

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

MARK OTTOVICH, HARVEY OTTOVICH,
individuals,

Plaintiffs,

v.

CITY OF FREMONT: CITY OF FREMONT
POLICE OFFICERS, RICARDO CORTES
AS DOE 1, SARGEANT HEININGE AS DOE
2, OFFICER SETTLE AS DOE 3, OFFICER
DANG AS DOE 4, Farmer as doe 5,
VETERANS ADMINISTRATION PALO
ALTO HEALTH CARE SYSTEM AS DOE 6,
VETERANS ADMINISTRATION PALO
CARE SYSTEM EMPLOYEE JOANIE
DROBRICK PATIENT ADVOCATE as Doe
7, DOES 8 THROUGH 25,

Defendants.

No. CV-09-04181 MMC

**ORDER GRANTING DEFENDANTS
VETERANS ADMINISTRATION PALO
ALTO HEALTH CARE SYSTEM,
JOANNE DROBICK, AND UNITED
STATES OF AMERICA’S MOTION TO
DISMISS THIRD AMENDED
COMPLAINT; STRIKING FOURTH
AMENDED COMPLAINT; VACATING
HEARING**

Before the Court is defendants Veterans Administration Palo Alto Health Care
System, Joanne Drobrick, and the United States of America’s (“Federal Defendants”)
Motion to Dismiss plaintiffs’ Third Amended Complaint (“TAC”), filed July 15, 2010
 (“Motion”), by which the Federal Defendants seek, pursuant to Rule 12(b)(1) and Rule
 12(b)(6) of the Federal Rules of Civil Procedure, dismissal of plaintiffs’ TAC as to said

1 defendants.¹ No opposition has been filed. Rather, on August 13, 2010, plaintiffs filed a
2 Fourth Amended Complaint, which the Federal Defendants ask be either stricken or
3 “ignore[d].” (Reply at 2:9.) Having read and considered the papers filed in support of the
4 motion, the Court deems the matter appropriate for determination thereon and rules as
5 follows.

6 As the Federal Defendants point out, the TAC’s First, Fourth, and Fifth Causes of
7 Action, each alleging a claim under 42 U.S.C. § 1983, cannot be pursued against the
8 Federal Defendants because § 1983 applies only to state actors. (See Mot. at 15:13-25.)
9 Additionally, plaintiffs fail to allege sufficient facts demonstrating said causes of action were
10 brought within the applicable two-year statute of limitations. (See Mot. at 6:2 - 7:11.)
11 Further, plaintiffs fail to allege sufficient facts demonstrating exhaustion of administrative
12 remedies. (See Mot. at 13:12 - 14:19.)

13 Accordingly, the Motion is hereby GRANTED, with leave to amend, and the above-
14 referenced Fourth Amended Complaint is hereby STRICKEN. If plaintiffs wish to file a
15 Fourth Amended Complaint, any such amended pleading shall be filed no later than
16 September 22, 2010.²

17 In light of the above, the hearing scheduled for September 3, 2010 is hereby
18 VACATED.

19 **IT IS SO ORDERED.**

20
21 Dated: September 1, 2010

22 
23 MAXINE M. CHESNEY
24 United States District Judge

25
26 _____
27 ¹ Plaintiffs’ First, Fourth, and Fifth Causes of Action are alleged against, *inter alia*,
28 the Federal Defendants. (See TAC at 9, 11, 12.)

²By granting leave to amend, the Court makes no finding herein as to the sufficiency
of the pleading filed on August 13, 2010.