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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF JIMMY RAY HATFIELD,  
et al.,

Plaintiffs,

No. C 11-2396 PJH

v.

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

COUNTY OF LAKE, et al.,

Defendants.

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Defendants (1) Dr. William Durkin ("Durkin"); (2) Adventist Health Clearlake Hospital ("Adventist"); and (3) Lake County Department of Mental Health ("DMH"), DMH employee Patricia Trujillo, and DMH employee Kristy Kelly's three separate motions to dismiss plaintiffs' first amended complaint ("FAC") came on for hearing on May 23, 2012 before this court. Durkin appeared through his counsel, Mike Green; Adventist appeared through its counsel, Denise Billups-Slone; and DMH, Trujillo, and Kelly appeared through their counsel, Steven Enochian. Counsel for Lake County, Eric Gale, and for the City of Clearlake, Dirk Larsen, also attended the hearing. Having read all the papers and carefully considered the relevant legal authority, the court hereby GRANTS IN PART and DENIES IN PART defendants' motions, for the reasons stated at the hearing, and summarized below as follows:

**I. Common Issue re: All Defendants' Motions**

There is one overriding deficiency in plaintiffs' FAC that impacts all three motions to dismiss. The FAC fails to specify which plaintiffs are bringing which claims against defendants as survival claims or otherwise, and in which capacity plaintiffs are bringing

**United States District Court**  
For the Northern District of California

1 those claims, e.g., as successors in interest or as heirs or otherwise.

2 Under California law, “survival actions” are distinguished from “wrongful death”  
3 actions. A wrongful death action is an independent claim brought by a decedent’s heirs for  
4 damages they personally suffered on account of the death. See Cal. Civ. P. Code §  
5 377.60. A survival action, on the other hand, is not a new cause of action that vests in the  
6 heirs on the death of the decedent. Rather, it is a separate and distinct personal injury  
7 action that belonged to the decedent before death, but which, by statute, “survives” to the  
8 decedent’s estate for the purpose of recovering damages that would have been available  
9 personally to the decedent had he or she lived. *Quiroz v. Seventh Ave. Ctr.*, 140 Cal. App.  
10 4th 1256, 1256 (2006); see Cal. Civ. P. Code § 377.20.

11 Under California law, if an injury giving rise to liability occurs before a decedent's  
12 death, then the claim survives to the decedent's estate. See Cal. Civ. P. Code § 377.30.  
13 In other words, it is a separate cause of action that belonged to the decedent before death,  
14 and which, by statute, survives that death. *Id.*; see *Quiroz*, 140 Cal. App. 4th at 1256. The  
15 survivor claim may be asserted by the decedent’s personal representative, or, if he has  
16 none, by the decedent’s “successor in interest.” Cal. Civ. P. Code § 377.30. The  
17 “decedent’s successor in interest” is “the beneficiary of the decedent’s estate or other  
18 successor in interest who succeeds to a cause of action or to a particular item of property  
19 that is the subject of a cause of action.” Cal. Civ. P. Code § 377.11. The “successor in  
20 interest” may prosecute the survival action if the person purporting to act as successor in  
21 interest satisfies the requirements of California law. See *id.*, §§ 377.30, 377.32; *Tatum v.*  
22 *City and County of San Francisco*, 441 F.3d 1090, 1094 (9th Cir. 2006).

23 A person seeking to file an action as a decedent’s successor in interest must attest  
24 to certain facts showing that the person is in fact the decedent’s successor in interest. Cal.  
25 Civ. P. Code § 377.32. The proposed “successor in interest” must execute and file an  
26 affidavit or declaration under penalty of perjury, stating: (1) the decedent's name; (2) the  
27 date and place of decedent's death; (3) that no proceedings are pending in California for  
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1 the administration of the decedent's estate; (4) either that the declarant is the decedent's  
2 successor in interest or is authorized to act on behalf of the decedent's successor in  
3 interest; and (5) that no other person has a superior right to commence the action or  
4 proceeding for the decedent. *Id.* In addition, the declarant must attach a certified copy of  
5 the death certificate; if the decedent's estate was administered, the declarant must also  
6 produce a copy of the final order showing distribution of the decedent's cause of action to  
7 the successor in interest. *Id.*

8 The party seeking to bring a survival action bears the burden of demonstrating that a  
9 particular state's law authorizes a survival action and that the plaintiff meets the state's  
10 requirements for bringing a survival action. *Moreland v. Las Vegas Metro. Police Dep't*,  
11 159 F.3d 365, 369 (9th Cir. 1998).

12 By contrast, under California law, a cause of action for wrongful death is a statutory  
13 claim. Cal. Civ. P. Code §§ 377.60-377.62. Its purpose is to compensate specific persons  
14 – that is, heirs – for the loss of companionship and other losses suffered as a result of a  
15 decedent's death. *Jackson v. Fitzgibbons*, 127 Cal. App. 4th 329, 335 (2005). Only the  
16 persons enumerated in § 377.60 have standing to assert a wrongful death claim. Section  
17 377.60(a) provides in part that

18 [a] cause of action for the death of a person caused by the wrongful act or  
19 neglect of another may be asserted by any of the following persons or by the  
20 decedent's personal representative on their behalf: (a) The decedent's  
21 surviving spouse, domestic partner, children, and issue of deceased children,  
22 or, if there is no surviving issue of the decedent, the persons . . . who would  
23 be entitled to the property of the decedent by intestate succession.

24 The wrongful death cause of action is considered joint and indivisible because "it is  
25 subject to the requirement that all heirs should join in the action and . . . damages awarded  
26 should be in a lump sum," and because it precludes omitted heirs from bringing subsequent  
27 and individual actions for the recovery of their individual damages. *Helling v. Lew*, 28 Cal.  
28 App. 3d 434, 438 (1972). An heir who files a wrongful death action is required to properly  
join all known heirs in the action. *Cross v. Pacific Gas & Elec. Co.*, 60 Cal. 2d 690, 692-93  
(1964); *Ruttenberg*, 53 Cal. App. 4th 801, 808 (1997).

1           At the hearing, plaintiffs represented that the § 1983 claims are the only claims being  
2 asserted as survival claims, which decedent’s daughters are bringing as successors in  
3 interest. Plaintiffs noted that none of the state law claims were being brought as survival  
4 claims, but that instead decedent’s daughters and his parents were suing in their capacity  
5 as decedent’s heirs. Plaintiffs also conceded that all of the state law claims were tied into  
6 the wrongful death claim. Plaintiffs further indicated that they would be dismissing the  
7 estate as a party since there was in actuality no estate.

8           For the reasons stated at the hearing, plaintiffs must add such clarification to the  
9 complaint itself, and all three motions to dismiss are GRANTED as to all claims on this  
10 basis with leave to amend. Plaintiffs are required to amend the complaint such that the  
11 second amended complaint (“SAC”) specifies in the heading to each claim which plaintiffs  
12 are bringing the claim and in which capacity. Additionally, plaintiffs are required to allege  
13 sufficient facts demonstrating that they are entitled to bring the claim in the capacity it is  
14 raised. This ruling applies to all claims that are not otherwise dismissed with prejudice as  
15 set forth below.

16 **II. Durkin’s Motion to Dismiss**

17 **A. Claim One: Deliberate Indifference Under § 1983**

18           The court GRANTS Durkin’s motion to dismiss the claim with leave to amend as set  
19 forth in section one above. However, the court finds that the FAC sufficiently alleges that  
20 Durkin acted under color of state law, a serious medical need on decedent’s behalf, and  
21 that Durkin responded with deliberate indifference, and DENIES Durkin’s motion to dismiss  
22 the claim on this basis. Additionally, the court DENIES Durkin’s motion to dismiss the claim  
23 based on the damages alleged in conjunction with the claim, and concludes that, for the  
24 reasons set forth in *Cotton v. City of Eureka*, 2012 WL 909669 at \*9 (N.D. Cal. 2012),  
25 damages based on the decedent’s pain and suffering are available in a § 1983 survival  
26 action. See also *Guerrero v. County of San Benito*, 2009 WL 4251435 at \*5 (N.D. Cal.  
27 2009); *Guyton v. Phillips*, 532 F.Supp. 1154, 1166-67 (N.D.Cal. 1981), *abrogated on other*  
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1 grounds by *Peraza v. Delameter*, 722 F.2d 1455 (9th Cir. 1984).

2 **B. Claim Five: Medical Negligence**

3 The court GRANTS Durkin’s motion to dismiss the claim as set forth in section one  
4 above. The court, however, finds that the FAC sufficiently alleges facts in support of a  
5 claim for medical negligence, and DENIES Durkin’s motion on that basis. *See Hanson v.*  
6 *Grode*, 76 Cal. App. 4th 601, 606 (1999) (the elements of a claim for medical malpractice  
7 include: (1) a duty to use such skill, prudence, and diligence as other members of the  
8 medical profession commonly possess and exercise; (2) a breach of that duty; (3) a  
9 proximate causal connection between the negligent conduct and the injury; and (4)  
10 resulting loss or damage). Nevertheless, this claim is DISMISSED as duplicative of the  
11 wrongful death claim, which is itself based on Durkin’s alleged medical negligence.

12 **C. Claim Seven: Unruh Act**

13 Plaintiffs agree to voluntarily dismiss this claim with prejudice.

14 **D. Claim Eight: Wrongful Death**

15 The court GRANTS Durkin’s motion to dismiss the claim with leave to amend as set  
16 forth in section one above. The court, however, finds that the FAC sufficiently alleges facts  
17 in support of a wrongful death claim, and DENIES Durkin’s motion on that basis. *Quiroz*,  
18 140 Cal. App. 4th at 1263-64 (the elements of a wrongful death cause of action include (1)  
19 the negligence or other wrongful act; (2) the resulting death; and (3) damages consisting of  
20 pecuniary loss suffered by the heirs).

21 **III. Adventist’s Motion to Dismiss**

22 **A. Supplemental Jurisdiction**

23 The federal supplemental jurisdiction statute provides as follows: “in any civil action  
24 of which the district courts have original jurisdiction, the district courts shall have  
25 supplemental jurisdiction over all other claims that are so related to claims in the action  
26 within such original jurisdiction that they form part of the same case or controversy under  
27 Article III of the United States Constitution.” 28 U.S.C. § 1367(a). A state law claim is part  
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1 of the same case or controversy when it shares a “common nucleus of operative fact” with  
2 the federal claims, and the state and federal claims would normally be tried together.  
3 *Trustees of the Constr. Indus. & Laborers Health & Welfare Trust v. Desert Valley*  
4 *Landscape Maint., Inc.*, 333 F.3d 923, 925 (9th Cir. 2003). In determining whether to  
5 exercise supplemental jurisdiction, a district court must undertake a case-specific analysis  
6 to ascertain whether declining supplemental jurisdiction “comports with the underlying  
7 objective of most sensibly accommodat[ing] the values of economy, convenience, fairness  
8 and comity.” *Bahrapour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004).

9 Here, the court finds that consideration of the § 1367(c) factors favors exercising  
10 supplemental jurisdiction. It is more efficient to proceed with all actions arising from the  
11 incident since the claims against Adventist share a “common nucleus of operative fact” with  
12 the federal and state law claims brought against the other defendants. Accordingly, the  
13 court DENIES Adventist’s motion on this ground.

14 **B. Claim Five: Medical Negligence**

15 The court GRANTS Adventist’s motion to dismiss the claim as set forth in section  
16 one above. Additionally, for the reasons set forth above regarding Durkin’s motion as to  
17 this claim, the court finds that the FAC sufficiently alleges facts in support of a claim for  
18 medical negligence on Durkin’s part, and further finds that the FAC sufficiently alleges facts  
19 demonstrating that Durkin was an ostensible agent of Adventist, and therefore DENIES the  
20 motion on that basis. See *Ermoian v. Desert Hosp.*, 152 Cal. App. 4th 475, 502 (2007);  
21 *Mejia v. Community Hosp. of San Bernardino*, 99 Cal. App. 4th 1448, 1454–1455 (2002).  
22 However, this claim is DISMISSED as duplicative of the wrongful death claim, which is itself  
23 based on the same alleged medical negligence.

24 **C. Claim Seven: Unruh Act**

25 The court concludes that plaintiffs have failed to sufficiently allege that Adventist  
26 intentionally discriminated against the decedent based on his membership in a protected  
27 class, and GRANTS Adventist’s motion to dismiss this claim. The dismissal is with  
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1 prejudice because the court finds that under the circumstances presented here, no claim  
2 for intentional discrimination *because of* decedent's disability can be stated.

3 **D. Claim Eight: Wrongful Death Act**

4 The court GRANTS Adventist's motion to dismiss the claim with leave to amend as  
5 set forth in section one above. The court, however, finds that the FAC sufficiently alleges  
6 facts in support of a wrongful death claim, and DENIES Adventist's motion on that basis.  
7 *See Quiroz*, 140 Cal. App. 4th at 1263-64.

8 **E. Punitive Damages**

9 The court GRANTS Adventist's motion to strike the punitive damages allegations  
10 that pertain to it in view of plaintiffs' agreement in their opposition that the claim should be  
11 dismissed.

12 **IV. DMH Group's Motion to Dismiss**

13 **A. DMH's Legal Identity**

14 Counsel for plaintiffs, DMH, and counsel for Lake County are required to meet and  
15 confer regarding whether DMH may be sued separate and apart from Lake County, which  
16 is also a defendant in the lawsuit. The amended complaint shall reflect the correct legal  
17 entity potentially liable for the conduct asserted.

18 **B. Claims Concerning Kristy Kelly**

19 **1. Claim One: Deliberate Indifference under § 1983**

20 Defendants' motion to dismiss this claim as it pertains to Kelly is GRANTED with  
21 prejudice. This claim is duplicative of claim three as asserted against Kelly, and plaintiffs  
22 have alleged no facts in their FAC in support of a deliberate indifference claim as to Kelly.

23 **2. Claim Three: Failure to Train and/or Supervise under § 1983**

24 The court GRANTS defendants' motion to dismiss the claim with leave to amend as  
25 set forth in section one above. Additionally, the court finds that plaintiffs have failed to  
26 allege a sufficient causal connection between Kelly's failure to supervise and/or train Trujillo  
27 and decedent's suicide. *See Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011).

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1 Defendants' motion to dismiss this claim as it pertains to Kelly is therefore GRANTED with  
2 leave to amend on this basis as well.

3 **3. Claim Four: Negligence**

4 The court GRANTS defendants' motion to dismiss the claim as set forth in section  
5 one above. Additionally, the court GRANTS defendants' motion to dismiss this claim  
6 because it is duplicative of the wrongful death claim.

7 **4. Claim Eight: Wrongful Death**

8 The court GRANTS defendants' motion to dismiss the claim with leave to amend as  
9 set forth in section one above. Additionally, the court GRANTS defendants' motion to  
10 dismiss this claim with leave to amend because, for the same reasons as those set forth  
11 above with respect to claim three, the court finds that plaintiffs fail to allege a sufficient  
12 causal connection between Kelly's actions or failure to act and decedent's suicide.

13 The court defers ruling regarding Kelly's entitlement to immunity under California  
14 Government Code section 820.2 until the summary judgment stage as it is possible  
15 immunity applies, but the court is unable to rule on the issue absent an evidentiary record.

16 **C. Patricia Trujillo**

17 **1. Claim One: Deliberate Indifference under § 1983**

18 The court GRANTS defendants' motion to dismiss the claim with leave to amend as  
19 set forth in section one above. However, the court finds that the FAC sufficiently alleges  
20 that Trujillo was deliberately indifferent to decedent's serious medical needs, and DENIES  
21 the motion on this basis. See *Simmons v. Navajo County*, 609 F.3d 1011, 1017-18 (9th  
22 Cir. 2010).

23 **2. Claim Four: Negligence**

24 The court GRANTS defendants' motion to dismiss the claim as set forth in section  
25 one above, and also because the claim is duplicative of the wrongful death claim, which is  
26 itself based on the same alleged underlying negligence.

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**3. Claim Five: Medical Negligence**

The court GRANTS defendants’ motion to dismiss the claim as set forth in section one above, and also because the claim is duplicative of the wrongful death claim, which is itself based on the same alleged underlying medical negligence allegations.

**4. Claim Six: Violation of Cal. Govt. Code § 845.6**

The court GRANTS defendants’ motion to dismiss the claim with leave to amend provided that existing California law permits plaintiffs to raise this claim against a public employee based on a non-custodial environment.

**5. Claim Eight: Wrongful Death**

The court GRANTS defendants’ motion to dismiss the claim with leave to amend as set forth in section one above. The court defers ruling regarding Trujillo’s entitlement to immunity under California Government Code section 855.8 until the summary judgment stage as it is possible immunity applies, but the court is unable to rule on the issue absent an evidentiary record.

**D. DMH**

**1. Claim Four: Negligence**

The court GRANTS defendants’ motion to dismiss the claim as set forth in section one above, and because the claim is duplicative of the wrongful death claim, which is itself based on the same alleged underlying negligence allegations.

**2. Claim Eight: Wrongful Death**

The court GRANTS defendants’ motion to dismiss the claim with leave to amend as set forth in section one above. The court defers ruling regarding DMH’s entitlement to immunity under California Government Code section 855.8 until the summary judgment stage as it is possible immunity applies, but the court is unable to rule on the issue absent an evidentiary record.

**E. Punitive Damages**

The court DENIES defendants’ motion to dismiss the punitive damages allegations.

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**CONCLUSION**

For the reasons set forth above, defendants' motions to dismiss are GRANTED IN PART and DENIED IN PART. Plaintiffs' second amended complaint is due no later than June 13, 2012. Defendants shall have 21 days thereafter in order to respond to the complaint. Plaintiffs are not permitted to raise any new claims in their SAC. Leave to amend must be sought and obtained before any new claims are raised.

In the event that all defendants answer the SAC, once filed, the parties shall meet and confer and stipulate to a case management conference date. However, if further motions to dismiss are filed in response to the SAC, the court will notify the parties of a further case management conference date, at which it will revisit the current dispositive motions deadlines and the trial date.

**IT IS SO ORDERED.**

Dated: May 29, 2012



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PHYLLIS J. HAMILTON  
United States District Judge