APPENDIX A

The opinion of the United States court of appeals
and
Mandate

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-2293

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIGITTE REYNOLDS,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
ANTHONY STEWART, Warden, et al.,	)	THE EASTERN DISTRICT OF
	)	MICHIGAN
Defendants-Appellees.	)	

ORDER

Before: SILER and THAPAR, Circuit Judges; HOOD, District Judge.*

Brigitte Reynolds, a pro se Michigan prisoner, appeals the district court's judgment dismissing her civil rights complaint filed pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Reynolds claims that, while she was in jail awaiting her state criminal trial, the county seized personal property from her apartment. When her trial ended, she moved the court to return some of the seized property. The state court denied her motion. Reynolds then requested transcripts of a specific hearing in order to appeal or move for reconsideration of the state court's decision. The state court sent a video of the hearing on a CD instead of providing her with paper transcripts. Correctional Officer Linda Tackett informed Reynolds that she was not allowed to have a CD. Reynolds asked Deputy Warden Karri Osterhout, Warden's Assistant Steven

*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

Halliwill, and Warden Anthony Stewart to allow her to view the materials on the CD but was not granted permission to do so. Reynolds alleged that, because she was unable to review the transcripts or the CD, she was prevented from having any possibility of prevailing in her case. She sought monetary, declaratory, and injunctive relief.

Reynolds filed a § 1983 complaint against Osterhout, Halliwill, Stewart, Tackett, and Warden's Assistant Erika Reeves, claiming that they violated her right of access to the courts by preventing her from viewing the contents of her CD. She also alleged that prison staff failed to respond to her grievances and that prisoners who were represented by counsel were able to view videos related to their cases. The defendants filed a motion to dismiss, to which Reynolds responded.

The magistrate judge recommended dismissing Reynolds's complaint. She determined that Reynolds had failed to allege a claim of denial of access to the courts because such claims are limited to interference with a direct appeal of a criminal conviction, a habeas petition, or a § 1983 suit challenging the conditions of confinement, and Reynolds's claim dealt with the disposition of personal property predating her conviction. The magistrate judge further found that Reynolds had failed to allege a claim arising from the grievance procedure.

The district court overruled Reynolds's objections, adopted the magistrate judge's recommendations, and dismissed the complaint. It explained that the right of access to the courts does not extend to property claims filed in state court.

We review de novo a district court's dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. *Grubbs v. Sheakley Grp., Inc.*, 807 F.3d 785, 792 (6th Cir. 2015). To avoid 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.*

To state a claim under § 1983, "a plaintiff must set forth facts that, when construed favorably, establish (1) the deprivation of a right secured by the Constitution or laws of the United States (2) caused by a person acting under the color of state law." *Sigley v. City of Parma Heights*, 437 F.3d 527, 533 (6th Cir. 2006).

Prisoners and pretrial detainees have a constitutional right of access to the courts. *See Lewis v. Casey*, 518 U.S. 343, 355 (1996). But

> [t]he tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.

Id. Reynolds did not allege that the defendants interfered with her right to access the courts with respect to a direct criminal appeal, a habeas corpus application, or a civil rights claim challenging the conditions of her confinement. Instead, she alleged that the prison defendants interfered with her state claim relating to the disposition of her personal property. This is insufficient to state a claim of denial of access to the courts. *See Smith v. Craven*, 61 F. App'x 159, 162 (6th Cir. 2003) ("The right of access does not extend to a prisoner's property claim filed in state court.").

Reynolds also attempts to raise an equal-protection claim in her appellate brief, but this issue was not properly presented to the district court. Therefore, we do not consider it. *See Bruton v. Men of Valor–Prison Ministry*, 511 F. App'x 531, 532 (6th Cir. 2013) (per curiam); *Dealer Comput. Servs., Inc. v. Dub Herring Ford*, 623 F.3d 348, 357 (6th Cir. 2010).

Accordingly, we **AFFIRM** the judgment of the district court.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 17-2293

Filed: May 17, 2018

BRIGITTE REYNOLDS

Plaintiff - Appellant

v.

ANTHONY STEWART, Warden; ERIKA REEVES, Warden's Assistant; KARRI OSTERHOUT, Deputy Warden Programs; STEVEN HALLIWILL, Warden's Assistant; LINDA TACKETT, Correctional Officer

Defendants - Appellees

MANDATE

Pursuant to the court's disposition that was filed 04/25/2018 the mandate for this case hereby issues today.

COSTS: None

APPENDIX B

Reynolds v Stewart, et al, No. 17-10257 Notice of Appeal

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Brigitte Reynolds,

Petitioner,

HONORABLE ARTHUR J. TARNOW
Case No. 17-10257

v.

Anthony Stewart, ET AL.,
Respondent.
_____/

NOTICE OF APPEAL

Notice is hereby given that Brigitte Reynolds, the petitioner in the above name case, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the Judgment granting Defendant's Motion To Dismiss and Dismissing Case; on September 29, 2017.

Respectfully submitted,

Brigitte Reynolds

Brigitte Reynolds

Dated: Oct 19, 2017

APPENDIX C

The opinion of the United States District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIGITTE REYNOLDS,

Plaintiff,

v.

ANTHONY STEWART, ET AL.,

Defendants.
_____/

Case No. 17-10257

SENIOR U.S. DISTRICT JUDGE
ARTHUR J. TARNOW

U.S. MAGISTRATE JUDGE
PATRICIA T. MORRIS

JUDGMENT

All issues having been resolved by the court's Order [18] of September 29, 2017, **THIS CASE IS CLOSED**.

Dated at Detroit, Michigan, this 29th day of September, 2017.

DAVID J. WEAVER
CLERK OF THE COURT

BY: s/Michael E. Lang
Deputy Clerk

Approved:

s/Arthur J. Tarnow
ARTHUR J. TARNOW
SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIGITTE REYNOLDS,

Plaintiff,

v.

ANTHONY STEWART, ET AL.,

Defendants.
_____/

Case No. 17-10257

SENIOR U.S. DISTRICT JUDGE
ARTHUR J. TARNOW

U.S. MAGISTRATE JUDGE
PATRICIA T. MORRIS

ORDER ADOPTING REPORT AND RECOMMENDATION [16]; OVERRULING PLAINTIFF'S OBJECTION [17]; GRANTING DEFENDANTS' MOTION TO DISMISS [13]; AND DISMISSING CASE

Plaintiff Brigitte Reynolds, a *pro se* prisoner, has brought claims against Defendants, Michigan Department of Corrections officials Anthony Stewart, Erica Reeves, Kari Osterhout, S. Holliwell, and Tackett. Plaintiff alleges violations of her First Amendment rights pursuant to 42 U.S.C. § 1983. Specifically, she claims a violation of her right of access to the courts.

Plaintiff sues Defendants in both their official and personal capacities. She seeks a declaratory judgment, injunctive relief, $350,000.00 in punitive damages, $350,000.00 in compensatory damages, and any appropriate attorney fees and costs.

Defendants filed a Motion to Dismiss [Dkt. #13] on April 24, 2017. On June 30, 2017, the Magistrate Judge issued a Report and Recommendation (R&R) [16]

> Plaintiff filed a Response to the instant Motion, (Doc. 14), and I consider it "as part of the pleadings." *Brown v. Matauszak*, 415 F. App'x 608, 613 (6th Cir. 2011) (quoting *Flournoy v. Seiter*, 835 F.2d 878, at *1 (6th Cir. Dec. 7, 1987) (unpublished table decision)). Relevantly, she elaborates somewhat on the state hearing, noting that "[t]he Alpena Court denied [the] return [of] property they seized from her apartment while she was confined in the county jail," and that she moved "for the return of her seized property that was not a part of her criminal convictions." (Doc. 14 at 5). She does not allege that the state's post-deprivation procedures are categorically inadequate.

(R&R 1-3).

LEGAL STANDARD

The Court must make a *de novo* determination of the portions of the R&R to which Plaintiff has objected. 28 U.S.C. § 636(b)(1)(C). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.*

On a Rule 12(b)(6) motion to dismiss, the Court must "assume the veracity of [the plaintiff's] well-pleaded factual allegations and determine whether the plaintiff is entitled to legal relief as a matter of law." *McCormick v. Miami Univ.*, 693 F.3d 654, 658 (6th Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993)).

ANALYSIS

The Magistrate Judge recommended that the Court grant Defendants' Motion to Dismiss. The Magistrate Judge held that Plaintiff's claims for monetary damages against Defendants in their official capacities are barred under the

1. Eleventh Amendment Immunity

It is well established that "sovereign immunity bars a § 1983 suit for monetary damages against a prison official in his official capacity." *Smith-El v. Steward*, 33 Fed. Appx. 714, 716 (6th Cir. 2002). This is such a case: Plaintiff seeks $350,000.00 each in punitive and compensatory damages and sues Defendants in their official capacities. Accordingly, her claims are barred and her Objection overruled.

2. Access to the Courts

Plaintiff lacks standing to bring a right-of-access claim because she has not alleged a justiciable injury. Plaintiff's "right to access the courts extends to direct appeals, habeas corpus applications, and civil rights claims only." *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999) (en banc). U.S. Supreme Court precedent explains that inmates must have access to the tools needed "in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement." *Lewis v. Casey*, 518 U.S. 343, 349 (1996). The Sixth Circuit has expressly foreclosed the exact claim Plaintiff attempts to bring: "[t]he right of access does not extend to a prisoner's property claim filed in state court." *Smith v. Craven*, 61 Fed. Appx. 159, 162 (6th Cir. 2003); *see also Hikel v. King*, 659 F. Supp. 337, 340 (E.D.N.Y. 1987) ("Unless part of a systemic practice, the intentional deprivation of personal property is not actionable under 42 U.S.C. §

APPENDIX D

Reynolds v Stewart, et al, No. 17-10257 United States District Court Eastern District of Michigan Report and Recommendation.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIGITTE REYNOLDS,

Plaintiff,

v.

CASE NO. 17-cv-10257
DISTRICT JUDGE ARTHUR J. TARNOW
MAGISTRATE JUDGE PATRICIA T. MORRIS

ANTHONY STEWART,
ERICA REEVES,
KARI OSTERHOUT,
S. HOLLIWELL, and
TACKETT,

Defendants.
_____/

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ON DEFENDANTS' MOTION TO DISMISS (Doc. 13)

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that Defendant's Motion to Dismiss, (Doc. 13), be **GRANTED**, and that this case be **DISMISSED**.

II. REPORT

A. Introduction

Plaintiff Brigitte Reynolds ("Plaintiff") is a prisoner incarcerated at Women's Huron Valley Correctional Facility ("WHVCF"), and filed this lawsuit, under 42 U.S.C. § 1983, on January 25, 2017 against Defendants Anthony Stewart ("Stewart"), Erica Reeves ("Reeves"), Kari Osterhout ("Osterhout"), S. Holliwell ("Holliwell"), and Tackett ("Tackett"). (Doc. 1). She avers a violation of her First Amendment right of access to the

courts because she was denied the ability to access a compact disc containing "transcripts of a hearing she had" in "the 26th Judicial Court in Alpena, Michigan" for "the return of her personal property." (Doc. 1 at ID 4). "Plaintiff needed transcripts to request a reconsideration and appeal the court's decision," and she had "21 days from June 3, 2016, to request a reconsideration from the court for the hearing and for the return of Plaintiff's personal property." (*Id.*). Tackett, a correctional officer, told her "she was not allowed to have the disc," as did Osterhout, Holliwell, and Stewart when she contacted them. (*Id.*). Other inmates "had been allowed" to "receive a viewing" of discs mailed them. (*Id.*). Following these rejections, Plaintiff "requested, but did not receive a hearing on" this rejection. (*Id.*).

On November 6, 2016, Plaintiff avers "a memo was posted in all housing units" stating that attorneys would be permitted to show inmates videos related to their cases on devices owned by the Michigan Department of Corrections ("MDOC"). (*Id.*). Because Plaintiff was representing herself in the state court proceeding, she was unable to utilize this policy. Ultimately, Defendants' actions "prevented her the possibility to prevail on a reconsideration and/or appeal of the 26th Circuit Court's decision and the possibility to recover her personal property from the county that prosecuted her on her criminal case." (*Id.*). "Additionally, the prison staff has not completed the grievance process within the Michigan Department of Corrections policy's mandated 120 days." (*Id.*).

Plaintiff filed a Response to the instant Motion, (Doc. 14), and I consider it "as part of the pleadings." *Brown v. Matauszak*, 415 F. App'x 608, 613 (6th Cir. 2011) (quoting *Flournoy v. Seiter*, 835 F.2d 878, at *1 (6th Cir. Dec. 7, 1987) (unpublished

table decision)). Relevantly, she elaborates somewhat on the state hearing, noting that "[t]he Alpena Court denied [the] return [of] property they seized from her apartment while she was confined in the county jail," and that she moved "for the return of her seized property that was not a part of her criminal convictions." (Doc. 14 at 5). She does not allege that the state's post-deprivation procedures are categorically inadequate.

Judge Michael Muck verbaly ordered the return of my property in my Trial.. *First time 6, 2011 while in WAUCF

Were told to return during my Trial is in Transcripts.

B. Motion To Dismiss Standard of Review

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the complaint with regard to whether it states a claim upon which relief can be granted. When deciding a motion under this subsection, "[t]he court must construe the complaint in the light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff can prove a set of facts in support of its claims that would entitle it to relief." *Bovee v. Coopers & Lybrand C.P.A.*, 272 F.3d 356, 360 (6th Cir. 2001). As the Supreme Court held in *Bell Atlantic Corp. v. Twombly*, a complaint must be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted if the complaint does not plead "enough facts to state a claim to relief that is plausible on its face." 550 U.S. 544, 570 (2007) (rejecting the traditional Rule 12(b)(6) standard set forth in *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957)). Under Rule 12(b)(6), "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations omitted). Even though a complaint need not contain "detailed" factual allegations, its "[f]actual allegations must

be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (citations omitted).

The Supreme Court has explained that the "tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (finding assertions that one defendant was the "principal architect" and another defendant was "instrumental" in adopting and executing a policy of invidious discrimination insufficient to survive a motion to dismiss because they were "conclusory" and thus not entitled to the presumption of truth). Although Rule 8 "marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era," it "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id.* "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. Thus, "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth . . . . When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.*

"In determining whether to grant a Rule 12(b)(6) motion, the court primarily considers the allegations in the complaint, although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account." *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1554 (6th Cir. 1997) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure §

1357 (2d ed. 1990)). This circuit has further "held that 'documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [the plaintiff's] claim.'" *Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir. 1997) (quoting *Venture Assoc. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)); *Yeary v. Goodwill Indus.–Knoxville, Inc.*, 107 F.3d 443, 445 (6th Cir. 1997) (finding that the consideration of other materials that "simply filled in the contours and details of the plaintiff's [second amended] complaint, and added nothing new," did not convert the motion to dismiss into a motion for summary judgment).

Because Plaintiff proceeds *in forma pauperis*, her complaint remains subject to *sua sponte* dismissal "at any time" if this Court finds that it "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). In addition, federal courts hold an independent obligation to examine their own jurisdiction. *United States v. Hays*, 515 U.S. 737, 742 (1995). Rule 12(h)(3) of the Federal Rules of Procedure provides that, if a court "determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."

To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the conduct about which she complains was committed by a person acting under the color of state law and (2) the conduct deprived her of a federal constitutional or statutory right. In addition, a plaintiff must allege that she suffered a specific injury as a result of the conduct of a particular defendant and she must allege an affirmative link between the

injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976).

C. Analysis and Conclusion

Plaintiff's complaint alleges, in general, that Defendants violated her First Amendment "legal right of access to the courts" because she was "prevented the possible reconsideration and appeal for the return of her personal property from the county that prosecuted her criminal case." (Doc. 1 at ID 5). She seeks "injunctive relief to allow prisoners to view CD's [sic] sent from the courts as needed, and a safe place to store the CD's [sic] so they do not get 'lost' and will be accessible for future viewing," as well as compensatory and punitive damages. (*Id.*). Defendants' Motion To Dismiss raises three prime arguments: (1) Defendants are entitled to Eleventh Amendment immunity; (2) Plaintiff's Complaint does not include allegations sufficient to generate a federal question, and thus this Court lacks subject matter jurisdiction; and (3) to the extent Plaintiffs' claims should survive, Defendants are entitled to qualified immunity. I address each argument in turn.

1. Eleventh Amendment Immunity

The Eleventh Amendment "places a jurisdictional limit on federal courts in civil rights cases against states and state employees," and as such it receives consideration at the forefront of my analysis. *Wells v. Brown*, 891 F.2d 591, 593 (6th Cir. 1989). "[A]s when the State itself is named as the defendant, a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02 (1984) (citing

Cory v. White, 457 U.S. 85, 91 (1982)). But an exception to this rule exists for suits "challenging the constitutionality of a state official's action . . . ." *Id.* at 102. In such cases, the Eleventh Amendment prohibits a federal court from "awarding damages against the state treasury even though the claim arises under the Constitution." *Id.* at 100. This rule would not necessarily bar certain non-monetary remedies against state officials acting in their official capacity. *Accord Pennhurst*, 465 U.S. at 120. It also presents no impediment to recovery against a state official in her *individual* capacity if no qualified immunity is found.

In the instant case, Plaintiff sues Defendants in both official and individual capacities. (Doc. 1 at ID 1). Her claims for monetary damages against Defendants in their official capacities are barred. *E.g.*, *Smith-El v. Steward*, 33 F. App'x 714, 716 (6th Cir. 2002). The Eleventh Amendment does not deprive this Court of jurisdiction, however, as to her claims for monetary damages against Defendants in their individual capacities, as well as to her claim for injunctive relief against Defendants.

2. Right of Access to the Courts

In *Bounds v. Smith*, the Supreme Court held that the Constitution entitles prisoners to "a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts" via "adequate law libraries or adequate assistance from persons trained in the law." 430 U.S. 817, 825, 828 (1977). This right was itself fundamental because it empowered prisoners in "original actions seeking new trials, release from confinement, or vindication of fundamental civil rights," which "are the first line of defense against constitutional violations." *Id.* at 827-28. Over time, the Supreme

Court explained that standing to bring a right-of-access claim requires a showing of "actual injury," which in turn stems from the nature of the underlying claim. *Lewis v. Casey*, 518 U.S. 343, 349 (1996). Justice Scalia, writing for the Court, elaborated on the sorts of claims whose blockage cause actual injury:

> *Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. *The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement.* Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.

Id. at 355 (emphasis added). In other words, an underlying claim can 'actually injure' only if it is a direct appeal, a habeas petition, or an "action[] under 42 U.S.C. § 1983 to vindicate 'basic constitutional rights,'" (*i.e.*, conditions of confinement). *Id.* at 354 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974)). A frivolous underlying claim precludes a finding of actual injury. *See id.* at 353 n.3 ("Depriving someone of a frivolous claim . . . deprives him of nothing at all, except perhaps the punishment of Federal Rule of Civil Procedure 11 sanctions."); *Christopher v. Harbury*, 536 U.S. 403, 415 (2002) ("[T]he 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."); *Hadix v. Johnson*, 182 F.3d 400, 405-06 (6th Cir. 1999) ("By explicitly requiring that plaintiffs show actual prejudice to non-frivolous claims, *Lewis* did in fact change the 'actual injury' requirement as it had previously been applied in this circuit."). The Sixth Circuit has strictly construed the Supreme Court's language, and guarantees to prisoners nothing more than the constitutional minimum illustrated in

Lewis. *See Thaddeus-X v. Bladder*, 175 F.3d 378, 391 (6th Cir. 1999) (en banc) (reflecting on the Supreme Court's language in *Lewis* and limiting the right of access to "direct appeals, habeas corpus applications, and civil rights claims only."); *see also Green v. Johnson*, No. 13-12305, 2014 WL 4054334, at *3 (E.D. Mich. Aug. 14, 2014) (discussing the Sixth Circuit's narrow construction of *Lewis*'s language, and adhering closely to it); *Mikko v. Davis*, 342 F. Supp. 2d 643, 646 (E.D. Mich. 2004) (same).[1]

The elements of a viable access-to-courts claim in the Sixth Circuit are: (1) "a non-frivolous underlying claim"; (2) "obstructive actions by state actors"; (3) "'substantial[] prejudice' to the underlying claim that cannot be remedied by the state court"; and (4) "a request for relief which the plaintiff would have sought on the underlying claim and is now otherwise unattainable." *Flagg v. City of Detroit*, 715 F.3d 165, 174 (6th Cir. 2013) (internal citations omitted). Because the underlying claim "is an element that must be described in the complaint," claimants should thus provide a description of the underlying claim sufficient to "give fair notice to a defendant" and "to apply the 'nonfrivolous' test" to its contents. *Christopher*, 536 U.S. at 415-16. And, as noted above, the right of access to the courts extends to "direct appeals, habeas corpus applications, and civil rights claims only." *Thaddeus-X*, at 391. If the plaintiff has been denied access to a meritorious personal injury case in state court, for example, he has no redress in federal court.

[1] Taken out of context, the standard articulated in *Thaddeus-X* ostensibly contemplates a broader right of access than that articulated in *Lewis*, particularly with respect to the phrase "civil rights claims." *Thaddeus-X*, 175 F.3d at 391. However, the Sixth Circuit frames its language as a *rephrasing* of the same "carefully-bounded right" described in *Lewis*, rather than an *expansion* of the constitutional minimum.

At the outset, I note that Plaintiff's Complaint undoubtedly presents a federal question. She alleges federal-question jurisdiction, (Doc. 1 at ID 1), which must flow from a "well-pleaded complaint." *See generally Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 9-10 (1983). Where the plaintiff asserts claims "aris[ing] under the [federal] law that creates the cause of action," her complaint very likely raises a sufficient federal question. *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916); *see Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 808 (1986) ("The 'vast majority' of cases that come within this grant of jurisdiction are covered by Justice Holmes' statement that a ''suit arises under the law that creates the cause of action.'" (quoting *Franchise Tax Bd.*, 463 U.S. at 9-10)). Where, as here, "both the court's subject matter jurisdiction and the substantive claim for relief are based on the same" federal law, "[d]ismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is 'so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.'" *Gunter*, 433 F.3d at 519 (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998)).

The pleadings at issue contend that Plaintiff required access to certain transcripts in order to mount an adequate challenge to an adverse state court ruling, that Defendants' denials of her requests for such transcripts effectively denied her the ability to challenge the state court's ruling, and that this conduct violated her fundamental right to access courts under the First Amendment. These averments are not so ludicrous as to deprive the

Court of subject-matter jurisdiction for failure to raise a federal question. *See, e.g., Steel Co.*, 523 U.S. at 89 ("'[J]urisdiction . . . is not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover.' Rather, the district court has jurisdiction if 'the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another' . . . unless the claim 'clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous.'" (quoting *Bell v. Hood*, 327 U.S. 678, 682-83, 685 (1946))).

This does not mean, however, that she fulfills the independent constitutional requirement of standing. By her admission, the underlying claim is an appeal from a state court ruling as to her personal property, which was taken from her apartment before her conviction and placement in prison. Such a claim, if lost, does not actually injure a claimant for purposes of a First Amendment right-of-access claim, because it is not a direct appeal of her conviction, a habeas petition, or a §1983 suit challenging the conditions of her confinement. *Cf., e.g., Smith v. Craven*, 61 F. App'x 159, 162 (6th Cir. 2003) ("A prisoner's right of access to the courts is limited to direct criminal appeals, habeas corpus applications, and civil rights claims challenging the conditions of confinement. . . . The right of access does not extend to a prisoner's property claim filed in state court."); *Hikel v. King*, 659 F. Supp. 337, 340 (1987) ("Unless part of a systematic practice, the intentional deprivation of personal property is not actionable under 42 U.S.C. § 1983 if the State provides a meaningful post-deprivation remedy."). As

such, Plaintiff has not shown that her inability to appeal the state court judgment actually injured her, and thus the case is nonjusticiable and should be dismissed.

Out of an abundance of caution, I address Plaintiff's stray allegation that the "prison staff has not completed the grievance process within the Michigan Department of Corrections policy's mandated 120 days," (Doc. 1 at ID 4), and note that it also fails to state a claim upon which relief can be granted. Section 1983 does not provide redress for a violation of state law. *Pyles v Raiser*, 60 F.3d 1211, 1215 (6th Cir. 1995). An alleged failure to comply with a state prison administrative rule or policy does not assert a federal claim nor does not itself rise to the level of a constitutional violation. *Laney v. Farley*, 501 F.3d 577, 581, n.2 (6th Cir. 2007).

3. Qualified Immunity

In carrying out their duties, state employed correctional officers "enjoy the protections of qualified immunity . . . ." *McKnight v. Rees*, 88 F.3d 417, 419 (6th Cir. 1996). To surmount this line of defense, Plaintiffs must establish: (1) that the facts alleged show that Defendants' conduct violated his constitutional right, (2) that the right violated was clearly established, *Saucier v. Katz*, 533 U.S. 194, 201 (2001), and (3) that Defendants reasonably should have known that his conduct violated clearly established law. *Doe v. Sullivan Cty., Tenn.*, 956 F.2d 545, 554 (6th Cir. 1992). Because it provides "immunity from suit" rather than a mere defense to liability, courts "should resolve questions of qualified immunity in the earliest possible stage of litigation . . . ." *Derfiny v. Pontiac Osteopathic Hosp.*, 106 F. App'x 929, 934 (6th Cir. 2004). However, because I find Plaintiff's claim nonjusticiable, I decline to consider whether Defendants would be

entitled to qualified immunity. In any event, courts typically reserve consideration on the issue of qualified immunity until the close of discovery. *Accord Wesley v. Campbell*, 779 F.3d 421, 433 (6th Cir. 2015) ("[I]t is generally inappropriate for a district court to grant a 12(b)(6) motion to dismiss on the basis of qualified immunity.").

For the reasons stated above, I recommend that Defendants' Motion To Dismiss, (Doc. 13), be **GRANTED**, and that this case be **DISMISSED**.

III. REVIEW

Pursuant to Rule 72(b)(2) of the Federal Rules of Civil Procedure, "[w]ithin 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy." Fed. R. Civ. P. 72(b)(2); *see also* 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Dakroub v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this magistrate judge.

Any objections must be labeled as "Objection No. 1," "Objection No. 2," etc. Any objection must recite precisely the provision of this Report and Recommendation to

which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed. R. Civ. P. 72(b)(2); E.D. Mich. LR 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as "Response to Objection No. 1," "Response to Objection No. 2," etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: June 30, 2017

S/ PATRICIA T. MORRIS
Patricia T. Morris
United States Magistrate Judge

CERTIFICATION

I hereby certify that the foregoing document was electronically filed this date through the Court's CM/ECF system which delivers a copy to all counsel of record. A copy was also sent via First Class Mail to Brigitte Reynolds #671020 at Huron Valley Complex- Womens, 3201 Bemis Road, Ypsilanti, MI 48197.

Date: June 30, 2017

By s/Kristen Castaneda
Case Manager