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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH CANDLER,  
Plaintiff,  
v.  
MALLOT, et al.,  
Defendants.

No. 2:14-cv-0363 GEB KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

I. Introduction

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are cross motions for summary judgment. (ECF Nos. 42, 48.) Plaintiff’s motion is for partial summary judgment. After carefully reviewing the record, the undersigned recommends that plaintiff’s motion be denied and defendants’ motion be granted in part and denied in part.

II. Legal Standard for Summary Judgment

Summary judgment is appropriate when it is demonstrated that the standard set forth in Federal Rule of Civil procedure 56 is met. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

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1 Under summary judgment practice, the moving party always bears  
2 the initial responsibility of informing the district court of the basis  
3 for its motion, and identifying those portions of “the pleadings,  
4 depositions, answers to interrogatories, and admissions on file,  
5 together with the affidavits, if any,” which it believes demonstrate  
6 the absence of a genuine issue of material fact.

7 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting then-numbered Fed. R. Civ. P.  
8 56(c)).

9 “Where the nonmoving party bears the burden of proof at trial, the moving party need  
10 only prove that there is an absence of evidence to support the non-moving party’s case.” Nursing  
11 Home Pension Fund, Local 144 v. Oracle Corp. (In re Oracle Corp. Sec. Litig.), 627 F.3d 376,  
12 387 (9th Cir. 2010) (citing Celotex Corp., 477 U.S. at 325); see also Fed. R. Civ. P. 56 advisory  
13 committee’s notes to 2010 amendments (recognizing that “a party who does not have the trial  
14 burden of production may rely on a showing that a party who does have the trial burden cannot  
15 produce admissible evidence to carry its burden as to the fact”). Indeed, summary judgment  
16 should be entered, after adequate time for discovery and upon motion, against a party who fails to  
17 make a showing sufficient to establish the existence of an element essential to that party’s case,  
18 and on which that party will bear the burden of proof at trial. Celotex Corp., 477 U.S. at 322.  
19 “[A] complete failure of proof concerning an essential element of the nonmoving party’s case  
20 necessarily renders all other facts immaterial.” Id. at 323.

21 Consequently, if the moving party meets its initial responsibility, the burden then shifts to  
22 the opposing party to establish that a genuine issue as to any material fact actually exists. See  
23 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to  
24 establish the existence of such a factual dispute, the opposing party may not rely upon the  
25 allegations or denials of its pleadings, but is required to tender evidence of specific facts in the  
26 form of affidavits, and/or admissible discovery material in support of its contention that such a  
27 dispute exists. See Fed. R. Civ. P. 56(c); Matsushita, 475 U.S. at 586 n.11. The opposing party  
28 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome  
of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
(1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.

1 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return  
2 a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436  
3 (9th Cir. 1987), overruled in part on other grounds, Hollinger v. Titan Capital Corp., 914 F.2d  
4 1564, 1575 (9th Cir. 1990).

5 In the endeavor to establish the existence of a factual dispute, the opposing party need not  
6 establish a material issue of fact conclusively in its favor. It is sufficient that “the claimed factual  
7 dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at  
8 trial.” T.W. Elec. Serv., 809 F.2d at 630. Thus, the “purpose of summary judgment is to ‘pierce  
9 the pleadings and to assess the proof in order to see whether there is a genuine need for trial.’”  
10 Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory committee’s note on 1963  
11 amendments).

12 In resolving a summary judgment motion, the court examines the pleadings, depositions,  
13 answers to interrogatories, and admissions on file, together with the affidavits, if any. Fed. R.  
14 Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson, 477 U.S. at  
15 255. All reasonable inferences that may be drawn from the facts placed before the court must be  
16 drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587. Nevertheless, inferences  
17 are not drawn out of the air, and it is the opposing party’s obligation to produce a factual  
18 predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F.  
19 Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to  
20 demonstrate a genuine issue, the opposing party “must do more than simply show that there is  
21 some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could  
22 not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for  
23 trial.’” Matsushita, 475 U.S. at 586 (citation omitted).

24 By contemporaneous notice provided on July 30, 2014, (ECF No. 22-2), plaintiff was  
25 advised of the requirements for opposing a motion brought pursuant to Rule 56 of the Federal  
26 Rules of Civil Procedure. See Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (*en banc*);  
27 Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988).

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1 III. Plaintiff's Claims

2 This action is proceeding on plaintiff's verified original complaint as to defendants Kitch,  
3 Lee, Mallot, Pavich and Torres.

4 Plaintiff alleges that on July 26, 2013, he was housed in administrative segregation ("ad  
5 seg"). (ECF No. 1 at 3.) At around 10:30 p.m., plaintiff complained to the unit officer that he  
6 was having suicidal thoughts. (Id.) Plaintiff was handcuffed and then placed in a holding cage.  
7 (Id.)

8 When defendants Pavich and Lee arrived to take plaintiff to see medical staff, defendant  
9 Pavich allegedly put a pair of handcuffs on plaintiff so tightly that they caused pain and cut off  
10 the circulation in plaintiff's wrist. (Id.) Defendant Pavich also placed a pair of leg irons on  
11 plaintiff's ankles so tightly that they caused pain and cut off circulation. (Id. at 3-4.) Plaintiff  
12 asked defendants Pavich and Lee to loosen up the restraints because they were painful but they  
13 refused. (Id. at 3.)

14 Plaintiff was then made to walk 300 feet to a transportation vehicle. (Id. at 4.) Plaintiff's  
15 leg restraints hurt with every step. (Id.)

16 When plaintiff arrived at medical, the nurse also refused to loosen the restraints. (Id.)  
17 Defendants Pavich and Lee put plaintiff in a holding cage the size of a phone booth. (Id.)  
18 Plaintiff heard defendant Torres tell defendants Pavich and Lee, "you didn't see nothing, you  
19 didn't hear nothing." (Id.) There were other inmates in nearby holding cages complaining of  
20 cold weather, long waits and tight restraints. (Id. at 4-5.)

21 Plaintiff asked defendants Mallott, Torres and Kitch to loosen his restraints, but they  
22 allegedly refused to help plaintiff. (Id. at 5.) Approximately two hours passed and plaintiff  
23 needed to use the restroom. (Id.) Plaintiff repeatedly asked defendant Mallott, Torres and Kitch  
24 to use the restroom but they refused plaintiff's request. (Id.) Plaintiff's shoulders began to hurt  
25 because he was handcuffed behind his back. (Id.)

26 After approximately five hours, plaintiff was forced to walk back through the "CTC" with  
27 the restraints cutting through his skin at the ankles and wrist. (Id. at 6.) Plaintiff was driven to C-  
28 yard and escorted to a room for suicide watch. (Id.) When defendants Pavich and Lee removed

1 the restraints, there were cuts, scrapes and bruises on plaintiff's wrist and ankles. (Id.) Plaintiff  
2 asked defendants for medical attention for these injuries, but defendants allegedly said that no  
3 medical staff were on duty at the time. (Id.) Defendants then left the area. (Id.)

#### 4 IV. Discussion

5 Plaintiff's complaint includes the following legal claims. First, plaintiff alleges that  
6 defendants used excessive force in violation of the Eighth Amendment with respect to the  
7 application of handcuffs and leg irons. Second, plaintiff alleges that defendants violated the  
8 Eighth Amendment when they made him stand outside in the holding cage in cold weather.  
9 Third, plaintiff alleges that defendants Mallott, Torres and Kitch violated the Eighth Amendment  
10 when they refused to allow plaintiff to use the restroom.

##### 11 A. Excessive Force

###### 12 *Undisputed Facts*

13 On the evening of July 26, 2013, plaintiff was in his cell in ad seg, Facility B at California  
14 State Prison-Sacramento ("CSP-Sac") for disciplinary reasons. (ECF No. 48-2 at 2.) First watch  
15 at CSP-Sac begins at 10:00 p.m. and ends at 6:00 a.m. (Id.)

16 On July 26, 2013, at around 10:30 p.m., the floor officer observed plaintiff in his cell  
17 standing on his desk with a noose around his neck in an apparent suicide attempt. (Id.)  
18 Defendants Lee and Pavich then escorted plaintiff in a vehicle to the Facility A medical clinic for  
19 evaluation by medical and mental health staff. (Id.)

20 Defendants placed plaintiff in handcuffs and leg restraints during the transport for three  
21 reasons: 1) plaintiff expressed suicidal intentions or exhibited suicidal behavior; 2) plaintiff was  
22 an ad seg inmate, and such inmates are placed in handcuffs and leg restraints because of the  
23 increased risk to staff when escorting such inmates; and 3) all inmates who are removed from  
24 their cell during first watch are placed in handcuffs and leg restraints because there is less custody  
25 staff present on first watch. (Id. at 3.)

26 Plaintiff was brought to Facility A because that is where medical staff who evaluate  
27 inmates expressing suicidal thoughts or intentions are located during first watch. (Id.) Inmates  
28 brought to Facility A for evaluation by medical personnel during first watch are placed in holding

1 cells to await evaluation by medical staff and to await orders from mental health clinicians, who  
2 are not on site during first watch, but who are on call. (Id.)

3 At approximately 11:47 p.m., plaintiff was placed in a holding cell in the Facility A  
4 sallyport because these cells are in view of the Facility A Ad Seg Watch Office, and plaintiff  
5 would be under observation by officers in that office. (Id.) Once plaintiff was placed in the  
6 holding cell, defendants Pavich and Lee left Facility A. (Id.) The Facility A Sallyport holding  
7 cell areas are in a covered, outside location. (Id.)

8 Inmates who express suicidal thoughts or display suicidal behavior are kept in handcuffs  
9 and leg restraints while in holding cells for their safety, and the safety and security of staff and  
10 other inmates. (Id. at 4.) Inmates who express suicidal thoughts or display suicidal behavior  
11 remain in handcuffs and leg restraints until such time as the inmate is placed in his new housing  
12 on orders given by mental health staff. (Id.) The parties do not dispute that plaintiff's handcuffs  
13 were fastened behind plaintiff's back.

14 A nurse evaluated plaintiff after he was brought to Facility A. (Id. at 5.) The nurse who  
15 evaluated plaintiff then contacted the on-call mental health clinician. (Id.) Orders were received  
16 from the on-call mental health clinician as to the appropriate housing unit for plaintiff, and those  
17 orders were transmitted to the watch office. (Id.) Defendants Pavich and Lee returned to Facility  
18 A and escorted plaintiff from Facility A to Cell C ZZ001, a cell in C Facility, for suicide  
19 precaution as directed by the orders from the on-call mental health clinician. (Id.)

20 Once plaintiff was put in C ZZ001 cell, his handcuffs and leg restraints were removed.  
21 (Id.)

### 22 *Disputed Facts*

23 The parties dispute whether plaintiff complained that the handcuffs and leg restraints were  
24 too tight. As discussed above, in his verified complaint, plaintiff alleges that he asked defendants  
25 Lee and Pavich to loosen the restraints immediately after they were put on, but defendants  
26 refused. (ECF 1 at 3.) Plaintiff also alleges that he later asked defendants Mallott, Torres and  
27 Kitch to loosen his restraints, but they refused. (Id. at 5.) At his deposition, plaintiff testified  
28 that he talked to defendants Mallot, Torres and Kitch as they walked by. (Plaintiff's deposition at

1 47.) Plaintiff testified that the only defendant who responded to his request to loosen the  
2 restraints was defendant Mallott who told him that the other officers would be back soon. (Id. at  
3 48.) Plaintiff testified that defendants Mallot, Torres and Kitch walked back and forth in front of  
4 plaintiff's holding cell "at least five times." (Id. at 49.)

5 In their declarations submitted in support of their summary judgment motion, defendants  
6 all state that they do not recall plaintiff complaining that his restraints were too tight. (ECF No.  
7 48-6 at 2 (Lee); ECF No. 48-13 at 2 (Pavich); ECF No. 48-7 at 3 (Mallot); ECF no. 48-10 at 2  
8 (Torres); (ECF No. 48-12 at 2 (Kitch).) All defendants state that if plaintiff had complained that  
9 his restraints were too tight, they would have checked to determine if they were too tight, and  
10 then loosened them if appropriate. (ECF No. 48-6 at 2 (Lee); ECF No. 48-13 at 2 (Pavich); ECF  
11 No. 48-7 at 3 (Mallott); ECF No. 48-10 at 2 (Torres); ECF No. 48-12 at 2-3 (Kitch).)

12 The parties also dispute the overall amount of time plaintiff wore the restraints. Plaintiff  
13 alleges that he wore the restraints for approximately 4 hours, i.e., from approximately 11:00 p.m.  
14 until 3 a.m. Under defendants' version of events, plaintiff wore the restraints for approximately 3  
15 hours, i.e, from approximately 11:00 p.m. until 2:00 a.m. The undersigned herein sets forth the  
16 evidence regarding this issue.

17 The parties do not dispute that plaintiff complained of suicidal thoughts at approximately  
18 10:30 p.m. At his deposition, plaintiff testified that after he complained of suicidal thoughts, he  
19 was placed in a holding cell and defendants Pavich and Lee arrived about twenty minutes later,  
20 i.e., at approximately 10:50 p.m. (Plaintiff's deposition at 31.) Defendants do not appear to  
21 dispute this time line.

22 The parties are fairly close in their claims regarding when defendants Lee and Pavich  
23 brought plaintiff to the Facility A holding cell. At his deposition, plaintiff testified that  
24 defendants Pavich and Lee first took him to an interview room with a nurse before taking him to  
25 Facility A. (Id. at 44.) Plaintiff testified that he left the interview room at around 11:00 p.m. and  
26 was placed in the Facility A holding cage approximately 20-25 minutes later. (Id.) In their  
27 declarations, defendants Pavich and Lee state that they placed plaintiff in the Facility A holding  
28 cell at approximately 11:47 p.m. (ECF No. 48-13 at 2 (Pavich); ECF No. 48-6 at 3 (Lee).)

1 Attached to defendants' declarations are holding cell logs reflecting the time they placed plaintiff  
2 in the holding cell.

3 The parties dispute when plaintiff was removed from the Facility A holding cell and taken  
4 to the suicide watch cell. At his deposition, plaintiff alleges that he stayed in the Facility A  
5 holding cell until at 3:00 a.m. (Plaintiff's deposition at 49.) Plaintiff testified that he knew the  
6 time because when he went to the next location with the "CNA," he asked her what time it was,  
7 and she said 3:00 a.m. (Id.) Defendants claim that plaintiff was removed from the Facility A  
8 holding cell at 2:00 a.m. (See Pavich and Lee declarations: ECF No. 48-13 at 2 (Pavich); ECF  
9 No. 48-6 at 3 (Lee).) Defendants have also provided the suicide watch tracking log which states  
10 that plaintiff arrived at C ZZ cell for suicide watch at 2:15 a.m. (ECF No. 48-11 at 4.)

11 The parties dispute the extent of injuries plaintiff suffered. Defendants argue that plaintiff  
12 suffered only minor injuries. Defendants do not dispute that plaintiff suffered "minor" cuts and  
13 scratches on his wrists and ankles that plaintiff claims were caused by the handcuffs and leg  
14 restraints. (ECF No. 48-2 at 5.) Defendants also do not dispute that plaintiff experienced  
15 numbness in his thumb for about one week after July 26, 2013. (Id.) Defendants cite the records  
16 from plaintiff's exams on July 30, 2013, and August 7, 2013, as evidence that plaintiff's injuries  
17 were minor. Defendants also submitted the declaration of Dr. Nangalama who states that the  
18 injuries described in these records demonstrate superficial and minor abrasions. (ECF No. 48-3 at  
19 2.) The undersigned describes these forms herein.

20 On July 28, 2013, plaintiff submitted a request for treatment, at which time he complained  
21 of cuts, bruises, pain and swelling, as well as numbness in his right wrist. (ECF No. 48-3 at 4.)

22 On July 30, 2013, plaintiff was seen by a nurse in response to this request. (Id. at 5.) The form  
23 states that no swelling or bruises were noted. (Id.) The color of plaintiff's wrists and ankles were  
24 within normal range. (Id.) The form notes no other injuries to plaintiff's wrists or ankles. (Id.)

25 On August 3, 2013, plaintiff submitted another health care services request form for  
26 treatment for his ankles and wrists. (Id. at 6.) In this form, plaintiff wrote that he received "the  
27 Motrin which helps with the pain." (Id.) Plaintiff wrote that after nine days, he still had scars  
28 that were healing and every time handcuffs were put on, the scabs came off which slowed the



1 healing process. (Id.) Plaintiff requested a pack of ointment so that the cuts could heal better.

2 (Id.)

3 A nursing encounter form dated August 7, 2013, reported that plaintiff had very small  
4 scars and no open areas. (Id. at 7.) Defendants also submitted the declaration of Dr. Nangalama  
5 who states that the injuries described in these records demonstrate superficial and minor  
6 abrasions. (ECF No. 48-3 at 2.)

7 Plaintiff's deposition testimony describes injuries more serious than those reflected in the  
8 July 30, 2013 and August 7, 2013 forms prepared by medical staff. At his deposition plaintiff  
9 testified that he had scabs on his ankles and wrists. (Plaintiff's deposition transcript at 64-66.)

10 Plaintiff's deposition testimony describes the cuts in more detail:

11 Q: How many cuts or scratches did you have on your right wrist?

12 A: How many?

13 Q: Yeah.

14 A: It was like, you can't even tell how many it was because it is like the size of the  
15 handcuffs. You know what I mean? You can't even see how many. Like, just like scratches,  
16 scratches and cuts. But you can't count. It's like different lines. It is like one big cut.

17 Q: Was there one distinct cut or several small cuts on the wrist?

18 A: Well, I just know like once it scabbed up –

19 Q: Uh-huh.

20 A: -- you wouldn't – couldn't really tell. It looks like it was one big cut once it scabbed  
21 up.

22 Q: Are you pointing to the top of your right hand?

23 A: Right.

24 Q: Is that where the cut was, on the top?

25 A: Yeah, cut right there, too.

26 Q: To the wrists?

27 A: Here on the side, like that.

28 Q: So the top of the wrist, side of the wrist?

1 A: Yep, right there.

2 Q: Left and right? Or just right?

3 A: Both of them.

4 Q: Both of them. So top of the wrist and on the side. What about the bottom, the under  
5 part of the wrists, any cuts there?

6 A: No, I was not really – too much was not there that I recall.

7 Q: Not like a big cut going all the way around?

8 A: Yeah. Just on the top, right here.

9 Q: All right. Would you describe the cuts as being deep?

10 A: Yeah, they was bleeding. Deep enough to where you seen blood.

11 Q: How much were they bleeding, would you say?

12 A: Oh, just red, like you can see meat.

13 Q: But were there drops of blood falling on the floor?

14 A: No, not drops of blood. Not like that, no.

15 Q: All right.

16 A: I couldn't see it until –you couldn't see it until the handcuffs actually came off.

17 Q: Okay. When the cuffs were on your wrists and ankles, how did it feel?

18 A: Painful.

19 (Plaintiff's deposition at 66-67.)

20 In his verified declaration filed in support of his opposition to defendants' summary  
21 judgment motion, plaintiff alleges that he was ultimately given Motrin for pain and antibiotic  
22 ointment for his injuries. (ECF No. 42 at 5.)

23 *Analysis*

24 “When prison officials use excessive force against prisoners, they violate the inmates’  
25 Eighth Amendment right to be free from cruel and unusual punishment.” Clement v. Gomez, 298  
26 F.3d 898, 903 (9th Cir. 2002). In order to establish a claim for the use of excessive force in  
27 violation of the Eighth Amendment, a plaintiff must establish that prison officials applied force  
28 maliciously and sadistically to cause harm, rather than in a good-faith effort to maintain or restore

1 discipline. Hudson v. McMillian, 503 U.S. 1, 6–7 (1992). In making this determination, the  
2 court may evaluate (1) the need for application of force, (2) the relationship between that need  
3 and the amount of force used, (3) the threat reasonably perceived by the responsible officials, and  
4 (4) any efforts made to temper the severity of a forceful response. Id. at 7; see also id. at 9–10.

5 The Eighth Amendment excessive force standard examines de minimis uses of force, not  
6 de minimis injuries. See Oliver v. Keller, 289 F.3d 623, 628 (9th Cir. 2002). However, not  
7 “every malevolent touch by a prison guard gives rise to a federal cause of action.” Hudson v.  
8 McMillian, 503 U.S. 1, 9 (1992). “The Eighth Amendment’s prohibition of cruel and unusual  
9 punishments necessarily excludes from constitutional recognition de minimis uses of physical  
10 force, provided that the use of force is not of a sort ‘repugnant to the conscience of mankind.’”  
11 Id. at 9–10 (internal quotations marks and citations omitted).

12 “[O]verly tight handcuffing can constitute excessive force.” Wall v. Cnty of Orange, 364  
13 F.3 1107, 1112 (9th Cir. 2004) (Fourth Amendment claim). “The Ninth Circuit has held that  
14 excessively tight handcuffing can constitute [excessive force], but only where a plaintiff claims to  
15 have been demonstrably injured by the handcuffs or where complaints about the handcuffs being  
16 too tight were ignored.” Cf. Dillman v. Tuolumne County, 2013 WL 1907379 at \*8 (E.D. Cal.  
17 2013) (citing Wall v. County of Orange, 364 F.3d 1107, 1109–12 (9th Cir. 2004) (arrestee  
18 suffered nerve damage as a result of continued restraint in tight handcuffs); LaLonde v. County of  
19 Riverside, 204 F.3d 947, 952, 960 (9th Cir. 2000) (arrestee complained to officer who refused to  
20 loosen handcuffs); Palmer v. Sanderson, 9 F.3d 1433, 1434–36 (9th Cir. 1993) (arrestee’s wrists  
21 were discolored and officer ignored his complaint), with Hupp v. City of Walnut Creek, 389  
22 F.Supp.2d 1229, 1233 (N.D. Cal. 2005) (denying summary judgment in the absence of “evidence  
23 of a physical manifestation of injury or of a complaint about tight handcuffs that was ignored”);  
24 Burchett v. Kiefer, 310 F.3d 937, 945 (6th Cir. 2002) (refusing to find a constitutional violation  
25 where officers immediately acted after arrestee complained that handcuffs were too tight).<sup>1</sup>

26  
27 <sup>1</sup> In Smith v. Yaroborough, 2008 WL 4877464 at \*12 n. 3 (C.D. 2008), the Central District also  
28 considered the type of injury required in a case alleging excessive force based on overly tight  
handcuffs. After surveying the case law, the Central District found that, “[i]n general, in cases  
where tight handcuffing was found to constitute excessive force, the plaintiff was in visible pain,

1 In the instant case, as indicated by the discussion above, whether plaintiff asked all  
2 defendants to loosen the handcuffs and leg restraints is a materially disputed fact. Defendants  
3 claim that plaintiff did not tell them that the handcuffs and leg restraints were too tight. In  
4 contrast, plaintiff alleges that he told all defendants that the handcuffs and leg restraints were too  
5 tight. On this ground, both motions for summary judgment as to this claim should be denied.

6 Defendants also move for summary judgment on grounds that plaintiff alleges no more  
7 than a de minimis injury. As indicated above, Ninth Circuit case law indicates that a plaintiff is  
8 not required to have a demonstrable injury in order to demonstrate excessive force in the  
9 application of handcuffs if he complained that the handcuffs were too tight. Moreover, in a recent  
10 unpublished case addressing a Fourth Amendment claim for excessive handcuffing, the Ninth  
11 Circuit found that the plaintiff was not required to show that the handcuffs caused visible physical  
12 injury. See Thompson v Lake, 2015 WL 1501760 at\* 1 (9th Cir. April 3, 2015) (“[I]t is enough  
13 that the handcuffs caused [plaintiff] unnecessary pain.”)

14 In the instant case, while the extent of plaintiff’s injuries is disputed, plaintiff’s undisputed  
15 injuries are sufficient to state an Eighth Amendment claim. Defendants do not dispute that the  
16 handcuffs and leg restraints caused plaintiff to suffer pain. In addition, it is undisputed that the  
17 handcuffs caused plaintiff to have scars on his wrists. Defendants also do not dispute that  
18 plaintiff suffered numbness in his right thumb for one week after the incident.

19 The undersigned observes that some of plaintiff’s claimed physical injuries are not  
20 consistent with the medical records. At his deposition, plaintiff testified that he suffered cuts on  
21 both of his wrists that looked like one big cut the size of the handcuffs. The undersigned  
22 particularly notes plaintiff’s testimony that the handcuffs bore into his wrists to the extent that he  
23 could see “meat.” In contrast, the record from the July 30, 2013 exam stated that no swelling or

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24  
25 repeatedly asked the defendants to remove or loosen the handcuffs, had pre-existing injuries  
26 known to the defendant, or alleged other forms of abusive conduct by defendant.” Id., citing  
27 Shaw v. City of Rendondo Beach, 2005 WL 6117549 at \*7 (C.D. Cal. 2005) (“In those tight  
28 handcuffing cases in which courts have found excessive force, the arrestee was either in visible  
pain, complained of pain, alerted the officer to pre-existing injuries, sustained more severe  
injuries, was in handcuffs for a longer period of time, asked to have the handcuffs loosened or  
released, and/or other forms of abusive conduct in conjunction with the tight handcuffing.”)

1 bruises were noted. The notes from this examination also stated that the color of plaintiff's wrists  
2 and ankles were within normal range. The notes from the July 30, 2013 exam noted no other  
3 injuries to plaintiff's wrists or ankles. The notes from the August 7, 2013 examination stated that  
4 plaintiff had very small scars and no open areas.

5 The undersigned is puzzled that the notes from the July 30, 2013 exam do not mention any  
6 injury to plaintiff's wrists which would have caused the scars referred to in the notes from the  
7 August 7, 2013 exam. The undersigned also notes that in his August 3, 2013 request for medical  
8 services, plaintiff wrote that he had been given Motrin for the pain associated with his injuries.  
9 This note suggests that other medical records may exist regarding the medical care plaintiff  
10 received for his injuries which are not before the court. However, the court need not consider  
11 these issues here because plaintiff has alleged sufficient injuries in support of his Eighth  
12 Amendment claim.

13 In his summary judgment motion, plaintiff also argues that defendants were not authorized  
14 to use leg irons. Attached as an exhibit to plaintiff's summary judgment motion is a copy of the  
15 California Department of Corrections ("DOM") Manual regarding the use of restraint gear. (ECF  
16 No. 42-2 at 8.) Section 52050.10.3 states that leg restraints shall be utilized on inmates who have  
17 been placed on "leg iron status" by the administrative segregation captain. (*Id.*)

18 In their opposition, defendants object that plaintiff's exhibit containing DOM section  
19 52050.10.3 is not authenticated and incomplete. (ECF No. 47-1 at 5.) Defendants also object that  
20 plaintiff has provided no evidence that the material in this exhibit applies under the circumstances  
21 or facts of this case. (*Id.*) Defendants' objections to plaintiff's exhibit containing Section  
22 52050.10.3 of the DOM manual have merit. *See* Federal Rules of Evidence 901, 401, 402.  
23 Accordingly, the undersigned finds that plaintiff has not demonstrated that defendants were not  
24 authorized to use leg irons.

25 Plaintiff also suggests that a suicidal inmate should not be required to wait for mental  
26 health care for several hours in a holding cage, with his hands handcuffed tightly behind his back  
27 and in leg restraints. As noted above, in Smith v. Yarborough, 2008 WL 4877464 (C.D. 2008),  
28 and Shaw v. City of Rendondo Beach, 2005 WL 6117549 (C.D. Cal. 2005), the Central District

1 found that tight handcuffing was found to constitute excessive force in a variety of situations,  
2 including when combined with “other forms of abusive conduct by defendant.” Smith, 2008 WL  
3 4877464 at \*12 n.3; Shaw, 2005 WL 6117549 at \*7. The conditions under which plaintiff wore  
4 the restraints may constitute the “other abusive conduct” referred to by the Central District.  
5 However, the undersigned does not reach this issue because neither party has sufficiently briefed  
6 this issue in the pending motions.

7 In conclusion, both motions for summary judgment as to plaintiff’s excessive force claim  
8 should be denied because whether plaintiff told defendants that the restraints were too tight is a  
9 materially disputed fact. Defendants’ motion for summary judgment as to this claim on grounds  
10 that plaintiff did not allege sufficient injury should also be denied.

11 *Qualified Immunity*

12 Defendants also argue that they are entitled to qualified immunity as to plaintiff’s  
13 excessive force claim.

14 In analyzing a claim of qualified immunity, a court must examine (1) whether the facts as  
15 alleged, taken in the light most favorable to plaintiff, show that the defendant's conduct violated a  
16 constitutional right, and (2) if a constitutional right was violated, whether, “in light of the specific  
17 context of the case,” the constitutional right was so clearly established that a reasonable official  
18 would understand that what he or she was doing violated that right. See Saucier v. Katz, 533 U.S.  
19 194, 201–02 (2001). If no constitutional right was violated, the inquiry ends and the defendant  
20 prevails. Saucier, 533 U.S. at 201.

21 To meet the “clearly established” requirement, “[t]he contours of the right must be  
22 sufficiently clear that a reasonable official would understand that what he is doing violates that  
23 right.” Anderson v. Creighton, 483 U.S. 635, 640 (1987). This requires defining the right  
24 allegedly violated in a “particularized” sense that is “relevant” to the actual facts alleged. Id.  
25 “Because the focus is on whether the officer had fair notice that her conduct was unlawful,  
26 reasonableness is judged against the backdrop of the law at the time of the conduct.” Brosseau v.  
27 Haugen, 543 U.S. 194, 198 (2004).

28 ///

1 Courts are not required to address the two inquiries in any particular order. Rather, courts  
2 may “exercise their sound discretion in deciding which of the two prongs of the qualified  
3 immunity analysis should be addressed first in light of the circumstances in the particular case at  
4 hand.” Pearson v. Callahan, 555 U.S. 223, 243 (2009).

5 Taking the facts in the light most favorable to plaintiff, the undersigned finds that  
6 defendants may have violated his constitutional rights. Plaintiff alleges that defendants  
7 disregarded his request to loosen the restraints and that he suffered injuries because the restraints  
8 were applied too tightly. The undersigned finds that under these circumstances, no reasonable  
9 officer could believe that the application of handcuffs was lawful. See Palmer v. Anderson, 9  
10 F.3d 1433, 1436 (9th Cir. 1993) (affirming the denial of qualified immunity on an excessive force  
11 claim where defendant unnecessarily fastened handcuffs so tightly around plaintiff’s wrists that  
12 they caused him pain and left bruises and refused to loosen the handcuffs after plaintiff’s  
13 complaint of pain). Accordingly, defendants’ motion for summary judgment on grounds that they  
14 are entitled to qualified immunity should be denied.

15 *Plaintiff’s Request Pursuant to Federal Rule of Civil Procedure 56(d)*

16 Finally, in his opposition plaintiff argues that defendants’ summary judgment motion  
17 should be denied because he was unable to locate the inmate witnesses who were with him in the  
18 Facility A holding cell area. (ECF No. 52 at 3-4.) Plaintiff argues that these inmate witnesses  
19 could provide declarations in support of his claim that he asked defendants to loosen the  
20 restraints. (Id.)

21 Federal Rule of Civil Procedure 56(d) provides that if a nonmovant shows, for specified  
22 reasons, that it cannot presents facts essential to justify its opposition, the court may defer  
23 considering the motion or deny it.

24 For the following reason, the undersigned finds that plaintiff’s inability to locate his  
25 inmate witnesses does not warrant denying defendants’ summary judgment motion. First,  
26 plaintiff’s inability to locate his inmate witnesses did not prevent plaintiff from moving for  
27 summary judgment as to this claim. Second, and more importantly, plaintiff’s summary  
28 judgment motion does not require the declarations from these inmate witnesses. Plaintiff’s

1 statements in his verified pleadings and deposition testimony are sufficient to demonstrate the  
2 existence of disputed material facts as to this claim. Accordingly, plaintiff's request that  
3 defendants' summary judgment motion be denied pursuant to Federal Rule of Civil Procedure  
4 56(d) should be denied.

5 B. Denial of Access to Restroom

6 *Legal Standard*

7 Temporary deprivation of access to a toilet can rise to the level of an Eighth Amendment  
8 violation. Hope v. Pelzer 536 U.S. 730, 738 (2002) (preventing inmate from using toilet for 7  
9 hours while handcuffed to hitching post contributed to Eighth Amendment violation); Pollard v.  
10 GEO Grp., Inc., 607 F.3d 583, 598 (9th Cir. 2010) ("a prison inmate deprived of access to a toilet  
11 for several days would have a strong case against prison officers under Bivens "), rev'd on other  
12 grounds by Minnecci v. Pollard, 132 S. Ct. 617 (2012); Johnson v. Lewis, 217 F.3d 726,730, 733  
13 (9th Cir. 2000) (complete absence of toilet facilities for inmates for one day could violate the  
14 Eighth Amendment). Nonetheless, "toilets can be unavailable for some period of time without  
15 violating the Eighth Amendment." Johnson, 217 F.3d at 733; accord Gunn v. Tilton, 2011 WL  
16 1121949, at \*3 (E.D. Cal. Mar. 23, 2011) (depriving inmate of access to a restroom for three to  
17 four hours did not violate the Eighth Amendment).

18 *Discussion*

19 The parties dispute whether plaintiff asked to use the bathroom while he was in the  
20 holding cell in Facility A. Defendants Mallot, Torres and Kitch have no recollection of plaintiff  
21 asking to use the bathroom. (ECF No. 48-2.) In his complaint, plaintiff alleges that after two  
22 hours passed, he needed to use the restroom. (ECF No. 1 at 5.) Plaintiff alleges that he repeatedly  
23 asked defendant Mallott, Torres and Kitch to use the restroom but they refused plaintiff's request.  
24 (Id.) In his verified opposition, plaintiff alleges that he had to wait approximately two hours to  
25 use the restroom. (ECF No. 52 at 6.) Plaintiff offers no evidence that he suffered any injury as a  
26 result of having to wait two hours to use the restroom.

27 The parties do not dispute that plaintiff was able to use the bathroom within two minutes  
28 of his arrival in the Facility C ZZ cell.



1 Taking the facts in the light most favorable to plaintiff, the undersigned finds no violation  
2 of his Eighth Amendment rights. Plaintiff's inability to use the bathroom was temporary and the  
3 duration was not such that it posed a threat of serious physical harm or illness to plaintiff. See  
4 Gunn, supra; Kanvick v. Nevada, 2010 WL 2162324 at \*5-6 (D. Nev. 2010) (noting that  
5 temporary deprivation of access to restrooms does not give rise to an Eighth Amendment claim in  
6 the absence of physical injury or risk of contamination.) Accordingly, defendants should be  
7 granted summary judgment as to this claim.

8 C. Exposure to Elements

9 Plaintiff alleges that defendants violated his Eighth Amendment rights by making him  
10 stand in the Facility A holding cell, which is outside, during cold weather. In his verified  
11 opposition, plaintiff alleges that he was wearing only boxer shorts and a t-shirt while in the  
12 holding cell. (ECF No. 52 at 7.) Plaintiff alleges that he is asthmatic and has allergies. (Id.)  
13 Plaintiff alleges that he is sensitive to cold and has been sickened before due to exposure to cold  
14 weather. (Id.)

15 Defendants move for summary judgment as to this claim on grounds that the outside  
16 temperature was not cold. In support of this argument, defendants cite the declaration of  
17 Correctional Captain J. Stewart. (ECF No. 48-5 at 1.) Captain Stewart states that the outside  
18 temperature logs maintained by California State Prison-Sacramento ("CSP-Sac") state that on  
19 July 26, 2013, at 11:00 p.m., the outside temperature was 81.5 degrees. (Id. at 2.) On July 27,  
20 2013, at 2:00 a.m., the outside temperature was 75.4 degrees. (Id.) Plaintiff has offered no  
21 evidence disputing defendants' evidence regarding the outside temperature.

22 As discussed above, the parties dispute the amount of time plaintiff was in the Facility A  
23 holding cell. However, assuming plaintiff was in the holding cell for the time he alleges (a little  
24 over 3 hours), the undersigned finds that plaintiff's exposure to the elements did not violate the  
25 Eighth Amendment. See Gunn v. Tilton, 2011 WL 1121949 at \*4 (E.D. Cal. 2011) (detaining  
26 prisoner outside for approximately six hours in temperatures ranging from 52 to 79 degrees did  
27 not violate Eighth Amendment); Reyes v. Kirkland, 2010 WL 3398486 at \*5-6 (N.D. Cal. Aug.  
28 27, 2010) (finding that detaining a prisoner outside in cool temperatures for sixteen hours did not

1 result in a deprivation sufficiently serious to warrant relief under the Eighth Amendment).  
2 Accordingly, defendants should be granted summary judgment as to this claim.

3 D. Plaintiff's Claims for Mental or Emotional Injuries

4 Defendants argue that plaintiff's claims for mental or emotional injuries should be  
5 dismissed pursuant to 42 U.S.C. § 1997e(e) because the injuries he suffered were de minimis.  
6 This section provides, "No federal civil action may be brought by a prisoner confined in a jail,  
7 prison, or other correctional facility, for mental or emotional injury suffered while in custody  
8 without a prior showing of physical injury." 42 U.S.C. § 1997e(e). This section "requires a prior  
9 showing of physical injury that need not be significant but more than de minimis." Oliver v.  
10 Keller, 289 F.3d 623, 627-29 (9th Cir. 2002). The physical injury requirement applies only to  
11 claims for mental or emotional injuries and does not bar claims for compensatory, nominal or  
12 punitive damages. Id. at 630.

13 The undersigned considers this argument with respect to plaintiff's excessive force claim  
14 only. As discussed above, plaintiff alleges that his injuries were more than de minimis. In  
15 contrast, the medical records submitted by the parties indicate that plaintiff's injuries were not  
16 serious. However, as discussed above, the undersigned is puzzled that the medical record from  
17 the July 30, 2013 exam does not reflect any injury that would have caused the scarring noted in  
18 the notes from the August 7, 2013 exam. While Dr. Nangalama states that plaintiff's injuries  
19 reflected in the notes from the August 7, 2013 exam were not serious, the undersigned is  
20 concerned that the notes from the July 30, 2013 do not accurately reflect the extent of plaintiff's  
21 injuries at a time closer to the incident. The undersigned is also concerned that the court record  
22 does not contain all of the records reflecting the medical care plaintiff received following the  
23 incident, as indicated by plaintiff's statement in his August 3, 2013 request for medical care that  
24 he received Motrin for his injuries. For these reasons, the undersigned cannot find that  
25 defendants have demonstrated that plaintiff's injuries were de minimis.

26 Accordingly, defendants' motion for summary judgment as to plaintiff's claim for mental  
27 and emotional injuries should be denied.

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1 E. Punitive Damages

2 Defendants move for summary judgment as to plaintiff's claim for punitive damages.  
3 Punitive damages are available in a claim brought pursuant to 42 U.S.C. § 1983 where the  
4 "conduct is shown to be motivated by evil motive or intent, or when it involves reckless or  
5 callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56  
6 (1983). Defendants argue that the evidence does not support a claim for punitive damages.

7 Whether plaintiff asked defendants to loosen his handcuffs and leg restraints is a  
8 materially disputed fact. If plaintiff is able to demonstrate that defendants ignored his request to  
9 loosen the handcuffs and leg restraints, he may be able to show that defendants acted with  
10 reckless or callous indifference to his Eighth Amendment rights. Accordingly, defendants'  
11 motion for summary judgment as to plaintiff's claim for punitive damages should be denied.

12 F. Official Capacity

13 Defendants move for summary judgment as to plaintiff's claims brought against them in  
14 their official capacities.

15 Plaintiff may not bring suit for monetary damages against defendants in their official  
16 capacities. "The Eleventh Amendment bars suit for money damages in federal court against a  
17 state, its agencies, and state officials in their official capacities." Aholelei v. Dept. of Pub. Safety,  
18 488 F.3d 1144, 1147 (9th Cir. 2007). Accordingly, defendants should be granted summary  
19 judgment as to plaintiff's official capacity claim for damages. This action should proceed only on  
20 plaintiff's individual capacity claim for damages.

21 Defendants also appear to argue that any claim for injunctive relief against them in their  
22 official capacities should be dismissed as well pursuant to the Eleventh Amendment. Defendants  
23 state that while plaintiff seeks injunctive relief in the form of better mental health care, plaintiff  
24 has admitted that defendants have no ability to control his mental health care or treatment.

25 "[T]he exception to Eleventh Amendment immunity applicable to prospective injunctive  
26 relief ... applies only to state officials with the ability to provide injunctive relief in their official  
27 capacities." Roberts v. Cal. Dept. of Corr., 2007 WL 951289 at \*2 (N.D. Cal. 2007). Defendants  
28 cite plaintiff's deposition testimony where plaintiff concedes that defendants have no control over

1 the mental health care he receives. (Plaintiff's deposition at 92-94.)

2 Because defendants cannot provide plaintiff with the requested injunctive relief,  
3 defendants should be granted summary judgment as to plaintiff's claim for injunctive relief.

4 V. Other Matters

5 On January 29, 2015, plaintiff filed a "reply" to defendants' summary judgment motion  
6 (ECF No. 53), in support of his opposition filed the same date (ECF No. 52). Attached to  
7 plaintiff's reply are several exhibits. On January 29, 2015, defendants filed objections to these  
8 exhibits and a motion to strike these exhibits. (ECF No. 54.) Because the undersigned has not  
9 considered any of the exhibits attached to plaintiff's reply in considering the pending summary  
10 judgment motions, defendants' objections and motion to strike are denied as unnecessary.

11 On February 13, 2015, plaintiff filed three additional pleadings in support of his  
12 opposition filed January 29, 2013: a declaration, a notice of supplemental opposition, and a  
13 supplemental opposition. (ECF Nos. 57, 58, 60.) On March 2, 2015, defendants filed a motion to  
14 strike these pleadings. (ECF No. 61.) Defendants argue that these pleadings, filed after their  
15 motion for summary judgment was fully briefed, are not authorized by the Local Rules or the  
16 Federal Rule of Civil Procedure. Defendants are correct. See Local Rule 230(1). Good cause  
17 appearing, defendants' motion to strike is granted.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. Defendants' evidentiary objections and motion to strike (ECF No. 54) are denied as  
20 unnecessary;

21 2. Defendants' motion to strike (ECF No. 61) is granted; and

22 IT IS HEREBY RECOMMENDED that:

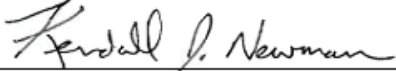
23 1. Plaintiff's motion for summary judgment (ECF No. 42) be denied;

24 2. Defendants' summary judgment motion (ECF No. 48) be denied as to plaintiff's  
25 excessive force claim against defendants in their individual capacities for damages, and denied as  
26 to plaintiff's request for punitive damages and for mental and emotional injuries; defendants'  
27 summary judgment be granted in all other respects.

28 ///

1           These findings and recommendations are 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 fourteen days  
3 after being served with these findings and recommendations, any party may file written  
4 objections with the court and serve a copy on all parties. Such a document should be captioned  
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
6 objections shall be filed and served within fourteen days after service of the objections. The  
7 parties are advised that failure to file objections within the specified time may waive the right to  
8 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 Dated: May 12, 2015

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11 \_\_\_\_\_  
12 KENDALL J. NEWMAN  
13 UNITED STATES MAGISTRATE JUDGE  
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