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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHAUNCEY HOLLIS,

Plaintiff,

v.

R. GONZALEZ, et al.,

Defendants.

CASE NO. 1:08-cv-1834 OWW DLB PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF CERTAIN
CLAIMS AND DEFENDANTS

(Doc. 14)

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

Findings and Recommendation Following Notice By Plaintiff

I. Background

A. Procedural History

Plaintiff Chauncey Hollis (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation. Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action by filing his complaint on December 2, 2008. On March 23, 2009, the Court dismissed the complaint with leave to file an amended complaint within thirty days. On May 26, 2009, after receiving an extension of time, Plaintiff filed his first amended complaint. On October 14, 2009, the Court screened the first amended complaint and found that it stated a cognizable claim against Defendant Sweeney for violation of the Fourth Amendment, and against Defendant Gonzales for retaliation in violation of the First Amendment, but failed to state any other cognizable claims. The Court ordered Plaintiff either to file a second amended complaint, curing the deficiencies identified, or notify the court of his willingness to proceed only against Defendant Sweeney or Defendant Gonzales. On November 16, 2009, Plaintiff notified the Court he did not wish to amend and is willing to proceed only against

1 Defendant Sweeney. Accordingly, the Court issues the following Findings and Recommendation.

2 **B. Screening Requirement**

3 The Court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
6 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
8 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
9 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
10 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

11 A complaint must contain “a short and plain statement of the claim showing that the pleader
12 is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
13 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
14 do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*,
15 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to
16 ‘state a claim that is plausible on its face.’” *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S.
17 at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.* at 1949.

18 **II. Summary of Plaintiff’s First Amended Complaint**

19 Plaintiff is currently confined at Central Valley Modified Community Correctional Facility
20 in McFarland, California. The events giving rise to this action occurred at California Correctional
21 Facility (“CCI”) in Tehachapi, at Desert View Modified Community Correctional Facility (“Desert
22 View MCCF”) in Adelanto, and at the California Institute for Men (“CIM”) in Chino. Plaintiff
23 seeks money damages and equitable relief.

24 **A. Visual Body Cavity Search**

25 Plaintiff alleges that on October 23, 2008, a search was conducted in Building One, which
26 included strip searches of all inmates. Plaintiff alleges that for inmates in his tier, the procedure
27 involved strip searches of the inmates at their cell. Plaintiff states that he complied with the order
28 to submit to a visual body cavity search. Plaintiff was then told to go to the recreation yard. As he

1 was walking to the basketball court, defendant Sweeney, who is female, ordered Plaintiff to stop and
2 strip. Plaintiff contends that she ordered Plaintiff to submit to a second visual body cavity search
3 despite being informed by Plaintiff that one had just been conducted. Plaintiff contends that he
4 complied with the order but that defendant Sweeney then threatened to have officers shoot Plaintiff
5 if he did not comply more fully. Plaintiff alleges that he was ordered to submit to a second search
6 by defendant Sweeney. Once the search was completed to defendant Sweeney's satisfaction, Plaintiff
7 was ordered to sit on the rocks near the basketball court. Plaintiff alleges that he was not permitted
8 to use the toilet and that he subsequently urinated on himself. Plaintiff further alleges that the cuffs
9 were too tight and that his legs, buttocks and arms became numb after sitting for two hours on rocks.
10 Plaintiff seeks relief from defendant Sweeney for violation of the Fourth Amendment, Eighth
11 Amendment, and the Equal Protection Clause of the Fourteenth Amendment.¹

12 Plaintiff contends that search of the Building was in response to a fist fight between two
13 inmates occurring six days earlier. Plaintiff alleges that defendants Director of Corrections
14 ("Director") and Warden Gonzalez are liable for having authorized a plan to conduct strip searches
15 of the inmates using both female and male officers.

16 **i. Fourth Amendment**

17 The Fourth Amendment guarantees the right of the people to be secure against unreasonable
18 searches, and its protections extend to incarcerated prisoners. *Bell v. Wolfish*, 441 U.S. 520, 545
19 (1979). In determining the reasonableness of a search under the Fourth Amendment, "[c]ourts must
20 consider the scope of the particular intrusion, the manner in which it is conducted, the justification
21 for initiating it, and the place in which it is conducted." *Id.* at 559. The reasonableness of a prisoner
22 search is determined by reference to the prison context and strip searches that are excessive,
23 vindictive, harassing or unrelated to any legitimate penological interest may not be reasonable.
24 *Michenfelder v. Sumner*, 860 F.2d 328 at 332 (9th Cir. 1988). "When a prison regulation impinges
25 on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate
26

27 ¹Plaintiff further contends that defendants violated various sections of Title 15. There is no independent
28 cause of action for violation of Title 15 regulations. *Davis v. Kissinger*, No. CIV S-04-0878 GEB DAD P, 2009 WL
256574, *12 n.4 (E.D. Cal. Feb. 3, 2009).

1 penological interests.” *Turner v. Safley*, 482 U.S. 78, 79 (1987).

2 The Ninth Circuit has not yet held that a cross-gender search in a prison setting violates a
3 prisoner’s rights under the Fourth Amendment. *Grummett v. Rushen*, 779 F.2d 491, 496 (9th Cir.
4 1985) (high potential for female guards to view male inmates disrobing, showering, and using toilet
5 facilities did not render prison policies unconstitutional); *Jordan v. Gardner*, 986 F.2d 1521, 1524
6 (9th Cir. 1993); *Somers v. Thurman*, 109 F.3d 614, 620 (9th Cir. 1997). Rather, a prisoner’s
7 legitimate expectations of bodily privacy from persons of the opposite sex are extremely limited.
8 *Jordan*, 986 F.2d at 1524; *see also Michenfelder*, 860 F.2d at 328 (visual body-cavity searches of
9 male inmates conducted within view of female guards held constitutional).

10 Plaintiff contends that the search conducted by defendant Sweeney was repetitive and
11 harassing. Under the minimal federal notice pleading standard, Plaintiff’s allegations that defendant
12 Sweeney ordered Plaintiff to submit to a second visual body cavity search despite having knowledge
13 that a search had just been conducted, and that she threatened to have Plaintiff shot during the search,
14 are sufficient to state a cognizable Fourth Amendment claim against her. However, Plaintiff’s claims
15 are insufficient to state a viable claim against defendants Director and Gonzalez. Their approval of
16 a plan that allows for visual body searches by female officers does not state a cognizable claim for
17 violation of the Fourth Amendment. *Grummett*, 779 F.2d at 496; *Jordan*, 986 F.2d at 1524; *Somers*,
18 109 F.3d at 620.

19 **ii. Eighth Amendment**

20 The Eighth Amendment protects prisoners from inhumane methods of punishment and from
21 inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006).
22 Extreme deprivations are required to make out a conditions of confinement claim, and only those
23 deprivations denying the minimal civilized measure of life’s necessities are sufficiently grave to form
24 the basis of an Eighth Amendment violation. *Hudson v. McMillian*, 503 U.S. 1, 9, 112 S.Ct. 995
25 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth
26 Amendment, the plaintiff must allege facts sufficient to support a claim that prison officials knew
27 of and disregarded a substantial risk of serious harm to the plaintiff. *E.g., Farmer v. Brennan*, 511
28 U.S. 825, 847, 114 S.Ct. 1970 (1994); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

1 Plaintiff alleges excessive force and deliberate indifference by defendant Sweeney arising
2 from the visual body cavity search.² However, Plaintiff fails to state a claim against her for violation
3 of the Eighth Amendment. Even assuming that Plaintiff's allegations satisfy the subjective
4 component of the *Hudson* analysis, Plaintiff fails to meet the objective component. The Court does
5 not find that an order to comply with a strip search, even in a situation where a similar search had
6 recently been completed by other prison staff, is objectively harmful enough to establish a violation
7 of the Eighth Amendment. Further, "[c]ross-gendered searches cannot be called inhumane and
8 therefore do not fall below the floor set by the objective component of the Eighth Amendment."
9 *Somers*, 109 F.3d at 623.

10 Finally, the circumstances, nature, and duration of the deprivations are critical in determining
11 whether the conditions complained of are grave enough to form the basis of a viable Eighth
12 Amendment claim. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2006). Plaintiff's allegations that
13 he was forced to sit outside on rocks for two hours, that his hand cuffs were too tight, and that he was
14 not permitted to use the restroom fail to rise to the level of a constitutional violation. There is
15 nothing to suggest that the officer "[knew] of and disregard[ed] an excessive risk to [plaintiff's]
16 health or safety." *Farmer*, 511 U.S. at 837.

17 With respect to defendants Director and Gonzalez, Plaintiff also fails to state a cognizable
18 Eighth Amendment claim against them. An allegation that they approved of a plan to search
19 inmates, and that a female officer was included as a member of the strip search team, does not meet
20 either the subjective or objective components of an Eighth Amendment claim. Plaintiff has not
21 alleged that defendants "[knew] of and disregard[ed] an excessive risk to [plaintiff's] health or
22

23 ² When a prison official stands accused of using excessive physical force in violation of the cruel and
24 unusual punishment clause of the Eighth Amendment, the question turns on whether force was applied in a good-
25 faith effort to maintain or restore discipline, or maliciously and sadistically for the purpose of causing harm. *Hudson*,
26 503 U.S. at 7 (citing *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986)). In determining whether the use of force was
27 wanton and unnecessary, it is proper to consider factors such as the need for application of force, the relationship
28 between the need and the amount of force used, the threat reasonably perceived by the responsible officials, and any
efforts made to temper the severity of the forceful response.

The Court does not find Plaintiff's Eighth Amendment claim based on an a theory of excessive force viable
because there are no allegations of physical force alleged. Further, verbal harassment or abuse alone is not sufficient
to state a constitutional deprivation under 42 U.S.C. § 1983, *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir.
1987), and threats do not rise to the level of a constitutional violation. *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir.
1987).

1 safety.” *Id.* Plaintiff has also failed to allege any wrongdoing that is objectively harmful enough to
2 establish a constitutional violation. *Somers*, 109 F.3d at 623.

3 **iii. Equal Protection Clause**

4 Next, Plaintiff alleges that the search violated the Equal Protection Clause of the Fourteenth
5 Amendment. “Section 1983 claims based on Equal Protection violations must plead intentional
6 unlawful discrimination or allege facts that are at least susceptible of an inference of discriminatory
7 intent.” *Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022, 1026 (9th Cir. 1998). Plaintiff
8 has not sufficiently alleged that defendants Sweeney, Director or Gonzalez acted with an intent or
9 purpose to discriminate against Plaintiff based upon membership in a protected class, *Barren v.*
10 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998), and a bare allegation that Plaintiff, who is male,
11 was searched by a female correctional officer is not sufficient to show that defendants acted with a
12 discriminatory animus towards male prisoners. Plaintiff fails to state a viable claim for violation of
13 the Fourteenth Amendment.

14 **iv. Due Process Clause**

15 Finally, Plaintiff alleges that defendant Gonzalez and Director violated due process.

16 The Due Process Clause of the Fourteenth Amendment protects prisoners from being
17 deprived of life, liberty, or property without due process of law. *Wolff v. McDonnell*, 418 U.S. 539,
18 556 (1974). Plaintiff has not alleged any facts that would support a claim that he was deprived of
19 a protected interest without procedural due process.

20 “To establish a violation of substantive due process . . . , a plaintiff is ordinarily required to
21 prove that a challenged government action was clearly arbitrary and unreasonable, having no
22 substantial relation to the public health, safety, morals, or general welfare. Where a particular
23 amendment provides an explicit textual source of constitutional protection against a particular sort
24 of government behavior, that Amendment, not the more generalized notion of substantive due
25 process, must be the guide for analyzing a plaintiff’s claims.” *Patel v. Penman*, 103 F.3d 868, 874
26 (9th Cir. 1996) (citations, internal quotations, and brackets omitted), *cert. denied*, 117 S. Ct. 1845
27 (1997); *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998). Plaintiff has not alleged any facts
28 that would support a claim that his rights under the substantive component of the Due Process Clause

1 were violated.

2 **B. Retaliation Claim**

3 Plaintiff additionally alleges that defendants Gonzalez and Director retaliated against Plaintiff
4 for filing prison grievances by transferring him from CCI to Desert View MCCF on January 26,
5 2009.

6 Allegations of retaliation against a prisoner's First Amendment rights to speech or to petition
7 the government may support a section 1983 claim. *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir.
8 1985); *see also Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989); *Pratt v. Rowland*, 65
9 F.3d 802, 807 (9th Cir. 1995). "Within the prison context, a viable claim of First Amendment
10 retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action
11 against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled
12 the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance
13 a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005).

14 Under the minimal federal notice pleading standard, Plaintiff's allegations that defendant
15 Gonzalez responded to Plaintiff's grievance activity by transferring him to another facility is
16 sufficient to state a claim for retaliation against him. However, Plaintiff's allegations are insufficient
17 to state a claim against defendant Director. Plaintiff must set forth "sufficient factual matter,
18 accepted as true, to 'state a claim that is plausible on its face'" *Iqbal*, 129 S.Ct. at 1949 (quoting
19 *Twombly*, 550 U.S. at 555). Determining whether a complaint states a plausible claim for relief is
20 a "context-specific task that requires the reviewing court to draw on its judicial experience and
21 common sense[.]...Where the well-pleaded facts do not permit the court to infer more than the mere
22 possibility of misconduct, the complaint has alleged-but it has not 'show[n]'-that the pleader is
23 entitled to relief.'" *Id.* at 1950; *see Fed. R. Civ. P 8(a)(2)*. The Court does not find plausible an
24 allegation that the Director of CDCR would personally intervene to have Plaintiff transferred from
25 one CDCR facility to another, in retaliation for Plaintiff pursuing prison grievance activity.

26 Accordingly, Plaintiff states a claim only against defendant Warden Gonzalez for retaliation,
27 in violation of the First Amendment.

28 ///

1 **C. Plaintiff's Other Claims Arising at CCI**

2 In addition to the claims discussed above, Plaintiff further alleges retaliatory activity by
3 various other prison staff members at CCI. A summary of these claims is provided by the following
4 paragraphs.

5 Plaintiff alleges that defendant librarian R. Hackett denied Plaintiff access to the law library,
6 thereby raising claims for denial of access to the courts, retaliation, violation of due process and
7 violation equal protection.

8 Plaintiff further alleges that defendant Correctional Officer Hawkins deliberately rerouted
9 Plaintiff's mail and searched his cell in retaliation for Plaintiff's grievance activity. Plaintiff alleges
10 claims for violation of the Eighth Amendment, as well as violations of due process and equal
11 protection. Plaintiff alleges similar claims against defendant Correctional Officer Reed, whom
12 Plaintiff states retaliated against him by moving him to another cell.

13 Plaintiff also alleges that defendant Appeals Coordinator Sampson violated Plaintiff's rights
14 under the Eighth and Fourteenth Amendments by failing to answer or acknowledge Plaintiff's inmate
15 grievances.

16 **i. Rule 18(a)**

17 Plaintiff may not proceed in one action on a myriad of unrelated claims against different staff
18 members. "The controlling principle appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim to
19 relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as
20 independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has
21 against an opposing party.' Thus multiple claims against a single party are fine, but Claim A against
22 Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims
23 against different defendants belong in different suits, not only to prevent the sort of morass [a
24 multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required
25 filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals
26 that any prisoner may file without prepayment of the required fees. 28 U.S.C. § 1915(g)." *George*
27 *v. Smith*, 507 F.3d at 607.

28 At this juncture, Plaintiff states only a claim against defendant Sweeney for violation of the

1 Fourth Amendment, and against defendant Gonzalez for retaliation in violation of the First
2 Amendment. Upon review, the remainder of Plaintiff's claims arising at CCI are unrelated to either
3 of the cognizable claims identified. Plaintiff may not proceed with unrelated claims against different
4 defendants in a single suit. *Id.* Accordingly, Plaintiff may not pursue his claims against defendants
5 Hackitt, Hawkins, Reed or Sampson in this action.

6 **D. Plaintiff's Claims Concerning his Conditions of Confinement at Desert View**
7 **MCCF and at CIM**

8 For the same reasons discussed above, Plaintiff may not pursue his claims arising from his
9 conditions of confinement at Desert View MCCF or at CIM in this action. The claims alleged
10 against correctional staff at those facilities are unrelated to the cognizable claims alleged against
11 defendants Sweeney and Gonzalez arising at CCI. To allow Plaintiff to pursue those unrelated
12 claims here would result in a violation of Rule 18(a). Plaintiff is not prevented from pursuing those
13 claims if he wishes; however, he may not litigate them in this action.

14 **III. Conclusion and Recommendation**

15 Plaintiff's first amended complaint states a claim against Defendant Sweeney for violation
16 of the Fourth Amendment arising from the strip search incident on October 23, 2008. Plaintiff also
17 states a claim for retaliation in violation of the First Amendment against defendant Warden
18 Gonzalez, for purportedly transferring Plaintiff to a different CDCR facility in response to Plaintiff's
19 grievance activities. Although both claims arise at CCI and the Court identifies both claims as
20 cognizable, the claims are unrelated. Plaintiff may not proceed with a "mishmash of a complaint"
21 and therefore cannot proceed with both claims in this one action. *George*, 507 F.3d at 607. Plaintiff
22 has indicated that he is willing to proceed only against Defendant Sweeney in this action.

23 Accordingly, the Court HEREBY RECOMMENDS the following:

- 24 1) This action proceed on Plaintiff's first amended complaint, filed May 26, 2009,
25 against Defendant Sweeney for violation of the Fourth Amendment;
- 26 2) Plaintiff's claim against Defendant Gonzalez for retaliation in violation of the First
27 Amendment be DISMISSED without prejudice;
- 28 3) Plaintiff's claims against Defendants Hackitt, Hawkins, Reed and Sampson be

1 DISMISSED without prejudice;

2 4) Plaintiff's claims arising at Desert View Modified Community Correctional Facility
3 and at the California Institute for Men be DISMISSED without prejudice;

4 5) Plaintiff's claims against Defendant Director of CDCR be DISMISSED with
5 prejudice for failure to state a claim upon which relief may be granted; and

6 6) Plaintiff's Eighth Amendment and Equal Protection claims be DISMISSED with
7 prejudice for failure to state a claim upon which relief may be granted.

8
9 IT IS SO ORDERED.

10 **Dated: June 18, 2010**

/s/ Dennis L. Beck
11 UNITED STATES MAGISTRATE JUDGE