

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

11 II. Factual Allegations of the First Amended Complaint

12 The first amended complaint alleges that defendants Bruns and Hicks violated plaintiff’s
13 right to access the courts. ECF No. 23. Specifically, plaintiff alleges that on November 18, 2018,
14 Bruns wrote him up for a disciplinary violation of which he was later found guilty. Id. at 6. He
15 appealed through the grievance system and his grievance was granted because video surveillance
16 footage showed no indecent exposure. Id. On March 7, 2022, plaintiff asked Hicks to make
17 copies of his PREA complaint but she never returned his grievance paperwork, causing him to
18 miss his “civil deadline” and the video footage showing her at his cell door taking his grievance
19 was destroyed. Id. at 6-8.

20 III. Failure to State a Claim

21 As plaintiff was previously advised, an inmate’s constitutional right to access the courts
22 covers only limited types of cases: direct appeals from convictions for which the inmates are
23 incarcerated, habeas petitions, and civil rights actions regarding prison conditions. Lewis v.
24 Casey, 518 U.S. 343, 354 (1996). “Impairment of any *other* litigating capacity is simply one of
25 the incidental (and perfectly constitutional) consequences of conviction and incarceration.” Id. at
26 355. To state a claim based on denial of access to the courts, a plaintiff must allege facts
27 demonstrating that he “suffered injury by being shut out of court.” Christopher v. Harbury, 536
28 U.S. 403, 415 (2002); Lewis, 518 U.S. at 351. “[T]he complaint should [also] state the

1 underlying claim in accordance with Federal Rule of Civil Procedure 8(a), just as if it were being
2 independently pursued.” Christopher, 536 U.S. at 417-18 (footnote omitted).

3 As in the original complaint, plaintiff makes only a vague and conclusory assertion that
4 Hicks caused him to miss his “civil deadline” and be “shut out of court.” He once again fails to
5 provide any facts regarding the underlying claim that would allow the court to determine whether
6 he was pursuing the type of case that would be covered by the constitution. Even assuming that
7 plaintiff was pursuing a habeas petition or civil rights action related to the disciplinary violation
8 or his PREA complaint, plaintiff provides no facts regarding the basis for his claim from which
9 the court can find that it was nonfrivolous. With respect to the new allegations against Bruns, it is
10 unclear how the claim against Bruns is related to that against Hicks, particularly considering the
11 nearly three-and-a-half-year-gap between the incidents. Moreover, there are no facts showing
12 that Bruns’ conduct denied plaintiff access to the courts, and even if the court assumes the
13 disciplinary charges were false, false statements by a correctional officer do not violate an
14 inmate’s constitutional rights and cannot, based on alleged falsity alone, support a claim under 28
15 U.S.C. § 1983. See Hines v. Gomez, 108 F.3d 265, 268 (9th Cir. 1997) (“[T]here are no
16 procedural safeguards protecting a prisoner from false retaliatory accusations.”).

17 IV. No Leave to Amend

18 Leave to amend should be granted if it appears possible that the defects in the complaint
19 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31
20 (9th Cir. 2000) (en banc). However, if, after careful consideration, it is clear that a complaint
21 cannot be cured by amendment, the court may dismiss without leave to amend. Cato v. United
22 States, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

23 The undersigned finds that, as set forth above, the complaint fails to state a claim upon
24 which relief may be granted. Plaintiff has already been given an opportunity to amend the
25 complaint and advised what kind of information he needed to provide. Given the lack of
26 additional facts to support the claims against Hicks, and the nature of the equally vague and
27 conclusory allegations against Bruns, it does not appear that further amendment would result in a
28 cognizable claim. As a result, leave to amend would be futile and the complaint should be

1 dismissed without leave to amend.

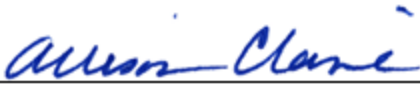
2 V. Plain Language Summary of this Order for a Pro Se Litigant

3 It is being recommended that your complaint be dismissed without leave to amend
4 because you have not alleged facts showing that your right to access the courts was violated.

5 In accordance with the above, IT IS HEREBY RECOMMENDED that the first amended
6 complaint be dismissed without leave to amend for failure to state a claim.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
9 after being served with these findings and recommendations, plaintiff may file written objections
10 with the court. Such a document should be captioned “Objections to Magistrate Judges Findings
11 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
12 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
13 (9th Cir. 1991).

14 DATED: January 3, 2025

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16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE
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