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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELWYN BRADY DAVIS,)	
)	
Plaintiff(s),)	No C 06-5629 VRW (PR)
)	
vs)	ORDER OF DISMISSAL
)	
SAN FRANCISCO POLICE DEPT', et)	(Doc # 2)
al,)	
)	
Defendant(s).)	
_____)	

Plaintiff, a prisoner at the San Francisco County Jail, has filed a pro se civil rights complaint under 42 USC § 1983 alleging that on December 17, 2004 he was hit by a car and taken to San Francisco General Hospital by a San Francisco police officer. Plaintiff seeks damages on the ground that the police officer failed to finish his police report and that the driver of the car that hit him was intoxicated.

Plaintiff also seeks to proceed in forma pauperis under 28 USC § 1915.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 USC § 1915A(a). The court must identify cognizable

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint
2 "is frivolous, malicious, or fails to state a claim upon which relief may be
3 granted," or "seeks monetary relief from a defendant who is immune from such
4 relief." Id § 1915A(b). Pro se pleadings must be liberally construed. Balistreri v
5 Pacifica Police Dep't, 901 F2d 696, 699 (9th Cir 1990).

6 To state a claim under 42 USC § 1983, a plaintiff must allege two
7 essential elements: (1) that a right secured by the Constitution or laws of the
8 United States was violated, and (2) that the alleged violation was committed by a
9 person acting under the color of state law. West v Atkins, 487 US 42, 48 (1988).

10 B. Legal Claims

11 Plaintiff's allegations that the officer failed to finish his police report must
12 be dismissed because they amount to no more than negligence and it is well-
13 established that the Constitution does not guarantee due care on the part of state
14 officials; liability for negligently inflicted harm is categorically beneath the
15 threshold of constitutional due process. County of Sacramento v Lewis, 523 US
16 833, 849 (1998). Failure to finish a police report simply is not the sort of official
17 action likely to rise to the conscience-shocking level required to support a
18 substantive due process claim under § 1983. See id.

19 Plaintiff's allegations that the driver of the car that hit him was intoxicated
20 also must be dismissed. A private individual does not act under color of state
21 law, an essential element of a § 1983 action. Gomez v Toledo, 446 US 635, 640
22 (1980). Purely private conduct, no matter how wrongful, is not covered under §
23 1983. Ouzts v Maryland Nat'l Ins Co, 505 F2d 547, 559 (9th Cir 1974). Simply
24 put: There is no right to be free from the infliction of constitutional deprivations
25 by private individuals. Van Ort v Estate of Stanewich, 92 F3d 831, 835 (9th Cir
26 1996).

1 **CONCLUSION**

2 For the foregoing reasons, plaintiff's request to proceed in forma pauperis
3 (doc # 2) is DENIED and the complaint is DISMISSED under the authority of 28
4 USC § 1915A..

5 The clerk enter judgment in accordance with this order, terminate all
6 pending motions as moot, and close the file. No fee is due.

7 SO ORDERED.

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VAUGHN R WALKER
United States District Chief Judge