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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW R. PEREZ,
Plaintiff,

v.

E. MOORE, et al.,
Defendants.

Case No. [18-cv-04856-SI](#)

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. No. 40

United States District Court
Northern District of California

INTRODUCTION

Matthew Perez, an inmate at Salinas Valley State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. This action is now before the court for consideration of the motion for summary judgment filed by defendants Franco, Moore, Peffley, and Salgado. Perez opposes the motion. For the reasons discussed below, summary judgment will be granted in the moving defendants' favor.

BACKGROUND

This action concerns prison officials' efforts to obtain contraband that they saw Perez ingest during a visit with his girlfriend. The claims remaining for adjudication are that defendants Franco, Moore, Peffley, and Salgado (1) violated Perez's Eighth Amendment right to be free from cruel and unusual punishment when they subjected him to continuous lighting during the contraband surveillance watch that lasted six days, and (2) violated Perez's Fourth Amendment right to be free from an unreasonable search as they took steps to hurry the contraband out of his system. (Other claims and defendants were dismissed in earlier orders, and are not further discussed.)

1 The following facts are undisputed unless otherwise noted:

2 The events and omissions giving rise to this action occurred from July 31 to August 6, 2016.
3 At the relevant time, Perez was a prisoner at the Salinas Valley State Prison in Soledad, California.
4 The remaining defendants are correctional lieutenant Moore, correctional officer (C/O) Salgado,
5 C/O Franco, and C/O Peffley. Each of these correctional defendants worked in the Investigative
6 Services Unit (ISU) at the prison.

7

8 A. Perez Ingests Contraband During A Contact Visit

9 During a contact visit on July 31, 2016, Perez’s girlfriend passed a capsule-shaped object
10 about two inches in length from her mouth to Perez’s mouth when they kissed. Perez then took
11 several drinks of water after the object passed to his mouth, apparently to aid in swallowing the
12 object. ISU officers Franco and Salgado witnessed the contraband being passed to Perez. The
13 passing of the contraband also was visible on surveillance video. Salgado immediately instructed
14 staff to handcuff Perez and escort his girlfriend out of the visiting room. See Docket No. 40-7 at 3-
15 4 (Salgado Decl.); Docket No. 40-4 at 3-4 (Franco Decl.); Docket No. 40-9 (surveillance video).

16 The girlfriend, Deanna Strickland, consented to a search of her person and surrendered a
17 Ziploc bag containing a clear, rock-like substance. Salgado tested the substance on the spot and
18 received a positive result for methamphetamine. In a recorded interview, Strickland told Franco
19 that she picked up the drugs from an outside supplier, brought them to the prison, and transferred
20 one package from her mouth to Perez’s mouth while kissing him. See Docket No. 40-7 at 3-4
21 (Salgado Decl.); Docket No. 40-4 at 3-4 (Franco Decl.); see also Docket No. 40-9 (surveillance
22 video recording); Docket No. 40-10 (interview video recording).

23

24 B. The Quest To Recover The Contraband

25 1. CDCR Procedures For Contraband Surveillance Watch

26 Regulations that apply to prisoners in the California Department of Corrections and
27 Rehabilitation (CDCR) define “contraband” as “anything that is not permitted, in excess of the
28 maximum quantity permitted, or received or obtained from an unauthorized source.” Cal. Code

1 Regs. tit. 15, § 3000 (2016). Ingesting controlled substances, unless authorized by the prison's
2 health care staff, is prohibited. *Id.* at § 3016(a). Possessing money also is prohibited. *Id.* at §
3 3006(b).

4 According to C/O Salgado, it is common for inmates to hide contraband by ingesting it or
5 placing it in their rectums as a means to avoid detection. If a bundle of drugs is not wrapped properly,
6 it can leak or explode inside an inmate who has swallowed it, resulting in overdose or death. The
7 presence of drugs in the prison can result in violence that is dangerous to inmates as well as to the
8 correctional staff who must watch them: an inmate known to be in possession of controlled
9 substances can be targeted by other inmates who want the drugs, and there can be violence related
10 to collection of debts incurred to pay for the drugs. Docket No. 40-7 at 2-3 (Salgado Decl.)

11 The CDCR's Operations Manual authorizes correctional staff to place an inmate on
12 contraband surveillance watch (CSW) "[w]hen it becomes apparent through medical examination,
13 direct observation, or there is reasonable suspicion that an inmate has concealed contraband in their
14 body, either physically or ingested, and the inmate cannot or will not voluntarily remove and
15 surrender the contraband." Operations Manual at § 52050.23 (2016). The purpose of CSW is to
16 retrieve the contraband "without physical intrusion if possible; ensure that contraband is not
17 circulated into the inmate population; and ensure the safety of the inmate." *Id.* Operations Manual
18 § 52050.23.1 authorizes CSW for 72 hours, or until the inmate produces three contraband-free bowel
19 movements. The decision to place an inmate on CSW must be made by the on-duty watch
20 commander or the administrative officer of the day. The warden or chief deputy warden must
21 approve restraints, extensions of the contraband watch, and any application for a search warrant.
22 Docket No. 40-7 at 4, 10 (Salgado Decl.). It is "extremely rare for an inmate to withhold
23 contraband" past the initial 72-hour period, but there are provisions in the operations manual to
24 renew the 72-hour CSW period and obtain a search warrant if necessary. *Id.* at 7.

25 The actual surveillance of an inmate on CSW is done by correctional officers, who are
26 supervised by correctional sergeants. Correctional officers are stationed directly outside the
27 inmate's cell and must watch the inmate at all times. ISU officers do not conduct the actual
28 surveillance of inmates on CSW but do check in several times a day to learn things, such as whether

1 the inmate has produced the contraband, is taking meals, or is attempting to conceal the contraband
2 until the CSW period is over. They check the inmate's clothing to be sure he has not tried to retrieve
3 the contraband and conceal it again by, e.g., re-ingesting it, hiding it in the cell or on a meal tray, or
4 trying to flush it in the toilet. *Id.* at 4-5.

5 An inmate on CSW is placed in a "controlled isolated setting . . . under constant visual
6 observation" until the contraband is retrieved or voluntarily surrendered. *Id.* at 10. To prevent an
7 inmate from retrieving or destroying the contraband, his hands (and, if necessary, his feet) are placed
8 in restraints; and his clothing is taped at the wrists, waist and ankles. *Id.*

9
10 2. Lighting

11 The Eighth Amendment claim remaining for adjudication concerns the constant illumination
12 of the cell in which Perez was kept for CSW. The parties agree the lights remained on throughout
13 the CSW.

14 The CDCR's Operations Manual provides that the cell's "lights should be dimmed, as
15 possible, during normal hours of darkness, if such action does not adversely impact staff's ability to
16 observe and monitor the inmate." *Id.* An inmate on CSW is issued a mattress and blanket at night,
17 and may cover his eyes with the blanket as long as his hands are still visible. Docket No. 40-7 at 5
18 (Salgado Decl.)

19 Proper lighting is essential to the success of the CSW, as the purpose of CSW is to constantly
20 observe the inmate in order to recover the contraband. Officers must document all events and inmate
21 movements and do so, on average, in 15-minute increments. (In Perez's case, there are dozens of
22 pages of records of his activities and status checks during his stay on CSW. Docket No. 40-11.)
23 Constant lighting also is necessary for officers to maintain a visual watch of the inmate's hands at
24 all times, so that it can be observed if, for example, he attempts to re-ingest the contraband or
25 otherwise dispose of it.

26 Constant lighting also serves a safety purpose. Inmates concealing contraband inside their
27 bodies are at a heightened risk of serious harm or death, as has occurred with inmates who ingested
28 controlled substances in packaging that allowed the substance to leak into their bodies. If an officer

1 does not maintain a clear and constant visual watch of the inmate, a medical emergency – such as
2 an unintentional overdose -- may not be timely detected. See Docket No. 40-1 at 2 (Smith Decl.);
3 Docket No. 40-5 at 4-5 (Moore Decl.).

4
5 3. Perez’s Stay on CSW

6 After Perez was observed on July 31 receiving the contraband during the kiss with his
7 girlfriend, he promptly was escorted out of the visiting room, strip-searched, evaluated by medical
8 staff, and put on CSW.¹ Docket No. 36 at 13. He remained on CSW from July 31 through August
9 6, when he was removed from CSW after he defecated the contraband. During that time, he also
10 made two trips to an outside hospital, Natividad Medical Center.

11 In the cell in which Perez did his CSW, the lights could be turned on or off with a switch
12 outside the cell and unavailable to Perez; the lights could not be dimmed. Docket No. 40-3 at 2
13 (Gallardo Decl.) As noted earlier, the CDCR’s Operations Manual provides that the cell’s “lights
14 should be dimmed, as possible, during normal hours of darkness, if such action does not adversely
15 impact staff’s ability to observe and monitor the inmate.” Docket No. 40-7 at 10.

16 During his stay in the cell, Perez did not voice any complaints about the condition of his
17 cell, including the lighting. Perez admitted in his deposition that he did not complain to any
18 defendant about the lights. Docket No. 40-12 at 57-58 (Perez Depo. RT 47-48).

19 It appeared to prison officials that Perez was taking extraordinary steps to avoid having the
20 contraband found. He refused most of the three meals offered to him each day. He often declined
21 offers of water. He also often declined to urinate or produce a bowel movement when the
22 opportunity was offered. He did not produce a bowel movement between July 31 and August 3.
23 Docket No. 40-7 at 5 (Salgado Decl.).

24 Defendants presented undisputed evidence that “[i]nmates often have an interest in
25 prolonging producing a bowel movement, or otherwise manipulating bowel movements to prevent
26

27
28 ¹ Perez states that an inmate suspected of having contraband has the option to be x-rayed
instead of going on CSW. Perez chose CSW. Docket No. 36 at 13.

1 the contraband from being released.” Id. at 5-6. The supplier may target the inmate who
2 relinquishes the contraband, and/or the inmate may become indebted to his suppliers and become a
3 target of attack if he cannot pay. Id. at 6.

4 On August 3, Perez collapsed while taking a shower. Docket No. 36 at 20. Correctional
5 officers immediately called medical staff, and Perez was taken to an outside hospital, Natividad
6 Medical Center. Before he was taken to the hospital, he was given a shot of Narcan, even though
7 he denied that his symptoms were related to any sort of overdose. Id. At Natividad, Perez refused
8 an x-ray but agreed to take laxatives; he produced five to seven bowel movements, yet no contraband
9 was included in the excrement. Docket No. 36 at 22-24. According to defendant Peffley, Perez
10 “constricted his rectum and slowly excreted only liquid feces” to avoid defecating the contraband.
11 Docket No. 40-6 at 6. Perez was returned from the hospital to the prison the next day.

12 On August 3, the chief deputy warden approved a second 72-hour CSW for Perez. This
13 extension of CSW was based on these circumstances: Perez had been observed ingesting at least
14 one bindle; his girlfriend admitted that she passed drugs from her mouth to Perez’s mouth; Perez
15 had eaten very little food and drank very little water during the first CSW period; and Perez had
16 produced only limited, liquid bowel movements free of contraband after receiving laxatives. The
17 chief deputy warden also authorized Salgado to obtain a search warrant. Id. at 7.

18 Salgado obtained a search warrant from the Monterey County Superior Court. Docket No.
19 40-7 at 13-18. His affidavit of probable cause described the facts, including the ingestion of
20 contraband by Perez, as well as the CSW efforts that had not yet yielded the contraband. The
21 affidavit proposed that the search be done at a hospital, where a “body cavity search will be
22 conducted in a medically approved manner by a licensed physician or other licensed medical
23 professional. Said person(s) are authorized by this court to conduct a body cavity search of the
24 above listed person without their consent. Said search does not include surgical procedures
25 accomplished with scalpels, but is rather a probing type of search. [] The term body cavity within
26 the meaning of this warrant shall constitute the mouth, digestive tract, and or anus of inmate Perez.”
27 Id. at 17-18 (errors in source; brackets added). The search warrant, signed by a judge of the
28 Monterey County Superior Court on August 5, authorized a search of Perez and described the

1 property to be seized as “[a]ny foreign objects to include methamphetamine, heroin, any other
2 controlled substances and prescription medication Any item deemed by qualified medical staff as
3 being a foreign object located inside Inmate Perez’ body shall be relinquished to a representative of
4 the Salinas Valley State Prison Investigative Services Unit.” Id. at 14.

5
6 4. August 5-6 Trip To Natividad Medical Center

7 The Fourth Amendment claim that remains for adjudication pertains to the search at
8 Natividad Medical Center, to which Perez was taken on August 5, 2016, so that the search warrant
9 could be executed. Defendant Moore showed the search warrant to medical staff at the hospital and
10 explained why CDCR personnel were there as well as the procedure for executing the search
11 warrant. The medical staff decided first to do an x-ray and CT-scan. Docket No. 40 at 16; see
12 Docket No. 36 at 27. Dr. Bass, an emergency room doctor, told lieutenant Moore that the CT-scan
13 revealed five foreign objects in Perez’s anal cavity. Docket No. 36 at 29. According to Perez,
14 lieutenant Moore wanted Dr. Bass to physically remove the objects pursuant to the search warrant,
15 but Dr. Bass refused to perform a physical intrusion because of a risk to Perez’s health if the objects
16 contained drugs and were perforated during removal. Id. at 29-30. Dr. Bass said he would prescribe
17 laxatives and “let nature take its course.” Id. at 30. (Defendants present evidence that they did
18 not try to direct the doctor’s course of action. At the summary judgment stage, the court accepts the
19 nonmoving party’s version as true.)

20 According to Perez, nurse Clement came into the room about fifteen minutes later with large
21 containers and began pouring the laxative into Perez’s mouth, and told him he would have to drink
22 all of the laxative. Id. (Perez’s hands were secured so he could not hold the cup to drink the liquid.)
23 After she had given him a cupful, Perez said he was not ready for more; Clement left the room and
24 returned a few minutes later to pour more laxative into Perez’s mouth. She repeated this at least
25 seven times in ten minutes. Id. at 32. Eventually, Perez protested that he needed more time because
26 his stomach could not take any more liquid without vomiting. Clement made an unsympathetic
27 comment about him stalling and left the room. Id. Perez closed his eyes and tried to sleep, but ISU
28 officer Peffley yelled at him and wouldn’t let him sleep. Id. Nurse Clement returned and Perez

1 complained that the officers were harassing him; Clement turned to Peffley and gave him the
2 laxative to administer to Perez, saying that she ““wasn’t going to deal with this”” and leaving the
3 room. Id. at 33. Peffley poured the laxative into Perez’s mouth until he began coughing and
4 choking, and then repeated the procedure. Id. (Defendants present evidence that they did not take
5 part in the administration of the laxative and did not yell at Perez. At the summary judgment stage,
6 the court accepts the nonmoving party’s version as true.)

7 Although denying that he yelled at Perez, Peffley states that he did talk to Perez in a “normal
8 tone” to try to keep him awake to expedite things. Docket No. 40-6 at 7. Peffley was trying to keep
9 Perez awake because the prison would not let Perez return with the contraband in him and they
10 “were in the emergency room. The waiting room was very crowded, and people were waiting for a
11 bed.” Id. at 7-8.

12 According to Perez, lieutenant Moore informed the officers at the hospital in the early hours
13 of August 6 that Perez would have to return to the prison because the hospital was not going to admit
14 Perez. Docket No. 36 at 38. But then Moore learned the medical staff at the prison would not allow
15 him to be returned to the prison in his current state. Id. at 35. Lieutenant Moore spoke with nurse
16 Clement, who told Perez she would administer an enema to him. Id. He objected and asked to see
17 the doctor, but nurse Clement refused to call the doctor. Id. According to Perez, ISU officers
18 Salgado and Peffley stripped off his clothes to expose his buttocks and bent him over while Clement
19 administered the enema without any lubrication. Id. According to Perez, the enema tore his anus
20 and caused it to bleed. Id. (Defendants present evidence that they did not direct the medical staff’s
21 treatment, that Perez was not happy but agreed to the laxative and enema, and that they did not
22 restrain Perez. At the summary judgment stage, the court accepts the nonmoving party’s version as
23 true.)

24 After receiving the enema, Perez started producing bowel movements at about 4:00 a.m. on
25 August 6. Within a few hours, Perez had produced several bowel movements containing a total of
26 five bindles of contraband. Docket No. 40-7 at 8. Two bindles contained methamphetamine, one
27 contained heroin, one contained marijuana, and one contained three one-hundred-dollar bills.
28 Docket No. 40-1 at 3-4 (Smith Decl.)

1 After his bowel movements produced the contraband, Perez was returned to the prison at
2 about 9:50 a.m. on August 6, where he was removed from CSW. Docket No. 40-7 at 8 (Salgado
3 Decl.).

4 As a result of the contraband incident, Perez pled no contest and was convicted of possession
5 of controlled substances in prison. Perez received a prison sentence totaling two years (i.e., one
6 year for the drug possession, doubled because he had suffered a prior conviction). Docket No. 40-
7 12 at 4.

8 9 **VENUE AND JURISDICTION**

10 Venue is proper in the Northern District of California because the events and omissions
11 giving rise to the complaint occurred in Monterey County, located in the Northern District. See 28
12 U.S.C. §§ 84, 1391(b). This court has federal question jurisdiction over this action under 42 U.S.C.
13 § 1983. See 28 U.S.C. § 1331.

14 15 **LEGAL STANDARD**

16 Summary judgment is proper where the pleadings, discovery, and affidavits show that there
17 is “no genuine dispute as to any material fact and [that] the moving party is entitled to judgment as
18 a matter of law.” Fed. R. Civ. P. 56(a). A court will grant summary judgment “against a party who
19 fails to make a showing sufficient to establish the existence of an element essential to that party’s
20 case, and on which that party will bear the burden of proof at trial . . . since a complete failure of
21 proof concerning an essential element of the nonmoving party’s case necessarily renders all other
22 facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A fact is material if it
23 might affect the outcome of the suit under governing law, and a dispute about a material fact is
24 genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving
25 party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

26 Generally, the moving party bears the initial burden of identifying those portions of the
27 record which demonstrate the absence of a genuine issue of material fact. The burden then shifts to
28 the nonmoving party to “go beyond the pleadings and by [his or her] own affidavits, or by the

1 ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing
2 that there is a genuine issue for trial.’” Celotex, 477 U.S. at 324 (citations omitted).

3 A verified complaint may be used as an opposing affidavit under Rule 56, as long as it is
4 based on personal knowledge and sets forth specific facts admissible in evidence. See Schroeder v.
5 McDonald, 55 F.3d 454, 460 & nn.10-11 (9th Cir. 1995) (treating plaintiff’s verified complaint as
6 opposing affidavit where, even though verification was not in conformity with 28 U.S.C. § 1746,
7 plaintiff stated under penalty of perjury that contents were true and correct, and allegations were not
8 based purely on his belief but on his personal knowledge). Here, Perez’s amended complaint was
9 signed under penalty of perjury so the facts therein are considered as evidence for purposes of
10 deciding the motion. See Docket No. 36-1 at 8.

11 The court’s function on a summary judgment motion is not to make credibility
12 determinations nor to weigh conflicting evidence with respect to a disputed material fact. See T.W.
13 Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir. 1987). The evidence
14 must be viewed in the light most favorable to the nonmoving party, and the inferences to be drawn
15 from the facts must be viewed in a light most favorable to the nonmoving party. Id. at 631.

17 DISCUSSION

18 A. Qualified Immunity Principles

19 The defense of qualified immunity protects “government officials . . . from liability for civil
20 damages insofar as their conduct does not violate clearly established statutory or constitutional rights
21 of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).
22 The doctrine of qualified immunity attempts to balance two important and sometimes competing
23 interests: “the need to hold public officials accountable when they exercise power irresponsibly and
24 the need to shield officials from harassment, distraction, and liability when they perform their duties
25 reasonably.” Pearson v. Callahan, 555 U.S. 223, 231 (2009). The doctrine thus intends to take into
26 account the real-world demands on officials in order to allow them to act “swiftly and firmly” in
27 situations where the rules governing their actions are often “voluminous, ambiguous, and
28 contradictory.” Mueller v. Auker, 576 F.3d 979, 993 (9th Cir. 2009) (citation omitted). “The

1 purpose of this doctrine is to recognize that holding officials liable for reasonable mistakes might
2 unnecessarily paralyze their ability to make difficult decisions in challenging situations, thus
3 disrupting the effective performance of their public duties.” Id.

4 To determine whether a government official is entitled to qualified immunity, courts must
5 consider (1) whether the official’s conduct violated a constitutional right, and (2) whether that right
6 was “clearly established” at the time of the alleged misconduct. Pearson, 555 U.S. at 232 (citing
7 Saucier v. Katz, 533 U.S. 194, 201 (2001)). Courts may “exercise their sound discretion in deciding
8 which of the two prongs of the qualified immunity analysis should be addressed first in light of the
9 circumstances in the particular case at hand.” Id. at 236.

10 “An officer cannot be said to have violated a clearly established right unless the right’s
11 contours were sufficiently definite that any reasonable official in [his] shoes would have understood
12 that he was violating it, meaning that existing precedent . . . placed the statutory or constitutional
13 question beyond debate.” City and County of San Francisco v. Sheehan, 135 S. Ct. 1765, 1774
14 (2015) (alteration and omission in original; citation omitted). This is an “exacting standard” which
15 “gives government officials breathing room to make reasonable but mistaken judgments by
16 protect[ing] all but the plainly incompetent or those who knowingly violate the law.” Id. (alteration
17 in original; internal quotation marks omitted).

18
19 **B. Defendants Are Entitled To Qualified Immunity on The Fourth Amendment Claim**

20 The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . .
21 against unreasonable searches and seizures.” U.S. Const. amend. IV. The issue here is whether the
22 manner of the search conducted at Natividad Medical Center was constitutionally impermissible.²

23
24 ² The complaint does not allege that there was not probable cause for the search. Even if
25 Perez intended to include a claim there was not probable cause, such a claim plainly fails at the
26 summary judgment stage. The undisputed evidence shows that: (1) prison officials directly
27 observed and video-recorded a mouth-to-mouth passage of an object from Perez’s girlfriend to Perez
28 during a kiss; (2) the girlfriend admitted that she had passed drugs to Perez; (3) prison officials
observed Perez taking steps to resist excreting the contraband they had seen him consume (e.g.,
minimizing food and water consumption and straining to limit his bowel movements); and (4) before
the laxatives or enema were administered, a CT-scan showed five foreign objects in Perez’s
alimentary canal. And, before the search at Natividad, prison officials had obtained a search warrant,
meaning that a judicial officer had determined that there was probable cause for the search.

1 An intrusive body search “requires ‘a more substantial justification’ than other searches.
2 George v. Edholm, 752 F.3d 1206, 1217 (9th Cir. 2014). There are three primary factors in deciding
3 the reasonableness of a body search, at least in the context of a search of an arrestee: (1) “‘the extent
4 to which the procedure may threaten the safety or health of the individual,’” (2) “‘the extent of
5 intrusion upon the individual's dignitary interests in personal privacy and bodily integrity,’” and (3)
6 “‘the community’s interest in fairly and accurately determining guilt or innocence.’” Id. at 1217
7 (quoting Winston v. Lee, 470 U.S. 753, 761-62 (1985) (rejecting state’s request for a court order
8 requiring a suspect to undergo surgery to remove a bullet from the suspect’s chest)). “The failure
9 to obtain a warrant, while not necessarily fatal to a claim of reasonableness, is also relevant.” Id.;
10 see also United States v. Fowlkes, 804 F.3d 954-61 (9th Cir. 2015) (“while visual cavity searches
11 that do not require physical entry into a prisoner’s body are generally permissible without a warrant
12 during the jail intake process, physical cavity searches generally are not”); id. at 958 (“forcible
13 removal of an unidentified item of unknown size from [suspect’s] rectum by officers without
14 medical training or a warrant violated his Fourth Amendment rights”).

15 Here, there is minimal evidence as to any danger to Perez’s health and safety from the
16 procedures performed in the hospital by medical personnel. Neither Perez nor the officers provides
17 evidence of the general risks of x-rays, CT-scans, laxatives or enemas. Perez states in his verified
18 amended complaint that it was unpleasant to be fed cup after cup of the voluminous quantity of
19 laxative prescribed for him, Docket No. 36 at 30-32, but that transient discomfort cannot reasonably
20 be viewed as a threat to his safety or health. His evidence that some defendants removed his clothes
21 to expose his buttocks (at a time when he was in mechanical restraints and could not use his hands
22 to do so himself) and held him during the administration of the enema does not show a threat to his
23 safety or health. Perez does present evidence that the particular method used by the nurse to
24 administer the enema (i.e., without lubrication) caused his anus to begin bleeding that day and
25 occasionally in the months thereafter. Id. at 35-36. This might allow a jury to find the particular
26 action of the nurse to have posed a danger to his health – although it appears speculative as to
27 whether the nurse’s activities or Perez’s activities caused the anal bleeding – but the nurse is no
28 longer a defendant in this action. Perez does not present evidence that would allow a reasonable

1 trier of fact to conclude that the correctional defendants controlled the manner in which the nurse
2 inserted the enema, and does not present any evidence that would allow a reasonable trier of fact to
3 conclude that enemas in general are dangerous to patients' safety or health.

4 The extent of the intrusion on Perez's "dignitary interests in personal privacy and bodily
5 integrity" was significant. The intrusion was considerably less, however, than the intrusion
6 described as "extreme" in *George*, 752 F.3d at 1217, where a doctor sedated an arrestee, inserted an
7 anoscope and long forceps into the arrestee's rectum to retrieve a baggie of cocaine, and inserted an
8 NG tube into the arrestee's stomach to feed a gallon of liquid laxative that triggered a complete
9 evacuation of the bowels. Unlike in *George*, there was no use of an anoscope or effort to retrieve
10 the contraband with forceps. See also *id.* at 1218-19 (collecting intrusive-search cases). *George* is
11 distinguishable also in that the intrusive search occurred without "other 'reasonable steps to mitigate
12 [the arrestee's] anxiety, discomfort, and humiliation,'" and was done to a person not yet convicted
13 of a criminal offense. *Id.* at 1281; see also *United States v. Cameron*, 538 F.2d 254, 258 (9th Cir.
14 1976) (warrantless search that consisted of digital rectal exam, laxative, and two enemas of person
15 stopped at border crossing was unreasonable under the Fourth Amendment). Those factors are not
16 present here, as reasonable steps had been taken to mitigate Perez's anxiety, discomfort, and
17 humiliation. The several days of CSW, the laxative offered to Perez at the prison, and the laxative
18 used on an earlier visit to the hospital provided him an opportunity to defecate the foreign bodies
19 without need for any intrusion at the hospital on August 6. Perez presents no evidence that he
20 wanted to, but was physically incapable of, defecating the contraband before the laxatives and
21 enema were administered on August 6. Unlike in *George*, there is evidence in this case that the
22 intrusions at the hospital occurred after Perez had taken affirmative steps to resist allowing the
23 foreign bodies to come out naturally.

24 The third factor, "'the community's interest in fairly and accurately determining guilt or
25 innocence,'" applies more easily when the person being searched is an arrestee rather than someone
26 already in prison. In *George*, the court noted that the community has a strong interest in prosecuting
27 those who are selling cocaine base, "[b]ut a jury could reasonably conclude that the baggie of
28 cocaine base could have been recovered through far less intrusive means," such as by keeping the

1 person “in the hospital, administer[ing] laxatives, and monitor[ing] his bowel movements.” George,
2 752 F.3d at 1220. This quoted passage effectively endorses all the means used to search Perez, other
3 than the enema.

4 The fact that Perez was a prisoner is another factor that must be considered in determining
5 whether the search was unreasonable. In addition to the determination of guilt or innocence that
6 applies when the person being searched is an arrestee, there is a prison security issue when the
7 person being searched is an existing prisoner. Courts have long recognized the dangers that
8 introducing contraband into a prison can pose to inmates and staff. Defendants present undisputed
9 evidence that the introduction of drugs into the prison presents not just the possibility of the inmate
10 abusing drugs, but also can lead to violence within the prison. The Supreme Court has recognized
11 the significant connection between drugs and prison violence. *Florence v. Bd. of Chosen*
12 *Freeholders*, 566 U.S. 318, 332 (2012) (“The use of drugs can embolden inmates in aggression
13 toward officers or each other; and, even apart from their use, the trade in these substances can lead
14 to violent confrontations.”).

15 Lastly and most importantly, the defendants had obtained a warrant for the search of Perez.
16 Courts repeatedly have stressed the importance of obtaining a warrant for a search. In the warrant
17 application seeking judicial approval of a search, defendant Salgado described the efforts from July
18 31 through August 4 to obtain the suspected contraband and explicitly stated what was intended for
19 Perez: Perez would be taken to a hospital and a “body cavity search will be conducted in a medically
20 approved manner by a licensed physician or other licensed medical professional. Said person(s) are
21 authorized by this court to conduct a body cavity search of the above listed person without their
22 consent. Said search does not include surgical procedures accomplished with scalpels, but is rather
23 a probing type of search.” Docket No. 40-7 at 17. That application was approved by a judicial
24 officer before the search was undertaken.

25 On the evidence in the record, defendants are entitled to qualified immunity because their
26 conduct did not violate a constitutional right. Moreover, even if there was a triable issue as to
27 whether the search at Natividad was constitutionally impermissible, defendants are entitled to
28 qualified immunity because it cannot be said “that any reasonable official in [their] shoes would

1 have understood that [they were] violating” Perez’s Fourth Amendment rights. Sheehan, 135 S. Ct.
2 at 1774. At the time Perez was given x-rays, a CT-scan, laxatives, and an enema at Natividad, a
3 search warrant had been obtained by defendants who had tried for days to obtain the contraband
4 with less intrusive means. Perez has not identified a case where a search pursuant to a warrant was
5 held unconstitutional in circumstances comparable to the bodily search done to him. Given these
6 circumstances, defendants could have believed reasonably, even if mistakenly, that the search was
7 constitutionally permissible. They therefore are entitled to judgment as a matter of law in their favor
8 on the defense of qualified immunity.

9
10 C. Heck Does Not Bar The Fourth Amendment Claim

11 Defendants urge that Perez’s Fourth Amendment claim is barred by the doctrine from Heck
12 v. Humphreys, 512 U.S. 477, 487 (1994). Heck held that a plaintiff cannot maintain a § 1983 claim
13 for damages if success on that claim necessarily would imply the invalidity of his conviction or
14 sentence, unless the conviction or sentence already has been invalidated.

15 In the Ninth Circuit, a conviction resting on a guilty plea or no-contest plea will not pose a
16 Heck bar to a Fourth Amendment claim based on the manner of a search because the “convictions
17 derive from the[] plea[], not from verdicts obtained with supposedly illegal evidence. The validity
18 of the[] conviction[] does not in any way depend upon the legality” of the challenged search. *Ove*
19 *v. Gwinn*, 264 F.3d 817, 823 (9th Cir. 2001) (Fourth Amendment claim for unreasonable blood tests
20 not Heck-barred because the evidence was not introduced when the defendants pled guilty and no-
21 contest to DUI charges); see also *Lockett v. Ericson*, 656 F.3d 892, 896-97 (9th Cir. 2011); *Roberts*
22 *v. City of Fairbanks*, 947 F.3d 1191, 1210 n.2 (9th Cir. 2020) (Ikuta, J., dissenting). Of course, even
23 when Heck does not apply, a plaintiff under a still-valid conviction would not be able to recover
24 damages for the imprisonment that flowed from conviction that was the product of an allegedly
25 unlawful search. See Heck, 512 U.S. at 487 n.7 (“the § 1983 plaintiff must prove not only that the
26 search was unlawful, but that it caused him actual, compensable injury, see *Memphis Community*
27 *School Dist. v. Stachura*, 477 U.S. 299, 308 (1986), which, we hold today, does not encompass the
28 ‘injury’ of being convicted and imprisoned (until his conviction has been overturned”).

1 The Heck rule does not apply in this case because Perez's conviction for possession of
2 controlled substances rests on a no-contest plea rather than a determination of guilt following a trial.
3 Defendants do not show that the drugs Perez possessed were introduced when he pled no-contest.
4 See *Ove*, 264 F.3d at 823. Defendants' Heck argument fails.

5
6 D. Eighth Amendment Claim

7 The doctrine of qualified immunity proves pivotal for the Eighth Amendment claim just as
8 it did for the Fourth Amendment claim. As explained below, an examination of the Ninth Circuit
9 cases that mark the way for the analysis of the Eighth Amendment claim reveals that the existence
10 of a legitimate penological purpose for continuous lighting either negates, or at least casts doubt on
11 whether there is, an Eighth Amendment problem. This lack of clarity about the legal relevance of
12 a legitimate penological purpose leads the court to conclude that defendants are entitled to qualified
13 immunity.

14
15 1. Continuous Illumination And The Eighth Amendment

16 The Constitution does not mandate comfortable prisons, nor does it permit inhumane ones.
17 See *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The treatment a prisoner receives in prison and
18 the conditions under which he is confined are subject to scrutiny under the Eighth Amendment. See
19 *Helling v. McKinney*, 509 U.S. 25, 31 (1993). The Eighth Amendment imposes duties on prison
20 officials to provide prisoners with the basic necessities of life, such as food, clothing, shelter,
21 sanitation, medical care, and personal safety. See *Farmer*, 511 U.S. at 832. A plaintiff alleging that
22 conditions of confinement amount to cruel and unusual punishment prohibited by the Eighth
23 Amendment must satisfy a two-prong test. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). First, a
24 plaintiff must satisfy an objective test showing that "he is incarcerated under conditions posing a
25 substantial risk of serious harm." *Farmer*, 511 U.S. at 834. In determining whether a deprivation
26 of a basic necessity is sufficiently serious to satisfy the objective component of an Eighth
27 Amendment claim, courts consider the circumstances, nature, and duration of the deprivation. See
28 *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). Second, the plaintiff must show that the prison

1 official inflicted the deprivation with a “sufficiently culpable state of mind,” that is, with “deliberate
2 indifference” to his health or safety. *Farmer*, 511 U.S. at 834. The deliberate indifference standard
3 requires that the official know of and disregard an excessive risk to inmate health or safety. See *id.*
4 at 837. The official must both be aware of facts from which the inference could be drawn that a
5 substantial risk of serious harm exists, and he must also draw the inference. See *id.*

6 “Adequate lighting is one of the fundamental attributes of “adequate shelter” required by
7 the Eighth Amendment. Moreover, there is no legitimate penological justification for requiring
8 inmates to suffer physical and psychological harm by living in constant illumination.” *Grenning*
9 *v. Miller-Stout*, 739 F.3d 1235, 1238 (9th Cir. 2014) (quoting *Keenan v. Hall*, 83 F.3d 1083, 1090
10 (9th Cir. 1996) (triable issues existed on the Eighth Amendment claim based on Keenan’s evidence
11 that the continuous illumination of his disciplinary segregation cell for six months had caused grave
12 sleeping problems as well as other mental and physical problems)). Continuous lighting of a
13 prisoner’s cell “can satisfy the objective part” of the Eighth Amendment test. *Id.*

14 In *Grenning*, the court determined that there were triable issues on the subjective part of the
15 Eighth Amendment test. *Grenning* was placed in segregated housing for about 13 days during an
16 investigation into a fight in which he was involved. *Id.* at 1237. In the segregated housing unit, the
17 cells were illuminated 24 hours a day. *Id.* *Grenning* presented evidence that the light was so bright
18 he could not sleep even with a covering over his eyes and that the lighting caused recurring
19 migraines as well as other pain and disorientation. *Id.* at 1238. *Grenning* submitted a grievance
20 informing prison officials that he could not sleep and had headaches as a result of the continuous
21 lighting. *Id.* Prison officials offered general security concerns as justification for the constant
22 illumination, such as the need to assess “the baseline behavior” of inmates who were considered
23 high risk to staff, other offenders, and themselves (even though some inmates were in the unit for
24 protection against other inmates); the need for guards to do welfare checks every 30 minutes with
25 minimal disruption to inmates; and the need for guards to be able to approach and look into cells
26 without advanced warning. *Id.* at 1237. Of interest here is the Ninth Circuit’s observation that
27 “[t]he precise role of legitimate penological interests is not entirely clear in the context of an Eighth
28 Amendment challenge to conditions of confinement.” *Id.* at 1240. The Ninth Circuit pointed out
that the Supreme Court had written that the test of *Turner v. Safley*, 482 U.S. 78 (1987), “which

1 requires only a reasonable relationship to a legitimate penological interest to justify prison
2 regulations, does not apply to Eighth Amendment claims,” yet also had looked at the existence of a
3 legitimate penological justification “in considering whether adverse treatment is sufficiently
4 gratuitous to constitute punishment for Eighth Amendment purposes.” *Grenning*, 739 F.3d at 1240
5 (citations omitted). In both *Chappell v. Mandeville*, 706 F.3d 1052 (9th Cir. 2013), and *Keenan*, 83
6 F.3d at 1090, the Ninth Circuit had “referred to possible legitimate penological interests when
7 considering allegations that continuous lighting violated the Eighth Amendment.” *Grenning*, 739
8 F.3d at 1240. The *Grenning* court ultimately did not decide whether legitimate penological interests
9 could defeat an otherwise valid Eighth Amendment claim because the defendants in that case had
10 not made such a showing with regard to the constant illumination of *Grenning*’s cell. *Id.* at 1240-
11 41.

12 The other significant case from the Ninth Circuit is *Chappell v. Mandeville*, 706 F.3d 1052
13 (9th Cir. 2013), in which the court determined that prison officials were entitled to qualified
14 immunity against an Eighth Amendment claim based on a contraband watch program very similar
15 to that used on *Perez*. *Chappell* was put on contraband watch a day after his girlfriend visited him
16 and left a hairpiece in the trashcan that tested positive for cocaine residue. *Id.* at 1054. Prison
17 officials searched *Chappell*’s cell, found methamphetamine, and placed him on a contraband watch
18 that lasted for seven days, using a procedure that (like *Perez*’s CSW) involved temporary
19 confinement in highly restrictive conditions that included searching his bowel movements for
20 contraband. See *id.* at 1055-56. The cell was continuously illuminated. *Id.* The court stated that
21 *Keenan* “did not clearly establish” that the continuous lighting in *Chappell*’s contraband-watch cell
22 was unconstitutional because *Chappell* was only in the cell for seven days and did not claim that he
23 was sleep deprived, whereas the inmate in *Keenan* claimed sleep deprivation over a period of six
24 months. *Id.* at 1057-58. Moreover, unlike *Keenan*, a “clear penological purpose” for the constant
25 illumination was offered by the defendants in *Chappell*: prison officials “suspected that *Chappell*
26 had secreted contraband in his body and kept the lights on so that they could monitor *Chappell* 24
27 hours a day to prevent him from disposing of the contraband.” *Id.* at 1058. The court also noted
28 that other cases provided no more clear guidance to defendants because the continuous-lighting
claims were very fact-specific and had mixed results, with a “large majority of the courts . . .

1 conclud[ing] that there was no Eighth Amendment violation.” Id. at 1058-59 (collecting cases).
2 The court determined that the defendants were entitled to qualified immunity because, at the time
3 the contraband watch took place in 2002, no court had ruled on whether a contraband watch
4 constitutes a legitimate penological purpose that would justify continuous illumination of an
5 inmate’s cell. Id. at 1059.

6 The law has not become any clearer since *Grenning* and *Chappell* on the constitutionality of
7 continuous illumination of a cell during contraband watch. Nor has it become clearer how the
8 existence of a legitimate penological purpose for officials’ actions affects an Eighth Amendment
9 claim in general. In fact, the most recent case on the matter determined that the absence of a
10 legitimate penological purpose for the actions was a necessary part of an Eighth Amendment claim.
11 See *Bearchild v. Cobban*, 947 F.3d 1130, 1144 (9th Cir. 2020) (holding that an Eighth Amendment
12 violation is established when prisoner “proves that a prison staff member, acting under color of law
13 and without legitimate penological justification, touched the prisoner in a sexual manner or
14 otherwise engaged in sexual conduct for the staff member’s own sexual gratification, or for the
15 purpose of humiliating, degrading, or demeaning the prisoner”) (emphasis added).

16 2. The Continuous Illumination Experienced By Perez

17 Turning now to Perez’s case, it is undisputed that (1) the lights were on continuously during
18 Perez’s 6-day stay in the CSW cell; (2) Perez did not complain to defendants about the lighting; (3)
19 Perez was in the CSW cell to be monitored after he was observed receiving contraband from his
20 girlfriend during a visit; (4) the lights remained on so that correctional staff could maintain
21 continuous visual monitoring of Perez to see if he attempted to hide or dispose of the contraband
22 that he was believed to have swallowed; and (5) continuous illumination allows staff to see a medical
23 emergency more quickly.

24 Perez fails to show a triable issue in support of his claim that the continuous lighting of the
25 CSW cell violated his Eighth Amendment rights. The lighting in Perez’s cell was the same
26 continuous lighting that existed in the contraband watch cell in *Chappell*, and prison officials offered
27 the same penological purpose for the continuous lighting in both cases: they needed to continuously
28 watch the inmate to be sure that he did not hide or dispose of the contraband they suspected he had

1 on or in his person. As the court noted in Chappell, most courts have concluded there is no Eighth
2 Amendment violation when continuous lighting is necessary for monitoring of the prisoner. 706
3 F.3d at 1059. Viewing the evidence in the light most favorable to Perez, there was not an Eighth
4 Amendment violation, given the need for continuous monitoring of the inmate who was suspected
5 of consuming contraband immediately before the CSW procedure was implemented. Although the
6 suspicion that an inmate has ingested contraband may be weak in some cases, that was not the
7 situation here. Prison officials were on very firm footing with their suspicion because Perez had
8 been directly observed receiving the contraband in his mouth, his receipt of contraband was captured
9 on a video-recording, and his meth-carrying girlfriend had admitted she passed the contraband
10 capsule to him. No reasonable jury could conclude that the continuous lighting used to monitor
11 Perez during the CSW violated Perez's Eighth Amendment rights.

12 Defendants prevail on the first prong of the Saucier test because there was not a violation of
13 Perez's Eighth Amendment right to be free from cruel and unusual punishment. See Saucier, 533
14 U.S. at 201 (threshold question in qualified immunity analysis is: "Taken in the light most favorable
15 to the party asserting the injury, do the facts alleged show the officer's conduct violated a
16 constitutional right?"). Even assuming, arguendo, that there was an Eighth Amendment violation,
17 defendants prevail on the second prong of the qualified immunity test because there was no clearly
18 established law controlling the specific facts of this case.

19 "An officer 'cannot be said to have violated a clearly established right unless the right's
20 contours were sufficiently definite that any reasonable official in [his] shoes would have understood
21 that he was violating it,' meaning that 'existing precedent . . . placed the statutory or constitutional
22 question beyond debate.'" Sheehan, 135 S. Ct. at 1774 (alteration and omission in original; citation
23 omitted); see, e.g., Carroll v. Carman, 574 U.S. 13, 16–18 (2014) (law not clearly established
24 whether officer may conduct a "knock and talk" at any entrance to a home that is open to visitors,
25 rather than only at the front door); Hines v. Youseff, 914 F.3d 1218, 1229 (9th Cir. 2019) (defendants
26 entitled to qualified immunity where "the specific right that the inmates claim in these cases—the
27 right to be free from heightened exposure to Valley Fever spores—was not clearly established at the
28 time"); Horton v. City of Santa Maria, 915 F.3d 592, 601–02 (9th Cir. 2019) (officer entitled to

1 qualified immunity on failure-to-protect claim from pretrial detainee who had attempted to hang
2 himself because there was conflicting information as to whether he was suicidal and the case law
3 “was simply too sparse, and involved circumstances too distinct from those in this case, to establish
4 that a reasonable officer would perceive a substantial risk that [detainee] would imminently attempt
5 suicide”). The Supreme Court “has repeatedly told courts—and the Ninth Circuit in particular—
6 not to define clearly established law at a high level of generality.” *Kisela v. Hughes*, 138 S. Ct.
7 1148, 1152 (2018) (per curiam) (officer entitled to qualified immunity for shooting a woman who
8 was armed with a large knife, was ignoring officers’ orders to drop the weapon, and was within
9 striking distance of her housemate; prior cases on excessive force did not clearly establish that it
10 was unlawful to use force under these circumstances, where officer may not have been in apparent
11 danger but believed woman was a threat to her housemate).

12 Here, Keenan, Chappell, and Grenning did not clearly establish a constitutional right to
13 avoid constant lighting while on CSW. It would not have been clear to a reasonable official in
14 defendants’ positions that they could not leave the lights on 24 hours a day to monitor an inmate on
15 CSW. The CSW is limited in length – normally 72 hours, with the possibility of extension – and is
16 done for a very specific purpose. Unlike the usual disciplinary housing or segregated housing
17 situation, the CSW stay ends in a matter of hours or days rather than weeks or months due to basic
18 human biology. Given the limited timeframe of CSW, plus the need to maintain constant visual
19 surveillance to be sure the inmate does not hide or dispose of the contraband he is suspected of
20 concealing, a reasonable officer in defendants’ positions could have thought it lawful to leave the
21 lights on continuously during Perez’s CSW.

22 The facts are nearly identical to those in Chappell, where the court did not find an Eighth
23 Amendment violation, so that case did not provide notice to defendants that their conduct was
24 unlawful. Perez identifies no case that has clarified the law on his fact pattern since the time that
25 Chappell was decided. Grenning did not overrule Chappell; instead, Grenning noted that it was
26 unclear whether a legitimate penological purpose would justify an otherwise unconstitutional
27 condition of confinement. Therefore, even if a constitutional violation did occur, defendants are
28 entitled to qualified immunity on the Eighth Amendment claim because it would not have been clear

1 to them that their actions were unlawful.

2

3

CONCLUSION

4

5

Defendants' motion for summary judgment is GRANTED. Docket No. 40. Defendants are entitled to judgment as a matter of law on plaintiff's claims. The clerk shall close the file.

6

IT IS SO ORDERED.

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Dated: May 29, 2020

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SUSAN ILLSTON
United States District Judge

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United States District Court
Northern District of California