



1 A complaint must contain “a short and plain statement of the claim showing that the pleader is  
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,  
5 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally  
6 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,  
7 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

8 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings liberally  
9 construed and to have any doubt resolved in their favor, but the pleading standard is now higher,  
10 Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive screening,  
11 Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow the Court  
12 to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at  
13 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a  
14 defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a  
15 defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss,  
16 572 F.3d at 969.

## 17 II.

### 18 COMPLAINT ALLEGATIONS

19 Plaintiff names the following fifteen prison officials as Defendants: Officer M. Hernandez,  
20 Lieutenant E. Williams, Lieutenant C. Livingston, A.O.D. S. Marsh, Associate Warden T.P. Wan,  
21 Officer L. Sanchez, Officer Galvenson, Officer Schleesman, Sergeant Crane, Sergeant Salvado,  
22 Captain A. Williams, Chief Office of Appeals M. Voong, Appeals Examiner D. Foston, Warden S.  
23 Sherman, and Lieutenant N. Scaife.

24 On February 19, 2017, M. Hernandez approached Plaintiff’s cell and requested that he strip  
25 search. Plaintiff complied and stripped down to his boxer shorts and told Hernandez that he would not  
26 be able to bend, squat or pull his buttocks apart because he wears a full body back brace. Plaintiff also  
27 had a medical chrono which prohibited him from bending, squatting, lifting more than 10 pounds, and  
28 no behind back handcuffs. Officer Hernandez was not satisfied with the results even though he was

1 aware that Plaintiff could not perform the tasks requested. Plaintiff was handcuffed and escorted to C-  
2 facility clinic. Once Plaintiff was in the housing tank, he informed Licensed Vocational Nurses  
3 Martinez and Sami that he was unable to perform the strip search as requested by Martinez due to his  
4 medical issues. Sami asked if Plaintiff was suspected to have contraband on him, and Plaintiff stated  
5 no.

6 On this same date, Lieutenant E. Williams requested that Plaintiff strip search again, and  
7 Plaintiff complied “all the way down to [his] boxer shorts” and stated he would “not be able to bend,  
8 squat & spread my buttocks apart, I’ve been through the metal detectors, hand wands & they’ve been  
9 negative. If you think I have something on me take me to be x-rayed they’ve done it everywhere else  
10 I’ve been under the circumstances either at CTC or F&R [due] to my medical condition.” Williams  
11 stated the x-ray technician was off and release and receiving had no one working, so if Plaintiff  
12 cooperated with him by removing his boxer shorts, bent over and spread his buttocks, he would  
13 dismiss the rules violation report of delaying staff and return him to his cell. Plaintiff again stated that  
14 he could not perform the tasks because of his medical condition as detailed in the medical chrono.  
15 Lieutenant Williams had Officer Hernandez hand wand him again which was negative but Williams  
16 decided to send Plaintiff to the Administrative Security Unit (ASU) contraband watch for weapons  
17 inspection. Plaintiff remained on contraband watch for three days, while handcuffed and in leg irons  
18 with bright lights on 24 hours a day.

19 After the third day on contraband watch, on February 21, 2017, Captain A. Williams arrived at  
20 the ASU and Plaintiff was taken for x-rays and cleared and released back to general population.  
21 Plaintiff submits that this same decision could have been made by Captain Williams three days earlier.

22 While Plaintiff was on contraband watch he asked several officers to turn off the bright light in  
23 his cell because he was unable to sleep. When Plaintiff asked Officer L. Sanchez to turn off the light,  
24 he stated that maintenance had to repair it because it was broken and would not turn off. When  
25 Plaintiff asked Officer Galvenson to turn off the light he stated that “they wanted him to leave it on.”  
26 When Plaintiff asked Officer Schleesman to turn off the light he said he would check with someone  
27 and later told him no. When Plaintiff asked Sergeant Crane he stated, “that the light had to be fixed.”  
28 When Plaintiff asked Sergeant Salvado to turn off the light he received the same negative responses.

1 Lieutenant C. Livingston interviewed Plaintiff regarding his inmate appeal filed regarding the  
2 circumstances surrounding his contraband surveillance watch. Plaintiff informed Livingston that he  
3 did not wish to withdraw the appeal, and the appeal was denied. S. Marsh upheld the decision that  
4 there was no misconduct and that staff did not violate CDCR state policy.

5 On July 3, 2017, N. Scaife upheld the decision that no misconduct by staff or policy had been  
6 violated and signed off on it.

7 On July 7, 2017, Warden S. Sherman also signed off on the inmate appeal.

8 Chief of Appeals M. Voong and Appeals Examiner D. Foston were afforded the opportunity to  
9 correct the matter and failed to do so when the appeal was denied at the third level of review on  
10 December 4, 2017.

11 Plaintiff contends that Associate Warden T.P. Wan is liable for the acts of his subordinates  
12 through the chain of command.

13 Plaintiff seeks compensatory damages as relief.

### 14 III.

## 15 DISCUSSION

### 16 A. Cruel and Unusual Punishment

17 The Eighth Amendment's prohibition against cruel and unusual punishment protects prisoners  
18 not only from inhumane methods of punishment but also from inhumane conditions of confinement.  
19 Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v. Brennan, 511 U.S. 825,  
20 847 (1994) and Rhodes v. Chapman, 452 U.S. 337, 347 (1981)) (quotation marks omitted). While  
21 conditions of confinement may be, and often are, restrictive and harsh, they must not involve the  
22 wanton and unnecessary infliction of pain. Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347)  
23 (quotation marks omitted). Thus, conditions which are devoid of legitimate penological purpose or  
24 contrary to evolving standards of decency that mark the progress of a maturing society violate the  
25 Eighth Amendment. Morgan, 465 F.3d at 1045 (quotation marks and citations omitted); Hope v.  
26 Pelzer, 536 U.S. 730, 7378 (2002); Rhodes, 452 U.S. at 346.

27 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,  
28 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir.

1 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains while in  
2 prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks omitted). To  
3 maintain an Eighth Amendment claim, a prisoner must show that prison officials were deliberately  
4 indifferent to a substantial risk of harm to his health or safety. Farmer, 511 U.S. at 847; Thomas v.  
5 Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir.  
6 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124, 1128 (9th  
7 Cir. 1998).

8 Plaintiff contends that on February 19, 2017, Defendant Hernandez ordered him to strip naked,  
9 squat, bend over at the waist, and pull his buttocks apart. Although Plaintiff stripped down to his  
10 boxers, he was not able to comply with the further requests due to his back brace and a permanent  
11 medical chrono which restricts him from bending, back handcuffs, and lifting more than 10 lbs.  
12 Despite clearing a metal detector test and being denied an x-ray examination, Plaintiff was then sent to  
13 the administrative segregation unit and placed on contraband watch wearing handcuffs and leg  
14 restraints, and subjected to 24-hour bright lights for three days. Viewing Plaintiff's allegations  
15 liberally, Plaintiff states a cognizable claim for cruel and unusual punishment against Defendants  
16 Officer M Hernandez, Lieutenant E. Williams, Captain Williams, Officer L. Sanchez, Officer  
17 Galvenson, Officer Schleesman, Sergeant Crane, and Sergeant Salvado.

18 **B. Inmate Appeal Process**

19 Plaintiff seeks to hold officials liable based on their decision of his inmate appeals.

20 "The Fourteenth Amendment's Due Process Clause protects persons against deprivations of  
21 life, liberty, or property; and those who seek to invoke its procedural protection must establish that one  
22 of these interests is at stake." Wilkinson v. Austin, 545 U.S. 209, 221 (2005). Plaintiff does not have  
23 a protected liberty interest in the processing his appeals, and therefore, he cannot pursue a claim for  
24 denial of due process with respect to the handling or resolution of his appeals. Ramirez v. Galaza, 334  
25 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)).

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1 Defendants Livingston, Scaife, Sherman, Voong, Foston and Wan were involved in reviewing  
2 and deciding Plaintiff's inmate appeals challenging his placement in administrative segregation. As  
3 Plaintiff was previously informed, he does not have a protected liberty interest in the appeals process,  
4 and Defendants' involvement in reviewing and denying his appeals provides no basis for imposition of  
5 liability under section 1983. Ramirez, 334 F.3d at 860. Defendants were not directly involved in the  
6 alleged past violation of Plaintiff's right against cruel and unusual punishment, and their decision to  
7 deny his appeal during the administrative review process does not subject them to liability for the  
8 underlying violation allegedly committed by other prison officials. Accordingly, Plaintiff fails to state  
9 a cognizable claim against Defendants Livingston, Scaife, Sherman, Voong, Foston and Wan, and  
10 these Defendants should be dismissed, without further leave to amend.<sup>1</sup>

#### 11 IV.

#### 12 RECOMMENDATIONS

13 Based on the foregoing, it is HEREBY RECOMMENDED that:

14 1. This action proceed on Plaintiff's cruel and unusual punishment claim against  
15 Defendants Officer M Hernandez, Lieutenant E. Williams, Captain Williams, Officer L. Sanchez,  
16 Officer Galvenson, Officer Schleesman, Sergeant Crane, and Sergeant Salvado; and

17 2. Defendants Livingston, Scaife, Sherman, Voong, Foston and Wan be dismissed from  
18 the action for failure to state a cognizable claim for relief.

19 These Findings and Recommendations will be submitted to the United States District Judge  
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one (21)**  
21 **days** after being served with these Findings and Recommendations, Plaintiff may file written  
22 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
23 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
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25 <sup>1</sup> Based upon the allegations in Plaintiff's original and first amended complaint, the Court is persuaded that Plaintiff is  
26 unable to allege any additional facts that would support a cognizable claim against these Defendants, and further  
27 amendment would be futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may not deny  
28 leave to amend when amendment would be futile.") Based on the nature of the deficiencies at issue, the Court finds that  
further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d  
1446-1449 (9th Cir. 1987).

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specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: June 15, 2018



UNITED STATES MAGISTRATE JUDGE