1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 KRISTIN HARDY, No. 2:13-cv-0726 JAM DAD P 12 Plaintiff. 13 v. **ORDER** 14 C. DAVIS, et al., 15 Defendants. 16 17 Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief 18 under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 19 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On February 11, 2015, the magistrate judge filed findings and recommendations herein 21 which were served on all parties and which contained notice to all parties that any objections to 22 the findings and recommendations were to be filed within fourteen days. Plaintiff has filed 23 objections to the findings and recommendations and Defendants responded. 24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this 25 court has conducted a <u>de novo</u> review of this case. Having carefully reviewed the entire file, the 26 court finds the findings and recommendations to be supported by the record and by proper 27 analysis, but the Court does not adopt the findings and recommendations to the extent they deny 28 Plaintiff leave to amend his claims against Defendant Davis. A court should freely grant leave to 1

1	amend. Fed. R. Civ. Pro. 15(a)(2). A court "is generally required to grant the plaintiff leave to
2	amend, even if no request to amend the pleading was made, unless amendment would be futile."
3	Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 246-47 (9th Cir.
4	1990). Amendment is not futile if the plaintiff could "cure the defect requiring dismissal 'without
5	contradicting any of the allegations of [the] original complaint." Plascencia v. Lending 1st
6	Mortgage, 583 F. Supp. 2d 1090, 1095 (N.D. Cal. 2008) (quoting Reddy v. Litton Indus., Inc.,
7	912 F.2d 291, 296 (9th Cir. 1990)) (alteration in original).
8	Here, the Court agrees with the magistrate judge that Plaintiff has not pled a causal link
9	between Defendant Davis's actions and the strip search. See F&R at 6, 8. But nothing in the
10	complaint contradicts such a link, and Plaintiff has had no previous opportunity to amend. The
11	Court therefore grants the motion to dismiss as to Defendant Davis, but allows Plaintiff leave to
12	amend those allegations.
13	Accordingly, IT IS HEREBY ORDERED that:
14	1. The findings and recommendations filed February 11, 2015 are adopted;
15	2. Defendants' March 28, 2014 motion to dismiss (ECF No. 26) is granted with leave to
16	amend as to all of Plaintiff's claims against Defendant Davis, and denied as to Plaintiff's Fourth
17	Amendment claim against Defendants Morris and Zahniser;
18	3. If Plaintiff chooses to file an amended complaint as to the allegations against Defendant
19	Davis, he must do so within twenty-one days from the date of this order;
20	4. Defendants Morris and Zahniser are directed to file an answer within twenty-one days
21	from the date of the filing of Plaintiff's amended complaint, or the expiration of the twenty-one
22	days allotted to file such amended complaint mentioned above in paragraph 3—whichever is
23	sooner; and
24	5. Plaintiff's June 2, 2014 motion to amend his complaint to add new claims or theories
25	against Defendant Davis (ECF No. 31) is denied.
26	DATED: June 9, 2015
27	/s/ John A. Mendez

UNITED STATES DISTRICT COURT JUDGE