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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

LIONEL CANNON,  
Plaintiff,  
v.  
SCOTT BOWMAN, *et al.*,  
Defendants.

Case ED CV 17-01202 TJH (AFM)

**ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND**

On June 19, 2017, plaintiff, a federal prisoner currently confined at the Northeast Ohio Correctional Center in Youngstown, Ohio, filed a *pro se* civil rights action pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971), and 42 U.S.C. § 1983. He subsequently was granted leave to proceed without prepayment of the full filing fee. Plaintiff's claims arise from events that took place in August 2014 when money was stolen from a safe at plaintiff's residence in San Bernardino, California. (ECF No. 1 at 5.) Plaintiff names as defendants Scott Bowman, who at that time was employed as a "Senior Most Veteran Agent" of the Federal Bureau of Investigations ("FBI"), and three "Doe" defendants identified as being employed either by the FBI or by an unidentified "local police agency." (*Id.* at 2.) Plaintiff seeks compensatory and punitive damages. (*Id.* at 6.)

In accordance with the mandate of the Prison Litigation Reform Act of 1995

1 (“PLRA”), the Court has screened the Complaint prior to ordering service for the  
2 purpose of determining whether the action is frivolous or malicious; or fails to state  
3 a claim on which relief may be granted; or seeks monetary relief against a  
4 defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2),  
5 1915A(b); 42 U.S.C. § 1997e(c)(1). The Court’s screening of the pleading under  
6 the foregoing statutes is governed by the following standards. A complaint may be  
7 dismissed as a matter of law for failure to state a claim for two reasons: (1) lack of  
8 a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory.  
9 *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990); *see also*  
10 *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (when determining whether  
11 a complaint should be dismissed for failure to state a claim under the PLRA, the  
12 court applies the same standard as applied in a motion to dismiss pursuant to Rule  
13 12(b)(6)). Further, with respect to a plaintiff’s pleading burden, the Supreme Court  
14 has held that, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment]  
15 to relief’ requires more than labels and conclusions, and a formulaic recitation of  
16 the elements of a cause of action will not do. . . . Factual allegations must be  
17 enough to raise a right to relief above the speculative level . . . on the assumption  
18 that all the allegations in the complaint are true (even if doubtful in fact).” *Bell*  
19 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted,  
20 alteration in original); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678-68 (2009) (To  
21 avoid dismissal for failure to state a claim, “a complaint must contain sufficient  
22 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
23 face.’ . . . A claim has facial plausibility when the plaintiff pleads factual content  
24 that allows the court to draw the reasonable inference that the defendant is liable for  
25 the misconduct alleged.” (internal citation omitted)). In addition, since plaintiff is  
26 appearing *pro se*, the Court must construe the allegations of the pleading liberally  
27 and must afford plaintiff the benefit of any doubt. *See Hebbe v. Pliler*, 627 F.3d  
28 338, 342 (9th Cir. 2010).

1 Finally, in determining whether the pleading states a claim on which relief  
2 may be granted, allegations of material fact must be taken as true and construed in  
3 the light most favorable to plaintiff. *Love v. United States*, 915 F.2d 1242, 1245  
4 (9th Cir. 1989). However, the “tenet that a court must accept as true all of the  
5 allegations contained in a complaint is inapplicable to legal conclusions.” *Iqbal*,  
6 556 U.S. at 678. Rather, a court first “discounts conclusory statements, which are  
7 not entitled to the presumption of truth, before determining whether a claim is  
8 plausible.” *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1129 (9th Cir. 2013). Then,  
9 “dismissal is appropriate where the plaintiff failed to allege enough *facts* to state a  
10 claim to relief that is plausible on its face.” *Yagman v. Garcetti*, 852 F.3d 859, 863  
11 (9th Cir. 2017) (internal quotation marks omitted, emphasis added).

12 After careful review and consideration of the Complaint under the foregoing  
13 standards, the Court finds that plaintiff’s allegations appear insufficient to state any  
14 claim on which relief may be granted. Accordingly, the Complaint is dismissed  
15 with leave to amend. *See Rosati*, 791 F.3d at 1039 (“A district court should not  
16 dismiss a *pro se* complaint without leave to amend unless it is absolutely clear that  
17 the deficiencies of the complaint could not be cured by amendment.”) (internal  
18 quotation marks omitted).

19 **If plaintiff still desires to pursue this action, he is ORDERED to file a**  
20 **First Amended Complaint no later than thirty (30) days after the date of this**  
21 **Order, remedying the deficiencies discussed below. Further, plaintiff is**  
22 **admonished that, if he fails to timely file a First Amended Complaint, or fails**  
23 **to remedy the deficiencies of this pleading as discussed herein, the Court will**  
24 **recommend that this action be dismissed without leave to amend and with**  
25 **prejudice.**<sup>1</sup>

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27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff is advised that this Court’s determination herein that the allegations in  
the Complaint are insufficient to state a particular claim should not be seen as



1 *Northcoast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981). Moreover, failure to  
2 comply with Rule 8 constitutes an independent basis for dismissal of a complaint  
3 that applies even if the claims in a complaint are not found to be wholly without  
4 merit. *See McHenry*, 84 F.3d at 1179; *Nevijel*, 651 F.2d at 673.

5 Plaintiff purports to bring a federal civil rights action against defendant  
6 Bowman and three “Doe” defendants arising from the theft of plaintiff’s property.  
7 Plaintiff alleges that, “during a search of plaintiff’s residence, defendant Bowman,  
8 [sic] did steal at least \$219,000 . . . from plaintiff out of plaintiff’s safe.” Plaintiff  
9 claims that “defendant Bowman was charged and ultimately convicted in Federal  
10 Court” of multiple counts under various federal statutes, none of which clearly  
11 pertain to the money that plaintiff alleges was stolen from his safe. (ECF No. 1 at  
12 3-4.) Plaintiff received a copy of transcripts from a hearing at which defendant  
13 Bowman pleaded guilty to the charges against him, and Bowman “implicated at  
14 least three other unnamed [sic] members of the Task Force” in the theft from  
15 plaintiff. (*Id.* at 4.) Plaintiff claims that the theft of plaintiff’s property by Bowman  
16 and the three “Doe” defendants named in this action constituted “an improper  
17 seizure of property in violation of plaintiff’s Fourth Amendment rights.” (*Id.*)  
18 Plaintiff’s Complaint, however, sets forth no factual allegations showing that the  
19 removal of the money from plaintiff’s safe was unreasonable. The Fourth  
20 Amendment protects against *unreasonable* searches and seizures. The removal of  
21 personal property may constitute a “seizure” within the meaning of the Fourth  
22 Amendment. *See, e.g., Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027 (9th Cir.  
23 2012) (“the Fourth Amendment protects against unreasonable interferences in  
24 property interests”); *Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th Cir.  
25 2005). However, plaintiff’s entirely conclusory allegation that the theft of money  
26 from his safe under unspecified circumstances constituted an unreasonable seizure  
27 pursuant to the Fourth Amendment is insufficient to meet his burden of alleging a  
28 minimum factual and legal basis for each claim that is sufficient to give each

1 defendant fair notice of what plaintiff's claims are and the grounds upon which they  
2 rest.

3 Similarly, plaintiff's claim that the theft of money constituted a deprivation of  
4 plaintiff's property interest in violation of the Fifth Amendment is unsupported by  
5 any factual allegations. (*Id.* at 5.) The Takings Clause of the Fifth Amendment,  
6 made applicable to the states through the Fourteenth Amendment, provides that  
7 "private property" may not be "taken for public use without just compensation."  
8 *See, e.g., Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 160  
9 (1980). The Takings Clause, however, only "requires compensation in the event of  
10 otherwise proper interference amounting to a taking." *Lingle v. Chevron U.S.A.,*  
11 *Inc.*, 544 U.S. 528, 543 (2005) (internal quotation marks omitted). If a government  
12 action is "impermissible," then the Takings Clause is not implicated. *See, e.g.,*  
13 *Crown Point Dev., Inc. v. City of Sun Valley*, 506 F.3d 851, 856 (9th Cir. 2007).  
14 Here, to the extent that the Complaint contains any factual allegations, plaintiff  
15 alleges that his money was stolen, and that defendant Bowman pleaded guilty to  
16 criminal charges in connection with the theft of plaintiff's money. (ECF No. 1 at 3-  
17 4.) Accordingly, it does not appear that the factual allegations in the Complaint  
18 give rise to any claim under the Fifth Amendment.

19 Plaintiff's claim that the four defendants conspired to violate plaintiff's  
20 Fourth and Fifth Amendment rights (*id.* at 5) also is devoid of any supporting  
21 factual allegations. The Ninth Circuit has held:

22 A civil conspiracy is a combination of two or more  
23 persons who, by some concerted action, intend to  
24 accomplish some unlawful objective for the purpose of  
25 harming another which results in damage. To prove a  
26 civil conspiracy, the plaintiff must show that the  
27 conspiring parties reached a unity of purpose or a  
28 common design and understanding, or a meeting of the  
minds in an unlawful arrangement. To be liable, each  
participant in the conspiracy need not know the exact

1 details of the plan, but each participant must at least share  
2 the common objective of the conspiracy.

3 *Lacey v. Maricopa County*, 693 F.3d 896, 935 (9th Cir. 2012) (en banc) (internal  
4 quotation marks omitted). Here, as in *Lacey*, plaintiff’s “conclusory conspiracy  
5 allegations in the [Complaint] do not define the scope of any conspiracy involving  
6 [each defendant], what role he had, or when or how the conspiracy operated.” 693  
7 F.3d at 937. The Supreme Court has made clear that plaintiff’s “formulaic  
8 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at  
9 555. Accordingly, plaintiff’s allegations in the Complaint are insufficient to state a  
10 claim for conspiracy against any defendant.

11 Further, to the extent that plaintiff intends to raise any federal civil rights  
12 claim against any defendant, plaintiff must set forth a short and plain statement  
13 showing that each named defendant took a specific action, participated in another’s  
14 action, or omitted to perform an action that caused the alleged constitutional  
15 deprivation. In order to state a federal civil rights claim against a particular  
16 defendant, plaintiff must allege that a specific defendant, while acting under color  
17 of state law, deprived him of a right guaranteed under the Constitution or a federal  
18 statute. *See West v. Atkins*, 487 U.S. 42, 48 (1988). “A person deprives another ‘of  
19 a constitutional right, within the meaning of section 1983, if he does an affirmative  
20 act, participates in another’s affirmative acts, or omits to perform an act which he is  
21 legally required to do that *causes* the deprivation of which [the plaintiffs  
22 complains].” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (quoting *Johnson*  
23 *v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (emphasis and alteration in original)).  
24 Here, plaintiff’s Complaint merely alleges that defendant Bowman was convicted  
25 on multiple federal charges in connection with a theft of money from plaintiff’s  
26 safe. Plaintiff sets forth no factual allegations showing that any defendant took any  
27 action that violated plaintiff’s federal civil rights.

1 For these reasons, it is altogether unclear to the Court what federal civil  
2 rights claims plaintiff is purporting to raise, which defendants he is purporting to  
3 raise what claims against, and what the legal and factual basis of each of plaintiff's  
4 civil rights claims may be. The Court is mindful that, because plaintiff is appearing  
5 *pro se*, the Court must construe the allegations of the Complaint liberally and must  
6 afford him the benefit of any doubt. *See Hebbe*, 627 F.3d at 342; *see also Alvarez*  
7 *v. Hill*, 518 F.3d 1152, 1158 (9th Cir. 2008) (because a plaintiff was proceeding  
8 *pro se*, "the district court was required to 'afford [him] the benefit of any doubt' in  
9 ascertaining what claims he 'raised in his complaint'") (alteration in original). That  
10 said, the Supreme Court has made clear that the Court has "no obligation to act as  
11 counsel or paralegal to *pro se* litigants." *Pliler v. Ford*, 542 U.S. 225, 231 (2004).  
12 Although plaintiff need not set forth detailed factual allegations, he must plead  
13 "factual content that allows the court to draw the reasonable inference that the  
14 defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (*quoting*  
15 *Twombly*, 550 U.S. at 555-56). In its present form, it would be extremely difficult  
16 for each defendant to discern what specific facts or legal theories apply to which  
17 potential claim or claims against them, and, as a result, it would be extremely  
18 difficult for each defendant to formulate applicable defenses.

19 The Court therefore finds that the Complaint fails to comply with Rule 8 and  
20 fails to state a claim upon which relief may be granted.

21 \*\*\*\*\*

22 **If plaintiff still desires to pursue this action, he is ORDERED to file a**  
23 **First Amended Complaint no later than thirty (30) days from the date of this**  
24 **Order, remedying the pleading deficiencies discussed above.** The First  
25 Amended Complaint should bear the docket number assigned in this case; be  
26 labeled "First Amended Complaint"; and be complete in and of itself without  
27 reference to the original Complaint, or any other pleading, attachment, or  
28 document.

1 The clerk is directed to send plaintiff a blank Central District civil rights  
2 complaint form, which plaintiff is encouraged to utilize. Plaintiff is admonished  
3 that he must sign and date the civil rights complaint form, and he must use the  
4 space provided in the form to set forth all of the claims that he wishes to assert in a  
5 First Amended Complaint.

6 Plaintiff is further admonished that, if he fails to timely file a First Amended  
7 Complaint, or fails to remedy the deficiencies of this pleading as discussed herein,  
8 the Court will recommend that the action be dismissed with prejudice on the  
9 grounds set forth above and for failure to diligently prosecute.

10 In addition, if plaintiff no longer wishes to pursue this action in the Central  
11 District of California, he may request a voluntary dismissal of the action pursuant to  
12 Federal Rule of Civil Procedure 41(a). The clerk also is directed to attach a Notice  
13 of Dismissal form for plaintiff's convenience.

14 **IT IS SO ORDERED.**

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16 DATED: 8/11/2017



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18 ALEXANDER F. MacKINNON  
19 UNITED STATES MAGISTRATE JUDGE  
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