

EXHIBIT A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-11733
Non-Argument Calendar

D.C. Docket No. 1:15-cv-24260-FAM

JESSE LOOR,

Plaintiff-Appellant,

versus

JENNY BAILEY,
EDWIN CAMBRIDGE,
MARYDELL GUEVARA,
ENRIQUE RODRIGUEZ,
TRACEY WEATHERSPOON,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(September 14, 2017)

Before WILSON, JULIE CARNES, and JILL PRYOR, Circuit Judges.

PER CURIAM:

Jesse Loor, a state prisoner proceeding pro se, appeals the sua sponte dismissal of his 42 U.S.C. § 1983 action for violations of the First and Fourteenth Amendments and Florida negligence law for failing to state a claim. On appeal, Loor argues that the district court erred by dismissing his complaint because the mailed materials that were denied to him were not obscene and were not in violation of copyright law. After a careful review of the record and the parties' briefs, we affirm.

I. Background

Loor's family mailed printed pages of a medical textbook to Loor, but they were rejected by the Metro West Detention Center because photocopies of printed books are not permitted due to copyright infringement law. Loor's family then sent three books to Loor, but they were impounded because they depicted sexual conduct deemed obscene. Loor sought to have the books placed with his property, but the clerk had already returned the books. Loor argues that the rejection of the materials was a violation of the First and Fourteenth Amendments. He argues that the materials were not in violation of copyright law because of the fair use doctrine, and that the rejection of the materials hindered his ability to become "a learned expert of child sex abuse." Loor also alleges that his due process rights

were violated when he was deprived of his property interest in the books and his liberty interest in educating himself on allegations of child sexual abuse.

II. Standard of Review

We review de novo a district court's sua sponte dismissal for failure to state a claim for relief under 28 U.S.C. § 1915A(b). *Harden v. Pataki*, 320 F.3d 1289, 1292 (11th Cir. 2003). To avoid dismissal for failure to state a claim, a complaint must include "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009). The complaint's factual allegations, though not its legal conclusions, must be accepted as true. *Id.*; see also *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965 (2007).

III. Loor's First Amendment Claim

When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261 (1987). Under *Turner*, we considers four factors to determine the reasonableness of a regulation: (1) whether a valid, rational connection exists between the prison regulation and the legitimate governmental interest put forward to justify it; (2) whether alternative means of exercising the right remains open to inmates; (3) the impact the accomodation of the asserted right will have on resources and other inmates and (4) whether a ready

alternative exists that fully accommodates prisoners' rights at de minimis cost to valid penological interests. *Id.* at 89–91. Where accommodation of an asserted right would have a significant “ripple effect” on fellow inmates or prison staff, courts should be particularly deferential to the informed discretion of corrections officials. *Pope v. Hightower*, 101 F.3d 1382, 1385 (11th Cir. 1996).

In *Thornburgh v. Abbot*, the Supreme Court examined a set of regulations prohibiting incoming publications to a prison that were detrimental to the security, good order, or discipline of the institution or might facilitate criminal activity. 490 U.S. 401, 416, 109 S. Ct. 1874, 1883 (1989). The Supreme Court noted, “Once in the prison, material of this kind reasonably may be expected to circulate among prisoners, with the concomitant potential for coordinated disruptive conduct.” *Id.* at 412.

Here, the district court did not err by dismissing Loor's complaint, pursuant to 28 U.S.C. § 1915A. Loor failed to raise a First Amendment claim because the regulation prohibiting copyrighted material and obscene material was reasonable. There is a valid, rational connection between the regulation prohibiting obscene, explicit, or copyrighted materials and the government's interest in keeping such materials from the hands of pretrial detainees. *See Thornburgh*, 490 U.S. at 416. It is rational to exclude materials that “create an intolerable risk of disorder,” and textbooks containing explicit imagery and nudity would be likely to circulate

among inmates. *Id.* at 417. Finally, as noted by the district court, requiring prison officials to verify copyright law compliance or redact books to omit obscene materials would be costly and no obvious means exist to give detainees access to obscene or copyrighted material at a de minimis cost.

IV. Loor's Fourteenth Amendment Claim

The Fourteenth Amendment protects against deprivation of a constitutionally protected interest in “life, liberty, or property” without the due process of law. *Maddox v. Stephens*, 727 F.3d 1109, 1118 (11th Cir. 2013). “[A] § 1983 claim alleging a denial of procedural due process requires proof of three elements: (1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process.” *Arrington v. Helms*, 438 F.3d 1336, 1347 (11th Cir. 2006) (internal quotation marks omitted).

“Not every action by a state actor that results in a loss of liberty under the Due Process Clause gives rise to liability under § 1983.” *Porter v. White*, 483 F.3d 1294, 1307 (11th Cir. 2007). “[T]he Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.” *Id.* (internal quotation marks omitted) (emphasis omitted).

Additionally, “no procedural due process violation [occurs] if a meaningful postdeprivation remedy for the loss is available.” *Case v. Eslinger*, 555 F.3d 1317, 1331 (11th Cir. 2009) (internal quotation marks omitted).

Loor failed to raise a procedural due process claim. The clerk's mistaken return of the textbooks, in contravention to the facility's policy to keep the impounded materials at the facility for 30 days, does not amount to a § 1983 violation. *See Porter*, 483 F.3d at 1307. Loor had a post-deprivation remedy to challenge the loss of property under Florida law. *See Fla. Stat. § 768.28(1)* (waiving sovereign immunity in tort actions for the negligent or wrongful acts of employees causing injury or loss of property). The existence of § 768.28 provides Loor with a meaningful, post-deprivation remedy to challenge the loss of property. *See Case*, 55 F.3d at 1331.

AFFIRMED.

EXHIBIT B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-11733-AA

JESSE LOOR,

Plaintiff - Appellant,

versus

JENNY BAILEY,
EDWIN CAMBRIDGE,
MARYDELL GUEVARA,
ENRIQUE RODRIGUEZ,
TRACEY WEATHERSPOON,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

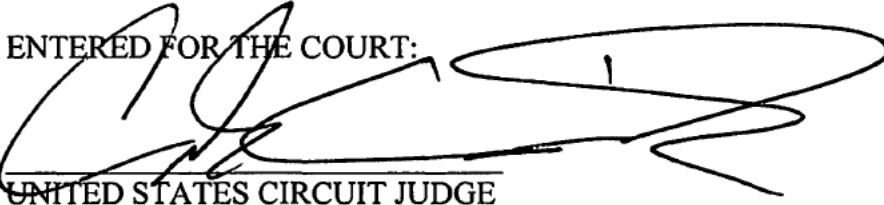
ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, JULIE CARNES, and JILL PRYOR, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-42

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-CV-24260-MORENO
MAGISTRATE JUDGE P.A. WHITE

JESSE LOOR,	:	
	:	
Plaintiff,	:	
	:	
v.	:	<u>REPORT OF</u>
	:	<u>MAGISTRATE JUDGE</u>
JENNY BAILEY, ET AL.,	:	
	:	
Defendants.	:	

I. Introduction

This cause is before the Court on the *pro se* Plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983.

The complaint was initially filed in the Circuit Court for the Eleventh Judicial Circuit for Miami-Dade County, case number 15-24181CA-01. The Defendants, Jenny Bailey, Edwin Cambridge, Marydell Guevara, Enrique Rodriguez, and Tracey Weatherspoon, were served between October 26 and 29, 2015. They have filed a Notice of Removal based on original jurisdiction and paid the requisite filing fee. (DE# 1). The Defendants also filed a motion for an extension of time to respond to the complaint until December 7, 2015 (DE# 4), which was granted in a paperless order.

The complaint is presently before the Court for initial screening.

II. Screening Standard

Because the Plaintiff is a prisoner seeking redress from governmental entities, employees or officers, his complaint is

subject to screening pursuant to 28 U.S.C. § 1915A, regardless of *in forma pauperis* status. See 28 U.S.C. § 1915A; Thompson v. Hicks, 213 Fed. Appx. 939, 942 (11th Cir. 2007). Section 1915A instructs that the complaint or any portion of the complaint shall be dismissed if it:

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b).

Section 1983 civil rights actions require the deprivation of a federally protected right by a person acting under color of state law. 42 U.S.C. § 1983; Polk County v. Dodson, 454 U.S. 312 (1981); Whitehorn v. Harrelson, 758 F. 2d 1416, 1419 (11th Cir. 1985). In order to state a claim, a plaintiff must establish (1) he was deprived of a right secured by the Constitution or laws of the United States, and (2) the alleged deprivation was committed under color of state law. 42 U.S.C. 1983; Dodson, 454 U.S. at 312; see Almand v. DeKalb County, Ga., 103 F.3d 1510, 1513 (11th Cir. 1997). The standard for determining whether a complaint states a claim upon which relief may be granted is the same under Section 1915(e)(2)(B) or and Federal Rules of Civil Procedure 12(b)(6) and 12(c). See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997)(“The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)”).

A complaint need not contain detailed factual allegations. See Fed. R. Civ. P. 8(a)(2) (pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief....”). However, a plaintiff’s obligation to provide the

grounds for his entitlement to relief requires more than labels and conclusions; a “formulaic recitation of the elements of a cause of action will not do....” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). The allegations must rise above the speculative level and “state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. A complaint is frivolous under section 1915(e) “where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989); see Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001). Dismissals on this ground should only be ordered when the legal theories are “indisputably meritless” or when the claims rely on factual allegations that are “clearly baseless.” Neitzke, 490 U.S. at 327.

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. See Twombly, 550 U.S. at 555; Ashcroft v. Iqbal, 556 U.S. 662 (2009). First, the court must identify the complaint’s factual allegations, which are entitled to an assumption of truth, and identify and reject the legal conclusions to which no assumption of truth applies. Iqbal, 556 U.S. at 678. Second, the court must determine whether these factual allegations, taken as true, plausibly suggest an entitlement to relief. Id. This is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Iqbal, 556 U.S. at 679. If the well-pleaded facts do not permit the court to infer more than the “mere possibility of misconduct,” the complaint is insufficient. Id.

III. Claims

The Plaintiff names as Defendants the Director of Miami-Dade County Corrections Marydell Guevara, Metro-West Detention Center Captain Enrique Rodriguez, Metro-West Detention Center Lieutenant

Jenny Bailey, Metro-West Detention Center Mailroom Clerk Tracey Weatherspoon, and Director of Patient Care Center Services Edwin Cambridge.

Construing the allegations liberally and accepting them as true, the Plaintiff's family purchased a medical textbook for him entitled "The Sexually Abused Child," copied 337 pages from the CD-ROM it included, and mailed the copies to him in five manila envelopes on November 3, 2014. Weatherspoon rejected them because "photocopies of copyrighted books are not permitted due to copyright infringement law," and an unknown supervisory approved this action. (DE# 1-1 at 6). The Plaintiff filed an inmate grievance which attached a cease and desist letter the same day, informing the mailroom staff that no copyright violation occurred due to the "fair use doctrine." Id. On November 17, 2014, Rodriguez and Bailey approved the rejection "due to copyright infringement law" despite the Plaintiff's grievance and letter. Id.

In December, 2014, the Plaintiff's family purchased three medical textbooks - "Evaluation of the Sexually Abused Child," "Obstetrics and Gynecology" and "Dorlad's/Gray's Pocket Atlas of Anatomy" - which Weatherspoon impounded on December 29, 2014, because they "depict[] sexual conduct." Id. The Plaintiff submitted an inmate grievance on December 31, 2014, attaching another cease and desist letter informing Weatherspoon of the books' probative value. (DE# 1-1 at 7). On January 14, 2015, the Plaintiff received notice that all three books had been rejected due to "obscene material," by Defendant Cambridge. Id. The same day, the Plaintiff asked Weatherspoon to have his books placed in property so his family could pick them up. She responded that they had already been sent back, which the Plaintiff informed her is contrary to written facility policy.

The Plaintiff wrote Defendant Guevara a letter on February 28, 2015, about the foregoing unconstitutional acts by Metro-West personnel. Guevara did not respond.

Other individuals at Metro-West have been subjected to similar misconduct.

The Plaintiff needs the returned material to "become a learned expert in allegations of sex abuse." (DE# 1-1 at 9). He alleges that the deprivation of incoming mail constitutes censorship in violation of the First Amendment, and deprivation of liberty and property under the Fourteenth Amendment for which he has no adequate remedy at law. He further alleges that the Defendants were placed on notice of these violations by the Plaintiff's grievances and letters.

He seeks declaratory judgment, injunctive relief, punitive and nominal damages, and any other relief that is just, proper, and equitable.

IV. Discussion

(1) Jurisdiction

When an action is removed to this Court, one of the Court's initial inquiries is whether its subject matter jurisdiction over the removed action exists. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 587-88 (1999) (examining the existence of "subject-matter jurisdiction at the outset of a case ... [is] often ... the most efficient way of going") (citation and quotation marks omitted and alterations in the original). A review of Plaintiff's complaint reveals that it claims federal constitutional violations, over which this Court has concurrent jurisdiction with the state court as a Section 1983 action, and a Florida negligence claim over which

this Court may exercise supplemental jurisdiction. See 28 U.S.C. § 1441; Felder v. Casey, 487 U.S. 131, 139 (1988) (state courts possess concurrent jurisdiction with federal courts over Section 1983 actions); 28 U.S.C. § 1367(a) (a district court may exercise supplemental jurisdiction over state law claims related to the federal court action). Each of the Plaintiff's claims, liberally construed, will be addressed in turn.

(2) First Amendment

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. I.

Although "prisoners do not shed all constitutional rights at the prison gate, ... [l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights." Sandin v. Conner, 515 U.S. 472, 485 (1995) (citation and quotations omitted). Both inmates and noninmates have a First Amendment interest in correspondence sent to one another. Procunier v. Martinez, 416 U.S. 396, 408-09 (1974), *overruled on other grounds by* Thornburgh v. Abbott, 490 U.S. 401 (1989). The Supreme Court's Martinez standard applies to a prisoner's *outgoing* mail while regulations affecting a prisoner's *incoming* mail is analyzed under the reasonableness standard set forth in Turner v. Safley, 482 U.S. 78, 89 (1987). See Perry v. Sec'y, Fla. Dep't of Corr., 664 F.3d 1359, 1364 (11th Cir. 2001). That is, "when a prison regulation

impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Turner, 482 U.S. at 89; see O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987) (a prison regulation, even though it infringes the inmate's constitutional rights to some degree, is an actionable constitutional violation only if the regulation is unreasonable); Hakim v. Hicks, 223 F.3d 1244, 1247 (11th Cir. 2000).

Reasonableness is determined by applying Turner's four-part test. First, there must be a "valid, rational connection" between the prison regulation and the legitimate governmental interest put forward to justify it, and this connection must not be so remote as to render the policy arbitrary or irrational. Turner, 482 U.S. at 89-90 (quoting Block v. Rutherford, 468 U.S. 576, 586 (1984)). Second, a court must consider whether inmates retain alternative means of exercising the circumscribed right. Turner, 482 U.S. at 90. Third, a court must take into account the costs that accommodating the right would impose on other inmates, guards, and prison resources generally. Id. And fourth, a court must consider whether there are alternatives to the regulation that "fully accommodate[] the prisoner's rights at *de minimis* cost to valid penological interests." Id.

The Supreme Court reaffirmed the Turner standard in Thornburgh. It agreed that prison officials could deny inmates incoming publication if they were deemed "detrimental to institutional security." Thornburgh 490 U.S. at 403. Affording officials with "broad discretion" is especially appropriate where "the regulations at issue concern the entry of materials into the prison." Id. at 416-17. The Court "accords substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining a corrections system's

legitimate goals and determining the most appropriate means to accomplish them.” Overton v. Bazzetta, 539 U.S. 126 (2003); see also Bell v. Wolfish, 441 U.S. 520, 547 (1979). Hence, courts should defer to the judgment of prison officials given the “inordinately difficult undertaking” posed by modern prison administration. Turner, 482 U.S. at 85; see also Lawson v. Singletary, 85 F.3d 502, 510 (11th Cir. 1996) (recognizing that management of prisons is complex and courts are ill-equipped to deal with such problems). This is particularly true where state penal facilities are involved. Newman v. State of Ala., 683 F.2d 1312 (11th Cir. 1982); Smith v. Sullivan, 611 F.2d 1039 (5th Cir. 1980).

In the instant case, the Plaintiff concedes that incoming mail was returned by the mailroom due to copyright infringement, and sexual or obscene content. The Plaintiff contends that he needs the material to “become a learned expert in allegations of sex abuse.” (DE# 1-1 at 9).

There is a valid, rational connection between the detention center’s prohibition of material that violates copyrights, contains sexual content, or is obscene, and the governmental interest of keeping explicit material or material that violates copyright law, out of the hands of pretrial detainees. Second, the Plaintiff has alternate means of exercising his rights through use of legal materials that are not in apparent violation of copyright or contain sexual or obscene content, or by using materials available at the detention center or through defense counsel. Third, the costs of verifying copyright law compliance and redacting books to omit obscene or sexual content, would be high. Fourth, there is no obvious alternative to the regulation which would fully accommodate detainees’ rights at *de minimis* cost. See, e.g., Richards v.

England, 2008 WL 5110793 (M.D. Fla. Dec. 1, 2008) (plaintiff failed to state a claim where the Florida Department of Corrections returned photographs which, the plaintiff admitted, depicted scantily clad women).

The Plaintiff has, therefore, failed to state a First Amendment claim and dismissal is warranted.

(3) Due Process

The Due Process Clause protects against deprivations of "life, liberty, or property without due process of law." U.S. Const. Amend XIV. An inmate states a cognizable procedural due process claim when he alleges a deprivation of a protected liberty or property interest, state action, and constitutionally inadequate process. Cryder v. Oxendine, 24 F.3d 175, 177 (11th Cir. 1994). The allegation of an unauthorized deprivation of property does not state a procedural due process claim where an adequate state remedy exists to redress the deprivation. Parratt v. Taylor, 451 U.S. 527 (1981), *overruled in part by* Daniels v. Williams, 474 U.S. 327 (1986). Post-deprivation remedies do not satisfy the due process requirement, however, where the deprivation of property is effected pursuant to an established state procedure rather than through unauthorized, random action. Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982); see also Carcamo v. Miami-Dade County, 375 F.3d 1104, 1106 n.4 (11th Cir. 2004) (acceptability of post-deprivation process turns on the feasibility of pre-deprivation process, not the existence of a policy or practice). An intentional deprivation of property by state employees does not give rise to a violation of the Due Process Clause if the state provides an adequate postdeprivation remedy, so long as it was random or unauthorized. Hudson v. Palmer, 468 U.S. 517, 533 (1984); see also Carcamo, 375 F.3d at 1105 (applying Parratt and Hudson to a deprivation of

property by a county). To determine whether a constitutional violation has occurred, it is necessary to ask what process the state provided and whether it was constitutionally adequate. Zinermon v. Burch, 494 U.S. 113, 126 (1990).

The Plaintiff alleges that the incoming mail sent by his family was returned; not that it was erroneously kept or discarded by the detention center. Nor does he allege that he lacks any post-deprivation remedy. Therefore, assuming that the detention center's return of unacceptable mail could be considered a due process violation, the Plaintiff's claim is not cognizable under Section 1983. *See, e.g., Poulin v. Jeter*, 2010 WL 3701384 (M.D. Fla. Sept. 15, 2010) (no constitutional violation where the plaintiff had access to a grievance procedure and failed to allege he did not have an adequate post-deprivation remedy).

The Plaintiff's due process claim should therefore be dismissed.

(4) Access to Courts

Prisoners and detainees have a constitutional right to effective access to the courts. *See Lewis v. Casey*, 518 U.S. 343 (1996); *Bounds v. Smith*, 430 U.S. 817 (1977); *Wilson v. Blankenship*, 163 F.3d 1284, 1290 (11th Cir. 1998); *Wanninger v. Davenport*, 697 F.2d 992 (11th Cir. 1983); *see also Bell*, 441 U.S. at 545 (pretrial detainees "retain at least those constitutional right that [the Supreme Court has] held are enjoyed by convicted prisoners."). To assert a claim arising from the denial of meaningful access to courts, an inmate must first establish actual injury. *Lewis*, 518 U.S. at 349-52. Actual injury may be established by demonstrating that an inmate's efforts to pursue a nonfrivolous claim were frustrated or impeded by a deficiency in the prison

library or in a legal assistance program or by an official's action. Id. at 351; Barbour v. Haley, 471 F.3d 1222, 1225 (11th Cir. 2006). For instance, an inmate could show actual injury with proof that a court dismissed his action for failure to comply with a technical requirement unknown to the inmate due to deficiencies in the prison's assistance facilities, or that a claim could not be presented to a court because an inmate was so stymied by the law library's inadequacies that he could not prepare a complaint. Lewis, 518 U.S. at 351; Barbour, 471 F.3d at 1225. The purpose of recognizing an access claim is to provide vindication for a separate and distinct right to seek judicial relief, therefore, a litigant asserting such a claim must also identify within his complaint a "nonfrivolous," "arguable" underlying claim. Christopher v. Harbury, 536 U.S. 403, 415 (2002); see Barbour, 471 F.3d at 1226. Further, the injury requirement is not satisfied by just any type of frustrated legal claim. Lewis, 518 U.S. at 354. The plaintiff must show that he was prejudiced in a criminal appeal, in a post-conviction proceeding, or in a civil rights action in which he sought "to vindicate 'basic constitutional rights.'" Id. at 354 (quoting Wolff v. McDonnell, 418 U.S. 539, 579 (1974)).

The Plaintiff's contention that he is attempting to become an expert on sexual allegations fails to allege actual injury by prejudicing one of the recognized legal proceedings.

Therefore, to the extent that he asserts that his right to access the courts has been violated, this claim should be dismissed.

(5) Florida Negligence

Under 28 U.S.C. § 1367(a), a district court may exercise

supplemental jurisdiction over state law claims related to the federal court action. To exercise supplemental jurisdiction over state law claims not otherwise cognizable in federal court, "the court must have jurisdiction over a substantial federal claim and the federal and state claims must derive from a 'common nucleus of operative fact.'" Jackson v. Stinchcomb, 635 F.2d 462, 470 (5th Cir. 1981)(quoting United Mine Workers v. Gibbs, 383 U.S. 715 (1966)).¹ State law claims should ordinarily be dismissed if all federal claims are eliminated before trial. Gibbs 383 U.S. at 726.

Because the Plaintiff originally filed this action in state court and it was subsequently removed to federal court, the remaining Florida negligence claims should be remanded back to state court. See Cook v. Sheriff of Monroe County, 402 F.3d 1092, 1123 (11th Cir. 2005) ("Because this case was originally filed in state court and removed to federal court pursuant to 28 U.S.C. § 1441, if the district court declines to continue to exercise supplemental jurisdiction, [plaintiff's] remaining claims should be remanded to state court"); Lewis v. City of St. Petersburg, 260 F.3d 1260, 1267 (11th Cir. 2001) (after all federal claims have been dismissed, "[i]f the district court does decline to exercise supplemental jurisdiction, these [state] claims shall be remanded to state court, rather than dismissed, because this case was originally filed in state court and removed to federal court"); May III v. Boyd Bros. Transportation, 241 Fed. Appx. 646 (11th Cir. 2007) (same).

IV. Conclusion

It is therefore recommended that the Complaint (DE# 1) be

¹ See Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (adopting as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

dismissed pursuant to Section 1915A(b)(1), for failure to state a claim upon which relief can be granted, and that the remaining state law claims be remanded to state court.

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

DONE AND ORDERED at Miami, Florida, this 23rd day of November, 2015.


UNITED STATES MAGISTRATE JUDGE

cc: Jesse Loor
10-75184
Metro West Detention Center
13850 NW 41 Street
Miami, FL 33138
PRO SE

Daija Page Lifshitz
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EXHIBIT D

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 15-24260-CIV-MORENO

JESSEE LOOR,

Plaintiff,

vs.

JENNY BAILEY, EDWIN CAMBRIDGE,
MARYDELL GUEVARA, ENRIQUE
RODRIGUEZ,
and TRACEY WEATHERSPOON,

Defendants.

_____ /

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
TO DISMISS PLAINTIFF'S COMPLAINT AND REMAND REMAINING STATE LAW
CLAIMS TO STATE COURT**

THE MATTER was assigned to the Honorable Patrick A. White, United States Magistrate Judge for a Report and Recommendation on Plaintiff's 42 U.S.C. § 1983 Civil Rights Complaint (**D.E. 1**), removed to this Court on **November 16, 2015**. The Magistrate Judge filed a Report and Recommendation (**D.E. 7**) on **November 23, 2015**. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues that the Defendant's Limited Objection to Report of Magistrate Judge presents (**D.E. 11**), filed on **December 7, 2015**, and being otherwise fully advised in the premises, it is

ADJUDGED that United States Magistrate Judge Patrick A. White's Report and Recommendation is **AFFIRMED** and **ADOPTED**. Accordingly, it is hereby

ADJUDGED that:

(1) Plaintiff's civil rights complaint is **DISMISSED**, pursuant to 28 U.S.C. Section 1915A(b)(1), for failure to state a claim upon which relief may be granted.

- (2) The remaining state law claims shall be **REMANDED** to State Court.
- (3) All pending motions in this case are **DENIED** as **MOOT**.
- (4) No Certificate of Appealability issue.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th of January 2016.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:
United States Magistrate Judge Patrick A. White

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