

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TROYCE T. BRANINBURG,	)	No. C 08-4562 CW (PR)
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANTS'
	)	MOTIONS FOR SUMMARY JUDGMENT
v.	)	
	)	(Docket nos. 24, 25, 26)
MONTEREY COUNTY, et al.,	)	
	)	
Defendants.	)	
_____	)	

INTRODUCTION

Plaintiff Troyce T. Braninburg, currently incarcerated at Coalinga State Hospital, brought this pro se civil rights case under 42 U.S.C. § 1983 alleging constitutional violations stemming from being housed at the Monterey County Jail (MCJ) as a pending "Sexually Violent Predator." Plaintiff seeks monetary relief.

Plaintiff is a pre-operation, transgender individual. In its previous Orders, the Court referred to Plaintiff using male pronouns. Plaintiff refers to herself using female pronouns in her filings; therefore, the Court will do so in this Order.

The Court conducted an initial screening of the complaint pursuant to 28 U.S.C. § 1915A(a). Plaintiff asserted that jail officials and medical staff at the MCJ were deliberately indifferent to her medical needs. The following background was taken from the Court's July 1, 2009 Order:

According to the allegations in the complaint, between May 1, 2007 and December 10, 2007, Plaintiff was held as a civil detainee at the Monterey County Jail. (Compl. at 3.) During this time, Plaintiff alleges he did not receive HIV/AIDS medications for four months, and he spent "the entire time in a unsanitary cell with little

1 or no medical attention." (Id.) Plaintiff alleges he  
2 "became ill and built up resistance to current . . .  
3 meds . . . [and] deteriorated medically-mentally." (Id.)  
4 Plaintiff also alleges that he filed numerous grievances,  
5 which were never addressed or returned. FN. (Compl. at  
6 1.)

7 Plaintiff names the "Monterey County District Attorney's  
8 Office" and the "Monterey County Jail Staff as  
9 correctional and medical staff" as defendants in this  
10 case. He seeks monetary damages.

11 FN. Plaintiff contends he has filed administrative  
12 appeals (grievances) on this issue which have never been  
13 answered. It thus appears he has not exhausted his  
14 administrative remedies as required by 42 U.S.C.  
15 § 1997e(a). If the allegations that his appeals have not  
16 been answered are true, however, it may be that  
17 administrative remedies are not "available" within the  
18 meaning of the statute. This is an issue better resolved  
19 at a later stage of the case.

20 (July 1, 2009 Order at 1-2 (footnote in original).) The Court  
21 found that Plaintiff's allegations presented a cognizable  
22 deliberate indifference claim. However, the Court determined that  
23 she failed to allege facts identifying which individuals violated  
24 her constitutional rights. (July 1, 2009 Order at 7.) Plaintiff  
25 named "Monterey County Jail Staff"; however, she failed to name any  
26 specific defendants. The Court granted Plaintiff thirty days to  
27 file an amended complaint to cure the pleading deficiencies, or to  
28 suffer dismissal of the action.

On August 4, 2009, Plaintiff filed a first amended complaint  
(FAC). She named the following Defendants: Monterey County Sheriff  
Mike Kanalakis; MCJ Commander Barrera; and MCJ Director of Medical  
Services Taylor Fithian, M.D. She also named the following as Doe  
defendants: three MCJ sergeants, twelve MCJ deputies; and MCJ  
Isolation Unit supervisors and deputies.

On January 25, 2010, the Court issued its Order of Service.  
The Court found that Plaintiff stated a cognizable claim for

1 deliberate indifference to her serious medical needs against  
2 Defendant Fithian. Plaintiff also stated cognizable supervisory  
3 liability claims against Defendants Kanalakakis and Barrera as well  
4 as cognizable Fourth and Fourteenth Amendment claims against  
5 Defendants Kanalakakis, Barrera and Fithian. Plaintiff's claims  
6 against the Doe defendants were dismissed without prejudice.

7 On June 23, 2010, Defendant Fithian filed his motion for  
8 summary judgment. On June 24, 2010, Defendants Kanalakakis and  
9 Barrera filed their motion for summary judgment. In their motions  
10 for summary judgment, Defendants did not raise Plaintiff's failure  
11 to exhaust her administrative remedies; therefore, the Court need  
12 not consider this issue.

13 In an Order dated July 27, 2010, the Court granted Plaintiff  
14 an extension of time to file her oppositions to Defendants' motions  
15 for summary judgment.

16 On September 1, 2010, Plaintiff filed her oppositions.<sup>1</sup>

17 On September 10, 2010 and September 14, 2010, Defendant  
18 Fithian and Defendants Kanalakakis and Barrera respectively filed  
19 their replies to Plaintiff's oppositions.

20 For reasons discussed below, the Court GRANTS in part and  
21 DENIES in part Defendants' motions for summary judgment.

---

22  
23 <sup>1</sup> In Plaintiff's opposition to Defendant Kanalakakis and  
24 Barrera's motion for summary judgment, she requests more time to  
25 conduct discovery. Plaintiff has already filed her oppositions to  
26 Defendants' motions for summary judgment. Defendants state that  
27 they were "not aware that Plaintiff conducted any discovery, and  
28 Plaintiff has not indicated in her opposition that she has any  
specific plans to do so in the future." (Defs. Kanalakakis and  
Barrera Reply at 2.) Furthermore, Plaintiff fails to describe which  
documents are sought or how "additional discovery would have  
revealed specific facts precluding summary judgment." See Tatum v.  
City and County of S.F., 441 F.3d 1090, 1101 (9th Cir. 2006).  
Therefore, the Court DENIES Plaintiff's request for a continuance  
for discovery.

BACKGROUND

I. Medical Care

Plaintiff was transferred from the California Men's Colony to MCJ in May, 2007. (Def. Fithian Mot. Summ. J., Ex. D-7, California Forensic Medical Group (CFMG) Records.) Plaintiff's medical records describing her prior medical treatment were transferred with her to MCJ. (Id., Ex. D, CFMG Records.) She also brought medications with her to MCJ. An Intake Health Screening and Intake Triage Assessment test found that Plaintiff had Hepatitis C, HIV/AIDS, psychiatric problems and prostate cancer. (Id., Ex. D-1, CFMG Records.)

According to her FAC, Plaintiff did not receive medical treatment or prescribed medication for over four months. (FAC at 3.) She claims that "this deliberate indifference will shorten [her] life expectancy." (Id.) Plaintiff adds that she also suffers from "Hep-C, Neuropathy, cancer, etc." (Id., Attach. "Claim 4 of 4.")

Plaintiff claims that the conditions of confinement caused her "to become extremely depressed, and very suicidal." (Id., Attach. "Claim 3 of 4.") She also "experienced extreme physical discomfort and insomnia." (Id.) Plaintiff claims that she lost forty pounds while housed at MCJ, "caused by a combination of lack of food, lack of proper medical treatment, depression, insomnia, and mental exhaustion." (Id.)

Plaintiff claims that despite being in solitary confinement, "no mental health care or treatment was provided or offered." (Id., Attach. "Relief 1 of 3.")

On May 3, 2007, Plaintiff was examined by Susana Fraser, P.A.

1 (Def. Fithian Mot. Summ. J., Ex. F-1, CFMG Records.) Plaintiff  
2 claims she was taking various medications, which were verbally  
3 approved by Dr. Garcia, her previous physician. (Id.) When  
4 Plaintiff arrived at MCJ, she did not have any HIV medication.  
5 (Id.) Plaintiff's HIV medications had been discontinued by the  
6 medical staff at the California Men's Colony because she had to  
7 undergo neck surgery; however, they were supposed to have been  
8 prescribed again post-surgery. (Id.) P.A. Fraser told Plaintiff  
9 that she would request Plaintiff's medical records relating to HIV  
10 medications. (Id.)

11 On May 16, 2007, Defendant Fithian prescribed six medications  
12 for Plaintiff's conditions after a Jail Re-Admission Health  
13 Appraisal was performed. (Id., Ex. D-9, CFMG Records.)

14 On May 29, 2007, the director of nurses advised MCJ that  
15 Plaintiff had not been on any HIV medications since June, 2006.  
16 (Id., Ex. F-2, CFMG Records.) P.A. Fraser decided to refer  
17 Plaintiff to the Natividad Immunology Division Outpatient (NIDO)  
18 clinic for a new evaluation relating to her HIV positive condition.  
19 (Id.)

20 On June 20, 2007, Plaintiff was seen by Dr. Pauda of the NIDO  
21 clinic. (Id., Ex. L, CFMG Records.) Dr. Pauda ordered laboratory  
22 tests. (Id.) On July 10, 2007, Plaintiff was scheduled for a  
23 follow-up appointment with Dr. Pauda and a psychiatrist, Dr. D.  
24 Guiroy, at the NIDO clinic. (Id., Ex. J-1 - J-2, CFMG Records.)

25 Plaintiff was seen by the Marriage and Family Therapist on  
26 June 22, 2007, who referred Plaintiff to Defendant Fithian. (Id.,  
27 Ex. F-5, CFMG Records.) On June 25, 2007, Defendant Fithian  
28

1 increased the dosage of Plaintiff's Wellbutrin prescription to  
2 treat her depression. (Id.) Plaintiff was otherwise stable.  
3 (Id.)

4 On June 27, 2007, Plaintiff's public defender, Erin  
5 Wennerholm, Esq., sent a letter expressing concern regarding  
6 Plaintiff's medical and psychiatric treatment. (Id., Ex. J-3, CFMG  
7 Records.) Ms. Wennerholm discussed Plaintiff's request for an  
8 increased dosage of her Wellbutrin prescription. (Id.) Plaintiff  
9 requested an additional bagged lunch or breakfast due to rapid  
10 weight loss, and also requested an extra pillow and blanket for  
11 comfort to alleviate pain caused by recent back surgery. (Id.)  
12 Plaintiff asked for disposable razors because of her sensitive  
13 skin. (Id.) Ms. Wennerholm indicated that later on she was  
14 informed that Plaintiff's Wellbutrin prescription had in fact been  
15 increased to the recommended dosage, and that Plaintiff's medical  
16 concerns were being addressed. (Id.)

17 On June 27, 2007, Defendant Fithian ordered Plaintiff an extra  
18 sack lunch and blanket. (Id., Ex. J-4 - J-5, CFMG Records.)

19 On July 10, 2007, Defendant Fithian ordered Plaintiff an  
20 additional sack breakfast. (Id., Ex. J-6, CFMG Records.) That  
21 same day, Plaintiff called Dr. Finnberg asking to discontinue her  
22 Wellbutrin prescription because of concerns relating to her liver  
23 disorder, and Defendant Fithian recommended that Plaintiff's  
24 request be granted. (Id., Ex. F-8, CFMG Records.)

25 On August 24, 2007, a MCJ health care provider denied  
26 Plaintiff's request for a razor due to Plaintiff's history of  
27 suicide threats. (Id., Ex. J-16, CFMG Records.) Plaintiff was  
28

1 also told that she would be given her Neurontin medication three  
2 times a day. (Id.)

3 Plaintiff was then seen at the NIDO clinic regarding her  
4 sensitive skin problems, lab tests and medications, as well as  
5 evaluations by Dr. Pauda, Dr. Guiroy and Dr. Tobber for Hepatitis C  
6 treatment. (Id., Ex. J-19 - J-24, CFMG Records.) Plaintiff was  
7 then given disposable razors due to her sensitive skin and  
8 prescribed various medications. (Id.)

9 On September 11, 2007, Defendant Fithian renewed Plaintiff's  
10 Wellbutrin prescription. (Id., Ex. F-16, CFMG Records.)

11 On October 3, 2007, Plaintiff again asked to discontinue her  
12 Wellbutrin prescription. (Id., Ex. J-28, CFMG Records.) Defendant  
13 Fithian ordered that Plaintiff's Wellbutrin prescription be tapered  
14 off during the following weeks. (Id.)

15 On October 9, 2007, Defendant Fithian noted that Plaintiff's  
16 Wellbutrin prescription was being tapered off, as requested, and  
17 would soon be entirely discontinued. (Id., Ex. F-18, CFMG  
18 Records.)

19 On October 17, 2007, Dr. Guiroy examined Plaintiff and  
20 recommended Wellbutrin once again. (Id., Ex. J-29 - J-30, CFMG  
21 Records.) Plaintiff was scheduled for a follow-up appointment with  
22 Dr. Pauda and Dr. Guiroy. (Id.)

23 On October 18, 2007, the physicians at NIDO clinic examined  
24 Plaintiff and recommended that Wellbutrin be prescribed again, to  
25 which Plaintiff agreed. (Id., Ex. F-19, CFMG Records.) The next  
26 day, Defendant Fithian noted that Plaintiff's Wellbutrin  
27 prescription had been restarted. (Id., Ex. F-20, CFMG Records.)  
28

1 On November 20, 2007, Plaintiff refused to visit physicians at  
2 the NIDO clinic for her follow-up appointment. (Id., Ex. J-35,  
3 CFMG Records.)

4 On November 29, 2007, Defendant Fithian noted that Plaintiff's  
5 Wellbutrin prescription was reordered. (Id., Ex. F-21, CFMG  
6 Records.)

7 On December 5, 2007, Plaintiff was last seen by medical staff  
8 before he was transferred out of MCJ on December 10, 2007. (Id.,  
9 Exs. E-13 & G-14, CFMG Records.)

10 II. Strip Search and Conditions of Confinement

11 Plaintiff alleges that she was "illegally stripped [sic]  
12 search[ed] upon entering MCJ." (FAC, Attach. "Claim 4 of 4.") She  
13 adds that, because this strip search was conducted in the presence  
14 of inmates, it was "humiliating and degrading." (Id.) Plaintiff  
15 argues that she should not have been subjected to a strip search,  
16 because it is "designed for criminal process misdemeanants [sic]  
17 who might be concealing a weapon or have drugs in their  
18 possession." (Id.)

19 Plaintiff alleges that she was held in "solitary confinement"  
20 for the entire duration of her stay in MCJ, and was "only allowed  
21 out of her cell a maximum of 3 hours per week (1 per day, 3x  
22 week)." (Id., Attach. "Claim 1 of 4.") Plaintiff claims that her  
23 cell was "filthy, infested with vermin, had poor plumbing which  
24 often backed up leaving raw sewage." (Id.)

25 Plaintiff claims that she was not given adequate bedding, and  
26 was placed in a "cold and dank" cell that caused her to suffer  
27 "insomnia brought on by extreme physical discomfort." (Id.)  
28



1 Plaintiff asserts that she was "routinely not given meals,  
2 particularly lunch." (Id., Attach. "Claim 2 of 4.") Plaintiff  
3 claims she was given a used razor to shave with, which "may well  
4 have exposed other persons to Plaintiff's HIV, and exposed  
5 Plaintiff to HIV, or other blood borne maladies from other  
6 persons." (Id.)

7 Plaintiff claims that she was "routinely placed in mechanical  
8 restraints" during transports. (Id.) Although Plaintiff was kept  
9 physically separated from the "criminal process prisoners" and  
10 placed in a compartment with a metal mesh grating, she claims that  
11 "the criminal process prisoners routinely expectorated and urinated  
12 on Plaintiff because of her 'involuntary civil commitment status.'" (Id.)  
13 Plaintiff claims that Defendants "made [her] status known to  
14 the criminal process prisoners," which "led to Plaintiff being  
15 singled out for abusive treatment at the hands of the criminal  
16 process prisoners, whom she never should have been transported with  
17 in the first place." (Id.)

18 Plaintiff asserts that she had "extremely limited access to  
19 telephones, could only place non-confidential monitored [sic]  
20 calls" and "could not receive calls. Also, visits were severely  
21 limited to 2 days of non-contact visits per week." (Id., Attach.  
22 "Claim 3 of 4.") Plaintiff argues that "mental health patients in  
23 California are entitled to, as a matter of statutory law,  
24 reasonable access to telephone to both make and receive  
25 confidential calls." (Id.)

26 Finally, Plaintiff asserts that she was denied equal  
27 protection and due process. Specifically, Plaintiff claims that  
28

1 "the conditions of confinement in MCJ and the actions of the  
2 Defendants were punitive in nature." (Id.) Plaintiff contends  
3 that she was "entitled to more considerate conditions of  
4 confinement than those of prisoners whose conditions of confinement  
5 are designed to punish." (Id.) Plaintiff also claims that she was  
6 denied equal protection in the form of rights codified in the  
7 Lanterman-Petris-Short (LPS) Act (California Welfare & Institution  
8 Code §§ 5000, et seq.) which were created to protect mental health  
9 patients in California. (Id., Attach. "Claim 4 of 4.")

10 DISCUSSION

11 I. Legal Standard

12 Summary judgment is properly granted when no genuine and  
13 disputed issues of material fact remain and when, viewing the  
14 evidence most favorably to the non-moving party, the movant is  
15 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.  
16 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);  
17 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.  
18 1987).

19 The moving party bears the burden of showing that there is no  
20 material factual dispute. Therefore, the Court must regard as true  
21 the opposing party's evidence, if supported by affidavits or other  
22 evidentiary material. Celotex, 477 U.S. at 324; Eisenberg, 815  
23 F.2d at 1289. The Court must draw all reasonable inferences in  
24 favor of the party against whom summary judgment is sought.  
25 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
26 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d  
27 1551, 1558 (9th Cir. 1991). A verified complaint may be used as an  
28 opposing affidavit under Rule 56, as long as it is based on

1 personal knowledge and sets forth specific facts admissible in  
2 evidence. Schroeder v. McDonald, 55 F.3d 454, 460 & nn.10-11 (9th  
3 Cir. 1995).

4 Material facts which would preclude entry of summary judgment  
5 are those which, under applicable substantive law, may affect the  
6 outcome of the case. The substantive law will identify which facts  
7 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
8 (1986). Where the moving party does not bear the burden of proof  
9 on an issue at trial, the moving party may discharge its burden of  
10 showing that no genuine issue of material fact remains by  
11 demonstrating that "there is an absence of evidence to support the  
12 nonmoving party's case." Celotex, 477 U.S. at 325. The burden  
13 then shifts to the opposing party to produce "specific evidence,  
14 through affidavits or admissible discovery material, to show that  
15 the dispute exists." Bhan v. NME Hosps., Inc., 929 F.2d 1404, 1409  
16 (9th Cir. 1991), cert. denied, 502 U.S. 994 (1991). A complete  
17 failure of proof concerning an essential element of the non-moving  
18 party's case necessarily renders all other facts immaterial.  
19 Celotex, 477 U.S. at 323.

## 20 II. Legal Claims

### 21 A. Deliberate Indifference to Medical Needs and Supervisory 22 Liability Claims

23 Deliberate indifference to serious medical needs violates the  
24 Eighth Amendment's prohibition against cruel and unusual  
25 punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);  
26 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled  
27 on other grounds by WMX Technologies, Inc. v. Miller, 104 F.3d  
28 1133, 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d

1 769, 771 (9th Cir. 1986). The analysis of a claim of deliberate  
2 indifference to serious medical needs involves an examination of  
3 two elements: (1) a prisoner's serious medical needs and (2) a  
4 deliberately indifferent response by the defendants to those needs.  
5 McGuckin, 974 F.2d at 1059. A serious medical need exists if the  
6 failure to treat a prisoner's condition could result in further  
7 significant injury or the "wanton infliction of unnecessary pain."  
8 Id. (citing Estelle, 429 U.S. at 104). The existence of an injury  
9 that a reasonable doctor or patient would find important and worthy  
10 of comment or treatment; the presence of a medical condition that  
11 significantly affects an individual's daily activities; or the  
12 existence of chronic and substantial pain are examples of  
13 indications that a prisoner has a serious need for medical  
14 treatment. Id. at 1059-60 (citing Wood v. Housewright, 900 F.2d  
15 1332, 1337-41 (9th Cir. 1990)). A prison official is deliberately  
16 indifferent if he knows that a prisoner faces a substantial risk of  
17 serious harm and disregards that risk by failing to take reasonable  
18 steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).  
19 The prison official must not only "be aware of facts from which the  
20 inference could be drawn that a substantial risk of serious harm  
21 exists," but he "must also draw the inference." Id. If a prison  
22 official should have been aware of the risk, but was not, then the  
23 official has not violated the Eighth Amendment, no matter how  
24 severe the risk. Gibson v. County of Washoe, 290 F.3d 1175, 1188  
25 (9th Cir. 2002). In order for deliberate indifference to be  
26 established, therefore, there must be a purposeful act or failure  
27 to act on the part of the defendant and resulting harm. See  
28 McGuckin, 974 F.2d at 1060; Shapley v. Nevada Bd. of State Prison

1 Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985). A finding that the  
2 defendant's activities resulted in "substantial" harm to the  
3 prisoner is not necessary, however. Neither a finding that a  
4 defendant's actions are egregious nor that they resulted in  
5 significant injury to a prisoner is required to establish a  
6 violation of the prisoner's federal constitutional rights.  
7 McGuckin, 974 F.2d at 1060, 1061 (citing Hudson v. McMillian, 503  
8 U.S. 1, 7-10 (1992) (rejecting "significant injury" requirement and  
9 noting that Constitution is violated "whether or not significant  
10 injury is evident")). However, the existence of serious harm tends  
11 to support an inmate's deliberate indifference claims. Jett v.  
12 Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing McGuckin, 974  
13 F.2d at 1060).

14 Once the prerequisites are met, it is up to the factfinder to  
15 determine whether deliberate indifference was exhibited by the  
16 defendant. Such indifference may appear when prison officials deny,  
17 delay or intentionally interfere with medical treatment, or it may  
18 be shown in the way in which prison officials provide medical care.  
19 See McGuckin, 974 F.2d at 1062 (delay of seven months in providing  
20 medical care during which medical condition was left virtually  
21 untreated and plaintiff was forced to endure "unnecessary pain"  
22 sufficient to present colorable § 1983 claim).

23 Plaintiff claims that Defendant Fithian failed to provide her  
24 with medical treatment for her HIV for up to four months. (FAC at  
25 3.) She also claims that she was never provided or offered mental  
26 health treatment. (FAC, Attach. "Relief 1 of 3.")

27 That Plaintiff has serious medical needs is not in dispute.  
28 However, Plaintiff's claim that Defendant Fithian failed to provide

1 any or adequate medical treatment does not support a claim of  
2 deliberate indifference. To the contrary, the record shows that  
3 Defendant Fithian provided adequate care to Plaintiff. (Def.  
4 Fithian Mot. Summ. J., CMFG Records.) Defendant Fithian, as well as  
5 outside physicians, examined Plaintiff on multiple occasions and  
6 gave her adequate treatment for her medical issues. (Id.) When  
7 Plaintiff first entered MCJ and was given a Jail Re-Admission Health  
8 Appraisal, Defendant Fithian noted that Plaintiff had Hepatitis C,  
9 HIV/AIDS, psychiatric problems and prostate cancer. (Id., Ex. D-1,  
10 CMFG Records.) Defendant Fithian prescribed six different  
11 medications for Plaintiff's conditions. (Id., Ex. D-9, CMFG  
12 Records.) Defendant Fithian increased the dosage of Plaintiff's  
13 Wellbutrin prescription to treat her depression. (Id., Ex. F-5,  
14 CMFG Records.) Plaintiff's complaints were not ignored by Defendant  
15 Fithian, who continued to give her follow-up care according to her  
16 medical needs. The record shows that Defendant Fithian ordered  
17 Plaintiff an additional sack breakfast and lunch, as well as an  
18 extra blanket. (Id., Ex. J-6, CMFG Records.) When Plaintiff  
19 requested that her Wellbutrin prescription be discontinued,  
20 Defendant Fithian ordered that the medication be tapered off and  
21 eventually stopped. (Id., Ex. J-28, CMFG Records.) Defendant  
22 Fithian renewed Plaintiff's Wellbutrin prescription after Plaintiff  
23 underwent lab tests at the NIDO clinic and agreed to take  
24 Wellbutrin. (Id., Ex. F-19 - F-20, CMFG Records.) Therefore, the  
25 Court finds that Defendant Fithian was not deliberately indifferent  
26 because he did not deny or delay treatment of Plaintiff's serious  
27 medical needs. Cf. Ortiz v. City of Imperial, 884 F.2d 1312, 1314  
28

1 (9th Cir. 1989) (summary judgment reversed where medical staff and  
2 doctor knew of head injury, disregarded evidence of complications to  
3 which they had been specifically alerted and, without examination,  
4 prescribed contraindicated sedatives).

5 Accordingly, Defendant Fithian is entitled to summary judgment  
6 on the deliberate indifference claim as a matter of law. See  
7 Celotex, 477 U.S. at 323.

8 Plaintiff sues Defendants Kanalakakis and Barrera in their  
9 supervisorial capacity. Specifically, Plaintiff claims Defendants  
10 Kanalakakis and Barrera failed to "adequately train and supervise  
11 [their] subordinate deputies who clearly violated Plaintiff's rights  
12 of due process and equal protection, and who were deliberately  
13 indifferent to Plaintiff's medical needs." (FAC, Attach. "Relief 1  
14 of 3.") The Court has not found that any of Defendants Kanalakakis's  
15 and Barrera's subordinates were deliberately indifferent to  
16 Plaintiff's medical needs, or violated any of her constitutional  
17 rights.

18 Accordingly, Defendants Kanalakakis and Barrera are entitled to  
19 summary judgment as a matter of law as to this claim as well. See  
20 Celotex, 477 U.S. at 323.

21  
22 B. Legal Claims Relating to Conditions of Confinement

23 1. Due Process Claim

24 Plaintiff claims that a variety of the conditions of her  
25 confinement at MCJ between May, 2007 and December, 2007, violated  
26 her constitutional rights as a civil detainee under the SVPA.

27 There is no per se prohibition on housing SVPs in facilities,  
28 such as county jails, where criminal detainees or convicts are also

1 housed. The Ninth Circuit, in Jones v. Blanas, 393 F.3d 918 (9th  
2 Cir. 2004), declined to hold that SVPs may not, consistent with the  
3 Constitution, be held in jail facilities, finding instead that the  
4 dispositive question when assessing an SVP's constitutional  
5 challenge to his or her conditions of confinement is whether those  
6 conditions are punitive. See Jones, 393 F.3d at 932. A restriction  
7 is punitive where it is intended to punish, or where it is excessive  
8 in relation to its non-punitive purpose, or is employed to achieve  
9 objectives that could be accomplished in alternative and less harsh  
10 methods. Id. at 933-34. The conditions and duration of confinement  
11 must "bear some reasonable relation to legitimate, non-punitive  
12 government interests." Hydrick v. Hunter, 500 F.3d 978, 997 (9th  
13 Cir. 2007) (internal quotation and citation omitted). Legitimate,  
14 non-punitive government interests include ensuring a detainee's  
15 presence at trial, maintaining jail security, and effective  
16 management of a detention facility. Jones, 393 F.3d at 932.

17  
18 Further, individuals who have not yet been civilly committed at  
19 trial under the SVPA are entitled to protections at least as great  
20 as those afforded to civilly committed individuals and to  
21 individuals accused but not convicted of a crime. Foster v.  
22 Runnels, 554 F.3d 807, 931-32 (9th Cir. 2009). For such  
23 individuals, a presumption of punitive conditions arises where the  
24 individual is detained under conditions identical to, similar to, or  
25 more restrictive than those under which pretrial criminal detainees  
26 are held, or where the individual is detained under conditions more  
27 restrictive than those he or she would face upon commitment. Id. at  
28 934; cf. Hydrick, 500 F.3d at 997 (after trial and civil commitment



1 under SVPA, presumption switches, and conditions of confinement are  
2 presumed non-punitive unless proven otherwise). The government must  
3 be afforded an opportunity to rebut this presumption by showing  
4 legitimate, non-punitive interests justifying the conditions of  
5 detainees awaiting SVPA proceedings, and by showing that the  
6 restrictions imposed on such detainees were not excessive in  
7 relation to these interests. See Jones, 393 F.3d at 934-35.

8 During the time period at issue in this case, Plaintiff was  
9 housed at MCJ while awaiting adjudication on her civil commitment  
10 proceedings, and was housed in conditions similar to those of  
11 pretrial criminal detainees. Thus, Defendants are required to rebut  
12 the Jones presumption that the conditions of confinement at MCJ were  
13 punitive. Defendants have submitted declarations and Plaintiff's  
14 jail records as evidence in support of their motions for summary  
15 judgment. Plaintiff has not submitted evidence in opposition,  
16 although the Court considers her sworn and verified first amended  
17 complaint as an opposing affidavit to the extent it is based on  
18 personal knowledge and sets forth specific facts admissible in  
19 evidence. See Schroeder, 55 F.3d at 460 & nn.10-11 (allowing  
20 verified complaint to be considered opposing affidavit under Rule 56  
21 to the extent it sets forth specific facts admissible into  
22 evidence).

23  
24 Plaintiff claims that Defendants violated her equal protection  
25 and due process rights by subjecting her to conditions of  
26 confinement that were punitive in nature. (FAC, Attach. "Claim 3 of  
27 4.") Defendants Kanalakis and Barrera argue that they had  
28 legitimate, non-punitive interests justifying how they housed

1 Plaintiff, and that the restrictions imposed on Plaintiff were not  
2 excessive in relation to those interests. (Defs. Kanalakis and  
3 Barrera Mot. Summ. J. at 2.) Moreover, Defendant Fithian argues  
4 that the decisions pertaining to Plaintiff's housing conditions were  
5 "reserved for custodial staff in the day-to-day management of an  
6 inmate's living condition." (Def. Fithian Mot. Summ. J. at 14.)

7 Plaintiff claims that she was held in solitary confinement for  
8 her entire stay at MCJ. (FAC at 3.) She claims that her complaints  
9 about the unsanitary conditions of her cell were ignored, and that  
10 she refused less restrictive placement "to protect herself from harm  
11 at the hands of other inmates." (Opp'n to Defs. Kanalakis and  
12 Barrera Mot. for Summ. J. at 17.) The undisputed evidence  
13 demonstrates that Defendants made "several attempts to expand  
14 [Plaintiff's] privileges and relax her confinement, given available  
15 resources and space." (Hunton Decl. ¶¶ 6-14.) Although she was  
16 placed in isolation, Plaintiff was authorized daily access to the  
17 day room in addition to three hours of outdoor recreation each week.  
18 (Id. ¶ 6.) Plaintiff was housed separately from criminal defendants  
19 as a safety precaution, and she also had greater access to staff and  
20 medical services as well as less competition for time in the day  
21 room. (Id. ¶ 8.) In regards to her claim of inadequate bedding,  
22 Plaintiff's sheets were changed each week and blankets were changed  
23 each quarter. (Id. ¶ 9.) Plaintiff was also ordered an extra  
24 blanket by Defendant Fithian. (Def. Fithian Mot. Summ. J., Ex. J-4  
25 - J-5, CMFG Records.) Efforts were made to ensure the sanitation of  
26 Plaintiff's cell. (Mihu Decl. ¶ 6-7.) For example, cleaning  
27 supplies were routinely provided to inmates because they were  
28

1 expected to clean their own rooms. (Id.) Moreover, three separate  
2 repairs took place, addressing flooding caused by a broken shower  
3 and leaking toilet. (Id.)

4 Plaintiff also claims that she was routinely denied meals,  
5 particularly lunch. (FAC, Attach. "Claim 2 of 4.") Denial of food  
6 service presents a sufficiently serious condition to meet the  
7 objective prong of the Eighth Amendment deliberate indifference  
8 analysis. Foster v. Runnels, 554 F.3d 807, 812-13 (9th Cir. 2009)  
9 (denial of sixteen meals over twenty-three days was "a sufficiently  
10 serious deprivation because food is one of life's basic  
11 necessities"). However, the evidence shows that Plaintiff was  
12 assigned an extra sack breakfast and lunch. (Def. Fithian Mot.  
13 Summ. J., Ex. J-6, CFMG Records.) Moreover, the record shows that  
14 Plaintiff refused her breakfast on six occasions, and refused her  
15 lunch on one occasion. (Hunton Decl. ¶ 10.) Plaintiff was not  
16 deprived of any meal. (Id.)

17 Therefore, the Court finds the evidence presented by Defendants  
18 sufficient to rebut the presumption that the conditions of  
19 confinement to which Plaintiff was subjected in MCJ were punitive.  
20 Plaintiff has failed to carry her burden of demonstrating a genuine  
21 issue of material fact. The Court finds no merit to Plaintiff's  
22 conclusory argument that, as a matter of law, Defendants violated  
23 her constitutional rights because she suffered conditions of  
24 confinement that were intended to punish.

25 Accordingly, Defendants are entitled to summary judgment on  
26 Plaintiff's due process claim.  
27

28

1                   2.    Equal Protection Claim

2           Plaintiff claims that Defendants failed to provide her with the  
3 protections afforded to persons subject to other civil commitments,  
4 such as other mental health patients. (FAC, Attach. "Claim 4 of  
5 4.") "The Equal Protection Clause of the Fourteenth Amendment  
6 commands that no State shall deny to any person within its  
7 jurisdiction the equal protection of the laws, which is essentially  
8 a direction that all persons similarly situated should be treated  
9 alike." City of Cleburne v. Cleburne Living Center, 473 U.S. 432,  
10 439 (1985) (internal quotation and citation omitted).

11           Plaintiff asserts that Defendants made her "involuntary  
12 commitment status" known to the criminal process prisoners, thus  
13 causing her to be singled out and abused. (FAC, Attach. "Claim 2 of  
14 4.") Defendants Kanalakis and Barrera argue that each civil  
15 detainee is clothed in a white jump suit as an indicator to other  
16 inmates and jail officials of his or her status as a civil detainee,  
17 and as a safety precaution to identify and separate the civil  
18 detainee from other inmates. (Def. Kanalakis and Barrera Mot. Summ.  
19 J. at 12.) Defendant Fithian argues that he did not provide any  
20 information to prisoners concerning Plaintiff and her involuntary  
21 commitment status. (Def. Fithian Mot. Summ. J. at 14.) The LPS Act  
22 sets forth the rights applicable to persons who have been  
23 involuntarily detained in a mental health treatment facility for  
24 evaluation or treatment. The Court finds unavailing Plaintiff's  
25 argument that she was treated differently from individuals civilly  
26 detained pursuant to the LPS Act. The LPS Act by its terms applies  
27 only to those who are involuntarily detained in a mental health  
28

1 facility for evaluation or treatment, and does not apply to  
2 individuals such as Plaintiff, who are involuntarily confined  
3 because they are facing civil commitment proceedings under the SVPA.

4 Accordingly, Defendants are entitled to summary judgment on  
5 Plaintiff's equal protection claim.

6 3. Right to Privacy Claim

7 Plaintiff claims that her right to privacy under the Fourteenth  
8 Amendment was violated because she was not allowed sufficient  
9 privacy while meeting with visitors and using the telephone. (FAC,  
10 Attach. "Claim 3 of 4.") Any right to privacy in a county jail is  
11 necessarily diminished by the government's legitimate interest in  
12 securing and effectively managing the jail. See Bell v. Wolfish,  
13 441 U.S. 520, 559 (1979). To test the reasonableness of intrusions  
14 into privacy in the jail setting, the Court "must consider the scope  
15 of the particular intrusion, the manner in which it is conducted,  
16 the justification for initiating it, and the place in which it is  
17 conducted." Id at 559. Matters such as the introduction of  
18 contraband, plans for escape or insubordination, and conflict among  
19 inmates or between inmates and staff could be discussed in  
20 confidential telephone calls or during confidential visits.  
21 Therefore, Defendants' restrictions on these matters are relatively  
22 routine precautions related to the safety of the staff and inmates  
23 and the security of the jail. See, e.g., Block v. Rutherford, 468  
24 U.S. 576, 588 (1984) (deferring to jail administrators' discretion  
25 in determination that contact visits would jeopardize safety of  
26 institution). Additionally, Defendants claim Plaintiff refused use  
27

28

1 of the day room and access to the telephone fifty-seven percent of  
2 the time it was available. (Hunton Decl. ¶ 12.)

3 There is no evidence in the record that the alleged  
4 restrictions on Plaintiff's telephone calls and visits were  
5 unrelated to the legitimate government interest in the safety of  
6 MCJ. Accordingly, Defendants are entitled to summary judgment on  
7 Plaintiff's right to privacy claim.

8 4. Fourth and Fourteenth Amendments

9 Plaintiff claims that she was subjected to a strip search upon  
10 arrival at MCJ, in violation of her Fourth and Fourteenth Amendment  
11 rights to be free from unreasonable searches and seizures. (FAC,  
12 Attach. "Claim 2-4 of 4.")

13 The Fourth Amendment right to be secure against unreasonable  
14 searches and seizures extends to SVPs. Hydrick, 500 F.3d at 993.  
15 The reasonableness of a particular search or seizure is determined  
16 by reference to the detention context and is a fact-intensive  
17 inquiry. Id.

18 Here, the search at issue involved a strip search upon arrival  
19 at a jail. The Fourth Amendment applies to the invasion of bodily  
20 privacy in prisons and jails. Bull v. San Francisco, 595 F.3d 964,  
21 974-75 (9th Cir. 2010) (en banc). To analyze a claim alleging a  
22 violation of this privacy right, the court must apply the test set  
23 forth in Turner v. Safley, 482 U.S. 78, 89 (1987), and determine  
24 whether a particular invasion of bodily privacy was reasonably  
25 related to legitimate penological interests. See Bull, 595 F.3d at  
26 973. A strip search that includes a visual body cavity search  
27 complies with the requirements of the Fourth Amendment so long as it  
28

1 is reasonable. Bell, 441 U.S. at 559. In Bell, the Supreme Court  
2 evaluated the constitutionality of a blanket policy allowing visual  
3 body cavity searches, without regard to individualized suspicion, of  
4 all inmates at the county jail, including pretrial detainees, after  
5 every contact visit with a person from outside the institution. Id.  
6 at 559-60. The Supreme Court upheld the policy because the  
7 possibility of smuggling drugs, weapons, and other contraband into  
8 the institution presented significant and legitimate security  
9 interests. Id. Similarly, the Ninth Circuit has held that the  
10 rights of arrestees placed in custodial housing with the general  
11 jail population are not violated by a policy or practice of strip  
12 searching each one of them as part of the booking process, provided  
13 that the searches are no more intrusive on privacy interests than  
14 those upheld in Bell, and the searches are not conducted in an  
15 abusive manner. Bull, 595 F.3d at 980-82 (San Francisco's policy  
16 requiring strip searches for all arrestees classified for custodial  
17 housing in the general population was facially reasonable under the  
18 Fourth Amendment, notwithstanding the lack of individualized  
19 reasonable suspicion as to the individuals searched).

20  
21 Defendants claim that Plaintiff was not strip searched because  
22 there is no record of a search and jail policy requires that such  
23 searches be recorded and documented. (Def's. Kanalakis and Barrera  
24 Mot. Summ. J. at 13.) Moreover, Plaintiff did not grieve the matter  
25 and "County Jail rules for strip searches require that the privacy  
26 of the inmate or detainee be maintained and that the search be  
27 reported." (Id.) However, Plaintiff maintains that the strip  
28 search did occur, and "whether it was recorded or not, it is common

1 for County Jail to perform strip searches of persons entering the  
2 facility from the community or other facilities." (Opp'n to Defs.  
3 Kanalakis and Barrera Mot. Summ. J. at 17.) Even if Plaintiff was  
4 strip searched, she does not claim that the search was unreasonable  
5 or conducted in an abusive manner. She only alleges that she was  
6 strip searched upon arriving at MCJ. As mentioned above, the Ninth  
7 Circuit has upheld the policy or practice of strip searching inmates  
8 as part of the booking process so long as they are reasonable and  
9 not conducted in an abusive manner. Bull, 595 F.3d at 980-82.  
10 Therefore, there is no evidence that the strip search conducted here  
11 violated her Fourth and Fourteenth Amendment rights.

12 Plaintiff further alleges that she was placed in mechanical  
13 restraints during transports, also in violation of her Fourth and  
14 Fourteenth Amendment rights. (FAC, Attach. "Claim 2-4 of 4.") As  
15 an SVP, Plaintiff had a right to conditions of confinement that were  
16 not punitive, and she also had a substantive liberty interest in  
17 freedom from unnecessary bodily restraint. Jones, 393 F.3d at 933;  
18 Youngberg v. Romeo, 457 U.S. 307, 321-22 (1982). However, the use  
19 of mechanical restraints while escorting Plaintiff when she was  
20 transported around the jail was reasonably related to Plaintiff's  
21 safety. Putting mechanical restraints on Plaintiff would reasonably  
22 prevent Plaintiff from separating herself from the guards escorting  
23 her and thereby endangering herself at the hands of other inmates.  
24 Moreover, according to jail officials, it was routine to restrain  
25 all detained persons with leg-irons and belly chains when being  
26 transported to court. (Pineda Decl. ¶ 5.) Therefore, the use of  
27 mechanical restraints while escorting her did not violate her Fourth  
28



1 and Fourteenth Amendment rights.

2 Even if Plaintiff had alleged violations of her Fourth and  
3 Fourteenth Amendment rights, there is no evidence that Defendants  
4 Kanalakis and Barrera, who are being sued in their supervisory  
5 capacity, "participated in or directed the violations, or knew of  
6 the violations and failed to act to prevent them." Taylor v. List,  
7 880 F.2d 1040, 1045 (9th Cir. 1989). Nor has Plaintiff made such a  
8 claim. Furthermore, Plaintiff fails to allege that Defendant  
9 Fithian, who was one of her physicians, participated in any way in  
10 the alleged strip search or in the use of mechanical restraints.  
11 Therefore, the Court finds no merit to her conclusory argument that  
12 these Defendants violated her Fourth and Fourteenth Amendment  
13 rights.

14 Accordingly, Defendants Kanalakis, Barrera and Fithian are  
15 entitled to summary judgment on her claims relating to the alleged  
16 strip search and to the use of mechanical restraints.

17 CONCLUSION

18 For the foregoing reasons,  
19 Defendants' motions for summary judgment (docket nos. 24, 25,  
20 26) are GRANTED.

21 The Clerk of the Court shall enter judgment in favor of  
22 Defendants in accordance with this Order, terminate all pending  
23 motions, and close the case. Each party shall bear his own costs.

24 This Order terminates Docket nos. 24, 25 and 26.

25 IT IS SO ORDERED.

26 DATED: 2/23/2011

27 

28 CLAUDIA WILKEN  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 TROYCE T. BRAININBURG,

5 Plaintiff,

6 v.

7 MONTEREY COUNTY et al,

8 Defendant.  
\_\_\_\_\_ /

Case Number: CV08-04562 CW

**CERTIFICATE OF SERVICE**

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

11 That on February 23, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
14 in the Clerk's office.

15 Troyce Tabatha Braninburg 754-2  
16 Coalinga State Hospital  
17 24511 Jayne Avenue  
18 P.O. Box 5003  
19 Coalinga, CA 93210

20 Dated: February 23, 2011

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk

United States District Court  
For the Northern District of California