

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

3  
4 EDWARD THOMAS,

5                                    Plaintiff,

6                                    v.

7 GERALD ELLIS, et al.,

8                                    Defendants.

Case No.: C 12-5563 CW (PR)

ORDER OF SERVICE AND PARTIAL  
DISMISSAL

9  
10                                    INTRODUCTION

11                                    Plaintiff, a state prisoner incarcerated at Salinas Valley  
12 State Prison (SVSP), has filed a pro se civil rights action  
13 pursuant to 42 U.S.C. § 1983, alleging the violation of his  
14 constitutional rights by prison officials and medical staff at  
15 SVSP. His motion for leave to proceed in forma pauperis has been  
16 granted.

17                                    DISCUSSION

18 I.        Standard of Review

19                                    A federal court must conduct a preliminary screening in any  
20 case in which a prisoner seeks redress from a governmental entity  
21 or officer or employee of a governmental entity. 28 U.S.C.  
22 § 1915A(a). In its review, the court must identify any cognizable  
23 claims and dismiss any claims that are frivolous, malicious, fail  
24 to state a claim upon which relief may be granted or seek monetary  
25 relief from a defendant who is immune from such relief. Id.  
26 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.  
27 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
28 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must

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

6 II. Plaintiff's Claims

7 A. Medical Claims

8 Plaintiff alleges that he is partially paralyzed and in  
9 chronic pain as the result of gunshot injuries he suffered in  
10 1996. He alleges that, since March 30, 2011, medical staff at  
11 SVSP have refused to continue his methadone prescription as  
12 previously prescribed for pain relief since November 2009. As a  
13 result, Plaintiff alleges that he is in constant and severe pain  
14 because of his injuries and is unable to sleep. He further  
15 alleges that, on September 9, 2010, Dr. Bright cancelled all of  
16 his prescriptions for assistive medical devices to help him  
17 ambulate and refused to renew medical chronos requiring that he be  
18 transported using waist chains, housed in a lower bunk on a lower  
19 tier, and allowed soft-sole shoes. As a result, Plaintiff alleges  
20 that his chronic pain has been exacerbated. He seeks injunctive  
21 relief and damages.

22 When Plaintiff's allegations are construed liberally, they  
23 state cognizable Eighth Amendment claims for deliberate  
24 indifference to his serious medical needs. See Estelle v. Gamble,  
25 429 U.S. 97, 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059  
26 (9th Cir. 1992).

27 B. Property Claim

28 Plaintiff alleges that SVSP correctional officers E. Mata and

1 Makela are responsible for the loss of his soft-sole shoes and  
2 other items of personal property, which went missing between April  
3 6 and 30, 2012, when his property was withheld from him and under  
4 their control. He surmises that the items either were destroyed  
5 or confiscated. He seeks replacement shoes and damages.

6 Plaintiff's allegations fail to state a claim for relief  
7 under 42 U.S.C. § 1983. When a prisoner suffers a property loss  
8 that is random and unauthorized his remedy lies with the State, as  
9 neither the negligent nor intentional deprivation of property  
10 states a due process claim under § 1983 under such circumstances.  
11 See Parratt v. Taylor, 451 U.S. 527, 535-44 (1981) (no claim where  
12 state employee negligently lost prisoner's hobby kit), overruled  
13 in part on other grounds, Daniels v. Williams, 474 U.S. 327, 330-  
14 31 (1986); Hudson v. Palmer, 468 U.S. 517, 533 (1984) (no claim  
15 for intentional destruction of inmate's property). The  
16 availability of an adequate state post-deprivation remedy, for  
17 example a state tort action, precludes relief under § 1983 because  
18 it provides adequate procedural due process. King v. Massarweh,  
19 782 F.2d 825, 826 (9th Cir. 1986). California law provides an  
20 adequate post-deprivation remedy for any property deprivations.  
21 Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing  
22 Cal. Gov't Code §§ 810-895).<sup>1</sup>

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26 <sup>1</sup> **Error! Main Document Only.** Nor is a prisoner protected by  
27 the Fourth Amendment against the seizure, destruction or  
28 conversion of his property. See Taylor v. Knapp, 871 F.2d 803,  
806 (9th Cir. 1989).

1 Plaintiff claims his property was destroyed or confiscated as  
2 the result of improper handling by prison staff. Such allegations  
3 fail to state a claim upon which relief may be granted under  
4 § 1983. Additionally, amendment of the complaint to state a claim  
5 based on such allegations would be futile. Accordingly, this  
6 claim is DISMISSED with prejudice and all claims against  
7 correctional officers E. Mata and Makela are DISMISSED from this  
8 action.

9 CONCLUSION

10 For the foregoing reasons, the Court orders as follows:

11 1. Plaintiff's deprivation of property claim is DISMISSED  
12 with prejudice and all claims against Defendants E. Mata and  
13 Makela are DISMISSED from this action.

14 2. Plaintiff states cognizable claims for deliberate  
15 indifference to his serious medical needs.

16 The Clerk of the Court shall mail a Notice of Lawsuit and  
17 Request for Waiver of Service of Summons, two copies of the Waiver  
18 of Service of Summons, a copy of the Complaint (Docket no. 1) and  
19 all attachments thereto and a copy of this Order to SVSP  
20 Defendants Gerald Ellis -- Chief Executive Officer at SVSP; M.  
21 Sepulveda -- Chief Medical Officer at SVSP; T.W. Wy -- medical  
22 doctor at SVSP; T.J. Carnes -- registered nurse at SVSP; B. Miller  
23 -- registered nurse at SVSP; Darrin Bright -- doctor and ADA  
24 coordinator at SVSP. The Clerk shall also mail a copy of the  
25 complaint and a copy of this Order to the State Attorney General's  
26 Office in San Francisco, and a copy of this Order to Plaintiff.  
27 3. Defendants are cautioned that Rule 4 of the Federal  
28 Rules of Civil Procedure require them to cooperate in saving

1 unnecessary costs of service of the summons and complaint.  
2 Pursuant to Rule 4, if Defendants, after being notified of this  
3 action and asked by the Court, on behalf of Plaintiff, to waive  
4 service of the summons, fail to do so, they will be required to  
5 bear the cost of such service unless good cause be shown for their  
6 failure to sign and return the waiver forms. If service is  
7 waived, this action will proceed as if Defendants had been served  
8 on the date that the waiver is filed, except that pursuant to Rule  
9 12(a)(1)(B), Defendants will not be required to serve and file an  
10 answer before sixty days from the date on which the request for  
11 waiver was sent. (This allows a longer time to respond than would  
12 be required if formal service of summons is necessary.)

13 Defendants are advised to read the statement set forth at the  
14 foot of the waiver form that more completely describes the duties  
15 of the parties with regard to waiver of service of the summons.  
16 If service is waived after the date provided in the Notice but  
17 before Defendants have been personally served, the answer shall be  
18 due sixty days from the date on which the request for waiver was  
19 sent or twenty days from the date the waiver form is filed,  
20 whichever is later.

21 4. Defendants shall answer the complaint in accordance with  
22 the Federal Rules of Civil Procedure. The following briefing  
23 schedule shall govern dispositive motions in this action:

24 a. No later than thirty days from the date their  
25 answer is due, Defendants shall file a motion for summary judgment  
26 or other dispositive motion. If Defendants file a motion for  
27 summary judgment, it shall be supported by adequate factual  
28 documentation and shall conform in all respects to Federal Rule of

1 Civil Procedure 56. If Defendants are of the opinion that this  
2 case cannot be resolved by summary judgment, they shall so inform  
3 the Court prior to the date the summary judgment motion is due.  
4 All papers filed with the Court shall be promptly served on  
5 Plaintiff.

6 At the time of filing the motion for summary judgment or  
7 other dispositive motion, Defendants shall comply with the Ninth  
8 Circuit's decisions in Woods v. Carey, 684 F.3d 934 (9th Cir.  
9 2012), and Stratton v. Buck, 697 F.3d 1004 (9th Cir. 2012), and  
10 provide Plaintiff with notice of what is required of him to oppose  
11 a summary judgment motion or a motion to dismiss for failure to  
12 exhaust administrative remedies.

13 b. Plaintiff's opposition to the motion for summary  
14 judgment or other dispositive motion shall be filed with the Court  
15 and served on Defendants no later than twenty-eight days after the  
16 date on which Defendants' motion is filed.

17 Before filing his opposition, Plaintiff is advised to read  
18 the notice that will be provided to him by Defendants when the  
19 motion is filed, and Rule 56 of the Federal Rules of Civil  
20 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (party  
21 opposing summary judgment must come forward with evidence showing  
22 triable issues of material fact on every essential element of his  
23 claim). Plaintiff is cautioned that because he bears the burden  
24 of proving his allegations in this case, he must be prepared to  
25 produce evidence in support of those allegations when he files his  
26 opposition to Defendants' summary judgment motion. Such evidence  
27 may include sworn declarations from himself and other witnesses to  
28 the incident, and copies of documents authenticated by sworn

1 declaration. Plaintiff will not be able to avoid summary judgment  
2 simply by repeating the allegations of his complaint.

3 c. Defendants shall file a reply brief no later than  
4 fourteen days after the date Plaintiff's opposition is filed.

5 d. The motion shall be deemed submitted as of the date  
6 the reply brief is due. No hearing will be held on the motion  
7 unless the Court so orders at a later date.

8 5. Discovery may be taken in this action in accordance with  
9 the Federal Rules of Civil Procedure. Leave of the Court pursuant  
10 to Rule 30(a)(2) is hereby granted to Defendants to depose  
11 Plaintiff and any other necessary witnesses confined in prison.

12 6. All communications by Plaintiff with the Court must be  
13 served on Defendants, or Defendants' counsel once counsel has been  
14 designated, by mailing a true copy of the document to Defendants  
15 or Defendants' counsel.

16 7. It is Plaintiff's responsibility to prosecute this case.  
17 He must keep the Court informed of any change of address and must  
18 comply with the Court's orders in a timely fashion.

19 8. Extensions of time are not favored, though reasonable  
20 extensions will be granted. Any motion for an extension of time  
21 must be filed no later than fourteen days prior to the deadline  
22 sought to be extended.

23 IT IS SO ORDERED.

24 Dated: 4/8/2013



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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