

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 JAMES DAVID WILLIAMS,  
4 Plaintiff,  
5 v.  
6 SCOTT KERNAN, et al.,  
7 Defendants.  
8

Case No. [17-cv-03538-YGR](#) (PR)

**ORDER DIRECTING DEFENDANTS  
TO FILE DISPOSITIVE MOTION OR  
NOTICE REGARDING SUCH  
MOTION**

9 Plaintiff, a state prisoner currently incarcerated at the California Training Facility (“CTF”),  
10 filed a *pro se* civil rights complaint under 42 U.S.C. § 1983, against these Defendants: California  
11 Department of Corrections and Rehabilitation Secretary Scott Kernan; Investigative Services Unit  
12 (“ISU”) Lieutenant V. Khan; ISU Sergeant S. Kelley ; ISU Correctional Officers Z. Brown and  
13 Officer S. Patterson; CTF Appeals Coordinator J. Truett; and two Doe Defendants. Upon review  
14 of Plaintiff’s complaint, the Court found that Plaintiff had stated a cognizable Eighth Amendment  
15 claim against Defendants.

16 On June 6, 2018, Defendants filed a motion to dismiss and motion for summary judgment.  
17 Plaintiff filed an opposition, and Defendants filed a reply. In a separate but concurrently filed  
18 Order, the Court has granted Defendants’ motion to dismiss and motion for summary judgment as  
19 to the Eighth Amendment claim. The Court also granted Plaintiff’s requests to amend the  
20 complaint to add CTF Correctional Sergeant S. Rodriguez and CTF Correctional Officer R. Salas  
21 as named Defendants as well as to serve these newly-added Defendants.

22 However, upon closer review of the legal arguments made by Plaintiff in opposition to the  
23 dispositive motion, in conjunction with a further evaluation of Plaintiff’s complaint, it became  
24 apparent to this Court that Plaintiff’s complaint reveals additional claims that were not mentioned  
25 in earlier Orders. Specifically, Plaintiff’s complaint shows that he also provided sufficient facts  
26 and alleged cognizable claims that his Fourth and Fourteenth Amendment rights were violated by  
27 Defendants Brown, Patterson, Rodriguez, and Salas. *See Bull v. San Francisco*, 595 F.3d 964,  
28 974-75 (9th Cir. 2010) (en banc) (noting that the Fourth Amendment applies to the invasion of

1 bodily privacy in prisons); *Armendariz v. Penman*, 75 F.3d 1311, 1320 (9th Cir. 1996) (“the  
2 Fourteenth Amendment protects against a State’s interferences with personal decisions relating to  
3 marriage, procreation, contraception, family relationships, child rearing, and education, as well as  
4 with an individual’s bodily integrity”) (internal quotation marks omitted), *overruled in part on*  
5 *other grounds by Crown Point Dev., Inc. v. City of Sun Valley*, 506 F.3d 851, 856 (9th Cir. 2007).

6 Defendants have not directly addressed the newly-identified Fourth and Fourteenth  
7 Amendment claims in a motion for summary judgment or other dispositive motion because the  
8 Court failed to previously serve those claims on Defendants. To that end, Defendants Brown,  
9 Patterson, Rodriguez, and Salas are directed to file a dispositive motion with respect to Plaintiff’s  
10 Fourth and Fourteenth Amendments claims, or a notice that such a motion is unwarranted. The  
11 parties shall abide by the briefing scheduled outlined below.


12 **CONCLUSION**

13 Defendants shall file a dispositive motion, or notice that no such motion is warranted, with  
14 respect to Plaintiff’s Fourth and Fourteenth Amendments claim against Defendants Brown,  
15 Patterson, Rodriguez, and Salas. The motion is due no later than **ninety (90) days** from the filing  
16 date of this Order. Plaintiff’s opposition is due no later than **twenty-eight (28) days** from the date  
17 Defendants’ motion is filed. Defendants shall file a reply within **fourteen (14) days** thereafter.

18 It is Plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court informed  
19 of any change of address and must comply with the Court’s orders in a timely fashion. Pursuant to  
20 Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes while an  
21 action is pending must promptly file a notice of change of address specifying the new address. *See*  
22 L.R. 3-11(a). The Court may dismiss without prejudice a complaint when: (1) mail directed to the  
23 *pro se* party by the Court has been returned to the Court as not deliverable, and (2) the Court fails  
24 to receive within sixty days of this return a written communication from the *pro se* party  
25 indicating a current address. *See* L.R. 3-11(b).

26 IT IS SO ORDERED.

27 Dated: March 14, 2019

28   
YVONNE GONZALEZ ROGERS  
United States District Judge