

1 **II. Screening Requirement and Standards**

2 Federal courts must engage in a preliminary screening of cases in which prisoners seek
3 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
5 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
6 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
7 relief.” *Id.* § 1915A(b).

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

16 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
17 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
18 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
19 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
20 678.

21 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
22 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
23 content that allows the court to draw the reasonable inference that the defendant is liable for the
24 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
25 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
26 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
27 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 failure to state a claim. Through the instant action, plaintiff seeks the return of his
4 address book, which was allegedly taken by defendant Rey during a search of plaintiff’s cell. *See*
5 ECF No. 1. Plaintiff does not know why defendant Rey searched his cell.

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
7 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
8 alleged violation was committed by a person acting under the color of state law. *West v. Atkins*,
9 487 U.S. 42, 48 (1988). Plaintiff does not identify any specific claims for relief, but his
10 allegations suggest that he wishes to state a claim for the loss of property without due process. As
11 set forth below, the allegations fail to state a cognizable claim under the applicable standards.

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

24 Because the deficiencies in plaintiff’s claim cannot be cured by further amendment, the
25 complaint is dismissed without leave to amend. *Silva v. Di Vittorio*, 658 F.3d 1090, 1105 (9th
26 Cir. 2011) (“Dismissal of a pro se complaint without leave to amend is proper only if it is
27 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”
28 (internal quotation marks omitted)); *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) (“[A]

1 district court should grant leave to amend even if no request to amend the pleading was made,
2 unless it determines that the pleading could not be cured by the allegation of other facts.”).

3 **IV. Summary of Order**

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 3) is granted.
- 6 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
7 accordance with the notice to the California Department of Corrections and Rehabilitation
8 filed concurrently herewith.
- 9 3. This action is dismissed for failure to state a claim and the Clerk is directed to close the
10 case.

11 DATED: April 28, 2015.

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13 EDMUND F. BRENNAN
14 UNITED STATES MAGISTRATE JUDGE
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