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

K. MWASI,

No. 2:15-CV-2685-TLN-CMK-P

Plaintiff,

vs.

ORDER

SACRAMENTO PRISON, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. 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 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. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
4 allege with at least some degree of particularity overt acts by specific defendants which support
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
6 impossible for the court to conduct the screening required by law when the allegations are vague
7 and conclusory.

9 I. PLAINTIFF'S ALLEGATIONS

10 Plaintiff names the following as defendants: (1) "Sacramento Prison"; (2) Gomez;
11 (3) E. Banuelos; (4) F. Austin; (5) Connie Gipson; (6) M. Kimbrell; (7) T. Campbell; (8)
12 Tumacder; (9) Beer; (10) T. Fujioka; (11) A. Morrison; (12) Vela; and (13) Ruiz.

13 For "Claim 1," plaintiff alleges "they illegally w/o due process discarded
14 property." Plaintiff also states: "Personal & legal files active criminal, interfere litigation 1st
15 Amend." Plaintiff then lists the following defendants: Beer, Banuelos, Austin, Fujioka,
16 Morrison, and Gipson.

17 For "Claim 2," plaintiff alleges "they put a glass a lot pieces glass in cheese,
18 personal cheese, attempt to kill me, in property." Plaintiff lists the following defendants: Gomez,
19 Vela, and Ruiz.

20 For "Claim 3," plaintiff alleges "they illegally discarded property, TV, w/o due
21 process: TV, pictures, food, active legal files, law books, reg. Books, etc." Plaintiff adds:
22 "Interfering litigation, 1st Amend." Plaintiff lists the following defendants: Banuelos, Kimbrell,
23 Tumacder, and Campbell.

24 Finally, for "Claim 4," plaintiff alleges "they illegally discarded property w/o due
25 process: law books, personal property, etc." Plaintiff lists "Bustinza, Guard," who is not a named
26 defendant.

1 **II. DISCUSSION**

2 Plaintiff's complaint suffers from a number of defects, each discussed below.

3 **A. Defendant "Sacramento Prison" is Immune**

4 The Eleventh Amendment prohibits federal courts from hearing suits brought
5 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.
6 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
7 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep't
8 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th
9 Cir. 1989). A state's agency responsible for incarceration and correction of prisoners is a state
10 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782
11 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th cir. 1993) (en banc).
12 Accordingly, defendant "Sacramento Prison" is immune from suit and must be dismissed.

13 **B. Plaintiff Fails to Establish a Causal Link**

14 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual
15 connection or link between the actions of the named defendants and the alleged deprivations.
16 See Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
17 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the
18 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts, or
19 omits to perform an act which he is legally required to do that causes the deprivation of which
20 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and
21 conclusory allegations concerning the involvement of official personnel in civil rights violations
22 are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the
23 plaintiff must set forth specific facts as to each individual defendant's causal role in the alleged
24 constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

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1 Here, plaintiff fails to set forth specific facts as to each named defendant's role in
2 the alleged constitutional violations. Simply alleging "they" did something is too vague to satisfy
3 the pleading requirements outlined above. Plaintiff will be provided an opportunity to amend to
4 set forth specific facts as to each defendant's alleged conduct.

5 **C. Plaintiff Fails to State a Due Process Claim**

6 Where a prisoner alleges the deprivation of a liberty or property interest caused by
7 the random and unauthorized action of a prison official, there is no claim cognizable under 42
8 U.S.C. § 1983 if the state provides an adequate post-deprivation remedy. See Zinermon v.
9 Burch, 494 U.S. 113, 129-32 (1990); Hudson v. Palmer, 468 U.S. 517, 533 (1984). A state's
10 post-deprivation remedy may be adequate even though it does not provide relief identical to that
11 available under § 1983. See Hudson, 468 U.S. at 531 n.11. A due process claim is not barred,
12 however, where the deprivation is foreseeable and the state can therefore be reasonably expected
13 to make pre-deprivation process available. See Zinermon, 494 U.S. at 136-39. An available
14 state common law tort claim procedure to recover the value of property is an adequate remedy.
15 See id. at 128-29.

16 Here, plaintiff vaguely alleges that his property was taken without due process.
17 Because California's tort claim procedures constitute an adequate post-deprivation remedy,
18 plaintiff cannot state a cognizable due process claim.

19 **D. Plaintiff Fails to State a First Amendment Claim**

20 Plaintiff appears to allege, albeit rather vaguely, that his First Amendment rights
21 were violated. Specifically, he states that "they" interfered with active criminal litigation.

22 Prisoners have a First Amendment right of access to the courts. See Lewis v.
23 Casey, 518 U.S. 343, 346 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977); Bradley v. Hall,
24 64 F.3d 1276, 1279 (9th Cir. 1995) (discussing the right in the context of prison grievance
25 procedures). This right includes petitioning the government through the prison grievance
26 process. See id. Prison officials are required to "assist inmates in the preparation and filing of

1 meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance
2 from persons trained in the law.” Bounds, 430 U.S. at 828. The right of access to the courts,
3 however, only requires that prisoners have the capability of bringing challenges to sentences or
4 conditions of confinement. See Lewis, 518 U.S. at 356-57. Moreover, the right is limited to
5 non-frivolous criminal appeals, habeas corpus actions, and § 1983 suits. See id. at 353 n.3 &
6 354-55. Therefore, the right of access to the courts is only a right to present these kinds of claims
7 to the court, and not a right to discover claims or to litigate them effectively once filed. See id. at
8 354-55.

9 As a jurisdictional requirement flowing from the standing doctrine, the prisoner
10 must allege an actual injury. See id. at 349. “Actual injury” is prejudice with respect to
11 contemplated or existing litigation, such as the inability to meet a filing deadline or present a
12 non-frivolous claim. See id.; see also Phillips v. Hust, 477 F.3d 1070, 1075 (9th Cir. 2007).
13 Delays in providing legal materials or assistance which result in prejudice are “not of
14 constitutional significance” if the delay is reasonably related to legitimate penological purposes.
15 Lewis, 518 U.S. at 362.

16 Here, plaintiff’s allegations do not, among other things, establish an actual injury.
17 Plaintiff has not specified how he was prejudiced with respect to contemplated or existing
18 litigation. Plaintiff will be provided an opportunity to amend.

19
20 **III. CONCLUSION**

21 Because it is possible that some of the deficiencies identified in this order may be
22 cured by amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the
23 entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).
24 Plaintiff is informed that, as a general rule, an amended complaint supersedes the original
25 complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following
26 dismissal with leave to amend, all claims alleged in the original complaint which are not alleged

1 in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).
2 Therefore, if plaintiff amends the complaint, the court cannot refer to the prior pleading in order
3 to make plaintiff's amended complaint complete. See Local Rule 220. An amended complaint
4 must be complete in itself without reference to any prior pleading. See id.

5 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
6 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
7 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
8 each named defendant is involved, and must set forth some affirmative link or connection
9 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
10 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

11 Because some of the defects identified in this order cannot be cured by
12 amendment, plaintiff is not entitled to leave to amend as to such claims. Specifically, plaintiff
13 cannot state a cognizable due process claim based on confiscation of personal property. Nor can
14 plaintiff state any claim against "Sacramento Prison," which is immune from suit.

15 Plaintiff, therefore, now has the following choices: (1) plaintiff may file an
16 amended complaint which does not allege the claims identified herein as incurable, in which
17 case such claims will be deemed abandoned and the court will address the remaining claims; or
18 (2) plaintiff may file an amended complaint which continues to allege claims identified as
19 incurable, in which case the court will issue findings and recommendations that such claims be
20 dismissed from this action, as well as such other orders and/or findings and recommendations as
21 may be necessary to address the remaining claims.

22 Finally, plaintiff is warned that failure to file an amended complaint within the
23 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
24 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
25 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
26 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's complaint is dismissed with leave to amend; and
2. Plaintiff shall file a first amended complaint within 30 days of the date of service of this order.

DATED: February 10, 2017



CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE