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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RODNEY WOMACK,

Plaintiff,

No. 2:12-cv-3110-WBS-EFB P

vs.

B. DONAHO, et al.,

Defendants.

FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION WITHOUT LEAVE  
TO AMEND FOR FAILURE TO STATE A  
CLAIM

\_\_\_\_\_/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. After a dismissal pursuant to 28 U.S.C. § 1915A, plaintiff has filed an amended complaint.

**I. Screening Requirement and Standards**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

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1 A *pro se* plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
2 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short  
3 and plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
4 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
5 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
6 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
7 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 129  
8 S. Ct. 1937, 1949 (2009).

9 To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
10 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
11 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
12 a cause of action, supported by mere conclusory statements do not suffice.” *Ashcroft v. Iqbal*,  
13 129 S. Ct. at 1949.

14 Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
15 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
16 content that allows the court to draw the reasonable inference that the defendant is liable for the  
17 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. When considering whether a complaint states a  
18 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
19 *Pardus*, 127 S. Ct. 2197, 2200 (2007), and construe the complaint in the light most favorable to  
20 the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

## 21 **II. Background**

22 According to the allegations in the original complaint (ECF No. 1), a correctional officer  
23 destroyed some of plaintiff’s personal property. In response, plaintiff filed administrative  
24 appeals with defendant Donahoo, the appeals coordinator. Donahoo allegedly cancelled the  
25 appeal as duplicative and provided plaintiff with erroneous information. Defendant Murray also  
26 allegedly failed to process plaintiff’s CDCR 22 request forms. Plaintiff claimed that his

1 complaints needed to be properly processed in order for him to file a small claims action based  
2 on the alleged destruction of his property. In addition, plaintiff named Warden Tim Virga as a  
3 defendant, but failed to include any allegations against him.

4 The court reviewed plaintiff's complaint pursuant to § 1915A and dismissed it with leave  
5 to amend because it did not state a cognizable claim. *See* ECF No. 8. In doing so, the court  
6 specifically informed plaintiff of the following requirements to keep in mind when drafting any  
7 amended complaint:

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
9 essential elements: (1) that a right secured by the Constitution or laws of the  
10 United States was violated, and (2) that the alleged violation was committed by a  
11 person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

12 An individual defendant is not liable on a civil rights claim unless the  
13 facts establish the defendant's personal involvement in the constitutional  
14 deprivation or a causal connection between the defendant's wrongful conduct and  
15 the alleged constitutional deprivation. *See Hansen v. Black*, 885 F.2d 642, 646  
16 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978). Plaintiff  
17 may not sue any official on the theory that the official is liable for the  
18 unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 129 S. Ct.  
19 1937, 1948 (2009). Rather, a plaintiff must plead that each defendant, through his  
20 own individual actions, has violated the Constitution. *Id.* It is plaintiff's  
21 responsibility to allege facts to state a plausible claim for relief. *Iqbal*, 129 S. Ct.  
22 at 1949; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

23 \* \* \*

24 Prisoners have a constitutional right of access to the courts. *Bounds v.*  
25 *Smith*, 430 U.S. 817, 828 (1977). Prisoners also have a right "to litigate claims  
26 challenging their sentences or the conditions of their confinement to conclusion  
without *active interference* by prison officials." *Silva v. Di Vittorio*, 658 F.3d  
1090, 1103 (9th Cir. 2011). An inmate alleging a violation of this right must  
show that he suffered an actual injury. *Lewis v. Casey*, 518 U.S. 343, 349-51  
(1996). That is, plaintiff must allege that the deprivation actually injured his  
litigation efforts, in that the defendant hindered his efforts to bring, or caused him  
to lose, an actionable claim challenging his criminal sentence or conditions of  
confinement. *See id.* at 351; *Christopher v. Harbury*, 536 U.S. 403, 412-15  
(2002).

There are no constitutional requirements regarding how a grievance  
system is operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003)  
(holding that prisoner's claimed loss of a liberty interest in the processing of his  
appeals does not violate due process because prisoners lack a separate  
constitutional entitlement to a specific prison grievance system). Thus, plaintiff  
may not impose liability on a defendant simply he or she played a role in

1 processing plaintiff's inmate appeals. *See Buckley v. Barlow*, 997 F.2d 494, 495  
2 (8th Cir. 1993) (an administrative "grievance procedure is a procedural right only,  
3 it does not confer any substantive right upon the inmates. Hence, it does not give  
4 rise to a protected liberty interest requiring the procedural protections envisioned  
5 by the fourteenth amendment. . . . Thus, defendants' failure to process any of  
6 Buckley's grievances, without more, is not actionable under section 1983."  
7 (internal quotations omitted)).

8 The Due Process Clause protects prisoners from being deprived of  
9 property without due process of law, *Wolff v. McDonnell*, 418 U.S. 539, 556  
10 (1974), and prisoners have a protected interest in their personal property, *Hansen*  
11 *v. May*, 502 F.2d 728, 730 (9th Cir. 1974). The United States Supreme Court has  
12 held, however, that "an unauthorized intentional deprivation of property by a state  
13 employee does not constitute a violation of the procedural requirements of the  
14 Due Process Clause of the Fourteenth Amendment if a meaningful  
15 postdeprivation remedy for the loss is available." *Hudson v. Palmer*, 468 U.S.  
16 517, 533 (1984). California provides an adequate postdeprivation remedy.  
17 *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (per curiam) ("[A]  
18 negligent or intentional deprivation of a prisoner's property fails to state a claim  
19 under section 1983 if the state has an adequate post deprivation remedy.").

20 ECF No. 8 at 3-5.

21 Now before the court is plaintiff's amended complaint. ECF No. 13.

### 22 **III. The Amended Complaint**

23 The allegations in the amended complaint do not materially differ from those in the  
24 original complaint. Once again, plaintiff fails to identify his intended claims for relief.  
25 However, the allegations indicate that plaintiff seeks redress for: (1) defendant McElroy's  
26 alleged destruction of his personal property; (2) defendant Murry's alleged failure to process his  
27 paperwork, thereby interfering with his ability to utilize the administrative appeals process, (3)  
28 defendant Donahoo's alleged failure to process his administrative appeal; and (4) defendant  
29 Warden Virga's alleged denial of his administrative appeal, and purported knowledge of the  
30 conduct of his subordinates.

31 The allegations in the amended complaint fail to cure the deficiencies or otherwise  
32 comply with the requirements set forth in the court's initial screening order. Plaintiff again fails  
33 to plead facts demonstrating that any defendant violated his federal rights. For the reasons stated  
34 in the initial screening order, the allegations regarding the deprivation of property and the

1 handling of his administrative appeals simply fail to state a cognizable claim for relief.

2 Moreover, plaintiff may not sue the warden on the theory that he is liable for the conduct of his  
3 subordinates.

4 Despite notice of the deficiencies in his allegations, and an opportunity to amend,  
5 plaintiff is unable to state a cognizable claim for relief. Therefore, this action must be dismissed  
6 without further leave to amend pursuant to 28 U.S.C. § 1915A. *Noll v. Carlson*, 809 F.2d 1446,  
7 1448 (9th Cir. 1987) (courts should provide a pro se plaintiff with an opportunity to amend after  
8 notifying the plaintiff of defects in the complaint); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir.  
9 2000) (“Under Ninth Circuit case law, district courts are only required to grant leave to amend if  
10 a complaint can possibly be saved. Courts are not required to grant leave to amend if a complaint  
11 lacks merit entirely.”)

12 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s amended complaint be  
13 dismissed for failure to state a claim and that the Clerk be directed to close this case.

14 These findings and recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
16 after being served with these findings and recommendations, any party may file written  
17 objections with the court and serve a copy on all parties. Such a document should be captioned  
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
19 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
20 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: August 13, 2013.

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23 EDMUND F. BRENNAN  
24 UNITED STATES MAGISTRATE JUDGE  
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