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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE DIAMOND, et al.,
Plaintiffs,
v.
CORIZON HEALTH, INC., et al.,
Defendants.

Case No. [16-cv-03534-JSC](#)

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS AND MOTION
FOR JUDGMENT ON THE
PLEADINGS AND DENYING
DEFENDANTS’ MOTION TO STRIKE**

Re: Dkt. No. 15

Plaintiffs filed suit against Corizon Health, Inc., the County of Alameda, Sheriff Gregory J. Ahern, and other unknown members of the Alameda County Sheriff’s Department as Does 1-50 alleging various civil rights claims under Section 1983, negligence, and a violation of California Government Code § 845.6 arising out of the death of their relative, Bryan Steicher, while he was a pretrial detainee at Santa Rita Jail. Now pending before the Court is Defendants’ Motion to Dismiss, for Judgment on the Pleadings, and/or to Strike the Section 845.6 claim and Plaintiffs’ request for injunctive relief. (Dkt. No. 15.) After carefully considering the parties’ briefing, the Court concludes that oral argument is unnecessary, see Civ. L. R. 7-1(b), and (1) GRANTS Defendants’ motion to dismiss the Section 845.6 claim as to Corizon without leave to amend; (2) GRANTS Defendants’ motion for judgment on the pleadings as to the Section 845.6 claim alleged against the County defendants with leave to amend; (3) GRANTS Defendants’ motion to dismiss and motion for judgment on the pleadings on Plaintiffs’ request for injunctive relief with leave to amend; and (4) DENIES Defendants’ motion to strike.

COMPLAINT ALLEGATIONS

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2 From June 18, 2014¹ until his death five days later, Bryan Steicher was in custody at Santa
3 Rita Jail in Dublin, California. (Compl. ¶ 18.) There, Bryan made several requests to obtain a
4 medically necessary Continuous Positive Airway Pressure (“CPAP”) machine for his sleep apnea
5 to assist with breathing during sleep. (Id. ¶ 16.) On June 18, 2014, Bryan asked his mother to
6 provide him with a CPAP device. (Id. ¶ 17.) Two days later, he submitted to the jail a written
7 request for a medical appointment. (Id.) On June 23, 2014, Bryan still had not received a CPAP
8 device. At some point that evening, Sheriff’s Deputies discovered Bryan dead in his cell due to a
9 sudden cardiac arrest related to cardiomyopathy. (Id.)

10 Plaintiffs are Bryan’s mother Christine Diamond and his surviving children Stephanie
11 Fischer, Brittany Alperstein, and Minor A.S. Plaintiffs allege that during Bryan’s five days in
12 custody at Santa Rita Jail, he was denied necessary medical attention and the ability to breathe
13 from not receiving his CPAP machine, which caused his death while in custody. (Id. ¶ 18.)
14 Plaintiffs assert four claims for relief. The first alleges a violation of 42 U.S.C. § 1983. They
15 contend that Corizon, Sheriff Ahern, and Doe defendants violated the First, Fourth, and Fourteenth
16 Amendments by depriving Bryan of the right to be free from deliberate indifference to his serious
17 medical needs while in custody, the right to be free from wrongful government interference with
18 familial relationships, and Plaintiffs’ right to companionship, society, and support of each other.
19 Second, Plaintiffs bring a municipal liability claim against Corizon, Sheriff Ahern, and Doe
20 defendants under Section 1983 based on the same constitutional violations. Plaintiffs also bring a
21 negligence claim and a claim for violation of California Government Code § 845.6 against all
22 Defendants. Plaintiffs request general damages, punitive damages as to Corizon and the Doe
23 defendants, attorneys’ fees and costs, and declaratory and injunctive relief.

24 Alameda County and Sheriff Ahern answered Plaintiffs’ Complaint. (Dkt. No. 7.)
25 Together with those two Defendants, Corizon then filed the instant motion to dismiss, for

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27 ¹ Plaintiffs allege that events occurred in both 2014 and 2016. (Compare Compl. ¶¶ 15, 17, with
28 id. ¶ 18.) It appears from the parties’ briefing that the incidents alleged actually occurred in 2014
and that the 2016 references are typos. Accordingly, this Order assumes that the events occurred
in 2014.

1 judgment on the pleadings, and/or to strike Plaintiffs' Section 845.6 claim for failure to state a
2 claim and their request for injunctive relief due to lack of standing. (Dkt. No. 15.)

3 LEGAL STANDARDS

4 I. Motion to Dismiss and Motion for Judgment on the Pleadings

5 When deciding a 12(b)(6) motion, the court must accept all factual allegations pled in the
6 complaint as true and draw all reasonable inferences in favor of the nonmoving party. See Cahill
7 v. Liberty Mut. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). "[F]or a complaint to survive a motion
8 to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must
9 be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Serv., 572
10 F.3d 962, 969 (9th Cir. 2009) (internal citations and quotation marks omitted). "Plausibility
11 requires pleading facts, as opposed to conclusory allegations or the formulaic recitation of the
12 elements of a cause of action." Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013) (internal
13 citations and quotation marks omitted).

14 A Rule 12(b)(6) motion to dismiss and a Rule 12(c) motion for judgment on the pleadings
15 are "virtually interchangeable." Sprint Telephony PCS, L.P. v. Cnty. of San Diego, 311 F. Supp.
16 2d 898, 902 (S.D. Cal. 2004) (citation omitted). The main difference between a Rule 12(b) motion
17 and Rule 12(c) motion is the time of filing. Dworkin v. Hustler Magazine Inc., 867 F.2d 1188,
18 1192 (9th Cir. 1989). A Rule 12(b)(6) motion to dismiss "must be made before the responsive
19 pleading." Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 954 (9th Cir. 2004) (citing Fed. R.
20 Civ. P. 12(b)(6)) (emphasis in original). By contrast, a Rule 12(c) motion for judgment on the
21 pleadings is only authorized after an answer has been filed. See Aldabe v. Aldabe, 616 F.2d 1089,
22 1093 (9th Cir. 1980). Otherwise, "the motions are functionally identical" and "the same standard
23 of review" applies for both a Rule 12(b)(6) and Rule 12(c) motion. Dworkin, 867 F.2d at 1192.

24 For motions under both Rule 12(b)(6) and Rule 12(c), the court should grant leave to
25 amend even if no request for leave to amend has been made, unless amendment would be futile.
26 See Pac. W. Grp., Inc. v. Real Time Solutions, Inc., 321 F. App'x 566, 569 (9th Cir. 2008)
27 (citation omitted).

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1 **II. Motion to Strike**

2 A Rule 12(f) motion to strike enables a district court to “strike from a pleading an
3 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R.
4 Civ. P. 12(f). Rule 12(f) motions are generally disfavored and “should not be granted unless the
5 matter to be stricken clearly could have no possible bearing on the subject of the litigation[.] If
6 there is any doubt whether the portion to be stricken might bear on an issue in the litigation, the
7 court should deny the motion.” *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057
8 (N.D. Cal. 2004) (internal citations omitted). Motions to strike should be granted “when
9 necessary to discourage parties from raising allegations completely unrelated to the relevant
10 claims and when the interests of justice so require.” *Sapiro v. Encompass Ins.*, 221 F.R.D. 513,
11 517 (N.D. Cal. 2004) (internal citations omitted).

12 **DISCUSSION**

13 **I. Fourth Cause of Action – Violation of California Government Code § 845.6**

14 Defendants contend that Plaintiffs’ Section 845.6 claim must be dismissed, adjudicated on
15 the pleadings, or stricken for two reasons. First, they argue that it must be dismissed against
16 Corizon because Section 845.6 only authorizes claims against a “public entity” or “public
17 employee,” and Corizon is a private company. Second, Defendants contend that Plaintiffs fail to
18 state a plausible Section 845.6 claim against any defendant. The Court will address each argument
19 in turn.

20 **A. Whether Plaintiffs Can Bring a Section 845.6 Claim against Corizon, a Private Entity**

21 Section 845.6 states, in relevant part, that “a public employee, and the public entity where
22 the employee is acting within the scope of his employment, is liable if the employee knows or has
23 reason to know that the prisoner is in need of immediate medical care and he fails to take
24 reasonable action to summon such medical care.” Cal. Gov’t Code § 845.6 (emphasis added). By
25 its very terms, Section 845.6 only applies to a “public employee” or “public entity[.]” The
26 California Government Code defines “public entity” to include “the State, the Regents of the
27 University of California, a county, city, district, public authority, public agency, and any other
28 political subdivision or public corporation in the State.” This definition “is intended to include

1 every kind of independent political or governmental entity in the State.” *Lawson v. Super. Ct.*,
2 180 Cal. App. 4th 1372, 1396 (2010) (internal citation omitted).

3 Plaintiffs do not allege that Corizon is an independent political or governmental entity.
4 Instead, they describe Corizon as a Delaware corporation that provides healthcare services under
5 contract with the County. Section 845.6 liability does not extend to private entities under contract
6 with the State. See *id.* at 1400 (holding that a private entity operating a residential correctional
7 facility under contract with the State was not a public entity and thus, not within the scope of
8 Section 845.6 liability).²

9 Plaintiffs’ attempt to expand Section 845.6 liability to Corizon is unpersuasive. “If there is
10 no ambiguity in the language, [courts] presume the Legislature meant what it said and the plain
11 meaning of the statute governs.” *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103
12 (2007). The statute clearly defines “public entity” and there is no ambiguity in the statutory
13 language. The Court must therefore presume that the Legislature intended Section 845.6 only to
14 apply to a “public entity” or “public employee.” Indeed, Plaintiffs concede that courts have found
15 Section 845.6 to apply only to “public entities” and their employees, yet urge the Court to go
16 beyond the literal interpretation of “public entity.” (Dkt. No. 18 at 4.) But they do not cite any
17 cases that have done so. The Court declines Plaintiffs’ invitation to be the first.

18 Plaintiffs’ reliance on *West v. Atkins*, 487 U.S. 42 (1988) does not change the Court’s
19 conclusion. In *Atkins*, the state hired a doctor to provide medical services to state prison inmates.
20 *Id.* The court held that Section 1983 liability extended to the doctor because he was acting under
21 color of state law and concluded that his liability could be imputed to the state. *Id.* at 54.
22 Plaintiffs contend that because liability for deliberate indifference to medical needs extends to an
23 independent contractor hired to perform state functions in *Atkins*, Section 845.6 liability should
24 extend that far as well. But *Atkins* involved Section 1983 liability, which only requires that a

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26 ² In *Lawson v. Superior Court*, 180 Cal. App. 4th 1372 (2010), the court also noted that while the
27 California Tort Claims Act does not expressly address whether governmental immunity extends to
28 independent contractors of the state, it “strongly implies that the Legislature did not intend to
confer such immunity” because an independent contractor is not a public employee or entity. *Id.*
at 1397 n.23. Thus, even if Plaintiffs alleged that Corizon operated as the County’s independent
contractor, Corizon would still not be a public entity subject to Section 845.6 liability.

1 defendant act “under color of state law,” not the statutory “public entity” requirement in the
2 California Government Code.

3 Because Corizon is not a public entity or public employee, the Court dismisses the Section
4 845.6 claim against Corizon without leave to amend. The Court denies Defendants’ motion to
5 strike this claim, as they have not met any of the standards for striking a claim and the motion in
6 any event is moot.

7 B. Sufficiency of Factual Allegations

8 Of course, the above analysis does not dispose of the Section 845.6 claim against the
9 County Defendants. To that end, Defendants contend that Plaintiffs fail to allege a violation of
10 Section 845.6 because there are no factual allegations that plausibly establish any of the elements
11 of such a claim.

12 “[T]o state a claim under [Section] 845.6, a prisoner must establish three elements: (1) the
13 public employee knew of or had reason to know of the need (2) for immediate medical care, and
14 (3) failed to reasonably summon such care.” *Jett v. Penner*, 439 F.3d 1091, 1099 (9th Cir. 2006)
15 (citing Cal. Gov’t Code § 845.6). “Liability under section 845.6 is limited to serious and obvious
16 medical conditions requiring immediate care.” *Lucas v. Cnty. of Los Angeles*, 47 Cal. App. 4th
17 277, 287-88 (1996) (internal citations and quotation marks omitted).

18 Plaintiffs fail to respond to Defendants’ argument that Plaintiffs fail to allege a Section
19 845.6 claim as to the County Defendants and thus concede this point. See *Ardente v. Shanley*, No.
20 07-4479 MHP, 2010 WL 546485, at *6 (N.D. Cal. Feb. 9, 2010) (“Plaintiff fails to respond to this
21 argument and therefore concedes it through silence.”).

22 Accordingly, the Court grants the County Defendants’ motion for judgment on the
23 pleadings as to Plaintiffs’ Section 845.6 claim with leave to amend as it pertains to the County
24 Defendants. The Court denies the County Defendants’ motion to strike this claim, as they have
25 not met any of the standards for striking a claim.

26 **II. Plaintiffs’ Request for Injunctive Relief**

27 Plaintiffs seek injunctive relief including orders requiring Defendants to institute and
28 enforce policies and procedures for handling inmates with serious medical needs and training

1 medical professionals in their care. (Compl. at 11-12.) Defendants urge the Court to dismiss,
2 strike, or adjudicate Plaintiffs’ request for injunctive relief on the grounds that Plaintiffs lack
3 standing to request injunctive relief.

4 Defendants’ bring their motion under Rule 12(b)(6) or 12(c), both of which involve failure
5 to state a claim. However, lack of standing is a jurisdictional defect. See *Cetacean Cmty. v. Bush*,
6 386 F.3d 1169, 1174 (9th Cir. 2004); *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 101
7 (1998). When a defendant “alleges only jurisdictional grounds for dismissal, the proper course is
8 to consider the motion as one to dismiss for lack of subject matter jurisdiction.” *Hellmann-*
9 *Blumberg v. Univ. of Pac.*, No. 2:12-CV-00286-GEB, 2013 WL 1326469, at *1 (E.D. Cal. Mar.
10 29, 2013) (internal citations and quotation marks omitted). The Court will therefore analyze
11 Defendants’ motion as a facial challenge under Rule 12(b)(1). See, e.g., *Machlan v. Proctor &*
12 *Gamble Co.*, 77 F. Supp. 3d 954, 958-59 (N.D. Cal. 2015) (addressing lack of standing to seek
13 injunctive relief under Rule 12(b)(1)); *San Luis Unit Food Producers v. United States*, 772 F.
14 Supp. 2d 1210, 1218 (E.D. Cal. 2011), *aff’d*, 709 F.3d 798 (9th Cir. 2013) (treating a jurisdictional
15 challenge brought under Rule 12(c) as a Rule 12(b)(1) motion).

16 For injunctive relief, plaintiffs must demonstrate that there is “a sufficient likelihood that
17 [they] will again be wronged in a similar way” and establish a “real and immediate threat of
18 repeated injury.” *Fortyone v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1081 (9th Cir. 2004)
19 (internal citation and quotation marks omitted). A plaintiff may show likelihood that her injury
20 will reoccur by showing “that the defendant had, at the time of the injury, a written policy, and
21 that the injury ‘stems from’ that policy.” *Armstrong v. Davis*, 275 F.3d 849, 865 (9th Cir. 2001),
22 abrogation recognized on other grounds by *Nordstrom v. Ryan*, 275 F.3d 849 (9th Cir. 2001)
23 (internal citation omitted). Federal standing to pursue injunctive relief under Article III requires
24 plaintiffs to “allege some threatened or actual injury resulting from the putatively illegal action
25 before a federal court may assume jurisdiction.” *O’Shea v. Littleton*, 414 U.S. 488, 493, (1974)
26 (internal citations and quotation marks omitted).

27 Here, Plaintiffs lack standing to pursue injunctive relief because they have not alleged a
28 real or immediate threat of future injury. Plaintiffs’ reliance on their “status as successor[s] in

1 interest to the harm perpetrated on the decedent” fails to demonstrate a “likelihood of substantial
2 and immediate irreparable injury” to Plaintiffs. *Neuroth v. Mendocino Cnty.*, No. 15-CV-03226-
3 NJV, 2016 WL 379806, at *3 (N.D. Cal. Jan. 29, 2016) (internal citation and quotation marks
4 omitted). “Because the injury was perpetrated on the decedent, there is no risk of future harm.”
5 *Id.*

6 Plaintiffs also fail to demonstrate a risk of repeated injury because the repeated injury
7 would require a string of contingencies to occur to Plaintiffs. Plaintiffs’ alleged threat of injury
8 would first require their arrest and placement in custody at an Alameda County jail. Plaintiffs
9 concede that to obtain injunctive relief, they must “demonstrate a realistic threat of repetition” of
10 the suffered injury. (Dkt. No. 18 at 6.) Yet it is pure speculation that Plaintiffs—who include
11 Bryan’s minor child—may have a future encounter in an Alameda County jail at all, let alone may
12 experience a failure by Alameda County employees to summon immediate medical care for their
13 serious medical needs. “[S]peculative claims do not show a likelihood of substantial and
14 immediate irreparable injury.” *Haynie v. Harris*, No. C 10-1255 SI, 2011 WL 5038357, at *8
15 (N.D. Cal. Oct. 24, 2011). For these reasons, Plaintiffs lack standing to pursue the injunctive
16 relief sought.

17 Plaintiffs cite *Rodriguez v. California Highway Patrol*, 89 F. Supp. 2d 1131, 1142 (N.D.
18 Cal. 2000), for the proposition that many courts have recognized that allegations of a policy,
19 pattern, and practice of constitutional violations demonstrate a real and immediate threat of future
20 injury to allow for injunctive relief. But *Rodriguez* is distinguishable. There, the plaintiffs alleged
21 that various state law enforcement agencies had a policy of racial profiling motorists. *Id.* at 1142.
22 The court concluded it was possible that the plaintiffs could show that they were likely to be
23 subjected to future racial profiling due to the policy. *Id.* This likelihood was sufficient for
24 injunctive relief because plaintiffs risked repeated injury anytime they were to drive in the future
25 as a result of the policy. By contrast, Plaintiffs must show a sufficient likelihood that they will be
26 arrested and detained in an Alameda County jail, experience a serious medical need, and a failure
27 by Alameda County employees to summon immediate medical care for that need. Plaintiffs have
28 failed to show that such a string of contingencies is sufficiently likely to occur to warrant

1 injunctive relief.

2 Nor have Plaintiffs asserted any hindrance to Santa Rita jail inmates' ability to protect their
3 own interests to allow for third party standing. See Powers v. Ohio, 499 U.S. 400, 411 (1991)
4 (noting that "there must exist some hindrance to the third party's ability to protect his or her own
5 interests" to assert third party standing). While other prisoners in Santa Rita Jail may face a risk
6 of a future injury similar to that alleged by Plaintiffs, Plaintiffs do not have standing to pursue
7 injunctive relief on their behalf based on this speculation. See Arlington Heights v. Metro. Hous.
8 Dev. Corp., 429 U.S. 252, 263 (1977) ("In the ordinary case, a party is denied standing to assert
9 the rights of third persons."). Accordingly, the Court grants Defendants' motion to dismiss and
10 motion for judgment on the pleadings on Plaintiffs' request for injunctive relief for lack of
11 standing with leave to amend. The Court denies Defendants' motion to strike this claim, as they
12 have not met any of the standards for striking a claim.

13 **CONCLUSION**

14 For the reasons described above, the Court GRANTS Defendants' motion to dismiss the
15 Section 845.6 claim as to Corizon without leave to amend and GRANTS the motion for judgment
16 on the pleadings as to the Section 845.6 claim alleged against the County Defendants with leave to
17 amend. The Court also GRANTS Defendants' motion to dismiss and motion for judgment on the
18 pleadings on Plaintiffs' request for injunctive relief with leave to amend for lack of standing.
19 Finally, the Court DENIES Defendants' motion to strike as to all claims.

20 Plaintiffs shall file an amended complaint, if any, within 20 days of the date of this Order.
21 If no amended complaint is filed, the Section 845.6 claim against the County Defendants will be
22 dismissed with prejudice and the injunctive relief claim dismissed without prejudice as dismissal
23 for lack of jurisdiction is always without prejudice. If Plaintiffs are later able to make allegations
24 sufficient to confer standing for injunctive relief, they may move for leave to amend under
25 whatever standard applies at that time.

26 **IT IS SO ORDERED.**

27 Dated: December 2, 2016

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JACQUELINE SCOTT CORLEY
United States Magistrate Judge