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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ANTONIO LOPEZ-VALLE,

Plaintiff,

vs.

CALIF. CITY CORR. FACILITY,

Defendant.

1:13-cv-00338- AWI GSAPC

ORDER DISMISSING COMPLAINT AND  
GRANTING PLAINTIFF LEAVE TO FILE  
AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE  
IN THIRTY DAYS

**I. Screening Requirement**

Plaintiff is a federal prisoner proceeding pro se and in forma pauperis in this civil Rights action pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

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

1 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
2 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
3 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §  
4 1915(e)(2)(B)(ii).

5 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
6 exceptions,” none of which applies to section 1983 actions. Swierkewicz v. Sorema N.A., 534  
7 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a  
8 short and plain statement of the claim showing that the pleader is entitled to relief . . .” Fed.  
9 R.Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the  
10 plaintiff’s claim is and the grounds upon which it rests.” Swierkewicz, 534 U.S. at 512.  
11 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.”  
12 Nietze v. Williams, 490 U.S. 319, 330 n. 9 (1989). “[A] liberal interpretation of a civil rights  
13 complaint may not supply essential elements of the claim that were not initially pled.” Bruns v.  
14 Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9<sup>th</sup> Cir. 1997)(quoting Ivey v.Bd. of Regents,  
15 673 F.2d 266, 268 (9<sup>th</sup> Cir. 1982)).

16 **II. Plaintiff’s Claims**

17 Plaintiff, an inmate in the custody of the U.S. Bureau of Prisons at the Dalby  
18 Correctional Facility in Post, Texas, brings this civil rights action against the California City  
19 Correctional Facility, where Plaintiff was housed at the time of the events complained of.  
20 Plaintiff’s claim stems from the deliberate loss of his legal property.

21 Plaintiff alleges that on June 23, 2012, “while possessing legal material pertaining to his  
22 criminal case in the California City Correctional Facility,” his legal material was confiscated.  
23 Plaintiff alleges that after he was questioned by Correctional Officers, his material was  
24 confiscated. Plaintiff was transferred to his current facility without his materials.

25 Plaintiff does not specifically articulate his particular claim. Plaintiff does refer to a  
26 criminal case. To the extent that Plaintiff is seeking a challenge which could entitle him to an  
27 earlier release, his sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411  
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1 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 (9<sup>th</sup> Cir. 1990), cert. denied, 498 U.S. 1126  
2 (1991).

3 To the extent that Plaintiff is seeking to challenge the destruction of personal property,  
4 he is advised that while an authorized, intentional deprivation of property is actionable under  
5 the Due Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532, n.13 (1984)(citing Logan v.  
6 Zimmerman Brush Co., 455 U.S. 435-36 (1982)); Quick v. Jones, 754 F.2d 1521, 1524 (9<sup>th</sup> Cir.  
7 1985), “[a]n unauthorized intentional deprivation of property by a state employee does not  
8 constitute a violation of the procedural requirements of the Due Process Clause of the  
9 Fourteenth Amendment if a meaningful post-deprivation remedy for the loss is available.”  
10 Hudson, 468 U.S. at 533.

11 California law provides an adequate post-deprivation remedy for any property  
12 deprivations. See Ca. Gov’t Code §§ 810-895; Barnett v. Centoni, 31 F.3d 813, 816-17 (9<sup>th</sup>  
13 Cir. 1994). California’s Tort Claims Act requires that a tort claim against a public entity or its  
14 employees be presented to the California Victim Compensation and Government Claims Board,  
15 formerly known as the State Board of Control, no more than six months after the cause of  
16 action accrues. Cal. Gov’t Code §§ 905.2, 910, 911.2, 945.4, 950-950.2 (West 2006).  
17 Presentation of a written claim, and action on or rejection of the claim are conditions precedent  
18 to the suit. State v. Superior Court of Kings County Bodde, 32 Cal. 4<sup>th</sup> 1243, 1245 (2004);  
19 Mangold v. California Pub. Utils. Comm’n, 67 F.3d 1470, 1477 (9<sup>th</sup> Cir. 1995). To state a tort  
20 claim against a public employee, a plaintiff must allege compliance with the Tort Claims Act.  
21 State v. Superior Court, 32 Cal.4<sup>th</sup> at 1245; Mangold, 67 F.3d at 1477.

22 To the extent that Plaintiff alleges the confiscation of his property was unauthorized and  
23 intentional, Plaintiff’s remedy would be found under California law. Plaintiff fails to show  
24 compliance with the California Tort Claims Act, and therefore his property claim is not  
25 cognizable under federal or state law.

26 To the extent that Plaintiff is claiming that he was denied access to the courts, Plaintiff  
27 must allege some conduct on behalf of an individual that indicates Plaintiff suffered actual  
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1 injury. Supreme Court precedent a provides that all inmate claims for interference with access  
2 to the court include “actual injury” as an element. Casey v. Lewis, 518 U.S. 343 (1996).

3 To establish a violation, prisoner must show that his prison’s law library or legal  
4 assistance program frustrated or impeded his ability to pursue a nonfrivolous legal claim.  
5 Casey, supra, 518 U.S. 343, 347. The right of access does not require the State to “enable the  
6 prisoner to discover grievances” or to “litigate effectively once in court.” Plaintiff refers to a  
7 “criminal case.” The Court is unable to determine whether Plaintiff is referring to a prison  
8 disciplinary violation or his underlying criminal conviction. Plaintiff must clearly articulate  
9 what particular claim he was proceeding on.

10 Further, Plaintiff must identify individual defendants. Plaintiff simply alleges that  
11 “officers” confiscated his documents. In order to hold an individual defendant liable, Plaintiff  
12 must name the individual defendant, describe where that defendant is employed and in what  
13 capacity, and explain how that defendant acted under color of state law. Plaintiff should state  
14 clearly, in his own words, what happened. Plaintiff must describe what each defendant, *by*  
15 *name*, did to violate the particular right described by Plaintiff. Plaintiff has failed to do so  
16 here. The complaint must therefore be dismissed. Plaintiff will, however, be given leave to file  
17 an amended complaint that cures the deficiencies identified in this order.

### 18 **III. Conclusion**

19 The Court has screened Plaintiff’s complaint and finds that it does not state any claims  
20 upon which relief may be granted under section 1983. The Court will provide Plaintiff with the  
21 opportunity to file an amended complaint curing the deficiencies identified by the Court in this  
22 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9<sup>th</sup> Cir. 1987). Plaintiff is cautioned that he  
23 may not change the nature of this suit by adding new, unrelated claims in his amended  
24 complaint.

25 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what  
26 each named defendant did that led to the deprivation of Plaintiff’s constitutional or other  
27 federal rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the “[f]actual  
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1 allegations must be [sufficient] to raise a right to relief above the speculative level . . . .” Bell  
2 Atlantic v. Twombly, 550 U.S. 544, 554 (2007)(citations omitted).

3 Finally, Plaintiff is advised that an amended complaint supersedes the original  
4 complaint, Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9<sup>th</sup> Cir. 1997); King v. Atiyeh, 814  
5 F.2d 565, 567 (9<sup>th</sup> Cir. 1987), and must be “complete and in and of itself without reference to  
6 the prior or superseded pleading.” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of  
7 action alleged in an original complaint which are not alleged in an amended complaint are  
8 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814  
9 (9<sup>th</sup> Cir. 1981)).

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a  
12 claim;
- 13 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 14 3. Within **thirty** days from the date of service of this order, Plaintiff shall file an  
15 amended complaint;
- 16 4. Plaintiff may not add any new, unrelated claims to this action via his amended  
17 complaint and any attempt to do so will result in an order striking the amended complaint; and
- 18 5. If Plaintiff fails to file an amended complaint, the Court will dismiss this action,  
19 with prejudice, for failure to state a claim.

20 IT IS SO ORDERED.  
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22 Dated: March 17, 2015

/s/ Gary S. Austin  
23 UNITED STATES MAGISTRATE JUDGE  
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