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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GREGORY SYLVESTER RIDEAU, Jr.,
CDCR #K-32522,

Plaintiff,

vs.

L. MINNICK, et al.,

Defendants.

Civil No. 09cv0296 BTM (WMc)

**ORDER SUA SPONTE DISMISSING
THIRD AMENDED COMPLAINT
FOR FAILING TO STATE A
CLAIM PURSUANT TO
28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

I. PROCEDURAL HISTORY

On February 17, 2009, Plaintiff, Gregory Sylvester Rideau, Jr., a state inmate currently incarcerated at Calipatria State Prison and proceeding pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983. Before the Court could conduct its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and 1915A(b), Plaintiff filed a First Amended Complaint (“FAC”). The Court dismissed Plaintiff’s FAC on August 6, 2009 but permitted him leave to file a Second Amended Complaint in order to correct the deficiencies of pleading identified by the Court.

1 See Aug. 6, 2009 Order at 7-8. On September 8, 2009, Plaintiff filed his Second Amended
2 Complaint (“SAC”). The Court, once again, dismissed his SAC for failing to state a claim. See
3 Oct. 26, 2009 Order at 7-8. Plaintiff appealed this Order to the Ninth Circuit Court of Appeals
4 on November 6, 2009. This Appeal was later dismissed because the Order from which Plaintiff
5 appealed was not yet final. On December 18, 2009, this Court dismissed Plaintiff’s entire action
6 and entered judgment because Plaintiff had failed to file a Third Amended Complaint. On
7 January 15, 2010, Plaintiff sought leave to reopen the case which was granted by this Court.
8 Plaintiff then requested and received extensions of time to file his Third Amended Complaint.
9 Finally, on June 4, 2010, Plaintiff filed his Third Amended Complaint (“TAC”).

10 **II. SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2) and § 1915A**

11 **A. Standard**

12 As the Court stated in its previous Orders, the Prison Litigation Reform Act (PLRA”)
13 obligates the Court to review complaints filed by all persons proceeding IFP and by those, like
14 Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced for, or
15 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole,
16 probation, pretrial release, or diversionary program,” “as soon as practicable after docketing.”
17 See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these provisions, the Court must sua sponte
18 dismiss any IFP or prisoner complaint, or any portion thereof, which is frivolous, malicious, fails
19 to state a claim, or which seeks damages from defendants who are immune. See 28 U.S.C. §§
20 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§
21 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

22 As currently pleaded, the Court finds that Plaintiff’s Third Amended Complaint fails to
23 state a cognizable claim under 42 U.S.C. § 1983. Section 1983 imposes two essential proof
24 requirements upon a claimant: (1) that a person acting under color of state law committed the
25 conduct at issue, and (2) that the conduct deprived the claimant of some right, privilege, or
26 immunity protected by the Constitution or laws of the United States. See 42 U.S.C. § 1983;
27 *Nelson v. Campbell*, 541 U.S. 637, 124 S.Ct. 2117, 2122 (2004); *Haygood v. Younger*, 769 F.2d
28 1350, 1354 (9th Cir. 1985) (en banc).

1 In each one of Plaintiff's pleadings from his original Complaint to this Third Amended
2 Complaint, he has sought to challenge the method by which money is garnished from his inmate
3 trust account to pay towards his restitution that was imposed when he was convicted and
4 sentenced in 1996.

5 In his Third Amended Complaint, Plaintiff claims various prison officials used an
6 "accounting fraud scheme" in violation of his Fourteenth Amendment rights to garnish money
7 from his inmate trust account. *See* TAC at 4. Specifically, Plaintiff claims that prison officials
8 were improperly categorizing monies that he received from his family as "inmate wages." *Id.*
9 Even if that were the case, the monies that Plaintiff receives from his family, or other sources,
10 and deposited into his inmate trust account can be subjected to garnishment towards the amount
11 of restitution he owes. California law requires a restitution fine to be collected in a manner set
12 forth by Cal. Pen. Code § 2085.5(a) which provides, in part, that:

13 "the Director of Corrections shall deduct a minimum of 20 percent or the balance owing
14 on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and
15 trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer
that amount to the California Victim Compensation and Government Claims Board for
deposit in the Restitution Fund in the State Treasury."

16 Cal. Pen. Code § 2085.5(a)

17 As the Court previously informed Plaintiff, there are certain exemptions from this
18 garnishment but he must plead facts to show that the monies deposited by his family or friends
19 fall under these exemptions which are as follows:

20 "Joint Venture Program Deposits, funds designated to pay the costs of a family visit
21 ("family visit funds"), Temporary Community Leave funds, federal disability payments, veteran
22 benefits, any reimbursement to an inmate as a result of a claim for lost or damaged property, or
money reimbursed to an inmate due to a failed attempt to purchase merchandise are exempt for
fines and direct orders of restitution."

23 CAL. CODE REGS. TIT. 15, § 3097(j).

24 Once again, there are no facts alleged that any of the funds deposited in Plaintiff's inmate
25 trust account fall under any of these exemptions. For example, while Plaintiff claims that he
26 receives funds from his family, he does not allege that any of these funds are designated to pay
27 the costs of a family visit, which is one of the exemptions.

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1 In addition, as the Court previously informed Plaintiff, where a prisoner alleges the
2 deprivation of a liberty or property interest caused by the unauthorized negligent or intentional
3 action of a prison official, such as the claims of accounting fraud, the prisoner cannot state a
4 constitutional claim where the state provides an adequate post-deprivation remedy. See
5 *Zinerman v. Burch*, 494 U.S. 113, 129-32 (1990); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984).
6 The California Tort Claims Act (“CTCA”) provides an adequate post-deprivation state remedy
7 for the random and unauthorized taking of property. *Barnett v. Centoni*, 31 F.3d 813, 816-17
8 (9th Cir. 1994). Here, Plaintiff claims that his property was fraudulently taken from his inmate
9 trust account and he continues to seek repayment for the alleged destruction of a typewriter. As
10 to both of these claims, Plaintiff has an adequate state post-deprivation remedy and his claims
11 relating to the alleged accounting fraud and loss of his typewriter are not cognizable in this §
12 1983 action, and must be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

13 Plaintiff also alleges that he has been denied access to the courts through “procedural
14 default.” TAC at 12. Plaintiff alleges that he could not “exhaust his administrative remedies
15 upon this issue to even file a Board of Control claims.” *Id.* Prisoners do “have a constitutional
16 right to petition the government for redress of their grievances, which includes a reasonable right
17 of access to the courts.” *O’Keefe v. Van Boening*, 82 F.3d 322, 325 (9th Cir. 1996). To establish
18 a violation of the right to access to the courts, however, a prisoner must allege facts sufficient
19 to show that: (1) a nonfrivolous legal attack on his conviction, sentence, or conditions of
20 confinement has been frustrated or impeded, and (2) he has suffered an actual injury as a result.
21 *Lewis v. Casey*, 518 U.S. 343, 353-55 (1996). An “actual injury” is defined as “actual prejudice
22 with respect to contemplated or existing litigation, such as the inability to meet a filing deadline
23 or to present a claim.” *Id.* at 348.

24 To demonstrate an “actual injury” Plaintiff would have to allege facts to show that he has
25 a nonfrivolous legal attack on his conditions of confinement related to the garnishment of a
26 portion of his funds from his inmate trust account. In order to assert an Eighth Amendment
27 claim for deprivation of humane conditions of confinement a prisoner must satisfy two
28 requirements: one objective and one subjective. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994);

1 *Allen v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1994). Under the objective requirement, the
2 plaintiff must allege facts sufficient to show that “a prison official’s acts or omissions
3 . . . result[ed] in the denial of the ‘minimal civilized measure of life’s necessities.’” *Farmer*, 511
4 U.S. at 834 (quoting *Rhodes*, 452 U.S. at 347). This objective component is satisfied so long
5 as the institution “furnishes sentenced prisoners with adequate food, clothing, shelter, sanitation,
6 medical care, and personal safety.” *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982);
7 *Farmer*, 511 U.S. at 534. Here, Plaintiff has not alleged in any of his pleadings that the
8 garnishment of his inmate trust account has led to the denial of adequate food, clothing, shelter,
9 sanitation, medical care or personal safety. Plaintiff’s inability to file a claim for the return of
10 the monies garnished from his trust account or the replacement of his typewriter would not rise
11 to the level of a nonfrivolous attack on the conditions of his confinement.

12 Thus, the Court finds that Plaintiff has failed to allege that “a complaint he prepared was
13 dismissed,” or that he was “so stymied” by any individual defendant’s actions that “he was
14 unable to even file a complaint,” direct appeal or petition for writ of habeas corpus that was not
15 “frivolous.” *Lewis*, 518 U.S. at 351; *Christopher*, 536 U.S. at 416 Therefore, Plaintiff’s access
16 to courts claims must be dismissed for failing to state a claim upon which section 1983 relief can
17 be granted.

18 Plaintiff also brings a number of state law claims in this action. However, because
19 Plaintiff cannot identify a violation of a federal law, the Court exercises its discretion to dismiss
20 Plaintiff’s pendent state law claims without prejudice. *See* 28 U.S.C. § 1367(c)(3) (“The district
21 court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if ...
22 the district court has dismissed all claims over which it has original jurisdiction.”); *United Mine*
23 *Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966) (“if the federal claims are dismissed
24 before trial, ... the state claims should be dismissed as well.”).

25 **III. CONCLUSION AND ORDER**

26 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

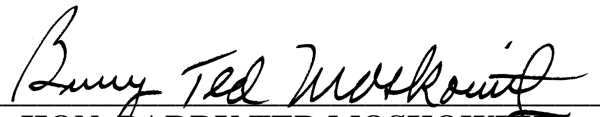
27 Plaintiff’s Third Amended Complaint is **DISMISSED** for failing to state a claim upon
28 which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b). Moreover,

1 because the Court finds amendment of Plaintiff's § 1983 claims would be futile at this time,
2 leave to amend is **DENIED**. See *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir.
3 1996) (denial of a leave to amend is not an abuse of discretion where further amendment would
4 be futile); see also *Robinson v. California Bd. of Prison Terms*, 997 F. Supp. 1303, 1308 (C.D.
5 Cal. 1998) ("Since plaintiff has not, and cannot, state a claim containing an arguable basis in
6 law, this action should be dismissed without leave to amend; any amendment would be futile.")
7 (citing *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996)).

8 The Clerk shall close the file.

9 **IT IS SO ORDERED.**

10 DATED: June 28, 2010



HON. BARRY TED MOSKOWITZ
United States District Judge

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