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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RONALD STEVENS LIBERATORE,
Plaintiff,
v.
STATE OF CALIFORNIA,
Defendant.

Case No. [16-cv-3439-TEH](#)

ORDER OF DISMISSAL

Plaintiff, an inmate at San Quentin State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. The amended complaint was dismissed with leave to amend and Plaintiff has submitted two letters (Docket Nos. 11, 12) that the Court has construed as a second amended complaint.

I

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 fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pleadings filed by pro se litigants, however, must be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010);

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1 Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir.
2 1990).

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

8 II

9 Plaintiff presents various allegations regarding the
10 confiscation of property and improper medical care.

11 Neither the alleged negligent nor intentional deprivation of
12 property states a due process claim under § 1983 if the
13 deprivation was random and unauthorized. Parratt v. Taylor, 451
14 U.S. 527, 535-44 (1981) (state employee negligently lost
15 prisoner's hobby kit), overruled in part on other grounds,
16 Daniels v. Williams, 474 U.S. 327, 330-31 (1986); Hudson v.
17 Palmer, 468 U.S. 517, 533 (1984) (intentional destruction of
18 inmate's property). The availability of an adequate state post-
19 deprivation remedy, e.g. a state tort action, precludes relief
20 because it provides adequate procedural due process. King v.
21 Massarweh, 782 F.2d 825, 826 (9th Cir. 1986). California law
22 provides an adequate post-deprivation remedy for any property
23 deprivations. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir.
24 1994) (citing Cal. Gov't Code §§ 810-895).

25 Deliberate indifference to serious medical needs violates
26 the Eighth Amendment's proscription against cruel and unusual
27 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin
28 v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other

1 grounds, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136
2 (9th Cir. 1997) (en banc). A determination of "deliberate
3 indifference" involves an examination of two elements: the
4 seriousness of the prisoner's medical need and the nature of the
5 defendant's response to that need. Id. at 1059.

6 A "serious" medical need exists if the failure to treat a
7 prisoner's condition could result in further significant injury
8 or the "unnecessary and wanton infliction of pain." Id. The
9 existence of an injury that a reasonable doctor or patient would
10 find important and worthy of comment or treatment; the presence
11 of a medical condition that significantly affects an individual's
12 daily activities; or the existence of chronic and substantial
13 pain are examples of indications that a prisoner has a "serious"
14 need for medical treatment. Id. at 1059-60.

15 A prison official is deliberately indifferent if he or she
16 knows that a prisoner faces a substantial risk of serious harm
17 and disregards that risk by failing to take reasonable steps to
18 abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The
19 prison official must not only "be aware of facts from which the
20 inference could be drawn that a substantial risk of serious harm
21 exists," but he "must also draw the inference." Id. If a prison
22 official should have been aware of the risk, but was not, then
23 the official has not violated the Eighth Amendment, no matter how
24 severe the risk. Gibson v. County of Washoe, 290 F.3d 1175, 1188
25 (9th Cir. 2002). "A difference of opinion between a prisoner-
26 patient and prison medical authorities regarding treatment does
27 not give rise to a § 1983 claim." Franklin v. Oregon, 662 F.2d
28 1337, 1344 (9th Cir. 1981).

1 The original and first amended complaints were dismissed
2 with leave to amend because it was difficult to discern the exact
3 nature of Plaintiff's allegations. The allegations of the second
4 amended complaint are similarly confusing.

5 To the extent Plaintiff still argues that state officials
6 have confiscated or broken his headphones, he has failed to state
7 a claim due to the availability of an adequate state post-
8 deprivation remedy. With regard to his medical claims he has
9 failed to present plausible allegations concerning how Defendants
10 were deliberately indifferent to his serious medical needs. Many
11 of Plaintiff's allegations concern medical care in the 1980s and
12 1990s which are time barred. To the extent he wishes to
13 challenge his denial of parole he must file a habeas petition.
14 Plaintiff's allegations are meritless and frivolous, and fail to
15 state a claim. Because no amount of amendment could cure the
16 deficiencies in this complaint, the action is dismissed with
17 prejudice.

18 III

19 For the foregoing reasons, the Court hereby orders as
20 follows:

- 21 1. Plaintiff's complaint is DISMISSED with prejudice as
22 frivolous and for failure to state a claim.
23 2. The Clerk shall close this case.

24 IT IS SO ORDERED.

25 Dated: 10/11/2016

26 

27 THELTON E. HENDERSON
28 United States District Judge