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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL MANRIQUEZ,  
Plaintiff,  
v.  
J. VANGILDER, et al.,  
Defendants.

Case No.16-cv-01320-HSG

**ORDER DENYING DEFENDANTS’  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

Re: Dkt. No. 57

Pending before the Court is a motion for judgment on the pleadings by Defendants S. Cupp, J. Cuske, K. Ohland, J. Vangilder, and J. Vasquez. Dkt. No. 57. For the reasons set forth below, the Court **DENIES** Defendants’ motion.<sup>1</sup>

**I. BACKGROUND**

**A. Factual Allegations**

For purposes of this motion, the Court takes the following allegations of fact to be true. Plaintiff Daniel Manriquez is incarcerated in the “C pod” at Pelican Bay State Prison (“Pelican Bay”). Dkt. No. 53 (Second Amended Complaint, or “SAC”) ¶ 13. Defendants are employees at Pelican Bay. See id. ¶¶ 8-12. Plaintiff alleges that on June 4, 2015, Vangilder and Vasquez were inside a control booth which connects to the C pod, “horse playing” with a “military-grade” grenade “designed to quickly release oleoresin capsicum (‘OC’) into the air.” Id. ¶¶ 15-16. OC is “known to cause pain” on contact. See id. ¶ 16. Vangilder subsequently dropped the grenade, which detonated in the control booth. Id. ¶ 18. Vangilder and Vasquez then “opened the windows to the control booth, allowing a fog of OC to quickly fill the surrounding space.” Id. “Upon being

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<sup>1</sup> The Court finds this matter appropriate for disposition without oral argument and the matter is deemed submitted. See Civil L.R. 7-1(b).

1 exposed to the OC, [Plaintiff] began coughing, gagging, and choking, in addition to experiencing  
2 an intense, burning pain on his skin, and in his eyes, nose, mouth, throat, and lungs.” Id. ¶ 19.

3 Plaintiff alleges that Vangilder and Vasquez ignored his and the other affected prisoners’  
4 calls for help, and instead “focused on decontaminating themselves” and obtaining medical care.  
5 Id. ¶ 21. Plaintiff further alleges that Vangilder and Vasquez did not close the control booth  
6 windows to contain the OC, evacuate or ventilate the pods, show Plaintiff how to decontaminate  
7 himself, or provide him with access to medical care. Id. ¶ 20. Defendants Cupp, Cuske, and  
8 Ohland—Vangilder and Vasquez’s supervisors—“went to the scene of the incident” shortly  
9 thereafter but ignored calls for help by Plaintiff and the other prisoners. Id. ¶ 23. Moreover, the  
10 supervisors “did not instruct their respective subordinates to ventilate the pods, assist the prisoners  
11 with decontamination of their persons and cells, and provide the prisoners with access to medical  
12 care.” Id.

13 Plaintiff’s person and cell “remained contaminated with OC” for several hours following  
14 the detonation, and “Defendants continued to ignore [his] requests for help.” Id. ¶ 24.

15 **B. Procedural Posture**

16 Plaintiff filed the SAC on November 30, 2017.<sup>2</sup> As relevant here, Plaintiff alleges battery  
17 against Vangilder. See SAC ¶¶ 26-30. Defendants answered on December 13, 2017. Dkt. No. 55.  
18 On April 25, 2018, Defendants filed a motion for judgment on the pleadings. Dkt. No. 57  
19 (“Mot.”). Plaintiff filed his opposition on May 9, 2018, Dkt. No. 64 (“Opp.”), and Defendants  
20 replied on May 16, 2018, Dkt. No. 68 (“Reply”).

21 **II. LEGAL STANDARD**

22 “After the pleadings are closed—but early enough not to delay trial—a party may move for  
23 judgment on the pleadings.” Fed. R. Civ. P. 12(c). Granting a judgment on the pleadings is  
24 proper when, “taking all the allegations in the pleadings as true, the moving party is entitled to  
25 judgment as a matter of law.” *Gregg v. Haw., Dep’t of Pub. Safety*, 870 F.3d 883, 887 (9th Cir.  
26 2017) (quoting *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998)). “Because a Rule  
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28 <sup>2</sup> This case is related to *Cisneros v. Vangilder*, No. 16-cv-0735-HSG (PR), *Falla v. Ducart*, No. 16-cv-0869-HSG (PR), and *Chaidez v. Vangilder*, No. 16-cv-1330-HSG (PR). Dkt. No. 19.

1 12(c) motion is functionally identical to a Rule 12(b)(6) motion, the same standard of review  
2 applies to motions brought under either rule.” Id. (quoting *Cafasso v. Gen. Dynamics C4 Sys.,*  
3 *Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011)) (internal quotation marks omitted).

4 “Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable  
5 legal theory or sufficient facts to support a cognizable legal theory.” *Mendondo v. Centinela*  
6 *Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008); see also Fed. R. Civ. P. 8(a) (requiring that  
7 a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to  
8 relief”). To survive a Rule 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to  
9 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim  
10 is facially plausible when a plaintiff pleads “factual content that allows the court to draw the  
11 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,  
12 556 U.S. 662, 678 (2009). In reviewing the plausibility of a complaint, courts “accept factual  
13 allegations in the complaint as true and construe the pleadings in the light most favorable to the  
14 nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.  
15 2008). Nonetheless, Courts do not “accept as true allegations that are merely conclusory,  
16 unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536  
17 F.3d 1049, 1055 (9th Cir. 2008).

18 **III. DISCUSSION**

19 Defendants move to dismiss Plaintiff’s battery claim against Vangilder under Rule 12(c),  
20 contending that Plaintiff “fails to allege factual content pointing to the necessary intentional action  
21 by Officer Vangilder.” See Mot. at 3. The Court disagrees.

22 “The elements of civil battery are: (1) defendant intentionally performed an act that  
23 resulted in a harmful or offensive contact with the plaintiff’s person; (2) plaintiff did not consent  
24 to the contact; and (3) the harmful or offensive contact caused injury, damage, loss or harm to  
25 plaintiff.” *Brown v. Ransweiler*, 171 Cal. App. 4th 516, 526-27 (2009). “[T]he element of intent  
26 is satisfied if the evidence shows defendant acted with a ‘willful disregard’ of the plaintiff’s  
27 rights.” *Ashcraft v. King*, 228 Cal. App. 3d 604, 613 (1991) (citing *Lopez v. Surchia*, 112 Cal.  
28 App. 2d 314, 318 (1952)); see also *Lopez*, 112 Cal. App. 2d at 318 (“In order to establish a case of

1 civil assault and battery, all that is necessary is that the evidence show that plaintiff's injury was  
2 caused by defendant's violence, or that defendant acted with wanton, willful or reckless disregard  
3 of plaintiff's rights.").

4 As pertinent here, Plaintiff alleges that Vangilder and Vasquez were "horse playing" with a  
5 "military-grade" grenade, designed to release a painful chemical, in a confined space that  
6 connected to Plaintiff's pod. See SAC ¶¶ 13-16. Vangilder subsequently "dropped the grenade,  
7 causing it to detonate," after which he and Vasquez opened the windows to the control booth,  
8 causing the OC to seep into Plaintiff's living space and injure him. See id. ¶¶ 18-19. Drawing all  
9 inferences in Plaintiff's favor, as the Court must do at this stage of the litigation, the Court finds  
10 that Plaintiff has adequately pled facts sufficient to support an inference that Vangilder  
11 demonstrated "willful disregard" for his rights. It is plausible that Vangilder's alleged  
12 carelessness with a device designed to release a painful chemical into the air near Plaintiff's living  
13 space was sufficiently reckless to warrant a finding of intent. Any failure of actual proof on this  
14 claim can be addressed on a motion for directed verdict at trial.

15 **IV. CONCLUSION**

16 For the foregoing reasons, the Court **DENIES** Defendants' motion.

17 **IT IS SO ORDERED.**

18 Dated: June 8, 2018

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21 **HAYWOOD S. GILLIAM, JR.**  
22 United States District Judge  
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