

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL DUNSMORE, ERNEST  
ARCHULETA, ANTHONY  
EDWARDS, REANNA LEVY, JOSUE  
LOPEZ, CHRISTOPHER NELSON,  
CHRISTOPHER NORWOOD, and  
LAURA ZOERNER, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

SAN DIEGO COUNTY SHERIFF'S  
DEPARTMENT, COUNTY OF SAN  
DIEGO, CORRECTIONAL  
HEALTHCARE PARTNERS, INC.,  
TRI-CITY MEDICAL CENTER,  
LIBERTY HEALTHCARE, INC.,  
MID-AMERICA HEALTH, INC.,  
LOGAN HAAK, M.D., INC., SAN  
DIEGO COUNTY PROBATION  
DEPARTMENT, and DOES 1 to 20,  
inclusive,

Defendants.

Case No.: 20-cv-00406-AJB-DDL

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR RECONSIDERATION  
(Doc. No. 225)**

Presently before the Court is Plaintiffs' motion for reconsideration of the Court's order granting motions to dismiss the second amended complaint ("SAC"). (Doc. No. 219.) Defendants have not filed an opposition to the motion. Having reviewed Plaintiffs' arguments under controlling legal authority, and pursuant to Local Civil Rule 7.1.d.1, the

1 Court finds the matter suitable for decision on the papers and without oral argument. For  
 2 the reasons set forth below, the Court **GRANTS** Plaintiffs' motion. The Court  
 3 **DISMISSES WITHOUT PREJUDICE** Plaintiffs' first claim for violations of the Eighth  
 4 Amendment in the SAC.

## 5 **I. BACKGROUND**

6 Plaintiffs Darryl Dunsmore, Ernest Archuleta, Anthony Edwards, Reanna Levy,  
 7 Josue Lopez, Christopher Nelson, Christopher Norwood, and Laura Zoerner (collectively,  
 8 "Plaintiffs") are current or former inmates of San Diego County Jail facilities (the "Jail"),  
 9 operated by Defendants San Diego County Sheriff's Department ("Sheriff's Department")  
 10 and County of San Diego (the "County") (collectively, "County Defendants"). Correctional  
 11 Healthcare Partners, Inc. ("CHP") and Liberty Healthcare, Inc., (collectively, "Contractor  
 12 Defendants") provide security, medical care, mental health care, and dental care to the  
 13 individuals incarcerated in the Jail. Plaintiffs bring this action on behalf of "themselves  
 14 and the approximately 4,000 incarcerated people who are similarly situated on any given  
 15 day" to "remedy the dangerous, discriminatory, and unconstitutional conditions in the Jail."  
 16 (SAC, Doc. No. 81, ¶ 6.) Specifically, Plaintiffs contend Defendants' policies and practices  
 17 contribute to the high death rates in the Jail, which "has for years exceeded the rates  
 18 nationally and in other large California jails, [and] it reached chilling heights in 2021 when  
 19 18 people died, amounting to a death rate of 458 incarcerated people per 100,000." (*Id.* ¶  
 20 1.)

21 The SAC alleges violations of (1) the Eighth Amendment, pursuant to 42 U.S.C.  
 22 § 1983; (2) the Fourteenth Amendment, pursuant to § 1983; (3) Article 1, Section 7 of the  
 23 California Constitution; (4) Article 1, Section 17 of the California Constitution; (5) the  
 24 Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12132, 12203; (6) the ADA,  
 25 § 12188; (7) the Rehabilitation Act, 29 U.S.C. § 794; (8) the Unruh Civil Rights Act, Cal.  
 26 Civ. Code § 51 et seq.; (9) Cal. Gov't Code § 11135; (10) the Sixth Amendment, pursuant  
 27 to 42 U.S.C. § 1983; (11) Section 15 of the California Constitution; (12) the Fourteenth  
 28 Amendment, pursuant to § 1983; (13) Section 7 of the California Constitution; (14) the

1 ADA for discrimination contributing to unnecessary incarceration and institutionalization;  
 2 and (15) Cal. Gov't Code § 11135 for discriminatory impact. (*Id.* ¶¶ 398–464.)

3 Between March and May of 2022, Defendants Logan Haak, M.D., Inc., Liberty  
 4 Healthcare, Inc., County of San Diego, and Correctional Healthcare Partners, Inc.  
 5 (collectively, “Defendants”) filed respective motions to dismiss Plaintiffs’ SAC. (*See* Doc.  
 6 Nos. 109, 125, 133, 134.) The Court granted Defendants’ motions to dismiss on September  
 7 27, 2022 (“September 2022 Order”). (*See* Doc. No. 219.) Specifically, the Court dismissed  
 8 Plaintiffs’ first claim under the Eighth Amendment and eighth claim under the Unruh Civil  
 9 Rights Act with prejudice and dismissed Plaintiffs’ remaining claims with leave to amend.  
 10 (*Id.*)

11 Plaintiffs now move for reconsideration of the September 2022 Order, asserting the  
 12 Court clearly erred when it dismissed Plaintiffs’ Eighth Amendment claim without leave  
 13 to amend, based on a mistaken belief that the SAC alleged Plaintiffs were all pre-trial  
 14 detainees, rather than a combination of pre-trial and post-conviction detainees. (Doc. No.  
 15 225.) This order follows.

## 16 **II. LEGAL STANDARD**

17 Federal Rule of Civil Procedure 59(e) provides that, after entry of judgment, a court  
 18 may alter or amend the judgment. “[T]he district court enjoys considerable discretion in  
 19 granting or denying [a Rule 59(e)] motion.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101,  
 20 1111 (9th Cir. 2011) (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir.  
 21 1999) (en banc) (per curiam)). However, because “the rule offers an extraordinary remedy,  
 22 [it should] be used sparingly in the interests of finality and conservation of judicial  
 23 resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)  
 24 (citation and internal quotation marks omitted). As such, a Rule 59(e) motion generally  
 25 should not be granted absent highly unusual circumstances, *389 Orange St. Partners v.*  
 26 *Arnold*, 179 F.3d 656, 665 (9th Cir. 1999), such as an intervening change in controlling  
 27 law, the availability of newly discovered or previously unavailable evidence, or the need  
 28 to correct a clear error or prevent a manifest injustice, *Allstate Ins. Co.*, 634 F.3d at 1111;

1 *see also McDowell*, 197 F.3d at 1255 n.4 (finding no abuse of discretion “merely because  
2 the underlying order is erroneous, rather than clearly erroneous”).

### 3 **III. DISCUSSION**

4 Plaintiffs seek reconsideration of the September 2022 Order, asserting the Court’s  
5 clearly erred when it dismissed without leave to amend Plaintiffs’ Eighth Amendment  
6 claim based on a mistaken belief that the SAC alleged Plaintiffs were all pre-trial detainees,  
7 rather than a mix of pre-trial and post-conviction detainees. (Doc. No. 225 at 6.) Plaintiffs  
8 refer the Court to allegations in the SAC that four of the eight Plaintiffs were serving or  
9 recently had served time in the Jail after having been convicted. (*Id.*) Specifically, the SAC  
10 alleges:

11 Plaintiff DARRYL DUNSMORE has been incarcerated at the Jail twice  
12 recently while seeking re-sentencing, and on several prior occasions as well .  
13 . . .

14 Plaintiff ERNEST ARCHULETA has been incarcerated at the Jail since July  
15 6, 2019. ARCHULETA has been sentenced . . . .

16 Plaintiff CHRISTOPHER NELSON has been incarcerated at the Jail since  
17 March 2, 2021. NELSON was detained awaiting trial until September 2021  
18 and is now housed at the Jail while awaiting transfer to CDCR . . . .

19 Plaintiff CHRISTOPHER NORWOOD . . . was first detained at the Jail for  
20 several months awaiting trial and is now awaiting transfer to CDCR.

21 (SAC ¶¶ 20, 21, 25, 26.)

22 Having reviewed the SAC, the Court finds it committed clear error in its September  
23 2022 Order. The SAC sufficiently alleges that Plaintiffs Dunsmore, Archuleta, Nelson, and  
24 Norwood are post-conviction detainees, and thus have a constitutional right to protection  
25 under the Eighth Amendment. For this reason, the Court **GRANTS** Plaintiffs’ motion. The  
26 Court adopts the analysis contained in Section IV.C of the September 2022 Order and  
27 applies it to the Eighth Amendment claim, finding that Plaintiffs’ myriad of claims and  
28 shotgun pleading fell short of providing plausible allegations. (*See* Doc. No. 219 at 7.)

1 Accordingly, Plaintiffs' first claim for violations of the Eighth Amendment is  
2 **DISMISSED WITH LEAVE TO AMEND.**

3 **IV. CONCLUSION**

4 Based on the foregoing, the Court **GRANTS** Plaintiffs' motion for reconsideration.  
5 (Doc. No. 225.) The Court **DISMISSES** the eighth amendment claim **WITHOUT**  
6 **PREJUDICE.**

7  
8 **IT IS SO ORDERED.**

9 Dated: October 31, 2022

10   
11 Hon. Anthony J. Battaglia  
12 United States District Judge  
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