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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KELLY H. WILSON,
Plaintiff,
v.
CYNTHIA ZUBIATE, et al.,
Defendants.

Case No. [14-cv-01032-VC](#)

**ORDER GRANTING IN PART AND
DENYING IN PART THE
DEFENDANTS' MOTION TO DISMISS**

Re: Dkt. No. 72

1. The motion to dismiss the due process claim is denied. According to the complaint, Wilson received two checks for VA disability benefits, he was entitled to that money and therefore had a property interest in it, prison officials decided on their own that he wasn't entitled to the money, and they sent the checks back to the VA without ever notifying Wilson or giving him an opportunity to be heard. The defendants assert that prison officials contacted the VA before returning the checks and were told Wilson should not receive them. But the complaint doesn't allege that; it alleges the prison officials decided on their own that Wilson was not eligible. The defendants argue that Wilson must plead with particularity that prison officials *did not* consult with the VA before returning the checks, but a plaintiff need only state a plausible claim; a plaintiff is not required at the pleading stage to include further allegations to refute a defendant's denial of allegations that are already plausible. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *cf. Ardente, Inc. v. Shanley*, 2010 WL 546485, at *6 (N.D. Cal. Feb. 10, 2010) ("[A] plaintiff has no obligation to plead facts in its complaint to rebut every defense that might be raised."). And it's plausible that prison officials returned the money on their own without consulting the VA, because the letter Wilson received from the VA about his benefits (which is incorporated by reference into the complaint and which prison officials screened before passing it on to him) strongly suggests he

1 was entitled to the money (as does federal law). *See* 38 U.S.C. § 5313; 38 C.F.R. § 3.665. And if
2 that's what happened, it was a due process violation. Under *Quick v. Jones*, 754 F.2d 1521, 1523-
3 24 (9th Cir. 1985), prison officials must give prisoners an opportunity to be heard before taking
4 their money away and giving it to someone else. And the allegations in the complaint are close
5 enough to the facts in *Quick* that qualified immunity is not warranted at the pleading stage. Of
6 course, the defendants are free to renew their qualified immunity argument at summary judgment
7 after adducing evidence about what really happened.

8 2. The motion to dismiss the claim that 15 CCR § 3140(b) is preempted by federal law is
9 denied. The regulation is ambiguous. One possible interpretation is that it requires prison
10 officials to consult with the relevant federal agency when a federal benefit payment arrives for a
11 prisoner to confirm that the prisoner is indeed entitled to the payment. Under this interpretation,
12 the regulation would probably not be preempted, because it would not stand as an obstacle to the
13 Congressional purpose of ensuring that disabled veterans (even incarcerated ones) receive their
14 disability payments. *See, e.g.*, 38 U.S.C. § 5301. But the regulation does not require, by its terms,
15 that any prison official actually confirm eligibility with the appropriate agency. The regulation
16 could be interpreted as allowing prison officials to conduct that determination themselves, while
17 merely "notify[ing]" the agency. 15 CCR § 3140(b)(2). Under this interpretation, the regulation
18 would almost certainly be preempted, because it would interfere with the VA's ability to decide for
19 itself about veterans' eligibility for benefits, as well as interfering with the Congressional purpose
20 of ensuring that people don't take benefits away from veterans. 38 U.S.C. § 5301. Therefore, the
21 question whether the regulation is preempted depends on how the state implements it, which
22 means the question can't be resolved at the pleading stage.¹

23 3. The motion to dismiss, on Eleventh Amendment grounds, the claim that 15 CCR § 3140
24 exceeds the scope of the Department of Corrections' regulatory authority under state law is
25 granted. There is an exception to Eleventh Amendment immunity for claims against state officials
26 in their official capacity, when the claims seek prospective relief and when they allege an ongoing

27 _____
28 ¹ The defendants have not argued that Wilson has no preemption claim in light of *Armstrong v. Exceptional Child Center*, 135 S. Ct. 1378 (2015), so this question will be left for another day.

1 violation of "federal" law. *Virginia Office for Protection & Advocacy v. Stewart*, 131 S. Ct. 1632,
2 1639 (2011); *Verizon Maryland, Inc. v. Public Service Comm'n of Maryland*, 535 U.S. 635, 645
3 (2002). "However, the amendment bars claims in federal court against state officials based on
4 state law violations." *Air Transp. Ass'n of Am. v. Public Utilities Comm'n*, 833 F.2d 200, 204 (9th
5 Cir. 1987). *See also Barrilleaux v. Mendocino Cnty.*, 61 F.Supp.3d 906, 914 (N.D. Cal. 2014).

6 4. The motion to dismiss Wilson's claim under 42 U.S.C. § 1983 for a violation of 38
7 U.S.C. § 5301(a)(1) is denied in part and granted in part. The defendants contend Section 5301
8 does not apply to the conduct alleged in the complaint because the statute is aimed at preventing
9 "creditors" from getting their hands on veterans' benefits. But the defendants cite no case – and
10 the Court is aware of none – holding that Section 5301 serves *only* to protect benefits from
11 "creditors." And the language of the statute is broader than that. It states that veterans' benefits
12 are "exempt from taxation" and exempt from "attachment, levy, or seizure by or under any legal or
13 equitable process whatever, either before or after receipt by the beneficiary," as well as "exempt
14 from the claim of creditors." 38 U.S.C. § 5301(a)(1). The defendants also contend the "process"
15 referred to in Section 5301 is a formal process involving judicial authorization, which did not
16 happen here. But the authority the defendants cite stands only for the proposition that 42 U.S.C. §
17 407(a) (the anti-attachment provision for social security benefits) requires a more formal process,
18 and the Ninth Circuit has held that Section 5301(a)(1) "creates a significantly broader preclusion"
19 than Section 407(a). *Gossett v. Czech*, 581 F.3d 891, 895 (9th Cir. 2009). Because the facts
20 alleged in the complaint suggest that prison officials conducted a "seizure" of Wilson's money
21 under a "process" established pursuant to regulation, Wilson has stated a claim for violation of the
22 statute.

23 However, the language of Section 5301(a)(1) is not so clear as to make it obvious that the
24 facts alleged by Wilson fall within the scope of the statute. In particular, it wouldn't be obvious to
25 every reasonable prison official that the seizure of Wilson's money was pursuant to a "legal or
26 equitable process." Nor has Wilson identified a case finding a violation of Section 5301 on facts
27 similar to this one. Therefore, the claim for damages against the individual defendants under this
28 statute is dismissed, because even taking the complaint's allegations as true, the individual

1 defendants cannot be said to have violated a clearly established right, meaning they are entitled to
2 qualified immunity. *See, e.g., City and Cnty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1774-
3 75 (2015). Only the claim for declaratory and injunctive relief against Beard in his official
4 capacity may go forward.

5 5. The motion to dismiss Wilson's claim under 42 U.S.C. § 1983 for a violation of 38
6 U.S.C. § 5905 is granted, because that criminal statute does not give a private plaintiff a civil
7 cause of action. *See Bates v. Nicholson*, 398 F.3d 1355, 1362 (Fed. Cir. 2005) (describing Section
8 5905); *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002) (describing test for deciding when a
9 statute gives a private plaintiff a civil cause of action).

10 6. As Wilson concedes, his state law tort claim for interference with prospective economic
11 relations must be dismissed. Dismissal is with prejudice as to Wilson; the Court declines to rule at
12 this time on Wilson's request that a similar claim be allowed to go forward if another plaintiff is
13 added to the case.

14
15 **IT IS SO ORDERED.**

16 Dated: July 13, 2015



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VINCE CHHABRIA
United States District Judge