



1 State Bar Review Court’s ruling, on September 29, 2011, Plaintiff was charged with 11  
2 felony charges adding up to possibly 20 years in State Prison.” *Id.* ¶¶ 9-10. “On  
3 January 23, 2012 Plaintiff signed a plea bargain/no contest to one felony and two  
4 misdemeanor counts because she been frightened and intimidated with the eleven felony  
5 charges made against her and the corresponding prison time. Plaintiff also feared that  
6 the perjured statements of the former clients made at the state bar trial would be  
7 believed at a criminal trial.” *Id.* ¶ 15. “At the end of February 2012, the Review  
8 Department [of the State Bar of California] affirmed the [State Bar] Trial Court’s  
9 ruling.” *Id.*, Ex. 8, ECF No. 1-2.

10 “On February 24, 2012 Plaintiff was sentenced to one year in [Las Colinas  
11 Women’s Jail] based in part on the large amount of fees at issue and was immediately  
12 taken into custody from the courtroom.” *Id.* ¶ 20, ECF No. 1. “Several days after  
13 Plaintiff’s incarceration she began to request the use of the Las Colinas law library....  
14 Plaintiff wanted to use the law library to research issues from the state bar trial that  
15 formed the basis for her criminal conviction and subsequent restitution order. Plaintiff  
16 wanted to investigate if she was entitled to relief from her criminal conviction and  
17 length of sentence. She also had to research the upcoming deadline for her petition for  
18 a writ of review [of the State Bar proceeding] to the Supreme Court.” *Id.* “Plaintiff  
19 made about four visits to the law library, over a ten-day period, each visit lasting  
20 approximately two hours.... Then, without notice or reason, her requests for library  
21 time went unanswered.” *Id.* Plaintiff submitted “Inmate Request forms” on March 12,  
22 2012 and March 14, 2012, seeking law library access. *Id.* ¶¶ 21-22. For the last two  
23 weeks of March 2012, “there was absolutely no access to the law library or legal  
24 research materials.” *Id.* ¶ 23. On April 1, 2012, Plaintiff received “a notice that the  
25 Law Library had been replaced by a legal research service.” *Id.* “The legal research  
26 service limited inmate requests to only ONE per calendar month and only FIVE  
27 questions could be asked each month.” *Id.* “This service was woefully deficient....”  
28 *Id.*

1 On April 18, 2012 and April 30, 2012, Plaintiff sent handwritten letters to the  
2 Supreme Court of California “explaining that she was incarcerated and unable to  
3 comply with procedures, fearful that she would miss the deadline for submitting a  
4 petition for writ of review [of the State Bar proceeding].” *Id.* ¶ 26. On April 24, 2012,  
5 May 4, 2012, and June 4, 2012, a deputy clerk with the Supreme Court of California  
6 wrote to Plaintiff stating that, “[t]o consider your petition, we require the petition to be  
7 in the proper form,” and “[i]t is still not clear which State Bar discipline matter you are  
8 appealing.” *Id.*, Exs. 7, 9, 10, ECF No. 1-2. On June 15, 2012, Plaintiff sent another  
9 letter to the Supreme Court of California. *Id.* ¶ 30, ECF No. 1. “On June 28, 2012, the  
10 [Supreme Court] clerk acknowledged Plaintiff’s letter of June 15, 2012, however the  
11 deadline for submitting a petition had pas[sed]. He further explained that the  
12 documents returned to the Plaintiff were due to her failure to provide clarification and  
13 original verification.” *Id.* “It was impossible for Plaintiff to clarify as she had no  
14 access to the tools necessary to comply. The verification form would have  
15 accompanied the petition, but Plaintiff was unable to prepare a petition without access  
16 to adequate research materials. There was no access to a copy machine to make three  
17 copies as required.” *Id.* “The lack of a law library, lack of research materials and lack  
18 of the tools needed to draft and make copies of a petition caused Plaintiff to miss the  
19 deadline for filing a writ of petition to the Supreme Court regarding the underlying  
20 ruling of her criminal conviction and restitution order.” *Id.*

21 “Defendants ... violated Plaintiff’s First, Sixth and Fourteenth amendment rights  
22 causing actual injury to Plaintiff.” *Id.* ¶ 8. “The constitutionally defective policies and  
23 practices of Defendants as described within [the Complaint], stymied Plaintiff’s access  
24 to the courts, resulting in Plaintiff’s inability to file a timely appeal to an administrative  
25 ruling of the State Bar of California while she was incarcerated. And as the State Bar’s  
26 ruling formed a basis for Plaintiff’s conviction, confinement and restitution orders,  
27 Plaintiff’s inability to access the courts to address trial court errors, resulted in pain,  
28 suffering, physical injury and emotional distress.” *Id.*

1 On August 10, 2012, Plaintiff was released from custody. *Id.* ¶ 3.

2 The Complaint alleges that “once the State Bar’s ruling became final, that ruling  
3 acted as res judicata as to the subsequent amount of criminal restitution ordered and  
4 supported the length of the criminal sentencing. Plaintiff never had the opportunity to  
5 petition the Supreme Court for a review of this administrative ruling as she is entitled.  
6 Plaintiff had a constitutional right to access the courts in order to properly address this  
7 crippling ruling, a right that was cruelly denied by the arbitrary acts of Defendants.”  
8 *Id.* ¶ 56. Pursuant to 28 U.S.C. § 1983, the Complaint seeks declaratory relief,  
9 compensatory damages in the amount of \$250,000 against each Defendant, and punitive  
10 damages in the amount of \$250,000 against each Defendant. *Id.* ¶¶ 57-59.

11 **B. Motion to Dismiss**

12 On June 24, 2013, all Defendants jointly filed the Motion to Dismiss. (ECF No.  
13 10). In conjunction with the Motion to Dismiss, Defendants filed a Request for Judicial  
14 Notice of certified copies of the “Felony Minutes” from the San Diego County Superior  
15 Court in the criminal case against Plaintiff. (ECF No. 10-2).<sup>1</sup> The “Felony Minutes”  
16 indicate that, at Plaintiff’s sentencing on February 24, 2012, Plaintiff was ordered to  
17 pay restitution to the victims “in an amount to be determined” at a later hearing. *Id.* at  
18 3. At hearings on March 26, 2012, May 2, 2012, July 5, 2012, and September 9, 2012,  
19 the restitution hearing was repeatedly continued to a future date. *Id.* at 5-11. At the  
20 restitution hearing on October 22, 2012, Plaintiff was ordered to “pay the following  
21 stipulated amounts: to Luwain Ng = \$43,130; to Denise Doll = \$41,865.48.” *Id.* at 13.  
22 Plaintiff was no longer incarcerated at the time of the September 9, 2012 and October  
23 22, 2012 hearings. *Id.* at 11, 13. At all hearings in Plaintiff’s criminal case prior to  
24 September 12, 2012, Plaintiff was represented by retained counsel. *Id.* at 3-9. At the  
25 September 9, 2012 and October 22, 2012 hearings, a public defender appeared as  
26 attorney for Plaintiff. *Id.* at 11, 13.

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28 <sup>1</sup> The unopposed Request for Judicial Notice is granted. *See United States v. Howard*, 381 F.3d 873, 876 (9th Cir. 2004) (stating that a court may take judicial notice of court records in another case).

1 Defendants move to dismiss the Complaint with prejudice pursuant to Federal  
2 Rule of Civil Procedure 12(b)(6). Defendants contend that the Complaint fails to state  
3 a claim of denial of access to the courts because:

4 Plaintiff has failed to establish the requisite element of actual injury in her  
5 Complaint. Plaintiff's claim that Supreme Court review of the disbarment  
6 recommendation would somehow affect her underlying conviction is  
7 frivolous. In addition, the alleged inadequacy of the law library or legal  
8 research service has not deprived Plaintiff of her ability to petition the  
9 Supreme Court, as evidenced by her numerous letters to the Court Clerk,  
10 the responsive letters advising of the requirements of the petition, and her  
11 own brief to the Bar Court. Moreover, she was represented by counsel at  
12 all times in the criminal proceedings.

13 (ECF No. 10-1 at 5).

14 On July 16, 2013, Plaintiff filed an opposition to the Motion to Dismiss. (ECF  
15 No. 14). Plaintiff contends:

16 Plaintiff quite clearly established the element of actual injury. First,  
17 Plaintiff's inability to petition the Supreme Court was not frivolous. The  
18 results of the State Bar trial formed the basis for the criminal proceedings.  
19 The District Attorney provided the probation department with pages of  
20 information from the State Bar trial. Then the probation department  
21 referenced that information in its subsequent recommendation that was  
22 accepted by the criminal court in its entirety and was made the order of the  
23 court. The terms of Plaintiff's confinement were in fact based upon the  
24 amount of alleged funds at issue as cited in the probation report. Thus the  
25 criminal sentencing was based upon the probation report which directly  
26 reflected the erroneous findings of the State Bar Court.

27 *Id.* at 4-5. Plaintiff states that she "*never* had an attorney throughout the State Bar  
28 proceedings as she could not afford one." *Id.* at 6. Plaintiff contends that her petition  
to the Supreme Court would not have been frivolous because: "The State Bar could find  
misappropriation in the method in which the funds were removed, but if and this is the  
big IF, the State Bar court had addressed the issue of unpaid fees still owing to Plaintiff,  
the ruling of misappropriation would stand but the amount misappropriated could be  
zero. And it was the amount of the alleged misappropriation that caused the probation  
officer to recommend such a harsh sentence, a recommendation that was accepted by  
the criminal court in its entirety." *Id.* at 19-20. Plaintiff requests leave to amend the  
Complaint if the Motion to Dismiss is granted. *Id.* at 22.

On July 17, 2013, Defendants filed a reply in support of the Motion to Dismiss.

1 (ECF No. 15).

2 **II. Standard of Review**

3 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state  
4 a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “A pleading that  
5 states a claim for relief must contain ... a short and plain statement of the claim showing  
6 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule  
7 12(b)(6) is appropriate where the complaint lacks a cognizable legal theory or sufficient  
8 facts to support a cognizable legal theory. *See Balistreri v. Pac. Police Depot*, 901 F.2d  
9 696, 699 (9th Cir. 1990).

10 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
11 requires more than labels and conclusions, and a formulaic recitation of the elements  
12 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
13 (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to dismiss, a court must  
14 accept as true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662,  
15 679 (2009). However, a court is not “required to accept as true allegations that are  
16 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”  
17 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “In sum, for a  
18 complaint to survive a motion to dismiss, the non-conclusory factual content, and  
19 reasonable inferences from that content, must be plausibly suggestive of a claim  
20 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.  
21 2009) (quotations omitted).

22 *Pro se* complaints are held to a less stringent standard than formal pleadings by  
23 lawyers. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). A *pro se* plaintiff’s  
24 complaint must be construed liberally to determine whether a claim has been stated.  
25 *See Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001). However, a *pro se* litigant’s  
26 pleadings still must meet some minimum threshold in providing the defendant with  
27 notice of what it is that it allegedly did wrong. *See Brazil v. U.S. Dep’t of Navy*, 66  
28 F.3d 193, 199 (9th Cir. 1995); *see also Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir.

1 1995) (“Although we construe pleadings liberally in their favor, *pro se* litigants are  
2 bound by the rules of procedure.”).

### 3 **III. Discussion**

4 Prisoners have a constitutional right of meaningful access to the courts. *See*  
5 *Lewis v. Casey*, 518 U.S. 343, 350-51 (1996) (citing *Bounds v. Smith*, 430 U.S. 817, 821  
6 (1977)). To establish a constitutional claim for denial of access to the courts, a plaintiff  
7 must show that the denial has hindered her ability to bring a non-frivolous legal claim.  
8 *See id.* at 351-53 & n.3. The right of access protects only non-frivolous direct criminal  
9 appeals, habeas corpus proceedings, and § 1983 actions. *See id.* at 353-55 & n.3; *see*  
10 *also id.* at 355 (“The tools [*Bounds*] requires to be provided are those that the inmates  
11 need in order to attack their sentences, directly or collaterally, and in order to challenge  
12 the conditions of their confinement. Impairment of any *other* litigating capacity is  
13 simply one of the incidental (and perfectly constitutional) consequences of conviction  
14 and incarceration.”).

15 Plaintiff’s appeal of the State Bar proceedings against her is neither an appeal of  
16 her criminal case, nor a habeas petition, nor a § 1983 claim. Accordingly, *Bounds* and  
17 *Lewis* are inapplicable, and Plaintiff has failed to state a cognizable claim for denial of  
18 access to the courts. Plaintiff alleges that “the State Bar’s ruling formed a basis for  
19 Plaintiff’s conviction, confinement and restitution orders.” (ECF No. 1 ¶ 8). Even if  
20 this allegation were sufficient to make *Bounds* and *Lewis* applicable, Plaintiff has failed  
21 to adequately allege facts to show that her claim would not be barred by the rule  
22 announced in *Heck v. Humphrey*, 512 U.S. 477 (1994), which prevents a person from  
23 bringing a civil rights action that “would necessarily imply the invalidity of [the  
24 plaintiff’s] conviction or sentence.” *Id.* at 487; *see also id.* at 486-87 (“We hold that,  
25 in order to recover damages for allegedly unconstitutional conviction or imprisonment,  
26 or for other harm caused by actions whose unlawfulness would render a conviction or  
27 sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been  
28 reversed on direct appeal, expunged by executive order, declared invalid by a state

1 tribunal authorized to make such determination, or called into question by a federal  
2 court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.”).

3 Even if Plaintiff had adequately alleged that *Bounds* and *Lewis* are applicable and  
4 her claim is not barred by the *Heck* rule, Plaintiff has failed to plausibly allege facts to  
5 show that an appeal of the State Bar proceedings in the summer of 2012 would have  
6 enabled Plaintiff to overturn her January 23, 2012 guilty plea and/or her February 24,  
7 2012 sentencing in the criminal case. Plaintiff also has failed to plausibly allege that  
8 Plaintiff (or Plaintiff's attorney) was prevented from meaningfully challenging the  
9 restitution amounts in the criminal case due to her failure to file an appeal of the State  
10 Bar proceeding. *Cf.* Felony Minutes of October 22, 2012 Restitution Hearing, ECF No.  
11 10-2 at 13 (indicating that Plaintiff was no longer incarcerated, present at the hearing,  
12 represented by counsel at the hearing, and the restitution amounts were “stipulated”).  
13 There are no allegations that Plaintiff appealed her criminal case or filed a habeas  
14 petition challenging any aspect of the criminal case. The record reflects that Plaintiff  
15 was represented by counsel at all times in the criminal proceedings. *Cf. United States*  
16 *v. Wilson*, 690 F.2d 1267, 1271-72 (9th Cir. 1982) (availability of court-appointed  
17 counsel satisfies the constitutional obligation to provide meaningful access to the  
18 courts). To the extent Plaintiff alleges that appeal of the State Bar proceeding was the  
19 only meaningful way to challenge her criminal conviction, sentence and restitution  
20 amount, Plaintiff has failed to plausibly allege that Defendants hindered Plaintiff's  
21 ability to bring a non-frivolous legal claim. *Lewis*, 518 U.S. at 353 & n.3 (holding that,  
22 to establish a constitutional claim for denial of access to the courts, a plaintiff must  
23 show that the denial has hindered her ability to bring a “non-frivolous legal claim”).  
24 The Motion to Dismiss is granted.


#### 25 **IV. Conclusion**

26 IT IS HEREBY ORDERED that the Motion to Dismiss is GRANTED. (ECF No.  
27 10). The Complaint is DISMISSED without prejudice. No later than 30 days from the  
28 date this Order is filed, Plaintiff may file a motion for leave to file a first amended



1 complaint, accompanied by a proposed first amended complaint. If Plaintiff fails to  
2 timely file a motion for leave to file a first amended complaint, this case shall remain  
3 closed without further order of the Court.

4 DATED: October 15, 2013

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6 **WILLIAM Q. HAYES**  
7 United States District Judge

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