

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2023

FOR THE NINTH CIRCUIT

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

CLARENCE LEONARD HEARNS, Jr.,

Plaintiff-Appellant,

v.

ANDREW WHISNAND; J BARBA; S  
FLEMING,

Defendants-Appellees.

No. 22-15138

D.C. No.1:20-cv-00313-JLT-BAK

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Jennifer L. Thurston, District Judge, Presiding

Submitted February 14, 2023\*\*

Before: FERNANDEZ, FRIEDLAND, and H.A. THOMAS, Circuit Judges.

California state prisoner Clarence Leonard Hearn, Jr., appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging claims for the denial of access to the courts and interference with mail. We review de novo a district court's dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*,

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\* 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).

213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Hearn's action because Hearn failed to allege facts sufficient to allege a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (noting that although pro se pleadings are to be construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *see also Lewis v. Casey*, 518 U.S. 343, 349-54 (1996) (setting forth the elements of an access-to-courts claim and explaining that the right to access the courts does not include the right "to litigate effectively once in court" (emphasis omitted)); *Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158, 1169 (9th Cir. 2022) (explaining a plaintiff in a § 1983 action must show that a state actor caused them a specific constitutional injury).

Hearn's motion for the case to be assigned to a panel (Docket Entry No. 7) is denied as moot.

**AFFIRMED.**

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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 CLARENCE L. HEARNS, et al.,

12 Plaintiffs,

13 v.

14 ANDREW WHISNAND, et al.,

15 Defendants.  
16

Case No. 1:20-cv-00313-JLT (PC)

**ORDER WITHDRAWING FINDINGS AND  
RECOMMENDATIONS (Doc. 19) ORDER  
DISMISSING THE ACTION**

(Doc. 18)

17 Clarence L. Hearn filed a first amended complaint alleging that the defendants interfered  
18 with his mail and access to the court in violation of the First Amendment. (Doc. 13.) The Court  
19 screened the amended complaint and determined that Plaintiff failed to state a claim on which  
20 relief may be granted. (Doc. 17.) The Court granted Plaintiff leave to file a second amended  
21 complaint and advised that that if he did not want to amend, he could instead file a notice of  
22 voluntary dismissal or forego amendment and notify the Court that he wishes to stand on his  
23 complaint. (*Id.* at 8.) The Court advised: "If the last option is chosen, the undersigned will issue  
24 findings and recommendations to dismiss the complaint without leave to amend, plaintiff will have an  
25 opportunity to object, and the matter will be decided by a District Judge." (*Id.*)

26 Plaintiff filed a response electing to waive his option to amend his complaint a second time  
27 and to stand on his first amended complaint as screened. (Doc. 18.) Plaintiff added: "Please move  
28 forward with your scheduled issuing of your Report and Recommendation, to have this action