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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

NOAH H.O. BATTLE,  
Plaintiff,

No. CIV S-10-2135-FCD-CMK-P

vs.

FINDINGS AND RECOMMENDATIONS

A. POSADAS, et al.,  
Defendants.

\_\_\_\_\_ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon

1 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must  
2 allege with at least some degree of particularity overt acts by specific defendants which support  
3 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
4 impossible for the court to conduct the screening required by law when the allegations are vague  
5 and conclusory.

6 Plaintiff names the following as defendants: Posadas, Harrison, Cameron, and  
7 Marsh. Plaintiff claims:

8 On 3-11-2010 Officer Posadas took Plaintiff's legal mail. Later on during  
9 the night the Plaintiff received an incident report . . . . in which stated . . .  
10 legal mail non-legal purp. updated by: Sgt. Harrison. Keep in mind,  
11 Plaintiff was Civil Pro Per status – approved; in addition, Plaintiff never  
12 was given back the legal mail nor was the legal mail mailed out. Also,  
13 Plaintiff has documentation that he has mailed to the addressee designated.  
14 Classification Officer Cameron is involved because Plaintiff has filed two  
15 or three grievances with no reply back. Lt. Marsh is [sic].<sup>1</sup>

16 It appears that plaintiff is primarily complaining that legal mail was improperly  
17 opened and/or confiscated by defendants Posadas and Harrison. Prisoners have a First  
18 Amendment right to send and receive mail. See Witherow v. Paff, 52 F.3d 264, 265 (9th Cir.  
19 1995) (per curiam). Prison officials may intercept and censor outgoing mail concerning escape  
20 plans, proposed criminal activity, or encoded messages. See Procunier v. Martinez, 416 U.S.  
21 396, 413 (1974); see also Witherow, 52 F.3d at 266. Based on security concerns, officials may  
22 also prohibit correspondence between inmates. See Turner v. Safley, 482 U.S. 78, 93 (1987).  
23 Prison officials may not, however, review outgoing legal mail for legal sufficiency before  
24 sending them to the court. See Ex Parte Hull, 312 U.S. 546, 549 (1941). Incoming mail from the  
25 courts, as opposed to mail from the prisoner's attorney, for example, is not considered "legal  
26 mail." See Keenan v. Hall, 83 F.3d 1083, 1094 (9th Cir. 1996), amended by 135 F.3d 1318 (9th  
Cir. 1998).

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<sup>1</sup> There are no additional allegations as to Marsh. The complaint simply stops with  
"Lt. Marsh is."

1           Specific restrictions on prisoner legal mail have been approved by the Supreme  
2 Court and Ninth Circuit. For example, prison officials may require that mail from attorneys be  
3 identified as such and open such mail in the presence of the prisoner for visual inspection. See  
4 Wolff v. McDonnell, 418 U.S. 539, 576-77 (1974); Sherman v. MacDougall, 656 F.2d 527, 528  
5 (9th Cir. 1981). Whether legal mail may be opened outside the inmate’s presence, however, is an  
6 open question in the Ninth Circuit. At least three other circuits have concluded that legal mail  
7 may not be opened outside the inmate’s presence. See id. (citing Taylor v. Sterrett, 532 F.2d 462  
8 (5th Cir. 1976), Back v. Illinois, 504 F.2d 1100 (7th Cir. 1974) (per curiam), and Smith v.  
9 Robbins, 452 F.2d 696 (1st Cir. 1972)); see also Samonte v. Maglinti, 2007 WL 1963697 (D.  
10 Hawai’i July 3, 2007) (recognizing open question). At least one court in this circuit, however,  
11 has concluded, based on citation to a Sixth Circuit case, that a “prison’s ‘pattern and practice’ of  
12 opening confidential legal mail outside of [the] inmate’s presence infringes upon [the] inmate’s  
13 First Amendment rights and access to the courts.” Oliver v. Pierce County Jail, 2007 WL  
14 1412843 (W.D. Wash, May 9, 2007) (citing Muhammad v. Pritcher, 35 F.3d 1081 (6th Cir.  
15 1994)). The Ninth Circuit has, however, held that an isolated instance or occasional opening of  
16 legal mail outside the inmate’s presence does not rise to the level of a constitutional violation.  
17 See Stevenson v. Koskey, 877 F.2d 1435, 1441 (9th Cir. 1989).

18           Here, plaintiff complains of an isolated instance. In particular, he does not allege  
19 any pattern or practice which resulted in the improper confiscation of his mail. Therefore,  
20 plaintiff simply has not stated a cognizable claim of a constitutional violation. Moreover, as to  
21 defendant Cameron, who is alleged to be responsible for failing to respond to plaintiff’s inmate  
22 grievances, prisoners have no stand-alone due process rights related to the administrative  
23 grievance process. See Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988); see also Ramirez v.  
24 Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (holding that there is no liberty interest entitling  
25 inmates to a specific grievance process). Because there is no right to any particular grievance  
26 process, it is impossible for due process to have been violated by ignoring or failing to properly

1 process grievances. Numerous district courts in this circuit have reached the same conclusion.  
2 See Smith v. Calderon, 1999 WL 1051947 (N.D. Cal 1999) (finding that failure to properly  
3 process grievances did not violate any constitutional right); Cage v. Cambra, 1996 WL 506863  
4 (N.D. Cal. 1996) (concluding that prison officials' failure to properly process and address  
5 grievances does not support constitutional claim); James v. U.S. Marshal's Service, 1995 WL  
6 29580 (N.D. Cal. 1995) (dismissing complaint without leave to amend because failure to process  
7 a grievance did not implicate a protected liberty interest); Murray v. Marshall, 1994 WL 245967  
8 (N.D. Cal. 1994) (concluding that prisoner's claim that grievance process failed to function  
9 properly failed to state a claim under § 1983).

10 Because it does not appear possible that the deficiencies identified herein can be  
11 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of  
12 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

13 Based on the foregoing, the undersigned recommends that this action be dismissed  
14 with prejudice.

15 These findings and recommendations are submitted to the United States District  
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
17 after being served with these findings and recommendations, any party may file written  
18 objections with the court. Responses to objections shall be filed within 14 days after service of  
19 objections. Failure to file objections within the specified time may waive the right to appeal.  
20 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21  
22 DATED: November 9, 2010

23   
24 **CRAIG M. KELLISON**  
25 UNITED STATES MAGISTRATE JUDGE  
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