

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4

5
6 SHANNON WHITE and CHARLIE
MILLION,

7 Plaintiffs,

8 v.

9 CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
10 et al.,

11 Defendants.

Case No. C 13-4969 KAW (PR)

ORDER OF DISMISSAL

12
13 Plaintiffs Shannon White and Charlie Million, state prisoners incarcerated at Salinas
14 Valley State Prison (“SVSP”), have filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983,
15 alleging violations of their constitutional rights by staff at SVSP. Plaintiffs have consented to the
16 jurisdiction of the undersigned United States Magistrate Judge over this action. However, only
17 Plaintiff White has filed a motion for leave to proceed *in forma pauperis* (“IFP”) with a completed
18 IFP application. His motion for leave to proceed IFP is granted in a separate order. Although
19 Plaintiff Million has received notice that he must file an IFP application by January 13, 2014 or
20 his case would be dismissed, he has not done so. Therefore, the claims brought in this case by
21 Plaintiff Million are dismissed without prejudice to filing in another case.¹ The Court now
22 addresses the claims asserted by Plaintiff White.

23 DISCUSSION

24 I. Standard of Review

25 A federal court must conduct a preliminary screening in any case in which a prisoner seeks
26 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.

27
28 ¹ Plaintiff Million’s claims pertain to the failure of Defendants to provide him with a heart healthy diet and the negligent hiring of individuals who have deprived him of a heart healthy diet.

1 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims
2 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek
3 monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se*
4 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
5 Cir. 1988).

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

10 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the
11 plaintiff can show that the defendant's actions both actually and proximately caused the
12 deprivation of a federally protected right. *Lemire v. California Dep't of Corrections &*
13 *Rehabilitation*, 726 F.3d 1062, 1074 (9th Cir. 2013); *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir.
14 1988); *Harris v. City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives
15 another of a constitutional right within the meaning of § 1983 if he does an affirmative act,
16 participates in another's affirmative act or omits to perform an act which he is legally required to
17 do, that causes the deprivation of which the plaintiff complains. *Leer*, 844 F.2d at 633. Under no
18 circumstances is there respondeat superior liability under § 1983. *Lemire*, 726 F.3d at 1074. Or,
19 in layman's terms, under no circumstances is there liability under § 1983 solely because one is
20 responsible for the actions or omissions of another. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
21 1989); *Ybarra v. Reno Thunderbird Mobile Home Village*, 723 F.2d 675, 680-81 (9th Cir. 1984).
22 A supervisor may be liable under § 1983 upon a showing of (1) personal involvement in the
23 constitutional deprivation or (2) a sufficient causal connection between the supervisor's wrongful
24 conduct and the constitutional violation. *Henry A. v. Willden*, 678 F.3d 991, 1003-04 (9th Cir.
25 2012). It is insufficient for a plaintiff only to allege that supervisors knew about the constitutional
26 violation and that they generally created policies and procedures that led to the violation, without
27 alleging "a specific policy" or "a specific event" instigated by them that led to the constitutional
28 violation. *Hydrick v. Hunter*, 669 F.3d 937, 942 (9th Cir. 2012).

1 II. Plaintiff's Claims

2 Plaintiff White alleges the following. On April 10, 2013, Plaintiff White submitted a
3 request for an interview regarding a "federal mandated transponder, and since Inmate Welfare
4 Funds is paying [sic] for Free Local Channels, then I should be ever [sic] to receive all 15
5 channels." He also requested that he be allowed to fundraise for more channels. He wants a
6 transponder so he can receive channels from Digital TV because he is paying for bad service
7 through DirecTV. He submitted more requests for interviews on this subject. On June 23, 2013,
8 Plaintiff White filed a class action staff complaint on this subject. The complaint was rejected
9 because inmates are not allowed to file group complaints. Plaintiff then filed a group appeal. This
10 was rejected on the ground that it was untimely.

11 Based on these allegations, Plaintiff White brings the following class action claims: (1) a
12 violation of First Amendment rights based upon the denial of Plaintiffs' rights to appeal and
13 petition the government for redress of grievances; (2) a violation of Fourteenth Amendment Due
14 Process rights based on the denial of Plaintiffs' rights to petition the government for redress of
15 grievances; and (3) negligence based on "hiring violent and mentally unstable persons."

16 A. Class Action Allegations

17 "[A] litigant appearing in propria persona has no authority to represent anyone other than
18 himself." *Russell v. United States*, 308 F.2d 78, 79 (9th Cir. 1962). The allegations pertaining to a
19 class action are dismissed because *pro se* prisoner-plaintiffs are not adequate class representatives
20 able to fairly represent and adequately protect the interests of a class. *See Oxendine v. Williams*,
21 509 F.2d 1405, 1407 (4th Cir. 1975).

22 B. Exhaustion

23 The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996)
24 ("PLRA") provides: "No action shall be brought with respect to prison conditions under [42
25 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other
26 correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C.
27 § 1997e(a). Exhaustion is mandatory and not left to the discretion of the district court. *Woodford*
28 *v. Ngo*, 548 U.S. 81, 84 (2006). Exhaustion is a prerequisite to all prisoner lawsuits concerning

1 prison life, whether such actions involve general conditions or particular episodes, whether they
2 allege excessive force or some other wrong, and even if they seek relief not available in grievance
3 proceedings, such as money damages. *Porter v. Nussle*, 534 U.S. 516, 524 (2002). All available
4 remedies must be exhausted; those remedies “need not meet federal standards, nor must they be
5 ‘plain, speedy, and effective.’” *Id.* (citation omitted). Because exhaustion under § 1997e(a) is an
6 affirmative defense, a complaint may be dismissed for failure to exhaust only if failure to exhaust
7 is obvious from the face of the complaint and/or any attached exhibits. *Wyatt v. Terhune*, 315
8 F.3d 1108, 1119-20 (9th Cir. 2003). The Court may dismiss a complaint for failure to exhaust
9 where the prisoner “conce[des] to nonexhaustion” and “no exception to exhaustion applies.” *Id.* at
10 1120.

11 Although Plaintiff White attaches documents to his complaint showing that he filed
12 administrative appeals regarding his television service, he does not attach administrative appeals
13 regarding the claims he asserts in his complaint, namely First and Fourteenth Amendment claims
14 based on the denial of the right to petition the government for redress of grievances. Thus, it
15 appears that these claims are not administratively exhausted. Ordinarily, dismissal for lack of
16 exhaustion would be with leave to amend. However, as discussed below, these claims are
17 dismissed for other reasons for which leave to amend is not appropriate.

18 C. Claims regarding Denial of Right to Appeal and to Redress Grievances

19 The failure to grant an inmate's appeal in the prison administrative appeal system does not
20 amount to a due process violation. There is no federal constitutional right to a prison
21 administrative appeal or grievance system for California inmates. *Ramirez v. Galaza*, 334 F.3d
22 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988); *Antonelli v.*
23 *Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996). The denial of an inmate appeal is not so severe a
24 change in condition as to implicate the Due Process Clause itself and the State of California has
25 not created a protected interest in an administrative appeal system in its prison. California's
26 regulations grant prisoners a purely procedural right: the right to have a prison appeal. *See* CAL.
27 CODE REGS. tit. 15, §§ 3084-3084.9 (2014). A provision that merely provides procedural
28 requirements, even if mandatory, cannot form the basis of a constitutionally cognizable liberty

1 interest. *See Smith v. Noonan*, 992 F.2d 987, 989 (9th Cir. 1993); *see also Antonelli*, 81 F.3d at
2 1430 (prison grievance procedure is procedural right that does not give rise to protected liberty
3 interest requiring procedural protections of Due Process Clause). As such, Plaintiff White has no
4 federal constitutional right to a properly functioning appeal system. An incorrect decision on an
5 administrative appeal or failure to process the appeal in a particular way does not amount to a
6 violation of his right to due process. Therefore, Plaintiff White’s due process claim based on the
7 denial of his appeals regarding adequate television stations is dismissed.

8 Under the First Amendment to the United States Constitution, prisoners have the right to
9 access to the courts and the right to petition the government for a redress of grievances. *Bounds v.*
10 *Smith*, 430 U.S. 817, 821 (1977). The right of meaningful access to the courts extends to
11 established prison grievance procedures. *Bradley v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995);
12 *accord Hines v. Gomez*, 853 F. Supp. 329, 331-32 (N.D. Cal. 1994). However, a cognizable First
13 Amendment claim requires that the plaintiff have standing, which requires that he have an actual
14 injury. *Blaisdell v. Frappiea*, 729 F.3d 1237, 1244 (9th Cir. 2013). “For there to be a judicially
15 cognizable injury, ‘the party before [the court] must seek a remedy for a personal and tangible
16 harm.’” *Id.* (citing *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013)). Under the First
17 Amendment, a prisoner has the right “to pursue legal redress for claims that have a reasonable
18 basis in law or fact.” *Silva v. Di Vittorio*, 658 F.3d 1090, 1103 (9th Cir. 2011).

19 Plaintiff White alleges that his right to petition the government for redress of grievances
20 was violated because his grievances regarding inadequate television stations were denied.
21 However, the Constitution does not protect access to television stations. The fact that Plaintiff’s
22 appeals regarding television stations were denied did not result in actual injury because he could
23 not have submitted a cognizable federal claim based on those appeals. Thus, Plaintiff’s First
24 Amendment claim must be dismissed because he fails to allege an actual injury.

25 Because the deficiencies regarding Plaintiff’s Fourteenth and First Amendment claims
26 would not be cured by the allegation of additional facts, dismissal is without leave to amend. *See*
27 *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532 (9th Cir. 2008) (leave to amend may be
28 denied if amendment would be futile); *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)

1 (amendment would be futile when complaint cannot be cured by allegation of other facts).

2 Plaintiff's claim must be dismissed for another reason. He names eleven defendants,
3 including Governor Edmund G. Brown, Jr., but he does not indicate how they violated his First
4 Amendment rights. As stated above, under § 1983, liability may be imposed on an individual
5 defendant only if the plaintiff can show that the defendant's actions both actually and proximately
6 caused the deprivation of a federally protected right. *Lemir*, 726 F.3d 1062, 1074 (9th Cir. 2013);
7 *Leer*, 844 F.2d at 634 (9th Cir. 1988). Under no circumstances is there liability under § 1983
8 solely because one is responsible for the actions or omissions of another. *Taylor*, 880 F.2d at
9 1045. Thus, Plaintiff's claim also must be dismissed because he does not allege how the
10 individuals he names have violated his First Amendment rights.

11 For all these reasons, Plaintiff's claims based on the redress of grievances are dismissed.
12 Dismissal is without leave to amend because amendment would be futile.

13 D. Negligence Based on Hiring Violent Persons

14 As the basis for this claim, Plaintiff White alleges, "Defendants, individually and in
15 concert with each other, have deprived Plaintiffs out [sic] of their constitutional rights by failing to
16 obey their own policies and procedures. The above-listed Defendants acted under pretense and
17 color of law . . . but Defendants' actions were beyond the scope of their jurisdiction and without
18 the authority of law. As a direct result of Defendants' negligence, Plaintiffs has [sic] been
19 damaged in the amount to be proven at trial." Comp. ¶ 71-73.

20 Although it is difficult to understand exactly what Plaintiff White is alleging in this claim,
21 it appears to relate back to his constitutional claims based on lack of access to adequate television
22 stations and is not about the "hiring of violent persons." As discussed above, Plaintiff White's
23 allegations of constitutional violations based on his lack of access to adequate television stations
24 fail to state cognizable claims. Therefore, Defendants' alleged failure to obey "policies and
25 procedures" regarding Plaintiff's access to television stations does not violate his constitutional
26 rights. Accordingly, this claim is not cognizable either as a constitutional claim or a negligence
27 claim and it is also dismissed without leave to amend.

28

1 CONCLUSION

2 For the foregoing reasons, the Court orders as follows:

3 1. Plaintiff Million's claims are dismissed without prejudice to filing in another complaint.

4 If Plaintiff Million files another complaint, he shall file a completed IFP application with it.

5 2. The class action allegations are dismissed.

6 3. Plaintiff White's claims are dismissed without leave to amend.

7 4. The Clerk of the Court shall enter a separate judgment and close the file.

8 IT IS SO ORDERED.

9
10 Dated: 4/2/14

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12 _____
13 KANDIS A. WESTMORE
14 UNITED STATES MAGISTRATE JUDGE