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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

HOMER TYRONE LEWIS,	)	1:12-cv-00856-LJO-BAM (PC)
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATIONS
	)	REGARDING DISMISSAL OF CERTAIN
v.	)	CLAIMS
	)	
KATHLEEN ALISON, et al.,	)	
	)	THIRTY-DAY DEADLINE
Defendants.	)	
	)	
	)	

**I. Screening Requirement and Standard**

Plaintiff Homer Tyrone Lewis (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On October 25, 2013, the Court directed Plaintiff either to file a third amended complaint or to notify the Court of his willingness to proceed on the cognizable claims in his second amended complaint. (ECF No. 20.) Plaintiff’s third amended complaint, filed on November 18, 2013, is currently before the Court for screening. (ECF No. 21.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary

1 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28  
2 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the  
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
6 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,  
7 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65  
8 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge  
9 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)  
10 (internal quotation marks and citation omitted).

11 To survive screening, Plaintiff’s claims must be facially plausible, which requires  
12 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable  
13 for the misconduct alleged. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted);  
14 Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility  
15 that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short  
16 of satisfying the plausibility standard. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks  
17 omitted); Moss, 572 F.3d at 969.

## 18 **II. Plaintiff’s Allegations**

19 Plaintiff is currently housed at California State Prison, Lancaster located in Lancaster,  
20 California. The events complained about allegedly occurred while Plaintiff was housed at the  
21 California Substance Abuse Treatment Facility (“CSATF”) located in Corcoran, California.  
22 Plaintiff names CSATF Interim Warden Kathleen Alison, Corcoran State Prison Interim Warden  
23 Derral G. Adams, Corcoran State Prison Chief Deputy Warden Maurice Junious, CSATF  
24 Facility Captain P. Denny, CSATF Officer G. Parra, and CSATF Officer R. Garza in their  
25 individual and official capacities as defendants.

26 Plaintiff alleges as follows: On January 31, 2011, Plaintiff was in his assigned bunk in  
27 Facility “D” Building when the control booth officer opened the cell door. Defendant G. Parra  
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1 approached Plaintiff's cell door and issued an order for Plaintiff to stand up and step outside the  
2 cell. When Plaintiff complied, Defendant Parra handcuffed Plaintiff, escorted him to the Facility  
3 "D" program office and placed him into a holding cell. Defendant Parra informed Plaintiff that it  
4 was ordered by Defendants Alison and Denny that Plaintiff be removed from Facility "D"  
5 Building and placed in Administrative Segregation ("Ad-Seg") for allegations of threat to murder  
6 a correctional officer on Facility "D."

7 While Plaintiff was in the holding cell, Defendant Parra informed Plaintiff that she was  
8 going to conduct a cell search of Plaintiff's assigned cell. After Defendant Parra completed the  
9 search, she confiscated three boxes of Plaintiff's civil file pertaining to his pending civil case,  
10 Case No. 1:10cv00266 LJO DLB, along with legal transcripts and law books. Defendant Parra  
11 brought all three boxes to the Facility "D" program office to be reviewed by the Investigative  
12 Services Unit ("ISU"). Plaintiff asked Defendant Parra why only his legal materials were being  
13 confiscated, but Defendant Parra refused to answer. Plaintiff later learned that the cell search  
14 and confiscation of legal materials was witnessed by inmate Daniel Masterson.

15 On February 1, 2011, Defendant Denny came to Ad-Seg and held Plaintiff's CDC 114-D  
16 unit placement hearing. During this interview, Defendant Denny stated, "This Ad-Seg  
17 placement will teach you not to file lawsuits against my former boss, Derral G. Adams." (ECF  
18 No. 21, p 7.)

19 On February 22, 2011, Plaintiff followed prison procedure and submitted a CDCR-22  
20 request form to Defendant Parra through institutional mail. Plaintiff requested return of all of his  
21 legal materials.

22 On February 28, 2011, Defendant Parra responded to Plaintiff in writing, stating "All of  
23 your legal materials [were] collected by 3<sup>rd</sup>/W Facility "D" Officer Carlos. Therefore you need  
24 to forward an inmate request for interview to Officer Carlos." (ECF No. 21, p. 7.)

25 Dissatisfied with Defendant Parra's response, Plaintiff continued to exhaust his  
26 administrative remedies. Plaintiff responded by filling out Section C of the CDCR-22 request  
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1 form for supervisor review on March 9, 2011. Plaintiff forwarded the CDCR-22 form to  
2 Defendant Parra's supervisor via institutional mail.

3 On the morning of March 14, 2011, Defendant Denny came to Ad-Seg on Facility "E"  
4 and held CDC 114-D hearings for other inmates. After Defendant Denny completed his  
5 hearings, he approached Plaintiff's cell door and stated, "I was informed by Kathleen Alison that  
6 you . . . recently filed a staff complaint against me and the attorney's office informed me that you  
7 sent a letter to them about the statement I made to you on February 1, 2011, about filing lawsuits  
8 against my former boss Mr. Derral Adams, and sent letter to the federal court in a motion, and  
9 now that I have your evidence and other legal materials out of your legal materials to support  
10 your lawsuit, that's the last time you'll pursue lawsuits against my colleague[]s at Corcoran  
11 Prison." (ECF No. 21, pp. 7-8.)

12 On March 23, 2011, Defendant Parra's supervisor, M. Ramirez, responded to Plaintiff's  
13 request form and stated, "Officer Parra was the initial person who confiscated your written  
14 materials. However, to expedite the review process, officer [C]arlos collected said property from  
15 ISU and reviewed it. Officer Carlos subsequently returned your property upon completion of his  
16 review. ISU nor Parra has any of your property. Therefore, this matter is resolved." (ECF No.  
17 21, p. 8.)

18 Plaintiff alleges that Defendants tried to obtain their advantage with this Court to get  
19 Plaintiff's pending civil case dismissed when defense counsel filed their motion to dismiss on  
20 March 14, 2011. Plaintiff alleges that this is the exact date that Defendant Denny approached  
21 Plaintiff's cell door and informed Plaintiff that he had Plaintiff's legal materials.

22 Plaintiff alleges that Defendants Adams and Junious engaged in a conspiracy to retaliate  
23 against Plaintiff when they were served with Plaintiff's civil action in February 2011. Plaintiff  
24 claims that Defendants conspired together and held all of Plaintiff's legal materials in the ISU  
25 office at SATF from January 31, 2011 to July 8, 2011 per the order of Defendant Denny, which  
26 is documented by Defendant Garza on May 25, 2011.

1 Plaintiff further alleges that he repeatedly requested the return of his legal materials while  
2 in Ad-Seg. Defendants Alison and Adams, in their supervisory positions, failed to take  
3 disciplinary action against the remaining defendants.

4 On June 10, 2011, Plaintiff was scheduled for transfer from CSATF to Lancaster State  
5 Prison. While Plaintiff was awaiting transfer in a holding cell, Defendant Garza came to  
6 interview Plaintiff regarding his inmate grievance. During this interview, Defendant Garza, in  
7 front of an inmate witness, stated, "Mr. Lewis, Im hear [sic] to interview you about 602 appeal  
8 on missing legal materials and to inform you that Mr. Adams, Warden and Mr. Junious, Chief  
9 Deputy Warden at [Corcoran State Prison] ordered Captain P. Denny to get your legal materials  
10 for them, and after Captain P. Denny and ISU reviewed it, the Captain confiscated [1-Box] of  
11 legal materials, and then I personally consolidated the rest of your legal materials into 2-boxes."  
12 (ECF No. 21, p. 9.)

13 Plaintiff asserts the following causes of action: (1) retaliation in violation of the First  
14 Amendment against Defendants Alison, Adams, Junious, Denny, Parra and Garza; (2) a violation  
15 of due process/access to courts; and (3) violation of California Penal Code § 2601.

### 16 **III. Discussion**

#### 17 **A. Official Capacity and Eleventh Amendment Immunity**

18 As previously explained to Plaintiff, he may not bring suit for money damages against  
19 Defendants in their official capacities. The Eleventh Amendment prohibits suits for monetary  
20 damages against a State, its agencies, and state officials acting in their official capacities.  
21 Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147 (9th Cir.2007). A suit against a state  
22 official in his official capacity equates to a suit against the state employing that official, Hafer v.  
23 Melo, 502 U.S. 21, 25, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991), effectively barring a plaintiff  
24 from bringing suit on these grounds. However, the Eleventh Amendment does not bar a suit for  
25 monetary damages against a state official sued in his individual capacity. Id. Accordingly, the  
26 Court recommends that Plaintiff's claims for damages against Defendants in their official  
27 capacities be dismissed.



1 (2002). A prisoner alleging a violation of his right of access to the courts must demonstrate that  
2 he has suffered “actual injury.” Lewis, 518 U.S. at 349–50. The actual-injury requirement  
3 mandates that an inmate “demonstrate that a nonfrivolous legal claim had been frustrated or was  
4 being impeded.” Id. at 353. The Supreme Court rejected the notion that the state must enable a  
5 prisoner to “litigate effectively once in court.” Id. at 354 (quoting and disclaiming language  
6 contained in Bounds v. Smith, 430 U.S. 817, 825–26, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977)); see  
7 also Cornett v. Donovan, 51 F.3d 894, 898-900 (9th Cir.1995) (determining that prisoners’ right  
8 of access to the courts is limited to the pleading stage of a civil rights action or petition for writ  
9 of habeas corpus).

10 Here, Plaintiff appears to be challenging the confiscation of his legal materials related to  
11 pending civil action 1:10-cv-00266-LJO-DLB. Plaintiff has failed to allege that he was  
12 prevented from filing his complaint in that action. Rather, Plaintiff is complaining about his  
13 ability to effectively litigate once in court. However, the Court notes that the parties reached a  
14 settlement agreement in civil action 1:10-cv-00266-LJO-DLB. Plaintiff therefore has failed to  
15 state a cognizable claim for denial of access to the courts. Lewis, 518 U.S. at 354. Accordingly,  
16 the Court recommends that Plaintiff’s denial of access to the courts claim be dismissed.

#### 17 **D. Penal Code Violation**

18 Plaintiff seeks to impose liability against Defendants based on an alleged violation of  
19 California Penal Code § 2601. In particular, Plaintiff claims that Defendants violated his section  
20 2601 right to inherit, own, sell or convey real or personal property, including all written and  
21 artistic material produced or created by the person during imprisonment. However, the right  
22 does not extend to possession of any particular property in prison. The Court finds that Plaintiff  
23 fails to state a claim upon which relief may be granted based on an alleged violation of Penal  
24 Code § 2601. Accordingly, it is recommended that this claim be dismissed.

#### 25 **E. Declaratory Relief**

26 In addition to damages, Plaintiff seeks a declaration that his rights were violated. “A  
27 declaratory judgment, like other forms of equitable relief, should be granted only as a matter of  
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1 judicial discretion, exercised in the public interest.” Eccles v. Peoples Bank of Lakewood  
2 Village, 333 U.S. 426, 431 (1948). “Declaratory relief should be denied when it will neither  
3 serve a useful purpose in clarifying and settling the legal relations in issue nor terminate the  
4 proceedings and afford relief from the uncertainty and controversy faced by the parties.” United  
5 States v. Washington, 759 F.2d 1353, 1357 (9th Cir. 1985). In the event that this action reaches  
6 trial and the jury returns a verdict in favor of Plaintiff, the verdict will be a finding that Plaintiff’s  
7 constitutional rights were violated. Accordingly, a declaration that any defendant violated  
8 Plaintiff’s rights is unnecessary.

9 **III. Conclusion and Order**

10 Plaintiff’s complaint states a cognizable claim of retaliation in violation of the First  
11 Amendment against Defendants Alison, Adams, Junious, Denny, Parra and Garza in their  
12 individual capacities, but does not state any other claims for relief under section 1983.

13 As Plaintiff was provided with the relevant legal standards and was given multiple  
14 opportunities to file an amended complaint, the Court does not recommend granting further leave  
15 to amend. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

16 Based on the foregoing, it is HEREBY RECOMMENDED that:

17 1. This action proceed on Plaintiff’s third amended complaint, filed on November  
18 18, 2013, against Defendants Alison, Adams, Junious, Denny, Parra and Garza in their individual  
19 capacities for retaliation in violation of the First Amendment.

20 2. Plaintiff’s claims for damages against Defendants in their official capacities be  
21 DISMISSED;

22 3. Plaintiff’s denial of access to the courts and California Penal Code § 2601 claims  
23 be DISMISSED from this action; and

24 4. Plaintiff’s request for declaratory relief be DISMISSED.

25 These Findings and Recommendations will be submitted to the United States District  
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
27 thirty (30) days after being served with these Findings and Recommendations, the plaintiff may  
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1 file written objections with the Court. The document should be captioned “Objections to  
2 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
3 objections within the specified time may waive the right to appeal the District Court’s order.  
4 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5  
6 IT IS SO ORDERED.

7 Dated: December 10, 2013

/s/ Barbara A. McAuliffe  
8 UNITED STATES MAGISTRATE JUDGE