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

TYRONE PARKS,)	NO. CV 13-0173 MMM (SS)
)	
Plaintiff,)	MEMORANDUM AND ORDER DISMISSING
)	SECOND AMENDED COMPLAINT WITH
v.)	LEAVE TO AMEND
LINDA ROWE, et al.,)	
)	
Defendants)	

**I.
INTRODUCTION**

On March 14, 2013, Plaintiff Tyrone Parks filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against two employees of Lancaster State Prison ("LSP"), where Plaintiff currently resides. The same day, Plaintiff filed a First Amended Complaint, which the Court dismissed with leave to amend.¹ On April 23, 2013, Plaintiff filed a Second Amended Complaint ("2AC").²

¹ Magistrate judges may dismiss a complaint with leave to amend without approval of the district judge. See McKeever v. Block, 932 F.2d 795, 795 (9th Cir. 1991).

² The Proof of Service indicates that Petitioner delivered the 2AC to prison authorities for mailing on April 23, 2013. (2AC at 33).

1 Congress mandates that district courts initially screen civil
2 complaints filed by prisoners seeking redress from a governmental entity
3 or employee. 28 U.S.C. § 1915A(b). This Court may dismiss such a
4 complaint, or any portions thereof, before service of process if the
5 Court concludes that the complaint (1) is frivolous or malicious,
6 (2) fails to state a claim upon which relief can be granted, or
7 (3) seeks monetary relief from a defendant who is immune from such
8 relief. 28 U.S.C. § 1915A(b) (1)-(2); see also Lopez v. Smith, 203 F.3d
9 1122, 1126-27 & n.7 (9th Cir. 2000) (en banc).

11 II.

12 ALLEGATIONS OF THE COMPLAINT

13
14 The Second Amended Complaint names as defendants Linda Rowe, senior
15 law librarian at LSP, and J. Curiel, Appeals Coordinator at LSP. (2AC at
16 2). Both defendants are sued in their individual capacities. (Id. at
17 8).

18
19 While Plaintiff's claims are not entirely clear, the gravamen of
20 the Second Amended Complaint is that Defendants Rowe and Curiel
21 improperly denied Plaintiff access to the LSP law library, thereby
22 preventing him from timely filing a petition for writ of certiorari with
23 the United States Supreme Court. (Id. at 4-5). Plaintiff alleges that
24 his petition was due on August 13, 2012. (Id., Exh. D at 26).

25
26
27 Therefore, although the Court did not receive the 2AC until May 8, 2013,
28 the Court applies the mailbox rule and deems the 2AC filed on April 23,
2013. In addition, to avoid confusion, the Court will cite to the 2AC,
including exhibits, as if it were consecutively paginated.

1 Plaintiff claims that on June 6, 2012, he properly requested access
2 to the LSP law library on a Form 22 Request for Interview. (2AC at 4-
3 5). Forty-two days later, on July 18, 2012, Plaintiff filed a grievance
4 complaining that he had not received a response to his June 6 request.
5 (Id. at 5). On July 24, 2012, while his grievance was pending,
6 Plaintiff submitted a "Priority Legal User (PLU) Request and
7 Declaration." (Id., Exh. C at 1). Rowe granted Plaintiff's PLU request
8 that same day, on July 24, 2012. (2AC at 5). On July 27, 2012, Curiel
9 screened Plaintiff's July 18 grievance on the ground that "Plaintiff
10 must first complete a Form 22 Request for Interview to it's [sic]
11 highest level." (Id.). Despite the screening of his grievance,
12 Plaintiff admits that he was given access to the LSP law library on July
13 30, 2012. (Id. at 6). However, evidently just after Plaintiff's
14 library visit, the LSP law library closed from July 30, 2012 through
15 August 24, 2012 due to an institutional lockdown. (Id., Exh. C at 2).
16

17 Plaintiff contends that Rowe violated his First Amendment right of
18 access to the courts by not granting him access to the LSP law library.
19 (2AC at 9). Plaintiff claims that had Rowe provided access to the law
20 library, he would have been able to timely and successfully file his
21 petition for writ of certiorari. (Id.). However, Plaintiff does not
22 identify the claims he allegedly anticipated presenting in his Supreme
23 Court petition or explain why additional library access was necessary
24 for him to file it.
25

26 Plaintiff contends that Curiel violated his First Amendment right
27 of access to the courts as well as his Fourteenth Amendment right to Due
28 Process by "screen[ing] out" Plaintiff's grievance through an "illegal

1 screen out" procedure. (Id.). According to Plaintiff, if Curiel had
2 processed Plaintiff's grievance appropriately, Plaintiff would have been
3 able to timely and successfully petition for writ of certiorari. (Id.).
4 Plaintiff seeks compensatory damages of \$800,000 and punitive damages of
5 \$400,000 against each Defendant. (Id. at 10).

6
7 **III.**

8 **DISCUSSION**

9
10 Pursuant to 28 U.S.C. § 1915A(b), the Court must dismiss
11 Plaintiff's Second Amended Complaint due to defects in pleading. Pro se
12 litigants in civil rights cases, however, must be given leave to amend
13 their complaints unless it is absolutely clear that the deficiencies
14 cannot be cured by amendment. See Lopez, 203 F.3d at 1128-29.
15 Accordingly, the Court grants Plaintiff leave to amend, as indicated
16 below.

17
18 **A. Plaintiff Fails To State A Claim For Denial Of Access To The Courts**

19
20 Prisoners have a constitutional right to meaningful access to the
21 courts. Silva v. DiVittorio, 658 F.3d 1090, 1101-02 (9th Cir. 2011).
22 The right of access to the courts protects prisoners' right to file
23 civil actions that have "a reasonable basis in law or fact" without
24 "active interference" by the government. Id. at 1102-03 (internal
25 quotation marks and emphasis omitted). The right of access to the
26 courts "does not require prison officials to provide affirmative
27 assistance in the preparation of legal papers," but does prohibit states
28 from "erecting barriers that impede the right of access of incarcerated

1 persons," such as by depriving prisoners of the "tools necessary to
2 challenge their sentences or conditions of confinement." Id. at 1102-03
3 (internal brackets and quotation marks omitted). Therefore, the Supreme
4 Court has held that prison authorities must provide prisoners with
5 "adequate law libraries" to enable them to pursue their claims. Bounds
6 v. Smith, 430 U.S. 817, 828, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977).

7
8 However, prisoners do not have a "freestanding right" to a law
9 library. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). Law
10 library access is relevant only as it pertains to a prisoner's right to
11 have a "reasonably adequate opportunity to present claimed violations of
12 constitutional rights to the courts." Lewis v. Casey, 518 U.S. 343,
13 351, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996). In addition, prisoners
14 are not guaranteed unlimited law library access. Johnson v. Moore, 948
15 F.2d 517, 521 (9th Cir. 1991). Prisoners are subject to reasonable and
16 necessary prison regulations regarding the time, manner and place in
17 which library resources are used. Id. (citing Lindquist v. Idaho, 776
18 F.2d 851, 858 (9th Cir. 1985)).

19
20 To state a claim for denial of access to the courts, prisoners must
21 allege an actual injury, i.e., that some official action has frustrated
22 or is impeding plaintiff's attempt to bring a nonfrivolous legal claim.
23 Nevada Dept. of Corrections v. Greene, 648 F.3d 1014, 1018 (9th Cir.
24 2011). Specifically, in a "backward-looking" access to the courts
25 action,³ a plaintiff must describe (1) a nonfrivolous underlying claim

26
27 ³ The Supreme Court distinguishes between "forward-looking" access
28 to the courts claims, in which the plaintiff alleges that official
action is frustrating plaintiff's ability to prepare and file a suit at

1 that was allegedly compromised "to show that the 'arguable' nature of
2 the claim is more than hope"; (2) the official acts that frustrated the
3 litigation of that underlying claim; and (3) a "remedy available under
4 the access claim and presently unique to it" that could not be awarded
5 by bringing a separate action on an existing claim. Christopher v.
6 Harbury, 536 U.S. 403, 416, 122 S. Ct. 2179, 153 L. Ed. 2d 413 (2002).

7
8 A missed filing deadline, by itself, is not enough to state an
9 access to the courts claim. The plaintiff must identify his underlying
10 claim and show that it arguably had some merit. See Flagg v. City of
11 Detroit, 715 F.3d 165, 178-79 (6th Cir. 2013) (plaintiff is not required
12 to prove he would have won underlying claim but for government
13 obstruction, but must show that the claim was at least arguably
14 meritorious and not frivolous); Brewster v. Dretke, 587 F.3d 764, 769
15 (5th Cir. 2009) (failure to identify issue that plaintiff would have
16 presented to the court was fatal to his access to the courts claim);
17 Barbour v. Haley, 471 F.3d 1222, 1226 (11th Cir. 2006) (plaintiff
18 alleging denial of access to the courts must "identify within his
19 complaint[] a 'nonfrivolous,' 'arguable' underlying claim") (quoting
20 Harbury, 536 U.S. at 415). A plaintiff must also show how the defendant
21 caused the deadline to be missed. See Vandelft v. Moses, 31 F.3d 794,
22 798 (9th Cir. 1994) (no actual injury where plaintiff requested library

23
24
25 the present time, and "backward-looking" claims, in which plaintiff
26 alleges that due to official action, a specific case cannot now be
27 tried, or be tried with all material evidence. In a backward-looking
28 claim, plaintiff must allege facts showing that the official action
resulted in the "loss of an opportunity to sue" or the "loss or
inadequate settlement of a meritorious case." Harbury, 536 U.S. at 413-
14.

1 resources after filing deadline had lapsed on one claim and did not show
2 how denial of access to resources for 57 days out of 365 caused
3 plaintiff's failure to file the other claim); Entzi v. Redmann, 485 F.3d
4 998, 1005 (8th Cir. 2007) (affirming dismissal where the complaint did
5 not explain how the prison's refusal to provide certain resources caused
6 the plaintiff to miss his filing deadline); Hayes v. Woodford, 444 F.
7 Supp. 2d 1127, 1134-35 (S.D. Cal. 2006) (no access to the courts claim
8 where plaintiff did not explain how insufficient resources actually
9 affected filing).

10
11 Here, Plaintiff's allegations do not demonstrate that Defendants'
12 acts or omissions hindered his efforts to pursue a nonfrivolous legal
13 claim. Plaintiff contends that had Rowe provided access to the LSP law
14 library, Plaintiff would have timely and successfully filed his petition
15 for writ of certiorari. (Id. at 9). However, Plaintiff does not
16 identify the claims he purportedly intended to present in his petition
17 or explain why his anticipated success on those claims is based on
18 anything "more than hope." Harbury, 536 U.S. 416. The vague assertion
19 that Plaintiff had an unidentified claim that would have succeeded fails
20 to state an access to the courts claim. See Flagg, 715 F.3d at 178-79;
21 Brewster, 587 F.3d at 769; Barbour, 471 F.3d at 1226.

22
23 Moreover, according to the complaint, Rowe did grant Plaintiff
24 access to the law library. (2AC at 6). Plaintiff alleges that Rowe
25 became aware of his appeal at some point between June 6 and 27, 2012.
26 (Id. at 5). Although Plaintiff states that he submitted a request for
27 library access on June 6, 2012, Plaintiff admits that he waited forty-
28 two days, until July 18, 2012, before filing a grievance when he did not

1 receive a response. (Id. at 5 & Exh. E at 28). Plaintiff waited even
2 longer to renew his request for library access to Rowe. Plaintiff's own
3 documents show that Rowe immediately granted Plaintiff's PLU status
4 request on July 24, 2012, the same day he submitted it. (Id. at 5 &
5 Exh. C at 17). The fact that Rowe immediately granted Plaintiff's PLU
6 status request on July 24, 2012 suggests that had Plaintiff renewed his
7 library access request earlier, it would have succeeded. (Id.).
8 Plaintiff further admits that he was "actually allowed into the Law
9 Library" on July 30, 2012, shortly after Rowe granted his PLU Request.
10 (Id. at 6). In addition, even though the library was closed immediately
11 after Plaintiff's July 30, 2012 visit until August 24, 2012 due to an
12 institutional lockdown, Plaintiff had access to law library materials
13 before and during the lockdown via "the paging system through the
14 institutional mail." (Id., Exh. C at 2). Plaintiff does not explain
15 why the library visit he was actually granted and the other legal
16 resources available to him were inadequate, particularly when the
17 grounds for his legal claim(s) in his anticipated petition for writ of
18 certiorari presumably had already been presented to the lower courts.
19 The Second Amended Complaint fails to show how Rowe's failure to respond
20 immediately to the June 6, 2012 access request was the cause of
21 Plaintiff's failure to timely file his petition with the Supreme Court.
22

23 Similarly, Plaintiff fails to allege facts showing that Curiel's
24 allegedly improper screening of his grievance hindered Plaintiff's
25 access to the courts. Plaintiff states that on July 27, 2012, Curiel
26 improperly screened the grievance he had filed on July 18, 2012
27 concerning the lack of response to his June 6, 2012 law library access
28 request. (Id. at 9). However, Rowe granted Plaintiff PLU status on

1 July 24, 2012, thereby rendering Curiel's screening on July 27, 2012
2 arguably moot. In addition, Plaintiff admits that he went to the
3 library on July 30, 2012, only three days after the allegedly improper
4 screening. (Id. at 6). Plaintiff also had access to library materials
5 via the paging system even during the lockdown. (Id., Exh. C at 2). As
6 such, Plaintiff fails to demonstrate how Curiel's screening of his
7 grievance, even if erroneous or improper, had any effect at all on
8 Plaintiff's ability to research his claims, much less that Curiel
9 impeded Plaintiff's access to the courts and thereby caused him to miss
10 a filing deadline.

11
12 Plaintiff's allegations against Defendants Rowe and Curiel fail to
13 show that either Defendant actually impeded Plaintiff's access to the
14 courts or was the cause of Plaintiff's failure to timely file his
15 Supreme Court petition. Accordingly, the Second Amended Complaint must
16 be dismissed, with leave to amend.

17
18 **B. Plaintiff Fails To State A Claim Against Defendant Curiel For**
19 **Screening Plaintiff's Grievance**

20
21 To state a claim under § 1983, a plaintiff must show that (1) the
22 action occurred "under color of state law" and (2) the action resulted
23 in the deprivation of a federal constitutional or statutory right.
24 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). However, the
25 existence of a prison grievance procedure does not create any
26 substantive rights enforceable under the Due Process Clause. See, e.g.,
27 Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir. 1996) ("With respect
28 to the Due Process Clause, any right to a grievance procedure is a

1 procedural right, not a substantive one. Accordingly, a state's inmate
2 grievance procedures do not give rise to a liberty interest protected by
3 the Due Process Clause.") (citations omitted); Doe v. Moore, 410 F.3d
4 1337, 1350 (11th Cir. 2005) ("State-created procedural rights that do
5 not guarantee a particular substantive outcome are not protected by the
6 Fourteenth Amendment, even where such procedural rights are mandatory.")
7 (internal quotation marks omitted). Consequently, an inmate does not
8 have a right to any particular grievance procedure or result. See,
9 e.g., Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) ("[I]nmates
10 lack a separate constitutional entitlement to a specific prison
11 grievance procedure.") (citing Mann v. Adams, 855 F.2d 639, 640 (9th
12 Cir. 1988)); Geiger v. Jowers, 404 F.3d 371, 374 (5th Cir. 2005) (an
13 inmate "does not have a federally protected liberty interest in having
14 . . . grievances resolved to his satisfaction"). Moreover, a prison
15 official's failure to process a grievance, without more, is insufficient
16 to establish liability under section 1983. See Buckey v. Barlow, 997
17 F.2d 494, 495 (8th Cir. 1993).

18
19 Here, Plaintiff contends that Curiel "illegally" processed
20 Plaintiff's grievance appeal by screening out the appeal and requesting
21 further documents in violation of "Plaintiff's Fourteenth Amendment
22 Right to Due Process of Law." (2AC at 6, 9). However, as noted above,
23 Plaintiff does not have a constitutional right to any particular
24 grievance process or result. Accordingly, Plaintiff's due process claim
25 against Curiel must be dismissed.

26 \\
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1 C. The Second Amended Complaint Fails To Satisfy Federal Rule Of Civil
2 Procedure 8

3
4 Federal Rule of Civil Procedure 8(a)(2) requires that a complaint
5 contain "'a short and plain statement of the claim showing that the
6 pleader is entitled to relief,' in order to 'give the defendant fair
7 notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. V. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167
8 L. Ed. 2d 929 (2007). Although detailed factual allegations are not
9 required, the Rule does call for sufficient factual matter, accepted as
10 true, to state a claim to relief that is plausible on its face.
11 Ashcroft v. Iqbal, 556 U.S. 662, 663, 129 S. Ct. 1937, 173 L. Ed. 2d
12 868. "A claim has facial plausibility when the pleaded factual content
13 allows the court to draw the reasonable inference that the defendant is
14 liable for the misconduct alleged." (Id.).

15
16
17 The Second Amended Complaint does not comply with the standards of
18 Rule 8 because it does not clearly allege facts showing that Defendants
19 Rowe and Curiel were the cause of Plaintiff's failure to timely file his
20 petition for writ of certiorari with the Supreme Court. Rowe granted
21 Plaintiff PLU status on July 24, 2012 and Plaintiff was granted library
22 access on July 30, 2012, despite Curiel's screening of his grievance.
23 In addition, many of Plaintiff's allegations concern the handling of his
24 grievance well after the August 13, 2012 deadline to file a petition
25 with the Supreme Court had passed. (2AC at 6-8). As such, the Second
26 Amended Complaint does not sufficiently demonstrate that Defendants'
27 conduct prevented Plaintiff from filing his petition.

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IV.

CONCLUSION

For the reasons stated above, the Second Amended Complaint is dismissed with leave to amend. If Plaintiff still wishes to pursue this action, he is granted **thirty (30) days** from the date of this Memorandum and Order within which to file a Third Amended Complaint. In any amended complaint, the Plaintiff shall cure the defects described above. The Third Amended Complaint, if any, shall be complete in itself and shall bear both the designation "Third Amended Complaint" and the case number assigned to this action. It shall not refer in any manner to any previously filed complaint in this matter.

In any amended complaint, Plaintiff should confine his allegations to those operative facts supporting each of his claims. Plaintiff is advised that pursuant to Federal Rule of Civil Procedure 8(a), all that is required is a "short and plain statement of the claim showing that the pleader is entitled to relief." **Plaintiff is strongly encouraged to utilize the standard civil rights complaint form when filing any amended complaint, a copy of which is attached.** In any amended complaint, Plaintiff should make clear what specific factual allegations give rise to his claims. Plaintiff is advised to omit any claims for which he lacks a sufficient factual basis. Furthermore, the Third Amended Complaint may not include new Defendants or claims not reasonably related to the allegations in the Complaint.

Plaintiff is explicitly cautioned that failure to timely file a Third Amended Complaint or otherwise respond to this Order may result in

1 a recommendation that this action be dismissed with prejudice for
2 failure to prosecute and obey Court orders pursuant to Federal Rule of
3 Civil Procedure 41(b). Furthermore, because Plaintiff has already had
4 several opportunities to state a claim based on essentially the same
5 facts, failure to correct the deficiencies identified above will result
6 in a recommendation that this action be dismissed with prejudice
7 pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff is
8 further advised that if he no longer wishes to pursue this action, he
9 may voluntarily dismiss it by filing a Notice of Dismissal in accordance
10 with Federal Rule of Civil Procedure 41(a)(1). A form Notice of
11 Dismissal is attached for Plaintiff's convenience.

12
13 DATED: July 23, 2013

14
15 _____ /s/
16 SUZANNE H. SEGAL
17 UNITED STATES MAGISTRATE JUDGE

18 **THIS MEMORANDUM IS NOT INTENDED FOR PUBLICATION NOR IS IT INTENDED TO BE**
19 **INCLUDED IN OR SUBMITTED TO ANY ONLINE SERVICE SUCH AS WESTLAW OR LEXIS.**
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