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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONNIE CHEROKEE BROWN,
Plaintiff,
v.
E.F. CASTRILLO, et al.,
Defendants.

No. 2:19-cv-0248 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On March 28, 2019, the court screened plaintiff’s complaint as the court is required to do under 28 U.S.C. § 1915A(a). The court dismissed plaintiff’s complaint with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and

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1 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
2 U.S. 232, 236 (1974).

3 As plaintiff was informed when the court screened his original complaint, in order to
4 avoid dismissal for failure to state a claim a complaint must contain more than “naked
5 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
6 action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
7 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
8 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

9 In his amended complaint, as in his original, plaintiff complains about the deprivation of
10 personal property. Plaintiff alleges his property was taken unlawfully, but does not point to facts
11 indicating why the deprivation was unlawful. Plaintiff asserts his property was taken in
12 retaliation for something, but does not identify what had happened to cause the alleged retaliation.
13 Plaintiff does not even indicate how his property was taken, the reasons given for the deprivation,
14 nor does he specify who took his property. For these reasons, plaintiff’s claims are too vague and
15 conclusory to state a claim upon relief could be granted.

16 Further, when the court screened plaintiff’s original complaint, plaintiff was informed:

17 Generally speaking, “an unauthorized intentional deprivation of
18 property by a state employee” does not, by itself, amount to a
19 violation of federal law. See Hudson v. Palmer, 468 U.S. 517, 533
20 (1984). Only authorized, intentional deprivations constitute
21 actionable violations of the Due Process Clause. An authorized
deprivation is one carried out pursuant to established state
procedures, regulations, or statutes. Piatt v. McDougall, 773 F.2d
1032, 1036 (9th Cir. 1985).

22 Plaintiff does not allege, or point to facts suggesting, his property deprivation was “carried
23 out pursuant to established state procedures,” etc.

24 For these reasons, plaintiff again fails to state a claim upon which relief can be granted
25 with respect to deprivation of personal property. Considering the guidance given to plaintiff
26 following the dismissal of his original complaint as to the contents of the amended complaint,
27 granting plaintiff leave to amend a second time appears futile.

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1 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court
2 assign a district court judge to this case.

3 IT IS HEREBY RECOMMENDED that;

4 1. Plaintiff's amended complaint be dismissed for failure to state a claim upon which
5 relief can be granted; and

6 2. This case be closed.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, plaintiff may file written objections
10 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
11 and Recommendations." Plaintiff is advised that failure to file objections within the specified
12 time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
13 Cir. 1991).

14 Dated: September 5, 2019

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16 CAROLYN K. DELANEY
17 UNITED STATES MAGISTRATE JUDGE

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