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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL K. BROWN,
Plaintiff,
v.
WHITTEN, et al.,
Defendants.

No. 2: 14-cv-0848 JAM KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On August 13, 2014, the undersigned granted plaintiff thirty days to file an amended complaint. (ECF No. 16.) Thirty days passed and plaintiff did not file an amended complaint. Accordingly, on October 15, 2014, the undersigned recommended that this action be dismissed. (ECF No. 17.)

On September 9, 2014, plaintiff filed an amended complaint. (ECF No. 20.) However, plaintiff put the wrong case number on the amended complaint. For that reason, the court only recently discovered plaintiff's amended complaint. Accordingly, the October 15, 2015 findings and recommendations are vacated. After reviewing the record, the undersigned finds that plaintiff's amended complaint does not state a potentially colorable claim for relief and recommends that this action be dismissed.

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1 Named as defendants are Correctional Officer Whitten, Warden Singh, Warden Duffy and
2 Correctional Counselor Sankovich.

3 Plaintiff alleges that on December 11, 2011, he was transferred from the California
4 Medical Facility (“CMF”) to Deuel Vocational Institution (“DVI”). Plaintiff alleges that prior to
5 this transfer, defendant Whitten stole some of plaintiff’s personal property including his
6 television, tennis shoes, shorts, etc. Plaintiff alleges that defendants Singh, Duffy and Sankovich
7 failed to properly process his administrative grievances challenging the wrongful confiscation of
8 his property.

9 Prisoners have a protected interest in their personal property. Hansen v. May, 502 F.2d
10 728, 730 (9th Cir. 1974). However, while an authorized, intentional deprivation of property is
11 actionable under the Due Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532, n.13 (1984)
12 (citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 435–36 (1982)); Quick v. Jones, 754 F.2d
13 1521, 1524 (9th Cir. 1985), “[a]n unauthorized intentional deprivation of property by a state
14 employee does not constitute a violation of the procedural requirements of the Due Process
15 Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is
16 available,” Hudson, 468 U.S. at 533. California Law provides an adequate post-deprivation
17 remedy for any property deprivations. See Cal. Gov’t Code §§ 810–95; Barnett v. Centoni, 31
18 F.3d 813, 816–17 (9th Cir. 1994).

19 While plaintiff alleges that the deprivation of his property was intentional, he does not
20 allege that it was authorized. Instead, plaintiff alleges that the confiscation of his property was
21 unauthorized. For these reasons, plaintiff’s claims challenging the deprivation of his property
22 should be dismissed.¹

23 ¹ Attached as an exhibit to the amended complaint is a letter dated February 7, 2013, addressed
24 to plaintiff from the Victim Compensation and Government Compensation Board denying his
25 claim as untimely because it was filed more than one year after the incident. (ECF No. 20 at 31.)
26 Also attached as an exhibit is another letter to plaintiff from the Victim Compensation and
27 Government Compensation Board dated March 6, 2013. (Id. at 33.) This letter informs plaintiff
28 that as of November 1, 2004, inmates are not required to exhaust administrative remedies prior to
submitting claims to the Board. (Id.) Plaintiff had an adequate post-deprivation remedy,
regardless of his dissatisfaction with that remedy.

1 To the extent plaintiff alleges that defendants that defendants Singh, Duffy and Sankovich
2 violated plaintiff's due process rights by failing to properly process his administrative grievances,
3 these claims are without merit. Inmates have no constitutional right to a prison administrative
4 appeal or grievance system. See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v.
5 Adams, 855 F.2d 639, 640 (9th Cir. 1988).

6 Plaintiff made similar allegations in his original complaint. (ECF No. 1.) The
7 undersigned advised plaintiff of the legal standards, set forth above, in the order screening the
8 original complaint. (ECF No. 10.) It does not appear that plaintiff can cure these pleading
9 defects.


10 Accordingly, IT IS HEREBY ORDERED that the October 15, 2014 findings and
11 recommendations are vacated; and

12 IT IS HEREBY RECOMMENDED that this action be dismissed.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, plaintiff may file written objections
16 with the court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
18 failure to file objections within the specified time may waive the right to appeal the District
19 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: November 14, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE