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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 PATRICK A. MARTINEZ,

No. 2:14-cv-2473-EFB P

12 Plaintiff,

13 v.

ORDER GRANTING IFP AND DISMISSING
ACTION FOR FAILURE TO STATE A
CLAIM PURSUANT TO 28 U.S.C. § 1915A

14 CALIFORNIA DEPARTMENT OF
15 CORRECTIONS AND
REHABILITATION,

16 Defendant.
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18 Plaintiff is a state prisoner proceeding without counsel in a civil action.¹ In addition to
19 filing a complaint, plaintiff seeks leave to proceed in forma pauperis.

20 **I. Request to Proceed In Forma Pauperis**

21 Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2).
22 Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect
23 and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.
24 § 1915(b)(1) and (2).

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27 ¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C.
28 § 636(b)(1) and is before the undersigned pursuant to plaintiff's consent. *See* E.D. Cal. Local
Rules, Appx. A, at (k)(4).

II. Screening Requirement and Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)). While the complaint must comply with the “short and plain statement” requirements of Rule 8, its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at 678.

Furthermore, a claim upon which the court can grant relief must have facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

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1 **III. Screening Order**

2 The court has reviewed plaintiff’s complaint pursuant to § 1915A and finds it must be
3 dismissed for lack of jurisdiction and/or for failure to state a claim. Through the instant action,
4 plaintiff seeks \$60 to compensate for the loss of a radio that was allegedly destroyed by a CDCR
5 employee. *See* ECF No. 1.

6 A federal court is a court of limited jurisdiction, and may adjudicate only those cases
7 authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S.
8 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332, confer
9 “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction requires
10 that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a “case or
11 controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be authorized
12 by a federal statute that both regulates a specific subject matter and confers federal jurisdiction.
13 *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity jurisdiction, a plaintiff
14 must specifically allege the diverse citizenship of all parties, and that the matter in controversy
15 exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World Airlines, Inc.*, 828 F.2d
16 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction of the federal courts
17 unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of subject matter jurisdiction
18 may be raised at any time by either party or by the court. *Attorneys Trust v. Videotape Computer*
19 *Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

20 Plaintiff’s complaint does not contain allegations related to this court’s subject matter
21 jurisdiction. It reveals, however, that there is no diversity of citizenship and that the amount in
22 controversy does not exceed \$75,000. Liberally construed, the allegations suggest that plaintiff
23 may be attempting to state a claim arising under federal law pursuant to 42 U.S.C. § 1983 for the
24 loss of property without due process. But as set forth below, the allegations fail to state a
25 cognizable claim under the applicable standards.

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1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
2 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
3 alleged violation was committed by a person acting under the color of state law. *West v. Atkins*,
4 487 U.S. 42, 48 (1988).

5 The Due Process Clause protects prisoners from being deprived of property without due
6 process of law, *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974), and prisoners have a protected
7 interest in their personal property, *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974). The United
8 States Supreme Court has held, however, that “an unauthorized intentional deprivation of
9 property by a state employee does not constitute a violation of the procedural requirements of the
10 Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the
11 loss is available.” *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). California provides an adequate
12 postdeprivation remedy. *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (per curiam)
13 (“[A] negligent or intentional deprivation of a prisoner’s property fails to state a claim under
14 section 1983 if the state has an adequate post deprivation remedy.”). Plaintiff cannot state a
15 proper due process claim because he has an adequate post deprivation remedy under California
16 law.

17 Because the deficiencies in plaintiff’s claim cannot be cured by further amendment, the
18 complaint is dismissed without leave to amend. *Silva v. Di Vittorio*, 658 F.3d 1090, 1105 (9th
19 Cir. 2011) (“Dismissal of a pro se complaint without leave to amend is proper only if it is
20 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”
21 (internal quotation marks omitted)); *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) (“[A]
22 district court should grant leave to amend even if no request to amend the pleading was made,
23 unless it determines that the pleading could not be cured by the allegation of other facts.”).

24 **IV. Summary of Order**

25 Accordingly, IT IS HEREBY ORDERED that:

- 26 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 5) is granted.

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1 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
2 accordance with the notice to the California Department of Corrections and Rehabilitation
3 filed concurrently herewith.

4 3. This action is dismissed for failure to state a claim and the Clerk is directed to close the
5 case.

6 DATED: May 4, 2015.

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EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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