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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREA JARREAU-GRIFFIN, et al.,

Plaintiffs,

v.

CITY OF VALLEJO, et al.,

Defendants.

No. 2:12-cv-2979-KJM-KJN

ORDER

This matter is before the court on defendants' motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). ECF No. 56. Also before the court are defendants' and plaintiff's requests for judicial notice. ECF Nos. 57, 66. Plaintiff¹ opposes and defendants have replied. ECF Nos. 65, 67. This matter is decided on the papers. For the following reasons, defendants' motion is denied.

I. REQUESTS FOR JUDICIAL NOTICE

Defendants request judicial notice of seven documents related to the City of Vallejo's (City's) bankruptcy: (1) the City's Voluntary Chapter 9 Petition, filed May 23, 2008; (2) the Order Fixing Bar Date for Claims Other Than Those Based on Retiree Health or Pension Benefits; (3) the Second Amended Plan for the Adjustment of Debts of City of Vallejo,

¹ As in the court's previous order (ECF No. 49), the court refers to Jarreau-Griffin as the only plaintiff but acknowledges she acts on behalf of herself and the estate.

1 California, as Modified August 2, 2011; (4) the Order Confirming City of Vallejo's Second
2 Amended Plan for the Adjustment of Debts of City of Vallejo, California, as Modified August 2,
3 2011; (5) the Notice of November 1, 2011 Effective Date; (6) the July 28, 2008 Stipulation and
4 Proposed Order to Stay Entire Action Pursuant to 11 U.S.C. Section 362 in the matter entitled
5 *Deocampo v. City of Vallejo*, No. 2:06-cv-1283-WBS (E.D. Cal.), executed by John Burris; and
6 (7) the Claims Register for *In re City of Vallejo, California*, Case No. 08-26813, in the
7 Bankruptcy Court for the Eastern District of California. Defs.' RJN, ECF No. 57. Plaintiff
8 opposes, conceding the documents are noticeable, but not for the truth of the matters asserted in
9 the documents. Opp'n at 3.

10 Plaintiff requests judicial notice of a pleading filed by the City in its bankruptcy
11 proceedings on May 23, 2008. ECF No. 66-1.

12 Each document covered by a party's request is a court document, and a matter of
13 public record subject to ready determination of its accuracy. *Reyn's Pasta Bella, LLC, v. Visa*
14 *USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). Accordingly, the request for judicial notice of
15 each document is GRANTED, with recognition of the limitation that the judicially noticed fact in
16 each instance is the existence of a document, not the truth of the matters asserted in the
17 documents. *Rowland v. Paris Las Vegas*, No. 3:13-CV-02630, 2014 WL 769393, at *3 (S.D. Cal.
18 Feb. 25, 2014).

19 II. PROCEDURAL BACKGROUND

20 On December 10, 2012, plaintiff Andrea Jarreau-Griffin filed a complaint against
21 the City and City police officer Kent Tribble. Compl., ECF No. 1. Plaintiff filed the operative
22 first amended complaint on June 25, 2013. ECF No. 15 (FAC). The complaint alleges violations
23 of the Fourth and Fourteenth amendments under 42 U.S.C. § 1983 against defendant Tribble and
24 municipal liability under *Monell* against the City. The claims arose on December 11, 2010,
25 during the pendency of the City's bankruptcy petition, filed on May 23, 2008. Req. for Judicial
26 Notice ("RJN"), Ex. 1, ECF No. 39-1. Despite receiving and filing plaintiff's claim for damages,
27 there is no evidence and the City does not argue it notified plaintiff of the bankruptcy
28 proceedings, and plaintiff never filed a proof of claim. Plaintiffs' RJN, Ex. 1; Defs.' RJN Ex. 6.

1 Defendants filed a motion to dismiss the first amended complaint on July 9, 2013,
2 ECF No. 16, and filed a motion for judgment on the pleadings on September 23, 2013, ECF No.
3 23. On November 6, 2013, the court denied without prejudice defendants' motion for judgment
4 on the pleadings, ECF No. 30. On December 9, 2013, the court granted in part defendants'
5 motion to dismiss, dismissing without leave to amend the third claim to the extent it was
6 premised on the Fourteenth Amendment; the fourth claim to the extent it is premised on the
7 Fourth Amendment; and plaintiffs' claims for punitive damages. ECF No. 32. The court
8 dismissed the fifth claim with leave to amend. *Id.*

9 On February 10, 2014, defendants filed a second motion for judgment on the
10 pleadings, which the court denied without prejudice on April 15, 2014. ECF Nos. 38, 48, 49.
11 Defendants filed the instant third motion for judgment on the pleadings on December 23, 2014.
12 ECF No. 56. Plaintiff filed her opposition and request for judicial notice on February 27, 2015.
13 ECF Nos. 65, 66. Defendants filed a reply on March 6, 2015. ECF No. 67.

14 III. ALLEGATIONS OF THE COMPLAINT

15 Plaintiff is Andrea Jarreau-Griffin, mother of decedent Guy J. Jarreau, Jr., who
16 sues on behalf of herself and the decedent's estate. FAC at 1. When filing the claim-for-damages
17 form with the City, plaintiff was represented by John Burris.² This litigation was initiated by
18 current counsel, Corey Evans. Defendant Tribble, employed by defendant City as a peace officer,
19 shot and killed Jarreau, Jr. at approximately 3:00 p.m. on December 11, 2010. FAC ¶ 7. Jarreau,
20 Jr., a "community activist, mentor, and student at Napa Valley Community College" was assisting
21 with the filming of "an anti-violence music video." *Id.* ¶ 9. Officers arrived at the scene, and
22 ordered the film crew to disperse. *Id.* ¶ 10. As Jarreau, Jr. and the film crew dispersed, more
23 officers arrived, commanding the film crew to get on the ground. *Id.* ¶ 11. Jarreau, Jr., a short
24 distance away, walked in the direction of the alley. *Id.* ¶ 11. Officer Tribble, in plainclothes,
25 gave no warning and shot Jarreau, Jr. while his hands were in the air, holding only a green cup.
26 *Id.*

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28 ² The court took judicial notice of this fact in its previous order, ECF No. 49 at 4.

1 After waiting an “unreasonably long” time before calling for medical assistance,
2 defendant Tribble and other City officers directed the ambulance to take Jarreau, Jr. to John Muir
3 Medical Center, which was “unreasonably far,” especially because other emergency medical
4 facilities were closer in proximity. *Id.* ¶ 16.

5 The City has and had a duty of care to hire, train, supervise and discipline peace
6 officers to avoid such harm and to provide emergency medical care to individuals. *Id.* ¶¶ 18–19.
7 This failure to train is “a factual and proximate cause of Mr. Jarreau’s death and plaintiffs’
8 damages.” *Id.* ¶ 19.

9 IV. TIMELINE OF BANKRUPTCY PROCEEDINGS

10 The City filed for bankruptcy on May 23, 2008. Ex. 1, RJN. Shortly thereafter, in
11 July 2008, plaintiff’s former attorney John Burris, who also was counsel in the separate case of
12 *Deocampo v. City of Vallejo, supra*, executed a stipulation to stay the action due to the
13 bankruptcy filing. Ex. 6, RJN. Under the terms of the Bankruptcy Order, the bar date for filing
14 any existing claims against the City was August 16, 2010. Ex. 2, RJN. The shooting giving rise
15 to the instant claims took place on December 11, 2010, and plaintiff, through attorney Burris,
16 submitted a claim under the Government Tort Claims Act on May 17, 2011. Ex. A, Faruqui Decl.
17 The bankruptcy court confirmed the City’s plan for adjustment of debts on August 4, 2011, Ex. 4,
18 Defs.’ RJN, and provided that upon the plan’s Effective Date of November 1, 2011, the City
19 would be discharged from all of its debts other than those excepted by the plan or statute. Exs. 3,
20 5, Defs.’ RJN. Although the shooting took place after the Bankruptcy Order’s bar date of August
21 16, 2010, the plan’s November 1, 2011 Effective Date bars any claims seeking monetary relief for
22 incidents occurring prior to the Effective Date not filed within 30 days. Ex. 5 at 2, Defs.’ RJN.
23 Plaintiff filed the instant action in this court on December 10, 2012.

24 V. LEGAL STANDARD

25 A motion for judgment on the pleadings under Federal Rule of Civil Procedure
26 12(c) is “functionally identical” to a motion to dismiss under Rule 12(b)(6). *Dworkin v. Hustler*
27 *Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). It is properly granted where “the moving
28 party clearly establishes on the face of the pleadings that no material issue of fact remains to be

1 resolved and that it is entitled to judgment as a matter of law.” *George v. Pacific-C.S.C. Work*
2 *Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996). In considering both motions to dismiss and for
3 judgment on the pleadings, the court’s inquiry focuses on the interplay between the factual
4 allegations of the complaint and the dispositive issues of law in the action. See *Hishon v. King &*
5 *Spalding*, 467 U.S. 69, 73 (1984). Courts “must presume all factual allegations of the complaint
6 to be true and draw all reasonable inferences in favor of the nonmoving party,” *Usher v. City of*
7 *L.A.*, 828 F.2d 556, 561 (9th Cir. 1987). This rule does not, however, apply to “a legal conclusion
8 couched as a factual allegation,” *Papasan v. Allain*, 478 U.S. 265, 286 (1986), *quoted in Bell Atl.*
9 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007), or to “allegations that contradict matters properly
10 subject to judicial notice,” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

11 While generally, “matters outside the pleadings are presented to and not excluded
12 by the court, the motion must be treated as one for summary judgment under Rule 56,” Fed. R.
13 Civ. P. 12(d), the court “may consider certain materials without converting the motion for
14 judgment on the pleadings into a motion for summary judgment. Such materials include . . .
15 matters of judicial notice.” *Tumlinson Group, Inc. v. Johannessen*, No. 2:09-cv-1089, 2010 WL
16 4366284, at *3 (E.D. Cal. Oct. 27, 2010) (citations omitted); *see also Lee v. City of L.A.*, 250 F.3d
17 668, 688–89 (9th Cir. 2001) (holding court may properly take judicial notice of “matters of public
18 record” without converting to summary judgment motion).

19 VI. DISCUSSION

20 As this court found in its previous order, “[u]nless an exception applies, the City’s
21 debt to Jarreau’s estate and heirs was discharged upon confirmation [August 4, 2011].” Order,
22 ECF No. 49 at 5. The court denied the motion because, “on the instant record, the court is unable
23 to find as a matter of law that plaintiff had either notice or actual knowledge of the City’s
24 bankruptcy proceedings.” *Id.* at 6. In order to overcome the inferences drawn in favor of the
25 nonmoving party at this stage, “defendants must show beyond ‘reasonable dispute,’ on the basis
26 of “sources whose accuracy cannot reasonably be questioned,” Fed. R. Evid. 201(b), that Burris’s
27 professional involvement in the bankruptcy began in July 2008, such that he had notice of the
28 bankruptcy when he filed plaintiff’s claim with the City in 2011, *In re Perle*, 725 F.3d 1023, 1025

1 (9th Cir. 2013) (noting, for notice or knowledge of bankruptcy to be imputed to other client, an
2 individual lawyer must represent a party in bankruptcy proceedings while simultaneously
3 representing client in other case). Because the burden is on the debtor to show notice to the
4 creditor, *In re Maya Const. Co.*, 78 F.3d 1395, 1399 (9th Cir. 1996), it is defendant's burden to
5 show that, as a matter of law, plaintiff had actual or imputed notice of the City's bankruptcy. As
6 noted above, given the posture of this case, the court draws all inferences in favor of the
7 nonmoving party.

8 Defendants argue, as they did in their previous motion, that plaintiff's former
9 counsel had personal notice of the City's bankruptcy at the time he submitted plaintiff's
10 government tort claim, and that knowledge is imputed to plaintiff. Therefore plaintiff is assumed
11 to have had notice of the bankruptcy case, as well as the impending discharge of her claims, at
12 least as of 2011 when Burris was assisting with her Government Tort Claims Act claim.
13 Defendants cite *In re Price*, 871 F.2d at 99. In *Price*, knowledge was imputed to the plaintiff
14 because plaintiff's counsel was given actual notice of the bankruptcy proceedings in time to file a
15 complaint, or at least to file a timely motion for an extension of time. At the time of his
16 representation of the plaintiff in that case, the lawyer was pursuing the same claim plaintiff
17 sought to have declared nondischargeable in state court. The Ninth Circuit held that "under these
18 circumstances notice to counsel constituted notice to [the plaintiff]." *Id.* at 99. This case,
19 however, concerns actual notice made during the representation of a different client in a different
20 matter, three years prior to his representation of this plaintiff. The Ninth Circuit has expressly
21 rejected the notion that notice of bankruptcy in the representation of one client is imputed to
22 plaintiffs in a different matter. *In re Perle*, 725 F.3d at 1028 ("Because [counsel] . . . learned of
23 the bankruptcy filing only in the course of representing a different client, we are unwilling to
24 impute the notice or actual knowledge of [defendant's] bankruptcy filing that he had to [client]").
25 The Ninth Circuit precedent takes account of the practical burden it would place on counsel to
26 have his knowledge imputed to another client in an unrelated matter and in a different context:
27 "[A]n attorney given notice of the bankruptcy on behalf of a particular client is not called upon to
28 review all of his or her files to ascertain whether any other clients may also have a claim against

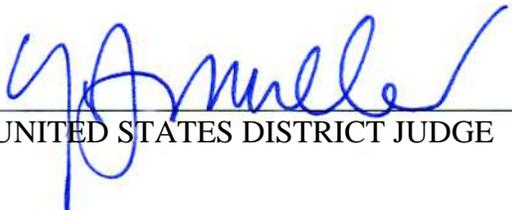
1 the debtor.” *Id.* Here, Burris no longer represents plaintiff and has not represented her in this
2 civil action; he only assisted her in filing a damages form with the City of Vallejo to exhaust the
3 California Tort Claims Act’s jurisdictional requirement. Ex. A, ECF No. 40-1. Burris, in a sworn
4 declaration, states he never told plaintiff about the bankruptcy, which is consistent with plaintiff’s
5 assertion she was unaware of the bankruptcy until April 2013. Burris Decl. at 1, ECF No. 65-2.
6 Although counsel in *Perle* was notified of the bankruptcy after representing the client to whom
7 the Ninth Circuit declined to impute knowledge, the defendants do not address, let alone attempt
8 to distinguish *Perle* from the present case; they do not meet their burden to show that, as a matter
9 of law, plaintiff’s claim is dischargeable.

10 VII. CONCLUSION

11 For the foregoing reasons, defendants’ motion is DENIED. This order resolves
12 ECF No. 56.

13 IT IS SO ORDERED.

14 DATED: May 15, 2015.

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17 UNITED STATES DISTRICT JUDGE
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