

1 raised claims that are legally “frivolous, malicious,” or that fail to state a claim upon which
2 relief may be granted, or that seek monetary relief from a defendant who is immune from
3 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion
4 thereof, that may have been paid, the court shall dismiss the case at any time if the court
5 determines that . . . the action or appeal . . . fails to state a claim upon which relief may
6 be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

8 **II. Pleading Standard**

9 A complaint must contain “a short and plain statement of the claim showing that
10 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
11 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
12 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
13 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
14 Plaintiffs must set forth “sufficient factual matter, accepted as true, to state a claim to
15 relief that is plausible on its face.” Iqbal, 556 U.S. at 678. Facial plausibility demands
16 more than the mere possibility that a defendant committed misconduct and, while factual
17 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 677-78.

19 Section 1983 “provides a cause of action for the deprivation of any rights,
20 privileges, or immunities secured by the Constitution and laws of the United States.”
21 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). To
22 state a claim under section 1983, a plaintiff must allege two essential elements: (1) that a
23 right secured by the Constitution or laws of the United States was violated and (2) that
24 the alleged violation was committed by a person acting under the color of state law. See
25 West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245
26 (9th Cir. 1987).

1 Under section 1983 the Plaintiff must demonstrate that each defendant personally
2 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
3 2002). This requires the presentation of factual allegations sufficient to state a plausible
4 claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,
5 969 (9th Cir. 2009). Prisoners proceeding pro se in civil rights actions are entitled to
6 have their pleadings liberally construed and to have any doubt resolved in their favor,
7 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), but nevertheless,
8 the mere possibility of misconduct falls short of meeting the plausibility standard, Iqbal,
9 556 U.S. at 678; Moss, 572 F.3d at 969.

11 **III. Plaintiff's Allegations**

12 Plaintiff complains of acts that occurred during his incarceration at Valley State
13 Prison ("VSP"). He names as Defendants (1) D. Gamble, Correctional Officer, and (2) M.
14 Barnett, Correctional Officer.

15 His allegations, largely unchanged from his original complaint, can be fairly
16 summarized as follows:
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18 Plaintiff was placed in Administrative Segregation for non-disciplinary reasons.
19 Reportedly his property was packed and removed from his cell by Defendants Gamble
20 and Barnett, but Plaintiff speculates that Gamble allowed inmates to pack the property.
21 Some items were confiscated because their possession was against prison rules.
22 Plaintiff was given a CDCR 1083 Inmate Property Inventory sheet that listed all items
23 packed and an attached document listing items confiscated. Plaintiff was not allowed to
24 look over the lists; Defendant Gamble told him to "just sign" it. Contrary to prison
25 procedures and regulations, Plaintiff was denied the right to determine how to dispose of
26 the confiscated property.
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1 Plaintiff noticed that several non-confiscated items were missing including a TV
2 and headphones. Plaintiff has receipts for the all missing items. They are listed on his
3 property card.

4 Defendant Gamble denied that these items were among those removed.
5 Defendant Gamble also told Plaintiff that some of the items in a plastic storage container
6 were claimed by another inmate, Mayfield. Plaintiff contends that the handicraft items in
7 the container were Plaintiff's.

8
9 Plaintiff does not specify the claims he wishes to make beyond stating that he
10 seeks relief for violation of due process rights and requests return of his property or its
11 monetary equivalence plus damages.

12 **IV. Analysis**

13 **A. Due Process**

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15 The Fourteenth Amendment protects individuals from the deprivation of property
16 without due process of law. U.S. Const. amend. XIV, § 1. Although prisoners retain due
17 process rights, those rights are limited "by the nature of the regime to which they have
18 been lawfully committed." Wolff v. McDonnell, 418 U.S. 539, 556 (1974) (citations
19 omitted).

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21 Authorized and intentional deprivations of property pursuant to an established
22 government procedure are violations of the right to due process, Hudson v. Palmer, 468
23 U.S. 517, 532 (1984) (citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 435–36
24 (1982)). However, neither negligent, nor unauthorized intentional deprivations of
25 property by a state or municipal employee "constitute a violation of the procedural
26 requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful
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1 post deprivation remedy for the loss is available.” Hudson v. Palmer, 468 U.S at 533 &
2 n.13 (1984) (citation omitted).

3 As noted in the previous screening order, Plaintiff’s pleading reflects that the loss
4 of his property was due to carelessness or, if purposeful, was not the result of an
5 authorized act. Defendants Gamble and Barnett either improperly supervised collection
6 of the Plaintiff’s things or intentionally took them without authorization from prison
7 officials. In any event, post deprivations remedies were available. (Plaintiff could, and
8 did, file a grievance with prison officials, and California tort law also provides a remedy
9 for property deprivation. Barnett v. Centoni, 31 F.3d 813, 817 (9th Cir. 1994) (citing Cal.
10 Gov’t Code §§ 810-895).)

11
12 Plaintiff previously was advised of the foregoing and of what facts needed to be
13 present and pled to state a viable due process claim. He nonetheless has failed to cure
14 previously identified defects. It is reasonable to conclude that he is unable to cure them.
15 Thus further leave to amend would be futile and should be denied.

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17 **B. Regulations**

18 Plaintiff refers to a variety of prison regulations he feels were violated in the
19 course of the disposal of his property.

20 Mere violation of state regulations is insufficient to establish a constitutional
21 violation. Cousins v. Lockyer, 568 F.3d 1063, 1070 (9th Cir. 2009) (“[S]tate departmental
22 regulations do not establish a federal constitutional violation.”). Moreover, “[t]he
23 existence of regulations . . . governing the conduct of prison employees does not
24 necessarily entitle Plaintiff to sue civilly to enforce the regulations or to sue for damages
25 based on the violation of the regulations.” Vasquez v. Tate, No. 1:10-cv-1876-JLT
26 (PC), 2012 WL 6738167, at *9 (E.D. Cal. Dec. 28, 2012). The Court is unaware of any
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1 authority that holds there exists a private right of action available to Plaintiff for violation
2 of Title 15 regulations; ample district court decisions hold to the contrary. E.g., id.; Davis
3 v. Powell, 901 F.Supp.2d 1196, 1211 (S.D. Cal. 2012); Meredith v. Overley, No. 1:12-cv-
4 00455-MJS (PC), 2012 WL 3764029, at *4 (E.D. Cal. Aug. 29, 2012); Parra v.
5 Hernandez, No. 08cv0191-H (CAB), 2009 WL 3818376, at *8 (S.D.Cal. Nov. 13, 2009);
6 Davis v. Kissinger, No. CIV S-04-0878 GEB DAD P, 2009 WL 256574, at *12 n.4
7 (E.D.Cal. Feb. 3, 2009), adopted in full, 2009 WL 647350 (Mar. 10, 2009).

9 Claims based solely on violation of state regulations should be dismissed without
10 further leave to amend.

11 **B. State Law Claims**

12 To the extent Plaintiff wants to recover under state law from those who wrongfully
13 caused or allowed the loss of his property, this Court would not have jurisdiction over
14 such claims unless a cognizable federal claim also existed.

16 This Court may exercise jurisdiction over a state law claim pursuant to 28 U.S.C.
17 § 1367(a) which states that in civil actions in which the district court has original
18 jurisdiction, it “shall have supplemental jurisdiction over all other claims in the action
19 within such original jurisdiction that they form part of the same case or controversy under
20 Article III [of the Constitution],” except as provided in subsections (b) and (c). “[Once
21 judicial power exists under § 1367(a), retention of supplemental jurisdiction over state
22 law claims under § 1367(c) is discretionary.” ACI v. Varian Assoc., Inc., 114 F.3d 999,
23 1000 (9th Cir. 1997). The Supreme Court has cautioned that “if the federal claims are
24 dismissed before trial, . . . the state claims should be dismissed as well.” United Mine
25 Workers of America v. Gibbs, 383 U.S. 715, 726 (1966).

1 Here, Plaintiff fails to allege a cognizable federal claim. State law claims standing
2 alone must be dismissed.

3 **V. Conclusion**

4 Plaintiff has not consented to Magistrate Judge jurisdiction. (ECF No. 3.)
5 Accordingly, the Clerk's Office is HEREBY DIRECTED to randomly assign this matter to
6 a district judge pursuant to Local Rule 120(e).
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8 Plaintiff's first amended complaint fails to state a cognizable claim. Plaintiff
9 previously was advised of pleading defects and afforded the opportunity to cure them.
10 He failed to do so. Further leave to amend appears futile and should be denied.

11 Accordingly, it is HEREBY RECOMMENDED that the first amended complaint be
12 DISMISSED with prejudice and without leave to amend for failure to state a claim.
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14 The findings and recommendation will be submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
16 Within fourteen (14) days after being served with the findings and recommendation, the
17 parties may file written objections with the Court. The document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendation." A party may respond
19 to another party's objections by filing a response within fourteen (14) days after being
20 served with a copy of that party's objections. The parties are advised that failure to file
21 objections within the specified time may result in the waiver of rights on appeal.
22 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
23 F.2d 1391, 1394 (9th Cir. 1991)).
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25 IT IS SO ORDERED.

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27 Dated: November 22, 2017

28 /s/ Michael J. Seng
7 UNITED STATES MAGISTRATE JUDGE

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