



1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

3 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
5 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
6 meritless legal theories or whose factual contentions are clearly baseless.” Jackson v. Arizona,  
7 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute  
8 on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490  
9 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,  
10 has an arguable legal and factual basis. Id.

11 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
12 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
13 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
14 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
15 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
16 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
17 allegations sufficient “to raise a right to relief above the speculative level.” Id. (citations  
18 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that  
19 merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original)  
20 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure §1216 (3d  
21 ed. 2004)).

22 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
23 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell  
24 Atl. Corp., 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
25 content that allows the court to draw the reasonable inference that the defendant is liable for the  
26 misconduct alleged.” Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint  
27 under this standard, the court must accept as true the allegations of the complaint in question,  
28 Hospital Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading

1 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, Jenkins v.  
2 McKeithen, 395 U.S. 411, 421 (1969).

### 3 **III. Screening Order**

4 Plaintiff alleges that, on March 10, 2015, he acted on an order from his work supervisor  
5 and entered a store room where inmate clothing was kept. ECF No. 4 at 3. He claims that  
6 defendant learned of his incursion into the room and, rather than confronting him about it, elected  
7 to "thrash" plaintiff's cell while plaintiff was at pill call. Id. at 4. Defendant allegedly left  
8 plaintiff's cell in a state of "utter disarray" with personal property strewn across the floor. Id.

9 After returning to his cell, plaintiff confronted defendant. Id. He asked why his cell had  
10 been violently searched and defendant indicated that she was displeased that plaintiff had entered  
11 the store room without her permission. Id. The two argued and defendant eventually accused  
12 plaintiff of threatening her. Id. Plaintiff claims that he was assessed a false disciplinary violation  
13 based on this exchange. Id.

14 The court has reviewed these claims and, for the reasons stated below, finds that neither is  
15 cognizable.

#### 16 **A. Cell Search**

17 The Supreme Court has held that cell searches which are conducted solely as a means of  
18 "calculated harassment" can violate the Eighth Amendment. Hudson v. Palmer, 468 U.S. 517,  
19 530 (1984). Courts have found such violations where an inmate has been subjected to frequent  
20 cell searches. See Scher v. Engelke, 943 F.2d 921, 923-24 (8th Cir. 1991) (finding an Eighth  
21 Amendment violation where inmate was subject to "frequent retaliatory cell searches, some of  
22 which resulted in the violent dishevelment of [the inmate's] cell."). By contrast, courts are  
23 disinclined to find an Eighth Amendment violation where an inmate alleges only a single,  
24 harassing search. See Vigliotto v. Terry, 873 F.2d 1201, 1203 (9th Cir. 1989). This is because  
25 the protection against cruel and unusual punishment extends not to inconveniences or discomfort  
26 but only to extreme deprivations which "deny the minimal civilized measure of life's necessities."  
27 Hudson v. McMillian, 503 U.S. 1, 8-9 (1992).

28 ///

1 Here, plaintiff only alleges that he was subject to one search. In light of Vigliotto, the  
2 court finds that this is insufficient to state an Eighth Amendment claim.

3 **B. False Disciplinary**

4 Inmates do not have any due process right to be free from false disciplinary charges. See  
5 Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986) (inmates have “no constitutionally  
6 guaranteed immunity from being falsely or wrongly accused of conduct which may result in the  
7 deprivation of a protected liberty interest,” provided that they are “not . . . deprived of a protected  
8 liberty interest without due process of law.”); Sprouse v. Babcock, 870 F.2d 450, 452 (8th  
9 Cir.1989) (“Sprouse’s claims based on the falsity of the charges and the impropriety of Babcock’s  
10 involvement in the grievance procedure, standing alone, do not state constitutional claims.”).  
11 Accordingly, plaintiff’s claim that defendant wrote him a false disciplinary after their argument  
12 fails.

13 **IV. Leave to Amend**

14 Plaintiff will be granted leave to file an amended complaint in which he can reattempt to  
15 allege a cognizable legal theory against a proper defendant and sufficient facts in support of that  
16 theory. Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must  
17 afford pro se litigants an opportunity to amend to correct any deficiency in their complaints).  
18 Should plaintiff choose to file an amended complaint, the amended complaint must clearly set  
19 forth the claims and allegations against each defendant. Any amended complaint must cure the  
20 deficiencies identified above and also observe the following:

21 Any amended complaint must identify as a defendant only persons who personally  
22 participated in a substantial way in depriving him of a federal constitutional right. Johnson v.  
23 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a  
24 constitutional right if he does an act, participates in another’s act or omits to perform an act he is  
25 legally required to do that causes the alleged deprivation).

26 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

27 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. George  
28 v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

1 Any amended complaint must be written or typed so that it so that it is complete in itself  
2 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
3 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
4 earlier filed complaint no longer serves any function in the case. See Forsyth v. Humana, 114  
5 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter  
6 being treated thereafter as non-existent.””) (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
7 1967)).

8 Finally, any amended complaint should be as concise as possible in fulfilling the above  
9 requirements. Fed. R. Civ. P. 8(a).

#### 10 **V. Summary of the Order**

11 You have been granted in forma pauperis status and will not have to pay the entire filing  
12 fee immediately.

13 The current complaint does not state a valid claim and is being dismissed. The single  
14 harassing search you allege is not enough to state an Eighth Amendment violation. Instead,  
15 courts have recognized Eighth Amendment cell search claims where an inmate alleges that he has  
16 been subject to multiple, frequent harassing searches.

17 Your claim based on the false disciplinary is being dismissed because inmates have no  
18 due process right to be free from false or mistaken disciplinary charges.

19 You are being given an opportunity to submit an amended complaint in which you can try  
20 to state viable claims. You must submit that complaint to the court within thirty days of this  
21 order’s filing date if you want this action to proceed.

#### 22 **VI. Conclusion**

23 Accordingly, IT IS HEREBY ORDERED that:

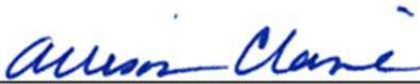
- 24 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 9) is granted.
- 25 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected  
26 in accordance with the notice to the California Department of Corrections and  
27 Rehabilitation filed concurrently herewith.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. The complaint (ECF No. 4) is dismissed with leave to amend within 30 days. The complaint must bear the docket number assigned to this case and be titled “Amended Complaint.” Failure to comply with this order will result in dismissal of this action for failure to prosecute. If plaintiff files an amended complaint stating a cognizable claim the court will proceed with service of process by the United States Marshal.

DATED: May 3, 2017

  
\_\_\_\_\_  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE