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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT VILLA,
CDCR #J-21973,

Plaintiff,

vs.

MATTHEW CATE; W.J. SULLIVAN;
MIKE POULOS; DOMINGO URIBE, JR.;
F. GONZALEZ; D. PARAMO; A. FAVILA;
D.J. DeGUES; P. GALEANA; C. WELCH;
JAMES S. HILL; S. SANDOVAL; J.
BURGOS; J.J. NAPOLITANO; T.
STEADMAN; D. VAN LEER; M.
HODGES; D. FOSTON; STEVEN
EPPERSON; JAMES MORENO; GARY
HOPPER; MARIO MACLUENO; R.
TOVAR; DEAVONNE LONG; J. HIRAL;
DOES 1-20,

Defendants.

Civil No. 11cv2426 IEG (JMA)

**ORDER DISMISSING COMPLAINT
FOR FAILING TO STATE A CLAIM
PURSUANT TO
28 U.S.C. § 1915(e)(2)(B) & 1915A(b)**

I. Procedural History

On May 31, 2011, Plaintiff, a state inmate currently incarcerated at the California Correctional Institution located in Tehachapi, California, and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 in the Eastern District of California. Plaintiff did not prepay the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).

1 Plaintiff's Motion to Proceed IFP was granted by Magistrate Judge Sheila Oberto on July
2 12, 2011. On October 17, 2011, Magistrate Judge Oberto conducted a sua sponte screening of
3 Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A and dismissed all the claims against
4 Defendants Steadman and Gonzalez for failing to state a claim upon which relief could be
5 granted. *See* Oct. 17, 2011 Order at 2-3. Magistrate Judge Oberto then found that as for the
6 remaining claims in Plaintiff's Complaint, venue was proper in the Southern District of
7 California and transferred the matter to this Court on October 17, 2011. *Id.* at 4.

8 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

9 The Prison Litigation Reform Act's ("PLRA") amendments to 28 U.S.C. § 1915 obligate
10 the Court to review complaints filed by all persons proceeding IFP and by those, like Plaintiff,
11 who are "incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated
12 delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial
13 release, or diversionary program," "as soon as practicable after docketing." *See* 28 U.S.C. §§
14 1915(e)(2)(B) and 1915A(b). Under these provisions, the Court must sua sponte dismiss any
15 prisoner civil action and all other IFP complaints, or any portions thereof, which are frivolous,
16 malicious, fail to state a claim, or which seek damages from defendants who are immune. *See*
17 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
18 (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000) (§ 1915A).

19 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte
20 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. However, 28
21 U.S.C. § 1915(e)(2) and § 1915A now mandate that the court reviewing an IFP or prisoner's suit
22 make and rule on its own motion to dismiss before directing that the Complaint be served by the
23 U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 ("[S]ection 1915(e) not only permits,
24 but requires a district court to dismiss an in forma pauperis complaint that fails to state a
25 claim."); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (discussing
26 § 1915A).

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1 “[W]hen determining whether a complaint states a claim, a court must accept as true all
2 allegations of material fact and must construe those facts in the light most favorable to the
3 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)
4 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). Here, however, even
5 presuming Plaintiff’s allegations true, the Court finds his Complaint fails to state a claim upon
6 which relief can be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B); 1915A(b); *Lopez*, 203 F.3d at
7 1126-27; *Resnick*, 213 F.3d at 446, n.1.

8 **A. 42 U.S.C. § 1983**

9 To state a claim under § 1983, Plaintiff must allege that: (1) the conduct he complains
10 of was committed by a person acting under color of state law; and (2) that conduct violated a
11 right secured by the Constitution and laws of the United States. *Humphries v. County of Los*
12 *Angeles*, 554 F.3d 1170, 1184 (9th Cir. 2009) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

13 **B. Property Claims**

14 Plaintiff claims that prison officials have unlawfully confiscated and destroyed his
15 personal property. (*See* Compl. at 24.) Where a prisoner alleges the deprivation of a liberty or
16 property interest caused by the unauthorized negligent or intentional action of a prison official,
17 the prisoner cannot state a constitutional claim where the state provides an adequate post-
18 deprivation remedy. *See Zinermon v. Burch*, 494 U.S. 113, 129-32 (1990); *Hudson v. Palmer*,
19 468 U.S. 517, 533 (1984). The California Tort Claims Act (“CTCA”) provides an adequate post-
20 deprivation state remedy for the random and unauthorized taking of property. *Barnett v.*
21 *Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Thus, Plaintiff has an adequate state post-
22 deprivation remedy and his claims relating to the taking of his property are not cognizable in this
23 § 1983 action, and must be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

24 **C. Respondeat Superior**

25 Plaintiff also seeks to hold a number of Defendants liable for alleged constitutional
26 violations of the grounds of “negligently failing to provide supervision.” (Compl. at 23.)
27 However, there is no respondeat superior liability under 42 U.S.C. § 1983. *Palmer v. Sanderson*,
28 9 F.3d 1433, 1437-38 (9th Cir. 1993). Instead, “[t]he inquiry into causation must be

1 individualized and focus on the duties and responsibilities of each individual defendant whose
2 acts or omissions are alleged to have caused a constitutional deprivation.” *Leer v. Murphy*, 844
3 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)). In order
4 to avoid the respondeat superior bar, Plaintiff must allege personal acts by each individual
5 Defendant which have a direct causal connection to the constitutional violation at issue. *See*
6 *Sanders v. Kennedy*, 794 F.2d 478, 483 (9th Cir. 1986); *Taylor v. List*, 880 F.2d 1040, 1045 (9th
7 Cir. 1989).

8 Supervisory officials may only be held liable for the allegedly unconstitutional violations
9 of a subordinate if Plaintiff sets forth allegations which show: (1) how or to what extent they
10 personally participated in or directed a subordinate’s actions, and (2) in either acting or failing
11 to act, they were an actual and proximate cause of the deprivation of Plaintiff’s constitutional
12 rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). As currently pleaded, however,
13 Plaintiff’s Complaint fails to set forth facts which might be liberally construed to support an
14 individualized constitutional claim against any of the named supervisory defendants.

15 **D. Conspiracy claims**

16 Plaintiff also alleges that several correctional officers acted in a conspiracy to violate his
17 constitutional rights pursuant to 42 U.S.C. § 1985(3). (*See* Compl. at 24.) “To state a cause of
18 action under § 1985(3), a complaint must allege (1) a conspiracy, (2) to deprive any person or
19 a class of persons the equal protection of the laws, or of equal privileges and immunities under
20 the laws, (3) an act by one of the conspirators in furtherance of the conspiracy, and (4) a personal
21 injury, property damage or a deprivation of any right or privilege of a citizen of the United
22 States.” *Gillespie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980); *see also Griffin v.*
23 *Breckenridge*, 403 U.S. 88, 102-03 (1971); *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th
24 Cir. 1992). “[T]he language requiring intent to deprive *equal* protection . . . means that there
25 must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind
26 the conspirators’ action.” *Griffin*, 403 U.S. at 102; *see also Sever*, 978 F.2d at 1536.

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1 Here, Plaintiff fails to allege membership in a protected class and fails to allege that any
2 Defendant acted with class-based animus, both of which are essential elements of a cause of
3 action under 42 U.S.C. § 1985(3). See *Griffin*, 403 U.S. at 101-02; *Schultz v. Sundberg*, 759
4 F.2d 714, 718 (9th Cir. 1985) (holding that conspiracy plaintiff must show membership in a
5 judicially-designated suspect or quasi-suspect class); *Portman v. County of Santa Clara*, 995
6 F.2d 898, 909 (9th Cir. 1993).

7 Accordingly, the Court must DISMISS Plaintiff's Complaint for all the reasons set forth
8 above but will provide Plaintiff with the opportunity to amend his Complaint to correct the
9 deficiencies of pleading identified by the Court.

10 **III. CONCLUSION AND ORDER**

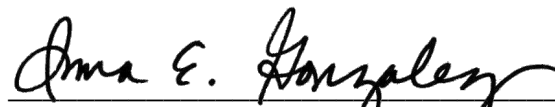
11 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

12 1. Plaintiff's Complaint is **DISMISSED** without prejudice for failing to state a claim
13 upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b).
14 However, Plaintiff is further **GRANTED** forty five (45) days leave from the date this Order is
15 filed in which to file a First Amended Complaint which cures all the deficiencies of pleading
16 noted above. Plaintiff's Amended Complaint must be complete in itself without reference to his
17 previous pleading. See S.D. CAL. CIVLR 15.1. Defendants not named and all claims not re-
18 alleged in the Amended Complaint will be considered waived. See *King v. Atiyeh*, 814 F.2d 565,
19 567 (9th Cir. 1987).

20 Further, Plaintiff is cautioned that should he elect not to amend, or if his Amended
21 Complaint still fails to state a claim upon which relief may be granted, the dismissal of this
22 action may hereafter be counted as a "strike" against him pursuant to 28 U.S.C. § 1915(g). See
23 *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

24 2. The Clerk of Court is directed to mail a form § 1983 complaint to Plaintiff.

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26 DATED: **December 1, 2011**


IRMA E. GONZALEZ, Chief Judge
United States District Court