UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 18-912 JGB (SHKx)**	Date	December 13, 2018
Title	***William J. Richards v. Charles Pickett, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: (In Chambers) Order DENYING Defendants' Motions to Dismiss (Dkt. Nos. 36, 38)

Before the Court are two motions to dismiss Plaintiff William J. Richards's First Amended Complaint ("FAC"). The first motion was filed by Defendants County of San Bernardino, Arrowhead Regional Medical Center, Minh Hang Chau, Noel Hui, and Edmund Ko ("County Defendants"), ("County Motion," Dkt. No. 36), and the second by Defendants John Parsons, Donald B. Thornton, Bonifacio C. Esperanza, John Culton, David Dunn, Nicholas Aguilera, Joseph Bick, Ray Andreasen, Nabil Athanassious, Eli Richman, Balraj Dhillon, and Deepak Mehta ("California Department of Corrections and Rehabilitation Defendants" or "CDCR Defendants"), ("CDCR Motion," Dkt. No. 38).[1] The Court previously found this Motion appropriate for decision without a hearing and vacated the December 10, 2018 hearing. (Dkt. No. 51.) See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of, and in opposition to, the Motions, the Court DENIES both Motions.

I. BACKGROUND

Plaintiff filed a complaint in this Court on April 30, 2018. (Dkt. No. 1.) On September 14, 2018, he filed a First Amended Complaint. (Dkt. No. 35.) The FAC alleges two causes of action: (1) violations of Plaintiff's civil rights under 42 U.S.C. § 1983 and (2) municipal liability

[1] While Defendant Charles Pickett was initially included as a party to the CDCR Motion, the Office of the Attorney General ("OAG") subsequently filed a Notice of Errata stating that Pickett is not represented by the OAG in this matter and is not a party to the CDCR Motion. (Dkt. No. 43.)

for violations of Plaintiff's civil rights under Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). On October 5, 2018, County Defendants and CDCR Defendants filed the present Motions. (Dkt. Nos. 36, 38.) Plaintiff filed his opposition on October 29, 2018. (Dkt. No. 41.) County and CDCR Defendants replied on November 7, 2018. (Dkt. Nos. 48, 49.)

II. LEGAL STANDARD

Defendants move to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). A Rule 12(b)(1) motion challenges the court's subject matter jurisdiction, without which a federal district court cannot adjudicate the case before it. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994). The party asserting federal subject matter jurisdiction bears the burden of proving its existence. Chandler v. State Farm. Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010.)

A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in a complaint. "Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). Factual allegations must be enough to "raise a right to relief above a speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Rule 12(b)(6) must be read in conjunction with Federal Rule of Civil Procedure 8(a), which requires a "short and plain statement of the claim showing that a pleader is entitled to relief," in order to give the defendant "fair notice of what the claim is and the grounds upon which it rests." Id.; see Horosny v. Burlington Coat Factory, Inc., 2015 WL 12532178, at *3 (C.D. Cal. Oct. 26, 2015). In considering a Rule 12(b)(6) motion to dismiss, a court accepts the plaintiff's factual allegations in the complaint, and construes the pleadings in the light most favorable to the non-moving party. See Shwarz v. United States, 234 F.3d 428, 435 (9th Cir. 2000). Determining whether a complaint states a plausible claim for relief is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009).

III. ALLEGED FACTS

Richards was convicted of murder in July 1997 and, from that time until June 21, 2016, was held in the custody of the California Department of Corrections, later the California Department of Corrections and Rehabilitation ("CDCR"). (FAC ¶ 25.)[2] The subject of this lawsuit is Defendants' alleged failure to diagnosis and treat his prostate cancer, resulting in that cancer becoming untreatable and, therefore, terminal.

[2] Richards's conviction was reversed by the California Supreme Court on May 26, 2016. (FAC ¶ 25.)

A. Plaintiff's Custodial History and Identities of the Parties

Richards was transferred between correctional centers on numerous occasions during his incarceration. Between 2002 and 2004, he was incarcerated at Centinela State Prison ("CSP"), where his treating physicians were Donald B. Thornton,[3] John Parsons, and Bonifacio Esperanza. (FAC ¶ 26.) Defendant Charles Pickett was the Chief Medical Officer and Health Care Manager at CSP and John Parsons was the Chief Physician. (Id. ¶¶ 4-7, 26.) All of these Defendants provided Richards with medical care or were responsible for his health and medical treatment. (Id. ¶ 26.) From 2004 to 2006, Richards was held at the Chuckawalla Valley State Prison ("CVSP"), where his treating physician was David Dunn, supervised by Chief Medical Officer and Health Care Manager John W. Culton. (Id. ¶¶ 8, 9, 33, 36.) Between 2006 and 2008, Richards was incarcerated at the California Correctional Institution ("CCI") and the California Men's Colony ("CMC"), where he was treated by Doe Defendants. (Id. ¶¶ 38, 42.) In February 2008, Richards was transferred to the California Medical Facility ("CMF"), where he was treated by Defendants Nicholas Aguilera, Joseph Bick, Ray Andreasen,[4] Nabil Athanassious, Eli Richman, Balraj Dhillon, and Deepak Mehta. (Id. ¶¶ 10-15, 44.) Between his transfer to CMF and his exoneration and release in 2016, Richards was moved between CMF and the San Bernardino County Jail ("SBCJ").[5] (Id. ¶¶ 44-46.) When he was detained at the SBCJ, Richards'ss treating physicians were John Prince,[6] Minh Hang Chau, Noel Hui, and Edmund Ko. (Id. ¶¶ 18, 45-46.) At all relevant times, Arrowhead Regional Medical Center ("ARMC"), its agents, officers, employees, and independent contractors were under contract with San Bernardino County for the purpose of providing medical care and attention on behalf of the County for prisoners in the custody of the County and CDCR. (Id. ¶ 17.)

B. Diagnosis and Treatment History

1. Treatment at CSP

While housed at CSP between 2002 and 2004, Richards began to present symptoms consistent with the onset of prostate cancer. (FAC ¶ 27.) He reported these symptoms to medical care providers at CSP, including Thornton and Esperanza. (Id.) As a result, on or around August 28, 2003, Esperanza ordered blood testing for Plaintiff in order to screen his levels of prostate-specific antigen ("PSA"). (Id. ¶ 28.) On or around September 5, 2003, laboratory results were returned with a finding that Richards's PSA level was 3.8, which was higher than normal for his age at the time and an obvious diagnostic indication of his prostate

[3] Plaintiff alleges that Donald B. Thornton and Ray Andreasen are deceased and so has named their estates as defendants in this action. (FAC ¶¶ 6, 11.)

[4] See note 3, supra.

[5] In his Opposition, Plaintiff clarifies that these transfers were for the purpose of his post-conviction habeas litigation. (Opp. at 7.)

[6] County Defendants do not move to dismiss on behalf of Prince, as he is retired and has not been served. (County Mot. at 1.)

cancer. (Id.) These results were reviewed by Defendants Esperanza, Parsons, and Thornton. (Id. ¶ 29.) A higher-than-normal PSA level is an indicator that the patient has a prostate tumor, and typically would be followed up with further diagnostic evaluation and monitoring, including a digital rectal examination, prostate biopsy, or further PSA tests. (Id. ¶ 30.) However, despite these test results and Richards's report of symptoms consistent with prostate cancer to Thornton and Esperanza, no further action was taken by Thornton, Esperanza, Parsons, or any other CSP medical staff. (Id. ¶ 29.) Richards was not informed of the results of this test, received no medical counseling or treatment plan, and was not referred to a urologist for monitoring. (Id. ¶¶ 30-31.) At the time, Defendants Pickett and Parsons were supervisors at CSP who were responsible for the policies, practices, and training of the medical staff, and yet failed to ensure that lab results were properly reviewed and communicated to patients or that patients received proper counseling regarding their serious medical conditions and treatment options. (Id. ¶ 32.) Because of this inaction, Richards was not diagnosed with prostate cancer in 2003. (Id.) Ultimately, he would not be diagnosed until 2007. (Id.)

2. Treatment at CVSP

Richards was subsequently transferred to CVSP, where Culton was the Chief Medical Officer and Dunn was his treating staff physician. (FAC ¶ 33.) Culton and Dunn were required to review Richards's medical records upon his transfer to CVSP but either did not do so or did so and nevertheless failed to follow up on Richards's abnormal PSA test results. (Id. ¶ 34.) While he was detained at CVSP between 2004 and 2006, Richards informed Dunn about the symptoms he was experiencing, which were consistent with prostate cancer, and requested prostate cancer screening. (Id. ¶ 35.) Dunn and other medical care providers led Richards to believe that he was receiving regular PSA tests, that his bloodwork did not present any concerns, and that his PSA levels were within normal limits. (Id.) In fact, he did not receive PSA tests or any other form of prostate cancer screening while detained at CVSP. (Id.) As a result, Richards was not diagnosed with prostate cancer while incarcerated at CVSP. (Id. ¶ 36.) Defendants Culton and Doe Defendants were supervisors at CVSP and failed to ensure that lab results were properly reviewed, or that patients were receiving medically appropriate counseling and treatment. (Id. ¶ 37.)

3. Treatment at CCI and CMC

In August 2006, Richards was transferred from CVSP to CCI. (FAC ¶ 37.) In or around January 2007, Richards was given a "high risk evaluation" and another PSA test was ordered. (Id. ¶ 39.) In March 2007, Richards's PSA level was measured at 6.8, which is well above normal levels for a person of Richards's age. (Id.) Richards was then referred to a urologist, but this referral was not completed until three months later, after Richards followed up with an inquiry about the delay. (Id.) The urologist performed a digital rectal examination, observed physical changes in Richards's prostate, and ordered a biopsy. (Id.) In July 2007, Richards received a prostate biopsy, which revealed moderately aggressive prostate cancer which would be amenable to cure with either surgery or radiation. (Id. ¶ 40.)

In September 2007, Richards was transferred to CMC. (FAC ¶ 42.) Radiation treatment began in October 2007, six months after Richards's PSA test and three months after his biopsy, and concluded in January 2008. (Id.) Richards also received three androgen deprivation therapy ("ADT") treatments between November 2007 and March 2008. (Id.)

4. Treatment at CMF and SBCJ

Richards was transferred to CMF in February 2008, where he would remain, with intermittent transfers to SBCJ for the purposes of his ongoing habeas litigation, until his exoneration and release from custody in 2016. (FAC ¶ 44.) These transfers included nine months at SBCJ in 2009 and three years at SBCJ from March 2010 through March 2013. (Id. ¶ 45.) Following Richards's 2007 radiation therapy, Defendants continued to monitor his progress with blood tests, including PSA tests. (Id. ¶ 47.) These blood tests reflected rapidly rising PSA levels, which indicates aggressively recurring prostate cancer. (Id. ¶ 48.) Richards's rising PSA level was acknowledged by Defendants Dhillon and Athanassious in Richards's progress notes in August 2008. (Id. ¶ 47.) Around the same time, Athanassious noted that there was "clinical evidence of recurrence" of Richards's prostate cancer. (Id.) The medically proper response at this time would have been to order a biopsy, provide Richards with medical counseling, and provide any available treatment options, such as surgery or cryotherapy. (Id. ¶¶ 48, 49.) Indeed, a biopsy was recommended for Richards at various points between June 2008 and December 2009 by Mehta, Richman, and Prince, but for years none was administered. (Id. ¶ 49.) Richards was also recommended for referral to a urologist multiple times between 2008 and 2009, but an appointment was not scheduled for several years. (Id.) Despite Richards's 2008 blood tests indicated rapidly rising PSA levels and these recommendations, Richards was not given a biopsy until September 2011. (Id.) Richards's medical care providers who treated him during this period, including Defendants Mehta, Dhillon, Athanassious, and Richman, would have had knowledge of the relevant facts based on information contained in his medical file and yet failed to ensure that he received a biopsy and necessary follow-up treatment. (Id.)

In December 2009, while housed at CMF, Richards received a urology consultation with Athanassious. (FAC ¶ 50.) Athanassious noted that Richards's PSA had been rising since April 2008 and had reached 1.5. (Id.) However, rather than ordering a biopsy or referring Richards for curative treatment, Athanassious recommended further ADT, a treatment that would at best slow down the growth of cancer, but would not cure it. (Id.) Richards began another round of ADT in December 2009. (Id.) Between December 2009 and August 2012, Richards's medical treatment was haphazard and inconsistent. Though his PSA levels decreased after his ADT treatment, they began to steadily increase again. (Id. ¶ 52.) Though this fact was noted in his medical records, no action was taken. (Id.)

Medical providers treating Richards at CMF and ARMC between 2008 and 2012 knew that he had signs of recurring prostate cancer, that he needed a biopsy to confirm its recurrence, that ADT is not a curative treatment, and that curative treatment options were available and should have been pursued immediately. (Id. ¶¶ 44-51.) Nevertheless, for three years they failed to provide Richards with a biopsy and for four years they failed to provide him with treatment.

(Id. ¶¶ 49, 51, 52, 54.) In June 2009, counsel for Richards in his state habeas proceedings began sending letters to CDCR representatives, including Mehta, requesting that Richards be given immediate treatment in response to his recurring prostate cancer. (Id. ¶ 53.) Richards's attorneys also filed a pleading in San Bernardino County Superior Court in March 2010 requesting immediate treatment in light of his aggressively recurring cancer. (Id.) Finally, in September 2011, Richards received a biopsy. However, no curative treatment was provided for him until August 2012 when, after further advocacy by his attorneys, Richards received a cryoablation treatment. (Id. ¶54.) This treatment was not successful and Richards PSA levels began to rise again afterwards. (Id. ¶ 57.) Richards received intermittent ADT treatments until his release from custody in 2016. On May 3, 2016, Richards was informed for the first time that he had no further treatment options and that his cancer was terminal. (Id. ¶ 58.) Richards's aggressively developing prostate cancer had grown during the years he was not receiving screening or treatment. (Id. ¶¶ 32, 36.) Prostate cancer is a very treatable form of cancer and chances of survival improve greatly with early intervention. (FAC ¶ 31.) Earlier screening, diagnosis, and treatment of Richards's prostate cancer would therefore have improved his chance of being cured and reduced the risk of the cancer progressing to a terminal stage. (Id. ¶ 41.)

IV. DISCUSSION

County and CDCR defendants each rely on three primary arguments: (1) that Richards's claims are barred by the statute of limitations; (2) that Defendants are protected by sovereign immunity; and (3) that Richards fails to state a claim with required specificity. The Court will address each argument in turn.

A. Statute of Limitations

Defendants argue that the California statute of limitations bars nearly all of Richards's claims. (County Mot. at 5-7; CDCR Mot. at 11-12.) For actions brought under 42 U.S.C. § 1983, courts apply the forum state's statute of limitations, which in California is two years. Canatella v. Van De Kamp, 486 F.3d 1128, 1132 (9th Cir. 2007). Additionally, Richards status as a prisoner entitled him to two years of tolling under California Code of Civil Procedure § 352.1(a). Richards was informed that his prostate cancer was terminal on May 3, 2016, (FAC ¶ 58), and brought this lawsuit on April 30, 2018. (Dkt. No. 1.) The sole disagreement between the parties relevant to whether Richards's claims are barred by the statute of limitations is the question of when Richards's claims accrued. Richards argues that his claims accrued on May 3, 2016, when he learned that his cancer was terminal. (Opp. at 14.) Defendants, however, argue that his claims accrued much earlier, when he had knowledge that injury was being caused by their alleged misconduct. (County Mot. at 5.)

The Court finds that Richards's claims accrued when he was informed that his prostate cancer had become terminal and thus are not barred by the statute of limitations. Unlike the statute of limitations, the accrual date of a Section 1983 claim is a matter of federal law. Gregg v. Hawaii, Dep't of Pub. Safety, 870 F.3d 883, 887 (9th Cir. 2017). The general rule is that a cause of action accrues when "the plaintiff knows or has reason to know of the injury that is the basis of the action and the cause of that injury." Id. Defendants argue that Richards had knowledge of

the onset of his prostate cancer as early as 2002 or, at the latest, in July 2007. (County Mot. at 7.) Further, they argue, Plaintiff and his attorneys clearly believed that he had been, and was being, harmed by his deficient care for years prior to filing the present lawsuit. (CDCR Reply at 3.)

Defendants' arguments, however, appear to misapprehend the nature of Richards's claims. Richards does not seek redress for generalized harms arising from ongoing delayed treatment of his prostate cancer. Rather, he seeks redress for his claim that Defendants' ongoing failure to diagnose and treat his cancer resulted in the specific harm of that cancer becoming untreatable and, therefore, terminal. In cases involving failure to diagnose and/or treat a disease, the relevant injury is not "the mere continuance of the undiagnosed problem in substantially the same state" but, rather, the "development of the problem into a more serious condition which poses greater danger to the patient or which requires more extensive treatment." Augustine v. United States, 704 F.2d 1074, 1078 (9th Cir. 1983). Thus, it is only when "the patient becomes aware or through the exercise of reasonable diligence should have become aware of the development of a pre-existing condition into a more serious condition that his cause of action can be said to have accrued…" Id.; see also Devbrow v. Kalu, 705 F.3d 765, 770 (7th Cir. 2013) (claims for negligent failure to diagnose and treat metastatic prostate cancer did not accrue until Plaintiff became aware that his cancer was metastatic and untreatable); McDonald v. Macabuhay, 2009 WL 2432833, at *6 (D. Ariz. Aug. 10, 2009) (plaintiff's claims accrued not when he was diagnosed with Hepatitis C but rather when he learned that defendants' failure to treat his Hepatitis C had resulted in permanent liver damage, since Plaintiff "could not have known at the time that Defendant's failure to timely diagnose or treat his Hepatitis would cause permanent liver damage.")

The Court is not persuaded by Defendants' argument that the ongoing efforts of Richards's and his habeas attorneys to secure proper medical treatment demonstrates that he had actual knowledge of the injury that forms the basis of this action before May 3, 2016. While Richards and his attorneys clearly understood that a serious medical condition was going untreated, the facts alleged in the FAC do not suggest that they had any understanding that this failure to diagnose and treat his prostate cancer had resulted in the concrete harm of it becoming untreatable until May 2016. If anything, the ongoing efforts of Richards and his attorneys merely demonstrates that they were in fact "diligent in discovering the critical facts" relevant to his injury. Bibeau v. Pac. Nw. Research Found. Inc., 188 F.3d 1105, 1108 (9th Cir. 1999). Despite his diligence, it was not until Richards was told that his cancer had become untreatable that he knew that his cancer had developed into a more serious condition – terminal cancer – and that his claims accrued. Because this date was May 3, 2016 and Plaintiff filed the present lawsuit on April 30, 2018, the Court finds that his claims are not barred by the statute of limitations.

B. Qualified Immunity

Defendants argue that all individual defendants are entitled to qualified immunity. (County Mot. at 10-11, CDCR Mot. at 9-10, 12-15.) "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Pearson v. Callahan, 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald, 457

U.S. 800, 818 (1982)). An officer will be denied qualified immunity if (1) taking the alleged facts in the light most favorable to the party asserting injury, the officer committed a constitutional violation, and (2) the officer's specific conduct violated "clearly established" federal law at the time of the alleged misconduct such that a reasonable officer would have understood the conduct to be unlawful. Torres v. City of Madera, 648 F.3d 1119, 1123 (9th Cir. 2011) (citing Saucier v. Katz, 533 U.S. 194, 201-02 (2001)). Courts may analyze these prongs in either order. Pearson, 555 U.S. at 236. Where no precedent clearly establishes that the conduct is unlawful, a court may find the defendants entitled to qualified immunity without determining whether their conduct in fact violated the Constitution. See, e.g., Weddle v. Nutzman, 725 Fed. Appx. 596, 596–7 (9th Cir. 2018).

Beginning with the second prong, the Court finds that all Defendants' alleged conduct violated Richards's clearly-established constitutional rights. It is well established that the government is obligated to provide medical care to those in its custody and that deliberate indifference to the serious medical needs of prisoners violates the Eighth Amendment. See Estelle v. Gamble, 429 U.S. 97 (1976); Hutchinson v. United States, 838 F.2d 309, 394 (9th Cir. 1988); Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996). In order to establish that a government official displayed deliberate indifference to serious medical needs, a plaintiff must show (1) that he had a serious medical need, failure to treat which could result in "further significant injury or the unnecessary and wanton infliction of pain" and (2) that defendant's response to the need was deliberately indifferent. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). At this stage, Defendants do not dispute that Richards's medical need was serious and that failure to treat it resulted in significant injury. The first prong is thus satisfied. In dispute is the second prong, which may be satisfied by showing "(a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference." Id. Thus, indifference "may appear when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care." Id.; see also Jackson, 90 F.3d at 332 ("Prison officials are deliberately indifferent to a prisoner's serious medical needs when they deny, delay, or intentionally interfere with medical treatment for a serious medical condition.") (internal quotation omitted). "[A] finding that the defendant repeatedly failed to treat an inmate properly or that a single failure was egregious strongly suggests that the defendants' actions were motivated by 'deliberate indifference' to the prisoner's medical needs." McGuckin v. Smith, 974 F.2d 1050, 1060 (9th Cir. 1992), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997).

Thus, it was clearly established that the failure to provide timely and adequate diagnostic testing and treatment for prostate cancer, a condition which could, and did, become terminal if neglected, violated a clearly-established constitutional right. There is no support for County Defendants' arguments that Chau, Hui, and Ko were not on notice that delaying Richards's medical treatment was unconstitutional. Indeed, unnecessary and harmful delay by prison doctors leading to further suffering or medical complications fall in the heartland of deliberate indifference claims. County Defendants do not cite any authority in support of their argument that the fact that Richards's was repeatedly transferred between the custody of CDCR and San Bernardino County made the obligations of Chau, Hui, and Ko less clear. These doctors' individual liability is a factual question which is inappropriate for resolution at the Rule 12(b)(6)

stage and has no bearing on whether Richards had a clearly established constitutional right to treatment of aggressive and rapidly developing prostate cancer.

In their briefing, the CDCR Defendants define the relevant constitutional violation too narrowly. It is true that, for purposes of the qualified immunity analysis, the clearly established law must be "particularized" to the facts of the case. White v. Pauly, 137 S. Ct. 548, 552 (2017). A constitutional right is clearly established for the purposes of qualified immunity if "existing precedent . . . placed the statutory or constitutional question confronted by the official beyond debate." Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011). However, while courts are not to interpret "clearly established law" at a high level of generality, al-Kidd, 563 U.S. at 731, a plaintiff need not point to a case perfectly consonant with a defendant's actions to defeat qualified immunity. Hope v. Pelzer, 534 U.S. 730, 741–46 (2002) (explaining officials may not invoke qualified immunity if they have "fair and clear warning" that their actions are unlawful); see also C.B. v. City of Sonora, 769 F.3d 1005, 1026–27 (9th Cir. 2014) (finding a clearly established Fourth Amendment right in novel factual circumstances). Here, the CDCR Defendants argue that it is not clearly established that the constitution "requires aggressive treatment of a patient with a 3.8 PSA test," (CDCR Mot. at 13), "requires aggressive treatment of a patient who has not been diagnosed with prostate cancer," (Id. at 14), or "advises a CDCR physician that prescribing ADT treatment for a patient with Plaintiff's condition, but not some other treatment, would violate the patients constitutional rights" (Id. at 15). But it is not necessary that the precise action in question have been previously held to be unlawful, and such narrow definitions of Defendants' constitutional obligations to patients in their care would effectively "define away all potential claims" against them. Jackson, 90 F.3d at 332. Here, it was sufficiently clear that ongoing failure to provide adequate diagnosis and treatment of potentially fatal cancer constituted deliberate indifference to Richards's serious medical needs. While mere disagreement over which course of treatment to pursue is insufficient to establish a claim of deliberate indifference, at this stage Richards has sufficiently alleged that the course of diagnosis and treatment chosen by Defendants at each stage of his care was "medically unacceptable under the circumstances." Jackson, 90 F.3d at 332. Thus, each Defendant would have reasonably understood that denying or delaying Richards's access to proper diagnostic and curative care constituted deliberate indifference and violated the Eighth Amendment.

Having addressed the second step of the qualified immunity inquiry, the Court finds that the first step – whether Richards has in fact alleged a constitutional violation – is coextensive with the question of he has stated a claim for his two causes of action under Section 1983. Accordingly, this will be addressed in the following section. As discussed there, the Court finds that Richards has alleged sufficient fact to state a claim against all Defendants and so holds that Defendants are not entitled to qualified immunity.

C. Failure to State Claim Against Individual Defendants

County and CDCR Defendants argue that Richards has failed to allege "any specific actions or inactions" by Defendants sufficient to show that they were deliberately indifferent to his serious medical needs. (County Mot. at 8; CDCR Mot. at 12-16.) The Court will consider

Richards's claims against Defendants from each correctional facility in which he was detained in turn.

1. CSP Defendants

CDCR Defendants argue that the FAC does not sufficiently allege CSP physicians Thornton, Parsons, Esperanza, and Pickett were deliberately indifferent to Richards's serious medical needs. Specifically, they argue that Esperanza was the only physician to treat Richards and that Richards only claim against Esperanza is that he "should have interpreted the [PSA] test results to mean that he had prostate cancer." (CDCR Opp. at 13) (emphasis removed). CDCR argues that a disagreement over what a physician should or should not infer from test results is insufficient to state a claim for deliberate indifference here, as it accepts that Esperanza lacked a "subjective belief that Plaintiff needed to be aggressively treated for prostate cancer." (Id.) (internal quotations omitted). However, the arguments misstate the test for deliberate indifference and so fail as a matter of law. In order to allege that Esperanza was deliberately indifferent, Richards does not need to show that Esperanza failed to provide adequate treatment despite a subjective belief that such treatment was necessary. Rather, at this stage it is sufficient for Richards to allege that Esperanza's failure to provide treatment was medically unacceptable under the circumstances and taken in conscious disregard of an excessive risk to plaintiff's health. Jackson, 90 F. 3d at 332. While the mental state of "conscious disregard" is subjective, it can be proven based on circumstantial evidence, including evidence that the risk itself was sufficiently obvious that a reasonable physician would have noticed it. Farmer v. Brennan, 511 U.S. 825, 841 (1994). Ultimately Defendant Esperanza may be able to show that his failure to diagnose and treat Richards's prostate cancer was the result of reasoned medical judgment or that a risk of prostate cancer was not sufficiently obvious from a 3.8 PSA test to constitute deliberate indifference. At the pleading stage, however, Richards has sufficiently alleged that a 3.8 PSA score from a patient of Richards age was an obvious indicator of prostate cancer such that disregarding it constituted deliberate indifference of a serious medical need. Richards has therefore stated a claim for deliberate indifference against Esperanza.

CDCR Defendants argue that Richards's claims against the other CSP physicians for their supervisory roles are "even more attenuated" since there is no allegation that they directly consulted or treated Richards or that they had knowledge or subjective belief that Richards had prostate cancer. (CDCR Opp. at 13.) But Richards alleges that the results of his PSA test were reviewed by Defendants Esperanza, Parsons, and Thornton, who nevertheless did not inform him of the results of this test and took no further medically necessary action. (FAC. ¶ 29.) Richards also alleges that these individuals were responsible for his medical care and, in fact, provided him with medical care between 2002 and 2004. (Id. ¶ 26.) Additionally, while Pickett is not a party to the Motions before the Court, Richards alleges that he was "responsible for … establishing policies, practices, supervision, and training for ensuring that inmates were receiving appropriate and necessary health care services and follow up treatment." (Id.) As discussed above, the failure of a physician responsible for the medical care of a prisoner to take medically necessary action despite awareness of medical test results showing a high risk of prostate cancer would constitute deliberate indifference under the Eighth Amendment. Further, while there is no pure respondeat superior liability under Section 1983, a supervisor is liable for the acts of his

subordinates if the supervisor "participated in or directed the violations or knew of the violations [of the subordinates] and failed to act to prevent them." Preschooler II v. Clark Cty. Sch. Bd. of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007) (citing Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)). Richards has therefore alleged sufficient facts to state a claim for deliberate indifference against Defendants Parsons and Thornton.

2. CVSP Defendants

CDCR Defendants argue that the FAC does not sufficiently allege deliberate indifference against CVSP physicians Dunn and Culton, as they only allege that "his bloodwork did not present any concerns" and his PSA levels were "within normal limits." (CDCR Mot. at 14.) Thus, Dunn and Culton's failure to treat Richards reflected their "subjective belief and medical judgment" and did not constitute deliberate indifference. (Id.) However, this argument omits critical portions of the FAC and again misstates the standard for deliberate indifference. Richards alleges that both Dunn and Culton were responsible for his medical care while he was detained at CVSP. In fact, the FAC alleges that, despite the fact Richards reported symptoms consistent with prostate cancer directly to Dunn and his high PSA test results were in his medical file, Dunn repeatedly told Richards that he was receiving ongoing diagnostic tests for prostate cancer and that the results of these tests were within normal limits. As discussed above, while Defendants may ultimately show that Dunn's actions reflected his reasoned medical judgment, at this stage Richards has sufficiently alleged that not only did Dunn have actual knowledge of a test result strongly indicating the presence of prostate cancer, he both failed to take medically necessary steps to diagnose and treat that condition and in fact actively misrepresented the diagnostic steps that had been taken. Accordingly, the Court finds that Richards has sufficiently stated a claim for deliberate indifference against Dunn and Culton.

3. CMF Defendants

CDCR Defendants argue that Richards has not alleged deliberate indifference "by any particular physician" while he was incarcerated at CMF prior to February 2008. (CDCR Mot. at 15.) Further, they argue that after he was diagnosed with prostate cancer in February 2008, Richards has only alleged specific conduct by Athanassious, which in any case does not support a deliberate indifference claim. (Id.) But the FAC alleges more than that, and in fact states that each of the CMF Defendants, Aguilera, Bick, Andreasen, Athanassious, Richman, Dhillon, and Mehta, not only treated Richards but also personally noted the recurrence of his cancer and/or his need for a biopsy after he received radiation therapy. (Id. ¶¶ 10-15, 44, 47-52.) Despite this, they took no action. Between June 2008 and December 2009, after Richards had been diagnosed with prostate cancer and received an initial round of radiation therapy, various doctors, including Mehta, Richman, and Prince, noted signs of recurring cancer and recommended a biopsy but none was provided to Richards for approximately three years. (Id. ¶ 49.) The FAC also alleges that other CMF medical care providers who treated Richards during this period, including Defendants Dhillon and Richman, would have had knowledge of information contained in his medical file showing clear signs of aggressively recurring prostate cancer and yet failed to ensure that he received a biopsy or necessary follow-up treatment. (Id.)

CDCR Defendants also argue that Richards claim is, essentially, that in receiving ADT treatment rather than cryoablation or surgical intervention he simply did not receive his "preferred treatment option," which is insufficient to state a claim for deliberate indifference. (CDCR Mot. at 15.) However, this against misstates the allegations in the FAC, which claims not that ADT treatments were not Richards's "preferred" treatment regime but rather that they were medically inappropriate in light of his rapidly recurring prostate cancer, and that administering them instead of medically necessary treatments constituted deliberate neglect which resulted in his cancer becoming untreatable. (FAC ¶¶ 31, 48, 50-51.) In other words, Richards's claim is not solely that ADT was not the treatment he desired, but that the provision of ADT in absence of other medically necessary treatments resulted in the fatal progression of his cancer. Especially in light of Richards's allegations that for many years CDCR Defendant repeatedly failed to provide the treatment medically necessary to prevent the fatal progression of his cancer, these allegations are sufficient to support a claim for deliberate indifference. See McGuckin, 974 F.2d at 1060 (repeated failure to treat a prisoner properly strongly suggests deliberate indifference to the prisoner's medical needs). Because the failure to provide medically necessary treatment to a prisoner suffering from a potentially fatal illness may constitute deliberate neglect, regardless of whether other, ineffective treatments were provided, the Court finds that Richards has alleged sufficient facts to state a claim against those CMF defendants who treated him. Additionally, the Court finds that Richards has sufficiently alleged that those CMF physicians who merely supervised those doctors who directly treated him had sufficient knowledge of these omissions that they may be held liable for their failure to act to ensure that he received medically necessary treatment. See Preschooler II, 479 F.3d at 1182.

4. County Defendants

County Defendants argue that the FAC fails to "specify any alleged actions or inactions" on the part of Chau, Hui, and Ko, other than that they "were in charge of [Richards's] care for a number of years after his cancer was diagnosed and before it was terminal." (County Mot. at 8.) But the FAC alleges substantially more than this, including that Defendants Prince, Chau, Hui, and Ko were "aware that curative treatment options were available and … should have been pursued immediately upon evidence of the recurrence of Plaintiff's cancer" and that nonetheless "[n]o biopsy was performed until September 2011, years after the chemical recurrence of cancer was first noted." (FAC ¶ 51.) Further, the FAC alleges that all of Richards's treating physicians had actual knowledge of the delay in treatment because the order for a biopsy was noted in his medical record beginning in 2008 and yet went unfulfilled for three years. (Id. ¶¶ 47, 49.) As discussed above, a factfinder may conclude that a prison official knew of a substantial medical risk and disregarded it based on the fact that the risk was sufficiently obvious. Farmer, 511 U.S. at 842. At this stage, Richards has pled sufficient factual allegations to support such a conclusion. Finally, insofar as County Defendant argue that their responsibility for Richards was diminished because he was "in both state and county custody during this time" such that his delay in care was an unintentional mistake, the Court does not agree that prison medical officers may defeat constitutional claims for deliberately indifferent treatment by maintaining a system of haphazard and inconsistent medical care which left no single medical officer responsible for Richards's

treatment. Accordingly, the Court finds that Richards has stated a claim for deliberate indifference against Chau, Hui, and Ko.

D. Failure to State Claim for Monell Municipal Liability Against San Bernardino County and ARMC

County Defendants move to dismiss Richards's claims for municipal liability against the County of San Bernardino and ARMC. (County Mot. ant 12.) They argue that Richards's allegations of municipal liability under Monell are "conclusory and fail to provide any specifics" as to the County or ARMC's specific deficient policies, practices, or training that led to the deprivation of his rights. (Id. at 13.) Further, they argue that, to the extent that Richards alleges that the County or ARMC had a "custom and practice of failing to ensure necessary procedures and treatments," the FAC provides no factual basis for these allegations, such as examples off specific deficient policies.[7]

A municipality can be liable under section 1983 "if the governmental body itself 'subjects' a person to a deprivation of rights or 'causes' a person 'to be subjected' to such deprivation." Connick v. Thompson, 563 U.S. 51, 60 (2011) (quoting Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978)). It cannot, however, be held liable vicariously for its employees' actions on a respondeat superior theory. Monell, 436 U.S. at 691; see also AE ex rel. Hernandez v. Cty. of Tulare, 666 F.3d 631, 636 (9th Cir. 2012). "[L]ocal governments are responsible only for 'their own illegal acts.'" Connick, 563 U.S. at 60 (quoting Pembaur v. Cincinnati, 475 U.S. 469, 479 (1986)). To establish liability, a plaintiff "must prove that 'action pursuant to official municipal policy' caused their injury." Id. (quoting Monell, 436 U.S. at 691). It is sufficient to show that the allegedly unconstitutional conduct was pursuant to "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Monell, 436 U.S. at 690.

"Although a constitutional violation must result from 'official municipal policy,' a county need not expressly adopt the policy. It is sufficient that the constitutional violation occurred pursuant to a 'longstanding practice or custom.'" Christie v. Iopa, 176 F.3d 1231, 1235 (9th Cir. 1999). "Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996). "In limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983." Connick, 563 U.S. at 61.

[7] County Defendants also argue that, because Richards has failed to state a claim against the individual County Defendants, there is no basis for municipal liability. Because the Court finds that Richards has stated a claim against the individual County Defendants it need not reach this argument.

Though County Defendants argue that the FAC alleges no specific custom or practice of failing to provide medically necessary treatment, in fact Richards alleges that over the course of his years-long incarceration in the custody of San Bernardino County he received "haphazard and inconsistent treatment" from County medical providers, including tests that were left incomplete or extensively delayed, resulting in steadily increasing PSA levels. (FAC ¶ 52.) No action was taken to remedy this problem even though this pattern "was noted in Plaintiff's medical records." (Id.) Moreover, this pattern of neglect continued despite multiple attempts by Richards's attorneys to secure proper medical care, including filing a motion in the Superior Court of California, San Bernardino County. (Id. ¶ 53.) Thus, County Defendants' denial of care to Richards was more than "isolated or sporadic incidents." Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996). Rather, it continued over several years and despite numerous requests that adequate care be provided. Such allegations of a history of repeated denial of necessary care are sufficient to make out a claim of an unconstitutional pattern or practice, even if that pattern or practice is towards a single individual. Oyenik v. Corizon Health, Inc., 696 F. App'x 792, 794 (9th Cir. 2017). Thus, the Court finds that Richards has alleged sufficient facts to make out a Section 1983 claim against San Bernardino County and ARMC.

V. CONCLUSION

For the foregoing reasons the Court DENIES the County and CDCR's Motions to Dismiss.

IT IS SO ORDERED.