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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEENAN G. WILKINS,  
Plaintiff,  
v.  
COUNTY OF CONTRA COSTA, et al.,  
Defendants.

Case No. [16-cv-07016-JD](#)

**ORDER OF SERVICE**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has paid the filing fee. Docket No. 35.

**DISCUSSION**

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

1 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations  
2 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its  
3 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”  
4 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they  
5 must be supported by factual allegations. When there are well-pleaded factual allegations, a court  
6 should assume their veracity and then determine whether they plausibly give rise to an entitlement  
7 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by  
9 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was  
10 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 **LEGAL CLAIMS**

12 Plaintiff’s allegations arise from his detention at Martinez Detention Facility while he was  
13 a pretrial detainee. Plaintiff alleges that his due process rights were violated in being placed in  
14 Administrative segregation (“Ad. Seg.”), the conditions in Ad. Seg. violated the Eighth and  
15 Fourteenth Amendments, his rights under the Equal Protection Clause were violated, he was  
16 denied access to the courts, a defendant retaliated against plaintiff due to his protected conduct and  
17 there was a conspiracy.

18 **Due Process**

19 A court presented with a procedural due process claim by a pretrial detainee should first  
20 ask if the alleged deprivation amounts to punishment and therefore implicates the Due Process  
21 Clause itself; if so, the court then must determine what process is due. *See, e.g., Bell*, 441 U.S. at  
22 537-38 (discussing tests traditionally applied to determine whether governmental acts are punitive  
23 in nature). Disciplinary segregation as punishment for violation of jail rules and regulations, for  
24 example, cannot be imposed without due process, i.e., without complying with the procedural  
25 requirements of *Wolff v. McDonnell*, 418 U.S. 539 (1974). *See Mitchell v. Dupnik*, 75 F.3d 517,  
26 523-26 (9th Cir. 1996).

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1           If the alleged deprivation does not amount to punishment, a pretrial detainee’s due process  
2 claim is not analyzed under *Sandin v. Conner*, 515 U.S. 474 (1995), which applies to convicted  
3 prisoners, but rather under the law as it was before *Sandin*. See *Valdez v. Rosenbaum*, 302 F.3d  
4 1039, 1041 n.3 (9th Cir. 2002). The proper test to determine whether detainees have a liberty  
5 interest is that set out in *Hewitt v. Helms*, 459 U.S. 460, 472 (1983), and *Kentucky Dep’t of*  
6 *Corrections v. Thompson*, 490 U.S. 454, 461 (1989). Under those cases, a state statute or  
7 regulation creates a procedurally protected liberty interest if it sets forth “substantive predicates’  
8 to govern official decision making” and also contains “explicitly mandatory language,” i.e., a  
9 specific directive to the decisionmaker that mandates a particular outcome if the substantive  
10 predicates have been met. *Thompson*, 490 U.S. at 462-63 (quoting *Hewitt*, 459 U.S. at 472).

11           If the alleged deprivation does not amount to punishment and there is no state statute or  
12 regulation from which the interest could arise, no procedural due process claim is stated and the  
13 claim should be dismissed. See *Meachum v. Fano*, 427 U.S. 215, 223-27 (1976) (interests  
14 protected by due process arise from Due Process Clause itself or from laws of the states).

15           Plaintiff alleges that he was placed in Ad. Seg. for eight months for unknown reasons  
16 without any due process. He also presents allegations that the deprivations amounted to  
17 punishment. This is sufficient to state a due process claim against Baker, Kosmicky, Yates,  
18 Arnada, Wilson and Wooden.

19           **Conditions of Confinement**

20           Inmates who sue prison officials for injuries suffered while in custody may do so under the  
21 Eighth Amendment’s Cruel and Unusual Punishment Clause or, if not yet convicted, under the  
22 Fourteenth Amendment’s Due Process Clause. See *Bell v. Wolfish*, 441 U.S. 520, 535 (1979);  
23 *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1067-68 (9th Cir. 2016) (en banc). But under both  
24 clauses, the inmate must show that the prison official acted with deliberate indifference. *Id.* at  
25 1068.4 Under the Fourteenth Amendment, a pretrial detainee plaintiff must also show that the  
26 challenged prison condition is not “reasonably related to a legitimate governmental objective.  
27 *Byrd v. Maricopa Cty. Board of Supervisors*, 845 F.3d 919, 924 (9th Cir. 2017) (quoting *Bell*, 441  
28 U.S. at 539). If the particular restriction or condition is reasonably related, without more, it does

1 not amount to punishment. *Bell*, 441 U.S. at 538-39.

2 Plaintiff alleges that he was in a small unsanitary cell with piles of trash that attracted  
3 rodents. He also alleges that he was denied exercise. These allegations are sufficient to proceed  
4 against defendants Livingston, Vanderlind and Vannoy. Plaintiff also names eleven deputies who  
5 worked on each shift. He has failed to link these defendants to the alleged constitutional  
6 deprivations. Simply that they were working at his cell block while he was incarcerated is  
7 insufficient. Nor has plaintiff stated a claim to extent that he argues jail officials violated state  
8 regulations. He may only proceed with constitutional claims.

9 **Equal Protection**

10 “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall  
11 ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a  
12 direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne*  
13 *Living Center*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982));  
14 *Thornton v. City of St. Helens*, 425 F.3d 1158, 1168 (9th Cir. 2005) (evidence of different  
15 treatment of unlike groups does not support an equal protection claim). Dissimilar treatment of  
16 dissimilarly situated persons does not violate Equal Protection. *See Keevan v. Smith*, 100 F.3d  
17 644, 648 (8th Cir. 1996) (treatment of dissimilarly situated persons in a dissimilar manner does not  
18 violate the Equal Protection Clause). Where state action does not implicate a fundamental right or  
19 a suspect classification, the plaintiff can establish an equal protection “class of one” claim by  
20 demonstrating that the state actor (1) intentionally (2) treated him differently than other similarly  
21 situated persons, (3) without a rational basis. *Gerhart v. Lake County Montana*, 637 F.3d 1013,  
22 1020 (9th Cir. 2011) (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per  
23 curiam)).

24 Plaintiff argues that detainees in general population were treated differently than he was.  
25 However, these two groups are not similarly situated and detainees in Ad. Seg. are expected to be  
26 treated differently than detainees in general population. Plaintiff has not shown that he or other  
27 Ad. Seg. detainees were treated differently than other similarly situated individuals. To the extent  
28 he argues he was treated different than other Ad. Seg. detainees, he has not presented any

1 allegations to support an Equal Protection violation. Because he has already been provided leave  
2 to amend, this claim is dismissed with prejudice.

3 **Access to the Courts**

4 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518 U.S.  
5 343, 350 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). To establish a claim for any  
6 violation of the right of access to the courts, the prisoner must prove that there was an inadequacy  
7 in the prison's legal access program that caused him an actual injury. *See Lewis*, 518 U.S. at 350-  
8 55. To prove an actual injury, the prisoner must show that the inadequacy in the prison's program  
9 hindered his efforts to pursue a non-frivolous claim concerning his conviction or conditions of  
10 confinement. *See id.* at 354-55.

11 Plaintiff alleges that he was denied access to the courts to litigate his family law case  
12 concerning child custody, parental rights and property allocation. To proceed with a constitutional  
13 claim plaintiff must demonstrate an actual injury with respect to a non-frivolous claim concerning  
14 his conviction or conditions of confinement. The family law case that plaintiff describes does not  
15 concern his conviction or condition of confinement. This claim is dismissed with prejudice  
16 because plaintiff has already been provided leave to amend.

17 **Retaliation**

18 "Within the prison context, a viable claim of First Amendment retaliation entails five basic  
19 elements: (1) An assertion that a state actor took some adverse action against an inmate (2)  
20 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's  
21 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate  
22 correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted).  
23 *Accord Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995) (prisoner suing prison officials under §  
24 1983 for retaliation must allege that he was retaliated against for exercising his constitutional  
25 rights and that the retaliatory action did not advance legitimate penological goals, such as  
26 preserving institutional order and discipline); *Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994)  
27 (per curiam) (same).

28

1 Plaintiff contends that defendant Engalstad transferred plaintiff to a different cell without a  
2 television in retaliation for plaintiff’s filing of complaints with the County Supervisors. This  
3 claim is sufficient to proceed.

4 **Conspiracy**

5 A civil conspiracy is a combination of two or more persons who, by some concerted  
6 action, intend to accomplish some unlawful objective for the purpose of harming another which  
7 results in damage. *Gilbrook v. City of Westminster*, 177 F.3d 839, 856 (9th Cir. 1999). To prove a  
8 civil conspiracy, the plaintiff must show that the conspiring parties reached a unity of purpose or  
9 common design and understanding, or a meeting of the minds in an unlawful agreement. *Id.* To  
10 be liable, each participant in the conspiracy need not know the exact details of the plan, but each  
11 participant must at least share the common objective of the conspiracy. *Id.*

12 Section 1985 proscribes conspiracies to interfere with an individual’s civil rights. To state  
13 a cause of action under section 1985(3), plaintiff must allege: (1) a conspiracy, (2) to deprive any  
14 person or class of persons of the equal protection of the laws, (3) an act by one of the conspirators  
15 in furtherance of the conspiracy, and (4) a personal injury, property damage or deprivation of any  
16 right or privilege of a citizen of the United States. *Gillispie v. Civiletti*, 629 F.2d 637, 641 (9th  
17 Cir. 1980). Section 1985 applies only where there is a racial or other class-based discriminatory  
18 animus behind the conspirators’ actions. *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th  
19 Cir. 1992). In interpreting these standards, the Ninth Circuit has held that a claim under § 1985  
20 must allege specific facts to support the allegation that defendants conspired together. *Karim-  
21 Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 626 (9th Cir.1988). A mere allegation of  
22 conspiracy without factual specificity is insufficient to state a claim under 42 U.S.C. § 1985. *Id.*;  
23 *Sanchez v. City of Santa Anna*, 936 F.2d 1027, 1039 (9th Cir. 1991).

24 Plaintiff alleges that defendants conspired against him, but he provides no allegations in  
25 support. He has failed to state a claim under either section 1983 or section 1985. This claim is  
26 dismissed with prejudice.

27 **Supervisory Liability**

28 “In a § 1983 or a *Bivens* action – where masters do not answer for the torts of their servants  
– the term ‘supervisory liability’ is a misnomer. Absent vicarious liability, each Government  
official, his or her title notwithstanding, is only liable for his or her own misconduct.” *Ashcroft v.  
Iqbal*, 556 U.S. 662, 677 (2009) (finding under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544  
(2007), and Rule 8 of the Federal Rules of Civil Procedure, that complainant-detainee in a *Bivens*  
action failed to plead sufficient facts “plausibly showing” that top federal officials “purposely  
adopted a policy of classifying post-September-11 detainees as ‘of high interest’ because of their  
race, religion, or national origin” over more likely and non-discriminatory explanations).

Supervisor defendants are entitled to qualified immunity where the allegations against  
them are simply “bald” or “conclusory” because such allegations do not “plausibly” establish the  
supervisors’ personal involvement in their subordinates’ constitutional wrong, *Iqbal*, 556 U.S. at  
675-84, and unfairly subject the supervisor defendants to the expense of discovery and continued  
litigation, *Henry A. v. Willden*, 678 F.3d 991, 1004 (9th Cir. 2012) (general allegations about  
supervisors’ oversight responsibilities and knowledge of independent reports documenting the  
challenged conduct failed to state a claim for supervisor liability). So it is insufficient for a  
plaintiff only to allege that supervisors knew about the constitutional violation and that they  
generally created policies and procedures that led to the violation, without alleging “a *specific*

1 policy” or “a *specific* event” instigated by them that led to the constitutional violations. *Hydrick v.*  
2 *Hunter*, 669 F.3d 937, 942 (9th Cir. 2012) (emphasis in original).

3 “Section 1986 authorizes a remedy against state actors who have negligently failed to  
4 prevent a conspiracy that would be actionable under § 1985.” *Cerrato v. San Francisco Cmty.*  
5 *Coll. Dist.*, 26 F.3d 968, 971 n. 7 (9th Cir. 1994). Plaintiff may not pursue a claim for relief under  
6 42 U.S.C. § 1986 unless he has first stated a claim for relief under section 1985. *McCalden v.*  
7 *California Library Assoc.*, 955 F.2d 1214, 1223 (9th Cir. 1992).

8 In multiple claims set forth above, plaintiff identifies several supervisors as responsible for  
9 the deprivations, yet he fails to provide specific allegations. He has failed to state a claim under  
10 either section 1983 or section 1986. Simply being a supervisor or denying a grievance is  
11 insufficient. The claims against the supervisory defendants related to their actions as supervisors  
12 are dismissed with prejudice. The specific supervisory defendants who have been identified above  
13 will be served with respect to the related claim.<sup>1</sup>

## 14 CONCLUSION

15 1. Defendants Sergeant Baker, Sergeant Kosmicky, Sergeant Yates, Deputy Arnada,  
16 Deputy Wilson, Deputy Wooden, Sherriff Livingston, Lieutenant Vanderlind, Lieutenant Vannoy  
17 and Deputy Engalstad shall be served as discussed above. The remaining defendants are  
18 dismissed with prejudice from this action.

19 2. The clerk shall issue a summons and the United States Marshal shall serve, without  
20 prepayment of fees, copies of the second amended complaint (Docket No. 39) with attachments  
21 and copies of this order on the following defendants at Martinez Detention Facility: Sergeant  
22 Baker, Sergeant Kosmicky, Sergeant Yates, Deputy Arnada, Deputy Wilson, Deputy Wooden,  
23 Sherriff Livingston, Lieutenant Vanderlind, Lieutenant Vannoy and Deputy Engalstad.

24 \_\_\_\_\_  
25 <sup>1</sup> To the extent plaintiff presented a *Monell* claim, any such claim is denied. Local governments  
26 are “persons” subject to liability under 42 U.S.C. § 1983 where official policy or custom causes a  
27 constitutional tort, see *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 690 (1978); however, a city  
28 or county may not be held vicariously liable for the unconstitutional acts of its employees under  
the theory of respondeat superior, see *Board of Cty. Comm’rs. of Bryan Cty. v. Brown*, 520 U.S.  
397, 403 (1997); *Monell*, 436 U.S. at 691. To impose municipal liability under § 1983 for a  
violation of constitutional rights resulting from governmental inaction or omission, a plaintiff must  
show: (1) that the plaintiff possessed a constitutional right of which he or she was deprived; (2)  
that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the  
plaintiff’s constitutional rights; and (4) that the policy is the moving force behind the  
constitutional violation. See *Plumeau v. School Dist. #40 County of Yamhill*, 130 F.3d 432, 438  
(9th Cir. 1997). Proof of random acts or isolated incidents of unconstitutional action by a non-  
policymaking employee are insufficient to establish the existence of a municipal policy or custom.  
See *Rivera v. County of Los Angeles*, 745 F.3d 384, 398 (9th Cir. 2014).

- 1           3.       In order to expedite the resolution of this case, the Court orders as follows:
- 2               a.       No later than sixty days from the date of service, defendant shall file a
- 3 motion for summary judgment or other dispositive motion. The motion shall be supported by
- 4 adequate factual documentation and shall conform in all respects to Federal Rule of Civil
- 5 Procedure 56, and shall include as exhibits all records and incident reports stemming from the
- 6 events at issue. If defendant is of the opinion that this case cannot be resolved by summary
- 7 judgment, he shall so inform the Court prior to the date his summary judgment motion is due. All
- 8 papers filed with the Court shall be promptly served on the plaintiff.
- 9               b.       At the time the dispositive motion is served, defendant shall also serve, on a
- 10 separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154 F.3d 952, 953-
- 11 954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003).
- 12 *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand* and *Wyatt* notices must be
- 13 given at the time motion for summary judgment or motion to dismiss for nonexhaustion is filed,
- 14 not earlier); *Rand* at 960 (separate paper requirement).
- 15               c.       Plaintiff's opposition to the dispositive motion, if any, shall be filed with
- 16 the Court and served upon defendant no later than thirty days from the date the motion was served
- 17 upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING," which is
- 18 provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc),
- 19 and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).
- 20           If defendant files a motion for summary judgment claiming that plaintiff failed to exhaust
- 21 his available administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff should take
- 22 note of the attached page headed "NOTICE -- WARNING (EXHAUSTION)," which is provided
- 23 to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003).
- 24               d.       If defendant wishes to file a reply brief, he shall do so no later than fifteen
- 25 days after the opposition is served upon him.
- 26               e.       The motion shall be deemed submitted as of the date the reply brief is due.
- 27 No hearing will be held on the motion unless the Court so orders at a later date.
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4. All communications by plaintiff with the Court must be served on defendant, or defendant’s counsel once counsel has been designated, by mailing a true copy of the document to defendants or defendants’ counsel.

5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the parties may conduct discovery.

6. It is plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed “Notice of Change of Address.” He also must comply with the Court’s orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

**IT IS SO ORDERED.**

Dated: June 21, 2018

  
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JAMES DONATO  
United States District Judge

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**NOTICE -- WARNING (SUMMARY JUDGMENT)**

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact-- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

**NOTICE -- WARNING (EXHAUSTION)**

If defendants file a motion for summary judgment for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If defendants file a motion for summary judgment for failure to exhaust and it is granted, your case will be dismissed and there will be no trial.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEENAN G. WILKINS,  
Plaintiff,  
v.  
COUNTY OF CONTRA COSTA, et al.,  
Defendants.

Case No. [16-cv-07016-JD](#)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 21, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Keenan G. Wilkins ID: #:AN2387  
Richard J. Donovan Correctional Facility  
San Diego, CA 92179

Dated: June 21, 2018

Susan Y. Soong  
Clerk, United States District Court

By:   
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO