

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FEB 23 2023

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

CLARENCE LEONARD HEARNS, Jr.,

No. 22-15138

Plaintiff-Appellant,

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

v.

MEMORANDUM\*

ANDREW WHISNAND; J BARBA; S  
FLEMING,

Defendants-Appellees.

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 Hearns, 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*,

---

\* 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 Hearns's action because Hearns 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).

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

**AFFIRMED.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CLARENCE L. HEARNS, et al.,

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

Plaintiffs,

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

ANDREW WHISNAND, et al.,

(Doc. 18)

### Defendants.

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

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