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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Louis Kendall Avanzi,
Plaintiff,
vs.
State of Arizona, et al.,
Defendants.

No. CV 10-1103-PHX-RCB (LOA)

ORDER

Plaintiff Louis Kendall Avanzi, who is confined in the Arizona State Prison Complex-Eyman in Florence, Arizona, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. #1) and an Application to Proceed *In Forma Pauperis* (Doc. #4). The Court will dismiss the action.

I. Application to Proceed *In Forma Pauperis* and Filing Fee

Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). The statutory fee will be collected monthly in payments of 20% of the previous month's income each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

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1 **II. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief against
3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
6 be granted, or that seek monetary relief from a defendant who is immune from such relief.
7 28 U.S.C. § 1915A(b)(1), (2).

8 A pleading must contain a “short and plain statement of the claim *showing* that the
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
10 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
11 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
12 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
13 statements, do not suffice.” Id.

14 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
15 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
17 that allows the court to draw the reasonable inference that the defendant is liable for the
18 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
19 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
20 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
21 allegations may be consistent with a constitutional claim, a court must assess whether there
22 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

23 If the Court determines that a pleading could be cured by the allegation of other facts,
24 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
25 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court
26 should not, however, advise the litigant how to cure the defects. This type of advice “would
27 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,
28 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was

1 required to inform a litigant of deficiencies). Plaintiff’s Complaint will be dismissed for
2 failure to state a claim, without leave to amend because the defects cannot be corrected.

3 **III. Complaint**

4 In his three-count Complaint, Plaintiff sues the following Defendants: the State of
5 Arizona; the Arizona Department of Corrections; Correctional Officers II Mendes, Lopez,
6 and Noel; Correctional Officers III Monaghan and Dembickie; and Lieutenant Lee. In each
7 count, Plaintiff alleges a violation of his Fourteenth Amendment due process rights regarding
8 his property.

9 In Count One, he claims his personal property was lost because “Defendant (1)”¹
10 improperly handled and transported his personal property when he was relocated from one
11 unit to another. He claims that the property was improperly inventoried and secured and that
12 there was no routing or tracking paperwork.

13 In Count Two, Plaintiff contends that his personal property was lost, stolen, or
14 destroyed because “Defendants (2) and (3)”² improperly handled and transported his personal
15 property when he was relocated from one unit to another. He claims that the personal
16 property was lost, stolen, or destroyed because it was improperly inventoried and secured and
17 that there was no contraband seizure paperwork and no “supervisor’s review to [e]nsure a
18 proper inventory was conducted in the absence of [the] property owner.”

19 In Count Three, Plaintiff asserts that an “[o]riginal copyrighted crossword puzzle of
20 [his] design was snatched from [his] hand” by Defendant Noel, who gave it to Defendant
21 Lee, and that neither Defendant Noel nor Defendant Lee initiated contraband seizure
22 paperwork or gave Plaintiff a receipt for his puzzle. Plaintiff also claims that Defendant Lee
23 gave either the original or a facsimile of the puzzle to Defendant Dembickie, who would not
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25 ¹Although Defendant State of Arizona is listed on the caption as “Defendant (1),” it
26 appears that Plaintiff is referring to the first individual defendant—Defendant Mendes.

27 ²Although Defendants Arizona Department of Corrections and Mendes are listed on
28 the caption as “Defendants (2) and (3),” it appears that Plaintiff is referring to the second and
third individual defendants—Defendants Lopez and Monaghan.

1 return the puzzle to Plaintiff. Plaintiff asserts that the three Defendants claimed that
2 Plaintiff's puzzle was "not recognized by the Department as personal property."

3 In his Request for Relief, Plaintiff injunctive relief, monetary damages, and
4 reimbursement of his filing fees and court costs.

5 **IV. Failure to State a Claim**

6 **A. Improper Defendants**

7 The State of Arizona and Arizona Department of Corrections are not a proper
8 Defendants. Under the Eleventh Amendment to the Constitution of the United States, a state
9 or state agency may not be sued in federal court without its consent. Pennhurst State Sch.
10 & Hosp. v. Halderman, 465 U.S. 89, 100 (1984); Taylor v. List, 880 F.2d 1040, 1045 (9th
11 Cir. 1989). Furthermore, "a state is not a 'person' for purposes of section 1983. Likewise
12 'arms of the State' such as the Arizona Department of Corrections are not 'persons' under
13 section 1983." Gilbreath v. Cutter Biological, Inc., 931 F.2d 1320, 1327 (9th Cir. 1991)
14 (citation omitted). Therefore, the Court will dismiss Defendants State of Arizona and
15 Arizona Department of Corrections.

16 **B. Failure to State a Claim**

17 The Fourteenth Amendment "Due Process Clause is simply not implicated by a
18 *negligent* act of an official causing unintended loss of or injury to life, liberty, or property."
19 Daniels v. Williams, 474 U.S. 327, 328 (1986) (emphasis in original). Moreover, even
20 unauthorized and intentional deprivations of property do not constitute a violation of
21 procedural requirements of the Due Process Clause if a meaningful post-deprivation remedy
22 for the loss is available. Hudson v. Palmer, 468 U.S. 517, 533 (1984). Plaintiff has an
23 adequate post-deprivation remedy. See Howland v. State, 818 P.2d 1169, 1172-73 (Ariz.
24 App. 1991) (the prisoner failed to state a due process claim where Arizona law provided an
25 available state tort remedy to recover the value of his property). Thus, Plaintiff has failed to
26 state a claim in Count One, Two, or Three. The Court will dismiss Plaintiff's Complaint.

27 **IT IS ORDERED:**

28 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. #4) is **granted**.


1 (2) As required by the accompanying Order to the appropriate government agency,
2 Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing fee.

3 (3) The Complaint (Doc. #1) is **dismissed** for failure to state a claim pursuant to
4 28 U.S.C. § 1915A(b)(1), and the Clerk of Court must enter judgment accordingly.

5 (4) The Clerk of Court must make an entry on the docket stating that the dismissal
6 for failure to state a claim may count as a “strike” under 28 U.S.C. § 1915(g).

7 (5) The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.
8 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of this
9 decision would not be taken in good faith.

10 DATED this 23rd day of May, 2010.

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14 Robert C. Broomfield
15 Senior United States District Judge
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