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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STACEY VICTORIA HARTNETT,

Plaintiff,

v.

COUNTY OF PLACER, a public
entity; PLACER COUNTY
DEPARTMENT OF HEALTH AND
HUMAN SERVICES (CSOC), a
public entity; PLACER COUNTY
COURT APPOINTED SPECIAL
ADVOCATES (CASA), a public
entity; RICHARD J. BURTON,
M.D., M.P.H., director as an
individual and-in official
capacity; KEVIN HENDERSON, as
an individual and-in official
capacity; DIANA RYAN, program
supervisor, as an individual
and-in official capacity; H.
PAUL SANDERS, as an
individual and-in official
capacity; APRIL CAREW, as an
individual, and-in official
capacity; KATHY TANNER, as an
individual, and-in official
capacity; KAREN SCHLANGER, as
an individual and-in official
capacity; TOM LIND, as an
individual and-in official
capacity; ROMNEY LYNN, as an
individual and-in official
capacity; DON KLEINDER, casa
director, as an individual
and-in official capacity;
TAMARA LARSON, CASA worker as
an individual and-in official
capacity; CHRISTINE TAYLOR

No. 2:13-cv-1636-GEB-KJN

**ORDER GRANTING EACH DEFENDANT'S
MOTION TO DISMISS PLAINTIFF'S
FEDERAL CLAIMS AND DECLINING TO
EXERCISE SUPPLEMENTAL
JURISDICTION OVER PLAINTIFF'S
STATE LAW CLAIMS UNDER 28
U.S.C. § 1367**

1 BROWN, as an individual and
2 DOES 1 through 25 inclusive,
3 Defendants.

4 The following Defendants seek dismissal of the claims
5 alleged in Plaintiff's Third Amended Complaint ("TAC"): Richard
6 Burton, Kevin Henderson, Diana Ryan, H. Paul Sanders, April
7 Carew, Kathy Tanner, Karen Schlanger, Tom Lind, Candyce Skinner,
8 Romney Lynn, , Placer County Department of Health and Human
9 Service ("CSOC"), the County of Placer ("the County")
10 (collectively "the County Defendants"), Child Advocates of Placer
11 County,¹ Tamara Larson, and Don Kleinder. Each Defendant seeks
12 dismissal with prejudice.

13 Plaintiff's TAC concerns allegations that each
14 Defendant deprived her of custody of her child during a child
15 custody dispute with her ex-spouse, Hartnett.

16 I. LEGAL STANDARD

17 "To survive a motion to dismiss, a complaint must
18 contain sufficient factual matter, accepted as true, to state a
19 claim to relief that is plausible on its face." Caviness v.
20 Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir.
21 2010) (citing Ashcroft v. Iqbal, 556 U.S. 662 (2009)). "A claim
22 has facial plausibility when the plaintiff pleads factual content
23 that allows the court to draw the reasonable inference that the
24 defendant is liable for the misconduct alleged." Iqbal, 556 U.S.
25 at 1949 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556
26

27 ¹ Since Child Advocates of Placer County argues it was erroneously sued as
28 "Placer County Court Appointed Special Advocates (CASA)," it is referred to
herein as Child Advocates of Placer County.

1 (2007)). "For purposes of a motion to dismiss, we accept all
2 well-pleaded allegations of material fact as true and construe
3 them in the light most favorable to the nonmoving party."
4 Sateriale v. R.J. Reynolds Tobacco Co., 697 F.3d 777, 783 (9th
5 Cir. 2012). However, "we do not accept legal conclusions in the
6 complaint as true, even if cast in the form of factual
7 allegations." Lacano Inv., LLC v. Balash, 765 F.3d 1068, 1071
8 (9th Cir. 2011) (internal quotation marks omitted).

9 **II. FACTUAL ALLEGATIONS**

10 The TAC contains the following allegations that relate
11 to the motion. Plaintiff and Hartnett had shared custody of their
12 child, A.H., prior to their divorce. (TAC ¶ 33.) However,
13 Plaintiff lost custody in 2010 as a result of a "Juvenile Court"
14 removal order, which was overturned in 2012 by the California
15 Third District Court of Appeal. (Id. ¶¶ 43, 45.) "The Juvenile
16 Court officially removed A.H. from [Plaintiff's custody] . . . on
17 August 16, 2010 . . . [and] awarded full legal and physical
18 custody . . . to Hartnett on June 1, 2011, when the . . . case
19 was terminated." (TAC ¶ 43.) Plaintiff "appealed the Juvenile
20 Court's . . . decision," which the Third District Court of
21 Appeals "reversed on August 8, 2012, . . . [in an order holding
22 that] Placer County Children's Systems of Care (CSOC) was not
23 legally justified in taking [her] . . . child." (TAC ¶¶ 45, 29.)

24 Plaintiff alleges each Defendant made one or more
25 negligent and intentional misrepresentations about her mental
26 health during the Juvenile Court proceedings and that the
27 Juvenile Court relied on these misrepresentations when it
28 rendered its wrongful decision to award sole custody of A.H. to

1 Hartnett. Specifically, Plaintiff alleges she has been diagnosed
2 with attention deficit hyperactivity disorder ("ADHD") and that
3 this diagnosis is included in psychological evaluations performed
4 during the custody proceedings; however these evaluations also
5 contain "false information" from Hartnett that Plaintiff "was
6 seriously mentally ill, [and was] bi-polar," and that Defendants
7 "fixated on [these] . . . unfounded allegations," and
8 "intentionally repeated" them in reports submitted to the state
9 court and in testimony given during the custody proceedings,
10 without mentioning Plaintiff's ADHD diagnosis. (TAC ¶¶ 4, 36-38,
11 40-41, 100, 127, 157, 173.) Plaintiff alleges the Juvenile Court
12 used each Defendant's "fraudulent misrepresentations, falsified
13 evidence and omission of exculpatory evidence" to take away
14 Plaintiff's child custody rights. (TAC ¶¶ 28, 56, 163, 173.)

15 Plaintiff alleges the district court has subject-matter
16 jurisdiction over her federal claims under 28 U.S.C. §§
17 1343(a)(3)-(4), 1331(a), and supplemental jurisdiction over her
18 state law claims under 28 U.S.C. § 1367. (TAC ¶ 2.)

19 **III. DISCUSSION**

20 **A. Familial Association and Free Exercise Claims**

21 Defendants argue Plaintiff's claim, in which she
22 alleges she was deprived of her First Amendment right to familial
23 association with her child, is barred by the applicable two year
24 statute of limitations. The County, Schlanger, Lynn, Burton,
25 Henderson and Ryan also argue that Plaintiff's First Amendment
26 right to the free exercise of her religion claim is barred by
27 this same limitations period.

28 "State law determines the statute of limitations for

1 [claims] brought under 42 U.S.C. § 1983." Usher v. City of Los
2 Angeles, 828 F.2d 556, 558 (9th Cir. 1987). "The applicable
3 statute of limitations for actions brought pursuant to 42 U.S.C.
4 § 1983 is the forum state's statute of limitations for personal
5 injury actions." Carpinteria Valley Farms, Ltd. v. Cnty. of Santa
6 Barbara, 344 F.3d 822, 828 (9th Cir. 2003). "[T]he applicable
7 statute of limitations under California law is two years" since
8 California's statute of limitations for personal injury actions
9 is two years. Jackson v. Barnes, 749 F.3d 755, 761 (9th Cir.
10 2014) (citing Cal. Code Civ. Proc. § 335.1).

11 **1. Familial Association**

12 Defendants argue Plaintiff's familial association
13 claims accrued no later than when Plaintiff lost custody of her
14 daughter, "which occurred on either August 16, 2010 [when
15 Plaintiff alleges the Defendants acted to take A.H. from her] or
16 in any case no later than June 1, 2011" when Plaintiff alleges
17 the Juvenile Court awarded Hartnett custody. (Mem. P&A Supp. Mot.
18 Dismiss ("County Mot.") 4:25-27, ECF No. 34-1.)

19 Plaintiff argues her familial association claims did
20 not accrue until August 8, 2012 when the "Third District Court of
21 Appeals [decision] revealed. . . that CSOC did not have the right
22 to remove [Plaintiff's] child from her custody." (Opp'n 15:22-23,
23 ECF No. 36.)

24 Plaintiff alleges in the TAC that each Defendant
25 violated her right to familial association when "on August 16,
26 2010, [each Defendant] acted, or knew and agreed and conspired,
27 to continue to unlawfully seize . . . or remove A.H. from
28 [Plaintiff] . . . and [when] on November 10, 2010, instead of

1 dismissing all charges and returning the child to [Plaintiff],
2 defendants' acted, or knew and agreed and conspired, to continue
3 to unlawfully seize... or remove A.H. from her mother." (TAC ¶
4 182.)

5 "Although California law determines the length of the
6 [statute of] limitations period, federal law determines when a
7 civil rights claim accrues. Accrual is the date on which the
8 statute of limitations begins to run; under federal law, a claim
9 accrues when the plaintiff knows of or has reason to know of the
10 injury which is the basis of the action." Lukovsky v. City and
11 Cnty. of S.F., 535 F.3d 1044, 1048 (9th Cir. 2008) (internal
12 quotation marks, citations, and emphasis omitted).

13 "The basis of [Plaintiff's] lawsuit is the unlawful
14 removal of her child[] . . . [which she alleges occurred no later
15 than November 10, 2010]." Kovacic v. Cuyahoga Cnty. Dep't of
16 Children & Family Servs., 606 F.3d 301, 307 (6th Cir. 2010).
17 Plaintiff's contention that her claims were "held . . . in
18 abeyance pending final resolution of the state custody case [is
19 not supported by federal tolling law and does not provide a basis
20 for] toll[ing] or otherwise chang[ing] the date of the accrual of
21 her claim[]." Id. "Once a plaintiff knows that harm has been done
22 to [her, she] . . . must determine within the period of
23 limitations whether to sue or not, which is precisely the
24 judgment that other tort claimants must make." Lukovsky, 535 F.3d
25 at 1050. Therefore, Plaintiff's alleged harm occurred no later
26 than November 10, 2010 when Plaintiff alleges A.H. "continued to
27 be removed from [her] care and custody," as a result of the
28 Juvenile Court order. (TAC ¶ 83.)

1 Plaintiff's action was "commenced in federal district
2 court for purposes of the statute of limitations when the
3 complaint [was] filed." Sain v. City of Bend, 309 F.3d 1134, 1128
4 (9th Cir. 2002). Plaintiff filed her initial complaint on August
5 8, 2013; since her familial association claims were commenced
6 "well outside the two-year limitations period . . . [the]
7 claim[s] . . . [are] untimely" and therefore dismissed with
8 prejudice. Kovacic, 606 F.3d at 308.

9 **2. Free Exercise Claim**

10 The County, Schlanger, Lynn, Burton, Henderson and Ryan
11 argue Plaintiff's free exercise claim also accrued more than two
12 years before she filed her complaint. Plaintiff did not respond
13 to this argument in her opposition brief.

14 Plaintiff alleges:

15 Karen Schlanger told Plaintiff that A.H.
16 could not attend catechism thus restricting
17 plaintiff's rights to exercise her free
18 choice of religion. During a supervised visit
19 at the Catholic Church in Tahoe, Plaintiff
20 and A.H., were walking up to the alter to
21 light candles and pray. Romney Lynn followed
them to the alter, interfered with them
lighting candles, prevented them from
praying, interfered with and prevented mother
and daughter from exercising their rights to
religious expression.

22 (TAC ¶ 227.) The TAC does not state the date on which this
23 alleged free exercise violation occurred, but does allege that
24 Schlanger was the social worker assigned to Plaintiff from
25 "January 2002 to on or about August 30, 2010," at which point
26 Schlanger was replaced. (TAC ¶ 12.) Even assuming the alleged
27 violative conduct occurred on the last day that Plaintiff alleges
28 Schlanger was assigned as "the case worker in this case," the

1 conduct underlying her claim occurred more than two years before
2 she filed her initial complaint. Further, Plaintiff's counsel
3 stated at the January 20, 2015 hearing on the motions that the
4 conduct underling this claim occurred outside the statute of
5 limitations period. See Johnson v. America Online, Inc., No. C-
6 01-21083-RMW, 2002 WL 1268397, at *2 n.1 ("[C]ounsel is competent
7 to make representations to the court which are binding upon his
8 clients."); Laird v. Air Carrier Engine Serv., Inc., 263 F.2d
9 948, 953 (5th Cir. 1959) ("Lawyers can and frequently do make
10 statements which, had the client made them, would be admissible
11 as admissions."). Therefore, Plaintiff's free exercise claim is
12 dismissed with prejudice.

13 **B. Plaintiff's Second Claim Titled Violation of the ADA**

14 Defendants seek dismissal of what Plaintiff states in
15 the title of her second claim is a claim alleged under section
16 12182 of the A[mericans] with Disabilities Act ("ADA"). However,
17 the text of this claim reveals it is alleged under the California
18 Unruh Act, which is prescribed in Civil Code § 51 et. seq.; this
19 is also evinced by the following damages Plaintiff seeks in this
20 claim:

21 [Plaintiff is] entitled to recover statutory
22 damages of 3 times the minimum actual damages
23 of \$46,000 or at least \$138,000 plus past
24 attorney fees in a total amount yet to be
25 determined plus current attorney's fees, as
26 provided in California Civil Code Section 52.
Plaintiff reserves the right to amend the
claimed amount to include additional costs
and expenses that have and are accruing but
not yet calculated.

27 (TAC Prayer for Relief, ¶ 2) (emphasis added). Although it is
28 unclear why Plaintiff titles this claim a federal ADA claim,

1 California's Unruh Act prescribes that section 12812 of the
2 federal ADA can be used to state an Unruh Act claim as follows:
3 "A violation of the right of any individual under the federal
4 Americans with Disabilities Act of 1990 . . . also constitute[s]
5 a violation" of the Unruh Act. Cal. Civ. Code § 51(f). However,
6 this incorporation of the federal ADA concerns pleading a
7 California state law claim under the Unruh Act, not a federal ADA
8 claim.² Therefore, there is no federal ADA claim pled in the TAC,
9 and thus, no surviving federal claims for the purpose of subject-
10 matter jurisdiction.

11 C. State Claims

12 County Defendants argue the Court should decline to
13 exercise supplemental jurisdiction over Plaintiff's state claims
14 since the TAC does not contain a viable federal claim. (County
15 Mot. 13:2-7.) Each claim in Plaintiff's TAC over which the
16 district court had original jurisdiction had been dismissed. The
17 TAC contains the following state claims: falsification of court
18 records; intentional infliction of emotional distress; negligent
19 infliction of emotional distress; abuse of process; failure to
20 discharge a mandatory duty; negligent supervision; falsely
21 accusing Plaintiff of a criminal act; placing false information
22 in a government file; negligence; and discrimination under the
23 California Civil Code section 51(f).

24 A district court may assess whether it should continue
25

26 ² Plaintiff stated through counsel during the January 20, 2015
27 hearing on the motions that she would request leave to amend the TAC "if it
28 means keeping [her] case alive." This conditional request is not considered a
motion to amend the TAC to add a federal ADA claim since, as explained below,
Plaintiff's "case [is still] alive" because Plaintiff's state claims will be
dismissed without prejudice.

1 exercising supplemental jurisdiction "at every stage of . . .
2 litigation," City of Chicago v. Int'l Coll. of Surgeons, 522 U.S.
3 156, 173 (1997), and may decline exercising supplemental
4 jurisdiction over a state claim based on "considerations of
5 judicial economy, convenience and fairness to litigants." United
6 Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966)). Further,
7 "[n]eedless decisions of state law should be avoided both as a
8 matter of comity and to promote justice between the parties, by
9 procuring for them a surer-footed reading of applicable law." Id.

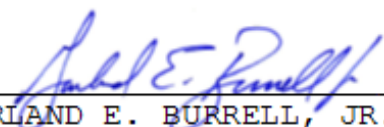
10 The Gibbs factors weigh in favor of declining the
11 exercise of supplemental jurisdiction over Plaintiff's remaining
12 state claims. Therefore, Plaintiff's state claims are dismissed
13 without prejudice under section 1367(c)(3).

14 IV. CONCLUSION

15 For the stated reasons, Plaintiff's federal claims are
16 dismissed with prejudice and her state law claims are dismissed
17 without prejudice under 28 U.S.C. § 1367(c)(3).

18 Judgment shall be entered in favor of Defendants on
19 Plaintiff's federal claims, and this action shall be closed.

20 Dated: May 27, 2015

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23 _____
24 GARIAND E. BURRELL, JR.
25 Senior United States District Judge
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