

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT M. STEWARD,  
Plaintiff,  
v.  
J. GILLSON,  
Defendant.

Case No. [18-cv-02152-RS](#) (PR)

**ORDER OF DISMISSAL**

**INTRODUCTION**

Plaintiff filed this federal civil rights action under 42 U.S.C. § 1983 against a prison guard at Pelican Bay State Prison. After reviewing his second amended complaint under 28 U.S.C. § 1915A(a), the Court concludes that plaintiff fails to state any claim for relief. Accordingly, this federal civil rights action is DISMISSED.

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

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting

1 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal  
2 conclusions cast in the form of factual allegations if those conclusions cannot reasonably  
3 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55  
4 (9th Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
5 essential elements: (1) that a right secured by the Constitution or laws of the United States  
6 was violated, and (2) that the alleged violation was committed by a person acting under the  
7 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

8 **B. Legal Claims**

9 Plaintiff has alleged in his three complaints that on December 20, 2016 prison guard  
10 Gillson “collected my out-going mail” and “proceeded to distribute the letters” to other  
11 prisoners. This is insufficient to state any claim for relief. An isolated incident of mail  
12 mishandling or mail delay is insufficient to state a claim under section 1983. *See Crofton*  
13 *v. Roe*, 170 F.3d 957, 961 (9th Cir. 1999); *Bach v. Illinois*, 504 F.2d 1100, 1102 (7th Cir.  
14 1974). Also, the allegations give rise to, at most, a claim of negligence or gross  
15 negligence, neither of which is actionable under section 1983. *See Farmer v. Brennan*,  
16 511 U.S. 825, 835-36 & n.4 (1994); *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir.  
17 1990).

18 **CONCLUSION**

19 This federal civil rights action is DISMISSED without prejudice. If plaintiff  
20 believes he can allege a constitutional claim cognizable under section 1983, he is free to  
21 file an amended complaint. The Clerk shall enter judgment in favor of defendant, and  
22 close the file.

23 **IT IS SO ORDERED.**

24 **Dated:** March 28, 2019

25   
26 RICHARD SEEBORG  
27 United States District Judge