



1 Plaintiff moves for sanctions based on the alleged spoliation of the videos sought in  
2 September 17, 2019 request for production of documents. It is undisputed that the videos plaintiff  
3 requested are unavailable apparently because they were either destroyed pursuant to the jail video  
4 retention policy and/or destroyed due to a computer problem at the jail.

5 For the reasons discussed herein, the undersigned tentatively finds that the original  
6 complaint, filed November 12, 2017, put defendants on notice to preserve certain videos. CTC  
7 Global Corporation v. Huang, 2019 WL 6357271, at \*2 (C.D. Cal. July 3, 2019) (quoting In Re  
8 Napster, Inc. Copyright Litig., 462 F.Supp.2d 1060, 1067 (N.D. Cal. 2006) (“As soon as a  
9 potential claim is identified, a litigant is under a duty to preserve evidence which it knows or  
10 reasonably should know is relevant to the action.”))

11 In claim two of the original complaint, plaintiff alleges that defendants Dominguez, Yang,  
12 Meier and Grout violated the Eighth Amendment by denying 1) plaintiff’s need for timely  
13 surgery; 2) denying plaintiff’s use of a wheelchair and other means to allow plaintiff not to bear  
14 weight on his feet until they healed; 3) denying plaintiff bathroom and shower facilities designed  
15 for handicapped persons; and 4) failing to assign plaintiff to a ground floor with a lower bunk.  
16 (ECF No. 1 at 19-20.)

17 In claim three of the original complaint, plaintiff alleges that defendants Dominguez,  
18 Yang, Meier and Grout violated the Eighth Amendment by 1) denying plaintiff the use of a  
19 wheelchair; 2) forcing plaintiff to walk excessive distances on crutches or with a cane; 3) forcing  
20 plaintiff to crawl on the ground; 4) denying plaintiff the use of a shower and bathroom facilities  
21 for handicapped persons; and 5) denying plaintiff a bunk on a lower tier of a double bunk. (Id. at  
22 21.)

23 In support of claims two and three, plaintiff alleges, in relevant part, that upon his arrival  
24 at the Main Jail, defendant Dominguez grabbed his crutches and made him hop to an attorney-  
25 client no-contact room. (Id. at 11-12.) Plaintiff alleges that defendant Dominguez later escorted  
26 plaintiff on his crutches to a holding tank with a toilet and then took plaintiff’s crutches. (Id. at  
27 12.) While in the holding tank, plaintiff had a panic attack and had to crawl on the floor to  
28 activate the emergency button. (Id.)

1 Plaintiff alleges that on February 6, 2017, defendant Yang made plaintiff move to  
2 different cell using only a cane. (Id. at 15.) Plaintiff had to drag his bag of belongings, weighing  
3 about 80 pounds, behind him. (Id.)

4 Plaintiff alleges that on February 8, 2017, defendant Meier refused to give plaintiff a  
5 wheelchair ride over to the elevator that would take plaintiff back to the top tier. (Id. at 16.)  
6 Plaintiff alleges that he had to hop on his left foot for ten feet, but that was so painful that plaintiff  
7 then crawled for another 20 feet and got on the elevator. (Id.)

8 Plaintiff alleges that on February 8, 2017, defendant Grout denied his request for a lower  
9 tier and lower bunk. (Id.) Defendant Grout denied this request and told plaintiff to go to his  
10 assigned bunk. (Id.) “Plaintiff did his best to go back up the stairs, but he could not.” (Id.)

11 The undersigned tentatively finds that the allegations set forth above put defendants on  
12 notice of their duty to preserve video of these alleged incidents.

13 As discussed at the September 17, 2021 hearing, in order to evaluate plaintiff’s spoliation  
14 claim, the undersigned requires additional information regarding whether, when and by whom a  
15 litigation hold was requested on the videos. Assuming a litigation hold regarding the videos was  
16 requested, the undersigned requires further information regarding what information the person(s)  
17 making the litigation hold received regarding the availability of the videos, i.e., did the person(s)  
18 receive confirmation that the videos had been destroyed pursuant to the retention policy or were  
19 they informed that the videos were lost due to computer problems. The undersigned also requires  
20 further information regarding the jail video retention policy, i.e., how regularly were videos  
21 actually erased pursuant to this policy. The undersigned also requires further information  
22 regarding what information current defense counsel received regarding the availability of the  
23 videos and from whom and when.

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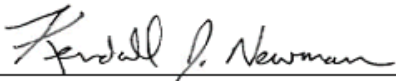
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1           Accordingly, IT IS HEREBY ORDERED that within twenty-one days of the date of this  
2 order, defendants shall file the further briefing discussed above; plaintiff may file a reply within  
3 fourteen days thereafter.

4 Dated: September 20, 2021

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KENDALL J. NEWMAN  
7 UNITED STATES MAGISTRATE JUDGE

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