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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EARL JAMES ROBBINS, SR.,  
Plaintiff,  
vs.  
FISHER, et al.,  
Defendants.

**1:21-cv-01642-GSA-PC**  
**ORDER FOR CLERK TO RANDOMLY  
ASSIGN A UNITED STATES DISTRICT  
JUDGE TO THIS CASE**  
**AND**  
**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE  
BE DISMISSED FOR FAILURE TO  
STATE A CLAIM, WITHOUT LEAVE  
TO AMEND  
(ECF No. 1.)**  
**OBJECTIONS DUE WITHIN  
FOURTEEN DAYS**

**I. BACKGROUND**

Earl James Robbins, Sr. (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on November 12, 2021. (ECF No. 1.) The Complaint is now before the court for screening. 28 U.S.C. § 1915A.

1 **II. SCREENING REQUIREMENT**

2 The court is required to screen complaints brought by prisoners seeking relief against a  
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
4 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
5 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
6 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
7 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
8 dismiss the case at any time if the court determines that the action or appeal fails to state a claim  
9 upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

10 A complaint is required to contain “a short and plain statement of the claim showing that  
11 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
12 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
14 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken  
15 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,  
16 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To state  
17 a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim  
18 to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,  
19 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as true, legal  
20 conclusions are not. Id. The mere possibility of misconduct falls short of meeting this  
21 plausibility standard. Id.

22 **III. SUMMARY OF COMPLAINT**

23 Plaintiff is presently incarcerated at Corcoran State Prison in Corcoran, California. The  
24 events at issue in the Complaint allegedly occurred at Valley State Prison in Chowchilla,  
25 California, when Plaintiff was incarcerated there in the custody of the California Department of  
26 Corrections and Rehabilitation (“CDCR”). Plaintiff names as defendants Raythel Fisher, Jr.  
27 (Warden), A. Medellin (Senior Accounting Supervisor), Howard E. Moseley (CDCR Associate  
28 Director), and M. McVay (Chief Deputy Warden) (collectively, “Defendants”).

1 Plaintiff's allegations follow:

2 Plaintiff alleges that CDCR Staff used forgery to steal Plaintiff's economic impact  
3 payments (E.I.P.) from his trust account. Defendant A. Medellin, Senior Accounting Supervisor,  
4 caused forgery of E.I.P. checks for \$1,200.00 on January 5, 2021, and \$1,400.00 on June 10,  
5 2021. Checks were sent by U.S. Mail to Plaintiff . The record clearly reflects that Plaintiff  
6 informed staff, including defendant Warden Fisher, that he did not owe the funds on his  
7 discharged prison number, which became a misdemeanor (Orange County California Case #  
8 96CF3516 with \$0.00 balance on December 21, 2015 for the case). On April 2, 2021 Plaintiff  
9 was transferred from Valley State Prison to Corcoran State Prison. Defendants continued cashing  
10 checks and stealing funds, depositing whatever amounts they desired. Inmate statements show  
11 proof. Defendants Fisher and Moseley have gone along with these thefts and the bullying of  
12 Plaintiff (seen in recorded grievance #86577 by defendant McVay, C.D.W. dated April 1, 2021).  
13 Valley State Prison staff records verify these funds were stolen, and then, to confuse the issues,  
14 chose not to mail Plaintiff's appeal forms back, but placed different appeal numbers as follows:  
15 #86577, 117923, 118096, 147793, in an attempt to justify the theft of federal funds. Also  
16 recorded is a California Government claim, which has not been responded to in the forty-five  
17 days allocated for due process, causing Plaintiff to seek relief in this U.S. District Court at a cost  
18 of \$350.00 to file this § 1983 action. Staff as well stole the \$600.00 debit card. Plaintiff is no  
19 longer at Valley State Prison, but they continue to cash checks and steal Plaintiff's funds.

20 As relief, Plaintiff requests to be financially compensated for the theft and mental anguish  
21 by the actions of stealing his funds after being informed he did not owe the fines in a discharged  
22 case returned to court years after discharged on Proposition 47 made misdemeanor. Plaintiff  
23 requests that every aspect of the case be forever removed from the CDCR's record. Plaintiff  
24 owes two federal filing fees that must be paid, and Plaintiff cannot pay them due to the thefts.  
25 Plaintiff requests that Defendants pay the federal filing fees, the cost of this filing fee/court cost,  
26 and the current fines showing for his conviction. Plaintiff also seeks funds to hire counsel to  
27 assist his defense for his illegal life term.

28 **IV. ECONOMIC IMPACT PAYMENT (EIP) – CARES ACT**

1 The economic impact payment provided for under the Coronavirus Aid, Relief, and  
2 Economic Security (“CARES”) Act is a tax credit allowed for the first taxable year beginning in  
3 2020. 26 U.S.C. § 6428. Martin v. Jefferson Cty. Dep’t of Human Res., Case No. 2:21-cv-175  
4 (S.D. Ohio 2021), 2021 U.S. Dist. LEXIS 123001, 2021 WL 2700333 \*1.

5 **V. PLAINTIFF’S CLAIMS**

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

7 Every person who, under color of any statute, ordinance, regulation, custom, or  
8 usage, of any State or Territory or the District of Columbia, subjects, or causes to  
9 be subjected, any citizen of the United States or other person within the  
10 jurisdiction thereof to the deprivation of any rights, privileges, or immunities  
secured by the Constitution and laws, shall be liable to the party injured in an  
action at law, suit in equity, or other proper proceeding for redress . . . .

11 42 U.S.C. § 1983.

12 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a  
13 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,  
14 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman v.  
15 Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697 F.3d  
16 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012); Anderson v.  
17 Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). “To the extent that the violation of a state law  
18 amounts to the deprivation of a state-created interest that reaches beyond that guaranteed by the  
19 federal Constitution, Section 1983 offers no redress.” Id.

20 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under  
21 color of state law and (2) the defendant deprived him or her of rights secured by the Constitution  
22 or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); see also  
23 Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of  
24 state law”). A person deprives another of a constitutional right, “within the meaning of § 1983,  
25 ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act  
26 which he is legally required to do that causes the deprivation of which complaint is made.’”  
27 Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting  
28 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be

1 established when an official sets in motion a ‘series of acts by others which the actor knows or  
2 reasonably should know would cause others to inflict’ constitutional harms.” Preschooler II, 479  
3 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of causation “closely resembles  
4 the standard ‘foreseeability’ formulation of proximate cause.” Arnold v. Int’l Bus. Mach. Corp.,  
5 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010,  
6 1026 (9th Cir. 2008).

7 **A. Improper Prison Grievance Procedure**

8 Some of Plaintiff’s allegations pertain to the review and handling of Plaintiff’s inmate  
9 appeals. The Due Process Clause protects prisoners from being deprived of liberty without due  
10 process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to state a cause of  
11 action for deprivation of due process, a plaintiff must first establish the existence of a liberty  
12 interest for which the protection is sought. “States may under certain circumstances create liberty  
13 interests which are protected by the Due Process Clause.” Sandin v. Conner, 515 U.S. 472, 483-  
14 84 (1995). Liberty interests created by state law are generally limited to freedom from restraint  
15 which “imposes atypical and significant hardship on the inmate in relation to the ordinary  
16 incidents of prison life.” Id.

17 “[I]nmates lack a separate constitutional entitlement to a specific prison grievance  
18 procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in  
19 processing of appeals because no entitlement to a specific grievance procedure), citing Mann v.  
20 Adams, 855 F.2d 639, 640 (9th Cir. 1988). “[A prison] grievance procedure is a procedural right  
21 only, it does not confer any substantive right upon the inmates.” Azeez v. DeRobertis, 568 F.  
22 Supp. 8, 10 (N.D. Ill. 1982) accord Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993); see  
23 also Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure  
24 confers no liberty interest on prisoner). “Hence, it does not give rise to a protected liberty interest  
25 requiring the procedural protections envisioned by the Fourteenth Amendment.” Azeez, 568 F.  
26 Supp. at 10; Spencer v. Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986).

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1           Actions in reviewing prisoner’s administrative appeal generally cannot serve as the basis  
2 for liability in a section 1983 action. Buckley, 997 F.2d at 495. The argument that anyone who  
3 knows about a violation of the Constitution, and fails to cure it, has violated the Constitution  
4 himself is not correct. “Only persons who cause or participate in the violations are responsible.  
5 Ruling against a prisoner on an administrative complaint does not cause or contribute to the  
6 violation.” Greeno v. Daley, 414 F.3d 645, 656-57 (7th Cir. 2005) accord George v. Smith, 507  
7 F.3d 605, 609-10 (7th Cir. 2007); Reed v. McBride, 178 F.3d 849, 851-52 (7th Cir. 1999); Vance  
8 v. Peters, 97 F.3d 987, 992-93 (7th Cir. 1996).; Haney v. Htay, No. 1:16-CV-00310-AWI-SKO-  
9 PC, 2017 WL 698318, at \*4–5 (E.D. Cal. Feb. 21, 2017).

10           Thus, Plaintiff’s allegations that any of the Defendants failed to properly process his  
11 prison appeals fail to state a cognizable claim under § 1983.

12           **B. Procedural Due Process**

13           “The Fourteenth Amendment’s Due Process Clause protects persons against deprivations  
14 of life, liberty, or property; and those who seek to invoke its procedural protection must establish  
15 that one of these interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221 (2005); Wolff, 418  
16 U.S. at 556. Prisoners have a protected interest in their personal property. Hansen v. May, 502  
17 F.2d 728, 730 (9th Cir. 1974). However, a plaintiff has no due process claim based on the  
18 defendants’ unauthorized deprivation of his personal property—whether intentional or  
19 negligent—if a meaningful state post-deprivation remedy for his loss is available. See Hudson v.  
20 Palmer, 468 U.S. 517, 533 (1984). California’s tort claim process provides that adequate post-  
21 deprivation remedy. Barnett v. Centoni, 31 F.3d 813, 816–17 (9th Cir. 1994) (citing Cal. Gov’t  
22 Code §§ 810–895) (“[A] negligent or intentional deprivation of a prisoner’s property fails to state  
23 a claim under section 1983 if the state has an adequate post deprivation remedy.”); see also  
24 Teahan v. Wilhelm, 481 F. Supp. 2d 1115, 1120 (S.D. Cal. 2007); Kemp v. Skolnik, No. 2:09-  
25 CV-02002-PMP, 2012 WL 366946, at \*6 (D. Nev. Feb. 3, 2012) (finding prisoner’s alleged loss  
26 or destruction of newspaper, magazines, and books failed to state a Fourteenth Amendment claim  
27 pursuant to Hudson and noting that “[i]f Plaintiff wishes to recoup the value of the alleged lost  
28 materials, he will have to file a claim in small claims court in state court.”).

1 Procedural due process is therefore satisfied if there is a meaningful post-deprivation  
2 remedy available to Plaintiff. Hudson, 468 U.S. at 533. Here, Plaintiff has an adequate post-  
3 deprivation remedy available under California law. Accordingly, Plaintiff fails to state a  
4 cognizable procedural due process claim for the alleged deprivation of his EIP funds.

5 **C. Substantive Due Process**

6 Plaintiff also fails to state a claim for violation of his substantive due process rights under  
7 the Fourteenth Amendment. “Substantive due process forbids the government from depriving a  
8 person of life, liberty, or property in such a way that shocks the conscience or interferes with the  
9 rights implicit in the concept of ordered liberty.” Donahoe v. Arpaio , 869 F.Supp.2d 1020, 1072  
10 (D. Arizona 2012) (quoting Corales v. Bennett, 567 F.3d 554, 568 (9th Cir. 2009) (internal  
11 citations and quotation marks omitted). “The protections of substantive due process have for the  
12 most part been accorded to matters relating to marriage, family, procreation, and the right to  
13 bodily integrity.” Id. (quoting Albright v. Oliver, 510 U.S. 266, 272, 114 S.Ct. 807, 127 L.Ed.2d  
14 114 (1994) (noting “claim to be free from prosecution except on the basis of probable cause is  
15 markedly different” from interests protected by substantive due process)). To state a claim for a  
16 substantive due process violation, Plaintiff must show that a challenged state action either  
17 “shocks the conscience” or arbitrarily deprives him of a fundamental right. United States v.  
18 Salerno, 481 U.S. 739, 746 (1987).

19 In reviewing the Complaint, the court finds that Plaintiff has not identified a single  
20 fundamental right implicated by the actions of the defendants, nor any action that “shocks the  
21 conscience.” Plaintiff’s claims here do not implicate any substantive due process right to the  
22 extent that it would support an independent claim for relief. See, e.g., Corales, 567 F.3d at 569-  
23 70.) (even if vice-principal lectured students regarding legal actions, called the students “dumb,  
24 dumb, and dumber,” told them they would have to pay a \$250 fine, that he was going to involve  
25 the police, and that they would go to juvenile hall, vice-principal’s conduct did not constitute a  
26 “true threat” or show conduct egregious enough to shock the conscience.)) Accordingly, Plaintiff  
27 fails to state a claim for substantive due process.

28 ///

1 **VI. ORDER, CONCLUSION, AND RECOMMENDATIONS**

2 **Order**

3 **IT IS HEREBY ORDERED** that the Clerk of Court randomly assign a United States  
4 District Judge to this case.

5 **AND**

6 **Conclusion and Recommendations**

7 For the reasons set forth above, the court finds that Plaintiff’s Complaint fails to state any  
8 claim and must be dismissed. Under Rule 15(a) of the Federal Rules of Civil Procedure, “[t]he  
9 court should freely give leave to amend when justice so requires.” “Dismissal without leave to  
10 amend is improper unless it is ‘clear’ that ‘the complaint could not be saved by any amendment.’”  
11 Harris v. Amgen, Inc., 573 F.3d 728, 737 (9th Cir. 2009) (quoting Lee v. City of Los Angeles,  
12 250 F.3d 668, 692 (9th Cir. 2001)). However, here, the court is persuaded that Plaintiff is unable  
13 to allege any additional facts, based upon the circumstances he challenges, that would state a  
14 cognizable claim under § 1983. “A district court may deny leave to amend when amendment  
15 would be futile.” Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013). The court finds that  
16 the deficiencies in Plaintiff’s claims outlined above are not capable of being cured by  
17 amendment, and therefore further leave to amend should not be granted. 28 U.S.C. §  
18 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

19 Accordingly, **IT IS HEREBY RECOMMENDED** that:

- 20 1. Plaintiff’s Complaint, filed on November 12, 2021, be dismissed for failure to  
21 state a claim under § 1983, without leave to amend; and  
22 2. The Clerk of Court be directed to close this case.

23 These findings and recommendations are submitted to the United States District Judge  
24 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**  
25 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file  
26 written objections with the court. Such a document should be captioned “Objections to  
27 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
28 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.

1 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
2 (9th Cir. 1991)).

3  
4 IT IS SO ORDERED.

5 Dated: January 6, 2022

/s/ Gary S. Austin  
6 UNITED STATES MAGISTRATE JUDGE