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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ALVIN J. SCHROEDER,

Plaintiff,

v.

MATTHEW CATE, et al.,

Defendants.

CASE NO. 1:10-CV-01905-AWI-DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
ACTION FOR FAILURE TO STATE A  
CLAIM UPON WHICH RELIEF MAY BE  
GRANTED (DOC. 1)

OBJECTIONS DUE WITHIN TWENTY-ONE  
DAYS

**Findings And Recommendations**

**I. Background**

Plaintiff Alvin J. Schroeder (“Plaintiff”) was a prisoner formerly in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). 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 October 13, 2010. Doc. 1.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been

1 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
2 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §  
3 1915(e)(2)(B)(ii).

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

11 **II. Summary of Complaint**

12 Plaintiff was formerly incarcerated at Pleasant Valley State Prison (“PVSP”) in Coalinga,  
13 California, where the events giving rise to this action occurred. Plaintiff names as Defendants  
14 Matthew Cate, secretary of CDCR, and former governor Arnold Schwarzenegger.

15 Plaintiff alleges the following. Plaintiff contends that he and other male inmates should  
16 be allowed to have depictions of female nudity, including pornographic and/or obscene materials.  
17 Plaintiff also contends that female correctional staff violate Plaintiff’s right to privacy being  
18 present in the housing units. Plaintiff requests as relief that male inmates be permitted to procure  
19 pornographic or obscene photos of female nudity, and that female staff be banned from all male  
20 inmate living quarters.

21 **III. Analysis**

22 Plaintiff’s contentions regarding the photos of female nudity implicate the First  
23 Amendment. Plaintiff fails to state a claim. The prohibition of possession of such photos in the  
24 prison context serves a legitimate penological interest. *Mauro v. Arpaio*, 188 F.3d 1054, 1058-  
25 59 (9th Cir. 1999) (en banc) (holding exclusion of sexually explicit materials serves the  
26 legitimate penological interests of institutional security, rehabilitation of inmates, and reducing  
27 sexual harassment of prison employees) .

28 Plaintiff’s contentions regarding female security staff working in the presence of male

1 inmates also fail to state a claim. Prisoners retain only a very limited Fourth Amendment to  
2 shield themselves from being observed nude. *Michenfelder v. Sumner*, 860 F.2d 328, 333-34  
3 (9th Cir. 1988). The right is not violated if guards only make casual observations or if the  
4 observations are made from a distance. *Id.* at 334.<sup>1</sup> Plaintiff alleges no facts that indicate female  
5 guards are actively observing Plaintiff nude. The mere possibility of misconduct falls short of  
6 meeting the plausibility standard. *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009)  
7 (citing *Iqbal*, 129 S. Ct. at 1949-50).

8 According to the court docket, Plaintiff was paroled. Notice of Change of Address, Doc.  
9 7. Plaintiff seeks only injunctive relief in this action. As Plaintiff was challenging his conditions  
10 of confinement, Plaintiff's request for injunctive relief appears moot. *See, e.g., Andrews v.*  
11 *Cervantes*, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007) (transferring prisoner to another prison  
12 renders prisoner's request for injunctive relief at moot if there is no reasonable expectation of  
13 return to the prison).

#### 14 **IV. Conclusion And Recommendation**

15 Plaintiff fails to state any claims against any Defendants. The Court does not find that  
16 Plaintiff will be able to plead additional facts to cure the deficiencies in his complaint.  
17 Accordingly, further leave to amend should not be granted. *See Lopez v. Smith*, 203 F.3d 1122,  
18 1127 (9th Cir. 2000) (en banc).

19 Based on the foregoing, it is HEREBY RECOMMENDED that

- 20 1. This action is DISMISSED for failure to state a claim upon which relief may be  
21 granted; and
- 22 2. This dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).

23 These Findings and Recommendations will be submitted to the United States District  
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-**  
25 **one (21) days** after being served with these Findings and Recommendations, the Plaintiff may  
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27 <sup>1</sup> Plaintiff cites to a class action filed in San Bernardino County regarding this issue. That class action is  
28 not controlling here, as it concerned strip searches of various detainees at the San Bernardino County Jail without  
reasonably suspicion that they possessed contraband.

1 file written objections with the Court. The document should be captioned “Objections to  
2 Magistrate Judge’s Findings and Recommendations.” The Plaintiff is advised that failure to file  
3 objections within the specified time may waive the right to appeal the District Court’s order.  
4 *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

5 IT IS SO ORDERED.

6 **Dated: May 6, 2011**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE

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