

1 monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

2 A complaint must contain “a short and plain statement of the claim showing that the pleader is
3 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
5 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
6 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
7 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
8 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

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

18 II.

19 COMPLAINT ALLEGATIONS

20 Plaintiff names D. Denny, M. Seaman, and S. Tallerico as Defendants.

21 Plaintiff contends that Defendants have violated his constitutional rights by interfering with his
22 communication with the court by rejecting and/or cancelling his inmate appeals without justification.
23 Plaintiff contends Defendants are inflicting intentional infliction of mental stress for which he seeks
24 compensation.

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1 **III.**

2 **DISCUSSION**

3 **A. Inmate Grievance 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 contends that Defendants have canceled and/or rejected his inmate appeals in
11 retaliation for being a “litigator.” Defendants’ actions in responding and/or processing Plaintiff’s
12 appeals, alone, cannot give rise to any claims for relief under section 1983 for violation of due process.
13 Accordingly, Plaintiff fails to state a cognizable claim for relief based upon the inmate appeals
14 process.

15 **B. Access to the Court**

16 Plaintiff has a constitutional right of access to the courts and prison officials may not actively
17 interfere with his right to litigate. Silva v. Di Vittorio, 658 F.3d 1090, 1101-02 (9th Cir. 2011).
18 However, to state a viable claim for relief, Plaintiff must allege he suffered an actual injury, which is
19 actual prejudice with respect to contemplated or existing litigation. Nevada Dep’t of Corr. v. Greene,
20 648 F.3d 1014, 1018 (9th Cir. 2011) (citing Lewis v. Casey, 518 U.S. 343, 348 (1996)) (quotation
21 marks omitted). Actual injury is “actual prejudice with respect to contemplated or existing litigation.”
22 Nevada Dep’t of Corr. v. Greene, 648 F.3d 1014, 1018 (9th Cir. 2011) (citing Lewis v. Casey, 518
23 U.S. 343, 348 (1996)) (internal quotation marks omitted).

24 Plaintiff fails to state a claim against any Defendants for denial of access to the courts.
25 Plaintiff has not alleged sufficient facts which indicate that he suffered an actual injury with respect to
26 contemplated or existing litigation. Any claim by Plaintiff that his present ability to file a civil rights
27 complaint pursuant to 42 U.S.C. § 1983, was impeded no such claim can exist as Plaintiff has filed and
28 this Court has reviewed the instant complaint. The court acknowledges the necessity of exhausting his

1 claims prior to bringing a section 1983 action. See Booth v. Churner, 532 U.S. 731, 741 (2001).
2 However, Plaintiff has failed to allege that he was denied access to the courts because of the actions by
3 Defendants. Accordingly, Plaintiff fails to state a cognizable claim for relief.

4 **C. Leave to Amend**

5 Plaintiff was previously notified of the deficiencies in the complaint and granted leave to
6 amend. Plaintiff has failed to cure the deficiencies and further amendment is therefore futile.
7 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-1449 (9th
8 Cir. 1987).

9 **IV.**

10 **CONCLUSION AND ORDER**

11 For the reasons stated above, the Court finds that Plaintiff's amended complaint fails to state a
12 claim upon which relief may be granted and further leave to amend would be futile.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's amended complaint is DISMISSED, with prejudice, for failure to state a
15 cognizable claim for relief;
- 16 2. This dismissal is subject to the "three-strikes" provision set forth in 28 U.S.C. §
17 1915(g). Silva v. Di Vittorio, 658 F.3d 1090, 1098-99 (9th Cir. 2011); and
- 18 3. Plaintiff's pending motion to vacate the judgment, filed December 15, 2014, is
19 DENIED as MOOT.

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21 IT IS SO ORDERED.

22 Dated: January 15, 2015



UNITED STATES MAGISTRATE JUDGE

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