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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MANUEL L. BODY,

Plaintiff,

No. C 12-6145 PJH (PR)

v.

ORDER OF DISMISSAL

M PHILLIPS, et al.,

Defendants.

Plaintiff, an inmate at Salinas Valley State 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).

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

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1 **B. Legal Claims**

2 Plaintiff contends that the defendant correctional officer lost his flat-screen television
3 when his property was stored.

4 Neither the negligent nor intentional deprivation of property states a due process
5 claim under § 1983 if the deprivation was random and unauthorized. *Parratt v. Taylor*, 451
6 U.S. 527, 535-44 (1981) (state employee negligently lost prisoner's hobby kit), *overruled in*
7 *part on other grounds*, *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v.*
8 *Palmer*, 468 U.S. 517, 533 (1984) (intentional destruction of inmate's property). The
9 availability of an adequate state post-deprivation remedy, e.g. a state tort action, precludes
10 relief because it provides adequate procedural due process. *King v. Massarweh*, 782 F.2d
11 825, 826 (9th Cir. 1986). California law provides an adequate post-deprivation remedy for
12 any property deprivations. *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing
13 Cal. Gov't Code §§ 810-895). Nor is a prisoner protected by the Fourth Amendment
14 against the seizure, destruction or conversion of his property. *Taylor v. Knapp*, 871 F.2d
15 803, 806 (9th Cir. 1989).

16 Plaintiff's allegations involve a random and unauthorized deprivation of property not
17 cognizable under section 1983, so must be dismissed. Moreover, plaintiff has brought this
18 exact same claim on several other occasions: No. C 11-4702 PJH (PR), No. C 11-5734
19 PJH (PR) and No. C 12-2871 PJH (PR). In each case plaintiff was informed why his
20 complaint failed to state a claim and the cases were dismissed with prejudice. It is not
21 clear why plaintiff continues to file the same frivolous action.

22 **CONCLUSION**

23 For the reasons set out above, the complaint is **DISMISSED** with prejudice as
24 frivolous and for failure to state a claim. The clerk shall close the file.

25 **IT IS SO ORDERED.**

26 Dated: January 4, 2013.



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PHYLLIS J. HAMILTON
United States District Judge

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