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

LEROY HAWKINS, JR. ,  
Plaintiff,  
v.  
STATE OF CALIFORNIA, et al.,  
Defendants.

CASE No. 1:09-cv-01705-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS TO:**

- 1) GRANT IN PART PLAINTIFF'S  
REQUEST FOR JUDICIAL NOTICE**
- 2) FIND PLAINTIFF'S CROSS-MOTION  
FOR SUMMARY JUDGMENT TO BE  
UNTIMELY**
- 3) DENY DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

**(ECF No. 71)**

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendant Bacher, whom Plaintiff alleges violated his First Amendment right of access to the courts. (ECF No. 25.)

On May 22, 2015, the Magistrate Judge issued findings and recommendations to deny Defendants' motion for summary judgment, to find Plaintiff's cross-motion for summary judgment to be untimely, and to grant in part Plaintiff's request for judicial

1 notice. (ECF No. 71.) Plaintiff filed objections to the Court's finding that his cross-motion  
2 for summary judgment was untimely (ECF No. 75); Defendant filed objections to the  
3 Court's denial of summary judgment (ECF No. 76); and Plaintiff replied to Defendant's  
4 objections (ECF No. 77).

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6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has  
7 conducted a *de novo* review of this case. Having carefully reviewed the entire file, the  
8 Court finds the Findings and Recommendations to be supported by the record and by  
9 proper analysis. The Court addresses Plaintiff's and Defendant's objections in turn.

#### 10 **I. Plaintiff's Objections**

11 Plaintiff argues that the Magistrate Judge should have considered his cross-motion  
12 for summary judgment because Plaintiff is entitled to summary judgment. The Court  
13 concludes that summary judgment in favor of Plaintiff is not appropriate. Although the  
14 Magistrate Judge found that Plaintiff's allegations, taken as true, were sufficient to  
15 support the conclusion that he had suffered actual injury under Lewis v. Casey, 518 U.S.  
16 343, 353 (1996), the Court did not find that Plaintiff had established actual injury as a  
17 matter of law. (ECF No. 71, at 14.) Defendant disputes that Plaintiff suffered actual  
18 injury as a result of his inability to file a petition for habeas corpus. (Id., at 7.) In addition,  
19 as discussed below, there is a dispute of fact regarding the type of assistance Plaintiff  
20 requested of Defendant, and therefore whether her failure to provide it amounted to an  
21 unconstitutional denial of access to the courts. Defendant has thus raised triable issues  
22 of fact regarding Plaintiff's access to court claim, so the Court rejects Plaintiff's  
23 contention that he is entitled to summary judgment.

#### 24 **II. Defendant's Objections**

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26 Defendant objects to the Magistrate Judge's recommendation to deny summary  
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1 judgment and qualified immunity. Defendant argues that the Magistrate Judge  
2 mischaracterized the type of assistance Plaintiff sought from Defendant, and that  
3 Plaintiff's complaint and deposition indicate he only wanted her to perform legal research  
4 and craft legal arguments, tasks she was neither authorized nor qualified to perform.  
5 She also argues that as an individual with no legal training, she is not an appropriate  
6 defendant for an access-to-courts claim, and that she reasonably believed her offer to  
7 scribe a letter for Plaintiff was not unconstitutional. The Court rejects these contentions.

9 Plaintiff's complaint does not indicate that he only asked Defendant for legal advice  
10 and research. Rather, it indicates that he sought help from Defendant in "preparing his  
11 petition" and that she told him the only assistance she could provide was in scribing a  
12 letter to the court. (ECF No. 24, at 4.) Although Defendant acknowledges in her  
13 objections that she could have helped "scribe" a habeas petition, she does not indicate  
14 that she ever told Plaintiff this, or that Plaintiff turned down such assistance. (ECF No.  
15 76, at 5.) To the contrary, Defendant indicates that the only type of assistance she told  
16 Plaintiff she could provide was the scribing of a letter, the inefficacy of which she all but  
17 conceded she was aware. (ECF No. 63, at 6.) Therefore the Court finds that the  
18 Magistrate Judge did not misconstrue the scope of Plaintiff's claim, and agrees that there  
19 is a triable issue of fact regarding the type of assistance Plaintiff requested and the type  
20 of assistance Defendant did or did not provide.

23 Similarly, while there may perhaps have been other appropriate defendants for  
24 Hawkins' access-to-courts claim, this does not mean that Peggy Bacher is *not* a proper  
25 defendant: state officials, including library staff, may be liable for impeding inmates'  
26 access to the courts. See Phillips v. Hust, 588 F.3d 652, 657 (9th Cir. 2009)(prison  
27 librarian sued on access-to-courts claim). In any case, there is no requirement that  
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1 defendants in access-to-courts cases have formal legal training. See Allen v. Sakai, 40  
2 F.3d 1001, 1005 (9th Cir. 1994)(noting that “it does not require sophisticated ‘legal  
3 scholarship’ to know a plaintiff’s access to the courts could be hindered seriously” by  
4 denying particular services); see also, e.g., Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir.  
5 2010)(plaintiff had viable access-to-courts claim against correctional officer and warden).

6  
7 It is disingenuous for Defendant to contend that her lack of formal legal training should  
8 alone absolve her of responsibility for Plaintiff’s inability to access the court when it is  
9 undisputed that her duties explicitly required her to help developmentally disabled  
10 inmates like Plaintiff gain court access (ECF Nos. 58-2, at 2, & 71, at 5), and she  
11 concedes that it would have been “well within [these] duties” to have helped Plaintiff  
12 scribe a habeas petition, assistance it does not appear she offered to him. (ECF No. 76,  
13 at 5.)  
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15 For these same reasons, the Magistrate Judge did not err in finding that  
16 Defendant was not entitled, at the summary judgment stage, to qualified immunity.  
17 Given the Clark Remedial Plan’s authorization of staff assistance in “completing any  
18 forms or documents necessary to secure any rights or benefits available to nondisabled  
19 inmates” (CRP, at 8, 47) and Defendant’s agreement that scribing a petition would have  
20 been “well within” her responsibilities (ECF No. 76, at 5), there appears to be at least a  
21 material question of fact whether it was reasonable for Defendant to believe that the only  
22 assistance she could provide to Plaintiff was scribing a letter she indicated she knew  
23 was unlikely to advance his efforts to file a habeas petition.  
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25 Accordingly, it is HEREBY ORDERED that:

- 26 1) The Court adopts the Findings and Recommendations filed May 22, 2015  
27 (ECF No. 71) in full;  
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- 2) Plaintiff's cross-motion for summary judgment (ECF No. 60) is considered untimely;
- 3) Defendant's motion for summary judgment (ECF No. 58) is DENIED;
- 4) The case is to remain open.

IT IS SO ORDERED.

Dated: July 8, 2015

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE