

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

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VENCIL C. GREEN,  
Plaintiff,  
v.  
JOE LIZARRAGA, et al.,  
Defendants.

No. 2:18-cv-0614 KJM CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel. On July 13, 2018, the court screened plaintiff's complaint as the court is required to do under 28 U.S.C. § 1915A(a). The court dismissed the complaint with leave to amend, and the court provided plaintiff with guidance as to the contents of any amended complaint. Plaintiff filed his amended complaint on July 24, 2018 and is now before the court for screening.

As plaintiff now knows, 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).

////

1 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
2 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
3 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
5 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
6 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
7 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
8 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.  
9 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
10 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and  
11 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
12 U.S. 232, 236 (1974).

13 As plaintiff claimed in his original complaint, plaintiff asserts that he has been denied  
14 equal protection of the laws in violation of the Fourteenth Amendment by being denied overnight  
15 visits with his wife because of a history of inappropriate sexual behavior, including several  
16 incidents of indecent exposure while in prison, all of which occurred more than four years ago.  
17 Documents attached by plaintiff to his amended complaint indicate that between April 14, 2013,  
18 and August 27, 2014, plaintiff “received numerous guilty findings for Rules Violation Reports  
19 (RVRs) in the past five years consistent with sexual misconduct” including 17 guilty findings for  
20 “indecent exposure” and 6 guilty findings for “indecent exposure with masturbation.” ECF No.  
21 10 at 17.

22 Plaintiff does not have a Constitutional right to conjugal visits. See Gerber v. Hickman,  
23 291 F.3d 617, 621 (9th Cir 2002). Under the Fourteenth Amendment, plaintiff does have a right  
24 to equal protection of the law. In order to proceed on a claim arising under the Equal Protection  
25 Clause, however, plaintiff must allege facts which show he is being treated differently from  
26 similarly situated inmates, see City of Cleburne, Tex., v. Cleburne Living Center, 473 U.S. 432,  
27 439 (1993) without any rational basis for the different treatment, see Block v. Rutherford, 468  
28 U.S. 576, 586 (1984).

1 Plaintiff claims he is similarly situated, for purposes of the Equal Protection Clause, to  
2 other inmates serving life imprisonment with the possibility of parole, as he is, yet they are  
3 permitted conjugal visits. Assuming this is the case, the decision to deny conjugal visits to life  
4 inmates who have an extensive history of sexual misconduct while in prison is rationally related  
5 to penological goals. Among other things, prison officials must be permitted to reserve  
6 privileges, such as conjugal visits, for inmates who follow prison rules as an incentive for inmates  
7 to follow those rules. Furthermore, in this instance, the denial of conjugal visits to prisoners who  
8 engage in sexual misconduct while in prison is the denial of a privilege directly related to the  
9 misconduct committed.

10 For these reasons, the court will recommend that plaintiff's amended complaint be  
11 dismissed for failure to state a claim upon which relief can be granted. The court will not grant  
12 leave to amend, as that appears futile.

13 In accordance with the above, IT IS HEREBY RECOMMENDED that:

- 14 1. Plaintiff's amended complaint be dismissed for failure to state a claim upon which  
15 relief can be granted; and
- 16 2. This case be closed.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen after  
19 being served with these findings and recommendations, plaintiff may file written objections with  
20 the court. The document should be captioned "Objections to Magistrate Judge's Findings and  
21 Recommendations." Plaintiff is advised that failure to file objections within the specified time  
22 waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
23 1991).

24 Dated: December 26, 2018

25   
26 CAROLYN K. DELANEY  
27 UNITED STATES MAGISTRATE JUDGE