v. A	yeku et al	Doc. 9
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4	FILED IN THE U.S. DISTRICT COURT EASTERN DISTRICT OF WASHINGTON	
5	UNITED STATES DISTRICT COURT Oct 31, 2018	
6	EASTERN DISTRICT OF WASHINGTON	
7	THOMAS WILLIAM SINCLAIR	
8	RICHEY, NO: 4:18-CV-5095-RMP	
9	Plaintiff, ORDER DISMISSING CASE	
10	V.	
11	J AIYEKU, L. YOUNG and K. WALKER,	
12	Defendants.	
13		
14	BEFORE THE COURT is Plaintiff's First Amended Complaint, ECF No. 8.	
15	Plaintiff, a prisoner at the Washington State Reformatory, is proceeding pro se. He	
16	paid the \$400.00 filing fee to commence this action. ECF No. 4. Defendants have	
17	not been served.	
18	On July 31, 2018, the Court found that Plaintiff's only viable claim,	
19	interference with his First Amendment right to use derogatory language in a	
20	grievance, was already being litigated against Defendant Aiyeku, in cause number	
21	4:16-CV-5047-RMP, and was therefore subject to dismissal without prejudice as	
	ORDER DISMISSING CASE 1 Dockets.	Justia.com

duplicative under *Azia v. Burrows*, 976 F.2d 1158 (9th Cir. 1992). ECF No. 7 at 5 6. Plaintiff's retaliation and grievance processing claims failed to state a claim
 upon which relief may be granted. ECF No. 7 at 6.

4 Once again, Plaintiff seeks monetary damages claiming that, between May 5 2015 and June 2016, Defendants violated his right to petition for redress of 6 grievances (i.e., use abusive and derogatory language in grievances) and his right 7 to be protected from retaliation under the First Amendment. He states that on fifty 8 occasions (25 of which he is already litigating in 4:16-CV-5047-RMP), he sought 9 the investigation of alleged abuse and misconduct through the grievance process, and on each occasion the three named Defendants instructed him to rewrite the 10 11 grievance to remove language they determined was abusive and derogatory, without explaining which specific language was abusive and derogatory. ECF No. 12 13 8 at 5. Plaintiff contends that he consequently requested that the Defendants process the grievances "as is." He alleges that Defendants "retaliated" against him 14 by failing to process the grievances, thus allegedly depriving Plaintiff of the right 15 to petition for redress of grievances. 16

A Ninth Circuit panel, in an unpublished opinion regarding Plaintiff's
litigation in the Western District of Washington on similar grounds, clarified that
"in context in *Brodheim* the 'adverse regulatory action' language refers to some
additional punitive action or threat of punitive action over and above merely
refusing to accept the grievance." *Richey v. Dahne*, _____ Fed. Appx. ____, 2018 WL

1940242, at *6 (9th Cir. Apr. 25, 2018) (quoting *Brodheim v. Cry*, 584 F. 3d 1262,
 1270-71 (9th Cir. 2009)). Therefore, Plaintiff's assertion that failing to process
 grievances constitutes a retaliatory adverse action under *Rhodes v. Robinson*, 408
 F.3d 559, 567-68 (9th Cir. 2005), is misplaced. Liberally construing the First
 Amended Complaint in the light most favorable to Plaintiff, the Court finds that it
 fails to cure the deficiencies of the initial complaint.

Consequently, for the reasons set forth above and in the Court's prior Order,
IT IS ORDERED that the complaint is DISMISSED without prejudice as
duplicative and for failure to state a claim upon which relief may be granted.
Because this dismissal is not solely for the reasons enumerated in 28 U.S.C. §
1915(g), and based on this Court's reading of *Washington v. Los Angeles Cty. Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016), this dismissal will NOT count as a
"strike" pursuant to 28 U.S.C. § 1915(g).

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order, enter judgment for Defendants, provide a copy to Plaintiff at his last known address, and **close the file**.

DATED October 31, 2018.

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s/ Rosanna Malouf Peterson ROSANNA MALOUF PETERSON United States District Judge

ORDER DISMISSING CASE -- 3