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

GARY MARTINOVSKY, et al.,  
Plaintiffs,  
v.  
COUNTY OF ALAMEDA, et al.,  
Defendants.

Case No. [16-cv-00403-MMC](#)

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTIONS TO DISMISS**

Re: Dkt. Nos. 21, 23

Before the Court are two motions: (1) "Motion to Dismiss Plaintiffs' Complaint [FRCP Rule 12(b)(6)] and, in the Alternative, Motion for More Definite Statement [FRCP Rule 12(e)]," filed Apr. 7, 2016, by defendants County of Alameda, Nancy O'Malley ("O'Malley"), John Paul Williams, and Eddie Bermudez (collectively, "County defendants"); and (2) "Motion to Dismiss; Request for a Stay," filed Apr. 8, 2016, by defendant Fernando Cubangbang ("Cubangbang"). Plaintiffs Gary Martinovsky and Integrated Pain Care, Inc. (collectively, "plaintiffs"), have filed opposition to each motion, to which the County defendants and Cubangbang have replied.<sup>1</sup>

The matters came on regularly for hearing on May 20, 2016. John Burton of The Law Offices of John Burton appeared on behalf of plaintiffs. Michael C. Wenzel of Bertrand, Fox, Elliot, Osman, & Wenzel appeared on behalf of the County defendants. Micah C. Osgood appeared on behalf of Cubangbang.

The Court having read and considered the parties' respective written submissions

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<sup>1</sup> On Apr. 22, 2016, in connection with their opposition to Cubangbang's motion, plaintiffs filed a Request for Judicial Notice, which request is granted.

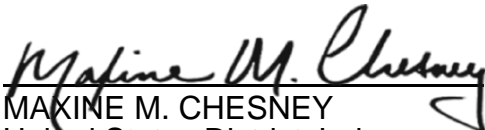
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and the arguments of counsel at the hearing, and for the reasons stated on the record at the hearing, the motions are hereby GRANTED in part and DENIED in part as follows.

1. The First Claim for Relief, titled "Deprivation of Civil Rights—42 U.S.C. § 1983: Individual Liability," is DISMISSED in its entirety. Such dismissal is without leave to amend to the extent the claim is brought against defendant O'Malley, and with leave to amend to the extent the claim is brought against the remaining individual defendants.
2. The Second Claim for Relief, titled "Deprivation of Civil Rights—42 U.S.C. § 1983: Entity and Supervisory Liability," is DISMISSED in its entirety. Such dismissal is without leave to amend to the extent the claim is brought against defendant O'Malley in her official capacity, and with leave to amend to the extent the claim is brought against said defendant in her individual capacity and the County of Alameda.
3. To the extent the County defendants' and Cubangbang's motions seek a more definite statement, such requests are DENIED as moot.
4. To the extent Cubangbang's motion seeks a stay of the instant proceedings, such request is DENIED without prejudice to renewal, if appropriate, at a later date.
5. Plaintiffs' Amended Complaint shall be filed no later than June 24, 2016.

**IT IS SO ORDERED.**

Dated: May 20, 2016

  
MAXINE M. CHESNEY  
United States District Judge