

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

SEAN MILLER, Plaintiff	:	
	:	CIVIL NO. 4:11-cv-811
	:	
v.	:	(Judge Nealon)
	:	
K. TROMETTER, <u>et al.</u> , Defendants	:	

**FILED
SCRANTON**

NOV 27 2012

ORDER

Per M. E. P.
DEPUTY CLERK

NOW, this 27th day of November, 2012, for the reasons set forth in the Memorandum issued this date, **IT IS HEREBY ORDERED THAT:**

1. The motion to dismiss, (Doc. 12), is **GRANTED in part and DENIED in part:**
 - A. The motion to dismiss count one (1) is **DENIED**;
 - B. The motion to dismiss count two (2) is **GRANTED** and count two (2) is **DISMISSED with prejudice**;
 - C. The motion to dismiss count four (4) is **GRANTED in part and DENIED in part:**
 - a. The motion to dismiss the retaliation claim against Defendant Trometter for spreading rumors that Plaintiff was a rat and a snitch is **DENIED**;
 - b. The motion to dismiss the retaliation claim against Defendant Trometter for issuing a false misconduct charge is **GRANTED** and this allegation is **DISMISSED with prejudice**;
 - c. The motion to dismiss Defendant Damiter from count four (4) is **DENIED**;
 - D. Count five (5) is **DISMISSED without prejudice**;
 - E. Count six (6) is **DISMISSED with prejudice**;
 - F. Plaintiff's claims regarding the body cavity searches are **DISMISSED with prejudice** under the Fourth and Fourteenth Amendments, and **DISMISSED without prejudice** under the Eighth Amendment;

- G. Plaintiff's request for monetary damages against Defendants in their official capacities is **DISMISSED with prejudice**;
2. Plaintiff is directed to file a second amended complaint within thirty (30) days of the date of this Order; and
 3. Any appeal will be deemed frivolous, lacking merit, and not taken in good faith.


United States District Judge