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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DONTE ROLANDO HARRIS,  
Plaintiff,  
v.  
H.A. RIOS, et al.,  
Defendants.

Case No. 1:09-cv-00781-MJS (PC)

**MEMORANDUM OF DECISION;  
JUDGMENT FOR DEFENDANTS COBB  
AND ZARAGOZA**

**CLERK TO TERMINATE ALL PENDING  
MOTIONS AND CLOSE CASE**

**I. BACKGROUND**

Plaintiff, a federal prisoner proceeding *pro se*, brought this civil rights action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). The action proceeded to trial on August 20, 2015, on Plaintiff's First Amendment claim against Defendants Gonzaga, Cobb, Zaragoza, and Valero for delay in delivery of incoming seized mail; a First Amendment claim against Defendant Cobb for interception and seizure of outgoing mail; and a Fifth Amendment due process claim against Defendants Estrada, Cobb, Valero, and Zaragoza for failing to provide notice that mail was seized.

1 The Court has subject matter jurisdiction over the case under 28 U.S.C. §§ 1331  
2 and 1343(a)(3). Venue in the Eastern District of California is proper under 28 U.S.C. §  
3 1391 because the events giving rise to the action occurred in this district.

4 All parties consented to the jurisdiction of a Magistrate Judge for all purposes in  
5 accordance with 28 U.S.C. § 636(b)(1)(B). Neither party having demanded a jury, the  
6 case was tried by the undersigned without a jury.

7 **II. UNDISPUTED FACTS**

8 The parties stipulated to the following facts:

- 9 1. Plaintiff was incarcerated at the United States Penitentiary in Atwater,  
10 California (“USP Atwater”) at all times relevant to his complaint.
- 11 2. Defendants were employed by the Bureau of Prisons at USP Atwater at all  
12 times relevant.
- 13 3. During Plaintiff’s incarceration at USP Atwater, he was the subject of an  
14 investigation involving his use of false liens, checks, and other fraudulent  
15 financial instruments.
- 16 4. Plaintiff alleges that his mail was seized as set forth in detail in Section IV,  
17 below.<sup>1</sup>

18 **III. DISPUTED FACTS**

19 The following facts remained disputed at the time of trial:

- 20 1. Whether the mail items at issue were contraband relating to Plaintiff’s alleged  
21 use of false liens, checks, and other fraudulent financial instruments.
- 22 2. Whether Plaintiff received notice the items were confiscated.
- 23 3. Whether any individual Defendant violated Plaintiff’s rights under the First or  
24 Fifth Amendment.

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27 <sup>1</sup> Plaintiff’s second amended complaint also alleged a First Amendment claim for seizure of his outgoing  
28 mail in October 2010. However, because this alleged seizure was not attributed to any identifiable  
defendant, the claim was dismissed. Plaintiff did, however, successfully allege a Fifth Amendment claim  
for failure to notify him of the seizure of mail in that month.

1 4. Whether Defendants reasonably could have believed their actions were legal  
2 in light of clearly established law and the information they possessed at the  
3 time.

4 5. If a Defendant did deprive Plaintiff of a right under the First or Fifth  
5 Amendment, whether such conduct was malicious, oppressive, or in reckless  
6 disregard of Plaintiff's rights.

7 6. Whether Plaintiff suffered any compensable damages.

8 **IV. PLAINTIFF'S CLAIMS**

9 Plaintiff claims that the following specific items of his mail were seized on or  
10 about the dates indicated and were seized by the Defendants whose names are stated  
11 and that the Defendants indicated failed to give him notice of the seizure.

12 1. November 7, 2007 -- Incoming Express Mail --

13 A. Item number EB21 5054 867US **and**

14 B. Item number EB73 4930 888US

15 were seized by Defendants Gonzaga and Cobb;

16 2. May 25, 2008 -- Outgoing Priority Mail envelope— (No reference number was  
17 provided initially, but the evidence leaves it clear this was outgoing mail Item  
18 number 0300 1290 002 7041 4939) was seized by Defendant Cobb.  
19 Defendant Cobb failed to give notice of the seizure;

20 3. April 2009 -- Incoming Priority Mail – Item number 2008 1140 0000 6011  
21 6651 was seized by Defendant Zaragoza. Defendant Estrada failed to give  
22 notice of the seizure;

23 4. May 16, 2010 -- Incoming Certified Mail – Item number 7008 1140 0000 8015  
24 3898 was seized by Defendant Valero. Defendant Valero failed to give  
25 notice of the seizure; and  
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1 5. July 26, 2010 – Incoming Certified Mail – Item Number 7010 0780 0001 8760  
2 1388 was seized by Defendant Valero. Defendants Zaragoza and Valero  
3 failed to give notice of the seizure.

4 These are the only items that Plaintiff claims in this case were improperly seized  
5 and notice of seizure not given.

6 **V. APPLICABLE LAW**

7 **A. Bivens Actions**

8 Under Bivens, a plaintiff may sue a federal officer in his or her individual capacity  
9 for damages for violating the plaintiff’s constitutional rights. See Bivens, 403 U.S. at  
10 397. A Plaintiff bringing a Bivens action must demonstrate “that each Government-  
11 official defendant, through the official’s own individual actions, has violated the  
12 Constitution.” Ashcroft v. Iqbal, 556 U.S. 662, 683 (2009). Respondeat superior liability  
13 is inapplicable to Bivens actions. Id.

14 **B. First Amendment**

15 Prisoners have “a First Amendment right to send and receive mail.” Witherow v.  
16 Paff, 52 F.3d 264, 265 (9th Cir. 1995) (per curiam). However, there must be a “delicate  
17 balance” between prisoners’ First Amendment rights and the discretion given to prison  
18 administrators to govern the order and security of the prison. Thornburgh v. Abbott,  
19 490 U.S. 401, 407-408 (1989).

20 A prison may adopt regulations or practices for incoming mail which impinge on  
21 a prisoner’s First Amendment rights as long as the regulations are “reasonably related  
22 to legitimate penological interests.” Turner v. Safley, 482 U.S. 78, 89 (1987);  
23 Thornburgh, 490 U.S. at 413. “[T]here is . . . no doubt that prison officials are justified in  
24 discovering and refusing to process mail” that contains “escape plans,  
25 contraband, threats, or evidence of illegal activity.” Smith v. Delo, 995 F.2d 827, 830  
26 (8th Cir. 1993). Prison officials have a responsibility to forward mail to inmates  
27 promptly. Bryan v. Werner, 516 F.2d 233, 238 (3d Cir. 1975). Allegations that mail  
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1 delivery was delayed for an inordinate amount of time are sufficient to state a claim for  
2 violation of the First Amendment. Antonelli v. Sheahan, 81 F.3d 1422, 1432 (7th Cir.  
3 1996). However, a temporary delay or isolated incident of delay does not violate  
4 a prisoner's First Amendment rights. Crofton v. Roe, 170 F.3d 957, 961 (9th Cir. 1999)  
5 (temporary delay resulting from security inspections does not violate First Amendment).

6 Because outgoing correspondence from prisoners does not generally pose a  
7 serious threat to internal prison order and security, there must be a closer fit between  
8 any regulation or practice affecting such correspondence and the purpose it purports to  
9 serve. Thornburgh, 490 U.S. at 411-12. Censorship of outgoing prisoner mail is justified  
10 if the following criteria are met: (1) the regulation furthers "an important or substantial  
11 government interest unrelated to the suppression of expression" and (2) "the limitation  
12 on First Amendment freedoms must be no greater than is necessary or essential to the  
13 protection of the particular governmental interest involved." Procunier v. Martinez, 416  
14 U.S. 396, 413 (1974), overturned on other grounds by Thornburgh, 490 U.S. at 413-14.

### 15 **C. Fifth Amendment**

16 An inmate has a "due process liberty interest in receiving notice that his  
17 incoming mail is being withheld by prison authorities." Frost v. Symington, 197 F.3d  
18 348, 353-54 (9th Cir. 1999). Thus, withholding delivery of inmate mail must be  
19 accompanied by minimum procedural safeguards. Procunier, 416 U.S. at 417-18,  
20 overruled on other grounds by Thornburgh, 490 U.S. at 413-14. These procedural  
21 safeguards include: (1) notifying the inmate that the mail was seized; (2) allowing the  
22 inmate a reasonable opportunity to protest the decision; and (3) referring any  
23 complaints to a prison official other than the one who seized the mail. Procunier, 416  
24 U.S. at 418-19; Krug v. Lutz, 329 F.3d 692, 698 (9th Cir. 2003).

### 25 **D. Qualified Immunity**

26 Government officials enjoy qualified immunity from civil damages unless their  
27 conduct violates "clearly established statutory or constitutional rights of which a  
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1 reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).  
2 Resolving a claim of qualified immunity requires courts to determine whether the facts  
3 alleged, when taken in the light most favorable to the plaintiff, violated a constitutional  
4 right, and if so, whether the right was clearly established. Saucier v. Katz, 533 U.S.  
5 194, 201 (2001). While often beneficial to address in that order, courts have discretion  
6 to address the two-step inquiry in the order they deem most suitable under the  
7 circumstances. Pearson v. Callahan, 555 U.S. 223, 236 (2009).

8 “The principles of qualified immunity shield an officer from personal liability when  
9 an officer reasonably believes that his or her conduct complies with the law.” Pearson,  
10 555 U.S. at 244. Therefore, “[i]f the [defendant’s] mistake as to what the law requires is  
11 reasonable . . . the [defendant] is entitled to the immunity defense.” Saucier, 533 U.S.  
12 at 205. Qualified immunity protects “all but the plainly incompetent or those who  
13 knowingly violate the law.” Malley v. Briggs, 475 U.S. 335, 341 (1986).

#### 14 **E. Punitive Damages**

15 Plaintiff has the burden of proving what, if any, punitive damages should be  
16 awarded by a preponderance of the evidence. Ninth Circuit Model Civil Jury  
17 Instructions § 5.5 (2008). The trier of fact must find that Defendant’s conduct was  
18 “motivated by evil motive or intent, or . . . involve[d] reckless or callous  
19 indifference to the federally protected rights of others.” Smith v. Wade, 461 U.S. 30,  
20 56 (1986). Acts or omissions which are malicious, wanton, or oppressive support an  
21 award of punitive damages. Dang v. Cross, 422 F.3d 800, 807-08 (9th Cir. 2005).

### 22 **VI. TRIAL**

#### 23 **A. Plaintiff’s Claims and Evidence<sup>2</sup>**

24 Plaintiff called himself as his only witness. He testified essentially as follows:  
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27 <sup>2</sup> The Court invited Plaintiff to describe in his opening statement all the evidence he believed supported  
28 his case. He did so. When actually presenting his case in chief, he touched on the same matters, but in  
less detail. In order to give this *pro se* Plaintiff the benefit of every doubt, the Court considers all claims  
presented by Plaintiff at trial as if in evidence but only to the extent discussed below.

1 All six of the items listed in Section IV, above, were confiscated without justification or  
2 authority and in only one of those six cases was he given notice of the confiscation and  
3 in no case was the confiscated mail delivered to him or returned to its sender as called  
4 for by applicable provisions of the Federal Bureau of Prison Program Statement Mail  
5 Management Manual. Other mail was confiscated as reflected in the trial exhibits filed  
6 by Defendants, but according to Plaintiff, none of those items are the subject of his  
7 claim or otherwise at issue in this case and none of the exhibits relating to them is  
8 relevant to his claims in this case.

9 Specifically, as to **Items 1.A.**<sup>3</sup> and **1.B.**, Plaintiff refers to Exhibits P-2 and P-3 as  
10 proof of delivery of the items to the prison. Plaintiff had been advised by family  
11 members that the items had been mailed to him Express Mail, but he never received  
12 them. Accordingly, his mother, Nadine Manley, instigated the U.S. Postal Service  
13 tracking system and, in response, the Postal Service produced Exhibit P-2, indicating  
14 delivery to an unknown signatory at the prison. Plaintiff asserts he was not given copies  
15 of P-2 or P-3 except in this litigation. Plaintiff believes Defendants Gonzaga and Cobb  
16 were responsible for the seizures.

17 Plaintiff contends that he sent out **Item 2** on or about May 25, 2008, by Priority  
18 Mail, but it was never received by the addressee or returned to Plaintiff. Exhibit P-5  
19 appears to be a June 30, 2008 request by Plaintiff for confirmation of delivery of item  
20 number 0300 1290 002 7041 4939. A typed note at the bottom under "DISPOSITION"  
21 states that the item was not in the mail room, but it was with the Special Investigative  
22 Service ("SIS"). In Exhibit D-C, Plaintiff on May 30, 2008, accuses Defendant Zaragoza  
23 of improperly turning over his mail to the FBI; it is not clear that this accusation relates  
24 to Item 2, but its date suggests as much. Yet, Plaintiff claims that Defendant Cobb  
25 seized the mail and failed to give notice of the seizure.

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28 <sup>3</sup> For simplicity's sake, the Court will generally refer to the six items of allegedly wrongfully confiscated mail only by the number and, if applicable, letter designation used by the Court in Section IV above.

1 Plaintiff acknowledges that he did receive notice of confiscation of **Item 3**, but  
2 asserts that the mail was never delivered nor returned to him, Plaintiff believes  
3 Defendant Zaragoza improperly seized the mail, but Defendant Estrada failed to give  
4 notice of the seizure. (It is noted that Exhibit D-F identifies confiscated mail by the same  
5 Priority Mail number Plaintiff associates with Item 3. It describes the items seized as “A  
6 certified letter, UCC paperwork, Bank statement”. However, the Exhibit indicates the  
7 items were seized March 17, 2009, and Plaintiff was given notice of seizure on April 9,  
8 2009.) The defense acknowledges that this item was confiscated.

9 As to **Item 4**, Plaintiff claims it was never received by him. He inquired about its  
10 whereabouts on May 16, 2010 and July 26, 2010 and was told by the mailroom “They  
11 took it.” The last page of Exhibit D-M corroborates that information (although the dates  
12 do not jibe). Plaintiff believes it was confiscated by Defendant Valero, and he failed to  
13 give notice of his seizure. According to Plaintiff, Exhibit P-1 reflects his inquiry as to the  
14 whereabouts of Item 4 and also the following item.

15 Plaintiff’s August 15, 2010 request (Exhibit P-1) to Defendant Zaragoza,  
16 indicating he had been told “you have my mail”, supports his claim that **Item 5** was  
17 seized by Defendants Valero and that Valero and Defendant Zaragoza failed to give  
18 notice. The last page of Exhibit D-M seems to reflect that this item was in fact  
19 confiscated. At trial, Plaintiff acknowledged that he did in fact receive that item but it  
20 was damaged to the point its text was illegible.

21 Plaintiff claims his actual damages consist of the wasted expenditure of fees to  
22 express mail items that were confiscated and the cost of obtaining Secretary of State  
23 Certifications on some documents. Specifically, he claims that seven never-received  
24 documents had been certified by the Secretary of State in Maryland at a cost of \$35.00  
25 each. He also lost the benefit of the \$34.00 he paid to have confiscated items express  
26 mailed and \$20.00 for having items certified. He claims he forfeited the benefit of  
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1 \$50.00 he paid to open a bank account that he was never able to use because  
2 Defendant's confiscated the forms necessary to open and/or maintain the account.

3 **B. Defendants' FRCP 52(c) Motions**

4 At the conclusion of Plaintiff's case, Defendants moved under FRCP 52(c) for  
5 judgment in favor of Defendants Jesse Estrada, Alicia Gonzaga and Jesus Valero. In  
6 arguing the motion, Plaintiff conceded the lack of evidence against Estrada and  
7 Gonzaga.

8 Plaintiff having presented no evidence upon which to base a claim that either  
9 Defendant Estrada or Gonzaga personally participated in confiscation of his mail or  
10 failed to give notice of a confiscation when they had a duty to do so, the motion was  
11 granted as to them. **Defendants Estrada and Gonzaga were dismissed from the**  
12 **action.** The case proceeded as to Defendants Jesus Valero and Lieutenants Cobb and  
13 Zaragoza.

14 **C. Defendants' Claims and Evidence**

15 Defendants maintain that the documents confiscated—two packages—contained  
16 contraband, namely information and materials to aid or enable others to file or  
17 capitalize on fraudulent liens against third parties. They maintain that they always gave  
18 Plaintiff notice of confiscation as required. They deny that other items Plaintiff alleges  
19 were confiscated were taken or held by any named Defendant or with the knowledge of  
20 any Defendant except as described below.

21 Defendants first called Plaintiff as a witness for the Defense. Examination of  
22 Plaintiff established that his only evidence relating to Defendant Valero was Exhibit P-7  
23 which bears that Defendant's name and apparent signature on a confiscation form.  
24 However, Plaintiff testified, and the written discovery corroborated, that Exhibit P-7  
25 necessarily related to Defendants' confiscation of items identified in Exhibits D-A  
26 through D-X, all of which are considered contraband and none of which are the subject  
27 of Plaintiff's claims in this suit. Defendants thus renewed the FRCP 52(c) motion as to  
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1 Defendant Valero. After further argument and review of the evidence the Court granted  
2 the motion on the ground that Plaintiff had presented no evidence that Defendant  
3 Valero had personally participated in any confiscation of any items which are the  
4 subject of Plaintiff claims in this suit or in failing to give Plaintiff notice of such a  
5 confiscation. **Defendant Valero was dismissed.**

6 Further, on examination by defense counsel, Plaintiff admitted that Exhibit D-F  
7 established that Plaintiff was in fact on April 3, 2009, given notice of the confiscation  
8 from the mail of Item 3, described as a “certified letter, UCC paperwork, Bank  
9 statement.”

10 The Defense had Plaintiff identify Exhibit D-E, an undated letter from Plaintiff to  
11 SIS Officer Cobb requesting return of Plaintiff’s property but doing so in terms and style  
12 commonly used by “Sovereign Nation” adherents to threaten or attempt to assert and  
13 file fraudulent liens against others. *See United States v. Getzschman*, 81 Fed. Appx.  
14 619, 620 (8th Cir. 2003) (explaining how adherents to the “redemption” theory use the  
15 UCC “to create fictitious ‘Treasury Direct Accounts’ in the United States Treasury  
16 Department”); *see also Justice v. Superior Court of San Diego Cnty.*, 2003 U.S. Dist.  
17 LEXIS 28945, \*5-8 (S.D. Cal. July 18, 2003) (explaining legal jargon and tactics  
18 commonly used by Sovereign citizens). Defendant similarly had Plaintiff identify other  
19 such documents at D-N which appear to the Court to reflect attempts by Plaintiff to  
20 assert billion and million dollar liens against the Judge, Assistant U.S. Attorneys and  
21 others involved in the criminal trial which resulted in his conviction and prison sentence.  
22 Plaintiff admitted attempting to send Exhibit N through the mail while at USP Atwater.

23 Plaintiff also admitted that by June 5, 2008, he received notice (Exhibit P-5) that  
24 Item 2 had been confiscated and was with SIS and that it contained:  
25 “INTERNATIONAL TREATY OF PEACE TO THE WORLD; INTERNATIONAL  
26 SECURITY AGREEMENT; COMMERCIAL SECURITY AGREEMENT” as reflected in  
27 Exhibit D-E.  
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1 Exhibit D-P is an undated letter from Plaintiff to another appearing to give  
2 instruction for similar lien activity. Exhibit D-X is a letter from Plaintiff seeking help in  
3 selling a \$12 million lien against Citibank; it includes related documents prepared and  
4 mailed by Plaintiff while incarcerated at USP Atwater.

5 The evidence reflecting Plaintiff's apparent attempts to engage in fraudulent  
6 activity while at USP Atwater was admitted over Plaintiff's relevancy objection. First, it  
7 did tend to establish, and Plaintiff does not dispute, that Items 2 and 3 did in fact  
8 constitute contraband. Otherwise, it was admitted only to the extent it might be said to  
9 justify Defendants' active inspection and confiscation of Plaintiff's mail if and as relevant  
10 to this action. The Court draws no inference therefrom as to the content of Items 1.A.,  
11 1.B., 4 or 5. The evidence is such that the Court makes its findings and renders its  
12 decision without regard to the content of these latter items.

13 Defendant Lt. Cobb was sworn and testified essentially as follows: He was the  
14 SIS Lieutenant at USP Atwater from 2007 until the end of 2010. He did not confiscate  
15 any of Plaintiff's mail referred to in Exhibits P-2 (Items 1A and 1B) and has no reason to  
16 believe such mail was confiscated. As to Exhibit P-3 (Item 2), he knows the subject  
17 package was in the SIS office, but he does not know who put it there. Exhibit D-P  
18 (Plaintiff's letter with lien filing instructions) was in the package (Item 2) which was in  
19 SIS in May or June 2008. It is, in the witness' opinion, contraband because it is  
20 instructing someone how to file fraudulent liens, and it is evidence of a possible crime.  
21 The witness never seized anything of Plaintiff's that was not contraband and never  
22 seized anything without giving Plaintiff notice.

23 Defendant Lieutenant Joel Zaragoza was sworn and testified essentially as  
24 follows: He was an SIS Lieutenant at USP Atwater from 2009 to 2012. He completed  
25 parts of Exhibit D-F, the Confiscation Form which refers to Item 3 and describes the  
26 items confiscated as "Certified letter, UCC paperwork, Bank statement." Exhibit D-N  
27 (purported liens against the Judge and AUSAs in Plaintiff's criminal case) was among  
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1 the documents confiscated and referred to in Exhibit D-F. Zaragoza never seized any of  
2 Plaintiff's mail that was not contraband and never seized any mail without giving notice  
3 to Plaintiff.

#### 4 **D. Rebuttal By Plaintiff**

5 Plaintiff responded in essence by arguing his case as well as he, a lay person  
6 without legal training, could. His argument was difficult to follow, but as best the Court  
7 could determine, Plaintiff's claims, supported by evidence, are the following:

- 8 1. Plaintiff in written discovery requested copies of all mail confiscated  
9 from him and all notices of confiscation Defendants prepared for him.  
10 Defendants responded with Exhibit P-7 and Exhibits D-A through D-X.  
11 None of these documents relate in any way to Items 1.A, 1.B, 4 or 5,  
12 items which were confiscated without notice being given to Plaintiff.
- 13 2. The documents in Items 1.A, 1.B, 4 and 5 have never been delivered to  
14 Plaintiff or to the intended recipient or sender (if other than Plaintiff).
- 15 3. Defendant Cobb's liability for at least one of the confiscations without  
16 notice is established by the fact that Cobb was an SIS Lieutenant at the  
17 time, he knew of the confiscation (he told Plaintiff someone from the  
18 mail room had brought the item to the SIS office), and he did not  
19 attribute the confiscation to anyone else.
- 20 4. Zaragoza gave Plaintiff a confiscation notice regarding Item 2.

#### 21 **VII. ANALYSIS**

22 Plaintiff testified, without contradiction, that Items 1.A, 1.B, 4, and 5, express or  
23 certified mail addressed to Plaintiff in November 2007, May 2010, and July 26, 2010,  
24 never reached Plaintiff even though it appears to have been delivered to USP Atwater  
25 where Plaintiff was then housed. This fact, plus the fact the prison was indeed  
26 concerned about Plaintiff's use of the mails for illicit activity is sufficient to support a  
27 conclusion that the items were indeed confiscated. Plaintiff also credibly maintained  
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1 that he never received notice Items 1.A, 1.B or 4 had been seized and, that those items  
2 were not returned to their senders. Item 5 ultimately was delivered to Plaintiff but in  
3 damaged condition. Item 2 was confiscated but Plaintiff was given notice of its  
4 confiscation and he in fact filed an administrative claim regarding its confiscation. It  
5 appears to have contained contraband material intended for use in filing fraudulent  
6 liens. Item 3 appears also to have been contraband, and Plaintiff was given notice of its  
7 seizure.

8         Based on the foregoing, the Court concludes that the weight of the evidence  
9 shows that Items 1.A, 1.B, and 4 were seized without proper notice to Plaintiff and  
10 without ever forwarding the Items to Plaintiff or returning them to the sender. Such  
11 action/inaction could be said to violate Plaintiff's rights under the Due Process Clause  
12 of the Fifth Amendment as set forth above. (To the extent that Plaintiff claims such acts  
13 and inaction also violated applicable regulations or policies, there is no implied private  
14 right to sue civilly for violation of Title 15 of the California Code of Regulations or prison  
15 regulations. See *e.g.*, *Vasquez v. Tate*, No. 1:10-cv-1876-JLT (PC), 2012 WL 6738167,  
16 at \*9 (E.D. Cal. Dec. 28, 2012); *Davis v. Powell*, 901 F. Supp. 2d 1196, 1211 (S.D. Cal.  
17 2012)).

18         The weight of the evidence also is sufficient to satisfy the Court that Item 5 was  
19 seized without notice and ultimately delivered in a damaged condition. There is no  
20 evidence the damage was intentional or in any way violated any of Plaintiff's  
21 constitutional rights.

22         Despite evidence that items were confiscated without proper notice and delivery  
23 or return, there is no evidence upon which the Court could attribute such acts and  
24 failures to act to either of the two remaining Defendants, Zaragoza or Cobb. Plaintiff  
25 argues that those Defendants, Lieutenants in the SIS office concerned with Plaintiff's  
26 allegedly illicit mail, reasonably should be expected to know of the confiscation of  
27 Plaintiff's mail. He also notes that Defendant Cobb actually had a discussion with  
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1 Plaintiff in which he demonstrated knowledge that Plaintiff's mail was in the SIS office.  
2 However, both flatly denied under oath confiscating any non-contraband or failing to  
3 give Plaintiff notice of seizure when they were involved in seizing mail. There is no  
4 evidence to the contrary. Plaintiff's suspicion, though perhaps reasonable, is not  
5 competent evidence and certainly not sufficient to establish by a preponderance of the  
6 evidence responsibility for a constitutional violation. Defendants Zaragoza and Cobb  
7 are entitled to judgment in their favor.

8 **VIII. FINDINGS AND CONCLUSION**

9 Based on the foregoing, the Court makes the following findings:

- 10 1. Prison officials confiscated mail Items 1.A, 1.B, and 4 without proper notice to  
11 Plaintiff and without forwarding the Items to Plaintiff or returning them to the  
12 sender;
- 13 2. Prison officials seized mail Item 5 without proper notice and ultimately  
14 delivered it to Plaintiff in a damaged condition; there is no evidence the  
15 damage was done intentionally or in violation of Plaintiff's constitutional rights;
- 16 3. No evidence exists linking Defendants Zaragoza and Cobb to the confiscation  
17 of Items 1.A, 1.B, 4, and 5 or the failure to provide notice of confiscation.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Judgment is entered in favor of Defendants Zaragoza and Cobb and against  
20 Plaintiff; and
- 21 2. The Clerk of the Court shall terminate all pending motions and close the case.  
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23 IT IS SO ORDERED.

24 Dated: December 3, 2015

25 /s/ Michael J. Seng  
26 UNITED STATES MAGISTRATE JUDGE  
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