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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CIRON B. SPRINGFIELD,  
Plaintiff,

v.

M. KHALIT, et al.,  
Defendants.

No. 2: 17-cv-2675 JAM KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s second amended complaint filed March 25, 2019. (ECF No. 18.) For the reasons stated herein, the second amended complaint is dismissed with leave to file a third amended complaint.

On November 14, 2018, the undersigned issued an order and findings and recommendations screening plaintiff’s first amended complaint. (ECF No. 11.) The first amended complaint named as defendants law librarians Lindquist and Khalit (identified as defendant “Khalil” in the November 14, 2018 order and findings and recommendations), Law Librarian Supervisor Denneg and Correctional Officer Brady. (Id. at 1.) The first amended complaint raised claims alleging due process violations, retaliation and denial of access to the courts. The undersigned recommended that the due process and access to the courts claims be dismissed. (Id. at 11.) The undersigned dismissed the retaliation claim with leave to amend.

1 (Id.)

2 Defendants Khalit and Brady are named as defendants in the second amended complaint.  
3 In the second amended complaint, plaintiff alleges that on July 14, 2017, he filed a grievance  
4 alleging that defendants Khalit and Brady retaliated against him for filing a grievance alleging  
5 inadequate law library access.

6 Plaintiff alleges that on July 20, 2017 defendant Khalit retaliated against him for filing the  
7 July 14, 2017 grievance by failing to send an escort officer to take plaintiff to the law library as a  
8 Preferred Legal User (“PLU”). Plaintiff alleges that on July 20, 2017, defendant Brady retaliated  
9 against him for filing the July 14, 2017 grievance by failing to issue a ducat for plaintiff to attend  
10 the law library despite receiving the ducat.<sup>1</sup>

11 Allegations of retaliation against a prisoner’s First Amendment rights to speech or to  
12 petition the government may support a section 1983 claim. Pratt v. Rowland, 65 F.3d 802, 807  
13 (9th Cir. 1995). “Within the [detention] context, a viable claim of First Amendment retaliation  
14 entails five basic elements: (1) An assertion that a state actor took some adverse action against an  
15 inmate (2) because of (3) that [inmate’s] protected conduct, and that such action (4) chilled the  
16 inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a  
17 legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

18 For the reasons stated herein, the undersigned finds that plaintiff has not plead sufficient  
19 facts demonstrating the first and fourth elements of a retaliation claim, i.e., adverse action and a  
20 chilling effect. To satisfy the pleading requirements for the fourth element, plaintiff must allege  
21 that defendants engaged in “acts that would chill or silence a person of ordinary firmness from  
22 future First Amendment activities.” Robinson, 408 F.3d at 568 (internal quotation marks and  
23 emphasis omitted). An objective standard governs the chilling inquiry. Brodheim v. Cry, 584  
24 F.3d 1262, 1270 (9th Cir. 2009).

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25 <sup>1</sup> In the second amended complaint, plaintiff also alleges that defendants Khalit and Brady  
26 denied him law library access on June 15, 2017 and retaliated against him for filing numerous  
27 Form 22s “and the forthcoming 602,” i.e., the grievance allegedly filed on July 14, 2017.  
28 However, it appears that the retaliation claim in the second amended complaint is based on the  
allegation that defendants denied plaintiff law library access on July 20, 2017 in retaliation for the  
July 14, 2017 grievance.

1 To satisfy the pleading requirements for the second element of a retaliation claim, plaintiff  
2 must allege that the “defendant took adverse against the plaintiff,” though “the adverse action  
3 need not be an independent constitutional violation.” Watison v. Carter, 668 F.3d 1108, 1114  
4 (9th Cir. 2012). However, not every allegedly adverse action is sufficient to support a claim for  
5 retaliation under § 1983. Id. (harm must be “more than minimal”) (quoting Rhodes, 408 F.3d at  
6 568 n. 11); Bell v. Johnson, 308 F.3d 594, 603 (6th Cir. 2002) (“[S]ome adverse actions are so de  
7 minimis that they do not give rise to constitutionally cognizable injuries.” (citing Thaddeaus-X v.  
8 Blatter, 175 F.3d 378, 396 (6th Cir. 1999).)

9 Plaintiff alleges that defendants denied him law library access on one occasion while he  
10 had PLU status. The undersigned finds that the denial of law library access on one occasion to an  
11 inmate with PLU status would not silence an inmate of ordinary firmness from future First  
12 Amendment activities, such as filing grievances. See Cheatham v. Benson, 2017 WL 5150788 at  
13 \*10 (W.D. Mich. 2017) (denial of access to library on one occasion is not sufficiently adverse to  
14 deter a reasonable person from engaging in protected conduct); Polansky v. Wrenn, 2012 WL  
15 5878384 at \*3 (D.N.H. 2012) (“Occasional denials of access to the law library, delays in the  
16 availability of for-purchase items, and being required to pay for copies of documents, without  
17 more, are normal incidents of prison life. The court finds that the ‘adverse acts’ alleged are  
18 insufficient to deter an inmate of ordinary firmness from filing a lawsuit. The acts alleged are  
19 thus de minimis and cannot support a retaliation claim.”)

20 The undersigned also finds that the denial of law library access on one occasion, without  
21 more, does not constitute an adverse action. See Meeks v. Schofield, 625 Fed.Appx. 697, 702  
22 (6th Cir. 2015) (denial of access to the library on one occasion is de minimis conduct that does  
23 not constitute an adverse action); Gordon v. Bertsch, 2015 WL 10319307 at \*10 (D.N.D. 2015)  
24 (the allegation that plaintiff was told on one occasion that he could not access the law library  
25 without more is not a sufficiently adverse action of an objective basis to satisfy the second  
26 element of a claim for retaliation); Anderson v. Akinjide, 2008 WL 2964145, at \*6 (S.D. Tex.  
27 July 30, 2008) (denying prisoner access to law library on one occasion was de minimis).

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1 Plaintiff does not claim that the alleged denial of law library access on July 20, 2017, had  
2 a chilling effect on his filing of future grievances. In fact, plaintiff alleges that the July 14, 2017  
3 grievance alleged that defendants had previously retaliated against him for filing a grievance  
4 alleging inadequate law library access. Plaintiff's failure to allege that defendants' actions caused  
5 plaintiff to suffer a chilling effect supports the undersigned's findings that plaintiff has not plead  
6 sufficient facts in support of the fourth element of a retaliation claim.

7 The undersigned also observes that plaintiff has not alleged that the denial of law library  
8 access on one occasion caused him to suffer any harm.

9 For the reasons discussed above, plaintiff's second amended complaint is dismissed.  
10 Plaintiff is granted leave to file a third amended complaint to address the pleading defects  
11 discussed above.

12 Accordingly, IT IS HEREBY ORDERED that plaintiff's second amended complaint (ECF  
13 No. 18) is dismissed with thirty days to file a third amended complaint; failure to file a third  
14 amended complaint within that time will result in a recommendation of dismissal of this action.

15 Dated: April 18, 2019

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18 KENDALL J. NEWMAN  
19 UNITED STATES MAGISTRATE JUDGE

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