

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Kristin Hardy v. A. Silva, John Doe

Hardy v. Silva · No. 3:24-cv-0899-JAH-MSB · Decided April 22, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 KRISTIN HARDY, Case No.: 3:24-cv-0899-JAH-MSB CDCR #AA-8633,
12 ORDER DISMISSING FIRST Plaintiff, 13 AMENDED PETITION FOR vs. FAILURE TO
STATE A CLAIM 14 PURSUANT TO 28 U.S.C. §§ 15 1915(e)(2)(B) AND 1915A(b) A. SILVA,
JOHN DOE, 16 Defendants. 17 18 19 20 21 BACKGROUND 22 Kristin Hardy (“Hardy” or
“Plaintiff”) is an inmate proceeding pro se with a civil 23 action pursuant to 42 U.S.C. § 1983.

On November 11, 2024, the Court granted Hardy’s 24 request to proceed in forma pauperis
(“IFP”) but dismissed his original complaint without 25 prejudice for failure to state a claim. ECF
No. 6. The Court granted Plaintiff leave to amend 26 and, after an extension of time, Hardy has
now filed a First Amended Complaint (“FAC”). 27 See ECF Nos. 6, 9, 10.

In his FAC, Hardy alleges his constitutional rights were violated 28 when a parcel containing
educational books Hardy had ordered by mail was improperly 1 returned to the sender. See ECF
No. 10. For the reasons discussed below, the Court 2 dismisses the FAC without prejudice for
failure to state a claim. 3 SCREENING PURSUANT TO 28 U.S.C. § 1915(e) AND § 1915A(b) 4
A. Legal Standards 5 Because Plaintiff is proceeding IFP, the Court must screen the FAC and sua
sponte 6 dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), to the extent it is 7
frivolous, malicious, fails to state a claim, or seeks damages from defendants who are 8 immune.

See *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc); *Rhodes v. 9 Robinson*, 621
F.3d 1002, 1004 (9th Cir. 2010). “The standard for determining whether 10 Plaintiff has failed to
state a claim upon which relief can be granted under § 11 1915(e)(2)(B)(ii) is the same as the
Federal Rule of Civil Procedure 12(b)(6) standard for 12 failure to state a claim.” *Watison v.*
Carter, 668 F.3d 1108, 1112 (9th Cir.

2012). Rule 13 12(b)(6) requires that a complaint to “contain sufficient factual matter... to state a
claim 14 to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
(internal 15 quotation marks omitted). While detailed factual allegations are not required,
“[t]hreadbare 16 recitals of the elements of a cause of action, supported by mere conclusory
statements, do 17 not suffice” to state a claim.

Id. The “mere possibility of misconduct” or “unadorned, the 18 defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility 19 standard. Id. 20 “To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right 21 secured by the Constitution and laws of the United States, and (2) that the deprivation was 22 committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 23 F.3d 1128, 1138 (9th Cir.

2012). 24 B. Plaintiff’s Allegations 25 Hardy alleges that in February of 2022, he enrolled in paralegal correspondence 26 course provided by “Blackstone.” ECF No. 10 at 8. He paid a tuition fee of \$825.00 and 27 was to receive books from Blackstone “in shipments of three[,] whenever an exam was 28 completed.” Id. 1 On March 10, 2023, while Hardy was an inmate at High Desert State Prison, he 2 completed an exam.

Id. Plaintiff was then transferred to Donovan Correctional Facility 3 (“RJD”) on March 13, 2023. Id. After Blackstone initially shipped Plaintiff’s next round 4 of textbooks to High Desert State Prison, Hardy “received notice” that the books were 5 being “reshipped” to RJD. Id. But Hardy subsequently learned the books were “received” 6 at RJD on April 27, 2023, while Hardy was confined to administrative segregation.

Id. 7 Silva, an RJD “receiving and release” officer, “rejected” the books and had them shipped 8 back to Blackstone. Id. 9 California Department of Corrections and Rehabilitation (“CDCR”) regulations 10 require that an inmate be provided “notice” when mail is rejected, but Silva did not provide 11 such a notice to Plaintiff. Id. at 9. Hardy further alleges Silva should have been aware that 12 inmates are permitted to have correspondence course books, even when confined to 13 administrative segregation.

Id. 14 In late May of 2023, spoke to “Doe,” another officer in “receiving and release,” who 15 provided Hardy with a “notice of disapproved books” indicating the books had been 16 returned to sender on May 1, 2023. Id. at 9–10.

The notice was not forwarded to a facility 17 captain as required under CDCR regulations. Id. at 10. 18 C. Discussion 19 Hardy alleges Defendants Silva and Doe violated his First Amendment and Due 20 Process rights when they deprived him of the shipment of books. Id. at 10–11. He seeks 21 compensatory and punitive damages. Id. at 11. 22 1.

First Amendment 23 Hardy alleges Silva and Doe violated his First Amendment rights by returning his 24 package to the sender “due to [his] ad-seg status,” despite regulations permitting Hardy to 25 have books. ECF No. 10 at 9.

As discussed in this Court’s previous screening order, 26 prisoners have “a First Amendment right to send and receive mail.” *Witherow v. Paff*, 52 27 F.3d 264, 265 (9th Cir. 1995) (per curiam). However, a temporary delay or isolated incident 28 of delay or other mail interference without evidence of improper motive does not violate a 1 prisoner’s First Amendment rights.

See *Crofton v. Roe*, 170 F.3d 957, 961 (9th Cir. 1999) 2 (temporary delay in the delivery of publications did not violate inmate's First Amendment 3 rights); accord *Smith v. Maschner*, 899 F.2d 940, 944 (10th Cir. 1990) (isolated incidents 4 of mail interference without evidence of improper motive do not give rise to a 5 constitutional violation); *Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir.

1999) (content- 6 neutral, short-term, and sporadic delays in prisoner's receipt of mail did not violate his First 7 Amendment rights). 8 Here, Hardy raises a single incident of delayed mail.¹ He appears to allege an 9 "improper motive" can be inferred from Silva's failure to follow CDCR regulations 10 regarding timely notification, but without more, this amounts to only negligence.

The Court 11 also notes that Hardy admits he received notification that the books had been shipped back 12 to the sender at the end of May, less than 30 days after the parcel was returned. See ECF 13 No. 10 at 9. Absent evidence of a "broader plan or course of conduct to censor plaintiff's 14 mail unconstitutionally, an error by prison officials does not justify relief under § 1983." 15 See *Lingo v. Boone*, 402 F. Supp. 768, 773 (C.D.

Cal. 1975) (finding prisoner not entitled 16 to monetary relief under § 1983 where prison officials erroneously withheld a single piece 17 of mail on the grounds that it was inflammatory); *Canales v. Guzman*, 2023 WL 5418771, 18 at *4 (S.D. Cal. 2023) (finding allegation of a single incident of negligence in failing to 19 deliver the plaintiff's package insufficient to state a First Amendment claim);² *Watkins v. Curry*, 2011 WL 5079532, at *3 (N.D.

Cal. 2011) ("[A]n honest error by prison officials 21 [in delivering mail] does not justify relief under § 1983"). Therefore, Hardy has failed to 22 state a First Amendment claim. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *Iqbal*, 556 U.S. 23 at 678. 24 2. Due Process 25 Hardy alleges Defendants violated his right to due process by having his books 26 27 1 Hardy does not allege that he never received the books.

See generally, ECF No. 10; see also ECF No. 1 28 1 returned to sender without giving him sufficient notice. ECF No. 1 at 2–3. The Due Process 2 Clause of the Fourteenth Amendment protects individuals from state deprivations of life, 3 liberty, or property without due process of law. With respect to a prisoner's property, the 4 Supreme Court has held that "an unauthorized intentional deprivation of property" by a 5 prison official constitutes a violation of due process if a meaningful post-deprivation 6 remedy for the loss is unavailable.

Hudson v. Palmer, 468 U.S. 517, 533 (1984). If, 7 however, a prison official merely acts negligently in losing a prisoner's property, there is 8 no due process violation. *Daniels v. Williams*, 474 U.S. 327, 328 (1986) ("[T]he Due 9 Process Clause is simply not implicated by a negligent act of an official causing unintended 10 loss of or injury to life, liberty, or property.") (emphasis in the original).

11 Here, Hardy’s claim that his package of books was improperly returned to the vendor 12 fails to give rise to a cognizable due process claim. As discussed above, Hardy’s allegations 13 are insufficient to plausibly allege an “unauthorized intentional” deprivation. See *id.* 14 Furthermore, Hardy does not allege he never received his books. And a mere delay of an 15 inmate’s mail without notice to the inmate is not a violation of the Fourteenth Amendment.

16 *Sorrels v. McKee*, 290 F.3d 965, 972 (9th Cir. 2002) (“Only if the failure to provide notice 17 was pursuant to prison policy does this constitute a due process violation actionable under 18 § 1983.”). 19 Finally, even if Hardy were permanently deprived of the books, he has an adequate 20 post-deprivation remedy under California law and therefore, he may not pursue a due 21 process claim arising out of the unlawful confiscation of his personal property.

Barnett v. Centoni, 31 F.3d 813, 816–17 (9th Cir. 1994) (citing Cal. Gov’t Code §§ 810–895). 23 Accordingly, Hardy has failed to state a due process claim. See 28 U.S.C. §§ 1915(e)(2)(B), 24 1915A(b); *Iqbal*, 556 U.S. at 678. 25 D. Amendment Would Be Futile 26 The Court previously provided Hardy with a short and plain statement of his 27 pleading deficiencies, and an opportunity to amend his claims, to no avail.

As such, the 28 Court finds granting further leave to amend would be futile. See *Gonzalez v. Planned Parenthood*, 759 F.3d 1112, 1116 (9th Cir. 2014) (‘Futility of amendment can, by itself, 2 ||justify the denial of... leave to amend.’”); *Zucco Partners, LLC v. Digimarc Corp.*, 552 3 || F.3d 981, 1007 (9th Cir. 2009) (“[W]here the plaintiff has previously been granted leave 4 ||to amend and has subsequently failed to add the requisite particularity to its claims, [t]he 5 || district court’s discretion to deny leave to amend is particularly broad.” (internal quotation 6 ||marks omitted)).

Thus, the FAC is dismissed without further leave to amend. 7 CONCLUSION AND ORDER 8 For above reasons, the Court DISMISSES this civil action sua sponte without 9 || further leave to amend for failure to state a claim upon which § 1983 relief can be granted, 10 || pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). 11 The Court further CERTIFIES that an IFP appeal would not be taken in good faith 12 pursuant to 28 U.S.C. § 1915(a)(3) and DIRECTS the Clerk of Court to enter a final 13 || judgment of dismissal and close the file.

14 IT IS SO ORDERED. 15 Dated: April 22, 2025 16 on. John A. Houston 7 // United States District Judge 18 19 20 21 22 23 24 25 26 27 28