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

HERMAN RENE ONTIVEROS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION and M. PORTER

Defendants.

No. 1:19-CV-01651-NONE-EPG (PC)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THE THIRD
AMENDED COMPLAINT BE DISMISSED
FOR FAILURE TO STATE A CLAIM AND
FOR LACK OF SUBJECT-MATTER
JURISDICTION

OBJECTIONS, IF ANY, DUE WITHIN 21
DAYS

(ECF No. 40)

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this Court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302. Plaintiff originally filed this suit on April 22, 2019. (ECF No. 1.) On January 13, 2020, the Court screened Plaintiff's second amended complaint, found that Plaintiff failed to state any claims, and granted leave to file a third amended complaint. (ECF No. 28). Plaintiff filed the third amended complaint, which is currently before the Court for screening, on July 2, 2020. (ECF No. 40).

For the reasons described below, the Court recommends that the federal claims be dismissed with prejudice for Plaintiff's failure to state a claim and that the state claims be dismissed without prejudice for lack of subject matter jurisdiction. Plaintiff may file objections to

1 these findings and recommendations within twenty-one days from the date of service of this
2 order.

3 **I. SCREENING REQUIREMENT**

4 The Court is required to screen complaints brought by prisoners seeking relief against a
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
6 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
7 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).
9 As Plaintiff is proceeding *in forma pauperis* (ECF No. 25), the Court may also screen the
10 complaint under 28 U.S.C. § 1915. “Notwithstanding any filing fee, or any portion thereof, that
11 may have been paid, the court shall dismiss the case at any time if the court determines that the
12 action or appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. §
13 1915(e)(2)(B)(ii).

14 A complaint is required to contain “a short and plain statement of the claim showing that
15 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
16 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
17 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
18 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
19 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
20 *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this
21 plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are not
22 required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681
23 (9th Cir. 2009) (internal quotation marks and citation omitted). Additionally, a plaintiff’s legal
24 conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

25 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal
26 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
27 *pro se* complaints should continue to be liberally construed after *Iqbal*).

28

1 **II. ALLEGATIONS IN THE COMPLAINT**

2 In his third amended complaint, Plaintiff alleges that while an inmate at California State
3 Prison-Corcoran he was denied access to the law library and paging service every week between
4 October 3, 2018 and January 1, 2019. (ECF No. 40 at 6-11).

5 Using the internal prison mail system, Plaintiff requested that the law librarian, Defendant
6 M. Porter, grant Plaintiff with physical access to the law library and various materials. However,
7 Defendant Porter denied Plaintiff such access. As a result, Plaintiff’s California writ of habeas
8 corpus case “was destroyed as I couldn’t effectively prosecut[e] it.” (*Id.* at 7). This “destroyed
9 [Plaintiff’s] chance to benefit from said writ.” (*Id.* at 9). Plaintiff alleges this denial of access
10 violated his federal and state constitutional rights and various state regulations. (*Id.* at 6-10).

11 **III. ANALYSIS OF PLAINTIFF’S CLAIMS**

12 **A. First Amendment Right of Access to Courts**

13 Here, Plaintiff claims that Defendants violated his right of access to the courts. He alleges
14 that this denial “thereby destroy[ed his] ability to prosecute the California writ of habeas corpus
15 (criminal) case # HSC-11286-SCS-2-64969, which destroyed my chance to benefit from said
16 writ.” (ECF No. 40 at 9).¹

17 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518 U.S.
18 343, 350 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). The right is limited to the filing of
19 direct criminal appeals, habeas petitions, and civil rights actions. *Id.* at 354. Claims for denial of
20 access to the courts may arise from the frustration or hindrance of “a litigating opportunity yet to
21 be gained” (forward-looking access claim) or from the loss of a suit that cannot now be tried
22 (backward-looking claim). *Christopher v. Harbury*, 536 U.S. 403, 412-15 (2002); *see also Silva*
23 *v. Di Vittorio*, 658 F.3d 1090, 1102 (9th Cir. 2011) (differentiating “between two types of access
24 to court claims: those involving prisoners’ right to affirmative assistance and those involving
25 prisoners’ rights to litigate without active interference”).

26 An “actual injury” is “actual prejudice with respect to contemplated or existing litigation,

27 ¹ He repeated this allegation several times. (*See, e.g., id.* at 7) (“My constitutional rights to meaningful access to the
28 courts were violated by Defendants and my California writ of Habeas Corpus case # HSC-11286-SCS-2-64969 was destroyed as I couldn’t effectively prosecuting it.”).

1 such as the inability to meet a filing deadline or to present a claim.” *Lewis*, 518 U.S. at 348; *see*
2 *also Jones v. Blanas*, 393 F.3d 918, 936 (9th Cir. 2004) (defining actual injury as the “inability to
3 file a complaint or defend against a charge”). Plaintiff need not show that he would have been
4 successful on the merits of his claims, but only that they were not frivolous. *Allen v. Sakai*, 48
5 F.3d 1082, 1085 & n.12 (9th Cir. 1994). A claim “is frivolous where it lacks an arguable basis
6 either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The Ninth Circuit has
7 emphasized that “[a] prisoner need not show, ex post, that he would have been successful on the
8 merits had his claim been considered. To hold otherwise would permit prison officials to
9 substitute their judgment for the courts’ and to interfere with a prisoner’s right to court access on
10 the chance that the prisoner’s claim would eventually be deemed frivolous.” *Allen*, 48 F.3d at
11 1091 (footnote omitted).

12 The nature and description of the underlying claim must be set forth in the pleading “as if
13 it were being independently pursued.” *Harbury*, 536 U.S. at 417. Hence, “the underlying cause of
14 action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair
15 notice to a defendant.” *Harbury*, 536 U.S. at 416 (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S.
16 506, 513–15 (2002)). Finally, Plaintiff must specifically allege the “remedy that may be awarded
17 as recompense but not otherwise available in some suit that may yet be brought.” *Id.* at 415.

18 Here, Plaintiff has alleged that he was not able to access the law library for seven of eight
19 weeks in 2018 and his writ of habeas corpus was “destroyed.” Plaintiff has failed to show that the
20 limited access caused him actual injury.

21 First, it is not clear his writ of habeas corpus case is non-frivolous. As the Court informed
22 Plaintiff when screening his second amended complaint, “[t]he underlying cause of action and its
23 lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a
24 defendant.” (ECF No. 28 at 7) (quoting *Harbury*, 536 U.S. at 416). Plaintiff provided no such
25 allegations.² Without allegations about the habeas case, there is no way to tell whether the
26 “destroyed” case is non-frivolous—or even what the case was about.

27
28 ² Plaintiff alleged his California writ of habeas corpus case number was “# HSC-11286-SCS-2-64969,” but the Court could not locate such a case.

1 Moreover, Plaintiff has not described how losing access to the library “destroyed” his
2 habeas case. That conclusory allegation was insufficiently specific. Plaintiff did not explain how
3 his case was destroyed. If he meant that a copy of his petition was destroyed, he did not explain
4 why he could not write a new petition or ask for additional time from the court. Plaintiff also
5 does not describe why his case was dismissed in a way that would permit the Court to determine
6 that the dismissal was related to the destruction of his petition. Without those types of allegations,
7 Plaintiff has failed to sufficiently plead that he was damaged due to his lack of access to the
8 courts under the legal standards set forth above.

9 Accordingly, Plaintiff has not stated a federal claim.

10 **B. State Law Claims**

11 Plaintiff alleges that the denial of access to the court violated the California state
12 constitution and 15 C.C.R. § 3122 *et seq.* These claims arise under California law.

13 1. State Law Claims Brought Under Section 1983

14 Section 1983 does not provide a cause of action for violations of state law. *See Galen v.*
15 *Cnty. of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007). To state a claim under § 1983, there
16 must be a deprivation of *federal* constitutional or statutory rights. *See Paul v. Davis*, 424 U.S. 693
17 (1976); *also see Buckley v. City of Redding*, 66 F.3d 188, 190 (9th Cir. 1995); *Gonzaga*
18 *University v. Doe*, 536 U.S. 273, 279 (2002). Therefore, the Court finds that Plaintiff has not
19 stated a claim thereunder.

20 2. Supplemental Jurisdiction

21 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of*
22 *Am.*, 511 U.S. 375, 377 (1994). “Article III, § 2, of the Constitution delineates [t]he character of
23 the controversies over which federal judicial authority may extend. And lower federal-court
24 jurisdiction is further limited to those subjects encompassed within a statutory grant of
25 jurisdiction. Accordingly, the district courts may not exercise jurisdiction absent a statutory
26 basis.” *Home Depot U. S. A., Inc. v. Jackson*, 139 S. Ct. 1743, 1746 (2019) (alteration in original)
27 (citations and internal quotation marks omitted).

28 “In 28 U.S.C. §§ 1331 and 1332(a), Congress granted federal courts jurisdiction over two

1 general types of cases: cases that aris[e] under federal law and cases in which the amount in
2 controversy exceeds \$ 75,000 and there is diversity of citizenship among the parties. These
3 jurisdictional grants are known as federal-question jurisdiction and diversity jurisdiction,
4 respectively. Each serves a distinct purpose: Federal-question jurisdiction affords parties a
5 federal forum in which to vindicate federal rights, whereas diversity jurisdiction provides a
6 neutral forum for parties from different States.” *Home Depot*, 139 S. Ct. at 1746 (alteration in
7 original) (citations and internal quotation marks omitted).

8 Additionally, “[e]xcept as provided in subsections (b) and (c) or as expressly provided
9 otherwise by Federal statute, in any civil action of which the district courts have original
10 jurisdiction, the district courts [] have supplemental jurisdiction over all other claims that are so
11 related to claims in the action within such original jurisdiction that they form part of the same
12 case or controversy under Article III of the United States Constitution. Such supplemental
13 jurisdiction shall include claims that involve the joinder or intervention of additional parties.” 28
14 U.S.C § 1367(a).

15 Subsection (c) of that statute permits district courts to decline supplemental jurisdiction in
16 certain situations:

17 The district courts may decline to exercise supplemental jurisdiction over a claim
18 under subsection (a) if--

- 19 (1) the claim raises a novel or complex issue of State law,
- 20 (2) the claim substantially predominates over the claim or claims over which the
21 district court has original jurisdiction,
- 22 (3) the district court has dismissed all claims over which it has original
23 jurisdiction, or
- 24 (4) in exceptional circumstances, there are other compelling reasons for declining
25 jurisdiction.

26 28 U.S.C § 1367(c)(1)-(4).

27 “The court’s discretion to decline jurisdiction over state law claims is informed by the
28 values of judicial economy, fairness, convenience, and comity.” *Snell v. Deutsche Bank Nat. Tr.
Co.*, 2015 WL 1440295, at *6 (E.D. Cal., Mar. 27, 2015) (citing *Acri v. Varian Assocs., Inc.*, 114
F.3d 999, 1001 (9th Cir. 1997) (*en banc*)).

Here, the Court has found that Plaintiff has failed to state any federal claims. Thus, it

1 recommends denying exercising supplemental jurisdiction on any potential remaining claims, 28
2 U.S.C. § 1367(c)(3), and dismissing these claims for lack of subject-matter jurisdiction.

3 **IV. CONCLUSION AND RECOMMENDATIONS**

4 The Court finds that Plaintiff’s complaint fails to state a cognizable claim. In its earlier
5 screening order, the Court found Plaintiff failed to state a claim and provided legal standards for
6 the federal cause of action. Because Plaintiff still failed to state a federal claim, the Court
7 recommends dismissing the federal claims with prejudice.

8 Accordingly, the Court HEREBY RECOMMENDS that:

- 9 1. Plaintiff’s federal law claim under section 1983 be DISMISSED, WITH
10 PREJUDICE, for failure to state a claim upon which relief may be granted;
- 11 2. Plaintiff’s state law claims be DISMISSED, WITHOUT PREJUDICE, for lack of
12 subject-matter jurisdiction; and
- 13 3. The Clerk of Court be directed to close this case.

14 These findings and recommendations are submitted to the district judge assigned to the
15 case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty-one (21) days** after
16 being served with these findings and recommendations, Plaintiff may file written objections with
17 the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
18 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
19 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
20 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21 IT IS SO ORDERED.

22
23 Dated: July 8, 2020

24 /s/ Eric P. Gray
25 UNITED STATES MAGISTRATE JUDGE
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