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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BUCK BOSWELL,

CASE NO. 1:09-cv-00822-MJS (PC)

Plaintiff,

ORDER DISMISSING PLAINTIFF'S
COMPLAINT FOR FAILURE TO STATE A
COGNIZABLE CLAIM

v.

PEREZ, et al.,

(ECF No. 9)

Defendants.

_____ /

SCREENING ORDER

I. PROCEDURAL HISTORY

On May 12, 2009, Plaintiff Buck Boswell, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 5.)

The original complaint was screened and dismissed, with leave to amend, on March 11, 2010. (ECF No. 8.) Plaintiff's First Amended Complaint, filed March 25, 2010, is now before the Court for screening. (ECF No. 9.)

1 **II. SCREENING REQUIREMENT**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
5 raised claims that are legally “frivolous, malicious,” or that fail to state a claim upon which
6 relief may be granted, or that seek monetary relief from a defendant who is immune from
7 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion
8 thereof, that may have been paid, the court shall dismiss the case at any time if the court
9 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
10 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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13 Section 1983 “provides a cause of action for the ‘deprivation of any rights, privileges,
14 or immunities secured by the Constitution and laws’ of the United States.” Wilder v.
15 Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983
16 is not itself a source of substantive rights, but merely provides a method for vindicating
17 federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

18 **III. SUMMARY OF COMPLAINT**

19
20 The First Amended Complaint alleges Correctional Officer Perez deprived Plaintiff
21 of his property in violation of his Due Process rights.¹

22 Plaintiff alleges the following:

23 On February 27, 2009 Plaintiff was presented with a property inventory slip in
24 anticipation of his move to administrative segregation. Plaintiff noticed the property
25

26 ¹ K. Harrington, Warden, Kern Valley State Prison was named as a Defendant in Plaintiff’s
27 original Complaint but was omitted from the First Amended Complaint.

1 inventory slip was incorrect and informed the officer. Plaintiff refused to sign the slip and
2 asked that the mistake be corrected. (Compl. at 3.) The error was not fixed and Plaintiff
3 was moved without his belongings. (Id. at 3, 4.) Plaintiff repeatedly submitted appeals to
4 retrieve his property and has thus far been unsuccessful. (Id. at 4.)
5

6 **IV. ANALYSIS**

7 To state a claim under Section 1983, a plaintiff must allege two essential elements:
8 (1) that a right secured by the Constitution or laws of the United States was violated and
9 (2) that the alleged violation was committed by a person acting under the color of state law.
10 See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243,
11 1245 (9th Cir. 1987).
12

13 A complaint must contain “a short and plain statement of the claim showing that the
14 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
15 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
16 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
17 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
18 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
19 face.’” Id. Facial plausibility demands more than the mere possibility that a defendant
20 committed misconduct and, while factual allegations are accepted as true, legal
21 conclusions are not. Id. at 1949-50.
22

23 The Due Process Clause of the Fourteenth Amendment protects individuals
24 from state deprivations of life, liberty, or property without due process of law. With respect
25 to a prisoner's property, the United States Supreme Court has held that “an unauthorized
26 intentional deprivation of property” by a prison official constitutes a violation of due process
27

1 if a meaningful post-deprivation remedy for the loss is unavailable. Hudson v. Palmer, 468
2 U.S. 517, 533 (1984). If, however, a prison official merely acts negligently in losing a
3 prisoner's property, there is no due process violation. Daniels v. Williams, 474 U.S. 327,
4 328 (1986) (“[T]he Due Process Clause is simply not implicated by a negligent act of an
5 official causing unintended loss of or injury to life, liberty, or property.”)
6

7 Here, Plaintiff alleges that the Defendant incorrectly catalogued Plaintiff's property
8 and refused to correct the error. Because these allegations, if proven true, at most
9 demonstrate that Defendant Perez acted negligently with respect to Plaintiff's property,
10 Plaintiff's allegations fail to state a cognizable due process claim. Daniels, 474 U.S. at 328.
11

12 Even if it were assumed, for the sake of discussion, that Defendant Perez
13 intentionally deprived Plaintiff of his property without authority, Plaintiff's complaint still fails
14 to state a cognizable claim. Under Hudson, such actions would violate due process only
15 if a meaningful post-deprivation remedy for Plaintiff's loss were unavailable. Hudson, 468
16 U.S. at 533. As noted in the Court's prior Screening Order, Plaintiff has a meaningful
17 post-deprivation remedy. Plaintiff may file suit in state court pursuant to California
18 Government Code §§ 900, et seq., to seek recovery for a tort by a public employee.
19 Parratt v. Taylor, 451 U.S. 527, 539 (1981) (“[P]ost-deprivation remedies made available
20 by the State can satisfy the Due Process Clause.”); Arnold v. Williams, 2009 WL 3710522,
21 at *3 (E.D. Cal. Oct.28, 2009) (California Government Code §§ 900, et seq. provide a
22 sufficient post-deprivation remedy for the purposes of due process).
23

24 **IV. CONCLUSION AND ORDER**

25 Plaintiff's First Amended Complaint does not state a cognizable due process claim.

26 Accordingly, it is HEREBY ORDERED that this action be dismissed with prejudice
27

1 for failure to state a claim under Section 1983.

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3 IT IS SO ORDERED.

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5 Dated: September 26, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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