UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

JAMES PLAS SAMS,

Plaintiff-Appellant,

v.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION; et al.,

Defendants-Appellees.

No. 20-55178

D.C. No. 5:19-cv-01538-ODW-JDE
Central District of California,
Riverside

ORDER

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

The district court certified that this appeal is not taken in good faith and has denied appellant's motion to proceed in forma pauperis for this appeal. *See* 28 U.S.C. § 1915(a). On March 13, 2020, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's March 13, 2020 order, we conclude that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard).

APPENDIX A

However, the record indicates that the district court dismissed the state law claims with prejudice. When a district court declines to exercise supplemental jurisdiction over state law claims after dismissing federal claims, it should dismiss the state law claims without prejudice. *See Gini v. Las Vegas Metro. Police Dep't*, 40 F.3d 1041, 1046 (9th Cir. 1994) ("When . . . the court dismisses the federal claim leaving only state claims for resolution, the court should decline jurisdiction over the state claims and dismiss them without prejudice." (alteration in original, citation and internal quotation marks omitted)).

We therefore summarily affirm the district court's judgment, but remand to the district court with instructions to amend the judgment to dismiss the state law claims without prejudice.

All pending motions are denied as moot.

AFFIRMED; REMANDED with instructions to amend the judgment.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

JAMES PLAS SAMS, Plaintiff, v. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, et al., Defendants.	Case No. 5:19-cv-01538-ODW-JDE SUPERSEDING ORDER RE COMPLAINT

I.

INTRODUCTION

On August 16, 2019, Plaintiff James Plas Sams ("Plaintiff"), proceeding pro se and seeking leave to proceed in forma pauperis, filed a civil rights complaint under 42 U.S.C. § 1983 ("Section 1983" or "§ 1983") against the California Department of Corrections and Rehabilitation ("CDCR"), Office Services Supervisor Chelsea Armenta ("Armenta"), Captain W. Hawkins ("Hawkins"), Appeals Coordinator P. Birdsong ("Birdsong"), Associate Warden P. Messerli ("Messerli"), Chief Deputy Warden R. W. Smith ("Smith"), Chief N. Fransham ("Fransham"), Lieutenant Ruben Jimenez ("Jimenez"), Appeals Examiner C. Tennison ("Tennison"), Chief P. Ramos

("Ramos"), C. Bristow ("Bristow"), and one Doe Defendant identified as "the Hiring Authority," alleging that a publication was improperly withheld and his administrative grievances were improperly rejected. Dkt. 1 ("Complaint"). All defendants are sued in their individual capacity only. On August 29, 2019, Plaintiff filed "Supplemental Exhibits in Support of Plaintiff's Complaint," explaining that Ironwood State Prison (the "Prison") staff would not e-file these documents with the Complaint and that the documents were incorporated by reference into the Complaint. Dkt. 7 ("Compl. Supp.").

Under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), the Complaint must be dismissed if it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. On September 5, 2019, after having reviewed the allegations in the Complaint, the Court found that the claims asserted in the Complaint were subject to dismissal for failing to state a claim upon which relief may be granted and seeking monetary relief against a defendant who is immune from such relief. Dkt. 8 ("Prior Order"). Although concluding that "it does not appear that Plaintiff's claims can be cured by further amendment," the Court nonetheless provided Plaintiff with an opportunity to file an amended complaint to, if he could, cure the deficiencies noted in the Prior Order. Id. at 18.

In response to the Prior Order, on September 23, 2019, Plaintiff filed a Motion for Reconsideration of the Prior Order, asserting, among other things, that the Complaint only alleges federal civil rights claims against Birdsong, based upon alleged First Amendment violations, with all remaining claims against the other defendants based solely upon alleged state law violations. Dkt. 10 ("Motion for Reconsideration") at 1-2. Based upon his characterization of the Complaint, including a clarification of the Complaint that provides "**[a]t no time is there a First Amendment claim that the denial**

of the publication is alleged as a federal claim" (id. at 2), Plaintiff argues that the Prior Order is based upon a "manifest showing of a failure to consider facts presented to the Court" (id. at 1), asserting that the Complaint does state claims for civil rights violations based upon First Amendment retaliation and denial of rights to association, Fourteenth Amendment due process violations, and conspiracy, as well as state law claims (id. at 2-6). On September 24, 2019, Plaintiff filed an Objection to the Prior Order (Dkt. 9, "Objection") in which Plaintiff similarly argues that the Prior Order erroneously found the Complaint: (1) was subject to Eleventh Amendment immunity as to state law claims (id. at 4-8 (CM/ECF pagination)); (2) did not allege a First Amendment violation based upon alleged infringement of expressive association and retaliation (id. at 4-7); and (3) did not state a Due Process claim; and (4) did not state a claim for conspiracy (id. at 7-8).

Having considered Plaintiff's Motion for Reconsideration and Objection, the Court issues this Order amending and superseding the Prior Order.

II.

SUMMARY OF PLAINTIFF'S ALLEGATIONS

Plaintiff alleges on February 19, 2019, Prison mail room staff Armenta and Hawkins "conspired" to deny Plaintiff, Cesar Ramirez ("Ramirez"), and Erik Burciaga ("Burciaga")[1] an Eden Press catalog on the ground that it violated Cal. Code Regs., tit. 15, § 3006 "in that it contained 'plans for activities that violate the law, these regulations, or local procedures.'" Complaint at 7, 15 (CM/ECF pagination); Compl. Supp., Exh. A at 5.

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[1] Ramirez and Burciaga have each filed separate federal civil rights actions, alleging the same claims as those asserted in this action. See Ramirez v. California Department of Corrections and Rehabilitation, et al., Case No. 2:19-cv-06910-ODW-JDE; Burciaga v. California Department of Corrections and Rehabilitation, et al., Case No. 5:19-cv-01436-ODW-JDE.

Plaintiff alleges the three inmates filed a group grievance communicating "a clear intention to sue for the denial of the publication." Complaint at 7. Plaintiff claims Birdsong arbitrarily rejected the group grievance on February 28, 2019 because of the "threat to sue." The stated reason for the rejection was "the event occurred to three (3) separate individuals versus the group collectively/as a whole." Id.; Compl. Supp., Exh. A. The rejection letter instructed the inmates to submit individual appeals. Compl. Supp., Exh. A. Plaintiff claims the basis for the rejection was contrary to the regulations, and as such, there was no legitimate penological interest for the rejection. Complaint at 7-8.

On or about March 1, 2019, Plaintiff filed an individual administrative appeal regarding the denial of the Eden Press catalog. Plaintiff pursued this administrative appeal through all three levels of review. Compl. Supp., Exh. E.

Meanwhile, on March 19, 2019, the three inmates allegedly submitted another group grievance challenging the denial of the original group grievance. Complaint 10; Compl. Supp., Exh. B. Plaintiff alleges that Birdsong again arbitrarily rejected this appeal, incorrectly stating it was a duplicate of the original issue, which Plaintiff contends it was not. Complaint at 10. He argues that Birdsong's denial was done in retaliation for "speech protected by the First Amendment" and there was no legitimate penological interest in the denial. Id.

Plaintiff contends the three inmates submitted a group staff complaint against Birdsong "for the repeated arbitrary denials of grievances" on April 2, 2019. Complaint at 11. On April 10, 2019, Birdsong allegedly denied the group staff complaint arbitrarily, (1) claiming the issue was moot because each inmate filed individual appeals regarding the Eden Press publication and (2) instructing the inmates to file individual staff complaints. Plaintiff contends the new staff complaint related to Birdsong's denial of the right to file grievances, not the denial of the publication, and Birdsong misquoted and omitted relevant language in the regulation regarding group grievances. Id.; Compl. Supp., Exh.

C. Plaintiff claims Birdsong denied the staff complaint in retaliation for filing the complaint against him, which Birdsong was not even permitted to review as it involved allegations against him. Complaint at 11-12.

Thereafter, on May 1, 2019, Plaintiff submitted an individual staff complaint against Birdsong, but Doe Defendant "refused to terminate the actions of Birdsong's arbitrary rejections of appeals." Complaint at 13. Plaintiff asserts the May 17, 2019 denial, "threatened to label appeals as abusive and impose restrictions as punishment" in retaliation "for attempting to the comply with the [Prison Litigation Reform Act of 1995]." Id.

Plaintiff contends these actions violated his First and Fourteenth Amendment rights as well as state law. Plaintiff seeks compensatory damages, punitive damages, and civil penalties. Complaint at 21.

III.

STANDARD OF REVIEW

As noted, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), a complaint is subject to dismissal if it fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. A complaint may be dismissed for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990) (as amended). In determining whether the complaint states a claim, its factual allegations must be taken as true and construed in the light most favorable to the plaintiff. See Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 588 (9th Cir. 2008). Courts construe the allegations of pro se complaints liberally. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam); see also Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (as amended). However, "a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled." Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251,

1257 (9th Cir. 1997) (citation omitted). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

A "plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original) (internal citations omitted); see also Iqbal, 556 U.S. at 678. A plaintiff must allege a minimum factual and legal basis for each claim that is sufficient to give each defendant fair notice of what the claims are and the grounds upon which they rest. See, e.g., Brazil v. U.S. Dep't of the Navy, 66 F.3d 193, 199 (9th Cir. 1995); McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991).

If the Court finds that a complaint should be dismissed for failure to state a claim, the Court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to amend should be granted if the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that "[a] pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment"). However, if, after careful consideration, it is clear that a complaint cannot be cured by amendment, the Court may dismiss without leave to amend. See Cato, 70 F.3d at 1105-06; see, e.g., Chaset v. Fleer/Skybox Int'l, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that "there is no need to prolong the litigation by permitting further amendment" where the "basic flaw" in the pleading cannot be cured by amendment).

IV.

DISCUSSION

A. General Standard for Civil Rights Claims

To state a civil rights claim under Section 1983, a plaintiff must allege that a defendant, while acting under color of state law, caused a deprivation of the plaintiff's federal rights. West v. Atkins, 487 U.S. 42, 48 (1988); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Causation "must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). An individual "causes" a constitutional deprivation when he or she (1) "does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation"; or (2) "set[s] in motion a series of acts by others which the [defendant] knows or reasonably should know would cause others to inflict the constitutional injury." Lacey v. Maricopa Cty., 693 F.3d 896, 915 (9th Cir. 2012) (en banc) (citation omitted).

B. CDCR is Immune from Suit for Claims for Damages under the Eleventh Amendment

"The Eleventh Amendment prohibits federal courts from hearing suits brought against an unconsenting state." Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991) (citing Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984)). This jurisdictional bar includes "suits naming state agencies and departments as defendants, and applies whether the relief sought is legal or equitable in nature." Id. "[A]n entity with Eleventh Amendment immunity is not a 'person' within the meaning of § 1983." Howlett By & Through Howlett v. Rose, 496 U.S. 356, 365 (1990). Additionally, the Eleventh Amendment bars supplemental state law claims. See Pennhurst State Sch. & Hosp., 465 U.S. at 121; Cholla Ready Mix, Inc. v.

Civish, 382 F.3d 969, 973 (9th Cir. 2004) (concluding that plaintiff's state law claims were barred by the Eleventh Amendment); Parra v. Hernandez, 2008 WL 5765843, at *10 (S.D. Cal. July 22, 2008) (dismissing claim for vicarious liability under Cal. Gov't Code § 815.2 against CDCR based on Eleventh Amendment immunity).

To overcome the Eleventh Amendment bar on federal jurisdiction over suits by individuals against a State and its instrumentalities, either the State must have "unequivocally expressed" its consent to waive its sovereign immunity or Congress must have abrogated it. See Pennhurst State Sch. & Hosp., 465 U.S. at 99-100. California has consented to be sued in its own courts pursuant to the California Tort Claims Act, but such consent does not constitute consent to suit in federal court. See BV Eng'g v. Univ. of Cal., L.A., 858 F.2d 1394, 1396 (9th Cir. 1988); Dittman v. California, 191 F.3d 1020, 1025-26 (9th Cir. 1999) ("California has not waived its Eleventh Amendment immunity with respect to claims brought under § 1983 in federal court"). Furthermore, Congress has not abrogated State sovereign immunity against suits under Section 1983. See Dittman, 191 F.3d at 1026; L.A. Branch NAACP v. L.A. Unified Sch. Dist., 714 F.2d 946, 950 (9th Cir. 1983).

Here, CDCR, as a state agency, is immune from suit for damages under the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 781 (1978) (per curiam); Brown v. Cal. Dep't of Corr., 554 F.3d 747, 752 (9th Cir. 2009); Taylor, 880 F.2d at 1045. Accordingly, Plaintiff's claims against CDCR are barred by the Eleventh Amendment.

In his Objection, Plaintiff purports to clarify that "the CDCR is sued under state law only." Dkt. 9 at 4. Plaintiff's purported clarification does not alter the Eleventh Amendment analysis. Eleventh Amendment immunity against state agencies for damages acts as a bar against all federal lawsuits against such entities, absent abrogation by Congress or a waiver by the state,

neither of which are alleged or supported here. See, e.g., Steshenko v. Gayrard, 44 F. Supp. 3d 941, 949 (N.D. Cal. 2014) (dismissing a § 1983 and state law action against a state entity based upon Eleventh Amendment immunity). Thus, Plaintiff's purported limitation has no bearing on the immunity analysis as to the CDCR.

C. The Complaint Fails to State a Federal Civil Rights Claim Against the Individual Defendants

The Complaint appears to seek to bring claims under the First Amendment and Due Process Clause of the Fourteenth Amendment for withholding the Eden Press catalog and improperly screening of Plaintiff's grievances. Following the entry of the Prior Order, Plaintiff asserts that the Complaint alleges a Section 1983 claim against defendant Birdsong for violating Plaintiff's "First Amendment rights to petition the government for the redress of grievances, expressive association, and retaliation" with the remaining claims against the other defendants asserted under "state law." Dkt. 9 at 1. Plaintiff similarly purports to limit his "federal claims" to "the denial of the right to petition the government for the redress of grievances and retaliation primarily." Dkt. 10 at 2.

As the Complaint on its face is not as narrowly drawn as stated by Plaintiff in his subsequent filing, the Court, interpreting the Complaint liberally, will address both what appear to be the claims raised in the Complaint, and Plaintiff's purported clarification.

1. Withholding the Eden Press Catalog

Interpreting the Complaint liberally, Plaintiff contends that his First Amendment right to expressive association and his Fourteenth Amendment right to due process were violated by Armenta and Hawkins by their withholding the delivery of the Eden Press catalog. Complaint at 7-10.

i. First Amendment

Prison inmates have a First Amendment right to send and receive mail. See Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995) (per curiam) (citing Thornburgh v. Abbott, 490 U.S. 401, 407 (1989)); see also Nordstrom v. Ryan, 856 F.3d 1265, 1271 (9th Cir. 2017). However, this "right is subject to 'substantial limitations and restrictions in order to allow prison officials to achieve legitimate correctional goals and maintain institutional security.'" Prison Legal News v. Lehman, 397 F.3d 692, 699 (9th Cir. 2005) (quoting Walker v. Sumner, 917 F.2d 382, 385 (9th Cir. 1990)); Morrison v. Hall, 261 F.3d 896, 901 (9th Cir. 2001). "[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987).

In Turner, the Supreme Court identified four factors relevant to determining whether a regulation affecting a constitutional right is reasonable:

> whether the regulation has a "'valid, rational connection'" to a legitimate governmental interest; whether alternative means are open to inmates to exercise the asserted right; what impact an accommodation of the right would have on guards and inmates and prison resources; and whether there are "ready alternatives" to the regulation.

Overton v. Bazzetta, 539 U.S. 126, 132 (2003) (quoting Turner, 482 U.S. at 89-91). The burden "is not on the State to prove the validity of prison regulations but on the prisoner to disprove it." Id.

Here, Plaintiff fails to allege sufficient facts to demonstrate that Armenta and Hawkins violated his First Amendment rights by withholding the Eden Press catalog. According to the factual allegations in the Complaint and the documents incorporated by reference, the Eden Press catalog was withheld from distribution on the ground that it violated Cal. Code Regs, tit. 15, § 3006

because it contained "plans for activities that violate the law, these regulations, or local procedures." Complaint at 15; Compl. Supp., Exh. A at 5.

As alleged, withholding the Eden Press catalog was reasonably related to a legitimate interest in maintaining security at the Prison.[2] "[P]revention of criminal activity and the maintenance of prison security are legitimate penological interests which justify the regulation of both incoming and outgoing prisoner mail." O' Keefe v. Van Boening, 82 F.3d 322, 326 (9th Cir. 1996). Plaintiff does not dispute that the Eden Press catalog violated Section 3006 or claim that the restriction bore no rational connection to the Prison's valid interest in maintaining security.

The Court also has considered whether Plaintiff has alternative means of exercising his asserted "right to associate with other speakers of similar opinions." See Complaint at 9. "Where 'other avenues' remain available for the exercise of the asserted right . . . courts should be particularly conscious of the 'measure of judicial deference owed to corrections officials . . . in gauging the validity of the regulation.'" Turner, 482 U.S. at 90 (second alteration in original) (citations omitted). "Where, as here, a state penal institution is involved, 'federal courts have a further reason for deference to the appropriate prison authorities.'" Casey v. Lewis, 4 F.3d 1516, 1521 n.3 (9th Cir. 1993) (citation omitted). Courts "must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for

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[2] According to the Ninth Circuit, The Paper Trip, the Eden Press publication at issue, previously listed such topics as: "[c]hange your age for whatever purpose"; "[a]void any or all creditors" and "[r]eturn from exile without detection." United States v. Reid, 634 F.2d 469, 471 (9th Cir. 1980). The catalog card listed Eden Press books on subjects such as "check frauds," "con games," and "privacy from the tax man." Id. The Court has not relied on this 1980 description in its decision, but such description supports the Prison's characterization of this publication as contraband.

determining the most appropriate means to accomplish them." Overton, 539 U.S. at 132. In this case, a single publication was withheld because it "provide[d] a means to obtain materials which violate the law, [and] which pose a threat to the safety and security of the institution . . . ." Compl. Supp., Exh. E at 11. There is nothing to suggest that Plaintiff was unable to obtain any reasonable alternative publications in order to exercise his asserted "right to associate with other speakers of similar opinions."

Additionally, as to the impact on others, the publication at issue was withheld precisely because of its potential adverse impact on guards, staff, and other inmates. Accommodating Plaintiff's request for this publication would create significant security concerns and "would impair the ability of corrections officers to protect all who are inside a prison's walls." Overton, 539 U.S. at 135.

Finally, the Court considers whether the presence of ready alternatives undermines the reasonableness of the decision. Overton, 539 U.S. at 136. Under Turner, the existence of obvious, easy alternatives to a prison regulation restricting constitutional rights may be evidence that the regulation is not reasonable, but is an "exaggerated response" to prison concerns. 482 U.S. at 90-91. "It is incumbent upon the prisoner[] to point to an alternative that accommodates [his] rights at de minimis cost to security interests." Casey, 4 F.3d at 1523. Plaintiff has not presented any alternatives to address the Prison's security concerns.

Accordingly, as currently pled, Plaintiff has not sufficiently stated a First Amendment claim against Armenta and Hawkins for withholding the Eden Press catalog.

ii. Fourteenth Amendment

The Due Process Clause protects prisoners from being deprived of liberty without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). A

violation of procedural due process requires a showing of (1) "a liberty or property interest protected by the Constitution," (2) "a deprivation of the interest by the government," and (3) "a lack of process." Shanks v. Dressel, 540 F.3d 1082, 1090 (9th Cir. 2008) (citation omitted); see also Swarthout v. Cooke, 562 U.S. 216, 219 (2011) (per curiam) (explaining that the procedural due process analysis proceeds in two steps: first, was there a liberty or property interest of which a person has been deprived, and second, if so, were the procedures followed by the State constitutionally sufficient). Prisoners have a liberty interest in the receipt of subscription publications sufficient to trigger procedural due process guarantees. See Krug v. Lutz, 329 F.3d 692, 696-97 (9th Cir. 2003). Thus, withholding the delivery of a prisoner's mail must be accompanied by minimum procedural protections. Id. at 697-98; Sorrels v. McKee, 290 F.3d 965, 972 (9th Cir. 2002) (as amended). The prisoner has a Fourteenth Amendment due process liberty interest in receiving notice that his incoming mail has been withheld by prison authorities, Frost v. Symington, 197 F.3d 348, 353 (9th Cir. 1999), and the right to appeal the exclusion of the publication to a prison official other than the one who made the initial exclusion decision. Krug, 329 F.3d at 698.

Here, Plaintiff admits, and the documents incorporated into the Complaint demonstrate, that he received notice that the publication was being withheld and provided an opportunity to appeal the decision through the Prison's administrative grievance procedure. This is all the process that he was due. As such, Plaintiff has failed to state a due process claim based on the denial of the Eden Press publication. See Krug, 329 F.3d at 698; Crozier v. Endel, 446 F. App'x 14, 15 (9th Cir. 2011); Brown v. Galvin, 2017 WL 6611501, at *4 (E.D. Cal. Dec. 27, 2017).

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2. Improper Screening of Grievances

Plaintiff also maintains that Birdsong repeatedly and arbitrarily denied his group administrative grievances without any legitimate penological interest in violation of his First Amendment right to petition the government for the redress of grievances and access to the courts, as well as his due process rights. He claims Birdsong was retaliating against him for filing the grievances, which communicated Plaintiff's intent to sue. Complaint at 7-12. He further alleges that when he submitted an individual staff complaint against Birdsong, Doe Defendant refused to terminate Birdsong's arbitrary actions and in retaliation, Doe Defendant and/or Birdsong threatened to label Plaintiff's appeals "as abusive and impose restrictions as punishment for attempting to comply with the PLRA." Id. at 13.

i. First Amendment

The First Amendment provides a right to petition the government for redress of grievances. See Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989) (citing Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972)). The right of access to the courts is subsumed under this right. Id. In the prison context, prisoners have a First Amendment right to file prison grievances. Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009). Deliberate retaliation by a state actor against an individual's exercise of First Amendment rights may be actionable under Section 1983. Soranno's Gasco, 874 F.2d at 1314; see also Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2005) (as amended).

To state a claim for retaliation in violation of the First Amendment in the prison context, a plaintiff must show five basic elements: "(1) [a]n 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." Brodheim, 584 F.3d at 1269 (quoting Rhodes, 408 F.3d at 567-68). To satisfy the causation element, plaintiff must show that his constitutionally protected conduct was a "'substantial' or 'motivating' factor" for the alleged retaliatory action. Brodheim, 584 F.3d at 1271 (quoting Soranno's Gasco, 874 F.2d at 1314). "[P]laintiff must show that the defendant's retaliatory animus was 'a "but-for" cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive.'" Capp v. Cty. of San Diego, 940 F.3d 1046, 1053 (9th Cir. 2019) (as amended) (citation omitted). The chilling inquiry is governed by an objective standard, and "the infliction of harms other than a total chilling effect can establish liability" for retaliatory conduct. See, e.g., Rhodes, 408 F.3d at 569; Mendocino Envtl. Ctr. v. Mendocino Cty., 192 F.3d 1283, 1300 (9th Cir. 1999). Adverse action is action that "would chill a person of ordinary firmness" from engaging in the protected activity. Pinard v. Clatskanie Sch. Dist. 6J, 467 F.3d 755, 770 (9th Cir. 2006) (as amended); see also Capp, 940 F.3d at 1054. Plaintiff bears the burden of pleading and proving the absence of legitimate correctional goals for the conduct of which he complains. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995).

Here, Plaintiff alleges that: (1) Birdsong arbitrarily rejected a group grievance in retaliation for "speech protected by the First Amendment"; (2) Birdsong arbitrarily denied a group staff complaint against him in retaliation for filing that staff complaint; and (3) Doe Defendant refused to terminate Birdsong's arbitrary rejection of appeals after Plaintiff submitted an individual staff complaint against Birdsong, and in retaliation, Doe Defendant and/or Birdsong threatened to label Plaintiff's appeals "as abusive and impose restrictions as punishment for attempting to comply with the PLRA." Complaint at 7, 10-13. The Court finds that these allegations do not plausibly state a First Amendment retaliation claim.

Plaintiff fails to plead facts that would establish a causal connection between the protected conduct and the adverse action. Plaintiff's conclusory allegations of "retaliation" without any specific factual support are insufficient to establish that the filing of the grievances was the substantial and motivating factor for the resulting rejections. The mere "fact that Plaintiff's grievance was denied does not establish a First Amendment retaliation claim." See Jordan v. Asuncion, 2018 WL 2106464, at *4 (C.D. Cal. May 7, 2018). Plaintiff's conclusory assertion that the filing of a grievance "communicated a clear intention to sue for denial of the publication" does not change the analysis. Such a conclusory claim would make the rejection of every grievance a basis for a First Amendment retaliation claim—a proposition that runs contrary to the law. See id.

In addition, where, as here, there is an "obvious alternative explanation" for the alleged misconduct, Plaintiff's conclusory allegation that Birdsong was retaliating against him is not plausible. See Capp, 940 F.3d at 1055 (noting the Supreme Court's "admonition that an allegation is not plausible where there is an 'obvious alternative explanation' for alleged misconduct." (quoting Iqbal, 556 U.S. at 682)). The allegations of the Complaint and the documents incorporated into the Complaint by reference reflect that Plaintiff's grievances were rejected for failing to comply with applicable regulations. Plaintiff was advised he could not appeal a rejected grievance and to resubmit his grievances as individual appeals. Unlike the cases cited by Plaintiff, Plaintiff was not prevented from pursing his administrative remedies. Compare Compl. Supp. with Complaint at 11 (citing Silverman v. Christian, 2018 U.S. Dist. LEXIS 80316, at *2 (N.D. Cal. May 3, 2018) (alleging that defendant "has 'not allowed grievances to be filed'") & Oden v. Voong, 2019 U.S. Dist. LEXIS 6525, at *2 (N.D. Cal. Jan. 14, 2019) (alleging that defendants prevented plaintiff from filing a staff complaint)). All grievances at issue stemmed from

Plaintiff's request to file a group grievance regarding the denial of the Eden Press publication. Plaintiff was permitted, and did file, an individual appeal regarding the denial of this publication through the third level of review. Plaintiff's mere disagreement with Birdsong's finding that Plaintiff must seek relief through an individual grievance rather than a group grievance is insufficient to show that Birdsong was retaliating against him for filing grievances. The Court finds that Plaintiff has failed to plausibly allege that retaliation was the but-for motive for the denial of the administrative grievances.

In addition, to the extent Plaintiff is asserting that Birdsong's allegedly improper rejection of the initial group grievance violated Plaintiff's First Amendment right to "expressive association," Plaintiff fails to allege sufficient facts to demonstrate that Birdsong violated Plaintiff's rights by rejecting the group grievance. Plaintiff argues that Birdsong's "arbitrary adverse action chilled the right to expressive association and forced Plaintiff to abandon that First Amendment right." Complaint at 8. He claims he "suffered actual injury to his contemplated litigation by the loss of potential defendants by not being able to advance this issue on further appeals." Id. As noted, however, after the initial group grievance was rejected, Plaintiff filed an individual administrative appeal, which was accepted for filing. Thus, contrary to Plaintiff's allegations, Plaintiff was not forced to abandon his First Amendment right; rather, he pursued it individually through the third level of administrative review. Plaintiff does not explain how Birdsong's instruction to file his administrative grievance individually resulted in any loss of potential defendants. Further, to the extent Plaintiff asserts that his rights to association were limited in that he was required to file an individual rather than a group grievance, there is no Constitutional right for detainees to file group grievances. See Lee v. Chavez, 1995 WL 481432, at *2 (N.D. Cal. Aug. 8, 1995); see also Ramirez v. Galaza,

334 F.3d 850, 860 (9th Cir. 2003) ("*inmates lack a separate constitutional* entitlement to a specific prison grievance procedure").

The Court finds that Plaintiff has failed to state a First Amendment claim against Birdsong based on his rejection of Plaintiff's administrative grievances.

ii. Fourteenth Amendment

Plaintiff also contends that Birdsong's rejection of his administrative grievances violated his due process rights. There is, however, no due process right to a specific prison grievance procedure. See Ramirez, 334 F.3d at 860 ("inmates lack a separate constitutional entitlement to a specific prison grievance procedure"); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988) ("There is no legitimate claim of entitlement to a grievance procedure."); Daniels v. Mar, 670 F. App'x 491, 492 (9th Cir. 2016) ("an inmate has no due process rights regarding the handling of grievances"); Riley v. Roach, 572 F. App'x 504, 507 (9th Cir. 2014) ("inmates do not possess a constitutional right to a prison grievance system"); Smith v. Swaney, 399 F. App'x 234, 234 (9th Cir. 2010) (affirming dismissal of plaintiff's due process claim because "a prisoner enjoys no constitutional right to a prison grievance procedure"). As such, Birdsong did not violate Plaintiff's due process rights by rejecting his administrative grievances. To the extent Plaintiff asserts that his due process claim is a "substantive due process claim" (see Dkt. 9 at 7; Dkt. 10 at 4-5), as prisoners are not entitled to any particular prison grievance procedure, a "substantive due process" claims based upon a grievance procedure similarly fails. See Shanks, 540 F.3d at 1087 ("To state a substantive due process claim, the plaintiff must show as a threshold matter that a state actor deprived it of a constitutionally protected life, liberty or property interest.").

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3. Conspiracy

Finally, Plaintiff seeks to hold the remaining defendants liable based on an alleged conspiracy to violate his constitutional rights. He claims Fransham joined this conspiracy by authoring a memorandum denying the Eden Press publication; and Jimenez, Messerli, Bristow, Smith, Tennison, and Ramos joined the conspiracy by denying Plaintiff's administrative appeals regarding the Eden Press publication. Complaint at 8. He further claims that all defendants are liable "for each of Birdsong's arbitrary violations of grievances both before and after they joined the conspiracy." Id. According to Plaintiff, "all the members of the conspiracy are liable as their conduct led to the violation of Plaintiff's constitutional rights and their [sic] is a causal connection." Id. at 12. Plaintiff's conclusory allegations are insufficient to state a Section 1983 claim based on a conspiracy to violate his constitutional rights.

"To establish liability for a conspiracy in a § 1983 case, a plaintiff must 'demonstrate the existence of an agreement or meeting of the minds' to violate constitutional rights." Crowe v. Cty. of San Diego, 608 F.3d 406, 440 (9th Cir. 2010) (as amended) (citation omitted). "The defendants must have, 'by some concerted action, intend[ed] to accomplish some unlawful objective for the purpose of harming another which results in damage.'" Mendocino Envtl. Ctr., 192 F.3d at 1301 (alteration in original) (citation omitted).

Here, Plaintiff has not alleged any facts showing the existence of an agreement or a "meeting of the minds" to violate his constitutional rights. Plaintiff must allege more than the alleged co-conspirators merely did or said the same thing. Myers v. City of Hermosa Beach, 299 F. App'x 744, 747 (9th Cir. 2008); see also Mendocino Envtl. Ctr., 192 F.3d at 1301 (plaintiff must demonstrate the existence of an agreement or "meeting of the minds" to violate constitutional rights). The mere fact that a defendant denied an administrative grievance does not establish liability under Section 1983. See

Mansanares v. Arizona, 2011 WL 5924349, at *10 (D. Ariz. Nov. 22, 2011) ("Where a defendant's only involvement in allegedly unconstitutional conduct is the denial of administrative grievances, the failure to intervene on a prisoner's behalf to remedy the alleged unconstitutional behavior does not amount to active unconstitutional behavior for purposes of § 1983." (citing Shehee v. Luttrell, 199 F.3d 295, 300 (6th Cir. 1999)); see also Fiorito v. Anderson, 2018 WL 4657171, at *8 (C.D. Cal. Sept. 24, 2018) ("Courts in this circuit generally agree that denying an inmate appeal does not, by itself, lead to liability."); Report and Recommendation accepted by 2018 WL 4691268 (C.D. Cal. Sept. 25, 2018). Plaintiff's naked assertion that a conspiracy existed, without more, is insufficient to state a claim. See Twombly, 550 U.S. at 557 ("a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality").

Moreover, under Section 1983, even if a plaintiff establishes the existence of a conspiracy, there is no liability unless there is an actual deprivation of constitutional rights. See Woodrum v. Woodward Cty., 866 F.2d 1121, 1126 (9th Cir. 1989). As explained, Plaintiff has not demonstrated that his First or Fourteenth Amendment rights were violated.

Accordingly, Plaintiff has failed to state a claim for conspiracy.

D. State Law Claims Against Individual Defendants

This Order does not address the merits of Plaintiff's state law claims against the individual defendants. When a federal court has dismissed all claims over which it has original jurisdiction, it may, at its discretion, decline to exercise supplemental jurisdiction over the remaining state law claims. 28 U.S.C. § 1367(c)(3); Carlsbad Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 639-40 (2009). Because Plaintiff's federal claims are subject to dismissal, Plaintiff's state law claims also are subject to dismissal.

V.

CONCLUSION

Based upon the deficiencies identified above, the Complaint is subject to dismissal. The Court provides Plaintiff with several options regarding how to proceed. **Within thirty (30) days of this Order**, Plaintiff shall select and file one of the following:

1. If Plaintiff believes he can in good faith remedy the deficiencies set forth above, he shall file a First Amended Complaint attempting to remedy the defects of the Complaint. Plaintiff is advised that if he elects to file a First Amended Complaint and the allegations remain deficient, the Court is unlikely to grant or recommend further leave to amend. Plaintiff's First Amended Complaint should bear the docket number assigned in this case; be labeled "First Amended Complaint"; and be complete in and of itself without reference to the prior complaint or any other pleading, attachment, or document, and shall specify the facts upon which Plaintiff alleges each named defendant caused any alleged constitutional violation. The First Amended Complaint may not alter the nature of this suit by alleging new, unrelated claims. The Clerk is directed to send Plaintiff a blank Central District civil rights complaint form, which Plaintiff is encouraged to use.

2. If Plaintiff disagrees with the above analysis and/or believes he cannot add sufficient further factual allegations to the Complaint, then he shall file a Notice of Intent to Proceed with the Complaint. If Plaintiff chooses to file a Notice of Intent, the Court will likely recommend that the District Judge dismiss the action without further leave to amend and provide Plaintiff an opportunity to file objections.

3. If Plaintiff no longer wishes to pursue this action, he may dismiss it by filing a Notice of Dismissal under Federal Rule of Civil Procedure 41(a)(1). Plaintiff is advised that a voluntary dismissal does not constitute a "strike" under 28 U.S.C. § 1915(g), whereas a dismissal of an action filed by a prisoner because it "fails to state a claim upon which relief may be granted" would constitute a "strike." See 28 U.S.C. § 1915(g). The Clerk also is directed to send Plaintiff a Central District request for dismissal form.

Plaintiff is admonished that, if he fails to timely file a response as directed in this Order, the Court will recommend that this action be dismissed for failure to state a claim, for failure to prosecute, and/or for failure to obey court orders.

Dated: November 25, 2019

JOHN D. EARLY
United States Magistrate Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 9 2020

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

JAMES PLAS SAMS, Plaintiff-Appellant, v. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION; et al., Defendants-Appellees.	No. 20-55178 D.C. No. 5:19-cv-01538-ODW-JDE Central District of California, Riverside ORDER

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

We treat Sams's "petition for panel rehearing in conjunction with petition for rehearing en banc" (Docket Entry No. 7) as a combined motion for reconsideration and motion for reconsideration en banc.

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

APPENDIX C

(f) An inmate or parolee or other person may assist another inmate or parolee with preparation of an appeal unless the act of providing such assistance would create an unmanageable situation including but not limited to: acting contrary to the principles set forth in sections 3163 and 3270, allowing one offender to exercise unlawful influence/assume control over another, require an offender to access unauthorized areas or areas which would require an escort, or cause avoidance or non-performance in assigned work and program activities. Inmates or parolees shall not give any form of compensation for receiving assistance or receive any form of compensation for assisting in the preparation of another's appeal. The giving or receiving of compensation is considered misconduct and is subject to disciplinary action.

(g) An inmate or parolee shall not submit an appeal on behalf of another person.

(h) Group appeal. If a group of inmates/parolees intend to appeal a policy, decision, action, condition or omission affecting all members of the group, one CDCR Form 602, Inmate/Parolee Appeal, shall be submitted describing the appeal issue(s) and action requested, accompanied by a CDCR Form 602-G (08/09), Inmate/Parolee Group Appeal, which is incorporated by reference, with the legible name, departmental identification number, assignment, housing, and dated signature of the inmate or parolee who prepared the appeal. Each page of the CDCR Form 602-G must contain the appeal issue, action requested, and a statement that all the undersigned agree with the appeal issue/action requested.

(1) The legible names of the participating inmates/parolees, departmental identification numbers, assignments, housing, and dated signatures shall be included in the space provided on the Inmate/Parolee Group Appeal form and no other signature page shall be accepted by the appeals coordinator.

(2) The inmate or parolee submitting the appeal shall be responsible for sharing the appeal response with the inmates or parolees who signed the appeal attachment.

(3) If the inmate or parolee submitting the appeal is transferred, released, discharged, or requests to withdraw from the group appeal, responses shall be directed to the next inmate or parolee listed on the appeal attachment who remains at the facility/region, and who shall be responsible for sharing the response with the other inmates or parolees identified on the appeal.

(4) An appeal shall not be accepted or processed as a group appeal if the matter under appeal requires a response to a specific set of facts (such as disciplinary and staff complaint appeals) that are not the same for all participants in the appeal. In such case, the group appeal shall be screened out and returned to the inmate or parolee submitting the appeal with directions to advise all those who signed the appeal attachment to submit individual appeals on their separate issues.

(5) Every inmate or parolee who signs a group appeal is ineligible to submit a separate appeal on the same issue.

(6) A group appeal counts toward each appellant's allowable number of appeals filed in a 14 calendar day period.

(i) Multiple appeals of the same issue. When multiple appeals are received from more than one inmate or parolee on an identical issue, each such appeal shall be individually processed. However, if other issues in addition or extraneous to the multiple appeal issue are contained in the submitted appeal, this particular complaint shall not be processed as a multiple appeal, but will be subject to processing as a separate, individual appeal.

(1) The original inmate or parolee, and as needed for clarification of issues, one or more of the other inmates or parolees, shall be interviewed.

(2) The appellant shall be provided with an appeal response. A statement shall be included in the response indicating that the appeal has been designated as one of multiple identical appeals for processing purposes and the same response is being distributed to each appellant.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5(a) and 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

HISTORY:

1. New section filed 5-18-89 as an emergency; operative 5-18-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-15-89.
2. Certificate of Compliance as to 5-18-89 order transmitted to OAL 9-7-89 and filed 10-10-89 (Register 89, No. 41).
3. New subsection (g) filed 5-6-92 as an emergency; operative 5-6-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-3-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5-6-92 order transmitted to OAL 8-31-92 and filed 10-7-92 (Register 92, No. 41).
5. Amendment of subsection (a) and Note filed 4-7-95 as an emergency pursuant to Penal Code section 5058; operative 4-7-95 (Register 95, No. 14). A Certificate of Compliance must be transmitted to OAL by 9-14-95 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4-7-95 order transmitted to OAL 6-26-95 and filed 7-25-95 (Register 95, No. 30).
7. Amendment of subsections (a)(1), (a)(2), (c) and (f)(1) filed 12-23-96 as an emergency; operative 12-23-96 (Register 96, No. 52). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-2-97, or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (a)(1), (a)(2), (c) and (f)(1) refiled 5-29-97 as an emergency; operative 6-2-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-30-97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction of History 8 (Register 97, No. 24).
10. Certificate of Compliance as to 5-29-97 order, including amendment of subsection (c), transmitted to OAL 9-25-97 and filed 11-7-97 (Register 97, No. 45).
11. Amendment of section heading, repealer and new section and amendment of Note filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 12-13-2010 order, including amendment of subsections (b), (e)–(f) and (h)(6), transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3084.3. Supporting Documents.

(a) An inmate or parolee shall obtain and attach all supporting documents, as described in section 3084(h), necessary for the clarification and/or resolution of his or her appeal issue prior to submitting the appeal to the appeals coordinator.

(b) The inmate or parolee shall not delay submitting an appeal within time limits established in section 3084.8 if unable to obtain supporting documents, but shall submit the appeal with all available supporting documents and in Part B of their CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, provide an explanation why any remaining supporting documents are not available. Time limits for filing an appeal are not stayed by failure to obtain supporting documentation and commence as set forth in subsection 3084.8(b).

(c) Failure to attach all necessary supporting documents may result in the appeal being rejected as specified in subsection 3084.6(b)(7). The appeals coordinator shall inform the inmate or parolee that the appeal is rejected because necessary supporting

Frequently Asked Questions

Where do I get the CDCR 602-1?

CDCR 602-1 are available in housing units and prison law libraries.

Who do I give the form to?

Completed grievances can be routed to the local Grievance Office by placing them into one of the locked collection boxes located throughout the institution.

What is the difference between the CDCR 602 and a CDCR 1824?

A CDCR 602-1 is used to submit a grievance. A CDCR 1824 is used to request an accommodation due to a disability.

Do I use this new process to file a health care grievance or appeal?

No. Continue to file health care grievances and appeals by using a CDCR 602-HC.

Can I try to resolve my issue informally?

Yes. CDCR always encourages informal resolution of issues when possible.

What are the grievance timeframes?

You have 30 calendar days to file a CDCR 602-1 and the institution has 60 calendar days to provide you a written response.

What if I am dissatisfied with the answer to my grievance?

You can use the CDCR 602-2 (included in the response to your grievance) to appeal the decision. You have 30 calendar days to submit an appeal and the Office of Appeals has 60 calendar days to provide you a written response.

APPENDIX E

NEED MORE INFORMATION?

CCR 3480 – Implementation Date and Definitions

CCR 3481 – Claimant's Ability to Grieve and to Appeal

CCR 3482 – Preparation and Submittal of a Grievance

CCR 3483 – Grievance Review

CCR 3484 – Allegations of Staff Misconduct

CCR 3485 – Preparation and Submittal of an Appeal

CCR 3486 – Appeal Review

CCR 3487 – Rejection of a Claim

The CDCR Form 22 is no longer in use; however, the GA 22 is available for use if you would like to request assistance from staff.

* * * * * * * *

- You have the right to file a grievance on a wide variety of issues, now called claims.
- If dissatisfied with the response to your claim, you can appeal it.

CDCR 602

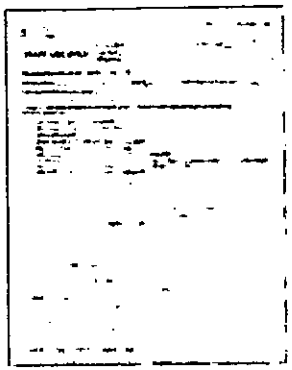
Have you heard about the new, easier to use, Grievance and Appeal process?

FIND OUT WHAT'S NEW

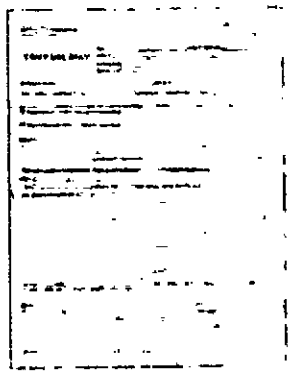
05-26-2020

Have an issue? We will listen and give you an answer.

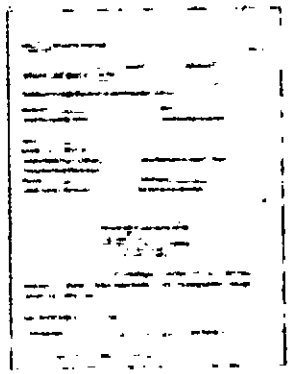
CDCR 602-1



CDCR 602-2



CDCR 602-3



Three new forms. Use the one that is right for you.

*Use the **CDCR 602-1** to file a grievance on claims that adversely affect you, including mail, visiting, living conditions, allegations against staff, case records, etc. Send the CDCR 602-1 to the Grievance Office at your institution.*

*The Grievance Office will provide you with a response and also a **CDCR 602-2**. You may use the CDCR 602-2 to appeal the institution's response to your claim. Send the CDCR 602-2 to the Office of Appeals in Sacramento.*

*If your claim was approved or granted and included a remedy that was not provided to you in 30 calendar days, complete a **CDCR 602-3** and send it to the Remedies Compliance Coordinator in Sacramento.*

How is the new process different from the old process?

Old Appeal Process	New Grievance and Appeal Process
Three levels of review	Two levels of review
Group appeals allowed	Group appeals not allowed
Approximately 210 days from start to finish	Approximately 180 days from start to finish
CCR (Title 15) 3084 – 3084.9	CCR (Title 15) 3480 – 3487

***Important Note:** Pursuant to CCR 3482 and 3485 in the new grievance and appeal regulations, any documents you attach to a grievance or appeal will not be returned to you.*

NEW DEFINITIONS AND TERMS (Also found in CCR 3480)

- **"Administrative Remedy"** means the non-judicial process provided by the department to address inmate and parolee complaints.
- **"Claimant"** refers to an inmate or parolee under the custody of CDCR who files a grievance or appeal with the Department.
- **"Claim"** means a single complaint arising from a unique set of facts or circumstances.
- **"Grievance"** means a written request from a claimant sent to a Grievance Office for review. A grievance may have more than one claim.
- **"Grievance Package"** means a grievance form and all of its supporting documents.
- **"Appeal"** means a written request from a claimant for review by the Office of Appeals of a decision issued by the institution or Regional Office of Grievance.
- **"Appeal Package"** means an appeal of grievance form and all of its supporting documents.