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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

COSME PRESAS,

Plaintiff,

v.

KERN MEDICAL CENTER, et al.,

Defendants.

Case No. 1:13-cv-02038-LJO-SKO (PC)

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING CLAIMS AGAINST  
KERN COUNTY SHERIFF'S  
DEPARTMENT AND NURSE JOHN DOE 1  
BE DISMISSED, AND ACTION PROCEED  
AGAINST REMAINING NINE DOE  
DEFENDANTS

(Doc. 38)

THIRTY-DAY OBJECTION DEADLINE

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**I. Procedural History**

Plaintiff Cosme Presas, a prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 13, 2013. On May 21, 2014, the Court dismissed Plaintiff's complaint, with leave to amend, for failure to state a claim. 28 U.S.C. § 1915A. Plaintiff filed an amended complaint on June 23, 2014, and on October 1, 2015, the Court dismissed Plaintiff's amended complaint, with leave to amend. Plaintiff filed a second amended complaint on October 26, 2015.

**II. Screening Requirement and Standard**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are

1 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that  
2 seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),  
3 (2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court  
4 shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to  
5 state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 A complaint must contain “a short and plain statement of the claim showing that the  
7 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
8 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
9 conclusory statements, do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937  
10 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and  
11 courts “are not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572  
12 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual  
13 allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678.

14 Under section 1983, Plaintiff must demonstrate that each defendant personally participated  
15 in the deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This  
16 requires the presentation of factual allegations sufficient to state a plausible claim for relief. *Iqbal*,  
17 556 U.S. at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners  
18 proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and  
19 to have any doubt resolved in their favor, *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)  
20 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of meeting the  
21 plausibility standard, *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

### 22 **III. Discussion**

#### 23 **A. Medical Care Claim Against Nurses and Deputies**

24 As a pretrial detainee, Plaintiff is protected from conditions of confinement which amount  
25 to punishment. *Bell v. Wolfish*, 441 U.S. 520, 535-36, 99 S.Ct. 1861 (1979); *Simmons v. Navajo*  
26 *County, Ariz.*, 609 F.3d 1011, 1017-18 (9th Cir. 2010); *Clouthier v. County of Contra Costa*, 591  
27 F.3d 1232, 1244 (9th Cir. 2010). While pretrial detainees’ rights are protected under the Due  
28 Process Clause of the Fourteenth Amendment, the standard for claims brought under the Eighth

1 Amendment has long been used to analyze pretrial detainees' conditions of confinement claims.  
2 *Simmons*, 609 F.3d at 1017-18; *Clouthier*, 591 F.3d at 1242; *Frost v. Agnos*, 152 F.3d 1124, 1128  
3 (9th Cir. 1998). With respect to medical care, the United States Constitution is violated only when  
4 jail officials act with deliberate indifference to an inmate's serious medical needs. *Snow v.*  
5 *McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012), *overruled in part on other grounds*, *Peralta v.*  
6 *Dillard*, 744 F.3d 1076, 1082-83 (9th Cir. 2014); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th  
7 Cir. 2012); *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). Deliberate indifference is shown  
8 where a prison official "knows that inmates face a substantial risk of serious harm and disregards  
9 that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825,  
10 847, 114 S.Ct. 1970 (1994). Plaintiff "must show (1) a serious medical need by demonstrating  
11 that failure to treat [his] condition could result in further significant injury or the unnecessary and  
12 wanton infliction of pain," and (2) that "the defendant's response to the need was deliberately  
13 indifferent." *Wilhelm*, 680 F.3d at 1122 (citing *Jett*, 439 F.3d 1091, 1096 (9th Cir. 2006)).  
14 Deliberate indifference is shown by "(a) a purposeful act or failure to respond to a prisoner's pain  
15 or possible medical need, and (b) harm caused by the indifference." *Wilhelm*, 680 F.3d at 1122  
16 (citing *Jett*, 439 F.3d at 1096). The requisite state of mind is one of subjective recklessness, which  
17 entails more than ordinary lack of due care. *Snow*, 681 F.3d at 985 (citation and quotation marks  
18 omitted); *Wilhelm*, 680 F.3d at 1122.

19 Plaintiff alleges that he had surgery on his nose on February 6, 2013, and his surgeon  
20 prescribed antibiotics and pain medication, but when he was transferred back to the jail the same  
21 day, the nurses and deputies he came into contact with refused to provide him with any pain  
22 medication. Plaintiff alleges that he was left in excruciating pain between February 6, 2013, and  
23 February 8, 2013, and again between February 14, 2014, and February 17, 2013. Plaintiff's  
24 allegations are sufficient to support the existence of an objectively serious medical need and to  
25 link Defendants Nurse Jane Doe 1, Nurse Jane Doe 2, Nurse Jane Doe 3, Deputy John Doe 1,  
26 Deputy John Doe 2, Deputy John Doe 3, Deputy John Doe 4, Deputy John Doe 5, and Deputy  
27 John Doe 6 to knowledge of and disregard of that need. *Wilhelm*, 680 F.3d at 1122. To the extent  
28 that Plaintiff intended to include Nurse John Doe 1 as a defendant, Plaintiff's second amended

1 complaint is devoid of any support for a claim against him. (2<sup>nd</sup> Amend. Comp., p. 5, § III(C) &  
2 7:20-27.) To the contrary, Plaintiff's allegations demonstrate that Nurse John Doe 1 responded to  
3 Plaintiff's complaint of pain by giving him pain medication during the next "med pass." (*Id.*,  
4 7:20-27.) Plaintiff was previously notified of the legal standard and the requirement that he link  
5 each defendant to actions or omissions demonstrating a violation of his rights. Accordingly, the  
6 Court recommends that the claim against Nurse John Doe 1 be dismissed, with prejudice.

7 **B. Municipal Liability Claim**

8 Plaintiff also names the Kern County Sheriff's Department as a defendant. A local  
9 government entity may not be held responsible for the acts of its employees under a *respondeat*  
10 *superior* theory of liability, *Monell v. Department of Social Services*, 436 U.S. 658, 691, 98 S.Ct.  
11 2018 (1978); *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Webb v. Sloan*, 330  
12 F.3d 1158, 1163-64 (9th Cir. 2003); *Gibson v. County of Washoe*, 290 F.3d 1175, 1185 (9th Cir.  
13 2002), but it may be held liable if it inflicts the injury complained of, *Monell*, 436 U.S. at 694;  
14 *Gibson*, 290 F.3d at 1185. Generally, a claim against a local government unit for municipal or  
15 county liability requires an allegation that "a deliberate policy, custom, or practice . . . was the  
16 'moving force' behind the constitutional violation . . . suffered." *Galen v. County of Los Angeles*,  
17 477 F.3d 652, 667 (9th Cir. 2007); *City of Canton, Ohio, v. Harris*, 489 U.S. 378, 385, 109 S.Ct.  
18 1197 (1989). Plaintiff's second amended complaint is devoid of any allegations supporting a  
19 viable municipal liability claim. Given that Plaintiff was previously granted leave to amend to  
20 cure this deficiency, the Court recommends dismissal of the claim against the Kern County  
21 Sheriff's Department, with prejudice.

22 **IV. Conclusion and Recommendation**

23 Plaintiff's second amended complaint states cognizable claims for relief against  
24 Defendants Nurse Jane Doe 1, Nurse Jane Doe 2, Nurse Jane Doe 3, Deputy John Doe 1, Deputy  
25 John Doe 2, Deputy John Doe 3, Deputy John Doe 4, Deputy John Doe 5, and Deputy John Doe 6  
26 for denial of medical care, in violation of the Due Process Clause. Plaintiff may also proceed  
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1 against those defendants for negligence in violation of state law.<sup>1</sup> However, Plaintiff fails to state  
2 claims against the Kern County Sheriff’s Department and Nurse John Doe 1.<sup>2</sup> Plaintiff was  
3 previously given leave to amend to cure the deficiencies but he was unable to do so, and based on  
4 the nature of the deficiencies, further leave to amend is not warranted. *Akhtar v. Mesa*, 698 F.3d  
5 1202, 1212-13 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

6 Accordingly, the Court HEREBY RECOMMENDS that:

- 7 1. This action proceed against Defendants Nurse Jane Doe 1, Nurse Jane Doe 2, Nurse  
8 Jane Doe 3, Deputy John Doe 1, Deputy John Doe 2, Deputy John Doe 3, Deputy  
9 John Doe 4, Deputy John Doe 5, and Deputy John Doe 6 for denial of medical care,  
10 in violation of the Due Process Clause, and for negligence; and
- 11 2. Plaintiff’s claims against the Kern County Sheriff’s Department and Nurse John  
12 Doe 1 be dismissed for failure to state a claim.

13 These Findings and Recommendations will be submitted to the United States District  
14 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
15 **thirty (30) days** after being served with these Findings and Recommendations, Plaintiff may file  
16 written objections with the Court. The document should be captioned “Objections to Magistrate  
17 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within  
18 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d  
19 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

20  
21 IT IS SO ORDERED.

22 Dated: November 20, 2015

23 /s/ Sheila K. Oberto  
24 UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> Plaintiff alleges compliance with the Government Claims Act. *Shirk v. Vista Unified Sch. Dist.*, 42 Cal.4th 201, 208-  
27 09 (Cal. 2007); *State v. Superior Court of Kings Cnty. (Bodde)*, 32 Cal.4th 1234, 1239 (Cal. 2004).

28 <sup>2</sup> In addition to the absence of any allegations supporting a federal constitutional claim arising from municipal liability  
claim, the Kern County Sheriff’s Department may not be held liable for the negligent acts of its employees. Cal.  
Gov’t Code § 844.6(a)(2).