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DATED: 1-31-13
J. Melle
DEPUTY CLERK

FILED
JAN 31 2013
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY [Signature] DEPUTY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

RODNEY BROWN,)
)
 Plaintiff,)
)
 v.)
)
 L.A. COUNTY COUNSEL, et al.,)
)
 Defendants.)

Case No. CV 13-154-PA (MLG)
ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND

I. Facts

Plaintiff is a pretrial detainee in the Los Angeles County Jail. He filed this pro se civil rights action pursuant of 42 U.S.C. § 1983 on January 24, 2013. Plaintiff claims that jail officials have discriminated against him and violated his right of access to the courts by maintaining an inadequate law library, denying him access to the library, and failing to provide legal forms. He further claims that Corrections Officer Little threatened to beat him and kick him in the eye. Plaintiff seeks money damages and both declaratory and injunctive relief.

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1 **II. Discussion and Analysis**

2 **A. Duty to Screen**

3 The Court has screened the complaint prior to ordering service
4 in order to determine whether the action is frivolous or malicious,
5 fails to state a claim upon which relief could be granted, or seeks
6 monetary relief against a defendant who is immune from such relief.
7 28 U.S.C. § 1915(e)(2). The Court's screening of the complaint under
8 the foregoing statute is governed by the following standards. A
9 complaint may be dismissed as a matter of law for failure to state
10 a claim for two reasons: (1) lack of a cognizable legal theory; or
11 (2) insufficient facts under a cognizable legal theory. *Balistreri*
12 *v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Since
13 Plaintiff is appearing pro se, the Court must construe the
14 allegations of the Complaint liberally and must afford Plaintiff the
15 benefit of any doubt. See *Karim-Panahi v. Los Angeles Police Dep't*,
16 839 F.2d 621, 623 (9th Cir. 1988).

17 Moreover, in determining whether a complaint states a claim on
18 which relief may be granted, allegations of material fact are taken
19 as true and construed in the light most favorable to the Plaintiff.
20 *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However,
21 "[t]hreadbare recitals of the elements of a cause of action,
22 supported by mere conclusory statements, do not suffice." *Ashcroft*
23 *v. Iqbal*, --- U.S. ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)
24 citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
25 Plaintiff is required to present factual allegations sufficient to
26 state a plausible claim for relief. *Iqbal*, 129 S.Ct. at 1949-50.

27 The Court in *Twombly* explained that a complaint is read in
28 conjunction with Federal Rule of Civil Procedure 8(a)(2) which

1 requires a "showing" that the plaintiff is entitled to relief,
2 "rather than a blanket assertion" of entitlement to relief. *Id.* at
3 556 n.3. While Rule 8 does not require "detailed factual
4 allegations," it nevertheless "demands more than an unadorned, the
5 defendant-unlawfully-harmed-me accusation." *Iqbal*, 129 S.Ct. at 1949.
6 A pleading that offers "labels and conclusions" or "a formulaic
7 recitation of the elements of a cause of action will not do."
8 *Twombly*, 550 U.S. at 555. Thus, "allegations in a complaint or
9 counterclaim may not simply recite the elements of a cause of action,
10 but must contain sufficient allegations of underlying facts to give
11 fair notice and to enable the opposing party to defend itself
12 effectively. Second, the factual allegations that are taken as true
13 must plausibly suggest an entitlement to relief, such that it is not
14 unfair to require the opposing party to be subjected to the expense
15 of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202,
16 1216 (9th Cir. 2011).

17 As will be discussed below, the complaint is deficient in that
18 it fails to state a claim upon which relief may be granted as to any
19 of the named defendants. However, as required by circuit precedent,
20 the complaint will be dismissed with leave to amend. *Lopez v. Smith*,
21 203 F.3d 1122 (9th Cir. 2000) (*pro se* litigant should be given an
22 opportunity to amend deficient pleadings unless it is clear that
23 these deficiencies cannot be overcome).

24 **B. The Complaint Fails to State a Cause of Action Upon Which**
25 **Relief May be Granted.**

26 **1. Discrimination**

27 Plaintiff first claims that he was the subject of
28 discrimination. Plaintiff does not identify any factual basis for

1 this claim. Under *Twombly* and Rule 8, an unsupported claim of
2 "discrimination" is insufficient to state a cause of action upon
3 which relief may be granted. The claim will be dismissed with leave
4 to amend.

5 2. Denial of Access to the Courts

6 Plaintiff next alleges that he is being denied his right of
7 access to the courts based upon the following: (1) the inadequacy of
8 the prison law library; and (2) the failure to provide him with legal
9 forms.

10 "[P]risoners have a constitutional right of access to the
11 courts." *Bounds v. Smith*, 430 U.S. 817, 821 (1977). This right is
12 only violated if the prisoner has suffered "actual injury," *Lewis v.*
13 *Casey*, 518 U.S. 343, 351 (1996), by way of an official action that
14 hindered his or her pursuit of a "nonfrivolous" or "arguable"
15 underlying legal claim. *Id.* at 353 & 353 n.3. See also *Christopher*
16 *v. Harbury*, 536 U.S. 403, 415 (2002) (*citing Lewis*); *Phillips v. Hust*,
17 477 F.3d 1070, 1076 (9th Cir. 2007) (*citing Lewis*). In other words,
18 the prisoner must demonstrate that his legal position has been
19 somehow prejudiced in that a claim has been lost. A plaintiff must
20 show that he was actually "shut out" of court in order to state a
21 denial of access cause of action. *Christopher*, 536 U.S. at 415;
22 *Phillips*, 477 F.3d at 1076.

23 Plaintiff has failed to allege an actual injury as required by
24 *Lewis*. There is no showing that the limited library resources or the
25 denial of legal forms have prejudiced him in any way. Indeed, despite
26 his complaints, Plaintiff has not been prevented from filing two
27 civil rights complaints in the last month. Until he has suffered some
28 injury, there is no cause of action for violation of Plaintiff's

1 right of access to the courts.

2 **3. Threats and Harassment**

3 Plaintiff has also failed to state a federal constitutional
4 claim against defendant Little. To the extent that Little might have
5 harassed or threatened Plaintiff, there is no constitutional
6 violation. See *Freeman v. Arpaio*, 125 F.3d. 732 (9th Cir.
7 1997) ("verbal harassment or abuse . . . is not sufficient to state
8 a constitutional deprivation under 42 U.S.C. § 1983.") (internal
9 citations omitted) (quoting *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139
10 (9th Cir. 1987); *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996),
11 amended 135 F.3d 1318 (9th Cir. 1998) (disrespectful and assaultive
12 comments by prison guard not enough to implicate 8th Amendment).

13 **D. IT IS THEREFORE ORDERED as follows:**

14 1. The complaint is dismissed without prejudice for the
15 reasons stated above.

16 2. Plaintiff has until **February 28, 2013**, to file a first
17 amended complaint, that remedies the defects identified in this
18 memorandum and order and complies with the requirements of the
19 Federal Rules of Civil Procedure and Local Rule 15-2.¹ Any amended
20 complaint must bear the docket number assigned in this case and must
21 be labeled first amended complaint. Plaintiff is advised that an
22 amended complaint is a document stating one or more causes of action
23 against one or more defendants. Local Rule 15-2. Pursuant to
24 Fed.R.Civ.P. 8, Plaintiff should make a short and plain statement of
25 the facts underlying his claims, the specific defendant to whom the

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27 ¹"Every amended pleading filed as a matter of right or allowed by
28 order of Court shall be complete including exhibits. The amended
pleading shall not refer to the prior, superseded pleading." Local
Rule 15-2.

1 facts apply; and the nature of the relief he seeks. The first amended
2 complaint must be plainly written and legible.

3 3. If Plaintiff fails to timely file the amended complaint,
4 or if the amended complaint fails to properly plead a cause of action
5 against any defendant, the complaint will be dismissed.

6 4. The Court's deputy clerk shall serve on Plaintiff a copy
7 of this memorandum and order and a blank civil rights complaint form
8 bearing the case number assigned to this action and marked to show
9 that it is a "First Amended Complaint." If Plaintiff chooses to
10 continue prosecuting this action, he must use this form to the extent
11 possible and not simply attach other documents to it and attempt to
12 incorporate claims by reference to the attachments.

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14 Dated: January 30, 2013

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Marc L. Goldman
United States Magistrate Judge

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