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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GORDON BULLOCK,	)	No. EDCV 17-1297-PA (AS)
	)	
Plaintiff,	)	<b>ORDER DISMISSING COMPLAINT</b>
v.	)	
	)	<b>WITH LEAVE TO AMEND</b>
NAFEESAH TILLMAN, Probation	)	
Supervisor, et al.,	)	
	)	
Defendants.	)	

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INTRODUCTION

On June 28, 2017, Gordon Bullock ("Plaintiff"), a California state prisoner proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. ("Compl.," Docket Entry No. 1). The Complaint names the following seven Defendants: (1) Nafeesah Tillman, a probation supervisor at the Riverside County Probation Department ("RCPD"); (2) Aneka Amezcua, who works in the "Restitution Service Unit" at the RCPD; (3) "City of Riverside, on behalf of Judge Becky Duggins (sueing City of Riverside)"; (4) the Riverside County Sheriff's Department; (5) the Sacramento County Sheriff's Department; (6) "alleged victim" Brian Kinman; and (7) Mark A. Hake, the Chief

1 Probation Officer at the RCPD. (Id. at 3-4 (continuous pagination  
2 used throughout this Order)). Plaintiff names Kinman in his  
3 individual capacity only and names all other Defendants in their  
4 official and individual capacities. (Id.).

5  
6 The Court has screened the Complaint as prescribed by 28 U.S.C.  
7 § 1915A and 42 U.S.C. § 1997e. For the reasons discussed below, the  
8 Court DISMISSES Plaintiff's Complaint WITH LEAVE TO AMEND.<sup>1</sup>

9  
10 **FACTUAL BACKGROUND AND PLAINTIFF'S ALLEGATIONS<sup>2</sup>**

11  
12 On March 29, 2016 at 6:45 A.M., the "dorm C.O." in Plaintiff's  
13 housing unit instructed Plaintiff to "get ready" because "Riverside  
14 sheriffs" had arrived to take Plaintiff to court. (Compl. at 5).  
15 Plaintiff said that his case was "over" but, after being instructed  
16 again to "get ready," Plaintiff went to the "chow hall," where he did  
17 not eat breakfast but received a boxed lunch. (Id.). Plaintiff  
18 returned to his housing unit but was then "rushed . . . out" to the  
19 Receiving and Release Department and was not permitted to pack  
20 property, including medication for a heart condition. (Id.).

21  
22  
23 <sup>1</sup> Magistrate judges may dismiss a complaint with leave to  
24 amend without approval from a district judge. McKeever v. Block, 932  
F.2d 795, 798 (9th Cir. 1991).

25 <sup>2</sup> The Court's description of this case's factual background  
26 and Plaintiff's allegations is drawn from the Complaint itself. In  
27 any First Amended Complaint, Plaintiff may further clarify the nature  
28 of his allegations and, if necessary, correct any inaccuracies in  
this description.

1 About an hour later, two sergeants brought Plaintiff to the  
2 "Riverside sheriffs." (Id. at 6). Plaintiff told the "sheriffs"  
3 that he had no "case" and had not been served with any "papers," but  
4 Plaintiff was told that "they just want[ed] [him] in court." (Id.).  
5 Plaintiff objected that he did not have his medication and had not  
6 eaten, but one of the "sheriffs" told Plaintiff that they would be at  
7 "Riverside Court" in about an hour and that Plaintiff should not  
8 "worry." (Id.).  
9

10 About an hour into the trip, the "sheriffs" stopped and bought  
11 food and drinks. (Id.). They did not permit Plaintiff to eat or  
12 drink during the trip, which lasted five or six hours and eventually  
13 ended at the Sacramento County Detention Center. (Id. at 6-7).  
14 Plaintiff also thought that the "sheriffs" might be planning to kill  
15 him because they did not permit him to eat or drink or bring his  
16 medication, they were driving in the "opposite direction" from the  
17 "Riverside Court," and Plaintiff had not been served with any papers  
18 related to his court appearance. (Id. at 6). Plaintiff's anxiety  
19 began to cause him to have chest pain, but the "sheriffs" did nothing  
20 to assist Plaintiff after being told about his chest pain. (Id.).  
21 One "sheriff" repeatedly said that the van would arrive at "Riverside  
22 Court" in about twenty minutes. (Id.).  
23

24 Upon arriving at the Sacramento County Jail, Plaintiff told a  
25 nurse that he was having chest pains and did not have his medication,  
26 but Plaintiff "was just put back in [the] tank." (Id. at 7). At  
27 2:00 P.M. he told an officer that he had not eaten all day, and the  
28 officer replied that Plaintiff "wouldn't [want] one of those nasty

1 sandwiches" and returned Plaintiff to the "tank," where he "was  
2 forced to drink water from a filthy moldy sink." (Id.). Plaintiff  
3 was fed "a little food on a dirty tray about 2 and something later."  
4 (Id.). Two hours later, he was taken to the "hole," where he  
5 received only a thin blanket and no sheets. (Id.).  
6

7 Plaintiff filed a grievance because he was not fed, was placed  
8 in the "hole" for nondisciplinary reasons, did not receive his  
9 medication, and did not receive sheets or enough blankets to stay  
10 warm. (Id.). On March 30, 2016, Plaintiff was denied a shower; when  
11 he asked why, the officer who had refused to release Plaintiff said  
12 "fuck you and your grievance." (Id. at 8). The officer also said  
13 "fuck you" when Plaintiff requested another grievance form. (Id.).  
14 Plaintiff began experiencing chest pains and told the officer so; the  
15 officer, with whom Plaintiff was communicating through a speaker in  
16 the wall, said "fucking nigger" and turned off the speaker. (Id.).  
17 Plaintiff twice attempted to "call back," but the officer refused to  
18 speak with Plaintiff any further. (Id.).  
19

20 On April 1, 2016, the "Riverside sheriffs" again picked up  
21 Plaintiff to take him to Riverside County Jail. (Id.). Plaintiff  
22 appears to contend that he should not have been taken to Riverside  
23 County Jail because he suffers from Valley Fever<sup>3</sup> and should not be  
24 taken "anyplace where it a risk for Valley Fever." (Id.). During  
25 the journey, the "sheriffs" picked up an inmate at Avenal State  
26

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27 <sup>3</sup> Coccidioidomycosis, commonly known as "Valley Fever," is an  
28 infection caused by inhaling the spores of the fungus *Coccidioides*,  
which is endemic to the soil throughout the southwestern United  
States. See Nawabi v. Cates, 2015 WL 5915269 at \*1 (E.D. Cal. 2015).

1 Prison. (Id. at 9). When the "sheriffs" told Plaintiff that they  
2 were going to Avenal State Prison, Plaintiff said that his Valley  
3 Fever prevented him from going there, but the "sheriffs" said that  
4 they would only be there "a few minutes" and went anyway. (Id.). It  
5 was "real windy" at Avenal State Prison and the van's windows were  
6 partially open, causing Plaintiff to breathe in "a lot of dust" and  
7 start coughing. (Id.). A few hours later, Plaintiff began  
8 "f[ee]ling sick and having pains"; a few hours after that, Plaintiff  
9 arrived at Riverside County Jail. (Id.).

10  
11 Upon arriving at Riverside County Jail, Plaintiff was put in the  
12 "holding tank" for four more hours even after telling officers that  
13 he was having chest pains. (Id.). Plaintiff was moved to another  
14 holding cell at 10:00 P.M.: at that time, he was "sick since [he]  
15 left Avenal" and hungry because all he had eaten that day was a  
16 sandwich, milk, and fruit at 3:00 A.M. (See id.). Plaintiff told a  
17 "Riverside sheriff" named Richardson that he needed medical  
18 assistance and to lie down; Richardson said "I don't care" and told  
19 Plaintiff to "sit [his] ass down in a fuckin' corner." (Id.).  
20 Plaintiff asked Richardson for a grievance form and Richardson said  
21 "hell no, fuck you." (Id.). Plaintiff told Richardson that  
22 Plaintiff would sue him. (Id.).

23  
24 Plaintiff was later called before a "Corporal Harris," who told  
25 Plaintiff that he was being written up for threatening to kill  
26 Richardson. (Id. at 10). Plaintiff told Harris that Richardson was  
27 lying. (Id.). Harris told Plaintiff that she had a videotape of  
28 Plaintiff's threat but refused to show Plaintiff the tape. (Id.).

1 Plaintiff returned to his cell and started having chest pains.  
2 (Id.). Plaintiff pressed a button on the wall to request help, but  
3 Harris, who was "in the bubble," said "no" and turned off the  
4 speaker. (Id.). After "over [five] minutes," an officer permitted  
5 Plaintiff to go to the nurse's station. (Id.). At the nurse's  
6 station, Plaintiff's blood pressure was high and a nurse wanted to  
7 send Plaintiff to an outside hospital, but "the doctor she called"  
8 refused. (Id.). Plaintiff's blood pressure eventually went down and  
9 his chest pains "almost" stopped." (Id.).  
10

11 On April 4, 2016, Plaintiff appeared in court before Judge  
12 Duggins, who told Plaintiff that he was there for "restitution."  
13 (Id.). Plaintiff said that he was not ordered to pay restitution and  
14 also argued that Judge Duggins had "intentionally" picked him up a  
15 week before; drove him "300 and something miles the opposite  
16 direction"; deprived him of medication, food, and sleep; and put him  
17 in the "hole" so that Plaintiff would "plead guilty" to "whatever  
18 this is." (Id.). Judge Duggins laughed, said "I'll send you back,"  
19 and ordered Plaintiff to pay \$845 in restitution. (Id.).  
20

21 Plaintiff replied that the judge at a preliminary hearing had  
22 said that the car for which restitution was sought was worth less  
23 than four hundred dollars and had "dents all over it." (Id. at 11).  
24 Plaintiff contended that he had not been ordered to pay restitution  
25 because the car "wasn't worth much" and Kinman, the "alleged victim,"  
26 wanted almost one thousand dollars "for an alleged thrown bottle."  
27 (See id. (spelling altered)). Plaintiff also requested a receipt or  
28 repair estimate; Judge Duggins did not provide one and did not "give

1 [Plaintiff] a hearing." (Id.). Plaintiff contends that his 2011  
2 plea agreement is "blank" regarding restitution. (Id.).  
3

4 While Plaintiff was waiting to be returned to his prison  
5 following his appearance before Judge Duggins, some papers were put  
6 under his door; among the papers was a recommendation signed by  
7 Tillman and Amezcua and "submitted" by Hake recommending that  
8 Plaintiff pay restitution in the amount of \$845.87. (Id.).  
9

10 Plaintiff contends that his plea agreement is "blank" regarding  
11 restitution, he was not given any "paperwork" until 2016, and he was  
12 not given a repair estimate substantiating the amount necessary to  
13 cover repairs to the car. (See id.). Plaintiff also argues that  
14 during his journey he was deprived of food, water, medication, and a  
15 shower; retaliated against for filing a grievance; and taken to a  
16 place that aggravated his Valley Fever. (Id. at 11-12). Plaintiff  
17 alleges violations of his First, Eighth, and Fourteenth Amendment  
18 rights and seeks compensatory and punitive damages. (Id. at 12).  
19

#### 20 **STANDARD OF REVIEW**

21  
22 Congress mandates that district courts initially screen civil  
23 complaints filed by prisoners seeking redress from a governmental  
24 entity or employee. 28 U.S.C. § 1915A. A court may dismiss such a  
25 complaint, or any portion thereof, before service of process, if the  
26 court concludes that the complaint (1) is frivolous or malicious;  
27 (2) fails to state a claim upon which relief may be granted; or  
28 (3) seeks monetary relief from a defendant who is immune from such

1 relief. 28 U.S.C. § 1915A(b)(1)-(2); see also Lopez v. Smith,  
2 203 F.3d 1122, 1126-27 & n.7 (9th Cir. 2000) (en banc).

3  
4 Dismissal for failure to state a claim is appropriate if a  
5 complaint fails to proffer "enough facts to state a claim for relief  
6 that is plausible on its face." Bell Atl. Corp. v. Twombly,  
7 550 U.S. 544, 570 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678  
8 (2009). "A claim has facial plausibility when the plaintiff pleads  
9 factual content that allows the court to draw the reasonable  
10 inference that the defendant is liable for the misconduct alleged."  
11 Iqbal, 556 U.S. at 678; see also Hartmann v. Cal. Dep't of Corr.  
12 & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013). A plaintiff must  
13 provide "more than labels and conclusions" or a "formulaic recitation  
14 of the elements" of his claim. Twombly, 550 U.S. at 555; Iqbal,  
15 556 U.S. at 678. However, "[s]pecific facts are not necessary; the  
16 [complaint] need only 'give the defendant fair notice of what the  
17 . . . claim is and the grounds upon which it rests.'" Erickson v.  
18 Pardus, 551 U.S. 89, 93 (2007) (per curiam) (quoting Twombly,  
19 550 U.S. at 555).

20  
21 In considering whether to dismiss a complaint, a court is  
22 generally limited to the pleadings and must construe all "factual  
23 allegations set forth in the complaint . . . as true and . . . in the  
24 light most favorable" to the plaintiff. Lee v. City of L.A.,  
25 250 F.3d 668, 688 (9th Cir. 2001). Moreover, pro se pleadings are  
26 "to be liberally construed" and held to a less stringent standard  
27 than those drafted by a lawyer. Erickson, 551 U.S. at 94; see also  
28 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("Iqbal



1 incorporated the Twombly pleading standard and Twombly did not alter  
2 courts' treatment of pro se filings; accordingly, we continue to  
3 construe pro se filings liberally when evaluating them under  
4 Iqbal."). Nevertheless, dismissal for failure to state a claim can  
5 be warranted based on either the lack of a cognizable legal theory or  
6 the absence of factual support for a cognizable legal theory.  
7 Mendondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.  
8 2008). A complaint may also be dismissed for failure to state a  
9 claim if it discloses some fact or complete defense that will  
10 necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221,  
11 1228-29 (9th Cir. 1984).

#### 12 13 DISCUSSION

14  
15 The Complaint contains deficiencies warranting dismissal, but  
16 leave to amend will be granted to permit Plaintiff to correct these  
17 deficiencies. See 28 U.S.C. § 1915A(b)(1).  
18

#### 19 **A. Plaintiff Fails To State A Claim Against Any Municipality**

20  
21 Plaintiff names as Defendants the City of Riverside,<sup>4</sup> the  
22 Riverside County Sheriff's Department, and the Sacramento County  
23 Sheriff's Department. (Compl. at 3-4).

24  
25 <sup>4</sup> The Court assumes that Plaintiff intends to name the City  
26 of Riverside by naming "City of Riverside, on behalf of Judge Becky  
27 Duggins (sueing City of Riverside)." (Compl. at 3). The Court  
28 observes that any claims against Judge Duggins for money damages  
related to her conduct as a judicial officer would likely be barred  
by judicial immunity. Ashelman v. Pope, 793 F.2d 1072, 1075 (9th  
Cir. 1986) (en banc). However, the likely immunity of Judge Duggins

1 Preliminarily, a department, agency or unit of a local  
2 government is generally an improper defendant. See Hervey v. Estes,  
3 65 F.3d 784, 791-92 (9th Cir. 1995) (police narcotics task force not  
4 a "person" or entity subject to suit under § 1983). Plaintiff's  
5 claims against the Riverside County Sheriff's Department and the  
6 Sacramento County Sheriff's Department are therefore dismissed with  
7 leave to amend. In any First Amended Complaint, Plaintiff may name  
8 the County of Riverside or the County of Sacramento as a Defendant if  
9 he wishes to continue to pursue claims against these entities or  
10 their departments or agencies.

11  
12 However, even construing Plaintiff's municipal liability claims  
13 as brought against the City of Riverside, the County of Riverside,  
14 and the County of Sacramento, Plaintiff's allegations are inadequate.  
15 A municipality is liable under § 1983 only for constitutional  
16 violations occurring as the result of an official government policy  
17 or custom. Collins v. City of Harker Heights, Tex., 503 U.S. 115,  
18 121 (1992). To prove municipal liability under § 1983, Plaintiff  
19 must show both a deprivation of a constitutional right and a  
20 departmental policy, custom, or practice that was the "moving force"  
21 behind the constitutional violation. Villegas v. Gilroy Garlic  
22 Festival Ass'n, 541 F.3d 950, 957 (9th Cir. 2008). There must be a  
23 "direct causal link between a municipal policy or custom and the  
24 alleged constitutional deprivation." Id. Proof of a single incident  
25 of unconstitutional activity, or even a series of "isolated or  
26 does not necessarily bar a suit against her municipal employer. See  
27 Kentucky v. Graham, 473 U.S. 159, 166-67 (1985) (suit against public  
28 official's employer is not barred by immunity defenses personal to  
the official).

1 sporadic incidents," will not give rise to liability under § 1983.  
2 Gant v. Cnty. of Los Angeles, 772 F.3d 608, 618 (9th Cir. 2014).  
3 Rather, liability must be "founded upon practices of sufficient  
4 duration, frequency and consistency that the conduct has become a  
5 traditional method of carrying out policy." Trevino v. Gates, 99  
6 F.3d 911, 918 (9th Cir. 1996).

7  
8 At most, Plaintiff's Complaint alleges against each municipal  
9 Defendant a single incident of unconstitutional activity or a series  
10 of isolated and sporadic incidents over the course of a few hours or  
11 days. Plaintiff does not allege that these deprivations were carried  
12 out pursuant to municipal policies, customs, or practices.  
13 Plaintiff's allegations are therefore insufficient to establish  
14 municipal liability, and these claims must be dismissed with leave to  
15 amend.<sup>5</sup> Gant, 772 F.3d at 618.

16  
17 **B. Defendant Kinman Was Not Acting "Under Color Of State Law"**

18  
19 Plaintiff claims that Brian Kinman, the "alleged victim" to whom  
20 restitution was ordered, "knowingly went and got a fake estimate and  
21 presented [it] to [the] probation department" and "conspired with"  
22 the RCPD and Judge Duggins to "embezzle" money from Plaintiff.  
23 (Compl. at 4, 12 (spelling altered)).

24  
25 <sup>5</sup> Plaintiff is also advised that "individual" and "official"  
26 capacity clarify the role in which a government official is sued:  
27 claims against a city or county are necessarily "official capacity"  
28 claims. See Kentucky, 473 U.S. at 165-66 ("Official-capacity suits .  
. . . generally represent only another way of pleading an action  
against an entity of which an officer is an agent." (internal  
quotation marks omitted)).

1 In order to obtain relief under § 1983, a plaintiff must show  
2 that: "(1) [an] action occurred 'under color of state law' and  
3 (2) the action resulted in the deprivation of a constitutional right  
4 or federal statutory right." See Jones v. Williams, 297 F.3d 930,  
5 934 (9th Cir. 2002). Conspiracy itself is not a constitutional tort  
6 under § 1983, but it is often alleged to "draw in private parties who  
7 would otherwise not be susceptible to a § 1983 action because of the  
8 state action doctrine." Lacey v. Maricopa County, 693 F.3d 896, 935  
9 (9th Cir. 2012) (en banc).

10  
11 Plaintiff's conspiracy claims against Kinman are vague and  
12 entirely conclusory, and Plaintiff's allegations are insufficient to  
13 implicate Kinman in a conspiracy to violate his civil rights. See  
14 Lacey, 693 F.3d at 937 ("conclusory conspiracy allegations" were  
15 insufficient to implicate defendant in conspiracy to violate civil  
16 rights). Therefore, Plaintiff has not plausibly pled that Kinman  
17 acted "under color of state law" as required to state a § 1983 claim  
18 against him. Plaintiff's claims against Kinman are therefore  
19 dismissed with leave to amend.

20  
21 **C. The Probation Officer Defendants Are Likely Entitled To Immunity**

22  
23 Plaintiff names as Defendants Mark A. Hake, Nafeesah Tillman,  
24 and Aneka Amezcua, all of whom work at the RCPD and appear to have  
25 been involved in preparing a "Memorandum" determining the amount of  
26 restitution that Plaintiff should pay. (Compl. at 3-4, 14-15).

1 State judges are entitled to absolute immunity for their  
2 judicial acts. Swift v. California, 384 F.3d 1184, 1188 (9th Cir.  
3 2004). Judicial immunity may be extended to other officials if their  
4 "judgments are functionally comparable to those of judges - that is,  
5 because they, too, exercise a discretionary judgment as part of their  
6 function." Id. (alterations and internal quotation marks omitted).  
7 Probation officers preparing reports for the use of state courts may  
8 possess judicial immunity for acts performed within the scope of  
9 their official duties. See Demoran v. Witt, 781 F.2d 155, 157-158  
10 (9th Cir. 1986). For example, probation officers receive judicial  
11 immunity for their role in preparing presentence reports because, in  
12 preparing these reports, probation officers act as "an arm of the  
13 sentencing judge;" engage in "impartial fact-gathering for the  
14 sentencing judge", the results of which can be considered in  
15 aggravation or mitigation of a punishment; and serve a function  
16 "integral to the independent judicial process." See id.

17  
18 Here, the report prepared by the Defendants associated with the  
19 RCPD indicates that it was prepared upon a November 2011 court order  
20 to "determine Victim Restitution" and was prepared using a police  
21 report and information provided by Kinman. (Compl. at 15). Judge  
22 Duggins reviewed the report and imposed the amount of restitution  
23 recommended. (See id. at 10). Although Plaintiff is correct that  
24 the amount of restitution is blank on his plea agreement, the same  
25 provision of the plea agreement agrees that Plaintiff will pay  
26 restitution if the victim suffered economic harm and that, if the  
27 parties do not agree on a restitution amount, the probation  
28 department will determine the appropriate amount. (Id. at 16).

1           Therefore, it appears that the Defendant probation officers were  
2 acting at the direction of the sentencing court in preparing the  
3 report, as contemplated in Plaintiff's plea agreement, and serving a  
4 function "integral to the independent judicial process." See  
5 Demoran, 781 F.2d at 157-158. Accordingly, the Defendant probation  
6 officers are likely entitled to judicial immunity for their role in  
7 investigating and recommending a particular amount of restitution.  
8 Plaintiff's claims against these Defendants should therefore be  
9 dismissed with leave to amend. In any First Amended Complaint,  
10 Plaintiff should omit allegations against these Defendants or include  
11 allegations plausibly showing that immunity does not apply.

12  
13 **D. Plaintiff's "Conditions Of Confinement" Claims Are Inadequately**  
14 **Pled**

15  
16           Plaintiff appears to allege that he received inadequate food and  
17 water while being driven to and from Sacramento, was deprived of a  
18 shower on March 30, 2016, and possibly that he spent a night without  
19 enough blankets to keep warm.<sup>6</sup> (Compl. at 5-10, 12).

20  
21           The Eighth Amendment's prohibition against cruel and unusual  
22 punishment protects prisoners from inhumane conditions of  
23 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
24 2006) (citing Farmer v. Brennan, 511 U.S. 825, 832 (1994)). Prison  
25 officials therefore have a "duty to ensure that prisoners are

---

26           <sup>6</sup> It is unclear whether Plaintiff's allegations regarding  
27 his access to blankets are intended to state an Eighth Amendment  
28 claim or are provided as background to his claims that he was  
retaliated against for complaining about prison conditions.

1 provided with adequate shelter, food, clothing, sanitation, medical  
2 care, and personal safety." Johnson v. Lewis, 217 F.3d 726, 731 (9th  
3 Cir. 2000). To establish a violation of this duty, a prisoner must  
4 satisfy both an objective and subjective component. See Wilson v.  
5 Seiter, 501 U.S. 294, 298 (1991). First, a prisoner must demonstrate  
6 an objectively serious deprivation, one that amounts to the denial of  
7 "the minimal civilized measures of life's necessities." Keenan v.  
8 Hall, 83 F.3d 1083, 1089 (9th Cir. 1996) (quoting Rhodes v. Chapman,  
9 452 U.S. 337, 346 (1981)). Second, a prisoner must also demonstrate  
10 that prison officials acted with a sufficiently culpable state of  
11 mind, that of "deliberate indifference." Wilson, 501 U.S. at 303;  
12 Johnson, 217 F.3d at 733.

13  
14 A prison official is liable for denying an inmate humane  
15 conditions of confinement only if "the official knows of and  
16 disregards an excessive risk to inmate health and safety; the  
17 official must both be aware of facts from which the inference could  
18 be drawn that a substantial risk of serious harm exists, and he must  
19 also draw the inference." Farmer, 511 U.S. at 837.

20  
21 Here, many of the conditions of confinement challenged by  
22 Plaintiff were isolated deprivations lasting part of a day or a  
23 single night. Plaintiff has not plausibly pled that these  
24 deprivations caused pain or injury sufficient to state a cognizable  
25 Eighth Amendment claim. See, e.g., Foster v. Runnels, 554 F.3d 807,  
26 814 (9th Cir. 2009) ("The sustained deprivation of food can be cruel  
27 and unusual punishment when it results in pain without any  
28 penological purpose . . . The repeated and unjustified failure to

1 [provide adequate food] amounts to a serious depr[iv]ation."  
2 (emphasis added)); see also Bartholomew v. Muhammad, 599 F. App'x  
3 313, 313-14 (9th Cir. 2015) (prisoner did not raise genuine dispute  
4 of material fact as to whether failure to provide him with soap, a  
5 shower, or a blanket on one day was sufficiently serious to state  
6 Eighth Amendment claim); Garrett v. Gonzalez, 588 F. App'x 692, 692  
7 (9th Cir. 2014) (case properly dismissed where prisoner made  
8 insufficient showing that deprivation of food "resulted in any pain  
9 or injury to his health"); Bartholomew v. Solorzano, 2014 WL 1232236,  
10 at \*3 (E.D. Cal. 2014) (daily showers are not required and complete  
11 denial of showers for a week does not violate the Eighth Amendment);  
12 Gunn v. Tilton, 2011 WL 1121949 at \*3-\*4 (E.D. Cal. 2011) (collecting  
13 cases for proposition that temporary deprivations of sanitation,  
14 water, and shelter that last "a short amount of time" and do not pose  
15 a "serious threat of harm" do not give rise to Eighth Amendment  
16 claim); Centeno v. Wilson, 2011 WL 836747 at \*3 (E.D. Cal. 2011)  
17 (depriving prisoner of mattress, blanket, and shower access for seven  
18 days did not violate Eighth Amendment).<sup>7</sup> Even if any of the  
19 aforementioned conditions gave rise to "a substantial risk of serious  
20 harm," Plaintiff also has not shown that any Defendant or potential  
21 Defendant was aware of that risk. Farmer, 511 U.S. at 837.

22  
23 The "conditions of confinement" claims described above must  
24 therefore be dismissed with leave to amend. If Plaintiff chooses to  
25 re-assert these claims in any First Amended Complaint, Plaintiff must  
26

27 \_\_\_\_\_  
28 <sup>7</sup> The Court cites non-precedential opinions for their  
persuasive value only.



1 include allegations establishing that any deprivations complained of  
2 were sufficiently serious to give rise to an Eighth Amendment claim.

3  
4 **E. Plaintiff Has No Constitutional Right To A Prison Grievance**  
5 **Procedure**

6  
7 Plaintiff alleges that, in refusing to give him a grievance  
8 form, a correctional officer "clearly violat[ed] [his] due process."  
9 (Compl. at 8). However, an inmate has no constitutionally protected  
10 interest in a prison grievance procedure. Mann v. Adams, 855 F.2d  
11 639, 640 (9th Cir. 1988) ("[T]o obtain a protectable right an  
12 individual must have a legitimate claim of entitlement to it. . . .  
13 There is no legitimate claim of entitlement to a grievance  
14 procedure." (citations omitted)); see also Ramirez v. Galaza, 334  
15 F.3d 850, 860 (9th Cir. 2003) ("[I]nmates lack a separate  
16 constitutional entitlement to a specific prison grievance  
17 procedure.") (citing Mann, 855 F.2d at 640); Antonelli v. Sheahan, 81  
18 F.3d 1422, 1430 (7th Cir. 1996) ("With respect to the Due Process  
19 Clause, any right to a grievance procedure is a procedural right, not  
20 substantive one. Accordingly, a state's inmate grievance procedures  
21 do not give rise to a liberty interest protected by the Due Process  
22 Clause.") (citations omitted).

23  
24 Because Plaintiff has no federally protected right to a  
25 grievance procedure, Plaintiff's Due Process claim regarding his  
26 access to a grievance procedure must fail and should be omitted from  
27 any First Amended Complaint.

1 **F. Plaintiff's "Abuse Of Power" Claim Appears Redundant**

2  
3 Plaintiff raises "abuse of power" claims against all Defendants  
4 other than Kinman. (Compl. at 5). However, although "[t]he policies  
5 underlying § 1983 include compensation of persons injured by  
6 deprivation of federal rights and prevention of abuses of power by  
7 those acting under color of state law," Robertson v. Wegmann, 436  
8 U.S. 584, 590-91 (1978), the Court cannot identify any authority  
9 giving rise to a freestanding "abuse of power" claim. Instead, it  
10 appears that Plaintiff's "abuse of power" claims are redundant and  
11 duplicative of his other claims. Thus, the Court dismisses the  
12 "abuse of power" claims with leave to amend so that Plaintiff may  
13 clarify and distinguish these claims if necessary.

14  
15 **CONCLUSION**

16  
17 For the reasons discussed above, the Court DISMISSES the  
18 Complaint WITH LEAVE TO AMEND.

19  
20 If Plaintiff still wishes to pursue this action, he shall file a  
21 First Amended Complaint **no later than 30 days from the date of this**  
22 **Order, or no later than September 18, 2017.** The First Amended  
23 Complaint must cure the pleading defects discussed above and shall be  
24 complete in itself without reference to any prior pleading. See C.D.  
25 Cal. L.R. 15-2 ("Every amended pleading filed as a matter of right or  
26 allowed by order of the Court shall be complete including exhibits.  
27 The amended pleading shall not refer to the prior, superseded

1 pleading." ). This means that Plaintiff must allege and plead any  
2 viable claims asserted in prior pleadings again.

3  
4 In any amended complaint, Plaintiff should identify the nature  
5 of each separate legal claim and confine his allegations to those  
6 operative facts supporting each of his claims. For each separate  
7 legal claim, Plaintiff should state the civil right that has been  
8 violated and the supporting facts for that claim only. Pursuant to  
9 Federal Rule of Civil Procedure 8(a), all that is required is a  
10 "short and plain statement of the claim showing that the pleader is  
11 entitled to relief." However, Plaintiff is advised that the  
12 allegations in the First Amended Complaint should be consistent with  
13 the authorities discussed above. In addition, the First Amended  
14 Complaint may not include new Defendants or claims not reasonably  
15 related to the allegations in the previously filed complaints.  
16 **Plaintiff is strongly encouraged to once again utilize the standard**  
17 **civil rights complaint form when filing any amended complaint, a copy**  
18 **of which is attached.**

19  
20 Plaintiff is explicitly cautioned that failure to timely file a  
21 First Amended Complaint, or failure to correct the deficiencies  
22 described above, may result in a recommendation that this action, or  
23 portions thereof, be dismissed with prejudice for failure to  
24 prosecute and/or failure to comply with court orders. See Fed. R.  
25 Civ. P. 41(b). Plaintiff is further advised that if he no longer  
26 wishes to pursue this action in its entirety or with respect to  
27 particular Defendants or claims, he may voluntarily dismiss all or  
28 any part of this action by filing a Notice of Dismissal in accordance

1 with Federal Rule of Civil Procedure 41(a)(1). A form Notice of  
2 Dismissal is attached for Plaintiff's convenience.

3  
4 IT IS SO ORDERED.

5  
6 Dated: August 16, 2017.

7  
8 \_\_\_\_\_/s/\_\_\_\_\_  
9 ALKA SAGAR  
10 UNITED STATES MAGISTRATE JUDGE  
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