

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

PAUL MONTANEZ,

Plaintiff,

v.

VELASCO, et al.,

Defendants.

Case No. 1:12-cv-00250 AWI DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT BE  
GRANTED

[ECF No. 57]

OBJECTION DEADLINE: THIRTY DAYS

**I. Background**

Plaintiff Paul Montanez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff filed this action on February 22, 2012. He filed a First Amended Complaint on November 5, 2012. (ECF No. 13.)

On February 12, 2013, the Court issued an order finding cognizable claims against Defendants Velasco and Murry for deliberate indifference in violation of the Eighth Amendment, and against Defendant California Correctional Institute (“CCI”) for violations of the Americans with Disability Act (“ADA”) and Rehabilitation Act (“RA”). (ECF No. 16.)

On July 2, 2014, Defendants filed a motion for summary judgment. (ECF No. 57.) On August 25, 2014, Plaintiff filed an opposition and a declaration in support of his opposition. (ECF No. 61.) Defendants filed a reply on August 29, 2014. (ECF No. 63). This motion has been

1 submitted upon the record without oral argument.<sup>1</sup> Local Rule 230(l). For the reasons set forth  
2 below, the Court recommends that Defendants’ motion be granted.

3 **II. Legal Standard**

4 Any party may move for summary judgment, and the Court shall grant summary judgment  
5 if the movant shows that there is no genuine dispute as to any material fact and the movant is  
6 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks omitted);  
7 Washington Mutual Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party’s position,  
8 whether it be that a fact is disputed or undisputed, must be supported by (1) citing to particular  
9 parts of materials in the record, including but not limited to depositions, documents, declarations,  
10 or discovery; or (2) showing that the materials cited do not establish the presence or absence of a  
11 genuine dispute or that the opposing party cannot produce admissible evidence to support the fact.  
12 Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may consider other materials in the  
13 record not cited to by the parties, but it is not required to do so. Fed. R. Civ. P. 56(c)(3); Carmen  
14 v. San Francisco Unified School Dist., 237 F.3d 1026, 1031 (9th Cir. 2001); accord Simmons v.  
15 Navajo County, Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010).

16 Defendant does not bear the burden of proof at trial and in moving for summary judgment,  
17 he need only prove an absence of evidence to support Plaintiff’s case. In re Oracle Corp.  
18 Securities Litigation, 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S.  
19 317, 323, 106 S.Ct. 2548 (1986)). If Defendant meets his initial burden, the burden then shifts to  
20 Plaintiff “to designate specific facts demonstrating the existence of genuine issues for trial.” In re  
21 Oracle Corp., 627 F.3d at 387 (citing Celotex Corp., 477 U.S. at 323). This requires Plaintiff to  
22 “show more than the mere existence of a scintilla of evidence.” Id. (citing Anderson v. Liberty  
23 Lobby, Inc., 477 U.S. 242, 252, 106 S.Ct. 2505 (1986)).

24 However, in judging the evidence at the summary judgment stage, the Court may not make  
25 credibility determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless, Inc., 509  
26

---

27 <sup>1</sup> Concurrently with his motion for summary judgment, Defendant served Plaintiff with the requisite notice of the  
28 requirements for opposing the motion. Woods v. Carey, 684 F.3d 934, 939-41 (9th Cir. 2012); Rand v. Rowland, 154  
F.3d 952, 960-61 (9th Cir. 1998).

1 F.3d 978, 984 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw all  
2 inferences in the light most favorable to the nonmoving party and determine whether a genuine  
3 issue of material fact precludes entry of judgment, Comite de Jornaleros de Redondo Beach v.  
4 City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011) (quotation marks and citation omitted),  
5 *cert. denied*, 132 S.Ct. 1566 (2012). The Court determines *only* whether there is a genuine issue  
6 for trial and in doing so, it must liberally construe Plaintiff's filings because he is a pro se  
7 prisoner. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (quotation marks and citations  
8 omitted).

9 **III. Evidentiary Objections**

10 A. Defendants' Motion to Strike Plaintiff's Declaration

11 Defendants object and move to strike Plaintiff's declaration on the ground that it is  
12 inadmissible based on failure to comply with Fed. R. Civ. P. 56(c)(4). (ECF Nos. 62, 63.) The  
13 Court declines to strike the declaration based on Defendants' relevancy objections. Irrelevant  
14 information cannot create a triable issue of material fact, and the Court finds it unnecessary to  
15 undertake striking portions of declarations merely because they arguably lack relevancy. E.g.,  
16 Burch v. Regents of University of Cal., 433 F.Supp.2d 1110, 1119 (E.D. Cal. 1996).

17 Accordingly, Defendants' motion to strike is denied. To the extent Defendants raise  
18 specific objections to factual allegations, the Court will address the objections if the fact is to be  
19 considered.

20 **IV. Plaintiff's Claim**<sup>2</sup>

21 At the time of filing, Plaintiff was incarcerated at the California Correctional Institution for  
22 Men, in Tehachapi, California, where the events in the complaint occurred. Plaintiff alleges that  
23 Defendants Velasco and Murry violated his rights under the Eighth Amendment. Plaintiff alleges  
24 that Defendant CCI violated his rights under the ADA and RA.

---

26 <sup>2</sup> Plaintiff's complaint is verified and his allegations constitute evidence where they are based on his personal  
27 knowledge of facts admissible in evidence. Jones v. Blanas, 393 F.3d 918, 922-23 (9th Cir. 2004). The  
28 summarization of Plaintiff's claim in this section should not be viewed by the parties as a ruling that the allegations  
are admissible.

1           On November 13, 2008, Plaintiff underwent surgery on his right wrist where a pin and  
2 screw were set in place to repair a non-healing schaphoid fracture. On April 16, 2009, Plaintiff  
3 underwent a second surgery to extract the pin. On May 4, 2009, Plaintiff's primary care physician  
4 issued him a comprehensive accommodation chrono, requiring Plaintiff to be cuffed with waist  
5 chains and his hands at his sides at all times to prevent pain. Plaintiff's physician instructed him  
6 not to lift, pull, push, twist, or grab with his right hand, which was still in a cast as a result of the  
7 surgery.

8           Plaintiff alleges that on June 25, 2009, he was in Receiving and Release ("RR") to be  
9 transported to a scheduled orthopedic specialist for a follow-up on his surgery. Defendants  
10 Velasco and Murry were part of the transportation team. Defendants utilized a chain restraint  
11 system that went around Plaintiff's waist and had a black box on the front. Plaintiff informed the  
12 Defendants that he had a medical chrono that required waist chains be used, and that his hands are  
13 to be cuffed to his sides, in order to prevent excruciating pain that results when Plaintiff's hand,  
14 wrist and forearm are placed in awkward positions. Defendants did not have mechanical leg  
15 restraints, so they used a flex cuff on Plaintiff's right arm, above the cast, despite his reports of a  
16 waist-chain chrono and complaints of pain. Plaintiff alleges that Defendants ignored him,  
17 connected the cuffs to the black box in front of him and pulled the zip tie connecting the cuffs and  
18 box all the way. Plaintiff was forced to slouch over in an awkward position. Plaintiff told  
19 Defendants that according to doctor's orders and a chrono, he should not be restrained with flex  
20 cuffs, but rather should be cuffed with waist chains, with his hands at his sides. Plaintiff also told  
21 Defendants that he was in excruciating pain because the restraints were causing pressure to be  
22 applied to his broken wrist. Plaintiff rode in the transportation vehicle for over two hours, causing  
23 pain to his broken arm and cuts and bruises to his upper arm.

24           On June 25, 2009, Plaintiff's doctor stated that his hand was not fully healed and that he  
25 could not push, pull, lift, grasp, or grab with his right hand. Plaintiff alleges that this condition  
26 qualifies him as a person with a disability under the ADA. Plaintiff alleges that his medical  
27 chrono establishes that he was qualified to receive the benefit of waist chains. Plaintiff was  
28 discriminated against when CCI officers refused to honor Plaintiff's waist chain chrono during

1 transportation to an outside hospital for treatment. As a result, Plaintiff suffered severe pain and  
2 pressure to his wrist and lacerations to his forearms from the flex-cuffs that the officers used to  
3 secure him. Plaintiff alleges that he suffered discrimination because of his disability and that CCI  
4 receives federal financial assistance.

5 Plaintiff requests compensatory and punitive damages.

6 **V. Undisputed Facts**<sup>3</sup>

7 1. Plaintiff is currently detained at the Men’s Central Jail in Los Angeles, California.  
8 (Pl.’s Dep. 52:22-25; Pl.’s Decl. ¶ 1.)

9 2. Plaintiff was an inmate at the California Correctional Institution (“CCI”) on June  
10 25, 2009, when Defendants allegedly violated his rights. (Pl.’s Dep. 12:4-7; Pl.’s Decl. ¶ 2.)

11 3. Plaintiff is right-handed. (Pl.’s Dep. 14:23-25.)

12 4. In March or April of 2008, Plaintiff fractured his right wrist playing basketball.  
13 (Pl.’s Dep. 12:11-19; Pl.’s Decl. ¶ 3.)

14 5. On November 13, 2008, Dr. Lee performed a surgery on Plaintiff’s right wrist to  
15 repair a fracture. (Pl.’s Dep. 12:11-14, 46:5-8; Pl.’s Decl. ¶ 4.)

16 6. On June 25, 2009, Plaintiff had an appointment outside of CCI—in Palmdale,  
17 California—to have his wrist examined by Dr. Lee. (Pl.’s Dep. 20:18-21:1, 33:13-16, 46:5-8;  
18 Velasco Decl. ¶ 3; Pl.’s Decl. ¶ 6.)

19 7. If an inmate has a medical appointment outside of CCI, officers escort the inmate  
20 from his assigned cell to a holding cell inside the Receiving and Release (R&R) building. (Pl.’s  
21 Dep. 23:12-24:6, 24:12-15.)

22 8. After the inmate has been searched for contraband, the transportation officers escort  
23 the inmate to a van that is parked in the driveway outside of R&R. (Pl.’s Dep. 23:5-24:3, 24:16-  
24 18; Velasco Decl. ¶ 3.)

25 9. Once the inmate is in the van, the transportation officers pick up their firearms at  
26 the armory. (Pl.’s Dep. 24:22-25.)

27  
28 <sup>3</sup> Facts which are immaterial to resolution of Defendants’ motion for summary judgment, unsupported by admissible evidence, and/or redundant are omitted.

1           10.     After stopping to pick up their firearms, the transportation officers go to the front  
2 gate of the prison to wait for other transportation vehicles that have the same destination. (Pl.’s  
3 Dep. 24:25-25:3, 25:19-24.)

4           11.     On June 25, 2009, Plaintiff was assigned to live in the Security Housing Unit  
5 (“SHU”). (Pl.’s Dep. 18:9-19.)

6           12.     The protocol for restraining a SHU inmate before transporting him to a medical  
7 appointment involves conducting an unclothed body search in R&R, providing the inmate with a  
8 temporary jumpsuit, and placing him in various restraints. (Velasco Decl. ¶ 3; Pl.’s Decl. ¶ 8.)

9           13.     The restraints placed on a SHU inmate before transporting him include leg irons  
10 that go around his ankles, a chain that goes around his waist, and handcuffs. (Velasco Decl. ¶ 3.)

11          14.     There are two types of chains that go around an inmate’s waist for transport: waist  
12 chains and a “martin” chain.<sup>4</sup> (Velasco Decl. ¶ 3.)

13          15.     Waist chains have a single handcuff on each side of the chain when they are placed  
14 around an inmate’s waist. (Velasco Decl. ¶ 3.)

15          16.     A martin chain has one link that is a little bigger than the rest of the links in the  
16 chain. (Velasco Decl. ¶ 3.)

17          17.     Handcuffs are connected to a martin chain by threading the handcuffs through the  
18 bigger link in the martin chain. (Velasco Decl. ¶ 3.)

19          18.     When the handcuffs connected to a martin chain are secured around an inmate’s  
20 wrists, the inmate’s hands are in front of him at the waist or abdomen level. (Velasco Decl. ¶ 3.)

21          19.     When the martin chain is used with SHU inmates, a black box is placed over the  
22 links between the two loops of the handcuffs to further restrict the inmate’s movement and prevent  
23 him from picking or tampering with the lock. (Velasco Decl. ¶ 3.)

24          20.     Officers Velasco and Murry were responsible for restraining and transporting  
25 Plaintiff to his doctor’s appointment. (Wilson Decl. ¶ 3; Velasco Decl. ¶ 3; Murry Decl. ¶ 3.)

26          21.     Before June 25, 2009, Plaintiff had never had any confrontations with Velasco or  
27 Murry and did not have any bad blood between them. (Pl.’s Dep. 48:12-17.)

28 \_\_\_\_\_  
<sup>4</sup> Plaintiff does not dispute that a martin chain goes around an inmate’s waist.

1           22.     On June 25, 2009, Plaintiff had a comprehensive accommodation chrono (chrono)  
2 from his doctor that indicated he needed to be restrained in waist chains. The chrono did not  
3 indicate that Plaintiff's hands had to be cuffed at his sides.<sup>5</sup> (Ex. A to Am. Compl., ECF No. 10 at  
4 p. 39, item number 23 titled "Other"; Pl.'s Dep. 35:20-36:3; Pl.'s Decl. ¶ 5.)

5           23.     Plaintiff told both Velasco and Murry multiple times, while he was in an R&R  
6 holding cell, that he had a chrono for waist chains that permitted his right hand to be cuffed at his  
7 side. (Pl.'s Dep. 36:15-37:3; Pl.'s Decl. ¶ 8.)

8           24.     Use of either a waist chain or a martin chain satisfies a chrono indicating that an  
9 inmate needs to be restrained in waist chains.<sup>6</sup> (Velasco Decl. ¶ 5.)

10          25.     On June 25, 2009, Velasco or Murry<sup>7</sup> conducted an unclothed body search of  
11 Plaintiff in R&R to look for weapons and other contraband. (Velasco Decl. ¶ 6; Pl.'s Decl. ¶ 8.)

12          26.     After conducting the unclothed body search, Velasco<sup>8</sup> threaded handcuffs through  
13 the link in the center of a martin chain, secured the martin chain around Plaintiff's waist, and  
14 secured one of the cuffs on Plaintiff's left wrist. (Velasco Decl. ¶ 6; Pl.'s Decl. ¶ 8.)

15          27.     Velasco could not secure the other handcuff loop around Plaintiff's right wrist  
16 because Plaintiff had a soft cast on that wrist. (Velasco Decl. ¶ 6; Pl.'s Decl. ¶ 8.)

17          28.     Plaintiff told Velasco that he wanted leg irons over his right forearm instead of flex  
18 cuffs. (Velasco Decl. ¶ 7.)

19          29.     Velasco did not apply leg irons over Plaintiff's cast because the length of chain  
20 between the two cuffs is too long and would have given Plaintiff too much movement with his  
21 right arm during the transportation. (Velasco Decl. ¶ 6.)

22          30.     Instead of placing leg irons over Plaintiff's right wrist, Velasco followed protocol

---

23 \_\_\_\_\_  
24 <sup>5</sup> Plaintiff contends the waist chain chrono was issued "to promote proper healing." (Pl.'s Decl. ¶ 5.) Defendants  
25 object to this allegation under Fed. R. Evid. 602 in that Plaintiff is not a doctor and Plaintiff has submitted no evidence  
26 to support this allegation. Defendants are correct. In any case, the fact is not material to the decision.

27 <sup>6</sup> Plaintiff disputes that a martin chain also satisfies a chrono for waist chains. Defendants have submitted evidence  
28 that a martin chain satisfies a chrono for waist chains. Plaintiff cites no evidence to rebut Defendant's evidence.

<sup>7</sup> Defendant Velasco states he conducted the search of Plaintiff. Plaintiff contends it was Defendant Murry. Whether  
it was Velasco or Murry who searched Plaintiff is not material to the suit.

<sup>8</sup> Plaintiff disputes Defendant Velasco's statement that Velasco secured the restraints. Plaintiff contends it was  
Defendant Murry. It is not material to this case whether it was Murry or Velasco who secured the restraints.  
Moreover, as Defendants point out, Plaintiff alleged in his amended complaint, at his deposition, and in his statement  
of disputed facts that it was Defendant Velasco who put him in restraints.

1 by applying plastic flex cuffs just above the cast on Plaintiff's forearm.<sup>9</sup> (Velasco Decl. ¶ 6; Pl.'s  
2 Decl. ¶ 8.)

3 31. Velasco put the flex cuffs on Plaintiff's upper forearm above his cast and cinched  
4 the loop down to a one-finger gap between the forearm and the flex cuff so that Plaintiff would not  
5 be able to pull the cuffs over his cast. (Velasco Decl. ¶ 6; Pl.'s Dep. 54:1-9; Pl.'s Decl. ¶ 8.)

6 32. The flex cuffs had two loops, so Velasco attached the second loop to the other end  
7 of the handcuffs that he had already applied to Plaintiff's left wrist and cinched it all the way  
8 down. (Velasco Decl. ¶ 6; Pl.'s Decl. ¶ 8.)

9 33. There would have been at least three inches between Plaintiff's right upper forearm  
10 and the black box at his waist. (Velasco Decl. ¶ 6.)

11 34. Velasco placed a small, plastic black box over the chain between the two loops of  
12 the metal handcuffs that were used to secure Plaintiff's left hand. (Velasco Decl. ¶ 6.)

13 35. The black box further restricted Plaintiff's movement and prevented him from  
14 picking or tampering with the lock. (Velasco Decl. ¶ 6.)

15 36. After the martin chain, handcuffs, and flex cuffs were all secure, Velasco placed leg  
16 irons around Plaintiff's ankles. (Velasco Decl. ¶ 6; Pl.'s Dep. 29:22-30:17.)

17 37. After Plaintiff was securely restrained, Velasco and Murry put Plaintiff in a van  
18 outside of R&R. (Velasco Decl. ¶ 8; Murry Decl. ¶ 7; Pl.'s Dep. 29:22-30:17.)

19 38. Before getting into the van, Plaintiff told Velasco and Murry that his wrist was  
20 hurting and that he wanted the flex cuffs off. (Pl.'s Dep. 37:9-14.)

21 39. Plaintiff complained to Velasco that the flex cuffs were on too tight and pinching  
22 his skin. (Pl.'s Dep. 54:6-10.)

23 40. Plaintiff complained that he was in a lot of pain because his fractured right wrist  
24 was throbbing. (Pl.'s Dep. 30:4-8.)

25 41. Plaintiff complained that the flex cuffs were too tight, hurting him, and causing  
26 pain to his right arm and wrist. (Murry Decl. ¶ 6.)

27  
28 <sup>9</sup> Plaintiff argues that Defendant Velasco did not follow proper protocol. However, he submits no evidence to support  
this assertion, whereas Defendants have submitted evidence that Velasco's actions followed proper protocol.



1           42.     Murry drove to the armory to collect firearms and stopped at the front gate of the  
2 prison. (Velasco Decl. ¶ 8; Murry Decl. ¶ 7; Pl.'s Dep. 29:22-30:17, 32:22-33:4.)

3           43.     Velasco's and Murry's supervisor, Sergeant Wilson, was in a vehicle behind them.  
4 (Velasco Decl. ¶ 8; Wilson Decl. ¶ 3.)

5           44.     While Plaintiff was in the van, he continued to complain that the flex cuffs were  
6 hurting his right arm and wrist and that he wanted the flex cuffs removed. (Murry Decl. ¶ 7; Pl.'s  
7 Dep. 37:9-17.)

8           45.     As transportation officers, Velasco and Murry had to follow prison procedures and  
9 protocol for restraining and transporting inmates. (Velasco Decl. ¶ 4; Murry Decl. ¶ 5.)

10          46.     If an inmate had a complaint regarding the way he was restrained for transportation,  
11 Velasco and Murry could not go outside of prison procedures or protocol on their own. (Velasco  
12 Decl. ¶ 4; Murry Decl. ¶ 5.)

13          47.     If an inmate had a complaint regarding the way he was restrained for transportation,  
14 Velasco and Murry had to contact their supervisor, alert him to the inmate's complaint, and let  
15 their supervisor decide whether to adjust the inmate's restraints or otherwise go outside of the  
16 established procedures for restraining an inmate for transportation. (Velasco Decl. ¶ 4; Murry  
17 Decl. ¶ 5.)

18          48.     When Murry stopped the van at the front gate, Velasco exited the van to speak to  
19 Sergeant Wilson. (Velasco Decl. ¶ 8; Murry Decl. ¶ 7.)

20          49.     Velasco and Murry told Sergeant Wilson that Plaintiff was complaining that he  
21 wanted leg irons instead of flex cuffs on his right wrist and that the flex cuffs were hurting his  
22 right arm and wrist. (Velasco Decl. ¶ 8; Wilson Decl. ¶ 4; Murry Decl. ¶ 7.)

23          50.     Sergeant Wilson was familiar with Plaintiff because he had participated in  
24 transporting Plaintiff to numerous doctor's appointments. (Wilson Decl. ¶ 3.)

25          51.     Sergeant Wilson knew what Plaintiff's injuries were and where he had pain.  
26 (Wilson Decl. ¶ 3.)

27          52.     Sergeant Wilson knew that Plaintiff had broken a bone in his wrist and that the  
28 reason he had a doctor's appointment on June 25, 2009, was to have his wrist examined. (Wilson

1 Decl. ¶ 3.)

2 53. Sergeant Wilson was informed of the way in which Plaintiff had been restrained  
3 while Plaintiff was in the van. (Velasco Decl. ¶ 8; Wilson Decl. ¶ 5; Murry Decl. ¶ 7.)

4 54. Sergeant Wilson understood that Plaintiff had leg irons around his ankles, a plastic  
5 flex cuff above his cast on his right wrist on the upper forearm, and a metal cuff around his left  
6 wrist with the other end of the cuffs closed. (Wilson Decl. ¶ 5.)

7 55. Sergeant Wilson had knowledge that the flex cuffs were connected to the empty  
8 metal cuff in front of Plaintiff's body and that a black box was closed over the chain between the  
9 metal cuffs and over the key holes. (Wilson Decl. ¶ 5.)

10 56. Sergeant Wilson also understood that the cuffs in front of Plaintiff's body were  
11 connected to a martin chain that went around his waist. (Wilson Decl. ¶ 5.)

12 57. Sergeant Wilson determined that the way Velasco had used the restraint equipment  
13 to restrain Plaintiff was appropriate. (Wilson Decl. ¶ 6.)

14 58. Sergeant Wilson told Velasco and Murry that the restraint equipment had been  
15 applied in an acceptable manner. (Wilson Decl. ¶ 6; Velasco Decl. ¶ 8; Murry Decl. ¶ 7.)

16 59. Sergeant Wilson did not instruct Velasco to adjust or change the restraint  
17 equipment used to restrain Plaintiff. (Wilson Decl. ¶ 6; Velasco Decl. ¶ 8.)

18 60. Sergeant Wilson did not instruct Murry to adjust or change the restraint equipment  
19 used to restrain Plaintiff. (Wilson Decl. ¶ 6; Murry Decl. ¶ 8.)

20 61. Velasco and Murry transported Plaintiff to his medical appointment without  
21 adjusting his restraint equipment. (Velasco Decl. ¶ 9; Murry Decl. ¶ 8.)

22 62. Dr. Lee cut Plaintiff's cast off, examined his wrist to see how it was healing,  
23 examined x-rays, and reapplied a hard cast. (Pl.'s Dep. 35:3-6, 46:9-15.)

24 63. The flex cuffs were on Plaintiff's right forearm above the cast for a total of about  
25 two and a half hours. (Pl.'s Dep. 37:18-38:2.)

26 64. Plaintiff does not have any complaints about the manner in which he was  
27 handcuffed on his way back to CCI after his medical appointment in Palmdale on June 25, 2009.  
28 (Pl.'s Dep. 35:11-18.)

1           65.     When Velasco, Murry, and Plaintiff returned to CCI, Velasco followed protocol by  
2 immediately taking Plaintiff to see a nurse at the Facility B medical clinic. (Velasco Decl. ¶ 10;  
3 Pl.'s Dep. 41:2-10.)

4           66. Plaintiff complained to the nurse that he was experiencing pain in his wrist. (Velasco  
5 Decl. ¶ 10.)

6           67.     Velasco asked the nurse to conduct a 7219 and look at Plaintiff's wrist. (Velasco  
7 Decl. ¶ 10; Pl.'s Dep. 41:2-10.)

8           68. When a nurse conducts a 7219, he or she examines an inmate, writes down the  
9 inmate's verbal complaints, and marks down any objective signs of injury, such as cuts, bruising,  
10 bleeding, punctures, or swollen areas, and documents it on a CDC 7219. (Velasco Decl. ¶ 10.)

11          69.     The nurse examined Plaintiff's wrist two to three minutes after Plaintiff returned to  
12 CCI following his doctor's appointment. (Pl.'s Dep. 41:2-10.)

13          70.     The nurse who examined Plaintiff's wrist filled out a 7219, which Plaintiff attached  
14 to his complaint. (Pl.'s Dep. 41:19-21, 42:8-13.)

15          71.     The nurse who examined Plaintiff's wrist following his doctor's appointment on  
16 June 25, 2009, noted redness on Plaintiff's right forearm, but did not note any cuts, lacerations,  
17 blood, or any other injuries. (Ex. A to Am. Compl., ECF No. 10 at p. 40.)

18 **VI.    Discussion**

19        **A.    Deliberate Indifference**

20        1.    Legal Standard

21           The Eighth Amendment's prohibition against cruel and unusual punishment protects  
22 prisoners not only from inhumane methods of punishment but also from inhumane conditions of  
23 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v.  
24 Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) and Rhodes v. Chapman, 452 U.S. 337, 347,  
25 101 S.Ct. 2392 (1981)) (quotation marks omitted). While conditions of confinement may be, and  
26 often are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of  
27 pain. Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks omitted).

28           Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,

1 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th  
2 Cir. 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains  
3 while in prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks  
4 omitted). To maintain an Eighth Amendment claim, inmates must show deliberate indifference to  
5 a substantial risk of harm to their health or safety. E.g., Farmer, 511 U.S. at 847; Thomas v.  
6 Ponder, 611 F.3d 1144, 1151-52 (9th Cir. 2010); Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir.  
7 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124, 1128  
8 (9th Cir. 1998).

9         The deliberate indifference standard involves an objective and a subjective prong. First,  
10 the alleged deprivation must be, in objective terms, “sufficiently serious . . . .” Farmer, 511 U.S.  
11 at 834 (citing Wilson v. Seiter, 501 U.S. 294, 298 (1991)); Hearns v. Terhune, 413 F.3d 1036,  
12 1042 (9th Cir. 2005). Second, the prison official must “know[] of and disregard[] an excessive  
13 risk to inmate health or safety . . . .” Farmer, 511 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144,  
14 1150-51 (9th Cir. 2010); Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465  
15 F.3d at 1045; Johnson, 217 F.3d at 731.

16         Thus, a prison official may be held liable under the Eighth Amendment for denying  
17 humane conditions of confinement only if he knows that an inmate faces a substantial risk of harm  
18 and disregards that risk by failing to take reasonable measures to abate it. Farmer, 511 U.S. at  
19 837-45. Prison officials may avoid liability by presenting evidence that they lacked knowledge of  
20 the risk, or by presenting evidence of a reasonable, albeit unsuccessful, response to the risk. Id. at  
21 844-45. Mere negligence on the part of the prison official is not sufficient to establish liability,  
22 but rather, the official’s conduct must have been wanton. Farmer, 511 U.S. at 835; Frost, 152 F.3d  
23 at 1128.

## 24         2.         Analysis

25         Plaintiff had an appointment to see his doctor for a follow-up visit on his fractured right  
26 wrist. Plaintiff had a soft cast on his right wrist. Plaintiff was also a SHU inmate, and SHU  
27 inmates are transported under a certain restraint protocol involving the use of leg irons that go  
28 around the ankles, a chain that goes around the waist, and handcuffs. There is no dispute that

1 Plaintiff had a comprehensive medical chrono indicating that he needed to be restrained in waist  
2 chains due to his fractured wrist. It is also undisputed that the use of a “martin chain” satisfies a  
3 chrono for waist chains. Plaintiff was placed in a martin chain such that handcuffs were threaded  
4 through the link in the center of a martin chain, the martin chain was secured around Plaintiff’s  
5 waist, and one of the cuffs was secured on Plaintiff’s left wrist. Since Plaintiff’s right wrist was in  
6 a soft cast, the other cuff could not be secured to the wrist. Therefore, a flex cuff was placed  
7 above the cast and secured to the chain. Plaintiff requested a leg iron be placed on his arm instead,  
8 but Defendant Velasco denied the request because the length of chain would have been too long  
9 when using leg irons and would have provided Plaintiff with too much movement during  
10 transportation. Plaintiff complained of pain due to the flex cuff, and Defendants responded by  
11 inspecting the cuff and confirming it had been applied correctly. The way in which Plaintiff was  
12 restrained as he was seated in the van resulted in Plaintiff’s arms hanging down in front of him  
13 with his right elbow and left wrist resting at his waist. Under these facts, the manner in which  
14 Plaintiff was restrained was not so extreme as to rise to the level of a constitutional violation. The  
15 restraint served the clear penological purpose of preventing Plaintiff’s escape.

16 Plaintiff argues that he continued to complain of pain to his wrist due to the flex cuff. It is  
17 undisputed that there were no other reasonable restraint options available at the time, and Plaintiff  
18 was advised that this was the manner he would be transported or he could opt not to be  
19 transported. Plaintiff chose to continue with the transport. He continued to complain of pain.  
20 Defendant Murry inspected the restraint. Defendants then contacted their supervisor, Sergeant  
21 Wilson. Plaintiff contends that Defendants delayed for 45 minutes before contacting Sergeant  
22 Wilson. However, Plaintiff submits no evidence that Defendants were in a position to speak with  
23 their supervisor prior to when they did. Defendants informed Sergeant Wilson of the manner in  
24 which Plaintiff was being restrained and Plaintiff’s complaints of pain. Sergeant Wilson was  
25 familiar with Plaintiff and his injury given he had participated in several transports involving  
26 Plaintiff. It is undisputed that Sergeant Wilson concluded that the restraint equipment had been  
27 applied in a proper manner, and that Sergeant Wilson did not instruct Defendants Velasco or  
28 Murry to adjust or modify the restraint in any manner.

1 After Plaintiff had been transported, he was seen by his doctor. There is no evidence that  
2 he suffered harm from the manner in which he was transported. Upon Plaintiff's return to the  
3 prison, he was immediately taken to a medical clinic concerning his complaints of pain from the  
4 flex cuff. A nurse examined Plaintiff's arm and noted redness to the right forearm but did not note  
5 any lacerations, cuts, blood, or any other injuries.

6 Viewing the evidence in the light most favorable to Plaintiff, the Court finds that Plaintiff's  
7 allegations do not constitute a sufficiently serious violation to rise to the level of an Eighth  
8 Amendment violation. Plaintiff was not subjected to excessive risk of harm to his health, and the  
9 manner of restraint was not so extreme as to violate contemporary standards of decency and rise to  
10 the level of a constitutional deprivation. See, e.g., Centeno v. Wilson, 2011 WL 836747 (E.D.  
11 Cal. 2011). The conclusion that Plaintiff's allegations do not constitute a sufficiently serious  
12 violation is supported by the lack of resulting harm. In addition, there is no showing that  
13 Defendants were deliberately indifferent to Plaintiff's complaints. Wilson, 501 U.S. at 303. The  
14 evidence shows Defendants repeatedly checked on Plaintiff's restraints and conferred with their  
15 supervisor regarding Plaintiff's complaints.

16 Accordingly, there is no dispute as to any material fact and Defendants are entitled to  
17 summary judgment. The undisputed evidence, when viewed in a light most favorable to Plaintiff,  
18 does not establish an Eighth Amendment violation.

19 **B. Qualified Immunity**

20 Qualified immunity shields government officials from civil damages unless their conduct  
21 violates "clearly established statutory or constitutional rights of which a reasonable person would  
22 have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727 (1982). "Qualified  
23 immunity balances two important interests - the need to hold public officials accountable when  
24 they exercise power irresponsibly and the need to shield officials from harassment, distraction, and  
25 liability when they perform their duties reasonably," Pearson v. Callahan, 555 U.S. 223, 231, 129  
26 S.Ct. 808 (2009), and it protects "all but the plainly incompetent or those who knowingly violate  
27 the law," Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092 (1986).

28 As the Court has found that no constitutional violation has occurred, it need not further

1 discuss the issue of qualified immunity.

2 **C. Americans with Disability Act**

3 Plaintiff claims that his wrist injury constitutes a disability for purposes of the Americans  
4 with Disability Act (“ADA”). He claims that CCI excluded him from participating in a service,  
5 program or activity, and is therefore liable for violating the ADA.

6 The Ninth Circuit has held that the ADA applies to inmates in state prisons. Armstrong v.  
7 Wilson, 124 F.3d 1019, 1025 (9th Cir. 1997). Under Title II of the ADA, “no qualified individual  
8 with a disability shall, by reason of such disability, be excluded from participation in or be denied  
9 the benefits of the services, programs, or activities of a public entity, or be subjected to  
10 discrimination by any such entity.” 42 U.S.C. § 12132. The ADA defines a qualified individual  
11 with a disability as “an individual with a disability who, with or without reasonable modifications  
12 to rules, policies, or practices, the removal of architectural, communication, or transportation  
13 barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements  
14 for the receipt of services or the participation in programs or activities provided by a public  
15 entity.” 42 U.S.C. § 12131(2). “The term ‘disability’ means . . . a physical or mental impairment  
16 that substantially limits one or more of the major life activities of [the] individual.”<sup>10</sup> 42 U.S.C. §  
17 12102(1)(A). For purposes of § 12102, major life activities “include, but are not limited to, caring  
18 for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting,  
19 bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and  
20 working.” 42 U.S.C. § 12102(2)(A).

21 In 2009, the regulations set forth certain factors to be considered in determining whether an  
22 individual is substantially limited in a major life activity, including:

- 23 (i) The nature and severity of the impairment;  
24 (ii) The duration or expected duration of the impairment; and  
25 (iii) The permanent or long term impact, or the expected permanent or long term

26 \_\_\_\_\_  
27 <sup>10</sup> The term disability may also mean a record of such an impairment or being regarded as having such an impairment,  
28 42 U.S.C. § 12102(2)(B), (C) (quotation marks omitted), but there is neither argument nor evidence that Plaintiff was  
disabled under those subsections, Coons v. Secretary of the U.S. Dept. of the Treasury, 383 F.3d 879, 886 (9th Cir.  
2004).

1 impact of or resulting from the impairment.

2 29 C.F.R. § 1630.2(j)(2) (2009).

3 In this case, Plaintiff suffered a wrist fracture in March or April of 2008. Surgery was  
4 performed on November 13, 2008. Plaintiff attended a follow-up appointment on June 25, 2009.  
5 Plaintiff claims that the very limited use of his right hand as a result of his wrist injury as it existed  
6 on June 25, 2009, qualifies as a disability for purposes of the ADA. Defendants argue that the  
7 wrist injury and associated limitations were only temporary. In support, Defendants note that the  
8 physician's instructions that Plaintiff relies on in support of his claim clearly indicate that the  
9 physical limitations were temporary and would only last until July 5, 2009. (ECF No. 13 at pp.  
10 39, 60.) In addition, Defendants note that the surgeon who performed the surgery stated he  
11 believed the injury would take three months or longer to heal, but Plaintiff would regain motion  
12 and function. (ECF No. 13 at p. 53.)

13 The Court concludes that Plaintiff's wrist injury does not qualify as a disability under the  
14 ADA. Defendants are correct that the fracture is akin to a broken limb or sprained joint, which do  
15 not qualify as disabilities under the ADA. See 29 C.F.R. Part 1630 App. § 1630.2(j) (2009)  
16 ("temporary, non-chronic impairments of short duration, with little or no long term or permanent  
17 impact, are usually not disabilities. Such impairments may include, but are not limited to, broken  
18 limbs, sprained joints, concussions, appendicitis, and influenza.") Therefore, Plaintiff was not  
19 disabled on June 25, 2009, under the ADA, and Defendants are entitled to summary judgment.

20 Defendants further persuasively argue that Plaintiff was not excluded from participating in  
21 any of CCI's programs, services or activities. Plaintiff claims that he was denied the benefit of the  
22 service of having his "waist chain chrono" honored by CCI during transportation to his medical  
23 appointment. As previously discussed, however, the waist chain chrono was in fact honored.  
24 Plaintiff was placed in a martin chain which satisfies the waist chain chrono. Accordingly,  
25 Defendants are entitled to summary judgment on Plaintiff's ADA claim.

26 **D. Rehabilitation Act**

27 Plaintiff also raises a claim under the Rehabilitation Act ("RA"), which provides that "no  
28 otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability,



1 be excluded from participation in, be denied the benefits of, or be subjected to discrimination  
2 under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 749(a). The  
3 Ninth Circuit has held that the Rehabilitation Act applies to inmates in state prisons. Armstrong,  
4 124 F.3d at 1025. “There is no significant difference in analysis of the rights and obligations  
5 created by the ADA and the Rehabilitation Act.” Zukle v. Regents of Univ. of California, 166  
6 F.3d 1041, 1051 (9th Cir. 1999) (citing 42 U.S.C. § 12133 (“The remedies, procedures, and rights  
7 set forth in [the Rehabilitation Act] shall be the remedies, procedures, and rights [applicable to  
8 ADA claims].”)). Therefore, Plaintiff’s claim under the RA is analyzed in the same manner as his  
9 ADA claims. As the Court previously found, Plaintiff was not disabled on June 25, 2009, and  
10 Plaintiff was not denied the benefit of any service, program or activity. Accordingly, Defendants  
11 are entitled to summary judgment on Plaintiff’s RA claim as well.

12 **VII. Conclusion and Recommendation**

13 For the reasons set forth above, the Court HEREBY RECOMMENDS that Defendant’s  
14 motion for summary judgment, filed on July 2, 2014, be GRANTED, thus concluding this action  
15 in its entirety.

16 These Findings and Recommendations will be submitted to the United States District  
17 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
18 **thirty (30) days** after being served with these Findings and Recommendations, the parties may  
19 file written objections with the Court. Local Rule 304(b). The document should be captioned  
20 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
21 objections must be filed within **ten (10) days** from the date of service of the objections. Local  
22 Rule 304(d). The parties are advised that failure to file objections within the specified time may  
23 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
24 1991).

25 IT IS SO ORDERED.

26 Dated: May 4, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE

28