IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CARRINGTON KEYS,	:	
Plaintiff	:	NO. 3:CV-07-1034
	:	
v.	:	(JUDGE NEALON)
	:	(MAGISTRATE JUDGE BLEWITT)
JEFFREY A. BEARD, ET AL.,	:	
Defendants	:	

MEMORANDUM and ORDER

On June 6, 2007, Plaintiff, an inmate currently incarcerated at the SCI-Camp Hill, commenced the present civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). The complaint argues that Plaintiff's constitutional rights were violated when prison officials confiscated and destroyed his personal property, *to wit*, a copy of the Uniform Commercial Code ("UCC"). After preliminarily screening the case pursuant to 28 U.S.C. § 1915(e)(2), on July 18, 2007, United States Magistrate Judge Thomas M. Blewitt issued a Report and Recommendation, recommending, *inter alia*, the dismissal of the complaint. (Doc. 11). On July 31, 2007, Plaintiff filed Objections to the Report and Recommendation. The matter is now ripe for disposition and, for the reasons that follow, the Report and Recommendation will be adopted and the complaint will be dismissed.

FILED
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PER M.E.P.
DEPUTY CLERK

Discussion

When objections to a Report and Recommendation have been filed, under 28 U.S.C. 636(b)(1)(c), the court must make a *de novo* consideration of those portions of the report to which there have been objections. *See* Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In so doing, the court may accept, reject, or modify, in whole or in part, the findings and recommendations contained in the report. 28 U.S.C. §636(b)(1); Local Rule 72.31. Further, the court may, in the exercise of sound judicial discretion, rely on the Magistrate Judge's proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 676 (1980); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

In his objections, Plaintiff asserts that the Report and Recommendation erred in assuming that the DOC has a valid security concern in restricting inmate possession of unabridged copies of the UCC, that the DOC policy is an exaggerated response to security concerns, and that the Magistrate Judge, in authoring the Report and Recommendation, is acting as an advocate for Defendants.

The Report and Recommendation reviewed the complaint under 28 U.S.C.§ 1915(e)(2)(B). In doing so, Magistrate Judge Blewitt determined that Plaintiff's claims under state law and international treatises should be dismissed and, further,

that he was unable to maintain his cause of action against all the named Defendants. The Magistrate Judge found that Plaintiff's Fourth Amendment due process claim should be dismissed inasmuch as it does not protect inmates from searches and seizures of their property given the legitimate penological goal of protection. Hudson v. Palmer, 468 U.S. 517, 528-29 (1984). Additionally, Plaintiff's Fourteenth Amendment claim provides him no basis for relief since he was provided with a post-deprivation remedy by way of the prison's administrative grievance process. Id. at 533 ("an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available."); Durham v. Department of Corrections, 173 Fed. Appx. 154, 157 (3d Cir. 2006)("Pennsylvania Department of Corrections' grievance procedure provides an adequate post-deprivation remedy."). The Report and Recommendation also concluded that the claims against Defendants Cole and Kelchner be dismissed under the doctrine of *respondeat superior*. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (holding that claims brought under § 1983 cannot be premised on a theory of *respondeat superior* but rather each named defendant must be shown, via the complaint's allegations, to have been personally involved in the events or occurrences which underlie a claim.). Noting that "other courts have found that the UCC in its

entirety would enable inmates to file fraudulent liens against prison staff and DOC officials," the Report and Recommendation concluded that "there is a very significant penological interest in limiting the availability of certain UCC sections." (Doc. 11, p. 16); *see also* Warren v. Pennsylvania, et al., 2007 WL 1653760 (W.D. Pa.); Monroe, et al., v. Beard, et al., 2007 WL 764086 (E.D. Pa.). Additionally, the prison law library contains certain sections of the UCC so that access to such for legitimate purposes is not prevented by this policy. Finally, Magistrate Judge Blewitt concluded that Plaintiff failed to state claims of: denial of access to the courts, because he clearly has be unfettered in filing action with this court; an Equal Protection violation, since he is a member of a non-suspect class and the policy serves a legitimate goal of security; or a violation of his right to petition under the First Amendment, inasmuch as he has not articulated an alleged injury. Moreover, the denial of the UCC cannot be reasonably characterized as interference with the mail.

Plaintiff's Objections reiterate the positions asserted in his complaint. While he may disagree with the Report and Recommendation or take issue with the Magistrate Judge's analysis of the issues, he has not presented any law or facts sufficient to overcome the deficiencies of his complaint.

Conclusion

The court finds the Report and Recommendation well-reasoned and legally

sound. Consequently, it will be adopted. An appropriate order follows.

Date: September 4, 2007

s/ William J. Nealon
United States District Judge

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ORDER

ACCORDINGLY, THIS 4th DAY OF SEPTEMBER, 2007, IT IS HEREBY ORDERED THAT:

1. The motion for leave to proceed *in forma pauperis* (Doc. 5) is GRANTED for the sole purposes of this order.

2. The Magistrate Judge's Report and Recommendation (Doc. 11) is ADOPTED.

3. The complaint (Doc. 1) is DISMISSED.

4. Plaintiff's request for injunctive relief (Docs. 3-4) is DISMISSED AS MOOT.

5. Any appeal will be deemed frivolous, lacking merit, and not taken in good faith.

s/ William J. Nealon
United States District Judge