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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

JOSEPH J. FLOWERS,
Plaintiff,

No. C 14-1641 NJV (PR)

ORDER OF DISMISSAL

v.

DEPARTMENT OF CORRECTIONS,
et al.,
Defendants.

Plaintiff filed a pro se civil rights complaint under 42 U.S.C. § 1983. The Court dismissed the original complaint with leave to amend and plaintiff has filed an amended complaint and a second amended complaint. (Doc. 12.) The Court will review the second amended complaint. As set forth below, the Court will dismiss this case for failure to state a claim upon which relief can be granted.

DISCUSSION

A. Standard of Review

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). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;

1 the statement need only "give the defendant fair notice of what the . . . claim is and the
2 grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
3 omitted). Although in order to state a claim a complaint "does not need detailed factual
4 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
5 requires more than labels and conclusions, and a formulaic recitation of the elements of a
6 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
7 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
8 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
9 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
10 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
11 framework of a complaint, they must be supported by factual allegations. When there are
12 well-pleaded factual allegations, a court should assume their veracity and then determine
13 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
14 679 (2009).

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

19 **B. Legal Claims**

20 Plaintiff alleges that his personal property was lost and certain legal documents were
21 taken.

22 Neither the negligent nor intentional deprivation of property states a due process
23 claim under § 1983 if the deprivation was random and unauthorized. *Parratt v. Taylor*, 451
24 U.S. 527, 535-44 (1981) (state employee negligently lost prisoner's hobby kit), *overruled in*
25 *part on other grounds*, *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v.*
26 *Palmer*, 468 U.S. 517, 533 (1984) (intentional destruction of inmate's property). The
27 availability of an adequate state post-deprivation remedy, e.g. a state tort action, precludes
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1 relief because it provides adequate procedural due process. *King v. Massarweh*, 782 F.2d
2 825, 826 (9th Cir. 1986). California law provides an adequate post-deprivation remedy for
3 any property deprivations. *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing
4 Cal. Gov't Code §§ 810-895). Nor is a prisoner protected by the Fourth Amendment
5 against the seizure, destruction or conversion of his property. *Taylor v. Knapp*, 871 F.2d
6 803, 806 (9th Cir. 1989).

7 Prisoners have a constitutional right of access to the courts. See *Lewis v. Casey*,
8 518 U.S. 343, 350 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). To establish a
9 claim for any violation of the right of access to the courts, the prisoner must prove that there
10 was an inadequacy in the prison's legal access program that caused him an actual injury.
11 See *Lewis*, 518 U.S. at 350-55. To prove an actual injury, the prisoner must show that the
12 inadequacy in the prison's program hindered his efforts to pursue a non-frivolous claim
13 concerning his conviction or conditions of confinement. See *id.* at 354-55.

14 Plaintiff states that he was transferred out of Salinas Valley State Prison and should
15 have received five boxes of his personal property that included legal documents when he
16 arrived at the new facility.¹ Plaintiff states that he eventually received the boxes but certain
17 legal documents were missing, including several witness declarations required for his
18 habeas petition, case No. C 14-0589 CW (PR). Plaintiff states that the declarations
19 discussed how others eavesdropped on Plaintiff and his attorney while they were
20 discussing his defense for his underlying criminal case. Case No. C 14-0589 CW (PR) was
21 stayed so Plaintiff could exhaust his claims. (Docket No. 9 in Case No. C 14-0589 CW
22 (PR).) Plaintiff indicated that he had recovered the lost evidence, which appeared to be
23 included in the petition. *Id.* The petition in No. C 14-0589 CW (PR) (Docket No. 1),
24 contains numerous declarations regarding the eavesdropping and Plaintiff states the
25 eavesdropping was addressed by the judge at his trial. Case No. C 14-0589 CW (PR) was
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27 ¹ The named defendants in this action appear to be guards at High Desert State Prison
28 which is located in the Eastern District of California.

1 recently unstayed as plaintiff stated he had exhausted his claims.

2 In this case, Plaintiff has failed to describe an actual injury to demonstrate denial of
3 access to the courts because he was able to file timely habeas petitions in state court with
4 the necessary evidence and there were several declarations attached to his federal petition
5 regarding the eavesdropping. Plaintiff seeks money damages and for tolling in his federal
6 habeas case. This Court cannot enter an order in this civil rights case granting tolling in a
7 separate habeas corpus case. Further, Plaintiff's habeas case has yet to be served on
8 respondent and it is not clear if tolling will be necessary. If tolling is required for the habeas
9 corpus petition to proceed, Plaintiff can present his arguments in that case. In conclusion,
10 Plaintiff has failed to demonstrate an actual injury to support a denial of access to the
11 courts claim. Because the deprivation of his property also fails to state a claim, this case is
12 dismissed.

13 **CONCLUSION**

- 14 1. This case is **DISMISSED** for the reasons set forth above.
15 2. The Clerk shall close the file.

16 **IT IS SO ORDERED.**

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18 Dated: July 30, 2014.

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NANDOR J. VADAS
United States Magistrate Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

JOSEPH J. FLOWERS,
Plaintiff,

No.1:14-CV-1641 NJV (PR)

CERTIFICATE OF SERVICE

v.

DEPARTMENT OF CORRECTIONS, et al,
Defendants.

I, the undersigned, hereby certify that on July 30, 2014, I served a true and correct copy of the attached by placing said copies in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail.

Joseph J. Flowers
F82065
A2-230
High Desert State Prison
P.O. Box 3030
Susanville, CA 96127

/s/ Linn Van Meter
Linn Van Meter
Administrative Law Clerk to the
Honorable Nandor J. Vadas