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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 FRANKLIN RAY BROWN,

9 Plaintiff,

10 v.

11 COUNTY OF FRESNO, et al.,

12 Defendants.
13
14

CASE NO. 1:14-CV-998---SMS

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF THE
SECOND AMENDED COMPLAINT
WITHOUT LEAVE TO AMEND AND THE
CASE CLOSED

15
16 Plaintiff Franklin Ray Brown (“Plaintiff”) brings this action *in pro se* and *in forma*
17 *pauperis* against several defendants for violations of civil rights pursuant to 42 U.S.C. section
18 1983. Plaintiff’s original complaint was screened and dismissed with leave to amend. Doc. 5.
19 Plaintiff filed a first amended complaint (“FAC”), also screened and dismissed with leave to
20 amend. Plaintiff filed a second amended complaint (“SAC”). Doc. 13. For the reasons below, the
21 Court recommends that Plaintiff’s SAC be dismissed without leave to amend.

22 I. SCREENING STANDARD

23 Under 28 U.S.C § 1915(e)(2), the Court must screen all complaints brought *in forma*
24 *pauperis* or by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000). The Court must
25 dismiss the complaint or any portion of it that is “frivolous,” “malicious,” “fails to state a claim
26 upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune
27 from such relief.” 28 U.S.C. § 1915(e)(2). To dismiss a complaint, or portion thereof, for failure to
28 state a claim, the Court applies the same standard as for motions to dismiss under Fed. R. Civ. P.

1 12(b)(6). *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). This screening for failure to
2 state a claim is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that a
3 defendant may choose to bring. *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

4 II. RULE 8

5 A complaint must contain “a short and plain statement of the claim showing that the
6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required,
7 but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
8 statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (citing *Bell Atlantic Corp.*
9 *v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted
10 as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 663 (quoting
11 *Twombly*, 550 U.S. at 570). While factual allegations are accepted as true, legal conclusions are
12 not. *Id.* at 678.

13 A pleading may not simply allege a wrong has been committed and demand relief. A
14 pleading must give fair notice of the claim being asserted and the grounds upon which it rests.
15 *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957); *Yamaguchi v. United States Department of Air*
16 *Force*, 109 F.3d 1475, 1481 (9th Cir. 1997).

17 If the Court determines that the complaint fails to state a claim, it should grant leave to
18 amend to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v.*
19 *Smith*, 203 F.3d at 1130. Dismissal of a *pro se* complaint for failure to state a claim is proper only
20 where it is obvious that the Plaintiff cannot prevail on the facts that he has alleged and that an
21 opportunity to amend would be futile. *Id.* at 1128.

22 III. SUMMARY OF ALLEGATIONS

23 According to the SAC, Plaintiff was incarcerated during December 2010. Plaintiff alleges
24 that he discovered that there were constitutional defects in the sentencing process, which made his
25 sentence unlawful. Plaintiff sought to have a civil judge evaluate the terms of his plea bargain.

26 On December 21, 2010, Plaintiff filed a lawsuit in the California State Court against the
27 Fresno County District Attorney’s Office (the “DA”) for breach of contract. He paid the court
28 filing fee. Plaintiff alleges he served the summons and complaint properly. At some point

1 defendant Tracy Meador, who is employed by Fresno County Risk Management, returned the
2 summons and complaint to Plaintiff, and stated that the County of Fresno required a specific way
3 of accepting a summons and complaint. Plaintiff alleges that the stated method of accepting
4 service was not in accord with the California Code of Civil Procedure.

5 Plaintiff moved for default judgment after receiving no response from the DA. He was
6 denied a hearing on his motion for default judgment.

7 In January 2011, the DA moved to quash service of summons. In support of their motion,
8 Stephanie Renteria, a DA employee, submitted a declaration containing untrue statements. She
9 stated that she did not receive personal service of process, but the summons and complaint were
10 mailed to the DA from the Superior Court of Fresno County. Ms. Renteria submitted as an exhibit
11 a manufactured envelope, which was allegedly the envelope in which she received Plaintiff's
12 summons and complaint in the state court action. However, this envelope had a postmark of
13 December 16, 2010, although Plaintiff did not file the action until December 21, 2010, and served
14 process on December 22, 2010. Ms. Meador also submitted a declaration.

15 Plaintiff alleges that these actions deprived him of his right to access the court by impeding
16 his claim, and constitute perjury, fraud and civil conspiracy. Plaintiff further alleges that the other
17 individual defendants in this action had knowledge of the civil rights violation and/or made policy
18 decisions that resulted in the denial of Plaintiff's right to access the court by his denial of a default
19 judgment hearing. Plaintiff wanted to use a court order granting default judgment "to collaterally
20 attack his sentence in a Writ Of Habeas Corpus or 1983 action to obtain his freedom." SAC ¶ 52.
21 Plaintiff alleges that if it were not for defendants' interference, he would have "received an order
22 from the court which would have given the judicial interpretation of the terms of the contract/plea
23 bargain." SAC ¶ 43. Plaintiff alleges that Fresno County failed to train its employees regarding
24 acceptance of service of process.

25 After these facts occurred, a form was created which instructs Fresno County employees
26 the proper way to handle accepting service of process. Plaintiff is no longer incarcerated.

27 IV. DISCUSSION

28 Plaintiff's FAC was dismissed because it did not state an access to courts claim or any

1 other federal claim. The Court order described the pleading requirements for an access to courts
2 claim and explained that Plaintiff had not adequately pled actual injury. Plaintiff's SAC does not
3 contain additional factual allegations, but adds allegations that clarify and emphasize his alleged
4 harm. He alleges that he suffered injury because he was denied unimpeded adjudication of his
5 legal claim, he was denied a hearing on his motion for default judgment, he was unable to obtain
6 default judgment against Defendants and use that judgment to support a habeas petition or
7 subsequent 1983 civil rights action, and he suffered and continues to suffer emotional distress.
8 SAC ¶¶ 40-43. However, these allegations do not cure the defect identified in the Court's prior
9 order and the SAC does not state a claim upon which relief may be granted. Plaintiff's SAC
10 should be dismissed for failure to state a claim.

11 A. Applicable Law

12 The Court's prior order dismissing the FAC informed Plaintiff that the elements of a
13 section 1983 case are "the deprivation of any rights, privileges, or immunities secured by the
14 Constitution and laws" by a "person" acting "under color of state law." *See* 42 U.S.C. § 1983. The
15 First Amendment right to petition the government includes a right of access to courts. *See Cal.*
16 *Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972).

17 States are required to assure all prisoners meaningful access to the courts. *Bounds v. Smith*,
18 430 U.S. 817, 824 (1977). For example, "indigent inmates must be provided at state expense with
19 paper and pen to draft legal documents, with notarial services to authenticate them, and with
20 stamps to mail them." *Id.* at 824-25. The inquiry is whether law libraries or other forms of legal
21 assistance are needed to give prisoners a reasonably adequate opportunity to present claimed
22 violations of fundamental constitutional rights to the courts. *Id.* at 825.

23 Plaintiff was also informed that an inmate bringing an access-to-courts case must allege
24 actual injury in the pursuit of direct appeals, habeas petitions, and section 1983 civil rights actions
25 to vindicate basic constitutional rights only. *See Lewis v. Casey*, 518 U.S. 343, 354 (1996). The
26 injury requirement is not satisfied "by just any type of frustrated legal claim." *Id.* Examples of
27 actual injury include having a case dismissed with prejudice and being unable to file legal actions.
28 *Id.* at 355.

1 B. Analysis

2 Plaintiff has alleged in his FAC that, while he was incarcerated, he properly served process
3 on the DA, that his papers were returned to him, and that DA employees manufactured an
4 envelope and lied in an affidavit submitted to the state court in a motion to quash service. Plaintiff
5 alleges that the DA, through its employees, did not accept service of process of his civil summons
6 and complaint, and insodoing, acted contrary to law. Because of the DA and its employee's
7 actions, Plaintiff was denied a default judgment hearing and a default judgment order. Taking
8 these facts as true, he has not alleged that he was deprived of his civil right to access the courts.
9 Plaintiff has still failed to allege that his habeas petition or civil rights action was dismissed,
10 unfiled, or otherwise foreclosed.

11 Plaintiff's alleged facts do not describe a harm that is anticipated and protected by the First
12 Amendment right of access to courts. As discussed, this right is infringed when a litigant is
13 prevented from bringing or litigating his appeal, habeas petition, or civil rights action. Plaintiff's
14 FAC alleges that he was prevented from bringing a civil breach of contract action against the DA
15 for breach of contract related to a plea bargain. Therefore, Plaintiff has not alleged that he was not
16 preventing from bringing an appeal of his criminal conviction, a habeas petition, or a civil rights
17 action, as anticipated and required by *Bounds* and *Casey*.

18 Even if the Court were to construe his breach of contract action as an appeal, habeas
19 petition, or civil rights action, he has not alleged actual injury in that he was hindered in any way
20 by any entity or individual from bringing or pursuing his civil action. Plaintiff must have alleged
21 that his action was unfiled, unheard, or otherwise foreclosed due to some government failure. He
22 has not made these allegations. His action was filed. He was free to re-serve the DA. He was free
23 to continue to pursue his claim to resolution without the desired default judgment order. The
24 allegations indicate that the DA would have accepted service of process by some means and that
25 Plaintiff was on notice of that means. Plaintiff alleges that defendant Tracy Meador returned his
26 papers in an envelope with a letter stating the DA's requirements for service. Plaintiff does not
27 allege that he attempted to re-serve according to the accepted means, or that the state court
28 prevented him from re-serving the summons and complaint after the order on the motion to quash.

1 In addition, Plaintiff does not allege that he attempted to bring a habeas petition in state court or a
2 direct appeal in order to challenge his sentence. The DA's alleged actions of refusing service and
3 making false statements in a court document did not prevent Plaintiff from filing or pursuing a
4 habeas petition or direct appeal.

5 Plaintiff has not alleged a cognizable section 1983 cause of action based on the right of
6 access to courts, or any other civil right. Hence, his first amended complaint should be dismissed.
7 Plaintiff is proceeding in pro se, and his pleadings are liberally construed. However, considering
8 the minimal changes between the FAC and the SAC, and his reinforcement of his allegations and
9 alleged harm which does not support a civil rights violation, it is clear that leave to amend would
10 be futile and Plaintiff cannot cure the defect. Leave to amend is not recommended.

11 C. State Court Claims

12 Plaintiff mentions in passing several state law claims, including fraud, perjury, and civil
13 conspiracy, but does not sufficiently plead any California cause of action. Should Plaintiff desire
14 to pursue an action based on violations of state law, that action would be properly brought in state
15 court, as the federal courts are of limited jurisdiction. See 28 U.S.C. § 1441. Plaintiff also should
16 be aware of any relevant statutes of limitation with regard to actions occurring in early 2010.

17 V. RECOMMENDATION

18 For the foregoing reasons, the Court RECOMMENDS that Plaintiff's SAC be
19 DISMISSED without leave to amend and the case closed.

20 These findings and recommendations are submitted to the United States District Court
21 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 72-
22 304 of the Local Rules of Practice for the United States District Court, Eastern District of
23 California. Within thirty (30) days after being served with a copy, Petitioner may file written
24 objections with the Court, serving a copy on all parties. Such a document should be captioned
25 "Objections to Magistrate Judge's Findings and Recommendations." The Court will then review

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1 the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that
2 failure to file objections within the specified time may waive the right to appeal the District
3 Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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6 IT IS SO ORDERED.

7 Dated: November 25, 2015

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE