

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 14 2026

FOR THE NINTH CIRCUIT

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

JOHN SCOTT MCCLINTOCK,

No. 23-15513

Plaintiff-Appellant,

D.C. No.

2:18-cv-00560-DAD-KJN

v.

T. COOPER, Sgt.; M. ARMENTA, Guard;
WINKLER, Guard; WHEELER, Guard; J.
CANTU, Guard; L. CANTU, Guard; B.
WALKER, Guard; M. ALLEN, Lieutenant,

MEMORANDUM*

Defendants-Appellees,

and

B. MCCLOUGHAN; JOE A. LIZARRAGA,
Warden; M. VOONG; C. WHITE; L.
OLIVAS,

Defendants.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted September 14, 2026**

* 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).

Before: O’SANNLAIN, SILVERMAN, and N.R. SMITH, Circuit Judges.

California state prisoner John McClintock appeals *pro se* from the district court’s grant of summary judgment and screening of his claims brought under 42 U.S.C. § 1983. We have jurisdiction under 28 U.S.C. § 1291. We review *de novo*. *Long v. Sugai*, 91 F.4th 1331, 1336 (9th Cir. 2024) (screening dismissal under 28 U.S.C. § 1915A); *Barnett v. Centoni*, 31 F.3d 813, 815 (9th Cir. 1994) (summary judgment). We may affirm on any ground supported by the record. *Opara v. Yellen*, 57 F.4th 709, 721 (9th Cir. 2023). We affirm.

I. Claim One

Claim One broadly alleged that Cooper, Armenta, Wheeler, J. Cantu, L. Cantu, and Winkler retaliated against McClintock for filing a grievance regarding his missing property and that Warden Lizarraga failed to take action in response. The district court properly dismissed this claim because McClintock failed to allege facts showing that defendants took any adverse action against him, or that Defendant Lizarraga “participated in or directed [any] violations, or knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (explaining the requirements for a supervisor to be liable for the constitutional violations of subordinates); *see Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (setting forth the requirements of a First Amendment retaliation claim in the prison context, including that state actor took some adverse

action against an inmate because of protected conduct).

II. Claim Two

The district court properly granted summary judgment for Cooper on Claim Two. This claim alleged that the defendants searched McClintock's cell in retaliation for his filing of grievances against them. The district court properly granted summary judgment for Cooper on Claim Two because McClintock failed to create a genuine dispute of material fact as to whether Cooper ordered the search or otherwise participated in any alleged violation. *See Taylor*, 880 F.2d at 1045.

The district court also properly granted summary judgment for L. Cantu on Claim Two because McClintock failed to raise a triable dispute as to whether he named L. Cantu in the original grievance, and therefore whether he exhausted administrative remedies. *Jones v. Bock*, 549 U.S. 199, 211, 218 (2007) (explaining that prisoners must exhaust administrative remedies consistent with prison policies and noting that "[t]he level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements . . . that define the boundaries of proper exhaustion.").

The district court *sua sponte* granted summary judgment on Claim Two as to Armenta, Winkler, Wheeler, and J. Cantu after construing the claim as alleging that Cooper directed them to conduct the retaliatory search. McClintock did not challenge that construction in the district court or on appeal. *See Wilcox v.*

Comm'r, 848 F.2d 1007, 1008 n.2 (9th Cir. 1988) (arguments not raised on appeal by pro se litigant deemed abandoned). Accordingly, because McClintock failed to present sufficient probative evidence that Cooper ordered the search, and never disputed the district court's construction of his allegations in Claim Two, the district court did not err in granting summary judgment as to these defendants.

III. Claims Three and Four

The district court properly dismissed Claims Three and Four. Claim Three alleged that defendants retaliated against him for filing a grievance, including by stomping on his hot pot, scattering his legal documents, and interfering with his mail. Claim Four alleged that defendants retaliated against him by placing an unstable inmate in his cell. Because McClintock's relevant grievances failed to put the prison on notice of these claims, he failed to exhaust administrative remedies and therefore summary judgment was proper. *See Sapp v. Kimbrell*, 623 F.3d 813, 824 (9th Cir. 2010) (explaining that to exhaust a claim, a prisoner must file a grievance that "puts the prison on adequate notice of the problem for which the prisoner seeks redress"); *see also Jones*, 549 U.S. at 211, 218.

IV. Claim Five

Finally, the district court properly granted summary judgment on Claim Five. McClintock alleged that Armenta and Cooper retaliated against him for filing a grievance by issuing a false "Counseling Only" rules-violation report. But

no published Ninth Circuit decision clearly establishes that issuing a “Counseling Only” report constitutes an adverse action sufficient to violate the First Amendment, and McClintock identifies none. Armenta and Cooper are therefore entitled to qualified immunity. *See Sampson v. County of Los Angeles*, 974 F.3d 1012, 1018 (9th Cir. 2020) (“[Q]ualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” (citations and internal quotation marks omitted)).

All pending motions are denied.

AFFIRMED.