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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAYMOND KELLEY,
Plaintiff,
v.
CPT. BREAKBILL, et al.,
Defendants.

Case No. 1:13-cv-01255-SKO (PC)
ORDER DISMISSING ACTION, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM UNDER SECTION 1983 AND
DIRECTING CLERK OF COURT TO
ENTER JUDGMENT
(Doc. 10)

I. Screening Requirement and Standard

Plaintiff Raymond Kelley (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 12, 2013. On May 9, 2014, the Court dismissed Plaintiff’s complaint, with leave to amend, for failure to state a claim. 28 U.S.C. § 1915A. Plaintiff filed an amended complaint on May 22, 2014.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an 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. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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

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

17 **II. Discussion**

18 In his amended complaint, Plaintiff seeks to impose liability against North Kern State
19 Prison staff members Captain Breakbill, Sergeant D. Rose, and Correctional Officer Brickwell
20 (“Defendants”) for losing his personal property, which was mailed to someone named Amber
21 Wilson on June 19, 2012. Plaintiff alleges that he does not know Amber Wilson, and he seeks
22 \$10,000.00 in damages for the loss of his property.

23 The Due Process Clause of the Fourteenth Amendment of the United States Constitution
24 protects prisoners from being deprived of property without due process of law, *Wolff v.*
25 *McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963 (1974), and prisoners have a protected interest in
26 their personal property, *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974). However, the Due
27 Process Clause is not violated by the random, unauthorized deprivation of property so long as the
28 state provides an adequate post-deprivation remedy. *Hudson v. Palmer*, 468 U.S. 517, 533, 104

1 S.Ct. 3194 (1984); *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Plaintiff has an
2 adequate post-deprivation remedy under California law and therefore, his allegation that
3 Defendants lost his personal property by mailing it to someone he does not know does not support
4 a claim under section 1983. *Barnett*, 31 F.3d at 816-17 (citing Cal. Gov't Code §§810-895).

5 **III. Conclusion and Order**

6 Plaintiff's amended complaint fails to state a claim upon which relief may be granted under
7 section 1983. The Court previously provided Plaintiff with an opportunity to amend and based on
8 the nature of the deficiencies at issue, further leave to amend would be futile. *Akhtar v. Mesa*, 698
9 F.3d 1202, 1212-13 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

10 Accordingly, this action is HEREBY DISMISSED, with prejudice, for failure to state a
11 claim upon which relief may be granted under section 1983, and the Clerk of the Court shall enter
12 judgment.

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IT IS SO ORDERED.

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Dated: June 2, 2014

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/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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