

EXHIBIT COVER PAGE:

Exhibit: A

Description of this exhibit:

Appendix A

Number of pages of this exhibit: _____ pages

JURISDICTION: (Check only one)

Municipal Court

Superior Court

Appellate Court

State Supreme Court

United States District Court

United States Circuit Court

United States Supreme Court

California Department of Corrections, 602 Exhibit.

Other: _____

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 15 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KEENAN G. WILKINS, AKA Nerrah
Brown,

Plaintiff-Appellant,

v.

COUNTY OF STANISLAUS; et al.,

Defendants-Appellees.

No. 18-16232

D.C. No. 1:16-cv-01858-DAD-
BAM
Eastern District of California,
Fresno

ORDER

Before: McKEOWN, BYBEE, and OWENS, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Wilkins's petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 11, 12) are denied.

No further filings will be entertained in this closed case.

EXHIBIT COVER PAGE:

Exhibit: B

Description of this exhibit:

Appendix B

Number of pages of this exhibit: 3 pages

JURISDICTION: (Check only one)

Municipal Court

Superior Court

Appellate Court

State Supreme Court

United States District Court

United States Circuit Court

United States Supreme Court

California Department of Corrections, 602 Exhibit.

Other: _____

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APR 24 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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D.C. No. 1:16-cv-01858-DAD-
BAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted April 17, 2019**

Before: McKEOWN, BYBEE, and OWENS, Circuit Judges.

California state prisoner Keenan G. Wilkins, AKA Nerrah Brown, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hamilton v. Brown*, 630 F.3d 889, 892 (9th Cir. 2011) (dismissal

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1915A); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)). We may affirm on any basis supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008). We affirm.

The district court properly dismissed Wilkins's access-to-courts claim because Wilkins failed to allege facts sufficient to show that any defendant caused an actual injury to a nonfrivolous legal claim. *See Lewis v. Casey*, 518 U.S. 343, 349-53 (1996) (setting forth elements of an access-to-courts claim and actual injury requirement).

The district court properly dismissed Wilkins's equal protection claim because Wilkins failed to allege facts sufficient to show that any defendant acted with an intent or purpose to discriminate against him based upon membership in a protected class. *See Hartmann v. Cal. Dep't of Corrs. & Rehab.*, 707 F.3d 1114, 1123 (9th Cir. 2013) (setting forth requirements of an equal protection claim); *see also* *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be liberally construed, a plaintiff must still present factual allegations sufficient to state a plausible claim for relief).

Denial of Wilkins's requests for injunctive and declaratory relief was proper because there was no claim upon which to request relief or remedies. *See Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1450 (9th Cir. 1992) (when

underlying claims have been decided, the reversal of a denial of preliminary injunctive relief would have no practical consequences, and the issue is therefore moot); *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989) (in order “[t]o obtain declaratory relief in federal court, there must be an independent basis for jurisdiction”).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

EXHIBIT COVER PAGE:

Exhibit: C

Description of this exhibit:

Appendix C

Number of pages of this exhibit: _____ pages

JURISDICTION: (Check only one)

Municipal Court

Superior Court

Appellate Court

State Supreme Court

United States District Court

United States Circuit Court

United States Supreme Court

California Department of Corrections, 602 Exhibit.

Other: _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEENAN WILKINS.

No. 1:16-cv-01858-DAD-BAM

Plaintiff,

1

STANISLAUS COUNTY, et al.

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
ACTION FOR FAILURE TO STATE A
CLAIM, AND DENYING MOTION FOR
INTERLOCUTORY APPEAL AS MOOT

(Doc. Nos. 11, 12, 13)

Plaintiff Keenan Wilkins is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On January 16, 2018, the assigned magistrate judge screened plaintiff's first amended complaint and recommended that the action be dismissed due to plaintiff's failure to state a cognizable claim. The magistrate judge also recommended that plaintiff's pending motion for interlocutory appeal be denied as moot. (Doc. No. 12.) Those findings and recommendations were served on plaintiff and contained notice that any objections were to be filed within fourteen (14) days after service. (*Id.*) Plaintiff filed objections on February 2, 2018. (Doc. No. 14.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has conducted a *de novo* review of this case, including plaintiff's objections. Having carefully reviewed the entire file, including plaintiff's objections, the undersigned concludes that the

1 magistrate judge's findings and recommendations are supported by the record and proper
2 analysis. Plaintiff's objections do not provide any basis to reject the magistrate judge's
3 recommendation of dismissal.¹

4 Accordingly,

5 1. The findings and recommendations issued on January 16, 2018 (Doc. No. 12) are
6 adopted in full;

7 2. This action is dismissed for failure to state a claim upon which relief may be granted;

8 3. Plaintiff's motion for certification of an interlocutory appeal (Doc. No. 11) is denied
9 as having been rendered moot;

10 4. All other pending motions, if any, are terminated; and

11 5. The Clerk of the Court is directed to close the case.

12 IT IS SO ORDERED.

13 Dated: June 18, 2018



UNITED STATES DISTRICT JUDGE

20
21 ¹ The court interprets plaintiff's Rule 60 motion filed on January 30, 2018 (Doc. No. 13) as
22 additional objections to the pending findings and recommendations. Plaintiff asserts in that
23 motion that the magistrate judge failed to rule on his request for declaratory and prospective
24 relief. The court notes that the magistrate judge found plaintiff had failed to state a cognizable
25 claim, and plaintiff may not pursue claims for declaratory or other prospective relief in the
26 absence of a cognizable legal claim. *See Sepulveda v. Lee*, No. ED CV 10-1705-CAS (PJW),
27 2011 WL 4763507, at *4 (C.D. Cal. July 27, 2011), *report and recommendation adopted*, 2011
*12 (E.D. Cal. Sept. 17, 2009), *findings and recommendations adopted* ("[B]ecause plaintiff
cannot prevail on his claim that his due process rights were violated in this regard, he has not
stated a cognizable claim for prospective injunctive relief."). These objections are therefore
unpersuasive.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

I. Screening Requirement and Standard

Plaintiff Keenan Wilkins (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 3, 2017, the Court screened Plaintiff’s complaint and dismissed it with leave to amend. (Doc. No. 5.) Plaintiff filed a first amended complaint on January 8, 2018, along with a motion for certification of an interlocutory appeal of the Court’s initial screening order. (Doc. Nos. 10, 11.) Plaintiff’s first amended complaint is currently before the Court for screening. (Doc. No. 10.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary

1 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28
2 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
7 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken
8 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,
9 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

10 To survive screening, Plaintiff’s claims must be facially plausible, which requires
11 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
12 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. United
13 States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant
14 acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
15 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

16 **II. Plaintiff’s Allegations**

17 Plaintiff is currently housed at R. J. Donovan Correctional Facility. Plaintiff names the
18 following defendants in their individual and official capacities: (1) Stanislaus County; (2) Angela
19 Segundo, Deputy Clerk; (3) Gloria Green, Deputy Clerk; (4) Rebecca J. Fleming, Clerk,
20 Executive Officer; (5) Michelle Salcido, Deputy Clerk and (6) Julie C. Dodge, Family Law
21 Facilitator.

22 Plaintiff asserts that multiple individuals acted or conspired to deny, interfere with and
23 obstruct his rights to Equal Protection and Access to Courts between February 2013 and
24 November 2016. Plaintiff alleges that he was served with a divorce action filed in Stanislaus
25 County Superior Court, No. 686620, which threatened not only his parental/custody rights as to his
26 two minor children, but also his property and financial rights.

27 On February 4, 2013, Plaintiff served a motion for counsel. Thereafter, on April 22, May
28 13, May 20 and May 27, 2013, Plaintiff served notices, letters and objections that he had not

1 received any ruling on his motion for counsel, but his correspondence was ignored by the court
2 clerks. In July 2013, Plaintiff learned that Deputy Clerk G. James never sent the court's order
3 denying counsel dated February 8, 2013.

4 On March 11, 2013, Plaintiff received response documents from Defendant Segundo.
5 Plaintiff completed the forms and returned them to Defendant Segundo with a notice. The
6 response was not filed, and was returned to Plaintiff with no reason or explanation. On March
7 28, 2013, Plaintiff resubmitted the documents to the Court with a notice to Defendant Segundo.
8 These documents were never filed or returned.

9 On April 11, 2013, a default judgment was granted against him. Plaintiff alleges that
10 default was entered by Defendant Salcido without any notice to Plaintiff. Plaintiff petitioned for
11 relief, which was granted.

12 Plaintiff asserts that he began to serve numerous motions that Defendant Fleming allowed
13 Deputy Clerks not file in violation of state law and in violation of Plaintiff's rights to Equal
14 Protection and Access to the Courts. Plaintiff alleges that Defendant G. James refused to file
15 Plaintiff's challenge for cause, motion to compel discovery and other motions.

16 Plaintiff filed a writ of mandate in the Fifth District Court of Appeal. The appellate court
17 reportedly ordered an informal response indicating whether Plaintiff filed a request for order to
18 comply with discovery and, if so, how the court ruled on the request. Plaintiff asserts that on
19 November 26, 2013, Defendant Green falsified a response to the Court of Appeal that no such
20 motion was filed or heard by the court. Plaintiff alleges that he filed/served those motions on
21 September 20, 2013 and October 28, 2013. The Court of Appeal then denied the writ of
22 mandate.

23 On December 9, 2013, Plaintiff alleges that the trial court issued an order against
24 Plaintiff, taking away his parental custody, property and financial rights. On September 16,
25 2016, Plaintiff filed a motion to vacate the trial court's judgment, which was denied on
26 November 10, 2016. Plaintiff then wrote a letter to Defendant Dodge, the Family Law
27 Facilitator, seeking the next step after the denial. Defendant Dodge sent Plaintiff a letter dated
28 November 21, 2016, denying him any help, information or assistance in violation of his rights to

1 Equal Protection as to similarly situated individuals seeking help from the Facilitator's Self-Help
2 Office.

3 Plaintiff seeks injunctive and declaratory relief, along with damages.

4 **III. Discussion**

5 **A. Eleventh Amendment Immunity**

6 Plaintiff names Stanislaus County as a defendant. However, Plaintiff's allegations
7 against Stanislaus County are more properly characterized as allegations against Stanislaus
8 County Superior Court. Plaintiff cannot state a claim against the Stanislaus County Superior
9 Court because such suits are bared by the Eleventh Amendment. See Simmons v. Sacramento
10 Cty. Super. Ct., 318 F.3d 1156, 1161 (9th Cir. 2003) ("Plaintiff cannot state a claim against the
11 Sacramento County Superior Court (or its employees), because such suits are barred by the
12 Eleventh Amendment").

13 Insofar as Plaintiff is attempting to pursue damages claims against court employees in
14 their official capacities, he may not do so. "The Eleventh Amendment bars suits for money
15 damages in federal court against a state, its agencies, and state officials in their official
16 capacities." Aholelei v. Dept. of Pub. Safety, 488 F.3d 1144, 1147 (9th Cir. 2007) (citations
17 omitted). However, the Eleventh Amendment does not bar suits seeking damages against state
18 officials in their personal capacities, Hafer v. Melo, 502 U.S. 21, 30 (1991); Porter v. Jones, 319
19 F.3d 483, 491 (9th Cir. 2003), or suits for injunctive relief brought against state officials in their
20 official capacities, Austin v. State Indus. Ins. Sys., 939 F.2d 676, 680 n.2 (9th Cir. 1991).

21 Thus, Plaintiff may only proceed against defendants in their individual capacities for
22 monetary damages and in their official capacities for injunctive relief. Nevertheless, as
23 explained below, Plaintiff cannot state a cognizable claim against any of the defendants—
24 whether in their individual or in their official capacities.

25 **B. Quasi-Judicial Immunity**

26 Court clerks have "absolute quasi-judicial immunity from damages for civil rights
27 violations when they perform tasks that are an integral part of the judicial process ... unless [the]
28 acts were done in the clear absence of all jurisdiction." Mullis v. U.S. Bankr. Court, 828 F.2d

1 1385, 1390 (9th Cir.1987). This includes merely administrative acts that are a part of the judicial
2 function, including a clerk's filing or refusing to file documents with the court. Id.; see In re
3 Castillo, 297 F.3d 940, 952 (9th Cir. 2002).

4 Here, Plaintiff's assertions regarding accepting or rejecting documents for filing, entering
5 default judgment, and submitting responses to inquiries from the appellate court are all tasks part
6 of the judicial process. Therefore, Plaintiff's complaint fails to state a cognizable claim against
7 the Stanislaus County Superior Court Clerks or other court employees. See, e.g., Sermenov v.
8 Lewis, No. 1:16-cv-01582 LJO-BAM (PC), 2017 WL 117879, at *2-3 (E.D. Cal. Jan. 11, 2017)
9 (state superior court clerks entitled to quasi-judicial immunity for allegedly refusing or failing to
10 file plaintiff's documents); Palacios v. Fresno County Super. Ct., No. 1:09cv0554 OWW DLB,
11 2009 WL 3416173, at *4-5 (E.D. Cal. Oct. 21, 2009).

12 **C. Access to Courts**

13 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey,
14 518 U.S. 343, 346 (1996). However, the right is limited to direct criminal appeals, habeas
15 petitions, and civil rights actions. Id. at 354. In order to state a claim for the denial of court
16 access, a prisoner must establish that he suffered an actual injury. Id. at 349. “[A]ctual injury [is]
17 actual prejudice with respect to contemplated or existing litigation, such as the ability to meet a
18 filing deadline or to present a claim.” Id. at 348; Christopher v. Harbury, 536 U.S. 403, 415
19 (2002) (quoting Lewis, 518 U.S. at 353 & n.3); Nevada Dep't of Corr. v. Greene, 648 F.3d 1014,
20 1018 (9th Cir. 2011).

21 As indicated above, Plaintiff cannot state a cognizable access to courts claim against the
22 superior court's employees because they are entitled to quasi-judicial immunity. Plaintiff also
23 cannot state a cognizable access to courts claim against any defendant because such a claim is
24 limited to direct criminal appeals, habeas petitions and civil rights actions, and does not include
25 divorce proceedings in state court. Even if this were not the case, Plaintiff has not identified any
26 actual injury suffered as a result of his inability to file documents. First, Plaintiff complains
27 about the lack of response to his motion for the appointment of counsel. However, Plaintiff was
28 not prevented from filing the motion for appointment of counsel and, as admitted, he ultimately

1 learned that the court had denied his motion. Second, Plaintiff complains that he submitted
2 documents to the court that were never filed and default was entered against him. However,
3 Plaintiff admits that after default was entered, he successfully petitioned for relief. Third,
4 Plaintiff complains that he was not able to file certain documents, such as a challenge for cause,
5 motion to compel discovery and other motions. However, Plaintiff also admits that he was able
6 to pursue his allegations regarding unfiled documents with the state appellate court. There is no
7 indication that any court employees prevented Plaintiff from filing documents with the appellate
8 court. Fourth, Plaintiff complains that the trial court issued an order against him on December 9,
9 2013, taking away his parental custody, property and financial rights. However, Plaintiff admits
10 that he was able to file a motion to vacate the judgment, which was denied. Although Plaintiff
11 did not receive the hoped-for assistance from the Family Law Facilitator after the denial, there is
12 no indication that Plaintiff was wholly unable to submit documents relating to his divorce
13 proceedings or that he was unable to pursue any post-judgment remedies, if available.

14 **D. Equal Protection**

15 The Equal Protection Clause requires that persons who are similarly situated be treated
16 alike. City of Cleburne, Tex. v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). An equal
17 protection claim may be established by showing that the defendant intentionally discriminated
18 against the plaintiff based on the plaintiff's membership in a protected class, Serrano v. Francis,
19 345 F.3d 1071, 1082 (9th Cir. 2003); Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir.
20 2001), or that similarly situated individuals were intentionally treated differently without a
21 rational relationship to a legitimate state purpose, Vill. of Willowbrook v. Olech, 528 U.S. 562,
22 564 (2000); see also Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir. 2008); N.
23 Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9th Cir. 2008).

24 Plaintiff has not stated a cognizable Equal Protection claim. Plaintiff's complaint does
25 not provide any facts to support a claim that he was discriminated against on the basis of his
26 membership in a protected class or that similarly situated individuals were treated differently.
27 Plaintiff's conclusory allegation that Defendant Dodge, the Family Law Facilitator, purportedly
28 denied Plaintiff the help proffered to similarly situated individuals is not sufficient.

1 **IV. Motion for Certification of Interlocutory Appeal**

2 The Court intends to recommend that this action be dismissed in its entirety for failure to
3 state a claim. Following dismissal of this action, Plaintiff may seek a direct appeal, if he so
4 chooses, and an interlocutory appeal will no longer be necessary. Therefore, the Court will
5 recommend that Plaintiff's motion for certification of an interlocutory appeal be denied as moot.

6 **V. Conclusion and Recommendations**

7 Plaintiff's complaint fails to state a cognizable claim. Despite being provided with the
8 relevant legal and pleading standards, Plaintiff has been unable to cure the identified
9 deficiencies, and further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130
10 (9th Cir. 2000).

11 Accordingly, it is HEREBY RECOMMENDED as follows:

- 12 1. Plaintiff's first amended complaint be dismissed for failure to state a claim upon
13 which relief may be granted pursuant to 28 U.S.C. §§ 1915(e) and 1915A; and
- 14 2. Plaintiff's motion for certification of an interlocutory appeal be denied as moot.

15 These Findings and Recommendations will be submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
17 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
18 file written objections with the Court. The document should be captioned "Objections to
19 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
20 objections within the specified time may result in the waiver of the "right to challenge the
21 magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
22 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: January 16, 2018

26 _____
27 /s/ Barbara A. McAuliffe

28 UNITED STATES MAGISTRATE JUDGE