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

ROGELIO MAY RUIZ,)	Case No. 1:17-cv-01454-DAD-SAB (PC)
)	
Plaintiff,)	
)	SCREENING ORDER GRANTING PLAINTIFF
v.)	LEAVE TO FILE AN AMENDED COMPLAINT
)	
J. CURRY,)	[ECF No. 1]
)	
Defendant.)	
)	
)	

Plaintiff Rogelio May Ruiz is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s complaint, filed on October 18, 2017.

**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. § 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 on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare

1 recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”
2 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555
3 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally participated in the
4 deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

5 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally
6 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121
7 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible,
8 which requires sufficient factual detail to allow the Court to reasonably infer that each named
9 defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,
10 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not
11 sufficient, and “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying
12 the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

13 II.

14 COMPLAINT ALLEGATIONS

15 A portion of Plaintiff’s complaint is written in Spanish. Plaintiff is advised that all federal
16 court filings must be in the English language. The Court cannot provide Plaintiff with translated
17 documents, nor will it translate his documents from Spanish to English. While Plaintiff submits that
18 he has difficulty with the English language, it is in the discretion of prison officials to best determine
19 how to ensure that “inmate with language problems have a reasonably adequate opportunity to file
20 nonfrivolous legal claims challenging their convictions or conditions of confinement.” Lewis v.
21 Carey, 518 U.S. 343, 356 (1996). Plaintiff should seek assistance at his institution for translation
22 services, and is not precluded from filing any motion for a reasonable extension of time to comply
23 with this order, if necessary.

24 In the portion of the complaint that is written in English, the Court will provide Plaintiff with
25 what appears to be the applicable legal standard for his claims and grant him leave to amend the
26 complaint.

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III.

DISCUSSION

A. Linkage under Section 1983

Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). "Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." Crowley v. Nevada ex rel. Nevada Sec'y of State, 678 F.3d 730, 734 (9th Cir. 2012) (citing Graham v. Connor, 490 U.S. 386, 393-94 (1989)) (internal quotation marks omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link, or causal connection, between each defendant's actions or omissions and a violation of his federal rights. Lemire v. California Dep't of Corr. and Rehab., 726 F.3d 1062, 1074-75 (9th Cir. 2013); Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

B. Loss of Personal Property

The Due Process Clause of the Fourteenth Amendment of the United States Constitution protects Plaintiff from being deprived of property without due process of law, Wolff v. McDonnell, 418 U.S. 539, 5563 (1974), and Plaintiff has a protected interest in his personal property, Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974). Authorized, intentional deprivations of property are actionable under the Due Process Clause. See Hudson v. Palmer, 468 U.S. 517, 532, n.13 (1984); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985). However, the Due Process Clause is not violated by the random, unauthorized deprivation of property so long as the state provides an adequate post-deprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533 (1984); Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994). Plaintiff has an adequate post-deprivation remedy under California law and therefore, he may not pursue a due process claim arising out of the unlawful confiscation of his personal property. Barnett, 31 F.3d at 816-17 (citing Cal. Gov't Code §§ 810-895).

In this instance, Plaintiff has alleged an unauthorized deprivation of his personal and legal property, and Plaintiff has an adequate post-deprivation remedy under California law and therefore, he may not pursue a due process claim arising out of the unlawful confiscation of his personal property.

1 Barnett, 31 F.3d at 816-17 (citing Cal. Gov't Code §§ 810-895). Accordingly, Plaintiff fails to state a
2 cognizable constitutional claim based on the alleged confiscation of his personal property.

3 **C. Access to the Courts**

4 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey, 518
5 U.S. 343, 346 (1996); Phillips v. Hust, 588 F.3d 652, 655 (9th Cir. 2009). The right of access to the
6 courts is merely the right to bring to court a grievance the inmate wishes to present, and is limited to
7 direct criminal appeals, habeas petitions, and civil rights actions. Lewis, 518 U.S. at 354. To bring a
8 claim, the plaintiff must have suffered an actual injury by being shut out of court. Christopher v.
9 Harbury, 536 U.S. 403, 415 (2002); Lewis, 518 U.S. at 351; Phillips, 588 F.3d at 655.

10 Plaintiff merely alleges that he has been denied access to the Court because his legal property
11 was confiscated. There are simply no allegations that Plaintiff suffered actual injury. Accordingly,
12 Plaintiff fails to state a cognizable claim for relief.

13 **D. Equal Protection**

14 The Equal Protection Clause requires that persons who are similarly situated be treated alike.
15 City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985); Hartmann v. California
16 Dep't of Corr. & Rehab., 707 F.3d 1114, 1123 (9th Cir. 2013); Furnace v. Sullivan, 705 F.3d 1021,
17 1030 (9th Cir. 2013); Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). To state a claim, Plaintiff
18 must show that Defendants intentionally discriminated against him based on his membership in a
19 protected class. Hartmann, 707 F.3d at 1123; Furnace, 705 F.3d at 1030; Serrano v. Francis, 345 F.3d
20 1071, 1082 (9th Cir. 2003); Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001).

21 **D. Appointment of Counsel**

22 In his complaint, Plaintiff seeks appointment of counsel because he is Spanish speaking and
23 does not understand or speak English.

24 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
25 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent
26 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern
27 District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court
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1 may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at
2 1525.

3 Without a reasonable method of securing and compensating counsel, the court will seek
4 volunteer counsel only in the most serious and exceptional cases. In determining whether
5 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the
6 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
7 legal issues involved.” Id. (internal quotation marks and citations omitted).

8 In the present case, the Court does not find the required exceptional circumstances. Even if it
9 assumed that Plaintiff is not well versed in the law and that he has made serious allegations which, if
10 proved, would entitle him to relief, his case is not exceptional. The record reflects that Plaintiff is able
11 to articulate his claims and for the most part has presented them in English. Circumstances common
12 to most prisoners, such as lack of legal education and limited law library access, do not establish
13 exceptional circumstances that would warrant a request for voluntary assistance of counsel.
14 Furthermore, at this early stage in the litigation, the Court cannot make any determination that Plaintiff
15 is likely to succeed on the merits. Therefore, the Court does not find exceptional circumstances to
16 warrant a search for voluntary counsel in this case.

17 For the foregoing reasons, Plaintiff’s motion for the appointment of counsel is **HEREBY**
18 **DENIED**, without prejudice.

19 **III.**

20 **CONCLUSION AND ORDER**

21 For the reasons discussed, Plaintiff shall be granted leave to file an amended complaint to cure
22 the deficiencies identified in this order. See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).
23 Any such first amended complaint shall not exceed **twenty-five (25) pages** in length, exclusive of
24 exhibits.

25 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what each
26 named defendant did that led to the deprivation of Plaintiff’s constitutional rights, Iqbal, 556 U.S. at
27 678-79. Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to
28 relief above the speculative level” Twombly, 550 U.S. at 555 (citations omitted). Further,

1 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended
2 complaint. George, 507 F.3d at 607 (no “buckshot” complaints). Finally, Plaintiff is advised that an
3 amended complaint supersedes the original complaint. Lacey v. Maricopa Cnty., 693 F.3d 896, 927
4 (9th Cir. 2012). Therefore, Plaintiff’s amended complaint must be “complete in itself without
5 reference to the prior or superseded pleading.” Local Rule 220.

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

- 7 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 8 2. Within thirty (30) days from the date of service of this order, Plaintiff shall file an
9 amended complaint; and
- 10 3. If Plaintiff fails to file an amended complaint in compliance with this order, the Court
11 will recommend to the district judge that this action be dismissed consistent with the
12 reasons stated in this order.

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14 IT IS SO ORDERED.

15 Dated: January 10, 2018



UNITED STATES MAGISTRATE JUDGE

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