

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLARENCE LONNELL ROBERSON,

Plaintiff,

v.

CSP-CORCORAN MAILROOM STAFF, et
al.,

Defendants.

Case No. 1:17-cv-01331-AWI-SAB (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
FOR FAILURE TO STATE A CLAIM

(ECF No. 10)

OBJECTIONS DUE WITHIN THIRTY
DAYS

Plaintiff Clarence Lonnell Roberson is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff’s first amended complaint, filed March 12, 2018. (ECF No. 10.)

I.

SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

1 A complaint must contain “a short and plain statement of the claim showing that the
2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
4 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate
6 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.
7 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

8 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
9 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d
10 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be
11 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
12 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss
13 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant
14 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s
15 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572
16 F.3d at 969.

17 II.

18 DISCUSSION

19 Plaintiff alleges that around October 27, 2016, he sent mail to his daughter. Office
20 assistant Zavala told Plaintiff to prove it and that no such mail had been sent out. Plaintiff told
21 her that he had evidence that the items were mailed out and Zavala said he did not. After
22 Plaintiff filed an inmate appeal his package appeared after being missing for two months.
23 Plaintiff brings this action against unknown mailroom staff and office assistant Zavala alleging
24 violation of his rights under the First Amendment.

25 As Plaintiff was previously advised, to state a claim under section 1983, he must show
26 that (1) each defendant acted under color of state law and (2) each defendant deprived him of
27 rights secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d
28 1178, 1185 (9th Cir. 2006). To state a claim, Plaintiff must demonstrate that each defendant

1 personally participated in the deprivation of his rights. Jones, 297 F.3d at 934. This requires that
2 the complaint allege that every defendant acted with the requisite state of mind to violate the
3 underlying constitutional provision. OSU Student Alliance v. Ray, 699 F.3d 1053, 1070 (9th
4 Cir. 2012).

5 Generally speaking, inmates have a right under the First Amendment to send and receive
6 mail. Hayes v. Idaho Corr. Ctr., 849 F.3d 1204, 1209 (9th Cir. 2017); Witherow v. Paff, 52 F.3d
7 264, 265 (9th Cir. 1995). However, isolated instances of interference with mail without any
8 evidence of improper motive have been found insufficient to state a constitutional claim. See
9 Stevenson v. Koskey, 877 F.2d 1435, 1441 (9th Cir. 1989) (negligent mishandling of inmate
10 mail insufficient to state a constitutional claim); Smith v. Maschner, 899 F.2d 940, 944 (10th Cir.
11 1990) (isolated incidents of mail interference without any evidence of improper motive or
12 resulting interference with the right to counsel or access to the courts do not give rise to a
13 constitutional violation); Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997) (“we have never
14 held or suggested that an isolated, inadvertent instance of opening incoming confidential legal
15 mail will support a § 1983 damage action”); Davis v. Goord, 320 F.3d 346, 351 (2d Cir. 2003)
16 (an isolated incident of mail tampering is usually insufficient to establish a constitutional
17 violation).

18 Here, liberally construed, Plaintiff’s complaint alleges that he placed a package in the
19 mail and after two months it was found without having been mailed out. Plaintiff has only
20 alleged an isolated interference with mail. Additionally, Plaintiff has included no allegations to
21 suggest any wrongful conduct by any prison official that resulted in the interference with the
22 mail. The mere fact that Plaintiff’s package was not mailed does not provide a basis for the
23 Court to reasonably infer that prison officials interfered with his mail, rather than it was just
24 misplaced. The Court finds that Plaintiff’s allegations are insufficient to state a cognizable
25 claim.

26 Further, Plaintiff’s allegation that Zavala told him that no package was mailed is
27 insufficient to demonstrate interference with his mail. Although Plaintiff alleges that after he
28 filed an appeal his package was found, the factual allegations in the complaint must demonstrate

1 that each defendant personally participated in the deprivation of a plaintiff's rights. Jones, 297
2 F.3d at 934. The complaint is devoid of any factual allegations of any conduct by Zavala or any
3 other mailroom employee by which the Court could infer that Plaintiff's federal rights were
4 violated. Iqbal, 556 U.S. at 678-79.

5 IV.

6 CONCLUSION AND RECOMMENDATIONS

7 Plaintiff has failed to state a cognizable claim for a violation of his federal rights.
8 Plaintiff's complaint was previously screened and Plaintiff was advised in an order on January
9 10, 2018 of the legal standards that applied to his claims and was provided with an opportunity to
10 cure the deficiencies in his complaint. (ECF No. 7.) Although Plaintiff was previously notified
11 of the applicable legal standards and the deficiencies in his pleading, and despite guidance from
12 the Court, Plaintiff's first amended complaint is largely identical to the original complaint.
13 Based upon the allegations in Plaintiff's original and first amended complaint, the Court is
14 persuaded that Plaintiff is unable to allege any additional facts that would support a claim for
15 interference with mail in violation of the First Amendment, and further amendment would be
16 futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may deny
17 leave to amend when amendment would be futile.") Based on the nature of the deficiencies at
18 issue, the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d
19 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

20 Based on the foregoing, IT IS HEREBY RECOMMENDED that this action be dismissed
21 for Plaintiff's failure to state a cognizable claim.

22 This findings and recommendations is submitted to the district judge assigned to this
23 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within thirty (30)
24 days of service of this recommendation, Plaintiff may file written objections to this findings and
25 recommendations with the court. Such a document should be captioned "Objections to
26 Magistrate Judge's Findings and Recommendations." The district judge will review the
27 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The
28 parties are advised that failure to file objections within the specified time may result in the

1 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
2 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3
4 IT IS SO ORDERED.

5 Dated: August 29, 2018


UNITED STATES MAGISTRATE JUDGE

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28