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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA  
9

10 HAROLD JENKINS,

Case No. 1:13-cv-00038-LJO-SKO PC

11 Plaintiff,

ORDER DISMISSING ACTION, WITH  
PREJUDICE, FOR FAILURE TO STATE A  
CLAIM UNDER SECTION 1983 AND  
DIRECTING CLERK OF COURT TO  
ENTER JUDGMENT

12 v.

13 R. DAVIS, et al.,

(Doc. 17)

14 Defendants.

15 ORDER THAT DISMISSAL IS SUBJECT  
16 TO 28 U.S.C. § 1915(G)  
17 \_\_\_\_\_/

18 **I. Screening Requirement and Standard**

19 Plaintiff Harold Jenkins, a state prisoner proceeding pro se and in forma pauperis, filed this  
20 civil rights action pursuant to 42 U.S.C. § 1983 on January 10, 2013. On October 15, 2013, the  
21 Court dismissed Plaintiff's complaint, with leave to amend, for failure to state a claim under  
22 section 1983. 28 U.S.C. § 1915A. Plaintiff filed an amended complaint on November 5, 2013.

23 The Court is required to screen complaints brought by prisoners seeking relief against a  
24 governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
25 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
26 legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that  
27 seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),  
28 (2). "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court

1 shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to  
2 state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the  
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
6 conclusory statements, do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937  
7 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and  
8 courts “are not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572  
9 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual  
10 allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678.

11 Under section 1983, Plaintiff must demonstrate that each defendant personally participated  
12 in the deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This  
13 requires the presentation of factual allegations sufficient to state a plausible claim for relief. *Iqbal*,  
14 556 U.S. at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The mere  
15 possibility of misconduct falls short of meeting this plausibility standard. *Iqbal*, 556 U.S. at 678;  
16 *Moss*, 572 F.3d at 969. However, prisoners proceeding pro se in civil rights actions are still  
17 entitled to have their pleadings liberally construed and to have any doubt resolved in their favor.  
18 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted).

## 19 **II. Discussion**

20 Plaintiff, who is currently incarcerated at Valley State Prison in Chowchilla, California,  
21 brings this action against Correctional Officer S. Escamilla for confiscating and destroying  
22 Plaintiff’s personal property. The event at issue occurred while Plaintiff was incarcerated at  
23 California State Prison-Corcoran.

24 The Due Process Clause protects prisoners from being deprived of property without due  
25 process of law, *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963 (1974), and prisoners have a  
26 protected interest in their personal property, *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974).  
27 However, while an authorized, intentional deprivation of property is actionable under the Due  
28 Process Clause, see *Hudson v. Palmer*, 468 U.S. 517, 532, n.13, 104 S.Ct. 3194 (1984) (citing

1 *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-36, 102 S.Ct. 1148 (1982)); *Quick v. Jones*,  
2 754 F.2d 1521, 1524 (9th Cir. 1985), “[a]n unauthorized intentional deprivation of property by a  
3 state employee does not constitute a violation of the procedural requirements of the Due Process  
4 Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is  
5 available,” *Hudson*, 468 U.S. at 533.<sup>1</sup>

6 Plaintiff’s amended complaint does not support a claim under section 1983 based on the  
7 authorized deprivation of his personal property without due process. *Nevada Dept. of Corrections*  
8 *v. Greene*, 648 F.3d 1014, 1019 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 1823 (2012). Plaintiff  
9 attempts to plead around the deficiencies identified in his original complaint by identifying the  
10 existence of procedures governing cell searches under Title 15 of the California Code of  
11 Regulations. (Doc. 17, Amend. Comp., 4:1-10.) However, the crux of Plaintiff’s claim is that  
12 Defendant Escamilla wrongfully and prematurely destroyed his personal property. (*Id.*, 4:12-28.)  
13 The unauthorized deprivation of property, be it negligent or intentional, does not give rise to a  
14 claim for relief under the Due Process Clause and Plaintiff’s claim fails as a matter of law.  
15 *Hudson*, 468 U.S. at 533.

16 **III. Conclusion and Order**

17 Plaintiff’s amended complaint fails to state a claim upon which relief may be granted under  
18 section 1983. Plaintiff was previously provided with an opportunity to amend and further leave to  
19 amend is not warranted in light of the deficiencies at issue. *Akhtar v. Mesa*, 698 F.3d 1202, 1212-  
20 13 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Noll v. Carlson*, 809 F.2d  
21 1446, 1448-49 (9th Cir. 1987).

22 Accordingly, this action is HEREBY ORDERED dismissed, with prejudice, for failure to  
23 state a claim under section 1983, and the Clerk of the Court shall enter judgment. This dismissal

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27 <sup>1</sup> California provides an adequate post-deprivation remedy. *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994)  
28 (citing Cal. Gov’t Code §§810-895).

1 is subject to the “three-strikes” provision set forth in 28 U.S.C. § 1915(g). *Silva v. Di Vittorio*, 658  
2 F.3d 1090, 1098-99 (9th Cir. 2011).

3  
4 IT IS SO ORDERED.

5 Dated: November 21, 2013

/s/ Lawrence J. O’Neill  
UNITED STATES DISTRICT JUDGE