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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GARLAND JONES,
CDCR #F-47928

Plaintiff,

vs.

MRS. TISCORNIA; MRS. MONRT,

Defendants.

Case No.: 3:18-cv-00544-GPC-PCL

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

I. Procedural History

On March 15, 2018, Garland Jones (“Plaintiff”), a prisoner incarcerated at the Richard J. Donovan Correctional Facility (“RJD”), located in San Diego, California, and proceeding pro se, filed a civil complaint pursuant to 42 U.S.C. § 1983. *See* Doc. No. 1 at 1.

1 Plaintiff did not prepay the civil filing fees required by 28 U.S.C. § 1914(a) at the
2 time of filing; instead he filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to
3 28 U.S.C. § 1915(a) (Doc. No. 2).

4 On March 26, 2018, this Court GRANTED Plaintiff’s Motion to Proceed IFP and
5 sua sponte DISMISSED his Complaint for failing to state a claim upon which relief could
6 be granted. *See* Doc. No. 4 at 7-8. Plaintiff was granted leave to file an amended
7 pleading in order to correct the deficiencies of pleading noted in the Court’s Order. *See*
8 *id.* On April 17, 2018, Plaintiff filed his First Amended Complaint (“FAC”). (Doc. No.
9 5.)

10 **II. Sua Sponte Screening per 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

11 **A. Standard of Review**

12 As the Court previously informed Plaintiff, because he is a prisoner and is
13 proceeding IFP, his FAC requires a pre-answer screening pursuant to 28 U.S.C.
14 § 1915(e)(2) and § 1915A(b). Under these statutes, the Court must sua sponte dismiss a
15 prisoner’s IFP complaint, or any portion of it, which is frivolous, malicious, fails to state
16 a claim, or seeks damages from defendants who are immune. *See Williams v. King*, 875
17 F.3d 500, 502 (9th Cir. Nov. 9, 2017) (discussing 28 U.S.C. § 1915(e)(2)) (citing *Lopez v.*
18 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)); *Rhodes v. Robinson*, 621 F.3d
19 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of
20 [screening] is ‘to ensure that the targets of frivolous or malicious suits need not bear the
21 expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014)
22 (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)). A
23 complaint is “frivolous” if it “lacks an arguable basis either in law or in fact.” *Neitzke v.*
24 *Williams*, 490 U.S. 319, 324 (1989).

25 “The standard for determining whether a plaintiff has failed to state a claim upon
26 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
27 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
28 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th

1 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
2 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
3 12(b)(6)”). Rule 12(b)(6) requires a complaint to “contain sufficient factual matter,
4 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,
5 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

6 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
7 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
8 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
9 relief [is] . . . a context-specific task that requires the reviewing court to draw on its
10 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or
11 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
12 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969
13 (9th Cir. 2009).

14 **B. 42 U.S.C. § 1983**

15 Section 1983 is a “vehicle by which plaintiffs can bring federal constitutional and
16 statutory challenges to actions by state and local officials.” *Anderson v. Warner*, 451
17 F.3d 1063, 1067 (9th Cir. 2006). To state a claim under 42 U.S.C. § 1983, a plaintiff
18 must allege two essential elements: (1) that a right secured by the Constitution or laws of
19 the United States was violated, and (2) that the alleged violation was committed by a
20 person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe*
21 *v. Frye*, 789 F.3d 1030, 1035-36 (9th Cir. 2015).

22 **C. Access to Courts claim**

23 Plaintiff alleges that Defendants have denied Plaintiff “access to courts.” (FAC at
24 3.) Prisoners have a constitutional right to access to the courts. *Lewis v. Casey*, 518 U.S.
25 343, 346 (1996). The right is limited to the filing of direct criminal appeals, habeas
26 petitions, and civil rights actions. *Id.* at 354. Claims for denial of access to the courts
27 may arise from the frustration or hindrance of “a litigating opportunity yet to be gained”
28 (forward-looking access claim) or from the loss of a suit that cannot now be tried

1 (backward-looking claim). *Christopher v. Harbury*, 536 U.S. 403, 412-15 (2002); *see*
2 *also Silva v. Di Vittorio*, 658 F.3d 1090, 1102 (9th Cir. 2011) (differentiating “between
3 two types of access to court claims: those involving prisoners’ right to affirmative
4 assistance and those involving prisoners’ rights to litigate without active interference.”).

5 However, Plaintiff must allege “actual injury” as the threshold requirement to any
6 access to courts claim. *Lewis*, 518 U.S. at 351-53; *Silva*, 658 F.3d at 1104. An “actual
7 injury” is “actual prejudice with respect to contemplated or existing litigation, such as the
8 inability to meet a filing deadline or to present a claim.” *Lewis*, 518 U.S. at 348; *see also*
9 *Jones v. Blanas*, 393 F.3d 918, 936 (9th Cir. 2004) (defining actual injury as the
10 “inability to file a complaint or defend against a charge”). The failure to allege an actual
11 injury is “fatal.” *Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1 (9th Cir. 2008) (“Failure to
12 show that a ‘non-frivolous legal claim had been frustrated’ is fatal.”) (quoting *Lewis*, 518
13 U.S. at 353 & n.4).

14 In addition, Plaintiff must allege the loss of a “non-frivolous” or “arguable”
15 underlying claim. *Harbury*, 536 U.S. at 413-14. The nature and description of the
16 underlying claim must be set forth in the pleading “as if it were being independently
17 pursued.” *Id.* at 417. Finally, Plaintiff must specifically allege the “remedy that may be
18 awarded as recompense but not otherwise available in some suit that may yet be
19 brought.” *Id.* at 415.

20 Plaintiff’s FAC fails to allege the actual injury required to state an access to courts
21 claim. *See Lewis*, 518 U.S. at 351-53; *Silva*, 658 F.3d at 1104. Thus, the Court finds that
22 Plaintiff’s FAC fails to include any “factual matter” to show how or why any of the
23 individual Defendant in this case caused him to suffer any “actual prejudice” “such as the
24 inability to meet a filing deadline or to present a claim,” with respect to any case. *Lewis*,
25 518 U.S. at 348; *Jones*, 393 F.3d at 936; *Iqbal*, 556 U.S. at 678.

26 Accordingly, because Plaintiff has failed to allege facts sufficient to show that any
27 named Defendant caused him to suffer any “actual injury” with respect to any non-
28 frivolous direct criminal appeal, habeas petition, or civil rights action he may have filed,

1 *see Lewis*, 518 U.S. at 354, the Court finds Plaintiff’s access to courts claims must be
2 dismissed for failing to state a claim upon which § 1983 relief can be granted.

3 **D. Grievance claims**

4 Plaintiff also claims that Defendants have failed to properly respond to his
5 administrative grievances. *See* FAC at 3-4. However, a prison official’s alleged
6 improper processing of an inmate’s grievances or appeals, without more, cannot serve as
7 a basis for section 1983 liability. *See generally Ramirez v. Galaza*, 334 F.3d 850, 860
8 (9th Cir. 2003) (prisoners do not have a “separate constitutional entitlement to a specific
9 prison grievance procedure.”) (citation omitted); *Mann v. Adams*, 855 F.2d 639, 640 (9th
10 Cir. 1988) (due process not violated simply because defendant fails properly to process
11 grievances submitted for consideration). Accordingly, Plaintiff’s claims arising from the
12 processing of his administrative grievances must be dismissed for failing to state a claim
13 upon which § 1983 relief can be granted.

14 **E. Leave to Amend**

15 A pro se litigant must be given leave to amend his pleading to state a claim unless
16 it is absolutely clear the deficiencies cannot be cured by amendment. *See Lopez*, 203
17 F.3d at 1130 (noting leave to amend should be granted when a complaint is dismissed
18 under 28 U.S.C. § 1915(e) “if it appears at all possible that the plaintiff can correct the
19 defect”). Therefore, while the Court finds Plaintiff’s FAC fails to state a claim upon
20 which relief can be granted, it will provide him a chance to fix the pleading deficiencies
21 discussed in this Order, if he can. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
22 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

23 **III. Conclusion and Order**

24 For all the reasons discussed, the Court:

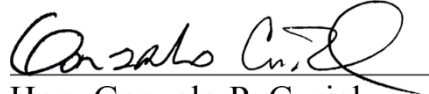
- 25 1. **DISMISSES** Plaintiff’s FAC for failing to state a claim upon which § 1983
26 relief can granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A;
- 27 2. **GRANTS** Plaintiff thirty (30) days leave to file an Amended Complaint
28 which cures all the deficiencies of pleading described in this Order. Plaintiff is cautioned,

1 however, that should he choose to file an Amended Complaint, it must be complete by
2 itself, comply with Federal Rule of Civil Procedure 8(a), and that any claim not re-
3 alleged will be considered waived. See S.D. CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v.*
4 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended
5 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
6 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an
7 amended pleading may be “considered waived if not repled.”).

8 3. The Clerk of Court is directed to mail Plaintiff a court approved form civil
9 rights complaint.

10 **IT IS SO ORDERED.**

11 Dated: June 12, 2018

12 
13 Hon. Gonzalo P. Curiel
14 United States District Judge
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