

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

28 UNITED STATES DISTRICT COURT JUDGE