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

LORENZO SEGURA,

Plaintiff,

No. CIV S-08-2137-SPG (PC)

vs.

T. FELKER, et al.,

Defendants.

ORDER GRANTING IN PART AND DENYING  
IN PART DEFENDANTS' MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT

**I. Background**

**A. Procedural History**

On September 11, 2008, Plaintiff Lorenzo Segura, a state prisoner incarcerated at California's High Desert Prison, proceeding without counsel, filed this civil rights action under 42 U.S.C. § 1983. Clerk's Record, Docket No. 1 ("Doc." 1). Plaintiff was confined at the time of the events giving rise to the complaint. On May 13, 2009, this court determined that the complaint stated cognizable claims for relief "stemming from allegations that Defendants failed to provide Plaintiff access to legal materials and destroyed Plaintiff's personal property, including legal materials, in retaliation for his using administrative grievance procedures, in violation of his First Amendment right to free speech and the Fourteenth Amendment's prohibition against

1 deprivation of life, liberty, or property without due process of law." (Doc. 16.) The complaint  
2 named Defendants Warden T. Felker, Correctional Officer ("C/O") McGuire, C/O Sanchez, C/O  
3 Green, C/O Fannon, Sgt. Ingwerson, Sgt. Medonca, and Sgt. Carrera. (Doc. 1.)

4 On September 24, 2009, all Defendants filed a motion to dismiss Plaintiff's complaint.  
5 (Doc. 22.) On November 4, 2009, Plaintiff filed an opposition. (Doc. 25.)

## 6 **B. Summary of Alleged Facts**

7 Plaintiff alleges that Defendants have denied him access to legal materials in an unspecified  
8 ongoing case. On August 30, 2006, Plaintiff asked Defendant Medonca for access to his legal  
9 materials. Defendant Medonca told Plaintiff to ask Defendant McGuire. On September 7, 2006,  
10 Plaintiff asked Defendant McGuire for his legal materials. Defendant McGuire promised to return  
11 later with his materials, but did not return. On October 11, 2006, Plaintiff asked C/O Micone for  
12 access to his legal materials. C/O Micone told Plaintiff to ask Defendants McGuire and Sanchez.  
13 On October 20, 2006, Defendant Sanchez and C/O Micone visited Plaintiff's cell. Defendant  
14 Sanchez told Plaintiff that he would not bring Plaintiff his legal materials. On November 22,  
15 2006, Plaintiff asked Defendant McGuire. Defendant McGuire told Plaintiff to ask Defendant  
16 Medonca. On January 16, 2006, Plaintiff again asked Defendant McGuire, who responded that  
17 Plaintiff would not be getting anything so stop asking. Defendant McGuire called Plaintiff a "cry  
18 baby."

19 Plaintiff alleges that his personal property has been destroyed. Plaintiff alleges that all of  
20 his legal mail has been opened outside his presence and read in violation of California law.  
21 Plaintiff alleges that Defendants' conduct constitutes retaliation.

## 22 **II. Analysis**

### 23 **A. Legal Standard**

24 Federal Rule of Civil Procedure 12(b)(6) requires dismissal of a complaint "if it is clear  
25 that no relief could be granted under any set of facts that could be proved consistent with the  
26 allegations." *Hishon v. King & Spaulding*, 467 U.S. 69, 73 (1984). In considering a Rule

1 12(b)(6) motion, the court must accept as true the factual allegations of the complaint. *Erickson*  
2 *v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). In addition, the pleadings of a litigant proceeding  
3 without counsel should be construed liberally. *Id.* However, "[t]hreadbare recitals of the  
4 elements of a cause of action, supported by mere conclusory statements, do not suffice."  
5 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A claim must have facial plausibility to survive a  
6 motion to dismiss, and facial plausibility arises when "the plaintiff pleads factual content that  
7 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
8 alleged." *Id.*

9 When ruling on a motion to dismiss, the court generally may not consider material outside  
10 the complaint. *Friedman v. Boucher*, 580 F.3d 847, 852 n.3 (9th Cir. 2009). But the court may  
11 consider materials outside the complaint "[i]n deciding a motion to dismiss for failure to exhaust  
12 nonjudicial remedies." *Wyatt v. Terhune*, 315 F.3d 1108, 1119-20 (9th Cir. 2003).

## 13 **B. Motion to Dismiss**

### 14 **1. Exhaustion of Nonjudicial Remedies**

15 A prisoner plaintiff must exhaust his nonjudicial remedies before filing a § 1983 complaint  
16 in federal court. *Porter v. Nussle*, 534 U.S. 516, 524 (2002).

17 In their motion to dismiss, Defendants assert that Plaintiff exhausted only two claims: his  
18 "access to the courts" claim and his "deprivation of personal property" claim. Defendants  
19 attached documentation supporting that assertion. In his response, Plaintiff states that he never  
20 intended to raise any other claims in his complaint. To the contrary, "[t]he only claims that are  
21 exhausted and presented in the complaint, (claims for relief) are [Plaintiff's] property, and access  
22 to court claim [which are] clear violation[s] of [P]laintiff's due process rights." (Doc. 25, at 4.)  
23 This court agrees with the parties that Plaintiff exhausted only his "access to the courts" claim and  
24 his "deprivation of personal property" claim.

25 Accordingly, this court GRANTS Defendants' motion to dismiss Plaintiff's retaliation  
26 claim and "opening of legal mail" claim and orders that those claims be dismissed as to all

1 Defendants without leave to amend.

2 **2. Access to the Courts Claim**

3 Inmates have a constitutional right to access the courts to attack their sentences and to  
4 challenge the conditions of their confinement. Lewis v. Casey, 518 U.S. 343, 354-55 (1996). An  
5 inmate alleging an interference with access to the courts must show an actual injury. Id. at 349-  
6 51. To meet that requirement, an inmate must allege that "a nonfrivolous legal claim had been  
7 frustrated or was being impeded." Id. at 353 (footnote omitted). "It follows that the underlying  
8 cause of action, whether anticipated or lost, is an element that must be described in the  
9 complaint." Christopher v. Harbury, 536 U.S. 403, 415 (2002). "It follows, too, that when the  
10 access claim . . . looks backward, the complaint must identify a remedy that may be awarded as  
11 recompense but not otherwise available in some suit that may yet be brought." Id.

12 Here, Plaintiff's complaint asserts that the relevant legal materials pertain to an "ongoing  
13 case," Doc. 1, at 5, para. 16, or an "active case," id. at 5, para. 20, or a "criminal case pending in  
14 the district court," id. at 6, para. 22. Plaintiff's complaint does not elaborate on the nature of the  
15 underlying cause of action. Plaintiff's complaint fails to identify the underlying cause of action  
16 with the specificity required by the Supreme Court in Christopher.

17 Plaintiff's complaint states that the denial of legal materials "caused Plaintiff's petition to  
18 be dismissed." But Plaintiff does not explain the nature of the "petition" or how the deprivation of  
19 the materials "caused" the dismissal of the petition. Nor does the complaint "identify a remedy  
20 that may be awarded as recompense but not otherwise available in some suit that may yet be  
21 brought." Christopher, 536 U.S. at 415. Plaintiff's complaint fails to identify the actual injury  
22 suffered by Plaintiff as required by the Supreme Court in Lewis and Christopher.

23 For the reasons stated above, this court concludes that Plaintiff has failed to state a claim  
24 for denial of access to the courts. Accordingly, this court GRANTS Defendants' motion to  
25 dismiss Plaintiff's "access to the courts" claim and orders that the claim be dismissed with leave to  
26 amend within 60 days.



