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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 DANA DEMETRIUS BAIRFIELD,

12 Plaintiff,

13 v.

14 OFFICER COLLINS – TRC # 1C08,

15 Defendant.  
16

No. 2:14-cv-1344 JAM AC P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff is an inmate at the Solano County Jail, proceeding pro se and in forma pauperis in  
18 this civil rights action filed pursuant to 42 U.S.C. § 1983. Pending for this court's review is  
19 plaintiff's Second Amended Complaint. See 28 U.S.C. § 1915A(a). For the reasons that follow,  
20 the undersigned recommends that this action be dismissed.

21 Plaintiff commenced this action on April 7, 2014, in the United States District Court for  
22 the Northern District of California, as a petition for writ of habeas corpus. ECF No. 1. On June  
23 23, 2014, following transfer of the action to this court, the undersigned construed plaintiff's initial  
24 filing as a civil rights complaint, in which plaintiff alleged the mishandling of his legal mail by  
25 Officer Collins at the Solano County Jail. The court dismissed the original filing with leave to  
26 file a civil rights complaint on the form provided with the court's order. ECF No. 13. Plaintiff  
27 thereafter filed a First Amended Complaint. ECF No. 14.

28 On December 24, 2014, this court dismissed plaintiff's First Amended Complaint with

1 leave to file a further amended complaint. ECF No. 16. While it appeared that plaintiff was  
2 attempting to state a First Amendment retaliation claim against defendant Collins, the court found  
3 that plaintiff's allegations<sup>1</sup> failed to state a cognizable claim.<sup>2</sup> In addition to noting the  
4 deficiencies in plaintiff's allegations, the court informed plaintiff of the legal standards for stating  
5 a cognizable First Amendment retaliation claim under Section 1983.

6 On January 20, 2015, plaintiff timely filed a Second Amended Complaint, which was  
7 docketed on February 6, 2015.<sup>3</sup> As now framed, plaintiff's allegations against defendant Collins  
8 state in full:

9 C/O Collins has and was depriving of my legal right as a pro-pre  
10 inmat (sic) and that in itself is a violation of my civil right[s].

11 ECF No. 18 at 3. Plaintiff seeks "25.000 dollor (sic)" in damages.

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13 <sup>1</sup> As previously described by this court, "The First Amended Complaint [] alleges that plaintiff  
14 'filed a writ' in superior court, after which, defendant Collins began refusing plaintiff 'pro-se  
15 status' and legal supplies, and started 'denying me legal mail passage.' ECF No. 14 at 3." ECF  
16 No. 16 at 3.

17 <sup>2</sup> As previously found by this court, ECF No. 16 at 3-4:

18 The complaint does not sufficiently allege a First Amendment  
19 retaliation claim. The complaint alleges adverse action by a state  
20 actor, but it fails to allege facts showing that the adverse action was  
21 taken because of plaintiff's exercise of his constitutional rights.  
22 Rather, by alleging that defendant's actions occurred "after"  
23 plaintiff filed his writ, the complaint "pleads facts that are 'merely  
24 consistent with' a defendant's liability." [Ashcroft v.] Iqbal, 556  
25 U.S. [662] at 678 [(2009)] (quoting [Bell Atlantic Corp. v.]  
Twombly, 550 U.S. [544] at 557 [(2007)]). Such pleading "stops  
short of the line between possibility and plausibility of 'entitlement  
to relief.'" *Id.*, at 557 (quoting *Twombly*, 550 U.S. at 678) (some  
quotation marks omitted). Further, the complaint fails to allege  
facts showing that plaintiff's exercise of his constitutional rights  
were a substantial or motivating factor for the officer's actions, that  
the adverse action "chilled" plaintiff's exercise of his constitutional  
rights, and that there was no legitimate correctional goal for the  
adverse action.

26 <sup>3</sup> Plaintiff's filing dates are based on application of the prison mailbox rule. See *Houston v. Lack*,  
27 487 U.S. 266 (1988) (establishing prison mailbox rule); *Campbell v. Henry*, 614 F.3d 1056, 1059  
28 (9th Cir. 2010) (applying the mailbox rule to both state and federal filings by incarcerated  
inmates).

1 This court must dismiss a complaint or portion thereof if the prisoner has raised claims  
2 that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be  
3 granted, or that seek monetary relief from a defendant who is immune from such relief. 28  
4 U.S.C. § 1915A(b)(1), (2).


5 The allegations of plaintiff’s Second Amended Complaint are far less cognizable than  
6 those set forth in his First Amended Complaint. The undersigned finds that plaintiff’s Second  
7 Amended Complaint fails to state a claim upon which relief may be granted. Id., § 1915A(b)(1).  
8 Moreover, this court is persuaded that plaintiff is unable to allege any facts, based upon the  
9 circumstances he challenges, that would state a cognizable claim, and therefore concludes that  
10 further amendment would be futile. “A district court may deny leave to amend when amendment  
11 would be futile.” Hartmann v.CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013); accord Lopez v.  
12 Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (“Courts are not required to grant leave to amend if a  
13 complaint lacks merit entirely.”).

14 Accordingly, IT IS HEREBY RECOMMENDED that:

- 15 1. This action be dismissed for failure to state a claim; and
- 16 2. The Clerk of Court be directed to close this case.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
19 after being served with these findings and recommendations, plaintiff may file written objections  
20 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings  
21 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
22 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153  
23 (9th Cir. 1991).

24 DATED: February 20, 2015

25   
26 ALLISON CLAIRE  
27 UNITED STATES MAGISTRATE JUDGE  
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