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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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

YOHONIA M. MARTIN,

Plaintiff,

v.

WELLS FARGO BANK,

Defendant.

No. C 13-04022 HRL (PR)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Plaintiff, a state prisoner proceeding pro se, filed a complaint against Wells Fargo Bank in San Rafael pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed in forma pauperis will be granted in a separate order.

**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

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be  
2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
3 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
5 elements: (1) that a right secured by the Constitution or laws of the United States was  
6 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. Plaintiff's Claim**

9 Plaintiff challenges the “legitimacy [*sic*] of actual banking institution” of the  
10 Wells Fargo Bank located inside the “Kroger Grocery on East Leland in Pittsburg  
11 California.” (Compl. at 3.) It is not clear what relief Plaintiff seeks. (Id.) Be that as it  
12 may, Plaintiff fails to state a cognizable claim under § 1983 because the complaint,  
13 liberally construed, fails to state a claim under § 1983. First of all, Plaintiff does not  
14 assert a violation of any federal right. Even if this particular banking branch was not  
15 “legitimate,” any deprivation of property is a matter best addressed by the state courts.<sup>1</sup>  
16 Secondly, Plaintiff has failed to show how Wells Fargo Bank, a private banking  
17 institution, was “acting under the color of state law” in these circumstances.<sup>2</sup> Plaintiff  
18 shall be granted leave to amend to attempt to state a cognizable claim under § 1983.

19 **CONCLUSION**

20  
21 <sup>1</sup>Section 1983 does not impose liability for violations of duties of care arising out  
22 of state tort law. See DeShaney v. Winnebago County Social Servs. Dep't, 489 U.S. 189,  
201-03 (1989).

23 <sup>2</sup>Action taken by private individuals or organizations may be under color of state  
24 law “if, though only if, there is such a close nexus between the State and the challenged  
25 action that seemingly private behavior may be fairly treated as that of the State itself.  
26 What is fairly attributable is a matter of normative judgment, and the criteria lack rigid  
27 simplicity. . . . [N]o one fact can function as a necessary condition across the board for  
28 finding state action; nor is any set of circumstances absolutely sufficient, for there may be  
some countervailing reason against attributing activity to the government.” Brentwood  
Academy v. Tennessee Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295-96 (2001)  
(internal quotation marks omitted).

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For the foregoing reasons, the Court orders as follows:

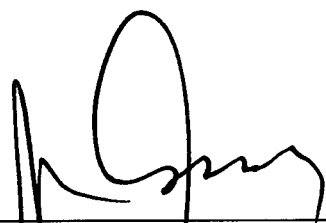
1. The complaint is DISMISSED with leave to amend. Within **twenty-eight (28) days** of the date this order is filed, Plaintiff shall file an amended complaint using the court's form complaint. The amended complaint must include the caption and civil case number used in this order and the words "FIRST AMENDED COMPLAINT" on the first page and write in the case number for this action, Case No. C 13-04022 EJD (PR). Plaintiff must answer all the questions on the form in order for the action to proceed.

**Failure to respond in accordance with this order by filing an amended complaint will result in the dismissal of this action without prejudice and without further notice to Plaintiff.**

The Clerk shall include two copies of the court's complaint with a copy of this order to Plaintiff.

**IT IS SO ORDERED.**

DATED: 11/12/13

  
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HOWARD R. LLOYD  
United States Magistrate Judge

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

YOHONIA M. MARTIN,  
Plaintiff,

Case Number: CV13-04022 HRL  
**CERTIFICATE OF SERVICE**

v.

WELLS FARGO BANK,  
Defendant.

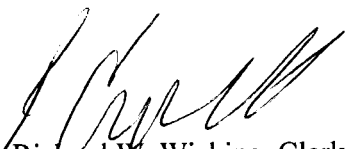
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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 11/12/13, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Yohonia Monique Martin 1163324  
Womens Correctional Center  
1590 Maple Street  
Redwood City, CA 94063

Dated: 11/12/13

  
Richard W. Wieking, Clerk