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

JOHNNY EARL EVANS,

Plaintiff,

vs.

1:07 CV 00604 OWW YNP SMS (PC)

FINDINGS AND RECOMMENDATION

EL DORADO HILL, et al.,

Defendants.

Plaintiff is a state prisoner proceeding prose in a civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

This action proceeds on the complaint. Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation at Centinela State Prison, brings this civil rights action against defendant correctional officials employed by the CDCR at Kern Valley State Prison. The allegations that give rise to this complaint occurred while Plaintiff was housed at Kern Valley State Prison.

Plaintiff’s allegations in this action stem from his difficulties in gaining access to the law library and legal research materials. Plaintiff’s central claim in this case is that he is denied adequate access to the law library, such that it prohibits him from prosecuting his various legal actions. Plaintiff names the following individual defendants: El Dorado Hill, Acting Director of

1 the CDCR; G. M. Galaza, Acting Warden at Kern Valley State Prison; Norman Olsen, Senior  
2 Librarian at Kern Valley State Prison; David Risenhoover, Supervisor of Vocation at Kern  
3 Valley State Prison.

4 Plaintiff recites the following difficulties he experienced while at Kern Valley State  
5 Prison. On July 24, 2005, he filed an inmate grievance, “complaining that there was no legal  
6 library to research in and he needed access to a law library six hours a week.” The response by  
7 Defendant Olsen advised Plaintiff that “the library will be open soon for obtaining court address,  
8 legal copies and mail etc. You will be ducated at the next opportunity to the library, where you  
9 can request copies of legal materials, which must be brought in from another library.”

10 On August 15, 2005, Plaintiff filed his grievance at the next level. Plaintiff specified that  
11 he was in the process of “preparing my criminal appeal to be refiled in the court.” Plaintiff stated  
12 that he needed access to legal authority. The next day, Plaintiff was placed in Administrative  
13 Segregation on an unrelated matter. On September 2, 2005, Defendants Olsen and Risenhoover  
14 interviewed Plaintiff, and provided Plaintiff access to the law library through the institution’s  
15 paging procedure. They agreed that Plaintiff would have access to blank paper, proof of service  
16 forms and a tort complaint form. Plaintiff alleges that he was never provided that material.

17 The facility where Plaintiff was housed at Kern Valley did not have any law books,  
18 forms, or computers until February of 2006. Plaintiff alleges that when the materials were  
19 received, he was able to gain law library access. In February of 2006, Plaintiff filed a grievance,  
20 complaining that there were only three computers for a thousand prisoners. Plaintiff also  
21 complained of other deficiencies: the library could only seat ten prisoners at a time; Plaintiff was  
22 only provided access for two hours a week; there was not a subscription to the Daily Appellate  
23 Report, U.S. Law Week, or anything else to advise on current state and federal law; no Shepard’s  
24 citation materials; no Judicial Council forms. Plaintiff alleges that he could not research and  
25 prepare a “meaningful civil application” because of the inability to research administrative  
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1 regulations related to corrections.

2 On March 7, 2006, Plaintiff asked Defendant Olsen to shepardize a section of the  
3 California Administrative Code. Plaintiff refers to a disciplinary charge he suffered for inciting  
4 other prisoners, and he needed legal materials to research the code section that he was charged  
5 with violating.

6 On March 10, 2006, Plaintiff attempted to file a small claim in the Kern County Superior  
7 Court, challenging the conduct of Defendant Gricewich, the Appeals Coordinator. Gricewich  
8 rejected a grievance filed by Plaintiff because it did not include the appropriate form. The Kern  
9 County Superior Court rejected Plaintiff's attempt to file a small claim, as he did not use the  
10 appropriate form.

11 On March 21, 2006, Plaintiff requested access to the law library. Plaintiff specifically  
12 needed a small claims form. On March 27, 2006, Plaintiff again requested access to the library  
13 and a small claims form, which was never provided. Plaintiff wrote a letter to the Warden.  
14 Plaintiff received a response from the Warden's secretary, indicating that "you have filed (8)  
15 legal appeals and not one addresses this issue. You must utilize the appeal process."

16 On May 5, 2006, Plaintiff filed a civil complaint in Bakersfield. The complaint was  
17 rejected due to an incomplete fee waiver. Plaintiff was instructed to file the complaint in  
18 McFarland. Plaintiff was "uncertain how to file his complaint." Plaintiff filed an inmate  
19 grievance, which was granted at the first level of review. Plaintiff alleges that he never received  
20 a small claim form, or the six hours a week law library access that he sought. Plaintiff also  
21 alleges that there is no staff trained in assisting prisoners.

22 On February 6, 2007, plaintiff requested copies of cases, using the paging system.  
23 Plaintiff sought permission to use the law library to make copies and to conduct research in a  
24 pending civil complaint. Defendant Olsen advised Plaintiff that he (Olsen) "is not obligated to  
25 copy cases." On February 28, 2007, Plaintiff made the same request, citing Lewis v. Casey, 116  
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1 S.Ct. 2174. Plaintiff also requested paper “and to make copies of an injunction motion.”  
2 Plaintiff did not receive a response. On March 28, 2007, Plaintiff was provided law library  
3 access for two hours. Plaintiff claims that the two hour a week policy has deprived him of  
4 “adequate time to do meaningful research and of the capability to file a meaningful application in  
5 the courts.”

6 To warrant relief under the Civil Rights Act, a plaintiff must allege and show that  
7 defendant’s acts or omissions caused the deprivation of his constitutionally protected rights. Leer  
8 v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993). In order to state a claim under § 1983, a  
9 plaintiff must allege that: (1) a person was acting under color of state law at the time the  
10 complained of act was committed; and (2) that person’s conduct deprived plaintiff of rights,  
11 privileges or immunities secured by the Constitution or laws of the United States. Paratt  
12 v. Taylor, 451 U.S. 527, 535 (1981).

13 The statute plainly requires that there be an actual connection or link between the actions  
14 of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v.  
15 Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The  
16 Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional  
17 right, within the meaning of section 1983, if he does an affirmative act, participates in another’s  
18 affirmative acts or omits to perform an act which he is legally required to do that causes the  
19 deprivation of which the complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
20 1978).

21 Because states must ensure indigent prisoners meaningful access to the courts,  
22 prison officials are required to provide either (1) adequate law libraries, or (2) adequate  
23 assistance from persons trained in the law. Bounds v. Smith, 430 U.S. 817, 828 (1977). Under  
24 prior law, Bounds was treated as establishing "core requirements," such that a prisoner alleging  
25 deprivation of the Bounds minima need not allege actual injury to state a constitutional claim.  
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1 Sands v. Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989). Recent Supreme Court precedent  
2 abolishes such approach, however, providing that all inmate claims for interference with access  
3 to the court include "actual injury" as an element. Casey v. Lewis, 518 U.S.343 (1996).

4 To establish a Bounds violation, a prisoner must show that his prison's law library or legal  
5 assistance program frustrated or impeded his ability to pursue a nonfrivolous legal claim. Casey,  
6 supra, 518 U.S. 343, 347. The right of access does not require the State to "enable the prisoner to  
7 discover grievances" or to "litigate effectively once in court." The Casey Court further limits the  
8 right of access to the courts, as follows:

9 Finally, we must observe that the injury requirement is not satisfied  
10 by just any type of frustrated legal claim .... Bounds does not  
11 guarantee inmates the wherewithal to transform themselves into  
12 litigating engines capable of filing everything from shareholder  
13 derivative actions to slip-and-fall claims. The tools it requires to  
14 be provided are those that the inmates need in order to attack their  
15 sentences, directly or collaterally, and in order to challenge the  
16 conditions of their confinement. Impairment of any other litigating  
17 capacity is simply one of the incidental (and perfectly  
18 constitutional) consequences of conviction and incarceration.

19 Casey, supra, 518 U.S. at 346.

20 In an order entered on April 10, 2008, Court found Plaintiff's allegations to be vague.  
21 Specifically, Plaintiff had not alleged facts indicating that he suffered actual injury as that term is  
22 defined above. Plaintiff referred to various legal actions, and made vague references to a civil  
23 complaint. That Plaintiff had difficulty in gaining access to conduct legal research, or that  
24 Plaintiff, in his view, did not have time to conduct adequate legal research, did not subject Olsen  
25 to liability.

26 Plaintiff was advised that in order to hold a named defendant liable, Plaintiff must charge  
that defendant with conduct that caused him actual injury within the meaning of Casey. Plaintiff  
offers no specifics regarding the nature of his civil complaint. As to the criminal charge Plaintiff  
is challenging, it appears that Plaintiff is challenging a prison disciplinary process. There are no  
facts alleged that Plaintiff was found guilty, and that the result would have been different had

1 Plaintiff been able to conduct legal research regarding the regulation at issue. Plaintiff was  
2 advised that he may not hold defendants liable by conclusory allegations that two hours a week in  
3 the law library is not enough time to conduct research. Plaintiff must allege facts that link the  
4 conduct of each named defendant to an injury suffered by Plaintiff as that term is defined in  
5 Casey. Plaintiff has failed to do so here.

6 On June 11, 2008, Plaintiff filed the first amended complaint that is now before the  
7 Court. In the first amended complaint, Plaintiff is more specific regarding that actions that he is  
8 pursuing. Plaintiff refers to small claims actions that he attempted to pursue, but was denied the  
9 requisite forms. Plaintiff requested a “small claims package” from Mr. Olsen, but Olsen never  
10 provided the forms. Plaintiff also sets forth allegations regarding the prison grievance process.  
11 Plaintiff attempted to pursue a grievance regarding the small claims forms.

12 Plaintiff does not, however, allege any facts indicating that he attempted to file a prisoner  
13 civil rights complaint and was frustrated in that attempt within the meaning of Casey. An  
14 allegation that Plaintiff was unable to file a small claims action, of itself, does not state a claim  
15 for relief for an unconstitutional denial of access to the courts within the meaning of Bounds or  
16 Casey. There are no allegations that Plaintiff was subjected to unconstitutional conditions of  
17 confinement, or that he was prevented from challenging that condition. Plaintiff has not allegef  
18 facts that cure the defects identified in the order dismissing the original complaint.

19 Because Plaintiff has not filed an amended complaint that cures the defects identified in  
20 the original complaint, the Court recommends dismissal of the claims made in the first amended  
21 complaint with prejudice for failure to state a federal claim upon which the court could grant  
22 relief. See Noll v. Carlson, 809 F. 2d 1446, 1448 (9<sup>th</sup> Cir. 1987) (prisoner must be given notice  
23 of deficiencies and opportunity to amend prior to dismissing for failure to state a claim).

24 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for  
25 failure to state a claim upon which relief can be granted.

1           These findings and recommendations are submitted to the United States District  
2 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within  
3 twenty days after being served with these findings and recommendations, plaintiff may file  
4 written objections with the court. Such a document should be captioned “Objections to  
5 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
6 objections within the specified time waives all objections to the judge’s findings of fact. See  
7 Turner v. Duncan, 158 F.3d 449, 455 (9<sup>th</sup> Cir. 1998). Failure to file objections within the  
8 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
9 F.2d 1153 (9th Cir. 1991).

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11 IT IS SO ORDERED.

12 **Dated:** October 22, 2009

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE