UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CASE NO.: **CV 2:18-4472-SJO (ASx)** **DATE:** **April 23, 2019**

FTITLE: **Gaspar Zavala v. Ronald Brown, et al.**

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz Courtroom Clerk	Not Present Court Reporter
COUNSEL PRESENT FOR PLAINTIFF(S):	**COUNSEL PRESENT FOR DEFENDANT(S):**
Not Present	Not Present

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PROCEEDINGS (in chambers): ORDER GRANTING-IN-PART AND DENYING-IN-PART DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT [Docket No. 31]

This matter comes before the Court on Defendants Ronald Brown, Kelly Emling, Michael Suzuki, and Mark Ridley-Thomas' ("Individual Defendants") Motion to Dismiss and Strike Pursuant to Federal Rule of Civil Procedure 12(b)(6) and 12(f) ("Motion"), filed November 16, 2018. Plaintiff Gaspar Zavala ("Plaintiff" or "Zavala") opposed this Motion on December 17, 2018 ("Opposition") and Defendants replied on December 21, 2018 ("Reply"). The Court found these matters suitable for disposition without oral argument. *See* Fed R. Civ P. 78(b). For the reasons stated below, the Court **GRANTS-IN-PART** and **DENIES-IN-PART** Defendants' Motion to Dismiss.

I. FACTUAL & PROCEDURAL BACKGROUND

Plaintiff is an individual that was jailed for more than thirteen years awaiting trial, despite his repeated requests to have his case brought to trial. (SAC ¶ 1.) It was only after the public defender's office was removed as his attorney that a Los Angeles Superior Court judge ultimately dismissed the civil detention against him, finding that the detention violated Mr. Zavala's due process rights. (SAC ¶ 1.) Mr. Zavala contends that his unlawful detention was the result of deliberate indifference on the part of the Los Angeles County Public Defender's Office and the Individual Defendants. (SAC ¶ 2.)

In the late 1990's, Plaintiff served a seven year sentence in state prison. (SAC ¶ 41.) Shortly before he was due to be released, the Los Angeles County District Attorney's office filed a petition for civil commitment pursuant to California's Sexually Violent Predator Act ("SVPA"). (SAC ¶ 41.) On November 5, 2002, the Superior Court issued an order for his removal from prison for arraignment on the petition. (SAC ¶ 41.) On November 26, 2002, Plaintiff appeared and entered a denial to the petition. (SAC ¶ 42.) The court appointed him counsel and set a probable cause hearing for February 25, 2003. (SAC ¶ 42.) Plaintiff's probable cause hearing was continued seven times. (SAC ¶ 44-52.) The hearing finally commenced on February 4, 2004 and the court ruled on February 11, 2004 that there was probable cause in support of the SVPA petition, setting

a pre-trial conference for April 21, 2004. (SAC ¶¶ 55-57.) The pre-trial conference was continued more than a dozen times, to April 16, 2010. (SAC ¶¶ 58-118.)

At the April 16, 2010 hearing, the court granted Plaintiff's motion for new evaluations pursuant to the amended evaluation standard, setting a new probable cause hearing for July 14, 2010—more than six years after Plaintiff's initial pre-trial conference date. (SAC ¶ 118.) This pattern continued for another six years, with dozens of hearings continued at the request of either the court or defense counsel. It was not until May 16, 2016 that Plaintiff finally had the opportunity to present his motion to dismiss to the court. (SAC ¶ 190.) On August 3, 2016, Judge Maria Stratton issued an order finding Plaintiff's 13-year pretrial detention unconstitutional and dismissed the petition for civil detention originally filed on November 1, 2002. (SAC ¶ 34.) Plaintiff was released from Coalinga State Hospital on August 12, 2016 after having been detained for 13 years, nine months, and 10 days. (SAC ¶ 39.)

Plaintiff now brings this action, pursuant to 42 U.S.C. § 1983, against public defenders Ronald Brown, Kelly Emling, Michael Suzuki, former Los Angeles County Supervisor Mark Ridley-Thomas, the Law Offices of the Los Angeles County Public Defender, and the County of Los Angeles. In his SAC, Plaintiff contends that the individual defendants are liable for Deliberate Indifference to Constitutional Violations and that the institutional defendants are subject to Municipal Liability for Constitutional Violations. (*See generally*, SAC.)

II. LEGAL STANDARDS

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of the claims asserted in the complaint." *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199-200 (9th Cir. 2003). In evaluating a motion to dismiss, a court accepts the plaintiff's factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff. *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *see Ileto*, 349 F.3d at 1200. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). To plead sufficiently, Plaintiff must proffer "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "All allegations and reasonable inferences are taken as true, and the allegations are construed in the light most favorable to the non-moving party, but conclusory allegations of law and unwarranted inferences

are insufficient to defeat a motion to dismiss." *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004)(internal cititations omitted).

Federal Rule of Civil Procedure Rule 9(b) ("Rule 9(b)") states that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). Thus, Rule 9(b) imposes a "heightened pleading standard" for fraud claims, so that "[a]verments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (citing *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)). "In the context of a fraud suit involving multiple defendants, a plaintiff must, at a minimum, identify the role of each defendant in the alleged fraudulent scheme." *Altman v. PNC Mortg.*, 850 F. Supp. 2d 1057, 1070 (E.D. Cal. 2012) (citing *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir. 1989)) (quotations and original formatting omitted). By contrast, "[a]llegations of non-fraudulent conduct need satisfy only the ordinary notice pleading standards of Rule 8(a)." *Vess*, 317 F.3d at 1105. The purpose of Rule 9(b)'s heightened standard is to: (1) give notice to defendants; (2) protect "defendants from unwarranted damage to their reputations"; and (3) guard against the danger of "strike suits" designed to increase settlement value by manipulating the discovery process. *Fitzer v. Sec. Dynamics Techs., Inc.*, 119 F. Supp. 2d 12, 17 (D. Mass. 2000).

As a general rule, leave to amend a complaint which has been dismissed should be freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when "the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv–Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.1986); *see Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

III. DISCUSSION

A. Supervisor Ridley-Thomas Is Not Entitled to Legislative Immunity

In their Motion To Dismiss, Defendants first contend that Mark Ridley-Thomas is entitled to absolute legislative immunity and must therefore be dismissed from this action. In Plaintiff's first cause of action for deliberate indifference, he accuses Supervisor Ridley-Thomas of recognizing the sexually violent predator unit's significant backlog of cases, yet failing "to take any reasonable measures to ensure that the constitutional rights of the SVP detainees, including Mr. Zavala, were protected." (SAC ¶ 205.)

Courts have long held that legislators are immune from liability for actions taken "in the sphere of legitimate legislative activity." *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998). This immunity extends not only to affirmative actions taken by a legislator, but also to omissions or failures to act. *Supreme Court of VA v. Consumers Union of the U.S., Inc.,* 446 U.S. 719, 734 (1980). In

order to determine whether an action is legislative for the purposes of legislative immunity, the Ninth Circuit has established a four factor test: (1) "whether the act involved ad hoc decisionmaking, or the formulation of policy"; (2) "whether the act applies to a few individuals, or to the public at large"; (3) "whether the act is formally legislative in character"; and (4) "whether it bears all the hallmarks of traditional legislation." *Kaahumanu v. County of Maui*, 315 F.3d 1215, 1220 (9th Cir. 2003).

1,2. Supervisor Ridley-Thomas' Actions Were Not Ad Hoc Decisionmaking

Ad hoc decisions are "taken based on the circumstances of particular case[s]" and do not "effectuate policy or create a binding rule of conduct." In other words, it "is made 'with a particular end or purpose,' as distinguished from 'a coordinated policy.'" *Community House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 961 (9th Cir. 2010). "Budgetary decisions such as a decision to eliminate an employment position, typically involve the formulation of policy. On the other hand, decisions directed toward specific individuals, such as a decision to indemnify a government employee, are normally considered to be ad hoc." *Id.* (citations omitted).

Here, Plaintiff contends that Supervisor Ridley-Thomas' actions were *ad hoc* because this action addresses only the violation of Plaintiff's rights and not the rights of other SVP detainees. This argument misapprehends the standard for *ad hoc* decisionmaking. Plaintiff must not merely allege that a governmental action affected him while ignoring other parties also affected. Such a standard would essentially allow any individual to allege that any policy decision was *ad hoc* so long as he brings the action on behalf of himself and not as a class action. On the contrary, Plaintiff must establish that the decision itself was intended to affect him in particular and was not directed toward a greater policy goal.

There is nothing in the SAC that would establish any such intent on the part of Supervisor Ridley-Thomas. It merely alleges that he failed to intervene and prevent Plaintiff's lengthy pretrial detention despite receiving regular briefing on SVP cases and having the authority to: (1) "have a case assigned to another public defender agency or to a private panel attorney"; (2) "develop and implement specific training programs for all personnel"; (3) "instruct Ronald Brown and Kelly Emling to replace or reassign personnel"; and (4) "instruct Ronald Brown and Kelly Emling to other personnel . . . to take specific actions in particular cases." (SAC ¶ 25.) What Plaintiff has not alleged, however, is that Supervisor Ridley-Thomas engaged in any particularized action or inaction in Mr. Zavala's case. Indeed, nowhere does the SAC identify any facts showing that Supervisor Ridley-Thomas was even aware of Mr. Zavala's case on an individualized basis, much less that he departed from the established and generalized policy toward SVP detainees. As such, the Court must conclude his actions were not directed at Mr. Zavala, nor did they have a particular end goal in mind, but rather were part of an overarching approach to policy

3,4. Supervisor Ridley-Thomas' Actions Were Unrelated to Formal or Traditional Legislation

While the parties do not dispute that Supervisor Ridley-Thomas is a legislator, his actions with regard to managing the SVP Unit were not legislative in nature. As courts has repeatedly recognized, not all governmental acts by a local legislator, or even a local legislature, are necessarily legislative in nature. *See e.g.*, *Cinevision Corp v. Burbank*, 745 F.2d 560, 580 (1984). "The essentials of the legislative function are the determination of legislative policy and its formulation and promulgation as a defined a binding rule of conduct." *Yakus v. United States*, 321 U.S. 414 424 (1944).

In the present case, Supervisor Ridley-Thomas is not accused of unlawful acts in the context of official legislation, but rather in a supervisory role. The SAC clearly states that "Defendant Ridley-Thomas was responsible for monitoring, supervision and management of the performance of the Public Defender's Office." (SAC ¶ 200.) It goes on to allege that "[a]s to all of the decisions he made with respect to the management of the Public Defender's office and its operation, he did not seek, nor was he required to seek, permission from the Board of Supervisors to implement or otherwise carry out his decisions." (SAC ¶ 200.) It is therefore his alleged failure to effectively supervise and manage, not his failure to legislate, that is the subject of this action. As such, the Court finds that Supervisor Ridley-Thomas is not shielded from liability by legislative immunity.

B. Plaintiff Has Alleged Sufficient Facts in Support of His Claim Against Supervisor Ridley-Thomas

Defendants next argue that Plaintiff's allegations against Supervisor Ridley-Thomas are not "factually plausible" as required by the Federal Rules of Civil Procedure. Specifically, they claim that there are insufficient particularized facts supporting the allegation that Supervisor Ridley-Thomas oversaw the operation of the Public Defender's office and that such an allegation is "inconceivable" because the SAC does not claim that he is even a member of the State Bar of California. This argument fails.

The SAC contains numerous, particularized allegations not only that Supervisor Ridley-Thomas was "responsible for monitoring, supervision and management" of the Public Defender's Office, but also that he "regularly met with defendants Brown, Emling, and Suzuki to discuss the issues surrounding the performance of the Public Defender's Office, its SVP Unit and individual cases." (SAC ¶¶ 200-201.) It further contends that "[a]s early as 2008, Brown, Emling and Suzuki regularly discussed significant delays in the processing of pending SVP cases with Ridley-Thomas," "regularly wr[iting] defendant Mark Ridley-Thomas emails, memoranda, meeting summaries and other written documents discussing the delay in processing these cases." (SAC ¶¶ 201-202.) Without reaching any conclusions regarding the veracity of the facts in dispute, the

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Court finds that the allegations listed above are sufficiently plausible and particularized to survive Defendants' Motion to Dismiss.

C. Supervisor Ridley-Thomas Is Not Entitled to Qualified Immunity

Defendants' final argument in favor of dismissing Plaintiff's allegations against Supervisor Ridley-Thomas is qualified immunity. When determining whether qualified immunity applies to a party, courts apply a two-step analysis: (1) whether the facts alleged or shown by Plaintiff make out a violation of a constitutional right; and (2) whether that right was "clearly established" by law at the time of the incident. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Supervisor Ridley-Thomas argues that, at the time of his actions, there was no clearly-established law requiring a person in his role as Supervisor to actively manage, supervise, or administer the Public Defender's Office and its SVP Unit. (Mot. 13-15.) This argument reveals a misunderstanding of the qualified immunity inquiry. Qualified immunity asks whether the **constitutional right** is clearly established by law at the time of the incident, not whether the defendant's duty to act is established by law.

The constitutional rights at issue in this case are Plaintiff's rights to due process and a speedy trial under the Fifth and Sixth Amendments. As evidenced by Judge Stratton's ruling on the matter, there is no dispute that Plaintiff's 13 year pre-trial detention is a violation of both of these constitutional rights. It is equally apparent that Plaintiff's Fifth and Sixth Amendment rights were "clearly established" at the time of the actions alleged in the SAC. *See e.g., Mathews v. Eldridge*, 424 U.S. 319 (1976); *Baker v. Wingo*, 407 U.S. 514 (1972). Because neither prong of the test has been met, the Court concludes that Supervisor Ridley-Thomas is not entitled to qualified immunity and therefore **DENIES** the Motion to Dismiss with respect to the claims against him.

D. Defendants Brown, Emling, and Suzuki

In his SAC, Plaintiff identifies the following laundry list of errors for which it contends the Public Defender's Office, its SVP Unit, and the deputy public defenders working in that unit are responsible:

> (a) Failing to regularly bring their clients to court for hearings, or to otherwise ensure that their clients are in court or that they would appear by video conference, so as to conceal from the clients their delays in processing their cases in a timely manner;
>
> (b) Failing to communicate to their clients the status of their cases, the strategies which were to be employed in defending their case, and the likelihood of success of their efforts;
>
> (c) Failing to obtain consent to continue hearing dates, trial dates as well as other deadlines which were in their control;

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(d) Waiving of their clients' appearance at hearings without securing their clients' authority to do so;

(e) Agreeing to repeated continuances sought by the prosecution;

(f) Ignoring their clients' requests to bring their case to trial promptly;

(g) Failing to meet reasonable deadlines in their clients' cases;

(h) Failing to timely secure experts, to ensure that such experts are properly prepared, and to ensure that such experts complete their work in a timely fashion;

(i) Allowing experts' reports to lapse or otherwise go stale;

(j) Concealing material facts from their clients;

(k) Concealing their misconduct from their clients;

(l) Failing to inform their clients of conflicts of interests;

(m) Failing to inform the court of conflicts of interest;

(n) Failing to bring cases to trial within the stipulated time period with the District Attorney's Office after the passage of Proposition 83;

(o) Failing to file oppositions to motions and other petitions by the prosecution;

(p) Allowing SVP cases to sit idle for years without meaningful progress;

(q) Failing to recommend to their supervisors that a declaration of unavailability be declared;

(r) Failing to recommend to their supervisors that a conflict of interest be declared so as to permit their SVP clients to file *Litmon* motions after extensive delays in the processing of their cases;

(s) After extensive delays on their part, failing to inform their clients of their right to file a motion under *People v. Litmon* for the violation of their constitutional rights.

(SAC ¶ 196.)

Defendants contend that the claims against the deputy public defenders Ronald Brown, Kelly Emling, and Michael Suzuki should be dismissed in part for failure to meet the minimum pleading standards required by the Federal Rules of Civil Procedure. In particular, they argue that Plaintiff attempts to "impute conduct attributable to the **public defenders** actually representing SVP detainees onto **supervisors** of the PD's Office . . . who did not appear as counsel of record for Plaintiff." (Mot. 17) (emphasis in original). Additionally, they argue that "an attorney, including a deputy public defender, representing a client does not act under color of state law within the meaning of § 1983 when performing a lawyer's traditional functions as counsel to a defendant." (Mot. 17.)

In support of their contention that lawyers are not subject to § 1983 when performing their traditional functions as counsel, Defendants cite to a Supreme Court holding stating that "a lawyer representing a client is not, by virtue of being an officer of the court, a state actor 'under color of state law' within the meaning of § 1983." *Polk County v. Dodson*, 454 U.S. 312, 318 (1981). The same opinion also found that when a public defender acts as counsel, the state has an obligation "to respect the professional independence of the public defenders whom it engages." *Id.* at 321-22. As the Supreme Court recognized, however, *Polk County* did not present the question of whether a public defender acted under color of state law while performing "certain administrative and possible investigative functions," leaving open the possibility that such actions could be subject to § 1983 liability. *Polk County*, 454 U.S. at 325. The Court later affirmed that "the determination whether a public defender is a state actor for a particular purpose depends on the nature and context of the function he is performing." *Georgia v. McCollum*, 505 U.S. 42, 54 (1992).

Examining the list of wrongful actions alleged by Plaintiff in his SAC, it is clear that the focus of his accusations is not on the administrative or investigative functions of the public defenders, but rather on actions taken pursuant to Plaintiff's legal representation. Though sometimes couched in terms of supervisory authority, such as the authority to "replace or reassign personnel" or "propose budget allocations," the harm complained of in the SAC arose not from budget allocations, but from the discretionary decisions of the individual public defenders acting within the scope of their legal representation. For this reason, the Court concludes that they were not acting under color of state law and therefore are not subject to § 1983 liability. Thus, the Court **GRANTS** Defendants' Motion with respect to the individual public defender defendants.

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IV. RULING

For the foregoing reasons, Plaintiffs' Motion to Dismiss is **GRANTED-IN-PART** and **DENIED-IN-PART.** Plaintiff's claims against the individual public defender defendants are **DISMISSED**. Plaintiff has **TEN (10) DAYS** in which to file a Third Amended Complaint if he so chooses. Defendants have **TEN (10) DAYS** thereafter in which to file an answer.

IT IS SO ORDERED.