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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHANA McCLOUD, an individual,
Plaintiff,

v.

JOSEPH A. FARROW,
individually and in his
official capacity as
California Highway Patrol
Commissioner; and DOES 1-50,
inclusive; individually,
Defendants.

No. CIV. S-13-2404 LKK/KJN

ORDER

I. BACKGROUND¹

Plaintiff Shana McCloud was a passenger in a car being driven by Jose Orosco (not a party). When a California Highway Patrol officer (as yet unidentified), tried to pull the car over, Orosco sped away, initiating a car chase that was apparently joined by at least one other unidentified officer. After Orosco crashed into a fence, the officers opened fire (they say Orosco tried to run them over), killing Orosco. While shooting Orosco,

¹ For purposes of this dismissal motion, the court takes the allegations of the Complaint as true.

1 the officers also shot plaintiff, with one bullet piercing her
2 lung. Plaintiff immediately surrendered, and asked for medical
3 attention, but the officers did not immediately call for medical
4 attention, and instead put her in handcuffs. "Several minutes
5 later," she was transported to the hospital.

6 Plaintiff asserts a Section 1983 supervisory claim against
7 John A. Farrow, the Commissioner of the California Highway
8 Patrol, for violation of her Fourth Amendment and Due Process
9 rights. Farrow is alleged to be a California state official, and
10 is sued "individually and in his official capacity." The
11 Complaint alleges that Farrow knew, or reasonably should have
12 known, of repeated acts of misconduct by the officers who shot
13 plaintiff and that he ratified and condoned their conduct.
14 Further, as a result of Farrow's deliberate indifference to the
15 behavior of those officers, and his failure to train them
16 properly, the officers shot plaintiff in violation of her
17 constitutional rights.

18 Defendant moves to dismiss, asserting that the Complaint
19 makes "mere conclusory allegations" that "merely sets forth the
20 elements of a 1983 claim without any specific reference to
21 anything that Commissioner Farrow did or failed to do." Motion
22 To Dismiss (ECF No. 4) at 4. Accordingly, Farrow says, "there is
23 nothing for Commissioner Farrow to admit or deny." Id., at 4.

24 **II. ANALYSIS**

25 It is clear that a principal difficulty facing plaintiff at
26 the time she filed the Complaint was that she did not know the
27 identities of the CHP officers involved. At oral argument on the
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1 motion, the parties agreed that plaintiff now knows the names of
2 those officers. Plaintiff is now in a position to amend the
3 Complaint to name those officers, and possibly, to dismiss
4 Commissioner Farrow, if such a voluntary dismissal is
5 appropriate.

6 **CONCLUSION**


7 Accordingly, the court orders as follows:

8 1. The Complaint is hereby **DISMISSED** with leave to
9 amend within 30 days of the date of this order;² and

10 2. Defendant's motion to dismiss (ECF No. 4), is
11 **DENIED** as moot.³

12 IT IS SO ORDERED.

13 DATED: April 7, 2014.

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17 LAWRENCE K. KARLTON
18 SENIOR JUDGE
19 UNITED STATES DISTRICT COURT
20
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22 _____
23 ² The court notes that the Ninth Circuit has very recently spoken on two cases
24 involving officer-involved shootings following car chases, one involving the
25 CHP. See Gonzalez v. City of Anaheim, ___ F.3d ___, 2014 WL 1274551 (9th
26 Cir. 2014) (en banc), and Lal v. California, ___ F.3d ___, 2014 WL 1272781
27 (9th Cir. 2014).

28 ³ Because the court does not rule on the merits of defendant's motion to
dismiss, it is up to plaintiff whether she will include Commissioner Farrow in
her amended complaint. However if plaintiff again sues Farrow, plaintiff
must, of course, ensure that her allegations against him comply with the
pleading requirements set forth in Bell Atlantic Corp. v. Twombly, 550 U.S.
544 (2007) and Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937 (2009), and
the cases interpreting them.