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

LOUIS JAMES,
CDCR #AE-7438,

Plaintiff,

vs.

CALIPATRIA STATE PRISON;
G.W. JANDA; A. CASTRO;
E. TRUJILLO; GROTH; R.N. NELSON;
CARPIO; M.C. MORALES; J.M.
BUILTEMAN; MARTEL; J.D.
LOZANO; CALIFORNIA DEP'T OF
CORRECTIONS AND
REHABILITATION,

Defendants.

Civil No. 14cv0964 BTM (MDD)

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

I. Procedural History

On April 17, 2014, Louis James (“Plaintiff”), currently incarcerated at Pleasant Valley State Prison located in Coalinga, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has also filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). On May 19, 2014, this Court GRANTED Plaintiff’s Motion to Proceed IFP but sua sponte dismissed his

1 Complaint for failing to state a claim and for seeking monetary damages against immune
2 defendants. *See* May 19, 2014 Order, ECF No. 3, at 8. Plaintiff was granted leave to file
3 an amended complaint in order to correct the deficiencies of pleading identified by the
4 Court. *Id.* On June 30, 2014, Plaintiff filed his First Amended Complaint (“FAC”).
5 (ECF No. 5.)

6 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

7 **A. Standard of Review**

8 As the Court stated in its previous Order, the Prison Litigation Reform Act
9 (“PLRA”) obligates the Court to review complaints filed by all persons proceeding IFP
10 and by those, like Plaintiff, who are “incarcerated or detained in any facility [and]
11 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the
12 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as
13 soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under
14 these provisions of the PLRA, the Court must sua sponte dismiss complaints, or any
15 portions thereof, which are frivolous, malicious, fail to state a claim, or which seek
16 damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

17 All complaints must contain “a short and plain statement of the claim showing that
18 the pleader is entitled to relief.” FED.R.CIV.P. 8(a)(2). Detailed factual allegations are
19 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
20 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
21 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

22 **B. 42 U.S.C. § 1983**

23 “Section 1983 creates a private right of action against individuals who, acting
24 under color of state law, violate federal constitutional or statutory rights.” *Devereaux v.*
25 *Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). “To establish § 1983 liability, a plaintiff
26 must show both (1) deprivation of a right secured by the Constitution and laws of the
27 United States, and (2) that the deprivation was committed by a person acting under color
28 of state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

1 **C. Access to Courts**

2 On October 20, 2011, Plaintiff alleges Defendants performed a cell extraction
3 while Plaintiff was in his cell “in the process of working on his case.” (FAC at 5.)
4 Plaintiff further claims that Defendants searched all of his legal paperwork and when it
5 was returned to him it was “in complete disarray and some of it was missing.” (*Id.*)

6 Prisoners do “have a constitutional right to petition the government for redress of
7 their grievances, which includes a reasonable right of access to the courts.” *O’Keefe v.*
8 *Van Boening*, 82 F.3d 322, 325 (9th Cir. 1996). In *Bounds*, 430 U.S. at 817, the
9 Supreme Court held that “the fundamental constitutional right of access to the courts
10 requires prison authorities to assist inmates in the preparation and filing of meaningful
11 legal papers by providing prisoners with adequate law libraries or adequate assistance
12 from persons who are trained in the law.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977).
13 To establish a violation of the right to access to the courts, however, a prisoner must
14 allege facts sufficient to show that: (1) a nonfrivolous legal attack on his conviction,
15 sentence, or conditions of confinement has been frustrated or impeded, and (2) he has
16 suffered an actual injury as a result. *Lewis v. Casey*, 518 U.S. 343, 353-55 (1996). An
17 “actual injury” is defined as “actual prejudice with respect to contemplated or existing
18 litigation, such as the inability to meet a filing deadline or to present a claim.” *Id.* at 348.

19 Here, Plaintiff has failed to alleged any actions with any particularity that have
20 *precluded* his pursuit of a non-frivolous direct or collateral attack upon either his
21 criminal conviction or sentence or the conditions of his current confinement. *See Lewis*,
22 518 U.S. at 355; *see also Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (the non-
23 frivolous nature of the “underlying cause of action, whether anticipated or lost, is an
24 element that must be described in the complaint, just as much as allegations must describe
25 the official acts frustrating the litigation.”). Moreover, Plaintiff has not alleged facts
26 sufficient to show that he has been actually injured by any specific defendant’s actions.
27 *Lewis*, 518 U.S. at 351. Plaintiff provides no adequate factual allegations regarding the
28 nature of his legal proceedings. He must provide more detail than simply referring to his

1 “legal petitions.”

2 In short, Plaintiff has not alleged that “a complaint he prepared was dismissed,” or
3 that he was “so stymied” by any individual defendant’s actions that “he was unable to
4 even file a complaint,” direct appeal or petition for writ of habeas corpus that was not
5 “frivolous.” *Lewis*, 518 U.S. at 351; *Christopher*, 536 U.S. at 416. Therefore, Plaintiff’s
6 access to courts claims must be dismissed for failing to state a claim upon which section
7 1983 relief can be granted. *See* 28 U.S.C. § 1915(e)(2), § 1915A(b). If Plaintiff chooses
8 to file an amended complaint, he must allege with specific factual detail the nature of his
9 legal proceedings and show that his underlying claims are not frivolous.

10 **D. Grievance procedures**

11 Plaintiff also claims that his “right to petition government for redress of
12 grievances” has been violated. (FAC at 6.) The Fourteenth Amendment provides that:
13 “[n]o state shall ... deprive any person of life, liberty, or property, without due process of
14 law.” U.S. CONST. amend. XIV, § 1. “The requirements of procedural due process apply
15 only to the deprivation of interests encompassed by the Fourteenth Amendment’s
16 protection of liberty and property.” *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972).
17 State statutes and prison regulations may grant prisoners liberty or property interests
18 sufficient to invoke due process protection. *Meachum v. Fano*, 427 U.S. 215, 223-27
19 (1976). To state a procedural due process claim, Plaintiff must allege: “(1) a liberty or
20 property interest protected by the Constitution; (2) a deprivation of the interest by the
21 government; [and] (3) lack of process.” *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir.
22 2000).

23 However, the Ninth Circuit has held that prisoners have no protected *property*
24 interest in an inmate grievance procedure arising directly from the Due Process Clause.
25 *See Ramirez v. Galaza*, 334 F.3d 850, 869 (9th Cir. 2003) (“[I]nmates lack a separate
26 constitutional entitlement to a specific prison grievance procedure”) (citing *Mann v.*
27 *Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (finding that the due process clause of the
28 Fourteenth Amendment creates “no legitimate claim of entitlement to a [prison] grievance

1 procedure”)).

2 In addition, Plaintiff has failed to plead facts sufficient to show that prison official
3 deprived him of a protected *liberty* interest by allegedly failing to respond to his prison
4 grievances in a satisfactory manner. While a liberty interest can arise from state law or
5 prison regulations, *Meachum*, 427 U.S. at 223-27, due process protections are implicated
6 only if Plaintiff alleges facts to show that Defendants: (1) restrained his freedom in a
7 manner not expected from his sentence, and (2) “impose[d] atypical and significant
8 hardship on [him] in relation to the ordinary incidents of prison life.” *Sandin v. Conner*,
9 515 U.S. 472, 484 (1995). Plaintiff pleads nothing to suggest how the allegedly
10 inadequate review and consideration of his inmate grievances resulted in an “atypical”
11 and “significant hardship.” *Id.* at 483-84. Thus, to the extent Plaintiff challenges the
12 procedural adequacy of inmate grievance procedures, his First Amended Complaint fails
13 to state a due process claim.

14 The Court finds that Plaintiff’s First Amended Complaint fails to state a section
15 1983 claim upon which relief may be granted and is therefore subject to dismissal
16 pursuant to 28 U.S.C. §§ 1915(e)(2)(b) & 1915A(b). The Court will provide Plaintiff
17 with an opportunity to amend his pleading to cure the defects set forth above. Plaintiff
18 is warned that if his amended complaint fails to address the deficiencies of pleading noted
19 above, it may be dismissed with prejudice and without leave to amend.

20 **III. CONCLUSION AND ORDER**

21 Good cause appearing, IT IS HEREBY ORDERED that:

22 1. Plaintiff’s First Amended Complaint is DISMISSED without prejudice for
23 failing to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(b). However,
24 Plaintiff is GRANTED forty five (45) days leave from the date this Order is electronically
25 filed in which to file a Second Amended Complaint which cures all the deficiencies of
26 pleading identified in this Order. Plaintiff’s Amended Complaint must be complete in
27 itself without reference to his original pleading. *See* S.D. CAL. CIVLR 15.1; *King v.*
28 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (citation omitted) (“All causes of action alleged

1 in an original complaint which are not alleged in an amended complaint are waived.”).

2


3 2. If Plaintiff fails to file an Amended Complaint within forty five (45) days,
4 the Court will enter a final Order entering judgment for the Defendants. The Clerk of
5 Court is directed to mail a form § 1983 complaint to Plaintiff.

6 **IT IS SO ORDERED.**

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DATED: November 10, 2014

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BARRY TED MOSKOWITZ, Chief Judge
United States District Court

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