

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD BUZZARD, JR.,

Plaintiff,

v.

STATE OF WASHINGTON, et al.,

Defendant.

Case No. C20-01559-RAJ-SKV

ORDER OF DISMISSAL

Having reviewed the Report and Recommendation of the Honorable S. Kate Vaughan, United States Magistrate Judge, any objections or responses, and the remaining record, the Court finds and ORDERS:

- (1) The Court ADOPTS the Report and Recommendation.
- (2) Defendants' motion to dismiss (Dkt. 60) is GRANTED.
- (3) For the reasons stated in the Report and Recommendation, the claims raised in Counts I and II of the amended complaint against Defendants Patnode, Rongen, Balmert, Davis, Ramsdell, Ahn, Sahlberg, De Lano, Thaut, and Hollingsworth are dismissed with prejudice. For the reasons stated in the Report and Recommendation, the claims raised in Count IV of the amended complaint against Defendants Thompson,

1 Meek, Wonders, Andrewjeski, Howerton, and Kopoian, alleging violation of Plaintiff's
2 right to access the courts and present a defense, his right to assist other inmates with legal
3 work, his right to have access to counsel, and his right to due process and equal
4 protection, are dismissed without prejudice.

5 (4) To the extent Plaintiff's amended complaint can be construed to raise
6 retaliation claims related to the Indeterminate Sentence Review Board's (ISRB's) denial
7 of Plaintiff's release on December 13, 2021 and related to Plaintiff's removal from the
8 law library for providing legal assistance to other inmates, those claims are dismissed
9 without prejudice.
10

11 (5) The Court declines to exercise supplemental jurisdiction over Plaintiff's
12 state law claims and those claims are dismissed without prejudice.

13 (6) The Clerk is directed to terminate Jay Inslee as a Defendant in this action.

14 (7) As no claims remain in this action the Clerk is directed to close the case.

15 (8) The Clerk is directed to provide copies of this order to the parties and to the
16 Hon. S. Kate Vaughan

17 Dated this 18th day of May, 2022.

18
19 

20 The Honorable Richard A. Jones
21 United States District Judge
22
23

United States District Court
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD BUZZARD, JR.,

Plaintiff,

v.

STATE OF WASHINGTON, et al.,

Defendant.

JUDGMENT IN A CIVIL CASE

Case No. C20-01559-RAJ-SKV

 Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT:

(1) The Report and Recommendation is approved and adopted.

(2) Defendants' motion to dismiss (Dkt. 60) is GRANTED.

(3) The claims raised in Counts I and II of the amended complaint against Defendants Patnode,

Rongen, Balmert, Davis, Ramsdell, Ahn, Sahlberg, De Lano, Thaut, and Hollingsworth are dismissed with

prejudice. The claims raised in Count IV of the amended complaint against Defendants Thompson, Meek,

Wonders, Andrewjeski, Howerton, and Kopoian, alleging violation of Plaintiff's right to access the courts and

present a defense, his right to assist other inmates with legal work, his right to have access to counsel, and his right to due process and equal protection, are dismissed without prejudice.

(4) To the extent Plaintiff's amended complaint can be construed to raise retaliation claims related to the Indeterminate Sentence Review Board's (ISRB's) denial of Plaintiff's release on December 13, 2021 and related to Plaintiff's removal from the law library for providing legal assistance to other inmates, those claims are dismissed without prejudice.

(5) The Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims and those claims are dismissed without prejudice.

(6) Pursuant to this Court's prior order dated October 28, 2021, (Dkt. 39) the claims raised in Count III of the amended complaint against Defendants Ahn, Carr, Patnode, Rongen, Balmert, Davis, and Ramsdell are dismissed without prejudice.

Dated this 18th day of May, 2022.

RAVI SUBRAMANIAN
Clerk of Court

s/ Sandra Rawski
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD BUZZARD, JR.,

Plaintiff,

v.

STATE OF WASHINGTON, et al.,

Defendant.

Case No. C20-01559-RAJ-SKV

REPORT AND RECOMMENDATION

Plaintiff is a state prisoner who is proceeding *pro se* and *in forma pauperis* in this 42 U.S.C. § 1983 civil rights action. Plaintiff's amended complaint predominantly challenges the denial of his release to community custody on November 22, 2010, July 30, 2012, and May 23, 2014, and the conditions of his release to community custody established on June 16, 2016. Dkt. 30. Plaintiff also alleges violations of his rights to: access the courts and present a defense at his revocation hearing; to assist other inmates with legal work; to have access to counsel, and to due process and equal protection. *Id.* Plaintiff names as Defendants the following current or former members of the Indeterminate Sentence Review Board (ISRB): Douglas Carr¹, Jeff Patnode, Tom Sahlberg, Betsy Hollingsworth, Dennis Thaut, Lynne De Lano, K. Rongen, E. Balmert, T.

¹ The Court notes that the claims in Count III of the amended complaint, which included all claims against Defendant Carr, were previously dismissed without prejudice. *See* Dkt. 39.

1 Davis, and Lori Ramsdell². He also names the following Department of Corrections (DOC)
 2 employees as Defendants: John Thompson (Law Librarian, Washington Corrections Center
 3 (WCC)), Meek³ (Sergeant (3A Unit), Monroe Correctional Complex (MCC)), Phillip Ahn
 4 (Community Corrections Officer, Washington State Department of Corrections (DOC)), Lori
 5 Wonders (Legal Liaison, Coyote Ridge Corrections Center (CRCC)), Andrewjeski⁴ (Associate
 6 Superintendent, CRCC), Howerton⁵ (Officer, CRCC), and Kopoian⁶ (Counselor (Unit 3A),
 7 MCC). Defendants Ahn, Andrewjeski, Balmert, Davis, Howerton, Kopoian, Meek, Patnode,
 8 Ramsdell, Rongen, Thompson, and Wonders have filed a motion to dismiss for failure to state a
 9 claim pursuant to Fed. R. Civ. P. 12(b)(6).⁷ Dkt. 60. Plaintiff has filed a response to the motion
 10 to dismiss and Defendants have filed a reply. Dkts. 63 & 65.

11 Having considered the parties' submissions, the balance of the record, and the governing
 12 law, the undersigned recommends that Defendants' motion to dismiss, Dkt. 60, be GRANTED.
 13 The undersigned recommends that the claims raised in Counts I and II of the amended complaint
 14 against Defendants Patnode, Rongen, Balmert, Davis, Ramsdell and Ahn, be dismissed with
 15 prejudice as barred by the statute of limitations. The undersigned recommends that the claims
 16 raised in Count IV of the amended complaint against Defendants Thompson, Meek, Wonders,
 17 Andrewjeski, Howerton, and Kopoian, alleging violations of Plaintiff's rights to access the
 18 courts and present a defense; to assist other inmates with legal work; to have access to counsel;
 19

20 ² Defendants identify Defendant Ramsdell's full name as Lori Ramsdell-Gilkey. Dkt. 60.

21 ³ Defendants identify Defendant Meek's full name as Scott Meek. Dkt. 60.

⁴ Defendants identify Defendant Andrewjeski's full name as Melissa Andrewjeski. Dkt. 60.

22 ⁵ Defendants identify Defendant Howerton's full name as Raymond Howerton. Dkt. 60.

⁶ Defendants identify Defendant Kopoian's full name as Catherine Kopoian. Dkt. 60.

23 ⁷ The Court notes that service of the amended complaint has not been completed on Defendants Sahlberg, De Lano, Thaut and Hollingsworth. In a notice dated November 30, 2021, the Attorney General's Office indicated that these Defendants were no longer employed by the ISRB or the State of Washington and, as such, the Attorney General's Office was unable to waive service on their behalf. Dkt. 51.

1 and to due process and equal protection, be dismissed without prejudice as they fail to allege
2 facts sufficient to state a claim.

3 The undersigned further recommends that Plaintiff's claims against the unserved
4 Defendants Sahlberg, De Lano, Thaut, and Hollingsworth, raised in Count I of the amended
5 complaint also be dismissed with prejudice pursuant to 28 U.S.C. §§ 1915A and 1915(e) as
6 barred by the statute of limitations. The undersigned also alternatively recommends that the
7 claims raised in Counts I and II of the amended complaint be dismissed against Defendants
8 Patnode, Rongen, Balmert, Davis, Ramsdell, Ahn, Sahlberg, De Lano, Thaut, and Hollingsworth,
9 pursuant to 28 U.S.C. §§ 1915A and 1915(e), as barred by quasi-judicial immunity. The
10 undersigned recommends that to the extent Plaintiff's amended complaint can be construed to
11 raise retaliation claims related to the ISRB's denial of Plaintiff's release on December 13, 2021
12 and related to Plaintiff's removal from the law library for providing legal assistance to other
13 inmates, those claims should be dismissed without prejudice pursuant to 28 U.S.C. §§ 1915A and
14 1915(e). The undersigned recommends that the Court decline to exercise supplemental
15 jurisdiction over Plaintiff's state law claims and that those claims be dismissed without
16 prejudice. The undersigned recommends that the Clerk be directed to terminate Jay Inslee as a
17 Defendant in this action. As no claims remain in this action the undersigned recommends that
18 the case be closed.

19 BACKGROUND

20 In Count I of his amended complaint, Plaintiff alleges that he was improperly "denied
21 parole release to community custody" on November 22, 2010, July 30, 2012, and May 23, 2014,
22 due to his refusal to "waive [his] 1st and 5th Amendment rights to freedom to refrain from
23 speaking, and refuse[al] to waive [his] 5th Amendment right against self-incrimination to attend

1 treatment.” Dkt. 30 at 6-7. He also alleges these denials of release to community custody
2 constituted “retaliation”, in violation of the First Amendment, because they were based on his
3 refusal to waive his First Amendment right to refrain from speaking and his Fifth Amendment
4 right against self-incrimination. *Id.* He alleges the denial of his release to community custody
5 violated his “state created liberty interest in release under the 5th and 14th Amendments, violated
6 [his] 5th Amendment rights against self-incrimination, and 1st Amendment right against freedom
7 to refrain from speaking, chilling [his] 1st Amendment rights, denied [him] that extra 6 years of
8 liberty interest in community custody[.]” *Id.* Plaintiff alleges Defendants Sahlberg, Thaut,
9 Hollingsworth, and De Lano, were the members of the ISRB who denied him release to
10 community custody, violating his constitutional rights, on November 22, 2010. *Id.* He alleges
11 Defendants Sahlberg, Rongen, De Lano, and Thaut, were the members of the ISRB who denied
12 him release to community custody, violating his constitutional rights, on July 30, 2012 and on
13 May 23, 2014. *Id.*

14 In Count II Plaintiff alleges that “from June 16, 2016 to present”, he was denied his First,
15 Second, Fifth and Fourteenth Amendment rights when “unconstitutional community custody
16 conditions were imposed and enforced that were not crime-related under RCW 9.94A.030(10),
17 not law in effect date of offense under RCW 9.94A.345, and are unconstitutional as applied to
18 Plaintiff’s conduct[.]” *Id.* at 10-11. Plaintiff lists the conditions he challenges as “travel
19 restrictions, computer restrictions, internet restrictions, social media restrictions, adult materials
20 restrictions or sexually explicit materials, polygraphs forced for monitoring purposes, forced
21 treatment, alcohol restrictions, and firearm restrictions[.]” *Id.* Plaintiff alleges Defendants ISRB
22 members Patnode, Rongen, Balmert, Davis, Ramsdell, and community custody officer Phillip
23 Ahn, violated his constitutional rights in imposing these restrictions. *Id.*

1 In Count IV Plaintiff alleges between July 28, 2020 and present he was denied his “1st
2 5th, 6th, and 14th Amendment rights to access the law library, access to courts, contact his
3 attorney(s), present a defense for his revocation hearing on August 26, 2020, notary, legal copies,
4 legal envelopes which he needed to litigate his appeals, and present a defense for his revocation
5 hearing.” *Id.* at 12-14. Plaintiff alleges between July 28, 2020 and approximately September 9,
6 2020, Defendant Meek denied Plaintiff access to the law library, legal envelopes, legal
7 photocopies, and access to the courts. *Id.* Plaintiff alleges this prevented him from preparing a
8 defense for his revocation hearing. *Id.* Plaintiff alleges he asked Defendant Meek and
9 Defendant Kopoian every day for legal forms, documents, and envelopes to prepare for his
10 revocation hearing but that he was not given library access for this purpose. *Id.* He alleges
11 Defendants’ actions also constituted “negligence” under Washington state law. *Id.* Plaintiff also
12 alleges Defendants Meek and Kopoian failed to ensure he had access to contact his attorney(s).
13 *Id.* Plaintiff alleges between September 9, 2020 and November 7, 2020, Defendant Thompson
14 denied him access to the law library. *Id.* Plaintiff alleges between November 7, 2020, to present,
15 Defendant Wonders denied him access to the courts, the law library, and photocopies. *Id.*

16 Plaintiff alleges on December 11, 2020, Defendant Andrewjeski denied Plaintiff his First
17 Amendment rights and violated DOC Policy 590.500 when she told him he was not permitted to
18 assist other inmates or talk to them about their legal cases. *Id.* He alleges on or about December
19 15, 2020, Defendant Howerton told him to be quiet in the law library and that he was not allowed
20 to assist other inmates. *Id.*

21 As relief Plaintiff requests \$53,000,000.00 in total. *Id.* at 15. He asks that he be awarded
22 general and specific damages against Defendants for Defendants’ negligence, statutory
23

1 attorney's fees, costs, and disbursements, and interest, and "other relief as the Court deems[.]"
 2 *Id.*

3 DISCUSSION

4 A motion to dismiss can be granted only if a plaintiff's complaint, with all factual
 5 allegations accepted as true, fails to "raise a right to relief above the speculative level[.]" *Bell*
 6 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007).

7 To survive a motion to dismiss, a complaint must contain sufficient
 8 factual matter, accepted as true, to "state a claim to relief that is
 9 plausible on its face." A claim has facial plausibility when the
 10 plaintiff pleads factual content that allows the court to draw the
 11 reasonable inference that the defendant is liable for the misconduct
 12 alleged. The plausibility standard is not akin to a probability
 13 requirement, but it asks for more than a sheer possibility that a
 14 defendant has acted unlawfully.

15 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556, 570).

16 A complaint must contain a "short and plain statement of the claim showing that the
 17 pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Specific facts are not necessary; the
 18 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon
 19 which it rests." *Erickson v. Pardus, et al.*, 551 U.S. 89, 93 (2007) (internal citations omitted).
 20 However, the pleading must be more than an "unadorned, the-defendant-unlawfully-harmed-me
 21 accusation." *Iqbal*, 556 U.S. at 678.

22 While the Court must accept all the allegations contained in the complaint as true, the
 23 Court does not have to accept a "legal conclusion couched as a factual allegation." *Id.*
 "Threadbare recitals of the elements of a cause of action, supported by mere conclusory
 statements, do not suffice." *Id.*; *Jones v. Community Development Agency*, 733 F.2d 646, 649
 (9th Cir. 1984) (vague and mere conclusory allegations unsupported by facts are not sufficient to
 state section 1983 claims); *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). While the Court

1 is to construe a complaint liberally, such construction “may not supply essential elements of the
2 claim that were not initially pled.” *Pena*, 976 F.2d at 471.

3 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
4 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
5 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
6 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is to identify the
7 specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).
8 To satisfy the second prong, a plaintiff must allege facts showing how individually named
9 defendants caused, or personally participated in causing, the harm alleged in the complaint. *See*
10 *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

11 *A. Counts I and II – Statute of Limitations*

12 In their motion to dismiss, Defendants assert Plaintiff’s allegations in Counts I and II, that
13 he was improperly denied release to community custody by the ISRB on November 22, 2010,
14 July 30, 2012, and May 23, 2014, and that the conditions of his community custody as
15 determined by the ISRB on June 16, 2016, violate his constitutional rights, are barred by the
16 statute of limitations. *See* Dkt. 60.

17 “A claim may be dismissed [for failing to state a claim] on the ground that it is barred by
18 the applicable statute of limitations only when ‘the running of the statute is apparent on
19 the face of the complaint.’” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d
20 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir.
21 2006)). “[A] complaint cannot be dismissed unless it appears beyond doubt that the plaintiff
22 can prove no set of facts that would establish the timeliness of the claim.” *Id.* (quoting
23 *Supermail Cargo, Inc. v. U.S.*, 68 F.3d 1204, 1206 (9th Cir. 1995)); *see also Tahoe-Sierra Pres.*

1 *Council, Inc. v. Tahoe Reg'l Planning Agency*, 216 F.3d 764, 788 (9th Cir. 2000) (court may
2 raise the defense of statute of limitations *sua sponte*), *overruled on other grounds by Gonzalez v.*
3 *Arizona*, 677 F.3d 383, 389 (9th Cir. 2011) (en banc).

4 A complaint must be timely filed. The Civil Rights Act, 42 U.S.C. § 1983, contains no
5 statute of limitations. “Thus, the federal courts [] apply the applicable period of limitations
6 under state law for the jurisdiction in which the claim arose.” *Rose v. Rinaldi*, 654 F.2d 546, 547
7 (9th Cir. 1981). In *Rose*, the Ninth Circuit determined the three-year limitations period identified
8 in Revised Code of Washington 4.16.080(2) is the applicable statute of limitations for § 1983
9 cases in Washington. 654 F.2d at 547; *see* RCW 4.16.080(2).

10 The Court also applies the forum state’s law regarding equitable tolling for actions
11 arising under § 1983. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). In Washington,
12 courts permit equitable tolling “when justice requires.” *Millay v. Cam*, 135 Wn.2d 193, 206
13 (1998). “The predicates for equitable tolling are bad faith, deception, or false assurances by the
14 defendant and the exercise of diligence by the plaintiff.” *Id.* Courts “typically permit equitable
15 tolling to occur only sparingly, and should not extend it to a garden variety claim of excusable
16 neglect.” *State v. Robinson*, 104 Wn. App. 657, 667 (2001) (internal quotations omitted).

17 Plaintiff alleges Defendants Sahlberg, Rongen, De Lano, Thaut, and Hollingsworth
18 improperly denied him release to community custody in one or more of the three ISRB hearings
19 held on November 22, 2010, July 30, 2012, and May 23, 2014. He alleges Defendants ISRB
20 members Patnode, Rongen, Balmert, Davis, Ramsdell, and community custody officer
21 Defendant Ahn, imposed unconstitutional conditions of his release to community custody on
22 June 16, 2016. Plaintiff had actual notice of the facts relating to these claims on November 22,
23 2010, July 30, 2012, May 23, 2014, and June 16, 2016. *See Kimes v. Stone*, 84 F.3d 1121, 1128

(9th Cir. 1996) (a claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action). The time for filing a complaint regarding these claims therefore expired three years after Plaintiff had notice of the alleged constitutional violation, on November 22, 2013, July 30, 2015, May 23, 2017, and June 16, 2019. Plaintiff signed--effectively filing--this complaint on October 22, 2020, over a year after the statute of limitations ran on his most recent claim, and several years after the statute of limitations ran with respect to his older claims. Thus, Plaintiff failed to file a timely complaint with respect to the claims relating to the November 22, 2010, July 30, 2012, and May 23, 2014, ISRB decisions denying his release on community custody, and the June 16, 2016, conditions imposed on his release to community custody.

Plaintiff has also failed to plead facts to support equitable tolling of these claims in his amended complaint. In his response to Defendants' motion to dismiss, Plaintiff argues that he is entitled to equitable tolling because his claims are "capable of repetition yet evading review." Dkt. 63. The Court is not persuaded by this argument. Plaintiff cites to *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1287 (9th Cir. 2013) in support of his argument. But *Shell* addressed the mootness doctrine in the context of a challenge to a motion for preliminary injunction where the preliminary injunction had expired naturally before the Ninth Circuit had the opportunity to address the appeal. 709 F.3d 1281. The Ninth Circuit determined the claim fell within an exception to the mootness doctrine, and could be considered, because it was "capable of repetition yet evading review."⁸ *Id.*

⁸ In *Shell*, the Ninth Circuit reasoned that:

A preliminary injunction limited to a single Arctic Ocean open water season, that bars Greenpeace USA from physically interfering with Shell's Arctic drilling operation, will never last long enough to allow full litigation because of the inherently limited duration of the open water season and, correspondingly, the drilling season.

Here, Defendants do not argue Plaintiff's claims are moot but instead that they are barred by the statute of limitations. Plaintiff has failed to plead any facts which, if proved, would support any plausible claim of equitable tolling. *Cervantes v. City of San Diego*, 5 F.3d 1273, 1277 (9th Cir. 1993); *Iqbal*, 556 U.S. at 679. Plaintiff cites no case law indicating that equitable tolling of the statute of limitations for his § 1983 action against ISRB members and his community custody officer, would be appropriate based on the exception to the mootness doctrine discussed in *Shell. Id.* Plaintiff also pleads no facts to indicate the alleged violations, for which his complaint only specifically requests monetary relief in this § 1983 action, "are capable of repetition yet evading review." *Id.* Plaintiff offers no reasonable explanation for why his claims could not have been fully reviewed and decided on the merits if filed within the statute of limitations.

Plaintiff also argues in his response to Defendants' motion that his claims are timely under the "continuing violations doctrine." Dkt. 63. The continuing violation doctrine applies to § 1983 actions and may allow a plaintiff to seek relief for events outside of the limitations period. *See Gutowsky v. County of Placer*, 108 F.3d 256, 259 (9th Cir. 1997); *Williams v. Owens-Illinois, Inc.*, 665 F.2d 918, 924 (9th Cir. 1982). But a "[m]ere 'continuing impact from past violations is not actionable.'" *Grimes v. City and County of San Francisco*, 951 F.2d 236, 238–39 (9th Cir. 1991) (quoting *Williams*, 665 F.2d at 924; *Abramson v. University of Hawaii*, 594 F.2d 202, 209 (9th Cir. 1979) ("The proper focus is upon the time of the

[...]

Shell has drilling rights under a multi-year lease, and there is no reason to believe that Greenpeace USA's "stop Shell" campaign was limited to the 2012 drilling season. We conclude that there is at minimum a "reasonable expectation that the same complaining party [will] be subject to the same action again." *Shell*, 709 F.3d at 1288 (internal citations omitted).

1 discriminatory acts, not upon the time at which the consequences of the acts became most
2 painful.”).

3 Here, Plaintiff’s causes of action accrued when the ISRB rendered its decisions denying
4 him release and setting the conditions of his community custody. The continuing violation
5 doctrine is inapplicable because Plaintiff fails to establish a new violation occurs each time the
6 allegedly unconstitutional conditions are enforced. *See Knox v. Davis*, 260 F.3d 1009, 1013 (9th
7 Cir. 2001) (Holding Plaintiff’s § 1983 cause of action accrued when she received a letter
8 permanently suspending her legal visitation and correspondence privileges at all correctional
9 facilities and with all inmates; continuing violation doctrine was inapplicable because Plaintiff
10 failed to establish a new violation occurred each time she was denied visitation or mail
11 privileges, rather the subsequent denials of privileges were “merely the continuing effect of the
12 original suspension.”); *Smith v. Rawson*, No. C19-00053, 2021 WL 1220617, at *10 (D. Idaho
13 Mar. 31, 2021) (Holding the continuing violation doctrine inapplicable and Plaintiff’s § 1983
14 claims barred by the statute of limitations and stating “[n]o new act occurred, and no new
15 limitation period began, each and every time one of the Defendants enforced the sentencing
16 terms imposed by [the sentencing judge] in 2010; imposed additional supervision conditions
17 pursuant to the same; or disciplined Plaintiff for violating them. Plaintiff has simply pled
18 continuing ‘ill effects’ resulting from being classified as a sex offender during his incarceration
19 and later parole, having to undergo sex offender treatment, and take a full disclosure polygraph
20 test, which requirements were imposed pursuant to [the sentencing judge’s] sentence.”).

21 Plaintiff fails to allege facts to indicate bad faith, deception, or false assurances by the
22 Defendants, or to demonstrate diligence on his own part in pursuing these claims. As Plaintiff
23 did not initiate this lawsuit until more than three years after he had notice of these claims, and as

1 he has not shown he is entitled to equitable tolling, these claims are barred by the statute of
 2 limitations.⁹ Accordingly, Defendants' motion to dismiss Plaintiff's claims against Defendants
 3 Patnode, Rongen, Balmert, Davis, Ramsdell and Ahn, should be granted and these claims should
 4 be dismissed as barred by the statute of limitations.

5 Plaintiff's claims against the unserved Defendants Sahlberg, De Lano, Thaut, and
 6 Hollingsworth, in Count I should also be dismissed pursuant to 28 U.S.C. §§ 1915A and 1915(e).
 7 Under these statutes, the Court must *sua sponte* dismiss a prisoner's IFP complaint, or any
 8 portion of it, which is frivolous, malicious, fails to state a claim, or seeks damages from
 9 defendants who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en
 10 banc) (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
 11 2010) (discussing 28 U.S.C. § 1915A(b)). As the running of the statute of limitations is apparent
 12 from the face of the amended complaint, and the amended complaint pleads no facts which
 13 would support a plausible claim for equitable tolling, Plaintiff's claims against these Defendants
 14 should also be dismissed for failure to state a claim. *See Hughes v. Lott*, 350 F.3d 1157, 1163
 15 (11th Cir. 2003) (upholding *sua sponte* dismissal under 28 U.S.C. § 1915(e)(2)(B) of prisoner's
 16 time-barred complaint); *Florence v. Benrostrol*, No. C19- 0446, 2019 WL 3068226, at *2-3

18 ⁹ The Court also observes that it appears several of the issues Plaintiff raises in Counts I and II have been
 19 previously addressed and dismissed by this Court in prior actions. Specifically, it appears Plaintiff's
 20 challenges to the November 22, 2010, July 30, 2012, and May 23, 2014 denials of release by ISRB
 21 members Delano, Sahlberg, Thaut, and Hollingsworth, on First and Fifth Amendment and retaliation
 22 grounds, were previously addressed and dismissed with prejudice by this Court in 2016. *See Buzzard v.*
 23 *ISRB/CCB*, No. C15-5874 RBL-KLS, 2016 WL 1237874, at *1 (W.D. Wash. Mar. 10, 2016), *report and*
recommendation adopted, 2016 WL 1221671 (W.D. Wash. Mar. 29, 2016) (dismissing claims against
 ISRB members based on quasi-judicial immunity). Thus, Plaintiff's same claims here appear to be
 duplicative of issues previously decided. It also appears that Plaintiff's claims challenging the conditions
 of his community custody related to internet/computer access and possession of sexually explicit
 materials set by the ISRB on June 16, 2016, have also been addressed by this Court in the context of a
 habeas petition. *See Buzzard v. Uttecht*, No. C21-1061-JCC-JRC, 2022 WL 1129639, at *1 (W.D. Wash.
 Mar. 25, 2022), *report and recommendation adopted*, 2022 WL 1127485 (W.D. Wash. Apr. 15, 2022)
 (denying habeas petition and dismissing these claims with prejudice).

(S.D. Cal. July 12, 2019) (dismissing time-barred complaint for failure to state a claim prior to service pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)).

B. Counts I and II – Quasi-Judicial Immunity

Plaintiff’s claims in Counts I and II should also be dismissed pursuant to 28 U.S.C. §§ 1915A and 1915(e) as the ISRB member Defendants (Sahlberg, De Lano, Thaut, Hollingsworth, Patnode, Rongen, Balmert, Davis, and Ramsdell) and the community custody officer Defendant (Ahn) are entitled to absolute immunity from Plaintiff’s claims for damages.

The Ninth Circuit has held that parole board officials are entitled to absolute immunity from suits by prisoners for actions taken when processing and deciding parole applications. *Sellars v. Case Procunier*, 641 F.2d 1295, 1302 (9th Cir. 1981); *see also Brown v. Cal. Dep’t of Corr.*, 554 F.3d 747, 751 (9th Cir. 2009) (“[P]arole board members are entitled to absolute immunity for parole board decisions.”). Absolute immunity also applies to “parole officials for the ‘imposition of parole conditions’ and the ‘execution of parole revocation procedures,’ tasks integrally related to an official’s decision to grant or revoke parole.” *Swift v. California*, 384 F.3d 1184, 1189 (9th Cir. 2004) (quoting *Anderson v. Boyd*, 714 F.2d 906, 909 (9th Cir. 1983)). This immunity applies even where parole officers “impos[e] allegedly unconstitutional parole conditions.” *Thornton v. Brown*, 757 F.3d 834, 839–40 (9th Cir. 2013).

Plaintiff claims the individual ISRB member Defendants Sahlberg, Thaut, Hollingsworth, De Lano and Rongen, improperly denied release and the individual ISRB member Defendants Patnode, Rongen, Balmert, Davis, and Ramsdell, and community custody officer Defendant Ahn, imposed unconstitutional community custody conditions.¹⁰ However, these Defendants are

¹⁰ The Court notes that Plaintiff does not allege in these claims that the community custody officer, Defendant Ahn, violated his constitutional rights by enforcing the community custody conditions in an unconstitutional or arbitrary manner, but only that he imposed the established (allegedly unconstitutional)

immune from suit because they were acting in their judicial capacity in denying Plaintiff's release and in imposing community custody conditions. Therefore, Plaintiff's claims for damages against Defendants Sahlberg, Thaut, Hollingsworth, De Lano, Patnode, Rongen, Balmert, Davis, Ramsdell, and Ahn, should be dismissed pursuant to 28 U.S.C. §§ 1915A and 1915(e). *See Buzzard*, 2016 WL 1237874, at *3 (dismissing claims against ISRB board members based on quasi-judicial immunity).¹¹

C. Count IV - Access to Courts, Access to Counsel, Legal Advice to Other Inmates, Due Process, Equal Protection

1. Access to Courts

Inmates have a “fundamental constitutional right of access to the courts.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977). In *Bounds*, the Supreme Court held the right of access requires prison officials to assist inmates in preparing and filing legal papers, either by establishing an adequate law library or by providing adequate assistance from persons trained in the law. *Id.* at 828. In *Lewis v. Casey*, 518 U.S. 343 (1996), the Supreme Court held a prisoner must show some actual injury resulting from a denial of access in order to allege a constitutional violation. *Id.* at 349.

To establish he suffered an actual injury, a plaintiff must show “actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to

community custody conditions upon Plaintiff. *See Thornton*, 757 F.3d at 839–40 (“Absolute immunity does bar Plaintiff's claims for damages against his parole officers for imposing allegedly unconstitutional parole conditions. [...] Absolute immunity does not extend, though, to Plaintiff's claim that the parole officers enforced the conditions of his parole in an unconstitutionally arbitrary or discriminatory manner.”). Plaintiff's claims, as pled, challenge the community custody conditions themselves, not any specific allegedly improper enforcement of those conditions.

¹¹ The Court notes that Plaintiff's amended complaint contains no requests for any specific injunctive or equitable relief with respect to these claims and, as such, with the dismissal of Plaintiff's claims for damages, it appears no viable claims would remain with respect to the claims raised in Counts I and II.

1 present a claim.” *Lewis*, 518 U.S. at 348; *Christopher v. Harbury*, 536 U.S. 403, 415, (2002);
2 *Nevada Dep’t of Corr. v. Greene*, 648 F.3d 1014, 1018 (9th Cir. 2011). The right of access to
3 the courts is limited to non-frivolous direct criminal appeals, habeas corpus proceedings, and
4 Section 1983 cases. *See Lewis*, 518 U.S. at 353 n. 3, 354-55. “Failure to show that a
5 ‘nonfrivolous legal claim has been frustrated’ is fatal to [an access to courts] claim.” *Alvarez v.*
6 *Hill*, 518 F.3d 1152, 1155 n. 1 (9th Cir. 2008) (quoting *Lewis*, 518 U.S. at 353 & n. 4).

7 Plaintiff makes several general assertions that Defendants Thompson, Meek, Kopoian
8 and Wonders interfered with his access to the courts by denying him access the law library
9 and/or failing to provide him with legal envelopes, legal copies, and notary services. *See Dkt.*
10 30. Plaintiff appears to assert that, due to Defendants’ actions, he was unable to adequately
11 prepare a defense for his community custody revocation hearing on August 26, 2021. But
12 Plaintiff fails to allege adequate facts showing how the alleged inadequate law library access or
13 denial of legal envelopes, legal copies, and notary services, resulted in the revocation of his
14 community custody, frustrated a nonfrivolous legal claim, or caused him other actual injury.

15 The Court notes that “[i]nmates have a constitutional right to either assistance of a
16 lawyer, or access to the law library.” *See Keenan v. Hall*, 83 F.3d 1083, 1093-94 (9th Cir. 1996).
17 Plaintiff’s pleadings make clear that he had counsel for his revocation hearing. *See Dkt. 63* at 4.
18 Thus, it does not appear he had any separate constitutional right to access the law library to
19 prepare for this hearing, nor does Plaintiff identify additional legal research he would have
20 needed to conduct himself, given that he had counsel, in order to prepare for the hearing. Even if
21 Plaintiff did not have counsel, Plaintiff fails to identify any specific information from the law
22 library he needed to prepare for his hearing or that would have affected the outcome of his
23 revocation hearing, nor does he explain how the denial of legal envelopes legal copies, or notary

services, resulted in the revocation of his community custody, frustrated any other non-frivolous legal claim, or caused him other actual injury. *See, e.g., Garcia v. Los Angeles Cty.*, No. C20-08528, 2021 WL 5404772, at *10 (C.D. Cal. Nov. 3, 2021) (“Plaintiff has not stated a § 1983 claim for failure to provide supplies because he has not shown that without the supplies, he lacked meaningful access to the courts. He has not shown any injury in his ability to litigate this or any other lawsuit as a result of the [jail’s] actions regarding supplies.”) *report and recommendation adopted sub nom.*, 2021 WL 5396096 (C.D. Cal. Nov. 18, 2021), *appeal dismissed sub nom.*, No. C21-56335, 2022 WL 726952 (9th Cir. Jan. 21, 2022); *Longhi v. Buffington*, No. C93-4096, 1994 WL 72208, at *2 (N.D. Cal. Feb. 28, 1994) (“Although plaintiff alleges that defendants [...] refused to provide envelopes, plaintiff has made no showing of actual injury.”).

In sum, Plaintiff fails to plead facts which raise his claim of denial of access to the courts above the speculative level. The amended complaint does not provide sufficient detail to establish any actual injury. Rather, Plaintiff provides only vague, conclusory statements alleging he has been harmed by Defendants. Accordingly, Defendants’ motion to dismiss should be granted and Plaintiff’s claim alleging denial of access to courts should be dismissed without prejudice.

2. Access to Counsel

Plaintiff also alleges generally that Defendants Meek and Kopoian “failed to ensure” he “had access to contact his attorney(s).” Dkt. 30.

“The Sixth Amendment provides that ‘[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defen[s]e.’” *Nordstrom v. Ryan* (*Nordstrom I*), 762 F.3d 903, 909 (9th Cir. 2014) (quoting U.S. Const. amend. VI). Deliberate

1 government interference with the confidential relationship between a criminal defendant and
2 defense counsel violates the Sixth Amendment right to counsel “if it substantially prejudices the
3 criminal defendant.” *Nordstrom I*, 762 F.3d at 909. Furthermore, the right of access to courts
4 includes the right of visitation with counsel. *Ching v. Lewis*, 895 F.2d 608, 609 (9th Cir. 1990).
5 But this right of access is not absolute and must be balanced against the legitimate governmental
6 interest in maintaining the security and safety of the prison facilities. *See Sands v. Lewis*, 886
7 F.2d 1166, 1169 (9th Cir. 1989) *overruled on other grounds by Lewis*, 518 U.S. at 350; *Bell v.*
8 *Wolfish*, 441 U.S. 520, 546 (1979).

9 Here, Plaintiff provides no specific factual allegations regarding when or how Defendants
10 Meek and Kopoian “failed to ensure” he “had access to contact his attorney(s).” Nor does
11 Plaintiff allege any specific facts to indicate he was prejudiced, or suffered harm, as a result of
12 Defendants’ actions. Plaintiff’s conclusory allegations regarding lack of access to his attorney
13 are insufficient to state a claim. Accordingly, Defendants’ motion to dismiss should be granted
14 and Plaintiff’s claim alleging lack of access to his attorney should be dismissed without
15 prejudice.

16 3. *Due Process and Equal Protection*

17 Plaintiff also generally references the Fifth and Fourteenth Amendment in his amended
18 complaint.

19 The Fourteenth Amendment Due Process Clause prohibits states from depriving “any
20 person of life, liberty, or property, without due process of law.” There are two possible forms of
21 a Fourteenth Amendment due process claim: substantive and procedural. To state a substantive
22 due process claim, plaintiff must allege “a state actor deprived [him] of a constitutionally
23 protected life, liberty, or property interest.” *Shanks v. Dressel*, 540 F.3d 1082, 1087 (9th Cir.

2008). To state a claim for violation of procedural due process, plaintiff must allege: (1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections. *Kildare v. Saenz*, 325 F.3d 1078, 1085 (9th Cir. 2003).

“To state a § 1983 claim for violation of the Equal Protection Clause, a plaintiff must show that he was treated in a manner inconsistent with others similarly situated, and that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166-67 (9th Cir. 2005) (internal quotations omitted). Alternatively, when an action does not implicate a protected class such as race or religion, a plaintiff may establish a “class of one” equal protection claim by alleging that he has been intentionally treated differently from others similarly situated without any rational basis for the difference in treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam). To “be considered similarly situated, the class of one challenger and his comparators must be prima facie identical in all relevant respects or directly comparable in all material respects.” *Warkentine v. Soria*, 152 F. Supp. 3d 1269, 1294 (E.D. Cal. 2016) (quoting *United States v. Moore*, 543 F.3d 891, 896 (7th Cir. 2008)).

To the extent Plaintiff intends to allege violation of his rights to due process or equal protection, he provides no argument or factual allegations explaining the basis for or supporting such claims. Accordingly, Defendants’ motion to dismiss should be granted and Plaintiff’s claim alleging violation of his rights to due process and equal protection should be dismissed without prejudice.

4. *Legal Advice to Other Inmates*

Plaintiff alleges on December 11, 2020, Defendant Andrewjeski violated Plaintiff’s First Amendment rights and DOC Policy 590.500 when she told him he was not permitted to assist

1 other inmates or talk to them about their legal cases. He alleges on or about December 15, 2020,
2 Defendant Howerton told him to be quiet in the law library and that he was not allowed to assist
3 other inmates.

4 A prisoner's legal assistance to other inmates deserves no more First Amendment
5 protection than any other prisoner speech. *See Shaw v. Murphy*, 532 U.S. 223, 231–32 (2001).
6 “[A] prison inmate retains those First Amendment rights that are not inconsistent with [their]
7 status as a prisoner or with the legitimate penological objectives of the corrections system.” *Pell*
8 *v. Procunier*, 417 U.S. 817, 822 (1974). A regulation that impinges on First Amendment rights
9 “is valid if it is reasonably related to legitimate penological interests.” *Turner v. Safley*, 482 U.S.
10 78, 89 (1987). In determining whether a prison regulation is reasonably related to a legitimate
11 penological interest, the court should consider the following factors: (1) whether there is a valid,
12 rational connection between the regulation and the interest used to justify the regulation; (2)
13 whether prisoners retain alternative means of exercising the right at issue; (3) the impact the
14 requested accommodation will have on inmates, prison staff, and prison resources generally; and
15 (4) whether there are ready alternatives to the regulation which could be implemented. *See*
16 *Beard v. Banks*, 548 U.S. 521, 529 (2006). Legitimate penological interests include “the
17 preservation of internal order and discipline, the maintenance of institutional security against
18 escape or unauthorized entry, and the rehabilitation of the prisoners.” *Procunier v. Martinez*,
19 416 U.S. 396, 412 (1974) (footnote omitted) *limited by Thornburgh v. Abbott*, 490 U.S. 401
20 (1989); *Beard*, 548 U.S. at 530–31 (motivating better behavior on the part of particularly
21 difficult prisoners); *Mauro v. Arpaio*, 188 F.3d 1054, 1059 (9th Cir. 1999) (protecting guards and
22 preventing prisoners from sexually harassing guards). “[F]reedom of association is among the
23 rights least compatible with incarceration.” *See Overton v. Bazzetta*, 539 U.S. 126, 131–32

1 (2003) (holding that prison officials’ restrictions on noncontact visits bore a rational relation to
2 legitimate penological interests).

3 Plaintiff appears to allege Defendants’ actions violated his constitutional right to provide
4 legal assistance to other inmates. But a prisoner does not have a separate free standing
5 constitutional right to provide legal assistance to other inmates. Rather, a prisoner’s legal
6 assistance to other inmates deserves no more First Amendment protection than any other
7 prisoner speech. *See Shaw*, 532 U.S. at 231–32. Here, Plaintiff fails to allege or provide any
8 facts demonstrating how the statements by Defendant Andrewjeski and Howerton, that he must
9 be quiet in the law library and that he was not permitted to assist other inmates or talk to them
10 about their legal cases, were unrelated to any legitimate penological interest. *See, e.g., Edwards*
11 *on behalf of J.E. v. Yamhill Cty.*, No. C19- 00240, 2021 WL 7540367, at *8 (D. Or. Sept. 7,
12 2021), *report and recommendation adopted*, 2022 WL 819449 (D. Or. Mar. 17, 2022) (Granting
13 Defendants’ motion to dismiss Plaintiffs’ First Amendment challenge to regulations on various
14 restrictions, including restrictions on journal writing, stating “Plaintiffs continue to fail to allege
15 any facts demonstrating how the rules are unrelated to any penological interest[.]”).

16 Thus, Plaintiff fails to allege sufficient facts to state a claim. Accordingly, Defendants’
17 motion to dismiss should be granted and Plaintiff’s claim alleging denial of his First Amendment
18 right to provide legal advice to other inmates should be dismissed without prejudice.

19 *D. Retaliation*

20 In his response to Defendants’ motion to dismiss, Plaintiff alleges he was subjected to
21 retaliatory behavior due to his litigation activities and for providing legal assistance to other
22 inmates. Dkt. 63 at 3-4. Specifically, Plaintiff alleges the ISRB retaliated against him in
23 December 2021 when it declined to release him. *Id.* Plaintiff also alleges, in his response to the

1 motion, that Defendant Andrewjeski and Defendant Howerton retaliated against him by “kicking
2 [him] out” of the law library for talking and assisting other inmates. *Id.* Plaintiff does not appear
3 to have raised these specific claims in his amended complaint. *See* Dkt. 30. However, even if
4 these claims were properly before the Court, his allegations fail to state a claim.

5 The First Amendment protects prisoners’ right to file grievances and pursue civil rights
6 litigation in federal court without retaliation. *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir.
7 2012); *Silva v. DiVittorio*, 658 F.3d 1090, 1104 (9th Cir. 2011). “Within the prison context, a
8 viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a
9 state actor took some adverse action against an inmate (2) because of (3) that prisoner’s
10 protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment
11 rights, and (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes*,
12 408 F.3d at 567-68.

13 “The prisoner must show that the type of activity in which he was engaged was
14 constitutionally protected, that the protected conduct was a substantial or motivating factor for
15 the alleged retaliatory action, and that the retaliatory action advanced no legitimate penological
16 interest.” *Quiroz v. Horel*, 85 F. Supp. 3d 1115, 1124 (N.D. Cal. 2015) (citing *Hines v. Gomez*,
17 108 F.3d 265, 267-68 (9th Cir. 1997)); *see also Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir.
18 1995) (plaintiff bears burden of pleading and proving the absence of legitimate correctional goals
19 for the conduct of which he complains). “[M]ere speculation that defendants acted out of
20 retaliation is insufficient.” *Wood v. Yordy*, 753 F.3d 899, 905 (9th Cir. 2014). Retaliation claims
21 brought by prisoners must be evaluated in light of concerns over “excessive judicial involvement
22 in day-to-day prison management, which ‘often squander[s] judicial resources with little
23 offsetting benefit to anyone.’” *Pratt*, 65 F.3d at 806 (quoting *Sandin v. Conner*, 515 U.S. 472,

1 482 (1995)). In particular, courts should “‘afford appropriate deference and flexibility’ to prison
2 officials in the evaluation of proffered legitimate penological reasons for conduct alleged to be
3 retaliatory.” *Id.* (quoting *Sandin*, 515 U.S. at 482).

4 Plaintiff alleges in his response to the motion that the ISRB “acted in retaliation for this
5 lawsuit” and denied him release in December 2021. But the record shows that the ISRB
6 provided the following reasons for denying Plaintiff’s release: “statistical estimate of risk,
7 criminal history, release history, ability to control behavior, responsivity to programming,
8 demonstrated offender change, release planning, discordant information, and case specific
9 factors.” Dkt. 63, Ex. 2 at 3. Thus, the record currently before the Court reflects that the denial
10 of Plaintiff’s release was intended to advance a legitimate penological goal, and Plaintiff fails to
11 allege sufficient facts to indicate that the filing of this lawsuit was a substantial or motivating
12 factor in the denial of his release.

13 Plaintiff also alleges Defendants retaliated against him by removing him from the library
14 because he was assisting other inmates with legal work. But again, Plaintiff fails to allege or
15 provide any facts to indicate that Defendants’ actions did not advance a legitimate penological
16 goal.

17 Accordingly, Plaintiff has failed to state a retaliation claim and, to the extent these claims
18 can be construed to have been raised in the amended complaint, they should be dismissed
19 without prejudice pursuant to 28 U.S.C. § 1915A and 1915(e).

20 *E. State Law Negligence Claim*

21 Plaintiff also appears to allege Defendants Meek and Kapoian were “negligent” under
22 Washington State Law in failing to provide him access to the law library and other legal
23 materials. Dkt. 30 at 12-14

1 Federal courts have supplemental jurisdiction to consider state-law claims when they are
2 “so related” to the federal claims that they “form part of the same case or controversy[.]” 28
3 U.S.C. § 1367(a). The exercise of supplemental jurisdiction is designed to promote “judicial
4 economy, convenience, fairness, and comity[.]” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343,
5 350 (1988). However, when all federal claims have been dismissed, the interests promoted by
6 supplemental jurisdiction are no longer present, and a court may decline to exercise jurisdiction
7 over state-law claims. 28 U.S.C. § 1367(c); *Carnegie-Mellon*, 484 U.S. at 350 n.7 (“[I]n the
8 usual case in which all federal-law claims are eliminated before trial, the balance of factors to be
9 considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness,
10 and comity—will point toward declining to exercise jurisdiction over the remaining state-law
11 claims.”).

12 Here, as the undersigned is recommending dismissal of all of Plaintiff’s federal-law
13 claims, the undersigned also recommends that the Court decline to exercise supplemental
14 jurisdiction over Plaintiff’s state law claims and that those claims be dismissed without
15 prejudice.

16 *F. Jay Inslee*

17 The Court also notes that Plaintiff does not name Jay Inslee in his amended complaint
18 although he remains listed as a Defendant on the docket. *See* Dkt. 30. Accordingly, the Court
19 recommends that the Clerk be directed to terminate Jay Inslee as a Defendant in this action.

20 *G. Leave to Amend*

21 The Ninth Circuit has “established that a pro se litigant bringing a civil rights suit must
22 have an opportunity to amend the complaint to overcome deficiencies unless it is clear that they
23 cannot be overcome by amendment.” *Eldridge v. Block*, 832 F.2d 1132, 1135-36 (9th Cir. 1987).

1 Here, Plaintiff was previously allowed to amend his complaint and as discussed above, his
2 amended complaint still fails to state a claim. Accordingly, the Court recommends Plaintiff not
3 be given additional leave to amend. *See Fid. Fin. Corp. v. Fed. Home Loan Bank of San*
4 *Francisco*, 792 F.2d 1432, 1438 (9th Cir. 1986) (“The district court’s discretion to deny leave to
5 amend is particularly broad where the court has already given the plaintiff an opportunity to
6 amend his complaint.”).

7 CONCLUSION

8 The Court recommends Defendants’ motion to dismiss (Dkt. 60) be GRANTED. The
9 undersigned recommends that the claims raised in Counts I and II of the amended complaint
10 against Defendants Patnode, Rongen, Balmert, Davis, Ramsdell and Ahn, be dismissed with
11 prejudice as barred by the statute of limitations. The undersigned recommends that the claims
12 raised in Count IV of the amended complaint against Defendants Thompson, Meek, Wonders,
13 Andrewjeski, Howerton, and Kopoian, alleging violation of Plaintiff’s right to access the courts
14 and present a defense, his right to assist other inmates with legal work, his right to have access to
15 counsel, and his right to due process and equal protection, be dismissed without prejudice as they
16 fail to allege facts sufficient to state a claim.

17 The undersigned further recommends that Plaintiff’s claims against the unserved
18 Defendants Sahlberg, De Lano, Thaut, and Hollingsworth, raised in Count I of the amended
19 complaint also be dismissed with prejudice pursuant to 28 U.S.C. §§ 1915A and 1915(e) as
20 barred by the statute of limitations. The undersigned also alternatively recommends that the
21 claims raised in Counts I and II of the amended complaint be dismissed against Defendants
22 Patnode, Rongen, Balmert, Davis, Ramsdell, Ahn, Sahlberg, De Lano, Thaut, and Hollingsworth,
23 pursuant to 28 U.S.C. §§ 1915A and 1915(e), as barred by quasi-judicial immunity. The

undersigned recommends that to the extent Plaintiff's amended complaint can be construed to raise retaliation claims related to the ISRB's denial of Plaintiff's release on December 13, 2021 and related to Plaintiff's removal from the law library for providing legal assistance to other inmates, those claims should be dismissed without prejudice pursuant to 28 U.S.C. §§ 1915A and 1915(e). The undersigned recommends that the Court decline to exercise supplemental jurisdiction over Plaintiff's state law claims and that those claims be dismissed without prejudice. The undersigned recommends that the Clerk be directed to terminate Jay Inslee as a Defendant in this action. As no claims remain in this action the undersigned recommends that the case be closed.

A proposed order accompanies this Report and Recommendation.

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report and Recommendation is signed. Failure to file objections within the specified time may affect your right to appeal. Objections should be noted for consideration on the District Judge's motions calendar for the third Friday after they are filed. Responses to objections may be filed within **fourteen (14) days** after service of objections. If no timely objections are filed, the matter will be ready for consideration by the District Judge on **May 13, 2022**.

Dated this 21st day of April, 2022.


S. KATE VAUGHAN
United States Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD BUZZARD, JR.,

Plaintiff,

v.

STATE OF WASHINGTON, et al.,

Defendant.

Case No. C20-01559-RAJ-SKV

ORDER OF DISMISSAL

Having reviewed the Report and Recommendation of the Honorable S. Kate Vaughan, United States Magistrate Judge, any objections or responses, and the remaining record, the Court finds and ORDERS:

- (1) The Court ADOPTS the Report and Recommendation.
- (2) Defendants' motion to dismiss (Dkt. 60) is GRANTED.
- (3) For the reasons stated in the Report and Recommendation, the claims raised in Counts I and II of the amended complaint against Defendants Patnode, Rongen, Balmert, Davis, Ramsdell, Ahn, Sahlberg, De Lano, Thaut, and Hollingsworth are dismissed with prejudice. For the reasons stated in the Report and Recommendation, the claims raised in Count IV of the amended complaint against Defendants Thompson, Meek, Wonders, Andrewjeski, Howerton,

1 and Kopoian, alleging violation of Plaintiff's right to access the courts and present a defense, his
2 right to assist other inmates with legal work, his right to have access to counsel, and his right to
3 due process and equal protection, are dismissed without prejudice.

4 (4) To the extent Plaintiff's amended complaint can be construed to raise retaliation
5 claims related to the Indeterminate Sentence Review Board's (ISRB's) denial of Plaintiff's
6 release on December 13, 2021 and related to Plaintiff's removal from the law library for
7 providing legal assistance to other inmates, those claims are dismissed without prejudice.

8 (5) The Court declines to exercise supplemental jurisdiction over Plaintiff's state law
9 claims and those claims are dismissed without prejudice.

10 (6) The Clerk is directed to terminate Jay Inslee as a Defendant in this action.

11 (7) As no claims remain in this action the Clerk is directed to close the case.

12 (8) The Clerk is directed to provide copies of this order to the parties and to the Hon.
13 S. Kate Vaughan

14 Dated this __ day of _____, 2022.

15
16 _____
17 RICHARD A. JONES
United States District Judge
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United States District Court

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD BUZZARD, JR.,

Plaintiff,

v.

STATE OF WASHINGTON, et al.,

Defendant.

JUDGMENT IN A CIVIL CASE

Case No. C20-01559-RAJ-SKV

___ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT:

- (1) The Report and Recommendation is approved and adopted.
- (2) Defendants' motion to dismiss (Dkt. 60) is GRANTED.
- (3) The claims raised in Counts I and II of the amended complaint against Defendants Patnode, Rongen, Balmert, Davis, Ramsdell, Ahn, Sahlberg, De Lano, Thaut, and Hollingsworth are dismissed with prejudice. The claims raised in Count IV of the amended complaint against Defendants Thompson, Meek, Wonders, Andrewjeski, Howerton, and Kopoian, alleging violation of Plaintiff's right to access the courts and present a defense, his right to assist other inmates with legal work, his right to have access to counsel, and his right to due process and equal protection, are dismissed without prejudice.
- (4) To the extent Plaintiff's amended complaint can be construed to raise retaliation claims related to the Indeterminate Sentence Review Board's (ISRB's) denial of Plaintiff's release on December 13, 2021 and

related to Plaintiff's removal from the law library for providing legal assistance to other inmates, those claims are dismissed without prejudice.

(5) The Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims and those claims are dismissed without prejudice.

(6) Pursuant to this Court's prior order dated October 28, 2021, (Dkt. 39) the claims raised in Count III of the amended complaint against Defendants Ahn, Carr, Patnode, Rongen, Balmert, Davis, and Ramsdell are dismissed without prejudice.

Dated this _____ day of _____, 2022.

RAVI SUBRAMANIAN
Clerk of Court

Deputy Clerk