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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JAYMAR DODDS,

Plaintiff,

v.

E. LASCANO, et al.,

Defendants.

CASE NO. 1:09-cv-00656 AWI DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL CERTAIN  
CLAIMS AND DEFENDANTS FROM  
ACTION

(Doc. 10)

**Findings and Recommendations Following Screening of Complaint**

**I. Procedural History**

Plaintiff Jaymar Dodds (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on April 13, 2009. On September 28, 2009, the Court issued an order finding that Plaintiff’s complaint states cognizable claims against Defendants Lascano and Williams for violation of the Eighth Amendment, and against Defendants Hamlin and Lascano for retaliation, in violation of the First Amendment. The Court also found that Plaintiff’s allegations do not support claims against any defendant relating to the strip search, or for denial of access to the courts, or regarding Plaintiff’s conditions of confinement in the ASU. The Court ordered Plaintiff to either file an amended complaint or notify the Court of his willingness to proceed only on the claims found to be cognizable. On October 23, 2009, Plaintiff notified the Court that he does not wish to amend and is willing to proceed on the claims found cognizable. Based on Plaintiff’s notice, this Findings and Recommendations now issues.

**II. Screening Requirement**

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

9 A complaint must contain “a short and plain statement of the claim showing that the pleader  
10 is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
12 do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v.  
13 Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set forth “sufficient  
14 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Iqbal, 129 S.Ct. at  
15 1949 (quoting Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal  
16 conclusion are not. Id. at 1949.

### 17 **III. Summary of Plaintiff’s Claims**

18 Plaintiff brings this action for violation of the First, Eighth and Fourteenth Amendments of  
19 the United States Constitution. Plaintiff names Sgt. E. Lascano, Lt. J. Hamlin, Correctional Officer  
20 B. Williams and Correctional Officer M. Rivera as defendants.

#### 21 **A. Eighth Amendment - Conditions of Confinement**

22 The events giving rise to this action allegedly occurred at Kern Valley State Prison  
23 (“KVSP”), where Plaintiff is presently incarcerated. Plaintiff alleges that on November 1, 2007, a  
24 cell search was conducted at KVSP. Plaintiff alleges that defendants Lascano, Williams and Rivera  
25 ordered Plaintiff from his cell. Plaintiff alleges that he was drugged/dragged in front of the unit  
26 counselor’s office, and ordered strip searched while others were present. Plaintiff alleges that  
27 defendant Lascano authorized defendants Williams and Rivera to confiscate Plaintiff’s bed linens,  
28 clothing, legal property, and personal property. Plaintiff alleges that he was subsequently informed

1 by prison staff that his property was under investigation and would not be immediately returned.  
2 Plaintiff contends that he was left in his cell for five or six days without a toothbrush, toothpaste,  
3 deodorant, soap or his personal property. Plaintiff contends that he suffered from cold temperatures  
4 without state-issued clothing and bed linens. Plaintiff alleges that he informed defendants Lascano  
5 and Williams of the problems but they did nothing to assist him.

6 The Eighth Amendment protects prisoners from inhumane methods of punishment and from  
7 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006).  
8 Extreme deprivations are required to make out a conditions of confinement claim, and only those  
9 deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form  
10 the basis of an Eighth Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9, 112 S.Ct. 995  
11 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth  
12 Amendment, the plaintiff must allege facts sufficient to support a claim that prison officials knew  
13 of and disregarded a substantial risk of serious harm to the plaintiff. E.g., Farmer v. Brennan, 511  
14 U.S. 825, 847, 114 S.Ct. 1970 (1994); Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

15 Plaintiff's allegations that defendants Williams and Lascano were involved in the  
16 confiscation of his clothing, bed linens and personal hygiene items, and knew of Plaintiff's  
17 complaints and failed to do anything, are sufficient to state a claim against them for violation of the  
18 Eighth Amendment. However, Plaintiff fails to state a cognizable Eighth Amendment claim against  
19 defendant Rivera. Defendant Rivera's role in confiscating Plaintiff's property, without more, does  
20 not sufficiently demonstrate that he knew of and disregarded an excessive risk to Plaintiff's health  
21 or safety. Farmer, 511 U.S. at 837.

## 22 **B. Fourth and Eighth Amendments - Strip Search**

23 It is not clear whether Plaintiff is further alleging that the body cavity search, conducted in  
24 the view of a female staff member and other inmates, impinged on the protections of the Eighth  
25 Amendment.

26 The Fourth Amendment guarantees the right to be secure against unreasonable searches, and  
27 its protections extend to incarcerated prisoners. Bell v. Wolfish, 441 U.S. 520, 545 (1979). In  
28 determining the reasonableness of a search under the Fourth Amendment, "[c]ourts must consider

1 the scope of the particular intrusion, the manner in which it is conducted, the justification for  
2 initiating it, and the place in which it is conducted.” Id. at 559. The reasonableness of a prisoner  
3 search is determined by reference to the prison context. Michenfelder v. Sumner, 860 F.2d 328, 332  
4 (9th Cir. 1988). “When a prison regulation impinges on inmates’ constitutional rights, the regulation  
5 is valid if it is reasonably related to legitimate penological interests.” Turner v. Safley, 482 U.S. 78,  
6 79 (1987).

7 Prisoners’ legitimate expectations of bodily privacy from persons of the opposite sex are  
8 extremely limited. Jordan v. Gardner, 986 F.2d 1521, 1524 (9th Cir. 1993); see also Michenfelder,  
9 860 F.2d at 328 (visual body-cavity searches of male inmates conducted within view of female  
10 guards held constitutional); Grummett v. Rushen, 779 F.2d 491, 492 (9th Cir. 1985) (high potential  
11 for female guards to view male inmates disrobing, showering, and using toilet facilities did not  
12 render prison policies unconstitutional); Thompson v. Souza, 111 F.3d 694, 700-01 (9th Cir. 1997)  
13 (visual body-cavity search of prisoners conducted in public held constitutional). Although visual  
14 strip searches, including visual body-cavity searches, of male prisoners conducted within view of  
15 female officers are generally permissible, abusive cross-gender strip searches may violate the Fourth  
16 Amendment's reasonableness standard. Somers v. Thurman, 109 F.3d 614, 622 n.5 (9th Cir. 1997).

17 Plaintiff has not sufficiently alleged that the search was conducted without penological  
18 justification, or that the defendants acted with a sufficiently culpable state of mind. The fact that the  
19 search was conducted in the view of a female staff member and other inmates, by itself, does not  
20 render the search unconstitutional. Plaintiff fails to state a claim against defendants Williams,  
21 Lascano and Rivera under the Fourth or Eighth Amendments.

### 22 **C. Fourteenth Amendment - Access to the Courts**

23 Plaintiff alleges that he informed both defendants Lascano and Hamlin that he required his  
24 legal property because he had an imminent court deadline pending. Plaintiff alleges that defendants  
25 refused to issue to him his legal property and that Plaintiff now “contends with being procedurally  
26 barred.”

27 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey, 518  
28 U.S. 343, 346, 116 S.Ct. 2174, 2177 (1996). The right is limited to direct criminal appeals, habeas

1 petitions, and civil rights actions. Id. at 354, 2181-82. Claims for denial of access to the courts may  
2 arise from the frustration or hindrance of “a litigating opportunity yet to be gained” (forward-looking  
3 access claim) or from the loss of a meritorious suit that cannot now be tried (backward-looking  
4 claim). Christopher v. Harbury, 536 U.S. 403, 412-15, 122 S.Ct. 2179, 2185-87 (2002). For  
5 backward-looking claims such as that at issue here, plaintiff “must show: 1) the loss of a  
6 ‘nonfrivolous’ or ‘arguable’ underlying claim; 2) the official acts frustrating the litigation; and 3) a  
7 remedy that may be awarded as recompense but that is not otherwise available in a future suit.”  
8 Phillips v. Hust, 477 F.3d 1070, 1076 (9th Cir. 2007).

9 The first element requires that plaintiff show he suffered an “actual injury” by being shut out  
10 of court. Harbury 536 U.S. at 415, 121 S.Ct. at 2187; Lewis, 518 U.S. at 351, 116 S.Ct. at 2180;  
11 Phillips, 477 F.3d at 1076. The second element requires that plaintiff show defendant proximately  
12 caused the alleged violation of plaintiff’s rights, “[t]he touchstone . . . [for which] is foreseeability.”  
13 Phillips, 477 at 1077. Finally, the third element requires that plaintiff show he has no other remedy  
14 than the relief available via *this* suit for denial of access to the courts. Id. at 1078-79.

15 Plaintiff fails to state a cognizable claim for denial of access to the courts. First, Plaintiff has  
16 not shown or alleged any actual injury by being shut out of court. Plaintiff’s allegation that he must  
17 now contend with being procedurally barred does not demonstrate any actual injury. Second,  
18 Plaintiff has not alleged that he was denied access to the courts relating to a criminal appeal, habeas  
19 petition, or civil rights action. Finally, Plaintiff has not sufficiently alleged that there is no other  
20 remedy available to him.

21 **D. First Amendment - Retaliation**

22 Plaintiff states that he filed a 602 grievance and a citizen’s complaint concerning his  
23 treatment. Plaintiff alleges that defendants Lascano and Hamlin retaliated against him by placing  
24 him in the “hole” for four months.

25 Allegations of retaliation against a prisoner’s First Amendment rights to speech or to petition  
26 the government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir.  
27 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. Rowland, 65  
28 F.3d 802, 807 (9th Cir. 1995). “Within the prison context, a viable claim of First Amendment

1 retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action  
2 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled  
3 the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance  
4 a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

5 An allegation of retaliation against a prisoner’s First Amendment right to file a prison  
6 grievance is sufficient to support claim under section 1983. Bruce v. Ylst, 351 F.3d 1283, 1288 (9th  
7 Cir. 2003).

8 Plaintiff has sufficiently stated a claim against defendants Lascano and Hamlin for retaliation,  
9 in violation of the First Amendment.

10 **E. Eighth Amendment - Conditions of Confinement in Administrative Segregation**  
11 **Unit (“ASU”)**

12 Plaintiff has alleged that he was subjected to unconstitutional conditions of confinement  
13 during his placement in ASU (*e.g.*, lack of outdoor exercise). Plaintiff has not linked these  
14 deprivations to the actions or omissions of any of the named defendants. Plaintiff must demonstrate  
15 that each defendant *personally* participated in the deprivation of his rights. Jones v. Williams, 297  
16 F.3d 930, 934 (9th Cir. 2002) (emphasis added).

17 Further, Plaintiff is informed that any attempt to proceed in this action with claims against  
18 other prison staff regarding his conditions of confinement while in ASU may be improper. “The  
19 controlling principle appears in Fed. R. Civ. P. 18(a): ‘A party asserting a claim to relief as an  
20 original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as  
21 alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing  
22 party.’ Thus multiple claims against a single party are fine, but Claim A against Defendant 1 should  
23 not be joined with unrelated Claim B against Defendant 2. Unrelated claims against different  
24 defendants belong in different suits, not only to prevent the sort of morass [a multiple claim, multiple  
25 defendant] suit produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison  
26 Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file  
27 without prepayment of the required fees. 28 U.S.C. § 1915(g).” George v. Smith, 507 F.3d 605, 607  
28 (7th Cir. 2007). Plaintiff may not proceed in a single action with unrelated claims against different

1 defendants.

2 **IV. Conclusion and Recommendation**

3 Plaintiff's complaint states claims against Defendants Lascano and Williams for violation  
4 of the Eighth Amendment and against Defendants Hamlin and Lascano for retaliation in violation  
5 of the First Amendment. However, Plaintiff's allegations do not support claims against any  
6 defendant relating to the strip search, or for denial of access to the courts, or regarding his conditions  
7 of confinement in the ASU. Plaintiff was provided with the opportunity to either amend or proceed  
8 only on his cognizable claims, and has opted to proceed on the cognizable claims. Accordingly, it  
9 is HEREBY RECOMMENDED that:

- 10 1. This action proceed on Plaintiff's complaint, filed April 13, 2009, against Defendants  
11 Lascano and Williams for violation of the Eighth Amendment and against  
12 Defendants Hamlin and Lascano for retaliation in violation of the First Amendment;
- 13 2. Plaintiff's claims for denial of access to the courts and pertaining to the strip search  
14 be dismissed for failure to state a claim;
- 15 3. Plaintiff's claims regarding the conditions of his confinement be dismissed without  
16 prejudice for violation of Federal Rule of Civil Procedure 18; and
- 17 4. Defendant Rivera be dismissed based on Plaintiff's failure to state any claims against  
18 him.

19 These Findings and Recommendations will be submitted to the United States District Judge  
20 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**  
21 **days** after being served with these Findings and Recommendations, plaintiff may file written  
22 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
23 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
24 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
25 1153 (9th Cir. 1991).

26 IT IS SO ORDERED.

27 **Dated: October 27, 2009**

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