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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BOBBY BEJARANO,  
Plaintiff,  
v.  
DAVID BAUGHMAN, et al.,  
Defendants.

No. 2:17-cv-0812 JAM DB P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff's complaint and application to proceed in forma pauperis are before the court.

**I. In Forma Pauperis Application**

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments

1 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
2 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
3 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
4 1915(b)(2).

## 5 **II. Screening Requirement**

6 The in forma pauperis statute provides, "Notwithstanding any filing fee, or any portion  
7 thereof, that may have been paid, the court shall dismiss the case at any time if the court  
8 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be  
9 granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

## 10 **III. Pleading Standard**

11 Section 1983 "provides a cause of action for the deprivation of any rights, privileges, or  
12 immunities secured by the Constitution and laws of the United States." Wilder v. Virginia Hosp.  
13 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of  
14 substantive rights, but merely provides a method for vindicating federal rights conferred  
15 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

16 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a  
17 right secured by the Constitution or laws of the United States was violated and (2) that the alleged  
18 violation was committed by a person acting under the color of state law. See West v. Atkins, 487  
19 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

20 A complaint must contain "a short and plain statement of the claim showing that the  
21 pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
22 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
23 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
24 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual  
25 matter, accepted as true, to state a claim to relief that is plausible on its face." Id. Facial  
26 plausibility demands more than the mere possibility that a defendant committed misconduct and,  
27 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

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1 **IV. Plaintiff's Allegations**

2 At all times relevant to this action, plaintiff was a state inmate housed at California State  
3 Prison in Sacramento, California ("CSP-Sac"). He names as defendants David Baughman, CSP-  
4 Sac Warden; M. Turner, librarian; J. Lynch, Associate Warden; J. Macomber, Warden; and K.  
5 Spencer, Supervisor of Academic / Vocational Programs. Each defendant is sued in his/her  
6 individual and official capacities.

7 Plaintiff's allegations are brief and reproduced here in their entirety:

8 On 11-6-15 I [went] to the law library to make copies of my crucial  
9 documents (actual deadline was 11-9-15) but based on training I  
10 could not make copies. I missed my court deadline and my petition  
11 got denied for untimeliness. I finally was able to make copies on  
12 11-10-15 therefore causing my petition to be untimely. I was denied  
access to courts for inadequate law library under the 1st  
Amendment. Each defendant was involve[d] for denying me the  
right to make copies and continued denial of an inadequate law  
library.

13 Compl. at 3.

14 Plaintiff seeks damages, injunctive relief, and declaratory relief.

15 **V. Discussion**

16 **A. Eleventh Amendment Immunity**

17 "The Eleventh Amendment bars suits for money damages in federal court against a state  
18 [and] its agencies . . . ." Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007).  
19 Even where the state is not named in the action, if the state is the real, substantial party in interest  
20 it is entitled to invoke Eleventh Amendment immunity. Edelman v. Jordan, 415 U.S. 651, 663  
21 (1974). The Eleventh Amendment does not immunize the State from suits seeking prospective  
22 injunctive relief. Jackson v. Hayakawa, 682 F.2d 1344, 1351 (9th Cir. 1982). Nor does the  
23 Eleventh Amendment bar suits seeking damages from public officials acting in their personal  
24 capacities. Hafer v. Melo, 502 U.S. 21, 30 (1991). "Personal-capacity suits . . . seek to impose  
25 individual liability upon a government officer for actions taken under color of state law." Hafer,  
26 502 U.S. at 25. In this action, plaintiff is suing all of the defendants in their official and individual  
27 capacities. Insofar as plaintiff seeks monetary relief from the defendants in their official  
28 capacities, he is barred by the Eleventh Amendment.

1           **B.     Linkage**

2           Section 1983 provides a cause of action for the violation of plaintiff's constitutional or  
3 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d  
4 1087, 1092 (9th Cir. 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);  
5 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). To state a claim, a plaintiff must  
6 demonstrate that each defendant personally participated in the deprivation of his rights. Iqbal, 556  
7 U.S. at 677; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v.  
8 City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones, 297 F.3d at 934. Plaintiff's  
9 complaint does not include any charging allegations specific to any of the defendants. Rather, he  
10 claims each defendant was somehow involved in his inability to obtain timely photocopies. It is  
11 unclear, though, how and to what extent each named defendant personally participated in the  
12 deprivation of plaintiff's rights.

13           To the extent that plaintiff alleges liability under § 1983 based on any of the defendants'  
14 roles as supervisory officials, the Supreme Court has emphasized that the term "supervisory  
15 liability," loosely and commonly used by both courts and litigants alike, is a misnomer. Iqbal, 556  
16 U.S. at 677. "Government officials may not be held liable for the unconstitutional conduct of their  
17 subordinates under a theory of respondeat superior." Id. at 676. Rather, each government official,  
18 regardless of his or her title, is only liable for his or her own misconduct. Id. at 677. Accordingly,  
19 plaintiff fails to state a claim against any of the defendants in their supervisory capacities.

20           **C.     Access to Court**

21           Since plaintiff alleges that his right of access to the courts has been violated by the  
22 defendants, the court herein provides the relevant legal standards for asserting a viable claim.

23           Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey,  
24 518 U.S. 343, 346 (1996); Silva v. Di Vittorio, 658 F.3d 1090, 1101 (9th Cir. 2011); Phillips v.  
25 Hust, 588 F.3d 652, 655 (9th Cir. 2009). Claims for denial of access to the courts may arise from  
26 the frustration or hindrance of "a litigating opportunity yet to be gained" (forward-looking access  
27 claim) or from the loss of a meritorious suit that cannot now be tried (backward-looking claim).  
28 Christopher v. Harbury, 536 U.S. 403, 412-15 (2002).

1 In either instance, “the injury requirement is not satisfied by just any type of frustrated  
2 legal claim.” Lewis, 518 U.S. at 354. Inmates do not enjoy a constitutionally protected right “to  
3 transform themselves into litigating engines capable of filing everything from shareholder  
4 derivative actions to slip-and-fall claims.” Id. at 355. Rather, the type of legal claim protected is  
5 limited to direct criminal appeals, habeas petitions, and civil rights actions such as those brought  
6 under section 1983 to vindicate basic constitutional rights. Id. at 354 (quotations and citations  
7 omitted). “Impairment of any other litigating capacity is simply one of the incidental (and  
8 perfectly constitutional) consequences of conviction and incarceration.” Id. at 355 (emphasis in  
9 original).

10 To assert a forward-looking access claim, the non-frivolous “underlying cause of action  
11 and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice  
12 to a defendant.” Christopher v. Harbury, 536 U.S. 403, 416 (2002). To state such a claim, the  
13 plaintiff must describe this “predicate claim ... well enough to apply the ‘non-frivolous’ test and  
14 to show that the ‘arguable’ nature of the underlying claim is more than hope.” Id. It is not enough  
15 for plaintiff merely to conclude that the claim was non-frivolous. The complaint should instead  
16 “state the underlying claim in accordance with Federal Rule of Civil Procedure 8(a) just as if it  
17 were being independently pursued, and a like plain statement should describe any remedy  
18 available under the access claim and presently unique to it.” Id. at 417-18.

19 Moreover, when a prisoner asserts that he was denied access to the courts and seeks a  
20 remedy for a lost opportunity to present a legal claim, he must show: (1) the loss of a non-  
21 frivolous or arguable underlying claim; (2) the official acts that frustrated the litigation; and (3) a  
22 remedy that may be awarded as recompense but that is not otherwise available in a future suit.  
23 Phillips v. Hust, 477 F.3d 1070, 1076 (9th Cir. 2007) (citing Christopher, 536 U.S. at 413-14,  
24 overruled on other grounds, Hust v. Phillips, 555 U.S. 1150 (2009) (reversed and remanded  
25 Phillips v. Hust, on qualified immunity grounds without change or discussion of elements of  
26 access to court claims)).

27 Here, plaintiff claims only that his “petition” was denied as untimely as a result of  
28 defendants’ conduct. He does not specify the type of petition that he filed or the claims

1 underlying it. Additionally, and as noted supra, he fails to link any allegations to a specific  
2 individual named as a defendant in this action. As presently pled, plaintiff's complaint fails to  
3 state an actionable access to court claim.

#### 4 **VI. Conclusion**

5 For the aforementioned reasons, plaintiff's complaint does not state a claim for relief. The  
6 Court will grant plaintiff an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d  
7 1446, 1448-49 (9th Cir. 1987). If plaintiff opts to amend, he must demonstrate that the alleged  
8 acts resulted in a deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff must  
9 set forth "sufficient factual matter . . . to 'state a claim that is plausible on its face.'" Id. at 678  
10 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate that each named  
11 defendant personally participated in a deprivation of his rights. Jones v. Williams, 297 F.3d 930,  
12 934 (9th Cir. 2002).

13 Plaintiff should note that although he has been given the opportunity to amend, it is not for  
14 the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff  
15 should carefully read this Screening Order and focus his efforts on curing the deficiencies set  
16 forth above.

17 Finally, plaintiff is advised that Local Rule 220 requires that an amended complaint be  
18 complete in itself without reference to any prior pleading. As a general rule, an amended  
19 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).  
20 Once an amended complaint is filed, the original complaint no longer serves any function in the  
21 case. Therefore, in an amended complaint, as in an original complaint, each claim and the  
22 involvement of each defendant must be sufficiently alleged. The amended complaint should be  
23 clearly and boldly titled "First Amended Complaint," refer to the appropriate case number, and be  
24 an original signed under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R.  
25 Civ. P. 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a  
26 right to relief above the speculative level . . . ." Twombly, 550 U.S. at 555 (citations omitted).

27 Accordingly, it is HEREBY ORDERED that:

- 28 1. The July 27, 2017, findings and recommendations (ECF No. 7) are vacated;

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2. Plaintiff's application to proceed in forma pauperis (ECF No. 6) is granted;
3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith;
4. Plaintiff's complaint is dismissed;
5. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and two copies of the amended complaint; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: August 10, 2017

  
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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