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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT EDWARD DAHL, JR.,  
Plaintiff,  
v.  
TIMOTHY VIRGA, et al.,  
Defendants.

No. 2:14-cv-0949 AC P

ORDER

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. 1983. Pursuant to the court’s order filed April 22, 2015, ECF No. 16, plaintiff has filed a Second Amended Complaint (SAC), ECF No. 20, seeking the return of several items of personal property premised on putative due process claims. See also ECF Nos. 21, 23-5 (wherein plaintiff further itemizes his missing property). Plaintiff has also filed a notice stating in pertinent part that he misidentified two defendants in his SAC. See ECF No. 26. For this reason, the court will dismiss the SAC, and grant plaintiff leave to file a Third Amended Complaint (TAC), after he has had the opportunity to review the supplemental response provided by the Office of the California Attorney General or her designee (AG) requested herein.

On June 4, 2015, the AG made a special appearance in this action responsive to the court’s May 21, 2015 request, see ECF No. 19, that the AG inquire into the current location of plaintiff’s property. The AG’s response notes that plaintiff was transferred eight times among

1 five institutions since June 2012. See ECF No. 22-1 at 1, ¶ 3 (Decl. of T. Worthy, AG Senior  
2 Legal Analyst). This includes at least two transfers since plaintiff commenced this action on  
3 April 17, 2014. See id. at 2, ¶¶ 7-8 (noting transfers on Apr. 30, 2014, and July 16, 2014).  
4 Subsequent to the filing of the AG’s response, plaintiff was again transferred, and is currently  
5 incarcerated at Kern Valley State Prison (KVSP). See ECF No. 25.

6 The AG’s response notes that plaintiff was deprived of three boxes of his property for a  
7 six-month period (December 12, 2014 to June 17, 2014), while housed at two different  
8 institutions. See Worthy Decl. at 2, ¶¶ 6-7. Plaintiff’s property remained at California State  
9 Prison-Sacramento (CSP-SAC), despite his December 12, 2013 transfer to KVSP, and April 30,  
10 2014 transfer to the California Medical Facility (CMF). These three boxes of property were  
11 transferred from CSP-SAC to CMF on June 17, 2014. However, CMF confiscated one of the  
12 boxes (“consisting of excessive books and magazines”), and provided plaintiff with only two  
13 boxes of his property. Id. at ¶ 7. A month later, on July 16, 2014, plaintiff was transferred from  
14 CMF back to CSP-SAC, with two boxes of property; the third (confiscated) box apparently  
15 remaining at CMF. Id. at ¶¶ 7-8. Thereafter, in response to an administrative grievance plaintiff  
16 filed at CSP-SAC, plaintiff was informed that yet another (fourth) box of his property remained at  
17 KVSP, and would be sent to him at CSP-SAC. Id. at ¶ 8. The AG states, “KVSP is currently  
18 investigating whether the box [at KVSP] . . . was sent to [plaintiff] at CSP-SAC or if it is still  
19 located at KVSP.” Id. at ¶ 9. A couple of weeks later, plaintiff was transferred back to KVSP.  
20 See ECF No. 25.

21 The undersigned finds it appropriate to request that the AG again inquire into the  
22 location(s) of plaintiff’s personal property and provide a supplemental response.

23 Accordingly, IT IS HEREBY ORDERED that:

24 1. The AG is requested to contact appropriate officials at the California Department of  
25 Corrections and Rehabilitation and/or the appropriate prisons, and obtain the following  
26 information for the period June 1, 2015 to the date of inquiry: (1) whether plaintiff currently has  
27 possession of all his property; (2) if not, identify the property that is not in plaintiff’s possession,  
28 its current location, and an explanation for its current location ; (3) whether and, if applicable,

1 when, plaintiff will obtain possession of specific missing personal property; and (4) whether and,  
2 if applicable, why, any specific item of plaintiff's personal property has been permanently  
3 confiscated or deemed permanently missing.

4 2. Within twenty-one (21) days after the filing date of this order, the AG is requested to  
5 file and serve a supplemental status report setting forth the above-requested information.

6 3. Plaintiff's Second Amended Complaint is dismissed with leave to amend.

7 4. On or before October 1, 2015, and after plaintiff has reviewed the AG's supplemental  
8 status report, plaintiff may file a proposed Third Amended Complaint that identifies the  
9 appropriate defendants and refines plaintiff's claims and requested relief. Plaintiff is directed to  
10 this court's order filed April 22, 2015, ECF No. 16, which sets forth the elements for stating a  
11 cognizable due process claim premised on the confiscation of a prisoner's personal property.

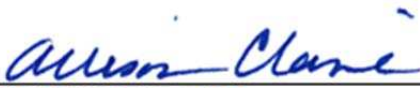
12 5. Plaintiff's failure to timely file a Third Amended Complaint will result in the dismissal  
13 of this action without prejudice.

14 6. The Clerk of Court is directed to:

15 a. Serve a copy of this order on the Office of the California Attorney General, Attention:  
16 Supervising Deputy Attorney General Monica N. Anderson.

17 b. Send plaintiff, together with a copy of this order, a blank copy of the form used by  
18 prisoners in this district to commence a civil rights action pursuant to 42 U.S.C. § 1983.

19 DATED: August 6, 2015

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21 ALLISON CLAIRE  
22 UNITED STATES MAGISTRATE JUDGE  
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