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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MICHAEL HOLLINS,

Plaintiff,

No. C 14-1289 PJH (PR)

vs.

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

GREG MUNKS, et. al.,

Defendant.

Plaintiff, a pretrial detainee incarcerated at Maguire Correctional Facility has filed a pro se civil rights complaint under 42 U.S.C. § 1983 and then an amended complaint (Docket No. 7) that the court has reviewed. 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

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*, 556 U.S. 662,
12 679 (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 alleges that he was assaulted by jail staff and his property was improperly
19 confiscated.

20 When a pretrial detainee challenges conditions of his confinement, the proper inquiry
21 is whether the conditions amount to punishment in violation of the Due Process Clause of
22 the Fourteenth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). The Due
23 Process Clause protects a post-arraignment pretrial detainee from the use of excessive
24 force that amounts to punishment. *See Graham v. Conner*, 490 U.S. 386, 395 n. 10 (1989)
25 (citing *Bell v. Wolfish*, 441 U.S. 520, 535–39 (1979)); *see also Gibson v. County of*
26 *Washoe, Nev.*, 290 F.3d 1175, 1197 (9th Cir. 2002). The Ninth Circuit has stated the
27 factors a court should consider in resolving a due process claim alleging excessive force.
28 *White v. Roper*, 901 F.2d 1501, 1507 (9th Cir. 1990). These factors are (1) the need for the

1 application of force, (2) the relationship between the need and the amount of force that was
2 used, (3) the extent of the injury inflicted, and (4) whether force was applied in a good faith
3 effort to maintain and restore discipline. *Id.*

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 In this amended complaint plaintiff only states that he was assaulted by three guards
17 who then took his postage stamps, glasses and other property. He identifies only one
18 guard and provides no other details about the incident. To the extent plaintiff references
19 his other filings he is informed that this amended complaint completely replaces the original
20 complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v.*
21 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the
22 original complaint or other filings by reference. The amended complaint will be dismissed
23 with leave to amend to provide all his claims and the identifies of all the defendants in one
24 filing.

25 In addition, plaintiff has filed 14 other cases in the last few months, some with similar
26 claims. If he files a second amended complaint he should indicate the date of the alleged
27 incident and that the substance of this action is not duplicative of his other cases. Plaintiff
28 must also provide additional information concerning the actions of the specific defendants,

1 plaintiff's actions and the injuries he suffered in order to demonstrate a cognizable claim of
2 excessive force.

3 **CONCLUSION**

4 1. The amended complaint is **DISMISSED** with leave to amend in accordance with
5 the standards set forth above. The second amended complaint must be filed no later than
6 **June 23, 2014**, and must include the caption and civil case number used in this order and
7 the words SECOND AMENDED COMPLAINT on the first page. Because an amended
8 complaint completely replaces the original complaint, plaintiff must include in it all the
9 claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).
10 He may not incorporate material from the original complaint by reference.

11 2. 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: May 19, 2014.



PHYLLIS J. HAMILTON
United States District Judge

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