



1 recommendation that defendants Ali and Rosse<sup>1</sup> be dismissed from this action. The court writes  
2 separately to explain why these two defendants must be dismissed without leave to amend.

3 Plaintiff alleges in his amended complaint that defendant Ali required defendants Stewart  
4 and Rosse to conduct a search of plaintiff's cell. ECF No. 12 at 3. Plaintiff alleges that defendant  
5 Ali initiated, and defendants Rosse and Stewart conducted, the search because plaintiff had  
6 retrieved a Top Ramen soup from a neighboring cell during defendant Ali's workshift, which  
7 defendant Ali claimed interfered with Ali's job duties. ECF No. 12 at 4-5, 11. In order to state a  
8 retaliation claim, plaintiff must allege that he engaged in conduct protected by the United States  
9 Constitution and that defendants "imposed a burden" on him "because he exercise[d] a  
10 constitutional right." *Blaisdell v. Frappiea*, 729 F.3d 1237, 1242 (9th Cir. 2013) (quoting *Regan*  
11 *v. Taxation with Representation of Washington*, 461 U.S. 540, 545 (1983)). Plaintiff does not  
12 allege that the activity he engaged in that was the basis for the alleged search, retrieving soup, is  
13 protected by the United States Constitution, nor could he. Prison inmates have no constitutional  
14 protection in retrieving property from another inmate's cell. Nor does plaintiff have  
15 constitutional protection against an unreasonable search of his cell, or intentional unauthorized  
16 deprivation of his personal property. *See Hudson v. Palmer*, 468 U.S. 517 (1984). For this  
17 reason, plaintiff has failed to state a cognizable claim against either defendant Ali or defendant  
18 Rosse, and the defect in his claim against these defendants cannot be cured by amendment.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The findings and recommendations filed March 10, 2015, are adopted as clarified by  
21 this order; and  
22 2. Defendants Ali and Rosse are dismissed.

23 DATED: April 7, 2015.

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25 \_\_\_\_\_  
26 UNITED STATES DISTRICT JUDGE

27 <sup>1</sup> Defendant Rosse is also referred to as defendant Ross in the amended complaint. *See, e.g.*, ECF  
28 No. 12 at 4.