

PRIORITY SEND

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. EDCV 13-00136-VAP (OPx)

Date: April 11, 2013

Title: RONALD J. HERISKO -v- TENET HEALTHCARE SYSTEM DESERT
INC., D/B/A DESERT REGIONAL MEDICAL CENTER, CEP AMERICA,
DIMPLE AGARWAL, M.D., RONALD B. HIMELMAN, M.D., AND DOES 1
THROUGH 10, INCLUSIVE

=====

PRESENT: HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

Marva Dillard
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFFS:

ATTORNEYS PRESENT FOR
DEFENDANTS:

None

None

PROCEEDINGS: MINUTE ORDER GRANTING DESERT REGIONAL
MEDICAL CENTER'S MOTION TO DISMISS (IN
CHAMBERS)

Before the Court is a motion to dismiss filed by Defendant Desert Regional Medical Center¹ ("Desert Regional") (Doc. No. 8) ("Motion"). The Court finds the matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; Local R. 7-15. After consideration of the papers in support of, and in opposition to, the Motion, the Court GRANTS Desert Regional's Motion.

¹Erroneously sued as Tenet Healthcare System Desert, Inc., dba Desert Regional Medical Center.

EDCV 13-00136-VAP (OPx)

RONALD J. HERISKO v. TENET HEALTHCARE SYSTEM DESERT INC., D/B/A DESERT REGIONAL MEDICAL CENTER, CEP AMERICA, DIMPLE AGARWAL, M.D., RONALD B. HIMELMAN, M.D., AND DOES 1 THROUGH 10, INCLUSIVE
MINUTE ORDER of April 11, 2013

I. BACKGROUND

A. Procedural Background

Plaintiff Ronald J. Herisko ("Plaintiff"), appearing pro se, brings this action for alleged violations of the Emergency Medical Treatment and Active Labor Act ("EMTALA") that occurred when Plaintiff was treated for an apparent heart attack.

Plaintiff filed his initial complaint on January 23, 2013 (Doc. No. 1) ("Complaint"). Plaintiff filed his first amended complaint on February 21, 2013 (Doc. No. 6) ("FAC"). Plaintiff alleges a single claim: violation of the EMTALA.

Desert Regional filed the instant motion on March 11, 2013. Plaintiff filed his opposition on March 26, 2013 (Doc. No. 22) ("Opposition"). Desert Regional filed its reply on April 1, 2013 (Doc. No. 24) ("Reply").

B. Factual Allegations

On January 23, 2011, at 3:15 a.m., Plaintiff, while at his residence, began experiencing chest pain and a cold sweat sensation. (FAC ¶ 7.) Believing he was having a heart attack, Plaintiff drove himself to Desert Regional's emergency medical center ("Medical Center"). (Id.) Plaintiff arrived at the Medical Center at 4:00 a.m., with severe chest and left arm pain and "announced that he might be having a heart attack." (Id. at ¶ 8.)

Plaintiff was "immediately taken . . . for screening" and placed in a bed in a curtained-off area. (Id. at ¶ 9.) Various medical professionals "began administering medical care and attending to plaintiff, to presumably screen plaintiff for a medical emergency condition." (Id.) At 4:39 a.m., an emergency room doctor entered a note in Plaintiff's medical chart diagnosing him with acute myocardial infarction ("AMI"). (Id. at ¶ 10.)

Despite this diagnosis, Desert Regional "did not consult a cardiologist specialist and failed to declare plaintiff's condition a medical emergency or take plaintiff to the catheterization lab which was readily available . . . to perform a required and timely angiogram and possible angioplasty" (Id. at ¶ 11.) Plaintiff remained in the Medical Center for the next 16 hours "without screening [him] for the

EDCV 13-00136-VAP (OPx)

RONALD J. HERISKO v. TENET HEALTHCARE SYSTEM DESERT INC., D/B/A DESERT REGIONAL MEDICAL CENTER, CEP AMERICA, DIMPLE AGARWAL, M.D., RONALD B. HIMELMAN, M.D., AND DOES 1 THROUGH 10, INCLUSIVE
MINUTE ORDER of April 11, 2013

need of immediate emergency medical treatment.” (*Id.* at ¶ 12.) At some point thereafter, Plaintiff was treated with an angioplasty and stent insertion, but, by this point, Plaintiff had “sustained massive heart damage resulting in permanent loss of heart function and severely reduced ejection fraction of only 20 to 25%, subjecting plaintiff to a high probability of sudden death syndrome.” (*Id.* at ¶ 13.)

C. Judicial Notice

Desert Regional filed a request for judicial notice with their Motion (Doc. No. 11) (“RJN”), requesting the Court to take judicial notice of (1) the original Complaint filed in this action (Ex. 2 to RJN) and (2) the first amended complaint filed on July 25 2012 in the Riverside Superior Court (Ex. 2 to RJN) (“State Court Complaint”).

The Court need not take judicial notice of the original Complaint filed in this action in order to consider it. As for the State Court Complaint, a court may take judicial notice of court filings and other matters of public record. See Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006) (citing Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998)). Accordingly, the Court finds the State Court Complaint appropriate for judicial notice and grants the request as to that item.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) allows a party to bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires only a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); Conley v. Gibson, 355 U.S. 41, 47 (1957) (holding that the Federal Rules require that a plaintiff provide “a short and plain statement of the claim” that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” (quoting Fed. R. Civ. P. 8(a)(2))); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). When evaluating a Rule 12(b)(6) motion, a court must accept all material allegations in the complaint — as well as any reasonable inferences to be drawn from them — as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep’t of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v.

EDCV 13-00136-VAP (OPx)

RONALD J. HERISKO v. TENET HEALTHCARE SYSTEM DESERT INC., D/B/A DESERT REGIONAL MEDICAL CENTER, CEP AMERICA, DIMPLE AGARWAL, M.D., RONALD B. HIMELMAN, M.D., AND DOES 1 THROUGH 10, INCLUSIVE
MINUTE ORDER of April 11, 2013

Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). Rather, the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id.

To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570; Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 556). Recently, the Ninth Circuit clarified that (1) a complaint must "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," and (2) "the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing the party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Although the scope of review is limited to the contents of the complaint, the Court may also consider exhibits submitted with the complaint, Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990), and "take judicial notice of matters of public record outside the pleadings," Mir v. Little Co. of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).

III. DISCUSSION

Although not apparent from the FAC, Plaintiff's EMTALA claim is based solely on an alleged violation of 42 U.S.C. § 1395dd(a). (Opp. at 4.) This section states:

In the case of a hospital that has a hospital emergency department, if

EDCV 13-00136-VAP (OPx)

RONALD J. HERISKO v. TENET HEALTHCARE SYSTEM DESERT INC., D/B/A DESERT REGIONAL MEDICAL CENTER, CEP AMERICA, DIMPLE AGARWAL, M.D., RONALD B. HIMELMAN, M.D., AND DOES 1 THROUGH 10, INCLUSIVE
MINUTE ORDER of April 11, 2013

any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition . . . exists.

42 U.S.C. § 1395dd(a).

In other words, 42 U.S.C. § 1395dd(a) "requires a hospital emergency department to provide for an 'appropriate medical screening examination' to determine whether an 'emergency' medical condition exists." Eberhardt v. City of Los Angeles, 62 F.3d 1253, 1257 (9th Cir. 1995). "The text of § 1395dd(a) does not define the term 'appropriate medical screening examination,' other than to state that its purpose is to identify an 'emergency medical condition.'" Id. An "emergency medical condition" is defined as:

[A] medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in - (i) placing the health of the individual . . . in serious jeopardy; (ii) serious impairment to bodily functions; or (iii) serious dysfunction of any bodily organ or part.

42 U.S.C. § 1395dd(e)(1)(A).

A "medical screening examination is 'appropriate' if it is designed to identify acute and severe symptoms that alert the physician of the need for immediate medical attention to prevent serious bodily injury." Eberhardt, 62 F.3d at 1257 (emphasis in original).

Desert Regional argues that Plaintiff has failed to allege a violation of Section 1395dd(a), and that Plaintiff's allegations actually demonstrate that Desert Regional complied with Section 1395dd(a). (Mot. at 5.)

EDCV 13-00136-VAP (OPx)

RONALD J. HERISKO v. TENET HEALTHCARE SYSTEM DESERT INC., D/B/A DESERT REGIONAL MEDICAL CENTER, CEP AMERICA, DIMPLE AGARWAL, M.D., RONALD B. HIMELMAN, M.D., AND DOES 1 THROUGH 10, INCLUSIVE
MINUTE ORDER of April 11, 2013

Plaintiff alleges that he arrived at the Medical Center at 4:00 a.m., and was “immediately taken . . . for screening.” (FAC ¶¶ 8, 9.) He further alleges that various medical professionals “began administering medical care and attending to plaintiff, to presumably screen plaintiff for a medical emergency condition.” (*Id.*) At 4:39 a.m., Plaintiff was diagnosed with AMI. (*Id.* at ¶ 10.)

Plaintiff’s allegations fail to demonstrate that Desert Regional did not meet the requirements of Section 1395dd(a), and, in fact, demonstrate that Desert Regional satisfied the requirements of that section. Plaintiff alleges that he was screened, and that he was eventually diagnosed with AMI.

Plaintiff argues that Desert Regional did not conduct the appropriate screening. (Opp. at 5; *see also* FAC ¶¶ 14, 20.) He contends the appropriate screening would have been to consult a cardiologist and administer an angiogram.² (Opp. at 5.) Plaintiff argues that Desert Regional failed to do this. (*Id.*) Plaintiff’s argument fails for a number of reasons. First, EMTALA does not entitle Plaintiff to demand a particular method of screening. Second, EMTALA does not require Plaintiff to be screened within a certain amount of time. Plaintiff admits he was administered an angiogram (Opp. at 5.); his claim of injury as a result of the delay before that procedure was administered amounts to a claim for professional negligence. Third, Plaintiff was screened, as he alleges, and within thirty-nine minutes after arriving, Plaintiff was diagnosed with AMI — the very condition eventually confirmed through the angiogram later performed.

Moreover, Plaintiff’s allegations are contradicted by the allegations in the State Court Complaint. In addition to alleging that he was screened in the FAC, Plaintiff also alleged in the State Court Complaint that, soon after he was admitted, Desert Regional began “administering medications, EKGs, taking vital signs, drawing blood, and otherwise inquiring of plaintiff’s medical condition,” and “they diagnose[d] plaintiff’s condition of [AMI] by 4:39 a.m.” (State Court Compl. ¶ 15.) These allegations contradict Plaintiff’s argument that he was not appropriately screened.

²An angiogram is a procedure performed by a cardiologist that determines whether a patient has suffered AMI. (Opp. at 5.)

EDCV 13-00136-VAP (OPx)

RONALD J. HERISKO v. TENET HEALTHCARE SYSTEM DESERT INC., D/B/A DESERT REGIONAL MEDICAL CENTER, CEP AMERICA,
DIMPLE AGARWAL, M.D., RONALD B. HIMELMAN, M.D., AND DOES 1 THROUGH 10, INCLUSIVE
MINUTE ORDER of April 11, 2013

Accordingly, the Court finds that Plaintiff's allegations are insufficient to demonstrate a claim under EMTALA and, in fact, demonstrate that Desert Regional complied with 1395dd(a). The Court finds that Plaintiff's EMTALA claim should be dismissed, with prejudice.

IV. CONCLUSION

For the reasons set forth above, the Court GRANTS Desert Regional's Motion, and DISMISSES Plaintiff's claim, WITH PREJUDICE.

IT IS SO ORDERED.