

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
4 allege with at least some degree of particularity overt acts by specific defendants which support
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
6 impossible for the court to conduct the screening required by law when the allegations are vague
7 and conclusory.

9 I. PLAINTIFF'S ALLEGATIONS

10 Plaintiff names the following as defendants: Mercy Medical Center, Trish
11 Patterson, Elizabeth Hernandez, Teresa Souza, Levi Solada, Peter Brindley, Pete Hansen, and
12 City of Redding. Plaintiff states that, prior to his incarceration, he arrived at Mercy Medical
13 Center on August 4, 2010 for treatment. X-rays were obtained and reviewed by defendant
14 Patterson, a doctor at Mercy Medical Center. According to plaintiff, Dr. Patterson "observed a
15 foreign object in Plaintiff's rectum." When asked by Dr. Patterson what was in his rectum,
16 plaintiff responded "tobacco." Plaintiff states that Dr. Patterson referred the matter to Redding
17 Police Department, specially, defendants Solada and Brindley "with the assistance of RN
18 Elizabeth Hernandez and Teresa Souza." Plaintiff alleges that Dr. Patterson "conspired with
19 officer Solada & Brindley . . . to detain and retrieve the foreign object over Mr. Mason strong
20 objections and protest." Plaintiff states that there was no warrant allowing a search or seizure.

21 According to plaintiff, Dr. Patterson said that a laxative could be administered in
22 order to retrieve the foreign object. Plaintiff states that, despite this suggestion, defendants
23 Solada and Brindley "authorized to use extreme physical force by forcefully restraining Mason to
24 the hospital bed." Plaintiff next alleges that "RN Souza & Hernandez participated in sexually
25 assaulting Mr. Mason with Officer Brindley and Solada." Plaintiff states: "They tore Mr. Mason
26 rectum." Plaintiff states that he was in extreme pain and that he was also bleeding. He also

1 claims to be suffering from post-traumatic stress disorder.

2 As to other named defendants, plaintiff claims that defendant Hansen, the Chief of
3 Police, is liable for failing to properly train and discipline officers under him, specifically
4 defendants Solada and Brindley. Plaintiff claims that Mercy Medical Center is liable for
5 implementing “customs” which “allowed Doctor Patterson and RN Hernandez and Souza to
6 recommend that they will willing to participate with the officers and assist in violation Mr.
7 Mason’s civil rights under the cloak of ‘color of state law.’” Plaintiff adds that “[a]ll defendants
8 knew Mr. Mason had a reasonable expectation of privacy in having a forcible full body cavity
9 search without a warrant to do so.” He also claims that defendants acted with malice.

11 II. DISCUSSION

12 The court finds that plaintiff’s complaint suffers from a number of defects, each
13 discussed below.

14 A. **Insufficient Factual Allegations to Determine Subject Matter Jurisdiction**

15 Plaintiff essentially claims defendants conspired to subject him to a warrantless
16 search and seizure in violation of the Fourth Amendment. Because plaintiff is now incarcerated,
17 it is reasonable to infer that plaintiff is incarcerated as a result of a criminal prosecution relating
18 to evidence discovered by the body cavity search. If a criminal case is still ongoing in any stage,
19 Younger abstention would be implicated, see Younger v. Harris, 401 U.S. 37 (1971) (barring the
20 federal court from hearing a civil rights claim arising from an ongoing criminal prosecution), as
21 would the issue of a Wallace stay, see Wallace v. Kato, 127 S.Ct. 1091 (2007) (allowing a
22 federal court to stay consideration of the federal claim until the criminal case is resolved). If a
23 criminal case is concluded to final judgment, then this case might be Heck-barred because
24 success on the 4th Amendment claim would imply the invalidity of the underlying conviction.
25 See Heck v. Humphrey, 512 U.S. 477, 483-84 (1994) (concluding that § 1983 claim not
26 cognizable because allegations were akin to malicious prosecution action which includes as an

1 element a finding that the criminal proceeding was concluded in plaintiff's favor); Butterfield v.
2 Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997) (concluding that § 1983 claim not cognizable
3 because allegations of procedural defects were an attempt to challenge substantive result in
4 parole hearing); cf. Neal, 131 F.3d at 824 (concluding that § 1983 claim was cognizable because
5 challenge was to conditions for parole eligibility and not to any particular parole determination);
6 cf. Wilkinson v. Dotson, 544 U.S. 74 (2005) (concluding that § 1983 action seeking changes in
7 procedures for determining when an inmate is eligible for parole consideration not barred
8 because changed procedures would hasten future parole consideration and not affect any earlier
9 parole determination under the prior procedures).

10 The court will provide plaintiff an opportunity to amend in order to allege facts
11 sufficient to resolve these jurisdictional questions.¹

12 **B. Mercy Medical Center not a Proper Defendant in a § 1983 Action**

13 Plaintiff names as a defendant Mercy Medical Center, which is alleged to have
14 implemented "customs" which led to the constitutional violation. Plaintiff does not, however,
15 state what those "customs" were or how they contributed to any constitutional violation. While
16 plaintiff alleges that these unspecified "customs" allowed a constitutional violation to occur, he
17 does not state how the "customs" did so. In any event, Mercy Medical Center is not a state actor
18 and cannot be held liable under § 1983. See Price v. Hawai'i, 939 F.3d 702, 707-08 (9th Cir.
19 1991). Mercy Medical Center should be dismissed with prejudice.

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24 ¹ Even if it is proper to exercise subject matter jurisdiction at this time, the court
25 may nonetheless conclude that, for the reasons discussed in the remainder of this order, plaintiff
26 cannot state any cognizable claims. In other words, the jurisdictional issue is not the only hurdle
plaintiff must clear before the action can proceed further.

1 **C. No Respondeat Superior Liability**

2 Plaintiff claims that defendant Hansen, the chief of police, is liable for failing to
3 properly train and discipline officers under him. Supervisory personnel are generally not liable
4 under § 1983 for the actions of their employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th
5 Cir. 1989) (holding that there is no respondeat superior liability under § 1983). A supervisor is
6 only liable for the constitutional violations of subordinates if the supervisor participated in or
7 directed the violations. See id. The Supreme Court has rejected the notion that a supervisory
8 defendant can be liable based on knowledge and acquiescence in a subordinate’s unconstitutional
9 conduct because government officials, regardless of their title, can only be held liable under
10 § 1983 for his or her own conduct and not the conduct of others. See Ashcroft v. Iqbal, 129 S.Ct.
11 1937, 1949 (2009). Defendant Hansen should be dismissed with prejudice.

12 **D. Conclusory Allegations of Conspiracy Insufficient**

13 Plaintiff’s conclusory allegations of a conspiracy with police officers is
14 insufficient to state a claim against defendants Patterson, Hernandez, and Souza. Private actors
15 may be liable under § 1983 as state actors where a conspiracy between private and state actors is
16 alleged. See Tower v. Glover, 467 U.S. 914, 920 (1984). Here, plaintiff alleges that these
17 defendants conspired with police officers to deprive him of his constitutional right to be free
18 from unreasonable searches and seizures. Plaintiff does not, however, plead facts sufficient to
19 show a meeting of the minds among the defendants, and that all members of the alleged
20 conspiracy shared the common objective of depriving plaintiff of his constitutional rights.
21 See United Steelworkers of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1540-01 (9th Cir. 1989)
22 (en banc). Plaintiff’s conclusory allegation is insufficient. See Radcliffe v. Ranbow Constr. Co.,
23 254 F.3d 772, 783-84 (9th Cir. 2001). Plaintiff will be granted leave to amend to plead his claim
24 against defendants Patterson, Hernandez, and Souza with more specificity.

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1 the court will address the remaining claims; or (2) plaintiff may file an amended complaint which
2 continues to allege claims identified as incurable, in which case the court will issue findings and
3 recommendations that such claims be dismissed from this action, as well as such other orders
4 and/or findings and recommendations as may be necessary to address the remaining claims.

5 Finally, plaintiff is warned that failure to file an amended complaint within the
6 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
7 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
8 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
9 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's complaint is dismissed with leave to amend; and
- 12 2. Plaintiff shall file a first amended complaint within 30 days of the date of
13 service of this order.

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15 DATED: August 19, 2011

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE
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