official capacity[, g]iven that the County
28 of Placer is a named defendant in the lawsuit" (Defs.'
Mot. 9:1-3.)

"When both a municipal officer and a local government
entity are named, and the officer is named only in an official
capacity, [and the allegations are insufficient to justify an

1 official capacity suit,] the court may dismiss the officer as a
2 redundant defendant." Ctr. for Bio-Ethical Reform, Inc. v. L.A.
3 Cnty. Sheriff Dep't, 533 F.3d 780, 799 (9th Cir. 2008).

4 Therefore, this portion of the dismissal motion is granted.

5 **ii Individual Capacity Suit Against Sheriff Bonner**

6 Sheriff Bonner seeks dismissal of Plaintiff's § 1983
7 individual capacity claim against him, arguing: "[P]laintiff
8 failed to state that [Sheriff Bonner] actually knew and
9 disregarded Plaintiff's serious medical need pursuant to
10 [Ashcroft v.] Iqbal." (Defs.' Mot. 10:14-16 (quoting Gibson v.
11 Heartly, 2012 U.S. Dist. LEXIS 178943 (E.D. Cal. Dec. 17, 2012).)

12 "[T]o establish individual liability under 42 U.S.C. §
13 1983, 'a plaintiff must plead that each Government-official
14 defendant, through the official's own individual actions, has
15 violated the Constitution.'" Hydrick v. Hunter, 669 F.3d 937, 942
16 (9th Cir. 2012) (quoting Iqbal, 129 S.Ct. at 1948.) "[T]here must
17 be a showing of personal participation in the alleged rights
18 deprivation: there is no respondeat superior liability under
19 section 1983." Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
20 2002).

21 Plaintiff alleges:

22 23. . . . Defendant Sheriff Bonner has
23 condoned an ongoing pattern of denial of
24 Inmate requests for medical assistance
25 committed by deputies assigned to the jails.
26 COUNTY and its officials, including Sheriff
27 Bonner, maintained or permitted one or more
28 of the following official policies, customs,
or practices

(FAC ¶ 23.) These "conclusory allegations and generalities [do
not contain] any allegation of the specific wrong-doing by

1 [Sheriff Bonner].” Hydrick, 669 F.3d at 942. Therefore, this
2 portion of the dismissal motion is granted.

3 **c. Conspiracy Claims**

4 Defendants also seek dismissal of Plaintiff’s
5 conspiracy claims, arguing: “[P]laintiff’s allegations of
6 conspiracy between [D]efendants to violate [P]laintiff’s rights
7 are mere conclusions with no factual allegations to support them”
8 and “will not support a claim for relief.” (Defs.’ Mot. 11:13-14,
9 11:20-21.)

10 Plaintiff alleges the following concerning conspiracy:

11 30. Defendant and each of them, acted
12 individually and in conspiracy with each
13 other to deprive Plaintiff of his federal
14 constitutional and/or statutory rights
15 and[/]or privilege[s] by failing and refusing
16 to provide Plaintiff with access to medical
17 care and the accommodations guaranteed him by
18 Federal and State law.

19

20 32. Defendants, and each of them, acted
21 individually and in conspiracy with each
22 other to deprive Plaintiff under color of
23 state law of his rights, as guaranteed [to]
24 him by the United States Constitution and
25 federal law, by committing the acts as more
26 fully set out above.

27

28 35. Defendants, and each of them, acted in
concert with each other pursuant to official
policies, plans and training of their
respective agencies, which is the County of
Placer. . . .

36. By reason of the acts of these
defendants, acting individually and in
conspiracy with each other, Plaintiff has
suffered . . . damages[.]

(FAC ¶¶ 30, 32, 35-36.)

1 These “conclusory allegations . . . [of] conspir[acy]
2 do not support a claim for [a] violation of . . . constitutional
3 rights” since they are devoid of sufficient facts to allege a
4 viable conspiracy claim. Woodrum v. Woodward Cnty., 866 F.2d
5 1121, 1126 (9th Cir. 1989). Therefore, this portion of the
6 dismissal motion is granted.³

7 **d. Plaintiff’s ADA and RA Claims**

8 Defendants seek dismissal of Plaintiff’s claims alleged
9 under the ADA and RA, contending Plaintiff “fail[ed] to allege”
10 an essential element of each claim; specifically, Defendants
11 argue Plaintiff failed to allege “that [he] was denied access to
12 [a] program because [of] his disability.” (Defs.’ Mot. 13:4-5.)

13 To state a Title II ADA claim, a plaintiff must allege:

- 14 (1) he is an individual with a disability;
15 (2) he is otherwise qualified to participate
16 in or receive the benefit of some public
17 entity’s services, programs, or activities;
18 (3) he was either excluded from participation
19 in or denied the benefits of the public
20 entity’s services, programs, or activities,
21 or was otherwise discriminated against by the
22 public entity; and (4) such exclusion, denial
23 of benefits, or discrimination was by reason
24 of [his] disability.

20 Simmons v. Navajo Cnty., 609 F.3d 1011, 1021 (9th Cir. 2010)
21 (emphasis added) (quoting McGary v. City of Portland, 386 F.3d
22 1259, 1265 (9th Cir. 2004) (alteration in original)).

23 “Similarly, to state a[n] [RA] claim[,] a plaintiff

25 ³ Defendants also seek dismissal of “[P]laintiff’s . . . [conspiracy] claim .
26 . . . alleged . . . in . . . [Count III of the FAC]”; however, Count III does not
27 contain conspiracy allegations. (Defs.’ Mot 11:22-25; see FAC ¶¶ 39-42.)
28 Therefore, this portion of the motion need not be reached. See Williams v. Bd.
of Parole Hearings, EDCV 08-00402-CBMMLG, 2008 WL 4809213, at *1 n.1 (C.D.
Cal. Nov. 3, 2008) (“Defendant misconstrues Plaintiffs’ complaint to include
an Eighth Amendment claim . . . and as such, the Court declines to address any
of Defendant’s arguments related to this claim.”)

1 must allege '(1) he is an individual with a disability; (2) he is
2 otherwise qualified to receive the benefit [of a program]; (3) he
3 was denied the benefits of the program solely by reason of his
4 disability; and (4) the program receives federal financial
5 assistance.'" O'Guinn v. Lovelock Correctional Ctr., 502 F.3d
6 1056, 1060 (9th Cir. 2007) (emphasis added) (quoting Duvall v.
7 Cnty. of Kitsap, 260 F.3d 1124, 1135 (9th Cir. 2001)).

8 Both the ADA and RA "prohibit[] discrimination because
9 of disability, not [because of] inadequate treatment for
10 disability." Simmons, 609 F.3d at 1022; see O'Guinn v. Nevada
11 Dep't of Corr., 468 F. App'x 651, 653 (9th Cir. 2012)
12 ("[Plaintiff] challenges the adequacy of his . . . health care, a
13 challenge that cannot be properly brought under the ADA and RA.")

14 Plaintiff alleges that he "has been denied and excluded
15 from the benefits of Defendants['] Program, which would provide
16 Plaintiff with access to medical care." (FAC ¶ 49.) Plaintiff
17 further alleges that he "has been denied and excluded from . . .
18 Defendants' Program, which would have provided Plaintiff, with
19 counseling, therapy and perhaps a prosthesis." (Id. ¶ 55.)
20 However, these allegations are insufficient to state viable ADA
21 and RA claims. Simmons, 609 F.3d at 1022.

22 Plaintiff also alleges:

23 50. . . . Defendant violated the ADA by
24 discriminating against Plaintiff . . . [b]y
25 reason of Plaintiff[']s disabilities; . . .
26 [and by] [d]enying Plaintiff the equal/same
27 opportunity to receive the benefit(s) of ADA
28 accommodations that are available to other
qualified individuals.

27 . . .

28 56. . . . Defendants violated the [RA] by

1 discriminating against Plaintiff . . . [b]y
2 reason of Plaintiffs disabilities, age and
3 need for medical services; [and by] . . .
4 [d]enying Plaintiff the equal/same
5 opportunity to receive the benefit(s) of
6 Defendants' programs/activities that are
7 available to other qualified individuals with
8 disabilities.

9 (FAC ¶¶ 50, 56.)

10 These conclusory allegations are insufficient to allege
11 plausible ADA and RA claims. See James v. Hubbard, 2:08-CV-01857-
12 RRC, 2010 WL 4901827, at *4 (E.D. Cal. Nov. 23, 2010) ("The
13 complaint's conclusory allegation that Plaintiff was denied
14 'meaningful access to services . . . and discriminated against'
15 is insufficient, absent factual support, to state a valid
16 claim.")

17 Therefore, this portion of the dismissal motion is
18 granted.

19 **e. California Disabled Persons Act Claim**

20 Defendants seek dismissal of Plaintiff's claim alleged
21 under the California Disabled Persons Act ("CDPA"), arguing this
22 law "does not address denial of access to services . . . ;
23 instead, it requires the elimination of physical impediments to
24 participation in community life." (Defs.' Mot. 15:20-21.)
25 Defendants further contend "Plaintiff has not pled a denial of
26 access to any programs based upon physical barriers of any sort
27 in his complaint." (Id. 16:5-7.)

28 The CDPA states in pertinent part: "[i]ndividuals with
disabilities or medical conditions have the same right as the
general public to the full and free use of the streets, highways,
sidewalks, walkways, public buildings, medical facilities, . . .

1 public facilities, and other public places." Cal. Civ. Code § 54.
2 The Act further states: "Individuals with disabilities shall be
3 entitled to full and equal access, as other members of the
4 general public, to accommodations, advantages, facilities,
5 medical facilities, . . . public accommodation, . . . and other
6 places to which the general public is invited" Cal. Civ.
7 Code § 54.1.

8 "The DPA is 'intended to secure to disabled persons the
9 same right as the general public to the full and free use of
10 facilities open to the public.' Its focus is upon physical access
11 to public places . . ." Turner v. Ass'n of Am. Med. Colleges, 167
12 Cal. App. 4th 1401, 1412 (2008) (quoting Urhausen v. Longs Drug
13 Stores California, Inc., 155 Cal. App. 4th 254, 261 (2007)).

14 Plaintiff alleges the following in his CDPA claim:

15 The failure of Defendants [sic] Placer County
16 Sheriff Department to provide Plaintiff with
17 the access to the appropriate medical care
18 and attention violates those provisions of
19 California law including, without limitation,
20 the following:

(a) The requirement of California Civil Code
Section 54 - 55.3 that the Defendants provide
reasonable accommodations to the plaintiff
because of his disability[.]

21 (FAC ¶ 44.) These allegations are insufficient to plausibly
22 allege that Plaintiff was denied "physical access to [a] public
23 place[]," as required to state a CDPA claim. Turner, 167 Cal.
24 App. 4th at 1412; see Lopez v. Cnty. of Tulare, CV-F-11-1547-LJO-
25 BAM, 2012 WL 33244, at * 10 (E.D. Cal. Jan. 6, 2012) (finding
26 allegations that county jail failed to house prisoner in cell
27 with suicide precaution insufficient to state a claim under the
28 CDPA). Therefore, this portion of the dismissal motion is

1 granted.

2 **f. Negligence and Negligent Infliction of Emotional Distress**
3 **Claims**

4 **i. Placer County and the PCSD**

5 Placer County and the PCSD⁴ seek dismissal of
6 Plaintiff's negligence claim and negligent infliction of
7 emotional distress claim, arguing under section 815 of the
8 California Government Code they cannot be held liable for these
9 claims. Section 815 provides in pertinent part: "Except as
10 otherwise provided by statute . . . A public entity is not liable
11 for an injury, whether such injury arises out of an act or
12 omission of the public entity or a public employee or any other
13 person." Cal. Gov't Code § 815(a). Under this statute,
14 "California public entities are not subject to common law tort
15 liability; all liability must be pursuant to statute." AE ex rel.
16 Hernandez, 666 F.3d at 638. Since "Plaintiff . . . has not
17 alleged a statutory basis for the negligence [and negligent
18 infliction of emotional distress] claim[s]," this portion of
19 Defendants' dismissal motion is granted. Howard v. City of
20 Vallejo, CIV. S-13-1439 LKK, 2013 WL 6070494, at *6 (E.D. Cal.
21 Nov. 13, 2013).

22 **ii. Sheriff Bonner**

23 Defendant Sherriff Bonner seeks dismissal of
24 Plaintiff's negligence and negligent infliction of emotional
25 distress claims, arguing that "[he] cannot be liable under
26 [section 820.8 of the Government Code] for the acts of his

27 ⁴ Defendants' argument is construed as an argument seeking dismissal of
28 Plaintiff's claims against both Placer County and the PCSD since Defendants
argue that Placer County and the PCSD are the same entity.

1 employees" since "[t]here are no allegations in the
2 complaint suggesting that [he] was directly involved in [the]
3 allegedly negligent denial of plaintiff's requests for medical
4 care." (Id. 16:19-20, 16:21-23; see also Defs.' Mot. 17:8-9.)

5 Section 820.8 of the Government Code prescribes:
6 "Except as otherwise provided by statute, a public employee is
7 not liable for an injury caused by the act or omission of another
8 person. Nothing in this section exonerates a public employee from
9 liability for injury proximately caused by his own negligent or
10 wrongful act or omission." Cal. Gov't Code § 820.8.

11 Plaintiff's conclusory allegations concerning Sheriff
12 Bonner's practices and policies are insufficient to support
13 drawing a reasonable inference that Sheriff Bonner proximately
14 caused Plaintiff's alleged injury. Fayer, 649 at 1064
15 ("[C]onclusory allegations of law and unwarranted inferences are
16 insufficient to defeat a motion to dismiss."). Therefore, this
17 portion of Defendant's dismissal motion is granted. See Herrera
18 v. City of Sacramento, 2:13-CV-00456 JAM-AC, 2013 WL 3992497, at
19 *3 (E.D. Cal. Aug. 2, 2013) (dismissing claims against supervisor
20 where Plaintiff "fail[ed] to allege [supervisor] personally
21 participated in the conduct giving rise to the allegations in the
22 complaint.")

23 IV. CONCLUSION

24 For the stated reasons, the dismissal motion is
25 granted. Plaintiff is granted ten (10) days from the date on
26 which this order is filed to file an amended complaint addressing
27 the deficiencies in any dismissed claim. Plaintiff is notified
28 that a dismissal order with prejudice could be entered under Rule

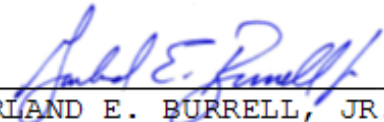
1 41(b) if Plaintiff fails to amend a dismissed claim in the
2 referenced second amended complaint.

3 Dated: February 18, 2014

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GARLAND E. BURRELL, JR.
Senior United States District Judge

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