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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KRZYSTOF WOLINSKI,
Plaintiff,
v.
N. ACOSTA, et al.,
Defendants.

Case No. 1:15-cv-00519-LJO-SAB-PC

FINDINGS AND RECOMMENDATION
THAT THIS ACTION BE DISMISSED FOR
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED
AND THAT THIS ACTION COUNT AS A
STRIKE UNDER 28 U.S.C. §1915(g).

OBJECTIONS DUE IN THIRTY DAYS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302. Currently before the Court is Plaintiff’s complaint, filed April 3, 2015.

I.
ALLEGATIONS

This action proceeds on the November 6, 2015, first amended complaint filed in response to an earlier order dismissing the original complaint and granting Plaintiff leave to file an amended complaint. In the order dismissing the original complaint, the Court noted the

1 following allegations. Plaintiff alleged that on April 4, 2014, Defendants Acosta and Zepeda
2 were assigned as transportation officers for Plaintiff's transfer from CSP Corcoran to Kern
3 Valley State Prison. Prior to loading Plaintiff into the van, Defendants ordered Plaintiff to
4 surrender his prescription eyeglasses for security reasons. Upon arrival at Kern Valley State
5 Prison, Plaintiff asked for his glasses. Plaintiff alleged that "both correct. offic. swiftly left
6 living (sic) behind my bag with medications but no Rx's glasses which they stoled (sic) from me
7 on 04-04-2014. Unfortunately they forgot that property inventory form CDC 1083 was issued to
8 me." (Compl. ¶ IV.) Plaintiff alleged that Sgt. Hernandez "maliciously denied my 602 &
9 perjured my medical chrono CDCR 7410."

10 II.

11 DISCUSSION

12 A. Deprivation of Property

13 The Due Process Clause protects prisoners from being deprived of property without due
14 process of law, Wolff v. McDonnell, 418 U.S. 539, 556 (1974), and prisoners have a protected
15 interest in their personal property Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974). However,
16 while an authorized, intentional deprivation of personal property is actionable under the Due
17 Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532 n. 13 (1984)(citing Logan v.
18 Zimmerman Brush Co., 455 U.S. 422 (1982)); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir.
19 1985), neither negligent nor unauthorized intentional deprivations of property by a state
20 employee "constitute a violation of the procedural requirements of the Due Process Clause of the
21 Fourteenth Amendment if a meaning post-deprivation remedy for the loss is available." Hudson,
22 468 U.S. at 533. California law provides an adequate post-deprivation remedy for any property
23 deprivations. Barnett v. Centoni, 31 F.3d 813, 816-817 (9th Cir. 1994)(citing Cal. Gov't Code
24 §§ 810-995). In the order dismissing the original complaint, Plaintiff was advised that the
25 allegations of the complaint clearly indicated an unauthorized deprivation of property. Because
26 California has an adequate post-deprivation remedy, Plaintiff cannot state a claim for relief on
27 his claim regarding the loss of his prescription eyeglasses. In the first amended complaint,
28 Plaintiff re-states, in greater detail, the allegations of the original complaint. The allegations of

1 the first amended complaint clearly indicate that the deprivation of Plaintiff's property was
2 unauthorized. Because there is an adequate post-deprivation remedy under California law, this
3 claim must be dismissed.

4 **B. Eighth Amendment**

5 The Court noted that Plaintiff may, however, hold Defendants liable if he alleges facts
6 indicating that depriving Plaintiff of his eyeglasses was intentional and caused him serious
7 injury. In order to violate the Eighth Amendment proscription against cruel and unusual
8 punishment, there must be a "deliberate indifference to serious medical needs of prisoners."
9 Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000)(quoting Estelle v. Gamble, 429 U.S. 97,
10 104 (1976)). Lopez takes a two-prong approach to evaluating whether medical care, or lack
11 thereof, rises to the level of deliberate indifference. First, a court must examine whether the
12 plaintiff's medical needs were serious. See Id. Second, a court must determine whether
13 "officials intentionally interfered with [the plaintiff's] medical treatment." Id. at 1132.

14 In the original complaint, Plaintiff had not alleged any facts that satisfied either prong.
15 There were no facts alleged indicating that taking Plaintiff's prescription eyewear was
16 intentional. Plaintiff's own allegations indicated that they were taken for security reasons. There
17 were no facts alleged indicating that either Acosta or Zepeda knew that Plaintiff had an
18 objectively serious medical condition or that taking Plaintiff's eyeglasses would cause or
19 exacerbate serious injury. The Court therefore dismissed the Eighth Amendment claim with
20 leave to amend.

21 In the first amended complaint, Plaintiff indicates that the glasses that were taken from
22 him included "1 pair of Ray Ban, and 1 pair of PT-36 dark Rx glasses to prevent seizures." (Am.
23 Compl. 3:20.) A simple reference to the deprivation of a medical appliance does not, of itself,
24 state a claim for relief under the Eighth Amendment. Plaintiff was specifically advised that he
25 failed to allege facts indicating that taking Plaintiff's eyeglasses exacerbated a serious medical
26 condition. An allegation that Defendants took Plaintiff's glasses, without any allegations that
27 such action caused an objectively serious injury, fails to state a claim.

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1 to state a claim upon which relief can be granted, and that this action count as a strike under 18
2 U.S.C. § 1915(g).

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 18 U.S.C. § 636(b)(1)(B). Within thirty days
5 after being served with these findings and recommendations, Plaintiff may file written objections
6 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s
7 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
8 specified time may result in waiver of rights on appeal. Wilkerson v. Wheeler, 77 F.3d 834 (9th
9 Cir. 2014)(citing Baxter v. Sullivan), 923 F.2d 1394 (9th Cir. 1991)).

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11 IT IS SO ORDERED.

12 Dated: November 19, 2015



UNITED STATES MAGISTRATE JUDGE

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