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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL HUDSON,)	1:11-cv-01560-BAM (PC)
)	
Plaintiff,)	FIRST SCREENING ORDER DISMISSING
)	ACTION, WITH PREJUDICE, AS BARRED
v.)	BY CLAIM PRECLUSION, AND
)	DIRECTING CLERK’S OFFICE TO ENTER
SUSAN HUBBARD, et al.,)	JUDGMENT
)	(ECF No. 1)
)	
Defendants.)	

I. Screening Requirement

Plaintiff Michael Hudson, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to [42 U.S.C. § 1983](#) on September 15, 2011. 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 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” [28 U.S.C. § 1915\(e\)\(2\)\(B\)\(ii\)](#).

1 A complaint must contain “a short and plain statement of the claim showing that the
2 pleader is entitled to relief. . . .” [Fed. R. Civ. P. 8\(a\)\(2\)](#). Detailed factual allegations are not
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
4 conclusory statements, do not suffice,” [Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937](#)
5 [\(2009\)](#) (citing [Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 \(2007\)](#)), and
6 courts “are not required to indulge unwarranted inferences,” [Doe I v. Wal-Mart Stores, Inc., 572](#)
7 [F.3d 677, 681 \(9th Cir. 2009\)](#) (internal quotation marks and citation omitted). While factual
8 allegations are accepted as true, legal conclusions are not; Plaintiff must present factual
9 allegations sufficient to state a plausible claim for relief. [Iqbal, 556 U.S. at 678-79](#); [Moss v. U.S.](#)
10 [Secret Service, 572 F.3d 962, 969 \(9th Cir. 2009\)](#). The mere possibility of misconduct falls short
11 of meeting this plausibility standard. [Iqbal, 556 U.S. at 678](#); [Moss, 572 F.3d at 969](#).

12 [Section 1983](#) provides a cause of action for the violation of Plaintiff’s constitutional or
13 other federal rights by persons acting under color of state law. [Nurre v. Whitehead, 580 F.3d](#)
14 [1087, 1092 \(9th Cir 2009\)](#); [Long v. County of Los Angeles, 442 F.3d 1178, 1185 \(9th Cir. 2006\)](#);
15 [Jones v. Williams, 297 F.3d 930, 934 \(9th Cir. 2002\)](#). To state a claim, Plaintiff must
16 demonstrate a link between actions or omissions of each named defendant and the violation of
17 his rights; there is no *respondeat superior* liability under [section 1983](#). [Iqbal, 556 U.S. at 676-](#)
18 [77, 129 S.Ct. at 1949](#); [Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 \(9th Cir.](#)
19 [2010\)](#); [Ewing v. City of Stockton, 588 F.3d 1218, 1235 \(9th Cir. 2009\)](#); [Jones, 297 F.3d at 934](#).

20 **II. Discussion**

21 **A. Summary of Claim**

22 Plaintiff, who is currently incarcerated at California State Prison, Corcoran (“Corcoran”),
23 brings this action against Defendant Susan Hubbard, Warden at Corcoran, and Defendant A.
24 Rodriguez, a correctional officer at Corcoran, for retaliation in violation of the First Amendment.
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1 Plaintiff alleges as follows: On December 16, 2009, Plaintiff was housed in
2 Corcoran's Security Housing Unit ("SHU"). He submitted a 602 appeal for a staff response to
3 see if his personal property could be held because he might be released from the SHU. If he was
4 not released, he would mail home his personal property.

5 On December 17, 2009, during second watch, SHU property officer R. Washington
6 brought Plaintiff a portion of his personal property. Plaintiff signed for it and then explained to
7 Officer Washington that he submitted a 602 appeal to the SHU property office for a staff
8 response as to whether his property could be held because he might be released soon from the
9 SHU. Officer Washington told Plaintiff to write this information on the top of the CDC-193
10 Inmate Trust withdrawal form. Officer Washington never told Plaintiff and never wrote on the
11 trust form that Plaintiff refused to sign the form.

12 On December 21, 2009, Plaintiff received a 4B SHU mail out disposal notice, a CDCR
13 128 internal chrono which stated: This notice is to inform you that you have unallowable/excess
14 SHU property currently stored at 4B-SHU mail-out room. Your refusal to select a method of
15 disposition . . . your property will be disposed of on December 17, 2009, per C.C.R. title 15, sec.
16 3191(c) and operational procedure #806.

17 On December 28, 2009, Plaintiff received an informal response in which Officer
18 Rodriguez stated: This appeal is denied. We do not hold property for more than fifteen (15)
19 days. Your property was issued to you on Dec. 17, 2009, at which time you refused to sign a
20 CDCR-193 trust withdrawal form on Dec. 17, 2009. This refusal of signing the 193 form is
21 automatically donated.

22 On July 28, 2010, Plaintiff filed a petition in the Kings County Superior Court seeking
23 recovery of his personal property or its value of \$1,000. On October 5, 2010, the Kings County
24 Superior Court denied his petition. On November 15, 2010, Plaintiff filed a petition in the
25 California Court of Appeal, Fifth Appellate District. On April 14, 2011, the Court of Appeal
26

1 denied the petition. On May 28, 2011, Plaintiff filed his petition in the California Supreme
2 Court. On August 17, 2011, the California Supreme Court denied the petition.

3 Following the denial of his petition for habeas corpus on August 17, 2011, by the
4 California Supreme Court, Plaintiff initiated this federal civil rights action claiming his property
5 was destroyed in retaliation for filing a 602 appeal in violation of the First Amendment. Plaintiff
6 seeks the return of his personal property or its value.

7 **B. Claim Preclusion**

8 **1. Prior Proceedings**

9 In his habeas petition to the Kings County Superior Court, Plaintiff alleged that on
10 December 17, 2009 and following his transfer to Corcoran, he received a portion of his personal
11 property. Plaintiff was informed on December 28, 2009 that the remaining portion of his
12 property was donated pursuant to Operational Procedure No. 806 when he failed and/or refused
13 to sign a trust withdrawal form (CDCR-193) for disposition/ mailing the confiscated portion of
14 his property.

15 Plaintiff claimed that donation of his personal property was in error because, on
16 December 16, 2009, he submitted both a CDC Form 602 Inmate/Parolee Appeal and a Request
17 for Interview aimed at securing the storage of his personal appeal pending administrative
18 challenge to his validation and SHU term. Plaintiff alleged that he never refused to sign the
19 withdrawal, but indicated that he had filed a 602 appeal and request for interview which should
20 have caused his property to be stored.

21 In an opinion signed on October 5, 2010, the Honorable Donna Tarter, Superior Court
22 Judge for the County of Kings, denied Plaintiff's habeas petition on the ground that there was no
23 dispute that the property was properly confiscated and that donation of the property was
24 appropriate due to Plaintiff's failure to execute the CDCR-193 for disposition of personal
25 property. (ECF No. 1, pp. 43-44; Ex. 4 to Complaint.)
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1 The Court of Appeal for the Fifth Appellate District summarily denied Plaintiff's petition
2 for writ of mandamus on April 14, 2011. (ECF No. 1, p. 46; Ex. 5 to Complaint.) The
3 California Supreme Court summarily denied Plaintiff's petition for writ of habeas corpus on
4 August 17, 2011. (ECF No. 1, p. 48; Ex. 6 to Complaint.)

5 **2. Legal Standard**

6 Claim preclusion bars litigation of claims that were or could have been raised in a prior
7 action. [Holcombe v. Hosmer, 477 F.3d 1094, 1097 \(9th Cir. 2007\)](#) (quotation marks omitted).
8 Federal courts are required to give state court judgments the preclusive effects they would be
9 given by another court of that state. [Brodheim v. Cry, 584 F.3d 1262, 1268 \(9th Cir. 2009\)](#)
10 (citing [Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 84, 104 S.Ct. 892 \(1984\)](#) and
11 [Maldonado v. Harris, 370 F.3d 945, 951 \(9th Cir. 2004\)](#)) (quotation marks omitted).

12 Under California law, a final judgment of a state court precludes further proceedings if
13 they are based on the same cause of action. [Brodheim, 584 F.3d at 1268](#) (citing [Maldonado, 370](#)
14 [F.3d at 951](#)) (quotation marks omitted). California courts employ the primary rights theory to
15 determine what constitutes the same cause of action for claim preclusion purposes, and under
16 this theory, a cause of action is (1) a primary right possessed by the plaintiff, (2) a corresponding
17 primary duty devolving upon the defendant, and (3) a harm done by the defendant which consists
18 in a breach of such primary right and duty. [Id.](#) (citing [City of Martinez v. Texaco Trading &](#)
19 [Transp., Inc., 353 F.3d 758, 762 \(9th Cir. 2003\)](#)) (quotation marks omitted). If two actions
20 involve the same injury to the plaintiff and the same wrong by the defendant, then the same
21 primary right is at stake even if in the second suit the plaintiff pleads different theories of
22 recovery, seeks different forms of relief and/or adds new facts supporting recovery. [Id.](#) (citing
23 [Eichman v. Fotomat Corp., 147 Cal.App.3d 1170, 1174, 197 Cal.Rptr. 612 \(1983\)](#)) (quotation
24 marks omitted).

1 **3. Findings**

2 In this instance, there is no doubt that Plaintiff is attempting to re-litigate his claim to
3 personal property (or its value) that was disposed of by Corcoran due to Plaintiff's failure to sign
4 a CDCR-193. This claim was denied by the Kings County Superior Court, the Court of Appeal
5 for the Fifth Appellate District and the California Supreme Court. Although Plaintiff appears to
6 be asserting a new legal theory in this action; that is, his property was disposed of in retaliation
7 for filing a 602 appeal in violation of the First Amendment, Plaintiff's claim arises from the
8 donation of his property by Defendant. This is the same loss of property complained of in his
9 state court habeas proceedings. Accordingly, Plaintiff's claim in this action is precluded. Given
10 the nature of the deficiency at issue, leave to amend is not warranted. [Lopez v. Smith, 203 F.3d](#)
11 [1122, 1130 \(9th Cir. 2000\)](#).

12 **III. Order**

13 For the reasons stated, this action is HEREBY ORDERED dismissed, with prejudice, as
14 barred by claim preclusion, and the Clerk's Office SHALL enter judgment.

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17 IT IS SO ORDERED.

18 Dated: April 3, 2013

19 /s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE
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