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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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RAMIN A. SHEKARLAB,

No. 2:18-cv-00047-JAM-EFB

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Plaintiff,

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v.

**ORDER GRANTING DEFENDANT CHARLES
KIM'S MOTION TO DISMISS PUNITIVE
DAMAGE CLAIM;**

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COUNTY OF SACRAMENTO, et al.,

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Defendants.

ORDER TO PLAINTIFF TO SHOW CAUSE

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Ramin A. Shekarlab ("Plaintiff") spent a year in the Sacramento County Jail, during which time, he alleges, the jail staff failed to appropriately respond to his serious eye condition. Plaintiff filed this lawsuit against Dr. Robert Padilla, Dr. Charles Kim, Manjeet Kaur, Joyce Amajor, Kathryn Gonzales, the County of Sacramento, and Does 1-10. Presently before the Court is Dr. Charles Kim's motion to dismiss the punitive damages claimed against him. For the reasons set forth below, Dr. Kim's motion is granted.¹

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for April 10, 2018.

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1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 This Order focuses on the facts relevant to Plaintiff's
3 claims against Dr. Kim, only. The following facts are taken as
4 true for the purposes of this motion:

5 Plaintiff was incarcerated from April 2016 to May 3, 2017.
6 Compl. ¶ 20. In May of 2016, Plaintiff began experiencing
7 serious pain and loss of vision in his right eye. Id. ¶¶ 23-24.
8 He subsequently submitted numerous requests for medical treatment
9 for pain and loss of vision in that eye. Id. ¶ 24. Over the
10 next several months he sought consultation with an
11 ophthalmologist, but did not see one until January 2017. Id.
12 ¶¶ 25-33. That ophthalmologist, Dr. Beard, recommended a
13 surgical consult. Id. ¶ 33.

14 Dr. Charles Kim, another ophthalmologist, saw Plaintiff the
15 following month, on February 22, 2017. Id. ¶ 37. Dr. Kim
16 "examined [P]laintiff and recommended that he be referred to a
17 retina specialist within 1-3 weeks." Id. He "indicated that the
18 retinal detachment in [P]laintiff's right eye was 'non-urgent,'"
19 "[e]ven though it was obvious that [P]laintiff needed surgery and
20 obvious that his need was time-sensitive[.]" Id.

21 Plaintiff remained incarcerated until May 3, 2017, and
22 received surgery on his eye a month and a half later. Id. ¶¶ 43,
23 44. Plaintiff alleges that the delay in surgery prevented a
24 successful outcome and caused Plaintiff to suffer near-total
25 retinal detachment in his right eye. Id. ¶¶ 46-49.

26 Plaintiff brings claims against the County of Sacramento and
27 the medical personnel he interacted with at the Sacramento County
28 Jail. As to Dr. Kim, Plaintiff asserts a claim for professional

1 negligence and seeks punitive damages. Id. ¶¶ 67-72.

2 II. OPINION

3 Dr. Kim moves to dismiss Plaintiff's prayer for punitive
4 damages against him. The first stated basis for dismissal
5 involves the legal question of whether California Code of Civil
6 Procedure ("C.C.P.") section 425.13 applies to Plaintiff's state
7 claim in this Court. As an alternative basis for dismissal, Dr.
8 Kim argues Plaintiff failed to allege sufficient facts to support
9 a claim for punitive damages. Because the Court's ruling turns
10 on the former, it does not address the latter.

11 A. C.C.P. § 425.13 in Federal Court

12 Federal courts deciding state claims apply state substantive
13 law and, generally, federal procedural law. See Hanna v. Plumer,
14 380 U.S. 460, 465 (1965) (describing the impact of Erie R. Co. v.
15 Tompkins, 304 U.S. 64 (1938)). Over the years, however, it has
16 become clear "that Erie-type problems [are] not to be solved by
17 reference to any traditional or common-sense substance-procedure
18 distinction[.]" Id. at 465-66. Instead the crucial question is:
19 "does it significantly affect the result of a litigation for a
20 federal court to disregard a law of a State that would be
21 controlling in an action upon the same claim by the same parties
22 in a State court?" Id. (quoting Guaranty Trust Co. of N.Y. v.
23 York, 326 U.S. 99, 109 (1945)).

24 Federal courts embark on a two part inquiry to decide
25 whether a state procedural rule should apply in a given case.
26 First, the court will ask whether there is a direct conflict
27 between a federal rule and the state law. Walker v. Armco Steel
28 Corp., 446 U.S. 740, 749-52 (1980). If there is a conflict and

1 the Federal Rule clearly applies, then the court will follow the
2 Federal Rule unless it falls outside the scope of the Rules
3 Enabling Act or the constitutional grant of power. Id. at 748.
4 If there is not a conflict, the court then considers whether
5 application of the state procedural rule might result in forum
6 shopping or an inequitable administration of the law. Id. at
7 753. The Ninth Circuit has also held that "where a state
8 evidentiary rule is intimately bound up with the rights and
9 obligations being asserted, [Erie] mandates the application of
10 the state rule." Wray v. Gregory, 61 F.3d 1414, 1417 (9th Cir.
11 1995) (citations omitted).

12 The parties dispute whether C.C.P. section 425.13 applies to
13 Plaintiff's punitive damages claim in this Court. Under section
14 425.13, a plaintiff cannot seek punitive damages from a health
15 care provider on a claim for professional negligence without
16 leave of court. The section provides:

17 In any action for damages arising out of the
18 professional negligence of a health care provider, no
19 claim for punitive damages shall be included in a
20 complaint or other pleading unless the court enters an
21 order allowing an amended pleading that includes a
22 claim for punitive damages to be filed. The court may
23 allow the filing of an amended pleading claiming
24 punitive damages on a motion by the party seeking the
25 amended pleading and on the basis of the supporting and
26 opposing affidavits presented that the plaintiff has
27 established that there is a substantial probability
28 that the plaintiff will prevail on the claim pursuant
to Section 3294 of the Civil Code.

24 C.C.P. § 425.13.

25 Federal district courts in California are divided on whether
26 to apply this rule. See Estate of Prasad ex rel. Prasad v. Cnty.
27 of Sutter, 958 F. Supp. 2d 1101, 1120 (2013) (collecting cases).
28 Several district courts in the Eastern District of California

1 have applied section 425.13 to state claims, finding the law is
2 "so 'intimately bound up' with [the plaintiff's] substantive
3 state law claims that, under the Erie exception, it applies to
4 bar these claims where there is no compliance to the rule."
5 Allen v. Woodford, No. 1:05-cv-01104-OWW-LJO, 2006 WL 1748587
6 (E.D. Cal. June 26, 2006) (citing Wray, 61 F.3d at 1417); see
7 Thomas v. Hickman, No. CV F 06-0215 AWI SMS, 2006 WL 2868967
8 (E.D. Cal. Oct. 6, 2006); Rhodes v. Placer Cnty., No. 2:09-cv-
9 00489 MCE KJN PS, 2011 WL 1302240 (E.D. Cal. Mar. 31,
10 2011)(following Allen and Thomas); Elias v. Navasartian, 1:15-
11 cv-01567-LJO-GSA-PC, 2017 WL 1013122 (E.D. Cal. Feb. 17, 2017)
12 (same). In contrast, district courts in the Northern and
13 Southern District of California have declined to apply it. See,
14 e.g., Jackson v. East Bay Hosp., 980 F. Supp. 1341, 1352 (N.D.
15 Cal. 1997) ("This court [] considers section 425.13's requirement
16 to be a procedural rather than a substantive one. The
17 requirement is essentially a method of managing or directing a
18 plaintiff's pleadings, rather than a determination of substantive
19 rights."); George v. Sonoma Cnty. Sheriff's Dept., 732 F. Supp.
20 2d 922, 951-52 (N.D. Cal. 2010) (following Jackson); Ortegoza v.
21 Kho, No. 12-cv-529-L KSC, 2013 WL 2147799, at *7 (S.D. Cal. May
22 16, 2013) (same). Finally, two courts in the Eastern District
23 have declined to apply section 425.13 because they find the
24 statute to be in direct conflict with the plain meaning of Rule
25 8(a)(3) of the Federal Rules of Civil Procedure. See Estate of
26 Prasad, 958 F. Supp. 2d at 1121; Padilla v. Beard, No. 2:14-cv-
27 01118-KJM-CKD, 2014 WL 6059218 (E.D. Cal. Nov. 12, 2014). This
28 conclusion follows an Eleventh Circuit decision that found a

1 direct conflict between Rule 8(a)(3) and a Florida statute
2 imposing requirements—similar to those at issue here—on
3 plaintiffs seeking punitive damages. See Cohen v. Office Depot,
4 Inc., 184 F.3d 1292 (11th Cir. 1999), opinion vacated in part on
5 reh'g, 204 F.3d 1069 (11th Cir. 2000) (relevant holding adhered
6 to).

7 1. No Direct Conflict With the Federal Rules

8 Rule 8(a)(3) states: "A pleading that states a claim for
9 relief must contain . . . a demand for the relief sought, which
10 may include relief in the alternative or different types of
11 relief." Under C.C.P. section 425.13, a plaintiff could not
12 include his prayer for punitive damages in his complaint until
13 moving the court for leave to do so. Plaintiff contends these
14 rules directly conflict, while Dr. Kim maintains they do not.
15 The parties direct the Court's attention to two adverse decisions
16 on this question: Cohen v. Office Depot, Inc., 184 F.3d 1292
17 (11th Cir. 1999), and Jones v. Krautheim, 208 F. Supp. 2d 1173
18 (D. Colo. 2002).

19 The Court finds the reasoning articulated in Jones, more
20 persuasive than that of Cohen. In Cohen, the Eleventh Circuit
21 read Rule 8(a)(3) to "say 'implicitly, but with unmistakable
22 clarity' that a plaintiff is not required to wait until a later
23 stage of the litigation to include a prayer for punitive damages,
24 nor is she required to proffer evidence or obtain leave of court
25 before doing so." 184 F.3d at 1299 (analogizing to the conflict
26 found in Hanna v. Plumer, 380 U.S. 460 (1965)). "In short," the
27 Circuit concluded, "Rule 8(a)(3) occupies the field in which the
28 pleading portion of [the state statute] would otherwise operate."

1 Id. The Jones court disagreed, finding a similar state statute
2 to be consistent with the federal rules. Id. at 1179. The
3 district court reasoned there would be an "obvious conflict"
4 between the statute and Rule 8 "were it not for the fact that
5 Rule 8 imposes no timing requirement." Id. at 1178. "In
6 practical use, Rule 8 does not and cannot operate in isolation,
7 but instead must be considered in conjunction with Rule 15, which
8 anticipates liberal amendment of pleadings throughout the course
9 of the litigation So long as a plaintiff has the
10 opportunity to amend the initial complaint to comply with Rule
11 8(a)(3) before the issues are ultimately tried, there is no
12 practical conflict between [the state statute] and Fed. R. Civ.
13 P. 8(a)(3)." Id.

14 The Court concurs with the Jones court's analysis. The
15 federal pleading rule does not require that every type of relief
16 sought be included in the complaint in its first iteration. The
17 Rules provide for pre-trial amendments of the complaint, which
18 district courts freely permit upon a plaintiff's motion or, at
19 later stages of litigation, grant for good cause. See Fed. R.
20 Civ. P. 15 & 16. A plaintiff can therefore follow the mandate of
21 C.C.P. section 425.13 consistent with the Federal Rules.
22 Further, unlike the Eleventh Circuit, this Court does not find
23 the alleged conflict to be analogous to that at issue in Hanna.
24 See Cohen, 184 F.3d at 1299. In Hanna, the Supreme Court found
25 that Rule 4(d)(1), by providing that "service shall be made upon
26 an individual by delivering a copy of the summons and of the
27 complaint to him personally or by leaving copies thereof at his
28 dwelling or usual place of abode with some person of suitable age

1 and discretion then residing therein," implicitly said that in
2 hand service is not required in federal courts. 380 U.S. at 462
3 (quoting the former Fed. R. Civ. P. 4(d)(1)). The Massachusetts
4 law requiring in hand service therefore conflicted with Rule 4.
5 Id. Here, because the federal pleading rules provide for
6 amendment, the text of Rule 8(a)(3) does not imply that
7 plaintiffs must be able to include all forms of relief they may
8 eventually seek in the initial complaint. The Court finds no
9 direct conflict between the California statute and Rule 8(a)(3).

10 2. C.C.P. § 425.13 Applies

11 The Court agrees with its fellow judges in the Eastern
12 District of California that the state rule must apply in federal
13 court. The rule is bound up with the state substantive cause of
14 action for professional negligence. Rather than applying
15 generally, the rule is expressly limited to actions for damages
16 arising out of the professional negligence of a health care
17 provider. See C.C.P. § 425.13(a). This limitation evinces a
18 legislative intent "to screen and assure the bona fides and
19 merits of a claim against a health care provider before a case
20 can be filed." Allen, 2006 WL 1748587 at *22. Indeed, "because
21 it was concerned that unsubstantiated claims for punitive damages
22 were being included in complaints against health care providers,
23 the [California] Legislature sought to provide additional
24 protection by establishing a pretrial hearing mechanism by which
25 the court would determine whether an action for punitive damages
26 could proceed." Cent. Pathology Serv. Med. Clinic, Inc. v.
27 Super. Ct., 3 Cal.4th 181, 189 (1992). The inquiry requires
28 courts to examine the substance of a plaintiff's claims and block

1 unsubstantiated pursuits of punitive damages early in litigation.

2 The Court is not persuaded that the federal courts'
3 authority to manage their own calendars obviates the propriety of
4 respecting this legislative balancing in federal court. Contra
5 Jackson, 980 F. Supp. at 1352-53 (finding that the federal
6 courts' case management procedures can accomplish the purposes
7 contemplated by section 425.13). Without the rule, prayers for
8 punitive damages that lack evidentiary support remain in a
9 lawsuit until defendants move for summary judgment or
10 adjudication. This result could cause the sort of forum shopping
11 and inequitable administration of the law that the Erie doctrine
12 was designed to prevent. See Walker v. Armco Steel Corp., 446
13 U.S. 740, 753 (1980).

14 In light of these important considerations, this Court joins
15 the cohort of district courts that find section 425.13 applicable
16 in federal court.

17 B. Application to Plaintiff's Claims

18 Plaintiff's prayer for punitive damages against Dr. Kim
19 based on the doctor's alleged professional negligence plainly
20 falls within C.C.P. section 425.13. Because Plaintiff has not
21 moved for leave of Court to seek punitive damages on his medical
22 negligence claim, Plaintiff's claim for punitive damages against
23 Dr. Kim is dismissed without prejudice.

24 The Court's holding suggests that Plaintiff may not seek
25 punitive damages against the other defendants in this case on
26 Plaintiff's fourth and fifth claims for relief. Plaintiff is
27 therefore ordered to show cause why the punitive damages he seeks
28 against Defendants Padilla, Kaur, Amajor, and Gonzales for


1 professional negligence, and against Defendants Padilla and the
2 County of Sacramento for negligent supervision, training, hiring,
3 and retention, should not also be dismissed—at this stage—due to
4 Plaintiff’s failure to adhere to C.C.P. section 425.13.

5 III. ORDER

6 For the reasons set forth above, the Court GRANTS
7 Defendant’s Motion to Dismiss, without prejudice. Plaintiff is
8 ORDERED TO SHOW CAUSE as to why his claims for punitive damages
9 against the other Defendants should not also be dismissed, as to
10 the state claims identified above. Plaintiff’s brief is due one
11 week from the date of this order. Defendants may file a response
12 to Plaintiff’s brief no later than one week thereafter.

13 IT IS SO ORDERED.

14 Dated: April 25, 2018

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16 JOHN A. MENDEZ,
17 UNITED STATES DISTRICT JUDGE
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