

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**  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL CRAIG,

Plaintiff,

v.

P. WHITLEY, et al.,

Defendants.

Case No. 1:15-cv-00182-LJO-SKO (PC)

ORDER REQUIRING PLAINTIFF TO FILE  
NOTICE REGARDING SEPARATE  
COMPLAINT INCLUDED WITH EXHIBITS

(Doc. 1)

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING ACTION BE  
DISMISSED, WITH PREJUDICE, FOR  
FAILURE TO STATE ANY CLAIMS  
UNDER SECTION 1983

(Doc. 1)

THIRTY-DAY DEADLINE

\_\_\_\_\_ /

**I. Screening Requirement and Standard**

Plaintiff Michael Craig (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 14, 2015. The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an 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). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall

1 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
2 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the  
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
6 conclusory statements, do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937  
7 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and  
8 courts “are not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572  
9 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual  
10 allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678.

11 Under section 1983, Plaintiff must demonstrate that each defendant personally participated  
12 in the deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This  
13 requires the presentation of factual allegations sufficient to state a plausible claim for relief. *Iqbal*,  
14 556 U.S. at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners  
15 proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and  
16 to have any doubt resolved in their favor, *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)  
17 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of meeting the  
18 plausibility standard, *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

19 **II. Discussion**

20 **A. Summary of Allegations**

21 Plaintiff, an inmate currently at California Substance Abuse Treatment Facility and State  
22 Prison, brings this action against Correctional Officer P. Whitley and Lieutenant M. A. Smith for  
23 violating his constitutional rights at California State Prison-Corcoran.<sup>1</sup> Plaintiff’s claims arise out  
24 of the confiscation of his Sony CD player on January 22, 2014. Plaintiff alleges that Defendant  
25 Whitley illegally searched his cell when he was out of the building and then illegally confiscated  
26

---

27 <sup>1</sup> Plaintiff’s inclusion of other defendants is confusing, as is his inclusion of another complaint form and a complaint  
28 filed in state court. These issues are addressed further in subsection E. Only Defendants Whitley and Smith are  
linked to Plaintiff’s claims arising from the cell search and property confiscation at issue in the operative complaint in  
this case.

1 his CD player. Defendant Whitley denied searching Plaintiff's cell or confiscating his CD player,  
2 and Plaintiff's inmate appeal was denied at all three levels of review. Plaintiff alleges that the cell  
3 search, property confiscation, and denial of his appeals violated his rights.

4 **B. Cell Search**

5 A prisoner has no "reasonable expectation of privacy in his prison cell entitling him to the  
6 protection of the Fourth Amendment against unreasonable searches and seizures." *Hudson v.*  
7 *Palmer*, 468 U.S. 517, 536, 104 S.Ct. 3194 (1984). Therefore, Plaintiff's claim that his cell was  
8 illegally searched fails as a matter of law.

9 **C. Property Confiscation**

10 The Due Process Clause of the Fourteenth Amendment of the United States Constitution  
11 protects prisoners from being deprived of property without due process of law, *Wolff v.*  
12 *McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2974 (1974), and prisoners have a protected interest  
13 in their personal property, *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974). However, the Due  
14 Process Clause is not violated by the random, unauthorized deprivation of property so long as the  
15 state provides an adequate post-deprivation remedy. *Hudson v. Palmer*, 468 U.S. 517, 533, 104  
16 S.Ct. 3194 (1984); *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Plaintiff has an  
17 adequate post-deprivation remedy under California law and therefore, he may not pursue a due  
18 process claim arising out of the illegal confiscation of his CD player. *Barnett*, 31 F.3d at 816-17  
19 (citing Cal. Gov't Code §§810-895).

20 **D. Response to Inmate Appeal**

21 The existence of an inmate appeals process does not create a protected liberty interest upon  
22 which Plaintiff may base a claim that he was denied a particular result or that the appeals process  
23 was deficient. *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384 (2005); *Ramirez v. Galaza*,  
24 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Thus,  
25 Plaintiff may not pursue a claim against Defendant Smith or any other defendant based on the  
26 response to his inmate appeal.

27 ///

28 ///

1           **E.       Separate Complaint Dated January 6, 2013**

2           Plaintiff's claims in this action arise from the cell search and CD player confiscation that  
3 occurred on January 22, 2014. However, Plaintiff's three page complaint is accompanied by 152  
4 additional documents. Buried toward the end of Plaintiff's 155 page filing are a separate federal  
5 civil complaint form dated January 6, 2013, which sets forth claims arising from an incident of  
6 physical force at Pleasant Valley State Prison on August 19, 2011, and an in forma pauperis  
7 application also dated January 6, 2013. (Comp., pp. 85-97.) Further confusing matters is  
8 Plaintiff's inclusion of a Fresno County Superior Court complaint filed on June 28, 2012, also  
9 apparently raising claims based on the incident of physical force on August 19, 2011, at Pleasant  
10 Valley State Prison.<sup>2</sup> (*Id.*, p. 98.)

11           Plaintiff's intent behind including these documents with his complaint against Defendants  
12 Whitley and Smith is unclear, but the documents do not relate to this action and given that the  
13 federal civil complaint form was dated two years before the complaint form in this case, the Court  
14 declines to speculate on Plaintiff reason for including them. However, the complaint is not related  
15 to the claims in this action, and this action is confined to the cell search and property confiscation  
16 that occurred on January 22, 2014. Fed. R. Civ. P. 18(a); *George v. Smith*, 507 F.3d 605, 607 (7th  
17 Cir. 2007). Because of potential statute of limitations concerns, the Court will permit Plaintiff to  
18 file a notice clarifying his intent. Cal. Civ. Proc. Code §§ 335.1, 352.1; *McDonald v. Antelope*  
19 *Valley Community College Dist.*, 45 Cal.4th 88, 101-03 (Cal. 2008). If he intended to file a  
20 second civil rights suit concurrently with this suit, the Court will direct the Clerk's Office to open  
21 another action based on the complaint alleging use of physical force against him on August 19,  
22 2011. This will result in the assessment of an additional filing fee, and Plaintiff is cautioned that **if**  
23 **he litigated those claims in state court and there was a final judgment on the merits, he is barred**  
24 **from relitigating those claims in federal court.** *Gonzales v. California Dep't of Corrs. & Rehab.*,  
25 739 F.3d 1226, 1230 (9th Cir. 2014). **If Plaintiff fails to file a notice clarifying his intent, his**  
26 **exhibits that do not relate to the claims in this action will be disregarded.**

27 ///

28 \_\_\_\_\_  
<sup>2</sup> Case number 12CECG02098.

1 **III. Conclusion**

2 Plaintiff's complaint fails to state any claims upon which relief may be granted under  
3 section 1983. The deficiencies in his claims arising from an illegal cell search, an illegal property  
4 confiscation, and an unsatisfactory inmate appeal response are *not* capable of being cured through  
5 amendment. *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d  
6 1122, 1130 (9th Cir. 2000); *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Therefore,  
7 the Court recommends that this action be dismissed, with prejudice, for failure to state a claim.

8 Given the confusion surrounding Plaintiff's intent in including an unrelated federal civil  
9 complaint with his exhibits and the potential for a statute of limitations issues, the Court will  
10 permit Plaintiff to file a notice clarifying whether he intended to bring a separate action arising  
11 from the incident of physical force at Pleasant Valley State Prison in August 2011. If Plaintiff  
12 fails to do so, his unrelated exhibits will be disregarded.

13 Accordingly, the Court hereby ORDERS Plaintiff to file a notice within **thirty (30) days**  
14 from the date of service of this order addressing whether he intended to file a separate action  
15 against Defendants Mendez, Martinez, Ramos, and Davi arising out of the use of force on August  
16 19, 2011. The Court further RECOMMENDS that this action be dismissed, with prejudice, for  
17 failure to state a claim under section 1983.

18 These Findings and Recommendations will be submitted to the United States District  
19 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
20 **thirty (30) days** after being served with these Findings and Recommendations, Plaintiff may file  
21 written objections with the Court. The document should be captioned "Objections to Magistrate  
22 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within  
23 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d  
24 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

25  
26 IT IS SO ORDERED.

27 Dated: November 29, 2015

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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