

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**

BARRY LEE BROOKINS,) Case No. 1:17-cv-01675-AWI-SAB (PC)
)
Plaintiff,)
)
v.) FINDINGS AND RECOMMENDATION
) RECOMMENDING DEFENDANTS’ MOTION
) FOR SUMMARY JUDGMENT BE
M. HERNANDEZ, et al.,) GRANTED/DENIED
)
Defendants.) [ECF No. 70]
)
)

Plaintiff Barry Lee Brookins is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Defendants’ motion for summary judgment, filed on April 20, 2020. (ECF No. 70.)

**I.
RELEVANT BACKGROUND**

This action is proceeding against Defendants Officer M. Hernandez and E. Williams for cruel and unusual punishment.

Defendants filed an answer to the complaint on December 19, 2018.

After an unsuccessful settlement conference, the Court issued the discovery and scheduling order on March 6, 2019. (ECF No. 37.)

///

1 On May 16, 2019, the Court granted Defendants request to modify the scheduling order and
2 extended the time to file an exhaustion-related motion for summary judgment to July 9, 2019. (ECF
3 No. 41.)

4 On July 9, 2019, Defendants filed an exhaustion-related motion for summary judgment. (ECF
5 No. 42.)

6 On August 30, 2019, the undersigned issued Findings and Recommendations recommending
7 that Defendants' exhaustion-related motion for summary judgment be granted, and Defendants A.
8 Williams, Gelvezon, Sanchez, Crane, Scheesley, and Marsh be dismissed, without prejudice, for
9 failure to exhaust the administrative remedies. (ECF No. 46.)

10 On December 16, 2019, the Findings and Recommendations were adopted in full and
11 Defendants A. Williams, Gelvezon, Sanchez, Crane, Scheesley, and Marsh were dismissed from the
12 action, without prejudice. (ECF No. 48.)

13 On January 16, 2020, Plaintiff filed a motion for reconsideration of the Court's December 16,
14 2019 order, which is pending review before the Honorable Anthony W. Ishii. (ECF No. 52.)

15 As previously stated, on April 20, 2020, Defendants Hernandez and Williams filed a motion
16 for summary judgment. (ECF No. 70.) Plaintiff filed an opposition on June 22, 2020, and Defendants
17 filed a reply on June 30, 2020. (ECF Nos. 85, 88.) Plaintiff filed a supplemental opposition on July 7,
18 2020. (ECF No. 91.)

19 II.

20 LEGAL STANDARD

21 A. Summary Judgment Standard

22 Any party may move for summary judgment, and the Court shall grant summary judgment if the
23 movant shows that there is no genuine dispute as to any material fact and the movant is entitled to
24 judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks omitted); Washington Mut. Inc. v.
25 U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's position, whether it be that a fact is disputed
26 or undisputed, must be supported by (1) citing to particular parts of materials in the record, including
27 but not limited to depositions, documents, declarations, or discovery; or (2) showing that the materials
28

1 cited do not establish the presence or absence of a genuine dispute or that the opposing party cannot
2 produce admissible evidence to support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks omitted).
3 The Court may consider other materials in the record not cited to by the parties, but it is not required to
4 do so. Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th
5 Cir. 2001); accord Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010).

6 In judging the evidence at the summary judgment stage, the Court does not make credibility
7 determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984
8 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw all inferences in the light most
9 favorable to the nonmoving party and determine whether a genuine issue of material fact precludes entry
10 of judgment, Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d at 942
11 (quotation marks and citation omitted).

12 **III.**
13 **DISCUSSION**

14 **A. Summary of Plaintiff’s Complaint**

15 On February 19, 2017, M. Hernandez approached Plaintiff’s cell and requested that he strip
16 search. Plaintiff complied and stripped down to his boxer shorts and told Hernandez that he would not
17 be able to bend, squat or pull his buttocks apart because he wears a full body back brace. Plaintiff also
18 had a medical chrono which prohibited him from bending, squatting, lifting more than 10 pounds, and
19 no behind back handcuffs. Officer Hernandez was not satisfied with the results even though he was
20 aware that Plaintiff could not perform the tasks requested. Plaintiff was handcuffed and escorted to C-
21 facility clinic. Once Plaintiff was in the housing tank, he informed Licensed Vocational Nurses
22 Martinez and Sami that he was unable to perform the strip search as requested by Martinez due to his
23 medical issues. Sami asked if Plaintiff was suspected to have contraband on him, and Plaintiff stated
24 no.

25 On this same date, Lieutenant E. Williams requested that Plaintiff strip search again, and
26 Plaintiff complied “all the way down to [his] boxer shorts” and stated he would “not be able to bend,
27 squat & spread my buttocks apart, I’ve been through the metal detectors, hand wands & they’ve been
28 negative. If you think I have something on me take me to be x-rayed they’ve done it everywhere else

1 I've been under the circumstances either at CTC or F&R [due] to my medical condition.” Williams
2 stated the x-ray technician was off and release and receiving had no one working, so if Plaintiff
3 cooperated with him by removing his boxer shorts, bent over and spread his buttocks, he would
4 dismiss the rules violation report of delaying staff and return him to his cell. Plaintiff again stated that
5 he could not perform the tasks because of his medical condition as detailed in the medical chrono.
6 Lieutenant Williams had Officer Hernandez hand wand him again which was negative but Williams
7 decided to send Plaintiff to the Administrative Security Unit (ASU) contraband watch for weapons
8 inspection. Plaintiff remained on contraband watch for three days, while handcuffed and in leg irons
9 with bright lights on 24 hours a day.

10 **B. Statement of Undisputed Facts**

11 1. During the events at issue in this case, Plaintiff was an inmate in the custody of the
12 California Department of Corrections and Rehabilitation (CDCR). (ECF No. 1 at 1, 4, 8.)¹

13 2. During the events at issue in this case, Plaintiff was housed at California Substance
14 Abuse and Treatment Facility (SATF) in Corcoran, California. (ECF No. 1 at 1, 8.)

15 3. During the events in this issue, Defendant M. Hernandez was a correctional officer at
16 SATF. (Declaration of M. Hernandez (Hernandez Decl.) ¶ 1, ECF No. 70-4.)

17 4. During the events at issue in this case, Defendant E. Williams was a correctional
18 lieutenant at SATF. (Declaration of E. Williams (Williams Decl.) ¶ 1, ECF No. 70-5.)

19 5. In February 2017, Plaintiff was house at Facility C, Building 2, Cell C2-118. (Pl.'s
20 Dep. 42:3-5; Hernandez Decl. ¶ 2.)

21 6. On February 19, 2017, prison officials conducted a systematic search of Plaintiff's
22 housing unit in order to locate missing metal and other contraband. (Williams Decl. ¶ 3; Pl's Dep.
23 48:12-25, 49:1-4.)

24 7. As part of the search, prison officials instructed Plaintiff to submit to an unclothed body
25

26 ¹ All references to pagination of specific documents pertain to those as indicated on the upper right corners via the
27 CM/ECF electronic court docketing system.

1 search. (Pl.'s Dep. 38:10-25, 39:5-21; Williams Decl. ¶ 3.)

2 8. Plaintiff refused to remove all of his clothing for the unclothed body search on the
3 ground that he had a medical condition and a medical chrono that prohibited him from bending over or
4 squatting. (Pl.'s Dep. 38:10-25, 43:1-10, 52:13-25; Williams Decl. ¶¶ 3-4; ECF No. 12 at 4, 6, 10.)

5 9. Plaintiff's medical records show that he did not have a medical condition or active
6 medical chrono that prohibited him from bending over or squatting. (Declaration of Dr. Feinberg
7 (Feinberg Decl.) ¶¶ 20-21, ECF NO. 70-6.)

8 10. After refusing to remove his clothing, Plaintiff was escorted to the Facility C medical
9 center and placed in a holding cell. (Pl.'s Dep. 42:17-25, 43:1-25, 44:1-9, 48:12-25, 56:24-25, 57:1-
10 11; Williams Decl. ¶¶ 3-4; ECF No. 12 at 10.)

11 11. After Plaintiff was escorted to the Facility C medical center, Plaintiff did not have any
12 other interactions or contact with Hernandez. (ECF No. 12 at 10; Hernandez Decl. ¶¶ 3-4.)

13 12. Hernandez did not recommend or authorize Plaintiff's placement on contraband
14 surveillance watch. (Hernandez Decl. ¶¶ 3-4.)

15 13. Hernandez did not work in the Short Term Restricted Housing Unit where s are
16 conducted, and he was not one of the officers assigned to visually monitor Plaintiff during his
17 contraband surveillance watch. (Hernandez Decl. ¶ 4; ECF No. 12 at 10.)

18 14. Hernandez was not aware there was any risk Plaintiff would suffer any injury if he
19 were placed on contraband surveillance watch, and he was not aware of the housing conditions
20 Plaintiff experienced while he was on contraband surveillance watch. (Hernandez Decl. ¶¶ 3-4; ECF
21 No. 12 at 10; Pl's Dep. 62:6-25; 63:1-10.)

22 15. At the Facility C medical facility, Williams asked Plaintiff to submit to an unclothed
23 body search. (Williams Decl. ¶ 5; Pl's Dep. 38:19-25, 48:12-25, 49:1-14, 50:6-25, 51:1-25, 52:1-25,
24 60:6-25, 61:1-19, ECF No. 12 at 10-11.)

25 16. Plaintiff again refused to remove all of his clothing for the unclothed body search on
26 the ground that he had a medical condition and a medical chrono that prohibited him from bending
27 over or squatting. (Williams Decl. ¶¶ 5-6; Pl's Dep. 38:19-25, 48:12-25, 49:1-25, 50:1-25, 51:1-25,
28 52:1-25, 55:24-25, 60:6-25, 61:1-19; ECF No. 12 at 10-11.)

1 17. Williams suspected Plaintiff was hiding contraband on or within his body based on
2 Plaintiff's refusal to remove all of his clothing for the unclothed body search. (Williams Decl. ¶¶ 6-8.)

3 18. Plaintiff passing a metal detector test did not eliminate the possibility that he was
4 hiding metal or other nonmetallic contraband within his body. (Williams Decl. ¶ 9.)

5 19. Williams could not have Plaintiff X-rayed onsite on February 19, 2017, because there
6 were no technicians to operate the X-ray machine that weekend. (Pl.'s Dep. 53:10-25, 54:1-25, 58:7-
7 11, ECF No. 12 at 11; CDCR DOM § 52050.21, Williams Decl. Ex. A.)

8 20. Williams did not have the authority to order Plaintiff to be taken to an outside hospital
9 to be X-rayed. (CDCR DOM § 52050.21, Williams Decl. Ex. A; Feinberg Decl. ¶ 22; Pl's Dep.
10 53:10-25, 54:1-25; ECF No. 12 at 11.)

11 21. Williams did not have authority to place Plaintiff on contraband surveillance watch.
12 (Williams Decl. ¶ 10; CDCR DOM § 52050.23.1)

13 22. Based on his suspicion that Plaintiff was hiding contraband on or within his body,
14 Williams contacted the Administrative Officer of the Day, reported Plaintiff would not remove all of
15 his clothing for an unclothed body search, and asked the AOD for instructions on how to address the
16 issue. (Williams Decl. ¶ 11.)

17 23. The AOD made the decision to place Plaintiff on contraband surveillance watch and
18 instructed Williams to have Plaintiff transferred to the Short Term Restricted Housing unit for the
19 contraband surveillance watch. (Williams Decl. ¶ 11.)

20 24. After Plaintiff was escorted from the Facility C medical facility to Short Term
21 Restricted Housing, Plaintiff did not have any other interactions or contact with Williams. (Williams
22 Decl. ¶ 2; Pl's Dep. 57:21-25, 58:1-6, 61:20-25, 62:1-3.)

23 25. Williams did not work in the Short Term Restricted Housing Unit where s are
24 conducted, and he was not one of the officers assigned to visually monitor Plaintiff during his .
25 (Williams Decl. ¶ 12; Pl's Dep. 57:21-25, 58:1-6, 61:20-25, 62:1-3.)

26 ///

27 ///

28 ///

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

C. Analysis of Defendants’ Motion

Defendants argue that the indisputable facts show Plaintiff did not have a medical condition that prevented him from obeying the officers’ orders to submit to an unclothed body search, and did not suffer any serious harm as a result of being put on contraband surveillance watch. There is also no evidence showing Hernandez and Williams were aware of and disregarded a substantial risk that Plaintiff would suffer serious harm while on contraband surveillance watch.

1. Eighth Amendment Deliberate Indifference Claim

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

Prison officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains while in prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks omitted). To maintain an Eighth Amendment claim, a prisoner must show that prison officials were deliberately indifferent to a substantial risk of harm to his health or safety. Farmer, 511 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

///
///

1 In opposition, Plaintiff initially argues Defendants' motion for summary judgment should be
2 denied because "Defense never answered the interrogatories ... dated January 12, 2020, which prejudiced
3 Plaintiff & will result in an incomplete record." (Pl.'s Opp'n at 3, ECF No. 85.)

4 Rule 56(d) of the Federal Rules of Civil Procedure provides a procedure by which a party may
5 avoid summary judgment when such party has not had sufficient opportunity to discover affirmative
6 evidence necessary to oppose the motion. See Garrett v. San Francisco, 818 F.2d 1515, 1518 (9th Cir.
7 1987). In particular, Rule 56(d) provides that a court may deny a summary judgment motion and
8 permit the opposing party to conduct discovery where it appears that the opposing party, in the
9 absence of such discovery, is unable to present facts essential to opposing the motion. Fed. R. Civ. P.
10 56(d). A pending discovery motion is sufficient to raise a question as to whether the party opposing
11 summary judgment should be permitted additional discovery, even if no request under Rule 56(d) has
12 been made. See Garrett, 818 F.2d at 1518.

13 Plaintiff fails to provide any explanation why Defendants Hernandez and Williams's
14 interrogatory responses are necessary to adequately oppose the motion for summary judgment. (See
15 ECF No. 85.) Further, Defendants Hernandez and Williams did not respond to Plaintiff's
16 interrogatories because they were untimely and served over two months after the discovery deadline
17 expired. (ECF No. 66 at 4.) Indeed, on March 26, 2020, the Court previously denied Plaintiff's
18 motion to compel Defendants Hernandez and Williams to respond to Plaintiff's untimely
19 interrogatories. (Id.) As stated in the Court's March 26, 2020 order, Plaintiff has failed to explain
20 why he could not have submitted the interrogatories within the discovery deadline and he never
21 requested an extension of time to do so. (Id.) Accordingly, there is no basis to Plaintiff's claim that
22 Defendants' motion for summary judgment based on the untimely and improper interrogatories.

23 Plaintiff further argues that Defendant Hernandez ordered him to submit to a strip search by
24 removing his boxers, squatting, bending, coughing and spreading his buttocks without any regard for
25 Plaintiff's medical condition. Plaintiff contends that he provided Defendant Hernandez with a
26 permanent accommodation chrono issued by the chief medical officer which provided no bending, no
27 back handcuffs or lifting over ten pounds. Plaintiff was then subjected to contraband security watch
28

1 for three days and nights in which Defendants Williams and Hernandez were “complicit.” Plaintiff
2 contends Defendants “M. Hernandez and E. Williams are both complicit to the acts and wrongdoing,
3 abusing their authority, gross negligence for not abiding b policies and procedures which led to the
4 cruel & unusual punishment of the Plaintiff. For it could have not been possible if either Defendant
5 would have performed their duties by the Department Operations Manual.” (Pl.’s Opp’n at 5, ECF
6 No. 85.) Plaintiff essentially argues that because Defendants Hernandez and Williams disregarded his
7 medical chrono by ordering him to submit to an unclothed body search which lead to his placement in
8 the contraband security watch, they were complicit in the conditions he experienced therein.

9 As an initial matter, there is no evidence Defendants Hernandez and Williams were personally
10 involved in determining or making the decision whether to place Plaintiff on contraband security
11 watch. Even viewing all reasonable inferences in a light favorable to Plaintiff, Defendants have
12 submitted evidence showing they had no material involvement in the decision to place Plaintiff on
13 contraband security watch, and Plaintiff has offered nothing to rebut that. Rather, it is undisputed that
14 only a Captain or Administrative Officer of the Day (AOD) could authorize Plaintiff’s placement on
15 contraband surveillance watch, and that the AOD made the decision in this instance to place Plaintiff
16 on contraband surveillance watch. (Williams Decl. ¶ 11.) Plaintiff contends that Defendant
17 Hernandez conducted the search which eventually led to his placement on contraband surveillance
18 watch, and acknowledges that Hernandez’s involvement ended after he escorted Plaintiff to the
19 holding cell at the Facility C medical center. (ECF No. 12 at 6, 10; Pl’s Dep. 64:4-25; Hernandez
20 Decl. ¶¶ 3-4.) In addition, Plaintiff contends Defendant Williams’ involvement ended after Plaintiff
21 was escorted from the Facility C medical center to the Short Term Restricted Housing Unit where the
22 contraband surveillance watch was conducted. (Pl.’s Opp’n at 10-11; Pl.’s Dep. 38:19-25, 48:12-25,
23 49:1-4, 50:6-25, 51:1-25, 60:6-25, 61:1-19, ECF No. 12 at 10-11; Williams Decl. ¶¶ 5-6, 11-12.)

24 Furthermore, there is no evidence to show that Defendants Hernandez and Williams were
25 responsible for or aware of the conditions Plaintiff experienced while on contraband surveillance
26 watch. It is undisputed that Defendants Hernandez and Williams were not part of the Short Term
27 Restrict Housing Unit team where Plaintiff’s contraband surveillance watch was conducted, and they
28 were not assigned to visually monitor Plaintiff during his contraband surveillance watch. (Hernandez

1 Decl. ¶¶ 3-4; ECF No. 12 at 10; Williams Decl. ¶ 2; Pl.’s Dep. 57:21-25, 58:1-6, 61:20-25, 62:1-25;
2 62:1-10.) Plaintiff’s contention that Defendants involvement in the attempted search led them to be
3 “complicit” in the contraband surveillance watch conditions is insufficient to demonstrate an Eighth
4 Amendment claim for deliberate indifference. It is beyond dispute that California’s contraband
5 surveillance watch procedures are not unconstitutional per se, Chappell v. Mandeville, 706 F.3d 1052,
6 1057-62 (9th Cir. 2013), “just putting plaintiff on (whether it be making the decision or physically
7 escorting plaintiff to the unit) does not establish a plausible claim for a constitutional violation,”
8 Fletcher v. Swarthout, No. 2:14-cv-0567 DB P, 2016 WL 6135870, * 5 (E.D. Cal. Oct. 21, 2016)
9 (granting motion to dismiss Eighth Amendment claim with regard to placement and retention on).
10 Therefore, based on the lack of evidence demonstrating that Defendants “were present, partook in, or
11 at least observed plaintiff during his stay in ,” Plaintiff has not established the subjective element of an
12 Eighth Amendment violation. Fletcher, 2016 WL 6135870, at *5; see also Glaze v. Stane, No. 1:14-
13 cv-01153-DAD-SAB (PC), 2016 WL 7014407, *5 (E.D. Cal. Dec. 1, 2016) (granting summary
14 judgment for defendant based on undisputed facts that defendant's superior made the decision to place
15 the plaintiff on contraband surveillance watch, defendant was not responsible for supervising
16 conditions, and defendant was not aware of the conditions within the contraband watch).

17 Plaintiff further argues that Defendants could and should have had him x-rayed for contraband
18 or ceased the search after he passed the metal detector tests. (ECF No. 85 at 3-4, 6, 10-14, 22-24.)
19 However, it is undisputed that the prison’s contraband surveillance watch procedures requires inmates
20 who are ordered to submit to an unclothed body search to “completely disrobe” so that staff can
21 “inspect and search each item of clothing and visually inspect the inmate’s body.” (CDCR DOM §
22 52050.16.5, Williams Decl. Ex. A.) It is also undisputed that Plaintiff was ordered to submit to an
23 unclothed body search as part of a systematic search for contraband, and Plaintiff refused to remove
24 all of his clothing as ordered. (ECF No. 85 at 22-24; Williams Decl. ¶¶ 3-8; Pl.’s Dep. 38:10-25, 39:5-
25 21, 48:12-25, 49:1-25, 50:1-25, 52:1-25, 55:24-25, 60:6-25, 61:1-19; ECF No. 12 at 4, 6, 10.) It is
26 further undisputed that the fact Plaintiff passed a metal detector test did not eliminate the possibility he
27 was hiding contraband within his body, and there was no ability to conduct an examination by x-ray.
28 Williams Decl. ¶ 9; Pl.’s Dep. 53:10-25, 54:1-25, 58:7-11, ECF No. 12 at 11; CDCR DOM 00A7

1 52050.21, Williams Decl. Ex. A; Feinberg Decl. ¶ 22.) Further, Plaintiff’s medical records demonstrate
2 that he was physically examined by medical staff while on contraband surveillance watch, and it was
3 concluded that no physical limitations prevent Plaintiff from complying with the officers’ orders.
4 (Feinberg Decl. ¶¶ 12-13, Ex. B.) Plaintiff also does not dispute that medical staff offered to assist him in
5 removing his underwear for the unclothed body search, that he refused the offer without explanation, and
6 that he could not explain why he could not remove his underwear when he was able to remove his pants
7 without complaint or injury. (Williams Decl. ¶¶ 4-8.) In addition, Plaintiff’s medical records demonstrate
8 that did not suffer any injuries as a result of the contraband surveillance watch conditions. (Feinberg Decl.
9 ¶ 21.)

10 Moreover, even if Plaintiff could demonstrate that Defendants Hernandez and/or Williams had
11 some involvement in recommending or placing him on contraband surveillance watch, it is undisputed that
12 Plaintiff did not have a valid chrono prohibiting bending, squatting, lifting, etc. in February 2017.
13 Although Plaintiff attaches a permanent chrono dated August 10, 2010, it specifically states that “chronos
14 indicating permanent injunction shall be reviewed *annually*.” (citation, emphasis added.) There is simply
15 no evidence that Plaintiff had an active/current chrono preventing him from complying with Defendants
16 request to bend/squat and cough in order to conduct the visible cavity search in February 2017. In fact,
17 Plaintiff’s medical records reveal that in June 2017, Plaintiff requested to reinstate the 2010 chrono, but it
18 was determined that Plaintiff did not medically qualify for any restrictions against bending and squatting.
(ECF No. 85 at 52; see also Feinberg Decl. ¶ 19, Ex. B.)

19 Plaintiff repeatedly argues that Defendants violated several policies set forth in the Department
20 Operations Manual. However, the violation of prison policy does not in and of itself state a claim under
21 Section 1983, which requires a showing of the violation of federal law. See West v. Atkins, 487 U.S.
22 42, 48 (1988) (providing that Section 1983 requires showing of violation of federal law). There is no
23 authority cited or of which the Court is aware suggesting that the Eighth Amendment or other federal
24 law requires an inmate’s scan to be assessed by a doctor or that the amount of training Defendants
25 received on operating the scanner was insufficient. Accordingly, Defendants Hernandez and Williams
26 are entitled to summary judgment.

27 ///

1 2. Qualified Immunity

2 Even if Plaintiff demonstrated that Defendants violated Plaintiff’s constitutional rights, the
3 Court finds Defendants are entitled to qualified immunity.

4 “Qualified immunity shields public officials from civil damages for performance of discretionary
5 functions. It is ‘an *immunity from suit* rather than a mere defense to liability; and like an absolute
6 immunity, it is effectively lost if a case is erroneously permitted to go to trial.’” Mueller v. Auker, 576
7 F.3d 979, 992 (9th Cir. 2009) (italics in original and citation omitted). “Qualified immunity shields a[
8 correctional] officer [or medical staff member] from suit when [they] make[] a decision that, even if
9 constitutionally deficient, reasonably misapprehends the law governing the circumstances [they]
10 confronted.” Brosseau v. Haugen, 543 U.S. 194, 198 (2004). “The purpose of this doctrine is to
11 recognize that holding officials liable for reasonable mistakes might unnecessarily paralyze their ability
12 to make difficult decisions in challenging situations, thus disrupting the effective performance of their
13 public duties.” Mueller, 576 F.3d at 993.

14 “In resolving questions of qualified immunity at summary judgment, courts engage in a two-
15 pronged inquiry. The first asks whether the facts, ‘[t]aken in the light most favorable to the party
16 asserting the injury, ... show the officer’s conduct violated a [federal] right[.]’” Tolan v. Cotton, 572
17 U.S. 650, 655-56 (2014) (citation omitted). “The second prong of the qualified-immunity analysis asks
18 whether the right in question was ‘clearly established’ at the time of the violation.” Id. at 656 (citation
19 omitted). In applying the qualified immunity doctrine, courts may “exercise their sound discretion in
20 deciding which of the two prongs of the qualified immunity analysis should be addressed first in light
21 of the circumstances in the particular case at hand.” Pearson v. Callahan, 555 U.S. 223, 236 (2009).

22 Under the second prong of the qualified immunity analysis, the question is whether the right in
23 question was clearly established at the time of the violation. Tolan, 572 U.S. at 656. A right is “clearly
24 established” when “the contours of the right [are] sufficiently clear that a reasonable official would
25 understand that what he is doing violates that right.” Anderson v. Creighton, 483 U.S. 635, 640 (1987).
26 Clearly established law should not be defined “at a high level of generality”; rather, it “must be
27 particularized to the facts of the case.” White v. Pauly, ____ U.S. ____, 137 S. Ct. 548, 552 (2017) (*per*
28 *curiam*) (citation omitted). While this standard does not require “a case directly on point,” Ashcroft v.

1 al-Kidd, 563 U.S. 731, 741 (2011), courts typically should identify analogous cases, i.e., ones in which
2 prison officials “acting under similar circumstances” violated the Eighth Amendment, White, 137 S. Ct.
3 at 552. To be analogous, however, the case need not be “materially similar.” Hope v. Pelzer, 536 U.S.
4 730, 739 (2002).

5 In the Ninth Circuit, to assess whether a right is clearly established, courts first look to “Supreme
6 Court and Ninth Circuit law existing at the time of the alleged act.” Cnty. House, Inc. v. City of Boise,
7 623 F.3d 945, 967 (9th Cir. 2010) (citation omitted). Absent binding precedent, courts should consider
8 all relevant decisional law. Capoeman v. Reed, 754 F.2d 1512, 1514 (9th Cir. 1985). Unpublished
9 circuit and district court decisions inform the analysis. Bahrampour v. Lampert, 356 F.3d 969, 977 (9th
10 Cir. 2004); Krug v. Lutz, 329 F.3d 692, 699 (9th Cir. 2003).

11 In Chappell, the Ninth Circuit reviewed California’s contraband surveillance watch procedures
12 as of 2002. The Court held that conditions in the contraband surveillance watch for six days, such as
13 continuous lighting, no mattress, tapping of clothing, lack of ventilation in hot cell, chaining to an iron
14 bed, shackles at ankles and waist, and having to eat like a dog, did not foreclose the finding of
15 qualified immunity. Chappell, 706 F.3d at 1057-62. To date, the Ninth Circuit has not determined
16 ruled whether placement on contraband surveillance watch is unconstitutional. See, e.g., Hinkley v.
17 Vail, 616 Fed. Appx. 274, 274 (9th Cir. 2015) (defendants entitled to qualified immunity because it
18 would not have been clear to reasonable official that 84-hour placement on violated Eighth
19 Amendment); Centano v. Wilson, 479 Fed. Appx. 101 (9th Cir. 2012) (finding no genuine dispute of
20 fact as to whether conditions on violated Eighth Amendment). Thus, because the Ninth Circuit has
21 held that California’s contraband surveillance watch procedures are not unconstitutional per se, the
22 mere placement on contraband surveillance watch is not a constitutional violation.

23 Here, the allegations within the contraband surveillance watch experienced by Plaintiff are less
24 egregious than those present in Chappell. Although Plaintiff faced similar circumstances, including
25 being handcuffed, placed in leg irons and constant bright lights, there are no allegations that Plaintiff
26 was without a mattress, that his clothing was tapped, that there was a lack of ventilation in a hot cell,
27 that he was chained to an iron bed, or that he was forced to eat like a dog. In addition, Plaintiff was
28 subjected to the conditions only half the time from that in Chappell. Even considering these more

1 severe circumstances in Chappell, the Ninth Circuit found that reasonable prison officials would not
2 have known the conditions were unconstitutional, which entitled them to qualified immunity. Further,
3 Plaintiff’s medical records demonstrate that Plaintiff did not complain of any injuries during the
4 contraband surveillance watch, and did not suffer any injuries as a result of the contraband
5 surveillance watch. (Feinberg Decl. ¶¶ 12-13, 15, 20-21.) Plaintiff has offered no authority to
6 demonstrate that the conditions he allegedly experienced were unconstitutional per se, and the
7 authority cited herein demonstrates otherwise. See Maraziti v. First Interstate Bank, 953 F.2d 520,
8 523 (9th Cir. 1992). Thus, the conditions within Plaintiff’s contraband surveillance watch were not
9 “such a far cry from what any reasonable prison official could have believed was legal that the
10 defendants knew or should have known they were breaking the law.” Chappell, 706 F.3d at 1062
11 (citation and quotation marks omitted).

12 In addition, given the Ninth Circuit authority that placement of an inmate on contraband
13 surveillance watch is not unconstitutional per se, a reasonable officer in Defendants’ positions would
14 not have had fair notice that their actions were unlawful. Because Defendants Hernandez and
15 Williams did not work in the housing unit where the contraband surveillance watch was conducted and
16 were not present during Plaintiff’s stay, reasonable officers in Defendants’ positions would presume
17 that their supervisors’ decision to place Plaintiff on contraband surveillance watch was lawful.
18 Further, reasonable officers in Defendants’ positions would not have had fair notice that their actions
19 may lead to Plaintiff being placed on contraband surveillance watch under alleged unconstitutional
20 conditions. Accordingly, Defendants Hernandez and Williams are entitled to qualified immunity in
21 this instance.

22 **IV.**

23 **RECOMMENDATIONS**

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

- 25 1. Defendants’ motion for summary judgment be granted in its entirety; and
26 2. Judgment be entered in favor of Defendants.

27 ///

28 ///

1 These Findings and Recommendations will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after
3 being served with these Findings and Recommendations, the parties may file written objections with
4 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
5 Recommendations.” The parties are advised that failure to file objections within the specified time
6 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir.
7 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
8

9 IT IS SO ORDERED.

10 Dated: July 31, 2020



UNITED STATES MAGISTRATE JUDGE