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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUSTAVO MCKENZIE,

 Plaintiff,

 v.

E.BANUELOS, et al.,

 Defendants.

CASE NO. 1:13-cv-01258-MJS

ORDER DISMISSING FIRST AMENDED
COMPLAINT FOR FAILURE TO STATE A
COGNIZALBE CLAIM

(ECF NO. 9.)

AMENDED COMPLAINT DUE WITHIN
THIRTY (30) DAYS

SCREENING ORDER

I. PROCEDURAL HISTORY

Plaintiff Gustavo McKenzie is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 5.)
Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 6.)
On August 12, 2013, Plaintiff filed his complaint. (ECF No. 1.) On September 16, 2013, without having screened the complaint, the Court granted Plaintiff leave to file an amended complaint. (ECF No. 8.) Plaintiff filed his First Amended Complaint on October 7, 2013. (ECF No. 9.) It is now before the Court for screening.

1 **II. SCREENING REQUIREMENT**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
5 raised claims that are legally “frivolous, malicious,” or that fail “to state a claim upon
6 which relief may be granted,” or that “seek monetary relief from a defendant who is
7 immune from such relief.” 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee,
8 or any portion thereof, that may have been paid, the court shall dismiss the case at any
9 time if the court determines that . . . the action or appeal . . . fails to state a claim on
10 which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

11 **III. SUMMARY OF COMPLAINT**

12 Plaintiff identifies correctional officers: E. Banuelos, L. Gallardo, G. Stoll, D.B.
13 Hernandez, and Mr. Charlet; and Appeals Coordinators: S. Harrison, N. Parra, and
14 Karen Cribbs as defendants. Plaintiff alleges that Defendants Banuelos, Gallardo, Stoll,
15 Hernandez, and Charlet deprived him of his property without due process and
16 Defendants Banuelos, Hernandez, Harrison, Parra and Cribbs retaliated against him for
17 filing grievances.

18 Plaintiff’s allegations can be summarized essentially as follows:

19 In April 2012, Plaintiff was transferred from California State Prison – Los Angeles
20 County (“CSP-LAC”) to the Segregated Housing Unit at California State Prison –
21 Corcoran (“CSP-Corcoran”). Once at CSP-Corcoran, Plaintiff reviewed the CDCR-1083
22 Forms, which list an inmate’s property, and noticed that the form from CSP-Corcoran did
23 not reflect all of his property, including his typewriter ribbons, cervical pillow, and photos.

24 Between April and June 2012, Defendants Gallardo, Stoll, and Charlet all brought
25 Plaintiff his tennis shoes and beanie on separate occasions, but refused to provide them
26 to him after he complained that he was not in receipt of all of his allowable property
27 (such as his books, magazines, sweatshirt, glasses, and cervical pillow) and that the
28 Form 1083 failed to reflect all of his property.

1 Defendants Banuelos, Gallardo, Stoll, Hernandez, and Charlet failed to locate his
2 missing property, which resulted in it being destroyed (including books, magazines, a CD
3 and CD player, headphones, AC Adapter, cable splitter, tumblers, glasses, clothes,
4 tennis shoes, beanie, deodorant, color pencils, typewriter and ribbon, and photos).

5 Plaintiff filed interview and grievance forms regarding his property; on many he
6 never received responses. However, the following Defendants retaliated against Plaintiff
7 for filing the grievances.

8 Defendant Banuelos responded to an interview request by falsely informing
9 Plaintiff he had refused his property, refused to sign a form for its disposal, and that
10 Plaintiff's appliances were "operational." (ECF No. 9 at 9.)

11 Defendant Hernandez interviewed Plaintiff regarding one of his property
12 grievances. He brought Plaintiff his cervical pillow, but refused to accept his postage for
13 mailing his non-allowable property home. Defendant Hernandez denied Plaintiff a
14 witness, defended the disposal of his property, and falsified his report.

15 Defendants Parra, Cribbs, and Harrison failed to process all of his grievances
16 and/or return them to him.

17 Plaintiff seeks monetary damages against Defendants for their violation of his
18 First, Fifth, and Fourteenth Amendment rights.

19 **IV. ANALYSIS**

20 **A. Section 1983**

21 Section 1983 "provides a cause of action for the 'deprivation of any rights,
22 privileges, or immunities secured by the Constitution and laws' of the United States."
23 *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
24 Section 1983 "'is not itself a source of substantive rights,' but merely provides 'a method
25 for vindicating federal rights conferred elsewhere.'" *Graham v. Connor*, 490 U.S. 386,
26 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979)).

27 To state a claim under Section 1983, a plaintiff must allege two essential
28 elements: (1) that a right secured by the Constitution and laws of the United States was

1 violated and (2) that the alleged violation was committed by a person acting under the
2 color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988); see also *Ketchum v.*
3 *Cnty. of Alameda*, 811 F.2d 1243, 1245 (9th Cir. 1987).

4 A complaint must contain “a short and plain statement of the claim showing that
5 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
6 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
7 supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S.
8 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff
9 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
10 plausible on its face.’” *Id.* Facial plausibility demands more than the mere possibility
11 that a defendant committed misconduct and, while factual allegations are accepted as
12 true, legal conclusions are not. *Id.*

13 **A. Official Capacity**

14 Plaintiff sues Defendants in their individual and official capacities. Plaintiff may
15 not bring suit for monetary damages against Defendants in their official capacities. “The
16 Eleventh Amendment bars suits for money damages in federal court against a state, its
17 agencies, and state officials in their official capacities.” *Aholelei v. Dep’t of Pub. Safety*,
18 488 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted). Therefore, Plaintiff’s claims
19 against Defendants in their official capacities are dismissed without leave to amend.

20 **B. Deprivation of Property**

21 The Due Process Clause protects prisoners from being deprived of property
22 without due process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). Prisoners
23 have a protected interest in their personal property. *Hansen v. May*, 502 F.2d 728, 730
24 (9th Cir.1974). An authorized, intentional deprivation of property may be actionable
25 under the Due Process Clause.¹ *Hudson v. Palmer*, 468 U.S. 517, 532, n.13 (1984)

27 ¹ An authorized deprivation is one carried out pursuant to established state procedures,
28 regulations, or statutes. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982); *Piatt v.*
McDougall, 773 F.2d 1032, 1036 (9th Cir. 1985).

1 (citing *Logan*, 455 U.S. at 435–436); See also *Quick v. Jones*, 754 F.2d 1521, 1524 (9th
2 Cir. 1985). However, authorized deprivations of property are not actionable if carried out
3 pursuant to a regulation that is reasonably related to a legitimate penological interest.
4 *Turner v. Safley*, 482 U.S. 78, 89 (1987).

5 Neither negligent nor unauthorized intentional deprivations of property by a
6 governmental employee “constitute a violation of the procedural requirements of the Due
7 Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy
8 for the loss is available.” *Hudson*, 468 U.S. at 533. There is an adequate post-
9 deprivation remedy under California law. *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th
10 Cir. 1994) (citing Cal. Gov’t Code §§ 810-895).

11 Here, Plaintiff does not specify whether the alleged deprivation of his property
12 was authorized. Nor do the allegations suggest Defendants engaged in conduct so
13 serious as to implicate Plaintiff’s substantive due process rights, *i.e.* conduct that is
14 prohibited regardless of available post-deprivation remedies. See *Wood v. Ostrander*,
15 879 F.2d 583, 588–89 (9th Cir.1989) (the “post-deprivation rule” does not apply to claims
16 alleging a deprivation of a right guaranteed by the substantive Due Process Clause).

17 If Plaintiff chooses to amend, he must allege facts showing an authorized
18 deprivation of property not reasonably related to a legitimate penological interest.

19 **C. Appeals Process**

20 Plaintiff complains of the manner in which Appeals Coordinators Harrison, Parra,
21 and Cribbs processed his grievances.

22 The Due Process Clause protects Plaintiff against the deprivation of liberty
23 without the procedural protections to which he is entitled under the law. *Wilkinson v.*
24 *Austin*, 545 U.S. 209, 221 (2005). To state a claim, Plaintiff must first identify the interest
25 at stake. *Id.* Liberty interests may arise from the Due Process Clause or from state law.
26 *Id.*

1 Prisoners have no stand-alone due process rights related to the administrative
2 grievance process. *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v.*
3 *Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Failing to properly process a grievance or
4 denying a grievance does not constitute a due process violation. *See, e.g., Wright v.*
5 *Shannon*, No. 1:05-cv-01485-LJO-YNP PC, 2010 WL 445203, at *5 (E.D. Cal. Feb. 2,
6 2010) (plaintiff's allegations that prison officials denied or ignored his inmate appeals
7 failed to state a cognizable claim under the First Amendment); *Williams v. Cate*, No.
8 1;09-cv-00468-OWW-YNP PC, 2009 WL 3789597, at *6 (E.D. Cal. Nov. 10, 2009)
9 (“Plaintiff has no protected liberty interest in the vindication of his administrative
10 claims.”).

11 Plaintiff has not stated a cognizable due process claim against Defendants
12 Harrison, Parra, and Cribbs for their handling of his grievances. Since no such rights
13 exist relative to the administrative grievance process, leave to amend would be futile and
14 is denied.

15 **D. Retaliation**

16 “[P]risoners have a First Amendment right to file prison grievances” and to be free
17 from retaliation for exercising this right. *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir.
18 2009); *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005). There are five elements
19 to a First Amendment retaliation claim: “(1) An assertion that a state actor took some
20 adverse action against an inmate (2) because of (3) that prisoner’s protected conduct,
21 and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and
22 (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes*, 408
23 F.3d at 567-68.

24 Plaintiff alleges that Defendants Banuelos, Hernandez, Harrison, Parra, and
25 Cribbs retaliated against him for filing his property grievances by writing false reports,
26 failing to properly process his grievances, and destroying his property. However, Plaintiff
27 fails to plead any facts to draw a causal connection between Defendants’ actions and his
28 filing of grievances that would lead one to infer their actions were done in retaliation.

1 See *Bruce v. Ylst*, 351 F.3d 1283, 1289 (9th Cir. 2003) (prison officials' retaliatory
2 motives may be established by raising issues of suspect timing, evidence, and
3 statements); see also *Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir. 1995) ("timing can
4 properly be considered as circumstantial evidence of retaliatory intent"). Additionally,
5 Plaintiff has not alleged that Defendants' actions chilled his exercise of his First
6 Amendment rights or that their actions did not reasonably advance a legitimate
7 correctional goal.

8 Plaintiff will be granted leave to amend to allege true facts supporting these
9 elements. In so doing, Plaintiff should set forth other facts, statements, or events, if any,
10 that gave rise to or immediately preceded Defendants' conduct and what, if any,
11 justification was given for their conduct to suggest a retaliatory motive.

12 **V. CONCLUSION AND ORDER**

13 Plaintiff's Complaint does not state a claim for relief. The Court will grant Plaintiff
14 an opportunity to file an amended complaint. *Noll v. Carlson*, 809 F.2d 1446, 1448-49
15 (9th Cir. 1987). Plaintiff should note that although he has been given the opportunity to
16 amend, it is not for the purposes of adding new claims. *George v. Smith*, 507 F.3d 605,
17 607 (7th Cir. 2007). Plaintiff should carefully read this Screening Order and focus his
18 efforts on curing the deficiencies set forth above.

19 Finally, Plaintiff is advised that Local Rule 220 requires that an amended
20 complaint be complete in itself without reference to any prior pleading. As a general
21 rule, an "amended complaint supersedes the original" complaint. See *Loux v. Rhay*, 375
22 F.2d 55, 57 (9th Cir. 1967). Therefore, in an amended complaint, as in an original
23 complaint, each claim and the involvement of each defendant must be sufficiently
24 alleged. Here, the amended complaint should be clearly and boldly titled "Second
25 Amended Complaint," refer to the appropriate case number, and be an original signed
26 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.
27 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a
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1 right to relief above the speculative level” *Twombly*, 550 U.S. at 555 (citations
2 omitted).

3 Accordingly, it is HEREBY ORDERED that:

- 4 1. Plaintiff's First Amended Complaint (ECF No. 9.) is DISMISSED for failure
5 to state a claim upon which relief may be granted;
- 6 2. The Clerk's Office shall send Plaintiff (1) a blank civil rights amended
7 complaint form and (2) a copy of his signed First Amended Complaint filed
8 October 7, 2013;
- 9 3. Plaintiff shall file an amended complaint within thirty (30) days from service
10 of this Order; and
- 11 4. If Plaintiff fails to file an amended complaint in compliance with this order,
12 the Court will dismiss this action, with prejudice, for failure to state a claim,
13 failure to comply with a court order, and failure to prosecute, subject to the
14 “three strikes” provision set forth in 28 U.S.C. § 1915(g). *Silva v. Di*
15 *Vittorio*, 658 F.3d 1090, 1098 (9th Cir. 2011).

16
17
18 IT IS SO ORDERED.

19
20 Dated: February 6, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE