

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Pro se complaints such as that filed by the plaintiff are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Obriecht v. Raemisch*, 517 F.3d 489, 491 n.2 (7th Cir. 2008).

The plaintiff brings this action against Pendleton Correctional Facility and the Indiana Department of Correction. He alleges that certain papers—which appear to have contained addresses, e-mail addresses, and names that would have aided the plaintiff in starting a business—were confiscated from him by correctional officers and not returned. He seeks money damages for the loss of those papers.

The plaintiff's claim must be dismissed for two independent reasons. First, neither defendant is a suable entity under § 1983. Moreover, a suit against a state agency is treated as a suit against the state itself for Eleventh Amendment purposes, and the Eleventh Amendment immunizes an unconsenting state from suits for damages in federal court. *See Smith v. Utah Valley Univ.*, 619 Fed. Appx. 559, 560 (7th Cir. 2015) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984)).

Second, even if the plaintiff named suable entities, he does not have a viable due process claim for the destruction of his property because there is a process available for the plaintiff to recover—namely, the Indiana state. As explained by the Seventh Circuit, “[the state] maintains a system of courts that can provide compensation for torts, and the opportunity to recover damages for a rogue guard’s wrongful conduct supplies all of the process that is due—whether the deprivation was negligent or intentional.” *Nance v. Vieregge*, 147 F.3d 589, 591 (7th Cir. 1998) (citations omitted); *see Parratt v. Taylor*, 451 U.S. 527, 541 (1981); *see also Watkins v. Kasper*, 599 F.3d 791, 798 (7th Cir. 2010) (“To the extent that [the plaintiff] relies on the destruction of his personal legal materials, his complaint is better characterized as a deprivation of property claim,

for which he may seek relief at state law.”); *Wilson v. Civil Town of Clayton, Indiana*, 839 F.2d 375, 383 (7th Cir. 1988) (holding that Indiana Tort Claims Act provides prisoners with adequate post-deprivation remedies for lost property).

II.

The plaintiff’s complaint must be dismissed for each of the reasons set forth above. The plaintiff shall have **through September 29, 2017**, in which to show cause why Judgment consistent with this Entry should not issue. *See Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1022 (7th Cir. 2013) (“Without at least an opportunity to amend or to respond to an order to show cause, an IFP applicant’s case could be tossed out of court without giving the applicant any timely notice or opportunity to be heard to clarify, contest, or simply request leave to amend.”).

IT IS SO ORDERED.

Date: 9/7/17



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

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