UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CHANDA HUGHES, *et al.*,

Plaintiffs,

v. CASE NO.: 8:12-cv-568-T-23MAP

GRADY JUDD, *et al.*,

Defendants.
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ORDER

In a motion (Doc. 77) to dismiss, Corizon Health, Inc., questions whether K.G. exhausted the administrative remedy at the Polk County jail before beginning (her portion of) this action. A July 27, 2012, order (Doc. 98) directs K.G. and Corizon to submit additional briefing. The supplemental briefs reveal at least one factual dispute – whether K.G. grieved to a specific guard at the jail – that compels a hearing. A resolution of the factual dispute, or of whichever dispute resolves the exhaustion issue, will initially rest with the magistrate judge. First, however, Corizon's motion to dismiss raises other matters, which this order briefly addresses.

The alleged failure to exhaust aside, Corizon seeks dismissal on the grounds that K.G. cannot obtain a class certification, that K.G. cannot obtain a preliminary injunction, and that K.G. fails to state a claim against Corizon. Two of the three

grounds immediately founder – neither a defective class allegation nor a defective preliminary injunction request justifies dismissing a complaint.

The second amended complaint ("the complaint") alleges that K.G. suffers several mental illnesses and that K.G. needs properly administered medication to prevent, among other problems, extreme drowsiness, erratic behavior, and suicidal urges. The jail allegedly deprived K.G. of medication for three days at the end of March, 2012, while K.G. was subjected to a suicide watch. Although K.G. allegedly uses extended-release pills that she must swallow whole, the medication K.G. later received was crushed. The complaint names several other detainees who allegedly both suffer a mental illness and received necessary medication only irregularly. K.G. sues Corizon under 42 U.S.C. § 1983 for deliberate indifference to K.G.'s serious medical needs in violation of the Eighth and the Fourteenth Amendments.

Corizon claims that K.G. never alleges pertinent facts and never states the harm caused by a missed or a crushed dose of medicine. Reading the complaint refutes both claims. Corizon contends that the jail must crush each pill to prevent a detainee's using a pill as currency and that, in any case, wrongly crushing medication constitutes mere negligence. At present no legal authority and no factual submission establishes either the necessity of crushing or the harm of crushing. Corizon asserts that K.G.'s action "amounts to nothing more than a state medical negligence claim" for which K.G. must file a pre-suit notice in accord with Florida law. Again Corizon

merely reads the complaint in the light most amenable to the defendant. *See also Patsy v. Bd. of Regents of the State of Fla.*, 457 U.S. 496 (1982).

For support Corizon cites *Craig v. Floyd County, Ga.*, 643 F.3d 1306 (11th Cir. 2011), and *Mann v. Taser International, Inc.*, 588 F.3d 1291 (11th Cir. 2009). *Craig* holds that alleging only one wrongful act by a jail establishes no custom triggering municipal liability under Section 1983. K.G.'s complaint, however, alleges that Polk County jail neglected the medical needs of several detainees. *Mann* addresses a summary judgment in favor of deputy sheriffs who allegedly failed to seek sufficient medical attention for a delirious arrestee. By itself, at least, *Mann* says nothing that helps a motion to dismiss an action about the dispensing of medication at a jail.

K.G. evidently stayed at Polk County jail as a pre-trial detainee. In consequence Corizon seeks to dismiss K.G.'s Eighth Amendment claim, as only a convicted prisoner can suffer cruel and unusual punishment. (Doc. 43 at 4) K.G. never denies that she was a detainee rather than a prisoner; she instead explains that, because the sub-class she wants to represent might include prisoners, the Eighth Amendment claim should remain "to ensure that all class members are protected." This approach fails to establish the vitality of the Eighth Amendment claim but, incidentally, succeeds at suggesting K.G. cannot represent the putative sub-class. To represent a class a plaintiff must enjoy standing to raise each of the class's claims. *Wooden v. Bd. of Regents of the Univ. Sys. of Ga.*, 247 F.3d 1262, 1287-88 (11th Cir. 2001); *see also Hawkins v. Compact-Cassani*, 251 F.3d 1230, 1238 (9th Cir. 2001)

(decertifying a class because the prisoner class representative could not pursue the detainee class members' claim).

The parties present no authority showing whether three days without the medication at issue followed by receipt of the medication crushed can equal a constitutionally serious harm. K.G.'s claim appears plausible and proceeds for that reason alone. Accordingly, the motion (Doc. 77) to dismiss is **DENIED**, except that the Eighth Amendment portion of Count 4 is **DISMISSED**. The matter of K.G.'s exhaustion of her administrative remedy is **REFERRED** to the magistrate judge for a hearing and a report and recommendation. K.G. and Corizon's motions (Docs. 109, 110) to submit documents are **GRANTED**.

ORDERED in Tampa, Florida, on August 13, 2012.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE