

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 DAVID N. OSOLINSKI,) Case No.: 1:14-cv-01895-AWI-SAB (PC)
12 Plaintiff,)
13 v.) FINDINGS AND RECOMMENDATIONS
14 MARISA BIGO, et al.,) RECOMMENDING DISMISSAL OF ACTION
15 Defendants.) FOR FAILURE TO STATE A COGNIZABLE
16) CLAIM UPON WHICH RELIEF MAY BE
) GRANTED
) [ECF No. 27]
)

17 Plaintiff David N. Osolinski is a civil detainee appearing pro se and in forma pauperis in this
18 civil rights action pursuant to 42 U.S.C. § 1983. Individuals detained pursuant to California Welfare
19 and Institutions Code § 6600 et seq. are civil detainees and are not prisoners within the meaning of the
20 Prison Litigation Reform Act. Page v. Torrey, 201 F.3d 1136, 1140 (9th Cir. 2000)

21 Now pending before the Plaintiff's amended complaint, filed March 12, 2015. (ECF No. 27.)

22 **I.**

23 **SCREENING REQUIREMENT**

24 The in forma pauperis statutes provides that "the court shall dismiss the case at any time if the
25 court determines that ... the action or appeal ... fails to state a claim upon which relief may be
26 granted." 28 U.S.C. § 1915(e)(2)(B)(ii). A complaint must contain "a short and plain statement of the
27 claim showing that the pleader is entitled to relief..." Fed. R. Civ. P. 8(a)(2). Detailed factual
28 allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported

1 by mere conclusory statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing
2 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and courts “are not required to indulge
3 unwarranted inferences,” Doe I v. Walmart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal
4 quotation marks and citation omitted). While factual allegations are accepted as true, legal
5 conclusions are not. Iqbal, 556 U.S. at 678.

6 Under section 1983, Plaintiff must demonstrate that each defendant personally participated in
7 the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires the
8 presentation of factual allegations sufficient to state a plausible claim for relief. Iqbal, 556 U.S. at
9 678-679; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of
10 misconduct falls short of meeting this plausibility standard. Id.

11 II.

12 SUMMARY OF COMPLAINT

13 On April 28, 2014, at approximately 9:00 a.m. and 11:00 a.m., Defendants Bigot, Alekhoughie,
14 and Rivera entered Plaintiff’s sleeping area while he was asleep and began rummaging through his
15 personal property, conducting a routine general search. Plaintiff is aware of no authority which
16 permits Defendants to perform a routine general search while the person is asleep in the area being
17 searched. The aforementioned action was taken by Defendants on at least two other occasions. The
18 routine general searches were performed in a manner solely for harassment and invasion of Plaintiff’s
19 privacy.

20 Plaintiff would awaken from his sleep and find Defendants going through his personal
21 property. Plaintiff yelled, “Get the hell away from my bed area while I am sleeping.” Plaintiff would
22 further state, “You can’t keep invading my sleeping space while I am asleep! You’re not trying to
23 announce [your intent] or making any attempts to awaken me to let me know you are in my bed
24 space!” Defendant Marisa Bigot told Plaintiff, “I am the Unit 18 Supervisor. I can do whatever I
25 want no matter what.”

26 Defendants, and each of them, have a pattern, policy, and practice of making up new rules as
27 they go, while nothing whatsoever is codified, and frequently changed to fit the situation.

28 ///

1 **III.**

2 **DISCUSSION**

3 **A. Civil Rights Section 1983**

4 “[C]ivil detainees retain greater liberty protections than individuals detained under criminal
5 process, and pre-adjudication detainees retain greater liberty protections than convicted ones. . . .”
6 Jones v. Blanas, 393 F.3d 918, 932 (9th Cir. 2004) (citations omitted). Treatment is presumptively
7 punitive when a civil detainee is confined in conditions identical to, similar to, or more restrictive than
8 his criminal counterparts, and when a pre-adjudication civil detainee is detained under conditions more
9 restrictive than a post-adjudication civil detainee would face. Id. at 932-33.

10 Civil detainees “are entitled to more considerate treatment and conditions of confinement than
11 criminals whose conditions of confinement are designed to punish.” Youngberg v. Romeo, 457 U.S.
12 307, 322 (1982) (citation omitted).

13 **B. Unreasonable Search of Room**

14 The Fourth Amendment prohibits only unreasonable searches. Bell v. Wolfish, 441 U.S. 520,
15 558 (1979); Byrd v. Maricopa Cnty. Sheriff’s Dep’t, 629 F.3d 1135, 1140 (9th Cir. 2011);
16 Michenfelder v. Sumner, 860 F.2d 328, 332 (9th Cir. 1988). The reasonableness of the search is
17 determined by the context, which requires a balancing of the need for the particular search against the
18 invasion of personal rights the search entails. Bell, 441 U.S. at 558-59 (quotations omitted); Byrd, 629
19 F.3d at 1141; Bull v. City and Cnty. of San Francisco, 595 F.3d 964, 974-75 (9th Cir. 2010); Nunez v.
20 Duncan, 591 F.3d 1217, 1227 (9th Cir. 2010); Michenfelder, 860 F.2d at 332-34. Factors that must be
21 evaluated are “the scope of the particular intrusion, the manner in which it is conducted, the
22 justification for initiating it, and the place in which it is conducted. Bell, 441 U.S. at 559; Byrd, 639
23 F.3d at 1141.

24 Civil detainees have “a diminished expectation of privacy after commitment to a custodial
25 facility. Bell, 441 U.S. at 557. Legitimate concerns justifying searches and seizures are “the safety
26 and security of guards and others in the facility, order within the facility and the efficiency of the
27 facility’s operations.” Hydrick v. Hunter, 500 F.3d 978, 993 (9th Cir. 2007) (internal quotation marks
28

1 omitted). However, “a search or seizure that is arbitrary, retaliatory, or clearly exceeds the legitimate
2 purpose of detention” violates the Fourth Amendment. Id.

3 Plaintiff’s bare allegations that his living area was subject to a routine general search solely for
4 harassment and invasion of privacy fails to state a cognizable claim for relief. Plaintiff’s allegations
5 simply do not demonstrate or support a plausible finding that the April 28, 2014, search and
6 subsequently two searches were unreasonable. Thus, even if a reasonable expectation of privacy in
7 Plaintiff’s room can be established, Plaintiff has failed to allege sufficient consistent facts to reflect an
8 unreasonable search of his living area. See, e.g., Bell, 441 U.S. 520, 557 (1979) (“No one can
9 rationally doubt that room searches represent an appropriate security measure”) Accordingly,
10 Plaintiff fails to state a cognizable Fourth Amendment claim.

11 **C. Violation of California Constitution and State Law**

12 Plaintiff contends that under California law, he has a constitutional right to privacy and to
13 acquire and protect property, a statutory right to property, and a regulatory right to privacy, dignity,
14 respect, and human care. Violations of state law do not give rise to a claim for relief under section
15 1983. Nurre v. Whitehead, 580 F.3d 1087, 1092 (9th Cir. 2009); Ove v. Gwinn, 264 F.3d 817, 824-25
16 (9th Cir. 2001); Sweaney v. Ada Cnty., Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997).

17 **D. Further Leave to Amend**

18 The Court previously notified Plaintiff of the deficiencies and granted leave to amend, and
19 because Plaintiff has failed to cure the deficiencies further amendment is not warranted. Lopez v.
20 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-1449 (9th Cir.
21 1987).

22 **IV.**

23 **CONCLUSION AND RECOMMENDATION**

24 Based on the foregoing, Plaintiff’s amended complaint fails to state any cognizable claims for
25 relief under section 1983. As Plaintiff has had previously opportunities to cure the deficiencies
26 identified by the Court and has failed to do so, further leave to amend shall not be granted. Lopez v.
27 Smith, 203 F.3d at 1130.

1 Accordingly, it is HEREBY RECOMMENDED that his action be DISMISSED based on
2 Plaintiff's failure to state a cognizable section 1983 claim.

3 These Findings and Recommendations will be submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
5 after being served with these Findings and Recommendations, Plaintiff may file written objections
6 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
7 Recommendations." Plaintiff is advised that failure to file objections within the specified time may
8 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
9 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

10
11 IT IS SO ORDERED.

12 Dated: **April 8, 2015**


UNITED STATES MAGISTRATE JUDGE