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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ZANE HUBBARD,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

Case No. 1:13-cv-00762-DLB PC

**FIRST SCREENING ORDER DISMISSING
COMPLAINT FOR FAILURE TO STATE A
CLAIM, WITH LEAVE TO AMEND**

(ECF No. 1)

RESPONSE DUE WITHIN THIRTY DAYS

I. Background

Plaintiff Zane Hubbard (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed his original complaint on May 22, 2013, which is presently before the Court for screening. (ECF No. 1.)

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. *Id.* § 1915A(b)(1),(2).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,

1 do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550
2 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a
3 claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). While factual
4 allegations are accepted as true, legal conclusions are not. *Id.*

5 **II. Summary of Complaint**

6 Plaintiff was incarcerated at Wasco State Prison (“WSP”) in Wasco, California and Corcoran
7 State Prison (“CSP”) in Corcoran, California, where the events giving rise to this action occurred.
8 Plaintiff names CDCR, Wasco State Prison Trust Account, Dunn, and Victims and Survivor Rights
9 Services for CDCR as defendants in this action.

10 Plaintiff alleges the following. At WSP, CDCR prison officials opened Plaintiff’s
11 confidential legal mail outside of his presence. Plaintiff requests assistance investigating this issue.
12 Sometime during August or September 2011, Plaintiff was charged \$24.95 for eyeglasses.
13 Sometime in February or March 2012, Plaintiff was incorrectly charged another co-payment of
14 \$24.95 for the same pair of eyeglasses.

15 In December 2011, Plaintiff was “out to court” in Sacramento County Jail and he received a
16 \$90 jail pay to WSP. Plaintiff never received this money even though he requested it. Plaintiff was
17 charged a \$400 restitution fine. Plaintiff was fined \$400 for possession of a controlled substance and
18 does not understand why the court ordered restitution. Plaintiff sent all the evidence pertaining to
19 his wrongfully seized money to the CDCR Victim and Survivor Rights Services. As of July 13,
20 2012, Plaintiff had not received an answer to his letter. Plaintiff attempted to exhaust his
21 administrative remedies but CDCR officials at CSP are attempting to cover up the illegal activity.
22 Defendant Dunn intercepted Plaintiff’s informal responses and wrote that there was no money seized
23 from Plaintiff’s account.

24 Plaintiff was transferred from WSP to CSP around the time that he first challenged this issue.
25 Prison officials purposefully housed a “SNY” inmate with Plaintiff with the knowledge that they
26 were placing both individuals in jeopardy of physical harm. As a result of the housing decision,
27 Plaintiff was shot in the back with a 40mm and continues to have pain from the injury.

28 Plaintiff requests monetary damages as relief.

1 **III. Analysis**

2 A. First Amendment—Mail Interference

3 Prisoners have “a First Amendment right to send and receive mail.” *Witherow v. Paff*, 52
4 F.3d 264, 265 (9th Cir. 1995). Prison regulations relating to the regulation of incoming mail are
5 analyzed under the Turner reasonableness standard set forth in *Turner v. Safley*, 482 U.S. 78, 89-91
6 (1987). *Thornburgh v. Abbott*, 490 U.S. 401, 413-14 (1989). The regulation is valid if it is
7 reasonably related to legitimate penological interests. *Turner*, 482 U.S. at 89. In determining the
8 reasonableness of the regulation, court must consider the following factors: (1) whether there is a
9 “valid, rational connection between the regulation and the legitimate government interest put
10 forward to justify it,” (2) “whether there are alternative means of exercising the right,” (3) the impact
11 that the “accommodation of the asserted constitutional right will have on guards and other inmates,”
12 and (4) “the absence of ready alternatives.” *Turner*, 482 U.S. at 89-90. Isolated incidents of mail
13 interference or tampering will not support a claim under section 1983 for violation of plaintiff’s
14 constitutional rights. *See Davis v. Goord*, 320 F.3d 346, 351 (2d. Cir. 2003); *Gardner v. Howard*,
15 109 F.3d 427, 431 (8th Cir. 1997); *Smith v. Maschner*, 899 F.2d 940, 944 (10th Cir. 1990).

16 Plaintiff fails to state a claim for interference with his mail. Plaintiff alleges that CDCR
17 officials opened his legal mail. Plaintiff however fails to make any specific allegations against
18 defendants. To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
19 color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal
20 law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). Plaintiff makes no
21 allegations as to how any individual defendant deprived him of his rights. Detailed factual
22 allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported
23 by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
24 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
25 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
26 *Twombly*, 550 U.S. at 570). Accordingly, Plaintiff fails to state a claim for interference with his
27 mail.

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1 B. Due Process—Property Deprivation

2 The Due Process Clause is not violated by the random, unauthorized deprivation of property
3 so long as the state provides an adequate post-deprivation remedy. *Hudson v. Palmer*, 468 U.S. 517,
4 533, 104 S.Ct. 3194 (1984); *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Plaintiff has an
5 adequate post-deprivation remedy under California law, and therefore, he may not pursue a due
6 process claim arising out of the unlawful confiscation of his personal property. *Barnett*, 31 F.3d at
7 816-17 (citing Cal. Gov’t Code §§810-895). Accordingly, Plaintiff fails to state a due process claim
8 for the loss of his property.

9 C. Eighth Amendment—Failure to Protect

10 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison
11 conditions must involve “the wanton and unnecessary infliction of pain” *Rhodes v. Chapman*,
12 452 U.S. 337, 347 (1981). Although prison conditions may be restrictive and harsh, prison officials
13 must provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety.
14 *Id.*; *Toussaint v. McCarthy*, 801 F.2d 1080, 1107 (9th Cir. 1986); *Hoptowit v. Ray*, 682 F.2d 1237,
15 1246 (9th Cir. 1982). Where a prisoner alleges injuries stemming from unsafe conditions of
16 confinement, prison officials may be held liable only if they acted with “deliberate indifference to a
17 substantial risk of serious harm.” *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

18 The deliberate indifference standard involves an objective and a subjective prong. First, the
19 alleged deprivation must be, in objective terms, “sufficiently serious” *Farmer v. Brennan*, 511
20 U.S. 825, 834 (1994) (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). Second, the prison official
21 must “know[] of and disregard[] an excessive risk to inmate health or safety” *Id.* at 837. Thus,
22 a prison official may be held liable under the Eighth Amendment for denying humane conditions of
23 confinement only if he knows that inmates face a substantial risk of harm and disregards that risk by
24 failing to take reasonable measures to abate it. *Id.* at 837-45. Mere negligence on the part of the
25 prison official is not sufficient to establish liability, but rather, the official’s conduct must have been
26 wanton. *Id.* at 835.

27 Here, Plaintiff fails to state an Eighth Amendment claim against any defendants. Plaintiff
28 concludes that CDCR officials knew that housing him with a “SNY” inmate placed him in jeopardy

1 in physical harm. However, Plaintiff fails to allege any facts as to how defendants knew of and
2 disregarded an excessive risk to Plaintiff's safety. Mere negligence on the part of the prison official
3 is not sufficient to establish liability, but rather, the official's conduct must have been wanton.
4 *Farmer*, 511 U.S. at 835. Accordingly, Plaintiff fails to state an Eighth Amendment claim for failure
5 to protect.

6 **IV. Conclusion and Order**

7 Plaintiff fails to state any cognizable federal claims against any Defendants. The Court will
8 provide Plaintiff with an opportunity to file an amended complaint curing the deficiencies identified
9 by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may
10 not change the nature of this suit by adding new, unrelated claims in his amended complaint.
11 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

12 If Plaintiff decides to amend, Plaintiff's amended complaint should be brief, Fed. R. Civ. P.
13 8(a), but must state what each named defendant did that led to the deprivation of Plaintiff's
14 constitutional or other federal rights. *See Iqbal*, 556 U.S. at 678. Although accepted as true, the
15 "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level . . ."
16 *Twombly*, 550 U.S. at 555.

17 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint,
18 *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) overruled in part on other grounds,
19 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. Aug. 29, 2012) (en banc); *King v. Atiyeh*, 814
20 F.2d 565, 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or
21 superseded pleading," Local Rule 220.

22 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 23 1. The Clerk's Office shall send Plaintiff a complaint form;
- 24 2. Plaintiff's complaint is dismissed for failure to state a claim, with leave to file an
25 amended complaint within thirty (30) days from the date of service of this order;
- 26 3. Plaintiff may not add any new, unrelated claims to this action via the first amended
27 complaint and any attempt to do so may result in an order striking the first amended complaint; and

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4. If Plaintiff fails to comply with this order, the Court will dismiss this action for failure to obey a court order and failure to state a claim.

IT IS SO ORDERED.

Dated: April 23, 2014

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE