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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAIME CESAR GONZALEZ,

Plaintiff,

v.

JOON KEE JAMES, et al.

Defendants.

No. 1:23-cv-01505-JLT-SAB (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DEFENDANTS'
MOTION TO DISMISS BE GRANTED

(ECF No. 27)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Defendants' motion to dismiss, filed November 18, 2024. (ECF No. 27.)

I.
PROCEDURAL BACKGROUND

This action is proceeding against Defendants Joon Kee James, Sabrina M. Kurczeski,¹ and Gerald Edwards for deliberate indifference to Plaintiff's serious medical need.

On March 8, 2024, a signed waiver of service was returned on behalf of Defendant Vu Quang Huynh. (ECF No. 13.)

On March 29, 2024, the summons were returned executed as to Defendants Joon Kee

¹ Erroneously sued by Plaintiff as Sabrina M. Kurezeski.

1 James, Sabrina M. Kurczeski, and Gerald Edwards. (ECF No. 14.) However, these Defendants
2 did not file a timely response, and, on July 2, 2024, the Court entered default as to these
3 Defendants. (ECF No. 17.)

4 On April 18, 2024, Defendant Vu Quang Huynh filed a motion to dismiss for lack of
5 jurisdiction and failure to state a claim for relief. (ECF No. 15.)

6 On April 24, 2024, Defendant Vu Quang Huynh filed an answer to the operative
7 complaint. (ECF No. 16.)

8 On July 22, 2024, Findings and Recommendations were issued to grant Defendant
9 Huynh's motion to dismiss. (ECF No. 21.) The Findings and Recommendations were adopted in
10 full on August 15, 2024, and Defendant Huynh was dismissed from the action. (ECF No. 21.)

11 On August 20, 2024, Defendants Kurczeski and Edwards filed a motion to set aside the
12 entry of default. (ECF No. 22.)

13 On September 17, 2024, Findings and Recommendations were issued to grant the motion
14 to set aside the entry of default as to Defendants Kurczeski and Edwards. (ECF No. 23.) The
15 Findings and Recommendations were adopted on October 28, 2024. (ECF No. 25.)

16 On November 18, 2024, Defendants Kurczeski and Edwards filed the instant motion to
17 dismiss the claims against them for lack of jurisdiction.² (ECF No. 27.) Plaintiff did not file an
18 opposition and the time to do so has passed. Local Rule 230(l).

19 II.

20 DISCUSSION

21 This action is proceeding on Plaintiff's claims that Defendants Joon Kee James, Sabrina
22 M. Kurczeski, Vu Quang Huynh, and Gerald Edwards for deliberate indifference to Plaintiff's
23 serious medical needs when he was taken to the hospital emergency room for evaluation.
24 Plaintiff claims that he reported to several emergency room personnel that he was assaulted by
25 correctional officers, that his back hurt, and he had lost control of his bowels. Plaintiff also
26 alleges that correctional officers directed that he be provided only a CT of the brain without
27 explanation and that emergency room providers acted under a "code of silence" with correctional

28 ² No response has been filed on behalf of Defendant Joon Kee James.

1 officers to ignore Plaintiff’s medical needs. He further alleges that the health care providers
2 neglected his medical needs as “retaliation.” Plaintiff then contends he was discharged without
3 treatment for his back pain and later, on April 27, 2023, it was discovered that he had a spinal
4 fracture.

5 Defendants Kurczeski and Edwards argue that the Court lacks subject matter jurisdiction
6 under Federal Rule of Civil Procedure 12(b)(1) because they are not a state actor for purposes of
7 § 1983 liability. In the alternative, Defendants argue that Plaintiff fails to state a cognizable claim
8 for relief under Federal Rule of Civil Procedure 12(b)(6).

9 Plaintiff bears the burden of establishing that defendant is a state actor, and there is a
10 presumption that private individuals and entities do not act under the “color of state law” within
11 the meaning of § 1983. Florer v. Congregation Pidyon Shevuyim, N.A., 639 F.3d 916, 922 (9th
12 Cir. 2011). To state a claim under § 1983, Plaintiff “must allege a violation of his constitutional
13 rights and show that the defendant's actions were taken under color of state law.” Florer v.
14 Congregation Pidyon Shevuyim, N.A., 639 F.3d 916, 921 (9th Cir. 2011) (quoting Gritchen v.
15 Collier, 254 F.3d 807, 812 (9th Cir. 2001)); Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir.
16 2006); see also Sampson v. County of Los Angeles, 974 F.3d 1012, 1018 (9th Cir. 2020). The
17 “color of law” or “state actor” requirement is “a jurisdictional requisite for a § 1983 action.”
18 Gritchen, 254 F.3d at 812; see also West v. Atkins, 487 U.S. 42, 46–48 (1988). The question in
19 determining whether a person is subject to suit under § 1983 is the same as the question in
20 Fourteenth Amendment claims, Pasadena Republican Club v. W. Justice Ctr., 985 F.3d 1161,
21 1167 (9th Cir. 2021). Specifically, is the alleged infringement of federal rights fairly attributable
22 to the government? Id.

23 Determining whether a private party acts under color of state law “is a matter of normative
24 judgment, and the criteria lack rigid simplicity.” Brentwood Acad. v. Tenn. Secondary Sch.
25 Athletic Ass’n, 531 U.S. 288, 295 (2001); Rawson v. Recovery Innovations, Inc., 975 F.3d 742,
26 747 (2020). “[N]o one fact can function as a necessary condition across the board for finding state
27 action; nor is any set of circumstances absolutely sufficient, for there may be some countervailing
28 reason against attributing activity to the government.” Brentwood, 532 U.S. at 295–96. To

1 typically act under color of state law, a defendant must have exercised power possessed on
2 account of state law and made possible because they are cloaked with the authority of state law.
3 West, 487 U.S. at 49; Florer, 639 F.3d at 922. A defendant need not necessarily be a state
4 employee, but they must be “a willful participant in joint action with the State or its agents.
5 Private persons, jointly engaged with state officials in the challenged action, are acting ‘under
6 color’ of law for purposes of § 1983 actions.” Dennis v. Sparks, 449 U.S. 24, 27–28 (1980).

7 There are at least four tests that facilitate identification of state action. Namely, “(1) public
8 function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental
9 nexus.” Rawson, 975 F.3d at 747 (quoting Kirtley v. Rainey, 326 F.3d 1088, 1092 (9th Cir.
10 2003)). Satisfaction of any the tests is enough to find state action, provided no “countervailing”
11 factor defeats a finding of state action. Pasadena Republican Club, 985 F.3d at 1167; Rawson,
12 975 F.3d at 747. Regardless of the test, the question is simply always whether a defendant has
13 exercised power possessed and made possible because state law. Pasadena Republican Club, 985
14 F.3d at 1167.

15 The public function test is satisfied only upon a showing that the function relevant to a
16 claim is “both traditionally and exclusively governmental.” Rawson, 975 F.3d at 747 (quoting
17 Kirtley, 326 F.3d at 1093). A plaintiff may satisfy both the nexus and joint action tests by
18 identifying “a sufficiently close nexus between the state and the private actor,” such that the
19 private action may be treated as an action of the State, or where the State is so interwoven with
20 the private action that the State was a joint participant in the action. Id. (quoting Jensen v. Lane
21 Cty., 222 F.3d 570, 575 (9th Cir. 2000)). Governmental compulsion or coercion may exist if the
22 State exercised coercive power or provided encouragement—whether explicit or secret—such
23 that a choice must be viewed as one made by the State. Id. (citing Blum v. Yaretsky, 457 U.S.
24 991, 1004 (1982)).

25 Physicians who contract with prisons to provide healthcare to inmates are state actors.
26 See, e.g., West, 487 U.S. at 50–54; Harris v. Mkrtchyan, No. 2:19-cv-1040-JAM-JDP (PC), 2021
27 WL 2651999, at *2 (E.D. Cal. June 28, 2021); George v. Sonoma Cty. Sheriff’s Dep’t, 732 F.
28 Supp. 2d 922, 934 (N.D. Cal. 2010). However, private doctors, nurses, and hospitals who have

1 not assumed the State's obligation to provide medical care to inmates, are not state actors just
2 because they provide one-off medical treatment to an inmate. See, e.g., West, 487 U.S. at 50–54;
3 Felix v. Casey, No. 2:18-cv-3185-KJM-AC-P, 2021 WL 2209828, at *2 (E.D. Cal. June 1, 2021);
4 Probst v. Adams Cty. Sheriff's Dep't, No. 1:20-cv-00032-DCN, 2021 WL 1554064, at *3 (D.
5 Idaho Apr. 19, 2021).

6 Here, there are insufficient allegations that Defendants Kurczeski and Edwards are
7 contract medical professionals with California City Correctional Facility, the California
8 Department of Corrections and Rehabilitation (CDCR), or that he is otherwise employed by the
9 State. In fact, it appears that Defendants Kurczeski and Edwards are employed by Adventist
10 Health, Tehachapi. (ECF No. 9.); Declaration of Sabrina M. Kurczeski, ¶¶ 2-3; Declaration of
11 Gerard Edwards, ¶¶ 2-3; see also Von Haney v. Cross, No. 2:18-CV-1836 KJN P, 2019 WL
12 586620, at *2 (E.D. Cal. Feb. 13, 2019) (stating outside surgeons and anesthesiologist at Shasta
13 Medical Center and “are not employees of the California Department of Corrections and
14 Rehabilitation, and thus do not qualify as state actors under section 1983.”). Defendants’ status
15 as state actors is further strained by the fact that they were contacted to perform “emergency”
16 room services. See Clewis v. Cal. Prison Health Care Servs., No. 2:14-cv-01682-SI, 2013 WL
17 2482521, at *1 (E.D. Cal. June 10, 2013) (finding no state action where “a health care provider
18 not contracted to the state has a preexisting commitment to serve all persons who present
19 themselves for emergency treatment”); Sykes v. McPhillips, 412 F.Supp.2d 197, 204 (N.D.N.Y.
20 2006) (doctors “non-contractual provision of medical services outside of the prison context, in an
21 emergency room, is not sufficient to support a finding of state actor status”); Rodriguez v.
22 Plymouth Ambulance Serv., 577 F.3d 816, 827 (7th Cir. 2009) (“an emergency medical system
23 that has a preexisting obligation to serve all persons who present themselves for emergency
24 treatment hardly can be said to have entered into a specific voluntary undertaking to assume the
25 state’s special responsibility to incarcerated persons”). Although Plaintiff alleges that emergency
26 room personnel acted pursuant to a “code of silence” with correctional officers in denying his
27 appropriate medical care, there are insufficient facts to demonstrate that either Kurczeski or
28 Edwards were aware of and willing participants in the alleged “code of silence.” In addition,

1 there are no facts to demonstrate how or when this “code of silence” was implemented or
2 employed to give rise to the level of “state action” under § 1983. Absent any specific allegations
3 demonstrating that Defendants Kurczeski and Edwards were acting under state law, this Court
4 lacks subject matter jurisdiction. Accordingly, Defendants’ motion to dismiss the claims against
5 him for lack of subject matter jurisdiction should be granted.³

6 **III.**

7 **RECOMMENDATIONS**

8 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 9 1. The motion to dismiss brought by Defendants Kurczeski and Edwards⁴ for lack of
10 subject matter be granted; and
11 2. Defendants Kurczeski and Edwards be dismissed from the action.

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

20
21 IT IS SO ORDERED.

22 Dated: January 28, 2025



23 STANLEY A. BOONE
24 United States Magistrate Judge

25
26 _____
27 ³ Because the Court finds that it lacks subject matter jurisdiction, the Court need not reach Defendants’ alternative
28 argument that the complaint fails to state a cognizable claim for relief.

⁴ As previously stated, this motion was not brought on behalf of Defendant Joon Kee James.