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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

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JOMAINE JONES,
Plaintiff,
v.
K. FRANKLIN,
Defendant.

Case No. 1:14-cv-01409 DLB PC
**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**
THIRY-DAY DEADLINE

Plaintiff Jomaine Jones (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff filed his complaint on September 10, 2014. He names K. Franklin as the sole Defendant.¹

A. SCREENING STANDARD

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. § 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

¹ Plaintiff consented to the jurisdiction of the United States Magistrate Judge on September 24, 2014.

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C.
2 § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the pleader
4 is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
5 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
6 do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly,
7 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to
8 ‘state a claim that is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 555). While factual
9 allegations are accepted as true, legal conclusions are not. Id.

10 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other
11 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092
12 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.
13 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or
14 omissions of each named defendant to a violation of his rights; there is no respondeat superior
15 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d
16 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);
17 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim
18 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
19 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.
20 at 678; Moss, 572 F.3d at 969.

21 **B. PLAINTIFF’S ALLEGATIONS**

22 Plaintiff is currently incarcerated at the California Substance Abuse Treatment Facility in
23 Corcoran, California, where the events at issue occurred.

24 Plaintiff alleges that on June 18, 2013, his former attorney mailed trial transcripts and other
25 court documents to Plaintiff. The documents were relevant to his criminal matter.

26 On September 1, 2013, Plaintiff filed an inmate appeal in an attempt to locate the documents.
27 Plaintiff explained to Defendant Franklin that he needed the documents to initiate a collateral attack
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1 on his conviction. Without the documents, Plaintiff contends that his claims are just speculation and
2 conjecture.

3 Defendant Franklin responded to Plaintiff's appeal, stating, "[T]here are no transcripts in the
4 mailroom. The mail and dates in question have been delivered to you and signed for attachments
5 provided." ECF No. 1, at 2. She further stated that she was unable to verify if the documents
6 actually arrived at the institution.

7 Plaintiff contends that his attorney indicated that he was sending him all of the files on June
8 18, 2014.² However, Plaintiff was not given the documents from Defendant Franklin or the
9 mailroom staff.

10 Based on these facts, Plaintiff alleges a violation of the First and Fourteenth Amendments.

11 **C. DISCUSSION**

12 1. First Amendment

13 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey, 518
14 U.S. 343, 346, 116 S.Ct. 2174 (1996); Silva v. DiVittorio, 658 F.3d 1090, 1101 (9th Cir. 2011);
15 Phillips v. Hust, 588 F.3d 652, 655 (9th Cir. 2009). However, to state a viable claim for relief,
16 Plaintiff must show that he suffered an actual injury, which requires "actual prejudice to
17 contemplated or existing litigation." Nevada Dep't of Corr. v. Greene, 648 F.3d 1014, 1018 (9th
18 Cir. 2011) (citing Lewis, 518 U.S. at 348) (internal quotation marks omitted), cert. denied, 132 S.Ct.
19 1823 (2012); Christopher v. Harbury, 536 U.S. 403, 415, 122 S.Ct. 2179 (2002); Lewis, 518 U.S. at
20 351; Phillips, 588 F.3d at 655.

21 Here, although Plaintiff mentions that the documents were necessary to challenge his
22 criminal conviction, he does not allege any actual injury.

23 Moreover, Plaintiff's allegation against Defendant Franklin is based on "information and
24 belief." He states, "[u]pon information and belief, Defendant Franklin acted with reckless disregard
25 towards Plaintiff when she maliciously discarded legal documents. . ." ECF No. 1, at 3. Such
26 speculative allegations, without factual support, are wholly inadequate to link Defendant to an
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² It is unclear whether "2014" is a typographical error, as the prior reference to June 18 was in 2013.

1 alleged violation. In fact, according to Plaintiff's allegations, Defendant Franklin looked for his
2 documents and responded accordingly.

3 Pro se litigants are entitled to have their pleadings liberally construed and to have any doubt
4 resolved in their favor, Wilhelm v. Rotman, 680 F.3d 1113, 1121-23 (9th Cir. 2012); Hebbe v. Pliler,
5 627 F.3d 338, 342 (9th Cir. 2010), but Plaintiff's claims must be facially plausible to survive
6 screening, which requires sufficient factual detail to allow the Court to reasonably infer that each
7 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678 (quotation marks
8 omitted); Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that
9 a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of
10 satisfying the plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572
11 F.3d at 969.

12 Plaintiff will be permitted to amend. In amending, he must demonstrate that he suffered an
13 actual injury, and that the injury was caused by Defendant Franklin. “[T]he ‘requisite causal
14 connection can be established not only by some kind of direct, personal participation in the
15 deprivation, but also by setting in motion a series of acts by others which the actor knows or
16 reasonably should know would cause others to inflict the constitutional injury.’” Hydrick v. Hunter,
17 500 F.3d 978, 988 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743-744 (9th Cir.
18 1978)).

19 2. Fourteenth Amendment

20 The Due Process Clause of the Fourteenth Amendment of the United States Constitution
21 protects Plaintiff from being deprived of property without due process of law, Wolff v. McDonnell,
22 418 U.S. 539, 556, 94 S.Ct. 2963 (1974), and Plaintiff has a protected interest in his personal
23 property, Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974). Authorized, intentional deprivations of
24 property are actionable under the Due Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532,
25 n.13, 104 S.Ct. 3194 (1984); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985), but the Due
26 Process Clause is violated only when the agency “prescribes and enforces forfeitures of property
27 without underlying statutory authority and competent procedural protections,” Nevada Dept. of
28 Corrections v. Greene, 648 F.3d 1014, 1019 (9th Cir. 2011) (citing Vance v. Barrett, 345 F.3d 1083,

1 1090 (9th Cir. 2003)) (internal quotations omitted), cert. denied, 132 S.Ct. 1823 (2012).

2 Plaintiff's claim of property loss is based on his speculative belief that Defendant
3 deliberately and maliciously deprived him of his property. Such deprivation would be an
4 unauthorized deprivation of property. However, the Due Process Clause is not violated by the
5 random, unauthorized deprivation of property so long as the state provides an adequate post-
6 deprivation remedy. Hudson, 468 U.S. at 533; Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir.
7 1994). Plaintiff has an adequate post-deprivation remedy under California law and therefore, he may
8 not pursue a due process claim arising out of the unlawful confiscation of his personal property.
9 Barnett, 31 F.3d at 816-17 (citing Cal. Gov't Code §§810-895).

10 Plaintiff will be permitted to amend this claim, but he should only amend if he can do so in
11 good faith.

12 **D. ORDER**

13 Plaintiff's complaint fails to state any claims for which relief may be granted. The Court will
14 provide Plaintiff with the opportunity to file an amended complaint. Akhtar v. Mesa, 698 F.3d 1202,
15 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809
16 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding new,
17 unrelated claims in his amended complaint. George, 507 F.3d at 607.

18 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
19 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, Iqbal, 556
20 U.S. at 676-77. Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a
21 right to relief above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations omitted).
22 Finally, an amended complaint supercedes the original complaint, Lacey v. Maricopa County, 693
23 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be "complete in itself without reference to
24 the prior or superceded pleading," Local Rule 220.

25 Accordingly, it is HEREBY ORDERED that:

26 1. Plaintiff's complaint is dismissed, with leave to amend;
27 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
28 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file an

1 amended complaint; and

2 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
3 action will be dismissed, with prejudice, for failure to state a claim under section 1983.

4 IT IS SO ORDERED.

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6 Dated: February 22, 2015

/s/ Dennis L. Beck
7 UNITED STATES MAGISTRATE JUDGE

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