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

|                     |   |                                |
|---------------------|---|--------------------------------|
| JERRY SMITH,        | ) | No. C 14-01779 EJD (PR)        |
|                     | ) |                                |
| Plaintiff,          | ) | ORDER OF SERVICE; DIRECTING    |
|                     | ) | DEFENDANTS TO FILE DISPOSITIVE |
| v.                  | ) | MOTION OR NOTICE REGARDING     |
|                     | ) | SUCH MOTION; INSTRUCTIONS TO   |
|                     | ) | CLERK                          |
| T. PASLEY, et. al., | ) |                                |
|                     | ) |                                |
| Defendants.         | ) |                                |
| _____               | ) |                                |

Plaintiff, a state prisoner at San Quentin State Prison, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983. Plaintiff’s motion for leave to proceed in forma pauperis will be granted in a separate written 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 Claims**

9 Plaintiff claims that Defendant T. Pasley interfered with his outgoing legal mail  
10 during May and June 2013. (Compl. at 3.) According to the attached papers, Defendant  
11 Pasley returned Plaintiff's mail to him with a request to submit Non Sufficient Funds  
12 ("NSF") envelopes to cover the cost of postage. Plaintiff claims that after he notified the  
13 mail room that he never received NSF envelopes, he received no response. He later  
14 interviewed with mailroom supervisor, Defendant Alex Lile, and notified her of the  
15 incident. Liberally construed, Plaintiff states a cognizable claim under the First  
16 Amendment. See Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995) (citing Thornburgh  
17 v. Abbott, 490 U.S. 401, 407 (1989)).

### 18 19 **CONCLUSION**

20 For the reasons stated above, the Court orders as follows:

21 1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for  
22 Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy  
23 of the complaint, all attachments thereto, and a copy of this order upon **Defendants T.**  
24 **Pasley, Office Assistant, and Alex Lile, Mail Room Supervisor, at San Quentin State**  
25 **Prison**, (San Quentin, CA 94964). The Clerk shall also mail a copy of this Order to  
26 Plaintiff.

27 2. Defendants are cautioned that Rule 4 of the Federal Rules of Civil  
28 Procedure requires them to cooperate in saving unnecessary costs of service of the

1 summons and the complaint. Pursuant to Rule 4, if Defendants, after being notified of  
2 this action and asked by the Court, on behalf of Plaintiff, to waive service of the  
3 summons, fail to do so, they will be required to bear the cost of such service unless good  
4 cause shown for their failure to sign and return the waiver form. If service is waived, this  
5 action will proceed as if Defendants had been served on the date that the waiver is filed,  
6 except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve and file  
7 an answer before **sixty (60) days** from the day on which the request for waiver was sent.  
8 (This allows a longer time to respond than would be required if formal service of  
9 summons is necessary.) Defendants are asked to read the statement set forth at the foot of  
10 the waiver form that more completely describes the duties of the parties with regard to  
11 waiver of service of the summons. If service is waived after the date provided in the  
12 Notice but before Defendants have been personally served, the Answer shall be due **sixty**  
13 **(60) days** from the date on which the request for waiver was sent or **twenty (20) days**  
14 from the date the waiver form is filed, whichever is later.

15 3. No later than **ninety (90) days** from the date of this order, Defendants shall  
16 file a motion for summary judgment or other dispositive motion with respect to the claims  
17 in the complaint found to be cognizable above.

18 a. Any motion for summary judgment shall be supported by adequate  
19 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of  
20 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor  
21 qualified immunity found, if material facts are in dispute. If any Defendant is of the  
22 opinion that this case cannot be resolved by summary judgment, he shall so inform the  
23 Court prior to the date the summary judgment motion is due.

24 b. **In the event Defendants file a motion for summary judgment, the**  
25 **Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate**  
26 **warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See**  
27 **Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).**

28 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court

1 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'  
2 motion is filed.

3 Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure  
4 and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary  
5 judgment must come forward with evidence showing triable issues of material fact on  
6 every essential element of his claim). Plaintiff is cautioned that failure to file an  
7 opposition to Defendants' motion for summary judgment may be deemed to be a consent  
8 by Plaintiff to the granting of the motion, and granting of judgment against Plaintiff  
9 without a trial. See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (per curiam);  
10 Brydges v. Lewis, 18 F.3d 651, 653 (9th Cir. 1994).

11 5. Defendants shall file a reply brief no later than **fourteen (14) days** after  
12 Plaintiff's opposition is filed.

13 6. The motion shall be deemed submitted as of the date the reply brief is due.  
14 No hearing will be held on the motion unless the Court so orders at a later date.

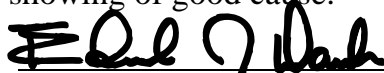
15 7. All communications by the Plaintiff with the Court must be served on  
16 Defendants, or Defendants' counsel once counsel has been designated, by mailing a true  
17 copy of the document to Defendants or Defendants' counsel.

18 8. Discovery may be taken in accordance with the Federal Rules of Civil  
19 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or  
20 Local Rule 16-1 is required before the parties may conduct discovery.

21 9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
22 court informed of any change of address and must comply with the court's orders in a  
23 timely fashion. Failure to do so may result in the dismissal of this action for failure to  
24 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

25 10. Extensions of time must be filed no later than the deadline sought to be  
26 extended and must be accompanied by a showing of good cause.

27 DATED: 8/5/2014

  
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JERRY SMITH,  
Plaintiff,

Case Number: CV14-01779 EJD

**CERTIFICATE OF SERVICE**

v.

T. PASLEY, et al.,  
Defendants.

\_\_\_\_\_/

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 8/5/2014, 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.

Jerry Eugene Smith H-44485  
San Quentin State Prison  
San Quentin, CA 94964

Dated: 8/5/2014

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk