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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSEPH NEALE, JR.)	1:18-cv-00296-LJO-BAM (PC)
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING DISMISSAL OF ACTION
v.)	FOR FAILURE TO STATE A CLAIM
)	
STU SHERMAN, et al.,)	
)	(ECF No. 1)
Defendants.)	
)	FOURTEEN-DAY DEADLINE
)	
)	

I. Screening Requirement and Standard

Plaintiff Joseph Neale, Jr. (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint, filed on March 2, 2018, is currently before the Court for screening. (ECF No. 1.)

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).

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 recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937,
2 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-
3 65 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
4 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
5 (internal quotation marks and citation omitted).

6 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
7 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
8 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially
9 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
10 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949
11 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
12 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
13 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at
14 678, 129 S. Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

15 **II. Plaintiff’s Allegations**

16 Plaintiff is a state prisoner currently housed at the California Substance Abuse Treatment
17 Facility in Corcoran, California, where the events in the complaint are alleged to have occurred.
18 Plaintiff names the following defendants: (1) Warden Stu Sherman; (2) Chief Deputy Warden
19 Maurice Junious; and (3) Associate Warden – Housing K. Comaites.

20 Plaintiff claims that four large boxes of his personal and legal property were lost,
21 misplaced stolen, and/or discarded. Specifically, Plaintiff alleges that on March 13, 2008, after
22 being threatened by a cellmate, he was compelled to request a cell change. Plaintiff explains that
23 usually in such a circumstance an inmate is moved to a different cell within the General
24 Population, but Plaintiff was instead sent to Ad Seg, which allowed custody to confiscate all of
25 his property. In total, Plaintiff asserts that six large boxes of her legal and personal property
26 were seized. Several months later, when Plaintiff was released from Ad Seg, only two small
27 boxes of his personal property were returned to him. Plaintiff alleges that all of his legal
28 property, trial transcripts, discovery, ethnological and penological research data, his open letter

1 to the general American public about prison administration, management, and the treatment of
2 inmates, and his personal intellectual properties, etc., were never returned to him.

3 Plaintiff contends that he was emotionally, mentally, intellectually, psychologically and
4 physically devastated by the loss of all his legal and personal property. Plaintiff is asking the
5 Court to compel the California Department of Corrections and Rehabilitation to find and return
6 his property or to compensate him financially for its value in the amount of \$500,000.00.

7 **III. Discussion**

8 **A. Linkage Requirement**

9 The Civil Rights Act under which this action was filed provides:

10 Every person who, under color of [state law] ... subjects, or causes to be
11 subjected, any citizen of the United States ... to the deprivation of any rights,
12 privileges, or immunities secured by the Constitution ... shall be liable to the party
injured in an action at law, suit in equity, or other proper proceeding for redress.

13 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
14 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See
15 Monell v. Dep't of Soc. Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed.2d 611 (1978); Rizzo v.
16 Goode, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). The Ninth Circuit has held that “[a]
17 person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of
18 section 1983, if he does an affirmative act, participates in another’s affirmative acts, or omits to
19 perform an act which he is legally required to do that causes the deprivation of which complaint
20 is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

21 Plaintiff has failed to link Defendants Sherman, Junious and Comaites to any asserted
22 constitutional violation. There are no factual allegations naming any of these defendants or
23 otherwise suggesting that they deprived Plaintiff of any rights. Insofar as Plaintiff seeks to hold
24 these defendants liable based on their apparent supervisory roles, he may not do so. Liability
25 may not be imposed on supervisory personnel for the actions or omissions of their subordinates
26 under the theory of respondeat superior. Iqbal, 556 U.S. at 676– 77; Simmons v. Navajo Cty.,
27 Ariz., 609 F.3d 1011, 1020–21 (9th Cir. 2010); Ewing v. Cty. of Stockton, 588 F.3d 1218, 1235
28 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). “A supervisor may be

1 liable only if (1) he or she is personally involved in the constitutional deprivation, or (2) there is
2 a sufficient causal connection between the supervisor’s wrongful conduct and the constitutional
3 violation.” Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013). “Under the latter theory,
4 supervisory liability exists even without overt personal participation in the offensive act if
5 supervisory officials implement a policy so deficient that the policy itself is a repudiation of
6 constitutional rights and is the moving force of a constitutional violation.” Crowley, 734 F.3d at
7 977 (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)) (internal quotation marks
8 omitted).

9 Here, Plaintiff has not alleged personal participation by any the defendants in the asserted
10 violation of his rights. Plaintiff also has not alleged that the wrongful deprivation of his property
11 was based on a policy implemented by the supervisory officials that was so deficient that the
12 policy repudiated Plaintiff’s constitutional rights or was the moving force of any constitutional
13 violation.

14 **B. Deprivation of Property**

15 Prisoners have a protected interest in their personal property. Hansen v. May, 502 F.2d
16 728, 730 (9th Cir. 1974). An authorized, intentional deprivation of property is actionable under
17 the Due Process Clause; see Hudson v. Palmer, 468 U.S. 517, 532, n. 13, 104 S.Ct. 3194, 82
18 L.Ed.2d 393 (1984) (citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 435–36, 102 S.Ct.
19 1148, 71 L.Ed.2d 265 (1982)); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985), however,
20 “[a]n unauthorized intentional deprivation of property by a state employee does not constitute a
21 violation of the procedural requirements of the Due Process Clause of the Fourteenth
22 Amendment if a meaningful post-deprivation remedy for the loss is available,” Hudson, 468 U.S.
23 at 533.

24 Plaintiff alleges that custody wrongly dealt with his property resulting in its loss. Due
25 Process is therefore satisfied if there is a meaningful post-deprivation remedy available to him.
26 Hudson, 468 U.S. at 533. Plaintiff has an adequate post-deprivation remedy available under
27 California law. Barnett v. Centoni, 31 F.3d 813, 816–17 (9th Cir. 1994) (citing Cal. Gov’t Code
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1 §§ 810–895). Accordingly, Plaintiff has failed to state a cognizable claim for the alleged
2 deprivation of his personal property. This deficiency cannot be cured by amendment.

3 **C. Statute of Limitations**

4 In addition to the foregoing deficiencies, Plaintiff’s section 1983 action also appears to be
5 time-barred by the relevant statute of limitations. Section 1983 contains no specific statute of
6 limitations. Therefore, federal courts apply the forum state’s statute of limitations for personal
7 injury actions. Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004); Maldonado v. Harris, 370
8 F.3d 945, 954 (9th Cir. 2004); Fink v. Shedler, 192 F.3d 911, 914 (9th Cir. 1999). California’s
9 statute of limitations for personal injury actions is two years. Cal. Civ. Proc. Code § 335.1;
10 Jones, 393 F.3d at 927; Maldonado, 370 F.3d at 954–55. Federal law determines when a civil
11 rights claim accrues, and “[u]nder federal law, a claim accrues when the plaintiff knows or
12 should know of the injury that is the basis of the cause of action.” Douglas v. Noelle, 567 F.3d
13 1103, 1109 (9th Cir. 2009) (citation omitted); Maldonado, 370 F.3d at 955; Fink, 192 F.3d at
14 914.
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16 In actions where the federal court borrows the state statute of limitations, courts should
17 also borrow all applicable provisions for tolling the limitations found in state law. Jones, 393
18 F.3d at 927. Under California law, the two-year statute of limitations is tolled during the time a
19 prisoner pursues his administrative remedies, and is potentially tolled up to an additional two
20 years if Plaintiff is incarcerated for a term of less than life. Douglas, 567 F.3d at 1109 (“State law
21 governs the statute of limitations period for § 1983 suits and closely related questions of tolling.
22 Section 1983 claims are characterized as personal injury suits for statute of limitations purposes”
23 (citations omitted)); Brown v. Valoff, 422 F.3d 926, 943 (9th Cir. 2005) (“[T]he applicable
24 statute of limitations must be tolled while a prisoner completes the mandatory exhaustion
25 process.”); Cal. Civ. Proc. Code §§ 335.1, 352.1(a). California law also provides for equitable
26 tolling of the statute of limitations where a plaintiff meets three conditions: “(1) defendant must
27 have had timely notice of the claim; (2) defendant must not be prejudiced by being required to
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1 defend the otherwise barred claim; and (3) plaintiff's conduct must have been reasonable and in
2 good faith.” Fink, 192 F.3d at 916 (citation and quotation marks omitted); see also Addison v.
3 State of California, 21 Cal.3d 313, 319 (1978) (citations omitted).

4 Here, the face of the complaint suggests that Plaintiff’s federal claims are time-barred.
5 Plaintiff’s property was taken in March 2008, and while it is not clear when Plaintiff was
6 released from Administration Segregation, Plaintiff did not file this action until March 2018,
7 nearly 10 years after the asserted taking of his property. Even if the Court applied an additional
8 two-year tolling period due to his incarceration, Plaintiff’s claims likely would still be untimely,
9 having not been filed during the four-year period after the deprivation. Further, Plaintiff it is not
10 clear that Plaintiff would be entitled to equitable tolling. Assuming that Plaintiff learned of the
11 wrongful deprivation of property in 2008, the Court would be unable to conclude that Plaintiff’s
12 failure to timely pursue his claims was in any way reasonable or in good faith.

14 **IV. Conclusion and Recommendation**

15 Plaintiff’s complaint fails to state a cognizable claim upon which relief may be granted.
16 The deficiencies of Plaintiff’s cannot be cured by amendment. Accordingly, the Court finds that
17 leave to amend the complaint is not warranted. . Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.
18 2000).

19 Accordingly, for the reasons explained above, the Court HEREBY RECOMMENDS that
20 this action be dismissed, with prejudice, for the failure to state a claim upon which relief may be
21 granted.

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

5 Dated: May 29, 2018

6 /s/ Barbara A. McAuliffe
7 UNITED STATES MAGISTRATE JUDGE
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