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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DAI NGUYEN,  
CDCR #T-01859,  
  
Plaintiff,  
  
vs.  
  
K. WILLIAMS, et al.,  
  
Defendants.

Case No. 23cv1142-JO-KSC

**ORDER DISMISSING FIRST  
AMENDED COMPLAINT  
WITHOUT FURTHER LEAVE TO  
AMEND PURUSANT TO 28 U.S.C.  
§ 1915(e)(2)(B)(ii) AND § 1915A(b)(1)**

Plaintiff Dai Nguyen is a state prisoner incarcerated at Calipatria State Prison in Calipatria, California. Proceeding *pro se*, he filed this lawsuit alleging that correctional counselors violated his constitutional rights when they denied his requests to transfer prisons to be closer to his attorneys and court proceedings. *See* Dkt. 9 (“First Amended Complaint”). After screening Plaintiff’s First Amended Complaint, the Court dismisses his claims with prejudice for the reasons stated below.

**I. BACKGROUND**

Plaintiff filed his original complaint on June 14, 2023, alleging that prison counselors denied his many requests to transfer prisons as follows.

- After filing a petition for resentencing in January 2019, Plaintiff requested to be transferred to New Folsom State Prison (“Folsom”) so that he could be “close to [his] court-appointed lawyer and discuss legal matters for pending court dates.” Dkt. 1, Compl. at 3. Counselor Gray denied his transfer request. *Id.*

- 1 • In October 2019, after filing a second petition for resentencing and to be appointed  
2 counsel, Plaintiff again requested to be transferred to Folsom to attend a hearing in  
3 that matter. *Id.* Counselor Martinez denied this request. *Id.*
- 4 • Plaintiff renewed his request to transfer by asking Counselor Zepeda, but Counselor  
5 Williams “vehemently denie[d this] transfer. *Id.* at 4.
- 6 • Prior to his August 21, 2020 court hearing, Plaintiff asked Counselor Zepeda for an  
7 early transfer to a facility near the court. *Id.* at 5. Officers ultimately denied his  
8 transfer and he was forced to appear in court virtually. *Id.*
- 9 • Plaintiff requested another transfer in December 2021 due to an alleged hearing  
10 impairment. *Id.* at 6. This request was also denied. *Id.*
- 11 • At Plaintiff’s annual committee meeting for 2022, Plaintiff requested and was denied  
12 a transfer. *Id.* The prison also denied a previously approved transfer to Corcoran  
13 State Prison. *Id.*

14 Dkt. 8, Order Screening Complaint at 2-3.

15 Based on these facts, Plaintiff alleged that prison counselors denied his rights to  
16 access the courts, benefit from the assistance of counsel, and receive a fair hearing. *See*  
17 *generally* Compl. Upon screening Plaintiff’s complaint pursuant to § 1915(e)(2)(B)(ii),  
18 the Court dismissed these three claims but granted him leave to amend his access to courts  
19 and denial of counsel claims. Order Screening Complaint at 10. In this dismissal order,  
20 the Court instructed Plaintiff that in order to state a claim for relief on these grounds, he  
21 must allege specific prejudice impacting his litigation, such as the inability to meet a filing  
22 deadline or present a non-frivolous claim. *Id.* at 5-7. The Court also instructed Plaintiff  
23 that his amended complaint must be complete in and of itself without reference to his  
24 original complaint and warned him that any defendants not renamed and any claims not  
25 realleged in his amended complaint would be considered waived. *Id.* at 10.

26 In response, Plaintiff filed an amended complaint and sought to establish prejudice  
27 and injury by adding the following allegations.

- 1 • He was unable to fully present unspecified claims at an order to show cause hearing  
2 because he was not physically present at the hearing and his appointed attorney was  
3 not available for a telephone call before the hearing. FAC at 1-2.
- 4 • Because he could not meet with his attorney in person prior to the order to show  
5 cause hearing, he (1) could not speak without being overheard by prison guards; (2)  
6 could not determine if his appointed attorney was racially biased and should be  
7 replaced; and (3) could not personally argue points of law regarding his eligibility  
8 for resentencing. *Id.* at 2-4.
- 9 • The court denied his petition for resentencing as successive on April 14, 2023,  
10 because he could not present all issues in the first petition or argue that his second  
11 petition should not be denied as successive. *Id.* at 5. Plaintiff claims this denial was  
12 because he could not articulate his legal arguments in a virtual, as opposed to in-  
13 person, hearing. *Id.* at 4.
- 14 • His court date was continued on the grounds that he tested positive for COVID. Had  
15 he been able to inform his attorney that his results were actually negative, his court  
16 date would not have been moved. *Id.* at 5.
- 17 • Because he could not meet with his attorney in person, Plaintiff was unable to direct  
18 him to important documents such as police reports and transcripts and he could not  
19 advise his attorney that the trial judge had wrongfully instructed the jury on felony  
20 murder. He alleges that this failure to present a manslaughter instruction to the jury  
21 “gave the prosecution and judge an unfair advantage.” *Id.* at 6-7.
- 22 • Because he missed a February 24, 2023 court date, the court appointed him the same  
23 attorney who had previously failed to present his arguments during Plaintiff's first  
24 resentencing hearing. *Id.* at 8.

25 Despite the Court's instructions, Plaintiff included the above allegations in his  
26 amended pleading but did not reallege his previous factual allegations and rename all his  
27 defendants in order to provide the Court with a complete pleading of all allegations and  
28 defendants. *See generally id.*



1 deny leave to amend when a proposed amendment would be futile. *Chappel v. Lab. Corp.*  
2 *of America*, 232 F.3d 719, 725–26 (9th Cir. 2000). Amendment is futile “if no set of facts  
3 can be proved under the amendment to the pleadings that would constitute a valid and  
4 sufficient claim or defense.” *Miller v. Rykoff–Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir.  
5 1988) (overruled on other grounds).

### 6 III. DISCUSSION

7 The Court dismissed Plaintiff’s original claims for violations of his right to access  
8 the courts and his right to counsel because he failed to specify that his litigation was  
9 prejudiced. In screening this amended complaint, the Court considers whether Plaintiff’s  
10 newly added allegations sufficiently plead that Defendants’ failure to transfer him  
11 prejudiced his litigation such that these claims may proceed.

#### 12 A. Access to Courts

13 The Court first considers whether Plaintiff has stated a claim for denial of access to  
14 courts based upon Defendants’ denial of his requests to transfer prisons. Under the First  
15 and Fourteenth Amendments, a prisoner has a fundamental right of access to courts without  
16 interference by prison officials. *Lewis v. Casey*, 518 U.S. 343, 352 (1996); *Silva v. Di*  
17 *Vittorio*, 658 F.3d 1090, 1103 (9th Cir. 2011), overruled on other grounds by *Richey v.*  
18 *Dahne*, 807 F.3d 1202 (9th Cir. 2015). To plead a denial of access to courts claim, a  
19 plaintiff must plausibly allege an “‘actual injury’—that is, ‘actual prejudice with respect to  
20 contemplated or existing litigation, such as the inability to meet a filing deadline or to  
21 present a claim.’” *Lewis*, 518 U.S. at 348–49; *see also Jones v. Blanas*, 393 F.3d 918, 936  
22 (9th Cir. 2004) (noting that an actual injury includes an “inability to file a complaint or  
23 defend against a charge”). “Failure to show that a ‘non-frivolous legal claim had been  
24 frustrated’ is fatal” to an access to courts claim. *Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1  
25 (9th Cir. 2008) (quoting *Lewis*, 518 U.S. at 353 & n.4).

26 Plaintiff’s amended pleading fails to specify that he suffered actual prejudice to his  
27 litigation and, therefore, fails to cure the pleading deficiencies in his original access to  
28 courts claim. *See generally* FAC at 1-8. Plaintiff’s new allegations itemize additional

1 instances where he could not present arguments because he was not physically present in  
2 court, but he fails to specify what those arguments would have been and what actual  
3 litigation prejudice resulted. *Id.* at 1-2, 4. It does not suffice for Plaintiff to broadly  
4 conclude that certain petitions would not have been dismissed if he had been able to speak  
5 in court. *See Lewis*, 518 U.S. at 348–49. He also raises the concerns that his physical  
6 distance caused him to be represented by attorneys who (1) were possibly racist or (2) had  
7 previously provided him with ineffective assistance. FAC at 2, 8. These speculations are,  
8 again, not accompanied by factual allegations about what these attorneys failed to do and  
9 any specific litigation consequences resulting from their failures. *See Lewis*, 518 U.S. at  
10 348–49. Because Plaintiff’s allegations regarding his access to courts claim are not  
11 sufficient to show that any non-frivolous legal claim has been frustrated, he has not pled  
12 that he suffered “actual prejudice.” Thus, his access to courts claim is dismissed. *See*  
13 *Alvarez*, 518 F.3d at 1155 n.1; *Iqbal*, 556 U.S. at 678.

#### 14 **B. Right to Counsel**

15 The Court next addresses whether Plaintiff has stated a claim for denial of his right  
16 to counsel. The Sixth Amendment prohibits government interference into the attorney-  
17 client relationship. *United States v. Irwin*, 612 F.2d 1182, 1187 (9th Cir. 1980). To state  
18 a violation of the Sixth Amendment’s right to counsel through government interference,  
19 the plaintiff must allege that he was substantially prejudiced by the government’s actions.  
20 *Id.*; *see also Weatherford v. Bursey*, 429 U.S. 545, 558 (1977) (finding that plaintiff could  
21 not state a section 1983 claim for violation of his right to counsel without demonstrating  
22 substantial prejudice). Some examples of “substantial prejudice” includes the introduction  
23 of negative evidence at trial, “the prosecution’s use of confidential information pertaining  
24 to defense plans and strategy,” and “other actions designed to give the prosecution an unfair  
25 advantage at trial.” *Williams v. Woodford*, 384 F.3d 567, 585 (9th Cir. 2004). Vague and  
26 conclusory allegations regarding unspecified barriers to a prisoner’s relationship with  
27 counsel fail to state a section 1983 claim for deprivation of the right to counsel. *See Stanley*  
28 *v. Vining*, 602 F.3d 767, 770 (9th Cir. 2010).

1 Plaintiff's complaint also fails to state a claim for denial of his right to counsel  
2 because it does not plead "actual prejudice." In his amended pleading, Plaintiff alleges that  
3 he was disadvantaged because he could not review key documents with his attorney in  
4 person and point out important information to him. FAC at 6-7. As a result, he could not  
5 point out to his attorney that the court had provided the wrong jury instruction during trial  
6 and, presumably, his attorney could not raise that argument for him to support his  
7 resentencing requests. *Id.* at 7. He does not, however, explain how the failure to make that  
8 argument specifically impacted the outcome of his resentencing petition or any other  
9 ruling. *See id.*; *Williams*, 384 F.3d at 585. Because he identifies no specific harm or  
10 negative impact to his litigation resulting from the fact that he was not housed in physical  
11 proximity to his lawyers, Plaintiff fails to state a claim for denial of his right to counsel.  
12 *See Iqbal*, 556 U.S. at 678; *Stanley*, 602 F.3d at 770.

### 13 **C. Incomplete Pleading**

14 Additionally, the fact that Plaintiff's amended complaint is not complete in itself  
15 provides an independent basis for dismissal. The Court explicitly informed Plaintiff that  
16 the amended complaint must be complete without reference to the prior dismissed  
17 complaint. S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896  
18 F.2d 1542, 1546 (9th Cir. 1989) ("The fact that a party was named in the original complaint  
19 is irrelevant; an amended pleading supersedes the original."). Here, Plaintiff's amended  
20 complaint refers to defendants from the original Complaint without renaming any  
21 individual defendant or including any factual allegations regarding what they did or failed  
22 to do. *See generally* FAC. While the Court cautioned Plaintiff that his new complaint  
23 must be complete by itself and outlined the consequences of failing to do so, *see* Order  
24 Granting Dismissal at 10, Plaintiff did not comply with these instructions. As such,  
25 Plaintiff's failure to name any individual defendants or include any facts about their alleged  
26 wrongful conduct in his most recent pleading provides additional grounds for dismissal.

### 27 **D. Leave to Amend**

28 The Court declines to grant Plaintiff further leave to amend his complaint. Plaintiff

1 has had two opportunities to specify the harm to his litigation as a result of being housed  
2 far from the courthouse and his attorneys. At this point, it appears Plaintiff is unable to  
3 add additional facts which would demonstrate that he suffered actual prejudice to his  
4 litigation by Defendants' failure to transfer him to a different prison. The Court, therefore,  
5 finds that granting leave to amend would be futile. *See Miller*, 845 F.2d at 214. Further,  
6 in his amended complaint, Plaintiff has not realleged the names of any individual  
7 Defendant or identified their specific wrongful conduct despite the fact he was warned by  
8 the Court that failure to do so may result in dismissal of the case. *See Order Granting*  
9 *Dismissal at 10; Lira*, 427 F.3d at 1169. Accordingly, for both of these reasons, the Court  
10 denies further leave to amend and dismisses Plaintiff's complaint with prejudice.

11 **E. Plaintiff's Objection to the Court's Due Process Dismissal**

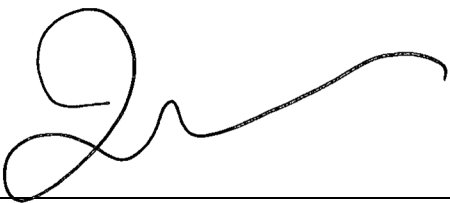
12 Plaintiff also filed an objection to the Court's order dismissing his due process claim  
13 with prejudice. Dkt. 10. For the reasons stated in the Court's January 31, 2024 Order,  
14 Section IV, C, Plaintiff's objection is overruled.

15 **IV. CONCLUSION**

16 For the reasons set forth above, the Court *sua sponte* DISMISSES Plaintiff's First  
17 Amended Complaint without further leave to amend based on his failure to state a claim  
18 upon which relief may be granted. Dkt. 9. The Court also OVERRULES Plaintiff's  
19 objection, Dkt. 10, to the Court's order dismissing his due process claim with prejudice,  
20 Dkt. 8, and DENIES AS MOOT Plaintiff's motions to serve the complaint and appoint  
21 counsel. Dkts. 12, 13. The Clerk of Court is DIRECTED to close the case.

22 **IT IS SO ORDERED.**

23 DATE: June 3, 2024

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25 \_\_\_\_\_  
26 Hon. Jinsook Ohta  
27 United States District Judge  
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