

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 31, 2018

SEAN F. McAVOY, CLERK

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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 THOMAS WILLIAM SINCLAIR
8 RICHEY,

Plaintiff,

v.

9
10 J AIYEKU, L. YOUNG and K.
11 WALKER,

Defendants.
12

NO: 4:18-CV-5095-RMP

ORDER DISMISSING
CASE

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 Ayeku, in cause number
21 4:16-CV-5047-RMP, and was therefore subject to dismissal without prejudice as

ORDER DISMISSING CASE -- 1

1 duplicative under *Azia v. Burrows*, 976 F.2d 1158 (9th Cir. 1992). ECF No. 7 at 5-
2 6. Plaintiff's retaliation and grievance processing claims failed to state a claim
3 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,
10 and on each occasion the three named Defendants instructed him to rewrite the
11 grievance to remove language they determined was abusive and derogatory,
12 without explaining which specific language was abusive and derogatory. ECF No.
13 8 at 5. Plaintiff contends that he consequently requested that the Defendants
14 process the grievances "as is." He alleges that Defendants "retaliated" against him
15 by failing to process the grievances, thus allegedly depriving Plaintiff of the right
16 to petition for redress of grievances.

17 A Ninth Circuit panel, in an unpublished opinion regarding Plaintiff's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

