

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LARY W. GREMP,

No. C-08-2303 MMC

Plaintiff,

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS
DELOE, SONOMA COUNTY AND
COGBILL'S MOTION TO DISMISS;
VACATING HEARING**

v.

SONOMA COUNTY, et al.,

Defendants

_____ /

Before the Court is the "Motion to Dismiss for Failure to State Claims Upon Which Relief May Be Granted," filed August 20, 2008, by defendants Kathleen Deloe ("Deloe"), Sonoma County ("County"), and Bill Cogbill ("Cogbill").¹ Plaintiff Lary W. Grempp has filed opposition, to which defendants have replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision thereon, VACATES the hearing scheduled for October 10, 2008, and rules as follows:

1. The First Cause of Action, by which plaintiff alleges a violation of 42 U.S.C. § 1983, is, for the reasons stated by defendants, subject to dismissal to the extent it is alleged against Deloe, a prosecutor. Specifically, because plaintiff's claims against Deloe

¹Two other defendants, Patrick Taylor and Glenn H. Van Schaack, have filed answers. Another defendant, Sarah Little, was recently served and has not filed a responsive pleading.

1 are based on Deloe's having conducted a "flawed" evaluation of evidence collected by state
2 investigators, (see SAC ¶¶ 41, 44, 46-47, 48), and having erroneously concluded therefrom
3 that probable cause existed to believe plaintiff had committed a crime, (see SAC ¶¶ 49-51),
4 Deloe is entitled to absolute immunity. See Gobel v. Maricopa County, 867 F. 2d 1201,
5 1204 (9th Cir. 1989) (holding prosecutor entitled to absolute immunity from claim based on
6 "preparation" of criminal case, including "organizing, evaluating, and marshalling [of]
7 evidence to facilitate seeking a warrant").

8 2. The First Cause of Action is subject to dismissal to the extent it is based on a
9 claim that defendants violated plaintiff's Sixth Amendment right to a speedy trial, (see SAC
10 ¶¶ 117, 119), for the reason plaintiff has clarified he is not basing his claim on a theory that
11 his Sixth Amendment rights were violated, (see Pl.'s Opp. at 14:1-6).

12 3. The First Cause of Action is not subject to dismissal to the extent it is alleged
13 against Cogbill. Contrary to defendants' argument, plaintiff has not alleged a claim against
14 Cogbill in his individual capacity, (see SAC ¶ 8), and plaintiff may pursue a federal claim of
15 municipal liability against Cogbill in his official capacity as Sheriff. See Monell v. Dep't of
16 Social Services, 436 U.S. 658, 690 n.55 (1978) (holding "official-capacity suits . . .
17 represent only another way of pleading an action against an entity of which an officer is an
18 agent").

19 4. The Second Cause of Action, alleging a claim of false arrest, and the Third
20 Cause of Action, alleging a violation of § 52.1 of the California Civil Code, are, for the
21 reasons stated by defendants, subject to dismissal to the extent they are brought against
22 the County. Specifically, plaintiff has failed to allege compliance with the claim presentation
23 requirements set forth in § 945.4 of the California Government Code, and, consequently,
24 his state law claims against the County are barred. See Ortega v. O'Connor, 764 F. 2d
25 703, 707 (9th Cir. 1985) (holding failure to comply with claim presentation requirements of
26 Government Code constitutes bar to maintaining state law claim against government
27 entity), rev'd in part on other grounds, 480 U.S. 709 (1987). Further, plaintiff's request for
28 leave to amend to allege substantial compliance with the claim presentation requirements

1 will be denied, because plaintiff's proposed allegations, that the County was on notice of
2 the claims from plaintiff's previous lawsuit against the County and that plaintiff filed a claim
3 against the County with a state agency, are, as a matter of law, insufficient to support a
4 claim of substantial compliance. See City of San Jose v. Superior Court, 12 Cal. 3d 447,
5 455 (1974) ("It is well-settled that claims statutes must be satisfied even in face of the
6 public entity's actual knowledge of the circumstances surrounding the claim. Such
7 knowledge – standing alone – constitutes neither substantial compliance nor basis for
8 estoppel."); Johnson v. San Diego Unified Sch. Dist., 217 Cal. App. 3d 692, 697, 700
9 (1990) (holding plaintiff failed to substantially comply with claim presentation requirements
10 with respect to claim against school district, where plaintiff submitted claim against school
11 district to state agency; stating doctrine of substantial compliance inapplicable where
12 plaintiff submitted claim to "wrong entity").

13 **CONCLUSION**

14 For the reasons stated above, defendants' motion to dismiss is hereby GRANTED in
15 part and DENIED in part, as follows:

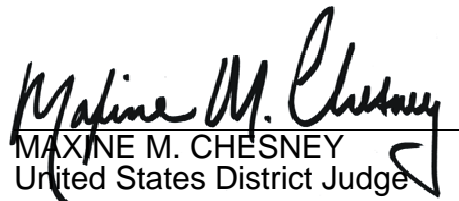
16 1. The First Cause of Action is hereby DISMISSED without leave to amend, to the
17 extent it is alleged against Deloe and to the extent it is based on a claim that plaintiff's Sixth
18 Amendment rights were violated.

19 2. The Second and Third Causes of Action are hereby DISMISSED without leave to
20 amend, to the extent they are alleged against the County.

21 3. In all other respects, the motion is DENIED.

22 **IT IS SO ORDERED.**

23
24 Dated: October 7, 2008

25 
MAXINE M. CHESNEY
United States District Judge

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