

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
5 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally
6 participated in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
7 2002).

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

16 **II.**

17 **COMPLAINT ALLEGATIONS**

18 On September 6, 2016, while Plaintiff was housed at California State Prison, Corcoran, he was
19 called to receiving and release to pack and register his personal property. Plaintiff’s thirteen inch
20 television was working fine. An inmate worker was assisting officer Gutierrez inventory the property.
21 Gutierrez dropped Plaintiff’s television and caused the digital component to come loose. The
22 television could be fixed, but Gutierrez confiscated the television and refused to let the inmate worker
23 repair it.

24 Plaintiff refused to sign the CDCR 1083 property inventory sheet because it did not contain the
25 truth and he was aware that officers were confiscating and breaking inmate property for inappropriate
26 reasons in an attempt to provoke the inmates to react with violence.

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1 On October 2, 2016, Plaintiff filed a timely inmate appeal while he was housed at Mule Creek
2 State Prison. On October 18, 2016, D. Goree Jr. screened and rejected/cancelled Plaintiff's appeal as
3 untimely claiming it was filed more than thirty days. Plaintiff contends his appeal was improperly
4 rejected as untimely.

5 Plaintiff contends he re-submitted the appeal at least four times in early 2017. On September
6 7, 2017, M. Voong responded to the appeal indicating that Plaintiff was misusing and abusing the
7 appeals process.

8 Plaintiff seeks compensatory and punitive damages, as well as costs of the action and
9 reimbursement for his television.

10 **II.**
11 **DISCUSSION**

12 **A. Confiscation/Destruction of Personal Property**

13 The Due Process Clause of the Fourteenth Amendment of the United States Constitution
14 protects Plaintiff from being deprived of property without due process of law, Wolff v. McDonnell,
15 418 U.S. 539, 5563 (1974), and Plaintiff has a protected interest in his personal property, Hansen v.
16 May, 502 F.2d 728, 730 (9th Cir. 1974). Authorized, intentional deprivations of property are
17 actionable under the Due Process Clause. See Hudson v. Palmer, 468 U.S. 517, 532, n.13 (1984);
18 Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985). However, the Due Process Clause is not violated
19 by the random, unauthorized deprivation of property so long as the state provides an adequate post-
20 deprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533 (1984); Barnett v. Centoni, 31 F.3d 813,
21 816-17 (9th Cir. 1994). Plaintiff has an adequate post-deprivation remedy under California law and
22 therefore, he may not pursue a due process claim arising out of the unlawful confiscation of his
23 personal property. Barnett, 31 F.3d at 816-17 (citing Cal. Gov't Code §§ 810-895).

24 In this instance, Plaintiff has alleged an unauthorized deprivation of his personal and legal
25 property, and Plaintiff has an adequate post-deprivation remedy under California law and therefore, he
26 may not pursue a due process claim arising out of the unlawful confiscation of his personal property.
27 Barnett, 31 F.3d at 816-17 (citing Cal. Gov't Code §§ 810-895). Accordingly, Plaintiff fails to state a
28 cognizable constitutional claim based on the confiscation and damage to his television.

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B. Conspiracy

To state a claim for conspiracy under section 1983, Plaintiff must show the existence of an agreement or a meeting of the minds to violate his constitutional rights, and an actual deprivation of those constitutional rights. Avalos v. Baca, 596 F.3d 583, 592 (9th Cir. 2010); Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2001).

Plaintiff fails to set forth any factual allegations that Defendants were acting in concert to deprive him of his personal property or retaliate against him. Plaintiff’s conspiracy theory is nothing more than his legal conclusion based on pure speculation. Accordingly, a bare allegation that Defendants conspired to violate Plaintiff’s constitutional rights does not suffice to give rise to a conspiracy claim under section 1983.

C. Retaliation

“Prisoners have a First Amendment right to file grievances against prison officials and to be free from retaliation for doing so.” Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012) (citing Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)). Also protected by the First Amendment is the right to pursue civil rights litigation in federal court without retaliation. Silva v. Di Vittorio, 658 F.3d 1090, 1104 (9th Cir. 2011). “Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

Plaintiff fails to state a cognizable claim for retaliation. Plaintiff’s personal property was allegedly confiscated and damaged prior to his filing an inmate appeal and therefore the allegations are simply insufficient to demonstrate his property was confiscated as a form of retaliation. To the extent Plaintiff contends that he was retaliated against by Defendant Gutierrez because of a prior action filed against his brother in 1997. There are simply no allegations that the actions taken by Gutierrez in 2016 were because of a prior lawsuit filed in 1997-almost 20 years prior to the actions alleged herein, and such claim is simply not plausible. In any event, the alleged improper confiscation of Plaintiff’s

1 property occurred prior to any statement by Plaintiff that he was going to file an inmate grievance.
2 Accordingly, Plaintiff fails to state a cognizable retaliation claim.

3 **D. Inmate Appeal 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 seeks to impose liability against D. Goree and M. Voong based on the handling and
11 denial of inmate appeals. However, as stated above, there is no independent constitutional claim based
12 on the alleged improper handling of inmate appeals. Accordingly, Plaintiff fails to state a cognizable
13 claim against Defendants D. Goree and M. Voong.

14 **III.**

15 **RECOMMENDATION**

16 Plaintiff’s first amended complaint fails to state a cognizable claim for relief. Plaintiff was
17 previously notified of the applicable legal standards and the deficiencies in his pleading, and despite
18 guidance from the Court, Plaintiff’s first amended complaint is largely identical to the original
19 complaint. Based upon the allegations in Plaintiff’s original and first amended complaint, the Court is
20 persuaded that Plaintiff is unable to allege any additional facts that would support a claim for a due
21 process violation or access to the court, and further amendment would be futile. See Hartmann v.
22 CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to amend when
23 amendment would be futile.”) Based on the nature of the deficiencies at issue, the Court finds that
24 further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v.
25 Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

26 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 27 1. The instant action be dismissed for failure to state a cognizable claim for relief; and
28 2. The Office of the Clerk is directed to randomly assign this action to a District Judge.

1 This Findings and Recommendation will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one (21)**
3 **days** after being served with this Findings and Recommendation, the parties may file written
4 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
5 Findings and Recommendation.” The parties are advised that failure to file objections within the
6 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-
7 39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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9 IT IS SO ORDERED.

10 Dated: January 4, 2018



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UNITED STATES MAGISTRATE JUDGE

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IV.

RECOMMENDATION

Plaintiff was previously notified of the applicable legal standards and the deficiencies in his pleading, and despite guidance from the Court, Plaintiff’s first amended complaint is largely identical to the original complaint. Based upon the allegations in Plaintiff’s original and first amended complaint, the Court is persuaded that Plaintiff is unable to allege any additional facts that would support a claim for cruel and unusual punishment in violation of the Eighth Amendment, and further amendment would be futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may not deny leave to amend when amendment would be futile.”) Based on the nature of the deficiencies at issue, the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).