



1 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
2 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
3 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
5 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
6 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
7 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
8 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.  
9 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
10 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94, and construe  
11 the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232,  
12 236 (1974).

13 In his second amended complaint, plaintiff claims that he is being denied access to a law  
14 library and his “personal legal property” by certain defendants “prejudiced the plaintiff in two  
15 active civil litigations.” ECF No. 19 at 15. However, plaintiff does not explain how he was  
16 prejudiced and he does not allege he was ever actually denied access to any court. While  
17 prisoners do have a right to access courts which arises under the First Amendment, Lewis v.  
18 Casey, 518 U.S. 343, 350 (1996), they do not have a freestanding right to access a law library, id.  
19 at 351.

20 Plaintiff also claims retaliation for complaints made by him concerning conditions of  
21 confinement. However, these retaliation claims are not adequately supported as plaintiff fails to  
22 point to specific facts which reasonably link adverse actions not taken in furtherance of legitimate  
23 correctional goals with protected activity, such as filing prisoner grievances. See Pratt v.  
24 Rowland, 65 F.3d 802, 806 (9th Cir. 1995).

25 Finally, plaintiff claims certain defendants denied him adequate mental health treatment.  
26 But plaintiff fails to allege facts suggesting he suffered injury because of any defendant’s  
27 deliberate indifference to known mental health problems. See Estelle v. Gamble, 429 U.S. 97,  
28 104-05 (1976).


1 For the reasons stated above, plaintiff's second amended complaint fails to state a claim  
2 upon which relief can be granted. On two occasions, the court has provided plaintiff with  
3 guidance as to the deficiencies with his claims and, in particular, the court informed plaintiff that  
4 his claims were too vague and lacking sufficient factual support. Despite the court's instructions,  
5 plaintiff has not been able to allege facts amounting to a claim upon which he can proceed. For  
6 these reasons, granting plaintiff leave to amend a third time appears futile.

7 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district  
8 court judge to this case; and

9 IT IS HEREBY RECOMMENDED that this action be dismissed for failure to state a  
10 claim upon which relief can be granted.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen after  
13 being served with these findings and recommendations, plaintiff may file written objections with  
14 the court. The document should be captioned "Objections to Magistrate Judge's Findings and  
15 Recommendations." Plaintiff is advised that failure to file objections within the specified time  
16 waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
17 1991).

18 Dated: January 29, 2018

19   
20 CAROLYN K. DELANEY  
21 UNITED STATES MAGISTRATE JUDGE

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24 warn2143.14(2)