

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hector Orozco v. American Legion Ambulance Company, et al.

Orozco · No. 2:25-cv-1994-DJC-CKD · Decided December 22, 2025

SUMMARY

The court grants plaintiff’s unopposed motion for leave to amend and deems the proposed first amended complaint operative. The magistrate judge finds potentially cognizable Eighth Amendment excessive-force and deliberate-indifference claims, a California gross-negligence claim against American Legion Ambulance, and California Bane Act claims against several defendants, while allowing plaintiff to amend further. The court recommends denying plaintiff’s motion to remand because the alleged removal defects were cured or could be cured.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Carolyn K. Delaney
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 22, 2025
DOCKET	2:25-cv-1994-DJC-CKD
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding without counsel, removed an action originally filed in California state court and moved to remand, amend the complaint, and obtain additional summonses. The magistrate judge granted leave to amend, screened the first amended complaint, denied the request for additional summonses, and recommended denying remand.
STANDARD OF REVIEW	On remand, procedural removal defects were evaluated under the removal statutes, including whether defects were cured and whether they caused prejudice. On screening, the court applied 28 U.S.C. § 1915A and dismissed claims that were frivolous, malicious, failed to state a claim, or sought relief from an immune defendant. The pleading was liberally construed because plaintiff proceeded without counsel.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

Hector Orozco v. American Legion Ambulance Company, T. Miranda, I. Bal, A. Davis, J. Grijalva, C. Sirithes, M. James, Choo, S. Martinez, Psych Tech Galbraith, P&S Davis, Dr. Bell, Michel Cureton, Dr. Brady, Sutter Amador Health, Alan McNany

TOPICS

civil procedure

section 1983

prisoners rights

police misconduct

negligence

PRACTICE AREAS

civil procedure

civil rights

prisoner civil rights

torts

health law

QUESTIONS PRESENTED

1. Whether alleged defects in service of the notice of removal and the failure of all defendants to join the removal required remand.
2. Whether plaintiff should be granted leave to file the proposed first amended complaint.
3. Whether the first amended complaint stated potentially cognizable claims under 42 U.S.C. § 1983 for excessive force and deliberate indifference to health or safety.
4. Whether the first amended complaint stated California-law claims for gross negligence, abuse or neglect of a dependent adult, intentional infliction of emotional distress, and violations of the Tom Bane Civil Rights Act.
5. Whether additional summonses should issue before plaintiff elected to proceed on the screened complaint or amend again.

HOLDINGS

1. Remand was not warranted because the alleged defects were procedural rather than jurisdictional, the notice-of-removal service issue had been cured without prejudice, and any defect concerning joinder of properly served defendants could be cured before judgment.
2. Plaintiff's unopposed motion for leave to amend was granted, and the proposed first amended complaint was deemed the operative complaint.
3. Liberally construed, the allegations stated a potentially cognizable claim under 42 U.S.C. § 1983 and the Eighth Amendment against Correctional Officers Grijalva, Choo, and S. Martinez for excessive force, but did not state such a claim against M. James for restraining plaintiff while unconscious.
4. The allegations stated a potentially cognizable § 1983 claim against R.N. Sirithes for deliberate indifference to plaintiff's health or safety, but did not state such a claim against Psych Tech Galbraith or P&S Davis.
5. The first amended complaint stated a potentially cognizable California gross-negligence claim against American Legion Ambulance based on the alleged conduct of its EMT employees.

6. The first amended complaint did not state a claim or basis for heightened remedies under California's dependent-adult-abuse statutory scheme because plaintiff was not a dependent adult within the relevant statutory definition.
7. The first amended complaint did not state a claim for intentional infliction of emotional distress against the identified defendants.
8. The complaint stated potential California Bane Act claims against Grijalva, Choo, S. Martinez, R.N. Sirithes, and American Legion Ambulance, but not against the remaining identified defendants.

KEY QUOTATIONS

“a procedural defect existing at the time of removal but cured prior to entry of judgment does not warrant reversal and remand of the matter to state court.” (at 15-17)

“applied force maliciously and sadistically to cause harm, rather than in a good-faith effort to maintain or restore discipline.” (at 3-5)

“Acts of simple or even gross negligence will not justify the additional civil damage remedies.” (at 23-27)

FACTUAL BACKGROUND

While incarcerated at Mule Creek State Prison on September 19, 2024, plaintiff suffered a fentanyl overdose and was found by prison personnel, who administered Narcan and restrained him. Plaintiff alleged that correctional officers used force against him for approximately one hour and seventeen minutes while he was in respiratory distress, and that R.N. Sirithes failed to recognize or respond adequately to his condition. He also alleged that ambulance personnel refused to evaluate or provide appropriate emergency aid and administered Versed before transport, resulting in injuries including paralysis and loss of taste and smell.

PROCEDURAL HISTORY

Orozco initiated the action in the Superior Court for Amador County, California. Several defendants filed a notice of removal to federal court. Plaintiff moved to remand and later sought leave to amend and issuance of additional summonses. The court granted the unopposed motion to amend, deemed the proposed first amended complaint operative, screened it under 28 U.S.C. § 1915A, identified several potentially cognizable claims, denied additional summonses pending plaintiff's election, and recommended that the motion to remand be denied.

DISPOSITION

other

REMAND INSTRUCTIONS

The magistrate judge recommended that the motion to remand be denied. The parties were advised that objections could be filed within fourteen days and that failure to object could waive appellate rights. The district judge was to review the findings and recommendations under 28 U.S.C. § 636(b)(1).

CASES CITED

- Soliman v. Philip Morris Inc., 311 F.3d 966, 970 (9th Cir. 2002)
- Dahlstrom v. Lifecare Centers of Am., Inc., No. C21-1465-TL-SKV, 2022 WL 584246, at *5 (W.D. Wash. Feb. 8, 2022)
- Emrich v. Touche Ross & Co., 846 F.2d 1190, 1193 n. 1 (9th Cir. 1988)
- Destfino v. Reiswig, 630 F.3d 952, 957 (9th Cir. 2011)
- Flam v. Flam, 788 F.3d 1043, 1047 (9th Cir. 2015)
- Hudson v. McMillian, 503 U.S. 1, 6-7 (1992)
- Farmer v. Brennan, 511 U.S. 825, 835 (1994)
- Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004)
- Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)
- Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
- Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Lathrop v. Healthcare Partners Med. Grp., 114 Cal. App. 4th 1412, 1423 (Ct. App. 2004)
- Berkley v. Dowds, 152 Cal. App. 4th 518, 529 (2007)
- Torres v. Santa Rosa Mem'l Hosp., No. C 12-6364 PJH, 2013 WL 4483469, at *3 (N.D. Cal. Aug. 20, 2013)
- So v. Shin, 212 Cal. App. 4th 652, 671 (2013)
- Johnson v. City of San Jose, 591 F. Supp. 3d 649, 669 (N.D. Cal. 2022)
- Scalia v. County of Kern, 308 F. Supp. 3d 1064, 1084 (E.D. Cal. 2018)
- Morrison v. Pal, No. 1:17-CV-00776-AWI-JLT, 2018 WL 6460038, at *10 (E.D. Cal. Dec. 10, 2018)
- Allen v. City of Sacramento, 234 Cal. App. 4th 41, 67 (3d Dist. 2015)
- Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987)
- George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)
- Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

Hector Orozco v. American Legion Ambulance Company, et al.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 HECTOR OROZCO 2:25-cv-1994-DJC-CKD P

12 Plaintiff,

13 v. ORDER AND

14 AMERICAN LEGION AMBULANCE FINDINGS AND RECOMMENDATIONS

COMPANY, et al., 15 Defendants. 16 17 Proceeding without counsel, plaintiff Hector Orozco, a

state prisoner, initiated this action 18 in the Superior Court for Amador County, California. Defendants T. Miranda, I. Bal, A. Davis, J. 19 Grijalva, C. Sirithes, and M. James filed a notice of removal. (ECF No. 1.) This matter is referred 20 to the undersigned by Local Rule 302. See 28 U.S.C. § 636(b)(1). Plaintiff's motion to remand, 21 motion for leave to amend the complaint, and request for issuance of additional summonses are 22 before the court. (ECF Nos. 5, 12, 20.) As set forth below, the undersigned will recommend the 23 motion to remand be denied. The unopposed motion for leave to amend is granted and plaintiff's 24 proposed amended complaint filed on August 18, 2025 (ECF No. 12-1) is deemed the operative 25 complaint. 26 The undersigned has screened the operative amended complaint and finds it states the 27 following potential claims: (1) under 42 U.S.C. § 1983 against Correctional Officers Grijalva, 28 Choo, and S. Martinez for excessive force in violation of the Eighth Amendment, (2) under 42 1 U.S.C. § 1983 against R.N. Sirithes for deliberate indifference to plaintiff's health or safety in 2 violation of the Eighth Amendment; (3) under California law against American Legion 3 Ambulance for gross negligence of one or more of its EMT employees; and (4) under California's 4 Bane Act against defendants Grijalva, Choo, S. Martines, Sirithes, and American Legion 5 Ambulance for alleged interference or attempted interference with plaintiff's state or federal 6 rights by threats, intimidation or coercion. Plaintiff may proceed on the operative amended 7 complaint as screened with only these claims or plaintiff may file an amended complaint under 8 the guidelines set forth below. 9 I. Motion to Remand 10 Plaintiff seeks remand of this case to the state court, on grounds that (1) defendants did 11 not promptly serve the notice of removal and (2) not all defendants against whom a federal 12 question claim is asserted joined the motion. (ECF No. 5 at 3.) Defendants opposed the motion 13 and plaintiff filed a reply. (ECF Nos. 10, 14.) 14 The alleged lack of prompt receipt of the notice of removal is, at most, a procedural defect 15 which does not affect subject matter jurisdiction. See *Soliman v. Philip Morris Inc.*, 311 F.3d 966, 16 970 (9th Cir. 2002) (“[A] procedural defect existing at the time of removal but cured prior to 17 entry of judgment does not warrant reversal and remand of the matter to state court.”). The record 18 reflects defendants served the notice of removal to plaintiff. (ECF No. 10-2 at 2, 4.) If there was 19 any defect in notice, it has been remedied by plaintiff's receipt of a re-served copy. (See *id.* at 7; 20 ECF No. 14 at 1.) Such a minor potential procedural defect which has been cured and which did 21 not prejudice plaintiff does not warrant remand. See *Dahlstrom v. Lifecare Centers of Am., Inc.*, 22 No. C21-1465-TL-SKV, 2022 WL 584246, at *5 (W.D. Wash. Feb. 8, 2022) (citing collected 23 cases where curable procedural defects did not deprive the court of jurisdiction or warrant 24 remand), report and recommendation adopted, No. C21-1465-TL-SKV, 2022 WL 579312 (W.D. 25 Wash. Feb. 25, 2022). 26 In response to plaintiff's argument that not all defendants joined in the removal, 27 defendants assert all properly served defendants joined the notice of removal. (ECF No. 10 at 2.) 28 Plaintiff “consents that there was an error in properly notifying the state court of American 1 Legion Ambulance being served with complaint, but nevertheless [asserts] American Legion 2 Ambulance was [properly] served and has failed to

consent to such removal[.]” (ECF No. 14 at 3 2.) In a subsequent motion filed in this case, plaintiff states an attorney for American Legion 4 Ambulance has asserted service was ineffective and improper. (ECF No. 20 at 2.) 5 All defendants who have been properly served in the action must join a petition for 6 removal. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n. 1 (9th Cir. 1988) (citing 28 U.S.C. § 1446(a)). The failure to join all proper defendants in a removal petition may render it 8 procedurally defective. See *id.* 9 The record presently before the court does not indicate defendant American Legion 10 Ambulance was properly served or is otherwise subject to the jurisdiction of the state court. If it is 11 subsequently determined that when the notice of removal was filed, any additional defendants had 12 been properly served and did not join the notice of removal, then the removing defendants may 13 cure any defect by obtaining joinder of all defendants prior to the entry of judgment. See *Destfino 14 v. Reiswig*, 630 F.3d 952, 957 (9th Cir. 2011) (“the district court may allow the removing 15 defendants to cure the defect by obtaining joinder of all defendants prior to the entry of 16 judgment”). 17 In sum, plaintiff raises only potential procedural defects which either have been cured or 18 which can be cured. The motion to remand should be denied. See *Flam v. Flam*, 788 F.3d 1043, 19 1047 (9th Cir. 2015) (“a magistrate judge presented with a motion for remand “should provide a 20 report and recommendation to the district court”). 21 II. Screening Requirement and Motion to Amend 22 The court is required to screen complaints brought by prisoners seeking relief against a 23 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In 24 this instance, after the notice of removal was filed and before the court screened plaintiff’s 25 removed complaint, plaintiff filed a motion for leave to amend. (ECF No. 12.) Plaintiff attached a 26 proposed amended complaint to that motion. (ECF No. 12-1.) No defendant has filed an 27 opposition to the motion for leave to amend. Good cause appearing, plaintiff’s unopposed motion 28 for leave to amend is granted. See Fed. R. Civ. P. 15(a). 1 The court will screen plaintiff’s first amended complaint (“FAC”). (ECF No. 12-1.) The 2 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally 3 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek 4 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). 5 III. Allegations in the FAC 6 While incarcerated at Mule Creek State Prison on September 19, 2024, plaintiff suffered a 7 fentanyl overdose which he believes was administered because he expressed intent to forward 8 information to gossip column TMZ. (ECF No. 12-1 at 21, 26-27.) Defendant M. James found 9 plaintiff, administered Narcan, and applied mechanical restraints to plaintiff’s wrists and legs. (*Id.* 10 at 10, 21.) Psych Tech Galbraith activated 911 emergency and administered Narcan. (*Id.* at 10.) 11 Plaintiff alleges these defendants did not follow proper procedures for administering Narcan 12 which constituted “physical abuse” within the meaning of California’s statutory scheme providing 13 for heightened remedies for abuse of a dependent adult. (*Id.* at 10.) 14 When plaintiff became conscious, he complained that the restraints were impeding his 15 ability to breathe. (ECF No. 12-1 at 21-22.) When he tried to sit up to breathe because he was in 16 respiratory distress, defendants

Grijalva, Choo, and S. Martinez claimed he was being combative 17 and used unnecessary force to compress his chest, stomach, arms and legs, giving him the feeling 18 of drowning and being tortured. (Id. at 20, 22, 25, 27.) This went on for one hour and 17 minutes 19 while plaintiff was in T.T.A. (Id. at 22.) 20 While plaintiff was in T.T.A., R.N. Sirithes failed to recognize plaintiff was in shock and 21 not just being in a combative state and allowed the correctional officer defendants to “abuse” him 22 by continuing to apply unnecessary force. (ECF No. 12-1 at 11, 23.) Plaintiff told R.N. Sirithes he 23 was in extreme pain, but medical reports instead falsely stated he was not in pain and was being 24 combative. (Id. at 10-11.) P & S Davis¹ gave the EMTs permission to administer 4 mgs of Haldol 25 even though plaintiff was already over sedated. (Id. at 26.) Defendants T. Miranda and Doctor 26 Bell failed to provide plaintiff with adequate medical care and “failed to properly staff medical 27 28 1 P & S Davis is also referred to as P & S Austin in the FAC and appears to be the same person. 1 staff.” (Id. at 12, 23.) 2 When EMTs from American Legion Ambulance arrived, no aid was given except 3 someone improperly administered 12 mgs of Versed, a chemical restraint. (ECF No. 12-1 at 11, 4 13-14.) A responding EMT immediately and without evaluating plaintiff stated she was not 5 taking him “like that,” suggesting plaintiff was being combative. (Id. at 12.) American Legion 6 Ambulance knew of the unfitness of its agents or employees who refused to render emergency 7 medical care to plaintiff and failed to determine he was threatened with serious illness or injury 8 by administration of the chemical agent and delay in transport to the hospital. (Id. at 17-18, 28.) 9 Michel Cureton and Dr. Brady are agents and employees of Sutter Amador Hospital. (ECF 10 No. 12-1 at 16, 20.) Once plaintiff arrived at Sutter Amador Hospital, Dr. Brady “undertook the 11 care” but “abused/neglected/abandoned” plaintiff. (Id. at 14, 20.) Sutter Amador Health 12 authorized and ratified the wrongful acts of Dr. Brady and “allowed the EMTs to abandon 13 plaintiff at T.T.A.” (Id. at 14, 28.) 14 Due to the defendants’ alleged conduct, plaintiff suffered injury including paralysis and 15 loss of taste and smell. (E.g., ECF No. 12-1 at 24.) Plaintiff brings federal claims under 42 U.S.C. 16 § 1983 for cruel and unusual punishment alleging excessive force by the correctional officer 17 defendants and deliberate indifference to health or safety by other prison official defendants. (Id. 18 at 21-24.) He brings state-law claims against various defendants under the Tom Bane Civil Rights 19 Act (id. at 25-29), and for abuse or neglect of a dependent adult (id. at 10-15, 20), negligence or 20 gross negligence (id. at 12-15), intentional infliction of emotional distress (id. at 15-17), and 21 refusal to render emergency medical services (id. at 17-19). Pertaining to his state-law claims, 22 plaintiff submitted a government claim for damages which was rejected by failure to act. (Id. at 23 18-19.) 24 IV. Screening the FAC 25 A. 42 U.S.C. § 1983 Claims 26 Liberally construed, plaintiff’s allegations against correctional officer defendants Grijalva, 27 Choo, and S. Martinez state a colorable claim for relief pursuant to 42 U.S.C. § 1983 and 28 28 U.S.C. § 1915A that these defendants used excessive force in violation of the Eighth Amendment. 1 The FAC does not state an excessive force claim against M. James for placing mechanical 2 restraints on plaintiff while he was unconscious because the allegations do

not plausibly suggest 3 this defendant “applied force maliciously and sadistically to cause harm, rather than in a good- 4 faith effort to maintain or restore discipline.” *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992). 5 Liberally construed, plaintiff’s allegations against R.N. Sirithes state a colorable claim for 6 relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A that defendant Sirithes was 7 deliberately indifferent to plaintiff’s health or safety in violation of the Eighth Amendment. The 8 FAC does not state a medical deliberate indifference claim against Psych Tech Galbraith or P&S 9 Davis. The allegation that defendants did not follow proper procedures for administering Narcan 10 is conclusory and suggests no more than mere negligence which does not rise to the level of 11 deliberate indifference. See *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). Similarly, the 12 allegation that a defendant gave the EMTs permission to administer 4 mgs of Haldol when 13 plaintiff was already over sedated expresses no more than a difference in opinion as to the 14 appropriate course of treatment, which does not show deliberate indifference. See *Toguchi v. 15 Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004). 16 Dr. Bell as Chief Medical Officer and T. Miranda as Warden are not adequately alleged to 17 have personally participated in any deprivation of plaintiff’s constitutional rights. See *Johnson v. 18 Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Supervisory personnel are generally not liable under § 19 1983 for the actions of their employees under a theory of respondeat superior and thus the causal 20 link between a defendant holding a supervisory position and the claimed constitutional violation 21 must be specifically alleged. See *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979). Vague and 22 conclusory allegations concerning the involvement of official personnel in civil rights violations 23 are not sufficient. See *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). 24 B. State Law Claims 25 1. Negligence 26 Defendant American Legion Ambulance may be held liable for state-law tort claims under 27 the doctrine of respondeat superior if its employee EMTs are liable under the applicable standard 28 of care. See *Lathrop v. Healthcare Partners Med. Grp.*, 114 Cal.App.4th 1412, 1423 (Ct. App. 1 2004). In California, EMTs are immune from ordinary negligence claims but are “liable in civil 2 damages for acts or omissions performed in a grossly negligent manner or acts or omissions not 3 performed in good faith.” Cal. Health & Safety Code § 1799.106. Liberally construing the FAC, 4 plaintiff states a claim against American Legion Ambulance for the alleged gross negligence of 5 its EMT employees for refusing to evaluate plaintiff or render medical aid. 6 The FAC does not state a negligence claim against Warden Miranda or Chief Medical 7 Officer Dr. Bell. Prison officials owe prisoners a duty to protect them from foreseeable harm. 8 *Giraldo v. Cal. Dep’t of Corr. & Rehab.*, 168 Cal. App. 4th 231, 252-53 (2008). However, 9 allegations that these defendants breached a legal duty to use reasonable care in the provision of 10 medical care by failing to provide prompt and appropriate care are conclusory allegations which 11 do not state a negligence claim. See *Flores v. Cnty. of Fresno*, No. 1:19-CV-01477-DAD-BAM, 12 2021 WL 3287715, at *10-11 (E.D. Cal. Aug. 2, 2021). Plaintiff also alleges these defendants 13 failed to have a doctor on site even though they were on notice there was a serious drug overdose 14 issue at the prison because an inmate had overdosed and died the day before. (ECF No. 12-1 at 15 17.)

This allegation does not suffice to allege defendants Warden Miranda or Chief Medical 16 Officer Dr. Bell failed to protect plaintiff from foreseeable harm. 17 The FAC also does not state a negligence claim against Dr. Brady or Sutter Amador 18 Health. Plaintiff's allegations against these defendants are conclusory and lack necessary factual 19 specificity. It is not enough to allege defendants undertook or were responsible for plaintiff's care 20 and failed their duties through abuse, abandonment, or neglect. 21 2. Abuse or Neglect of Dependent Adult 22 The FAC does not state any claim or basis for heightened remedies for abuse or neglect of 23 a dependent adult. See Welf. & Inst. Code, § 15600 et seq. California law provides for heightened 24 remedies for abuse of a dependent adult or elder when the cause of action includes facts showing 25 physical abuse, neglect, or other treatment with resulting physical harm or pain or mental 26 suffering. *Berkley v. Dowds*, 152 Cal. App. 4th 518, 529 (2007); see also *id.* ("Acts of simple or 27 even gross negligence will not justify the additional civil damage remedies."). 28

1 A "dependent adult" in this context is a person between the ages of 18 and 64 years who 2 has physical or mental limitations that restrict the ability to carry out normal activities or to 3 protect their rights, or who is admitted as an inpatient to a 24-hour health facility as defined in 4 specified sections of the Health and Safety Code. See Cal. Welf. & Inst. Code § 15610.23. 5 Plaintiff was not an inpatient at a 24-hour health facility. Neither his medical condition nor the 6 circumstances of being unconscious, restrained, and in need of transport for emergency medical 7 care were limitations that restricted his ability to protect his rights within the meaning of the 8 statutory scheme. See *Torres v. Santa Rosa Mem'l Hosp.*, No. C 12-6364 PJH, 2013 WL 9 4483469, at *3 (N.D. Cal. Aug. 20, 2013) (rejecting argument that person became a "dependent 10 adult" based on emergency medical conditions and being transferred emergently by ambulance). 11

3. Intentional Infliction of Emotional Distress 12 The FAC does not state an intentional infliction of emotional distress claim. Plaintiff does 13 not allege any conduct by Warden Miranda or Dr. Bell "directed to" plaintiff. See *So v. Shin*, 212 14 Cal. App. 4th 652, 671 (2013), as modified on denial of reh'g (Jan. 28, 2013). Plaintiff does not 15 allege any specific facts regarding the conduct of Alan McNany or regarding the conduct of 16 Michel Cureton or Dr. Shawn Brady, except vague references that Dr. Brady undertook pre- 17 hospital care and Alan McNany ratified the wrongful acts of American Legion Ambulance 18 employees. Such allegations fail to plausibly suggest any defendant engaged in extreme and 19 outrageous conduct with reckless disregard for the probability of causing plaintiff emotional 20 distress or with intent to cause plaintiff emotional distress. See *So*, 212 Cal. App. 4th at 671. 21

4. Tom Bane Civil Rights Act 22 The FAC states a potential Bane Act claim against defendants Grijalva, Choo, and S. 23 Martinez based on the allegations that these defendants used unreasonable and unnecessary force 24 while plaintiff was in respiratory distress. See *Johnson v. City of San Jose*, 591 F. Supp. 3d 649, 25 669 (N.D. Cal. 2022) ("allegations in support of the excessive force claim... meet the 26 requirements to allege a specific intent to violate [plaintiff's] rights under the Bane Act"). 27 Plaintiff also states a potential Bane Act claim against R.N. Sirithes. See *Scalia v. Cnty. of Kern*, 28 308 F. Supp. 3d 1064, 1084

(E.D. Cal. 2018) (“a prison official’s deliberate indifference to 1 serious medical needs is a coercive act”). Plaintiff also states a potential Bane Act claim against 2 American Legion Ambulance based on the alleged conduct of the responding EMTs. See 3 *Morrison v. Pal*, No. 1:17-CV-00776-AWI-JLT, 2018 WL 6460038, at *10 (E.D. Cal. Dec. 10, 4 2018) (rejecting argument that the defendant could not be held vicariously liable for another’s 5 conduct under the Bane Act). 6 Plaintiff does not state a Bane Act claim against defendants Sutter Amador Health, 7 Warden Miranda, Dr. Bell, M. James, Psych Tech Galbraith, P&S Austin, Alan McNany, Michel 8 Cureton, or Dr. Brady because plaintiff has not adequately alleged any of these defendants 9 intentionally interfered or attempted to interfere with his state or federal constitutional or legal 10 rights by threats, intimidation or coercion. See Cal. Civ. Code, § 52.1(b); *Allen v. City of 11 Sacramento*, 234 Cal. App. 4th 41, 67 (3rd Dist. 2015). 12 C. Defendant Bal 13 Plaintiff lists “Chief Medical Executive” Inderpal Bal as a defendant but does not include 14 any factual allegations about defendant Bal’s conduct or indicate that defendant Bal is sued in any 15 cause of action. Thus, the FAC does not state a claim against defendant Bal. 16 V. Request for Issuance of Additional Summonses (ECF No. 20) 17 Plaintiff requests the court to issue additional summonses directed to American Legion 18 Ambulance, Sutter Amador Health, Shawn Brady, S. Martinez, Choo, and Sandahal Galbraith. 19 (ECF No. 20.) Although the undersigned has determined the FAC states potential claims against 20 American Legion Ambulance, S. Martinez, and Choo, plaintiff is being granted an opportunity to 21 file a further amended complaint. Additional summonses will be issued for defendants against 22 whom the court determines plaintiff has stated a potential claim after plaintiff decides whether to 23 proceed on the FAC as screened or file a further amended complaint. If plaintiff files a further 24 amended complaint, the court will first screen the further amended complaint. See 28 U.S.C. § 25 1915A(a). 26 VI. Leave to Amend 27 Plaintiff may proceed on the FAC as screened with the potential claims found to be 28 cognizable or plaintiff may file a further amended complaint. See *Noll v. Carlson*, 809 F.2d 1446, 1 1448-49 (9th Cir. 1987). Plaintiff must complete and return to the court the attached notice along 2 with any optional amended complaint. This opportunity to amend is not for the purposes of 3 adding new and unrelated claims. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Local 4 Rule 220 requires that an amended complaint be complete without reference to any prior 5 pleading. See *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). A further amended complaint 6 should be titled “Second Amended Complaint” and should reference the case number. 7 If plaintiff chooses to proceed on the FAC as screened, the court will construe the choice 8 as a request to voluntarily dismiss the additional claims and defendants pursuant to Rule 9 41(a)(1)(i) of the Federal Rules of Civil Procedure. Then the court will send plaintiff the 10 necessary forms for service of the complaint on defendants American Legion Ambulance 11 Company, S. Martinez, and Choo. 12 VII. Plain Language Summary for Pro Se Party 13 The following information is meant to explain this order in plain English. This summary 14 is not intended as legal advice. 15 The allegations in your first amended complaint state some claims against some 16 defendants but

other claims must be dismissed pursuant to 28 U.S.C. § 1915A(b). You are not obligated to amend the complaint and may proceed on the FAC as screened with the claims listed in the order below. In the alternative, you may file a further amended complaint. You must complete the attached notice and return it to the court within 30 days from the date of this order, along with any optional amended complaint. VIII. Order and Recommendation In accordance with the above, IT IS ORDERED as follows: 1. Plaintiff's unopposed motion for leave to amend (ECF No. 12) is GRANTED and the proposed first amended complaint (ECF No. 12-1) is deemed the operative complaint. 2. Plaintiff's request for issuance of additional summonses (ECF No. 20) is DENIED. 3. The court has screened plaintiff's first amended complaint and finds it states the following potential claims: against Correctional Officers Grijalva, Choo, and S. Martinez for excessive force in violation of the Eighth Amendment, against R.N.] Sirithes for deliberate indifference to plaintiffs health or safety in violation of the 2 Eighth Amendment; against American Legion Ambulance for gross negligence of one 3 or more of its EMT employees; and under the Bane Act against defendants 4 Choo, S. Martines, Sirithes, and American Legion Ambulance for alleged interference 5 or attempted interference with plaintiffs state or federal rights by threats, intimidation 6 or coercion; plaintiff may proceed on the FAC as screened with these claims or 7 plaintiff may file an amended complaint. 8 4. Within thirty (30) days of the date of this order, plaintiff shall complete and return the 9 attached Notice of Election form along with any optional amended complaint. 10 5. Failure to respond to this order will result in a recommendation that this action be 11 dismissed for failure to obey a court order and failure to prosecute. 12 In addition, IT IS RECOMMENDED that plaintiff's motion to remand (ECF No. 5) be 13 | denied. 14 These findings and recommendations are submitted to the United States District Judge 15 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 16 || after being served with these findings and recommendations, any party may file written 17 || objections with the court and serve a copy on all parties. Such a document should be captioned 18 || "Objections to Magistrate Judge's Findings and Recommendations." Any response to the 19 || objections shall be filed and served within seven days after service of the objections. The parties 20 || are advised that failure to file objections within the specified time may waive the right to appeal 21 || the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 22 | Dated: December 22, 2025 / Lae / a ly. ae

24 UNITED STATES MAGISTRATE JUDGE

25 8, oroz1994.scrn.elect.remfr 26 27 28 1]

1 UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF CALIFORNIA

3

4 HECTOR OROZCO, 2:25-cv-1994-DJC-CKD P

5 Plaintiff,

6 v. NOTICE OF ELECTION

7 AMERICAN LEGION AMUBLANCE

COMPANY, et al., 8 Defendants 9 10 Check one: 11 12 _____ Plaintiff wants to proceed on the
FAC as screened with the following claims: (1) against 13 Correctional Officers Grijalva, Choo,
and S. Martinez for excessive force in violation of 14 the Eighth Amendment, (2) against R.N.
Sirithes for deliberate indifference to plaintiff's 15 health or safety in violation of the Eighth
Amendment; (3) against American Legion 16 Ambulance for gross negligence of one or more of
its EMT employees; and (4) under the 17 Bane Act against defendants Grijalva, Choo, S. Martines,
Sirithes, and American Legion 18 Ambulance for alleged interference or attempted interference
with plaintiff's state or 19 federal rights by threats, intimidation or coercion. Plaintiff understands
that by choosing 20 to proceed on these claims, the court will construe the choice as a request to
voluntarily 21 dismiss the additional claims and defendants pursuant to Rule 41(a)(1)(A)(i) of the
22 Federal Rules of Civil Procedure. 23 24 _____ Plaintiff wants to amend the complaint. 25 26

DATED: _____

27 Plaintiff 28