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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KATHERINE ROBINSON; and
WILLIAM ROBINSON,

Plaintiffs,

v.

COUNTY OF SHASTA, et al.,¹

Defendants.

No. 2:14-cv-02910-KJM-KJN

ORDER

This matter is before the court on the motion by defendants Shasta County (County) and Shasta County Sheriff’s Department (Sheriff’s Department) (collectively, defendants) to dismiss plaintiffs’ first amended complaint, arguing it is not possible to

¹ Plaintiffs have also sued Doe defendants. The Ninth Circuit has held that if a defendant’s identity is not known before the complaint is filed, a “plaintiff should be given an opportunity through discovery to identify the unknown defendants.” *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (quotation marks omitted) (quoting *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). Plaintiffs are warned, however, that Doe defendants will be dismissed if “it is clear that discovery would not uncover the[ir] identities, or that the complaint would be dismissed on other grounds.” *Id.* (quotation marks omitted) (quoting *Gillespie*, 629 F.2d at 642). Plaintiffs are also warned that Federal Rule of Civil Procedure 4(m) is applicable to Doe defendants. That rule provides the court must dismiss defendants who have not been served within 120 days after the filing of the complaint unless good cause is shown. *See Glass v. Fields*, No. 09-00098, 2011 U.S. Dist. LEXIS 97604 (E.D. Cal. Aug. 31, 2011); *Hard Drive Prods. v. Does*, No. 11-01567, 2011 U.S. Dist. LEXIS 109837, at *2–4 (N.D. Cal. Sep. 27, 2011).

1 comprehend the essence of the allegations against the County defendants. (ECF No. 13 at 1.) In
2 the alternative, they argue the complaint against them should be dismissed under Federal Rule of
3 Civil Procedure 12(b)(6)² because the County defendants did not participate in the incident at
4 issue. (*Id.* at 1–2.) Plaintiffs believe defendants’ motion is better understood as a motion for a
5 more definite statement under Rule 12(e). (ECF No. 17 at 1.) In the alternative, if the court were
6 to treat defendants’ motion as a Rule 12(b)(6) motion and grant it, plaintiffs request leave to
7 amend. (*Id.* at 2.)

8 The court held a hearing on the matter on April 24, 2015. Larry Baumbach
9 appeared for plaintiffs and James Ross for defendants. After having carefully considered the
10 parties’ briefs, oral arguments, and the record, the court GRANTS defendants’ motion with leave
11 to amend in part.

12 I. BACKGROUND

13 Plaintiffs, individually and as co-administrators of William Robinson’s estate,
14 bring this action under 42 U.S.C. § 1983. (Compl. ¶ 1, ECF No. 9.) Plaintiffs are the decedent’s
15 parents and his only surviving heirs. (*Id.*) Defendants are alleged to have been “charged with
16 conducting the duties of coroner for all deaths occurring within Shasta County.” (*Id.* ¶ 2.)

17 On July 20, 2014,³ the decedent was transported in a transportation vehicle from
18 the Enloe Medical Center in Chico, California to the RestPadd Psychiatric Health Facility in
19 Redding, California for rehabilitation and treatment purposes. (*Id.* ¶ 7.) Upon arrival, the
20 decedent became severely agitated while in the back seat. (*Id.*) Because of the decedent’s mental
21 state, RestPadd did not admit him into the facility and recommended he be taken to the Mercy
22 Medical Center. (*Id.*) Upon arrival at the Mercy Medical Center, the medical transport driver
23 called Redding Police to assist with removing decedent from the car. (*Id.*) Two Redding police
24 officers arrived and attempted to remove the decedent from the car. (*Id.*) The decedent resisted;
25 he “attempt[ed] to pull away.” (*Id.*) The officers ultimately took him to the ground, and while on

26 ² All further references to the Federal Rules of Civil Procedure are in short form.

27 ³ Defendants contend the correct date is July 19, 2014. (ECF No. 13 at 2.) Plaintiffs
28 should address this discrepancy in their second amended complaint.

1 the ground, one of the police officers began beating him. (*Id.*) When the decedent had stopped
2 breathing, the paramedics on the scene began resuscitation, and the decedent was later taken to
3 the Mercy Medical Center. (*Id.*) The decedent remained in a coma until he passed away on July
4 27, 2014. (*Id.* ¶¶ 7, 11.)

5 The only paragraph in the complaint that pertains to the County and the Sheriff's
6 Department alleges as follows:

7 The Shasta County Sheriff's Department undertook investigation of
8 the incident and also undertook the Coroner's duties of conducting
9 the Coroner's investigation and in the process wasted or disposed of
10 critical evidence that prevented the medical examiner from
11 determining the cause of death. The cause of death was severe
12 anoxic brain injury. Pre-death injuries were: brain trauma;
13 displaced nasal bone fracture; twelfth left rib fracture; tenth right
14 rib fracture (displaced); huge hematoma of left eye; and
15 miscellaneous bruises and lacerations.

16 (*Id.* ¶ 8.)

17 The operative complaint alleges six claims: (1) wrongful death; (2) injury resulting
18 in death; (3) municipal liability; (4) wrongful death under state law; (5) violation of California
19 Civil Code section 51.7; and (6) negligent hiring. (*See generally* ECF No. 9.) Defendants move
20 to dismiss plaintiffs' complaint (ECF No. 13); plaintiffs oppose the motion (ECF No. 17), and
21 defendants have replied (ECF No. 18).

22 II. LEGAL STANDARD

23 Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a
24 complaint for "failure to state a claim upon which relief can be granted." A court may dismiss
25 "based on the lack of cognizable legal theory or the absence of sufficient facts alleged under a
26 cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

27 Although a complaint need contain only "a short and plain statement of the claim
28 showing that the pleader is entitled to relief," FED. R. CIV. P. 8(a)(2), to survive a motion to
dismiss this short and plain statement "must contain sufficient factual matter . . . to 'state a claim
to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell
Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint must include something
more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" or "labels and

1 conclusions’ or ‘a formulaic recitation of the elements of a cause of action’” *Id.* (quoting
2 *Twombly*, 550 U.S. at 555). Determining whether a complaint will survive a motion to dismiss
3 for failure to state a claim is a “context-specific task that requires the reviewing court to draw on
4 its judicial experience and common sense.” *Id.* at 679. Ultimately, the inquiry focuses on the
5 interplay between the factual allegations of the complaint and the dispositive issues of law in the
6 action. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

7 In making this context-specific evaluation, this court “must presume all factual
8 allegations of the complaint to be true and draw all reasonable inferences in favor of the
9 nonmoving party.” *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). This rule
10 does not apply to “a legal conclusion couched as a factual allegation,” *Papasan v. Allain*, 478
11 U.S. 265, 286 (1986), *quoted in Twombly*, 550 U.S. at 555, to “allegations that contradict matters
12 properly subject to judicial notice,” or to material attached to or incorporated by reference into the
13 complaint, *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

14 III. DISCUSSION

15 A. Sheriff’s Department

16 At the hearing on the instant motion, plaintiffs conceded that the Sheriff’s
17 Department should be dismissed with prejudice because the County is the proper entity to be
18 named as a defendant in this case. *See Melendres v. Arpaio*, No. 13-16285, 2015 WL 1654550, at
19 *3 (9th Cir. Apr. 14, 2015) (ordering Maricopa County be substituted as a party in lieu of the
20 Maricopa County Sheriff’s Office). Accordingly, the court DISMISSES the Sheriff’s Department
21 with prejudice.

22 B. State-Law Claims

23 At the hearing on the instant motion, the parties similarly agreed that plaintiffs’
24 state-law claims against the County should be dismissed with prejudice. Therefore, according to
25 the parties’ stipulation, the court DISMISSES plaintiffs’ state-law claims against the County with
26 prejudice.

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1 C. Plaintiffs' Remaining Claims

2 As to plaintiffs' remaining claims, the court finds the allegations of the complaint
3 are insufficient to give notice of the nature of the claim or claims under which plaintiffs seek to
4 proceed. In their opposition brief, however, plaintiffs attest that they can amend the complaint,
5 consonant with Rule 11, to state a viable claim against the County. (*See* ECF No. 17 at 2 (“[I]t is
6 the position of Plaintiffs that a revision of Plaintiffs’ complaint can clarify the allegations against
7 the County so as to constitute a violation of . . . Plaintiffs’ rights under 42 U.S.C 1983 [sic].”)).
8 *See Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 840 (9th Cir. 2000) (“A claim is the aggregate of
9 operative facts which give rise to a right enforceable in the courts.” (internal quotation marks
10 omitted)). At the hearing on the instant motion, plaintiffs’ counsel reaffirmed that position and
11 stated that he could allege sufficient facts showing the County’s improper performance of the
12 Coroner’s duties. The court thus GRANTS defendants’ motion to dismiss with leave to amend.
13 In granting plaintiffs leave to amend, the court reminds counsel that as a matter of good practice,
14 each claim should be separately numbered under a separate heading briefly identifying the nature
15 of the claim asserted and the defendants against whom the claim is asserted.

16 IV. MEET AND CONFER EFFORTS

17 This court’s Standing Order requires parties to meet and confer to discuss
18 thoroughly the substance of the contemplated motion and any potential resolution before filing a
19 motion. (Standing Order at 3, ECF No. 3-1.) The purpose of this requirement is to allow
20 plaintiff’s counsel to carefully evaluate defendant’s contentions and determine whether an
21 agreement can be reached to cure any defects. (*Id.*) Counsel should resolve minor procedural or
22 other non-substantive matters during these discussion. (*Id.*)

23 Here, despite the repeated efforts of defendants’ counsel to engage in meet and
24 confer with plaintiffs’ counsel on three occasions, including their offer to stipulate to a further
25 amendment, plaintiffs’ counsel did not respond. (ECF No. 13-1 at 3–4.) At the hearing,
26 plaintiffs’ counsel accepted responsibility for his failures. Given the explanation and acceptance
27 of responsibility, the court declines to sanction him. However, the court cautions plaintiffs’

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1 counsel that he will likely be sanctioned for any future failures to comply with the court's
2 Standing Order.

3 V. CONCLUSION

4 For the foregoing reasons, the court orders as follows:

- 5 1. The Shasta County Sheriff's Department is dismissed with prejudice.
- 6 2. Plaintiffs' state law claims are dismissed with prejudice.
- 7 3. Plaintiffs' remaining claims are dismissed with leave to amend.
- 8 4. Plaintiffs' second amended complaint is due within fourteen (14) days from the
9 date of this order.
- 10 5. This order resolves ECF No. 13.

11 IT IS SO ORDERED.

12 DATED: May 4, 2015.

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15 UNITED STATES DISTRICT JUDGE
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