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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RANDAL JEROME DALAVAI,
12 Plaintiff,
13 v.
14 THE REGENTS, et al,
15 Defendants.

Case No.: 22-cv-1992-CAB-WVG

**ORDER GRANTING MOTIONS TO
DISMISS**

[Doc. Nos. 11, 13]

16
17 This matter is before the Court on Defendants The Regents and The Elizabeth
18 Hospice's motions to dismiss. The motions have been fully briefed, and the Court finds
19 them suitable for determination on the papers. For the reasons set forth, the motions to
20 dismiss [Doc. Nos. 11, 13] are **GRANTED**.

21 **I. PROCEDURAL HISTORY**

22 This case was filed shortly after this Court dismissed a previous action filed by
23 Plaintiff for lack of Article III standing. *See* 22-cv-1471-CAB-WVG at Doc. No. 15. In
24 that case, Plaintiff, proceeding *pro se*, filed a complaint on behalf of himself alleging the
25 same violation of federal law presented by his current complaint. Plaintiff's federal claim
26 made in his individual capacity was dismissed with prejudice for lack of standing and the
27 case was dismissed.
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1 Plaintiff then sought to reinstate the previous action alleging the same violation of
2 federal law still naming himself as plaintiff but in the capacity of appointed special counsel
3 on behalf of the estate of his mother Geetha Dalavai (the “Decedent”). The Plaintiff was
4 advised however that he could not proceed *pro se* as the representative of the Decedent’s
5 estate and the amendment substituting the estate as plaintiff was not allowed. Plaintiff was
6 advised that he could file a new case on behalf of the Decedent’s estate, but he needed to
7 obtain counsel to do so. *See* 22-cv-1471-CAB-WVG at Doc. No. 16.

8 Plaintiff then filed the present action, proceeding *pro se*, not on behalf the
9 Decedent’s estate, but in a new capacity as “successor in interest” of the Decedent. This
10 new complaint [Doc No. 1] alleges one federal claim against The Regents, as
11 representatives of UC San Diego Health (“UCSD Health”), under the Emergency Medical
12 Treatment & Labor Act, 42 U.S.C. § 1395dd (“EMTALA”). He also alleges multiple state
13 law violations against The Regents and The Elizabeth Hospice. On January 24, 2023, The
14 Regents filed a motion to dismiss for failure to state a claim. [Doc. No. 11]. On January
15 27, 2023, The Elizabeth Hospice filed a motion to dismiss for lack of subject matter
16 jurisdiction and failure to state a claim. [Doc. No. 13]. Plaintiff filed a consolidated
17 response to both motions on March 14, 2023. [Doc. No. 23]. Both Defendants filed their
18 reply on March 21, 2023. [Doc. No. 25]. Plaintiff, without leave, filed a surreply on March
19 27, 2023. [Doc. No. 26].

20 **II. ALLEGATIONS IN THE COMPLAINT**

21 Plaintiff alleges that on September 1, 2020, the Decedent went to the Inland Valley
22 Medical Center Emergency Room (“IVMC”) for shortness of breath. [Doc. No. 1 at 10].
23 IVMC admitted the Decedent to their care shortly after her arrival to the hospital. [Doc.
24 No. 1 at 11]. In the time she was at IVMC, the Decedent was not diagnosed with the
25 emergency medical condition listed on her death certificate. [Doc. No. at 13]. When IVMC
26 determined the Decedent needed a higher-level of care, she was transferred to Jacobs
27 Medical Center at UCSD Health on September 16, 2020. [Doc. No. 1 at 13]. UCSD Health
28 allegedly did not treat all the diseases identified at IVMC, and failed to diagnose or stabilize

1 the underlying disease that caused the Decedent’s emergency medical condition. [Doc.
2 No. 1 at 22]. UCSD Health allegedly determined the Decedent was not a candidate for a
3 lung transplant and transferred the Decedent to The Elizabeth Hospice. [Doc. No. 1 at 23].
4 In transferring her to The Elizabeth Hospice, UCSD Health allegedly prevented Decedent
5 from being transferred to another facility to receive life-saving treatment. [Doc. No. 1 at
6 26].

7 **III. STANDARD OF REVIEW**

8 **a. Lack of Subject Matter Jurisdiction**

9 Under Federal Rule of Civil Procedure 12(b)(1), a complaint must be dismissed for
10 lack of subject matter jurisdiction. “A motion to dismiss for lack of subject matter
11 jurisdiction may either attack the allegations of the complaint or may be made as a
12 ‘speaking motion’ attacking the existence of subject matter jurisdiction in fact.” *Thornhill*
13 *Pub. Co. v. Gen. Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). “In a facial attack,
14 the challenger asserts that the allegations contained in a complaint are insufficient on their
15 face to invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039
16 (9th Cir. 2004). “[I]n a factual attack, the challenger disputes the truth of the allegations
17 that, by themselves, would otherwise invoke federal jurisdiction.” *Id.* When assessing a
18 12(b)(1) motion to dismiss, “the district court is not restricted to the face of the pleadings,
19 but may review any evidence, such as affidavits and testimony, to resolve factual disputes
20 concerning the existence of jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560
21 (9th Cir. 1988).

22 “The party asserting jurisdiction bears the burden of establishing subject matter
23 jurisdiction.” *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d
24 981, 984 (9th Cir. 2008) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,
25 377 (1994)).

26 **b. Failure to State a Claim**

27 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the
28 defense that the complaint “fail[s] to state a claim upon which relief can be granted”—

1 generally referred to as a motion to dismiss. The Court evaluates whether a complaint states
2 a recognizable legal theory and sufficient facts in light of Federal Rule of Civil Procedure
3 8(a)(2), which requires a “short and plain statement of the claim showing that the pleader
4 is entitled to relief.” Although Rule 8 “does not require ‘detailed factual allegations,’ . . . it
5 [does] demand . . . more than an unadorned, the defendant-unlawfully-harmed-me
6 accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
7 *Twombly*, 550 U.S. 544, 555 (2007)).

8 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
9 accepted as true, to ‘state a claim of relief that is plausible on its face.’” *Id.* (quoting
10 *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible
11 when the collective facts pled “allow . . . the court to draw the reasonable inference that
12 the defendant is liable for the misconduct alleged.” *Id.* There must be “more than a sheer
13 possibility that a defendant has acted unlawfully.” *Id.* Facts “merely consistent with a
14 defendant’s liability” fall short of a plausible entitlement to relief. *Id.* (quoting *Twombly*,
15 550 U.S. at 557). The Court need not accept as true “legal conclusions” contained in the
16 complaint, *id.*, or other “allegations that are merely conclusory, unwarranted deductions of
17 fact, or unreasonable inferences,” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998
18 (9th Cir. 2010).

19 **IV. DISCUSSION**

20 **a. Lack of Subject Matter Jurisdiction Over the Claims Made Against** 21 **The Elizabeth Hospice**

22 The Elizabeth Hospice argues the claims against it should be dismissed for lack of
23 subject matter jurisdiction. [Doc. No. 13 at 8-9]. The Complaint indicates that subject
24 matter jurisdiction should exist via diversity under 28 U.S.C. § 1332(a). For a federal court
25 to have subject matter jurisdiction based on diversity (1) all plaintiffs must be citizens of
26 different states from all defendants, and (2) the amount in controversy must exceed
27 \$75,000. 28 U.S.C. § 1332(a). The Complaint indicates that Plaintiff and two Defendants
28

1 are citizens of California. Because the parties are not citizens of different states there is no
2 diversity jurisdiction.

3 The only basis for subject matter jurisdiction in this matter is the federal claim under
4 the EMTALA. Plaintiff brings his federal claim against The Regents alone. The Court
5 declines to exercise supplemental jurisdiction over Plaintiff’s state law claims. The
6 Elizabeth Hospice is hereby **DISMISSED** from this action for lack of subject matter
7 jurisdiction over the claims alleged against them.¹

8 **b. EMTALA**

9 Plaintiff’s sole federal claim against The Regents is pursuant to the Emergency
10 Medical Treatment & Labor Act. The Regents argue this case should be dismissed because
11 (1) Plaintiff lacks standing to bring his EMTALA claim; (2) Plaintiff’s EMTALA claim is
12 barred by the statute of limitations; and (3) Plaintiff fails to state an EMTALA claim. [Doc.
13 No. 11]. The Court addresses each argument separately.

14 **1. Standing**

15 The Regents assert this case should be dismissed because Plaintiff lacks standing
16 and his EMTALA claim is barred by collateral estoppel. The Court finds Plaintiff has
17 standing to bring this case.

18 Plaintiff brings the present case as the Decedent’s successor in interest pursuant to
19 California Code of Civil Procedure 377. “A cause of action for . . . a person is not lost by
20 reason of the person’s death, but survives subject to the applicable limitations period.” Cal.
21 Civ. Code Proc. (“CCP”) 377.20(a). A deceased’s “successor in interest” is “defined as the
22 beneficiary of the decedent’s estate or ‘other successor in interest who succeeds to a cause
23 of action.’” *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1053 (9th Cir. 2018). All that is
24 required under the California Code of Civil Procedure to become successor in interest is
25 an affidavit comporting with the requirements in CCP 377.32.

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28 ¹ Because the Court lacks subject matter jurisdiction, it declines to consider the merits of The Elizabeth
Hospice’s further arguments for dismissal.

1 Successors in interest have standing to sue in EMTALA claims. *See Bryant v.*
2 *Adventist Health Sys./W.*, 289 F.3d 1162, 1166 (9th Cir. 2002). While it is well established
3 that an individual cannot appear on behalf of another, *Simon v. Hartford Life, Inc.*, 546
4 F.3d 661, 664 (9th Cir. 2009), some courts have determined that *pro se* successors in
5 interest can establish claims without counsel. *See Raymond v. Martin*, No.
6 118CV00307DADJLT, 2018 WL 2047202 (E.D. Cal. May 2, 2018) (finding that father,
7 *pro se*, had standing to bring § 1983 claim as son’s successor in interest); *See also Gutierrez*
8 *v. Tucker*, No. 219CV0878JAMDMCP, 2021 WL 5263847 at *4 (E.D. Cal. April 20, 2021)
9 (denying *pro se* successor in interest’s motion to appoint counsel because he could
10 “articulate claims on his own”); *See also Doss v. JPMorgan Chase Bank, N.A.*, No. 18-
11 CV-5512-EDL, 2018 WL 11471479 (N.D. Cal. Oct. 30, 2018) (allowing *pro se* successor
12 in interest to amend complaint to establish affidavit requirement).

13 Here, Plaintiff has filed an affidavit sufficient to meet the requirements of CCP
14 377.32. [Doc. No. 5]. The Court finds Plaintiff has standing to sue as successor in interest,
15 and he may proceed with this action as a *pro se* litigant. The Regents’ collateral estoppel
16 argument is inapplicable here because Plaintiff, as successor in interest to the Decedent, is
17 a new party alleging new claims. Accordingly, The Regents’ motion to dismiss based on
18 standing is **DENIED**.

19 2. Statute of Limitations

20 The Regents assert this case should be dismissed because the EMTALA claim is
21 barred by the statute of limitations. Plaintiff argues his claim is not barred by the statute of
22 limitations because he filed the lower numbered case prior to the statute of limitations
23 deadline, and his current claims “relate-back” to the timely complaint. *See 22-cv-1471-*
24 *CAB-WVG* at Doc. No. 1.

25 The statute of limitations for an EMTALA claim is two years. 42 U.S.C. §
26 1395dd(d)(2)(C). The latest date of wrongdoing by UCSD Health alleged in the Complaint
27 is October 1, 2020. [Doc. No. 1 at 22]. The statute of limitations required this claim to be
28 filed by October 1, 2022, and the Complaint was brought on December 15, 2022. This case

1 does not relate back, as Plaintiff has filed a new complaint with new parties. *See O'Donnell*
2 *v. Vencor Inc.*, 466 F.3d 1104, 1111 (9th Cir. 2006) (finding a second complaint does not
3 relate back to a first complaint because it is not an amendment, “but rather a separate
4 filing”). The statute of limitations has run on Plaintiff’s EMTALA claim, and the Court
5 does not see any reason to grant tolling of the statute of limitations.

6 Accordingly, Plaintiff’s EMTALA claim is **BARRED** by the statute of limitations,
7 and the Regents’ motion to dismiss is **GRANTED** on that ground.

8 **3. Failure to State Claim**

9 Even if this case was not barred by the statute of limitations, Plaintiff fails to state
10 an EMTALA claim. Plaintiff alleges the EMTALA was violated when UCSD Health (1)
11 failed to take reasonable steps to secure Decedent’s written informed consent to refuse
12 examination and treatment available under the statute; (2) failed to provide necessary
13 screening for the emergency medical condition Decedent had “when she checked in to the
14 emergency at Inland Valley Medical Center.”; and (3) prematurely transferred Decedent to
15 hospice care. The Regents argue Plaintiff fails to state an EMTALA claim because UCSD
16 Health was not an emergency department liable under the EMTALA.

17 EMTALA requires a hospital’s emergency department to “provide [] an appropriate
18 medical screening examination within the capability of the hospital’s emergency
19 department . . . to determine whether or not an emergency medical condition . . . exists.”
20 42 U.S.C. § 1395dd(a). A participating hospital “has a duty to stabilize only those
21 emergency medical conditions that its staff detects.” *Bryant*, 289 F.3d at 1166 (quoting
22 *Jackson v. East Bay Hosp.*, 246 F.3d 1248, 1254 (9th Cir. 2001)). “EMTALA’s
23 stabilization requirement ends when an individual is admitted for inpatient care.” *Id.* at
24 1168.

25 The Complaint alleges IVMC was the emergency department Decedent visited for
26 shortness of breath on September 1, 2020. IVMC later admitted Decedent to inpatient care
27 from September 1, 2020 to September 16, 2020 prior to transferring her to UCSD Health.
28 [Doc. No. 1 at 10]. The only hospital liable under the EMTALA would be IVMC, who is

1 not a party to this action, and IVMC’s liability ended once they admitted the Decedent to
2 inpatient care. Plaintiff also acknowledges that “IVMC did not violate EMTALA as they
3 conducted an [appropriate medical screening examination] within their capacity.” [Doc.
4 No. 23 at 24]. The Decedent was transferred to UCSD Health *after* she visited the
5 emergency department and was admitted to inpatient care at IVMC. Plaintiff has not
6 alleged facts sufficient to establish UCSD Health violated the EMTALA.

7 Accordingly, The Regents’ motion to dismiss for failure to state a claim is
8 **GRANTED.**

9 **4. Leave to Amend**

10 Federal Rule of Civil Procedure 15 states that courts “should freely give leave [to
11 amend] when justice so requires.” “But a district court need not grant leave to amend where
12 the amendment: (1) prejudices the other party; (2) is sought in bad faith; (3) produces an
13 undue delay in litigation; or (4) is futile.” *AmerisourceBergen Corp. v. Dialysist W., Inc.*,
14 465 F.3d 946, 951 (9th Cir. 2006). “Futility of amendment is analyzed much like a Rule
15 12(b)(6) motion to dismiss—an amended complaint is futile when it would be subject to
16 dismissal.” *Woods v. First Am. Title, Inc.*, No. CV111284GHKVBKX, 2011 WL
17 13218022, at *2 (C.D. Cal. Sept. 20, 2011). Because Plaintiff fails to state an EMTALA
18 claim and this claim is barred by the statute of limitations, the Court finds any further
19 amendment to Plaintiff’s EMTALA claim would be futile. The Court declines to grant
20 leave to amend.

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1 **V. CONCLUSION**

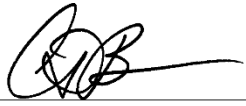
2 In light of the foregoing, the Court hereby **ORDERS**:

- 3 1. The Elizabeth Hospice's motion to dismiss for lack of subject matter
4 jurisdiction is **GRANTED**.
- 5 2. Plaintiff's EMTALA claim is **BARRED** by the statute of limitations.
- 6 3. The Regent's motion to dismiss for failure to state an EMTALA claim is
7 **GRANTED** without leave to amend.

8 This order is without prejudice to Plaintiff filing his state law claims in state court.² The
9 Clerk of Court shall **CLOSE** this case.

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11 It is **SO ORDERED**.

12 Dated: April 5, 2023

13 
14 Hon. Cathy Ann Bencivengo
15 United States District Judge

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28 ² The Court does not take a position as to whether those claims would be time barred by the statute of limitations.