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6 **UNITED STATES DISTRICT COURT**
78 EASTERN DISTRICT OF CALIFORNIA
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10 LEROY DEWITT HUNTER,

CASE NO. 1:07-cv-01126-AWI-SMS PC

11 Plaintiff,

ORDER DIRECTING CLERK'S OFFICE TO
SEND COMPLAINT FORM AND COURTESY
COPIES OF DOCUMENTS 11 AND 23, AND
REQUIRING PLAINTIFF TO FILE A SECOND
AMENDED COMPLAINT WITHIN THIRTY
DAYS

12 v.

13 DONNY YOUNGBLOOD, et al.,

Defendants.

(Doc. 27)

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15 **I. Pending Recommendation for Dismissal**16 Plaintiff Leroy Dewitt Hunter, a state prisoner proceeding pro se and in forma pauperis, filed
17 this civil rights action pursuant to 42 U.S.C. § 1983 on August 3, 2007. The matter was referred to
18 a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.19 On June 17, 2010, the Magistrate Judge issued [findings and recommendations](#) (f&r) to
20 dismiss this action based on Plaintiff's failure to file a second amended complaint in compliance
21 with the [order](#) filed May 4, 2010. After re-service of the f&r at an updated address, Plaintiff filed
22 a timely [objection](#) on August 9, 2010, in which he contends that following his transfer to North Kern
23 State Prison from High Desert State Prison, he is without his ten boxes of property and cannot
24 respond to court orders without the documents. Plaintiff also claims he requested an order releasing
25 his property, but the Court refused his request.

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1 **II. Procedural Background**

2 On July 15, 2008, the Magistrate Judge screened Plaintiff's complaint and dismissed it, with
3 leave to amend, for failure to state a claim. On December 15, 2008, after Plaintiff failed to comply
4 with the order and failed to object to the subsequent recommendation that this action be dismissed,
5 the case was dismissed.¹ Plaintiff filed two motions for reconsideration on the ground that he never
6 received the order or the recommendation. On August 10, 2009, Plaintiff's motions were granted;
7 this action was reopened; and Plaintiff was re-served with the screening order and directed to file
8 an amended complaint in compliance with the screening order by September 14, 2009. Plaintiff filed
9 a notice of change of address to High Desert State Prison on August 24, 2009, and an amended
10 complaint on August 31, 2009.

11 On January 27, 2010, the Magistrate Judge screened Plaintiff's amended complaint and
12 recommended dismissal of this action for failure to state a claim. Plaintiff objected on February 5,
13 2010. Based on the level of factual detail set forth in the objection regarding his legal claim, the
14 Magistrate Judge vacated the recommendation on May 4, 2010, and granted Plaintiff an additional
15 opportunity to amend on the basis that it appeared Plaintiff might be able to state a cognizable claim.
16 The Magistrate Judge provided Plaintiff with detailed instructions regarding the federal pleading
17 standard and directed Plaintiff to file a second amended complaint within thirty days curing the
18 deficiencies identified in the January 27 recommendation.

19 On June 17, 2010, the f&r presently before the Court was issued following Plaintiff's failure
20 to file a second amended complaint. As a courtesy, Plaintiff's address in this case was updated by
21 the Clerk of the Court following receipt of a notice of change of address filed in case number 1:09-
22 cv-01556-MJS on July 12, 2010, and the f&r was re-served on July 20, 2010.

23 **III. Discussion**

24 Neither Plaintiff's original complaint nor Plaintiff's first amended complaint stated any
25 claims upon which relief may be granted. The Magistrate Judge generously granted Plaintiff one

27 28 ¹ The order and the recommendation to dismiss were returned by the postal service as undeliverable because
Plaintiff was no longer housed at the jail. Plaintiff did not file a notice of change of address from the Kern County
Jail to Corcoran State Prison until November 13, 2008, following service of both the order and the recommendation.

1 final opportunity to amend, and he failed to comply with or otherwise respond to that order.
2 Although Plaintiff objects to the dismissal of this action on the ground that he is, or was, without his
3 legal material following his transfer to North Kern State Prison, Plaintiff offers no specific
4 explanation regarding his failure to amend or take other action between early May and early to mid-
5 July, when it appears the transfer occurred.

6 While the Court finds Plaintiff's objections not particularly compelling, it will grant him one
7 final, limited opportunity to amend. To comply with the order to file a second amended complaint,
8 Plaintiff need only set forth his legal claims and the facts supporting those claims. Plaintiff does not
9 need to conduct legal research and he is not required to make legal arguments or provide citations
10 to legal authority. The Court will direct the Clerk's Office to provide Plaintiff with a complaint form
11 and copies of the previous screening order and screening f&r. In addition, in the section that follows,
12 the Court will again set forth the legal standards applicable to Plaintiff's claims. This combination
13 of documents and information is more than adequate to allow Plaintiff to draft and file a second
14 amended complaint, status of his legal property notwithstanding.²

15 **IV. Legal Standards**

16 **A. Pleading Standard**

17 In amending his complaint, Plaintiff shall take note of the following applicable standards.
18 With respect to the specificity of his factual allegations, the complaint must contain "a short and
19 plain statement of the claim showing that the pleader is entitled to relief . . ." Fed. R. Civ. P.
20 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of
21 a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 129
22 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955,
23 1964-65 (2007)).

24 Under section 1983, Plaintiff must demonstrate that each defendant *personally* participated
25 in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) (emphasis
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27 ² Plaintiff did not file a motion in this case requesting an order pertaining to his legal property, despite his
28 assertion to the contrary. Regardless, the Court has no jurisdiction in this action to issue an order directing prison
officials to return Plaintiff's legal property. Summers v. Earth Island Institute, 129 S.Ct. 1142, 1149 (2009); also 18
U.S.C. § 3626(a)(1)(A).

1 added). This requires the presentation of factual allegations sufficient to state a plausible claim for
2 relief. Iqbal, 129 S.Ct. at 1949-50; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
3 The mere possibility of misconduct falls short of meeting this plausibility standard. Id.

4 **B. Excessive Force**

5 Plaintiff, a pretrial detainee at the relevant time, is attempting to pursue an excessive force
6 claim arising out of an incident in which Kern County Sheriff's Deputy Parker shoved his wheelchair
7 toward the wall, which caused Plaintiff injuries as he tried to slow or stop the chair with his hands.
8 The Due Process Clause of the Fourteenth Amendment protects pretrial detainees from the use of
9 excessive force that amounts to punishment. Gibson v. County of Washoe, Nev., 290 F.3d 1175,
10 1197 (9th Cir. 2002) (citing Graham v. Connor, 490 U.S. 386, 395 n.10 (1989)) (quotations omitted).
11 Under the Fourth Amendment, which sets the applicable constitutional limitations for excessive
12 force claims against pretrial detainees, Gibson, 290 F.3d at 1197, the issue is whether the defendant's
13 actions were objectively reasonable in light of the facts and circumstances confronting him at the
14 time, without regard to the underlying intent or motivation, Lolli v. County of Orange, 351 F.3d 410,
15 415 (9th Cir. 2003) (quoting Graham, 490 U.S. at 397) (quotations omitted).

16 **C. Denial of Access to the Courts**

17 Plaintiff is also attempting to pursue a claim for denial of access to the courts, arising out of
18 his inability to obtain sufficient law library access to research the criminal case against him.
19 Plaintiff, who is currently serving his sentence following the conviction in that case, asserts that there
20 would have been a different outcome in his criminal case if he had been able to spend more time
21 researching.

22 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey, 518
23 U.S. 343, 346 (1996); Phillips v. Hust, 588 F.3d 652, 655 (9th Cir. 2009). The right of access to
24 the courts is merely the right to bring to court a grievance the inmate wishes to present, and is limited
25 to direct criminal appeals, habeas petitions, and civil rights actions. Lewis, 518 U.S. at 354. To
26 bring a claim, a plaintiff must have suffered an actual injury by being shut out of court. Christopher
27 v. Harbury, 536 U.S. 403, 415 (2002); Lewis at 351; Phillips, 588 F.3d at 655.

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1 Plaintiff's inability to research criminal law prior to or during the course of the proceedings
2 against him does not give rise to a cognizable claim for relief. Lewis at 354. Further, now that
3 Plaintiff is serving the sentence imposed following his criminal conviction, he may not pursue a civil
4 rights claim which if successful would potentially bring his conviction or the length of his sentence
5 into question. Wilkinson v. Dotson, 544 U.S. 74, 81-2 (2005). At this juncture, Plaintiff is limited
6 to seeking relief via a petition for writ of habeas corpus.

7 **D. Rule 18(a) Limitation**

8 Finally, Plaintiff's excessive force claim and access claim do not appear to be related to one
9 another. Plaintiff is cautioned that he may not proceed in this action on unrelated claims against
10 different defendants. "The controlling principle appears in Fed. R. Civ. P. 18(a): 'A party asserting
11 a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either
12 as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has
13 against an opposing party.' Thus multiple claims against a single party are fine, but Claim A against
14 Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims
15 against different defendants belong in different suits, not only to prevent the sort of morass [a
16 multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required
17 filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals
18 that any prisoner may file without prepayment of the required fees. 28 U.S.C. § 1915(g)." George
19 v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

20 **V. Order**

21 Based on the foregoing, it is HEREBY ORDERED that:

22 1. The Clerk's Office shall send Plaintiff a civil rights complaint form and courtesy
23 copies of documents 11 and 23;

24 2. Plaintiff shall file a second amended complaint within **thirty (30) days** from the date
25 of service of this order; and

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3. If Plaintiff fails to file a second amended complaint in compliance with this order, this action will be dismissed, with prejudice, for failure to state a claim upon which relief may be granted and for failure to obey a court order.

IT IS SO ORDERED.

Dated: November 13, 2010

CHIEF UNITED STATES DISTRICT JUDGE