

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 JIMMIE DOSS,

5 Plaintiff,

6 v.

7 COUNTY RECORDER'S OFFICE OF
8 CONTRA COSTA COUNTY, D. WEBBER,
9 COUNTY CLERK,

10 Defendants.

Case No.: C 13-3845 CW (PR)

ORDER OF DISMISSAL WITH LEAVE
TO AMEND AND DIRECTING COURT
CLERK TO PROVIDE PLAINTIFF WITH
BLANK CIVIL RIGHTS FORM

11 INTRODUCTION

12 Plaintiff, a state prisoner incarcerated at Corcoran State
13 Prison, has filed a pro se civil rights action pursuant to 42
14 U.S.C. § 1983, alleging the violation of his constitutional rights
15 by the Contra Costa County Recorder's Office and D. Webber, County
16 Clerk. His motion for leave to proceed in forma pauperis is
17 granted in a separate order.

18 DISCUSSION

19 I. Legal Standard

20 A federal court must conduct a preliminary screening in any
21 case in which a prisoner seeks redress from a governmental entity
22 or officer or employee of a governmental entity. 28 U.S.C.
23 § 1915A(a). In its review, the court must identify any cognizable
24 claims and dismiss any claims that are frivolous, malicious, fail
25 to state a claim upon which relief may be granted or seek monetary
26 relief from a defendant who is immune from such relief. Id.

1 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
2 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
3 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must
5 allege two essential elements: (1) that a right secured by the
6 Constitution or laws of the United States was violated, and
7 (2) that the alleged violation was committed by a person acting
8 under the color of state law. West v. Atkins, 487 U.S. 42, 48
9 (1988).

10 Liability may be imposed on an individual defendant under 42
11 U.S.C. § 1983 if the plaintiff can show that the defendant's
12 actions both actually and proximately caused the deprivation of a
13 federally protected right. Lemire v. Cal. Dept. Corrections &
14 Rehabilitation, __ F.3d __, 2013 WL 4007558, *8 (9th Cir. 2013);
15 Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City
16 of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person
17 deprives another of a constitutional right within the meaning of
18 § 1983 if he does an affirmative act, participates in another's
19 affirmative act or omits to perform an act which he is legally
20 required to do, that causes the deprivation of which the plaintiff
21 complains. Leer, 844 F.2d at 633. Under no circumstances is
22 there respondeat superior liability under § 1983. Lemire, 2013 WL
23 4007558, *8. Or, in layman's terms, under no circumstances is
24 there liability under § 1983 solely because one is responsible for
25 the actions or omissions of another. Taylor v. List, 880 F.2d
26 1040, 1045 (9th Cir. 1989); Ybarra v. Reno Thunderbird Mobile Home
27 Village, 723 F.2d 675, 680-81 (9th Cir. 1984). A supervisor may
28 be liable under § 1983 upon a showing of (1) personal involvement
in the constitutional deprivation or (2) a sufficient causal

1 connection between the supervisor's wrongful conduct and the
2 constitutional violation. Henry A. v. Willden, 678 F.3d 991,
3 1003-04 (9th Cir. 2012) (citing Starr v. Baca, 652 F.3d 1202, 1207
4 (9th Cir. 2011)). It is insufficient for a plaintiff only to
5 allege that supervisors knew about the constitutional violation
6 and that they generally created policies and procedures that led
7 to the violation, without alleging "a specific policy" or "a
8 specific event" instigated by them that led to the constitutional
9 violations. Hydrick v. Hunter, 669 F.3d 937, 942 (9th Cir. 2012)

10 II. Plaintiff's Allegations

11 Plaintiff alleges that, in December 2007, Defendants assisted
12 an individual named Amos Joe Jones in the theft of real property
13 from Plaintiff by way of fraud and/or a lack of knowledge of the
14 procedural protocols required by law and policy as the custodian
15 of public records.¹ Plaintiff alleges that Defendants allowed Mr.
16 Jones to file a fraudulent deed to Plaintiff's real property that
17 Mr. Jones claimed Plaintiff had signed without requiring an
18 "affidavit" or a notarized signature to prove that Plaintiff had
19 agreed to transfer the property. Plaintiff asserts that
20 Defendants' participation in filing the fraudulent document
21 without utilizing procedural protocol or policy deprived him of
22 his property without due process of law.

23 Ordinarily, due process of law requires notice and an
24 opportunity for some kind of hearing prior to the deprivation of a
25 significant property interest. Memphis Light, Gas & Water Div. v.

26 ¹ Plaintiff filed an earlier § 1983 action against Mr. Jones,
27 Doss v. Jones, C 13-1905 CW (PR), that was dismissed because
28 private individuals do not act under color of state law and, thus,
Mr. Jones could not be sued under § 1983.

1 Craft, 436 U.S. 1, 19 (1978). Neither the negligent nor
2 intentional deprivation of property states a due process claim
3 under § 1983 if the deprivation was random and unauthorized,
4 however. Parratt v. Taylor, 451 U.S. 527, 535-44 (1981) (state
5 employee negligently lost prisoner's hobby kit), overruled in part
6 on other grounds, Daniels v. Williams, 474 U.S. 327, 330-31
7 (1986); Hudson v. Palmer, 468 U.S. 517, 533 (1984) (intentional
8 destruction of inmate's property). The availability of an
9 adequate state post-deprivation remedy, e.g., a state tort action,
10 precludes relief because it provides sufficient procedural due
11 process. Zinermon v. Burch, 494 U.S. 113, 128 (1990) (where state
12 cannot foresee, and therefore provide meaningful hearing prior to,
13 deprivation statutory provision for post-deprivation hearing or
14 common law tort remedy for erroneous deprivation satisfies due
15 process); King v. Massarweh, 782 F.2d 825, 826 (9th Cir. 1986)
16 (same). California law provides such an adequate post-deprivation
17 remedy. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994)
18 (citing Cal. Gov't Code §§ 810-895).

19 If the deprivation is not random and unauthorized, but the
20 result of "established state procedure," the availability of a
21 post-termination tort action does not necessarily provide due
22 process. Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-37
23 (1982) (failure on part of state commission to hold hearing within
24 statutory time limits not permitted to terminate timely filed
25 claim). Parratt does not apply where the state has procedures
26 designed to control the actions of state officials and the
27 officials act pursuant to those procedures. Zimmerman v. City of
28 Oakland, 255 F.3d 734, 738 (9th Cir. 2001); Armendariz v. Penman,
31 F.3d 860, 866 (9th Cir. 1994), aff'd in part on relevant

1 grounds and vacated in part on other grounds on reh'g en banc, 75
2 F.3d 1311 (9th Cir. 1996) (en banc). In those instances, the
3 Fourteenth Amendment requires "'an opportunity . . . granted at a
4 meaningful time and in a meaningful manner,' . . . for a hearing
5 appropriate to the nature of the case.'" Logan, 455 U.S. at 437.

6 Here, Plaintiff alleges that Defendants failed to follow
7 proper procedures. Thus, his allegations fall under Parratt
8 because the alleged action was random and unauthorized.
9 Furthermore, Plaintiff may bring a state claim for negligence
10 against the proper Defendants, thus satisfying the requirement for
11 an adequate state post-deprivation remedy. Therefore, his
12 allegations fail to state a due process claim.

13 Plaintiff's allegations fail for another reason. As
14 discussed above, there is no vicarious or supervisory liability
15 under § 1983. Plaintiff names the County Recorder's Office and
16 the County Clerk as Defendants, not the specific employee who
17 allegedly was negligent in filing Mr. Jones' document. Therefore,
18 Plaintiff's complaint fails to name a proper Defendant.

19 Accordingly, Plaintiff's complaint is DISMISSED for failure
20 to state a cognizable claim for relief. He may file an amended
21 complaint, if he truthfully can allege that the fraudulent
22 document was filed pursuant to a policy or procedure and clearly
23 links a proper Defendant to the alleged injury for which he or she
24 is alleged to be responsible.

24 CONCLUSION

25 For the foregoing reasons, the Court orders as follows:

- 26 1. Plaintiff's complaint is DISMISSED.
- 27 2. Within thirty (30) days from the date of this Order,
28 Plaintiff may file an amended complaint in order to cure the

1 deficiencies noted above.

2 Plaintiff shall use the court's civil rights complaint form,
3 a copy of which is provided herewith, and include in the caption
4 both the case number of this action, No. C 13-3845 CW (PR), and
5 the heading "AMENDED COMPLAINT."

6 If Plaintiff fails to timely file an amended complaint in
7 conformity with this Order, the case will be dismissed without
8 prejudice and will be closed.

9 3. It is Plaintiff's responsibility to prosecute this case.
10 He must keep the Court informed of any change of address and
11 must comply with the Court's orders in a timely fashion.

12 Failure to do so may result in the dismissal of this action,
13 pursuant to Federal Rule of Civil Procedure 41(b), for failure to
14 prosecute.

15 4. The Clerk of the Court shall provide Plaintiff with a
16 blank civil rights complaint form.

17 Dated: 10/3/2013



18 CLAUDIA WILKEN
19 UNITED STATES DISTRICT JUDGE

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