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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

R.H., et al.,

Plaintiffs,

No. C 11-2396 PJH

v.

**ORDER DENYING MOTION TO
DISMISS**

COUNTY OF LAKE, et al.,

Defendants.

Defendant Patricia Trujillo's¹ motion to dismiss plaintiffs' third amended complaint came on for hearing on November 7, 2012 before this court. Plaintiffs appeared through their counsel, Michael Green. Defendant Trujillo appeared through her counsel, Sonja Dahl. Counsel for Lake County, Jaime Bodiford, also attended the hearing. Having read all the papers and carefully considered the relevant legal authority, the court hereby DENIES defendant's motion for the reasons stated at the hearing, and as follows.

Defendant moves to dismiss plaintiffs' first cause of action, brought under 42 U.S.C. § 1983, and plaintiffs' fifth cause of action, for wrongful death due to medical negligence. As to the section 1983 claim, defendant argues that there was no special relationship created between her and the decedent, and that she did not affirmatively act to place the decedent in danger. Thus, in defendant's view, there can be no constitutional violation. As to the medical negligence claim, defendant argues that there was no doctor-patient (or equivalent) relationship created, and thus she had no duty of care with respect to the decedent.

¹The motion was also filed by then-defendant Kristy Kelly, but the parties have since stipulated to dismiss all claims against Ms. Kelly. See Dkt. 172.

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The court finds that, based on the face of the complaint, plaintiffs have adequately alleged the elements of a constitutional violation, and have also adequately alleged that defendant had a duty of care with respect to the decedent. Defendant may still be able to rebut those allegations, but must wait until the summary judgment stage to do so. Accordingly, defendant's motion is DENIED.

IT IS SO ORDERED.

Dated: November 8, 2012



PHYLLIS J. HAMILTON
United States District Judge