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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOSE ANTONIO RODRIGUEZ,

Plaintiff,

No. C 12-5228 PJH (PR)

vs.

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

CORRECTIONAL TRAINING
FACILITY SOLEDAD,

Defendant.

Plaintiff, a former state prisoner at the Correctional Training Facility Soledad, has filed a pro se civil rights complaint under 42 U.S.C. § 1983.

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 Plaintiff alleges that he was released from prison but has not received all of his
18 property and states that it has been stolen. Plaintiff identifies no specific individuals and
19 the only named defendant is the prison itself.

20 However, neither the negligent nor intentional deprivation of property states a due
21 process claim under § 1983 if the deprivation was random and unauthorized. *Parratt v.*
22 *Taylor*, 451 U.S. 527, 535-44 (1981) (state employee negligently lost prisoner's hobby kit),
23 *overruled in part on other grounds, Daniels v. Williams*, 474 U.S. 327, 330-31 (1986);
24 *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (intentional destruction of inmate's property).
25 The availability of an adequate state post-deprivation remedy, e.g. a state tort action,
26 precludes relief because it provides adequate procedural due process. *King v. Massarweh*,
27 782 F.2d 825, 826 (9th Cir. 1986). California law provides an adequate post-deprivation
28 remedy for any property deprivations. *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir.

1 1994) (citing Cal. Gov't Code §§ 810-895). Nor is a prisoner protected by the Fourth
2 Amendment against the seizure, destruction or conversion of his property. *Taylor v.*
3 *Knapp*, 871 F.2d 803, 806 (9th Cir. 1989).

4 The complaint is dismissed with leave to amend. Plaintiff must also identify the
5 specific defendants responsible to state a claim under 42 U.S.C. § 1983. Plaintiff will also
6 be provided an application for a non-prisoner to proceed in forma pauperis. Failure to file
7 an amended complaint or provide a completed application to proceed in forma pauperis will
8 result in the dismissal of these claims.

9 **CONCLUSION**

10 1. The complaint is **DISMISSED** with leave to amend, within twenty-eight days from
11 the date of this order. The amended complaint must include the caption and civil case
12 number used in this order and the words AMENDED COMPLAINT on the first page.
13 Because an amended complaint completely replaces the original complaint, plaintiff must
14 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258,
15 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by
16 reference. Failure to amend within the designated time will result in the dismissal of these
17 claims.

18 2. An application to proceed in forma pauperis will be provided to plaintiff and must
19 be completed and returned to the court within twenty-eight days from the date of this order.

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

25 **IT IS SO ORDERED.**

26 Dated: November 16, 2012.



PHYLLIS J. HAMILTON
United States District Judge

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