

1 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
2 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
3 be granted, or that seek monetary relief from a defendant who is immune from such relief.
4 28 U.S.C. § 1915A(b)(1), (2).

5 A pleading must contain a “short and plain statement of the claim *showing* that the
6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
7 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
8 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
9 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements, do not suffice.” Id.

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
12 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
13 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
14 that allows the court to draw the reasonable inference that the defendant is liable for the
15 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
16 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
17 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
18 allegations may be consistent with a constitutional claim, a court must assess whether there
19 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

20 **II. Second Amended Complaint**

21 In his one-count Second Amended Complaint, Plaintiff sues the following Defendants
22 at the Apache County Jail: Commander Matrese Avila, Sergeant Rubin Garcia, and Corporal
23 C. Bond. Plaintiff alleges he was denied his right to attorney-client confidentiality. He
24 claims that his attorney had advised him that Plaintiff should get any important information
25 to the attorney as soon as possible. Plaintiff alleges that he tried to obtain an envelope so he
26 could write to his attorney and provide the attorney with important information, but Plaintiff
27 is indigent and Defendants Garcia and Bond told him that, “per [Defendant] Avila,” Plaintiff
28 would not receive another envelope until the following Tuesday because he was only entitled

1 to one envelope per week. Consequently, Plaintiff states that he wrote to his attorney on a
2 postcard and he now feels he will “not be able to receive a fair trial.”

3 In his Request for Relief, Plaintiff seeks “jail reform,” a fair trial, and monetary
4 damages.

5 **III. Failure to State a Claim**

6 “Indigent inmates have a constitutional right to meaningful access to the courts.”
7 King v. Atiyeh, 814 F.2d 565, 568 (9th Cir. 1987) (citing Bounds v. Smith, 430 U.S. 817,
8 821-23 (1977)). This includes access to a lawyer for trial, paper and pen to draft legal
9 documents, and stamps to mail them. Bounds, 430 U.S. at 824-25. However, inmates “do
10 not have an unlimited right to free postage in connection with the right of access to the
11 courts.” White v. White, 886 F.2d 721, 723 -724 (4th Cir. 1989) (quoting Twyman v. Crisp,
12 584 F.2d 352, 359 (10th Cir.1978)). The government can adopt “reasonable postage stamp
13 regulations.” King, 814 F.2d at 568.

14 In addition, prisoners do not have a right to any *particular* mean of access to the court.
15 See Aswegan v. Henry, 981 F.2d 313, 314 (8th Cir. 1992). There is “no established
16 minimum requirement that a state must meet in order to provide indigent inmates with
17 adequate access to the courts.” King, 814 F.2d at 568. A court must determine whether the
18 individual inmate before the court has been denied meaningful access. Id.

19 To establish that he was denied meaningful access to the courts, a plaintiff must
20 submit evidence showing that he suffered an “actual injury” as a result of the defendants’
21 actions. See Lewis v. Casey, 518 U.S. 343 (1996). An “actual injury” is “actual prejudice
22 with respect to contemplated or existing litigation, such as the inability to meet a filing
23 deadline or to present a claim.” Id. at 348.

24 Plaintiff has failed to demonstrate that being limited to one envelope per week to
25 correspond with his attorney denied him access to the courts. Although he claims that he was
26 unable to call his attorney “collect” to relay the allegedly important information, it appears
27 Plaintiff did not request that prison officials contact his attorney. Plaintiff states that, after he
28 wrote his attorney on postcards, Defendant Garcia informed Plaintiff that, “if you need to get

1 a hold of your lawyer, just put a request in the box an[d] we will contact your lawyer for you.”
2 Moreover, it is unclear why Plaintiff did not use to a postcard to request that his attorney call
3 Plaintiff or visit Plaintiff at the jail. Cf. Pino v. Dalsheim, 558 F. Supp. 673, 674-75
4 (S.D.N.Y. 1983) (although plaintiff and his attorney would have preferred to communicate
5 by telephone, the state “is not obligated to provide the *best* manner of access,” and, therefore,
6 there was no constitutional violation where inmate was limited to two, eight-minute phone
7 conversations per month but was allowed unlimited mail correspondence with his attorney and
8 unlimited private visits).

9 Nor has Plaintiff demonstrated that he suffered an actual injury. In his postcards,
10 Plaintiff informed his attorney that he wanted to get his co-defendant subpoenaed as a defense
11 witness and that he wanted to put a confidential informant on the stand. Plaintiff claims that
12 after he wrote the postcards, the prosecutor and his co-defendant’s attorney told his co-
13 defendant not to have contact with Plaintiff and the prosecutor informed Plaintiff’s attorney
14 that the prosecution was not required to produce the confidential informant. Plaintiff has
15 failed to demonstrate that these events were the result of someone other than his attorney
16 reading his postcards. A “more likely explanation[.]” is that these events were the result of
17 Plaintiff’s attorney complying with Plaintiff’s instructions in the postcards. See Iqbal, 129
18 S. Ct. at 1951. Plaintiff’s belief that his ability to obtain a fair trial was compromised is
19 entirely conclusory and speculative. See Ivey v. Board of Regents of the University of
20 Alaska, 673 F.2d 266, 268 (9th Cir. 1982) (conclusory and vague allegations will not support
21 a cause of action).

22 **IV. Dismissal without Leave to Amend**

23 Because Plaintiff has failed to state a claim in his Second Amended Complaint, the
24 Court will dismiss his Second Amended Complaint. “Leave to amend need not be given if
25 a complaint, as amended, is subject to dismissal.” Moore v. Kayport Package Express, Inc.,
26 885 F.2d 531, 538 (9th Cir. 1989). The Court’s discretion to deny leave to amend is
27 particularly broad where Plaintiff has previously been permitted to amend his complaint.
28 Sisseton-Wahpeton Sioux Tribe v. United States, 90 F.3d 351, 355 (9th Cir. 1996). Repeated

1 failure to cure deficiencies is one of the factors to be considered in deciding whether justice
2 requires granting leave to amend. Moore, 885 F.2d at 538.

3 Plaintiff has made three efforts at crafting a viable complaint and appears unable to do
4 so despite specific instructions from the Court. The Court finds that further opportunities to
5 amend would be futile. Therefore, the Court, in its discretion, will dismiss Plaintiff's Second
6 Amended Complaint without leave to amend.

7 **IT IS ORDERED:**

8 (1) Plaintiff's Second Amended Complaint (Doc. #8) and this action are **dismissed**
9 for failure to state a claim, and the Clerk of Court must enter judgment accordingly.

10 (2) The Clerk of Court must make an entry on the docket stating that the dismissal
11 for failure to state a claim may count as a "strike" under 28 U.S.C. § 1915(g).

12 Dated this 30th day of December, 2009.

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Robert C. Broomfield
Senior United States District Judge