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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JESSE L. YOUNGBLOOD,

Plaintiff,

No. C 12-4423 PJH (PR)

vs.

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

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

Defendants.

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Plaintiff, a prisoner at Corcoran Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

**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 omitted). Although in order to state a claim a complaint "does not need detailed factual

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

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

16 **B. Legal Claims**

17 Initially, the court notes that this complaint is substantially similar to a prior complaint  
18 that plaintiff filed with this court that was dismissed. *See Youngblood v. The People of the*  
19 *State of California*, C 11-4064 PJH (PR). As this complaint contains a few minor  
20 differences, the court will issue this screening order out of an abundance of caution.

21 Plaintiff's claims are difficult to understand. He states that from 2002 through 2012  
22 his rights were violated and he sustained injuries from forty-five "John Doe" staff members  
23 at Salinas Valley State Prison. Plaintiff says he was threatened, harassed, drugged, falsely  
24 imprisoned, unknown prison staff tampered with his mail and his property was confiscated.  
25 Plaintiff does not provide details regarding the threats or injuries or even the identities of  
26 the defendants.

27 Allegations of verbal harassment and threats fail to state a claim cognizable under  
28 42 U.S.C. § 1983. *See Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997)

1 (harassment); *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (threats). And plaintiff's  
2 allegation that he suffered physical injuries is conclusory, and so fails to state a claim under  
3 the standard announced in *Iqbal*. The majority of the remaining claims are similarly far too  
4 vague to state claim. For these reasons, to the extent that plaintiff's legal claims are  
5 discernable, they are inadequate to state a claim.

6 In the abstract, defendant Warden Lamarque might be a proper defendant, but  
7 plaintiff has alleged no facts showing that Lamarque had any involvement in or knowledge  
8 of the events that give rise to his claim; Lamarque is not even mentioned in the portion of  
9 the form complaint in which plaintiff is asked to set out his claim. He thus has failed to state  
10 a claim against Lamarque. See *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)  
11 (even at the pleading stage, "[a] plaintiff must allege facts, not simply conclusions, that  
12 show that an individual was personally involved in the deprivation of his civil rights."). The  
13 claims against Lamarque will be dismissed with leave to amend.

14 Though not named as defendants, plaintiff identifies three correctional officers who  
15 may have been involved with the confiscation of plaintiff's property, though the complaint is  
16 vague as to what occurred. Plaintiff is informed that neither the negligent nor intentional  
17 deprivation of property states a due process claim under § 1983 if the deprivation was  
18 random and unauthorized. *Parratt v. Taylor*, 451 U.S. 527, 535-44 (1981) (state employee  
19 negligently lost prisoner's hobby kit), *overruled in part on other grounds, Daniels v.*  
20 *Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984)  
21 (intentional destruction of inmate's property). The availability of an adequate state post-  
22 deprivation remedy, e.g. a state tort action, precludes relief because it provides adequate  
23 procedural due process. *King v. Massarweh*, 782 F.2d 825, 826 (9th Cir. 1986). California  
24 law provides an adequate post-deprivation remedy for any property deprivations. *Barnett v.*  
25 *Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal. Gov't Code §§ 810-895). Nor is a  
26 prisoner protected by the Fourth Amendment against the seizure, destruction or conversion  
27 of his property. *Taylor v. Knapp*, 871 F.2d 803, 806 (9th Cir. 1989). Plaintiff will be  
28 provided an opportunity to amend regarding his confiscated property if the named

1 correctional officers are even intended to be defendants in this case.

2 **CONCLUSION**

3 1. The complaint is **DISMISSED** with leave to amend, as indicated above, with  
4 respect to Lamarque and his allegations regarding his property, within thirty days from the  
5 date of this order. The amended complaint must include the caption and civil case number  
6 used in this order and the words AMENDED COMPLAINT on the first page. Because an  
7 amended complaint completely replaces the original complaint, plaintiff must include in it all  
8 the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.  
9 1992). He may not incorporate material from the original complaint by reference. Failure to  
10 amend within the designated time will result in the dismissal of these claims.

11 3. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
12 court informed of any change of address by filing a separate paper with the clerk headed  
13 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.  
14 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
15 Federal Rule of Civil Procedure 41(b).

16 **IT IS SO ORDERED.**

17 Dated: November 15, 2012.



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PHYLLIS J. HAMILTON  
United States District Judge

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