

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Ellis v. Kern Medical Center

No. 1:23-cv-01344-KES-SKO (PC) (E.D. Cal. Apr. 16, 2025) · No. 1:23-cv-01344-KES-SKO (PC) · Decided
April 16, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends that Charles Ellis’s Fourteenth Amendment medical-care claims proceed against Defendants Gonzalez and Hodge. It recommends dismissing Kern Medical Center because the First Amended Complaint does not allege that the asserted constitutional violation resulted from a policy or custom promulgated or endorsed by the medical center.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sheila K. Oberto
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 16, 2025
DOCKET	1:23-cv-01344-KES-SKO (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations following screening of a prisoner's first amended complaint under 28 U.S.C. § 1915A. The magistrate judge recommended that the action proceed on Fourteenth Amendment medical-care claims against Gonzalez and Hodge and that Kern Medical Center be dismissed.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A, the court must dismiss a prisoner's complaint or portion thereof that is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. On screening, factual allegations are accepted as true and liberally construed for a pro se prisoner, but legal conclusions and unwarranted inferences are not accepted.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations; persuasive only and subject to review by the assigned district judge.

TOPICS

prisoners rights

section 1983

due process

pleadings

civil procedure

PRACTICE AREAS

Prisoner civil rights

Federal civil procedure

Constitutional medical-care claims

QUESTIONS PRESENTED

1. Whether the first amended complaint plausibly alleged a Fourteenth Amendment inadequate-medical-care claim by a pretrial detainee against Gonzalez and Hodge.
2. Whether the first amended complaint alleged personal participation, causation, and an unconstitutional policy or custom sufficient to impose section 1983 liability on Kern Medical Center.
3. Whether further leave to amend against Kern Medical Center would be futile.

HOLDINGS

1. The first amended complaint plausibly alleged Fourteenth Amendment claims against Gonzalez and Hodge because it alleged intentional decisions to discontinue pain medication, a substantial risk of serious harm from the untreated knee condition and continuing pain, failure to take reasonable available measures to abate that risk, and resulting injury.
2. The first amended complaint failed to state a section 1983 claim against Kern Medical Center because it did not allege facts showing that a constitutional violation resulted from a policy, decision, or custom promulgated or endorsed by the medical center.
3. Further leave to amend against Kern Medical Center would be futile because the amended complaint remained deficient for the same reasons identified in the original screening order and did not cure those deficiencies.

KEY QUOTATIONS

“Thus, to bring a pretrial detainee’s failure to protect or inadequate medical care claim under the Fourteenth Amendment, a plaintiff must establish: (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff’s injuries.” (at 20-21)

FACTUAL BACKGROUND

Charles Ellis alleged that, while a pretrial detainee at the Kern County Jail, he suffered continuing pain from a torn meniscus in his left knee and that surgery recommended for the injury was never performed. He alleged that

Dr. Hodge discontinued oxycodone and other pain medication after a drug screen was positive and that Dr. Gonzalez and Hodge jointly followed or implemented a policy governing narcotic pain treatment. Ellis asserted that the resulting lack of pain treatment and withdrawal symptoms caused continuing and worsening injury. He also alleged that Kern Medical Center was liable because surgery recommended by physicians employed by or associated with it was not performed.

PROCEDURAL HISTORY

The court's January 16, 2024 screening order found the original complaint failed to state a claim and granted leave to amend. After Ellis failed to amend timely, the court recommended dismissal for failure to obey court orders and prosecute, but later vacated that recommendation, granted an extension, and denied appointed counsel. Ellis then filed a first amended complaint, which the magistrate judge screened and found sufficient to proceed against Gonzalez and Hodge but insufficient against Kern Medical Center.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge recommended that the action proceed only on the Fourteenth Amendment claims against Gonzalez and Hodge and that Kern Medical Center be dismissed. The parties were given 14 days to file objections under 28 U.S.C. § 636(b)(1) and Local Rule 304(b).

CASES CITED

- *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990)
- *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512-13 (2002)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 676-78 (2009)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)
- *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)
- *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989)
- *Bruns v. National Credit Union Administration*, 122 F.3d 1251, 1257 (9th Cir. 1997)
- *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
- *Rizzo v. Goode*, 423 U.S. 362, 373-75 (1976)
- *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)
- *Simmons v. Navajo County, Arizona*, 609 F.3d 1011, 1020-21 (9th Cir. 2010)
- *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070-71 (9th Cir. 2016)
- *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002)
- *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)
- *Corales v. Bennett*, 567 F.3d 554, 570 (9th Cir. 2009)
- *Starr v. Baca*, 652 F.3d 1202, 1205-06 (9th Cir. 2011)

- Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991)
- Farmer v. Brennan, 511 U.S. 825 (1970)
- Waggy v. Spokane County, Washington, 594 F.3d 707, 713 (9th Cir. 2010)
- Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
- Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Whitley v. Albers, 475 U.S. 312, 318 (1986)
- Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998)
- Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979)
- Kingsley v. Hendrickson, 576 U.S. 389, 400, 402 (2015)
- Daniels v. Williams, 474 U.S. 327, 330-31 (1986)
- George v. Sonoma County Sheriff's Department, 732 F. Supp. 2d 922, 934, 940 (N.D. Cal. 2010)
- Rodriguez v. Plymouth Ambulance Service, 577 F.3d 816, 822 (7th Cir. 2009)
- McRorie v. Shimoda, 795 F.2d 780, 784 (9th Cir. 1986)
- Hartmann v. California Department of Corrections and Rehabilitation, 707 F.3d 1114, 1129-30 (9th Cir. 2013)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

(PC) Ellis v. Kern Medical Center

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 CHARLES ELLIS, 1:23-cv-01344-KES-SKO (PC)

12 Plaintiff, FINDINGS AND RECOMMENDATIONS

TO PROCEED ON CERTAIN CLAIMS

13 v. AND TO DISMISS KERN MEDICAL

CENTER FROM THIS ACTION

14 KERN MEDICAL CENTER, et al., FOLLOWING SCREENING OF

PLAINTIFF'S FIRST AMENDED

15 Defendants. COMPLAINT

16 14-DAY OBJECTION DEADLINE

17 18 Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 19
42 U.S.C. § 1983.

20 I. BACKGROUND

21 The Court issued its First Screening Order on January 16, 2024. (Doc. 6.) It determined 22
Plaintiff's complaint failed to state a claim upon which relief could be granted against any named
23 defendant. (Id. at 4-12.) Plaintiff was granted 21 days within which to file a first amended 24

complaint or a notice of voluntary dismissal. (Id. at 12-13.) 25 On February 21, 2024, when Plaintiff failed to timely file a first amended complaint, the 26 Court issued Findings and Recommendations to dismiss this action for Plaintiff's to obey court 27 orders and failure to prosecute. (Doc. 8.) Objections were due within 14 days. (Id. at 4.) 28 On March 11, 2024, Plaintiff filed a document titled "Motion: Requesting Time 1 Extension, and Consideration for Counsel at this Time, be Appointed." (Doc. 9.) 2 On March 14, 2024, the Court issued its Order Vacating Findings and Recommendations 3 to Dismiss This Action for Plaintiff's Failure to Obey Court Orders and Failure to Prosecute; 4 Order Granting Plaintiff's Request for Extension of Time to Comply with the First Screening 5 Order; and Order Denying Plaintiff's Request to Appoint Counsel. (Doc. 11.) Relevant here, 6 Plaintiff was ordered to file a first amended complaint within 21 days. (Id. at 6.) 7 On March 11, 2024, Plaintiff filed a first amended complaint.¹ (Doc. 12.)

8 II. SCREENING REQUIREMENT

9 The Court is required to screen complaints brought by prisoners seeking relief against a 10 governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). 11 The Court must dismiss a complaint or portion thereof if the complaint is frivolous or malicious, 12 fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant 13 who is immune from such relief. 28 U.S.C. § 1915A(b). The Court should dismiss a complaint if 14 it lacks a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal 15 theory. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

16 III. PLEADING REQUIREMENTS

17 A. Federal Rule of Civil Procedure 8(a) 18 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited 19 exceptions." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002). A complaint must contain 20 "a short and plain statement of the claims showing that the pleader is entitled to relief." Fed. R. 21 Civ. P. 8(a)(2). "Such a statement must simply give the defendant fair notice of what the 22 plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512 (internal 23 quotation marks & citation omitted). 24 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a 25 cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must 27 28 1 The amended complaint is signed and dated March 1, 2024. 1 set forth "sufficient factual matter, accepted as true, to 'state a claim that is plausible on its face.'" 2 Id. (quoting *Twombly*, 550 U.S. at 570). Factual allegations are accepted as true, but legal 3 conclusions are not. Id. (citing *Twombly*, 550 U.S. at 555). 4 The Court construes pleadings of pro se prisoners liberally and affords them the benefit of 5 any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). However, "the 6 liberal pleading standard . . . applies only to a plaintiff's factual allegations," not his legal 7 theories. *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989). Furthermore, "a liberal interpretation 8 of a civil rights complaint may not supply essential

elements of the claim that were not initially 9 pled,” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (internal 10 quotation marks & citation omitted), and courts “are not required to indulge unwarranted 11 inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation 12 marks & citation omitted). The “sheer possibility that a defendant has acted unlawfully” is not 13 sufficient to state a cognizable claim, and “facts that are merely consistent with a defendant’s 14 liability” fall short. *Iqbal*, 556 U.S. at 678 (internal quotation marks & citation omitted). 15

B. Linkage and Causation
16 Section 1983 provides a cause of action for the violation of constitutional or other federal
17 rights by persons acting under color of state law. See 42 U.S.C. § 1983. To state a claim under
18 section 1983, a plaintiff must show a causal connection or link between the actions of the 19
defendants and the deprivation alleged to have been suffered by the plaintiff. See *Rizzo v. Goode*,
20 423 U.S. 362, 373-75 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to
the 21 deprivation of a constitutional right, within the meaning of section 1983, if he does an
affirmative 22 act, participates in another’s affirmative acts, or omits to perform an act which he is
legal required 23 to do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*,
588 F.2d 740, 24 743 (9th Cir. 1978) (citation omitted). 25 C. Supervisory Liability 26 Liability
may not be imposed on supervisory personnel for the actions or omissions of 27 their subordinates
under the theory of respondeat superior. *Iqbal*, 556 U.S. at 676-77; see e.g., 28 *Simmons v. Navajo*
Cty., Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010) (plaintiff required to 1 adduce evidence the
named supervisory defendants “themselves acted or failed to act 2 unconstitutionally, not merely
that subordinate did”), overruled on other grounds by *Castro v. 3 C’nty of Los Angeles*, 833 F.3d
1060, 1070 (9th Cir. 2016); *Jones v. Williams*, 297 F.3d 930, 934 4 (9th Cir. 2002) (“In order for a
person acting under color of state law to be liable under section 5 1983 there must be a showing of
personal participation in the alleged rights deprivation: there is 6 no respondeat superior liability
under section 1983”). 7 Supervisors may be held liable only if they “participated in or directed the
violations, or 8 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d
1040, 1045 (9th

9 Cir. 1989). “The requisite causal connection may be established when an official sets in motion a
10 ‘series of acts by others which the actor knows or reasonably should know would cause others
to 11 inflict’ constitutional harms.” *Corales v. Bennett*, 567 F.3d 554, 570 (9th Cir. 2009). Accord
12 *Starr v. Baca*, 652 F.3d 1202, 1205-06 (9th Cir. 2011) (supervisory liability may be based on 13
inaction in the training and supervision of subordinates). 14 Supervisory liability may also exist
without any personal participation if the official 15 implemented “a policy so deficient that the
policy itself is a repudiation of the constitutional 16 rights and is the moving force of the
constitutional violation.” *Redman v. Cty. of San Diego*, 942 17 F.2d 1435, 1446 (9th Cir. 1991)
(citations & quotations marks omitted), abrogated on other 18 grounds by *Farmer v. Brennan*, 511
U.S. 825 (1970). 19 To prove liability for an action or policy, the plaintiff “must ... demonstrate
that his 20 deprivation resulted from an official policy or custom established by a ... policymaker

possessed 21 with final authority to establish that policy.” *Waggy v. Spokane County Washington*, 594 F.3d 22 707, 713 (9th Cir.2010). When a defendant holds a supervisory position, the causal link between 23 such defendant and the claimed constitutional violation must be specifically alleged. See *Fayle v. 24 Stapley*, 607 F.2d 858, 862 (9th Cir. 1979). Vague and conclusory allegations concerning the 25 involvement of supervisory personnel in civil rights violations are not sufficient. See *Ivey v. 26 Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). 27 // 28 //

1 IV. DISCUSSION

2 A. Plaintiff’s First Amended Complaint 3 Plaintiff identifies “Dr. Hodge ... a pain [management] doctor ... working for Kern 4 Medical Center,” “Dr. Gonzales ... a doctor... [at] Kern Medical,” and “Dr. Hodge ... DR ... [at] 5 Kern Medical Center.” (Doc. 12 at 2-3.)² He did not name “Kern Medical Center” as a defendant. 6 (Id.) Plaintiff seeks “Monetary relief, \$25,000; and Medical Care needed.” (Id. at 5.) 7 B. Plaintiff’s Allegations 8 Plaintiff contends he is a pretrial detainee at the Kern County Jail and has been 9 incarcerated since February 3, 2022. (Doc. 12 at 6.) He alleges he has been complaining of knee 10 pain for months before an MRI was conducted. (Id.) The MRI revealed Plaintiff had a torn 11 meniscus in his left knee. (Id.) He was scheduled to see orthopedic doctors and specialists and 12 was then recommended for surgical repair. (Id.) Although surgery was set for November 22, 13 2022, that date “came and went, without so much as a reason for the cancellation.” (Id.) Plaintiff 14 contends he is still waiting for the surgery and is not receiving pain medications. (Id.) 15 Defendant Gonzalez is a doctor working at the Kern County Jail Lerdo Justice Facility 16 and supervises nurse practitioners. (Doc. 12 at 6.) Plaintiff contends he “approached medical” and 17 advised them of his injury and was eventually given pain medications. (Id. at 6-7.) Plaintiff states 18 he was tested for illegal substance abuse after being prescribed pain medication. (Id. at 7.) He was 19 informed that an injury must be deemed serious enough to require narcotic pain medications and 20 that his injury was serious. (Id.) Plaintiff states he was initially prescribed Tramadol at 50 21 milligrams, twice a day, which was increased to 100 milligrams, three times a day, for 22 approximately six to seven months. (Id.) He alleges he was then approved for pain management 23 and scheduled to see Defendant Hodge, “who is a [doctor] employed at the Kern Medical 24 Center.” (Id.) 25 Defendant Hodge reviewed Plaintiff’s injury and the MRI results. (Doc. 12 at 7.) Hodge 26 prescribed oxycodone for Plaintiff’s pain. (Id.) Plaintiff asserts Hodge “[d]rug screened” him the 27 28 2 Despite this duplication, it is clear from the facts asserted that there is only one Defendant Hodge. 1 same day he prescribed oxycodone, and the results came back positive. (Id.) Plaintiff contends all 2 pain medication was “immediately discontinued” as a result. (Id. at 7-8.) He asserts he was 3 deprived of medical care and pain relief “due to Dr. Hodge’s decision to discontinue [his] meds.” 4 (Id. at 8.) Plaintiff states he “may have given a dirty urine sample, which is true,” but contends 5 “that does not negate” the fact he experienced pain, and it does not give a primary care physician 6 the right to refuse medical care afforded by the Fourteenth Amendment. (Id.) Plaintiff contends 7 Hodge’s discontinuation of his pain medication was “direct and intentional” because Hodge knew

8 Plaintiff would “be in pain daily” but chose not to treat Plaintiff. (Id. at 8-9.) Plaintiff asserts he 9 has a right to medical treatment “whether he’s a [d]rug addict or not.” (Id. at 9.) 10 Plaintiff contends Defendant Hodge advised him that he and Defendant Gonzalez had 11 agreed to discontinue Plaintiff’s pain management treatment as a matter of policy. (Doc. 12 at 9.) 12 Hodge’s act caused Plaintiff to be deprived of medical care and was the moving force behind the 13 constitutional violation. (Id.) 14 Plaintiff asserts Defendant Gonzalez “is the policymaker that the nurse practitioners 15 answer to, who has final authority.” (Doc. 12 at 9.) It Gonzalez’s policy, in combination with 16 Defendant Hodge, to give the final authorization to maintain or discontinue narcotic pain 17 medications. (Id.) Plaintiff alleges Gonzalez has the “final say” and that Hodge will not prescribe 18 pain medications without Gonzalez’s approval and “vice/versa.” (Id.) Gonzalez and Hodge’s 19 decision “to uphold policy that deprived Plaintiff” of medical care is a form of punishment, “for 20 the dirty urine sample.” (Id.) Plaintiff alleges he lost privileges and is in constant pain. (Id.) 21 Gonzalez and Hodge’s decision was intentional and placed him at serious risk of suffering serious 22 harm. (Id. at 10.) Defendants were aware of his injury and pain and did not take any reasonable 23 available measures to alleviate his pain, “or take steps to try and heal Plaintiff’s injury by offering 24 corrective, recommended surgery protocols” (Id.) He contends both defendants completely 25 ignored his pain complaints and requests for medical assistance. (Id.) 26 Plaintiff contends “[n]o policy should be in place that allows primary care physicians to 27 withhold the pain relief required to alleviate anyone’s pain.” (Doc. 12 at 11.) Defendants 28 Gonzalez and Hodge’s actions exacerbated Plaintiff’s existing injury, added excruciating 1 “withdrawal symptoms,” making “a man almost, and assuredly, have to cry out at times.” (Id.) 2 Once the narcotic pain medications were discontinued, Plaintiff alleges that Defendant 3 Hodge refused to prescribe non-narcotic pain medications “because they never helped anyway,” 4 causing Plaintiff to “just suffer.” (Doc. 12 at 12.) Plaintiff asserts the withdrawal symptoms 5 caused by the discontinued narcotic pain medication is “a new injury.” (Id.) 6 Plaintiff states he is a recovery drug addict. (Doc. 12 at 12.) He had a “moment of 7 weakness” and relapse and contends he should not have been punished for it. (Id.) Plaintiff 8 contends he is entitled to medical treatment for his injury and pain. (Id.) His condition has 9 worsened, and he is “receiving no treatment at all, whatsoever, to fix [his] injuries.” (Id. at 13.) 10 Plaintiff states the only form of assistance he has been provided is the use of a wheelchair. (Id.) 11 Plaintiff asserts “Kern Medical Center” is “liable under color of law” for failing to 12 perform the surgery approved by its Doctors Bekker and Yusef³ which has not been performed. 13 (Doc. 12 at 13-14.) Plaintiff asserts that the fact the recommended surgery was never performed 14 at Kern Medical Center means that it “should have, or would have been bound to notice what is 15 going on, after so long and by [Plaintiff] not receiving” the recommended surgery, making it 16 liable. (Id.) 17 C. Plaintiff’s Claim 18 Applicable Legal Standards 19 “The Cruel and Unusual Punishments Clause[, under the Eighth Amendment,] was 20 designed to protect those convicted of crimes.” *Whitley v. Albers*, 475 U.S. 312, 318 (1986) 21 (internal quotation marks & citation omitted). In contrast, “[c]laims

by pretrial detainees are analyzed under the Fourteenth Amendment Due Process Clause, rather than under the Eighth Amendment.” *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998) (citing *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979)). The Supreme Court has explained a Fourteenth Amendment claim is subject to a different standard than a claim under the Eighth Amendment’s Cruel and Unusual Punishment Clause because the language and nature of the claims often differ, and “most Neither of these individuals is named as a defendant in this action. 1 importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all.” *Kinsley v. Hendrickson*, 576 U.S. 389, 400 (2015). The Supreme Court held that, in contrast to the 3 subjective standard in an Eighth Amendment excessive force case, “an objective standard is 4 appropriate in the context of excessive force claims brought by pretrial detainees pursuant to the 5 Fourteenth Amendment.” *Id.* at 402. 6 The Ninth Circuit has extended the *Kingsley* objective standard to failure to protect and 7 section 1983 medical care claims by pretrial detainees. *Gordon v. Cnty. of Orange*, 888 F.3d 8 1118, 1124-25 (9th Cir. 2018) (pre-trial detainee claims for violations of the right to adequate 9 medical care must be evaluated under an objective deliberate indifference standard); *Castro v. 10 Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (applying *Kingsley* objective standard 11 to failure to protect claims). Thus, to bring a pretrial detainee’s failure to protect or inadequate 12 medical care claim under the Fourteenth Amendment, a plaintiff must establish: 13 (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those 14 conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures 15 to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk 16 involved—making the consequences of the defendant’s conduct obvious; and (iv) by not taking such measures, the defendant caused 17 the plaintiff’s injuries. 18 *Gordon*, 888 F.3d at 1125; *Castro*, 833 F.3d at 1071. In contrast to the knowing and purposeful 19 state of mind in the first element, the remaining elements require an objective standard. See 20 *Castro*, 833 F.3d at 1070-71. Specifically, the third element must be viewed on each case’s 21 particular facts and circumstances, and the plaintiff must prove the defendant acted with “more 22 than negligence but less than subjective intent – something akin to reckless disregard.” *Gordon*, 23 888 F.3d at 1125 (quoting *Castro*, 833 F.3d at 1071). “The mere lack of due care by a state 24 official does not deprive an individual of life, liberty, or property under the Fourteenth 25 Amendment.” *Id.* (quoting *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)). 26

Analysis 27 Plaintiff’s Claims Against Defendants Gonzalez and Hodge 28

Liberally construing the first amended complaint and accepting all facts as true, Plaintiff 1 plausibly alleges Fourteenth Amendment claims against Defendants and Gonzalez and Hodge. 2 Regarding the first Gordon factor, Plaintiff plausibly alleges Defendants Gonzalez and Hodge 3 made an intentional decision to deny Plaintiff all pain medications after Plaintiff tested positive or 4 “dirty” following a drug screen. Plaintiff also plausibly alleges Gonzalez and Hodge’s actions put 5 him at substantial risk of suffering serious harm given his existing knee condition and continuing 6 pain complaints,

particularly after surgery was recommended but has never been provided. The 7 Court finds it reasonable to infer from the allegations that Gonzalez and Hodge's actions resulted 8 in the cancellation of the recommended surgery. Plaintiff also sufficiently alleges that Gonzalez 9 and Hodge did not take reasonable available measures to abate the risk presented and that the 10 consequences of their actions were obvious. Finally, concerning the fourth Gordon factor, 11 Plaintiff plausibly alleges Gonzalez and Hodge's refusal to prescribe any pain medication caused 12 him further injury and continued constant pain. Gordon, 888 F.3d at 1125. 13 Plaintiff's Claim Against Kern Medical Center 14 Although Plaintiff did not list Kern Medical Center as a defendant in the first amended 15 complaint, (see Doc. 12 at 2-3), given Plaintiff's factual assertions at pages 13 and 14, the Court 16 considers such a claim. 17 "A private physician or hospital that contracts with a public prison system to provide 18 treatment for inmates performs a public function and acts under color of law for purposes of § 19 1983." *George v. Sonoma Cnty. Sheriff's Dep't*, 732 F. Supp. 2d 922, 934 (N.D. Cal. 2010) (citing 20 *West v. Atkins*, 487 U.S. 42, 56 n. 15 (1988); *Lopez v. Dep't of Health Servs.*, 939 F.2d 881, 883 21 (9th Cir.1991)). In order to state a claim against private entities who have performed a public 22 function and have acted under color of law for purposes of section 1983, Plaintiff must allege 23 facts demonstrating that his constitutional rights were violated based upon a "policy, decision, or 24 custom promulgated or endorsed by the private entity." *George*, 732 F. Supp. 2d at 940; see 25 *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 822 (7th Cir. 2009) (stating that, "like a 26 municipality, a private corporation can be liable if the injury alleged is the result of a policy or 27 practice, or liability can be demonstrated indirectly by showing a series of bad acts and inviting 28 the court to infer from them that the policy-making level of government was bound to have 1 noticed what was going on and by failing to do anything must have encouraged or at least 2 condoned the misconduct of subordinate officers"); *McRorie v. Shimoda*, 795 F.2d 780, 784 (9th 3 Cir. 1986) (to state an official capacity claim under section 1983, a plaintiff must allege that the 4 official was acting pursuant to a policy or custom). 5 Here, even liberally construing the first amended complaint, Plaintiff fails to state a claim 6 against Kern Medical Center. Plaintiff fails to allege any facts demonstrating his constitutional 7 rights were violated based upon a policy promulgated or endorsed by Kern Medical Center. The 8 facts alleged by Plaintiff—that Kern Medical Center should be liable because the surgery 9 recommended by other physicians in its employ was never performed—is insufficient. *George*, 10 732 F. Supp. 2d at 940; *Rodriguez*, 577 F.3d at 822. 11 Plaintiff fails to state a claim upon which relief can be granted against Kern Medical 12 Center. Because Plaintiff's first amended complaint is deficient for the same reasons as those 13 articulated in the Court's original screening order (see Doc. 6 at 9-10), and because Plaintiff has 14 failed to remedy those deficiencies, Plaintiff cannot cure his pleadings; thus, that leave to amend 15 would be futile. See *Hartman v. CDCR*, 707 F.3d 1114, 1129-30 (9th Cir. 2013) (affirming 16 dismissal of first amended complaint and finding leave to amend futile where complaint's 17 allegations belied plaintiff's entitlement to relief). The Court will recommend any

claim against 18 Kern Medical Center be dismissed.

19 V. CONCLUSION AND ORDER

20 Based on the foregoing, the Court finds that Plaintiff's first amended complaint states 21 plausible Fourteenth Amendment claims against Defendants Gonzalez and Hodge but fails to 22 state a claim upon which relief can be granted against Kern Medical Center. 23 Accordingly, the Court HEREBY RECOMMENDS: 24 1. This action PROCEED only on Plaintiff's Fourteenth Amendment claims against 25 Defendants Gonzalez and Hodge as asserted in his first amended complaint; and 26 2. That Kern Medical Center be DISMISSED from this action. 27 These Findings and Recommendations will be submitted to the United States District 28 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within 14 days 1 after being served with a copy of these Findings and Recommendations, a party may file written 2 objections with the Court. Local Rule 304(b). The document should be captioned, "Objections to 3 Magistrate Judge's Findings and Recommendations" and shall not exceed fifteen (15) pages 4 without leave of Court and good cause shown. The Court will not consider exhibits attached to 5 the Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference 6 the exhibit in the record by its CM/ECF document and page number, when possible, or otherwise 7 reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page limitation 8 may be disregarded by the District Judge when reviewing these Findings and Recommendations 9 under 28 U.S.C. § 636(b)(l)(C). A party's failure to file any objections within the specified time 10 may result in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

12 IT IS SO ORDERED. 13

14 Dated: April 16, 2025 /s/ Sheila K. Oberto .

UNITED STATES MAGISTRATE JUDGE

15 16 17 18 19 20 21 22 23 24 25 26 27 28