

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JESSE L. YOUNGBLOOD,

Plaintiff,

vs.

Warden A. A. LAMARQUE; and 45
Unknown Names of Gov. Officials,

Defendants.

No. C 12-4423 PJH (PR)

**ORDER GRANTING MOTION
TO AMEND; DENYING
MOTION TO APPOINT
COUNSEL; DISMISSING
CASE**

Plaintiff, a prisoner at Corcoran Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff's original complaint was dismissed with leave to amend and he has filed an amended complaint.

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; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations

1 omitted). Although in order to state a claim a complaint “does not need detailed factual
2 allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
3 requires more than labels and conclusions, and a formulaic recitation of the elements of a
4 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
5 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
6 (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is
7 plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained
8 the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the
9 framework of a complaint, they must be supported by factual allegations. When there are
10 well-pleaded factual allegations, a court should assume their veracity and then determine
11 whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 129 S.Ct.
12 1937, 1950 (2009).

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

17 **B. Legal Claims**

18 Plaintiff’s claims in the amended complaint are again difficult to understand. He
19 states that from 2005 through 2010 unidentified correctional officers injured him which led
20 to mental anguish, they stole his property and denied him access to the courts. Plaintiff
21 does not provide details regarding these allegations or even the identities of most of the
22 defendants. The court also notes that this complaint is substantially similar to a prior
23 complaint that plaintiff filed with this court that was dismissed. See *Youngblood v. The*
24 *People of the State of California*, C 11-4064 PJH (PR).

25 Plaintiff is informed that neither the negligent nor intentional deprivation of property
26 states a due process claim under § 1983 if the deprivation was random and unauthorized.
27 *Parratt v. Taylor*, 451 U.S. 527, 535-44 (1981) (state employee negligently lost prisoner's
28 hobby kit), *overruled in part on other grounds, Daniels v. Williams*, 474 U.S. 327, 330-31

1 (1986); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (intentional destruction of inmate's
2 property). The availability of an adequate state post-deprivation remedy, e.g. a state tort
3 action, precludes relief because it provides adequate procedural due process. *King v.*
4 *Massarweh*, 782 F.2d 825, 826 (9th Cir. 1986). California law provides an adequate post-
5 deprivation remedy for any property deprivations. *Barnett v. Centoni*, 31 F.3d 813, 816-17
6 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895). Nor is a prisoner protected by the
7 Fourth Amendment against the seizure, destruction or conversion of his property. *Taylor v.*
8 *Knapp*, 871 F.2d 803, 806 (9th Cir. 1989).

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

16 Plaintiff has again failed to identify the defendants or even provide details that could
17 state a constitutional claim. As no amount of amendments would cure the deficiencies of
18 the amended complaint, it will be dismissed without leave to amend.

19 **CONCLUSION**


20 1. Plaintiff's motion to amend (Docket No. 7) is **GRANTED** and the court has
21 considered the amended complaint.

22 2. This action is **DISMISSED** without leave to amend as frivolous and for failure to
23 state a claim.

24 3. Plaintiff's motion to appoint counsel (Docket No. 9) is **DENIED** as moot.

25 **IT IS SO ORDERED.**

26 Dated: February 4, 2013.



PHYLLIS J. HAMILTON
United States District Judge

28 G:\PRO-SE\PJH\CR.12\Youngblood4423.dis.wpd