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3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
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6 BILLY RAE MALDONADO,  
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8 Plaintiff,

9 vs.

10 PLEASANT VALLEY STATE PRISON,  
11

et al.,

12 Defendants.  
13  
14

1:12-cv-1088-AWI-EPG-PC

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(ECF No. 23.)

ORDER DISMISSING ACTION, WITH  
PREJUDICE, FOR FAILURE TO STATE A  
CLAIM UPON WHICH RELIEF MAY  
BE GRANTED UNDER SECTION 1983

ORDER THAT DISMISSAL IS SUBJECT  
TO 28 U.S.C. § 1915(g)

ORDER FOR CLERK TO CLOSE CASE

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16 Billy Rae Maldonado ("Plaintiff") is a state prisoner proceeding *pro se* in this civil  
17 rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States  
18 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

19 On April 12, 2016, [findings and recommendations](#) were entered, recommending that  
20 this action be dismissed based on Plaintiff's failure to state a claim upon which relief may be  
21 granted under §1983. (ECF No. 23.) On June 23, 2016, Plaintiff filed [objections](#) to the  
22 findings and recommendations. (ECF No. 26.)

23 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this  
24 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,  
25 including Plaintiff's objections, the Court finds the findings and recommendations to be  
26 supported by the record and proper analysis. Plaintiff relies on a single incident in which his  
27 buttocks and scrotum were touched by a prison guard during the course of what appears to be  
28 an otherwise legitimate pat-down search. The facts that are alleged are comparable with other

1 cases in which no constitutional violation was found based on allegations of improper touching.  
2 See, e.g., Cavalier v. County of San Diego, 2015 U.S. Dist. LEXIS 80754, \*6-\*7, \*44-\*45  
3 (S.D. Cal. May 13, 2015) (and cases cited therein); Trotter v. Haws, 2010 U.S. Dist. LEXIS  
4 141715, \*11-\*13 (C.D. Cal. Dec. 13, 2010) (and cases cited therein); Smith v. L.A. Cnty., 2010  
5 U.S. Dist. LEXIS 61985, \*12-\*16 (C.D. Cal. Apr. 22, 2010); Osterloth v. Hopwood, 2006 U.S.  
6 Dist. LEXIS 102069, \*13-\*17 (D. Mont. Oct. 11, 2006). Plaintiff's objections are overruled.

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8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The Findings and Recommendations issued by the Magistrate Judge on April 12,  
10 2016 (Doc. No. 23) are adopted in full;
- 11 2. This action is dismissed, with prejudice, based on Plaintiff's failure to state a  
12 claim upon which relief may be granted under § 1983;
- 13 3. This dismissal is subject to the "three-strikes" provision set forth in 28 U.S.C. §  
14 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and
- 15 4. The Clerk of Court is directed to close this case.

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17 IT IS SO ORDERED.

18 Dated: July 28, 2016

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SENIOR DISTRICT JUDGE