

JAN 27 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KEVIN R. SCHRUBB, Sr.,

Plaintiff - Appellant,

v.

JAMES TILTON, Secretary of CDCR; et  
al.,

Defendants - Appellees.

No. 14-16823

D.C. No. 3:08-cv-02986-TEH

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Thelton E. Henderson, District Judge, Presiding

Submitted January 20, 2016\*\*

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Kevin R. Schrubb, Sr., a California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging a due process violation arising out of the destruction of his personal property when he

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

was unable to pay the return shipping fees. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Nev. Dep't of Corr. v. Greene*, 648 F.3d 1014, 1018 (9th Cir. 2011). We affirm.

The district court properly granted summary judgment because, even assuming that Schrubb had a protected property interest, Schrubb was given ample notice of the prison's mail out policy and opportunities to comply with that policy. *See id.* at 1019 (finding no due process violation where inmate was given adequate opportunity to comply with regulation, which is "all the process that is due").

We reject Schrubb's contention that the district court erred in failing to consider whether Schrubb's grievance was improperly screened out because defendants did not move for summary judgment on the basis of exhaustion.

Schrubb's request for judicial notice is denied because defendants have included the necessary parts of the record in the excerpts of record.

**AFFIRMED.**