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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEVONTE B. HARRIS,)	1:16-cv-01158-BAM (PC)
)	
Plaintiff,)	SCREENING ORDER DISMISSING
)	COMPLAINT FOR FAILURE TO STATE A
v.)	COGNIZABLE CLAIM, WITH LEAVE TO
)	AMEND
F. MASCIERENAS, et al.,)	
)	(ECF No. 1)
Defendants.)	THIRTY (30) DAY DEADLINE
)	
)	

I. Screening Requirement and Standard

Plaintiff Devonte B. Harris (“Plaintiff”), proceeding pro se and in forma pauperis, initiated this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff consented to magistrate judge jurisdiction. (ECF No. 9.) Plaintiff’s complaint, filed on August 8, 2016, is currently before the Court for screening. (ECF No. 1.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not

1 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
2 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937,
3 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-
4 65 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
5 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
6 (internal quotation marks and citation omitted).

7 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
8 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
9 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially
10 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
11 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949
12 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
13 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
14 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at
15 678, 129 S. Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

16 **II. Plaintiff’s Allegations**

17 Plaintiff is a state prisoner currently housed at CSP-Sacramento. The events at issue
18 occurred while he was housed at CSP-Corcoran. Plaintiff names the following defendants: (1) F.
19 Mascernas, Correctional Officer; (2) H. Gamboa, Sergeant; (3) J. Vander Poel, Associate
20 Warden.

21 Plaintiff alleges as follows: On February 14, 2015, Walkenhorst, an approved CDCR
22 vendor, processed an annual personal package for Plaintiff according to their invoice. This
23 package arrived at CSP-Corcoran on February 23, 2016. Department Operation Manual §
24 54030.7.1 states the date of eligibility for receiving a package is calculated from the date it
25 arrives at the institution. Plaintiff was eligible to receive his package when it arrived at the
26 institution on February 23, 2016.

1 On March 2, 2015,¹ Plaintiff attended a disciplinary hearing and was placed on loss of
2 privileges, including annual packages. On March 18, 2015, Defendant Mascerenas, acting as the
3 Warden's designee, disallowed Plaintiff's package because he was on loss of privileges and
4 determined it would be returned to the sender at Plaintiff's expense.

5 On March 19, 2015, Defendant Mascerenas notified Plaintiff that his package was being
6 disallowed, and that he needed to attain sufficient funds on his trust account to return it to sender
7 because Plaintiff currently had no funds. Mascerenas had Plaintiff sign an acknowledgement of
8 receiving this notification of disallowance. California Code of Regulations, Title 15, §
9 3134(c)(4) states that a package must be delivered 15 calendar days after arrival to the
10 institution.

11 Plaintiff told Defendant Mascerenas that he was indeed eligible for his packages because
12 it arrived at the institution prior to Plaintiff being placed on loss of privileges. Further,
13 Walkenhorst's return policy allowed refunds when a package is returned within 30 days from the
14 date of the February 14, 2015 invoice only. Therefore, Defendant Mascerenas' delayed
15 notification prevented Plaintiff from obtaining a refund.

16 Defendant Mascerenas still refused to issue Plaintiff his package. He was retaliating
17 against Plaintiff for a grievance Plaintiff had filed about him confiscating authorized items out of
18 Plaintiff's previous annual package (Log No. CSPC-6-14-02044). Defendant Mascerenas chilled
19 but did not silence Plaintiff's speech. Defendant Mascerenas' confiscation of Plaintiff's package
20 and delayed notification was not narrowly tailored to further a legitimate penological interest.

21 On March 22, 2015, Plaintiff filed an administrative appeal on these issues. Afterwards,
22 he obtained shipment tracking results from Walkenhorst showing his package was delivered to
23 the institution on February 23, 2016. CCR, Title 15, § 3084.7 required a face to face interview at
24 the First Level of Review for an appeal. Plaintiff was never interviewed.

25 On May 5, 2016, Plaintiff's appeal was sent to him, although he didn't receive it from the
26 appeals office until a few days later. Defendant Gamboa falsely claimed that she interviewed
27 Plaintiff on April 3, 2015 and that he had no further supporting documents to provide. Appeals

28 ¹ The dates of events, 2016 and 2015, are taken directly from Plaintiff's complaint.

1 Reviewer Vander Poel erroneously concluded that Plaintiff's package was received by the
2 institution on March 2, 2015, the same day he was placed on loss of privileges. If Defendant
3 Gamboa really had interviewed Plaintiff, he could have shown her documentary proof that his
4 package was received at the institution on February 23, 2015, before he was placed on loss of
5 privileges, and thus eligible for it.

6 On May 11, 2015, as a result of Defendants Gamboa and Vander Poel denying Plaintiff's
7 appeal, Defendant Mascerenas destroyed Plaintiff's package.

8 Plaintiff's first cause of action is that Defendant Mascerenas violated Plaintiff's First
9 Amendment right by retaliating against him for a past grievance. His second cause of action is
10 that Defendants Mascerenas, Gamboa, and Vander Poel negligently destroyed Plaintiff's
11 personal property, costing \$99.82. Plaintiff's third cause of action is that Defendants Mascerenas,
12 Gamboa, and Vander Poel committed conversion of Plaintiff's \$99.82 personal property
13 package.

14 Plaintiff seeks a declaration that the acts and omissions violated his rights, and a
15 judgment for nominal, compensatory, and punitive damages against each defendant, jointly and
16 severally.

17 **III. Discussion**

18 **a. Retaliation**

19 Plaintiff claims that Defendant Mascerenas violated his First Amendment rights by
20 confiscating his personal package in retaliation for a past grievance against him.

21 Within the prison context, a viable First Amendment retaliation claim "entails five
22 essential elements: (1) An assertion that a state actor took some adverse action against an inmate
23 (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's
24 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
25 legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005). In
26 order to state a retaliation claim, a plaintiff must plead facts which suggest that retaliation for the
27 exercise of protected conduct was the "substantial" or "motivating" factor behind the defendant's
28 conduct. See Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989). The

1 plaintiff must also plead facts which suggest an absence of legitimate correctional goals for the
2 conduct he contends was retaliatory. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (citing
3 Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985)).

4 Plaintiff has not alleged sufficient facts to state a claim for retaliation in violation of the
5 First Amendment against Defendant Mascerenas. Plaintiff's statement that he was being
6 retaliated against for a past grievance is conclusory and speculative at best. Although Plaintiff
7 has stated he filed a past grievance and his package was not released to him and was destroyed,
8 he has not alleged any facts showing that Defendant Mascerenas' actions were taken because of
9 the past grievance.

10 Furthermore, Plaintiff's allegations that he was not allowed any packages due to
11 disciplinary privilege losses, and that Defendant Mascerenas denied the package after these
12 privilege restrictions were imposed, suggest a legitimate correctional goal for the package denial.
13 Plaintiff's allegations that he both did not have the funds to return the package to the sender, and
14 was beyond the package return date, when his package was destroyed, further undermines his
15 claim that Defendant Mascerenas disposed of the package for retaliatory reasons. Plaintiff must
16 plead facts which suggest the absence of any legitimate correctional goals for Defendant
17 Mascerenas' actions.

18 Plaintiff will be granted leave to amend this claim to cure these deficiencies.

19 **b. Personal Property**

20 Plaintiff brings a claim against all Defendants for the value of his personal property that
21 he states was negligently destroyed. An unauthorized deprivation of property, either intentional
22 or negligent, by a state employee is not actionable under § 1983 if a meaningful state post-
23 deprivation remedy for the loss is available. Hudson v. Palmer, 468 U.S. 517, 533 (1984).
24 California law provides an adequate post-deprivation remedy for any property deprivations.
25 Barnett v. Centoni, 31 F.3d 813, 816-817 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895).
26 Thus, Plaintiff may not pursue a claim based on the alleged destruction of his personal property
27 by Defendant Mascerenas, Gamboa, or Vander Poel under § 1983.

1 **c. Inmate Appeals Process**

2 Plaintiff alleges that the Defendant Gamboa falsified information in respect to his inmate
3 appeal, that Defendant Vander Poel made errors in his findings in that appeal, and that his appeal
4 was sent to him late. Defendants’ actions in responding to Plaintiff’s appeals, alone, cannot give
5 rise to any claims for relief under section 1983 for violation of due process. “[A prison]
6 grievance procedure is a procedural right only, it does not confer any substantive right upon the
7 inmates.” Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993) (citing Azeez v. DeRobertis,
8 568 F. Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.
9 2003) (no liberty interest in processing of appeals because no entitlement to a specific grievance
10 procedure); Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance
11 procedure confers no liberty interest on prisoner); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.
12 1988). “Hence, it does not give rise to a protected liberty interest requiring the procedural
13 protections envisioned by the Fourteenth Amendment.” Azeez, 568 F. Supp. at 10. Actions in
14 reviewing a prisoner’s administrative appeal, without more, are not actionable under section
15 1983. Buckley, 997 F.2d at 495.

16 Thus, since he has neither a liberty interest, nor a substantive right in inmate appeals,
17 Plaintiff fails to state a cognizable claim for the processing and/or reviewing of his inmate
18 appeals.

19 **d. Declaratory Relief**

20 Plaintiff seeks a declaration that his rights were violated by various defendants. “A
21 declaratory judgment, like other forms of equitable relief, should be granted only as a matter of
22 judicial discretion, exercised in the public interest.” Eccles v. Peoples Bank of Lakewood
23 Village, 333 U.S. 426, 431, 68 S. Ct. 641, 92 L. Ed. 784 (1948). “Declaratory relief should be
24 denied when it will neither serve a useful purpose in clarifying and settling the legal relations in
25 issue nor terminate the proceedings and afford relief from the uncertainty and controversy faced
26 by the parties.” United States v. Washington, 759 F.2d 1353, 1357 (9th Cir. 1985).

27 In the event that this action reaches trial and the jury returns a verdict in favor of Plaintiff,
28 the verdict will be a finding that Plaintiff’s constitutional rights were violated. Accordingly, a

1 declaration that a defendant violated Plaintiff's rights is unnecessary.

2 **e. State Law Claim**

3 Plaintiff's claim for conversion is a tort governed by state law. Violation of state tort law
4 is not sufficient to state a claim for relief under § 1983. To state a claim under § 1983, there must
5 be a deprivation of federal constitutional or statutory rights. See Paul v. Davis, 424 U.S. 693
6 (1976). The Court will not exercise supplemental jurisdiction over any state law claim absent a
7 cognizable federal claim. 28 U.S.C. § 1367(a); Herman Family Revocable Trust v. Teddy Bear,
8 254 F.3d 802, 805 (9th Cir. 2001); see also Gini v. Las Vegas Metro. Police Dep't, 40 F.3d 1041,
9 1046 (9th Cir. 1994). "When ... the court dismisses the federal claim leaving only state claims for
10 resolution, the court should decline jurisdiction over the state claims and dismiss them without
11 prejudice." Les Shockley Racing v. National Hot Rod Ass'n, 884 F.2d 504, 509 (9th Cir. 1989).

12 Because Plaintiff has not alleged any cognizable federal claims, the Court will not
13 exercise supplemental jurisdiction over his state law claim, and declines to screen that claim at
14 this time. 28 U.S.C. § 1367(a); Herman Family Revocable Trust, 254 F.3d at 805.

15 **IV. Conclusion and Order**

16 Plaintiff's complaint fails to state any cognizable claim upon which relief may be
17 granted. The Court will provide Plaintiff with the opportunity to file an amended complaint
18 curing the deficiencies identified by the Court in this order. Lopez v. Smith, 203 F.3d 1122, 1130
19 (9th Cir. 2000). Plaintiff must state what the Defendants did that deprived the Plaintiff of his
20 constitutional rights. Iqbal, 556 U.S. at 678-79. Although accepted as true, the "[f]actual
21 allegations must be [sufficient] to raise a right to relief above the speculative level. . . ."
22 Twombly, 550 U.S. at 555 (citations omitted). Plaintiff also may not change the nature of this
23 suit by adding new, unrelated claims in his amended complaint. See George v. Smith, 507 F.3d
24 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

25 Finally, Plaintiff is advised of the general rule that an amended complaint supersedes the
26 original complaint. Lacey v. Maricopa Cnty., 693 F.3d 896, 927 (9th Cir. 2012) (en banc).
27 Therefore, Plaintiff's amended complaint must be "complete in itself without reference to the
28 prior or superseded pleading." Local Rule 220.

1 Accordingly, the Court HEREBY ORDERS that:

- 2 1. The Clerk's Office shall send to Plaintiff a complaint form;
- 3 2. Plaintiff's complaint, filed on August 8, 2016 (ECF No. 1), is dismissed for the
- 4 failure to state a cognizable claim upon which relief may be granted, with leave to
- 5 amend;
- 6 3. Within **thirty (30) days** of service of this order, Plaintiff shall file a first amended
- 7 complaint or a notice of voluntary dismissal; and
- 8 4. **Plaintiff's failure to comply with this order will result in dismissal of this action**
- 9 **for failure to state a claim upon which relief may be granted, failure to obey a**
- 10 **court order, and failure to prosecute.**

11

12 IT IS SO ORDERED.

13 Dated: January 31, 2017

14 /s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE

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