No. 18-8756

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JOHNATHAN SAMUEL WILLIAMS — PETITIONER
(Your Name)

vs.

CALIFORNIA DEPT. OF CORR. & REHAB. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATE COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Johnathan S. Williams
(Your Name)

Correctional Training Facility Soledad
(Address)

P.O. Box 689, Soledad, California 93960-0689
(City, State, Zip Code)

CDCR Number K-46368
(Phone Number)

QUESTION(S) PRESENTED

I. DID THE U.S.D.C. COMMIT LEGAL ERROR BY GRANTING DEFENDANT'S MOTION TO DISMISS UNDER RES JUDICATA WITHOUT ALLOWING THE APPELLANT AN OPPORTUNITY TO CONTEST IT?

II. DID THE U.S.D.C. COMMIT LEGAL ERROR BY ADOPTING THE FINDINGS OF THE MAGISTRATE THAT THE LEGAL ARGUMENTS IN THE FIRST AMENDED COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF DID NOT STATE A PRIMA FACIE CASE FOR RELIEF EXCEPT FOR THE DENTAL ARGUMENTS?

III. DID THE U.S.D.C. COMMIT LEGAL ERROR AND VIOLATE APPELLANT'S DUE PROCESS AND FEDERAL PROCEDURAL RIGHTS BY ALLOWING THE MAGISTRATE TO PARTICIPATE OVER APPELLANT'S REPEATED OBJECTION IN VIOLATION OF ROELL V. WITHROW, CAUSING AN UNWARRANTED IMPACT UPON THE COURT'S APPOINTMENT OF COUNSEL AFTER THE REVERSE AND REMAND BY THE DISTRICT JUDGE?

VI. SHOULD THE U.S.D.C. HAVE ALLOWED SUBSTITUTION OF DEFENDANT PARTIES WHO WERE PLED IN THE DECLARATION OF FACTS (DOF) and SET FORTH IN THE REQUEST FOR INJUNCTIVE RELIEF (RIR) PRIOR TO DISMISSAL?

V. DOES DEFENDANT'S CONDUCT HERE AND PRISON POLICIES CREATE DISPARATE LIVING CONDITIONS, VIOLATIONS OF CONSTITUTIONAL LAW, ACTING OR FAILING TO ACT IN A DELIBERATELY INDIFFERENT MANNER SUFFICIENT TO SHOCK THE CONSCIENCE CONSTITUTING A CLEAR AND PRESENT DANGER TO THE APPELLANT AND ALL OTHER CDCR PRISONERS SUFFICIENT TO TRIGGER THE COURT'S DUTY TO INVESTIGATE?

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LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. DRS. KURK, DDS.; 2. MCINTYRE; 3. TRANQUINA; 4. WOODS, 5. HU; 6. PARK-LIN; 7. ZANG; 8. WALKER; 9; GUIRGUIS; 10. LO; 11. SIDHU; 12. NGUYEN, 13. Z. AHMED, M.D.; and S. POSSON Chief Medical Officer California Department of Corrections and Rehabilitation (CDCR) Personnel: 1. LT. H. WILLIAMS; 2. LT. T. LEE; 3. CAPT. BRIGGS; 4. CAPT. E. YOUNG; 5. CORRECTIONAL OFFICERS JO; 6. BASIC; 7. BLAZEVIC; 8. NELSON; 9. PETERSEN; 10. TAXERA ; 11. AS. WARDEN K. MITCHELL; 12. Director of CDCR; 13. Warden of CSP San Quentin; 14. Warden of CSP Solano; and 15. Appeals Coordinators of CSP Solano, High Desert, and San Quentin.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[X] reported at 730 Fed. Appx. 516 (9th Cir. 2018); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 13, 2018.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 2, 2018, and a copy of the order denying rehearing appears at Appendix B.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including April 1, 2019 (date) on January 29, 2019 (date) in Application No. 18 A 786.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case comes to the Court following protracted litigation on the part of the DEFENDANTS (all employees of the California Department of Corrections, hereinafter CDCR). The PLAINTIFF - APPELLANT WILLIAMS (hereinafter Plaintiff) has suffered the invidious deprivation of medical and dental treatment according to state and federal law, as well as the violations of several federal consent decrees, causing him pain and injuries.

Plaintiff was appointed counsel(Dkt. #33), which was "limited" by the magistrate, causing procedural errors. On 3-9-17, the 9th Circuit ordered plaintiff to respond to the argument that the appeal was not taken in good faith, and following the response by the Deputy Attorney General (DAG) the Court ruled in plaintiff's favor allowing briefing to continue.(See EXHIBIT 40).

Plaintiff filed a request for judicial notice and sought to bring to the Court's attention the testimonial facts demonstrating retaliation that the District Court (U.S.D.C.) had previously filed on 12-15-14. He also sought to make sure that the Court was aware of the 28 exhibits that he were concomitantly filed with the "DECLARATION OF FACTS" (DOF)(see, U.S.D.C. dkt. #37-39). While it was the district court and the defendants responsibility to adhere to ABA Rule 3.4 and provide the Court a **complete record**, Plaintiff was relatively certain that the respondents would fail to apprise the Court of his attempts over the years to protect his Due Process rights.

Here, just as they (the CDCR, DEFENDANTS, and each of them in the DOF) did except when the U.S.D.C. mentioned the motion for TRO/IR in rejecting the Magistrate's Findings & Recommendations (MFR), defendant's counsel refused to acknowledge that OTHER CDCR DEFENDANTS existed as alleged in the DOF. In fact it was not until filing the "RESPONDENT'S OPPOSITION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE" (U.S.C.A. Dkt. #22) that counsel even mentioned that the "153 testimonial facts and twenty-eight exhibits" even existed. (Dkt. #22 at pg.02).

Plaintiff has suffered retaliation as stated in the DECLARATION, due to the many 602s, state habeas petitions and federal complaints. Plaintiff has been imprisoned by the State of California since 1996. At the beginning of his imprisonment, he had thirty (30) teeth, some residual damage to his muscular skeletal frame due to injury sustained while in the Marines at 17. He is now over 60.

Plaintiff does not have, nor has he ever had pyorrhea or any other disease that would cause him to loose thirteen teeth. He became aware of the policy to extract rather than to repair teeth early on, and filed an administrative complaint (CDC or CDCR 602). He has always been put off, administratively screened out, or has been denied outright. A dental 602 has been filed almost every year.

Plaintiff has also had various medical complaints regarding his back, knees, and neck, which cause pain daily. As well as the incapacitating migraine headaches he has suffered since he was injured on active duty in the Marines. Administrative complaints have been filed each of the years plaintiff has been in the CDCR, all to no avail. Indeed, in the underlying COMPLAINT the DEFENDANTS not only filed an opposition to Dkt. No. 30 & 56, but the District Court **DID NOT address these issues until 8-8-18, well after appeal was filed!**

Given the state of plaintiff's medical and dental condition, it is clear that without the intervention of THIS COURT he will have to acquiesce to the removal of at least two more teeth or he will not be given dentures. despite the fact that the teeth that are sought to be extracted would better anchor the dentures! It is clear from the dental history that the **only time he is given any priority treatment** is when he agrees to an extraction of some sort!!

Since it is clearly beyond dispute that the CDCR and the parties Plaintiff named in the "DECLARATION OF FACTS"(DOF) were apprised of ALL of the relevant facts when each 602 was submitted, the Court should have allowed joinder. (See dkt. no. 09). In each of Plaintiff's 602s over almost the last two decades, he has argued that (1) he had a viable medical or dental argument, and (2) that when he complained about the actions of medical, dental, or C/O and administrative malfeasance he began to suffer increased retaliation from them in some form.

In his complaints over the span of his incarceration plaintiff chronicled a litany of actions that were also the subject of other 602s , by many other inmates in most of the CDCR prisons. In some cases the medical or employee actions were alleged to be due to either policy or deliberate indifference/malfeasance. However, ALL of the actions described in his REQUEST FOR JUDICIAL NOTICE (see, dkt. 39, 12-15-14), and were also the subject of one of his 602s. (See also dkt. #30, 56, and 65).

Clearly, the defendants counsel was, and is aware of these 602s. Therefore, plaintiff should have been allowed to add claims/defendants or substitute them for the already served defendants. ALL of the facts, claims and defendants were inter-connected, and contended to one "who is or may be liable" to the Plaintiff given the constitutional nexus being alleged in the grounds of the DOF and FAC The liability of these defendants has been asserted when plaintiff originally filed his 602s.

[1] In the endeavor to establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." The court "must 'pierce the pleadings and to assess the proof in order to.... draw "all reasonable inferences supported by the evidence of serious" deprivation. ("The specification . . . of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations"); because he is a pro se prisoner. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010); see also Swierkiewicz v. Sorema N. A., 534 U.S. 506, 512, (2002). The court may treat such a document as "part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003) Vasquez v. Los Angeles Cnty., 487 F.3d 1246, 1249 (9th Cir. 2007). A pleading need not repeat the same assertion more than once to provide notice. We understand that the defendants or the [ ] court might have been confused to encounter this pair of claims given that the rest of the complaint refers to a singular "Plaintiff." But Defendants can resolve such ambiguities by filing a Rule 12(e) motion for a more definite statement. See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002)

"If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding."); see also Crawford-El v. Britton, 523 U.S. 574, 598, (1998); Erickson v. Pardus, 551 U.S. 89, 93-94, (2007)

"It has long been established that it is inappropriate to resolve issues of credibility, motive, and intent on motions for summary judgment. It is equally clear that where such issues are presented, the submission of affidavits or depositions is insufficient to support a motion for summary judgment." Hardin v. Pitney-Bowes Inc., 451 U.S. 1008, 1009, 101 S. Ct. 2345, 68 L. Ed. 2d 861 (1981) (Rehnquist, J., dissenting from the denial of the petition for writ of certiorari); see also Provenz v. Miller, 102 F.3d 1478, 1489 (9th Cir. 1996) ("'Cases where intent is a primary issue generally are inappropriate for summary judgment unless all reasonable inferences that could show genuine need for trial.'" Matsushita, 475 U.S. at 587 (citations omitted).

THE DISTRICT COURT ERRED IN NOT ALLOWING JOINDER/SUBSTITUTION OF PARTIES

Plaintiff contends that the parties named in the DOF are "indispensible parties", and it was error not to allow him to be heard regarding retaliation claims (see F.R.Civ.P. 12(d), especially given his TRO/IR motions. The Court has made clear that there are instances where, as here, due to conduct "arising out of ...[a] series of transactions or occurrences," "[u]nder the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encoraged." See, e.g., Rule 19(a)(2), providing for "compulsory joinder" of a "required party"[2] with respect to "any right to relief asserted against them..." This has been true since United Mine Workers of America v Gibbs, 383 U.S. 715, 724 (1966).

Therefore it is clear that as plaintiff has contended, there is, and has been an effort made to limit the defendants in this case despite the allegations set forth in the DOF and in dkt. #30 & 56. The DEFENDANTS named in the DOF and RIR should have been served by the district court as requested. Plaintiff thus contends that it was clear error for the District Court not to join the "required" and "indispensable" parties under F.R.Civ.P. 19(a)(2). See, e.g., Republic of Phillipines v. Pimentel, 553 U.S. 851, 873 (2008), Moore's Federal Practice §19.02, and F.R.Civ.P. 18 and 20. The claims/grounds delineated what was done, as the DOF and RIR also stated plaintiff's allegations as to who did what when (especially since they are alleged to be ongoing violations).

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2. Proper Parties, Required Parties, and Indispensable Parties

If joinder of a required party is feasible, the court must order joinder of that party. Fed. R. Civ. P. 19(a)(2). On the other hand, if joinder of a "required party" is not feasible, the court must conduct a third and final inquiry under Rule 19(b) to determine whether the case can proceed without that party. See Pimentel, 553 U.S. at 863-64. Under Rule 19(b), based on case-specific [ ] considerations including a non-exclusive list of factors set forth in Rule 19(b)(1)-(4), the court must "determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b); Pimentel, 553 U.S. 864. If the court, after conducting the requisite equitable analysis, finds that the case cannot proceed in the absence of the required party, the court must dismiss the case. See Pimentel, 553 U.S. at 873. This is a drastic action that courts are generally reluctant to undertake, unless serious harm will result from nonjoinder and the plaintiff's interest can be protected by proceeding in another forum. See Moore's Fed. Practice § 19.02[3][c]. Although the rules do not use the term, the Sixth Circuit and other courts appropriately characterize an "indispensable party" as follows: "[a] person or entity 'is only indispensable, within the meaning of Rule 19, if (1) it is necessary [i.e., required], (2) its joinder is cannot be effected, and (3) the court determines that it will dismiss the pending case rather than proceed in the case without the absentee." Rule 19 provides for the compulsory joinder of parties, even where the plaintiff has declined to join a particular party in the first instance. Essentially, the rule prescribes certain specific circumstances in which the plaintiff's autonomy to dictate party structure is outweighed by the policy need to join an additional defendant or defendants to the lawsuit. See Republic of Phillipines v. Pimentel, 553 U.S. 851, 863, 128 S. Ct. 2180, 171 L. Ed. 2d 131 (2008) ("[T]he determination who may, or must, be parties to a suit has consequences for the persons and entities affected by the judgment; for the judicial system and its interest in the integrity of its processes and the respect accorded to its decrees; and for society and its concern for the fair and prompt resolution of disputes"); see also Moore's Fed. Practice § 19.02[1].

Plaintiffs may bring a joint action: "Persons may join in one action as plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action." Rule 18(a) provides: "A party asserting a claim ... may join, as independent or alternative claims, as many claims as it has against an opposing party." Fed.R.Civ.P. 18(a).

1. PLAINTIFF'S ORIGINAL & AMENDED COMPLAINTS AND BOTH REQUESTS FOR INJUNCTIVE INCLUDED THE CDCR DIRECTOR OF CORRECTIONS AND INDIVIDUAL WARDENS POLICIES

Plaintiff contends that The Court's rejection of the magistrate's Findings and Recommendations (see Dkt. #33)[2] makes it clear that counsel would have been able to reply to the defendants' MOTION TO DISMISS (Dkt. #46) but for the "limited purpose" truncation of the Court's "ORDER". The prejudicial effect of the magistrate's actions are replete thereafter.

Objective analysis of the docket sheet shows that the DECLARATION OF FACTS (DOF) and EXHIBITS (Dkt. #38-40) was submitted immediately after receipt of the magistrate's order truncating appointment of counsel plaintiff also filed objections to the district judge which went unanswered.

Also unanswered was the "OBJECTIONS ..." (Dkt. #53) to the magistrates' ORDER reliving appointed counsel on 4-28-15 (Dkt. #52), which was "FILED" along with the third objection pursuant to 28 USC §636, and a docket sheet request. Plaintiff needed a docket sheet so he could ascertain his legal position, having had no reply from appointed counsel, **nor copies of any documents** submitted by counsel.

Thereafter, plaintiff filed the second RIR, which was opposed by defendants counsel (Dkt. #56 and 57). DEFENDANTS had already been served a copy to the first and second request for injunctive relief along with an attached "DECLARATION" and "EXHIBITS". Before any of the uncontested FACTS in the RIR could be adjudicated, the magistrate THEN filed "FINDINGS AND..." (Dkt. #58). Clearly, the record shows that plaintiff has been denied Due Process. The Article III Court made the following **factual findings** which show need for relief: [3]

[3] More apropos to the circumstances of the case here, what plaintiff seeks immediately is to locate the whereabouts and serve the defendants he has sued. Given the assistance of counsel, he should be able to succeed in doing that. Thus, under the second factor, both the plaintiff and this court would benefit from the appointment of counsel to help prosecute plaintiff's case. The plaintiff has been unable to locate the named defendants without assistance, and more delay may further exacerbate his injuries. (See Pl.'s Mot. for Inj. Relief at 2 (stating that plaintiff arrived in prison with thirty teeth, but "now has only eight upper teeth, and has been disfigured by the loss of his other teeth which also created a speech impediment").) Counsel can help by making requests for information on his behalf and more efficiently securing responses.

Evaluation of the likelihood of success is difficult at such an early stage in this proceeding. Plaintiff claims that, over the last ten years, he has repeatedly requested dental care to alleviate pain and prevent the loss of teeth. (Pl.'s Am. Compl. at 43, 48.) He alleges that doctors at California State Prison, Solano, refused to provide treatment, with the exception of tooth extraction. (Id. at 44.) Plaintiff states he has few remaining teeth with several defective crowns and fillings, (id. at 46-47), and that denial of treatment has caused him to endure "painful tooth aches" that force him to chew only [on one side of his mouth, (id. at 44). Similarly situated plaintiffs have won verdicts premised upon comparable denial of dental care. See, e.g., Woods, 684 F.3d at 936-38 (detailing a former prisoner's success in a civil rights case for failure to provide adequate dental care while incarcerated at California State Prison, Solano) Williams v. Kurk, 2014 U.S. Dist LEXIS 132062, 2014, Decided & Filed September 19, 2014,

When "limited counsel" was appointed, plaintiff also objected reasoning that the magistrate was NOT following the spirit of the Court's 9-19-14 order. In denying relief to plaintiff's 10-13-15 60(b) motion, the Court agreed that counsel was to be appointed "not simply for the effectuation of service." But as the record reflects at no time did Mr. Schmidt ask plaintiff "if he was interested in continued representation ..."(11-02-15 ORDER, dkt. #68 at pages 03-04)

Plaintiff is well aware that he is not a trained lawyer, and that even one like Mr. Schmidt is better than none at all, as the case law he has read seems to illustrate that the courts pay more attention to filings made by attorneys. However, let it be clear for the record: AT NO TIME DID ATTORNEY SCHMIDT CONVEY TO THIS PLAINTIFF THE DESIRE TO ASSIST HIM BEYOND SERVICE OF THE DEFENDANTS.

Plaintiff contends that the DEFENDANTS counsel knew that he had filed other 602s relevant to retaliation, dental and medical care especially since the defendants never pled exhaustion as a defense to the suit. Plaintiff contends that the DEFENDANTS had a duty to notify the Court that plaintiff had on numerous occasions alleged in 602s, and pleadings in state court that the DEFENDANTS and their subordinates have, and still are harassing him because of his legal complaints to the courts.

4. Legal Standard First Amendment Retaliation

Inmates have a constitutional right of access to courts. Lewis v. Casey, 518 U.S. 343, 350, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996); Bounds v. Smith, 430 U.S. 817, 821, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977). There are two types of access to courts claims: those involving prisoners' rights to affirmative assistance and those involving prisoners' rights to litigate without active interference. Silva v. Di Vittorio, 658 F.3d 1090, 1102 (9th Cir. 2011). For both types of claims, as a matter of standing, the plaintiff must show actual injury as [ ] a result of the deprivation. Lewis, 518 U.S. at 349-51. Actual injury means that the prisoner's pursuit of a nonfrivolous legal claim was hindered or prevented. Id. at 353 & n.3 Specifically, a plaintiff must show "'actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim.'" Nevada Dept. of Corrections v. Greene, 648 F.3d 1014, 1018 (9th Cir. 2011), cert. denied, 132 S. Ct. 1823, 182 L. Ed. 2d 627 (2012) (quoting Lewis, 518 U.S. at 348). "Within the prison context, a viable claim of [ ] First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005). Plaintiff presented evidence he was prevented from filing a timely objection to the F&R because California Department of Corrections and Rehabilitation ("CDCR") Officer Gray conducted a search of his cell on September 9, 2015 and seized or destroyed his objections. (Pl.'s Mot. at 2.) Plaintiff contends that his cell was searched in retaliation for his legal activities against CDCR. (Pl.'s Mot. for Extension of [ ] Time ("EOT") at 2 (Docket No. 62).) The search of his cell was out of plaintiff's control and likely interfered with his ability to file objections. In re WILLIAMS, J.S., et al., Plaintiff, v. CDCR 2015 U.S. Dist. LEXIS 148335,(Nov. 2, 2015). Although it can be difficult to establish the motive or intent of the defendant, a plaintiff may rely on circumstantial evidence. Bruce v. Ylst, 351 F.3d 1283, 1288-89 (9th Cir. 2003) (finding that a prisoner establishes a triable issue of fact regarding prison officials' retaliatory motives by raising issues of suspect timing, evidence, and statements); Hines v. Gomez, 108 F.3d 265, 267-68 (9th Cir. 1997); Pratt v. Rowland, 65 F.3d 802, 808 (9th Cir. 1995) ("timing can properly be considered as circumstantial evidence of retaliatory intent").

Plaintiff has satisfied the third element of his retaliation claim, filing a grievance is a First Amendment protected activity. [ ] Valandingham, 866 F.2d at 1138. The Defendants allegedly destroyed Plaintiff's grievances and threatened him. "[T]he mere threat of harm can be an adverse action, regardless of whether it is carried out because the threat itself can have a chilling effect." Brodheim, 584 F.3d at 1270. These allegations are sufficient to satisfy the first and fourth elements of Plaintiff's retaliation claim.

The U.S.D.C. Docket Sheet that Plaintiff received along with the notification that his appeal had been filed enlightened him to facts that had previously been withheld. Plaintiff had NOT been sent any of the following documents that appear on the U.S.D.C. Docket:

1. #43- STATUS REPORT and MOTION for EXTENSION of Time to complete service of process ... (01-16-2015)
2. #48- ORDER signed by Magistrate Judge C. M. Kellison granting 30 day extension of time ... (02-04-15)
3. #49- STATUS REPORT by Johnathan Samuel Williams .... (02-13-15)(all sent by appointed counsel)

These motions were submitted to the Court without plaintiff's knowledge, or his receiving a copy of them as proven by the Legal Mail Log.

Plaintiff's CDCR Legal Mail Log from CSP Wasco State Prison which is attached hereto as an exhibit shows exactly what legal mail he received. The log documents what legal mail that plaintiff received, and what legal mail he sent. See Exhibit 17, CDCR 119 Mail Log.

Examination of the U.S.D.C. Docket Sheet reflects plaintiff requested a U.S.D.C. Docket Sheet on 5-26-15 (dkt. #55), 9-14-15 (dkt. #61), and 9-17-15 (dkt. #64). With each motion that he sent to the Court plaintiff would also request a current docket sheet, reasoning that when and if the Court deigned to respond to the pleading he would be able to track all of the prior events, as plaintiff did not believe that an Article III District Court Judge would ignore the procedural rules.(Plaintiff also repeatedly filed 28 USC §636(c)(2)

Plaintiff assumed that the magistrate was either misinforming misinforming or not informing Judge Shubb of what was occurring. This is why plaintiff expressly titled and mailed his pleadings to "SENIOR U.S. DISTRICT COURT JUDGE W. B. SHUBB". This includes the plaintiff's "OBJECTIONS TO THE FINDINGS AND RECOMMENDATIONS ..." at dkt. #53, objecting to the ORDER relieving appointed counsel.

Appointed counsel never responded to letters sent to him, and the only time plaintiff became aware that counsel had not, nor intended to respond to the defendants motion for summary judgment was when he received the magistrate's findings and recommendations.

The record should reflect that plaintiff requested a copy of the current docket sheet on at least four occasions without any response from the district court. Plaintiff sought a current docket sheet so that he could be sure that the documents that he sent were being received by the Court. This includes dkt. #30 & 56, Second Motion for Injunctive Relief, which had a DECLARATION IN SUPPORT OF MOTION", which was submitted **immediately after relief of his counsel, but not responded to**, violating procedural Due Process.

Plaintiff contends that ALL of these documents are relevant not only to the summary judgment decision, but also to whether or not the Court should grant injunctive relief. Plaintiff also contends that any objective analysis of his filings, and whether defendants should have been substituted[5] starts with his 602s. Here the positive record reflects that while plaintiff has maintained (and still does) that the START of his dental problems began with DEFENDANTS DR.(S) KURK, MCINTYRE, and WOODS; the dental problems persist, and are negatively effecting his health. Furthermore, had appointed counsel not been "limited" by the magistrate, the may have utilized the DOF to substitute defendants from the 602s.

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[5] Despite the broad language of Rule 18(a), plaintiff may join multiple defendants in a single action because he also asserts at least one claim to relief against each of them that arises out of a pattern of similar violations and presents questions of law or fact common to all . . . deliberate indifference. Charles Allen Wright, Arthur R. Miller, Mary Kay Kane. 7 Federal Practice & Procedure Civil 3d §1655; see also United States v. Mississippi, 380 U.S. 1.Lastly, the suits arose out of the same nucleus of facts as the earlier case " alleged to be carrying on activities which were part of a series of transactions or occurrences the validity of which depended upon questions of law or fact common to all of them. joinder of dentist in one suit as defendants was proper under Rule 20(a)); Plata v. Schwarzenegger, 2005 U.S. Dist. LEXIS 8878 (N.D. Cal., May 10. 2005) see also Brown v. Plata, 131 S. Ct. 1910, (2011). 16 S. Ct"'[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." Bd. of Comm'rs of Bryan Cnty. v. Brown, 520 U.S. 397, 410, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997). "Thus, [CDCR] policymakers are on actual or constructive 602 notice that a particular omission in their [Dental Program]causes[CDCR dentists]to violate citizens' constitutional rights, the [CDCR is] deemed deliberately indifferent if the policymakers choose to retain that program." Connick, 131 S.Ct. at 1360 (citing Bryan Cnty., 520 U.S. at 407). "'[CDCR's] 'policy of inaction' in light of notice that its program will cause constitutional violations 'is the functional equivalent of a decision by the [CDCR] to violate the Constitution.'" Id. (quoting City of Canton, 489 U.S. at 395 (O'Connor, J., concurring in part and dissenting in part)). "A less stringent standard of fault for a failure-to-train claim 'would result in de facto respondeat superior liability on municipalities . . .'" Id.

Plaintiff's COMPLAINT sought injunctive relief,[6] as well as twelve (12) claims for relief. Plaintiff does not know whether or not the Court was aware of the history of his complaints against the DEFENDANTS, and has never been afforded the opportunity to have his day in court (All of the CLAIMS were first raised in a CDCR 602). The U.S.D.C. factual findings in appointing counsel and REJECTING the Magistrate's F & R, make it clear that the FAC claims are NOT frivolous.

The Ninth Circuit on 1-23-18, clearly makes a legal finding that the 14 points and legal arguments made in his "REPONSE" were relevant and "non-frivolous". The plaintiff prays that the Court here will look through the CDCR and State of California smoke screen that is killing and also maiming him, and other CDCR prisoners with their medical policies.

First, until the Judge mentioned it in its 11-02-15 ORDER, plaintiff did not know that "appointed counsel asked plaintiff if he was interested in continued representation after he completed the task of serving the defendants." (11-02-15 ORDER at page 4:01-4:12). Until plaintiff had been served with the 12-04-15 notification that his appeal had been filed he was unaware that appointed counsel had filed ANY documents, and the one docket sheet he received which stopped at 42.(Dated 12-31-14)

The docket sheet stating that the case was closed and the appeal filed however, lists another twenty eight entries stopping at number 70. Analysis of that docket sheet reflects that plaintiff requested a current docket sheet numerous times to no avail.

The docket sheet and the record also reflects that plaintiff filed objections to the magistrate's 4-28-15 order relieving the court appointed counsel and also requesting a docket sheet.

[6] Plaintiff concurrently filed a Request for Judicial Notice, asking that the Court take judicial notice of the exhibits attached to the First Amended Complaint. (Docket No. 39 Attachment). As plaintiff himself has incorporated 10 such exhibits into the operative First Amended Complaint (FAC at Pgs. 30-34) and centrally relies thereon, and as the authenticity of such exhibits is undisputed, the Court may consider such documents in assessing the Motion to Dismiss, irrespective of defendant's request. See Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001) (citation omitted) (in assessing Rule 12(b)(6) motion, court may consider documents properly submitted with complaint without need to convert Rule 12(b)(6) motion into motion for summary judgment) abrogated on other grounds as explained in Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125-26 (9th Cir. 2002); Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006) (citations omitted) (even if document not physically attached to complaint, court may still consider document in assessing Rule 12(b)(6) motion if complaint refers to document, document is central to plaintiff's claim, and no party questions authenticity thereof. Ninth Circuit has "repeatedly stressed that the court must remain guided by 'the underlying purpose of Rule 15 . . . to facilitate decision on the merits rather than on the pleadings or technicalities.'" Lopez, 203 F.3d at 1127 (citation omitted).

II. Failure to Provide Contemporaneous Rand Notice Was Clear Error

The positive record reflects that the DEFENDANTS failed to provide a contemporaneous Rand Notice with their motion for summary judgment as required. By violating this clear precedent, Appellant's federal Due Process rights were violated. See, e.g., Woods v. Carey, 684 F.3d 934 (9th Cir. 2012); Rand v. Roland, 154 F.3d 952 (9th Cir. 1998).

The Ninth Circuit reiterated this prohibition in Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). The Court made clear that the PLRA has a procedural component that "requires inmates to both substantially and procedurally exhaust all claims through administrative avenues before filing a suit in court." Pursuant to Wilkerson, ALL of the CLAIMS in Appellant's ORIGINAL COMPLAINT (O.C.) and/or AMENDED COMPLAINT (A.C.) also have been exhausted in a CDCR 602 that "describe[d] the problem and the action requested." (citations omitted) at p. 839.

Wilkerson reflects that there, as here, procedurally Appellant as the "grievant need not lay out the facts, articulate legal theories, or demand particular relief. All the grievance need do is object intelligibly some asserted shortcoming." The Court, relying on a previous opinion in Sapp v. Kimbrell, 623 F.3d 813 (9th Cir. 2010), made comment that is particularly relevant here holding that there, as here, Appellant "was not required to identify the doctor by name to exhaust the grievance against him. Neither the PLRA itself nor the California regulations require an inmate to identify responsible parties or otherwise to signal who ultimately may be sued." Id. Sapp, at pg. 824.

Thus Appellant contends that he has been deprived of procedures in the Rules that were designed to protect ALL plaintiffs, including those like himself who happen to be imprisoned. The decision below does not align with the Court's and Congress' express goal "toward entertaining the broadest possible scope of action consistent with fairness to the parties." United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 724 (1966)

III. Failure to Allow Discovery and Retaliation Arguments is Error

Appellant, relying in part on Judge Kozinski's analysis of judicial estoppel[7] in Baughman v. Walt Disney World Co., 685 F.3d 1131, 1134 (9th Cir. 2012) contends that the 7-13-18 opinion violates numerous previous procedural holdings of the Ninth Circuit and the Supreme Court regarding prisoner's federal civil rights and court access.

It is now, and has been appellant's legal position that the District Court has in this case and others repeatedly refused to protect CDCR prisoners state and federal civil rights, even when the court has previously ruled in favor of a prisoner litigant in similar circumstances. Also the ineffectiveness of appointed counsel.

In the underlying O.C. and A.C. appellant's legal argument, if properly construed, makes a prima facie case of a "continuing violations doctrine" insofar as his dental arguments go. It is undisputed that he has exhausted a CDCR medical or dental 602 almost every year he has been imprisoned. So too has he repeatedly argued that the CDCR has been engaged in a "pogrom" of segregation and discrimination that has caused conflict between prisoners, creating a clear and present danger. In the present case the DEFENDANTS failed to "specifically ... [controvert] facts identified in the statement of undisputed facts" appellant submitted to the Court several times, thus they are "deemed to have admitted the validity of the facts contained in the statement." Beard v. Banks,

7 This is not a case of "res judicata". as Defendant suggests. Defendants' conduct on this record can be construed as: (1) a flat refusal of medical treatment for a condition that if left untreated is serious and painful; or (2) a conditional refusal of such treatment, subject to Plaintiff 's consent to undergo an unwanted medical procedure that would deprive him of a body part he wished to keep. Either way, a reasonable jury could find that Plaintiff was refused treatment of a degenerative tooth condition that caused him acute infections, debilitating pain and tooth loss if left untreated. Ordinarily, a tooth cavity is not a serious medical condition, but that is at least in part because a cavity is so easily treatable. Absent intense pain or other exigency, the treatment of a cavity (in or out of prison) can safely be delayed by the dentist's schedule or the patient's dread or neglect, can be subject to triage or the management of care, can be mitigated or repaired temporarily, and can be coordinated with other related conditions that need to be treated together. Nevertheless, a tooth cavity is a degenerative condition, and if it is left untreated indefinitely, it is likely to produce agony and to require more invasive and painful treatments, such as root canal therapy or extraction. See 1993 Public Health Reports 1993, U.S. Department of Health and Human Services, Pub. No. 108: 657-672, Toward Improving the Oral Health of Americans: an Overview of Oral Health Status and Care Delivery 3 ("Dental caries is a progressive disease process. Unless restorative treatment is provided, the carious lesion will continue to destroy the tooth, eventually resulting in pain, acute infection, and costly treatment to restore the tooth or have it removed. [:] "); e.g., Edwina Kidd and Sally Joyston-Bechal, Essentials of Dental Caries: The disease and its management 45 (1997) ("The 'point of no return' [for a carious lesion] where we can no longer hope for arrest . . . . is when a cavity is present . . . ."). Consequently, because a tooth cavity will degenerate with increasingly serious implications if neglected over sufficient time, it presents a "serious medical need" within the meaning of our case law.

In determining whether a prison official responded reasonably to a known risk, the resources available to the official, including financial resources, or the lack thereof, may be considered. Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014) (overruling Snow v. McDaniel, 681 F.3d 978 (9th Cir. 2012)

The Court in Aktar also followed the procedures that appellant contends militates for relief here, in that there too reversal was required due to the failure to provide a contemporaneous Rand Notice. See, e.g., Aktar v. Mesa, 698 F.3d 1202, 1213-1214 (9th Cir 2012) (citing and affirming the requirement of Rand Notice in Stratton v. Buck, 697 F.3d 1004 (9th Cir. 2012). The record here reflects that not only was appellant denied Rand Notice, but also his Declaration of Facts (DOF), that this Court took judicial notice of, alleged numerous instances of retaliation.

The Supreme Court has repeatedly repudiated violations of the "deep-rooted historic tradition that everyone should have his own day in court", which has been denied appellant. Richards v. Jefferson County, 517 U.S. 793, 798 (1996). Issue preclusion can NOT apply if the issues of law or fact have **never been actually litigated** and determined by a valid and final judgment. See, Restatement (Second) of Judgments §27, p. 250 (1982).

As appellant argued in his Informal Opening Brief (IOB), his procedural and legal claims against the CDCR are contained in **each 602 he filed.** The district court violated the very thing that the Wilkerson Court and the Restatement (Second) of Judgments §24, Comment f , warned about, as

> "Material operative facts occurring after the decision of an action with respect to the same subject matter may in themselves, or taken in conjunction with the antecedent facts, comprise a transaction **which may be made the basis of a second action not precluded by the first**"; cf. id., §20(2) ("A valid and final personal judgment for the defendant, which rests on the prematurity of the action or on the plaintiff's failure to satisfy a precondition to suit, **does not bar another action by the plaintiff instituted after the claim has matured**, or the precondition has bees satisfied." id., §20, Comment k (discussing relationship of this rule with §24, Comment f) (Bold emphasis added)

Here, the "precondition" would be another CDCR 602, stating new factual circumstances, and different DEFENDANT doctors therein. This is why the DEFENDANTS have not argued lack of exhaustion.See Exhibit 14

2. Plaintiff's Factual Allegations In The First and Present Action Are Relevant For Accuracy As There Was Never Any Discovery Ordered

Plaintiff contends that the U.S.D.C. should have allowed substitution, or joinder of DEFENDANTS listed in this pleading. All of these DEFENDANTS and the issues relevant to their actions were set forth in the DECLARATION submitted to the Court for judicial notice. The CDCR dentists are listed in exhausted administrative complaints submitted to the DEFENDANTS, but the Court never considered whether they were relevant to summary judgment. Those 602s are numbered 1.) WSP-HC-13044472; 2.) WSP-HC-13043824; 3.) OTLA-51-09-12961; IAB-0713798; IAB-16-00773; WSP-HC-16049191; WSP-HC-13043824; SQ-12-00179; and 11-01452.

The dentist DEFENDANTS listed in those 602s are:[8] KURK (at 66-100); MCINTYRE (at 66-72, 77-79); WOODS (66-72); TRANQUINA (66-76, 78); PARK-LIN (66-76); ZANG (at 66-75, 78); HU (at 66-199); WALKER (at 66-100); Cheung (at 66-100); GUIRGUIS (at 66, 79-100); LO (at 66, 79-100); SIDHU (66, 79-100); Health Mgr. III D. PEREZ (at 66, 79-100); LEWIS (at 66-79-100); NGUYEN, C. DDS at CTF (Exhibit 23); Z. AHMED, M.D., and, S. POSSON, (CME) (all in Exhibit 19, 602 #CTF-HC-16043514).

As alleged in the 602s, DEFENDANTS conspired to retaliate against him, and to impede First Amendment rights in retaliation. They are H. WILLIAMS, T. LEE, HADRAVA, BRIGGS, EVANS, E., YOUNG, C., MITCHELL, K., TATE I., HILLIARD, (see Ex. 12,21-22) NOLLETTE, JO, BASIC, BLAZEVIC, NELSON, PETERSEN, and TAXERA. They are alleged to have conspired with DEFENDANT K. MITCHELL, to retaliate against PLAINTIFF for his exercising First Amendment rights to complain about unconstitutional prison conditions in 602s filed by him.

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8. Whether The Evidence Is Admissible (citing Plaintiff s' Statement of Undisputed Facts are to the specific numbered undisputed fact asserted.)

A court may consider the pleadings, discovery, and disclosure materials, as well as any affidavits on file. Fed. R. Civ. P. 56(c)(2). Where the moving party's version of events differs from the non-moving party's version, a court must view the facts and draw reasonable , inferences in the light most favorable to the non-moving party. Scott v. Harris, 550 U.S. 372, 378, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

Rule 26(a)of the Federal Rules of Civil Procedure provides that "a party must, without awaiting a discovery request, provide to other parties: a copy of, or a description by category and location of, all document, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to supports its claims or defenses, unless solely for impeachment." FED.R.CIV.PROC. 26(a)(1)(B). Rule 26(e) provides that litigants have a continuing duty to supplement their disclosures under Rule 26(a). Here, because plaintiff first raised the issue of his lawsuit against them, and because he continued to file CDC 602 inmate appeals challenging the validity of their action Plaintiff alleges in his declaration Defendants' actions as alleged in the Complaint were done with malice and the intent to pre,udice Plaintiff's parole eligibility. Plaintiff filed a CDCR 602 at the time gives "fair warning" so defendant has had ample notice of plaintiff 's intent to rely on the documents. As respects plaintiff's argument : Under Rule 803(8)(C). See FED.R.EVID. 803(8)(C) ("The following are not excluded by the hearsay rule, even though the declarant is available as a witness: . . . Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth . . . in civil actions and proceedings Plaintiffs object to the Defendants dispute Plaintiffs' allegations in these documents, the court is well aware of the limitations on its ability to accept the truth of matters asserted in the materials of which it takes judicial notice, and will proceed accordingly. See, generally, 21B Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 5106.4 ("Facts Judicially Noticeable; Indisputability – 'Ascertainable Facts' – Court Records") (2d ed. 2012). Plaintiffs have pled sufficient other damages to establish a complete causal relationship between the alleged misrepresentations and the harm claimed

STATEMENT OF THE CASE

The "DEFENDANT'S-RESPONDENTS' REPLY TO THE APPELLANT'S RESPONSE TO THE COURTS' MARCH 9, 2017 ORDER" (sent to the 9th Cir,) recognizes the dispute; i.e., his "602's and.. "motivation in screening plaintiff's exhausted 602 issues from judicial review".(U.S.C.A. DktEntry: #20, at p. 6) . Therefore, the defendants' stated legal position when considered in conjunction with their argument that this appeal was not taken in good faith, is part of the dispute.

By allowing appellant to proceed, tacitly implying recognition of the facts (as set forth in appellants' DECLARATION OF FACTS (DOF), the court has to recognize the error made by the district court in failing to substitute the **names** of the defendants as set forth by the Rules.

Court precedent holds that a complaint cannot proceed on unexhausted issues, and the issues are derived from the CDCR 602, which is the basis of a claim. Thus, the 602's submitted as evidence gains particular relevance. It is appellant's contention that error here started when the magistrate failed to list the correct defendants. Appellant has on numerous occasions informed the Court that he was also contesting the CDCR dental **POLICIES** as well as their conduct in alleged violation of the Plata Consent Decree, and made clear that he has an EMERGENT dental need that will only get worse **without the Court's intervention.**

In the "RESPONDENTS' OPPOSITION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE (O JN), the defendant's **finally recognize** the "153 testimonial facts" and "28 exhibits ", yet then commits perjury stating the facts and exhibits were not put before the district court. See, i.e., U.S.D.C. DktEntry Nos. 37-39 which were **submitted prior to** the District Court Judge's ruling below "REJECTING... the Findings and Recommendations", ruling in appellant's favor. This was the first recognition of what part of the dispute was. But the **other 602's** and defendants therein are now **part of the record,** available for substitution.

Plaintiff contends that his legal position is analogous to Lopez. utilized here as the procedural position is the same, causation and the rationale for the argument that he "was not required to identify the doctor by name", are also similar. So too should the decision whether to grant Plaintiff relief,[9] if the intent of the PLRA and the Rules is integrity and justice.

Plaintiff's oral health had an egregious and invidious impact on his ability to concentrate, make legal arguments or study, and negatively impacting his general health and well being. Because of his repeated 602 administrative complaints, he had a tooth filled. However, as can be seen by the attached diagram of his mouth, he can currently only chew on one side of his mouth. His gums, palate, and roof of his mouth are constantly bleeding and abraded because of his dental health.(Latest exhausted 602 attached)

Plaintiff contends that his dental condition is a clear and present danger, as if he looses another tooth on the left side of his mouth, he will be unable to masticate his food at all. The invidious eviceration of teeth since he first filed ANY 602 has given him a speech impediment, eroded self confidence, and has caused deterioration of his health in general.

Thus Plaintiff seeks via this motion to vindicate the principle that the Court's protection of his and all other prisoner's right to have his day in court still exists. Here, Plaintiff has been denied Due Process to conceivably explicate the legal and procedural issues, extracating him from the quagmire in which he and other CDCR prisoners are immersed. Here, despite the Plata Consent Decree, the U.S.D.C. is still inundated with complaints.

[9] Pro se complaints in civil rights cases are interpreted liberally to give plaintiffs "the benefit of any [*11] doubt." Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal quotation marks omitted). If a complaint is dismissed for failure to state a claim, the court must "freely" grant leave to amend unless the plaintiff could not possibly correct errors in the complaint by alleging "other facts." Cafasso v. General Dynamics C4 Systems, Inc., 637 F.3d 1047, 1058 (9th Cir. 2011) (citation omitted); Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc) (citation and quotation marks omitted). Courts have discretion to deny leave to amend where there is "undue prejudice to the opposing party, bad faith by the movant, futility, and undue delay." Prison officials violate the Eighth Amendment when they respond with deliberate indifference to an inmate's serious medical needs. Estelle v. Gamble, 429 U.S. 97, 103-05, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) (citations and footnotes omitted). An inmate's medical need is sufficiently "serious" if, objectively, the failure to treat it "will result in significant injury or the unnecessary and wanton infliction of pain." Peralta v. Dillard, 744 F.3d 1076, 1081 (9th Cir. 2014) (en banc) (citations and internal quotation marks omitted), cert. denied, 135 S. Ct. 946, 190 L. Ed. 2d 829 (2015). A prison official acts with deliberate indifference when he or she is subjectively aware of, but purposefully ignores or fails to respond to an "excessive risk to inmate health" (i.e., a serious medical need). Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014) (citations omitted). A defendant's alleged indifference must be substantial. See Estelle, 429 U.S. at 105-06; Lemire v. California Department of Corrections and Rehabilitation, 726 F.3d 1062, 1081-82 (9th Cir. 2013) Nevertheless, a court must give a pro se litigant leave to amend his complaint "unless it determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (quotation omitted) (citing Noll v. Carlson, 809 F.2d 1446, 1447 (9th Cir. 1987)). In the FAC, Plaintiff brings retaliation, conspiracy, due process, and state law deprivation of personal property claims. (See Dkt.# 25.

The irony of the U.S.D.C. Judge's response to the 60(b) motion is that the very next case after Taylor v. Sturgell, 553 U.S. 880 (2008), is Pimentel, which plaintiff relies upon herein as also being applicable to the DOF. The record here is clear that procedurally, the District Court erred by failing to join "necessary parties" that were supported by the facts alleged in the DOF, and those set forth in the motion for injunctive relief.

Plaintiff's state and federal Due Process rights were eviscerated by the actions of the Court in failing to join the "necessary parties"[10] in the DOF and RIR. So too did the Court fail to conduct any investigation into or even hear his request for injunctive relief (RIR) even though the DAG also filed a motion contesting it. Which as a matter of law made issues of retaliation and ALL factual matters reviewable by this Court. (See Dkt. #56 & 57)

In the District Court's response to the 60(b), the Court, while it did memorialize the salient facts regarding the actions of C/O GRAY, and did prior to that cause Associate Warden KELLY MITCHELL to return plaintiff's legal materials, nothing was done about the reprisals, transfer, harassment, and other invidious deprivations that affected plaintiff's MEDICAL AND dental health. All of which plaintiff is stoically enduring even now.

Clearly claim preclusion can NOT apply when, as here, the issues are discrete, identified in each 602, and exhausted. It is also contended to have been error not only for the magistrate to participate over plaintiff's written objection, to allow the magistrate to answer procedural complaints about actions taken by that same magistrate. The record reflects that plaintiff sought habeas relief in the Marin County Superior Court when the retaliation was

10. RULES 18 and 20: JOINDER OF DEFENDANTS AND CLAIMS Linkage Requirement

Rule 20(a)(2) of the Federal Rules of Civil Procedure limits the joinder of defendants, and Rule 18(a), governs the joinder of claims. See Fed. R. Civ. P. 18(a), 20(a)(2). Rule 20(a)(2) provides: "Persons . . . may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2)(A) and (B). Rule 18 (a) provides: "A party asserting a claim . . . may join, as independent or alternative claims, as many claims as it has against an opposing party." Fed. R. Civ. P. 18(a). Wright & Miller's treatise on federal civil procedure explains that, where multiple defendants are named, the analysis under Rule 20 precedes that under Rule 18: Rule 20 deals solely with joinder of parties and becomes relevant only when there is more than one party on one or both sides of the action. It is not concerned with joinder of claims, which is governed [*8] by Rule 18. Therefore, in actions involving multiple defendants Rule 20 operates independently of Rule 18 . . .

Among plaintiff's contentions, which are relevant here is that DEFENDANTS MCINTYRE, TRANQUINA, PARK-LIN, ZHANG, Y. C. HU, J. WALKER, CHEUNG (DOF #66, 79), J. LO, H. GUIRGUIS, G. SIDHU, D. PEREZ, and J. LEWIS (#66, 79)(#'s show DOF location), should have been allowed to be joined pursuant to F.R.Civ.P. 14(a)(1) and /or the Rules providing for joinder. Given the assertions in his 602s and in the motions for TRO/IR filed prior to dismissal(i.e., dkt. nos. 30, and 56). Judge SHUBB'S 9-19-14 ORDER even mentions the motion for IR[11] in conjunction with his analysis But compare the 8-8-18 ORDER (Append. A) sent AFTER the Ninth Cir. decision.

Plaintiff also sought interpleader when he sought to compel DEFENDANTS who were at that time nonparties to respond to interrogatories, document production, and explain why they were retaliating against him. See, i.e. dkt. #16 and 17). This was done right after the motion for reconsideration of the ORDER dismissing "all other claims and defendants ...as ordered by the Northern District;"(dkt. nos. 15-22). The record reflects that he had also sought local habeas relief. (See Exhibits 7-10). All of these assertion of his rights got him was more retaliation, and another transfer into a more dangerous prison.The record reflects the district court violated 28 U.S.C. §1657, by failing to "expedite the consideration of [his motion] for temporary or preliminary injunctive relief..."

This Court has previously recognized "the severity of his alleged injuries and the potential impact on other prisoners within the California prison system..."(dkt.33: 3-5 at pg. 11), Plaintiff has contended all along that not only was CDCR dental policy in violation of his federal rights, but that there was a conspiracy among State officials to do so, and to retaliate against those who complain.

11. Plaintiff's Motion for Temporary Restraining Order/Preliminary Injunction

Plaintiff filed a Motion for Temporary Restraining Order and Preliminary Injunction on April 9, 2014(Dkt.at 30 & 56.) Defendants filed an opposition to Plaintiff's motion on May 29, 2015 (Dkt. No.*57) Plaintiff filed a reply to Defendants' opposition.

1. Applicable Legal Standards

Here, Plaintiff argues that Defendants and asserted claims for tortious interference and conspiracy that included actions alleged in 602 appeals, and "[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972, 117 S. Ct. 1865, 138 L. Ed. 2d 162 (1997) (per curiam) (quotations and citation omitted); see also Winter v. NRDC, Inc., 555 U.S. 7, 22, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008) ("A preliminary injunction is an extraordinary remedy, never awarded as of right." (citing Munaf v. Geren, 553 U.S. 674, 689-90, 128 S. Ct. 2207, 171 L. Ed. 2d 1 (2008))); Rizzo v. Goode, 423 U.S. 362, 378, (1976) Plaintiff having formally complained of facts from which the inference can be drawn that each and every one of the sixteen Defendants shared and carried out an agreement to violate Plaintiff's constitutional rights. Pleading conspiracy is not an "all or nothing" endeavor. Rather, it is possible to sufficiently allege a conspiracy among some, but not all, of the Defendants. Further, it is possible to sufficiently allege a conspiracy among one Defendant and other non-party prison officials, even if Plaintiff's Complaint fails to state a conspiracy claim against all of the remaining Defendants. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter, 555 U.S. at 20 (citing Munaf, 553 U.S. at 689-90); Defendants are active participants in the allegations of the FAC such that they are critical to the disposition of the important issues in the litigation. Further, the Court has discretion to "drop or add" parties under Rule 21 "on such terms as are just."

I. APPELLANT HAS CONTENDED THAT THE COURT'S DECISION SUBJECTS HIM TO A HEIGHTENED PLEADING STANDARD AND IGNORES HIS PRESENT IMMINENT DANGER

Appellant contends that the 7-13-18 decision by the Court errs as it fails to follow clear judicial and statutory rules, decisions on the same underlying issue: The heightened pleading standard which has deprived him of exposing defendant's perfidy that places him in danger.[12]

It is clear Plaintiff's complaint also contain as an element of scienter - that an underlying constitutional violation (i.e., CDCR's failure to disclose to the Court the fact that the CDCR never had any intent to faithfully apply the appropriate federal rights to plaintiff, and/or any other CDCR prisoner), and plaintiff's efforts to expose this.

The irony of Plaintiff's situation was, and is that HIS complaint has NEVER been granted discovery, and has always been subjected to a hightened pleading standard in violation of Pardus. Plaintiff has repeatedly stated that it " is error to require [him] to produce evidence in support of his allegations before a responsive pleading is filed", and as that is what occurred here, it " is sufficient reason to reverse the judgment." Pitre v. Cain, 131 S.Ct. 8 (2010)(citing Twombly, 550 U.S. at 564 n.8). Thus, here the doctrine of invited error precludes the Defendants gaining advantage procedurally from circumstances they are the proximate cause of.

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[12] On appeal of summary judgment, to be clear, the question here is not whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting Twombly, 550 U.S. at 570). Rather, the question is whether the complaint gave "notice of the claim such that the opposing party may defend himself or herself effectively." Starr v. Baca, 652 F.3d 1202, 1212 (9th Cir. 2011). "[U]nder the Federal Rules of Civil Procedure, a complaint need not pin plaintiff's claim for relief to a precise legal theory. Rule 8(a)(2) of the Federal Rules of Civil Procedure generally requires only a plausible 'short and plain' statement of the plaintiff's claim, not an exposition of his legal argument." Skinner v. Switzer, 562 U.S. 521, 131 S. Ct. 1289, 1296, 179 [ ] L. Ed. 2d 233 (2011); see also Fontana v. Haskin, 262 F.3d 871, 877 (9th Cir. 2001) ("Specific legal theories need not be pleaded so long as sufficient factual averments show that the claimant may be entitled to some relief."). The complaint is therefore not inadequate merely

On a motion to dismiss for failure to state a claim, the court must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party. Western Reserve Oil & Gas Co. v. New, 765 F.2d 1428, 1430 (9th Cir. 1985), cert. denied, 474 U.S. 1056, 106 S. Ct. 795, 88 L. Ed. 2d 773 (1986). [ ] On appeal, the court reviewing a grant of a motion to dismiss must also presume the truth of the allegations of the complaint. Mark v. Groff, 521 F.2d 1376, 1378 (9th Cir. 1975). The issue is not whether the plaintiff ultimately will prevail, but whether he is entitled to offer evidence to support his claim. Scheuer v. Rhodes, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974). The trial court may not grant a motion to dismiss for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957).

We have in this nation a "'deep-rooted historic tradition that everyone should have his own day in court,'" and presume, consequently, that "'[a] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.'" Richards v. Jefferson County, 517 U.S. 793, 798, 135 L. Ed. 2d 76, 116 S. Ct. 1761 (1996) (citations omitted; alteration in original). Yet, the court decides Issue preclusion attaches only "when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment." Restatement (Second) of Judgments § 27, p. 250 (1982). "In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated . . ." [Id., comment e, at 257].

REASONS FOR GRANTING THE PETITION

Plaintiff has no idea how receptive the Court will be to his motion for relief from what is in esscense its own procedural holding. However, given the decades he has fought for his federal rights, and the state and federal constitutional rights of ALL other CDCR prisoners , he has nothing to loose except perhaps his life.

Ironically, a review of the many administrative appeals, and the Court's ruling in Pardus, supra, it is clear that pursuant to the general pleading rules, and the rules requiring both screening and exhaustion required by the PRLA, the underlying CDCR appeal or 602 administrative complaint (602) forms the procedural basis of ANY federal claim that is cognizable. See, e.g., Conley v. Gibson, 355 U.S. 41, 45 (1957), The Theory of Modern Pleading, §72, Federal Practice and Procedure, Wright and Kane (2011 ed), Erickson v. Pardus, 551 U.S. 89 (2007)). Walker v. Beard, 789 F.3d. 1125 (9th Cir. 2015) is relied upon here.

Plaintiff contends dismissal of "Docket entries 30, 34, 56.." show the reality that magistrates often assist the attorney generals in their evisceration of the few civil rights remaining to prisoners and often refuse to acknowledge the valid complaints when they are brought to the Court's attention. The First Amended Complaint (FAC) lists CSP SAN QUENTIN, DIRECTOR(S) CDCR, WARDEN(S) CSP HIGH DESERT, Doctors HU, CHUNG, WONG, MCINTYRE, KURK, and WOODS as well as the operative CDCR 602 (SOL-24-08-24451)[13] therein arguing that the dentists "extracted teeth that could have been saved in direct violation of the American and California Dental Association..."

[13] Surely each defendant may move for an order requiring a more definite statement by pointing out "the defects complained of and the details desired." Fed. R. Civ. P. 12(e). See 5 Charles A. Wright & Arthur A. Miller, Federal Practice & Procedure: Civil 2d § 1324, at 750 (1990) Moreover, the plaintiff's claim being founded upon a separate transaction or occurrence, it is properly "stated in a separate count . . . [because] a separation facilitates the clear presentation of the matters set forth." Fed. R. Civ. P. 10(b); James Wm. Moore, et al., Moore's Federal Practice, § 10.03[2][a] (3d ed. 1997). Plaintiff is raising different claims against different CDCR defendants requiring a responsive pleading or to enable the court and the other parties to understand the claims." Moore's, § 10.03[2][a]. Courts have required separate counts where multiple [ ] claims are asserted, where they arise out of separate transactions or occurrences, and where separate statements will facilitate a clear presentation. Wright & [ ] Miller, Federal Practice and Procedure: Civil 2d § 1324. In such cases, separate counts permit pleadings to serve their intended purpose to frame the issue and provide the basis for informed pretrial proceedings. "Experience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice."

THE LOWER COURT'S RULING VIOLATES PARDUS, LUJAN, LYONS AND DUE PROCESS

Plaintiff contends the here, as in Walker v. Beard, 789 F.3d 1125, 1132 (9th Cir. 2015), he was transferred to different prisons but, "the alleged violation[s that] occurred w[ere] system wide." He argued repeatedly that the district court failed to apply the principles enunciated in Walker "to construe liberally motion papers and pleadings filed by pro se inmates...", given that clearly "responsive pleadings ... may be necessary for a pro se plaintiff to clarify his legal theories." Id. 789 F.3d at 1133. See also Erickson v. Pardus, 551 U.S. 89, 94 (2007)("A document filed pro se is to be liberally construed however inartfully pleaded..." Plaintiff contends that this was not followed here.

Clearly plaintiff has "suffered an injury in fact" that was caused by "the conduct complained of" (in the many underlying 602s) and his legal argument "will be redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Also, as recognized by the Court, Plaintiff Woods, all other similarly situated prisoners in the CDCR including plaintiff have an ongoing interest in the dispute. The case also features "a sufficient likelihood that he [and others] will again be wronged in a similar way." Los Angeles v. Lyons, 461 U.S. 95, 101 (1983). Plaintiff is still suffering from the lack of restorative dental care.[14]

All of the claims, as stated in the FAC and DOF, were alleged in 602s, also relevant to ALL other CDCR prisoners, and the subject matter sets forth legally arguable constitutional violations as they are stated. It is contended that there is an effort underway (and has been for years) to continue with what plaintiff has alleged be unconstitutional policies.

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[14] The Court cannot seriously contest the fact plaintiffs' complaint precisely satisfies these pleading requirements. His causation analysis alleges that they (1) arbitrarily confiscated, withheld, and eventually destroyed his property, threatened to transfer him to another correctional institution, and ultimately assaulted him, (2) because he (3) exercised his First Amendment rights to file prison grievances and otherwise seek access to the legal process, and that (4) beyond imposing those tangible harms, the guards' actions chilled his First Amendment rights and (5) were not undertaken to advance legitimate penological purposes. Rhodes's First Amended Complaint is, in short, the very archetype of a cognizable First Amendment retaliation claim. See, e.g., Gomez v. Vernon, 255 F.3d 1118, 1127 (9th Cir. 2001) (holding that "repeated threats of transfer because of [the plaintiff's] complaints about the administration of the [prison] library" were sufficient to ground a retaliation claim); Hines, 108 F.3d at 269 (holding that the retaliatory imposition of a ten-day period of confinement and loss of television -- justified by a correctional [ ] officer's false allegation that the plaintiff breached prison regulations -- violated the First Amendment); Pratt, 65 F.3d at 807 ("It would be illegal for [corrections] officials to transfer and double-cell [plaintiff] solely in retaliation for his exercise of protected First Amendment rights."); Valandingham v. Bojorquez, 866 F.2d 1135, 1138 (9th Cir. 1989) (holding that, if correctional officers indeed called plaintiff a "snitch" in front of other prisoners in retaliation for his filing grievances, it would violate the First Amendment).

None of the Claims or Legal Arguments Raised Fail to Meet Federal Standards

The record here reflects that none of plaintiff's claims were "frivolous, malicious or fail to state a claim". Here, like plaintiffs' argument in the Circuit Court, there has been a finding by that Court that the issues in the DOF and those argued below are NOT frivolous. This plaintiff contends violated the intent of Congress and the Court's admonition that the "three strikes provision was designed to filter out the bad claims and facilitate consideration of the good." Coleman v. Tollefson, 135 S.Ct. 1759, 1764 (2015) (citing Jones v. Bock. 549 U.S. 199, 204 (2007); Belanus v. Clark, 796 F.3d 1021, 1028 (9th Cir. 2015); Richey v Dahne, 807 F.3d 1202 (9th Cir. 2015).

After plaintiff's very first CDCR 602 regarding his teeth was denied, and having been subjected to daily unconstitutional segregation as well as other civil rights violations, he was subjected to retaliation because of his assistance to other prisoners including Plaintiff BROOKS at Solano. This retaliation included being transferred and placed in Ad-Seg for assisting Plaintiff COOPER (in Cooper v. State of California, No. 02-03712). Plaintiff was transferred to arguably one of the most dangerous prisons.

Plaintiff was, and still is in pain daily from his teeth, and often accidentally bites his tongue or has bleeding gums.[15] Now he can only chew with his remaining incisors and his two remaining left side premolars. ALL of the teeth on the right side of his mouth have been invidiously excised as a matter of dental POLICY promulgated by CDCR in violation of federal law. Plaintiff will continue to suffer unless the Court helps .

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15. To summarize, refusal to treat an inmate's tooth cavity unless the inmate consents to extraction of another diseased tooth constitutes a violation of the Eighth Amendment. Although a tooth cavity is not ordinarily deemed a serious medical condition, that is because the condition is readily treatable. Unless the cavity is treated, however, the tooth will degenerate, probably cause severe pain, and eventually require extraction and perhaps further extraordinary invasive treatment. The present record allows the inference that for a whole year, the defendants refused treatment unless Plaintiff consented to an unwanted extraction, and would have continued to do so indefinitely Unless they have been required by court order to give treatment. Here, Plaintiffs seek an affirmative injunction requiring prison administration to adopt and apply federal criteria in determining dentist hiring needs in Prison which operates under CDCR control. They allege that "Cate is responsible for the administration of the CDCR, including its policies, practices. Ordinarily, a tooth cavity is not a serious medical condition, but that is at least in part because a cavity is so easily treatable. Absent intense pain or other exigency, the treatment of a cavity (in or out of prison) can safely be delayed by the dentist's schedule or the patient's dread or neglect, can be subject to triage or the management of care, can be mitigated or repaired temporarily, and can be coordinated with other related conditions that need to be treated together. Nevertheless, a tooth cavity is a degenerative condition, and if it is left untreated indefinitely, it is likely to produce agony and to require more invasive and painful treatments, such as root canal therapy or extraction. See 1993 Public Health Reports 1993, U.S. Department of Health and Human Services, Pub. No. 108: 657-672, Toward Improving the Oral Health of Americans: an Overview of Oral Health Status and Care Delivery, 3 ("Dental caries is a progressive disease process. Unless restorative treatment is provided, the carious lesion will continue to destroy the tooth, eventually resulting in pain, acute infection, and costly treatment to restore the tooth or have it removed. [ ]"). e g , Edwina Kidd and Sally Joyston Bechal Essentials of Dental Caries: The disease and its management 43 (1997) ("The 'point of no return' [for a carious lesion] where we can no longer hope for arrest . . . is when a cavity is present . . . ."). Consequently, because a tooth cavity will degenerate with increasingly serious implications it neglected over sufficient time, it presents a "serious medical need" within the meaning of our case law Lopez v. Smith, 203 F 3d 1122, 1130 (9th Cir. 2000) (en banc) That might ultimately lead to the unnecessary loss of an easily reparable tooth was particularly serious because the plaintiff had so few teeth to spare.

It is clear that the court and judges do not believe that many obstacles and impediments were, and are placed in plaintiff's (and any other CDCR pro se litigant's path to prevent exposure of the alleged unconstitutional conditions within the CDCR. The unconstitutionality starts with the Jim Crow, separate but equal racism systematically being driven into the minds of **everyone including the guards!** The CDCR policy is SEGREGATION NOW, SEGREGATION FOREVER. By any means necessary.

This includes prevaricating to the court, e.g. Johnson v. California, 125 S.Ct. 1141 (2005), what the actuality of prisoner racial division entailed. The rationale of the federal courts continued acceptance of the outright lies of the CDCR, and the fraudulent pleadings put forth by "attorneys" of the Department of Justice (representing all Correctional Officers C/O, and Doctors, indemnifying them from damages) is beyond belief. The Court itself recognized that the racism claim regarding CDCR was viable in Johnson. Ib. But the Court believed the lie it was told that CDCR's racial issues were "restricted to reception." This is a bare faced lie, way beyond just misrepresenting the facts. FACT is: WITHIN CDCR EVERY ASPECT OF LIFE IS SEGREGATED.

As plaintiff argued in his ORIGINAL COMPLAINT (O.C.): "DEFENDANTS have willfully created a segregated prison environment ..." which necessarily forces "CDC prisoners and staff to live in an environment reminiscent of the Jim Crow separate but equal type of segregation." (see, dkt. #09, at pp. 30-34). This was plaintiff's SIXTH CLAIM FOR RELIEF, that he had a "FEDERAL RIGHT TO INDIVIDUALIZED TREATMENT WITHOUT RACIAL, ETHNIC OR ANY OTHER BIAS CONSISTENT WITH THE 1ST, 6TH, AND 14TH AMENDMENTS". Plaintiff contends this states enough of a "claim for relief".

The danger caused to plaintiff daily by accepted prison "policy" is impossible to quantify without unbiased expert analysis, but is antithetical to the Law. The DAG and CDOJ violated Rule 11 by not admitting the scope of segregation in CDCR.

Of all of plaintiff's contentions in the OC and FAC that was most important to him and ALL OTHER CDCR PRISONERS, was his assertion that an unconstitutional "pogrom" was underway. In plain language devoid of any embellishment whatsoever he has argued against the CDCR's systemic "Jim Crow" "Separate but Equal" segregation, which is pervasive.[16]

Contrary to what the California Department of Justice (CDOJ) or counsel who represent the CDCR staff, doctors, etc., have represented to EVERY COURT, EVERY person in contact with CDCR experiences this pervasive and systemic racism on a daily basis. This includes staff, C/O's and management. Its the dirty little secret, that is never addressed even though it is known to cause internal rot, and is antithetical to rehabilitation.

Those who have the audacity to make such statements find themselves and their complaints rejected by the magistrate. See, e.g., Spencer Peterson III v. State Dep't of Corr. & Rehab., 2012 U.S.Dist.Lexis 64035 (case no. 10-01132-BAM) (where a Black CDCR prison guard cited racism and racial discrimination as why he was not promoted). The invidious practices fester, and prohibit rehabilitation and should be investigated, as they are antithetical to the Public Interest. Bigotry, institutionalized but sub rosa, is contended by plaintiff to be the "pogrom" he has alleged from the beginning, only to be ignored since pro se arguments can easily be silenced.

Plaintiff asserts that ALL of the legal and factual conclusions made by Judge Shubb, when he appointed counsel on 9-19-14, militate in his favor. that NONE of his claims are frivolous, thus it was clear error to dismiss. It was also clear error not to directly on the motion for injunctive relief.

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[16] Constitutional Law > Equal Protection > Race > Level of Review > Civil Rights Law > Prisoner Rights > Discrimination

The district court erred dismissing claim that racially dividing inmates "breeds enmity and racial tension," but CDCR has an interest in enforcing the segregation policy "because prison officials are paid higher wages during a racial crisis that involves inmates rioting"; and failed to eradicate the policy.

A plaintiff is not required to show discriminatory intent where the state admitted it considered race when it assigned inmates to a cell. When the government expressly classifies persons on the bases of race or national origin its action is immediately suspect. A plaintiff in such a lawsuit need not make an extrinsic showing of discriminatory animus or a discriminatory effect to trigger strict scrutiny.

"[A]ny official action that treats a person differently on account of his race or ethnic origin is inherently suspect." Fisher v. Univ. of Tex., 133 S.Ct. 2411, 2419, 186 L. Ed. 2d 474 (2013) (quoting Fullilove v. Klutznick, 448 U.S. 448, 523, 100 S. Ct. 2758, 65 L. Ed. 2d 902 (1980) (Stewart, J., dissenting) (internal quotation marks omitted)). Consequently, the general rule is that when a state actor explicitly treats an individual differently on the basis of race, strict scrutiny is applied. Id.; Johnson v. California, 543 U.S. 499, 505, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995). Under strict scrutiny, all racial classifications imposed by the government must be "narrowly tailored to further compelling government interests.' Fisher, 133 S.Ct. at 2419 (quoting Grutter v. Bollinger, 539 U.S. 306, 326, 123 S. Ct. 2325 (2003)..

When Plaintiff examined his previous civil complaints in order to prepare for his response to the Defendants S.J. motion, it made him despondent to realize that the record clearly shows that when the defendants made their policy of extracting teeth rather than provide the required restorative care known to him he immediately filed a 602.

When Plaintiff was imprisoned at H.D.S.P., Solano, San Quentin, and Wasco he complained every year about unconstitutional medical/dental care , and did file 602s and civil rights actions for unconstitutional behavior. This subjected him to retaliation at every prison he was at. Even when he was responsible for keeping the violence down because of his advice that such activity was counter productive, he suffered.

Indeed, the positive record reflects that right after 9-11, he appeared on a P.B.S. show called California Connection while at CSP Solano. At that time he was assisting another military veteran named MAYWEATHERS who was arguing a civil rights complaint on religious freedom (see Mayweathers v. Newland, 258 F.3d 930 (2001)(Muslim PLRA complaint), VICTOR COOPER, case no. 02-03712 JSW (Jewish kosher diet pgm.), and a number of published and unpublished criminal and civil cases.

The irony of Plaintiff's situation was, and is that HIS complaint has NEVER been granted discovery, and has always been subjected to a hightened pleading standard in violation of Pardus. Plaintiff has repeatedly stated that it " is error to require [him] to produce evidence in support of his allegations before a responsive pleading is filed", and as that is what occurred here, it " is sufficient reason to reverse the judgment." Pitre v. Cain, 131 S.Ct. 8 (2010)(citing Twombly, 550 U.S. at 564 n.8). Thus, here the doctrine of invited error precludes the Defendants gaining advantage procedurally from circumstances they are the proximate cause of.

CONCLUSION

Where Defendant's Conduct Is The Proximate Cause of Harm All of Plaintiff's Underlying Claims Are Justiciable Torts

PLAINTIFF asserts and contends DEFENDANTS in the DOF and already pleaded have violated his state and federal constitutional civil rights as stated in the "DECLARATION OF FACTS" (DOF) and OBJECTIONS (Dkt. 37-40) which went **unanswered**. Those facts were enough to defeat summary judgment (S.J.), and also procedurally entitled to an investigation at a minimum to comport with Due Process, since retaliation was alleged prior to S.J. decision. (See, DOF and "FACTS" attached to EACH RIR submitted).

Plaintiff contends that the events that have occurred and the invidious deprivation of medical and dental care that he is still continually suffering mirrors that set forth recently in the case Whole Woman's Health v. Texas, 136 S.Ct. 2292 (2016). There, as here, the DOF claims are against a "necessary party", and should have been allowed to be added given intent of Congress in enacting the PLRA, RLUIPA, and the Rules.[17]

In plain terms, the actions alleged by the plaintiff have never been denied by any of the parties against whom they are alleged to have been carried out by. However, the CCPOA (California Correctional Peace Officers Association), and the California Attorney General's Office each owe him a fiduciary and legal duty to protect his state and federal civil rights, which they refuse to do. Plaintiff's claims are as serious as the "contaminated water" argued in the fn.

[17] Development of new material facts can mean that a new case and an otherwise similar previous case do not present the same claim. See Restatement (Second) of Judgments §24, Comment f (1980) ("Material operative facts occurring after the decision of an action with respect to the same subject matter may in themselves, or taken in conjunction with the antecedent facts, comprise a transaction which may be made the basis of a second action not precluded by the first"); cf. id., §20(2) ("A valid and final personal judgment for the defendant, which rests on the prematurity of the action or on the plaintiff's failure to satisfy a precondition to suit, does not bar another action by the plaintiff instituted after the claim has matured, or the precondition has been satisfied"); id., §20, Comment k (discussing relationship of this rule with §24, Comment f). Plaintiff pled reliance on the alleged misrepresentation. We find this approach persuasive. Imagine a group of prisoners who claim that they are being forced to drink contaminated water. These prisoners file suit against the facility where they are incarcerated. If at first their suit is dismissed because a court does not believe that the harm would be severe enough to be unconstitutional, it would make no sense to prevent the same prisoners from bringing a later suit if time and experience eventually showed that prisoners were dying from contaminated water. Such circumstances would give rise to a new claim that the prisoners' treatment violates the Constitution. Plaintiff's allegations with regard to" Factual developments may show that constitutional harm, which seemed too remote or speculative to afford relief at the time [***27] of an earlier suit, was in fact indisputable. In our view, such changed circumstances will give rise to a new constitutional claim. This approach is sensible, and it is consistent with our precedent." See Abie State Bank v. Bryan, 282 U.S. 765, 772, 51 S. Ct. 252, 75 L. Ed. 690 (1931) (where "suit was brought immediately upon the enactment [*2306] of the law," "decision sustaining the law cannot be regarded as precluding a subsequent suit for the purpose of testing [its] validity . . . in the lights of the later actual experience"); cf. Lawlor v. National Screen Service Corp., 349 U.S. 322, 328, 75 S. Ct. 865, 99 L. Ed. 1122 (1955) (judgment that "precludes recovery on claims arising prior to its entry"

In conclusion, the APPELLANT -PLAINTIFF PRAYS THAT THE COURT will remember the adage that "all that is necessary for evil to triumph is for good men to do nothing." So too does appellant contend that all that is necessary for justice to fail is for judges to do nothing.

As the Supreme Court warned forty years ago in Haines v. Kerner,

> Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by the petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." (Internal quotation marks omitted) 404 U.S. 519, 520-521 (1972) Per curaim opinion, expressing the unanimous view of the Court.

Therefore, appellant prays that the court will take into account the numerous civil complaints that have been filed against the former CDC, now disingenuously called the California Department of Corrections and Rehabilitation. Here, as in Crawford-El v. Britton,

> "Petitioner conteads that the respondent deliberately misdirected [his legal] boxes to punish him for exercising the First Amendment rights and to deter similar conduct in the future." 523 U.S. 574, 140 L.Ed2d 759, 767 (1998).

Here, appellant asserts that unless the Court acts he will continue to suffer from the repercussions of the egregious denial of constitutionally adequate dental care. Due to the DEFENDANTS asserted failure to follow modern standards appellant has suffered the loss of over ten teeth. Teeth that were refused root canals, crowns, or other viable dental practices aimed at restoration of teeth rather than the draconian policy of extraction. The CDCR policy of extraction is akin to severing toes or fingers due to a hangnail. Appellant's teeth still need root canals to prevent further loss.

PLAINTIFF asserts and contends that DEFENDANTS KELLY MITCHELL, while acting as Associate Warden of San Quentin State Prison, and SANCHEZ while acting as a Correctional Officer(C/O), violated his Federal First Amendment rights by seizing his legal materials and law books during an institutional search on 10-22-10, delaying his ability to respond to pending litigation and seeking to intimidate and retaliate against him for complaining about it. (See, e.g., PLAINTIFF'S SECOND REQUEST FOR ENLARGEMENT OF TIME & DECLARATION U.S.D.C. Dkt. #05-06, and thereafter he began to suffer retaliation and harassment from guards).

PLAINTIFF asserts and contends that DEFENDANTS H. WILLIAMS, R. HADRAVA, C. YOUNG, T. LEE, O. NOLLETTE, G. SHELTON, BASIC, BLAZEVIC, JO, NELSON, PETERSEN, TAXERA, were custody staff of the California Department of Corrections and Rehabilitation (CDCR) and each of them, conspired to retaliate and intimidate plaintiff by falsely accusing him of violating prison rules. As set forth in the DECLARATION at #01-74.

Plaintiff asserts and contends that DEFENDANTS H. WILLIAMS, R. HADRAVA, C. YOUNG, T. LEE, O. NOLLETTE, G. SHELTON, BASIC, BLAZEVIC, JO, NELSON, PETERSEN, and TAXERA conspired to delay plaintiff's civil complaint, and retaliated against him by denying him access to his legal materials and the law library when they knew he had legal deadlines on pending matters before the court (DOF at 136-158).

Plaintiff asserts and contends that these same DEFENDANTS conspired to, and did plant evidence, falsify state reports, in order to find plaintiff guilty of CDCR Serious Rules Violations Reports (SRVR) denying him state and federal Due Process.

Plaintiff asserts and contends that these same DEFENDANTS violated his state and federal rights by transferring him to a more dangerous prison in retaliation for his legal filings against them.

VERIFICATION

I, JOHNATHAN WILLIAMS, PRO SE, do hereby attest to the veracity of the information, circumstance, and evidence submitted herein. I further state that pursuant to Federal Civil Rule 01, that consistent with federal law the position asserted, and defenses advanced by me as counter argument, are NOT interposed for any improper or dilatory purpose.

Signed pursuant to 28 U.S.C. § 1746 et seq., under the penalty of perjury.

Dated: 4-1-19

Johnathan S. Williams
Petitioner Pro Se

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1 Plaintiff's filings are accorded the benefit of the prison mailbox rule, pursuant to which a document is deemed served or filed on the date a prisoner signs the document (or signs the proof of service, if later) and [*4] gives it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988) (establishing prison mailbox rule); Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (applying the mailbox rule to both state and federal filings by prisoners).

DECLARATION OF FACTS

IN SUPPORT OF PETITION

Petitioner, proceeding pro se, submits the following facts pursuant to 28 U.S.C.S. §§ 1746 et seq. Petitioner requests that the Court take judicial notice of the asserted facts pursuant to the Federal Rules of Evidence Rules 102, 103, 302, 401, 402, 608, 704, 1101, and any other applicable state or federal Rule allowing Petitioner to submit personally known testimonial facts.

The FACTS asserted herein in this petition, and in the legal arguments tendered in support of the petition are also requested to be judicially noticed.

WHEREFORE, Petitioner asserts that the following statements are true and correct to the best of his personal knowledge.

1. Petitioner was denied relief by the Ninth Circuit Court of Appeals on 7-13-18.

2. Petitioner timely sought en banc of the denial which was also denied on 11-02-18.

3. Petitioner sent a request to this Court for an extension of time which was responded to by the Clerk of the Court on 11-16-18.

4. Petitioner was appointed counsel by Judge Shubb of the United States District Court (E.D. Cal.) on the underlying action.

5. That appointment was impeded and "limited" by the actions of the magistrate which had an adverse impact on petitioner's state and federal civil rights.

6. Petitioner has ongoing mental health issues that often have an impact on his ability to concentrate and file documents.

7. Petitioner is taking medications prescribed by the CDCR

to combat his diagnosed clinical depression and PTSD sickness.

8. Petitioner's ability to access the prison law library has been systematically impeded on a regular basis.

9. Pursuant to a new CDCR Memorandum, the physical law books have been removed from the CDCR law library at CTF Soledad.

10. Since petitioner's denial by the Ninth Circuit Court of Appeals, there have been several "modified programs" stopping almost all law library access even though he was not involved.

11. After the denial by the Ninth Circuit, petitioner was notified by the District Court of the termination of "matters at Docket entries 30, 34, 56, 63, and 65 as matters pending before the court."

12. District Court Docket entries No. 30 and 56 were motions for injunctive relief that were "FILED" before the motion to dismiss was filed by the RESPONDENTS.

13. The RESPONDENTS filed a motion with the Ninth Circuit objecting to the request for judicial notice filed by petitioner which only included documents and declarations that had been filed previously in the District Court.

14. Because of the holidays and historical timeline petitioner's mental disability has been exacerbated.

15. Petitioner needs at least another sixty days to complete the petitioner for review.

16. Petitioner has only been allowed access to the law library 15 times in the month of March and less than that in April.

17. Petitioner's mental state was NOT conducive to cogently set forth his legal position, but timely files as 4-1-19 was a State holiday.

VERIFICATION

I, Johnathan Williams, PRO SE, do hereby attest to the veracity of the information, circumstance, and evidence submitted herein. I further state that pursuant to Federal Civil Rule 01, that consistent with federal law the position asserted, and defenses advanced by me as counter argument, are NOT interposed for any improper or dilatory purpose.

Signed pursuant to 28 U.S.C. § 1746 et seq., under the penalty of perjury.

Dated: 4-1-19

Petitioner Pro Se

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