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6 **UNITED STATES DISTRICT COURT**
78 EASTERN DISTRICT OF CALIFORNIA
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10 WILLIAM LANGSTON MEADOR,

CASE NO. 1:07-cv-00365-SMS PC

11 v. Plaintiff,

ORDER DISMISSING ACTION FOR
FAILURE TO STATE A CLAIM UNDER
SECTION 1983, AND DIRECTING CLERK
OF COURT TO ENTER JUDGMENT12 CALIFORNIA CORRECTIONAL
INSTITUTION, et al.,

(Doc. 19)

13 Defendants.

14 ORDER COUNTING DISMISSAL AS
A STRIKE UNDER SECTION 1915(G)
15 /16 **Screening Order**17 **I. Procedural History**

18 Plaintiff William Langston Meador, a state prisoner proceeding pro se and in forma pauperis,
19 filed this civil rights action pursuant to 42 U.S.C. § 1983 on March 6, 2007. Plaintiff's complaint
20 was dismissed on January 5, 2009, for failure to state any claims upon which relief may be granted.
21 28 U.S.C. § 1915A. Plaintiff filed a first amended complaint on February 12, 2009, and the
22 undersigned recommended dismissal of this action for failure to state any claims on October 23,
23 2009. On December 24, 2009, the Honorable Anthony W. Ishii, who was at that time assigned to
24 this action, adopted the findings and recommendations in full with the exception of allowing Plaintiff
25 leave to file a second amended complaint limited to his newly asserted claim that the strip search at

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1 issue in the action was conducted without any justification.¹ Now pending before the Court for
2 review is Plaintiff's second amended complaint, filed February 12, 2009.

3 **II. Screening Requirement**

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

12 A complaint must contain "a short and plain statement of the claim showing that the pleader
13 is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
14 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
15 do not suffice." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v.
16 Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set forth "sufficient
17 factual matter, accepted as true, to 'state a claim that is plausible on its face.'" Iqbal, 129 S.Ct. at
18 1949 (quoting Twombly, 550 U.S. at 555). Facial plausibility demands more than the mere
19 possibility that a defendant committed misconduct, Iqbal at 1950, and while factual allegations are
20 accepted as true, legal conclusion are not, id. at 1949.

21 **III. Plaintiff's Claims**

22 **A. Factual Allegations**

23 Plaintiff, who is currently incarcerated at California State Prison-Solano in Vacaville, brings
24 this action against Correctional Officer Foster, Sergeant R. Mazuka, Lieutenant J. Peterson, Captain
25 M. Carrasco, and Associate Warden M. Stainer based on a strip search conducted at the California
26 Correctional Institution in Tehachapi on July 27, 2005.

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28 ¹ This is now a consent case. Appendix A(k)(4) of the Local Rules.

1 Plaintiff was in the law library when an incident occurred on the yard involving the attempted
2 murder of an inmate with weapons. (Doc. 19, 2nd Amend. Comp., court record p. 6; Doc. 15, 1st
3 Amend. Comp., p. 4 & Ex. A p. 1; Doc. 3, Comp., p. 6 & Ex. A p. 22.²) After the yard was cleared,
4 Plaintiff and the other inmates in the library were ordered to leave and submit to a strip search. (2nd
5 Amend. Comp., p. 6, 1st Amend. Comp., p. 4, Comp., p. 6.) A female officer was several feet away
6 and Plaintiff objected to stripping in her presence, although he disrobed while objecting. (2nd
7 Amend. Comp. at 6, 1st Amend. Comp. at 4, Comp. at 6.) Plaintiff was then ordered to turn around
8 at gun point, handcuffed, and taken to a holding cell. (2nd Amend. Comp. at 9, 1st Amend. Comp.
9 at 5, Comp. at 7.) Plaintiff was released several hours later and given a rules violation, which he
10 contends was false. (2nd Amend. Comp. at 6.) Plaintiff alleges that there was no justification for
11 requiring him to submit to a strip search in front of a female officer and the search was therefore
12 unreasonable. (Id. at 9-10.)

13 **B. Fourth Amendment Claim**

14 On two previous occasions, the Court found Plaintiff's allegations insufficient to state a
15 claim. In all three complaints, Plaintiff's assertion that the strip search was unreasonable is based
16 on the purported violation of Cal. Code Regs., tit. 15 § 3287(b), which provides that inmates are
17 subject to unclothed body inspections "when there is a reasonable suspicion to believe the inmate
18 may have unauthorized or dangerous items concealed on his or her person, or that he or she may
19 have been involved in an altercation of any kind." (2nd Amend. Comp. at 6; 1st Amend. Comp. at 5;
20 Comp. at 7-8.) In his second amended complaint, Plaintiff alleges that because he was in the law
21 library with the door closed and not at the location of the incident, and because the incident had been
22 "cleared," there was no justification or need to strip search him in front of a female guard. (2nd
23 Amend. Comp. at 6-7.)

24 The Fourth Amendment protects prisoners from unreasonable searches, including the
25 invasion of bodily privacy. Bull v. City and County of San Francisco, 595 F.3d 964, 974-75 (9th Cir.
26 2010); Michenfelder v. Sumner, 860 F.2d 328, 332-34 (9th Cir. 1988). While prisoners retain some

28 ² The Court takes judicial notice of Plaintiff's original and first amended complaints. E.g., United States v. Howard, 381 F.3d 873, 876, n.1 (9th Cir. 2004).

1 legitimate expectation of bodily privacy from persons of the opposite sex, such rights are extremely
2 limited, Jordan v. Gardner, 986 F.2d 1521, 1524 (9th Cir. 1993); Michenfelder, 860 F.2d at 333, and
3 prisoners do not have a recognized right to be free from cross-gender strip searches, Somers v.
4 Thurman, 109 F.3d 614, 622 (9th Cir. 1997); Jordan, 986 F.2d at 1524-25.

5 The Fourth Amendment prohibits unreasonable searches, and reasonableness is determined
6 by the context, which requires a balancing of the need for the particular search against the invasion
7 of personal rights that search entails. Bell v. Wolfish, 441 U.S. 520, 558-59, 99 S.Ct. 1861 (1979)
8 (quotations omitted); Bull, 595 F.3d at 971-72; Nunez v. Duncan, 591 F.3d 1217, 1227 (9th Cir.
9 2010); Michenfelder at 332. The scope of the particular intrusion, the manner in which it is
10 conducted, the justification for initiating it, and the place in which it is conducted must be
11 considered. Bell, 441 U.S. at 559 (quotations omitted); Bull at 972; Nunez, 591 F.3d at 1227;
12 Michenfelder at 332.

13 In evaluating whether a prison's policy or practice is reasonable under the Fourth
14 Amendment, courts must also look to the test articulated in Turner v. Safley, 482 U.S. 78, 89-91, 107
15 S.Ct. 2254 (1987). Bull at 973; Nunez at 1227; Michenfelder at 331. Under Turner as applied to
16 Fourth Amendment body search claims, any infringement on a prisoner's Fourth Amendment rights
17 must be reasonably related to legitimate penological interests, which requires consideration of (1)
18 whether there is a valid, rational connection between the prison regulation and the legitimate
19 governmental interest put forward to justify it; (2) the impact the accommodation of the asserted
20 constitutional right will have on guards and other inmates, and on the allocation of prison resources
21 generally; and (3) the absence of ready alternatives. Bull at 973; Nunez at 1227; Michenfelder at
22 331.

23 The Court is mindful that it is evaluating Plaintiff's Fourth Amendment claim at the pleading
24 stage. Nevertheless, Plaintiff's allegations must be sufficient to state a facially plausible Fourth
25 Amendment claim and any alleged infringement "must be evaluated in the light of the central
26 objective of prison administration, safeguarding institutional security." Bull at 972 (quoting Bell at
27 547). "[T]he problems that arise in the day-to-day operation of a correctional facility are not
28 susceptible of easy solutions," and prison officials must be accorded "wide-ranging deference in the

1 adoption and execution of policies and practices that in their judgment are needed to preserve
2 internal order and discipline and to maintain institutional security.”” Id.

3 Plaintiff’s attempt to base a Fourth Amendment claim on the allegation that section 3287
4 authorized the search at issue only if there was a reasonable suspicion that he had an unauthorized
5 or dangerous item concealed on his body or that he was involved in an altercation, neither of which
6 was applicable given his location in the law library at the time of the incident on the yard, is belied
7 by a reading of section 3287. Notably omitted from Plaintiff’s pleadings is the remainder of section
8 3287, which in fact permits unclothed body inspections in other situations, including routine inmate
9 movement into or out of high security risk areas, and inspections to prevent possession and
10 movement of dangerous items.

11 Regardless, Fourth Amendment claims are evaluated for reasonableness and not on whether
12 or not Title 15 regulations were violated. In this instance, the attempted murder of an inmate with
13 weapons involved occurred on the yard. After the yard was cleared, inmates in the law library were
14 removed and searched, with Plaintiff’s search occurring within a few feet of a female officer.³ These
15 scant facts simply do not support a facially plausible claim that Plaintiff was subjected to an
16 unreasonable search. Plaintiff’s Fourth Amendment claim is dismissed, with prejudice. Fed. R. Civ.
17 P. 8(a); Iqbal at 1949-50.

18 **C. Eighth Amendment Claim**

19 The Court previously found that Plaintiff’s Eighth Amendment was not cognizable, and when
20 Plaintiff’s first amended complaint was dismissed, Plaintiff was granted leave to amend only his
21 Fourth Amendment claim. However, Plaintiff re-alleges that the strip search at issue violated his
22 rights under the Eighth Amendment.

23 The Eighth Amendment protects prisoners from inhumane methods of punishment and from
24 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006).
25 Extreme deprivations are required to make out a conditions of confinement claim, and only those

27 ³ Although such allegations would not affect the outcome in this case, the Court notes that there is no
28 allegation that the female officer was involved in the search or that she even viewed Plaintiff without his clothes.
Plaintiff’s claim is premised simply on her presence in the area of the search.

1 deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form
2 the basis of an Eighth Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9, 112 S.Ct. 995
3 (1992) (citations and quotations omitted). In order to state a claim, the factual allegations must
4 support a claim that prison officials knew of and disregarded a substantial risk of serious harm to
5 Plaintiff. E.g., Farmer v. Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994); Frost v. Agnos, 152
6 F.3d 1124, 1128 (9th Cir. 1998).

7 The allegations that Plaintiff was ordered to submit to a strip in the presence of a female
8 officer following a serious incident on the yard are insufficient to support a claim for relief under the
9 Eighth Amendment. Plaintiff's Eighth Amendment claim is dismissed, with prejudice. Fed. R. Civ.
10 P. 8(a); Iqbal at 1949-50.

11 **D. Fourteenth Amendment Claim**

12 Plaintiff's due process claim was also previously found to be deficient and Plaintiff was not
13 granted leave to amend the claim. Because Plaintiff re-alleges his prayer for the restoration of his
14 time credits, the Court will address the due process claim.

15 In a prison disciplinary proceeding, Plaintiff was charged with and found guilty of willfully
16 resisting, delaying or obstructing a peace officer in the performance of duty, and was assessed a
17 ninety-day credit forfeiture. (1st Amend. Comp. at 6, 10-11; Comp. at 29.) Plaintiff may neither
18 challenge the rules violation report nor seek a credit restoration. Wilkinson v. Dotson, 544 U.S. 74,
19 81-2, 125 S.Ct. 1242 (2005). Plaintiff's sole remedy at this juncture is the prison's administrative
20 process or a petition for writ of habeas corpus. Wilkinson, 544 U.S. at 81-2. Plaintiff's due process
21 claim is dismissed, without prejudice, for failure to state a claim. Id.

22 **IV. Conclusion and Order**

23 Plaintiff's second amended complaint fails to state a claim upon which relief may be granted
24 under section 1983. In light of the Court's previous screening order and the nature of the
25 deficiencies at issue, justice does not require further leave to amend be granted. Lopez v. Smith, 203
26 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

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1 Accordingly, it is HEREBY ORDERED that:

2 1. This action is dismissed in its entirety as follows for failure to state a claim under
3 section 1983:

4 a. Plaintiff's Fourth Amendment claim arising from the strip search is dismissed
5 with prejudice;

6 b. Plaintiff's Eighth Amendment claim arising from the strip search is dismissed
7 with prejudice; and

8 c. Plaintiff's Fourteenth Amendment due process claim arising from the false
9 disciplinary report and credit loss is dismissed without prejudice;

10 2. The Clerk of the Court shall enter judgment; and

11 3. This dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).

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13 IT IS SO ORDERED.

14 Dated: August 3, 2010

15 /s/ Sandra M. Snyder
16 UNITED STATES MAGISTRATE JUDGE

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