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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN HENRY YABLONSKY,
Plaintiff,
vs.
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.
Defendants.

Case No.: 18cv1122-CAB-AGS

**ORDER GRANTING MOTION TO
DISMISS SECOND AMENDED
COMPLAINT**

[Doc. No. 67]

Pending before the Court is Defendants’ motion to dismiss the second amended complaint. [Doc. No. 67.] For the reasons set forth below, the motion is **GRANTED**.

BACKGROUND

Plaintiff filed the original complaint on June 15, 2018. [Doc. No. 4.] Defendants responded with a motion to dismiss all causes of action contained in the complaint with the exception of Plaintiff’s retaliation cause of action. [Doc. No. 17.] Defendants’ motion to dismiss was granted with leave to amend. [Doc. No. 31.] On September 20, 2019, Plaintiff filed a First Amended Complaint (“FAC”). [Doc. No. 32.] Defendants filed a Motion to Dismiss the FAC in its entirety and it was granted in part with leave to amend.

1 [Doc. No. 43.] Specifically, the Court concluded Plaintiff did not plead an access-to-court
 2 cause of action because he failed to identify the actual injury that resulted. [Doc. No. 39,
 3 at 3-6, Doc. No. 43.] The Court also dismissed Plaintiff’s ADA cause of action with leave
 4 to amend because Plaintiff failed to plead facts showing Defendants “exclusion, denial of
 5 benefits, or discrimination was by reason of his disability.” [Doc. No. 39, at 12-14, Doc.
 6 No. 43.] Finally, the Court dismissed with leave to amend Plaintiff’s request for
 7 “declaratory relief to determine what rights[,] benefits[,] and privileges exist in this
 8 matter regarding . . . treatment of handicapped inmates pursuant to the American[s with]
 9 Disabilities Act” because it overlapped with the Armstrong class actions February 28,
 10 2013 Remedial Plan. [Doc. No 39, at 15, Doc. No. 43.]

11 On September 2, 2020, Plaintiff filed a Second Amended Complaint (“SAC”).
 12 [Doc. No. 62.] On September 24, 2020, Defendants filed a third Motion to Dismiss,
 13 seeking to dismiss the access-to-court and ADA causes of action, the newly asserted
 14 Eighth Amendment cruel and unusual punishment claim, and the request for declaratory
 15 relief under the ADA. [Doc. No. 67.] On October 19, 2020, Plaintiff filed an opposition.
 16 [Doc. No. 71.]¹ On October 30, 2020, Defendants filed a reply. [Doc. No. 72.] On
 17 November 12, 2020, Plaintiff filed a sur-reply. [Doc. Nos. 77 and 78.]

18 ALLEGATIONS OF SECOND AMENDED COMPLAINT

19 Plaintiff’s SAC contains causes of action under the First Amendment for access to
 20 courts, free speech, and retaliation. [Doc. 62, at 69-85.] It alleges violations of the ADA
 21 [Id. at 85-89] and asserts a new Eighth Amendment cruel and unusual punishment claim.
 22 [Id. at 90-91.] Plaintiff alleges that he arrived at Richard J. Donovan Correctional Facility
 23 in June of 2016. [Doc. No. 62 at 26, ¶ 31.] Upon arrival, Plaintiff was provided access to
 24 the library and noticed the librarians would read all inmates confidential legal papers
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26
 27 ¹ In his opposition, Plaintiff continually asserts that Defendants have failed to deny the allegations of the
 28 SAC and, therefore, they are deemed admitted. [See e.g., Doc. No. 71 at 2, ll. 3-4, 9-10.] However,
 Defendants are not required to admit or deny any allegations until they file an answer to the operative
 complaint. Fed.R.Civ.P. 8(b)(1)(B).

1 before making copies, including his own. [Id. at 27, ¶¶ 32-36.] He complained and the
2 Defendants allegedly retaliated against him by limiting his law library access. [Id. at 28, ¶
3 40.] This violated the American with Disabilities Act because Plaintiff is visually
4 impaired and had a chrono permitting him 2 two-hour library sessions per week. [Id. at
5 72-74, 85-89.]

6 On November 13, 2017, Plaintiff wrote a letter to the Litigation Coordinator
7 Defendant McGuire asking for assistance with a pending 602 staff complaint. [Doc. No.
8 62 at 30, ¶ 46.] The next day on November 14, 2017, the Institutional Security Unit
9 searched Plaintiff's cell and confiscated his legal papers. [Id. at 31, ¶ 50.] Plaintiff alleges
10 McGuire directed the search and confiscation. [Id.] A portion of the files were returned
11 three days later on November 17, 2017. [Id. at 33, ¶ 58.]

12 From 2016 to 2018, Plaintiff had a pending habeas petition and postconviction
13 challenges. [Doc. No. 62 at 31-32, 38, 61-62.] The limited law library access, and
14 confiscation of his papers "distracted, interfered and caused hardship" in Plaintiff's
15 pending lawsuits. [Id. at 70.] Plaintiff was allegedly interviewed by Defendant Martinez
16 regarding his law library access appeal. [Doc. No. 61 at 35 -37, ¶¶68 - 72.] During the
17 interview, Plaintiff agreed to withdraw the law library access appeal, but Martinez
18 withdrew the appeal regarding the alleged confiscation of his legal papers instead. [Id.]

19 In 2018, Defendant Robles allegedly wrote a "false RVR," as retaliation for
20 Plaintiff's 602 staff complaints and Form 22 requests. [Doc. No. 62 at 37, ¶ 75.]

21 LEGAL STANDARD

22 Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a party may move to
23 dismiss a complaint for "failure to state a claim upon which relief can be granted." A
24 court may dismiss "based on the lack of cognizable legal theory or the absence of
25 sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police*
26 *Dep't*, 901 F.2d 696, 699 (9th Cir.1990). Although a complaint need contain only "a
27 short and plain statement of the claim showing that the pleader is entitled to relief,"
28 (Fed.R.Civ.P. 8(a)(2)), in order to survive a motion to dismiss this short and plain

1 statement “must contain sufficient factual matter ... to ‘state a claim to relief that is
2 plausible on its face.’ ” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic*
3 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint must include something more
4 than “an unadorned, the-defendant-unlawfully-harmed-me accusation” or “ ‘labels and
5 conclusions’ or ‘a formulaic recitation of the elements of a cause of action.’ ” *Id.* (quoting
6 *Twombly*, 550 U.S. at 555). Determining whether a complaint will survive a motion to
7 dismiss for failure to state a claim is a “context-specific task that requires the reviewing
8 court to draw on its judicial experience and common sense.” *Id.* at 679. Ultimately, the
9 inquiry focuses on the interplay between the factual allegations of the complaint and the
10 dispositive issues of law in the action. See *Hishon v. King & Spalding*, 467 U.S. 69, 73
11 (1984).

12 DISCUSSION

13 I. Access to Courts Claim.

14 Defendants again move to dismiss the access to courts claim for failing to
15 sufficiently plead actual injury. [Doc. No. 67 at 7-8.] To satisfy the actual-injury
16 requirement, plaintiffs must allege defendants’ actions hindered “efforts to pursue a legal
17 claim.” See *Lewis v. Casey*, 518 U.S. 343, 351 (1996). Specifically, plaintiffs must
18 identify a link between a defendant’s “constitutional misconduct” and an “adverse
19 disposition” in plaintiff’s underlying case. *Simkins v. Bruce*, 406 F.3d 1239, 1244 (10th
20 Cir. 2005); see also *Christoper v. Harbury*, 536 U.S. 403, 418 (2002)(denying an access-
21 to-courts claim because “the complainant failed to identify the underlying cause of action
22 that the alleged deception had compromised”).

23 Here, Plaintiff’s SAC does not cure the defects previously noted by the Court
24 because it still fails to sufficiently describe an actual injury. [See Doc. No. 62 at 69-72,
25 77-79.] Plaintiff alleges Defendants schemed to “distract, interfere, and cause hardship”
26 that caused delays in his filings [Id. at 70], but he does not identify any resulting injury.
27 In one handwritten notation in the SAC, Plaintiff implies that defendants’ actions caused
28 a successive petition to be deemed late. [Doc. No. 62 at 69, ll. 16-18.] However,

1 Plaintiff fails to identify what relief the petition was seeking, and what specific
2 “constitutional misconduct” caused that alleged delay. *Simpkins*, 406 F.3d at 1244.
3 Therefore, the access-to-courts claim again fails.

4 II. ADA Claim.

5 To state an ADA disability-discrimination claim, plaintiff must allege that:

- 6 (1) He is an individual with a disability;
- 7 (2) He is otherwise qualified to participate in or receive the benefit of some
public entity’s services, programs or activities;
- 8 (3) He was either excluded from participation in or denied the benefits of the
9 public entity’s services, programs, or activities, or was otherwise
discriminated against by the public entity; and
- 10 (4) Such exclusion, denial of benefits, or discrimination was by reason of his
11 disability.

11 *Vos v. City of Newport Beach*, 892 F.3d 1024, 1036 (9th Cir. 2018).

12 Defendants move to dismiss Plaintiff’s ADA claim because it fails to adequately
13 allege the fourth element of an ADA cause of action. Just as with the FAC, the gravamen
14 of the allegations in the SAC continues to be that Plaintiff’s library access was limited
15 because of the grievances he filed, not because of his disability or attempts to enforce the
16 chrono. [Doc. No. 62, at ¶¶213 - 230.] Plaintiff has failed to sufficiently allege that any
17 alleged exclusion or denial of service was by reason of his disability. Therefore, the
18 ADA claim again fails.

19 III. Request for Declaratory Relief.

20 Defendants seek dismissal of the request for declaratory relief because it is the
21 same relief that was dismissed from the FAC.² Plaintiff’s request for declaratory relief in
22 the SAC [Doc. No. 62 at 94] is identical with the one in the FAC [Doc. No. 32 at 78].
23 Therefore, the request for declaratory relief is again dismissed.

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27 ² The claim for relief was dismissed from the FAC because it overlaps with the ongoing class action
28 litigation in *Armstrong v. Brown*, No. C 94-2307 CW (N.D. Cal., June 29, 1994). [Doc. No. 39 at 15,
Doc. No. 43.]

1 IV. Eighth Amendment Claim.

2 In the SAC, Plaintiff asserts a new claim for an Eighth Amendment violation,
3 alleging that Defendants’ conduct (limiting law library access, reading of legal mail,
4 seizing of paperwork, and false RVR) was cruel and unusual punishment. [Doc. No. 62
5 at 90-91.] This claim is improper, however, because Plaintiff has not been given leave to
6 add new claims. See Fed. R. Civ. Pro. 15; Cervantes v. Countrywide Home Loans, Inc.,
7 656 F.3d 1034, 1043 (9th Cir. 2011)(leave to amend to add new claim to a complaint may
8 be denied on the basis plaintiff failed to comply with local rules).

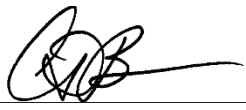
9 In addition, the SAC fails to state an Eighth Amendment claim, because it does not
10 implicate basic human needs such as “food, clothing, shelter, sanitation, medical care,
11 and personal safety.” Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986),
12 abrogated in part on other grounds in Sandin v. Connor, 515 U.S. 472 (1995). Therefore,
13 this claim is dismissed.

14 CONCLUSION

15 For the reasons set forth above, Defendants’ motion to dismiss [Doc. No. 67] is
16 **GRANTED**. Given that this case is over two years old and has been through three
17 rounds of motions to dismiss, **no further leave to amend will be granted**. Defendants
18 shall **answer** the SAC, as amended by this order, by **December 14, 2020**.

19 **IT IS SO ORDERED.**

20 Dated: November 30, 2020

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23 Hon. Cathy Ann Bencivengo
24 United States District Judge
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