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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 LOUIS JAMES,
12 CDCR #AE-7438,

13 Plaintiff,

14 vs.

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16
17 CALIPATRIA STATE PRISON;
18 G.W. JANDA; A. CASTRO;
19 E. TRUJILLO; GROTH; R.N. NELSON;
20 CARPIO; M.C. MORALES; J.M.
21 BUILTEMAN; MARTEL; J.D.
22 LOZANO; CALIFORNIA DEP'T OF
23 CORRECTIONS AND
24 REHABILITATION,

25 Defendants.

Civil No. 14cv0964 BTM (MDD)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*
(ECF Doc. No. 2); and**

**(2) DISMISSING COMPLAINT
FOR FAILING TO STATE A
CLAIM AND FOR SEEKING
MONEY DAMAGES AGAINST
IMMUNE DEFENDANTS
PURSUANT TO
28 U.S.C. § 1915(e)(2) AND
§ 1915A(b)**

24 Louis James (“Plaintiff”), currently incarcerated at Corcoran State Prison located
25 in Corcoran, California and proceeding pro se, has filed a civil rights Complaint pursuant
26 to 42 U.S.C. § 1983. Plaintiff has also filed a Motion to Proceed *In Forma Pauperis*
27 (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF Doc. No. 2). Plaintiff alleges that his
28 constitutional rights were violated when he was housed at Calipatria State Prison

1 (“CAL”) in 2011.

2 **I. MOTION TO PROCEED IFP**

3 All parties instituting any civil action, suit or proceeding in a district court of the
4 United States, except an application for writ of habeas corpus, must pay a filing fee of
5 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to
6 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
7 § 1915(a). However, a prisoner granted leave to proceed IFP remains obligated to pay
8 the entire fee in installments, regardless of whether his action is ultimately dismissed.
9 *See* 28 U.S.C. § 1915(b)(1) & (2).

10 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act
11 (“PLRA”), a prisoner seeking leave to proceed IFP must submit a “certified copy of the
12 trust fund account statement (or institutional equivalent) for the prisoner for the six-
13 month period immediately preceding the filing of the complaint.” 28 U.S.C.
14 § 1915(a)(2). From the certified trust account statement, the Court must assess an initial
15 payment of 20% of (a) the average monthly deposits in the account for the past six
16 months, or (b) the average monthly balance in the account for the past six months,
17 whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28
18 U.S.C. § 1915(b)(4). The institution having custody of the prisoner must collect
19 subsequent payments, assessed at 20% of the preceding month’s income, in any month
20 in which the prisoner’s account exceeds \$10, and forward those payments to the Court
21 until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

22 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust
23 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2.
24 *Andrews*, 398 F.3d at 1119. The Court has reviewed Plaintiff’s trust account statement,
25 as well as the attached prison certificate issued by the CDCR’s trust account officials
26 verifying his available balances, and has determined that Plaintiff has no available funds
27 from which to pay filing fees at this time. *See* 28 U.S.C. § 1915(b)(4). Therefore, the
28 Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF Doc. No. 2) and assesses no

1 initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350 balance
2 of the filing fees mandated shall be collected and forwarded to the Clerk of the Court
3 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

4 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

5 **A. Standard of Review**

6 The PLRA also obligates the Court to review complaints filed by all persons
7 proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained in any
8 facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of
9 criminal law or the terms or conditions of parole, probation, pretrial release, or
10 diversionary program,” “as soon as practicable after docketing.” See 28 U.S.C.
11 §§ 1915(e)(2) and 1915A(b). Under these provisions of the PLRA, the Court must sua
12 sponte dismiss complaints, or any portions thereof, which are frivolous, malicious, fail
13 to state a claim, or which seek damages from defendants who are immune. See 28 U.S.C.
14 §§ 1915(e)(2)(B) and 1915A.

15 All complaints must contain “a short and plain statement of the claim showing
16 that the pleader is entitled to relief.” FED.R.CIV.P. 8(a)(2). Detailed factual allegations
17 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported
18 by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
19 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

20 However, while the court “ha[s] an obligation where the petitioner is pro se,
21 particularly in civil rights cases, to construe the pleadings liberally and to afford the
22 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
23 2010) (citing *Bretz v. Kelm*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not, in
24 so doing, “supply essential elements of claims that were not initially pled.” *Ivey v. Board*
25 *of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

26 **B. 42 U.S.C. § 1983**

27 “Section 1983 creates a private right of action against individuals who, acting
28 under color of state law, violate federal constitutional or statutory rights.” *Devereaux v.*

1 *Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of
2 substantive rights, but merely provides a method for vindicating federal rights elsewhere
3 conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks
4 and citations omitted). “To establish § 1983 liability, a plaintiff must show both (1)
5 deprivation of a right secured by the Constitution and laws of the United States, and (2)
6 that the deprivation was committed by a person acting under color of state law.” *Tsao*
7 *v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

8 **C. Respondeat Superior**

9 As an initial matter, Plaintiff names several Defendants whom he seeks to hold
10 liable in their supervisory capacity. Plaintiff claims these Defendants are “responsible
11 for the failure to supervise and train subordinate employees and officials in the
12 appropriate manner to conduct proper procedure.” (Compl. at 8.) However, there is no
13 respondeat superior liability under 42 U.S.C. § 1983. *Palmer v. Sanderson*, 9 F.3d 1433,
14 1437-38 (9th Cir. 1993); *see also Iqbal*, 556 U.S. at 676 (“[V]icarious liability is
15 inapplicable to ... § 1983 suits.”). Instead, a plaintiff “must plead that each government-
16 official defendant, through the official’s own individual actions, has violated the
17 Constitution.” *Iqbal*, 556 U.S. at 676. “The inquiry into causation must be
18 individualized and focus on the duties and responsibilities of each individual defendant
19 whose acts or omissions are alleged to have caused a constitutional deprivation.” *Leer*
20 *v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362,
21 370-71 (1976)).

22 Supervisory prison officials may only be held liable for the allegedly
23 unconstitutional violations of a subordinate if Plaintiff sets forth allegations which show:
24 (1) how or to what extent they personally participated in or directed a subordinate’s
25 actions, and (2) in either acting or failing to act, they were an actual and proximate cause
26 of the deprivation of Plaintiff’s constitutional rights. *Johnson v. Duffy*, 588 F.2d 740,
27 743 (9th Cir. 1978). As currently pleaded, however, Plaintiff’s Complaint fails to
28 include sufficient “factual content that [would] allow[] the court to draw [a] reasonable

1 inference” in support of an individualized constitutional violation committed by the these
2 supervisory Defendants. *Iqbal*, 556 U.S. at 678.

3 For this reason, Plaintiff’s Complaint fails to state a claim upon which section
4 1983 relief can be granted as to Defendants Janda, Nelson, Builteman, Martel and
5 Lozana. *See* 28 U.S.C. § 1915(e)(2), § 1915A(b).

6 **D. Property claims**

7 Plaintiff claims that his Fourth, Eighth and Fourteenth¹ Amendment rights were
8 violated when prison officials lost some of his legal paperwork when he was moved to
9 Administrative Segregation. (*See* Compl. at 4.) Where an inmate alleges the deprivation
10 of a liberty or property interest caused by the unauthorized negligent or intentional action
11 of a prison official, the prisoner cannot state a constitutional claim where the state
12 provides an adequate post-deprivation remedy. *See Zinermon v. Burch*, 494 U.S. 113,
13 129-32 (1990); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). The California Tort
14 Claims Act (“CTCA”) provides an adequate post-deprivation state remedy for the
15 random and unauthorized taking of property. *Barnett v. Centoni*, 31 F.3d 813, 816-17
16 (9th Cir. 1994). Thus, Plaintiff has an adequate state post-deprivation remedy and his
17 claims relating to the destruction or loss of his property are not cognizable in this § 1983
18 action, and must be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

19 **E. Access to Courts**

20 Plaintiff claims that some of his legal materials were lost and other materials were
21 returned to him in “complete disarray.” (Compl. at 5.) To the extent that Plaintiff is
22 attempting to state an access to courts claim, he has failed to allege facts sufficient to
23 state such a claim. Prisoners do “have a constitutional right to petition the government
24 for redress of their grievances, which includes a reasonable right of access to the courts.”
25 *O’Keefe v. Van Boening*, 82 F.3d 322, 325 (9th Cir. 1996); *accord Bradley v. Hall*, 64

26
27 ¹ Even though Plaintiff identifies several different constitutional violations, they are all based
28 on the same set of facts. “Where a particular Amendment ‘provides an explicit textual source of
constitutional protection’ against a particular sort of government behavior, ‘that Amendment, not the
more generalized notion of ‘substantive due process,’ must be the guide for analyzing these claims.”
Albright v. Oliver, 510 U.S. 266, 273 (1994), *quoting Graham v. Connor*, 490 U.S. 386, 394 (1989).

1 F.3d 1276, 1279 (9th Cir. 1995). In *Bounds*, 430 U.S. at 817, the Supreme Court held
2 that “the fundamental constitutional right of access to the courts requires prison
3 authorities to assist inmates in the preparation and filing of meaningful legal papers by
4 providing prisoners with adequate law libraries or adequate assistance from persons who
5 are trained in the law.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977). To establish a
6 violation of the right to access to the courts, however, a prisoner must allege facts
7 sufficient to show that: (1) a nonfrivolous legal attack on his conviction, sentence, or
8 conditions of confinement has been frustrated or impeded, and (2) he has suffered an
9 actual injury as a result. *Lewis v. Casey*, 518 U.S. 343, 353-55 (1996). An “actual
10 injury” is defined as “actual prejudice with respect to contemplated or existing litigation,
11 such as the inability to meet a filing deadline or to present a claim.” *Id.* at 348.

12 Here, Plaintiff has failed to alleged any actions with any particularity that have
13 *precluded* his pursuit of a non-frivolous direct or collateral attack upon either his
14 criminal conviction or sentence or the conditions of his current confinement. *See Lewis*,
15 518 U.S. at 355 (right to access to the courts protects only an inmate’s need and ability
16 to “attack [his] sentence[], directly or collaterally, and ... to challenge the conditions of
17 [his] confinement.”); *see also Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (the
18 non-frivolous nature of the “underlying cause of action, whether anticipated or lost, is
19 an element that must be described in the complaint, just as much as allegations must
20 describe the official acts frustrating the litigation.”). Moreover, Plaintiff has not alleged
21 facts sufficient to show that he has been actually injured by any specific defendant’s
22 actions. *Lewis*, 518 U.S. at 351.

23 In short, Plaintiff has not alleged that “a complaint he prepared was dismissed,”
24 or that he was “so stymied” by any individual defendant’s actions that “he was unable
25 to even file a complaint,” direct appeal or petition for writ of habeas corpus that was not
26 “frivolous.” *Lewis*, 518 U.S. at 351; *Christopher*, 536 U.S. at 416 (“like any other
27 element of an access claim[,] ... the predicate claim [must] be described well enough to
28 apply the ‘nonfrivolous’ test and to show that the ‘arguable’ nature of the underlying

1 claim is more than hope.”). Therefore, Plaintiff’s access to courts claims must be
2 dismissed for failing to state a claim upon which section 1983 relief can be granted. *See*
3 28 U.S.C. § 1915(e)(2), § 1915A(b).

4 **F. Eleventh Amendment**

5 Finally, the Court finds that to the extent Plaintiff names the “California
6 Department of Corrections and Rehabilitation” and CAL as Defendants, his claims must
7 be dismissed. The State of California’s Department of Corrections and Rehabilitation
8 (“CDCR”) and any state correctional agency, sub-division, or department under its
9 jurisdiction are not persons subject to suit under § 1983. *Hale v. State of Arizona*, 993
10 F.2d 1387, 1398–99 (9th Cir. 1993) (holding that a state department of corrections is an
11 arm of the state, and thus, not a “person” within the meaning of § 1983). And if by
12 naming the CDCR or CAL Plaintiff really seeks to sue the State of California itself, his
13 claims are clearly barred by the Eleventh Amendment. *See Alabama v. Pugh*, 438 U.S.
14 781, 782 (1978) (per curiam) (“There can be no doubt . . . that [a] suit against the State
15 and its Board of Corrections is barred by the Eleventh Amendment, unless [the State] has
16 consented to the filing of such a suit.”). Therefore, the Court dismisses Plaintiff’s claims
17 for damages against the CDCR and CAL for seeking monetary damages against immune
18 defendants.

19 The Court finds that Plaintiff’s Complaint fails to state a section 1983 claim upon
20 which relief may be granted and seeks monetary damages against immune defendants,
21 and is therefore subject to dismissal pursuant to 28 U.S.C. §§ 1915(e)(2)(b) & 1915A(b).
22 The Court will provide Plaintiff with an opportunity to amend his pleading to cure the
23 defects set forth above. Plaintiff is warned that if his amended complaint fails to address
24 the deficiencies of pleading noted above, it may be dismissed with prejudice and without
25 leave to amend.

26 **III. CONCLUSION AND ORDER**

27 Good cause appearing, IT IS HEREBY ORDERED that:

- 28 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF No.

1 2) is GRANTED.

2 2. The Secretary of the California Department of Corrections and
3 Rehabilitation, or his designee, shall collect from Plaintiff's prison trust account the
4 \$350 filing fee owed in this case by collecting monthly payments from the account in an
5 amount equal to twenty percent (20%) of the preceding month's income and forward
6 payments to the Clerk of the Court each time the amount in the account exceeds \$10 in
7 accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY
8 IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.

9 3. The Clerk of the Court is directed to serve a copy of this Order on Jeffrey
10 A. Beard, Secretary, California Department of Corrections and Rehabilitation, P.O. Box
11 942883, Sacramento, California, 94283-0001.

12 **IT IS FURTHER ORDERED** that:

13 4. Plaintiff's Complaint is DISMISSED without prejudice for failing to state
14 a claim and for seeking monetary damages against immune defendants pursuant to 28
15 U.S.C. §§ 1915(e)(2)(b) and 1915A(b). However, Plaintiff is GRANTED forty five (45)
16 days leave from the date this Order is filed in which to file a First Amended Complaint
17 which cures all the deficiencies of pleading identified in this Order. Plaintiff's Amended
18 Complaint must be complete in itself without reference to his original pleading. *See* S.D.
19 CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542,
20 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the original.”); *King v. Atiyeh*,
21 814 F.2d 565, 567 (9th Cir. 1987) (citation omitted) (“All causes of action alleged in an
22 original complaint which are not alleged in an amended complaint are waived.”).

23 If Plaintiff fails to file an Amended Complaint within forty five (45) days, the
24 Court will enter a final Order entering judgment for the Defendants. The Clerk of Court
25 is directed to mail a form § 1983 complaint to Plaintiff.

26 DATED: May 19, 2014

27 
28 BARRY TED MOSKOWITZ, Chief Judge
United States District Court