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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL RIESE,
Plaintiff,
v.
COUNTY OF DEL NORTE, et al.,
Defendants.

Case No. [12-cv-03723-WHO](#)

**ORDER DENYING MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT**

Re: Dkt. No. 62

United States District Court
Northern District of California

INTRODUCTION

Plaintiff Michael Riese has filed a Motion for Leave to File an Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a). In his proposed amended complaint, Riese seeks to add negligence and negligent supervision causes of action against Del Norte County. After considering the parties' briefs, the Court DENIES Riese's motion to amend the complaint.

BACKGROUND

A. Factual background

Riese is a former District Attorney of Del Norte County. During Riese's tenure as District Attorney, he "fired Defendant [Jon] Alexander from his position as Deputy District Attorney after determining that Alexander could no longer be employed as a Deputy DA while on probation." Compl. [Dkt. No. 1] ¶ 22. According to Riese, his firing of Alexander "began a chain of events orchestrated by Alexander to discredit, humiliate and cause injury to" Riese. *Id.* In June 2010, Alexander defeated Riese in an election and succeeded him as District Attorney. *Id.* ¶ 23.

Riese alleges that on August 22, 2011, he fell asleep while at a Safeway "as a side effect from some medication he had been prescribed for a medical condition." *Id.* ¶ 24. He asserts that two police officers responded and, after speaking with him, "concluded this was a medically related incident and that Riese was not under the influence of any alcohol or narcotics." *Id.* Riese

1 alleges that Alexander was the first person on the scene to investigate the Safeway matter and that
2 Alexander “interviewed witnesses and obtained video recordings from the store.” *Id.*

3 Riese claims that following the Safeway incident, Alexander “decided to harass and
4 wrongfully prosecute Riese to further a personal vendetta Alexander carried.” *Id.* According to
5 Riese, Alexander, along with other law enforcement officers, “agreed to have [Crescent City
6 Police Department] officers pull Riese over every chance they got to try and catch him intoxicated
7 because at the time they had no evidence to use against Riese at trial.” *Id.* He alleges that
8 Alexander conducted interviews of witnesses and pushed forward with the “bad faith prosecution”
9 of Riese even though witness statements were favorable to Riese. *Id.*

10 In February 2012, Riese was tried in Del Norte County Superior Court for driving under
11 the influence, child endangerment, and public intoxication arising from the Safeway incident. *Id.*
12 ¶ 32. The jury found Riese not guilty on all counts. *Id.*

13 **B. Procedural background**

14 Riese filed the instant action on July 16, 2012 and named numerous defendants, including
15 Del Norte County. Riese’s original complaint asserted a cause of action under 42 U.S.C. § 1983
16 alleging, among other things, that Del Norte County poorly supervised its employees and
17 “maintain[ed] an unconstitutional policy, custom, and practice of harassing and detaining
18 individuals without probable cause or reasonable suspicion.” *Id.* ¶ 67.

19 In April 2013, Riese and Del Norte County filed a Joint Case Management Conference
20 Statement stating that Riese “may amend [the complaint] to include a negligence cause of action
21 against Defendant County of Del Norte based on what he asserts is continued negligent conduct on
22 its part since the filing of this civil action.” Joint Case Management Conference Statement [Dkt.
23 No. 40] at 5. The statement proposed no deadline for filing an amended complaint.

24 Riese now requests leave to amend in order to add negligence and negligent supervision
25 causes of action against Del Norte County. Mot. for Leave to Amend [Dkt. No. 62] at 2. In his
26 Motion for Leave, Riese claims that, per orders of the Del Norte County District Attorney’s office,
27 investigators probing an April 2012 incident involving Riese “served unlawful subpoenas on
28 several pharmacies for private medical records and subpoenas demanding Riese’s cellular phone

1 records.” *Id.* at 5. Riese further alleges that Alexander and Del Norte County “were reckless in
2 failing to provide Riese with [the] „statutory notice to consumer“ that [was] required,” and that the
3 “unlawful subpoenas resulted in several [Health Insurance Portability and Accountability Act
4 (“HIPPA”)] and civil rights violations.” *Id.*

5 Riese filed a claim form with Del Norte County on April 17, 2013 “[d]ue to the continued
6 harassment and violations against [Riese] by Alexander and the District Attorney’s office and the
7 failure of . . . [Del Norte] County to supervise and prevent Alexander’s actions.” Notice of Errata
8 to Exhibit B of Plaintiff’s Mot. for Leave to Amend [Dkt. No. 68] (“Notice of Errata”) at 14. Del
9 Norte County rejected the claim on June 28, 2013. *Id.*

10 **LEGAL STANDARD**

11 Per Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading only with
12 the opposing party’s written consent or the court’s leave. The court should freely give leave when
13 justice so requires.” In general, federal courts have adopted a liberal attitude toward pleading
14 requirements. “In the absence of any apparent or declared reason—such as undue delay, bad faith
15 or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments
16 previously allowed, undue prejudice to the opposing party by virtue of allowance of the
17 amendment, futility of amendment, etc.—the leave sought should, as the rules require, be „freely
18 given.”” *Foman v. Davis*, 371 U.S. 178, 182 (1962). Among these considerations, “prejudice to
19 the opposing party carries the greatest weight.” *Sonoma County Ass’n of Retired Employees v.*
20 *Sonoma County*, 708 F.3d 1109, 1117 (9th Cir. 2013) (internal quotation marks omitted).

21 A motion for leave to amend may also be denied where a proposed cause of action “would
22 have been futile in that it could be defeated on a motion for summary judgment.” *Gabrielson v.*
23 *Montgomery Ward & Co.*, 785 F.2d 762, 766 (9th Cir. 1986). *See also California ex. rel.*
24 *California Dept. of Toxic Substances Control v. Neville Chemical Co.*, 358 F.3d 661, 673 (9th Cir.
25 2004) (“The grant or denial of an opportunity to amend is within the discretion of the District
26 Court, and denial of leave to amend is appropriate if the amendment would be futile. Futility
27 includes the inevitability of a claim’s defeat on summary judgment.”) (internal quotation marks
28 and citations omitted).

1 **DISCUSSION**

2 Riese argues that granting him leave to amend would not unduly prejudice the defendants,
3 as “Defendants were aware in April 2013 that there was a possibility that Riese would seek to
4 amend complaint if the negligent conduct continued unabated and there was evidence of the
5 negligence.” Mot. for Leave to Amend at 4. Riese also argues that Del Norte County will not be
6 prejudiced because neither side has begun discovery. *Id.* at 5. In addition, Riese maintains that his
7 request for leave to amend is not futile because new evidence of Del Norte County’s negligence
8 has emerged—namely, the incidents surrounding the unlawful subpoenas allegedly resulting in
9 several HIPPA and civil rights violations. *Id.* at 6.

10 In response, Del Norte County asserts that Riese’s Motion for Leave should be denied “on
11 the single factor that amendment would be futile.” Opp’n [Dkt. No. 79] at 2. Del Norte County
12 argues that it is not the proper defendant for Riese’s proposed new negligence and negligent
13 supervision claims because “Alexander was not employed or supervised by” Del Norte County,
14 but, instead, by the Attorney General. *Id.* at 2-3. Del Norte County claims that because it had no
15 power to supervise Alexander, it cannot be held liable for Alexander’s purported negligence. *Id.*
16 at 3.¹

17 Riese did not file a reply to Del Norte County’s opposition.

18 As stated, while prejudice to the opposing party is the weightiest consideration among the
19 *Foman* factors when deciding whether to grant leave to amend, *Sonoma County*, 708 F.3d at 1117,
20 such motions may also be denied on futility grounds. *Gabrielson*, 785 F.2d at 766.

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23 ¹ Del Norte County also argues that even if Riese were able to establish that it was
24 Alexander’s employer or supervisor, it is immune from liability because a “public entity is not
25 liable for an injury, whether such injury arises out of an act or omission of the public entity or by a
26 public employee or any other person.” *Id.* (quoting Cal. Gov’t Code Section 815). It also
27 contends that Riese’s motion should be denied because Riese’s “declaration consists of hearsay
28 statements regarding how and when the criminal investigation or prosecution were essentially
conducted or driven by Defendant Alexander” and, thus, Riese provides no admissible evidence in
support of his Motion for Leave. *Id.* at 4. Since district attorneys are state officers, as discussed in
this Order and as the County argues, the Court need not address the County’s alternative
arguments to deny the motion to amend.

1 Riese’s proposed new causes of action allege that Del Norte County should be held liable
2 for the actions of Alexander, the District Attorney of Del Norte County at the time of the incidents
3 in question. Mot. for Leave to Amend at 5-6. However, vicarious liability cannot attach to Del
4 Norte County unless it is shown that Alexander was acting as a *county* official, not a state official,
5 in the execution of his prosecutorial duties, including the investigation of Riese.

6 Riese’s proposed causes of action against Del Norte County are futile because “under
7 California law a county district attorney acts as a state official when deciding whether to prosecute
8 an individual.” *Weiner v. San Diego County*, 210 F.3d 1025, 1030 (9th Cir. 2000). “All relevant
9 California cases . . . have held that district attorneys are state officers for the purpose of
10 *investigating and proceeding with criminal prosecutions.*” *Id.* (emphasis added).

11 Riese alleges that Del Norte County failed to supervise Alexander “and others within his
12 authority,” Notice of Errata at 34, during “the course of the investigation” of Riese. Mot. for
13 Leave to Amend at 5. Additionally, Riese maintains that “[a]lthough a conflict existed due to
14 Alexander’s being a named defendant in Riese’s July 2012 complaint, Alexander continued to be
15 involved with the investigation” of Riese. *Id.* at 5-6.

16 Riese’s attempt to hold Del Norte County liable for Alexander’s actions focuses on
17 Alexander’s conduct during his investigation of Riese, and fits squarely within *Weiner*. As a
18 result, any amendment seeking to hold Del Norte County vicariously liable for Alexander’s
19 actions would prove futile because District Attorneys act as state officers, and not county officers,
20 in their investigation and prosecution of criminal cases. *Weiner*, 210 F.3d at 1030. Likewise, an
21 amendment seeking to hold Del Norte County liable for the actions of those “within [Alexander’s]
22 authority” would also prove futile because members of the District Attorney’s office also fall
23 under *Weiner*’s ambit. *Pellerin v. Nev. Cnty.*, No. 12-cv-665-KJM-CKD, 2013 WL 1284341, *4
24 (E.D. Cal. Mar. 28, 2013) (applying *Weiner* to hold that “*members of the District Attorney’s office*
25 *were state officials for purposes of prosecutorial decisions*”) (emphasis added).

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CONCLUSION

For the reasons stated above, Riese's Motion for Leave To File Amended Complaint is DENIED.

IT IS SO ORDERED.

Dated: October 9, 2013



WILLIAM H. ORRICK
United States District Judge

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