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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES S. LONGSHORE,  
  
Plaintiff,  
  
v.  
  
WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS, a Washington State  
Governmental Entity, OFFICER "JOHN DOE"  
REID, OFFICER JOSHUA J. LENS,  
  
Defendants.

Case No. 3:15-cv-05059-KLS

ORDER GRANTING DEFENDANTS'  
MOTION FOR JUDGMENT ON THE  
PLEADINGS UNDER FED. R. CIV. P.  
12(c) AND DISMISSING PLAINTIFF'S  
COMPLAINT

This matter is before the Court on defendants' motion for judgment on the pleadings under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 12(c). *See* Dkt. 17. Plaintiff has filed a civil rights complaint pursuant to 42 U.S.C. § 1983, seeking damages for the alleged mishandling of his legal mail. *See* Dkt. 5. Pursuant to 28 U.S.C. § 636(c), Fed. R. of Civ. P. 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. After reviewing defendants' motion, plaintiff's response thereto and the remaining record, the Court hereby finds that for the reasons set forth below, defendants' motion should be granted and plaintiff's complaint should be dismissed with prejudice.

ORDER - 1

## STANDARD OF REVIEW

1  
2 Any party may bring a motion for judgment on the pleadings “[a]fter the pleadings are  
3 closed but within such time as not to delay the trial.” Fed. R. Civ. P. 12(c). The standard of  
4 review applied to a motion for judgment on the pleadings is essentially the same as that which is  
5 applicable to a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). *See Ludahl v. Seaview*  
6 *Boat Yard, Inc.*, 869 F. Supp. 825, 826 (W.D. Wash. 1994); *Qwest Communications Corp. v.*  
7 *City of Berkeley*, 208 F.R.D. 288, 291 (N.D. Cal. 2002) (Fed. R. Civ. P. 12(b)(6) and 12(c) are  
8 substantially identical). All allegations of material fact in the non-moving party’s pleadings are  
9 taken as true and “construed in the light most favorable to that party,” and all inferences to be  
10 drawn from those facts also are construed in favor of the party opposing the motion, as are all  
11 “[u]ncontested allegations to which the [moving] party had an opportunity to respond.” *General*  
12 *Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*,  
13 887 F.2d 228, 230 (9th Cir. 1989); *Fajardo v. County of Los Angeles*, 179 F.3d 698, 699 (9th Cir.  
14 1999); *Qwest*, 208 F.R.D. at 291; *Ludahl*, 869 F. Supp. at 826.

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17 Dismissal of a complaint under Fed. R. Civ. P. 12(c) may be based upon either “the lack  
18 of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal  
19 theory.” *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). While a  
20 complaint “does not need detailed factual allegations, a plaintiff’s obligation to provide the  
21 ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a  
22 formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v.*  
23 *Twombly*, 127 S.Ct. 1955, 1965 (2007) (internal citation omitted). “Factual allegations must be  
24 enough to raise a right to relief above the speculative level.” *Id.*

25  
26 Vague and mere “[c]onclusionary allegations, unsupported by facts” are thus insufficient

1 to state a section 1983 claim. *Jones v. Comty. Dev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984);  
2 *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). Further, although the complaint is to be  
3 construed liberally, such construction “may not supply essential elements of the claim that were  
4 not initially pled.” *Pena*, 976 F.2d at 471. The Court should not dismiss the complaint, however,  
5 “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim  
6 which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).  
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### 8 STATEMENT OF FACTS

9 At all times relevant to this case, plaintiff was an inmate at the Stafford Creek Correction  
10 Center (“SCCC”), and defendants Reid and Lens were corrections officers for the Department of  
11 Corrections (“DOC”). *See* Dkt. 5, pp. 1-4. At 10:15 p.m. on November 4, 2013, plaintiff notified  
12 defendant Reid that he had legal mail to process, which consisted of a personal restraint petition  
13 (“PRP”) packet containing “original evidence documentation,” through which plaintiff sought to  
14 challenge his state criminal convictions in addition to the direct appeal thereof he also had filed.  
15 *Id.* at pp. 2-3. Plaintiff, however, kept no copies of the PRP or the other documentation contained  
16 in the packet. *See id.* at p. 3.  
17

18 Because the PRP packet was considered “oversized” legal mail, defendant Reid sought  
19 the assistance of a second, unnamed corrections officer in processing the packet. *Id.* Once that  
20 second officer arrived, defendant Reid then retrieved the PRP packet and “‘logged’ the mail by  
21 signing the correct documents and turning the mail over to [defendant] Lens who put the mail in  
22 the legal mailbag.” *Id.* According to plaintiff, although “[a]fter the ‘logging’ of [his] mail it was  
23 to be turned over to DOC staff to process the documents,” it “was not properly sent and was lost  
24 by the DOC.” *Id.* at p. 4.  
25

26 Instead of receiving a “postage transfer” that “should have acted as a mail receipt for his

1 PRP,” the postage transfer plaintiff received sometime on November 5, 2013, stated: “No mail  
2 attached.” *Id.* Plaintiff “immediately brought this issue to the attention Sgt. Lopez who notified  
3 Sgt. Stlelau, as the error occurred during Sgt. Stlelau’s shift.”<sup>1</sup> *Id.* “Sgt. Stlelau then met with  
4 [plaintiff] to ascertain who processed [his] legal mail, and [plaintiff] informed the sergeant that  
5 his legal mail was handled by [defendants] Reid and Lens. *Id.* “In the evening of November 5,  
6 2013, Sgt. Stlelau informed [plaintiff] that [defendant] Lens had not properly logged [his] mail,  
7 and as a result, it was placed in the improper mailbag.” *Id.*

8  
9 “Sgt. Stlelau ordered all DOC staff that handled [plaintiff’s] mail to search for the lost  
10 mail,” but plaintiff’s “original PRP and the original exhibits that accompanied it were never  
11 located.” *Id.* Although plaintiff attempted to duplicate the lost evidence, he was unable to do so  
12 despite “diligent efforts” made in that regard. *Id.* Plaintiff eventually hired private legal counsel  
13 to assist him with respect to his direct appeal and to help him “replicate the lost PRP,” but the  
14 missing evidence could not be replicated, and the Washington State Court of Appeals denied his  
15 direct appeal and dismissed his PRP. *Id.* at pp. 4-5.

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17 In his complaint, plaintiff asserts the following causes of action:

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- 19 • the DOC and its employees were negligent in losing his legal mail;
  - 20 • the DOC deprived him of the equal protection of laws by unreasonably  
21 obstructing and negligently depriving him of access to the courts;
  - 22 • the DOC violated his right to a fair trial by negligently losing key  
23 evidence and legal documents that adversely impacted his ability to raise a  
24 successful claim;
  - 25 • the DOC failed to provide adequate training in handling the usual and  
26 recurring situations with which corrections officers must deal, which is so  
closely related to the deprivation of his rights as to be the moving force  
that proximately caused his injuries; and

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<sup>1</sup> Neither Sgt. Lopez nor Sgt. Stlelau are parties to this case.

- the DOC's negligence in losing his legal mail impeded and frustrated his attempt to challenge his convictions.

*Id.* at pp. 5-8.

## DISCUSSION

### **I. Plaintiff's Negligence Claim Is Insufficient to State a Claim Under Section 1983**

To state a claim under 42 U.S.C. § 1983, a complaint must allege: (a) the conduct complained of was committed by a person acting under color of state law, and (b) the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the United States. *See Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are present. *See Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985). In addition, facts must be alleged showing how *individually named defendants* caused or personally participated in causing the harm claimed in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

A person will be held to deprive another “of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is legally required to do that *causes* the deprivation of which [the plaintiff complains].” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (emphasis in original) (citation omitted). In this case, plaintiff alleges his injuries “were caused solely by the negligence of DOC employees.” Dkt. 5, p. 6. “[A] negligent act by a person acting under color of state law,” however, “does not rise to the level of a constitutional violation.” *Strong v. Woodford*, 428 F.Supp.2d 1082, 1085 (C.D. Cal. 2006) (citing *Daniels v. Williams*, 474 U.S. 327, 333 (1986) (“[I]njuries inflicted by governmental negligence are not addressed by the United States Constitution.”)); *see also Hines v. Boothe*, 841 F.2d 623, 624 (5th Cir. 1988) (“Negligence does

1 not state a claim under section 1983.”) (emphasis in original), *overruled on other grounds in*  
2 *Huguet v. Barnett*, 900 F.2d 838 (5th Cir. 1990).

3 “The burden of establishing [a defendant’s] level of culpability rests with the plaintiff.”  
4 *Stevenson v. Koskey*, 877 F.2d 1435, 1441 (9th Cir. 1989). For section 1983 purposes, “[a]ctions  
5 such as mislaying an inmate’s property” or “the loss of his legal mail” suggest “merely ‘failure to  
6 measure up to the conduct of a reasonable person,’” and accordingly “do not constitute more  
7 than negligence.” *Id.*; *Hines*, 841 F.2d at 624. Rather, an inmate must show the official’s  
8 “conduct concerning [his] mail rose beyond the level of mere negligence.” *Stevenson*, 877 F.2d  
9 at 1441; *see also Pink v. L.T. Lester*, 52 F.3d 73, 76 (4th Cir. 1995) (noting “it matters not, for  
10 purposes of § 1983,” whether alleged harm premised on lack of court access “is catalogued under  
11 the First or Fourteenth Amendment,” as both constitutional provisions suggest “intentional” or  
12 “conscious act” is required).

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15 Nowhere in his complaint does plaintiff allege his injuries were caused by anything other  
16 than the negligence of the DOC and/or its employees. *See* Dkt. 5, pp. 5-8. As discussed below,  
17 furthermore, as an agency of the State of Washington, the DOC is immune from suit under the  
18 Eleventh Amendment. Nor does plaintiff allege facts showing defendant Reid acted or failed to  
19 act in a manner that could be said to rise even to the level of negligence in terms of handling his  
20 legal mail. *See id.* at pp. 3-4; *Arnold*, 637 F.2d at 1355 (facts must be alleged showing how  
21 individually named defendants caused or personally participated in causing harm claimed in  
22 complaint). Indeed, plaintiff specifically alleges defendant Reid logged his mail “by signing the  
23 correct documents” and turning it over to defendant Lens. Dkt. 5, p. 3.  
24

25 Plaintiff does allege in the complaint that defendant *Lens* did not properly log his mail,  
26 but there is no allegation that this was due to any conscious intent by defendant Lens to deprive

1 plaintiff of his right to access the courts. *See* Dkt. 5, p. 4. Plaintiff asserts in his response to  
2 defendants’ motion that “at the time of the mail being lost, [he] was in solitary confinement,” and  
3 that “[t]o expect him to ascertain what happened to his mail while in solitary confinement is  
4 unreasonable.” Dkt. 19, p. 5. But if plaintiff truly does not know what happened to his legal mail,  
5 than his section 1983 suit fails outright, given that as just discussed he must allege sufficient  
6 facts showing how individually named defendants caused the claimed harm, whether or not it is  
7 reasonable to expect him to know those facts given his circumstances.  
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9 Plaintiff goes on to assert that he “believed that the officers’ actions were intentional,”  
10 because he “has been the subject of retaliation at the hands of the Department of Corrections and  
11 has filed multiple ‘Offender Complaint[s]’ regarding such retaliation.” *Id.* There is no allegation  
12 of such retaliation, however, contained in the complaint. Nor has plaintiff claimed – either in his  
13 complaint or now in response to defendants’ motion – that even if such retaliation has occurred,  
14 defendant Reid and defendant Lens were involved in it, knew about it or participated in causing  
15 his mail to be lost because of it or otherwise because of the Offender Complaints he allegedly  
16 filed. Indeed, plaintiff does not specify which “officers’ actions” were allegedly intentional, but  
17 instead merely asserts the retaliation occurred “at the hands of the [DOC]” as opposed to again  
18 individually named defendants.  
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## 20 **II. The DOC Is Immune From Suit Under the Eleventh Amendment**

21 Under the Eleventh Amendment, a state is not subject to suit by its own citizens in  
22 federal court. *See Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). As an arm of the state, a  
23 state agency also is immune from suit in federal court under the Eleventh Amendment. *See*  
24 *Howlett v. Rose*, 496 U.S. 356, 365 (1990); *Will v. Michigan Dep’t of State Police*, 491 U.S. 58,  
25 70 (1989). Further, an entity that has Eleventh Amendment immunity is not a “person” within  
26

1 the meaning of 42 U.S.C. § 1983.<sup>2</sup> *Howlett*, 496 U.S. at 365. In each of the five causes of action  
2 in his complaint, plaintiff appears to have named the DOC as the sole defendant given that with  
3 respect to each such cause, he mentions no named defendant other than the DOC and expressly  
4 states immediately under the title for that cause of action: “(against Defendant Washington State  
5 Department of Corrections).”<sup>3</sup> See Dkt. 5, pp. 5-8. As an arm of the state, however, the DOC is  
6 immune from suit in this Court.<sup>4</sup>

### 8 **III. The Issue of Qualified Immunity**

9 Defendants argue defendant Lens and defendant Reid are entitled to qualified immunity  
10 in this case. Under the doctrine of qualified immunity, state officials “performing discretionary  
11 functions [are protected] from liability for civil damages insofar as their conduct does not violate  
12 clearly established statutory or constitutional rights of which a reasonable person would have  
13 known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Somers v. Thurman*, 109 F.3d 614, 617  
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15 <sup>2</sup> Section 1983 reads in relevant part: “Every person who, under color of any statute, ordinance, regulation, custom,  
16 or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the  
17 United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or  
18 immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in  
19 equity, or other proper proceeding for redress.” 42 U.S.C. § 1983.

20 <sup>3</sup> To the extent defendants Lens and Reid also can be read into one or more of those causes of action, furthermore, as  
21 explained above plaintiff has failed to allege sufficient facts to show how defendant Reid caused or participated in  
22 causing the alleged harm, and at most has shown the actions of defendant Lens rose to the level of negligence in not  
23 properly handling his legal mail.

24 <sup>4</sup> Defendants argues that because defendant Lens and defendant Reid appear to have been named as parties only in  
25 their official capacities, they are immune from liability under the Eleventh Amendment as well. It is true that a  
26 lawsuit brought “against a state official in his or her official capacity is not a suit against the official but rather is a  
27 suit against the official’s office,” and as such, “it is no different from a suit against the State itself.” *Will*, 491 U.S. at  
28 71. As such, state officials acting in their official capacities also are not “persons” for the purposes of 42 U.S.C. §  
29 1983. *Id.* The only exception to this rule is when a state official is sued in his or her official capacity for prospective  
30 injunctive relief. *Doe v. Lawrence Livermore National Laboratory*, 131 F.3d 836, 839 (9th Cir. 1997). However, it  
31 is presumed that state officials are sued in their personal capacities where those officials are named in the complaint,  
32 even if the complaint “does not explicitly mention the capacity in which they are sued.” *Romano v. Bible*, 169 F.3d  
33 1182, 1186 (9th Cir. 1999); see also *Shoshone-Bannock Tribes v. Fish & Game Commission*, 42 F.3d 1278, 1284  
34 (9th Cir. 1994) (state officials named in complaint seeking damages under 42 U.S.C. § 1983 presumed to be sued in  
35 individual capacities); *Price v. Akaka*, 928 F.2d 824, 828 (9th Cir. 1991). As the Ninth Circuit has explained, “[a]ny  
36 other construction would be illogical where the complaint is silent as to capacity, since a claim for damages against  
37 state officials in their official capacities is plainly barred.” *Shoshone-Bannock Tribes*, 42 F.3d at 1284; *Price*, 928  
38 F.2d at 828. The Court therefore declines to find defendants Lens and Reid are immune from liability on this basis.



1 (9th Cir. 1997). Although as discussed above plaintiff has failed to establish defendants' conduct  
2 violated a clearly established federal statutory or constitutional right, it is unclear whether either  
3 defendant Lens or defendant Reid are state officials who at the time of the alleged harm could be  
4 said to be performing discretionary functions. Accordingly, the Court declines to find the  
5 doctrine applies in this case.

6  
7 **CONCLUSION**

8 For the reasons stated above, defendants' motion for judgment on the pleadings (*see* Dkt.  
9 17) hereby is **GRANTED**, as plaintiff is unable to prove any set of facts in support of his claim  
10 that would entitle him to relief. Accordingly, plaintiff's complaint is **dismissed with prejudice**.

11 DATED this 2nd day of October, 2015.

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15 Karen L. Strombom  
16 United States Magistrate Judge  
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