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\*E-Filed 5/20/13\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

BRUCE L. FULLER,  
Plaintiff,

No. C 13-0172 RS (PR)

**ORDER OF DISMISSAL**

v.

ANDREW JOHN HAYNAL,  
Defendant.

**INTRODUCTION**

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a).

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica*

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1 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

2 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim  
3 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)  
4 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial  
5 plausibility when the plaintiff pleads factual content that allows the court to draw the  
6 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting  
7 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions  
8 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from  
9 the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).  
10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
11 (1) that a right secured by the Constitution or laws of the United States was violated, and  
12 (2) that the alleged violation was committed by a person acting under the color of state law.  
13 *See West v. Atkins*, 487 U.S. 42, 48 (1988).

14 **B. Legal Claims**

15 Plaintiff alleges that his attorney violated his federal constitutional rights when he  
16 destroyed without plaintiff’s consent files related to plaintiff’s legal proceedings. Plaintiff’s  
17 attorney appears to be a private, not a state, actor. Private actors are not liable under § 1983.  
18 *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). In order to state a claim for relief, plaintiff  
19 must allege facts showing that his attorney was acting under color of state law.

20 Accordingly, the action is DISMISSED without prejudice. Any motion to reopen  
21 must include a complaint containing nonconclusory factual allegations that defendant was  
22 acting under color of state law. The Clerk shall enter judgment in favor of defendant, and  
23 close the file.

24 **IT IS SO ORDERED.**

25 DATED: May 20, 2013

  
RICHARD SEEBORG  
United States District Judge

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