

1 Plaintiff. (ECF No. 23.) The Court dismissed all other claims and defendants for the failure to
2 state a cognizable claim for relief. (Id. at 12.) The Court indicated that jurisdiction existed under
3 28 U.S.C. § 636(c), based on the fact that Plaintiff had consented to Magistrate Judge jurisdiction
4 and no other parties had yet appeared. (See id. at 1.)

5 **I. Williams v. King**

6 On November 9, 2017, the Ninth Circuit Court of Appeals ruled that 28 U.S.C. §
7 636(c)(1) requires the consent of all named plaintiffs and defendants, even those not served with
8 process, before jurisdiction may vest in a Magistrate Judge to dispose of a civil case. Williams v.
9 King, 875 F.3d 500 (9th Cir. 2017). Accordingly, the Court did not have jurisdiction to dismiss
10 the claims described in its October 24, 2017 order.

11 Here, as noted above, no defendant was yet served at the time that the Court screened the
12 second amended complaint, and therefore none had appeared or consented to Magistrate Judge
13 jurisdiction. Because all defendants had not consented, the undersigned's dismissal of Plaintiff's
14 claims is invalid under Williams. Because the undersigned nevertheless stands by the analysis in
15 the previous screening order, she will below recommend to a District Judge that the non-
16 cognizable claims be dismissed.

17 **II. Screening Requirement**

18 The Court is required to screen complaints brought by prisoners seeking relief against a
19 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
20 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or
21 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
22 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.
23 § 1915(e)(2)(B)(ii).

24 A complaint must contain "a short and plain statement of the claim showing that the
25 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
26 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
27 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,
28 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65

1 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge
2 unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
3 (internal quotation marks and citation omitted).

4 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
5 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
6 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff's claims must be facially
7 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
8 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949
9 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
10 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
11 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678,
12 129 S. Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

13 **III. Allegations**

14 Plaintiff, an inmate in the custody of the California Department of Corrections and
15 Rehabilitation (CDCR) at Pelican Bay State Prison, brings this civil rights action against
16 Correctional Officer D. Smith, Warden K. Holland, Correctional Sergeant M. Montano,
17 Correctional Lieutenant J. Tyree, and Correctional Officer Does 1-4, employees of the CDCR at
18 CCI Tehachapi, where the events at issue occurred.

19 Plaintiff alleges that on May 20, 2014, Defendant Smith "intercepted Plaintiff's Outgoing
20 letter and Prevented it From being mailed . . . due to his speculation and conjecture that it
21 contained a Coded message written a member of the Mexican Mafia Prison gang." (ECF No. 21
22 at p. 6.) After the letter was intercepted, Plaintiff alleges that Defendants Smith, Montano and
23 Tyree conspired to retaliate against Plaintiff "due to the alleged contents of [his] letter." (Id.)

24 On the same date, Defendant Tyree tasked Defendant Montano with completing a targeted
25 search of Plaintiff's cell. Defendant Montano in turn ordered Officers G. Adame, B. Medrano and
26 P. Orteaa to join Defendant Smith in targeting Plaintiff's cell. Plaintiff alleges that Defendants
27 Smith, Montano and subordinates arrived at Plaintiff's cell with a malicious intent to retaliate
28 against him. Plaintiff further alleges that, as he was finishing using the restroom, Defendant Smith

1 ordered Plaintiff to “submit to being Placed in zip-ties.” (Id. at p. 7.) Plaintiff alleges that when he
2 finished using the restroom and flushing it, Defendant Smith “without warning or good cause . . .
3 used unnecessary and excessive force by the infliction of sadistic wanton pain on Plaintiff with
4 pepper-spray and Placing Plaintiff in extremely tight zip-ties that caused Plaintiff to temporarily
5 lose feeling in the hands.” (Id.)

6 After being placed in zip-ties, Plaintiff was removed barefoot from his cell and paraded
7 through the main yard by Defendants Smith and Montano. Plaintiff was escorted to the dining
8 hall where he was “verbally assaulted and threatened with more pepper spray” by Defendants
9 Smith and Montano. (Id. at p. 8.) Plaintiff was informed by Defendant Montano that Warden
10 Holland wanted Plaintiff placed on management-cell status. The cell was unfurnished. Plaintiff
11 alleges that he was not decontaminated before being placed in the management cell. Plaintiff
12 alleges that for 3 days, he was not provided with “any sort of cleaning supplies, no soap, toilet-
13 paper or disinfectant.” (Id.) Plaintiff alleges that he suffered from severe pain from trying not to
14 defecate because he had no way of cleaning himself. Plaintiff eventually defecated and was
15 forced to use his bare hand to clean himself. Plaintiff was not allowed a mattress and was forced
16 to sleep on the cold, dirty floor. Plaintiff contends that he suffered sleep deprivation for the 3 days
17 due to the lack of a mattress, the effects of the pepper spray and the unsanitary conditions.

18 As to retaliatory intent, Plaintiff alleges that Defendant Smith provided contradictory
19 testimony regarding the contents of Plaintiff’s letter in disciplinary reports. Plaintiff further
20 alleges that Defendant Does 1-4 deprived Plaintiff of any grievance forms, which led to Plaintiff
21 commencing a hunger strike to peacefully protest the alleged events. Plaintiff also contends that
22 Defendants Holland, Tyree and Montano failed to train subordinates and prevent them from
23 maintaining a pattern of retaliation. Plaintiff also contends that Defendant Holland refused to
24 respond to Plaintiff’s request to stop retaliation by her subordinates. Plaintiff states that he
25 notified Defendant Holland about the interference with his outgoing letter and the deprivation of
26 legal supplies.

27 As relief, Plaintiff seeks a declaratory judgment, preliminary and permanent injunctions,
28 and compensatory and punitive damages.

1 **IV. Discussion**

2 **A. Official Capacity**

3 To the extent Plaintiff seeks to bring claims for damages against defendants in their
4 official capacities, he may not do so. The Eleventh Amendment prohibits suits for monetary
5 damages against a State, its agencies, and state officials acting in their official capacities. Aholelei
6 v. Dep't of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007). As such, the Eleventh
7 Amendment bars any claim for monetary damages against defendants acting in their official
8 capacities.

9 **B. First Amendment**

10 **1. Right to Send Mail**

11 Plaintiff alleges that Defendant Smith, Holland and Tyree violated Plaintiff's First
12 Amendment rights by promulgating, enforcing and implementing overbroad rules and regulations
13 that curtailed his right to freedom of speech. Although not entirely clear, it appears that Plaintiff
14 is challenging implementation of the prison policy allowing for his outgoing mail to be
15 intercepted and not mailed.

16 Prisoners have a First Amendment right to send and receive mail. Witherow v. Paff, 52
17 F.3d 264, 265 (9th Cir. 1995) (per curiam). However, prison officials may visually inspect
18 outgoing mail to determine whether it contains contraband material that threatens prison security
19 or material threatening the safety of the recipient. See Witherow, 52 F.3d at 266; Royse v.
20 Superior Court, 779 F.2d 573, 574-75 (9th Cir. 1986).

21 Here, Plaintiff admits that his mail was intercepted based on Defendant Smith's belief that
22 it contained an encoded message to a gang member, which does not violate the First Amendment.
23 Plaintiff has not otherwise alleged a deficient policy regarding review of outgoing mail or that he
24 was otherwise prevented from sending and receiving mail that did not contain allegedly encoded
25 messages. Further, generally isolated incidents of mail interference or tampering will not support
26 a claim under section 1983 for a violation of Plaintiff's constitutional rights. See Davis v. Goord,
27 320 F.3d 346, 351 (2d Cir. 2003); Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997); Smith
28 v. Maschner, 899 F.2d 940, 944 (10th Cir. 1990).

1 **2. Retaliation**

2 Plaintiff alleges that Defendants Smith, Montano and Holland violated his First
3 Amendment rights because he was pepper sprayed, threatened, placed in zip-ties and subjected to
4 the management cell in retaliation for the exercise of his right to freedom of speech.

5 “Within the prison context, a viable claim of First Amendment retaliation entails five
6 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)
7 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
8 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate
9 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567– 68 (9th Cir. 2005).

10 Plaintiff fails to allege that he was engaged in protected conduct. According to the
11 allegations in his complaint, Plaintiff was pepper sprayed, threatened, placed in zip-ties and
12 housed in a management cell because of mail alleged to contain an encoded message to a gang
13 member. Plaintiff fails to establish how attempting to send mail alleged to contain an encoded
14 message is protected conduct. Even if the mail was later determined not to contain such a
15 message, all of the alleged retaliatory actions occurred in May 2014, prior to any such
16 determination or resolution of the related disciplinary matter in July and September 2014. (ECF
17 No. 21 at pp. 6-9 and Exs. C, D.)

18 **B. Eighth Amendment**

19 **1. Conditions of Confinement**

20 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison
21 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman,
22 452 U.S. 337, 347 (1981). A prisoner’s claim does not rise to the level of an Eighth Amendment
23 violation unless (1) “the prison official deprived the prisoner of the ‘minimal civilized measure of
24 life’s necessities,’” and (2) “the prison official ‘acted with deliberate indifference in doing
25 so.’” Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting Hallett v. Morgan, 296
26 F.3d 732, 744 (9th Cir. 2002) (citation omitted)).

27 In order to find a prison official liable under the Eighth Amendment for denying humane
28 conditions of confinement within a prison, the official must know “that inmates face a substantial

1 risk of serious harm and disregarded that risk by failing to take reasonable measures to abate
2 it.” Farmer v. Brennan, 511 U.S. 825, 847 (1994).

3 Plaintiff alleges that Defendants Holland and Does 1-4 denied Plaintiff his basic human
4 necessities while in the management cell, and that Defendants Holland, Montano and Does 1-4
5 were deliberately indifferent. Liberally construed, Plaintiff has stated a cognizable claim for relief
6 under the Eighth Amendment against Defendant Does 1-4, who reportedly were the correctional
7 officers “overseeing Plaintiff while he was being subjected to the management-cell.” (ECF No. 21
8 at p. 6.) However, Plaintiff fails to allege that Defendants Holland and Montano knew of the
9 conditions in the management cell and failed to respond.

10 To the extent that Plaintiff seeks to impose liability on Defendants Holland and Montano
11 based on a supervisory role, government officials may not be held liable for the actions of their
12 subordinates under a theory of respondeat superior. Iqbal, 556 U.S. at 676. Since a government
13 official cannot be held liable under a theory of vicarious liability for section 1983 actions,
14 Plaintiff must plead that the official has violated the Constitution through his own individual
15 actions. Id. In other words, to state claim for relief under section 1983, Plaintiff must link
16 Warden Holland or Sergeant Montano with some affirmative act or omission that demonstrates a
17 violation of Plaintiff’s federal rights.

18 Despite alleging that Defendants Holland and Montano ordered Plaintiff housed in a
19 management cell, Plaintiff fails to allege any facts indicating that Defendants Holland or Montano
20 were personally aware of the conditions to which Plaintiff was subjected. Plaintiff therefore fails
21 to state a condition of confinement claim against Defendants Holland and Montano.

22 2. Excessive Force

23 The Cruel and Unusual Punishments Clause of the Eighth Amendment protects prisoners
24 from the use of excessive physical force. Wilkins v. Gaddy, 559 U.S. 34, 37 (2010) (per
25 curiam); Hudson v. McMillian, 503 U.S. 1, 8-9 (1992). What is necessary to show sufficient harm
26 under the Eighth Amendment depends upon the claim at issue, with the objective component
27 being contextual and responsive to contemporary standards of decency. Hudson, 503 U.S. at 8
28 (quotation marks and citations omitted). For excessive force claims, the core judicial inquiry is

1 whether the force was applied in a good-faith effort to maintain or restore discipline, or
2 maliciously and sadistically to cause harm. Wilkins, 559 U.S. at 37 (quoting Hudson, 503 U.S. at
3 7) (quotation marks omitted).

4 Not every malevolent touch by a prison guard gives rise to a federal cause of
5 action. Wilkins, 559 U.S. at 562 (quoting Hudson, 503 U.S. at 9) (quotation marks omitted).
6 Necessarily excluded from constitutional recognition is the de minimis use of physical force,
7 provided that the use of force is not of a sort repugnant to the conscience of mankind. Id.
8 (quoting Hudson, 503 U.S. at 9-10) (quotation marks omitted). In determining whether the use of
9 force was wanton or and unnecessary, courts may evaluate the extent of the prisoner's injury, the
10 need for application of force, the relationship between that need and the amount of force used, the
11 threat reasonably perceived by the responsible officials, and any efforts made to temper the
12 severity of a forceful response. Hudson, 503 U.S. at 7 (quotation marks and citations omitted).

13 Here, the Court finds that, liberally construed, the complaint states a claim for relief
14 against Defendant Smith for excessive force. The allegations indicate that Plaintiff was not
15 offering resistance, and Defendant Smith subjected Plaintiff to pepper spray. The allegations also
16 indicate that Defendant Smith applied restraints in such a way that Plaintiff experienced
17 numbness in his hands. While the absence of a serious injury is relevant to the Eighth
18 Amendment inquiry, it does not end it. Hudson, 503 U.S. at 7. The malicious and sadistic use of
19 force to cause harm always violates contemporary standards of decency. Wilkins, 559 U.S. at 562
20 (quoting Hudson, 503 U.S. at 9 (quotation marks omitted)). Thus, it is the use of force rather than
21 the resulting injury which ultimately counts, Id. at 562.

22 As to Plaintiff's allegation that Defendants Smith and Montano verbally assaulted and
23 threatened him in the dining hall, Plaintiff fails to state a claim. Allegations of threats and
24 harassment do not state a cognizable claim under 42 U.S.C. § 1983. See Keenan v. Hall, 83 F.3d
25 1083, 1092 (9th Cir. 1996) (assaultive comments by prison guard not enough to implicate Eighth
26 Amendment); Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987) (mere threat of bodily harm does
27 not constitute constitutional wrong).

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1 **3. Failure to Decontaminate**

2 As noted above, in order to find a prison official liable under the Eighth Amendment for
3 denying humane conditions of confinement within a prison, the official must know “that inmates
4 face a substantial risk of serious harm and disregarded that risk by failing to take reasonable
5 measures to abate it.” Farmer, 511 U.S. at 847.

6 Liberally construed, Plaintiff has stated an Eighth Amendment claim for failure to
7 decontaminate against Defendant Smith. The allegations of the complaint indicate that Defendant
8 Smith subjected Plaintiff to pepper spray, and placed him in the management cell without
9 decontaminating Plaintiff.

10 **C. Due Process**

11 **1. Fourteenth Amendment**

12 Plaintiff asserts that Defendants Holland and Montano violated his due process rights by
13 placing him in the management cell without any procedural safeguards. Prisoners may claim the
14 protections of the Due Process Clause of the Fourteenth Amendment, and they may not be
15 deprived of life, liberty, or property without due process of law. Wolff v. McDonnell, 418 U.S.
16 539, 556 (1974). Before a prisoner is placed in disciplinary segregation, due process requires that
17 a prisoner is entitled to: (1) a written statement at least 24 hours before the disciplinary hearing
18 that includes the charges, a description of the evidence against the prisoner, and an explanation
19 for the disciplinary action taken; (2) an opportunity to present documentary evidence and call
20 witnesses, unless calling witnesses would interfere with institutional security; and (3) legal
21 assistance where the charges are complex or the inmate is illiterate. Id. at 563–70. Plaintiff’s
22 allegations that he was placed in a management-cell do not equate with placement in disciplinary
23 segregation.

24 Plaintiff also alleges that Defendant Smith violated his due process rights by preventing
25 Plaintiff’s outgoing letter from being mailed and failing to give Plaintiff an opportunity to present
26 his views. However, Plaintiff’s allegations suggest that he received a hearing on his RVR, and
27 there is no assertion that Defendant Smith interfered with the disciplinary hearing process.

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1 Further, Plaintiff's claims regarding his outgoing mail are covered by the specific
2 provisions of the First Amendment. "[I]f a constitutional claim is covered by a specific
3 constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed
4 under the standard appropriate to that specific provision, not under the rubric of substantive due
5 process." See United States v. Lanier, 520 U.S. 259, 272 n. 7 (1997)).

6 2. State Created Liberty Interests

7 Plaintiff alleges that defendants deprived him of his state created liberty interest rights
8 protected by the Fourteenth Amendment when: Defendant Smith failed to notify Plaintiff by way
9 of CDC Form 1819 that his outgoing letter was never mailed; Defendants Does 1-4 maliciously
10 and deliberately refused Plaintiff his right to appeal; and Defendants Does 1-4, Holland and
11 Montano deliberately deprived Plaintiff of the basic human necessities to keep himself and his
12 living quarters clean and sanitary while he was in the management cell.

13 Plaintiff's claims regarding his outgoing letter and deprivation of basic human necessities
14 are covered by the provisions of the First and Eighth Amendments respectively. Thus, Plaintiff's
15 allegations should be analyzed under those specific standards. Id. Additionally, Plaintiff's
16 allegation that Defendant Does 1-4 deprived him of grievance forms does not state a cognizable
17 due process claim. The existence of an inmate appeals process does not create a protected liberty
18 interest upon which Plaintiff may base a claim that he was denied a particular result or that the
19 appeals process was deficient. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v.
20 Adams, 855 F.2d 639, 640 (9th Cir. 1988).

21 D. Conspiracy

22 Plaintiff alleges that Defendants Smith, Tyree, Montano, Holland and Does 1-4 conspired
23 to deprive Plaintiff of his constitutional rights. To state a claim for conspiracy under section 1983,
24 Plaintiff must show the existence of an agreement or a meeting of the minds to violate his
25 constitutional rights, and an actual deprivation of those constitutional rights. Avalos v. Baca, 596
26 F.3d 583, 592 (9th Cir. 2010); Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2001). A bare
27 allegation that defendants conspired to violate Plaintiff's constitutional rights will not suffice to
28 give rise to a conspiracy claim under section 1983. Moreover, Plaintiff's claim of conspiracy is

1 speculative and he presents no facts to show a meeting of the minds to violate his constitutional
2 rights.

3 **E. Failure to Train and Supervise**

4 Plaintiff also asserts failure to train and supervise allegations against the “supervisory”
5 defendants, Holland, Tyree and Montano. A “failure to train” or “failure to supervise” theory can
6 be the basis for a supervisor’s liability under § 1983 in only limited circumstances, such as where
7 the failure amounts to deliberate indifference. See City of Canton, Ohio v. Harris, 489 U.S. 378,
8 387–90 (1989). “The cases in which supervisors have been held liable under a failure to
9 train/supervise theory involve conscious choices made with full knowledge that a problem
10 existed.” Wardell v. Nollette, No. C05–0741RSL, 2006 WL 1075220, at *3 (W.D. Wash. Apr. 20,
11 2006) (collecting cases); see also Cousin v. Small, 325 F.3d 627, 637 (5th Cir. 2003) (to impose
12 liability for a supervisor’s failure to train, “a plaintiff must usually demonstrate a pattern of
13 violations and that the inadequacy of the training is obvious and obviously likely to result in a
14 constitutional violation”) (citation, internal quotation marks omitted), cert. denied, 540 U.S. 826,
15 (2003).

16 “A pattern of similar constitutional violations by untrained employees is ordinarily
17 necessary to demonstrate deliberate indifference for purposes of failure to train, though there
18 exists a ‘narrow range of circumstances [in which] a pattern of similar violations might not be
19 necessary to show deliberate indifference.’” Flores v. County of Los Angeles, 758 F.3d 1154,
20 1159 (9th Cir. 2014) (quoting Connick v. Thompson, 563 U.S. 51, 131 S. Ct. 1350, 1360–61, 179
21 L.Ed.2d 417 (2011)). In this “narrow range of circumstances,” a single incident may suffice to
22 establish deliberate indifference where the violation of constitutional rights is a “highly
23 predictable consequence” of a failure to train because that failure to train is “so patently
24 obvious.” Connick, 563 U.S. at 64.

25 Here, Plaintiff makes conclusory statements that the supervisory defendants failed to train
26 subordinates. Plaintiff’s conclusory statements do not show that his injury was a “highly
27 predictable consequence” of Defendants’ failure to train, or that the failure to train was “patently
28 obvious.” Id.

1 **F. Requested Relief**

2 **1. Declaratory Judgment**

3 Plaintiff seeks a declaration that his rights were violated by defendants. “A declaratory
4 judgment, like other forms of equitable relief, should be granted only as a matter of judicial
5 discretion, exercised in the public interest.” Eccles v. Peoples Bank of Lakewood Village, 333
6 U.S. 426, 431 (1948). “Declaratory relief should be denied when it will neither serve a useful
7 purpose in clarifying and settling the legal relations in issue nor terminate the proceedings and
8 afford relief from the uncertainty and controversy faced by the parties.” United States v.
9 Washington, 759 F.2d 1353, 1357 (9th Cir. 1985).

10 In the event that this action reaches trial and the trier of fact returns a verdict in favor of
11 Plaintiff, the verdict will be a finding that Plaintiff’s constitutional rights were violated.
12 Accordingly, a declaration that a defendant violated Plaintiff’s rights is unnecessary.

13 **2. Injunctive Relief**

14 Plaintiff seeks several forms of injunctive relief. Plaintiff is no longer housed at CCI
15 Tehachapi, where he alleges the incidents at issue occurred, and where the prison official
16 defendants are employed. Therefore, any relief he seeks against the officials at CCI Tehachapi is
17 moot. See Andrews v. Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007) (prisoner’s claims for
18 injunctive relief generally become moot upon transfer) (citing Johnson v. Moore, 948 F.2d 517,
19 519 (9th Cir. 1991) (per curiam) (holding claims for injunctive relief “relating to [a prison’s]
20 policies are moot” when the prisoner has been moved and “he has demonstrated no reasonable
21 expectation of returning to [the prison]”)).

22 **V. Conclusion and Recommendation**

23 Plaintiff has stated the following cognizable claims: (1) an Eighth Amendment conditions
24 of confinement claim against Defendants Does 1-4 in their individual capacities arising from
25 conditions in the management cell; and (2) Eighth Amendment claims against Defendant Smith in
26 his individual capacity for excessive force and for failure to decontaminate Plaintiff. However,
27 Plaintiff has failed to state any other cognizable claims in this action, and the Court finds that
28 further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

