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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL HARPER,

Plaintiff,

No. 2:09-cv-01969 GEB KJN P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

ORDER TO SHOW CAUSE

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On June 6, 2010, this court issued an Order and Findings and Recommendations dismissing plaintiff's complaint with leave to file an amended complaint, and recommending, pursuant to the "three strikes" rule of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), that plaintiff be barred from filing further complaints while a prisoner without prepayment of the full filing fee. (Dkt. No. 17.)

On June 21, 2010, plaintiff timely filed objections explaining, inter alia, that all he seeks in this action is the return of his personal property which prison officials have, since January 2010, represented "is on its way." (Dkt. No. 18.) Plaintiff explains, "the only things that I want out of this property is my pictures of my wife, my son and my grandmother because those pictures cannot be replaced because they are dead so those are the things I want and my addresses for my family because I cannot have anything to do with my family if I do not have there

1 addresses (sic). . .” (Id. at 2.)

2           It appears that plaintiff’s property was sent in May 2009 from High Desert State  
3 Prison to the Sacramento Regional Parole Office, where it was then sent in January 2010 to  
4 Pleasant Valley State Prison. As previously recounted by the court, the factual allegations of the  
5 amended complaint provide in full (id. at 2-3):

6           On April 7, 2008, Plaintiff Daniel Harper was released to Sacramento  
7 County Sheriffs to go back to court for his case as showed in Exhibit A  
8 and the plaintiff does come back to the custody of the California  
9 Department of Corrections in 2009. And in Exhibit B on 6-2-09 I put in a  
10 602 grievance to get my property back from High Desert State Prison since  
11 that is the prison I left all of my property at to get told this, “Granted your  
12 property was sent on 5/21/9 Fed Ex to Reg’l Sacramento on 5-22 -[08]”  
13 and I start write every one that I can think of that will be able to get my  
14 propert[y] back to me and to know where my property is to just get the run  
15 around until January 28, 2010 when L. Harikian writes this to me, “Your  
16 appeals have been reviewed. On January 27, 2010 I contacted the  
17 Assistant Unit Supervisor of the Sacramento South Parole Unit. They  
18 indicated they will overnight your property to you at P.V.S.P. Please  
19 forward all additional correspondence regarding this issue to the address  
20 listed below” and still on 3-30-10 I still have not gotten this property back  
21 in my possion (sic) at all.

22           The court previously noted that plaintiff would not likely be able to allege a  
23 cognizable due process claim under § 1983 because “[i]t appears that plaintiff’s property has not  
24 been lost but remains in transit,” and the state likely provides an adequate post-deprivation  
25 remedy (e.g., pursuant to the California Tort Claims Act). (Dkt. No. 17, at 7-9.) However,  
26 plaintiff’s instant objections and the continuing absence of his personal property give the court  
pause relative to its prior ruling and recommendations, particularly the court’s conclusion that  
plaintiff has thus far failed to state an Eighth Amendment Claim and that the instant case, given  
its simplicity, should be the vehicle for this court’s three strikes ruling. The Eighth  
Amendment’s proscription against cruel and unusual punishment protects against an inmate’s  
loss of possessions resulting from a significant and intentional or calculated harassment unrelated  
to prison needs. Hudson v. Palmer, 468 U.S. 517, 528, 530 (1984); Farmer v. Brennan, 511 U.S.

1 825, 834 (1994) (deprivation must be objectively serious, unnecessary and wanton). The  
2 continuing failure of CDCR officials and others to produce plaintiff's located property – and/or  
3 to coordinate with the Sacramento County Sheriff's Department and/or Parole Unit and/or L.  
4 Harikian and/or any other pertinent entity or individual to do so – suggests a possibly callous and  
5 intentional harassment of plaintiff unrelated to matters of prison discipline and security. One of  
6 the clearly stated purposes of the California Department of Corrections and Rehabilitation is the  
7 rehabilitation of its prisoners; the objects of plaintiff's current pursuit facilitate the rehabilitative  
8 purpose. Moreover, it appears that plaintiff has diligently pursued this matter through the  
9 administrative appeals process, thus meeting the threshold criteria for maintaining this action.

10           Accordingly, the court will direct named defendant CDCR to show cause, within  
11 fourteen days, why plaintiff has not yet received his property. CDCR's response shall include all  
12 relevant declarations. Since CDCR has not yet been notified of this action or served with any  
13 pleading or documents herein, the Clerk of Court will be directed to serve a copy of this order on  
14 the California Attorney General's Office.

15           For the foregoing reasons, IT IS HEREBY ORDERED that:

16           1. The California Department of Corrections and Rehabilitation is directed to  
17 show cause in writing, within fourteen days of the filing date of this order, why plaintiff has not  
18 yet received the property which is the subject of this litigation;

19           2. The California Department of Corrections and Rehabilitation shall serve  
20 plaintiff with a copy of their response to this order to show cause; and

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3. The Clerk of Court shall serve a copy of this order on Michael Patrick Farrell,  
Senior Assistant Attorney General.

SO ORDERED.

DATED: July 14, 2010

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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