

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

YAKINI DEANDRE BYRD,

Plaintiff,

v.

E. RAZO, et al.,

Defendants.

Case No. 1:20-cv-00814-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO STATE A COGNIZABLE
CLAIM

(ECF No. 10)

FOURTEEN-DAY DEADLINE

Plaintiff Yakini DeAndre Byrd (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. On August 17, 2020, the Court screened Plaintiff’s complaint and granted him leave to amend. (ECF No. 9.) Plaintiff’s first amended complaint, filed on August 31, 2020, is currently before the Court for screening. (ECF No. 10.)

I. Screening Requirement and Standard

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

1 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
2 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
7 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken
8 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,
9 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

10 To survive screening, Plaintiff’s claims must be facially plausible, which requires
11 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
12 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.
13 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted
14 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
15 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

16 **II. Plaintiff’s Allegations**

17 Plaintiff is currently housed at California State Prison, Corcoran in Corcoran, California,
18 where the events in the amended complaint are alleged to have occurred. Plaintiff names the
19 following defendants: (1) Sergeant E. Razo; (2) Associate Warden R. Juarez; (3) SHU Property
20 Officer M. Medina; and (4) Appeals Coordinator J. Ceballos.

21 Plaintiff asserts a “Torts act” violation and alleges, “Officer M. Medina Refuse to give me
22 my package and had my signature missused to embezzle me of it. Then had all the above names
23 try to cover it up.” (ECF No. 10 at 3) (unedited text). As relief, Plaintiff seeks return of his
24 package or compensatory damages. He also requests punitive damages. (Id. at 6.)

25 **III. Discussion**

26 **A. Federal Rule of Civil Procedure 8**

27 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain
28 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed

1 factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,
2 supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678 (citation
3 omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to
4 relief that is plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570,
5 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are not. Id.;
6 see also Twombly, 550 U.S. at 556–557.

7 Although Plaintiff’s amended complaint is short, it is not a plain statement of his claims.
8 As a basic matter, the complaint does not clearly state what happened, when it happened or who
9 was involved. Despite being provided with the relevant pleading standard, Plaintiff has been
10 unable to cure this deficiency.

11 **B. Linkage Requirement**

12 The Civil Rights Act under which this action was filed provides:

13 Every person who, under color of [state law] ... subjects, or causes to be subjected,
14 any citizen of the United States ... to the deprivation of any rights, privileges, or
15 immunities secured by the Constitution ... shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress.

16 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
17 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See
18 Monell v. Dep’t of Soc. Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The
19 Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional
20 right, within the meaning of section 1983, if he does an affirmative act, participates in another’s
21 affirmative acts or omits to perform an act which he is legally required to do that causes the
22 deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

23 Here, Plaintiff fails to adequately link Defendants Razo, Juarez and Ceballos to the
24 allegations in his complaint. Plaintiff’s conclusory statement regarding a cover up is not
25 sufficient. Plaintiff fails to state what each of these defendants did or did not do that resulted in a
26 deprivation of his rights. Despite being provided with the relevant standard, Plaintiff has been
27 unable to cure this deficiency.

28 ///

1 **C. Fourteenth Amendment - Deprivation of Property**

2 Prisoners have a protected interest in their personal property. Hansen v. May, 502 F.2d
3 728, 730 (9th Cir. 1974). An authorized, intentional deprivation of property is actionable under
4 the Due Process Clause. See Hudson v. Palmer, 468 U.S. 517, 532 n.13 (1984) (citing Logan v.
5 Zimmerman Brush Co., 455 U.S. 422, 435–36 (1982)); Quick v. Jones, 754 F.2d 1521, 1524 (9th
6 Cir. 1985). However, “an unauthorized intentional deprivation of property by a state employee
7 does not constitute a violation of the procedural requirements of the Due Process Clause of the
8 Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available.”
9 Hudson, 468 U.S. at 533.

10 Here, Plaintiff alleges that Defendant Medina engaged in embezzlement and misuse of his
11 signature related to his property. He further asserts that the remaining defendants covered up
12 these actions. In short, Plaintiff alleges that defendants engaged in an unauthorized, intentional
13 deprivation of his property. Due process is therefore satisfied if there is a meaningful post-
14 deprivation remedy available to him. Id.

15 Plaintiff has an adequate post-deprivation remedy available under California law. Barnett
16 v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895). Therefore,
17 Plaintiff fails to allege a cognizable due process claim based on the deprivation of his property
18 (package) against any of the named defendants. This deficiency cannot be cured by amendment.

19 **D. State Law Claims**

20 Plaintiff purports to bring claims under the “Torts act.” It is unclear whether he intends to
21 pursue state law tort claims or any other state law claims. Under 28 U.S.C. § 1367(a), in any civil
22 action in which the district court has original jurisdiction, the “district courts shall have
23 supplemental jurisdiction over all other claims that are so related to claims in the action within
24 such original jurisdiction that they form part of the same case or controversy under Article III of
25 the United States Constitution,” except as provided in subsections (b) and (c). The Supreme Court
26 has stated that “if the federal claims are dismissed before trial, ... the state claims should be
27 dismissed as well.” United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966). Although
28 the Court may exercise supplemental jurisdiction over state law claims, Plaintiff must first have a

1 cognizable claim for relief under federal law. 28 U.S.C. § 1367. As Plaintiff has not stated a
2 cognizable claim for relief under federal law, it will be recommended that the Court decline to
3 exercise supplemental jurisdiction over any purported state law claims.

4 **IV. Conclusion and Recommendation**

5 For the reasons stated, Plaintiff's amended complaint fails to comply with Federal Rule of
6 Civil Procedure 8 and fails to state a cognizable claim for relief under section 1983. Despite
7 being provided with relevant pleading and legal standards, Plaintiff has been unable to cure the
8 deficiencies in his complaint by amendment, and thus further leave to amend is not warranted.
9 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

10 Accordingly, the Court HEREBY DIRECTS the Clerk of the Court to randomly assign a
11 district judge to this action.

12 Furthermore, IT IS HEREBY RECOMMENDED as follows:

- 13 1. The federal claims in this action be dismissed based on Plaintiff's failure state a
14 cognizable claim upon which relief may be granted; and
- 15 2. The Court decline to exercise supplemental jurisdiction over Plaintiff's purported
16 state law claims.

17 These Findings and Recommendation will be submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
19 (14) days after being served with these Findings and Recommendation, Plaintiff may file written
20 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
21 Findings and Recommendation." Plaintiff is advised that failure to file objections within the
22 specified time may result in the waiver of the "right to challenge the magistrate's factual
23 findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
24 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
25 IT IS SO ORDERED.

26 Dated: September 10, 2020

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE