

1 In his objections, Plaintiff agreed that all claims against all Defendants other than Karlow should be
2 dismissed. He objected to the dismissal of the sexual harassment and state law causes of action against
3 Defendant Karlow. Significantly, Plaintiff asserts that Defendant Karlow “would come up behind the
4 plaintiff making contact with the Plaintiff legs just below the buttocks.” Doc. 17, 3:6-7. In the operative
5 complaint, Plaintiff only states “Karlow’s acts of rolling around in his chair, coming up behind the
6 Plaintiff and making contact with the Plaintiff on several occasions.” Doc. 13:13:28-14:2. Plaintiff’s
7 allegations are still not factually clear enough to state a claim. For sexual harassment to constitute an
8 Eighth Amendment violation, the objectionable behavior has to be extremely egregious. The Ninth
9 Circuit has found that even some touches do not meet that standard. See Watison v. Carter, 668 F.3d
10 1108, 1113 (9th Cir. 2012) (“LaGier approached Watison while Watison was still on the toilet, rubbed
11 his thigh against Watison’s thigh, ‘began smiling in a sexual contact [sic],’ and left the cell laughing....
12 The ‘humiliation’ Watison allegedly suffered from the incident with Officer LaGier does not rise to the
13 level of severe psychological pain required to state an Eighth Amendment claim”). If Plaintiff believes
14 that Defendant Karlow has in fact violated the Eighth Amendment through sexual harassment, he must
15 make a motion for leave to amend his complaint and provide the factual details that support such a claim.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The Findings and Recommendations, filed on August 9, 2018, are adopted in part.
- 18 2. Plaintiff is granted leave to file a second amended complaint to state claims against
19 Defendant Karlow. Plaintiff must file his amended complaint within 45 (forty-five) days of the filing
20 of this order. If Plaintiff does not file a new complaint within that time frame, then the matter is referred
21 back to the Magistrate Judge for initiation of service of process on the existing complaint.
- 22 3. All other claims against other Defendants are dismissed from the action for failure to
23 state a cognizable claim for relief.

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25 IT IS SO ORDERED.

26 Dated: January 14, 2019

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28 SENIOR DISTRICT JUDGE