



1 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion  
2 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
3 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
4 relief.” *Id.* § 1915A(b).

5 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
6 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
7 plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
8 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
9 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
10 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
11 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556  
12 U.S. 662, 679 (2009).

13 To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
14 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
15 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
16 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at  
17 678.

18 Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
19 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
20 content that allows the court to draw the reasonable inference that the defendant is liable for the  
21 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a  
22 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
23 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the  
24 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

### 25 **III. Screening Order**

26 Plaintiff’s complaint (ECF No. 1) alleges that his legal property was wrapped in a  
27 bedsheet. He claims that officers Tran and Thompson claimed it was a “weight bag” and illegally  
28 confiscated it. When his legal property was not returned, plaintiff filed an appeal. Plaintiff

1 asserts that when the officers responded to the appeal, they lied and claimed that the bedsheet  
2 contained magazines. The complaint purports to assert claims of retaliation and conspiracy to  
3 obstruct justice. Having reviewed the complaint pursuant to § 1915A, the court finds that it must  
4 be dismissed with leave to amend for failure to state a claim.

5 Plaintiff fails to state a viable First Amendment retaliation claim because he has not  
6 alleged that a defendant took some adverse action against him because of his protected conduct,  
7 and that such action chilled the exercise of his First Amendment rights, and did not reasonably  
8 advance a legitimate correctional goal. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir.  
9 2005). If plaintiff intends to assert a retaliation claim, he must allege facts showing that  
10 defendants were aware of his prior engagement in protected conduct and that his protected  
11 conduct was “the ‘substantial’ or ‘motivating’ factor” behind their alleged misconduct. *Brodheim*  
12 *v. Cry*, 584 F.3d 1262, 1271 (9th Cir. 2009). Generally speaking, a retaliation claim cannot rest  
13 on the logical fallacy of *post hoc, ergo propter hoc*, literally, “after this, therefore because of  
14 this.” *See Huskey v. City of San Jose*, 204 F.3d 893, 899 (9th Cir. 2000).

15 Further, the complaint cannot support any claim based on a conspiracy, which requires  
16 allegations of specific facts showing that two or more persons intended to accomplish an unlawful  
17 objective of causing plaintiff harm and took some concerted action in furtherance thereof.  
18 *Gilbrook v. City of Westminster*, 177 F.3d 839, 856-57 (9th Cir. 1999); *Margolis v. Ryan*, 140  
19 F.3d 850, 853 (9th Cir. 1998) (to state claim for conspiracy under § 1983, plaintiff must allege  
20 facts showing an agreement among the alleged conspirators to deprive him of his rights); *Delew*  
21 *v. Wagner*, 143 F.3d 1219, 1223 (9th Cir. 1998) (to state claim for conspiracy under § 1983,  
22 plaintiff must allege at least facts from which such an agreement to deprive him of rights may be  
23 inferred); *Burns v. County of King*, 883 F.2d 819, 821 (9th Cir. 1989) (per curiam) (conclusory  
24 allegations of conspiracy insufficient to state a valid § 1983 claim); *Karim-Panahi v. Los Angeles*  
25 *Police Dep’t*, 839 F.2d 621, 626 (9th Cir. 1988).

26 Moreover, any due process claim predicated on the confiscation of plaintiff’s property  
27 fails because he has not alleged facts showing that he had no post deprivation process available to  
28 him. The Due Process Clause protects prisoners from being deprived of property without due

1 process of law, *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974), and prisoners have a protected  
2 interest in their personal property, *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974). The United  
3 States Supreme Court has held, however, that “an unauthorized intentional deprivation of  
4 property by a state employee does not constitute a violation of the procedural requirements of the  
5 Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the  
6 loss is available.”<sup>2</sup> *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). Here, California’s tort claim  
7 process provides an adequate postdeprivation remedy *Barnett v. Centoni*, 31 F.3d 813, 816-17  
8 (9th Cir. 1994) (per curiam) (“[A] negligent or intentional deprivation of a prisoner’s property  
9 fails to state a claim under section 1983 if the state has an adequate post deprivation remedy.”).  
10 Plaintiff cannot state a proper due process claim because California offers an adequate post  
11 deprivation remedy.

12 There are also no constitutional requirements regarding how a grievance system is  
13 operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that prisoner’s  
14 claimed loss of a liberty interest in the processing of his appeals does not violate due process  
15 because prisoners lack a separate constitutional entitlement to a specific prison grievance system).  
16 Thus, plaintiff may not impose liability on a defendant simply because he played a role in  
17 processing plaintiff’s appeals or because the appeals process was otherwise rendered unfair. *See*  
18 *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993) (an administrative “grievance procedure is a  
19 procedural right only, it does not confer any substantive right upon the inmates. Hence, it does  
20 not give rise to a protected liberty interest requiring the procedural protections envisioned by the  
21 fourteenth amendment.” (internal quotations omitted)). Simply characterizing as lies the reasons  
22 that were stated for denying plaintiff’s appeal does not circumvent this rule. Hence, plaintiff’s  
23 allegations here regarding the handling of his appeal fail to state a claim.

24 For these reasons, the complaint is dismissed. Plaintiff will be granted leave to file an  
25 amended complaint, if he can allege a cognizable legal theory against a proper defendant and  
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27 <sup>2</sup> A due process claim is not barred, however, where the deprivation is foreseeable and  
28 will occur, if at all, at a predictable point in time, such that the state can be reasonably expected to  
make pre-deprivation process available. *See Zinermon v. Burch*, 494 U.S. 113, 136-39 (1990).

1 sufficient facts in support of that cognizable legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-  
2 27 (9th Cir. 2000) (*en banc*) (district courts must afford pro se litigants an opportunity to amend  
3 to correct any deficiency in their complaints). Should plaintiff choose to file an amended  
4 complaint, the amended complaint shall clearly set forth the claims and allegations against each  
5 defendant. Any amended complaint must cure the deficiencies identified above and also adhere  
6 to the following requirements:

7 Any amended complaint must identify as a defendant only persons who personally  
8 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*  
9 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a  
10 constitutional right if he does an act, participates in another's act or omits to perform an act he is  
11 legally required to do that causes the alleged deprivation).

12 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

13 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*  
14 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

15 Any amended complaint must be written or typed so that it so that it is complete in itself  
16 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
17 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
18 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
19 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter  
20 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
21 1967)).

22 The court cautions plaintiff that failure to comply with the Federal Rules of Civil  
23 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.  
24 *See* E.D. Cal. L.R. 110.

#### 25 **IV. Summary of Order**

26 Accordingly, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted.

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2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the California Department of Corrections and Rehabilitation filed concurrently herewith.
3. The complaint is dismissed with leave to amend within 30 days. The complaint must bear the docket number assigned to this case and be titled "Amended Complaint." Failure to comply with this order will result in dismissal of this action for failure to prosecute. If plaintiff files an amended complaint stating a cognizable claim the court will proceed with service of process by the United States Marshal.

Dated: October 5, 2017.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE