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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

MELODIE HUGHES, et al.,
Plaintiffs,
v.
COUNTY OF MENDOCINO, et al.,
Defendants.

Case No. [15-cv-01794-NJV](#)

**ORDER ON MOTION TO DISMISS
SECOND AMENDED COMPLAINT**

Re: Dkt. No. 62

Plaintiff Melodie Hughes (“Plaintiff”) proceeds *pro se* in this action filed against the County of Mendocino, Sheriff Thomas Allen, Deputy Chora, Deputy DeMarco, California Forensic Medical Group (“CFMG”), and Dr. Taylor Fithian. On March 3, 2016, Plaintiff filed a Second Amended Complaint (“SAC”). Defendants California Forensic Medical Group and Dr. Taylor Fithian filed an Answer to the SAC, while the County of Mendocino, Sheriff Thomas Allen, Deputy Chora, and Deputy DeMarco filed a Motion to Dismiss (Doc. 62) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff filed a Response to the Motion (Doc. 68), to which Defendants filed a Reply (Doc. 70). The court took the matter under submission on the papers. (Doc. 69). For the reasons that follow the court will grant the motion in part and deny the motion in part.

FACTS AS ALLEGED IN THE SAC

The Complaint is predicated on the events surrounding the death of Plaintiff’s son, Ivan Slater (“Slater”). Slater was arrested by Deputy DeMarco on March 22, 2014, and taken to the Mendocino County Jail. SAC. (Doc. 58) at ¶21. When Slater was arrested, he was suffering “heroin withdrawals” and Deputy DeMarco was aware of Slater’s medical need. *Id.* at ¶22. At the jail, Deputy Chora completed a “Medical Booking Screening paperwork.” Slater became very

1 sick in the first 24 hours. *Id.* at 26. The CFMG failed to follow protocol and never summoned a
2 doctor. *Id.* at ¶30-32.

3 On March 26, 2014, Slater was released on his own recognizance. *Id.* at ¶35. On March
4 27, 2014, Slater died. Slater did not use heroin within the last two hours of his life. *Id.* at ¶38.

5 CLAIMS

6 Plaintiff presents six claims for relief in the SAC: (1) the First Claim is pursuant to 42
7 U.S.C. § 1983, based on alleged violations of the Eighth and Fourteenth Amendments to the
8 United States Constitution and is against all Defendants; (2) the Second Claim is pursuant to 42
9 U.S.C. § 1983, based on alleged violations of the First and Fourteenth Amendments to the United
10 States Constitution for deprivation of the liberty interests in the parent-child relationship and is
11 against all Defendants; (3) the Third Claim is for failure to furnish/summon medical care arising
12 under California state law and is against all Defendants; (4) the Fourth Claim is for negligent
13 supervision, training, hiring, and retention under California state law and is against Sheriff
14 Allman, CFMG, and Dr. Taylor Fithian; (5) the Fifth Claim is a negligence claim under California
15 state law and is against all Defendants; and (6) the Sixth Claim is for wrongful death under
16 California state law and is brought against all Defendants.

17 LEGAL STANDARD

18 The purpose of a motion to dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure
19 is to test the legal sufficiency of the claims stated in the complaint. A motion to dismiss may be
20 brought under Rule 12(b)(6) when the plaintiff fails to state a claim upon which relief can be
21 granted.

22 A complaint must contain a “short and plain statement of the claim showing that the
23 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). While Rule 8 “does not require ‘detailed
24 factual allegations,’” a complaint “must contain sufficient factual matter, accepted as true, to ‘state
25 a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct.
26 1937,1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570, 127 S.Ct.
27 1955, 1955 (2007)). Facial plausibility is established “when the plaintiff pleads factual content
28 that allows the court to draw the reasonable inference that the defendant is liable for the

1 misconduct alleged.” *Id.* Thus, in order to survive a motion to dismiss, the nonmoving party must
2 allege facts that are “enough to raise a right to above the speculative level . . . on the assumption
3 that all the allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at
4 555.

5 Dismissal of a complaint can be based on either the lack of a cognizable legal theory or the
6 lack of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dept.*,
7 901 F.2d 696, 699 (9th Cir. 1990). In considering whether the complaint is sufficient to state a
8 claim, the court will take all material allegations as true and construe them in the light most
9 favorable to the plaintiff. *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

10 DISCUSSION

11 A. Deputy Defendants

12 In her Response, Plaintiff concedes the Fourth Claim against Deputy DeMarco and all
13 claims except the Third Claim against Deputy Chora. In addition, Plaintiff does not oppose
14 Defendants’ request to dismiss the Sixth Claim against the deputy Defendants.

15 I. First-Third Claims against Deputy DeMarco

16 Defendants move for dismissal of the First, Second, and Third claims against Deputy
17 DeMarco on the basis that Plaintiff has failed to plead that the deputy acted with deliberate
18 indifference. As Defendants state:

19
20 Establishing deliberate indifference requires that a plaintiff “show [(1)] a ‘serious
21 medical need’ by demonstrating that ‘failure to treat a prisoner's condition could
22 result in further significant injury or the unnecessary and wanton infliction of
23 pain,’” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *McGuckin v.*
24 *Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992)) (2) that “defendant’s response to the
need was deliberately indifferent.” *Id.* “Deliberate indifference may be established
by evidence of ‘(a) a purposeful act or failure to respond to a prisoner's pain or
possible medical need and (b) harm caused by the indifference.’” *M.H. v. County*
of Alameda, 62 F. Supp. 3d 1049, 1076 (N.D. Cal. 2014) (quoting *Jett v. Penner*,
439 F.3d 1091, 1096 (9th Cir. 2006)).

25 Def. Mot. (Doc. 62) at 9. Defendants assert that “there are no allegations in the SAC that
26 DeMarco’s actions of taking Slater to the MCJ constituted a purposeful act or failure to respond to
27 Slater’s pain or possible medical need.” *Id.* at 4. The court does not agree. Plaintiff alleges that
28 Deputy DeMarco, the arresting officer, knew of Slater’s need for medical help and, acting with

1 deliberate indifference, failed to summon it. SAC (Doc. 58) at ¶¶ 22, 23, & 41. This is sufficient
2 to state a cause of action under the First, Second, and Third Claims against the deputy and this
3 request for dismissal is denied.

4 **2. The Third Claim against Deputy Chora**

5 The SAC alleges that Deputy Chora “failed to complete a medical screening and call for a
6 nurse” and did not mention heroin detoxification on the screening form. *Id.* at ¶¶ 17 & 24.
7 Defendants argue that “there are no allegations in Plaintiff’s SAC that either DeMarco or Chora
8 interacted with Slater at a time when he was in immediate need of medical care.” Defs.’ Mot.
9 (Doc. 62) at 11. However, the SAC alleges that Slater was in need of medical care upon arrest and
10 then describes his condition as worsening. Thus, Plaintiff has set forth a claim for deliberate
11 indifference and the request to dismiss Deputy Chora from the Third Claim is denied.

12 **3. The Fifth Claim against Deputy DeMarco**

13 This Claim for relief is a negligence claim brought under California law, and against
14 Deputy Demarco asserts that “nurses and officers failed to comply with a minimum professional
15 standard in the provision of medical care to [] Slater.” SAC (Doc. 58) at ¶73. This claim is
16 separate and distinct from the Third Claim which was brought as a failure to summon or furnish
17 medical care under California state law. There are no allegations in the SAC that Deputy
18 DeMarco provided medical care, or was under an obligation to personally provide medical care to
19 a professional standard for Slater. Rather, the allegations are that Deputy DeMarco failed to
20 properly summon medical care. Those claims are properly brought under the Third Claim and not
21 this claim. Any failure to summon medical care against Deputy DeMarco contained in this claim
22 is duplicative of the failure to summon medical care claim in the Third Claim. Accordingly, this
23 claim is dismissed as to Deputy DeMarco.

24 **B. Defendants County of Mendocino and Sheriff Allman**

25 **1. The Fourth Claim against the County of Mendocino**

26 The County moves for dismissal of the Fourth Claim. The Fourth Claim was previously
27 dismissed against the County. The SAC does not assert a new claim against the County.
28 Accordingly, that request is denied as moot.

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2. *The Fifth Claim against the County and Sheriff Allman*

The County and Sheriff Allman move for dismissal from this claim on the basis that the County is immune and that Sheriff Allman was not engaged in the healing arts. Mot. (Doc. 62) at 14. The allegations in the SAC are that “nurses and officers” failed to provide a professional standard of care in the provision of medical care and that the other defendants “failed to adopt policies, procedures, and training for staff,” which resulted in there being “NO MEDICAL CARE AT THE MENDOCINO COUNTY JAIL!” SAC (Doc. 58) at 11 (capitalization in the original). As the court instructed in its Order of October 27, 2015, a “public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.” (Doc. 37) at 6 (quoting Cal. Gov’t Code § 815.2(a)). The court agrees with Defendants that Plaintiff has failed to set forth a claim under § 815.2(a). Plaintiff has failed to plead that it was within the scope of Sheriff Allman’s employment to provide the policies, procedures, and training for staff regarding the provision of medical care. Again, this is not a failure to summon medical or furnish medical care claim, but rather whether the medical care provided was to the “professional standard of care.” As Plaintiff states in the SAC, it was CFMG that provided medical services at the county jail, not the Sheriff. Accordingly, Defendants’ request that the County and Defendant Allman be dismissed from the Fifth Claim is granted.

CONCLUSION

For the reasons stated above, it is ORDERED that the motion to Dismiss (Doc. 13) is GRANTED in part and DENIED in part.

Further it is ORDERED that this matter is set for a case management conference at 2:00 p.m. on July 26, 2016:

IT IS SO ORDERED.

Dated: May 13, 2016



NANDOR J. VADAS
United States Magistrate Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 MELODIE HUGHES, *et al.*,
4 Plaintiffs,
5 v.
6 COUNTY OF MENDOCINO, *et al.*,
7 Defendants.
8

Case No. [15-cv-01794-NJV](#)

CERTIFICATE OF SERVICE


9 I, the undersigned, hereby certify that I am an employee of the U.S. District Court,
10 Northern District of California.

11
12 That on May 13, 2016, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Melodie Hughes
18 P.O. Box 207
Willits, CA 95490

19
20 Dated: May 13, 2016
21

22 Susan Y. Soong
23 Clerk, United States District Court

24 
25 By: _____
26 Robert Illman, Law Clerk to the
27 Honorable NANDOR J. VADAS
28