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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GREGORY LEON YOUNG,  
Plaintiff,

v.

CYNTHIA Y. TAMPKINS, et al.,  
Defendants.

Case No. CV 16-07455 JFW (RAO)

ORDER ACCEPTING REPORT  
AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE  
JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Second Amended Complaint (“SAC”), all of the other records and files herein, and the Report and Recommendation of United States Magistrate Judge (“Report”). Further, the Court engaged in a *de novo* review of those portions of the Report to which Plaintiff objected. Plaintiff advances several arguments in his objections to the Report. The Report sufficiently addresses the bulk of those arguments, but two of the arguments warrant a brief discussion.

Plaintiff objects to the Report’s recommendation that this Court deny his access to the courts claim. Plaintiff relies on the case *Silva v. Di Vittorio*, 658 F.3d 1090 (9th Cir. 2011), and argues that *Silva* overruled *Lewis v. Casey*, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996), a case cited by the Report. To begin with, because *Lewis v. Casey* is a United States Supreme Court case, it cannot be

1 overruled by a more recent opinion of a lower court, such as the Ninth Circuit Court  
2 of Appeals. The Magistrate Judge’s Report is also not in conflict with *Silva*. The  
3 *Silva* panel held that prisoners have a right under the First and Fourteenth  
4 Amendments to litigate their civil rights claims without active interference by  
5 prison officials, even past the pleading stage. 658 F.3d at 1103. *Silva* did not,  
6 however, eliminate the requirement to allege an actual injury. *See id.* at 1102,  
7 1104. The Magistrate Judge recommended dismissal of Plaintiff’s access to the  
8 courts claim because the SAC failed to state an actual injury, not for failure to  
9 sufficiently allege interference with access to the law library. The Report explains  
10 in detail why the SAC fails to allege an actual injury, and Plaintiff has not  
11 addressed or objected to this portion of the Report.

12       Regarding his retaliation claim, Plaintiff raises certain factual allegations for  
13 the first time. Plaintiff alleges that “one correctional officer” stated that he would  
14 assist Plaintiff if Plaintiff was not suing the prison. Dkt. No. 17 at 6.<sup>1</sup> Plaintiff  
15 continues that, “for the same reason,” Correctional Officer Capacete, who would  
16 allow him to go to the law library, started to limit Plaintiff’s access. *Id.* at 6-7.  
17 Plaintiff asserts that other officers are witnesses because they have knowledge of  
18 the “PLU/GLU prison condition problem.” *Id.* at 7. Plaintiff then repeats his  
19 allegation from the SAC that Officers Vicario and Cernas stated that they were  
20 ordered to interfere with Plaintiff’s access to the courts after Officer Navarette read  
21 a Ninth Circuit order in a different case brought by Plaintiff. *Id.*

22       The Court has considered whether Plaintiff could allege a cognizable  
23 retaliation claim if he were allowed to amend his complaint to add these allegations.  
24 The Court concludes that Plaintiff has not adequately alleged that adverse action  
25 was taken as a result of Plaintiff engaging in protected conduct. Plaintiff does not  
26 allege when the unnamed officer and Officer Capacete made their statements, or

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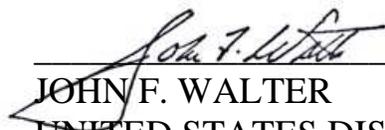
27 <sup>1</sup> References to pages of Plaintiff’s objections are based upon the pagination  
28 provided by the Court’s electronic docket.

1 when or how the alleged retaliatory interference with access to the law library  
2 occurred. And, as explained in the Report, Plaintiff has not alleged that Officers  
3 Vicario and Cernas actually interfered with Plaintiff's access to the law library.  
4 Even after consideration of the new factual allegations in Plaintiff's objections, the  
5 Court agrees with the Magistrate Judge's conclusion that Plaintiff fails to plead a  
6 cognizable retaliation claim.<sup>2</sup>

7 Accordingly, the Court is not persuaded by Plaintiff's objections. The Court  
8 hereby accepts and adopts the findings, conclusions, and recommendations of the  
9 Magistrate Judge.

10 IT IS ORDERED that this action is dismissed with prejudice. Plaintiff's  
11 Request to Proceed Without Prepayment of Filing Fees (Dkt. No. 7) is denied.

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14 DATED: June 1, 2017

  
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15 JOHN F. WALTER  
16 UNITED STATES DISTRICT JUDGE  
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24 <sup>2</sup> An exhibit to Plaintiff's objections appears to contradict Plaintiff's assertion that  
25 he was denied access to the law library from December 2015 through his release in  
26 December 2016. In Exhibit C, a May 9, 2016 second level appeal response, the law  
27 librarian is quoted as stating that Plaintiff frequents the law library at least twice a  
28 week, for a couple of hours a day, on a monthly basis. See Dkt. No. 17 at Ex. C.  
The Court is not required to accept as true allegations that are contracted by  
exhibits attached to the complaint. See *Sprewell v. Golden State Warriors*, 266  
F.3d 979, 988 (9th Cir. 2001).