

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 26 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

CHARLES EDWARD ALLEN,

Plaintiff-Appellant,

v.

J. CARDENAS, Correctional Officer; et al.,

Defendants-Appellees.

Nos. 20-55788  
20-55789

D.C. Nos. 3:20-cv-00788-JAH-RBM  
3:19-cv-01610-JAH-RBB

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
John A. Houston, District Judge, Presiding

Submitted August 17, 2021\*\*

Before: SILVERMAN, CHRISTEN, and LEE, Circuit Judges.

California state prisoner Charles Edward Allen appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging violations of the First and Eighth Amendments arising from alleged retaliation by a correctional officer. We have jurisdiction under 28 U.S.C. § 1291. We review de

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

novo. *Byrd v. Maricopa County Bd. of Supervisors*, 845 F.3d 919, 922 (9th Cir. 2017) (dismissal under 28 U.S.C. § 1915A); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)). We affirm.

The district court properly dismissed Allen’s First Amendment claim because Allen failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be liberally construed, a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (elements of a First Amendment retaliation claim).

On appeal, Allen fails to address the district court’s dismissal of his Eighth Amendment claims and has therefore waived his challenge to the district court’s order regarding those claims. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“[W]e will not consider any claims that were not actually argued in appellant’s opening brief.”).

**AFFIRMED.**