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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WILLIAM L. NIBLE,

Plaintiff,

v.

FINK et al.,

Defendants.

Case No.: 3:16-cv-02849-BAS-RBM

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE RE: GRANTING
DEFENDANT’S MOTION TO
DISMISS SECOND AMENDED
COMPLAINT**

[Doc. 62.]

I. INTRODUCTION

Defendant William G. Stratton (“Stratton”) has filed a Motion to Dismiss the Second Amended Complaint filed by Plaintiff William L. Nible (“Plaintiff”) on the grounds that it fails to state a claim upon which relief can be granted. (Doc. 62.) Plaintiff filed a document entitled “Plaintiff’s Brief in Opposition to Defendant G. Stratton’s Motion for Summary Judgment” (Doc. 69), which the Court has construed as an opposition (Doc. 70).

The matter was referred to the undersigned Judge for Report and Recommendation Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 72.1(c)(1)(d). After a thorough review of the pleadings, moving and opposition papers, this Court respectfully recommends the Motion be **GRANTED**.

II. FACTUAL ALLEGATIONS¹

1
2 Plaintiff alleges that on July 13, 2015, while incarcerated at Richard J. Donovan
3 Correctional Facility in San Diego, California (“RJD”), he received a package containing
4 a set of religious runes. (Doc. 46, at 4-5.) However, Defendant T. Fink (“Fink”), a prison
5 guard at Central Release and Receiving (the mail distribution center at RJD) opened the
6 package, inspected the contents, determined that the 25-piece rune set contained therein
7 violated the prison’s “religious property matrix,” and refused to release the rune set to
8 Plaintiff. (Doc. 46, at 5.) Fink’s rationale for denying Plaintiff the rune set was that “they
9 are made of stone,” and Plaintiff was only allowed five stones per the prison’s “religious
10 property matrix.” (*Id.*)

11 On September 27, 2015, Plaintiff submitted a CDCR-22 grievance form regarding
12 Fink’s confiscation of his rune set. (Doc. 46, at 6.) The grievance was rejected on
13 November 5, 2015, and Stratton made the determination that the grievance “did not meet
14 the requirement for assignment as a staff complaint².” (*Id.*, at 7.)

15 Plaintiff alleges that on August 4, 2015, a family member filed a citizen’s complaint
16 with the California Department of Corrections and Rehabilitation and received a response
17 from Stratton. (*Id.*) Stratton’s response stated that the rune set was confiscated because
18 rune symbols were “identified as being associated with a security threat group.” (*Id.*, at 7-
19 8.) Stratton allegedly came to this conclusion after an interview with Fink, although Fink
20 had initially stated that the rune set was confiscated due to size restrictions. (*Id.*, at 8.)

21 Plaintiff filed a Second Amended Complaint pursuant to 42 U.S.C. § 1983, claiming
22 that Stratton violated his constitutional right to due process, the Religious Land Use and
23 Institutionalized Persons Act (“RLUIPA”), the First Amendment, the Fourteenth

24
25
26 ¹ In a Report and Recommendation submitted by the undersigned on April 8, 2019, the Court set forth
27 detailed factual allegations contained in Plaintiff’s Second Amended Complaint but did not assess
28 Stratton’s liability. (Doc. 71.) As such, the Court will only address Plaintiff’s allegations against
Stratton and Stratton’s liability herein.

² Although the grievance was not classified as a “staff complaint,” it was still allegedly processed as a
grievance. (Doc. 46, at 7.)

1 Amendment Equal Protection Clause, and the Eighth Amendment prohibition against cruel
2 and unusual punishment. (Doc. 46, at 11-12.)

3 III. APPLICABLE STANDARD

4 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil
5 Procedure tests the legal sufficiency of the claims asserted in the complaint. Fed. R. Civ.
6 P. 12(b)(6); *Navarro v. Block*, 250 F. 3d 729, 932 (9th Cir. 2001). A claim may only be
7 dismissed if “it appears beyond doubt that the plaintiff can prove no set of facts in support
8 of his claim which would entitle him to relief.” *Id.* Although a complaint need not contain
9 detailed factual allegations, it must plead “enough facts to state a claim to relief that is
10 plausible on its face.” *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has
11 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
12 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
13 *Iqbal*, 556 U.S. 662, 678 (citing *Twombly*, 550 U.S. at 556). “Where a complaint pleads
14 facts that are merely consistent with a defendant’s liability, it stops short of the line between
15 possibility and plausibility of entitlement to relief.” *Id.*, at 678 (quoting *Twombly*, 550 U.S.
16 at 557) (internal quotations omitted).

17 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
18 requires more than labels and conclusions, and a formulaic recitation of the elements of a
19 cause of action will not do.” *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478
20 U.S. 265, 286 (1986) (alteration in original)). “In deciding such a motion, all material
21 allegations of the complaint are accepted as true, as well as all reasonable inferences to be
22 drawn from them.” *Navarro*, 250 F.3d at 932 (9th Cir. 2001) (citing *Cahill v. Liberty Mut.*
23 *Ins. Co.*, 80 F.3d 338 (9th Cir. 1996)). However, a court need not accept “legal
24 conclusions” as true. *Iqbal*, 556 U.S. at 678. Additionally, “to be entitled to the
25 presumption of truth, allegations in a complaint or counterclaim may not simply recite the
26 elements of a cause of action, but must contain sufficient allegations of underlying facts to
27 give fair notice and to enable the opposing party to defend itself effectively.” *Starr v. Baca*,
28 652 F.3d 1202, 1216 (9th Cir. 2011). The court may not assume that “the [plaintiff] can

1 prove facts [he or she] has not alleged or that defendants have violated the ... laws in ways
2 that have not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council*
3 *of Carpenters*, 459 U.S. 519, 526 (1983).

4 IV. DISCUSSION

5 **A. Plaintiff’s Due Process Cause of Action**

6 Stratton argues that the Second Amended Complaint fails to state a claim for a
7 violation of due process because Plaintiff has neither a liberty interest nor a substantive
8 right to the procedures involved, and therefore due process claims based on the denial of
9 or interference with a prisoner’s access to a prison grievance system are not cognizable.
10 (Doc. 62, at 3.) Stratton also argues that the negligent or intentional deprivation of a
11 prisoner’s property by a state employee does not constitute a violation of the Due Process
12 Clause if a meaningful post-deprivation remedy is available. (Doc. 62, at 7.)

13 Plaintiff responds that he is entitled to the grievance process established by
14 California Code of Regulations, Title 15, sections 3084.0 through 3084.9, and that
15 Stratton’s alleged failure to comply with that process constitutes a violation of the Due
16 Process Clause. (See Doc. 69, at 3-4.)

17 1. Alleged improper handling of grievances

18 As an initial matter, “inmates lack a separate constitutional entitlement to a specific
19 prison grievance procedure.” *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann*
20 *v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Additionally, inmates have no due process
21 rights regarding the proper handling of grievances. *Wise v. Washington State Department*
22 *of Corrections*, 244 Fed.Appx. 106, 108 (9th Cir. 2007). Furthermore, ruling against a
23 prisoner on an administrative appeal does not cause or contribute to the underlying
24 constitutional violation. (See *Riley v. Dunn*, No. 09-cv-8850-JFW (MLG), 2011 U.S. Dist.
25 LEXIS 119570, at *18-19 (C.D. Cal. Oct. 14, 2011). Therefore, a prisoner’s claim that a
26 prison official denied a grievance, without more, is not sufficient to state a claim for a
27 constitutional violation. *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993); see *Riley*,
28 No. CV 09-8850-JFW (MLG), at *18-19. Plaintiff claims that Stratton’s handling of his

1 grievance violates Title 15 of the California Code of Regulations. (Doc. 46, at 12.) The
2 improper handling of grievances is not a cognizable due process claim. *Wise*, 244
3 Fed.Appx. at 108. Therefore, insofar as Plaintiff’s due process claim is predicated on
4 Stratton’s alleged failure to comply with Title 15 of the California Code of Regulations or
5 the denial of Plaintiff’s appeal, Plaintiff fails to state a claim.

6 2. Alleged deprivation of Plaintiff’s due process rights

7 The Due Process Clause of the Fourteenth Amendment protects prisoners’ interests
8 in their personal property. *Hansen v. May*, 502 F.2d 728, 720 (9th Cir. 1974). However,
9 the Due Process Clause does not protect against all deprivations of property by the state; it
10 only protects against deprivations “without due process of law.” Const. Amend. XIV; *see*
11 *also Baker v. McCollan*, 443 U.S. 137, 145 (1979). Where the state must act quickly out
12 of necessity, or where providing pre-deprivation process may be impractical, a meaningful
13 post-deprivation process satisfies the Due Process Clause. *Parratt v. Taylor*, 451 U.S. 527,
14 538-539 (1981) (overruled on other grounds by *Daniels v. Williams*, 474 U.S. 327 (1998)).
15 Where a deprivation of property is caused by conduct pursuant to established state
16 procedure, post-deprivation remedies do not satisfy due process. *See Logan v. Zimmerman*
17 *Brush Co.*, 455 U.S. 422 (1982). On the other hand, an intentional but unauthorized, or
18 negligent deprivation of property by a state employee “does not constitute a violation of
19 the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a
20 meaningful post[-]deprivation remedy is available. For intentional, as for negligent
21 deprivations of property by state employees, the state’s action is not complete until and
22 unless it provides or refuses to provide a suitable post[-]deprivation remedy.” *Hudson v.*
23 *Palmer*, 468 U.S. 517, 533 (1984).

24 California provides adequate post-deprivation remedies. *Barnett v. Centoni*, 31 F.3d
25 813, 816–17 (9th Cir. 1994) (per curiam) (finding that prisoner had failed to state a due
26 process claim for deprivation of property because “California Law provides an adequate
27 post-deprivation remedy for any property deprivations. *See Cal. Gov’t Code §§ 810–895.*”)
28 *See also Teahan v. Wilhelm*, 481 F.Supp.2d 1115 (S.D. Cal. March 28, 2007). The fact that

1 the remedy available does not afford equivalent relief to that provided by 42 U.S.C. § 1983
2 does not render the remedy inadequate. *See Parratt*, 451 U.S. at 544. Procedural due
3 process does not guarantee a successful outcome, only that a deprivation be accompanied
4 by process. *See Donovan v. Ritchie*, 68 F.3d 14, 18 (1st Cir. 1995.)

5 Here, to the extent that Plaintiff's due process claim is based on Stratton's
6 involvement in the deprivation of his rune set, the Second Amended Complaint fails to
7 state a claim. Plaintiff alleges that Stratton was a prison administrator employed by the
8 CDCR as an administrator of citizen complaints filed against staff at RJD. (Doc. 46, at 3.)
9 Plaintiff alleges Stratton was charged with the task of processing citizens' complaints for
10 the warden. (Doc. 46, at 3.) Plaintiff alleges that on November 5, 2015, Stratton
11 determined Plaintiff's inmate appeal (log # RJD-15-02965) did not meet the requirement
12 for assignment as a staff complaint. (Doc. 46, at 7.) Finally, Plaintiff alleges that when a
13 family member filed a citizen's complaint with the CDCR on August 4, 2015, Stratton
14 responded with "false statements" that Plaintiff's rune set was confiscated because it
15 contained symbols associated with a security threat group. (Doc. 46, at 8.) Stratton
16 allegedly came to this conclusion after an interview with defendant Fink, even though Fink
17 allegedly never mentioned the security threat group association before that interview.
18 (Doc. 46, at 8.)

19 Plaintiff fails to sufficiently allege that Stratton was involved in the deprivation of
20 Plaintiff's rune set. Plaintiff claims Stratton only determined that Plaintiff's appeal did not
21 meet the requirements for assignment as a staff complaint, and responded to a citizen's
22 complaint filed by Plaintiff's family member. Even if Stratton made "false and misleading
23 statements" to Plaintiff's family member, Plaintiff has failed to plausibly allege that the
24 statement was "an affirmative act...that *cause[d]* the deprivation of which complaint is
25 made" *Preschooler II v. Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007).

26 Assuming *arguendo* that Stratton was involved in the alleged deprivation of
27 Plaintiff's rune set, Plaintiff still fails to state a claim against him for a violation of his due
28 process rights because the alleged deprivation was unauthorized, and California provides

1 adequate post-deprivation remedies. *See Hudson*, 468 U.S. at 533; *Barnett v. Centoni*, 31
2 F.3d 813 (9th Cir. 1997).

3 Plaintiff alleges that Defendants failed to comply with the California Department of
4 Corrections and Rehabilitation personal property matrix, which allowed Plaintiff to have
5 the rune set in question. (*See* Doc. 46, at 5.) The alleged failure to comply with the personal
6 property matrix is an explicit violation of the procedures dealing with inmates' personal
7 property. Thus, Plaintiff has alleged that the rune set was confiscated in violation of an
8 established state procedure.

9 As to whether an adequate post-deprivation remedy is available, the Ninth Circuit
10 held in *Barnett v. Centoni*, 31 F.3d 813 (9th Cir. 1997), that the state of California provides
11 an adequate post-deprivation remedy for property deprivations, in the form of the
12 California Government Claims Act. *See* Cal. Gov't. Code §§ 810, *et seq.*

13 The Second Amended Complaint alleges that the confiscation was unauthorized and
14 intentional; further, an adequate post-deprivation remedy is available. As such, the Second
15 Amended Complaint fails to state a claim for a violation of due process against Stratton.
16 Accordingly, it is respectfully recommended that the Court **GRANT** Stratton's Motion to
17 Dismiss as to Plaintiff's due process claim.

18 **B. The Remaining Causes of Action**

19 Stratton moves to dismiss Plaintiff's RLUIPA cause of action because a plaintiff
20 may not maintain an RLUIPA action against an individual government official in his
21 individual capacity, and because the Eleventh Amendment bars RLUIPA claims for
22 monetary damages against state employees acting in their official capacities. (Doc. 62, at
23 4-5.) Stratton also moves to dismiss Plaintiff's First Amendment claim, because Stratton
24 was not involved in the alleged constitutional deprivation and the allegations do not
25 constitute a substantial burden on Plaintiff's religious practice. (Doc. 62, at 6.) Finally,
26 Stratton moves to dismiss Plaintiff's Fourteenth Amendment Equal Protection cause of
27 action because Plaintiff has failed to allege that Stratton acted with a discriminatory intent.
28 (Doc. 62, at 6.)

1 Plaintiff submits no opposition to Stratton’s Motion as to these claims. Instead,
2 Plaintiff expressly consents to dismissal. (Doc. 69, at 5.) Plaintiff writes: “Argument
3 Number II, in Defendant’s Motion to Dismiss by G. Stratton [pertaining to the RLUIPA
4 claim], Plaintiff Will Concede ... Argument Number III, in Defendant’s Motion to Dismiss
5 by G. Stratton [pertaining to the First Amendment claim], Plaintiff Will Concede ...
6 Argument Number IV, in Defendant’s Motion to Dismiss by G. Stratton [pertaining to the
7 equal protection claim]³, Plaintiff Will Concede ... Argument Number V, in Defendant’s
8 Motion to Dismiss by G. Stratton [pertaining to the Eight Amendment claim], Plaintiff Will
9 Concede.” (Doc. 69, at 5.) Accordingly, it is respectfully recommended that the Court
10 **GRANT** Stratton’s Motion to Dismiss as to the RLUIPA, First Amendment, equal
11 protection, and Eighth Amendment claims.

12 **C. Leave to Amend**

13 As a general rule, courts freely grant leave to amend a complaint which has been
14 dismissed. Fed. R. Civ. P. 15(a); *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806
15 F.2d 1393, 1401 (9th Cir. 1986). “Leave [to amend] shall be freely given when justice so
16 requires.” Fed. R. Civ. P. 15(a). It “should be granted ‘if it appears at all possible that the
17 plaintiff can correct the defect.’” *Id.* (quoting *Breier v. N. Cal. Bowling Proprietors' Ass'n*,
18 316 F.2d 787, 789-90 (9th Cir. 1963)). However, “the Ninth Circuit has recognized that
19 plaintiffs do not enjoy unlimited opportunities to amend their complaints.” *Stone v. Conrad*
20 *Preby's*, 2013 WL 139939, at *2 (S.D. Cal. Jan.10, 2013) (citing *McHenry v. Renne*, 84
21 F.3d 1172, 1174 (9th Cir. 1996)). *See also Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.
22 2000) (“[A] district court should grant leave to amend ... unless it determines that the
23 pleading could not possibly be cured by the allegation of other facts.”).

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26 ³ Stratton combines Fourteenth Amendment procedural due process and equal protection arguments in
27 section “V” of his motion, but also makes due process arguments in section “I” of the motion. (*See* Doc.
28 62, at 6-10, 3-4.) Plaintiff concedes “Argument V,” but also makes due process arguments in section
“III” of his opposition. (*See* Doc. 69, at 3-4.) As such, Plaintiff has not conceded his Fourteenth
Amendment due process claim, and the Court has analyzed it *supra*.

1 Here, Plaintiff has not requested leave to amend the Second Amended Complaint,
2 and has expressly consented to the dismissal of the First Amendment, RLUIPA, Eighth
3 Amendment, and equal protection causes of action. (Doc. 69, at 5; *see generally* Doc. 69.)
4 Accordingly, as to those causes of action, it is respectfully recommended that leave to
5 amend be **DENIED**.

6 As to the due process cause of action, allowing Plaintiff to amend his Second
7 Amended Complaint would be futile. The crux of Plaintiff's claim is that prison guards at
8 RJD violated established state procedures when they confiscated his rune set. (Doc. 46, at
9 8-12.) Plaintiff has specifically alleged that Stratton violated Title 15 of the California
10 Code of Regulations. (*See* Doc. 46, at 5.) But, the unauthorized and intentional deprivation
11 of property in violation of established state procedure is not a constitutional violation when
12 adequate state post-deprivation remedies are available. And, California provides adequate
13 post-deprivation remedies. *Hudson*, 468 U.S. at 533; *Barnett*, 31 F.3d at 816-17.
14 Additional allegations will not change the state of the law. Therefore, leave to amend
15 would be futile. Accordingly, it is respectfully recommended that as to the due process
16 cause of action, leave to amend be **DENIED**.

17 **V. CONCLUSION**

18 The Court submits this Report and Recommendation to United States District Judge
19 Cynthia A. Bashant under 28 U.S.C. § 636(b)(1)(B) and Rule 72.1(c)(1)(d) of the Local
20 Civil Rules of the United States District Court for the Southern District of California. For
21 the reasons set forth above, **IT IS HEREBY RECOMMENDED** that the Court issue an
22 Order approving and adopting this Report and Recommendation, and directing that
23 Judgment be entered **GRANTING** Stratton's Motion to Dismiss **WITHOUT LEAVE TO**
24 **AMEND**.

25 **IT IS ORDERED** that no later than **30 days after submission of the order**, any
26 party to this action may file written objections with the Court and serve a copy on all
27 parties. The document should be captioned "Objections to Report and Recommendation."
28 **IT IS FURTHER ORDERED** that any reply to the objections shall be filed with the Court

1 and served on all parties no later than **30 days after filing of objections**. The parties are
2 advised that failure to file objections within the specified time may waive the right to raise
3 those objections on appeal of the Court's order. *See Turner v. Duncan*, 158 F.3d 445, 455
4 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th Cir. 1991).

5 **IT IS SO ORDERED.**

6 DATE: May 23, 2019

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11 HON. RUTH BERMUDEZ MONTENEGRO
12 UNITED STATES MAGISTRATE JUDGE
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