



## II. Standard of Review

The court is required to review a complaint in a civil action in which an inmate seeks redress from a governmental entity or officer. 28 U.S.C. § 1915A(a). The court must dismiss a complaint if it is “frivolous, malicious, or fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915A(b)(1). To survive dismissal for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

Where, as here, a complaint was filed pro se, it must be construed liberally. King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). “Principles requiring generous construction of pro se complaints are not, however, without limits.” Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985). A pro se complaint “must still ‘state a claim to relief that is plausible on its face.’” Sakyi v. Nationstar Mortg., LLC, 770 F. App’x 113, 113 (4th Cir 2019) (quoting Jackson v. Lightsey, 775 F.3d 170, 178 (4th Cir. 2014)).

## III. Discussion

Section 1983 imposes liability on any person who, under color of state law, deprives another person “of any rights, privileges, or immunities secured by the Constitution and laws.” 42 U.S.C. § 1983. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged

deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988).

The court construes Neelson’s complaint as attempting to assert a constitutional claim for denial of access to the courts. To state such a claim, a plaintiff must plead facts showing that he has suffered an “actual injury” as a result of the denial of access. See Lewis v. Casey, 518 U.S. 343, 351 (1996); see also Cochran v. Morris, 73 F.3d 1310, 1317 (4th Cir. 1996) (emphasizing that a prisoner must “identify an actual injury” resulting from the denial of access and “cannot rely on conclusory allegations”). To satisfy the “actual injury” requirement, a plaintiff “must identify a ‘nonfrivolous,’ ‘arguable’ underlying claim” that has been frustrated or impeded as a result of the defendants’ actions. Christopher v. Harbury, 536 U.S. 403, 415 (2002) (quoting Lewis, 518 U.S. at 353 & n.3). Thus, “the underlying cause of action, whether anticipated or lost, is an element that must be described in the complaint, just as much as allegations must describe the official acts frustrating the litigation.” Id.

Neelson’s complaint does not satisfy this requirement. He does not describe the claims that he seeks to pursue in specific enough terms to satisfy “the ‘nonfrivolous’ test and to show that the ‘arguable’ nature of the underlying claim[s] is more than hope.” Id. at 416. Nor does he explain why he needs the operating procedures in order to file a complaint and cannot simply request the desired information through discovery once a complaint is filed and served. Because Neelson does not adequately allege that he has been hindered in pursuing a nonfrivolous claim, his complaint fails to state a claim for denial of access to the courts.

#### IV. Conclusion

For the foregoing reasons, the court concludes that Neelson's complaint is subject to dismissal for failure to state a claim against the defendant. Based on his status as a pro se litigant, the court will dismiss the action without prejudice and allow him an opportunity to file an amended complaint within thirty days, if he so chooses. An appropriate order will be entered.

Entered: January 8, 2024



Michael F. Urbanski  
Chief U.S. District Judge  
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Chief United States District Judge