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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RAYMOND GEORGE GLASS,	)	CASE NO. 1:10-cv-01652 AWI GSA PC
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATIONS
	)	RECOMMENDING DISMISSAL OF ACTION,
v.	)	WITH PREJUDICE, FOR FAILURE TO
	)	STATE A CLAIM UNDER SECTION 1983
G. RODRIGUEZ, et al.,	)	
	)	(Doc. 1)
Defendants.	)	OBJECTIONS DUE WITHIN THIRTY DAYS
	/	

**Findings and Recommendations Following Screening of Complaint**

**I. Screening Requirement**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on September 13, 2010.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.  
3 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and  
4 plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a).  
5 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the  
6 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading  
7 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330  
8 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements  
9 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257  
10 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

## 11 **II. Plaintiff’s Claim**

### 12 **A. Summary of Complaint**

13 Plaintiff is currently housed at California State Prison Corcoran, where the events at issue  
14 in this action occurred. Plaintiff’s sole claim in this action is that Defendant Correctional Officer  
15 Rodriguez deprived him of his personal property in an unauthorized manner. Specifically, Plaintiff  
16 alleges that on April 20, 2010, C/O Rodriguez advised Plaintiff that he would dispose of certain  
17 items of his personal property if he did not provide an address to send them to. Plaintiff alleges that  
18 he responded by advising Rodriguez that he was authorized to retain the property. Plaintiff also  
19 alleges that Rodriguez stole certain items of his personal property. (Compl. ¶ IV.)

20 Where a prisoner challenges the deprivation of a liberty or property interest, caused by the  
21 unauthorized negligent or intentional action of a prison official, the prisoner cannot state a  
22 constitutional claim where the state provides an adequate post-deprivation remedy. See Zinermon  
23 v. Burch, 494 U.S. 113, 129-30 (1990); Hudson v. Palmer, 468 U.S. 517, 533 (1984); Barnett v.  
24 Centoni, 31 F.3d 813, 816 (9<sup>th</sup> Cir. 1994) (per curiam); Raditch v. United States, 929 F.2d 478, 481  
25 (9<sup>th</sup> Cir. 1991); Taylor v. Knapp, 871 f.2d 803, 805 (9<sup>th</sup> Cir. 1989). This rule applies to the Fifth  
26 Amendment’s Due Process Clause as well. Raditch, 929 F.2d at 481. Thus, where the state provides  
27 a meaningful postdeprivation remedy, only authorized, intentional deprivations constitute actionable  
28 violations of the Due Process Clause. An authorized deprivation is one carried out pursuant to

1 established state procedures, regulations, or statutes. Piatt v. McDougall, 773 F.2d 1032, 1036 (9th  
2 Cir. 1985); see also Knudson v. City of Ellensburg, 832 F.2d 1142, 1149 (9th Cir. 1987). In the  
3 instant case, plaintiff has not alleged any facts which suggest that the deprivation of his personal  
4 property was “authorized” under the definition above. Plaintiff specifically alleges that C/O  
5 Rodriguez stole Plaintiff’s property, and disposed of his property that Plaintiff had authorization to  
6 possess.

7 California has an adequate post deprivation remedy. California’s Tort Claims Act requires  
8 that a tort claim against a public entity or its employees be presented to the California Victim  
9 Compensation and Government Claims Board, formerly known as the State Board of Control, no  
10 more than six months after the cause of action accrues. Cal. Gov’t Code §§ 905.2, 910, 911.2, 945.4,  
11 950-9502 (West 2006). Presentation of a written claim, and action on or rejection of the claim are  
12 conditions precedent to suit. State v. Superior Court of Kings County (Bodde), 32 Cal. 4<sup>th</sup> 1234,  
13 1245 (2004); Mangold v. California Pub. Utils. Comm’n, 67 F.3d 1470, 1477 (9<sup>th</sup> Cir. 1995). To  
14 state a tort claim against a public employee, a plaintiff must allege compliance with the Tort Claims  
15 Act. State v. Superior Court, 32 Cal. 4<sup>th</sup> at 1245; Mangold, 67 F.3d at 1477; Karim-Panahi v. Los  
16 Angeles Police Dept., 839 F.2d 621, 627 (9<sup>th</sup> Cir. 1988). Plaintiff fails to allege facts to show  
17 compliance with California’s Tort Claims Act.

### 18 **III. Conclusion and Recommendation**

19 Plaintiff’s complaint does not state any cognizable claims under section 1983. Plaintiff’s  
20 claim arises from the unauthorized deprivation of his personal property. The complaint clearly  
21 alleges that the deprivation was unauthorized. California has an adequate post deprivation remedy.  
22 Plaintiff cannot, therefore, state a claim for relief. Because the Court finds that this deficiency is  
23 not capable of being cured by amendment, the Court HEREBY RECOMMENDS dismissal of this  
24 action, with prejudice, for failure to state a claim. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir.  
25 1987).

26 These Findings and Recommendations will be submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**  
28 **days** after being served with these Findings and Recommendations, Plaintiff may file written

1 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
2 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the  
3 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d  
4 1153 (9th Cir. 1991).

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7 IT IS SO ORDERED.

8 **Dated: March 14, 2011**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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