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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,	)	
	)	FINDINGS AND RECOMMENDATIONS
v.	)	RECOMMENDING DISMISSAL OF ACTION
	)	FOR FAILURE TO STATE A COGNIZABLE
J. CURRY,	)	CLAIM FOR RELIEF
	)	
Defendant.	)	[ECF No. 13]
	)	
	)	

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 first amended complaint, filed March 2, 2018.

**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 On December 3, 2013, Plaintiff was arrested and placed in the hole. Defendant J. Curry lost all  
16 of Plaintiff’s property and falsified a property list with Plaintiff’s signature. When Plaintiff asked  
17 Curry for his property he stated he didn’t know where it was.

18 **III.**

19 **DISCUSSION**

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, 5563 (1974), and Plaintiff has a protected interest in his personal property, Hansen v.  
23 May, 502 F.2d 728, 730 (9th Cir. 1974). Authorized, intentional deprivations of property are  
24 actionable under the Due Process Clause. See Hudson v. Palmer, 468 U.S. 517, 532, n.13 (1984);  
25 Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985). However, the Due Process Clause is not violated  
26 by the random, unauthorized deprivation of property so long as the state provides an adequate post-  
27 deprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533 (1984); Barnett v. Centoni, 31 F.3d 813,  
28 816-17 (9th Cir. 1994). Plaintiff has an adequate post-deprivation remedy under California law and

1 therefore, he may not pursue a due process claim arising out of the unlawful confiscation of his  
2 personal property. Barnett, 31 F.3d at 816-17 (citing Cal. Gov't Code §§ 810-895). Thus, Plaintiff's  
3 property claim may be cognizable under state law, but such a claim must be brought in state court  
4 rather than in federal court.

5 As with Plaintiff original complaint, Plaintiff has alleged an unauthorized deprivation of his  
6 personal and legal property, and Plaintiff has an adequate post-deprivation remedy under California  
7 law and therefore, he may not pursue a due process claim arising out of the unlawful confiscation of  
8 his personal property. Barnett, 31 F.3d at 816-17 (citing Cal. Gov't Code §§ 810-895). Accordingly,  
9 Plaintiff fails to state a cognizable constitutional claim based on the alleged confiscation of his  
10 personal property.

#### 11 IV.

#### 12 RECOMMENDATION

13 Plaintiff was previously notified of the applicable legal standards and the deficiencies in his  
14 pleading, and despite guidance from the Court, Plaintiff's first amended complaint is largely identical  
15 to the original complaint. Based upon the allegations in Plaintiff's original and first amended  
16 complaint, the Court is persuaded that Plaintiff is unable to allege any additional facts that would  
17 support a claim for cruel and unusual punishment in violation of the Eighth Amendment, and further  
18 amendment would be futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district  
19 court may not deny leave to amend when amendment would be futile.") Based on the nature of the  
20 deficiencies at issue, the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203  
21 F.3d 1122, 1130 (9th. Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

22 Based on the foregoing, it is HEREBY RECOMMENDED that the instant action be dismissed  
23 for failure to state a cognizable claim for relief, without further leave to amend.

24 This Findings and Recommendation will be submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one (21)**  
26 **days** after being served with this Findings and Recommendation, the parties may file written  
27 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
28 Findings and Recommendation." The parties are advised that failure to file objections within the

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specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: March 8, 2018



UNITED STATES MAGISTRATE JUDGE