

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH NICHOLS,
Plaintiff,
v.
ELOY MEDINA, et al.,
Defendants.

Case No. [13-cv-05773-JD](#)

ORDER OF DISMISSAL

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff's amended complaint was dismissed with leave to amend. After several extensions, plaintiff has filed a second amended complaint.

DISCUSSION

I. 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." Although a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

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

II. LEGAL CLAIMS

Plaintiff states many allegations that, starting in 2005, defendants tampered with his legal mail and have withheld or lost his property. The statute of limitations for civil actions filed in California is two years, as set forth at California Civil Procedure Code § 335.1, which is the applicable statute in § 1983 actions. *See Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004). Because an inmate suffers from the disability of imprisonment, an inmate has, for claims accruing after 2002, four years to bring a § 1983 claim for damages in California, i.e., the regular two year period under section 335.1 plus two years during which accrual was postponed due to the disability of imprisonment. California Civil Procedure Code § 352.1(a); *Johnson v. State of California*, 207 F.3d 650, 654 (9th Cir. 2000).¹ Under federal law, a claim generally accrues for limitations purposes when the plaintiff knows or has reason to know of the injury which is the basis of the action. *See TwoRivers v. Lewis*, 174 F.3d 987, 991–92 (9th Cir. 1999).

Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518 U.S. 343, 350 (1996). To establish a claim for any violation of the right of access to the courts, the prisoner must prove that there was an inadequacy in the prison's legal access program that caused

¹ The two years of tolling is for prisoners serving less than a life term. The Court is not aware of plaintiff's sentence, but even with the two years tolling many of these claims remain untimely, as will be discussed below. California Civil Procedure Code § 352.1(a)

him an actual injury. *See Lewis*, 518 U.S. at 350-55. To prove an actual injury, the prisoner must show that the inadequacy in the prison's program hindered his efforts to pursue a non-frivolous claim concerning his conviction or conditions of confinement. *See id.* at 354-55.

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

Plaintiff alleges many instances between 2005 and 2008 when defendants interfered with his legal mail. This case was filed on December 13, 2013, therefore the claims for this time period are untimely. Moreover, plaintiff stated in his original complaint that he brought a claim in Monterey County Superior Court in 2005 regarding the interference with his legal mail, therefore claims brought in this action could be barred by res judicata and collateral estoppel. Plaintiff was informed that he must address these issues in the second amended complaint. Plaintiff makes vague arguments that he is entitled to several additional years of tolling because an inmate appeal was not timely processed in 2008. This argument is meritless and plaintiff's own exhibits contain appeals that were appropriately processed. Plaintiff has also failed to show an actual injury in his efforts to pursue a non-frivolous claim concerning his conviction or conditions of confinement, to support a constitutional claim.

Plaintiff's allegation that defendants lost or confiscated his property in 2014, while timely, also fails to state a claim. This allegation fails to state a § 1983 claim due to the availability of a state post-deprivation remedy, nor has plaintiff presented any allegations of a denial of access to the courts. Plaintiff also argues that defendants improperly processed his inmate appeals. However, there is no constitutional right to a prison administrative appeal or grievance system.


1 *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th
2 Cir. 1988).² As plaintiff has already been provided an opportunity to amend and as he has failed
3 to cure the deficiencies discussed by the Court, this action is dismissed without leave to amend for
4 failure to state a claim.

5 **CONCLUSION**

- 6 1. The complaint is **DISMISSED** without leave to amend for the reasons set forth
7 above.
8 2. The Clerk shall close this case.

9 **IT IS SO ORDERED.**

10 Dated: October 3, 2014

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13 JAMES DONATO
14 United States District Judge
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27 ² Plaintiff also presents conclusory allegations that a recent transfer to another prison was
28 retaliatory. He has failed to state a claim and as the transfer just occurred, it is not clear that he
will be dismissed without prejudice, but plaintiff may file a new action with that allegation if he
chooses.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 10/3/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Joseph Nichols ID: H-87217
Calif. State Prison--L.A. County
P.O. Box 8457
Lancaster, CA 93539-8457

Dated: 10/3/2014

Richard W. Wieking
Clerk, United States District Court

By  _____
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO