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\*E-Filed 9/13/11\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SPENCER RAWLINS BRASURE,

No. C 08-1943 RS (PR)

Plaintiff,

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

v.

ROBERT AYERS, et al.,

Defendants.

**INTRODUCTION**

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. For the reasons stated herein, defendants' motion for summary judgment is GRANTED as to all claims against all defendants.

**BACKGROUND**

The undisputed facts are as follows: A 2007 search of plaintiff's cell by defendants, employees of San Quentin State Prison, yielded drug paraphernalia, documents related to gambling and gang activity, and weapons. Consequently, the contraband was seized for inventorying, plaintiff was placed on a temporary property control restriction, and a hearing was subsequently held. Plaintiff was found guilty of possessing a weapon and lost ten days

1 of yard privileges. Ninety days after the seizure, the property restriction was terminated and  
2 plaintiff's authorized property was returned to him.<sup>1</sup> Plaintiff's specific claims are that  
3 defendants violated his (1) First Amendment rights by placing him on property and  
4 correspondence restrictions; and (2) due process rights by the loss of property taken because  
5 of the restrictions.<sup>2</sup>

## 6 MOTION FOR SUMMARY JUDGMENT

### 7 I. Standard of Review

8 Summary judgment is proper where the pleadings, discovery and affidavits  
9 demonstrate that there is "no genuine dispute as to any material fact and that the moving  
10 party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are  
11 those which may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
12 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a  
13 reasonable jury to return a verdict for the nonmoving party. *Id.*

14 The party moving for summary judgment bears the initial burden of identifying those  
15 portions of the pleadings, discovery and affidavits which demonstrate the absence of a  
16 genuine issue of material fact. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323 (1986). On an  
17 issue for which the non-moving party will have the burden of proof at trial, as is the case  
18 here, the moving party need only point out "that there is an absence of evidence to support  
19 the nonmoving party's case." *Id.* at 325.

20 Once the moving party meets its initial burden, the nonmoving party must go beyond  
21 the pleadings and, by its own affidavits or discovery, show that a material fact is genuinely  
22 disputed. Fed. R. Civ. P. 56(c). The court is only concerned with disputes over material  
23 facts and "factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*,

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25 <sup>1</sup> After his property was returned, plaintiff filed an inmate grievance in which he alleged  
26 that some items had not been returned. Plaintiff withdrew this grievance ten days later, stating  
that all issues had been "resolved." (Defs.' Mot. for Summ. J. at 17.)

27 <sup>2</sup> Plaintiff's third claim — that his rights were violated when defendants promulgated the  
28 rules under which he was deprived of his property — is duplicative of the issues raised in the  
first two claims and is hereby DISMISSED.

1 477 U.S. at 248. It is not the task of the court to scour the record in search of a genuine issue  
2 of triable fact. *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996). The nonmoving party  
3 has the burden of identifying, with reasonable particularity, the evidence that precludes  
4 summary judgment. *Id.* If the nonmoving party fails to make this showing, “the moving  
5 party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323.

6 **II. Claims**

7 Plaintiff claims that his due process rights were violated when defendants  
8 (A) deprived him of his property; (B) deprived him of his mail; and (C) destroyed his  
9 property. As set forth below, none of these claims present a viable basis on which to  
10 proceed.

11 **A. Property Deprivations**

12 Plaintiff claims that his 90-day placement on property restrictions violated his First  
13 Amendment rights. In essence, plaintiff’s claim is that defendants violated his right to due  
14 process by depriving him of his property for 7 days prior to his hearing, and for 90 days  
15 thereafter.

16 When state officials deprive an inmate of his property pursuant to state regulations  
17 and statutes, due process mandates a meaningful hearing on the matter. *See Logan v.*  
18 *Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982); *Armendariz v. Penman*, 31 F.3d 860, 866  
19 (9th Cir. 1994), *aff’d* in part on relevant grounds and vacated in part on other grounds on  
20 reh’g en banc, 75 F.3d 1311 (9th Cir. 1996) (en banc). Here, it is undisputed that plaintiff  
21 was provided with a meaningful hearing and an opportunity to express his views with respect  
22 to the property’s confiscation. Contrary to plaintiff’s assertion, the hearing need not always  
23 be prior to deprivation, as “the necessity of quick action by the State or the impracticability  
24 of any pre-deprivation process” are important considerations. *See Logan*, 455 U.S. at 436  
25 (quoting *Parratt v. Taylor*, 451 U.S. 527, 539 (1981)); *Armendariz*, 31 F.3d at 866.

26 Furthermore, the non-contraband property was returned to plaintiff. Therefore, he has not  
27 shown that defendants violated his right to due process. Accordingly, defendants’ motion for  
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1 summary judgment as to his property restrictions and deprivations is GRANTED.

2 **B. Mail Deprivation**

3 Plaintiff alleges that defendants placed him on mail restrictions contemporaneous with  
4 his property restrictions, and that he lost his subscription publications and a personal letter as  
5 a result. Defendants deny that he was placed on mail restrictions. Other than plaintiff's  
6 assertions, there is no evidence in support of his claim.

7 Plaintiff has not shown that his due process rights were violated. He simply assumes  
8 that he failed to receive his mail because of a mail restriction. The undisputed fact that only  
9 a small amount of mail went missing, and that there is no record plaintiff was placed on mail  
10 restriction, undermine this assumption. Even viewing the allegations in the light most  
11 favorable to plaintiff, the missing mail appears to be the result at most of negligence, rather  
12 than any intentional acts by defendants. Liability for negligently inflicted harm is  
13 categorically beneath the threshold of constitutional due process. *See County of Sacramento*  
14 *v. Lewis*, 523 U.S. 833, 849 (1998). As a claim of negligence is insufficient to show a  
15 violation of due process, defendants' motion for summary judgment as to this claim is  
16 GRANTED.

17 **C. Loss of Property**

18 Plaintiff claims that defendants destroyed his property without affording him due  
19 process. According to defendants, plaintiff complained to prison staff that some boxes  
20 containing his legal materials were missing. Plaintiff was told that the boxes were not  
21 missing, but that the contents had been condensed into fewer boxes.

22 Plaintiff has not shown a basis for relief, even if his property was destroyed. Neither  
23 the negligent nor intentional deprivation of property states a due process claim under § 1983  
24 if the deprivation was random and unauthorized. *See Parratt*, 451 U.S. at 535–44 (1981),  
25 overruled in part on other grounds, *Daniels v. Williams*, 474 U.S. 327, 330–31 (1986);  
26 *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). The availability of an adequate state  
27 post-deprivation remedy, e.g., a state tort action, precludes relief because it provides  
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1 sufficient procedural due process. *See Zinermon v. Burch*, 494 U.S. 113, 128 (1990).  
2 California law provides such an adequate post-deprivation remedy. *See Barnett v. Centoni*,  
3 31 F.3d 813, 816–17 (9th Cir. 1994) (citing Cal. Gov’t Code §§ 810–895). Accordingly,  
4 defendants’ motion for summary judgment as to this claim is GRANTED.

5 **CONCLUSION**

6 Defendants’ motion for summary judgment (Docket No. 33) is GRANTED.  
7 Plaintiff’s motions for sanctions, entry of default judgment, and hearings<sup>3</sup> (Docket Nos. 32,  
8 35, 36, 43 & 47) are DENIED. The Clerks shall terminate Docket Nos. 32, 33, 35, 36, 43 &  
9 47, enter judgment in favor of defendants as to all claims, and close the file.

10 **IT IS SO ORDERED.**

11 DATED: September 13, 2011

  
12 RICHARD SEEBORG  
13 United States District Judge

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28 <sup>3</sup> Though some are titled as motions for summary judgment, they are in fact motions for  
sanctions.