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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 RAYNE DEE WELLS JR.,

7 Plaintiff,

8 v.

9 ELDON VAIL, *et al*,

10 Defendants.

Case No. C09-5324 FDB


ORDER ADOPTING REPORT  
AND RECOMMENDATION  
DISMISSING FRIVOLOUS  
COMPLAINT PURSUANT TO  
28 U.S.C. § 1915

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12 The Magistrate Judge recommends that this civil rights complaint be dismissed as failing to state a  
13 cognizable claim. Plaintiff has filed objections asserting he has an Eighth Amendment claim. As detailed  
14 in the Report and Recommendation, Plaintiff has been given the opportunity to cure the deficiencies in his  
15 original complaint, and his amended complaint remains similarly deficient.

16 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L.  
17 Strombom, and the remaining record, does hereby find and ORDER:

- 18 (1) The Court adopts the Report and Recommendation;
- 19 (2) Plaintiff's amended complaint is DISMISSED;
- 20 (3) The Clerk is directed to terminate this action pursuant to 28 U.S.C. § 1915(e) and to count  
21 this as a dismissal under 28 U.S.C. § 1915(g); and
- 22 (4) The Clerk is directed to send copies of this Order to plaintiff and to the Hon. Karen L.  
23 Strombom.

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25 DATED this 13<sup>th</sup> day of October, 2009.

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FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE