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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMIASEN DRAKE,

Plaintiff,

v.

M. DOOLEY,

Defendant.

No. 2:15-cv-2166-EFB P

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

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed an application for leave to proceed in forma pauperis.

I. Request to Proceed In Forma Pauperis

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

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

1 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
2 relief.” *Id.* § 1915A(b).

3 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
4 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
5 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
6 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
7 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

8 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
9 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
10 U.S. 662, 679 (2009).

11 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
12 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
13 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
14 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
15 678.

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

23 **III. Screening Order**

24 The court has reviewed plaintiff’s complaint pursuant to § 1915A and finds it must be
25 dismissed for failure to state a claim. Through the instant action, plaintiff seeks unspecified
26 damages for the loss and/or damage to his “personal property” caused by unidentified “staff
27 members.” ECF No. 1, § IV.

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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). Plaintiff does not identify any specific claims for relief, but his
5 allegations suggest that he wishes to state a claim for the loss of property without due process. As
6 set forth below, the allegations fail to state a cognizable claim under the applicable standards.

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

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

26 **IV. Summary of Order**

27 Accordingly, IT IS HEREBY ORDERED that:

- 28 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is granted.

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 filed
3 concurrently herewith.

4 3. The Clerk of the Court shall randomly assign a United States District Judge to this
5 action.

6 Further, IT IS HEREBY RECOMMENDED that this action be dismissed for failure to
7 state a claim and the Clerk be directed to close the case.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
13 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
14 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: December 2, 2015.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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