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

FREDERICK E. LEONARD,
Plaintiff,
v.
GURMEET KAUR,
Defendant.

Case No. 2:19-CV-2271-TLN-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Defendant’s motion for summary judgment, ECF No. 37, Plaintiff’s opposition, ECF No. 40, and Defendant’s reply, ECF No. 41. Additionally, before the Court is Plaintiff’s cross-motion for summary judgment, ECF No. 43, Defendant’s opposition, ECF No. 46, and Plaintiff’s reply, ECF No. 49. Plaintiff’s single claim alleges that Defendant, a prison librarian, denied him the use of the video viewing station in the prison law library, in violation of his First Amendment right to access courts.

Both parties move for summary judgment. Defendant argues she is entitled to summary judgment because Plaintiff’s underlying case is frivolous, and she did not prevent him from meeting a court-ordered deadline. ECF No. 37 at 1. In addition, she contends that she is entitled to qualified immunity. Id. Plaintiff argues he is entitled to summary judgment because

1 Defendant violated his right to access to the courts and that Defendant is not entitled to qualified
2 immunity. ECF No. 43. The undersigned finds that there is no genuine dispute about whether
3 Defendant violated Plaintiff's right of access to the courts and thus recommends that Defendant's
4 motion for summary judgment be granted and Plaintiff's cross-motion for summary judgment be
5 denied.

7 I. BACKGROUND

8 Plaintiff commenced this civil rights action on November 8, 2019. ECF No. 1. At
9 the relevant times, Plaintiff was a priority legal user ("PLU"), meaning he was allowed additional
10 time in the prison law library. Id. Plaintiff was a PLU because he had court-ordered deadlines in
11 an active case, Leonard v. Casillas, et al., No. 2:18-CV-2004-CKD-P.

12 Plaintiff alleges in his complaint that on three dates, June 6, 7, and 8 of 2019,
13 Defendant prohibited him from using the video viewing station in the law library, which barred
14 him from filing objections to a court order. ECF No. 1 at 1-4. Specifically, he claims that
15 Defendant did not allow him to utilize the viewing station in the library while he conducted legal
16 research. Id. at 3. Plaintiff additionally alleges that Defendant accused him of "monopolizing"
17 the video equipment and he feared pursuing his legal work because Defendant threatened him
18 with disciplinary action. Id. He also alleges that on June 8, 2019, Defendant told him that he was
19 wasting his time as PLU and that she would consider his actions in the future when deciding
20 whether to grant him PLU status. Id. at 4.

21 Plaintiff commenced the underlying case of Leonard v. Casillas, et al., No. 2:18-
22 CV-2004-CKD-P on June 7, 2018. ECF No. 1. In that case, he brought several claims against
23 three defendants: Casillas, Foster, and Shahid. Id. In a screening order, the Court found that
24 Plaintiff's retaliation claim against Casillas was cognizable. Id. However, it found the following
25 claims were not cognizable: (1) deliberate indifference to Plaintiff's serious medical needs against
26 Casillas, (2) indeliberate indifference to Plaintiff's due process rights against Shahid and Foster,
27 and (3) due process violations against Shahid and Casillas. Id. The Court gave Plaintiff two
28 options: proceed on his complaint, subject its dismissal of the incognizable claims, or amended

1 his complaint. Id. The Court allowed him fourteen days to notify the Court of his decision. Id.
2 On May 6, 2019, Plaintiff notified the Court that he elected to amend his complaint. ECF No. 11.
3 The Court granted Plaintiff thirty days from the date of service (May 10, 2019) to file his
4 amended complaint. ECF No. 12. On May 31, 2019, Plaintiff filed his first amended complaint.
5 ECF No. 13. The Court issued another screening order addressing Plaintiff's first amended
6 complaint on June 6, 2019. ECF No. 15. There, the Court found that Plaintiff had stated viable
7 claims against Casillas and Foster for retaliation and against Shahid and Foster for due process.
8 Id. However, the Court found Plaintiff's claims against Shahid and Foster for deliberate
9 indifference to Plaintiff's due process rights and his claim against Casillas for due process did not
10 state viable claims. Id. The Court dismissed those claims and ordered Plaintiff to file any
11 objections within fourteen days of June 6, 2019, meaning he had until June 20, 2019. Id.
12 Plaintiff did not file any objections, and the Court ultimately dismissed those claims without leave
13 to amend. ECF No. 20.

14 15 **II. THE PARTIES' EVIDENCE**

16 **A. Defendant's Evidence**

17 Defendant's motion for summary judgment is supported by declarations of L.
18 Pigniolo, a California Department of Corrections and Rehabilitation ("CDCR") California State
19 Prison ("CSP")-Solano Librarian, ECF No. 37-5, and Stacia L. Johns, a Deputy Attorney General
20 employed by the Office of the Attorney General for the State of California and Defendant's
21 counsel, ECF No. 37-4, as well as portions of Plaintiff's deposition transcript and interrogatory
22 responses, id. at 4-18. Defendant also submitted a Statement of Undisputed Facts, ECF No. 37-3,
23 contending the following facts are undisputed:

24 1. Plaintiff Frederick Leonard (BD7691) is a prisoner in the
25 custody of the California Department of Corrections and Rehabilitation
26 (CDCR). (Compl. 1, ECF No. 1.) Plaintiff was housed at Solano State
Prison at times material to the matters at issue. (Id. at 1-2.)

27 2. At all times relevant to this action, Defendant Kaur was
28 employed by CDCR at Solano State Prison as a Senior Librarian. (Compl.
2, ECF No. 1.)

1 3. Plaintiff initiated the action in Leonard v. Casillas, et al.,
2 Case No. 2:18-cv-2004 (E.D. Cal.) on July 20, 2018. (Def.'s Req. for
3 Judicial Notice (RJN), Ex. B.) The complaint alleged that the defendants,
4 G. Casillas, A. Shahid, and P. Foster, violated his rights under the First,
5 Eighth, and Fourteenth Amendments. (Id.)

6 4. On April 24, 2019, the court screened the complaint,
7 finding that Plaintiff failed to state claims upon which relief could be
8 granted with respect to his claims against defendants Shahid and Foster,
9 and with respect to his deliberate indifference and due process claims
10 against Casillas. (RJN Ex. C.) The court gave Plaintiff the option to
11 proceed on his retaliation against defendant Casillas or amend the
12 complaint. (Id.) The court ordered Plaintiff to complete and return a form
13 notifying the court as to how he chose to proceed within fourteen days.
14 (Id.)

15 5. On May 6, 2019, Plaintiff filed a notice indicating he would
16 amend the complaint. (RJN Ex. D.)

17 6. On May 10, 2019, the court ordered Plaintiff to amend his
18 complaint within thirty days. (RJN Ex. E.) The order stated that if
19 Plaintiff failed to amend the complaint, the case would proceed on the
20 original complaint as screened. (Id.)

21 7. Plaintiff filed an amended complaint on May 31, 2019.
22 (RJN Ex. F.) The amended complaint alleged that the defendants G.
23 Casillas, A. Shahid, and P. Foster violated Plaintiff's rights under the First,
24 Eighth, and Fourteenth Amendments. (Id.)

25 8. On June 6, 2019, the court issued findings and
26 recommendations with respect to Plaintiff's First Amended Complaint.
27 (RJN Ex. G.) The court found service appropriate with respect to
28 Plaintiff's First Amendment claims against defendants Casillas and Foster.
29 (Id.) The court also found service appropriate with respect to Plaintiff's
30 due process claims against defendants Foster and Shahid. (Id.) The court
31 recommended that Plaintiff's due process claim against defendant Casillas
32 and his deliberate indifference claims against defendants Shahid and
33 Foster be dismissed without leave to amend. (Id.) The court ordered that
34 any objections to the findings and recommendations were due within
35 fourteen days. (Id.) The court served the order on Plaintiff by mail. (RJN
36 Ex. A.)

37 9. Plaintiff's objections to the findings and recommendations
38 were due June 24, 2019. (Fed. R. Civ. Proc. 6(a)(1)(C), (d).)

39 10. Plaintiff received the findings and recommendations on
40 approximately June 10, 2019, or June 11, 2019. (Pl.'s Dep. 46:20-47:5;
41 Pl.'s Response to Def.'s Interrogatory No. 5.)

42 11. Plaintiff never filed objections to the findings and
43 recommendations issued June 6, 2019. (RJN Ex. A.) The district judge
44 adopted the magistrate judge's findings and recommendations on July 22,
45 2019. (Id.)

1 12. The case Leonard v. Casillas, et al., Case No. 2:18-cv-2004
2 (E.D. Cal.) remains pending at the time of this motion. (RJN Ex. A.)

3 13. At all relevant times, Plaintiff had Priority Legal User
4 (PLU) status in the prison library. (Compl. 3-4, ECF No. 1; Pigniolo Decl.
5 ¶ 4, Ex. A.)

6 14. On June 6, 2019, Plaintiff visited the law library from
7 approximately 7:50 a.m. to 11:30 a.m., and from 12:40 p.m. to 2:30 p.m.
8 He used the video viewing station from 8:30 a.m. to 11:30 a.m., and from
9 12:45 p.m. to 2:30 p.m. (Pigniolo Decl. ¶¶ 6-7; Exs. B, C.)

10 15. On June 7, 2019, Plaintiff visited the library from 7:30 a.m.
11 to 11:30 a.m., and from 12:50 p.m. to 2:30 p.m. (Id.) He used the video
12 viewing station from 7:55 a.m. to 9:10 a.m., from 10:30 a.m. to 11:30
13 a.m., and from 1:00 p.m. to 2:20 p.m. (Id.)

14 16. On June 8, 2019, Plaintiff visited the library from 7:40 a.m.
15 to 11:30 a.m., and from 12:40 p.m. to 2:30 p.m. (Id.) He used the video
16 viewing station from 7:40 a.m. to 9:20 a.m. (Id.)

17 17. On June 11, 2019, Plaintiff visited the library from 8:08
18 a.m. to 11:30 a.m., and from 12:30 p.m. to 2:30 p.m. (Id.) He used the
19 video viewing station from 8:45 a.m. to 11:20 a.m. (Id.)

20 18. On June 12, 2019, Plaintiff visited the library from 8:15
21 a.m. to 11:30 a.m., and from 12:40 p.m. to 2:30 p.m. (Id.) He used the
22 video viewing station from 10:10 a.m. to 11:10 a.m., and from 12:35 p.m.
23 to 2:30 p.m. (Id.)

24 19. On June 13, 2019, Plaintiff visited the library from 7:37
25 a.m. to 11:30 a.m. and from 12:35 p.m. to 2:30 p.m. (Id.) He used the
26 video viewing station from 8:00 a.m. to 10:00 a.m., from 10:10 a.m. to
27 11:10 a.m., and from 12:35 p.m. to 2:20 p.m. (Id.)

28 20. On June 14, 2019, Plaintiff visited the library from 7:40
a.m. to 11:30 a.m., and from 12:35 p.m. to 2:30 p.m. (Id.) He used the
video viewing station from 8:00 a.m. to 11:30 a.m., and from 12:35 p.m.
to 2:30 p.m. (Id.)

 21. On June 15, 2019, Plaintiff visited the library from
approximately 1:20 p.m. to 2:30 p.m. (Id.) He used the video viewing
station from 1:20 p.m. to 2:20 p.m. (Id.)

 22. On June 18, 2019, Plaintiff visited the library from 7:40
a.m. to 11:30 a.m., and from 12:40 p.m. to 2:30 p.m. (Id.) He used the
video viewing station from 8:00 a.m. to 9:15 a.m., and from 12:40 p.m. to
2:20 p.m. (Id.)

 23. On June 19, 2019, Plaintiff visited the library from 7:40
a.m. to 11:30 a.m., and from 12:40 p.m. to 2:30 p.m. (Id.) He used the
video viewing station from 8:00 a.m. to 11:30 a.m., and from 12:40 p.m.
to 2:25 p.m. (Id.)

1 24. On June 20, 2019, Plaintiff visited the library from 7:40
2 a.m. to 11:30 a.m., and from 12:40 p.m. to 2:30 p.m. (Id.) He used the
3 video viewing station from 8:00 a.m. to 9:15 a.m. (Id.)

4 25. On June 21, 2019, Plaintiff visited the library from 7:45
5 a.m. to 11:30 a.m. (Id.) He used the video viewing station from 8:05 a.m.
6 to 11:15 a.m. (Id.)

7 26. On June 22, 2019, Plaintiff visited the library from 12:47
8 p.m. to 2:30 p.m. (Pignuolo Decl. ¶ 6, Ex. B.)

9 27. On June 6, 7, and 8, 2019, Plaintiff used the video viewing
10 station to watch JFK, a 1991 film starring Kevin Costner. (Pignuolo Decl.
11 ¶ 8, Ex. D.)

12 28. Plaintiff used the video viewing station to watch JFK on
13 June 11, 13, 14, 15, 18, 19, 20, and 21, 2019. (Id.)

14 29. JFK was the only film Plaintiff viewed in the library in
15 June 2019. (Id.)

16 ECF No. 37-3.

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18 **B. Plaintiff's Evidence**

19 In response to Defendant's Statement of Undisputed Facts, Plaintiff offers his own
20 declaration signed under penalty of perjury. ECF No. 40 at 1-2. He states in his declaration that
21 Defendant's motion for summary judgment is untimely and thus should not be considered by this
22 Court. Id. at 2.

23 In support of his cross-motion for summary judgment, Plaintiff filed a Statement
24 of Disputed Facts asserting genuine issues of disputed fact. See ECF No. 43. In support of his
25 opposition, Plaintiff offers his own declaration signed under penalty of perjury, see id. at 3-6, as
26 well as the following exhibits:

27 Exhibit A Plaintiff's complaint, id. at 20.

28 Exhibit B Plaintiff's administrative grievance log # 19-01603 and second and
 third level responses, id. at 25.

 Exhibit C Plaintiff's administrative grievance log # 19-01599 and second and
 third level response, id. at 33.

 Exhibit D Plaintiff's administrative grievance log # 19-01159 and second
 third level response, id. at 42.

 Exhibit E Plaintiff's inmate request for interview, id. at 49.

- 1 Exhibit F Defendant’s responses to Plaintiff’s first set of interrogatories, id. at 51.
- 2
- 3 Exhibit G Defendant’s responses to Plaintiff’s first set of requests for admissions, id. at 64.
- 4 Exhibit H Defendant’s responses to Plaintiff’s second set of requests for admissions, id. at 75.
- 5
- 6 Exhibit I Defendant’s responses to Plaintiff’s second set of interrogatories, id. at 85.
- 7
- 8 Exhibit J Plaintiff’s PLU status memorandum dated id. at 95.
- 9
- 10 Exhibit K Court order in case Leonard v. Casillas, Case No. 2:18-cv-2004-CKD (P), dated April 24, 2019, id. at 99.
- 11
- 12 Exhibit L Plaintiff’s PLU status memorandum and court order in case Leonard v. Casillas, Case No. 2:18-cv-2004-CKD (P), dated May 10, 2019, id. at 112.
- 13
- 14 Exhibit M Plaintiff’s requested extension of PLU status and Leonard v. Casillas, Case No. 2:18-cv-2004-CKD (P), dated June 6, 2019 id. at 119.
- 15
- 16 Exhibit N Court order from Leonard v. Casillas, Case No. 2:18-cv-2004-WBS-CKD (P), dated July 19, 2019, id. at 132.
- 17
- 18 Exhibit O Plaintiff’s PLU status memorandum dated November 1, 2019, and a settlement conference memorandum dated December 5, 2019 id. at 137.
- 19
- 20 Exhibit P Video Library Request from CSP-Solano Prison dated June 7 and 8, 2019, id. at 142.
- 21
- 22 Exhibit Q Declaration of Keith Harrell, id. at 144.

20 Because Plaintiff is pro se, the Court “must consider as evidence in his opposition
 21 to summary judgment all of [the] contentions offered in motions and pleadings, where such
 22 contentions are based on personal knowledge and set forth facts that would be admissible in
 23 evidence, and where [Plaintiff] attested under penalty of perjury that the contents of the motions
 24 or pleadings are true and correct.” Jones v. Blanas, 393 F.3d 918, 923 (9th Cir. 2004). Therefore,
 25 the Court will also consider as evidence the factual assertions made in Plaintiff’s complaint,
 26 which is verified.

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1 **III. STANDARD FOR SUMMARY JUDGEMENT**

2 The Federal Rules of Civil Procedure provide for summary judgment or summary
3 adjudication when “the pleadings, depositions, answers to interrogatories, and admissions on file,
4 together with affidavits, if any, show that there is no genuine issue as to any material fact and that
5 the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a). The
6 standard for summary judgment and summary adjudication is the same. See Fed. R. Civ. P.
7 56(a), 56(c); see also Mora v. ChemTronics, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998). One of
8 the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. See
9 Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Under summary judgment practice, the
10 moving party

11 . . . always bears the initial responsibility of informing the district court of
12 the basis for its motion, and identifying those portions of “the pleadings,
13 depositions, answers to interrogatories, and admissions on file, together
14 with the affidavits, if any,” which it believes demonstrate the absence of a
15 genuine issue of material fact.

16 Id., at 323 (quoting former Fed. R. Civ. P. 56(c)); see also Fed. R. Civ. P.
17 56(c)(1).

18 If the moving party meets its initial responsibility, the burden then shifts to the
19 opposing party to establish that a genuine issue as to any material fact actually does exist. See
20 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to
21 establish the existence of this factual dispute, the opposing party may not rely upon the
22 allegations or denials of its pleadings but is required to tender evidence of specific facts in the
23 form of affidavits, and/or admissible discovery material, in support of its contention that the
24 dispute exists. See Fed. R. Civ. P. 56(c)(1); see also Matsushita, 475 U.S. at 586 n.11. The
25 opposing party must demonstrate that the fact in contention is material, i.e., a fact that might
26 affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.
27 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th
28 Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could
return a verdict for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436
(9th Cir. 1987). To demonstrate that an issue is genuine, the opposing party “must do more than

1 simply show that there is some metaphysical doubt as to the material facts Where the record
2 taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no
3 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted). It is sufficient that “the
4 claimed factual dispute be shown to require a trier of fact to resolve the parties’ differing versions
5 of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631.

6 In resolving the summary judgment motion, the Court examines the pleadings,
7 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.
8 See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed, see Anderson,
9 477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed before the
10 court must be drawn in favor of the opposing party, see Matsushita, 475 U.S. at 587.
11 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to
12 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen
13 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.
14 1987). Ultimately, “[b]efore the evidence is left to the jury, there is a preliminary question for the
15 judge, not whether there is literally no evidence, but whether there is any upon which a jury could
16 properly proceed to find a verdict for the party producing it, upon whom the onus of proof is
17 imposed.” Anderson, 477 U.S. at 251.

18 IV. DISUCSSION

19 Plaintiff alleges that Defendant violated his First Amendment right to access courts
20 by denying him the use of the prison law library’s video viewing station on June 6, 7, and 8,
21 2019. Defendant avers that she is entitled to summary judgment for three reasons. ECF No. 37 at
22 1. First, she argues Plaintiff’s underlying case was frivolous. Id. Second, she contends there is
23 no evidence that she blocked him from meeting a court-ordered deadline. Id. Finally, she argues
24 she is entitled to qualified immunity. Id. Plaintiff argues that Defendant violated his right to
25 access courts and that she is not entitled to summary judgment.¹ ECF No. 43. Having
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27 ¹ Plaintiff also asserts that Defendant retaliated against him and interfered with his
28 access to courts on additional dates. As Plaintiff failed to include either of these claims in the
complaint, this Court will not address them at this time. See Gonzalez v. City of Fed. Way, 299
F. App’x. 708, 710 (9th Cir. 2008).

1 considered the evidence, the Court concludes Defendant did not violate Plaintiff's First
2 Amendment right. The Court therefore recommends granting Defendant's motion and denying
3 Plaintiff's motion.

4 Prisoners have a First Amendment right of access to the courts. See Lewis v.
5 Casey, 518 U.S. 343, 346 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977); Jones v. Williams,
6 791 F.3d 1023, 1035 (9th Cir. 2015); Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995). Prison
7 officials must "assist inmates in the preparation and filing of meaningful legal papers by
8 providing prisoners with adequate law libraries or adequate assistance from persons trained in the
9 law." Bounds, 430 U.S. at 828; Silva v. Di Vittorio, 658 F.3d 1090, 1103 (9th Cir. 2011)
10 (overruled on other grounds as stated by Richey v. Dahne, 807 F.3d 1202, 1209 n.6 (9th Cir.
11 2015). But the right does not require a particular methodology. See Lewis, 518 U.S. at 356. It
12 guarantees the "capability of bringing contemplated challenges to sentences or conditions of
13 confinement before the courts." Id. It does not promise to turn inmates into effective litigators.
14 See id. at 354-55; Phillips v. Hust, 588 F.3d 652, 655 (9th Cir. 2009). The right of access secures
15 the ability to present non-frivolous claims to the court, it does not secure a right to discover
16 claims or litigate them effectively once filed. See Lewis, 518 U.S. at 354-55; Phillips, 477 F.3d at
17 655. The tools required are those that inmates need to attack their sentences or challenge
18 conditions of confinement. See Lewis, 518 U.S. at 355; Phillips, 477 F.3d at 655. "Impairment
19 of any other litigating capacity is simply one of the incidental (and perfectly constitutional)
20 consequences of conviction and incarceration." Lewis, 518 U.S. at 355; see Phillips, 477 F.3d at
21 655. The right is restricted to non-frivolous criminal appeals, civil rights actions under 42 U.S.C.
22 § 1983, and habeas corpus petitions. Lewis, 518 U.S. at 353 n.3, 354-56.

23 The United States Supreme Court has identified two categories of access-to-court
24 claims. Christopher v. Harbury, 536 U.S. 403, 412-13 (2002). The first category includes
25 "forward-looking" claims, which allege that official action presently frustrates a plaintiff's ability
26 to prepare and file a suit. Id. at 413. The second category, "backward-looking" claims, allege
27 that due to official action, a specific case "cannot now be tried (or tried with all material
28 evidence), no matter what official action may be in the future." Id. at 413-14. These cases look

1 “backward to a time when specific litigation ended poorly, or could not have commenced, or
2 could have produced a remedy subsequently unobtainable.” Id. at 414.

3 To establish an access to the court violation, a prisoner must identify an actual
4 injury. Lewis, 518 U.S. at 349-351; Nev. Dep’t of Corrs. v. Greene, 648 F.3d 1014, 1018 (9th
5 Cir. 2011); Urmancheev v. Anglea, No.:1:19-cv-00791-DAD-JLT (PC), 2020 WL 1904818, at *2
6 (E.D. Cal. Apr. 17, 2020). An actual injury is “actual prejudice with respect to contemplated or
7 existing litigation, such as the inability to meet a filing deadline or to present a claim.” Lewis,
8 518 U.S. at 349; Urmancheev, 2019 WL 1904818, at *2. An actual injury is a jurisdictional
9 requirement and may not be waived. See Lewis, 518 U.S. at 348-52; Urmancheev, 2019 WL
10 1904818, at *2. And in the backward-looking context more specifically, a plaintiff must identify:
11 (1) loss of a “nonfrivolous,” “arguable” underlying claim; (2) the official acts that frustrated the
12 litigation of the underlying claim; and (3) a remedy that “may be awarded as recompense but [is]
13 not otherwise available in some suit that may yet be brought.” Harbury, 536 U.S. at 414-18;
14 Urmancheev, 2019 WL 1904818, at *2; Kabede v. Brown, No. 2:16-cv-1765 DB (P), 2017 WL
15 714300, at *6 (E.D. Cal. Feb. 22, 2017).

16 Under California prison regulations, to be eligible for PLU status, inmates must
17 demonstrate that they have a court ordered deadline in an active case or a statutory deadline, and
18 they must not be represented by counsel. Cal. Code Regs. tit. 15 § 3122 (b) (1), (2). Generally,
19 an inmate can obtain PLU status within 30 calendar days of the court-ordered deadline. See id. at
20 (b)(5). An inmate with PLU status may have their status revoked or be removed from the library
21 if they are “observed by staff to act in an unreasonably disruptive manner or [] engage in non-
22 legal work.” Id. at (b)(7). Additionally, use the law library is “for the purpose of using its legal
23 resources.” Cal. Code Regs. tit. 15 § 3123(a). And while all inmates are entitled to access the
24 law library, “[i]nmates on PLU status may receive a minimum of 4 hours per calendar week of
25 requested physical law library access, as resources are available, and shall be given higher
26 priority to the law library resources.” Id. at (b).

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1 Both parties argue that the opposing motions are untimely. Pursuant to the
2 scheduling order, the deadline for filing dispositive motions was March 29, 2019. ECF No. 21.
3 Defendant filed her motion on March 29, 2019, ECF No. 37, and thus it is timely. Plaintiff's
4 motion, on the other hand, was not file until April 23, 2021. ECF No. 43. Despite this, the Court
5 will consider Plaintiff's motion given that Defendant's opposition substantively addresses it.

6 Turning to the merits, the undisputed evidence shows that Plaintiff had access to
7 the prison law library and its video viewing station.² Indeed, the law library access logs establish
8 that he was in the law library for a total of 16 hours and 38 minutes on June 6, 7, and 8, 2019.
9 ECF No. 37-5 at 55-65. As for the video viewing station, the logs indicate Plaintiff used it for 3
10 hours on June 6, 2 hours and 20 minutes on June 7, and 1 hour and 40 minutes on June 8. Id. at
11 78-79. Plaintiff's evidence does not refute the logs which show that he had access to the law
12 library as well as the video viewing station. Accordingly, Plaintiff cannot succeed on his claim.
13 The Court finds that Defendant has met her summary judgment burden of demonstrating the
14 absence of triable issues of fact arising from Plaintiff's allegation and that Plaintiff has not
15 overcome this showing with evidence establishing a triable issue of fact. Thus, this Court
16 recommends granting Defendant's motion and denying Plaintiff's motion.

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25 ² Aside from the evidence showing that Plaintiff had access to the library and video
26 viewing station, the evidence also shows that he did not know about the pending court deadline
27 until after he claimed Defendant denied him access. See ECF No. 37-4 at 46-47 (Plaintiff
28 acknowledging he did not receive the Court order with deadlines until June 11, 2019); ECF No.
37-4 at 15-16 (Plaintiff acknowledging he did not receive the Court order with deadlines until
June 10, 2019).

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V. CONCLUSION

Based on the foregoing, the undersigned recommends that Defendant's motion for summary judgment, ECF No. 37, be granted, and Plaintiff's cross-motion for summary judgment, ECF No. 43, be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to the objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 3, 2021



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE