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8 REGENTS OF THE UNIVERSITY OF  
CALIFORNIA and DR. GREGORY SOKOLOV,  
M.D., sued in his individual and official capacity

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

11  
12 JAMES JOSHUA MAYFIELD, JAMES  
ALLISON MAYFIELD, JR. and TERRI  
13 MAYFIELD,

14 Plaintiffs,

15 v.

16 IVAN OROZCO, in his individual capacity;  
SHERIFF SCOTT JONES, in his individual  
17 and official capacity; RICK PATTISON, in his  
individual and official capacity, COUNTY OF  
18 SACRAMENTO; REGENTS OF THE  
UNIVERSITY OF CALIFORNIA; and DR.  
19 GREGORY SOKOLOV, in his individual and  
official capacity, and DOES 1-5,

20 Defendants.  
21

Case No. 2:13-CV-02499-JAM-AC

**ASSIGNED TO THE HONORABLE JOHN  
A. MENDEZ – COURTROOM 6**

**NOTICE OF MOTIONS AND MOTIONS**

- A. TO DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION (FRCP  
12(b)(1));**
- B. FAILURE TO STATE CLAIMS UPON  
WHICH RELIEF CAN BE GRANTED  
(FRCP 12(b)(6); and**
- C. TO STRIKE PORTIONS OF  
PLAINTIFFS’ SECOND AMENDED  
COMPLAINT (FRCP 12(f))**

**(FRCP 12(b)(1); 12(b)(6); and 12(f))**

Judge: Hon. John A. Mendez  
Date: May 20, 2015  
Time: 9:30 A.M.  
Ctrm.: 6

Second Amended Complaint Filed: 3/19/15  
Trial Date: Not Yet Set

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26 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

27 **NOTICE IS HEREBY GIVEN** that on May 20, 2015 at 9:30 a.m. or as soon thereafter as the  
28 matter may be heard in Courtroom 6 of the above-entitled court located at 501 I Street, Sacramento,

1 California, defendants REGENTS OF THE UNIVERSITY OF CALIFORNIA and DR. GREGORY  
2 SOKOLOV, M.D., sued in his individual and official capacity, will and do hereby move this court for  
3 the following orders:

4 1. Dismissing Plaintiffs' Second Amended Complaint as to the Regents in its entirety  
5 under Federal Rules of Civil Procedure (hereinafter FRCP) 12(b)(1) on the ground that this court lacks  
6 jurisdiction over the subject matter of any suit against the Regents as the Regents, as an  
7 instrumentality of the State of California, are immune from being sued by any individuals for money  
8 damages in any Federal Court by virtue of the Eleventh Amendment of the United States Constitution;

9 2. Dismissing Plaintiffs' Third, Fourth and Fifth Causes of Action against defendant  
10 Regents ;and defendant Sokolov in his "official capacity" under Rule 12(b)(6) on the ground that the  
11 Regents are not "persons" within the meaning of the Federal Civil Rights Act (42 U.S.C. § 1942);

12 3. Dismissing Plaintiffs Thirteenth Cause of Action against defendant Regents (dangerous  
13 condition of public property) under Rule 12(b)(6) on the basis that said claim fails to state a claim  
14 upon which relief can be granted, as a matter of law;

15 4. Striking Paragraphs 21, 22 and 23 of the Second Amended Complaint under Rule 12(f)  
16 as immaterial and impertinent;

17 5. Striking Paragraph 66 of said Second Amended Complaint under Rule 12(f) as  
18 impertinent. irrelevant, immaterial and/or scandalous;

19 6. Striking Paragraph 68 of the Second Amended Complaint under Rule 12(f) as  
20 immaterial, impertinent and/or scandalous;

21 7. That portion of Paragraph 131 appearing at page 12:23-24 and ("plaintiff James A.  
22 Mayfield and Terri Mayfield") under Rule 12(f) on the basis that it is impertinent and immaterial;

23 8. Striking the Eleventh (negligence) and Fifteenth (negligent infliction of emotional  
24 distress) Causes of Action as against defendants Regents and Sokolov on the basis that they are  
25 duplicative and redundant; and

26 9. Striking Prayer No. 7 (restitution) under Rule 12(f) as immaterial and impertinent.

27 10. Striking that portion of Prayer No. 8 appearing at 37:1, to wit: "including injunctive  
28 and/or declaratory relief," under Rule 12(f) as immaterial and impertinent.

1 The motion under Rule 12(b)(1) is being made on the ground that this court lack subject matter  
2 jurisdiction over any money damage suit against the Regents while the motions under 12(b)(6) are  
3 made on the grounds that various of the causes of action stated within the Second Amended  
4 Complaint fail to state causes of action upon which relief can be granted against these moving  
5 defendants. The motions to strike various portions of plaintiffs' Second Amended Complaint under  
6 Rule 12(f) are made on the basis that said matters are variously irrelevant, impertinent, immaterial,  
7 and/or scandalous. Said motions will be based on the present notice of motions and motions, the  
8 memorandum of points and authorities submitted in support thereof, the Second Amended Complaint  
9 itself, the pleadings and papers on file herein, and on other such further oral and/or written argument  
10 as may be presented at or before hearing on these motions.

11 DATED: April 20, 2015

WILKE, FLEURY, HOFFELT,  
GOULD & BIRNEY, LLP

12  
13 By:           //Robert F. Tyler, Jr.            
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CALIFORNIA and GREGORY SOKOLOV,  
M.D., sued in his individual and official capacity  
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 8 M.D., sued in his individual and official capacity

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 12 JAMES JOSHUA MAYFIELD, JAMES  
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16 IVAN OROZCO, in his individual capacity;  
 SHERIFF SCOTT JONES, in his individual  
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 18 SACRAMENTO; REGENTS OF THE  
 UNIVERSITY OF CALIFORNIA; and DR.  
 19 GREGORY SOKOLOV, in his individual and  
 official capacity, and DOES 1-5,

20 Defendants.

Case No. 2:13-CV-02499-JAM-AC

**ASSIGNED TO THE HONORABLE JOHN  
 A. MENDEZ – COURTROOM 6**

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 DEFENDANTS REGENTS AND  
 SOKOLOV’S MOTIONS TO DISMISS  
 FOR LACK OF SUBJECT MATTER  
 JURISDICTION, FAILURE TO STATE A  
 CLAIM UPON WHICH RELIEF CAN BE  
 GRANTED, AND/OR TO STRIKE (FRCP  
 12(b)(1), 12(b)(6), AND 12(f)**

Judge: Hon. John A. Mendez  
 Date: May 20, 2015  
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**I.**  
**INTRODUCTION**

Defendant Regents of the University of California and Dr. Gregory Sokolov, M.D., respectfully submit this memorandum of points and authorities in support of their motions to dismiss under Federal Rules of Civil Procedure<sup>1</sup> 12(b)(1) and 12(b)(6), and to strike under Rule 12(f).

**II.**  
**STATEMENT OF THE FACTS**

James Mayfield (“plaintiff”) filed his original Complaint for money damages herein, *in propria persona*, on December 3, 2013, naming Ivan Orozco, Sheriff Scott Jones, James Lewis, Rick Pattison and the County of Sacramento as defendants, alleging that they had violated his civil rights by assaulting him in County Jail on or about October 22, 2012. Approximately 4½ months prior to that filing, plaintiff suffered a severe injury while allegedly attempting suicide on July 17, 2013. (Second Amended Complaint ¶¶ 74-77.) Approximately a month after filing his original Complaint, plaintiff then filed a tort claim with the County of Sacramento on January 16, 2014 (¶ 87) protesting that, in various regards, the County was responsible in damages for the injuries he suffered as a result of that alleged suicide attempt. On March 26, 2014, plaintiff, again *in pro per*, filed his Amended Complaint, for money damages arising from civil rights violations against him by the same “original” defendants, now alleging not only the original assault (from November 22, 2012), but that the County Jail, by allegedly failing to provide him with necessary care, treatment and evaluation for various (prior) episodes of suicidal ideation, had failed to prevent him from attempting suicide on July 17, 2013, causing him to suffer severe physical injury, i.e., a tetraparesis (Amended Complaint, generally ¶¶ 15-20): claims were founded not only under Federal Civil Rights Act (e.g., First Cause of Action), but state claims for the alleged negligent provision of health and mental health care to him (Fifth Cause of Action). Shortly after plaintiff filed this Amended Complaint, plaintiff’s father, James Mayfield, Sr., requested a continuance of the scheduling conference so that he could obtain legal representation for

---

<sup>1</sup> All references to “Rule” herein are to the Federal Rules of Civil Procedure, unless otherwise indicated.

<sup>2</sup> All references to ¶ herein are to the paragraphs in the Second Amended Complaint, unless otherwise indicated.

1 his son. (Docket No. 11.) While two attorneys came in as counsel for plaintiff shortly thereafter  
2 (Docket No. 13.), two weeks later, on August 1, 2014, those attorneys almost immediately then moved  
3 to withdraw as counsel of record, which was granted by this court on September 17, 2014. (Docket  
4 Nos. 17, 24 and 25). On December 18, 2014, plaintiff's present counsel, the Hadsell, Stormer &  
5 Renick law offices came in as counsel of record for plaintiff James Mayfield. (Docket No. 28.)  
6 Thereafter, the original parties (i.e., Mr. Mayfield, Jr. and the County defendants) stipulated that  
7 plaintiff could file a second amended complaint (SAC) which would not only add as plaintiffs Mr.  
8 Mayfield's father and step-mother, James Allison Mayfield, Sr. and Terri Mayfield, but several new  
9 defendants, the Regents of the University of California ("Regents"), Dr. Gregory Sokolov ("Sokolov")  
10 and Does 1-5. Pursuant to that stipulation, the SAC was filed with this court on March 19, 2015. Dr.  
11 Sokolov and the Regents accepted service of the SAC via Receipt and Acknowledgement on March  
12 30, 2015.

13 As pertinent herein, the SAC generally alleges the same injuries and money damages set forth  
14 within the Amended Complaint, i.e., a battery and civil rights violations by defendant Orozco as well  
15 as alleged civil rights violations, medical negligence, and ancillary state law claims which allegedly  
16 produced Mr. Mayfield, Jr.'s serious injury by and through an alleged failed suicide attempt. As  
17 pertinent herein, the present moving parties, Regents and/or Sokolov, are named in 11 of the  
18 complaint's 15 causes of action, to wit: 3 federal civil rights claims (the Third, Fourth and Fifth  
19 Causes of Action); a (Sixth) cause of action for medical negligence; a (Seventh) cause of action for  
20 failure to furnish medical care under California Government Code section 845.6; an (Eleventh) cause  
21 of action for general negligence; a (Twelfth) cause of action for negligent supervision, hiring and  
22 training; a (Thirteenth) cause of action for dangerous condition of public property (against the  
23 Regents, and not Sokolov); a (Fourteenth) cause of action for intentional infliction of emotional  
24 distress; and, a (Fifteenth) cause of action for negligent infliction of emotional distress.

25 As will be shown below, however, the Regents are totally immune from suit herein, whether  
26 based on federal or state law, under the Eleventh Amendment, while plaintiff's Federal Civil Rights  
27 claims against the Regents, and by parity, against defendant Sokolov in his "official capacity," fail for  
28 the simple reason that the Regents and their employees acting in their official capacities are not

1 “persons” within the meaning of the Federal Civil Rights Act. Last, plaintiff’s Thirteenth Cause of  
2 Action, against the Regents for “dangerous condition of public property” is properly dismissed under  
3 12(b)(6) in that it is simply a non sequitur – the Regents are alleged to have contracted to provide  
4 services, and are not (nor can they be) alleged to have owned or maintained any piece of tangible  
5 physical property which caused plaintiff injury.

6 In like manner, as will be discussed below, Paragraphs 22, 23, 66, and 68 of plaintiff’s  
7 complaint as well as the Eleventh and Fifteenth Causes of Action, plaintiffs James Mayfield, Sr. and  
8 Terri Mayfield’s claims for injury under their son’s medical negligence claim (¶ 131, at 12:22-24),  
9 plaintiffs’ prayer (No. 7) for restitutionary relief, and plaintiffs’ inclusion of a prayer for injunctive  
10 and/or declaratory relief (Prayer No, 8 at 37:1) are properly stricken under FRCP 12(f) as redundant,  
11 immaterial, impertinent, or scandalous.

12 **III.**  
13 **LEGAL DISCUSSION**

14 **A. PLAINTIFFS’ COMPLAINT SHOULD BE DISMISSED IN ITS ENTIRETY AS TO**  
15 **THE REGENTS AND AS TO DEFENDANT SOKOLOV “IN HIS OFFICIAL**  
16 **CAPACITY” PURSUANT TO RULE 12(b)(1)**

17 Rule 12(b)(1) allows a party to move for dismissal based upon the court’s lack of subject  
18 jurisdiction over them. Under Rule 12(b)(1), the plaintiff always bears the burden of establishing  
19 subject matter jurisdiction, and “the court presumes lack of jurisdiction until plaintiff proves  
20 otherwise.” (California Practice Guide: Federal Civil Procedure Before Trial (2000), Schwarzer et al.,  
21 ¶9:77 at p. 9-17-9-18, citing, *inter alia*, *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375  
[114 S.Ct. 1673] (1994).)

22 Defendant, the Regents, as an instrumentality of the State of California, established under  
23 California Constitution Article IX, § 9 is totally immune from being sued by individuals in federal  
24 court by virtue of the Eleventh Amendment of the United States Constitution, which reads as follows:

25 “The Judicial Power of the United States shall not be construed to  
26 extend to any suit in law or equity, commenced or prosecuted against  
27 one of the United States by Citizens of another State, or by Citizens or  
Subjects of any Foreign State.”

28 ///

1 Although suits against a State by a citizen of that same State are not within the *explicit*  
2 prohibition of the Eleventh Amendment, it is widely recognized that such suits *are* in fact so  
3 prohibited. “An unconsenting State (including its agencies or departments) is immune from suits  
4 brought in federal court by her own citizens as well as citizens by another State.” (*Pennhurst State*  
5 *School & Hospital v. Halderman*, 465 U.S. 89, 100 [104 S.Ct. 900 (1984); see also *Papasan v. Allain*,  
6 478 U.S. 265, 276 [106 S.Ct. 2932] (1986.) Moreover, the type of relief sought (e.g., injunctive or  
7 monetary) is not germane to the question of whether the suit is barred by the Eleventh Amendment.  
8 (*Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 58 [116 S.Ct. 1114] (1996).)

9 Here, the key point of inquiry is whether the Regents are properly considered an arm of the  
10 State for purposes of Eleventh Amendment immunity. The answer is in the affirmative, for it has long  
11 been established that “the Regents (are) an instrumentality of the State for the purposes of the  
12 Eleventh Amendment.” (*Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989); see  
13 also *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982); *Bond v. Regents of the University of*  
14 *California*, 504 F.Supp. 1349, 1353-1354 (ED Cal., 1981) (stating the factors compelling that  
15 conclusion); see also, Article IX, Section 9 of the California Constitution (University of California is a  
16 public trust to be administered by the existing corporation known as the “Regents of the University of  
17 California.” The Regents of the University of California are a constitutionally created aspect of the  
18 State of California itself, and as such, they are an arm of the State for purposes of the Eleventh  
19 Amendment, enjoying a total immunity from any liability under any of the causes of action brought  
20 herein. Given that there has been no waiver of this immunity, the present action must be dismissed as  
21 against them in its entirety.<sup>3</sup>

22 The Eleventh Amendment likewise bars an actions against employees of the Regents who are  
23 acting in their “official capacities.” (*Vaughn v. Regents of the University of California*, 504 F.Supp.  
24 1349, 1353-1354 (E.D. Cal. 1981); see also, *Unified School District No. 480 v. Epperson*, 583 F.2d,  
25 1118, 1121 (10<sup>th</sup> Cir., 1978); *Williams v. Eaton*, 443 F.2d 442, 429 (10<sup>th</sup> Cir., 1971).)

26 \_\_\_\_\_  
27 <sup>3</sup> While under California law, the Regents have the power to sue and be sued, this has not and cannot be construed as a waiver of  
28 immunity from suit in Federal court provided by the Eleventh Amendment. (See, *Selman v. Harvard Medical School*, 494 F.Supp. 603,  
615 (S. Dist. NY, see e.g. 1980; and *Korgich v. Regents of the Mexico School of Minds*, 582 F.2d 549, 551-552 (10<sup>th</sup> Circuit, 1978).

1 As the present complaint herein solely seeks money damages against defendant Dr. Sokolov in  
2 his official capacity as an employee of the Regents, as well as money damages against the Regents  
3 themselves, it is barred by the Eleventh Amendment and should be dismissed in its entirety as to both.  
4 (*Vaughn v. Regents, supra*, at 1349, 1353 (dismissing federal action against the Regents and its  
5 employees based upon Eleventh Amendment immunity).)

6 **B. THE THIRD, FOURTH, AND FIFTH CAUSES OF ACTION (CIVIL RIGHTS**  
7 **VIOLATIONS) AND THIRTEENTH CAUSE OF ACTION (DANGEROUS**  
8 **CONDITION OF PUBLIC PROPERTY) SHOULD BE DISMISSED AS TO**  
9 **DEFENDANT REGENTS, AND THE TWELFTH CAUSE OF ACTION (NEGLIGENT**  
10 **SUPERVISION) DISMISSED AS TO BOTH THE REGENTS AND DEFENDANT**  
11 **SOKOLOV PURSUANT TO RULE 12(b)(6)**

12 **1. Rule 12(b)(6) Standard**

13 Rule 12(b)(6) allows a party to move for dismissal based upon a plaintiff's failure to state a  
14 claim upon which relief can be granted. For the purposes of Rule 12(b)(6), a "claim means a set of  
15 facts which, if established, gives rise to one or more enforceable legal rights." (*Goldstein v. North*  
16 *Jersey Trust Co.*, 39 FRD 363, 366 (S.D. N.Y. 1966).) When examining a Rule 12(b)(6) motion, "the  
17 court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well-  
18 pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to  
19 support a claim that would merit relief." (Schwarzer, et al., California Practice Guide: Federal Civil  
20 Procedure Before Trial (2000), ¶ 9:187 at p. 9-53, citing, *inter alia*, *Cahill v. Liberty Mutual Ins. Co.*,  
21 80 F.3d 336, 337-338 (9th. Cir. 1996).)

22 **2. Plaintiff's Third, Fourth And Fifth Causes Of Action Should Be Dismissed As To**  
23 **The Regents And Defendant Sokolov Acting In His "Official Capacity" Because**  
24 **They Are Not "Persons" Within The Meaning Of The Federal Civil Rights Act**

25 Defendants, the Regents and, for the present purposes Sokolov in his "official capacity," as  
26 arms of the State of California itself, are not "persons," within the meaning of the Federal Civil Rights  
27 Act, including 42 U.S.C. §§ 1983, 1985, and 1986. (*Armstrong v. Meyers*, 964 F.2d 948, 949-950 (9<sup>th</sup>  
28 Cir. 1992); *Thompson v. Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989); *Sellers v. Regents of*  
*University of California*, 432 F.2d 493, 500 (9th Cir. 1970).) Given that the Regents and Sokolov,  
acting in his official capacity, are not "persons" within the meaning of the Federal Civil Rights Act,  
plaintiffs Third, Fourth and Fifth Causes of Action, and each of them fail to state a claim upon which

1 relief can be granted against them. The Third, Fourth and Fifth Causes of Action should therefore be  
2 dismissed without leave to amend, as to them, pursuant to Rule 12(b)(6).

3 **3. The Thirteenth Cause Of Action (Dangerous Condition Of Public Property)**  
4 **Should Be Dismissed As To Defendant Regents**

5 In their Thirteenth Cause of Action, plaintiffs’ allege that defendant Regents allowed a  
6 “dangerous condition of public property” to exist which caused him harm, under Government Code  
7 section 830, et. seq.<sup>4</sup> In point of fact, however, plaintiffs’ claim, is as against defendant Regents, a  
8 complete non sequitur. Thus, plaintiffs correctly allege that, as pertinent herein, the sole connection  
9 the Regents have with the Sacramento County Jail’s operations solely lies in their contract to provide  
10 psychiatric treatment to the inmates of the Sacramento County Jail. (SAC, ¶ 16.) Conversely, the  
11 main charging allegation in the Thirteenth Cause of Action is that Mr. Mayfield’s inmate housing, i.e.,  
12 the bunk bed in his cell, was physically dangerous and unsafe, (SAC ¶ 169.) The property that is  
13 alleged to have been “dangerous,” however, was the physical jail facility itself, owned and operated  
14 by the County, and not owned, operated or controlled by the Regents, who in turn were only  
15 contracted to provide services, not maintain the physical environment of the jail’s regular inmate  
16 population. However, for a public entity’s liability for a “dangerous condition” has to be predicated  
17 upon its ownership or control of a piece of tangible real or personal property containing a physical  
18 deficiency (in the property itself) that causes injury to the plaintiffs. (Government Code section  
19 830(c); see also *Cerna v. City of Oakland*, 161 Cal.App.4<sup>th</sup> 1340, 1347-1348, rehearing denied, review  
20 denied (2008).) Given this, plaintiffs’ claim against the Regents for maintaining a “dangerous  
21 condition of public property” is a non sequitur, which therefore fails to state a claim upon which relief  
22 can be granted, and is properly dismissed under Rule 12(b)(6).

23  
24  
25  
26 <sup>4</sup> While plaintiffs make no specific citation to Government Code section 830 as the ground for their Thirteenth Cause of  
27 Action, in fact, as the liability of a public entity in the State of California is solely a creature of statute, and the only statute  
28 that refers to any potential liability for a public entity for a “dangerous condition of public property” is set forth in  
Government Code section 830, it is quite clear that said section is the only basis upon which they could found such an  
action.

1           **4.       Conclusion**

2           Plaintiffs’ Third, Fourth and Fifth Causes of Action, for Civil Rights Violations are properly  
3 dismissed under Rule 12(b)(6) as the Regents are not a “person” within the meaning of the Civil  
4 Rights Act, while their Thirteenth Cause of Action for dangerous condition of public property, is  
5 property dismissed as to the Regents in that there is no “public property” that they maintained which  
6 caused injury to the plaintiffs.

7           **5.       Conclusion**

8           For the foregoing reasons, plaintiffs’ Third, Fourth, and Fifth Causes of Action each fail to  
9 state claims against both defendants Regents and Sokolov upon which relief can be granted. Given  
10 this, each should be dismissed as to the Regents and Sokolov pursuant to FRCP 12(b)(6), while  
11 plaintiffs Thirteenth Cause of Action fails to state an adequate claim against defendant Regents.

12 **C.       VARIOUS PORTIONS OF PLAINTIFFS’ COMPLAINT SHOULD BE STRICKEN**  
13 **UNDER FRCP 12(f)**

14           **1.       Rule 12(f) Standard**

15           Rule 12(f) empowers a Court to "strike from a pleading any redundant, immaterial,  
16 impertinent, or scandalous matter" and authorizes a motion to strike such allegations as “could have  
17 no possible bearing on the subject matter of the litigation so as to avoid the expenditure of time and  
18 money that it must arise in litigating spurious issues by dispensing of those issues at the initial stages of  
19 the litigation.” (*Wilkerson v. Butler*, 229 F.R.D. 166, 170 (E.D. Cal 2007).) A ‘redundant’ matter  
20 within the meaning of FRC 12(f) consists of allegations that constitute a needless repetition of other  
21 allegations or which are foreign to the issue to be denied, while an ‘immaterial’ matter has no essential  
22 or important relationship to the claim for relief, and/or consist of a statement of unnecessary  
23 particulars such as superfluous historical allegations. (*Wilkerson v. Butler, supra.*) Similarly, an  
24 “impertinent” allegation is one which is neither responsive to the issues involved in the act and which  
25 could not be put in issue or given in evidence between the parties because they do not pertain or are  
26 unnecessary to the issues in question. (*Wilkerson v. Butler, supra.*) Similarly, a “scandalous” matter  
27 improperly casts a derogatory light on someone, usually a party and which otherwise bears no possible  
28 relation to the controversy, or which may cause the objecting party prejudice. (*Wilkerson v. Butler,*



1 *supra.*) Utilizing these standards, and each of them, it is clear that various portions of plaintiffs’  
2 Second Amended Complaint are property stricken under Rule 12(f).

3 **2. Paragraphs 21-23 Are Properly Stricken As Immaterial and Impertinent**

4 In Paragraphs 21-23, plaintiffs allege the circumstances of a head injury that Mr. Mayfield  
5 suffered long before the events in question, going into great detail about the circumstances of an  
6 alleged high school “football injury,” Mr. Mayfield’s ostensible accolades as a high school athlete and  
7 student, and his subsequent downward course after high school. However interesting all of this  
8 alleged history may be, it is totally unrelated to the events in question, and occurred five to six years  
9 prior to any of the events in question. Each and every one of these allegations is totally extraneous to  
10 any of the potential issues in this litigation. Thus, it is clear that whether or not Mr. Mayfield was a  
11 stellar athlete and scholar in high school, whether he suffered an injury in a football game, or whether  
12 his academic progress in high school suffered as a result of a head injury that he suffered during the  
13 course of high school athletics, has absolutely nothing to do with the issues in this litigation. Put  
14 simply, while a plaintiff’s (“premorbid”) condition is certainly an issue in litigation such as this, the  
15 “premorbid” condition in issue is that that existed at the point in time the alleged tortious activity  
16 began, Mr. Mayfield’s arrest and incarceration on June 5, 2011, i.e., many years after the events  
17 detailed in the paragraphs in question. Put another way, how he may have been before he received an  
18 injury that has nothing to do with and which occurred long before the events in question, is totally  
19 extraneous to this litigation – the only thing properly at issue is his physical and mental state at the  
20 time that the events in question began. Given this, Paragraphs 21, 22, and 23 are therefore properly  
21 stricken as immaterial and impertinent.

22 **3. Paragraph 66 Is Properly Stricken As Immaterial, Impertinent And Scandalous**

23 In Paragraph 66, plaintiffs’ allege that on one occasion, an unnamed mentally ill inmate  
24 (obviously not plaintiff) was physically restrained for 24 hours without food, water or treatment while  
25 unstated staff waited for a response from an out-of-state doctor who was not returning calls. Clearly,  
26 this matter has nothing to do with the present plaintiff and is inserted in the complaint solely for the  
27 prejudicial effect it casts on the defendants. This effect is totally unfounded for a variety of reasons.  
28 First, and most importantly, this unstated inmate is clearly not plaintiff, and the allegations therefore

1 concern actions completely outside of those framed within the present complaint. Second, the actions  
2 themselves are extraneous to any of the charging allegations of this complaint – they are simply  
3 “apples and oranges” of a different type and quality than the acts, errors and omissions alleged in this  
4 complaint. Third, they are obviously prejudicial, and meant to be such. Given this, Paragraph 66 is  
5 properly stricken as immaterial, impertinent, and scandalous.

6 **4. Paragraph 68 Of The Complaint Is Properly Stricken As Immaterial And**  
7 **Scandalous**

8 In Paragraph 68 of the Second Amended Complaint, plaintiffs allege on “information and  
9 belief” that shortly before his alleged suicide attempt (of July 17, 2013) defendants placed a social  
10 worker with no nursing training in the position of program director for the psychiatric unit at the  
11 Sacramento County Jail, and that despite lacking such, began administering medications to unnamed  
12 third party inmates resulting in repeated medication errors. Saliently absent from this allegation is that  
13 such actions resulted in any medication error as to this plaintiff - that, of course, is why they are not  
14 made directly, but instead on information and belief. Again, the matter is totally outside of the issues  
15 framed within the present pleadings, and is being inserted into the complaint solely for its prejudicial  
16 effect against the defendants, by alleging that there is unsubstantiated information that may indicate  
17 that defendants may have put an unqualified person in a position where they may have caused harm to  
18 other inmates in a manner completely unassociated with any of the acts, errors and omissions that  
19 allegedly occurred as to the present plaintiff. Given this, this entire paragraph is properly stricken as  
20 immaterial, impertinent and scandalous. (*Wilkerson v. Butler, supra.*)

21 **5. That Portion Of Paragraph 131, Appearing At Page 29:23-24, To Wit: “And**  
22 **Plaintiffs James A. Mayfield (Sr.) And Terri Mayfield” Are Properly Stricken as**  
23 **Immaterial.**

24 Paragraph 131 is contained within the plaintiffs’ medical malpractice claim against defendants  
25 Regents and Sokolov. In Paragraph 131, they claim that as a proximate cause of that negligence,  
26 plaintiff James Mayfield’s father and step-mother (“plaintiffs James A. Mayfield and Terri Mayfield”)  
27 suffered injury and damage. The father and step-mother’s claim do not stem from any damage to their  
28 own persons but instead sound in the loss of their filial consortium with their son/step-son. Loss of  
filial consortium is, however, not recognized as a proper adjunct of a medical malpractice claim under

1 California law. (*Martinez v. County of Los Angeles* 186 Cal.App.3d 884, 893-894 (1986).) Similarly,  
2 the plaintiff parents’ claim suffers a fatal flaw in the fact that they can also not make a seasonable  
3 claim sounding in “bystander liability” - they were obviously not even aware of the alleged negligent  
4 actions of the defendants until long after they had occurred. (See, SAC ¶ 78.) Given this, there is also  
5 no direct or bystander liability that can be alleged on behalf of either of the plaintiff parents arising  
6 from defendants’ alleged acts of medical negligence. (*Justice v. Atchison* 19 Cal.3d 564-585 (1977);  
7 *Hurlbut v. Sonora Community Hospital* 207 Cal.3d 388, 399-401 (1989); see also, *Morton v.*  
8 *Thousand Oaks Surgical Hospital* 187 Cal.App.4<sup>th</sup> 926, 931 (2010) (adult children could not maintain  
9 claim for negligent infliction of emotional distress arising out of postoperative failure to respond to  
10 their mother’s worsening condition given lack of awareness of the cause of contemporaneous aware of  
11 the cause of those injuries).)

12 The plaintiff parents are not proper party plaintiffs in a medical negligence action under  
13 California law, either under a “direct victim” or a loss of “filial relationship” theory of liability. Given  
14 this, that portion of the allegations contained in Paragraph 131 positing them as party plaintiffs in the  
15 medical negligence claim against the defendants is properly stricken as immaterial and impertinent.

16 **6. Plaintiffs’ Eleventh (Negligence) And Fifteenth (Negligent Infliction Of Emotional**  
17 **Distress) Causes Of Action Are Properly Stricken As To Defendants Regents And**  
18 **Sokolov**

19 Plaintiffs’ allegations against the Regents and defendant Sokolov arise due to the claimed acts,  
20 errors and omissions committed by those defendants against plaintiff James Mayfield, Jr., while  
21 providing psychiatric care to him under the Regents’ contract with the County to provide mental  
22 health services to the County Jail inmates. It is a classic claim of medical/mental healthcare  
23 negligence. However, plaintiffs then make a general negligence claim against these defendants  
24 (Eleventh Cause of Action) as well as claim that these defendants’ alleged professional negligence  
25 negligently caused them emotional distress (Fifteenth Cause of Action – NIED), based upon these  
26 same charging allegations. However, negligent infliction of emotional distress is simply a species of  
27 negligence, while plaintiffs’ negligence claim itself is totally subsumed within their medical  
28 malpractice claim against these defendants. Given this, plaintiffs’ general negligence (Eleventh Cause

1 of Action) as well as their NIED claims are totally redundant (Fifteenth Cause of Action) and are  
2 properly stricken as to these defendants. (*Wilkerson v. Butler, supra.* at page 171.)

3 **7. Plaintiffs’ Seventh Prayer, For Restitution, Is Properly Stricken As Impertinent**  
4 **And Immaterial**

5 After alleging a classic claim for personal injury damages by and through their fifteen various  
6 causes of action, plaintiffs then set forth a prayer for relief for “restitution” (Prayer No. 7, appearing at  
7 page 36:28), which has nothing to do with any of the charging allegations and which is totally outside  
8 any form of relief that could ever be afforded them – there are no allegations that any monies were  
9 given by any of the plaintiffs to any of the various defendants, much less that the defendants received  
10 any remuneration of any type from any of the plaintiffs. There is, simply put, nothing to base a claim  
11 of restitution on. Given that this form of relief is not recoverable under any of the allegations of the  
12 Second Amended Complaint, it is properly stricken as a matter of law. (*Wilkerson v. Butler, supra.* at  
13 page 172; Schwarzer, et al., California Practice Guide: Federal Civil Procedure Before Trial (2005),  
14 attacking the pleadings, ¶9-389 and 9-390, page 9-97.)

15 **8. That Portion Of Plaintiffs’ 8<sup>th</sup> Prayer, For Injunctive And/or Declaratory Relief,**  
16 **Is Properly Stricken As Impertinent and Immaterial**

17 Plaintiffs’ 8<sup>th</sup> Prayer, while ostensibly in the form of the usual incantation appearing at the end  
18 of a pleading (i.e., “for such other and further relief as may be proper in the circumstances”) actually  
19 is much more – it contains a prayer for injunctive and/or declaratory relief. However, just as with  
20 their 7<sup>th</sup> Prayer, there is nothing in the present Second Amended Complaint that pleads any action by  
21 this plaintiff for injunctive and/or declaratory relief. Thus, the present pleadings indicate that Mr.  
22 Mayfield, suing on his own behalf, has not been incarcerated at the County Jail for almost 2 years, and  
23 there is no indication that he is likely to be so incarcerated at any time in the future. Given this, there  
24 is no reason for any type of injunction to issue against continuing or threatened actions by the  
25 defendants against him: he thus simply completely fails to show any potential entitlement to any form  
26 of injunctive relief. Similarly, he pleads no basis for declaratory relief, as no present or continuing  
27 controversy between he and the defendants is pleaded either. This is, in sum, an action for money  
28 damage relief for a series of actions that ended long ago, and which have no ability to repeat as to the

1 plaintiffs, or any of them. Given this, any prayer for injunctive and/or declaratory relief simply has no  
2 basis in the pleadings, and is simply impertinent and immaterial and properly stricken as a matter of  
3 law. (*Wilkerson v. Butler, supra*, at page 172; *Schwarzer, et al., supra*.)<sup>5</sup>

4 **IV.**  
5 **CONCLUSION**

6 For the foregoing reasons, and each of them, these defendants' various 12(b)(1), 12(b)(6), and  
7 12(f) motions should be granted.

8 DATED: April 20, 2015

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9  
10 By:                   //Robert F. Tyler, Jr.                    
11 ROBERT F. TYLER, JR.  
12 Attorneys for Defendants  
13 REGENTS OF THE UNIVERSITY OF  
CALIFORNIA and GREGORY SOKOLOV,  
14 M.D., sued in his individual and official capacity  
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27 <sup>5</sup> To the extent that plaintiffs argue that they are seeking equitable or declaratory relief, that intention no way appears on  
28 the face of the SAC, thus rendering it fatally uncertain under FRCP 12(e).