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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

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| CLARENCE L. ROBERSON, |) | Case No.: 1:17-cv-00980-BAM (PC) |
| Plaintiff, |) | |
| v. |) | ORDER DIRECTING CLERK OF COURT TO |
| |) | RANDOMLY ASSIGN DISTRICT JUDGE |
| DR. PY NGUYEN, |) | FINDINGS AND RECOMMENDATIONS |
| Defendant. |) | REGARDING DISMISSAL OF ACTION FOR |
| |) | FAILURE TO STATE A CLAIM |
| |) | (ECF No. 1) |
| |) | |
| |) | FOURTEEN-DAY DEADLINE |
| |) | |

Plaintiff Clarence L. Roberson (“Plaintiff”), a state prisoner, proceeds pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint, filed on July 24, 2017, is currently before the Court for screening. (ECF No. 1.)

I. Screening Requirement and Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 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 pleader is
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell
5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). While a plaintiff’s
6 allegations are taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v.
7 Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
8 omitted).

9 To survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient
10 factual detail to allow the Court to reasonably infer that each named defendant is liable for the
11 misconduct alleged. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss v.
12 United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant
13 acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
14 plausibility standard. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss, 572
15 F.3d at 969.

16 **II. Plaintiff’s Allegations**

17 Plaintiff is currently housed at the California Health Care Facility in Stockton, California. The
18 complaint’s allegations concern events that transpired while he was housed at CSP-Corcoran. Plaintiff
19 names Dr. Py Nuygen as the sole defendant. Plaintiff forwards a property claim and alleges as
20 follows: “Psychogist Nuygen deliberately requested to review my personal art and personal written
21 book’s and decided to steal one of my completed books and a art drawing that was for my daughter.”
22 (ECF No. 1 at p. 3) (unedited text). Plaintiff contends that he was psychologically affected because he
23 never thought she would do that, and requests monetary damages in the amount of \$50,000. (Id. at pp.
24 3, 6.)

25 **III. Discussion**

26 **A. Deprivation of Property**

27 Plaintiff complains that his personal property was stolen by Defendant Nuygen. While an
28 authorized, intentional deprivation of property is actionable under the Due Process Clause, neither a

1 negligent nor intentional unauthorized deprivation of property by a prison official is actionable if a
2 meaningful post-deprivation remedy is available for the loss. Hudson v. Palmer, 468 U.S. 517, 533
3 (1984); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1984).

4 As Plaintiff alleges that his personal property was stolen by defendant, this is an unauthorized,
5 intentional deprivation. Due Process is therefore satisfied if there is a meaningful post-deprivation
6 remedy available to him. Hudson, 468 U.S. at 533. Plaintiff has an adequate post-deprivation remedy
7 available under California law. Barnett v. Centoni, 31 F.3d 813, 816–17 (9th Cir. 1994) (citing Cal.
8 Gov’t Code §§ 810–895). Accordingly, Plaintiff has failed to state a cognizable claim for the alleged
9 deprivation of his personal property. This deficiency cannot be cured by amendment.

10 **B. State Law Claims**

11 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
12 jurisdiction, the district court “shall have supplemental jurisdiction over all other claims in the action
13 within such original jurisdiction that they form part of the same case or controversy under Article III,”
14 except as provided in subsections (b) and (c). The Supreme Court has cautioned that “if the federal
15 claims are dismissed before trial, . . . the state claims should be dismissed as well.” United Mine
16 Workers of America v. Gibbs, 383 U.S. 715, 726 (1966). Although the court may exercise
17 supplemental jurisdiction over state law claims, Plaintiff must first have a cognizable claim for relief
18 under federal law. See 28 U.S.C. § 1367.

19 In this instance, Plaintiff fails to state a cognizable federal claim for relief under 42 U.S.C. §
20 1983. Liberally construing allegations in the complaint, Plaintiff may be able to pursue a state law
21 claim. However, as Plaintiff has failed to state any cognizable federal claims in this action, it is
22 recommended that the Court decline to exercise supplemental jurisdiction over Plaintiff’s state law
23 causes of action, and that Plaintiff’s state law claims be dismissed without prejudice. See 28 U.S.C. §
24 1367(c)(3).

25 **IV. Conclusion and Recommendation**

26 Plaintiff’s complaint fails to state a cognizable claim for relief. The deficiencies of Plaintiff’s
27 complaint cannot be cured by amendment, and thus leave to amend is not warranted. Lopez v. Smith,
28 203 F.3d 1122, 1130 (9th Cir. 2000).

1 Accordingly, the Court HEREBY DIRECTS the Clerk of the Court to randomly assign a
2 district judge to this action.

3 Further, the Court HEREBY RECOMMENDS that Plaintiff's federal claims be dismissed for
4 failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915(e) and 1915A
5 and that Plaintiff's state law claims be dismissed without prejudice.

6 These Findings and Recommendation will be submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
8 **days** after being served with these Findings and Recommendation, Plaintiff may file written objections
9 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
10 Recommendation." Plaintiff is advised that failure to file objections within the specified time may
11 result in the waiver of the "right to challenge the magistrate's factual findings" on appeal. Wilkerson
12 v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.
13 1991)).

14
15 IT IS SO ORDERED.

16 Dated: February 11, 2018

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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