

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Damon Lamar Campbell,

5 Plaintiff

6 v.

7 Brian Williams, *et al.*,

8 Defendants

Case No. 2:20-cv-00634-CDS-VCF

Order Granting Defendants' Motion for
Summary Judgment and Denying Plaintiff's
Cross-Motion for Summary Judgment

[ECF Nos. 25, 27]

9
10 Plaintiff Damon Lamar Campbell sues several officials from High Desert State Prison
11 (HDSP), where he was previously housed as an inmate.¹ He brings two claims for relief against
12 defendants Ashcraft, Launette,² Nash, Williams, McKeekan, and George³ challenging his
13 conditions of confinement under the Fourteenth Amendment following a fight at the prison on
14 March 25, 2018, where Campbell and two other inmates were pepper sprayed. Campbell also
15 seeks relief under a theory of supervisory liability against defendants Ashcraft, McKeekan, Nash,
16 and Williams.

17 Defendants Ashcraft, McKeekan, Nash, and Williams filed a motion for summary
18 judgment on May 18, 2022. ECF No. 27. Campbell filed an opposition and a cross-motion for
19 summary judgment on May 11, 2022. ECF No. 25.⁴ The motions are now fully briefed.

20
21 ¹ At the time defendants' motion for summary judgment was filed, Campbell was housed at the Warm
Springs Correctional Center. Def. Ex. A, ECF No. 27-1 (Bed History). He is now housed at Ely State Prison.
ECF No. 48.

22 ² Launette was dismissed from this action pursuant to Federal Rule of Civil Procedure 4(m) on January
1, 2023. ECF No. 51.

23 ³ The Attorney General's (AG) Office now represents defendant George. They moved to amend their
summary judgment motion to add George in as a defendant on March 28, 2023. ECF No. 58. In May, I
24 denied that motion without prejudice and directed them to file a motion setting forth why they were
25 seeking to amend after agreeing to represent George "recently," with no further explanation as to when
they decided to represent George. ECF No. 63. To date, no motion has been filed. Thus, the status of
George's representation or the AG's intention to continue representing him, or not, is unclear.

26 ⁴ These were docketed in reverse order. The court assumes that the delay was caused as a result of this
matter being administratively reassigned to me on May 17, 2022. See ECF No. 26 (notice of reassignment).

1 For the reasons set forth herein, I deny defendants' motion for summary judgment based
2 on Campbell's alleged failure to exhaust administrative remedies under the Prison Litigation
3 Reform Act (PLRA), but grant summary judgment because I find that defendants are entitled to
4 qualified immunity. Because Campbell has no surviving claims; I kindly request that the Clerk of
5 Court enter judgment accordingly and close this case.

6 **I. Background**

7 The parties agree that there was a fight involving inmates at High Desert State Prison
8 (HDSP) on March 25, 2018. Complaint, ECF No. 1-1⁵ at 6 ("On March 25, 2018, plaintiff was
9 attempting to break up a fight between his cellmate...and another inmate[.]"); ECF No. 27 at 3
10 ("On March 25, 2018 . . . inmates were fighting."). The parties disagree, however, regarding
11 Campbell's involvement. Defendants allege that Campbell was involved in the fight (ECF No. 27
12 at 3), while Campbell claims that he was attempting to break up the fight. ECF No. 1-1 at 6.
13 Regardless of Campbell's role in the fight, the parties agree that Nevada Department of
14 Corrections (NDOC) officers deployed oleoresin capsicum (OC) spray, which is more
15 commonly known as pepper spray, on the inmates (including Campbell) to help stop the fight.
16 Def. Ex. B, ECF No. 27-2 (Notice of Charges); ECF No. 1-1 at 6. Campbell alleges that he was
17 sprayed all over his entire body. ECF No. 1-1 at 6.

18 After being sprayed, the inmates, including Campbell were evaluated by medical staff.
19 Def. Ex. B, ECF No. 27-2 at 2; ECF No. 1-1 at 6. Campbell was released after the evaluation. The
20 medical report states that there were no signs of injury to Campbell, and Campbell himself
21 denied any pain or need for medical treatment. Def. Ex. C (sealed), ECF No. 27-3 at 2. The
22 medical treatment plan included "DECON IN UNIT." *Id.* Per the complaint, Campbell was then
23

24 ⁵ A complaint is not evidence. *See Moran v. Selig*, 447 F.3d 748, 759–60, n.16 (9th Cir. 2006) (An unverified
25 complaint "cannot be considered as evidence."). The court cites to the complaint to provide helpful
26 background information and to show which facts are not in dispute for judicial efficiency purposes.
However, in resolving the motion, the court relies only on admissible evidence. *Orr v. Bank of America*, 285
F.3d 764 (9th Cir. 2002) (holding that a trial court can consider only admissible evidence in ruling on a
motion for summary judgment).

1 given a shower. ECF No. 1-1 at 6. Campbell claims that he was fully clothed during the shower,
2 but he was given a change of clothes when he finished showering. *Id.* Campbell was then
3 transported to prison administration where he was interviewed and then moved to
4 administrative segregation (*id.*; *see also* Def. Ex. D, ECF No. 27-4 at 2 (3/26/2018 case note that
5 Campbell will be moved to segregation when bed is available and note dated 4/25/2018 noting
6 that Campbell was in administrative segregation)) where he remained until May of 2018. *See id.*
7 at 3.

8 Campbell alleges that three days following the fight, on March 28, he asked Corrections
9 Officer (CO) Ashcraft to retrieve his personal belongings or, at a minimum, for a towel so he
10 could wash himself off with soap to remove pepper spray he felt on his body, noting that he was
11 experiencing burning, a smell, and a chemical taste all over his body, including his genitals and
12 buttocks; that request was denied. ECF No. 1-1 at 7. The case notes from March 27, 2018 for
13 Campbell state that he was cleared for “exercise/showers/phones as a walk alike inmate only.”
14 Def. Ex. D, ECF No. 27-4 at 2–3. Campbell alleges that he made the same request on March 28 to
15 another officer, Laurenette, but that this request was also denied. ECF No. 1-1 at 7. That same
16 day, Campbell submitted two kites to retrieve his personal property, which included a request
17 to take a shower. *See* Def. Ex. E, ECF No. 27-5 (kites). Campbell received the same response to
18 both kites: that his property was rolled up along with the property of other inmates so Campbell
19 would have to go to “property” to separate it out. *Id.*

20 Campbell sent a third kite on March 29, 2018, advising that he had an upcoming trial
21 date (in June 2018) and that he was having difficulties contacting his lawyer. Def. Ex. F. ECF No.
22 27-6. He also wrote that he had not showered in five days. *Id.* While difficult to read, it appears
23 that Assistant Warden Nash⁶ responded to that kite, writing that Campbell had been provided
24 a towel and instructions on retrieving his property. *Id.* One day later, Campbell submitted an
25 emergency grievance regarding his lack of access to his personal property, his need to access his
26

⁶ Defendant Nash also states that Nash was the person who responded to this kite. ECF No. 27 at 4.

1 legal materials, and the denial of a shower since the time he was rinsed off on March 25, 2018.
2 Emer. Grievance, Def. Ex. G, ECF No. 27-7. The grievance was denied because its contents did
3 not qualify as an “emergency.” *Id.* (referencing Administrative Regulation (AR) 740). On March
4 30, 2018, Campbell was offered a shower. Def. Ex. H, Shower Log, ECF No. 27-8. The shower log
5 indicates that Campbell refused the shower at 19:15 hours. *Id.* Campbell argues in his reply that
6 that log does not reflect the reason he declined, which was, that he was unable to shower
7 because he still did not access to soap, a change of underwear, socks, or a towel.⁷ ECF No. 36 at
8 4.

9 On April 21, 2018, Campbell submitted an informal grievance detailing his requests from
10 March 25–30, 2018. Def. Ex. I, ECF No. 27-9 at 2–5. That grievance also detailed additional
11 information from Campbell, namely that: (1) he was given a towel on April 2, 2018, (2) he was
12 finally taken to retrieve his property on April 3, 2018, which allowed him to put on clean clothes,
13 including underwear, and (3) he was left in his cell for nine days with nothing but a mattress,
14 sheet and blanket, and limited clothing after he had been doused in the pepper spray. *Id.* at 3–4.
15 That grievance was rejected “Per AR 740” which states that “continuation forms (DOC 3097)
16 shall not exceed two (2) pages per grievance.” *Id.* at 6. Campbell used three pages. *See id.* at 3–5.
17 Campbell resubmitted his grievance on June 23, 2018, this time only using two continuation
18 pages. *Id.* at 7–8. The NDOC responded on July 20, 2018, stating that the grievance had been
19 “forwarded to the Inspector General’s office for further review.” *Id.* at 9.

20 Then, on September 17, 2018, Campbell submitted a First Level Grievance. *Id.* at 10. His
21 grievance was denied, with the opportunity to resubmit, noting that the informal grievance was
22 already pending and that the Inspector General (IG) had 90 days to respond. *Id.* at 11. The 90-day
23
24

25 _____
26 ⁷ Campbell submitted declarations from prisoners Anthony Reed and Van’ Tonio William stating that
Campbell did not have access to a towel until April 2, 2018, nor to his personal property until April 3,
2018. *See* ECF No. 25-2 at 37, ¶¶7–8; 38, ¶4.

1 period had not yet expired by the time of the September 17th grievance. On October 24, 2018,
2 Campbell received the following official response to his grievance:

3 “Inmate Campbell, your informal grievance was received and the issue reviewed.
4 You have failed to provide supportive information about the allegation. However
5 upon review of reports from staff, review of HDSP Policy after a use of force
6 involving OC, and NOTIS information, you were initially medically evaluated and
7 decontaminated. HDSP policy and practice is such that after decontamination,
8 another set of clothing is provided to the inmate. You were housed in an area of
HDSP for a maximum of two days then moved to Ad-seg where upon you were
cleared for yard/showers as a walk alike. It seems to be unreasonable that you
didn’t have clothes for 9 days after the spray if you were cleared for yard in two.
Grievance denied.”

9 *Id.* at 12. Campbell re-submitted his First Level Grievance on November 19, 2018, noting that he
10 had provided supportive documentation (to include the kites he submitted) and argued that plain
11 water does not constitute “decontamination.” *Id.* at 13–14. On March 27, 2019, that grievance was
12 partially granted by official response. *Id.* at 15. The response stated that the informal response that
13 Campbell received was corrected pursuant to AR 740-03.2. *Id.* It also stated that all allegations of
14 inmate abuse shall be immediately reported to the Warden, Assistant Wardens (AWs), and the
15 Inspector General. *Id.* It further noted that given the seriousness of Campbell’s allegations, his
16 First Level Grievance was re-sent to the IG for another review. *Id.*

17 What happened between March of 2019 and the date of the next report, October 21, 2019,
18 is unclear. The next report provided to the court is dated October 21, 2019. *Id.* at 16. That report
19 states:

20 “Your grievance has been reviewed and rejected 4 times for multiple 3098s. This
21 grievance can no longer be responded to as it has been rejected multiple times for
22 being improper. You were given multiple opportunities to correct these errors.
23 THIS GRIEVANCE CANNOT BE RESUBMITTED. If you resubmit this grievance,
it will be confiscated and retained in your Inmate Grievance File with no further
actions taken.”

24 *Id.* at 16. The court has no information regarding the IG’s response to the resubmittal of Campbell’s
25 first level grievance.

1 **II. Legal standard**

2 Summary judgment is appropriate when the pleadings and admissible evidence “show
3 that there is no genuine issue as to any material fact and that the movant is entitled to judgment
4 as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (citing Fed. R. Civ. P. 56(c)).
5 At the summary judgment stage, the court views all facts and draws all inferences in the light
6 most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100,
7 1103 (9th Cir. 1986). If reasonable minds could differ on material facts, summary judgment is
8 inappropriate because its purpose is to avoid unnecessary trials when the facts are undisputed;
9 the case must then proceed to the trier of fact. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir.
10 1995). Once the moving party satisfies Rule 56 by demonstrating the absence of any genuine
11 issue of material fact, the burden shifts to the party resisting summary judgment to “set forth
12 specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
13 242, 256 (1986); *Celotex*, 477 U.S. at 323. “To defeat summary judgment, the nonmoving party
14 must produce evidence of a genuine dispute of material fact that could satisfy its burden at trial.”
15 *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018).

16 **III. Discussion**

17 Defendants argue that they are entitled to summary judgment because Campbell failed to
18 exhaust his administrative remedies pursuant to the PLRA. Def. MSJ, ECF No. 27 at 6–8. They
19 further argue that Campbell cannot meet his burden of demonstrating that he was subjected to
20 cruel and unusual punishment under the Eighth Amendment. *Id.* at 8–13. Last, defendants argue
21 that they are entitled to qualified immunity. *Id.* at 13–15. Campbell opposes defendants’ summary
22 judgment motion and seeks summary judgment in his favor, arguing that defendants Ashcraft,
23 McKeekan, and George failed to intervene on his behalf to help alleviate the pain and suffering
24 that he experienced after being left in pepper spray-soiled undergarments and socks for several
25 days following the fight on March 25, 2018. Def. Opp. and Cross-Motion for Summ. Judg., ECF
26

1 No. 25-1 at 6–8. Campbell also argues that defendants Nash and Williams ignored his pleas for
2 help, and therefore should be held responsible under a supervisory liability argument. *Id.* at 9–14.

3 *A. Campbell exhausted his administrative remedies.*

4 The Prison Litigation Reform Act requires a prisoner to exhaust his administrative
5 remedies before filing a § 1983 action. 42 U.S.C. § 1997e(a). The PLRA provides, in pertinent part,
6 that “[n]o action shall be brought with respect to prison conditions under section 1983 of this
7 title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional
8 facility until such administrative remedies as are available are exhausted.” *Id.* In *Porter v. Nussle*,
9 the Supreme Court held that the PLRA’s exhaustion requirement applies to all inmate suits
10 about prison life. 534 U.S. 516, 532 (2002). The Supreme Court has determined that “exhaustion
11 in cases covered by § 1997e(a) is now mandatory.” *Id.* at 524 (citation omitted). The purpose of
12 exhaustion under the PLRA is to further the efficient administration of justice. Thus, exhaustion
13 must be “proper.” *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). This means that a grievant must use all
14 steps the prison holds out, enabling the prison to reach the merits of the issue. *Id.* at 90. A
15 prisoner need comply only with the prison’s own grievance procedures in order to properly
16 exhaust under the PLRA. *Jones v. Bock*, 549 U.S. 199 (2007).

17 Grievances filed within the NDOC are governed by AR 740. *See* Def Ex. K, ECF No. 27-11.
18 AR 740 provides descriptions of the purpose of the regulation, the scope of issues that inmates
19 may grieve, the process to which grievances must adhere, and available remedies for successful
20 grievances. *See generally id.* The provisions of AR 740 were effective “on or after the effective date
21 of [the] AR,” which in this instance was August 30, 2017. *Id.* at 2.

22 Specifically, the AR 740 in effect at the time that Campbell filed his first kite provided
23 that its purpose is to “set forth the requirements and procedures of the administrative process
24 that [NDOC] inmates must utilize to resolve addressable grievances and claims including . . .
25 any [] tort or civil rights claim relating to conditions of confinement.” *Id.* “An inmate who is
26 dissatisfied with the response to a grievance at any level may appeal the grievance to the next

1 level[.]” *Id.* at 6. The grievance structure is essentially a multi-level dispute resolution
2 mechanism, whereby an inmate must satisfy each level’s substantive and procedural
3 requirements before filing a higher-level grievance. *See generally id.* It requires inmates to first
4 pursue resolution via alternative means, such as “discussion with staff” or submitting an inmate
5 request form. *Id.* at 7. Once an inmate has exhausted alternative means, they may file an informal
6 grievance. *Id.* If that fails to provide the requested relief, the inmate may file a first-level
7 grievance, and if that again fails, a second-level grievance. *Id.* at 10–12. If a grievance is “Granted”
8 at any level, the grievance process is considered complete and the inmate’s administrative
9 remedies exhausted, and the inmate cannot appeal the decision to a higher level.”⁸ *Id.* at 6.

10 Defendants contend that Campbell failed to exhaust his remedies for grievance # 2006-
11 30-63639. ECF No. 27 at 6–8. Specifically, they argue that 1) Campbell failed to fully grieve his
12 Eighth Amendment claim because he did not detail in particular that he was experiencing
13 “burning” to his body from the OC spray; and 2) Campbell failed to correct the errors in his
14 rejected First Level appeal and did not submit a Second Level appeal. *Id.* at 8. I address these
15 arguments in turn.

16 Defendants’ first argument is unavailing. Indeed, defendants place outsized emphasis on
17 Campbell’s failure to detail *one* of his symptoms ensuing from the conduct about which he
18 complained. Prisoners are only required to give detail sufficient to “alert the prison to the nature
19 of the wrong for which redress is sought.” *Jones*, 549 U.S. at 219. Campbell’s grievances leave no
20 room for doubt as to the nature of the wrong for which he seeks redress: Campbell clearly
21 articulates that he was sprayed with OC spray, that he was “left in a cell with nothing but a
22 mattress, beddings (sheet/blanket), and the boxershort[s] and socks on [his body], after being
23

24 ⁸ AR 740 was updated in November of 2018. I take judicial notice of the updated version of AR 740. *See*
25 https://doc.nv.gov/uploadedFiles/docnvgov/content/About/Administrative_Regulations/AR%20740%20-%20Inmate%20Grievance%20Procedure%20-%20Temporary%20-%202011.20.2018.pdf (last accessed on
26 September 19, 2023). This version also provided that if a grievance is “Granted” at any level, the grievance
process is considered complete and the inmate’s administrative remedies exhausted, and the inmate
cannot appeal the decision to a higher level. *Id.* at pg. 5.

1 soaked in pepperspray”, without “anything to attempt to clean [himself] with soap or proper
2 shower to remove the existing chemical agent” or its “lingering effects”, and that he was starting
3 to “smell extremely bad and can still smell the pepperspray on [his] hands after [he] touch[es]
4 parts of [his] body”. ECF No. 27-7; ECF No. 27-9. The prison was thus not only fully alerted to
5 underlying wrong about which Campbell complained—being left without adequate ability to
6 wash himself of the pepper spray’s “lingering effects”—but also his discomfort stemming from
7 that wrong—his “extremely bad [smell].” Defendants’ argument that the omission of one
8 particular symptom somehow vitiated the validity of the entire grievance in this case is simply
9 without merit.⁹

10 Defendants’ second argument is contrary to the record. Indeed, the evidence shows that
11 Campbell first attempted resolution via alternative means. *See* Def. Ex. I, Grievance 2006-30-
12 63639, ECF No. 27-9 at 3 (stating that he attempted to talk to Ashcraft and Laurenette about
13 not having his property and needing a towel to remove the lingering effects of the pepper spray).
14 He then submitted an informal grievance.¹⁰ *See* ECF No. 27-9 at 2–5. That informal grievance was
15 rejected for exceeding the page limit. *Id.* at 6. Campbell then resubmitted the informal grievance
16 meeting the requisite page limit. *See id.* at 7–8. NDOC’s response to that grievance was “per AR
17 740 this grievance has been forwarded to the inspector general for further review.” *Id.* at 9.
18 Approximately two months later, Campbell submitted a first level grievance, but it was rejected
19 because the 90-day period for the IG’s office to respond had not yet run. *Id.* at 10–11 (referencing
20 90-day policy set forth in AR 740 for allegations referred to the IG’s office). On October 24, 2018,
21 that grievance was denied (*see id.* at 12), so Campbell submitted another first level grievance. *Id.*
22 at 13–14. That grievance was **partially granted**. *Id.* at 15 (emphasis added). While the AR
23 discusses the process for sexual abuse allegations that are referred to the Inspector General, it

24 ⁹ I also note that Campbell’s grievances were never rejected for lack of detail nor was he asked to explain
25 what “lingering effects” he was experiencing—the prison had every opportunity to seek further detail
had it felt such detail was necessary at the time to better understand the circumstances.

26 ¹⁰ It is concerning to the court that in this grievance Campbell states that he attached kites and an
emergency grievance, but none were provided to the court.

1 provides no further guidance on what do to once Campbell's grievance was partially granted. See
2 ECF No. 27-11 at 10–11. The AR does not discuss nor provide any information regarding the
3 process for other types of referrals.

4 When a prison's grievance procedures are silent or incomplete as to factual specificity, "a
5 grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought."
6 *Griffin v. Arpaio*, 557 F.3d 1117, 1120 (9th Cir. 2009). More importantly, the Supreme Court held
7 that a prison's own grievance process, not the PLRA, determines how detailed a grievance must
8 be to satisfy the PLRA exhaustion requirement. *Jones*, 549 U.S. at 218. Without more guidance in
9 the AR, it is unclear how Campbell could have exhausted his administrative remedies. He
10 waited over 90 days for the IG's office to respond. There is no information before the court that
11 any response was ever received. It is defendant's burden to show that an administrative process
12 was available, and that the inmate failed to exhaust it. *Fordley v. Lizarraga*, 18 F.4th 344, 350-351
13 (9th Cir. 2021). Defendants have failed to proffer evidence or argument sufficient for the court to
14 determine that Campbell failed to exhaust his administrative remedies in this circumstance.
15 Therefore, defendants' summary judgment on this ground is denied.

16 B. *Defendants are shielded by qualified immunity.*

17 Campbell alleges that defendants violated his Eighth Amendment rights to be free from
18 cruel and unusual punishment by failing to allow him to fully shower and to access his personal
19 property so he could put on clean undergarments after he was sprayed with OC. In essence,
20 Campbell is challenging the conditions of his confinement for the seven days following getting
21 sprayed. Defendants oppose the motion and argue that they are entitled to qualified immunity.

22 The court conducts a two-step inquiry to determine whether a defendant is entitled to
23 qualified immunity. See *Groves v. City of Reno*, 2015 WL 5350099, at *4 (D. Nev. Sept. 14, 2015).
24 First, a court evaluates whether the facts, taken in the light most favorable to the plaintiff, show
25 that the defendant's conduct violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201
26 (2001). If yes, then the court must determine if the right in question was clearly established at

1 the time of the defendant’s actions, such that any reasonably well-trained official would have
2 known that their conduct was unlawful. *D. C. v. Wesby*, 583 U.S. 48 (2018); *see also Malley v. Briggs*,
3 475 U.S. 335, 344–45 (1986).

4 In cases alleging cruel and unusual punishment, the court looks to the conditions of
5 confinement to first evaluate whether there is a constitutional violation. “[A] prison official
6 cannot be found liable under the Eighth Amendment for denying an inmate humane conditions
7 of confinement unless the official knows of and disregards an excessive risk to inmate health or
8 safety.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). “[T]he official must both be aware of facts from
9 which the inference could be drawn that a substantial risk of serious harm exists, and he must
10 also draw the inference.” *Id.* Thus, there is both an objective and a subjective component to an
11 actionable Eighth Amendment violation so that an inmate bringing a challenge to their
12 conditions of confinement must demonstrate that those conditions posed a risk of “objectively,
13 sufficiently serious” harm and that the officials had a “sufficiently culpable state of mind” in
14 denying the proper medical care. *Wallis v. Baldwin*, 70 F.3d 1074, 1076 (9th Cir. 1995) (internal
15 quotations omitted).

16 Herein lies the issue with Campbell’s claims for relief. In his complaint, he alleges that he
17 requested a towel so he could wash himself off with soap to remove pepper spray he felt on his
18 body, noting that at the time he was experiencing multiple physical ailments including burning,
19 a smell, and a chemical taste all over his body, including his genitals and buttocks—and that this
20 request was denied. *See* ECF No. 1-1 at 7. But the allegations in his complaint are far more
21 detailed than those contained in his kites and grievances wherein he noted that he needed a
22 towel, soap, and a shower to remove “lingering effects” of the pepper spray and argued that
23 rinsing off alone is insufficient to remove “the chemical agent.”¹¹ *See* ECF No. 27-7 at 2; 27-9 at 2,

24
25 ¹¹ In fact, this violated NDOC’s internal policy which requires states that “[a]ll inmates/staff exposed to
26 chemical agents will receive a shower, **unclothed** and a change of clothes.” *See* Plf. Ex. A, ECF No. 25-2 at
4 (emphasis added). Campbell only received a **clothed** shower in violation of the policy. Even taking the
violation of NDOC’s policy into account, there is insufficient evidence to establish a constitutional
violation. *See Warren v. Dep’t of Corr.*, 2011 WL 1485431, at *7 (W.D. Wash. Mar. 22, 2011), *report and*

1 4, 7–8, 13; ECF No. 27-12 at 2 (history report dated 7/11/2018), 7 (history report dated 4/21/2018).
2 Campbell did not complain about burning or any other specific ailment as a result of being
3 peppered sprayed in his kites and grievances that he submitted immediately following the
4 March 25, 2018 incident. The most detail he provided was in his March 30, 2018 emergency
5 grievance which stated that he “was starting to smell extremely bad” and that he could “still
6 smell the pepperspray on [his] hands after he touch[s] parts of [his]body.” Emerg. Grievance,
7 ECF No. 27-7 at 2. Without more, his complaints did not, and could not, be interpreted as
8 constituting a serious medical need.¹² If such a serious need was present, the “failure to treat []
9 could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’”
10 *See McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992) (quoting *Estelle v. Gamble*, 429 U.S. 97,
11 104 (1976)), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997).
12 Because Campbell only complained of generic “lingering effects” in his kites and grievances, the
13 prison officials had no details from which they could reasonably determine a serious medical
14 need.¹³ Consequently, Campbell fails to satisfy the objective component of establishing a claim
15 for cruel and unusual punishment.

16
17 *recommendation adopted*, 2011 WL 1483347 (W.D. Wash. Apr. 18, 2011) (finding that there was no evidence
18 that a medical decision was made in reckless disregard for a prisoner’s condition even where the prison
19 violated its own policies).

19 ¹² I note that the standard of detail in a grievance sufficient to properly alert a prison to the conduct
20 underlying a potential Eighth Amendment claim and the level of detail sufficient to alert a prison of a
21 potential serious medical need may be different, depending on the circumstances. Such is the case here.
22 Campbell’s grievances were detailed enough to alert the prison “to the nature of the wrong for which
23 redress is sought”—primarily, the prison’s denial of Campbell’s ability to adequately wash himself after
24 being sprayed with pepper spray—but not sufficient to alert the prison that a serious medical issue,
25 rather than just discomfort, may be underway.

23 ¹³ Even if Campbell had provided additional information, it is unclear if Campbell could establish
24 unnecessary or wanton infliction of pain. *See Wilson v. Tinchler*, 2016 WL 676583, at *6 (W.D. Va. Feb. 18,
25 2016) (granting qualified immunity where the inmate was given the option to shower and refused
26 because the water was not “cool”); *Garcia v. Covello*, 2015 WL 160673, at *8 (C.D. Cal. Jan. 12, 2015)
(finding that “[p]epper spray decontamination with hot instead of cold water does not constitute an
excessive risk of serious harm”); *Saunders v. Shaw*, 2015 WL 6693744, at *8 (E.D. Va. Oct. 28, 2015) (finding
that an inmate’s “minor discomfort during the decontamination [with hot water] does not suggest that
any reasonable juror could characterize defendants’ conduct as a wanton infliction of pain”); *Davis v.*
Prince, 2013 WL 588723, at *5 (E.D.N.C. Feb. 13, 2013) (granting qualified immunity because

1 Campbell also fails to meet the subjective component of an Eighth Amendment claim.
2 That requires that a prisoner demonstrate that the officials (the defendants) had a culpable
3 mental state, which is “deliberate indifference’ to a substantial risk of serious harm.” *Frost v.*
4 *Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998) (quoting *Farmer v. Brennan*, 511 U.S. 825, 835 (1994)).
5 “Deliberate indifference” is evidenced only when “the official knows of and disregards an
6 excessive risk to inmate health or safety; the official must both be aware of the facts from which
7 the inference could be drawn that a substantial risk of serious harm exists, and he must also
8 draw the inference.” *Farmer*, 511 U.S. at 837. Liability does not attach for mere negligence. *Frost*,
9 152 F.3d at 1128. Thus, an “official’s failure to alleviate a significant risk that he should have
10 perceived but did not, ... cannot []be condemned as the infliction of punishment.” *Farmer*, 511
11 U.S. at 838. Indeed, an “official’s conduct must have been ‘wanton,’” an evaluation that is based
12 not upon the effect on the prisoner, “but rather, upon the constraints facing the
13 official.” *Frost*, 152 F.3d at 1128 (quoting *Wilson v. Seiter*, 501 U.S. 294, 302–03 (1991)). Further,
14 prison officials violate their obligation under the Constitution if they intentionally deny or delay
15 access to medical care. *Estelle*, 429 U.S. at 104–05.

16 Campbell fails to produce evidence that defendants were aware of the specific conditions
17 he was experiencing after being pepper sprayed. He therefore cannot establish any wanton
18 conduct on behalf of defendants, nor can he establish that there was any intentional denial or
19 delay of needed medical care. And because liability cannot be based on what the officials *should*
20 *have* known, any argument that the guards should have—but failed to—perceive Campbell’s
21 pain and suffering cannot form a basis for liability. Because Campbell has not demonstrated a
22 statutory or constitutional violation beyond any debate, defendants are entitled to qualified
23 immunity and summary judgment in their favor.¹⁴ This determination extends to Campbell’s

24 _____
25 “decontamination was undertaken and a medical evaluation was conducted” after an allegedly hot
shower).

26 ¹⁴ Even though the Attorney General’s Office never responded to my order regarding defendant George, I
nonetheless sua sponte grant summary judgment in his favor because he too is entitled to qualified
immunity under Federal Rule of Civil Procedure 56(f). Campbell had an opportunity to be heard on his

1 claim based on supervisory liability. A supervisory official can liable under § 1983 so long as
2 “there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a
3 sufficient causal connection between the supervisor's wrongful conduct and the constitutional
4 violation.” *Keates v. Koile*, 883 F.3d 1228, 1242–43 (9th Cir. 2018) (quoting *Starr v. Baca*, 652 F.3d
5 1202, 1207 (9th Cir. 2011)). Having already determined that there was no constitutional
6 violation, Nash and Williams are also entitled to summary judgment.

7 **IV. Conclusion**

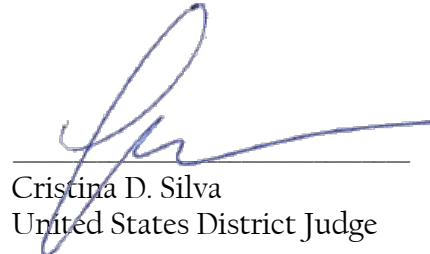
8 IT IS THEREFORE ORDERED that the defendants' motion for summary judgment
9 [ECF No. 27] is GRANTED.

10 IT IS FURTHER ORDERED that summary judgment is sua sponte GRANTED in favor
11 of defendant George under Rule 56(f) of the Federal Rules of Civil Procedure.

12 IT IS FURTHER ORDERED that plaintiff's cross-motion for summary judgment [ECF
13 No. 25] is DENIED.

14 The Clerk of Court is instructed to enter judgment accordingly and close this case.

15 DATED: September 26, 2023

16
17
18 
19
20
21
22
23
24
25
26

Cristina D. Silva
United States District Judge

position regarding George's liability in his opposition to the summary judgment, and his own cross-motion.