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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 RAY GUTIERREZ,

12 Plaintiff,

13 vs.

14 R. DOMINGUEZ, et al.,

15 Defendants.  
16  
17  
18

1:14-cv-01866-GSA-PC

ORDER DISMISSING CASE, WITH  
PREJUDICE, FOR FAILURE TO STATE A  
CLAIM UNDER § 1983  
(ECF No. 16.)

ORDER THAT THIS DISMISSAL IS  
SUBJECT TO THE “THREE STRIKES”  
PROVISION OF 28 U.S.C. § 1915(g)

ORDER FOR CLERK TO CLOSE CASE

19 **I. BACKGROUND**

20 Ray Gutierrez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis  
21 with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint  
22 commencing this action on November 24, 2014. (ECF No. 1.) The Court screened the  
23 Complaint under 28 U.S.C. § 1915A and issued an order on September 22, 2015, dismissing  
24 the Complaint for failure to state a claim, with leave to amend. (ECF No. 15.) On October 26,  
25 2015, Plaintiff filed the First Amended Complaint, which is now before the Court for  
26 screening. (ECF No. 16.)

27 On December 10, 2014, Plaintiff consented to Magistrate Judge jurisdiction in this case  
28 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 8.)

1 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of  
2 California, the undersigned shall conduct any and all proceedings in the case until such time as  
3 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

4 **II. SCREENING REQUIREMENT**

5 The court is required to screen complaints brought by prisoners seeking relief against a  
6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
7 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
8 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
9 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
10 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
11 paid, the court shall dismiss the case at any time if the court determines that the action or  
12 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

13 A complaint is required to contain “a short and plain statement of the claim showing  
14 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are  
15 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
16 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
17 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are  
18 taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart  
19 Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).  
20 To state a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to  
21 ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S.  
22 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as  
23 true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting  
24 this plausibility standard. Id.

25 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

26 Plaintiff is presently incarcerated at High Desert State Prison in Susanville, California,  
27 in the custody of the California Department of Corrections and Rehabilitation. The events at  
28 issue in the First Amended Complaint allegedly occurred at the California Correctional

1 Institution (CCI) in Tehachapi, California, when Plaintiff was incarcerated there. Plaintiff  
2 names as defendants Correctional Officer (C/O) R. Dominguez, C/O R. J. Williams, Sergeant  
3 G. Doser, and Captain R. Mayo (collectively, "Defendants"), who were all employed at CCI at  
4 the time of the events at issue. Plaintiff's factual allegations follow.

5 On March 7, 2014, Plaintiff made numerous requests to attend the law library. He  
6 advised defendant Williams that he had a statute of limitations of November 24, 2014 for a  
7 habeas petition of a sentence. Williams advised Plaintiff he would be called in. The floor staff  
8 told Plaintiff he was scheduled to attend the law library, but he was crossed off the list and was  
9 unable to attend the law library until June 13, 2014. At the law library, Plaintiff was denied  
10 photocopies of the habeas petition because he did not have funds in his trust account. Plaintiff  
11 is indigent, and defendant Williams, who was the librarian, had a duty to supply indigent  
12 persons with supplies, photocopies, paper, pens, envelopes, etc.

13 Again in August, defendant Williams denied Plaintiff photocopies and mailing  
14 envelopes, which delayed the filing of Plaintiff's habeas petition. On August 20, 2014,  
15 Plaintiff attended a committee meeting where defendants Doser and Mayo were present.  
16 Plaintiff advised Doser and Mayo that defendant Williams denied him legal supplies, and they  
17 told Plaintiff they would talk to her (Williams). Plaintiff's request for access to the law library  
18 was approved on July 4, 2014, to start on October 20, 2014. On September 3, 2014, Plaintiff  
19 was moved to another yard without his property. Plaintiff advised defendant Dominguez about  
20 his November 20, 2014 deadline, that he had no property, pen, legal paper, envelopes,  
21 transcripts, or case citations, and that he was scheduled for the law library on October 20, 2014.

22 On October 16, 2014, Plaintiff received his legal property, but he was not called to the  
23 law library or scheduled for October 20, 2014, as was previously approved on July 4, 2014.  
24 Defendant Dominguez has been known to block or delay the filing of habeas petitions and  
25 lawsuits, to refuse to mail legal documents, to take away legal research materials, and to deny  
26 access to law books.

27 On October 29, 2014, Plaintiff filed a 602 appeal about defendant delaying Plaintiff's  
28 access to the law library, and denying him photocopies and mailing envelopes.

1 On November 6, 2014, Plaintiff attended the law library and handed defendant a habeas  
2 petition for photocopy service. Defendant Dominguez took the petition and proceeded to read  
3 it. Some of the documents concerned Dominguez, and Dominguez told Plaintiff he didn't need  
4 copies of those documents. Plaintiff explained that those were exhibits to his habeas petition to  
5 show that Plaintiff was being denied access to the courts. Dominguez continued reading  
6 plaintiff's petition and confronted him, saying he did not need the exhibits. Plaintiff told  
7 defendant Dominguez that he was not allowed to read his confidential mail. Dominguez only  
8 made two copies of the petition for Plaintiff, but Plaintiff needed three copies so he could keep  
9 one for his records. Plaintiff paid for the copies, which caused him to choose between  
10 purchasing deodorant and copies, because after paying for the copies he was left with a zero  
11 balance in his trust account.

12 Defendant also provided Plaintiff with an outdated habeas petition form. While he was  
13 organizing his habeas petition, Plaintiff received a revised habeas petition form with  
14 instructions to file an original plus two copies. Plaintiff believes that Defendant refused to give  
15 him enough copies with the intent that his petition would be rejected as improperly filed with  
16 the court.

17 On January 20, 2015, while attending the law library, Defendant advised Plaintiff that  
18 the copy machine was out of service, so Plaintiff could not get copies of his objections to the  
19 Magistrate Judge's findings and recommendations. Plaintiff was scheduled to attend the law  
20 library on January 22, 2015, but Defendant said he would not call Plaintiff to the library on that  
21 day. Defendant knew Plaintiff had a deadline to file his objections in thirteen days. On  
22 January 27, 2015, a normal day for Plaintiff's PLU (priority legal user) access, Defendant again  
23 failed to call Plaintiff to the law library. On January 29, 2015, Plaintiff was given access to the  
24 law library and he asked Defendant why he did not call him on January 27th, to which  
25 Defendant replied, "Things change, like the wind." Plaintiff gave Defendant several  
26 declarations to photocopy. One of the declarations was by "McCoy," who was a witness to  
27 Defendant reading Plaintiff's confidential mail. Defendant refused to make Plaintiff a copy of  
28 that declaration and when Plaintiff received his copies, the "McCoy" declaration was not

1 included, and Plaintiff asked Defendant where it was. Defendant told Plaintiff he was going to  
2 hold on to the declaration, and Plaintiff was escorted back to his cell.

3 On January 30, 2015, while at the law library, Plaintiff asked Defendant if he was going  
4 to call him to the library on February 2, 2016, the last day of Plaintiff's PLU access. Defendant  
5 replied no, and that he would not be there. Defendant then told Plaintiff that his legal mail did  
6 not go out last night and returned the declaration along with legal mail that did not go out.  
7 Defendant became aggressive and said, "You don't think I know where this is going, I know  
8 where this is going, your (sic) trying to f\*\*\* me, if you try to f\*\*\* me, it's not going to work  
9 and I will get your a\*\*." Plaintiff told Defendant that it is a federal crime for state actors to  
10 threaten him.

11 Plaintiff seeks monetary damages and costs of suit.

#### 12 **IV. PLAINTIFF'S CLAIMS**

13 The Civil Rights Act under which this action was filed provides:

14 Every person who, under color of any statute, ordinance, regulation, custom, or  
15 usage, of any State or Territory or the District of Columbia, subjects, or causes  
16 to be subjected, any citizen of the United States or other person within the  
17 jurisdiction thereof to the deprivation of any rights, privileges, or immunities  
secured by the Constitution and laws, shall be liable to the party injured in an  
action at law, suit in equity, or other proper proceeding for redress . . . .

18 42 U.S.C. § 1983

19 "[Section] 1983 'is not itself a source of substantive rights,' but merely provides 'a  
20 method for vindicating federal rights elsewhere conferred.'" Graham v. Connor, 490 U.S. 386,  
21 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman  
22 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697  
23 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);  
24 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). "To the extent that the violation of  
25 a state law amounts to the deprivation of a state-created interest that reaches beyond that  
26 guaranteed by the federal Constitution, Section 1983 offers no redress." Id.

27 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted  
28 under color of state law and (2) the defendant deprived him of rights secured by the

1 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.  
2 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing  
3 “under color of state law”). A person deprives another of a constitutional right, “within the  
4 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or  
5 omits to perform an act which he is legally required to do that causes the deprivation of which  
6 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th  
7 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite  
8 causal connection may be established when an official sets in motion a ‘series of acts by others  
9 which the actor knows or reasonably should know would cause others to inflict’ constitutional  
10 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of  
11 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”  
12 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City  
13 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

14 **A. Denial of Access to Courts**

15 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey,  
16 518 U.S. 343, 346 (1996); Phillips v. Hust, 588 F.3d 652, 655 (9th Cir. 2009). The right of  
17 access to the courts is merely the right to bring to court a grievance the inmate wishes to  
18 present, and is limited to direct criminal appeals, habeas petitions, and civil rights actions.  
19 Lewis, 518 U.S. at 354. While Plaintiff has a constitutional right to access the courts, the  
20 interferences complained of by Plaintiff must have caused him to sustain an actual injury.  
21 Christopher v. Harbury, 536 U.S. 403, 415 (2002); Lewis, 518 U.S. at 351; Hebbe v. Pliler, 627  
22 F.3d 338, 342 (9th Cir. 2010); Phillips, 588 F.3d at 655; Jones v. Blanas, 393 F.3d 918, 936  
23 (9th Cir. 2004). The absence of an injury precludes an access claim, and Plaintiff’s complaint  
24 is devoid of any facts suggesting any injury occurred. Harbury, 536 U.S. at 415-16; Jones, 393  
25 F.3d at 936.

26 Further, inmates do not have the right to a law library or legal assistance. Lewis, 518  
27 U.S. at 351. Law libraries and legal assistance programs are only the means of ensuring access  
28 to the courts. Id. Because inmates do not have “an abstract, freestanding right to a law library

1 or legal assistance, an inmate cannot establish relevant actual injury by establishing that his  
2 prison's law library or legal assistance program is subpar in some theoretical sense." Id.

3 Plaintiff alleges that Defendants' actions, which denied him sufficient access to the law  
4 library, writing materials, and envelopes, caused a delay in the filing of his habeas petition and  
5 other legal documents. However, Plaintiff does not allege facts suggesting that any actual  
6 injury occurred.

7 Plaintiff has no right to a law library or legal assistance. Lewis, 518 U.S. at 351.  
8 Because inmates do not have "an abstract, freestanding right to a law library or legal assistance,  
9 an inmate cannot establish relevant actual injury by establishing that his prison's law library or  
10 legal assistance is subpar in some theoretical sense." Id.

11 Therefore, Plaintiff fails to state a claim for denial of access to courts.

12 **B. Due Process**

13 Plaintiff claims that his rights to due process were violated. The Due Process Clause  
14 protects prisoners from being deprived of liberty or property without due process of law. Wolff  
15 v. McDonnell, 418 U.S. 539, 556 (1974); Wilkinson v. Austin, 545 U.S. 209, 221 (2005). In  
16 order to state a cause of action for deprivation of procedural due process, a plaintiff must first  
17 establish the existence of a property or liberty interest for which the protection is sought. Id.  
18 Plaintiff fails to establish the existence of a protected interest. Therefore, Plaintiff fails to state  
19 a claim for violation of due process.

20 **V. CONCLUSION**

21 The Court finds that Plaintiff fails to state any cognizable claims in the First Amended  
22 Complaint upon which relief may be granted under § 1983. The Court previously granted  
23 Plaintiff leave to amend the complaint, with ample guidance by the Court. Plaintiff has now  
24 filed two complaints without stating any claims upon which relief may be granted under §  
25 1983. The Court finds that the deficiencies outlined above are not capable of being cured by  
26 amendment, and therefore further leave to amend should not be granted. 28 U.S.C. §  
27 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

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1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. This case is DISMISSED, with prejudice, for failure to state a claim upon which  
3 relief may be granted under § 1983;
- 4 2. This dismissal is subject to the “three-strikes” provision set forth in 28 U.S.C. §  
5 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and
- 6 3. The Clerk is directed to close this case.

7  
8 IT IS SO ORDERED.

9 Dated: October 6, 2016

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE