

"ORIGINAL"

APPENDIX # A.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 19 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ZURI SANA KABISA YOUNG, AKA Zuri
S.K. Young, AKA Zuri Sanakabis Young,

Plaintiff-Appellant,

v.

M. VOONG, Chief of Appeals; et al.,

Defendants-Appellees.

No. 18-15526

D.C. No. 1:17-cv-01671-LJO-SAB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted September 12, 2018**

Before: LEAVY, HAWKINS, and TALLMAN, Circuit Judges.

California state prisoner Zuri Sana Kabisa Young, AKA Zuri S.K. Young, AKA Zuri Sanakabis Young appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm.

The district court properly dismissed Young's due process claim arising from the confiscation of his personal property because Young had an adequate postdeprivation remedy under California law. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984) ("[A]n unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available."); *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) ("California [l]aw provides an adequate post-deprivation remedy for any property deprivations.").

The district court properly dismissed Young's due process claim arising from the treatment of his prison appeals because Young "lack[s] a separate constitutional entitlement to a specific prison grievance procedure." *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003).

The district court properly dismissed Young's retaliation and conspiracy claims because Young failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are liberally construed, a plaintiff must allege facts sufficient to state a plausible claim); *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005)

(elements of a retaliation claim in the prison context); *Cassettari v. Nevada County, Cal.*, 824 F.2d 735, 739-40 (9th Cir. 1987) (insufficiency of allegations to support a § 1983 violation precludes a conspiracy claim predicated upon the same allegations); *see also Buckey v. County of Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992) (plaintiff must allege “specific facts to support the existence of a conspiracy among the defendants”).

We reject as without merit Young’s contention that the district court acted unlawfully by dismissing the action after granting in forma pauperis status.

We do not consider issues or arguments not specifically and distinctly raised in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

"ORIGINAL"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 11 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ZURI SANA KABISA YOUNG, AKA
Zuri S.K. Young, AKA Zuri Sanakabis
Young,

Plaintiff - Appellant,

v.

M. VOONG, Chief of Appeals; et al.,

Defendants - Appellees.

No. 18-15526

D.C. No. 1:17-cv-01671-LJO-SAB
U.S. District Court for Eastern
California, Fresno

MANDATE

The judgment of this Court, entered September 19, 2018, takes effect this
date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Nixon Antonio Callejas Morales
Deputy Clerk
Ninth Circuit Rule 27-7

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

ZURI S. YOUNG,

CASE NO: 1:17-CV-01671-LJO-SAB

v.

M. VOONG, ET AL.,

XX -- Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 3/7/2018**

Marianne Matherly
Clerk of Court

ENTERED: March 7, 2018

by: /s/ S. Sant Agata
Deputy Clerk

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

11	ZURI S. YOUNG,	)	Case No. 1:17-cv-01671-LJO-SAB (PC)
12	Plaintiff,)	
13	v.	)	ORDER ADOPTING FINDINGS AND
14	M. VOONG, et al.,	)	RECOMMENDATION TO DISMISS CASE WITH
15	Defendants.	)	PREJUDICE FOR FAILURE TO STATE A
16		)	CLAIM, AND DIRECTING CLERK OF COURT
		)	TO CLOSE CASE
		)	[ECF Nos. 11, 12]

Plaintiff Zuri S. Young is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On January 5, 2018, the Magistrate Judge recommended that this action be dismissed for the failure to state a claim upon which relief may be granted. (ECF No. 11.) Specifically, Plaintiff alleges on September 6, 2016, his television was confiscated and damaged, and officer Gutierrez refused to repair it. The Magistrate Judge found that Plaintiff alleged an unauthorized deprivation of his personal property and he has an adequate post-deprivation remedy under California law. In addition, Plaintiff failed to state a cognizable claim for retaliation or conspiracy claim. Plaintiff was permitted thirty days to file objections to the findings and recommendations. On January 16, 2018, Plaintiff timely filed objections. (ECF No. 12.)

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the Court
2 has conducted a *de novo* review of this case. Having carefully reviewed the entire file, including
3 Plaintiff's objections, the Court finds the findings and recommendations to be supported by the record
4 and by proper analysis.

5 Accordingly, it is HEREBY ORDERED THAT:

- 6 1. The Findings and Recommendations filed January 5, 2018 (ECF No. 11) are adopted in
7 full;
8 2. This action is DISMISSED, with prejudice, for the failure to state a claim upon which
9 relief may be granted; and
10 3. The Clerk of Court is directed to CLOSE this case.

11
12 IT IS SO ORDERED.

13 Dated: March 7, 2018

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

11	ZURI S. YOUNG,	)	Case No. 1:17-cv-01671-SAB (PC)
12	Plaintiff,)	
13	v.	)	ORDER DIRECTING OFFICE OF THE CLERK TO RANDOMLY ASSIGN A DISTRICT JUDGE TO THIS ACTION
14	M. VOONG, et al.,)	
15	Defendants.	)	FINDINGS AND RECOMMENDATION RECOMMENDING DISMISSAL OF ACTION FOR FAILURE TO STATE A COGNIZABLE CLAIM FOR RELIEF
16)	
17		)	[ECF No. 10]

Plaintiff Zuri S. Young is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's first amended complaint, filed on January 2, 2018, in response to the Court's December 15, 2017 screening order.

I.

SCREENING REQUIREMENT

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 on which relief may be granted," or that "seek[] monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
5 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally
6 participated in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
7 2002).

8 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally
9 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121
10 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible,
11 which requires sufficient factual detail to allow the Court to reasonably infer that each named
12 defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,
13 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not
14 sufficient, and “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying
15 the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

16 II.

17 COMPLAINT ALLEGATIONS

18 On September 6, 2016, while Plaintiff was housed at California State Prison, Corcoran, he was
19 called to receiving and release to pack and register his personal property. Plaintiff’s thirteen inch
20 television was working fine. An inmate worker was assisting officer Gutierrez inventory the property.
21 Gutierrez dropped Plaintiff’s television and caused the digital component to come loose. The
22 television could be fixed, but Gutierrez confiscated the television and refused to let the inmate worker
23 repair it.

24 Plaintiff refused to sign the CDCR 1083 property inventory sheet because it did not contain the
25 truth and he was aware that officers were confiscating and breaking inmate property for inappropriate
26 reasons in an attempt to provoke the inmates to react with violence.

27 ///

28 ///

1 On October 2, 2016, Plaintiff filed a timely inmate appeal while he was housed at Mule Creek
2 State Prison. On October 18, 2016, D. Goree Jr. screened and rejected/cancelled Plaintiff's appeal as
3 untimely claiming it was filed more than thirty days. Plaintiff contends his appeal was improperly
4 rejected as untimely.

5 Plaintiff contends he re-submitted the appeal at least four times in early 2017. On September
6 7, 2017, M. Voong responded to the appeal indicating that Plaintiff was misusing and abusing the
7 appeals process.

8 Plaintiff seeks compensatory and punitive damages, as well as costs of the action and
9 reimbursement for his television.

10 II.

11 DISCUSSION

12 A. Confiscation/Destruction of Personal Property

13 The Due Process Clause of the Fourteenth Amendment of the United States Constitution
14 protects Plaintiff from being deprived of property without due process of law, Wolff v. McDonnell,
15 418 U.S. 539, 5563 (1974), and Plaintiff has a protected interest in his personal property, Hansen v.
16 May, 502 F.2d 728, 730 (9th Cir. 1974). Authorized, intentional deprivations of property are
17 actionable under the Due Process Clause. See Hudson v. Palmer, 468 U.S. 517, 532, n.13 (1984);
18 Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985). However, the Due Process Clause is not violated
19 by the random, unauthorized deprivation of property so long as the state provides an adequate post-
20 deprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533 (1984); Barnett v. Centoni, 31 F.3d 813,
21 816-17 (9th Cir. 1994). Plaintiff has an adequate post-deprivation remedy under California law and
22 therefore, he may not pursue a due process claim arising out of the unlawful confiscation of his
23 personal property. Barnett, 31 F.3d at 816-17 (citing Cal. Gov't Code §§ 810-895).

24 In this instance, Plaintiff has alleged an unauthorized deprivation of his personal and legal
25 property, and Plaintiff has an adequate post-deprivation remedy under California law and therefore, he
26 may not pursue a due process claim arising out of the unlawful confiscation of his personal property.
27 Barnett, 31 F.3d at 816-17 (citing Cal. Gov't Code §§ 810-895). Accordingly, Plaintiff fails to state a
28 cognizable constitutional claim based on the confiscation and damage to his television.

B. Conspiracy

To state a claim for conspiracy under section 1983, Plaintiff must show the existence of an agreement or a meeting of the minds to violate his constitutional rights, and an actual deprivation of those constitutional rights. Avalos v. Baca, 596 F.3d 583, 592 (9th Cir. 2010); Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2001).

Plaintiff fails to set forth any factual allegations that Defendants were acting in concert to deprive him of his personal property or retaliate against him. Plaintiff's conspiracy theory is nothing more than his legal conclusion based on pure speculation. Accordingly, a bare allegation that Defendants conspired to violate Plaintiff's constitutional rights does not suffice to give rise to a conspiracy claim under section 1983.

C. Retaliation

"Prisoners have a First Amendment right to file grievances against prison officials and to be free from retaliation for doing so." Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012) (citing Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)). Also protected by the First Amendment is the right to pursue civil rights litigation in federal court without retaliation. Silva v. Di Vittorio, 658 F.3d 1090, 1104 (9th Cir. 2011). "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

Plaintiff fails to state a cognizable claim for retaliation. Plaintiff's personal property was allegedly confiscated and damaged prior to his filing an inmate appeal and therefore the allegations are simply insufficient to demonstrate his property was confiscated as a form of retaliation. To the extent Plaintiff contends that he was retaliated against by Defendant Gutierrez because of a prior action filed against his brother in 1997. There are simply no allegations that the actions taken by Gutierrez in 2016 were because of a prior lawsuit filed in 1997-almost 20 years prior to the actions alleged herein, and such claim is simply not plausible. In any event, the alleged improper confiscation of Plaintiff's

1 property occurred prior to any statement by Plaintiff that he was going to file an inmate grievance.
2 Accordingly, Plaintiff fails to state a cognizable retaliation claim.

3 **D. Inmate Appeal Process**

4 “The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of
5 life, liberty, or property; and those who seek to invoke its procedural protection must establish that one
6 of these interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221 (2005). Plaintiff does not a
7 have protected liberty interest in the processing his appeals, and therefore, he cannot pursue a claim
8 for denial of due process with respect to the handling or resolution of his appeals. Ramirez v. Galaza,
9 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)).

10 Plaintiff seeks to impose liability against D. Goree and M. Voong based on the handling and
11 denial of inmate appeals. However, as stated above, there is no independent constitutional claim based
12 on the alleged improper handling of inmate appeals. Accordingly, Plaintiff fails to state a cognizable
13 claim against Defendants D. Goree and M. Voong.

14 **III.**

15 **RECOMMENDATION**

16 Plaintiff’s first amended complaint fails to state a cognizable claim for relief. Plaintiff was
17 previously notified of the applicable legal standards and the deficiencies in his pleading, and despite
18 guidance from the Court, Plaintiff’s first amended complaint is largely identical to the original
19 complaint. Based upon the allegations in Plaintiff’s original and first amended complaint, the Court is
20 persuaded that Plaintiff is unable to allege any additional facts that would support a claim for a due
21 process violation or access to the court, and further amendment would be futile. See Hartmann v.
22 CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to amend when
23 amendment would be futile.”) Based on the nature of the deficiencies at issue, the Court finds that
24 further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th. Cir. 2000); Noll v.
25 Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

26 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 27 1. The instant action be dismissed for failure to state a cognizable claim for relief; and
28 2. The Office of the Clerk is directed to randomly assign this action to a District Judge.

1 This Findings and Recommendation will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one (21)**
3 **days** after being served with this Findings and Recommendation, the parties may file written
4 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
5 Findings and Recommendation." The parties are advised that failure to file objections within the
6 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-
7 39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8
9 IT IS SO ORDERED.

10 Dated: **January 4, 2018**


UNITED STATES MAGISTRATE JUDGE

IV.

RECOMMENDATION

Plaintiff was previously notified of the applicable legal standards and the deficiencies in his pleading, and despite guidance from the Court, Plaintiff's first amended complaint is largely identical to the original complaint. Based upon the allegations in Plaintiff's original and first amended complaint, the Court is persuaded that Plaintiff is unable to allege any additional facts that would support a claim for cruel and unusual punishment in violation of the Eighth Amendment, and further amendment would be futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may not deny leave to amend when amendment would be futile.") Based on the nature of the deficiencies at issue, the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).