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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ALEJANDRO PRADO,  
  
                                Plaintiff,  
  
          v.  
  
GARY SWARTHOUT, et al.,  
  
                                Defendants.

No. 2:15-cv-01866 WBS DB

MEMORANDUM AND ORDER

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Plaintiff, a state prisoner proceeding pro se, filed this action alleging violations of 42 U.S.C. § 1983 and the Americans with Disabilities Act. (First Amended Complaint ("FAC") (Docket No. 12.)) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

Defendants moved for summary judgment (Docket No. 36), and on February 5, 2019, the magistrate judge filed findings and recommendations regarding that motion ("Findings and Recommendations") (Docket No. 45). In them, the magistrate judge

1 recommended granting defendants' Motion for Summary Judgment with  
2 respect to plaintiff's constitutional claims and denying it with  
3 respect to plaintiff's ADA claim. These findings and  
4 recommendations were served on all parties and contained notice  
5 to all parties that any objections to the findings and  
6 recommendations were to be filed within twenty-one days.

7 Defendants and plaintiff separately filed objections to  
8 the findings and recommendations (Docket Nos. 50, 51).<sup>1</sup> In  
9 accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this  
10 court has conducted a de novo review of defendants' Motion for  
11 Summary Judgment.

12 I. Factual and Procedural Background

13 Plaintiff's allegations arise out of his experiences as  
14 an inmate in the custody of the California Department of  
15 Corrections. At all times relevant to the allegations of the  
16 First Amended Complaint, plaintiff was housed in the  
17 Administrative-Segregation unit ("Ad-Seg") of the California  
18 State Prison Solanao ("CSP-SOL"). (Defs.' Statement of  
19 Undisputed Facts ("DSUF") ¶ 1 (Docket No. 36-3); Plaintiff's  
20 Affidavit and Statement of Undisputed Facts ("PSUF") ¶ 1 (Docket  
21 No. 43 at 15-18).)

22 The outside edge of the shower in the CSP-SOL's Ad-Seg

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23 <sup>1</sup> Plaintiff also filed a "Reply to the Defendant's Objection  
24 to the Magistrate Judge's Findings and Recommendations; Motion to  
25 Appoint An Expert Witness." (Docket No. 52.) Courts "generally"  
26 utilize an expert witness when "scientific, technical, or other  
27 specialized knowledge will assist the trier-of-fact to understand  
28 the evidence or decide a fact in issue." Ledford v. Sullivan,  
105 F.3d 354, 358-59 (7th Cir. 1997). The evidence at issue in  
this case is not so complex that the appointment of an expert is  
necessary to assist the trier-of-fact. Accordingly, plaintiff's  
Motion to Appoint an Expert Witness (Docket No. 52) is denied.

1 unit was bordered by a tile lip which plaintiff claims is  
2 "several inches" high and defendants describe as "eleven inches  
3 high on the outside of the shower stall, and six inches high on  
4 the inside of the shower". (PSUF ¶¶ 9-10; DSUF ¶ 39.) On  
5 September 3, 2013, plaintiff fell while exiting the Ad-Seg unit's  
6 shower. (DSUF ¶ 37; PSUF ¶ 8.) On September 5, 2013, plaintiff  
7 filed a grievance about the fall; in it, he requested that the  
8 showers be made ADA compliant or that he be transferred to  
9 another institution. (DSUF ¶ 42; PSUF ¶ 11.) In response to the  
10 grievance, plaintiff was interviewed by Correctional Lt.  
11 Blackwell. (DSUF ¶ 43.) The prison's associate warden Matteson  
12 subsequently determined that plaintiff's accommodation chrono<sup>2</sup>  
13 did not indicate he required the use of an ADA compliant shower.  
14 (DSUF ¶ 44.)

15 On October 10, 2013, plaintiff again fell while in the  
16 shower. (DSUF ¶ 46; PSUF ¶ 12.) On October 18, 2013,  
17 plaintiff's accommodation chrono was updated; plaintiff was  
18 classified as "DPO,"<sup>3</sup> indicating that he intermittently used a  
19 wheelchair and required relatively low terrain with no  
20 obstructions in the path of travel. (DSUF ¶¶ 47, 49.) On that  
21 same day, October 18, 2013, Chief Deputy Warden Arnold signed a  
22 second-level response to plaintiff's grievance. (Id. ¶ 48.) The

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23  
24 <sup>2</sup> A "chrono" is a form used by physicians treating  
25 inmates in the custody of the California Department of  
26 Corrections to document any accommodations an inmate requires  
27 because of a medical condition.

28 <sup>3</sup> "DPO" is a code used by California's Department of  
29 Corrections to classify an inmate's disability. Inmates who are  
30 "DPO" are eligible for a disability placement through the  
31 Department of Corrections' Disability Placement Program.

1 response indicated that because of plaintiff's new  
2 classification, he met the criteria for transfer to another  
3 institution that could better accommodate his mobility  
4 impairments. (DSUF ¶ 49; PSUF ¶ 13.)<sup>4</sup> No later than October 25,  
5 2018, defendant provided plaintiff access a shower chair and  
6 walker. (DSUF ¶¶ 51-52.)

7 On April 30, 2014, plaintiff was transferred to the  
8 California Medical Facility at Vacaville ("CMF"). (DSUF ¶ 54.)

9 B. Disputed Facts

10 Plaintiff claims that he fell "several more times after  
11 10/10/13, up through the time he transferred to [California  
12 Medical Facility] on 04/30/14" (PSUF ¶ 16.) He supports this  
13 claim with an incident report and medical records related to a  
14 fall on April 29, 2014. (FAC, Exhibit C at 26/44, 30-33/44.)  
15 Defendants state that there is no evidence plaintiff fell after  
16 receiving access to the shower chair and walker. (Mot. for Summ.  
17 J. at 9.)<sup>5</sup>

18 Defendant states that once provided with the shower  
19 chair and walker, plaintiff could "sit on the chair, lift his  
20 legs over the tile ledge, and swing his legs and feet into the  
21 shower" and "use [the] walker as a stabilizing device to help him  
22 get into the shower." (DSUF ¶¶ 51-52.) Though plaintiff did not

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23  
24 <sup>4</sup> Arnold's response indicated that pending  
25 plaintiff's transfer, plaintiff would be housed in the prison's  
26 Correctional Treatment Center--which had accessible showers.  
(DSUF ¶ 49; PSUF ¶ 14.) Despite this, plaintiff remained in the  
27 Ad-Seg unit throughout his time at CSP-SOL; he could not be  
28 placed in the CTC because of concerns about his vulnerability to  
violence. (DSUF ¶ 50.)

<sup>5</sup> For purposes of adjudicating this motion, the  
court assumes plaintiff's assertion that he fell on April 29 2014  
is true.

1 directly dispute this claim in his opposition to defendants'  
2 Motion for Summary Judgment, his Motion to Appoint an Expert  
3 Witness implicitly disputes these claims by alleging that they  
4 are "based upon sheer speculation." (Mot. to Appoint an Expert  
5 Witness at 2.) Plaintiff does not point to any evidentiary  
6 support for this allegation.

## 7 II. Legal Standard

8 Summary judgment is proper "if the movant shows that  
9 there is no genuine dispute as to any material fact and the  
10 movant is entitled to judgment as a matter of law." Fed. R. Civ.  
11 P. 56(a). A material fact is one that could affect the outcome  
12 of the suit, and a genuine issue is one that could permit a  
13 reasonable jury to enter a verdict in the non-moving party's  
14 favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
15 (1986).

16 The party moving for summary judgment bears the initial  
17 burden of establishing the absence of a genuine issue of material  
18 fact and can satisfy this burden by presenting evidence that  
19 negates an essential element of the non-moving party's case.  
20 Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

21 Alternatively, the movant can demonstrate that the non-moving  
22 party cannot provide evidence to support an essential element  
23 upon which it will bear the burden of proof at trial. Id. Any  
24 inferences drawn from the underlying facts must, however, be  
25 viewed in the light most favorable to the party opposing the  
26 motion. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475  
27 U.S. 574, 587 (1986).

## 28 III. Discussion

1           A.    Plaintiff's Claims

2                   Having carefully reviewed the entire file, the court  
3 finds the magistrate judge's findings and recommendations are  
4 supported by the record and proper analysis with respect to the  
5 following issues: (1) plaintiff's Eight Amendment claims; and (2)  
6 plaintiff's equal protection claim. However, for the following  
7 reasons, the court does not adopt the magistrate judge's  
8 recommendation with respect to the remaining claim.

9           B.    ADA Claim

10                   1.   Applicable Law

11                   Title II of the ADA provides: "[N]o qualified  
12 individual with a disability shall, by reason of such disability,  
13 be excluded from participation in or be denied the benefits of  
14 the services, programs, or activities of a public entity, or be  
15 subjected to discrimination by any such entity." 42 U.S.C. §  
16 12132. To prevail on a claim under Title II, a plaintiff must  
17 show "(1) he is a 'qualified individual with a disability'; (2)  
18 he was either excluded from participation in or denied the  
19 benefits of a public entity's services . . . or was otherwise  
20 discriminated against by the public entity; and (3) such  
21 exclusion, denial . . . or discrimination was by reason of his  
22 disability." Duvall v. County of Kitsap, 260 F.3d 1124, 1135  
23 (9th Cir. 2001) (citing Weinreich v. L.A. Cty. Metro. Transp.  
24 Auth., 114 F.3d 976, 978 (9th Cir. 1997)).

25                   The implementing regulations of Title II provide that  
26 "[a] public entity shall make reasonable modifications in  
27 policies, practice, or procedures when the modifications are  
28 necessary to avoid discrimination on the basis of disability,

1 unless the public entity can demonstrate that making the  
2 modifications would fundamentally alter the nature of the  
3 service, program, or activity.” 28 C.F.R. § 35.130(b)(7).

4 Determining whether a modification or accommodation is  
5 reasonable is a fact-specific, context-specific inquiry. Zukle  
6 v. Regents of Univ. of Cal., 166 F.3d 1041, 1048 (9th Cir. 1999).

7 A public entity “does not ‘act’ by proffering just any  
8 accommodation: it must consider the particular individual’s need  
9 when conducting its investigation into what accommodations are  
10 reasonable.” Duvall v. County of Kitsap, 260 F.3d 1124, 1139  
11 (9th Cir. 2001), as amended on denial of reh’g (Oct. 11, 2001).

12 In evaluating ADA claims brought by inmates, the court may  
13 “consider, with deference to the expert views of the facility  
14 administrators, a detention or correctional facility’s legitimate  
15 interests . . . when determining whether a given accommodation is  
16 reasonable.” Pierce v. County of Orange, 526 F.3d 1190, 1217  
17 (9th Cir. 2008).

## 18 2. Analysis

19 The CDCR is a public entity and the showers it provides  
20 inmates are a “program or service” within the meaning of the ADA.  
21 See Jaros v. Ill. Dep’t of Corr., 684 F.3d 667, 672 (7th Cir.

22 2012). Moreover, it is undisputed that following the October 18,  
23 2013 adjustment to his chrono, plaintiff was a “qualified  
24 individual with a disability” within the meaning of the ADA.

25 (See Defs.’ Objs. to Findings and Recommendations (“Objections”)  
26 at 7 (Docket No. 50).) Finally, it is undisputed that following  
27 the October 18, 2013, adjustment to plaintiff’s chrono indicating  
28 that he required relatively low terrain with no obstructions in

1 the path of travel, the Ad-Seg unit showers--which are bounded on  
2 at least one side by a raised tile lip that is several inches  
3 high (PSUF ¶¶ 9-10; DSUF ¶ 39)--were not accessible to plaintiff  
4 without some form of accommodation.

5 At issue, then, is whether plaintiff was provided with  
6 reasonable modifications that allowed him access to a shower  
7 during the period between October 18, 2013, and April 30, 2014.

8 The magistrate judge provided two bases for her  
9 recommendation that defendants' Motion for Summary Judgment be  
10 denied with respect to plaintiff's ADA claim: first, that the  
11 record lacked facts showing that defendants conducted a "fact-  
12 specific inquiry to determine how to best accommodate plaintiff"  
13 (Findings and Recommendations at 18,) and second, that based on  
14 the delay in transferring plaintiff to a facility with accessible  
15 showers, "a rational trier of fact could infer that the  
16 institution was deliberately indifferent" to plaintiff's lack of  
17 access to accessible showers. (Id.)

18 The magistrate judge is correct that once public  
19 entities, correctional facilities among them, receive a request  
20 for accommodation, they are "required to undertake a fact-  
21 specific investigation to determine what constitutes a reasonable  
22 accommodation." See Duvall, 260 F.3d at 1139 (9th Cir. 2001).  
23 Merely proffering an accommodation is not enough; the public  
24 entity "must consider the particular individual's need when  
25 conducting its investigation into what accommodations are  
26 reasonable." (Id.) In evaluating the adequacy of a public  
27 entity's "fact-specific inquiry," or lack thereof, courts have  
28 looked to whether a given inquiry was sufficiently fact-specific



1 to facilitate the identification of a reasonable accommodation.  
2 See Mooring v. Dep't of Corr. & Rehab., No. 2:14-CV-01471 MCE  
3 KJN, 2015 WL 6163449, at \*4 (E.D. Cal. Oct. 14, 2015) (holding  
4 that a defendant's "failure to even mention" a fact-specific  
5 inquiry into plaintiff's disability rendered summary judgment for  
6 defendant on plaintiff's ADA claims inappropriate in case where  
7 amputee plaintiff was provided with shower chair but was  
8 nonetheless forced to hop on one leg from wheelchair to shower);  
9 Sengupta v. City of Monrovia, No. CV0900795ABCSJHX, 2010 WL  
10 11515299, at \*5 (C.D. Cal. July 28, 2010) (denying summary  
11 judgment when officers ignored deaf arrestee's requests for a  
12 sign language interpreter and made no effort to ascertain what  
13 accommodations he required).

14 In the instant case, however, the court finds that  
15 defendants did engage in a fact-specific inquiry reflecting a  
16 contextualized consideration of plaintiff's mobility limitations  
17 and the potential of a shower chair and/or walker to mitigate  
18 their effects. Writing on October 25, 2013, Captain Wamble  
19 observed that "[i]n an effort to assist inmate Prado to traverse  
20 [the ledge bordering the Ad-Seg unit shower] he has been provided  
21 with the use of a shower chair to sit in and lift his legs over  
22 the ledge and/or a walker which he can use as a stabilizing  
23 device to assist him in stepping over the ledge. Both  
24 apparatuses are available for his use whenever he showers, and  
25 the decision on which apparatus [sic] has been left to inmate  
26 Prado as to which is the easiest and most comfortable for him on  
27 any given day." (Docket No. 36-3 at 91/153). Wamble's report  
28 evidences defendants' attention to plaintiff's particular

1 limitations and capacities.

2           The accommodation provided to plaintiff was apparently  
3 sufficient to accommodate plaintiff's disability. The record  
4 indicates, and plaintiff has not disputed, that plaintiff took  
5 routine showers between October 18, 2013 and April 29, 2014.  
6 (Docket No. 36-3 at 133/153-152/153). The day after his alleged  
7 April 29th fall, plaintiff was transferred to CMF. Moreover,  
8 there is no evidence that the shower chair and walker were so  
9 poorly suited to plaintiff's needs that using them to access the  
10 shower caused him severe pain or exacerbated his medical  
11 problems. Cf. Schmidt v. Odell, 64 F. Supp. 2d 1014, 1033 (D.  
12 Kan. 1999) (denying summary judgment to jailers on ADA claim  
13 brought by double amputee who was not timely provided with a  
14 shower chair and was therefore only able to access the shower by  
15 crawling and sitting on the floor or by standing--with great  
16 pain--on his residual legs).<sup>6</sup>

17           If plaintiff had not been provided with reasonable  
18 accommodations before his transfer to CMF, a reasonable inference  
19 of deliberate indifference might be drawn, as suggested by the  
20 magistrate judge, from the delay in transferring him. However,  
21 because the court concludes that plaintiff was afforded a timely  
22 fact-specific inquiry and reasonably accommodated with the shower  
23 chair, no such inference may be drawn from the delay in  
24 transferring him.

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26           <sup>6</sup> Even if it is true that plaintiff fell more than  
27 once between the time he was provided with the chair and the time  
28 he was transferred, it would not alter the conclusion that  
defendants conducted an appropriate inquiry or that the  
accommodation of the chair was reasonable.

1           Accordingly, because plaintiff has not provided  
2 evidence to support an essential element upon which he will bear  
3 the burden of proof at trial, namely, that he was "excluded from  
4 participation in or denied the benefits of a public entity's  
5 services" as a result of his disability, defendants' motion for  
6 summary judgment on plaintiff's ADA claim must be granted.

7           IT IS THEREFORE ORDERED that:

8           1.    The findings and recommendations (Docket No. 45),  
9 are adopted in part and rejected in part as set forth herein.

10           2.    Defendant's Motion for Summary Judgment (Docket  
11 No. 36) is GRANTED.

12           3.    The Clerk of Court shall close this case.

13 Dated:   April 10, 2019



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14 WILLIAM B. SHUBB  
15 UNITED STATES DISTRICT JUDGE  
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