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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GAVIN B. DAVIS,  
  
Plaintiff,  
  
v.  
  
SAN DIEGO COUNTY SHERIFF  
DEPARTMENT,  
  
Defendant.

Case No.: 18cv866-WQH-JLB  
  
**ORDER**

HAYES, Judge:

The matters before the Court are the motion to dismiss for failure to state a claim (ECF No. 3), the motion for Rule 11 sanctions and perjury claim (ECF No. 5), and the motion for partial summary judgment (ECF No. 6).

**I. BACKGROUND**

On May 4, 2018, Plaintiff Gavin B. Davis, proceeding pro se, initiated this action by filing a Complaint pursuant to 42 U.S.C. § 1983 alleging that he has been denied his constitutional right to access to the courts. (ECF No. 1).

1 On May 25, 2018, Defendant Sheriff William D. Gore filed a motion to dismiss the  
2 complaint.<sup>1</sup> (ECF No. 3). On June 13, 2018, Plaintiff filed a response in opposition. (ECF  
3 No. 12). On June 25, 2018, Defendant filed a reply. (ECF No. 166). On June 29, 2018,  
4 Plaintiff filed a sur-reply. (ECF No. 20).

5 On May 29, 2018, Plaintiff filed a “FRCP 11 Motion for Sanctions and Perjury  
6 Claim (18 U.S.C. § 1621)” and a motion for partial summary judgment. (ECF Nos. 5, 6).  
7 Defendant filed responses in opposition to both motions. (ECF No. 10, 13). Plaintiff filed  
8 replies. (ECF Nos. 15, 18).

## 9 II. ALLEGATIONS OF THE COMPLAINT

10 From November 2017 until April 2018, Plaintiff was in pre-trial detention at San  
11 Diego Central Jail. (ECF No. 1 at ¶ 10; ECF No. 1-2 at 2–6).

12 Plaintiff’s access to the courts is being unlawfully denied in multiple  
13 capacities by [Defendant], including but not limited to not allowing the  
14 Plaintiff access to a law library, and denying the Plaintiff’s ancillary services  
15 (e.g. attorney services) ability to reasonably access him during periods of  
16 detainment (e.g. November 2017 until April 2018). As a result, the Plaintiff  
17 has occurred actual injuries including but not limited to the ability to  
effectively collaterally attack the opposition subjecting him to the custody of  
Defendant SDCSD.

18 (ECF No. 1 at ¶ 7). During this period of pre-trial detention, Plaintiff’s requests for access  
19 to the law library were denied. *Id.* ¶ 10. Plaintiff provided an “Inmate Grievance”  
20 regarding his access to the law library and related policies. *Id.* ¶ 11. The grievance form  
21 was rejected and indicated, “that it was ‘not a grievance’ and ‘[Plaintiff]’ is not a pro per  
22 inmate, if [Plaintiff] becomes pro per for your criminal case, [Plaintiff] may be given access  
23 to the law library.” *Id.* ¶ 12. Defendant has a policy of “restricting . . . access [to the law  
24 library] to exclusively pro per litigants in California state criminal defense.” *Id.* ¶ 13.  
25 Plaintiff had informed Defendant in writing and orally that “he had a ‘hybrid’  
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27  
28 <sup>1</sup> Defendant Gore states that he was “apparently served as San Diego County Sheriff’s Department.” *Id.*  
at 1.

1 representation, being represented in the state criminal cases (e.g. SCD266332) by  
2 professional law firm, Ronis & Ronis (San Diego), and, in fact, being pro per in parallel  
3 federal cross-actions.” *Id.* “Plaintiff suffered actual injury . . . as a result of being denied  
4 access to the law library facilities where he was detained.” *Id.* ¶ 14.

5 The conditions offered by Defendant . . . at SDCJ . . . though secondarily to  
6 the notion that the pre-trial detention, itself, is illegal, and already the subject  
7 of a cross-action (e.g. USDC SD Cal. 17-654, *Davis v. SDDA et. al.*), place  
8 the Plaintiff at a clear competitive disadvantage and are unconstitutional.

9 *Id.* ¶ 15. The Legal Research Associates program, offered in lieu of access to the law  
10 library, is inadequate because it limits research requests to one per calendar month, limits  
11 responses to 50 pages, has a turn-around time of 4–5 working days, and asserts that its  
12 services do not create an attorney-client relationship. *Id.* Further, “Plaintiff’s professional  
13 visit with Callahan Attorney Services at George Bailey Donovan Facility” was interrupted  
14 by Defendant and Plaintiff was later informed that such “professional visits . . . would  
15 immediately cease without court order.” *Id.* ¶¶ 17–18.

16 The actions of . . . Defendant . . . compounded actual injuries to the Plaintiff,  
17 and were detrimentally impeding in further denying him access to the courts,  
18 including permissible cross-actions to the false charges he faces . . . and the  
19 tools and ability to timely research, review, prepare, file and move on  
20 collateral attack and in other capacities.

21 *Id.* ¶ 19. Plaintiff asserts that he is being denied his constitutional right to access to the  
22 courts. *Id.* ¶¶ 20–31.

### 23 **III. MOTION TO DISMISS**

24 Defendant contends that the factual allegations of the Complaint are insufficient to  
25 support a denial of access to the courts claim. Defendant contends that access to a law  
26 library is not required to ensure access to the courts. Defendant asserts that Plaintiff is not  
27 a pro-per criminal defendant and contends that a criminal defendant represented by counsel  
28 has no constitutional right of access to a law library. Defendant contends that prisoners do  
not have a constitutional right of access to the courts to litigate unrelated civil claims.

1 Further, Defendant contends that “even if Plaintiff had articulated an entitlement to pursue  
2 civil claims, the legal resources he was provided were sufficient.” (ECF No. 3-1 at 5).  
3 Defendant contends that Plaintiff cannot state a claim for denial of access to the courts  
4 based on his assertion that he was entitled to more professional visits from a process serving  
5 company. Defendant contends that Plaintiff fails to allege an actual injury. Defendant  
6 contends that Plaintiff is no longer incarcerated and his claims are therefore moot.  
7 Defendant contends that Plaintiff failed to exhaust administrative remedies.

8 Plaintiff contends that Defendant makes various misrepresentations and “fallacies of  
9 logic” in the motion to dismiss. (ECF No. 12 at 5–6). Plaintiff asserts that he has been  
10 represented in his criminal proceedings “(a) Pro Per . . . (b) by criminal defense attorney,  
11 Mr. Patrick J. Hennessy” in addition to the law firm of Ronis & Ronis. *Id.* at 5. Plaintiff  
12 contends that he is being denied his constitutional right to access to the courts because his  
13 federal litigation is a “legally permissible cross-action and collateral attack to the California  
14 State criminal proceedings.” *Id.* at 7. Plaintiff asserts that Defendant’s statement that  
15 “Plaintiff has never been a pro-per criminal defendant” constitutes perjury because “even  
16 though Ronis & Ronis is retained as defense counsel in state criminal proceedings . . .  
17 Plaintiff, at all times, can and has been represented in a ‘horizontal’ capacity as co-counsel,  
18 and has such unconditional right under the 6th Amendment.” *Id.* Plaintiff contends that  
19 his Complaint demonstrates a plausible right to relief.

#### 20 **A. Legal Standard**

21 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a  
22 claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of Civil  
23 Procedure 8(a) provides that “[a] pleading that states a claim for relief must contain . . . a  
24 short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.  
25 R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where the complaint lacks  
26 a cognizable legal theory or sufficient facts to support a cognizable legal theory. *See*  
27 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

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

## 12            **B. Discussion**

13            Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518  
14 U.S. 343, 346 (1996). In *Bounds v. Smith*, the Supreme Court of the United States stated  
15 that the “fundamental constitutional right of access to the courts requires prison authorities  
16 to assist inmates in the preparation and filing of meaningful legal papers by providing  
17 prisoners with adequate law libraries or adequate assistance from persons trained in the  
18 law.” 430 U.S. 817, 828 (1977); *see also Phillips v. Hurst*, 588 F.3d 652, 655 (9th Cir.  
19 2009). “The Court subsequently made clear, however, that *Bounds* ‘guarantee[d] no  
20 particular methodology but rather the conferral of a *capability*—the capability of bringing  
21 contemplated challenges to sentences or conditions of confinement before the courts.’”  
22 *Phillips*, 588 F.3d at 655 (quoting *Lewis*, 518 U.S. at 356). Inmates do not have “an  
23 abstract, freestanding right to a law library or to legal assistance[;]” rather, inmates have a  
24 constitutional right to “meaningful access to the courts.” *Lewis*, 518 U.S. at 351. “[P]rison  
25 law libraries and legal assistance programs are not ends in themselves, but only the means  
26 for ensuring ‘a reasonably adequate opportunity to present claimed violations of  
27 fundamental constitutional rights to the courts.’” *Id.* “Because *Bounds* did not create an  
28 abstract, freestanding right to a law library or legal assistance, an inmate cannot establish

1 relevant actual injury simply by establishing that his prison’s law library or legal assistance  
2 program is subpar in some theoretical sense.” *Id.* “Moreover, there is a causation  
3 requirement: an inmate must show that official acts or omissions ‘hindered his efforts to  
4 pursue a [non-frivolous] legal claim.’” *Phillips*, 588 F.3d at 655 (citing *Lewis*, 518 U.S. at  
5 351).

6 [T]he inmate therefore must go one step further and demonstrate that the  
7 alleged shortcomings in the library or legal assistance program hindered his  
8 efforts to pursue a legal claim. He might show, for example, that a complaint  
9 he prepared was dismissed for failure to satisfy some technical requirement  
10 which, because of deficiencies in the prison’s legal assistance facilities, he  
11 could not have known. Or that he had suffered arguably actionable harm that  
12 he wished to bring before the courts, but was so stymied by inadequacies of  
13 the law library that he was unable even to file a complaint.

14 *Lewis*, 518 U.S. at 351.

15 In this case, Plaintiff alleges that he was denied access to the law library, that the  
16 legal research associates program is inadequate, and that he was unable to meet with an  
17 ancillary legal services company. Lack of access to a law library and alleged shortcomings  
18 of a legal assistance program alone are insufficient to support a claim for the denial of  
19 access to the courts. *See, e.g., Phillips*, 588 F.3d at 655; *Lewis*, 518 U.S. at 351. Plaintiff  
20 must also allege sufficient facts to demonstrate that he suffered an actual injury and that  
21 his efforts to pursue a legal claim were hindered. In this case, Plaintiff alleges that his  
22 ability to litigate his federal claims, which he describes as “collateral attacks” on his state  
23 criminal case, has been impaired. Plaintiff asserts that he lacks the “tools and ability to  
24 timely, research, review, prepare, file and move on collateral attack and in other  
25 capacities.” (ECF No. 1 at ¶¶ 19, 23). These conclusory statements fail to demonstrate an  
26 actual injury for purposes of an access to the courts claim. The Court concludes that the  
27 allegations of the Complaint are insufficient to support a plausible inference that the denial  
28 of access to the law library and the alleged shortcomings of the legal assistance program at  
the San Diego Central Jail hindered Plaintiff’s efforts to pursue a legal claim.

1 Plaintiff also alleges that he has been denied access to the courts through the denial  
2 of access to ancillary legal services. Plaintiff alleges that he has been represented by  
3 counsel in his underlying criminal proceedings and does not allege that this representation  
4 has been impeded. Further, Plaintiff has no absolute right to counsel in civil proceedings.<sup>2</sup>  
5 *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Hedges v. Resolution Trust Corp.*, 32  
6 F.3d 1360, 1363 (9th Cir. 1994). Plaintiff fails to state a claim for denial of access to the  
7 courts. The motion to dismiss is granted in its entirety.<sup>3</sup>

#### 8 IV. MOTION FOR SANCTIONS

9 Plaintiff moves the Court for sanctions against counsel for Defendant, Ronald  
10 Lenert, as well as the initiation of criminal charges for perjury. Plaintiff contends that  
11 counsel “willfully and knowingly misrepresents facts seeking dismissal.” (ECF No. 5 at  
12 1-2). Plaintiff asserts that the safe harbor provision of Federal Rule of Civil Procedure 11  
13 is inapplicable because counsel has committed perjury. *Id.* at 6. Plaintiff contends that the  
14 statement that “Plaintiff has never been a pro-per criminal defendant” constitutes perjury.  
15 *Id.* at 8.

16 Defendant contends that the request should be denied as improper and that Plaintiff’s  
17 allegations of perjury are misplaced. Defendant states, “the contested issue (that  
18 Defendant’s counsel failed to acknowledge Plaintiff had at previous times to his  
19 incarceration been unrepresented by defense counsel) is not material to this litigation,  
20 which only involves whether Plaintiff had adequate representation while incarcerated.”  
21 (ECF No. 13 at 4). Defendant states, “Given the improper nature of Plaintiff’s present  
22 request, as well as his pattern of harassing communications to Defendant and counsel, the  
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25 <sup>2</sup> Plaintiff does not specifically assert a denial of assistance of counsel claim but states that “the right of  
26 access to counsel is an essential component of the right of access to the courts” and that the “right to  
27 counsel includes the right to ancillary services.” (ECF No. 1 at 11). Plaintiff does not allege facts to  
28 demonstrate that his alleged inability to meet with Callahan Attorney Services, which provides ancillary  
legal services, caused him any injury. Callahan Attorney Services is not alleged to represent Plaintiff as  
counsel in any of his proceedings.

<sup>3</sup> Plaintiff’s motion for partial summary judgment is denied as moot. (ECF No. 6).

1 Court should consider imposing reasonable sanctions against Plaintiff, and/or an  
2 appropriate admonishment against future tactics.” *Id.* at 6.<sup>4</sup>

3 Federal Rule of Civil Procedure 11(c) provides:

4 A motion for sanctions must be made separately from any other motion and  
5 must describe the specific conduct that allegedly violates Rule 11(b). The  
6 motion must be served under Rule 5, but it must not be filed or be presented  
7 to the court if the challenged paper, claim, defense, contention, or denial is  
8 withdrawn or appropriately corrected within 21 days after service or within  
9 another time the court sets. If warranted, the court may award to the prevailing  
party the reasonable expenses, including attorney’s fees, incurred for the  
motion.

10 Fed. R. Civ. P. 11(c)(1). Rule 11 places “stringent notice and filing requirements on parties  
11 seeking sanctions.” *Holgate v. Baldwin*, 425 F.3d 671, 677 (9th Cir. 2005). Rule 11  
12 contains a “safe harbor” provision, which requires a party seeking sanctions “to give the  
13 opposing party 21 days” to withdraw or otherwise correct the offending paper before filing  
14 the motion for sanctions. *Id.* at 678; Fed. R. Civ. P. 11(c)(1)(A). The Court of Appeals for  
15 the Ninth Circuit enforces the safe harbor provision “strictly,” and “must reverse the award  
16 of sanctions when the challenging party [fails] to comply with the safe harbor provisions,  
17 even when the underlying filing is frivolous.” *Holgate*, 425 F.3d at 678; *see also Radcliffe*  
18 *v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir. 2001); *Barber v. Miller*, 146 F.3d 707,  
19 710 (9th Cir. 1998) (“It would therefore wretch both the language and purpose of the  
20 amendment to the Rule to permit an informal warning to substitute for service of a  
21 motion”).

22 Plaintiff has failed to comply with the 21-day safe harbor provision of Rule 11. In  
23 this case, Plaintiff complains of statements made by Defendant’s counsel in the motion to  
24 dismiss, which was filed on May 25, 2018. Plaintiff filed his motion for sanctions under  
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26  
27 <sup>4</sup> Defendant’s request for sanctions included in his response in opposition is denied as procedurally  
28 improper. Defendant may file any request for sanctions by motion and pursuant to the requirements of  
Federal Rule of Civil Procedure 11.



1 Rule 11 four days later on May 29, 2018. Plaintiff does not assert that he provided any  
2 notice of this motion to Defendant. Plaintiff's motion for sanctions is denied.

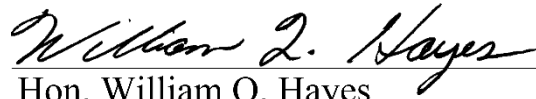
3 **V. CONCLUSION**

4 IT IS HEREBY ORDERED that the motion to dismiss filed by Defendant is granted.  
5 (ECF No. 3).

6 IT IS FURTHER ORDERED that the motion for sanctions filed by Plaintiff is  
7 denied. (ECF No. 5).

8 IT IS FURTHER ORDERED that the motion for summary judgment filed by  
9 Plaintiff is denied as moot. (ECF No. 6).

10 Dated: August 14, 2018

  
11 Hon. William Q. Hayes  
12 United States District Court