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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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11 Charles H. Roop,

12 Plaintiff,

13 vs.

14 Charles L. Ryan, et al.

15 Defendants.

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No. CV 12-0270-PHX-RCB (JFM)

ORDER

17 Plaintiff Charles H. Roop brought this civil rights action pursuant to 42 U.S.C. § 1983
18 against Arizona Department of Corrections (ADC) Director Charles L. Ryan, former Warden
19 Ernest Trujillo, and Deputy Warden Jeffrey Freeland (Doc. 8). Before the Court is
20 Defendants' Motion for Summary Judgment (Doc. 30), which Plaintiff opposes (Doc. 33).

21 The Court will grant the motion and terminate the action.

22 **I. Background**

23 In his First Amended Complaint, Plaintiff averred that he receives monthly Veteran's
24 Administration (VA) disability checks and that Defendants commingle the funds derived
25 from these checks with funds received for deposit to other inmates' accounts to maximize
26 the interest earned. He claimed that the interest accumulated from this interest-bearing
27 account is transferred into a special service fund pursuant to state law rather than being
28 credited to him (id.). Plaintiff further alleges that Defendants unconstitutionally delayed

1 receipt of his VA benefits when they imposed and enforced Department Order (DO) 905
2 § 1.3.3, which suspends or hold funds for 10 business days from the date of deposit (*id.*).

3 The Court determined that Plaintiff sufficiently stated a claim for a violation of the
4 Fifth Amendment Takings Clause (Doc. 10).

5 Defendants now move for summary judgment on the grounds that (1) there is no Fifth
6 Amendment violation because the taking of interest earned from Plaintiff's account was not
7 without just compensation; (2) the restrictions on Plaintiff's incoming funds are reasonably
8 related to legitimate penological interests; and (3) Defendants are entitled to qualified
9 immunity (Doc. 30).

10 **II. Summary Judgment Standard**

11 A court must grant summary judgment "if the movant shows that there is no genuine
12 dispute as to any material fact and the movant is entitled to judgment as a matter of law."
13 Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The
14 movant bears the initial responsibility of presenting the basis for its motion and identifying
15 those portions of the record, together with affidavits, that it believes demonstrate the absence
16 of a genuine issue of material fact. Celotex, 477 U.S. at 323.

17 If the movant fails to carry its initial burden of production, the nonmovant need not
18 produce anything. Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc., 210 F.3d 1099,
19 1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts
20 to the nonmovant to demonstrate the existence of a factual dispute and that the fact in
21 contention is material, i.e., a fact that might affect the outcome of the suit under the
22 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable jury
23 could return a verdict for the nonmovant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
24 248, 250 (1986); see Triton Energy Corp. v. Square D. Co., 68 F.3d 1216, 1221 (9th Cir.
25 1995). The nonmovant need not establish a material issue of fact conclusively in its favor,
26 First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968); however, it must
27 "come forward with specific facts showing that there is a genuine issue for trial." Matsushita
28 Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (internal citation

1 omitted); see Fed. R. Civ. P. 56(c)(1).

2 At summary judgment, the judge’s function is not to weigh the evidence and
3 determine the truth but to determine whether there is a genuine issue for trial. Anderson, 477
4 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence, and draw all
5 inferences in the nonmovant’s favor. Id. at 255. The court need consider only the cited
6 materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3).

7 **III. Parties’ Contentions**

8 **A. Defendants’ Motion**

9 In support of their motion, Defendants submit a separate Statement of Facts (DSOF),
10 which is supported by the declaration of Sheryl Bodmer, ADC Bureau Administrator of
11 Financial Services, and attachments (Doc. 31, Ex. C, Attachs.).

12 Defendants assert that, in accordance with state statute, interest earned on inmate trust
13 account funds—which are invested with the state treasurer—is deposited in the Special
14 Services Fund, which supports the benefit, education, and welfare of all inmates (Doc. 30 at
15 3).

16 Defendants acknowledge that the ADC method of dealing with interest earned on
17 Plaintiff’s inmate trust account is a taking under the Fifth Amendment; however, they argue
18 that there has been no deprivation of just compensation and, thus, no Fifth Amendment
19 violation because the accrued interest earned on Plaintiff’s money did not exceed his share
20 of ADC’s operating costs of the Inmate Trust Fund (id. at 6). According to Defendants, in
21 2011 and 2012, Plaintiff earned less than one dollar each year in interest; yet, his share of the
22 operating costs was just over \$40.00 each year (id.). Defendants therefore maintain that
23 because the interest earned was less than Plaintiff’s share of the cost of administering the
24 inmate trust accounts, there is no “just compensation” due to Plaintiff, and they are entitled
25 to summary judgment (id.).

26 Next, Defendants assert that the limitations on disbursement of inmate monies set
27 forth in DO 905.03 are reasonably related to legitimate penological interests (id. at 8-10).
28 They argue that the limitations reduce contraband import and the frequency and incentives

1 for extortion and bribery (id. at 9).

2 Lastly, Defendants argue that even if the Court found a violation, there is no clearly
3 established precedent indicating that Defendants' handling of Plaintiff's funds violated
4 Plaintiff's rights such that it should have been obvious to a reasonable official and, therefore,
5 they are entitled to qualified immunity (id. at 12-13).

6 **B. Plaintiff's Response¹**

7 Plaintiff submitted a response memorandum and a separate Statement of Facts (PSOF)
8 in response to DSOF (Docs. 33-34).

9 Plaintiff argues that the state legislature establishes laws dictating how the ADC
10 Director is to handle incoming inmate funds but it did not provide any statute that allows
11 ADC to hold inmate funds prior to disbursement for the purpose of drawing interest from
12 those funds (Doc. at 2-3). According to Plaintiff, it is unlikely the state legislature would
13 have intended for the ADC to hold VA checks for this purpose, and he maintains that the
14 interest derived from his VA benefits should belong to him (id. at 3). Plaintiff asserts that
15 Defendants' argument that the interest earned on his funds covers maintenance costs is moot
16 because if the legislature wanted to charge fees for such maintenance, they would have
17 provided for that in state law (id.).

18 Plaintiff contends that the hold or suspension of his VA funds pursuant to DO 905.01
19 § 1.1.3 violates 38 U.S.C. § 5301, and that this, as well as the allocation of interest on his
20 funds, has been held unlawful by the Ninth Circuit in Nelson v. Heiss, 271 F.3d 891 (9th Cir.
21 2001), and Higgins v. Beyer, 293 F.3d 683 (3d Cir. 2002) (id. at 4-5). He states that the hold
22 renders his VA check unavailable for approximately 20 days after receipt (id. at 6).

23 As to Defendants' argument regarding the rationale for limitations on inmate-monies
24 disbursement, Plaintiff asserts that there is no proof that the availability of his money in his
25 account could possibly affect the inmate population (id. at 7).

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27 ¹The Court issued a Notice, required under Rand v. Rowland, 154 F.3d 952, 962 (9th
28 Cir. 1998), informing Plaintiff of his obligation to respond to Defendants' motion and the
requirements under Federal Rule of Civil Procedure 56 (Doc. 32).

1 **C. Defendants' Reply**

2 Defendants argue that Plaintiff failed to properly address their assertions of fact and
3 he ignored the crux of the substantive argument; that is, that it costs more to administer his
4 inmate account than any interest earned to which he would otherwise be entitled (Doc. 35 at
5 1-2). Defendants further argue that Plaintiff ignores the distinction between seizure,
6 confiscation, and assignment of inmate funds prohibited by Nelson, and temporary holds on
7 deposits, which are at issue in this case (id. at 2).

8 **IV. Analysis**

9 The parties do not dispute the material facts; namely, that Plaintiff's VA checks are
10 placed on hold for 10 business days; that those checks are placed in an interest-bearing
11 account; and that the interest earned on Plaintiff's VA checks does not go to him but is
12 deposited in a general fund for the benefit, education, and welfare of all inmates.

13 “The Takings Clause of the Fifth Amendment prohibits the government from taking
14 private property for public use without just compensation.” Ward v. Ryan, 623 F.3d 807,
15 810 (9th Cir. 2010) (discussing the Takings Clause as it applies to inmate trust fund
16 accounts); U.S. Const., amend. V. While the Fifth Amendment does not preclude the
17 Government from confiscating private property, it does impose two conditions on the
18 exercise of such authority: the taking must be for “public use,” and “just compensation” must
19 be paid to the owner. Brown v. Legal Found. of Wash., 538 U.S. 216, 231-32 (2003). The
20 Takings Clause is applicable to the States through the Fourteenth Amendment. Dolan v. City
21 of Tigard, 512 U.S. 374, 383 (1994).

22 The Ninth Circuit has held that diversion of the interest on inmates' trust accounts into
23 a common inmate welfare fund constitutes a “taking” under the Fifth Amendment. McIntyre
24 v. Bayer, 339 F.3d 1097, 1099-1100 (9th Cir. 2003); Schneider v. Cal. Dep't of Corrs., 345
25 F.3d 716, 720 (9th Cir. 2003). But the Fifth Amendment only proscribes taking *without* just
26 compensation. Schneider, 345 F.3d at 720 (citing Brown v. Legal Found. of Wash., 538 U.S.
27 216, 235 (2003). To determine whether such action constitutes a taking without just
28 compensation, an individualized assessment of net interest and just compensation is required;

1 the court must examine whether the interest earned on the individual plaintiff’s inmate trust
2 account is exceeded by his share of the costs of administering the personal inmate trust
3 account. Schneider, 345 F.3d at 720-21 (citing McIntyre, 339 F.3d at 1097). In Schneider,
4 like the instant action, the interest earned on inmate trust accounts was not allocated to cover
5 only the trust account administration costs, but to a general welfare fund “used for the
6 benefit, education, and welfare of inmates” Id. at 719.

7 Plaintiff contends that the state legislature did not provide for a fee to be assessed to
8 cover the costs of maintaining inmate trust accounts; thereby suggesting that Defendants’
9 actions violate state law. Plaintiff did not raise a state-law claim in his pleading.
10 Nonetheless, Arizona Revised Statute § 41-1604.05, which provides for interest from inmate
11 trust accounts to be retained in an interest bearing account and deposited in a special services
12 fund, mirrors the Nevada state statute addressed in McIntyre and the California state statute
13 addressed in Schneider. See McIntyre, 339 F.3d at 1098 (Nev. Rev. Stat. § 209.221(3));
14 Schneider, 345 F.3d at 719 (Cal. Penal Code § 5008).

15 Defendants submit evidence demonstrating that in 2011, the interest earned on
16 Plaintiff’s inmate trust account was \$0.52, and in 2012, the interest earned was \$0.60 (Doc.
17 31, DSOF ¶¶ 14-15). The evidence shows that the average annual cost per inmate to
18 administer the inmate trust accounts is \$47.43 (id. ¶ 13). Thus, the interest earned on
19 Plaintiff’s inmate trust account is exceeded by his share of the administration costs. Based
20 on the holdings in McIntyre and Schneider, this constitutes just compensation for the taking
21 of interest on Plaintiff’s account.

22 The Court notes, however, that Plaintiff’s claim pertains solely to interest on his VA
23 checks, and neither McIntyre nor Schneider addressed inmate trust accounts supported by
24 funds from the VA. See McIntyre, 339 F.3d at 1098 (personal property trust fund included
25 “wages earned during incarceration as well as any money received from outside sources”);
26 Schneider, 345 F.3d at 718-710 (no reference to source of funds in inmate trust accounts).
27 VA benefits are treated differently than other sources of income. Federal statute provides
28 that VA benefits are not assignable and are exempt from taxation, creditors’ claims, and from

1 attachment, levy, or seizure under any process whatsoever, either before or after receipt by
2 the beneficiary. 38 U.S.C. § 5301(a)(1). Thus, federal veterans’ benefits retain their exempt
3 status even after being deposited in a bank account. Porter v. Aetna Ca. & Sur. Co., 370 U.S.
4 159, 160-61 (1962); see Nelson, 271 F.3d at 896 (“[e]ven after receipt and deposit, the
5 [veterans’ benefits] funds remained subject to the call of the veteran, or his guardian, and
6 could not be touched”).

7 As Defendants argue, the cases on which Plaintiff relies, Nelson and Higgins, concern
8 situations where (1) the inmate assigned a future VA check to cover purchases made with
9 insufficient funds and (2) prison officials seized an inmate’s VA check to pay a court fine.
10 Both these actions are prohibited by § 5301. The Nelson decision refers to a “hold” placed
11 on the prisoner’s account after he submitted withdrawal orders for funds to be withdrawn
12 from his account to purchase copies and dental supplies. 271 F.3d at 893. The prisoner did
13 not have sufficient funds in his account to cover the purchases; however, instead of
14 “bouncing” his withdrawal orders, the prison offered a kind of overdraft protection—it
15 allowed the purchases and placed a hold on the account so it could be repaid when funds
16 arrived. Id. This “hold” allowed for the assignment of future veterans’ benefits, which, as
17 stated, is prohibited under the statute.

18 Defendants’ temporary hold on Plaintiff’s VA disbursement checks is not the same
19 type of “hold” referred to in Nelson, and it did not provide for an assignment of benefits.
20 Although the temporary hold on Plaintiff’s VA checks appears unnecessary because they are
21 issued by the US Treasury (see Doc. 34, PSOF ¶ 19), it is similar to standard commercial
22 banking procedures that place holds on most deposited checks, and nothing in § 5301
23 prohibits such holds. Indeed, the Court already held in its Screening Order that the delay in
24 crediting Plaintiff’s account with his VA benefits does not violate the governing federal
25 statutes (Doc. 10 at 4).

26 Further, there is nothing in § 5301 regarding interest on VA benefits or specifying that
27 interest on VA benefits constitutes non-taxable interest or interest that is otherwise exempt
28 in the same manner that the VA benefit itself is exempt. Absent that specific language in the

1 statute or any precedent treating interest on VA benefits as exempt, there is nothing to
2 support that Defendants' temporary hold and allocation of interest on Plaintiff's VA checks
3 violates the Fifth Amendment or any other federal right.

4 The Court need not address Defendants' Turner argument in support of DO 905.03,
5 because that provision is not relevant to Plaintiff's claim, nor does the Court need to address
6 qualified immunity. Defendants' Motion for Summary Judgment will be granted.

7 **IT IS ORDERED:**

8 (1) The reference to the Magistrate Judge is **withdrawn** as to Defendants' Motion for
9 Summary Judgment (Doc. 30).

10 (2) Defendants' Motion for Summary Judgment (Doc. 30) is **granted**.

11 (3) The Clerk of Court must terminate the action and enter judgment accordingly.

12 (4) For the reasons set forth herein, pursuant to 28 U.S.C. § 1915(a)(3), an appeal
13 from the judgment in this action would not be taken in good faith.

14 DATED this 19th day of June, 2013.

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18 Robert C. Broomfield
19 Senior United States District Judge
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