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

KEVIN R. SCHRUBB, I,	)	No. C 09-2197 JSW (PR)
Plaintiff,	)	
v.	)	<b>ORDER OF DISMISSAL</b>
JAMES TILTON, et al,	)	
Defendants.	)	

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**INTRODUCTION**

Plaintiff, a California prisoner proceeding pro se, has filed a civil rights complaint complaining about violations of his rights while incarcerated at Pelican Bay State Prison. The complaint was dismissed with leave to amend, and Plaintiff filed a timely amended complaint. In this order, the Court reviews Plaintiff’s amended complaint pursuant to 28 U.S.C. § 1915A. The claim of deliberate indifference to Plaintiff’s safety is dismissed without prejudice, and the claim for the deprivation of property is dismissed with prejudice.

**DISCUSSION**

I. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or

1 fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a  
2 defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be  
3 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.  
4 1990).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:  
6 (1) that a right secured by the Constitution or laws of the United States was violated, and  
7 (2) that the alleged violation was committed by a person acting under the color of state  
8 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

9 II Legal Claims

10 A. Deliberate Indifference to Safety

11 Plaintiff alleges that another inmate attacked and injured him in his cell. He  
12 further alleges that two unnamed Defendants, Does #1 and 2, did not fulfill their duty to  
13 investigate the other inmate’s potential for being a threat to Plaintiff before assigning  
14 him to Plaintiff’s cell. He claims that this amounted to deliberate indifference to his  
15 safety in violation of the Eighth Amendment.

16 Even if Plaintiff’s allegations were sufficient to state a claim of deliberate  
17 indifference, the claim may not proceed because the Defendants have not been named.  
18 Plaintiff was cautioned in the order dismissing the complaint with leave to amend that  
19 “although the use of Doe defendants is acceptable to withstand dismissal of the  
20 complaint at the initial review stage, Plaintiff is cautioned that using “John Doe”  
21 defendants creates its own problem: those persons cannot be served with process in this  
22 action until they are identified by their real names.” Plaintiff was directed to “promptly  
23 take steps to discover the names of the unnamed defendants and to provide that  
24 information to the Court” in the amended complaint. Plaintiff has not done so.  
25 Consequently, the claim will be dismissed without prejudice to him refiling the claim in  
26 a new complaint in which he names the two responsible defendants.



1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 SCHRUBB,

6 Plaintiff,

7 v.

8 TILTON ET AL et al,

9 Defendant.  
10 \_\_\_\_\_/

Case Number: CV09-02197 JSW

**CERTIFICATE OF SERVICE**

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on February 9, 2011, I SERVED a true and correct copy(ies) of the attached, by placing  
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
16 delivery receptacle located in the Clerk's office.

17 Kevin R Schrub V-55932  
18 Facility "B", 5-150  
19 Post Office Box 1050  
20 Soledad, CA 93960-1060

21 Dated: February 9, 2011



22 Richard W. Wieking, Clerk  
23 By: Jennifer Ottolini, Deputy Clerk  
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