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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RICHARD C. OREMUS,

No. CIV S-09-2734-MCE-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

CALIFORNIA HIGHWAY
PATROL, et al.,

Defendants.

_____/

Plaintiff, a state prisoner proceeding pro se, brings this civil action. Pending before the court is plaintiff's complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints

1 contain a “short and plain statement of the claim showing that the pleader is entitled to relief.”
2 Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly.
3 See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)).
4 These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim
5 and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996).
6 Because plaintiff must allege with at least some degree of particularity overt acts by specific
7 defendants which support the claims, vague and conclusory allegations fail to satisfy this
8 standard. Additionally, it is impossible for the court to conduct the screening required by law
9 when the allegations are vague and conclusory.

11 I. PLAINTIFF’S ALLEGATIONS

12 Plaintiff names the following as defendants: California Highway Patrol and
13 Rocklin Police Department. Plaintiff claims:

14 My vehicle was illegally impounded with a guise that it was being
15 taken for evidence. I placed numerous request to California
16 Highway Patrol and Rocklin Police Department to retrieve my
17 vehicle. But it was kept under false pretenses, and then my vehicle
18 is discarded by acting agencies. No protocol or procedure was
19 conducted with my vehicle under “provisions of evidence” (per CA
20 Evidence Code revised edition 2009” my vehicle was. I had family
21 attempt to retrieve my vehicle and due to negligence of these two
22 agencies my car was left to be vanished. I did my part in all aspect
23 to retrieve my property that was stolen by these two agencies!
24 Why was I subjected to prejudices [sic] and discrimination.

21 II. DISCUSSION

22 Plaintiff’s complaint suffers from two defects. First, Plaintiff only names two
23 agencies as defendants, no individuals are named as specifically responsible for the alleged
24 actions. Second, Plaintiff is claiming deprivation of property without due process, for which
25 there is an adequate state remedy.

26 ///

1 A. IMMUNITY (California Highway Patrol)

2 The Eleventh Amendment prohibits federal courts from hearing suits brought
3 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.
4 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
5 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep’t
6 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th
7 Cir. 1989). A state’s agency responsible for incarceration and correction of prisoners is a state
8 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782
9 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th cir. 1993) (en banc).

10 The Eleventh Amendment also bars actions seeking damages from state officials
11 acting in their official capacities. See Eaglesmith v. Ward, 73 F.3d 857, 859 (9th Cir. 1995);
12 Pena v. Gardner, 976 F.2d 469, 472 (9th Cir. 1992) (per curiam). The Eleventh Amendment
13 does not, however, bar suits against state officials acting in their personal capacities. See id.
14 Under the doctrine of Ex Parte Young, 209 U.S. 123 (1908), the Eleventh Amendment does not
15 bar suits for prospective declaratory or injunctive relief against state officials in their official
16 capacities. See Armstrong v. Wilson, 124 F.3d 1019, 1025 (9th Cir. 1997). The Eleventh
17 Amendment also does not bar suits against cities and counties. See Monell v. Dep’t of Soc.
18 Servs., 436 U.S. 658, 690 n.54 (1978).

19 Here, Plaintiff names the California Highway Patrol as a defendant. He does not
20 name any individual officers, but the agency itself as a defendant. However, the California
21 Highway Patrol is a state agency, thus protected from suit under the Eleventh Amendment. As
22 such, Plaintiff is unable to proceed with his claim against the California Highway Patrol.

23 B. MUNICIPAL LIABILITY (Rocklin Police Department)

24 Municipalities and other local government units are among those “persons” to
25 whom § 1983 liability applies. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978).
26 Counties and municipal government officials are also “persons” for purposes of § 1983. See id.

1 at 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local
2 government unit, however, may not be held responsible for the acts of its employees or officials
3 under a respondeat superior theory of liability. See Bd. of County Comm'rs v. Brown, 520 U.S.
4 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not
5 of the actions of its employees or officers. See id. To assert municipal liability, therefore, the
6 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or
7 custom of the municipality. See id. A claim of municipal liability under § 1983 is sufficient to
8 withstand dismissal even if it is based on nothing more than bare allegations that an individual
9 defendant's conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los
10 Angeles Police Dep't, 839 F.2d 621, 624 (9th Cir. 1988).

11 Here, Plaintiff claims his vehicle was impounded and disposed of without
12 following proper procedures. There are no allegations that any specific individual was
13 responsible for the actions taken, nor that the actions taken were the result of a policy or custom
14 of the Rocklin Police Department. However, even if Plaintiff was granted leave to file an
15 amended complaint on this basis, as discussed below his claims suffer additional defects.

16 C. DUE PROCESS

17 Where a prisoner alleges the deprivation of a liberty or property interest caused by
18 the unauthorized action of a prison official, there is no claim cognizable under 42 U.S.C. § 1983
19 if the state provides an adequate post-deprivation remedy. See Zinermon v. Burch, 494 U.S. 113,
20 129-32 (1990); Hudson v. Palmer, 468 U.S. 517, 533 (1984). A state's post-deprivation remedy
21 may be adequate even though it does not provide relief identical to that available under § 1983.
22 See Hudson, 468 U.S. at 531 n.11. An available state common law tort claim procedure to
23 recover the value of property is an adequate remedy. See Zinermon, 494 U.S. at 128-29.

24 Here, Plaintiff alleges he was deprived of his property by either a negligent or
25 deliberate act by one or both of the law enforcement agencies in failing to follow proper protocol.
26 At best, Plaintiff is claiming that he was denied due process by an unauthorized action of some

1 unknown individual. However, there is no indication that the state does not provide an adequate
2 post-deprivation remedy for this situation. As such, Plaintiff cannot state a cognizable claim
3 under § 1983.¹

4
5 **III. CONCLUSION**

6 Because it does not appear possible that the deficiencies identified herein can be
7 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
8 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

9 Based on the foregoing, the undersigned recommends that Plaintiff's complaint be
10 dismissed for failure to state a claim for which relief can be granted.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
13 after being served with these findings and recommendations, any party may file written
14 objections with the court. Responses to objections shall be filed within 14 days after service of
15 objections. Failure to file objections within the specified time may waive the right to appeal.
16 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17
18 DATED: July 14, 2010

19 
20 **CRAIG M. KELLISON**
21 UNITED STATES MAGISTRATE JUDGE

22
23 _____
24 ¹ In fact, presumably in accordance with the state's procedure, Plaintiff filed a
25 request for compensation. He even attaches to his complaint a copy of his claim for the loss of
26 property he filed with the Government Claims Program. That claim was apparently denied as a
late filed claim. Plaintiff has also filed a request in this court for relief of the deadline in which
to file a claim. However, this court does not have the ability to grant such a request. Plaintiff
would have to file such a request with the state.