

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL JOHN McGLOTHIN,

Plaintiff,

v.

T. PEREZ, et al.,

Defendants.

Case No. 1:14-cv-00844-MJS (PC)

**ORDER DISMISSING ACTION WITH
PREJUDICE FOR FAILURE TO STATE
A CLAIM (ECF No. 14)**

**DISMISSAL COUNTS AS STRIKE
PURSUANT TO 28 USC § 1915(g)**

**CLERK TO TERMINATE ALL PENDING
MOTIONS AND CLOSE CASE**

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed on June 4, 2014 pursuant to 42 U.S.C. § 1983. He has consented to magistrate judge jurisdiction.

The Court dismissed Plaintiff's original Complaint (ECF No. 1) without prejudice for failure to state a claim. (ECF No. 9). His First Amended Complaint (ECF No. 14) is before the Court for screening.

I. SCREENING REQUIREMENT

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.

1 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
2 raised claims that are legally “frivolous, malicious,” or that fail to state a claim upon
3 which relief may be granted, or that seek monetary relief from a defendant who is
4 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

5 **II. PLEADING STANDARD**

6 Section 1983 “provides a cause of action for the deprivation of any rights,
7 privileges, or immunities secured by the Constitution and laws of the United States.”

8 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990), quoting 42 U.S.C. § 1983.

9 Section 1983 is not itself a source of substantive rights, but merely provides a method
10 for vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386,
11 393-94 (1989).
12

13 To state a claim under § 1983, a plaintiff must allege two essential elements: (1)
14 that a right secured by the Constitution or laws of the United States was violated and (2)
15 that the alleged violation was committed by a person acting under the color of state law.
16 See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cty., 811 F.2d 1243,
17 1245 (9th Cir. 1987).
18

19 A complaint must contain “a short and plain statement of the claim showing that
20 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
21 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
22 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
23 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
24

25 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim that is
26 plausible on its face.” Id. Facial plausibility demands more than the mere possibility that
27 a defendant committed misconduct and, while factual allegations are accepted as true,
28

1 legal conclusions are not. Id., at 667-68.

2 **III. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

3 Plaintiff names as Defendants: (1) Perez, Warden, Corcoran State Prison
4 (“CSP”), (2) Neal, Accountant, CSP, and (3) Slimp, Investigative Services Unit (“ISU”)
5 Officer, CSP.
6

7 Plaintiff claims that Defendants, on four occasions, allowed a third party to
8 fraudulently withdraw a total of \$1,932.18 from Plaintiff’s CSP inmate trust account. He
9 claims that several such withdrawals occurred after he put Defendants on notice of the
10 first unauthorized withdrawal.

11 Plaintiff also claims that Defendants improperly handled his related administrative
12 appeal(s) by canceling, rejecting and denying same.
13

14 Plaintiff seeks restitution of the money taken from his account

15 **IV. DISCUSSION**

16 Of the claims Plaintiff was given leave to amend in the first screening order,
17 Plaintiff has re-alleged only his due process claim in the amended complaint. (ECF No.
18 14, at 4). As the Court explained in its first screening order (ECF No. 9), “only the most
19 egregious official conduct” is sufficiently arbitrary to violate substantive due process,
20 Cty. of Sacramento v. Lewis, 523 U.S. 833, 846 (1998), and neither negligent nor
21 unauthorized intentional deprivations of property by state employees violate procedural
22 due process where there is an adequate post-deprivation remedy. Hudson v. Palmer,
23 468 U.S. 517, 533 (1984). Because the facts Plaintiff has set forth allege at most a
24 negligent deprivation of property, and because California’s post-deprivation remedies
25 are adequate, Plaintiff fails to state a cognizable due process claim. The court explains
26 its reasoning in more detail below.
27
28

1 **A. Substantive due process**

2 An individual’s right to substantive due process protects him against arbitrary
3 government action. Lewis, 523 U.S. at 846 (1998); Sylvia Landfield Tr. v. City of Los
4 Angeles, 729 F.3d 1189, 1195 (9th Cir. 2013); Bingue v. Prunchak, 512 F.3d 1169,
5 1173 (9th Cir. 2008). Both legislation and misconduct by an individual government
6 employee may violate substantive due process. Lewis, 523 U.S. at 846. Individual
7 misconduct must be “egregious,” however, to be unconstitutional, id., and the “alleged
8 deprivation must ‘shock the conscience and offend the community’s sense of fair play
9 and decency.’” Sylvia Landfield Tr., 729 F.3d at 1195 (quoting Marsh v. Cty. of San
10 Diego, 680 F.3d 1148, 1154 (9th Cir. 2012)(publication of toddler’s autopsy photos
11 could violate relatives’ due process rights)); see also, e.g., Porter v. Osborn, 546 F.3d
12 1131, 1141-1142 (9th Cir. 2008)(police officer’s fatal shooting of motorist during traffic
13 stop could violate due process); Tennison v. City and Cty. of San Francisco, 570 F.3d
14 1078, 1088-1089 (9th Cir. 2008)(due process violated where investigators withheld
15 exculpatory information, causing two innocent men to be incarcerated wrongfully for
16 thirteen years).

17 Here, Defendants’ alleged oversight, enabling a third party to withdraw money
18 fraudulently from Plaintiff’s trust account, is simply not comparable to the above cases.
19 Although perhaps worthy of criticism, Defendants’ alleged acts do not “shock the
20 conscience.” Therefore, Plaintiff fails to state a substantive due process claim.

21 **B. Procedural Due Process**

22 The Due Process Clause also guarantees “procedural fairness” and protects
23 prisoners from being deprived of property without due process of law. Wolff v.
24 McDonnell, 418 U.S. 539, 556 (1974). Prisoners have a protected interest in their
25
26
27
28

1 personal property, including “funds held in prison accounts. Thus, inmates are entitled
2 to due process with respect to any deprivation of this money”. Vance v. Barrett, 345
3 F.3d 1083, 1088 n.6 (9th Cir. 2003)(citing Reynolds v. Wagner, 128 F.3d 166, 179 (3d
4 Cir. 1997)).

5
6 Not every deprivation of a protected property interest, however, violates federal
7 procedural due process. Daniels v. Williams, 474 U.S. 327, 332 (1986)(affirming that the
8 Fourteenth Amendment is not “a font of tort law to be superimposed upon whatever
9 systems may already be administered by the States”); Hudson v. Palmer, 468 U.S. 517,
10 533 (1984). “Where a government official’s act causing injury to... property is merely
11 negligent, ‘no procedure for compensation is *constitutionally* required.” Daniels, 474
12 U.S. at 333 (citing Paratt v. Taylor, 451 U.S. 527, 548 (1981)(POWELL, J., concurring)).
13 Even an “unauthorized, intentional deprivation of property by a governmental employee”
14 does not violate procedural due process “if a meaningful post-deprivation remedy for the
15 loss is available.” Hudson, 468 U.S. at 533; Barnett v. Centoni, 31 F.3d 813, 816-817
16 (9th Cir. 1994).

17
18 There is an adequate post-deprivation remedy under California law. Blueford v.
19 Prunty, 108 F.3d 251, 256 (9th Cir. 1997); Barnett, 31 F.3d at 816-817. Where a
20 plaintiff seeks damages for the alleged negligent or wrongful conduct of a state
21 employee, he may file suit in state court under the California Tort Claims Act. CAL.
22 GOV’T. CODE §§ 810 *et seq.*; Barnett, 31 F.3d at 816-817. The Act requires plaintiffs
23 suing “for money or damages” to first present their claims to the Victim Compensation
24 and Government Claims Board. CAL. GOV’T. CODE § 945.4. Claim presentation may not
25 be required, however, for plaintiffs whose “property [was] lost and cannot be returned
26 due to the government’s own negligence” and who only seek “specific recovery of his
27
28

1 personal property or its value.” Escamilla v. CDCR, 141 Cal. App. 4th 498, 509-513
2 (Cal. Ct. App. 2006)(prisoner whose personal effects had been discarded by prison staff
3 was not required to present claim, even though he would be recovering value of
4 possessions, not possessions themselves); accord City of Stockton v. Super. Ct., 171
5 P.3d 20, 28-29 (Cal. 2007); Holt v. Kelly, 574 P.2d 441, 444 (Cal. 1978); Minsky v. City
6 of Los Angeles, 520 P.2d 726, 733 n. 14 (Cal. 1974). This latter category of plaintiffs
7 can seek redress directly by filing a petition for a writ of mandamus. See Escamilla, 141
8 Cal. App. 4th at 511-512.

9
10 Here, Plaintiff alleges that Defendants allowed a third party to make multiple
11 fraudulent withdrawals from his prison trust account. He also alleges that Defendants’
12 conduct was not authorized under CSP Operating Procedures. These allegations
13 establish, at most, negligence on the part of Defendants in allowing the withdrawals,
14 and thus do not state a procedural due process violation. Daniels, 474 U.S. at 330-331.
15 Even if authorization of the fraudulent withdrawals had been intentional, however, there
16 would still be no due process violation because Plaintiff has adequate redress under
17 California law. See Barnett, 31 F.3d at 816-817.

18 19 **C. Supplemental Jurisdiction over any Viable State Claims**

20 The court will not address the viability of Plaintiff's state tort claims, or whether,
21 under Escamilla, he would be exempt from the claim presentation requirement of the
22 Tort Claims Act, because the Court will not exercise supplemental jurisdiction over any
23 state law claim absent a cognizable federal claim. 28 U.S.C. § 1367(c)(3); Herman
24 Family Revocable Trust v. Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001); Brown v.
25 Lucky Stores, Inc., 246 F.3d 1182, 1189 (9th Cir. 2001). “When . . . the court dismisses
26 the federal claim leaving only state claims for resolution, the court should decline
27
28

1 jurisdiction over the state claims and dismiss them without prejudice.” Les Shockley
2 Racing v. National Hot Rod Ass'n, 884 F.2d 504, 509 (9th Cir. 1989).

3 Here, Plaintiff has failed to state a cognizable federal claim, so the court declines
4 to exercise jurisdiction over possible state claims.

5
6 **V. CONCLUSIONS AND ORDER**

7 Plaintiff’s first amended complaint fails to state a cognizable claim. He was
8 previously advised of pleading deficiencies and afforded the opportunity to correct them.
9 He failed to do so. No useful purpose would be served by once again pointing out the
10 deficiencies and giving another opportunity to correct them. Further leave to amend
11 would be futile and is denied.

12 Based on the foregoing, it is HEREBY ORDERED that:

- 13 1. Plaintiff’s First Amended Complaint (ECF No. 14) is DISMISSED for failure
14 to state a claim;
- 15 2. This action is DISMISSED WITH PREJUDICE for failure to state a claim;
16 dismissal shall count as a strike pursuant to 28 U.S.C. § 1915(g). Silva v.
17 Di Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and
- 18 3. Any and all pending motions shall be terminated and the Clerk of Court
19 shall CLOSE this case.
20
21

22
23 IT IS SO ORDERED.

24 Dated: March 3, 2015

25 /s/ Michael J. Seng
26 UNITED STATES MAGISTRATE JUDGE
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28