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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALEJANDRO ALVE,
CDCR #B-77176,

Plaintiff,

vs.

D. EDWARDS; R. SILVAS;
J. SIGLER; J. ESPINOZA,

Defendants.

Civil No. 10-1389 DMS (POR)

**ORDER DISMISSING COMPLAINT
FOR FAILURE TO STATE A CLAIM
PURSUANT TO 28 U.S.C. § 1915A**

I.

PROCEDURAL HISTORY

On July 1, 2010, Alejandro Alve, a state inmate currently incarcerated at Calipatria State Prison located in Calipatria, California, submitted a civil action pursuant to 42 U.S.C. § 1983. In addition, Plaintiff filed a “Motion to Proceed *In Forma Pauperis*” which was denied by the Court due to sufficient funds in his inmate trust account. See July 14, 2010 Order at 2. Plaintiff has now filed the required \$350.00 initial civil filing fee in order to proceed in this matter.

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1 **II.**

2 **SUA SPONTE SCREENING PURSUANT TO 28 U.S.C. § 1915A(b)**

3 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the Court to
4 review complaints filed by anyone “incarcerated or detained in any facility who is accused of,
5 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions
6 of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after
7 docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP.
8 See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any
9 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may
10 be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

11 **A. Constitutional Claims**

12 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
13 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived
14 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the
15 United States. See 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on*
16 *other grounds by Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769 F.2d
17 1350, 1354 (9th Cir. 1985) (en banc).

18 **B. Fourteenth Amendment Due Process Claims - Disciplinary Hearing**

19 In his Complaint, Plaintiff alleges his due process rights were violated when he was
20 subjected to a disciplinary hearing wherein he was found guilty of having contraband. “The
21 requirements of procedural due process apply only to the deprivation of interests encompassed
22 by the Fourteenth Amendment’s protection of liberty and property.” *Board of Regents v. Roth*,
23 408 U.S. 564, 569 (1972). State statutes and prison regulations may grant prisoners liberty
24 interests sufficient to invoke due process protections. *Meachum v. Fano*, 427 U.S. 215, 223-27
25 (1976). However, the Supreme Court has significantly limited the instances in which due
26 process can be invoked. Pursuant to *Sandin v. Conner*, 515 U.S. 472, 483 (1995), a prisoner
27 can show a liberty interest under the Due Process Clause of the Fourteenth Amendment only if
28 he alleges a change in confinement that imposes an “atypical and significant hardship . . . in

1 relation to the ordinary incidents of prison life.” *Id.* at 484 (citations omitted); *Neal v. Shimoda*,
2 131 F.3d 818, 827-28 (9th Cir. 1997).

3 In this case, Plaintiff has failed to establish a liberty interest protected by the Constitution
4 because he has not alleged, as he must under *Sandin*, facts related to the conditions or
5 consequences of his disciplinary hearing which show “the type of atypical, significant
6 deprivation [that] might conceivably create a liberty interest.” *Id.* at 486. For example, in
7 *Sandin*, the Supreme Court considered three factors in determining whether the plaintiff
8 possessed a liberty interest in avoiding disciplinary segregation: (1) the disciplinary versus
9 discretionary nature of the segregation; (2) the restricted conditions of the prisoner’s
10 confinement and whether they amounted to a “major disruption in his environment” when
11 compared to those shared by prisoners in the general population; and (3) the possibility of
12 whether the prisoner’s sentence was lengthened by his restricted custody. *Id.* at 486-87.

13 Therefore, to establish a due process violation, Plaintiff must first show the deprivation
14 imposed an atypical and significant hardship on him in relation to the ordinary incidents of
15 prison life. *Sandin*, 515 U.S. at 483-84. Plaintiff has failed to allege any facts from which the
16 Court could find there were atypical and significant hardships imposed upon him as a result of
17 the Defendants’ actions. Plaintiff must allege “a dramatic departure from the basic conditions”
18 of his confinement that would give rise to a liberty interest before he can claim a violation of due
19 process. *Id.* at 485; *see also Keenan v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir. 1996), *amended*
20 *by* 135 F.3d 1318 (9th Cir. 1998). He has not; therefore the Court finds that Plaintiff has failed
21 to allege a liberty interest, and thus, has failed to state a due process claim. *See May*, 109 F.3d
22 at 565; *Hewitt*, 459 U.S. at 466; *Sandin*, 515 U.S. at 486 (holding that placing an inmate in
23 administrative segregation for thirty days “did not present the type of atypical, significant
24 deprivation in which a state might conceivably create a liberty interest.”).

25 C. Fourteenth Amendment Due Process Claims - Grievance Procedures

26 In addition, to the extent Plaintiff challenges the procedural adequacy of CDC inmate
27 grievance procedures, his Complaint fails to state a due process claim. *See* 28 U.S.C.
28 § 1915A(b)(1); *Resnick*, 213 F.3d at 446. This is because the Ninth Circuit has held that

1 prisoners have no protected *property* interest in an inmate grievance procedure arising directly
2 from the Due Process Clause. *See Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (finding
3 that the due process clause of the Fourteenth Amendment creates “no legitimate claim of
4 entitlement to a [prison] grievance procedure”); *accord Adams v. Rice*, 40 F.3d 72, 75 (4th Cir.
5 1994) (1995); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

6 **D. Personal Property Claims**

7 Finally, Plaintiff alleges that correctional officers violated his constitutional rights when
8 they removed his television set and never returned it. Where a prisoner alleges the deprivation
9 of a liberty or property interest caused by the unauthorized negligent or intentional action of a
10 prison official, the prisoner cannot state a constitutional claim where the state provides an
11 adequate post-deprivation remedy. *See Zinermon v. Burch*, 494 U.S. 113, 129-32 (1990);
12 *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). The California Tort Claims Act (“CTCA”)
13 provides an adequate post-deprivation state remedy for the random and unauthorized taking of
14 property. *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Thus, Plaintiff has an
15 adequate state post-deprivation remedy and his claims relating to the taking of his property are
16 not cognizable in this § 1983 action, and must be dismissed pursuant to 28 U.S.C.
17 § 1915A(b)(1).

18 Thus, Plaintiff’s entire Complaint must be dismissed for failing to state a claim upon
19 which section 1983 relief may be granted. *See* 28 U.S.C. § 1915A(b)(1). Because it is not
20 altogether certain that Plaintiff would be unable to allege additional facts which might state a
21 claim against Defendants, however, the Court will provide Plaintiff with an opportunity to
22 amend his pleading in light of the standards set forth above.

23 **III.**

24 **CONCLUSION AND ORDER**

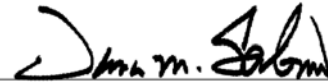
25 Good cause appearing, **IT IS HEREBY ORDERED:**

26 Plaintiff’s Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
27 § 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave from the date this
28 Order is “Filed” in which to file a First Amended Complaint which cures all the deficiencies of

1 pleading noted above. Plaintiff's Amended Complaint must be complete in itself without
2 reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants not named and
3 all claims not re-alleged in the Amended Complaint will be deemed to have been waived. *See*
4 *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Further, if Plaintiff's Amended Complaint
5 fails to state a claim upon which relief may be granted, it may be dismissed without further
6 leave to amend and may hereafter be counted as a "strike" under 28 U.S.C. § 1915(g). *See*
7 *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

8 **IT IS SO ORDERED.**

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10 DATED: August 11, 2010



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12 HON. DANA M. SABRAW
13 United States District Judge
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