

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 21 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EDWARD ALLYN HUDACKO,

Plaintiff - Appellant,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET YI MAN LEE;
DIANE EHRENSAFT; STEPHEN
ROSENTHAL; ASAF ORR; NATHANIEL
BIGGER; DANIEL HARKINS;
CHRISTINE UNDERHILL,

Defendants - Appellees.

No. 24-7360

D.C. No.

3:23-cv-05316-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Argued and Submitted October 8, 2025
San Francisco, California

Before: S.R. THOMAS, NGUYEN, and BRESS, Circuit Judges.

Edward Hudacko appeals the following orders by the district court: (1) the
dismissal of his Section 1983 action against Daniel Harkins; Nathaniel Bigger;

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Christine Underhill; University of California San Francisco (“UCSF”) doctors Janet Yi Man Lee, Diane Ehrensaft, and Stephen Rosenthal; and the UCSF Child and Adolescent Gender Center’s Legal Director Asaf Orr; (2) the dismissal of his fraudulent concealment and intentional infliction of emotional distress (“IIED”) claims against Dr. Lee, Dr. Ehrensaft, Dr. Rosenthal, and Orr (collectively, the “UCSF Individuals”); and (3) the denial of six of his requests for judicial notice. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.¹

I. Section 1983 Claims

A. Harkins, Bigger, and Underhill

Only a state actor can be liable under 42 U.S.C. § 1983. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). A plaintiff may demonstrate that a private individual was a *de facto* state actor under “the joint action test” by “proving the existence of a conspiracy” or by showing that the “private party was a willful participant in joint action with the State or its agents.” *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002). “To prove a conspiracy between the state and private parties under section 1983, [plaintiff] must show an agreement or meeting of the minds to violate constitutional rights.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41 (9th Cir. 1989) (citation modified).

¹ We do not address Hudacko’s withdrawn arguments that the district court judge was biased.

The district court correctly concluded that Harkins, Bigger, and Underhill are not *de facto* state actors. Hudacko's bare assertions of a "scheme" and "joint effort," in his Second Amended Complaint ("SAC") are "formulaic recitation[s] of" the joint action test that are not entitled to the assumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 680–81 (2009); *see also In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (holding that the court is not "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences").

Considering only the factual allegations in his SAC, Hudacko alleges that Harkins 1) was aware of Provision 7b of the custody order, 2) knew Hudacko opposed puberty blockers and surgical procedures, 3) excluded Hudacko from the decision regarding the implant procedure, and 4) had email exchanges and calls with other Defendants. But Hudacko does not allege that Harkins had a duty to include Hudacko in any discussions between Harkins and other defendants. Although Hudacko alleges there was a conference call between Harkins, Orr, and Bigger, the only information Hudacko cites to support his "information and belief" that the defendants discussed the "scheme" during this call is a billing record showing that Harkins had a "conference call with counsel" that lasted 0.35 hours. To allege based on that billing record that the call led to an "agreement for Defendants to perpetrate the scheme" is an "unwarranted deduction[] of fact" at

best—something we are not required to accept as true. *See In re Gilead*, 536 F.3d at 1055.

The SAC also cites UCSF’s progress notes that Underhill was working with Bigger, Harkins, and Orr to “achieve resolution in the near future,” but absent other facts, these notes do not in any way show an improper scheme or conspiracy to violate Hudacko’s rights. There is nothing surprising or nefarious about Harkins and Bigger, as the lawyers representing Minor and Underhill respectively, working with Underhill as permitted by the custody order. Hudacko’s only other factual allegation against Bigger is that the latter billed time for his legal work. Again, citing the billing for legal services as support for a claim of conspiracy is not a plausible allegation. *See Iqbal*, 556 U.S. at 678 (holding the plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully”). Nor was Underhill a *de facto* state actor, as the district court correctly explained.

B. The UCSF Individuals

The defense 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.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). “A right is clearly established only if its contours are sufficiently clear that a reasonable official would understand that what he is doing violates that right . . . [E]xisting precedent

must have placed the statutory or constitutional question beyond debate.” *Carroll v. Carman*, 574 U.S. 13, 16 (2014) (citation modified).

The district court correctly concluded that the UCSF Individuals are entitled to qualified immunity because Hudacko’s alleged right was not clearly established. Although the rights of parents in the “care, custody, and control of their children” is a well-established liberty interest under the Fourteenth Amendment, *Troxel v. Granville*, 530 U.S. 57, 65 (2000), Hudacko’s right cannot be defined that broadly because the custody order stripped him of almost all his parental rights. Under the custody order, Underhill had sole medical decision-making authority over Minor with the exception of “any gender identity related surgery,” which required Hudacko’s consent.

Hudacko cites no clearly established law under similar facts. Instead, he contends that the “explicit language” of the custody order provision clearly establishes his right. But it was not clear the implant procedure fell within Provision 7b’s “surgery” exception in the custody order. *See Carroll*, 574 U.S. at 16; *see also Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (“Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions.”). And putting aside the custody order, Hudacko cites no clearly established law creating a parental liberty interest in precluding the procedure at issue here when the other parent and minor child

consent to it.

II. Fraudulent Concealment Claim

Under California law, one of the required elements for fraudulent concealment is that the defendant has “a duty to disclose” to the plaintiff. *Graham v. Bank of Am., N.A.*, 226 Cal. App. 4th 594, 606 (2014). Where the defendant is not in a fiduciary relationship with the plaintiff, fraudulent concealment is actionable only if there exists “some other relationship between the plaintiff and defendant in which a duty to disclose can arise.” *LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336–37 (1997).

Hudacko alleged no transaction or relationship with any of the UCSF Individuals that could give rise to a duty to disclose. *See Graham*, 226 Cal. App. 4th at 606. Orr was an attorney representing the UCSF Center, and his “duty of undivided loyalty” was to his client, not to Hudacko. *See LiMandri*, 52 Cal. App. 4th at 338.

Hudacko alleges that Drs. Lee, Ehrensaft, and Rosenthal (collectively, “UCSF Doctors”) owed him a duty to disclose because the custody order named UCSF explicitly as Minor’s medical provider and granted them “special decision-making powers.” This contention is unsupported because the custody order does not grant UCSF any powers. Rather, it only conditions Underhill’s authority to consent to hormone therapy for Minor on UCSF recommending that treatment.

Thus, the custody order does not create a “contractual agreement” between Hudacko and UCSF that gives rise to a duty to disclose.² *See LiMandri*, 52 Cal. App. 4th at 337.

III. IIED Claim

Under California law, one of the elements of a prima facie case of IIED is “outrageous conduct by the defendant.” *Little v. Stuyvesant Life Ins. Co.*, 67 Cal. App. 3d 451, 461 (1977).

The custody order permits Minor “to pursue the services provided by UCSF as to [Minor’s] gender identity, and shall be permitted to commence hormone therapy, if recommended by UCSF,” but Minor could not obtain “any gender identity related surgery until they are 18 years of age, absent written agreement from both parties . . . or an order of the court.” As we explained, the implant procedure could reasonably be interpreted to be hormone therapy and not gender identity related surgery. But even if the procedure constituted “gender identity related surgery” under the custody order, defendants’ alleged conduct is not “so extreme as to exceed all bounds of that usually tolerated in a civilized society.”

² Hudacko also alleges the UCSF Doctors owed him a general duty of care under Cal. Civ. Code § 1714(a), which provides that “everyone is responsible . . . for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person.” That duty is limited, however, to negligence cases—not fraudulent concealment, which is governed by other provisions of California Civil Code. *See* 46 Cal. Jur. 3d Negligence § 8; 34A Cal. Jur. 3d Fraud and Deceit § 38.

See Yau v. Santa Margarita Ford, Inc., 229 Cal. App. 4th 144, 160 (2014).

On appeal, Hudacko does not meaningfully argue that he alleged outrageous conduct required for an IIED claim. Instead, Hudacko contends that whether the implant procedure “could reasonably [be] interpreted to be” hormone therapy was a factual dispute that should not have been decided at the pleading stage. But the district court did not decide that the implant procedure was in fact hormone therapy under the custody order. Instead, the district court only held that *even if* the implant procedure could be regarded as gender identity related surgery, the UCSF Individuals’ conduct cannot be outrageous because the implant procedure “could reasonably [be] interpreted to be” hormone therapy under the custody order.

Fuentes v. Perez, 66 Cal. App. 3d 163, 172 (1977) (“It is for the court to determine, in the first instance, whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery.”).

IV. Denial of Requests for Judicial Notice

Under Federal Rule of Evidence 201, a court may take judicial notice of an “adjudicative fact” that is “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(a)–(b). We review a district court’s decision to take judicial notice for abuse of discretion, *Ritter v. Hughes Aircraft Co.*, 58 F.3d

454, 458 (9th Cir. 1995), and we hold that the district court did not abuse its discretion here denying Hudacko's requests for judicial notice.

Hudacko contends that his requests were examples of "state-funded involuntary human medical experimentation" relevant to "demonstrate 'the *plausibility* of a conspiracy to use deception in the practice of involuntary human medical experimentation,'" but these studies are not relevant here because they do not concern the "immediate parties." *See* Fed. R. Evid. 201 advisory committee's note to subdivision (a) for 1972 proposed rules.

AFFIRMED.