



OFFICE OF ADMINISTRATIVE HEARINGS

State of California

GENERAL JURISDICTION DIVISION

320 West Fourth Street, Suite 630, Los Angeles CA 90013
(213) 576-7200 phone
www.dgs.ca.gov/OAH

Department of General Services

Governor Edmund G. Brown Jr.

November 01, 2018

Edward Avila
1621 West Cubbon Street
Santa Ana, CA 92703

Re: OAH Case Number 2018071120

Dear Edward Avila:

Enclosed is the Decision of the Office of Administrative Hearings (OAH) resulting from your fair hearing.

If you are not satisfied with the OAH's decision, within six (6) months from receipt of this letter, you have the right to file a petition with the Superior Court of California, under Code of Civil Procedure section 1094.5, requesting a review of the entire proceedings. You may be entitled to reasonable attorney's fees and costs if you obtain a decision from the Superior Court in your favor. In accordance with Welfare and Institutions Code section 19709, the court will not require you to pay a filing fee or post a bond; such petitions are entitled to preference in setting the petition hearing date. While you need not pay a filing fee, you are responsible for the costs of the record, which includes a transcript of the hearing, unless you produce a court waiver of fees and costs in which the Department of Rehabilitation will provide the record to you at no cost.

If you would like additional assistance in filing a petition, seeking to reverse this Decision or in resolving any other issues with the Department of Rehabilitation, you may contact Disability Rights of California, Inc. (DRC). DRC, through contract with the Department of Rehabilitation, and at no cost to you, provides applicants and consumers with advocacy services under the Client Assistance Program. You may reach your advocate by calling DRC's toll-free number: 1-800-776-5746 or 1-800-719-5798 (TTY). For more information about the Department of Rehabilitation's Client Assistance Program, call 1-800- 952-5544 or 1-866- 712-1084 (TTY), send an email to: capinfo@dor.ca.gov, or write to CAP at Post Office Box 944222, Sacramento California, 94299-9222.

Regional Offices

Oakland
1515 Clay Street
Suite 206
Oakland, CA 94612
(510) 622-2722

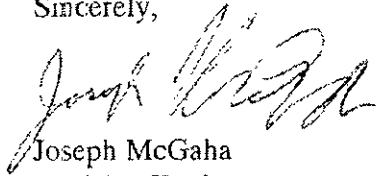
Sacramento
2349 Gateway Oak Drive
Suite 6200
Sacramento, CA 95833
(916) 263-0550/(916) 263-0880

San Diego
1350 Front Street
Suite 3005
San Diego, CA 92101
(619) 525-4475

Van Nuys
15350 Sherman Way
Suite 300
Van Nuys, CA 91406
(818) 904-2383

Page 2 of 2

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph McGaha".

Joseph McGaha

Decision Typist

Office of Administrative Hearings

Enclosure *

DECLARATION OF SERVICE

Case Name: Avila, Edward

OAH No.: 2018071120

I, Joseph McGaha, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 320 West Fourth Street, Suite 630, Los Angeles, CA 90013. On November 01, 2018, I served a copy of the following document(s) in the action entitled above:

DECISION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

Trung Le
Orange/San Gabriel District
222 S. Harbor Blvd., Suite 300
Anaheim, CA 92805
thlc@dor.ca.gov; shan@dor.ca.gov
VIA Email (E-Service)

Edward Avila
1621 West Cubbon Street
Santa Ana, CA 92703
avilaedward1972@gmail.com
VIA Overnight Delivery and VIA Email (E-Service)

Ignacio Alegre
DOR Santa Ana Branch Office
790 The City Drive South, Suite 110
Orange, CA 92868
Ignacio.Alegre@dor.ca.gov
VIA Email (E-Service)

Shelly Risby
REHAB HEARING/MEDIATION
Attn: Shelly Risby
Mediation & Fair Hearing Office
721 Capitol Mall
Sacramento, CA 95814
appealsinfo@dor.ca.gov
VIA Overnight Delivery and VIA Email (E-Service)

☒ **Overnight Delivery.** I enclosed the above-described document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package with overnight delivery fees paid at an office or a location regularly utilized for collection and overnight delivery by an authorized overnight delivery courier.

☒ **Electronic Transmission.** Based on a court order or the agreement of the parties to accept service by electronic transmission, the document(s) were distributed to the person(s) by secure electronic transmission (OAH Secure e-File) with a notification and document link sent to the email address(es) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Los Angeles, California on November 01, 2018.

DocuSigned by:
Joseph McGaha
518967450583410
Joseph McGaha, Declarant

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

E.A.,

Appellant,

OAH No. 2018071120

vs.

DEPARTMENT OF REHABILITATION,

Respondent.

DECISION

Jennifer M. Russell, Administrative Law Judge with the Office of Administrative Hearings, heard this matter in Santa Ana, California on October 5, 2018. Appellant E. A. represented herself.¹ Sherri Han, District Operations Support Manager, and Leshelle Brueggeman, Qualified Rehabilitation Counselor and Senior Vocational Rehabilitation Counselor, represented respondent Department of Rehabilitation (DOR or the Department).

Testimonial and documentary evidence was received, the case argued and the matter submitted for decision on October 5, 2018. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUES

1. Whether the Department should grant appellant's request for an amended Individualized Plan for Employment.
2. Whether the Department should fund appellant's attendance at Trinity Law School in the amount of \$56,000 per year for a period of five years.

¹ Initials are used to protect Appellant's privacy.

FACTUAL FINDINGS

1. Appellant is a 45-year-old man. In 2013, he earned a graduate degree in history from the University of Texas—Pan American (UTPA). Between 2013 and 2016, he served on the faculties of South Texas College and California State University, Channel Islands as an adjunct professor. Respondent reported to the Department that he left both institutions because his obsessive compulsive disorder “forced me to have an anxious brake (*sic*) down.” (Exh. 2.)

2. On July 25, 2017, the Department notified appellant that he met the eligibility criteria for vocational rehabilitation services. He presents with Obsessive Compulsive Disorder, Dyslexia, back pain, and a 17 percent reduction in motion of his right hand. The Department additionally notified appellant that he had 90 days from the date of his eligibility determination to develop an Individualized Plan for Employment (IPE).

3. On August 22, 2017, appellant met with Department staff to develop his IPE. The Case Note memorializing that meeting documents that appellant “has chosen High School Teacher as his employment goal.”

He stated that he has done some research that there will be more opportunities to apply for LA Unified School District or other districts but Santa Ana Unified District. His previous teaching experiences and history were Adjunct Professor at South Texas College in McAllen, TX for 3 years and at California State University Channel Island in Camarillo, CA for 4 months; therefore, he would like to use his transferable skills to look for a teaching position in secondary school in CA. . . . He stated that he has to take Geometry and Algebra to prepare for his CBEST² test since he has struggled with math subject. He is planning to take these math classes at SAC³ this fall. After taking and passing the CBEST he will apply for a teaching position at Unified School District [*sic*]. He expects he will complete his plan earliest in August 2018.

(Exh. 7.)

4. Appellant’s IPE lists appellant’s chosen employment goal as “Teachers Secondary School (25203100) Single-Subject Teacher.” The IPE memorializes appellant’s interest in teaching in high school as follows:

During our plan discussion, you expressed your interest of obtaining a high school teaching position. You have earned a MA degree in History at UTPA. Your goal is to take and pass a CBEST test sometime after September 2017.

² CBEST is the acronym for the California Basic Educational Skills Test.

³ “SAC” refers to Santa Ana Community College.

To prepare for the test, you are planning to take Geometry and Algebra since mathematics were [*sic*] your weak subjects. After passing the tests, you will be looking for work with the school district in the State of California.
(Exh. 6 at Page 3 of 12.)

5. Appellant's IPE enumerates several steps, stages, or phases needed to reach his employment goal. They include, among other things, registering at Santa Ana Community College for the Fall 2017 semester to take math classes, participating in an internship program, obtaining a position as a trainee, taking and passing the CBEST, completing a subject matter program approved by the Commission on Teacher Credentialing, and passing the California Subject Examinations for Teachers (CSET) in a single subject matter.

6. Case Notes, dated September 1 and 18 and December 12, 2017, document appellant's refusal to sign his IPE claiming that he needed more time to determine what course of action he wanted to take. For example:

He informed that he could not get into his class at SAC since it was too late and the class was full. He stated he has another plan to go getting his teaching credential. He does not want to attend his class at the junior college. He stated he has not committed anything yet

(Exh. 7.)

7. It appears from a December 13, 2017 Case Note that appellant ultimately affixed his signature to the IPE on December 13, 2017 although the IPE bears an August 31, 2017 date. Among other things, the December 13, 2017 Case Note states, "He has signed his plan and agreed with all the terms previously discussed and stated on his IPE. He wants to be a single subject History teacher." (Exh. 7.)

8. In spring 2018, appellant matriculated at Rancho Santiago Community College, where he enrolled in Mathematics for Liberal Arts. Appellant also enrolled in Legal Terminology and Legal Studies, two courses not provided for in his IPE, but which the Department nonetheless funded after admonishing him that in the future it would not fund the costs of courses for which there has been no prior Department approval. A January 26, 2018 Case Note documents that appellant enrolled in the two legal courses to "help him with his writing for the CBEST." (Exh. 7.) On behalf of appellant, the Department paid Rancho Santiago Community College registration charges totaling \$2,679.⁴

9. During an April 13, 2018 meeting with Department personnel, appellant announced his withdrawal from Rancho Santiago Community College. He was no longer interested in pursuing his stated IPE vocational goal of becoming a secondary or high school history teacher. Rather, he expressed interest in pursuing a graduate degree in social work.

⁴ The Department also provided financial support and services to appellant in the form of a laptop computer, software, printer, assistive technology devices, and books.

Thereafter, the Department scheduled several meetings with appellant to discuss appellant's vocational rehabilitation program, but appellant did not attend the meetings for a variety of reasons.

10. By email dated July 14, 2018, appellant wrote the Department listing, among other things, the following requests:

- 1) I request for a five-year grant to pursue Law School.
- 2) I request for a new IEP [*sic*] that allows me to pursue \$56,000.00 in grants to train for the law School Admission Test.
- 3) I request for \$56,000.00 for tuition and expenses, each year.
 - a) I request for books, supplies, and expenses
 - b) I request for the cost of living for a family of seven
 - c) I request for the cost of tuition

(Exh. 13.)

11. An August 6, 2018 Case Note documents that appellant told Department personnel that he "needed a law degree to win his law suites [*sic*] in South Texas College, State of Texas, Social Security and EEOC." (Exh. 7.)

12. On August 8, 2018, appellant forwarded to the Department an email from Trinity Law School accepting him to its Juris Doctor program commencing Fall 2018 and directing him, among other things, to complete financial aid applications or documents. Trinity Law School subsequently provided appellant with a formal acceptance letter on August 10, 2018.

13. At the administrative hearing, appellant testified that, for three weeks up to September 25, 2018, he attended Trinity Law School to "try it out." According to appellant, he attended classes in torts, criminal law, and contracts, and he read the books and did the homework. He maintains that his attendance at Trinity Law School was disrupted because the Department would not fund the cost of tuition in an amount totaling \$56,000 per year. Although not clearly or precisely articulated, appellant appears to argue that the Department's refusal to fund the cost of his attendance at Trinity Law School amounts to a breach of contract. (See Exh. A.)

14. Appellant offered a September 25, 2018 email from a Trinity Law School associate dean confirming his acceptance "as a student in our FLEX Program for the Spring 2019 semester." (Exh. A.) Appellant also offered a September 26, 2018 letter identifying the reasonable accommodations Trinity Law School intends to provide him. (Exh. A.) Appellant additionally offered a manuscript or book proposal as evidence of his capabilities. (Exh. C.)

15. The Department declined to fund the cost of appellant's attendance at Trinity Law School for several reasons including that educational training to obtain a Juris Doctor degree is not written in appellant's IPE, that appellant took over 20 years to complete the graduate degree he holds in history, that appellant already possesses the necessary education and skill sets to obtain competitive, gainful employment, that further educational training is not necessary for appellant to secure entry level employment, and that appellant has not conducted an exhaustive search of the job market.

LEGAL CONCLUSIONS

1. Any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal hearing. (Calif. Code Regs., tit. 9, § 7531, subd. (a).)

2. Appellant has the burden of introducing evidence sufficient to demonstrate his case by a preponderance of the evidence. (Calif. Code Regs., tit. 9, § 7536, subd. (e).)

3. The purpose of an IPE is to provide a written plan of action and a statement of understanding regarding the rights and responsibilities of both the client and the Department. An IPE is developed jointly by the client and the rehabilitation counselor. An IPE may include educational training to achieve a client's vocational goals. (Calif. Code Regs., tit. 9, §§ 7128, 7130, 7131.)

4. In this matter, appellant's IPE, dated August 31, 2017, which was produced after joint consultation between appellant and his rehabilitation counselor, unequivocally identifies appellant's vocational goal as secondary school teacher. To prepare appellant with the skills and qualifications necessary for suitable employment at the entry level, appellant's IPE provides for educational training consisting of the mathematics courses he required for his success on the CBEST. In the spring semester of 2018, appellant matriculated at Rancho Santiago Community College, where he enrolled in a mathematics course and, without the Department's prior approval, two para-legal courses. On appellant's behalf, the Department funded the costs of these courses in an amount totaling \$2,679. But before the spring semester concluded, respondent abandoned the courses in which he was enrolled, including the mathematics course he need in preparation of the CBEST, and he declared his disinterest in pursuing the educational training necessary for him to achieve his stated vocational goal of becoming a secondary or high school teacher. Under these circumstances, respondent's conduct constitutes a termination of the educational training set forth in his IPE dated August 31, 2017. (Calif. Code Regs., tit. 9, § 7159.)

5. Appellant seeks educational training to attain a Juris Doctor degree from Trinity Law School at a cost of \$56,000 per year for five years. Training services are provided only to the extent necessary to facilitate achievement of a vocational objective or to

prepare a client with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. (Calif. Code Regs., tit. 9, § 7149.) Appellant's vocational goal set forth in his IPE is secondary or high school teacher. Appellant's IPE has no provision requiring educational training for him to attain a Juris Doctor degree to facilitate his entry level employment in the legal profession. The Department is limited to providing services, including educational training, in accordance with the provisions of an IPE. (Calif. Code Regs., tit. 9, § 7128.) To the extent that appellant seeks pursuing a vocational goal and concomitant educational training not provided in his IPE, appellant may, in collaboration with a Department vocational rehabilitation counselor, amend his IPE pursuant to established and codified procedures. (Calif. Code Regs., tit. 9, § 7130, subd. (a) (6) and (7).)

6. Even assuming that educational training to attain a Juris Doctor degree is required for appellant, the Department is prohibited from authorizing "training or training services provided by an institution of higher education unless a maximum effort has been made by the client to secure grant assistance from other sources to pay in whole or in part the costs of such services." (Calif. Code Regs., tit., 9, § 7197, subd. (b).) "Maximum effort" means a client's specific actions which are necessary to establish eligibility and secure any similar benefits necessary to vocational rehabilitation." (Calif. Code Regs., tit., 9, § 7197, subd. (a)(1).)⁵ The evidence offered at the administrative hearing establishes that Trinity Law School directed appellant, among other things, to complete financial aid applications or documents. No evidence offered at the administrative hearing addresses whether appellant has expended maximum efforts to establish his eligibility for and to secure financial aid to fund any educational training to attain a Juris Doctor degree. Appellant has not met his burden of introducing evidence sufficient to demonstrate by a preponderance of the evidence that the Department should fund his attendance at Trinity Law School in the amount of \$56,000 per year for a period of five years.

⁵ California Code of Regulations, title 9, section 7197 is consistent with and mirrors the language of section 103 of the Rehabilitation Act of 1973. In pertinent part section 103 states:

Vocational rehabilitation services provided under this title are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including [¶. . .] (5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services provided at an institution of higher education shall be paid for with funds under this title unless maximum efforts have been made by the designated State unit and the individual to secure grant assistance, in whole or part, from other sources to pay for such training.

(29 U.S.C. § 723.)

7. By reason of Factual Findings 1 through 15 and Legal Conclusions 3, 4 and 5, cause exists for the Department to grant appellant's request to amend his IPE, which is dated August 31, 2017, consistent with the requirements of California Code of Regulations, title 9, section 7130.

8. By reason of Factual Findings 1 through 15 and Legal Conclusions 3, 5 and 6, cause does not exist to grant appellant's request that the Department fund his attendance at Trinity Law School in the amount of \$56,000 per year for a period of five years.


ORDER

1. The Department shall conduct an assessment for determining whether appellant's Individualized Plan for Employment, which is dated August 31, 2017, should be amended to reflect any substantive changes in the employment outcome or vocational rehabilitation services to be provided.

2. The Department shall not fund appellant's attendance at Trinity Law School in the amount of \$56,000 per year for a period of five years in the absence of any Individualized Plan for Employment requiring educational training for a Juris Doctor degree and in the absence of any showing that appellant has expended maximum efforts to establish his eligibility for and to secure financial aid or grant assistance from other sources to pay, in whole or part, for such educational training.

DATED: November 1, 2018

DocuSigned by:


JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative Decision in this matter. Each party is bound by this Decision. If dissatisfied with this Decision, an appeal must be made to the Superior Court of California within six (6) months after receipt of the Decision. The Client Assistance Program (CAP) is available to assist with the appeal. (Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Calif. Code Regs., tit. 9, § 7358, subd. (b).)



OFFICE OF ADMINISTRATIVE HEARINGS

State of California

GENERAL JURISDICTION DIVISION

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Department of General Services

Governor Edmund G. Brown Jr.

November 01, 2018

Edward Avila
1621 West Cubbon Street
Santa Ana, CA 92703

Re: OAH Case Number 2018071120

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Suite 3005
San Diego, CA 92101
(619) 525-4475

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Van Nuys, CA 91406
(818) 904-2383

DECLARATION OF SERVICE

Case Name: Avila, Edward

OAH No.: 2018071120

I, Joseph McGaha, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 320 West Fourth Street, Suite 630, Los Angeles, CA 90013. On November 01, 2018, I served a copy of the following document(s) in the action entitled above:

DECISION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

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Orange/San Gabriel District
222 S. Harbor Blvd., Suite 300
Anaheim, CA 92805
thle@dor.ca.gov;shan@dor.ca.gov
VIA Email (E-Service)

Edward Avila
1621 West Cubbon Street
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avilaedward1972@gmail.com
VIA Overnight Delivery and VIA Email (E-Service)

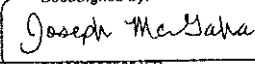
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790 The City Drive South, Suite 110
Orange, CA 92868
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VIA Email (E-Service)

Shelly Risby
REHAB HEARING/MEDIATION
Attn: Shelly Risby
Mediation & Fair Hearing Office
721 Capitol Mall
Sacramento, CA 95814
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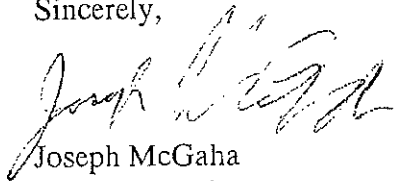
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Los Angeles, California on November 01, 2018.

DocuSigned by:

5189674505634FD
Joseph McGaha, Declarant

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph McGaha".

Joseph McGaha

Decision Typist

Office of Administrative Hearings

Enclosure *

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Case: 8:19cv613 Doc: 14

Edward Avila
1621 W Cubbon Street
Santa Ana, CA 92703

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Message-Id:<28507711@cacd.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al Order on Motion for Order Content-Type: text/html

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 10/1/2019 at 11:23 AM PDT and filed on 10/1/2019

Case Name: Edward Avila v. State of California et al

Case Number: 8:19-cv-00613-JVS-ADS

Filer:

Document Number: 14

Docket Text:

MINUTES (IN CHAMBERS) (IN CHAMBERS) ORDER DENYING EX PARTE APPLICATION FOR GUARDIAN AD LITEM AND DISMISSING COMPLAINT WITH LEAVE TO AMEND by Magistrate Judge Autumn D. Spaeth: Plaintiff's Application for a Guardian ad Litem [8] is denied. The Complaint is hereby dismissed with leave to amend. Plaintiff shall file a First Amended Complaint by no later than October 31, 2019. (kh)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

Edward Avila
1621 W Cubbon Street
Santa Ana CA 92703

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 8:19-000613 JVS (ADS) Date: October 1, 2019
Title: Edward Avila v. State of California, et al.

Present: The Honorable Autumn D. Spaeth, United States Magistrate Judge

Kristee Hopkins
Deputy Clerk

None Reported
Court Reporter / Recorder

Attorney(s) Present for Plaintiff(s):
None Present

Attorney(s) Present for Defendant(s):
None Present

**Proceedings: (IN CHAMBERS) ORDER DENYING EX PARTE
APPLICATION FOR GUARDIAN AD LITEM AND
DISMISSING COMPLAINT WITH LEAVE TO AMEND**

On April 1, 2019, Plaintiff Edward Avila, who is at liberty and proceeding pro se, filed a Complaint. [Dkt. No. 1]. Plaintiff asserts breach of contract, promissory estoppel, fraud, duress, violations of his First Amendment rights, and violations of the Rehabilitation Act of 1973, and appealing an OAH decision. [Id.]. Plaintiff is suing the State of California, the California Department of Rehabilitation, Trung Le, Ignacio Alegre, and Lechelle Brueggeman (collectively “Defendants”). [Id.].

**I. PLAINTIFF’S APPLICATION FOR A GUARDIAN AD LITEM
IS DENIED**

Plaintiff has filed an “Ex Parte Application for Rule 17” (“Application for Guardian ad Litem”) in which Plaintiff requests that the Court appoint a guardian ad litem for this case. [Dkt. No. 8]. Plaintiff argues he should be appointed a guardian ad litem because he suffers from Obsessive Compulsive Disorder, Dyslexia, and panic attacks that are “triggered by this matter.” [Id., p. 2]. Plaintiff attaches photocopies of prescriptions and various filings from this case. [Id., pp. 6-26].

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 8:19-000613 JVS (ADS) Date: October 1, 2019

Title: Edward Avila v. State of California, et al.

Federal Rule of Civil Procedure 17(c) (“Rule 17(c)”) states, “The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.” Fed. R. Civ. P. 17(c).

Here, Plaintiff has not provided substantial evidence that he is incompetent. One of the prescriptions Plaintiff provided indicates he was diagnosed with Obsessive Compulsive Disorder when he was 24 and mentions anxiety. [Dkt. No. 8, p. 7]. The remaining prescriptions are illegible. [Dkt. No. 8, p. 6]. These unverified, and illegible exhibits do not present substantial evidence that Plaintiff is incompetent. Even if the Court were to accept these attachments to the Application for Guardian ad Litem as admissible evidence of his mental health, they are insufficient to show anything more than a medical diagnosis and potentially medication. Neither means Plaintiff is incompetent. See Allen v. Calderon, 408 F.3d 1150, 1153 (9th Cir. 2005) (finding a pro se civil litigant “entitled to a competency determination when substantial evidence of incompetence is presented”); Justice v. Rockwell Collins, Inc., 720 F. App’x 365, 367 (9th Cir. 2017) (finding district court not obligated to appoint guardian ad litem before dismissing a civil action because there was insufficient evidence of mental incompetence). As such, Plaintiff’s Application for a Guardian ad Litem is denied.

II. THE COMPLAINT IS DISMISSED WITH LEAVE TO AMEND

The Court is required to screen pro se complaints brought in forma pauperis and dismiss claims that, among other things, are frivolous, malicious, or fail to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2). In determining whether Plaintiff has stated a claim, the Court accepts as true the factual allegations contained in the Complaint and views all inferences in the light most favorable to Plaintiff. See Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011). However, courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). The Court construes the Complaint liberally because Plaintiff is proceeding pro se. Barrett v. Belleque, 544 F.3d 1060, 1061-62 (9th Cir. 2008) (per curiam).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 8:19-000613 JVS (ADS) Date: October 1, 2019

Title: Edward Avila v. State of California, et al.

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Rule 8(d)(1) instructs that “[e]ach allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). A complaint is subject to dismissal if “one cannot determine from the complaint who is being sued, for what relief, and on what theory.” Dobshinsky v. High Desert State Prison, 332 Fed. App’x. 427, 428 (9th Cir. 2007) (quoting McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996)).

Here, the Complaint does not meet the requirements set forth in Rule 8 because it is not a short and plain statement of Plaintiff’s claims. Rather, the Complaint only includes a series of assertions with almost no facts in support. Simply put, the Complaint does not contain enough information to allow a defendant to have fair notice of the claims against him and the ability to adequately respond. See Twombly, 550 U.S. at 555. **For these reasons, the Complaint is hereby dismissed with leave to amend. Plaintiff shall file a First Amended Complaint by no later than October 31, 2019.**

In doing so, Plaintiff is reminded to provide a short, plain statement of what happened, identify his claims against each defendant, and clearly describe each defendant’s wrongful conduct. Plaintiff should clearly identify each defendant being sued. Also, Plaintiff should state specific facts meeting the legal standard for each claim he is bringing. Plaintiff should also attach any documentation he has of the OAH decision he is appealing. Plaintiff is encouraged to use the attached Central District civil rights complaint form when filing the First Amended Complaint.

Plaintiff is advised that an amended complaint supersedes the prior complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). This means that the filing of an amended complaint entirely supplants or replaces the original or any prior complaint, which is “treated thereafter as nonexistent.” Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (internal citations omitted); see also Charles Alan Wright, et al., 6 Fed. Prac. & Proc. Civ. § 1476 (3d ed. April 2018 Update)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 8:19-000613 JVS (ADS) Date: October 1, 2019

Title: Edward Avila v. State of California, et al.

("Once an amended pleading is interposed, the original pleading no longer performs any function in the case and any subsequent motion made by an opposing party should be directed at the amended pleading."). Therefore, the First Amended Complaint must contain all claims Plaintiff intends to bring against all defendants.

Plaintiff is expressly warned that failure to timely file a First Amended Complaint may result in a recommendation to the District Judge that this action be dismissed without prejudice for failure to state a claim and/or for failure to prosecute and obey Court orders pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk of Court is directed to mail Plaintiff a blank Central District civil rights complaint form to use for filing the First Amended Complaint.

IT IS SO ORDERED.

Initials of Clerk kh

1 _____ (Full Name)
2 _____ (Address Line 1)
3 _____ (Address Line 2)
4 _____ (Phone Number)

5 Plaintiff in Pro Per

6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 _____) **Case No.: 8:19-cv-00613-JVS-ADS**
12 **Plaintiff,**) (To be supplied by the Clerk)
13 **vs.**) **First Amended Civil Rights**
14) **Complaint Pursuant to 42 U.S.C. §**
15) **1983 (non-prisoners)**
16) **Jury Trial Demanded: ☐ Yes ☐ No**
17)
18 **Defendant(s).**)
19 _____

20 (All paragraphs and pages must be numbered.)

21 **I. JURISDICTION**

22 1. This court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
23 Federal question jurisdiction arises pursuant to 42 U.S.C. § 1983.

24
25 **II. VENUE**

26 2. Venue is proper pursuant to 28 U.S.C. § 1391 because _____
27 _____
28 _____

III. PARTIES

3. Plaintiff _____ resides at:
(your full name)

(your address)

(You should specifically identify each Defendant you intend to sue in a separate, numbered paragraph.)

4. Defendant _____ works at
(full name of Defendant)

(Defendant's place of work)

Defendant's title or position is _____
(Defendant's title or position at place of work)

This Defendant is sued in his/her (check one or both):

☐ individual capacity

☐ official capacity

This Defendant was acting under color of law because: _____

5. Defendant _____ works at
(full name of Defendant)

(Defendant's place of work)

Defendant's title or position is _____
(Defendant's title or position at place of work)

This Defendant is sued in his/her (check one or both):

☐ individual capacity

☐ official capacity

This Defendant was acting under color of law because: _____

1. Defendant _____ works at
Insert ¶ # (full name of Defendant)

2
3 _____
(Defendant's place of work)

4 Defendant's title or position is _____
(Defendant's title or position at place of work)

6 This Defendant is sued in his/her (check one or both):
7 ☐ individual capacity ☐ official capacity

9 This Defendant was acting under color of law because _____
10 _____
11 _____
12 _____

13 _____
14 _____
15 _____
16 1. Defendant _____ works at
Insert ¶ # (full name of Defendant)

17 _____
18 _____
19 *(Defendant's place of work)*

20 Defendant's title or position is _____
(Defendant's title or position at place of work)

21
22 This Defendant is sued in his/her (check one or both):
23 ☐ individual capacity ☐ official capacity

24
25 This Defendant was acting under color of law because _____
26 _____
27 _____
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IV. STATEMENT OF FACTS

(Explain what happened in your own words. You do not have to cite legal authority in this section. Be specific about names, dates, and places. Explain what each Defendant did. Remember to number every paragraph.)

Insert ¶ #

Insert ¶ #

Insert ¶ #

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Insert ¶ #

Insert ¶ #

Insert ¶ #

V. CLAIMS

Claim #1

_____. Plaintiff realleges and incorporates by reference all of the paragraphs above.
Insert ¶ #

_____. Plaintiff has a claim under 42 U.S.C. §1983 for violation of the following
Insert ¶ # federal constitutional or statutory civil right:

_____. The above civil right was violated by the following Defendants:
Insert ¶ #

(You may list facts supporting your claim. Be specific about how each Defendant violated this particular civil right.)

_____.
Insert ¶ #

_____. As a result of the Defendant's violation of the above civil right, Plaintiff
Insert ¶ # was harmed in the following way:

Claim # ()
(insert Claim#)

_____. Plaintiff realleges and incorporates by reference all of the paragraphs above.
Insert ¶ #

(List any other legal claim you have that is related to your civil rights claim.)

_____.
Insert ¶ #

_____. Plaintiff alleges the above claim against the following Defendant(s):
Insert ¶ #

(You may list facts supporting your claim. Be specific about how each Defendant
violated the rights giving rise to this claim.)

_____.
Insert ¶ #

_____. As a result of the Defendant's violation of the rights giving rise to this
Insert ¶ # claim, Plaintiff was harmed in the following way:

VI. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff requests:

Insert ¶ #

Insert ¶ #

Insert ¶ #

Insert ¶ #

Dated: _____

Sign: _____

Print Name: _____

Case: 8:19cv613 Doc: 65

Edward Avila
1621 W Cubbon Street
Santa Ana, CA 92703

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnef@cacd.uscourts.gov
Message-Id:<31164565@cacd.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al Notice of Report and Recommendation Content-Type:
text/html

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 1/4/2021 at 4:07 PM PST and filed on 1/4/2021

Case Name: Edward Avila v. State of California et al
Case Number: 8:19-cv-00613-JVS-ADS
Filer:
Document Number: 65

Docket Text:

NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Autumn D. Spaeth. Objections to R&R due by 1/25/2021. (kh)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

Julia Ann Clayton julia.clayton@doj.ca.gov

Bejan Eyre Atashkar susan.lincoln@doj.ca.gov, bejan.atashkar@doj.ca.gov

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Edward Avila

1621 W Cubbon Street

Santa Ana CA 92703

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDWARD AVILA,

PLAINTIFF/PETITIONER,

v.

STATE OF CALIFORNIA, et al.,

DEFENDANT/RESPONDENT.

CASE NUMBER:

8:19-00613 JVS (ADS)

NOTICE OF FILING OF
MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION

TO: All Parties of Record

You are hereby notified that the Magistrate Judge's Report and Recommendation has been filed on
January 4, 2021.

Any party having Objections to the Report and Recommendation and/or order shall, not later than
January 25, 2021, file and serve a written statement of Objections with points and authorities
in support thereof before the Honorable Autumn D. Spaeth, U.S. Magistrate Judge. A party
may respond to another party's Objections within 14 days after being served with a copy of the Objections.

Failure to object within the time limit specified shall be deemed a consent to any proposed findings of fact.
Upon receipt of Objections and any Response thereto, or upon expiration of the time for filing Objections or a
Response, the case will be submitted to the District Judge for disposition. Following entry of Judgment and/or
Order, all motions or other matters in the case will be considered and determined by the District Judge.

The Report and Recommendation of a Magistrate Judge is not a Final Appealable Order. A Notice of
Appeal pursuant to Federal Rules of Appellate Procedure 4(a)(1) should not be filed until entry of a Judgment
and/or Order by the District Judge.

CLERK, UNITED STATES DISTRICT COURT

Dated: January 4, 2021

By: K. Hopkins

Case: 8:19cv613 Doc: 66

Edward Avila
1621 W Cubbon Street
Santa Ana, CA 92703

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnf@cacd.uscourts.gov
Message-Id:<31164690@cacd.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al Notice of Report and Recommendation Content-Type:
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 1/4/2021 at 4:15 PM PST and filed on 1/4/2021

Case Name: Edward Avila v. State of California et al

Case Number: 8:19-cv-00613-JVS-ADS

Filer:

Document Number: 66

Docket Text:

AMENDED NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge
Autumn D. Spaeth. Objections to R&R due by 1/19/2021. (kh)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

Julia Ann Clayton julia.clayton@doj.ca.gov

Bejan Eyre Atashkar susan.lincoln@doj.ca.gov, bejan.atashkar@doj.ca.gov

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Edward Avila

1621 W Cubbon Street

Santa Ana CA 92703

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDWARD AVILA,

PLAINTIFF/PETITIONER,

v.

STATE OF CALIFORNIA, et al.,

DEFENDANT/RESPONDENT.

CASE NUMBER:

8:19-00613 JVS (ADS)

**AMENDED NOTICE OF FILING
OF MAGISTRATE JUDGE'S
REPORT AND
RECOMMENDATION**

TO: All Parties of Record

You are hereby notified that the Magistrate Judge's Report and Recommendation has been filed on January 4, 2021.

Any party having Objections to the Report and Recommendation and/or order shall, not later than January 19, 2021, file and serve a written statement of Objections with points and authorities in support thereof before the Honorable Autumn D. Spaeth, U.S. Magistrate Judge. A party may respond to another party's Objections within 14 days after being served with a copy of the Objections.

Failure to object within the time limit specified shall be deemed a consent to any proposed findings of fact. Upon receipt of Objections and any Response thereto, or upon expiration of the time for filing Objections or a Response, the case will be submitted to the District Judge for disposition. Following entry of Judgment and/or Order, all motions or other matters in the case will be considered and determined by the District Judge.

The Report and Recommendation of a Magistrate Judge is not a Final Appealable Order. A Notice of Appeal pursuant to Federal Rules of Appellate Procedure 4(a)(1) should not be filed until entry of a Judgment and/or Order by the District Judge.

CLERK, UNITED STATES DISTRICT COURT

Dated: January 4, 2021

By: K. Hopkins

Case: 8:19cv613 Doc: 69

Edward Avila
1621 W Cubbon Street
Santa Ana, CA 92703

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnf@cacd.uscourts.gov
Message-Id:<31346864@cacd.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al Order on Motion for Order Content-Type: text/html

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 2/4/2021 at 11:50 AM PST and filed on 2/4/2021

Case Name: Edward Avila v. State of California et al

Case Number: 8:19-cv-00613-JVS-ADS

Filer:

Document Number: 69

Docket Text:

MINUTE (IN CHAMBERS) ORDER GRANTING REQUEST TO CHANGE ADDRESS [68]
by Magistrate Judge Autumn D. Spaeth. Plaintiff may file a notice of change of address with the Court providing the post office box he wishes to use. Plaintiff is advised that all notices related to this case will continue to be sent to the current service address on file until this information is received. (hr)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

Julia Ann Clayton michelle.coseng@doj.ca.gov

Bejan Eyre Atashkar susan.lincoln@doj.ca.gov, bejan.atashkar@doj.ca.gov

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Edward Avila

1621 W Cubbon Street

Santa Ana CA 92703

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 8:19-00613 JVS (ADS) Date: February 4, 2021
Title: Edward Avila v. State of California, et al.

Present: The Honorable Autumn D. Spaeth, United States Magistrate Judge

<u>Kristee Hopkins</u>	<u>None Reported</u>
Deputy Clerk	Court Reporter / Recorder
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

**Proceedings: (IN CHAMBERS) ORDER GRANTING REQUEST TO
CHANGE ADDRESS**

On January 26, 2021, the Court received a "Request for Change of Address" filed by pro se plaintiff Edward Avila. [Dkt. No. 68]. Plaintiff requests that he be permitted to change his mailing address to a post office box.

Plaintiff's request is **GRANTED**. Plaintiff may file a notice of change of address with the Court providing the post office box he wishes to use. Plaintiff is advised that all notices related to this case will continue to be sent to the current service address on file until this information is received.

IT IS SO ORDERED.

Initials of Clerk kh

Case: 8:19cv613 Doc: 71

Edward Avila
1621 W Cubbon Street
Santa Ana, CA 92703

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnef@cacd.uscourts.gov
Message-Id:<31384540@cacd.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al Judgment Content-Type: text/html

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 2/10/2021 at 5:24 PM PST and filed on 2/10/2021

Case Name: Edward Avila v. State of California et al

Case Number: 8:19-cv-00613-JVS-ADS

Filer:

WARNING: CASE CLOSED on 02/10/2021

Document Number: 71

Docket Text:

JUDGMENT by Judge James V. Selna, Related to: R&R - Accepting Report and Recommendations [70]. IT IS HEREBY ADJUDGED that the above-captioned case is dismissed with prejudice. (MD JS-6, Case Terminated).(hr)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

Julia Ann Clayton michelle.coseng@doj.ca.gov

Bejan Eyre Atashkar susan.lincoln@doj.ca.gov, bejan.atashkar@doj.ca.gov

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Edward Avila

1621 W Cubbon Street

Santa Ana CA 92703

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDWARD AVILA,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

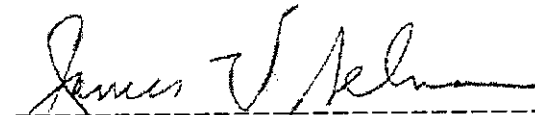
Defendants.

Case No. 8:19-00613 JVS (ADS)

JUDGMENT

Pursuant to the Court's Order Accepting the Report and Recommendation of
United States Magistrate Judge and Dismissing Case IT IS HEREBY ADJUDGED that
the above-captioned case is dismissed with prejudice.

DATED: 2/10/21



THE HONORABLE JAMES V. SELNA
United States District Judge

Case: 8:19cv613 Doc: 70

Edward Avila
1621 W Cubbon Street
Santa Ana, CA 92703

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnef@cacd.uscourts.gov
Message-Id:<31384532@cacd.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al R&R - Accepting Report and Recommendations
Content-Type: text/html

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 2/10/2021 at 5:22 PM PST and filed on 2/10/2021

Case Name: Edward Avila v. State of California et al

Case Number: 8:19-cv-00613-JVS-ADS

Filer:

Document Number: 70

Docket Text:

ORDER ACCEPTING REPORT AND RECOMMENDATIONS by Judge James V. Selna for MOTION to Dismiss [53], MOTION to Dismiss[43], Report and Recommendation [67]. 1. The United States Magistrate Judge's Report and Recommendation, [Dkt. No. 67], is accepted; 2. Defendants' Motions to Dismiss [Dkt. Nos. 43, 53] are granted; 3. The case is dismissed with prejudice; and 4. Judgment is to be entered accordingly. (see document for further details) (hr)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

Julia Ann Clayton michelle.coseng@doj.ca.gov

Bejan Eyre Atashkar susan.lincoln@doj.ca.gov, bejan.atashkar@doj.ca.gov

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Edward Avila

1621 W Cubbon Street

Santa Ana CA 92703

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 EDWARD AVILA,

12 Plaintiff,

13 v.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.
16

Case No. 8:19-00613 JVS (ADS)

ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE AND DISMISSING
CASE


17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the pleadings and all the
18 records and files herein, including the Report and Recommendation ("R&R") dated
19 January 4, 2021 [Dkt. No. 67], of the assigned United States Magistrate Judge. No
20 objections to the Report and Recommendation were filed, and the deadline for filing
21 such objections has passed.

22 Accordingly, IT IS HEREBY ORDERED:

- 23 1. The United States Magistrate Judge's Report and Recommendation,
24 [Dkt. No. 67], is accepted;

2. Defendants' Motions to Dismiss [Dkt. Nos. 43, 53] are granted;
3. The case is dismissed with prejudice; and
4. Judgment is to be entered accordingly.

DATED: 2/10/21



THE HONORABLE JAMES V. SELNA
United States District Judge

Case: 8:19cv613 Doc: 77

Edward Avila
2807 Honolulu Drive
Weslaco, TX 78596

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:noreply@ao.uscourts.gov
Message-Id:<31750672@cacd.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al Notice of Change of Attorney Business or Contact
Information (G-06) Content-Type: text/html

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 4/13/2021 at 9:04 AM PDT and filed on 4/8/2021

Case Name: Edward Avila v. State of California et al

Case Number: 8:19-cv-00613-JVS-ADS

Filer: Edward Avila

WARNING: CASE CLOSED on 02/10/2021

Document Number: 77

Docket Text:

Notice of Change of Address and Contact Information: changing address to 2807 Honolulu Drive, Weslaco, Texas 78596, changing Phone number to 956-246-3903 for Pro Se Litigant Edward Avila. (It)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

Bejan Eyre Atashkar bejan.atashkar@doj.ca.gov, susan.lincoln@doj.ca.gov

Julia Ann Clayton julia.clayton@doj.ca.gov, michelle.coseng@doj.ca.gov

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Edward Avila
2807 Honolulu Drive
Weslaco, TX 78596

The following document(s) are associated with this transaction:

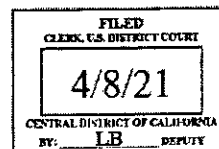
Document description:Main Document

Original filename:C:\fakepath\SA19CV00013JVS-Change Address.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=4/13/2021] [FileNumber=31750670-0
] [0a24dedb520cf59b44136dce285d43b74dcedc7e5e0c597327861b97911f9a48668
e840aa46aba23ddb2047e43aba708c0733aa34dcf3d7626a3397caac968d]]

Name and address:



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Edward D. Avila

CASE NUMBER:

PLAINTIFF(S)

8:19-CV-0013-JUS-ADSx

State of California
et al

DEFENDANT(S)

NOTICE OF CHANGE OF ATTORNEY
BUSINESS OR CONTACT INFORMATION

INSTRUCTIONS

Attorneys with pending cases:

If you are counsel of record in a case currently pending in this district and you need to update your business or contact information, you must file and serve this form in each of your pending cases. Doing so will satisfy your notice obligation under Local Rule 83-2.4. In addition, if you are registered to use the Court's electronic filing system, you must log in to your PACER account and update your information online. See Local Rule 5-4.8.1. For instructions, visit www.cacd.uscourts.gov/e-filing/updating-your-contact-information.

Attorneys with no pending cases:

If you are registered to use the Court's electronic filing system, but have no cases currently pending in this district, and you need to update your business or contact information in the Court's records, you must log in to your PACER account and update your information online (see www.cacd.uscourts.gov/e-filing/updating-your-contact-information). Doing so satisfies your obligations under Local Rules 5-4.8.1 and 83-2.4; you do not need to submit this or any other form.

If you are not registered to use the Court's electronic filing system, have no cases currently pending in this district, and need to update your business or contact information in the Court's records, please complete this form (you may leave the caption and case number blank) and email it to "email_update@acd.uscourts.gov" with the subject line "Attention: Attorney Admission Clerk." Doing so satisfies your notice obligation under Local Rule 83-2.4.

Please note:

Use this form only to make changes to an attorney's business or contact information, not to change a party's representation. If you need to add, remove, or substitute counsel in a particular case, use Form G-01 ("Request for Approval of Substitution or Withdrawal of Counsel") or Form G-123 ("Notice of Appearance or Withdrawal of Counsel").

SECTION I - IDENTIFYING INFORMATION

Name: Edward Avila

Current email address of record: _____

Check one: ☐ Member of the Central District Bar; CA Bar No: _____

☒ Admitted pro hac vice

Counsel of record for (if filing in a pending case): Edward Avila

If you are an Assistant United States Attorney or Deputy Federal Public Defender in this district, indicate your agency and office:

☐ PPDO

☐ USAO (specify): ☐ Civil Division ☐ Criminal Division

☐ Los Angeles

☐ Santa Ana

☐ Riverside

SECTION II - UPDATED INFORMATION

☐ I need to update the email address associated with my records. My new primary email address is: _____

Note: if you need to update the secondary email address(es) associated with your account, you must log in and make those changes yourself.

☒ I need to update other business or contact information. Please replace my current contact information with the following new information:

Attorney's name changed to: _____

Name of new firm or government agency: _____

New address: 2807 Honolulu Dr, Westlaco, TX 78596

New telephone number: (956) 246 3903 New fax number: _____

New email address (for non-e-filers): _____

SECTION III - APPLICATION TO CLOSED CASES

If you are registered to use the Court's e-filing system, you will have the opportunity to change your contact information on cases that are no longer pending when you update your information in PACER. If you are not registered, using this form to update your information will affect pending and future cases only, unless you check one of the boxes below:

- ☒ Update my information in all cases (including closed cases) in which I am listed as counsel of record.
- ☐ Update my information in only the following cases (include case name and number; attach additional pages if necessary):

SECTION IV - REGISTERING TO USE THE COURT'S E-FILE SYSTEM

If you have not yet registered to use the Court's e-filing system, you may do so at www.pacer.gov. Click "Manage My Account" in the upper right corner of the screen, log in using your individual upgraded PACER account, and select the "Maintenance" tab. Select "Attorney Admissions/E-File Registration," choose "U.S. District Courts," and the Central District of California from the dropdown menus, click on the "E-File Registration Only" button, and follow the instructions. Your request will be submitted to the Central District. If approved, you will be notified that your e-filing privileges have been activated.

SECTION V - SIGNATURE

Pursuant to Rule 83-2.4 of the Local Rules for the Central District of California, I hereby notify the Clerk of Court and all parties to this action, if any action is named above, that my business or contact information has changed as indicated herein.

Date:

4/5/2021

Signature:

Edmund Chudra

(Name / Nombre) Edwood Avila
(Address / Direccion) 2807 Honolulu
Weslaco TX 78596
(Phone / Telefono) (956) 346 3903
(Email / Correo electronico) edwood.avila1972@gmail.com
Plaintiff in Pro Per
(Plaintiff / Demandante or Defendant / Demandado)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Edwood Avila

Plaintiff

vs.

State of California et al

Defendants.

Case No.: 8:19-cv-00613 JVS-ADSx
U.S. DISTRICT COURT

PROOF OF SERVICE BY MAIL
(Certificado de Servicio por Correo)

I, Irasema Avila, declare as follows:
(Name / Nombre)

My address is (mi direccion es) 2807 Honolulu Drive
Weslaco, TX 78596, which
is located in the county where the mailing described below took place:

On 4/5/2021 I served the documents described as:
(date of mailing or delivery)

1. REQUEST FOR EXTENSION
(a petition for extension)

2. (PROPOSED) ORDER GRANTING REQUEST FOR EXTENSION
(orden propuesta otorgando la solicitud de extensión)

change of address

(list the names of any other documents that are being served with this order and the documents that are being served)

on all interested parties in this action by placing a true and correct copy thereof in a sealed envelope, with first-class postage prepaid thereon, and deposited said envelope in the United States mail at or in Santa Ana, CA,
(city and state of mailing - ciudad y estado de envío)
addressed to:

Julia A. Clayton, AG (name/nombre) Clerk of Court
455 Golden Gate Avenue (address/dirección) 225 E. Temple St.
Suite 11000 (address/dirección) Suite 15-134
San Francisco, CA 94102 (address/dirección) Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4/5/2021
(date)

at Santa Ana, CA
(city and state of mailing - ciudad y estado donde se firmó)

Irasema B. Avila
(signature - firma)

Irasema B. Avila
(print name - apellido y su nombre)

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APR - 6 2021

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215

APR - 7 2021

clerk of court
225 E Temple St
Suite 15-134
Los Angeles CA 90012

Edward Avila
2807 Honolulu
Pasadena TX 78596

Case: 8:19cv613 Doc: 82

Edward Avila
2807 Honolulu Drive
Weslaco, TX 78596

MIME-Version:1.0 From:caed_ecfmail@caed.uscourts.gov To:noreply@ao.uscourts.gov
Message-Id:<32074245@caed.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al Minutes of In Chambers Order/Directive - no proceeding held
Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 6/8/2021 at 10:50 AM PDT and filed on 6/8/2021

Case Name: Edward Avila v. State of California et al

Case Number: 8:19-cv-00613-JVS-ADS

Filer:

WARNING: CASE CLOSED on 02/10/2021

Document Number: 82

Docket Text:

MINUTE (IN CHAMBERS) ORDER STRIKING PLAINTIFF'S NOTICE OF LODGING OF EXHIBITS [80], [81] by Magistrate Judge Autumn D. Spaeth. Having reviewed Plaintiff's notices and the attached exhibits, the Court finds the case is closed and these exhibits to be unrelated to any pending matter. Accordingly, the Court STRIKES Plaintiff's Notices of Lodging, [Dkt. Nos. 80, 81], and ORDERS the exhibits returned to Plaintiff. (hr)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

Julia Ann Clayton julia.clayton@doj.ca.gov, michelle.coseng@doj.ca.gov

Bejan Eyre Atashkar susan.lincoln@doj.ca.gov, bejan.atashkar@doj.ca.gov

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Edward Avila
2807 Honolulu Drive
Weslaco TX 78596

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 8:19-0613-JVS-ADS Date: June 8, 2021

Title: Avila v. State of California, et al.

Present: The Honorable Autumn D. Spaeth, United States Magistrate Judge

Kristee Hopkins

Deputy Clerk

None Reported

Court Reporter / Recorder

Attorney(s) Present for Plaintiff(s):
None Present

Attorney(s) Present for Defendant(s):
None Present

**Proceedings: (IN CHAMBERS) ORDER STRIKING PLAINTIFF'S NOTICE
OF LODGING OF EXHIBITS**

On May 12, 2021, Plaintiff Edward Avila filed a Notice of Lodging for two exhibits. [Dkt. No. 80]. Two days later, Plaintiff filed a subsequent Notice of Lodging for a single exhibit. [Dkt. No. 81].

Having reviewed Plaintiff's notices and the attached exhibits, the Court finds the case is closed and these exhibits to be unrelated to any pending matter. Accordingly, the Court **STRIKES** Plaintiff's Notices of Lodging, [Dkt. Nos. 80, 81], and **ORDERS** the exhibits returned to Plaintiff.

IT IS SO ORDERED.

Initials of Clerk kh

Case: 8:19cv613 Doc: 83

Edward Avila
2807 Honolulu Drive
Weslaco, TX 78596

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:noreply@ao.uscourts.gov
Message-Id:<32217260@cacd.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al Motion for Leave to Appeal In Forma Pauperis
Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 7/2/2021 at 1:22 PM PDT and filed on 5/25/2021

Case Name: Edward Avila v. State of California et al

Case Number: 8:19-cv-00613-JVS-ADS

Filer: Edward Avila

WARNING: CASE CLOSED on 02/10/2021

Document Number: 83

Docket Text:

MOTION and Affidavit for Permission to Proceed In Forma Pauperis filed by plaintiff Edward Avila. (mat)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

Bejan Eyre Atashkar bejan.atashkar@doj.ca.gov, susan.lincoln@doj.ca.gov

Julia Ann Clayton julia.clayton@doj.ca.gov, michelle.coseng@doj.ca.gov

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Edward Avila

2807 Honolulu Drive

Weslaco, TX 78596

The following document(s) are associated with this transaction:

Document description:Main Document

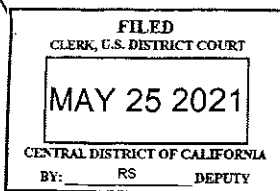
Original filename:C:\fakepath\SA19CV00613.IFP.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=7/2/2021] [FileNumber=32217258-0]

[b6bf5f09e9662bd822c2a45e52cd811b496a4d22b82ea98fd4630375ed286e025c2b

3555355c87e0489faa87590669862343cc0ecef199891939e40a0dd83ef5]]



RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS
MAY 25 2021

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
DOCKETED
DATE
INITIAL

Form 4. Motion and Affidavit for Permission to Proceed in Forma Pauperis

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form04instructions.pdf>

9th Cir. Case Number(s)

Case Name

8:19-cv-00613-JVS-ADSx

Affidavit in support of motion: I swear under penalty of perjury that I am financially unable to pay the docket and filing fees for my appeal. I believe my appeal has merit. I swear under penalty of perjury under United States laws that my answers on this form are true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Signature

Edmund Clark

Date

5/22/2021

The court may grant a motion to proceed in forma pauperis if you show that you cannot pay the filing fees and you have a non-frivolous legal issue on appeal. Please state your issues on appeal. (attach additional pages if necessary)

Do disabled people have a voice in court? Congress allows for Reasonable Accommodations but do courts have too? Did the honorable judge error in not only denying reasonable but in reducing accommodations for a disabled person? Jurisprudence dictates disabled people suffer from systemic oppression without access to reasonable accommodations forcing a subsection of the population to occupy an adverse position of society therefore setting a low bar assuring the equilibrium on disabled people constitutional rights to be less than equal representation by removing their access to a voice when faced with an undue burden of being able to speak like a lawyer thus inflicting a drastic impact on disabled people and thus the society as a whole by denying access of disabled people to the judicial branch of government in not allowing them to have reasonable accommodations thus systemically oppressing disabled people; is that a social norm of the legal system or did congress hold society and the judicial system accountable to uphold the rights of the United States Constitution for disabled people too, in other words do disabled people have the same access to the judicial branch if the courts are not willing to allow for reasonable accommodations and is it reasonable to not only withhold reasonable accommodations but to reduce accommodations on a disabled person?

1. For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income Source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ 0	\$ 0	\$ 0
Self-Employment	\$ 0	\$ 0	\$ 0	\$ 0
Income from real property (such as rental income)	\$ 0	\$ 0	\$ 0	\$ 0
Interest and Dividends	\$ 0	\$ 0	\$ 0	\$ 0
Gifts	\$ 0	\$ 0	\$ 0	\$ 0
Alimony	\$ 0	\$ 0	\$ 0	\$ 0
Child Support	\$ 0	\$ 0	\$ 0	\$ 0
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ 0	\$ 0	\$ 0
Disability (such as social security, insurance payments)	\$ 1100	\$ 0	\$ 0	\$ 0
Unemployment Payments	\$ 0	\$ 1424.00	\$ 0	\$ 2648.00
Public-Assistance (such as welfare)	\$ 0	\$ 0	\$ 0	\$ 0
Other (specify) <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
TOTAL MONTHLY INCOME:	\$ 1100	\$ 0	\$ 0	\$ 0

2. List your employment history for the past two years, most recent employer first.
(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
United States Census	Los Angeles Office 360 E. 2nd Street, Suite 325 Los Angeles, CA 90012	From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>

3. List your spouse's employment history for the past two years, most recent employer first.
(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
Mercy House Living Centers	P.O. Box 1905, Santa Ana, CA 92702	From 11/2018 To 08/2020	\$ 2900.00
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>
		From <input type="text"/> To <input type="text"/>	\$ <input type="text"/>

4. How much cash do you and your spouse have? \$

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount You Have	Amount Your Spouse Has
Wells Fargo	Checking	\$ 12.00	\$ 900.00
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishing.

Home	Value	Other Real Estate	Value
n/a	\$ n/a	n/a	\$ n/a

Motor Vehicle 1: Make & Year	Model	Registration #	Value
2008 Dodge Caravan	CE		\$ 1000
Motor Vehicle 2: Make & Year	Model	Registration #	Value
1999 Toyota Siena	CE		\$ 50, blown mortor

Other Assets	Value
n/a	\$ n/a
	\$
	\$

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse	Amount owed to you	Amount owed to your spouse
n/a	\$ n/a	\$ n/a
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support. If a dependent is a minor, list only the initials and not the full name.

Name	Relationship	Age
D. A.	Son	8
D.E.R.A	Son	10
D.A.	Son	15

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 200	\$ 200
- Are real estate taxes included? <input type="radio"/> Yes <input checked="" type="radio"/> No		
- Is property insurance included? <input type="radio"/> Yes <input checked="" type="radio"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 300	\$ 300
Home maintenance (repairs and upkeep)	\$ 1000	\$ 0
Food	\$ 200	\$ 800
Clothing	\$ 200	\$ 200
Laundry and dry-cleaning	\$ 80	\$ 80
Medical and dental expenses	\$ 0	\$ 600
Transportation (not including motor vehicle payments)	\$ 0	\$ 0
Recreation, entertainment, newspapers, magazines, etc.	\$ 30	\$ 25
Insurance (not deducted from wages or included in mortgage payments)		
- Homeowner's or renter's	\$ 0	\$ 0
- Life	\$ 0	\$ 0
- Health	\$ 0	\$ 0
- Motor Vehicle	\$ 0	\$ 140
- Other	\$ 0	\$ 0
Taxes (not deducted from wages or included in mortgage payments)		
Specify	\$ 0	\$ 0

	You	Spouse
Installment payments		
- Motor Vehicle	\$ 0	\$ 0
- Credit Card (name) <input type="text"/>	\$ 0	\$ 0
- Department Store (name) <input type="text"/>	\$ 0	\$ 0
Alimony, maintenance, and support paid to others	\$ 0	\$ 0
Regular expenses for the operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ 0
Other (specify) <input type="text"/>	\$ 0	\$ 0
TOTAL MONTHLY EXPENSES	\$ 0	\$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months? ☒ Yes ☐ No

If Yes, describe on an attached sheet.

10. Have you spent—or will you be spending—any money for expenses or attorney fees in connection with this lawsuit? ☐ Yes ☒ No

If Yes, how much? \$

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

My wife's unemployment benefits may end unexpectedly

12. State the city and state of your legal residence.

City

State

Your daytime phone number (ex., 415-355-8000)

Your age

Your years of schooling

Case: 8:19cv613 Doc: 67

Edward Avila
1621 W Cubbon Street
Santa Ana, CA 92703

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnf@cacd.uscourts.gov
Message-Id:<31164776@cacd.uscourts.gov>Subject:Activity in Case 8:19-cv-00613-JVS-ADS
Edward Avila v. State of California et al Report and Recommendation (Issued) Content-Type:
text/html

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 1/4/2021 at 4:18 PM PST and filed on 1/4/2021

Case Name: Edward Avila v. State of California et al

Case Number: 8:19-cv-00613-JVS-ADS

Filer:

Document Number: 67

Docket Text:

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE issued by Magistrate Judge Autumn D. Spaeth re Complaint - (Discovery), [1], Motions to Dismiss[43], [53]. It is recommended that the District Judge issue an Order (1) accepting this Report and Recommendation; (2) granting Defendants' Motions to Dismiss [Dkt. Nos. 43, 53] without leave to amend; and (3) dismissing all claims against the State of California, California DOR, Ignacio Alegre, Lechelle Brueggeman, Erica Frees, Sherri Han-Lam, and Sheila Truong. (kh)

8:19-cv-00613-JVS-ADS Notice has been electronically mailed to:

Julia Ann Clayton julia.clayton@doj.ca.gov

Bejan Eyre Atashkar susan.lincoln@doj.ca.gov, bejan.atashkar@doj.ca.gov

8:19-cv-00613-JVS-ADS Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Edward Avila

1621 W Cubbon Street

Santa Ana CA 92703

1
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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 EDWARD AVILA,

11 Plaintiff,

12 v.

13 STATE OF CALIFORNIA, et al.,

14 Defendants.
15
16

Case No. 8:19-00613 JVS (ADS)

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

17 This Report and Recommendation is submitted to the Honorable James V. Selna,
18 United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of
19 the United States District Court for the Central District of California.

20 I. INTRODUCTION

21 Plaintiff Edward Avila ("Plaintiff"), proceeding pro se, filed a civil rights action
22 under 42 U.S.C. § 1983 ("Section 1983") against the State of California, the California
23 Department of Rehabilitation (the "DOR") and five of its employees, Ignacio Alegre,
24 Lechelle Brueggeman, Erica Frees, Sherri Han-Lam, and Sheila Truong, each in their

1 official capacities only (collectively, "Defendants"). In the First Amended Complaint
2 ("FAC"), Plaintiff alleges defendants violated his constitutional rights by refusing to
3 provide Vocational Rehabilitation Services to attend law school. [Dkt. No. 15].

4 Before the Court are two motions to dismiss. The first was filed by defendants
5 Ignacio Alegre, Lechelle Brueggeman, Erica Frees, Sherri Han-Lam, and Sheila Truong.
6 [Dkt. No. 43]. The second was filed by the State of California and the DOR. [Dkt. No.
7 53]. Both motions assert all of Plaintiff's claims should be dismissed pursuant to either
8 Rule 12(b)(1) or 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a
9 claim.

10 **II. SUMMARY OF ALLEGATIONS AND PROCEDURAL HISTORY**

11 In the FAC, Plaintiff alleges a series of constitutional violations by Defendants
12 that resulted in a denial of Vocational Rehabilitation Services ("VRS") to attend law
13 school. Plaintiff is a disabled individual who "presents with Obsessive Compulsive
14 Disorder, Dyslexia, back pain, and a 17 percent reduction in motion of his right hand."
15 [Dkt. No. 15, p. 23]. Plaintiff was a recipient of benefits from the Texas Department of
16 Assistive and Rehabilitative Services ("DARS"). [*Id.* at ¶ 11]. During or before 2016, he
17 moved to California, where he applied for VRS from the California Department of
18 Rehabilitation. [*Id.*]. Plaintiff alleges that Texas DARS and California DOR did not
19 communicate to transfer his information between them, resulting in Plaintiff's Ticket to
20 Work, and hence his Supplemental Security Income, being placed in jeopardy. [*Id.* at ¶
21 11-12]. On July 25, 2017, Plaintiff received a Notice of Eligibility and Priority for
22 Services from DOR. [*Id.* at ¶ 12].

23 The FAC alleges that Plaintiff wished to obtain an Individual Plan for
24 Employment ("IPE") with the degree of Juris Doctor as the goal. [Dkt. No. 15, ¶ 13].

1 Plaintiff had previous experience as a teacher, but informed Defendant Truong, his
2 initial counselor, he could not teach again due to his disability. [Id. at ¶ 14]. The FAC
3 alleges Defendant Truong ignored Plaintiff's explanation and informed him that
4 Defendant Alegre, her supervisor at DOR, would not allow an IPE with law school as the
5 goal. [Id.]. Plaintiff also asserts Defendant Alegre told Plaintiff "no one does a PHD or
6 Juris Doctor through the Department of Rehabilitation ...you took 20 year [sic] to earn
7 your (MA) degree." [Id. at ¶ 29]. Plaintiff, concerned about losing SSI benefits, agreed
8 on October 31, 2017 to an IPE with the goal of high school teacher. [Id. at ¶ 14].

9 To fulfill the IPE, Plaintiff enrolled in math and writing classes at Santa Ana
10 College ("SAC"). [Dkt. No. 15, ¶ 15]. He also enrolled in two paralegal classes that were
11 "verbally okayed" by Defendant Truong. [Id.]. Plaintiff received a new DOR counselor,
12 Defendant Frees, who informed him the paralegal classes were not authorized, and DOR
13 would pay for the classes, but not the books. [Id.]. Eventually, due to the lack of books,
14 a delay in receiving assistive technology, and pressure from Defendant Alegre over
15 budget concerns, Plaintiff withdrew from all his classes at SAC. [Id. at ¶ 16].

16 Subsequently, Plaintiff was admitted to the J.D. program at Trinity Law School.
17 [Dkt. No. 15, ¶ 16]. According to the FAC, at the time of enrollment, Plaintiff's IPE did
18 not include a law degree, but he believed DOR, if ordered by the Office of Administrative
19 Hearings ("OAH"), would fund his legal education. [Id. at ¶ 16]. However, the OAH
20 later held the denial of an IPE for law school was justified. [Id. at Exh. A, p. 28]. In late
21 2018, Plaintiff was terminated as a client at DOR. [Id. at ¶ 21].

22 On April 1, 2018, Plaintiff filed suit against the State of California, California
23 DOR, and three of the named Defendants. [Dkt. No. 1]. The complaint was dismissed
24 with leave to amend because it failed to state a claim pursuant to Federal Rule of Civil

1 Procedure 8. [Dkt. No. 14]. On October 31, 2019, Plaintiff filed a First Amended
2 Complaint ("FAC") that added the remaining two named Defendants. [Dkt. No. 15]. A
3 copy of the decision of an Administrative Law Judge at the Office of Administrative
4 Hearings who ruled on Plaintiff's challenge of DOR decisions was attached to the FAC.
5 [Id. at Exh. A]; see Fed. R. Civ. P. 10(c) ("[a] copy of a written instrument that is an
6 exhibit to a pleading is part of the pleading for all purposes.").

7 Plaintiff lists two claims in the FAC. Claim One is a Section 1983 action for
8 violation of the Rehabilitation Act of 1973, and violations of the Fifth and Fourteenth
9 Amendments to the United States Constitution brought against defendants State of
10 California, California DOR, Truong, Alegre, Brueggeman, and Frees. [Dkt. No. 15, ¶¶
11 24-25]. Claim Two is a Section 1983 action for violation of due process pursuant to the
12 Fifth Amendment, violation of equal protection pursuant to the Fourteenth
13 Amendment, violation of the Rehabilitation Act of 1973, and "abuse of power under the
14 color of law." [Id. at ¶ 34]. Claim Two is brought against defendants Truong, Alegre,
15 Brueggeman, and Ham-Lam. [Id. at ¶ 35]. Plaintiff seeks recovery of "expectation"
16 costs of \$120,000 per year, based on United States Department of Labor estimates of
17 attorney salaries, and benefits for twenty years, totaling four million dollars. [Id. at ¶
18 39].

19 The state employee defendants filed a Motion to Dismiss on April 22, 2020,
20 seeking to dismiss all claims, pursuant to Rule 12(b)(1), because Plaintiff failed to
21 establish Article III standing and because Defendants are entitled to sovereign
22 immunity. [Dkt. No. 43]. These defendants also sought to dismiss all claims pursuant
23 to Rule 12(b)(6) because Plaintiff failed to state a claim for either a Section 1983
24 violation or a Rehabilitation Act violation. The State of California and California DOR,

1 represented by the same counsel as the state employee defendants, filed a substantially
2 similar motion¹ to dismiss on July 22, 2020 (hereinafter, "California's Motion"). [Dkt.
3 No. 53]. Plaintiff filed an Opposition to the state employees' Motion to Dismiss on May
4 20, 2020 ("Opposition") and filed an Opposition to California's Motion on August 12,
5 2020 ("Second Opposition"), addressing each of Defendants' contentions in turn. [Dkt.
6 Nos. 49, 58]. Defendants filed Replies in Support of their Motions to Dismiss on June
7 24, 2020 and August 26, 2020, respectively. [Dkt. Nos. 51, 62]. As both motions to
8 dismiss are substantially similar and filed by the same counsel, the court address both
9 motions together here.

10 **III. ANALYSIS**

11 **A. Standard of Review for Rule 12(b)(1) Motions**

12 A Rule 12(b)(1) motion for lack of subject matter jurisdiction may be either a
13 facial or factual attack. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir.
14 2004). A facial attack "asserts that the allegations contained in a complaint are
15 insufficient on their face to invoke federal jurisdiction." Safe Air for Everyone, 373 F.3d
16 at 1039. All allegations in the complaint are presumed true for purposes of a facial
17 attack, Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004), but the court need not
18 accept as true legal conclusions couched as factual allegations, Doe v. Holy See, 557 F.3d
19 1066, 1073 (9th Cir. 2009). "By contrast, in a factual attack, the challenger disputes the
20 truth of the allegations that, by themselves, would otherwise invoke federal

21
22
23 ¹ This motion to dismiss also sought to dismiss claims against DOR pursuant to Rule
24 12(b)(5) for deficient service. For reasons discussed below, all claims must be dismissed
on other grounds. As such, the Court finds it unnecessary to address the issue of service
at this time.

1 jurisdiction.” Safe Air for Everyone, 373 F.3d at 1039. In a factual attack, the court may
2 consider evidence outside the pleadings without converting the motion into one for
3 summary judgment. Safe Air for Everyone, 373 F.3d at 1039 (citing Savage v. Glendale
4 Union High Sch., Dist. No. 205, Maricopa Cty., 343 F.3d 1036, 1039 n.2 (9th Cir.
5 2003)).

6 Additionally, a Rule 12(b)(1) motion is the “proper vehicle for invoking sovereign
7 immunity from suit.” Pistor v. Garcia, 791 F.3d 1104, 1111 (9th Cir. 2015). A party
8 invoking sovereign immunity bears the burden of establishing its existence. Pistor, 791
9 F.3d at 1111 (citing Miller v. Wright, 705 F.3d 919, 923 (9th Cir. 2013)).

10 **B. Section 1983: Defendants are Entitled to Sovereign Immunity**

11 Defendants seek to dismiss all of Plaintiff’s claims, which are based on Section
12 1983, because Defendants are immune from such suit pursuant to the Eleventh
13 Amendment. [Dkt. No. 43, pp. 2, 20-21; Dkt. No. 53, p. 18]. The Eleventh Amendment
14 bars suit in federal court by citizens against a state or its agencies under Section 1983
15 unless the state has waived its immunity. See N. Ins. Co. of N.Y. v. Catham County, Ga.,
16 547 U.S. 189, 193 (2006); Savage, 343 F.3d at 1040 (“[i]t is well established that
17 agencies of the state are immune under the Eleventh Amendment from private damages
18 or suits for injunctive relief brought in federal court.”). Generally, state officers acting in
19 their official capacity receive the same immunity as the government agency that employs
20 them. Hafer v. Melo, 502 U.S. 21, 25 (1991). An “official-capacity suit is, in all respects
21 other than name, to be treated as a suit against the entity.” Kentucky v. Graham, 473
22 U.S. 159, 166 (1985) (citation omitted). The party asserting sovereign immunity bears
23 the initial burden of proving they are entitled to it. Sato v. Orange Cty. Dep’t of Educ.,
24 861 F.3d 923, 928 (9th Cir. 2017).

1 Defendants assert they are all entitled to sovereign immunity as a state, state
2 agency, and state employees sued in official capacity for monetary damages. [Dkt. No.
3 43, pp. 20-21; Dkt. No. 53, pp. 18-19]. Defendants are correct that all defendants are
4 immune pursuant to the Eleventh Amendment. As a state, defendant State of California
5 is immune. N. Ins. Co. of N.Y., 547 U.S. at 193; see also Brown v. Cal. Dep't of Corr., 554
6 F.3d 747, 752 (9th Cir. 2009) (“[t]he State of California has not waived its Eleventh
7 Amendment immunity with respect to claims brought under § 1983 in federal court, and
8 the Supreme Court has held that § 1983 was not intended to abrogate a State’s Eleventh
9 Amendment immunity”) (internal citations omitted). As a state agency, California DOR
10 is immune. Savage, 343 F.3d at 1040; Dittman v. California, 191 F.3d 1020, 1025-26
11 (9th Cir. 1999) (“[i]n the absence of a waiver by the state or a valid congressional
12 override, ‘under the eleventh amendment, agencies of the state are immune from private
13 damage actions or suits for injunctive relief brought in federal court.’”). Finally, as
14 employees of a state agency sued only in their official capacities and only for monetary
15 damages, Defendants Alegre, Brueggeman, Frees, Ham-Lan, and Truong are also
16 entitled to Eleventh Amendment immunity. Graham, 473 U.S. at 166. Indeed, courts
17 have specifically found California DOR and its employees are entitled to sovereign
18 immunity. See Lett v. Cal. Dep't of Rehab., 2012 WL 5880440, at *3 (E.D. Cal. Nov. 21,
19 2012) (“[i]t appears from the general allegations that the California Department of
20 Rehabilitation cannot be sued for damages in federal court because of Eleventh
21 Amendment immunity.”); see also Bly-Magee v. California, 236 F.3d 1014, 1017 (9th Cir.
22 2001) (holding California DOR and its employees were entitled to sovereign immunity
23 from False Claims Act actions). Accordingly, Defendants meet their burden to show
24 they are entitled to sovereign immunity.

1 In Opposition, Plaintiff does not provide any case law or point to any exception to
2 sovereign immunity that applies to DOR and its employees, but argues instead
3 defendant employees abused their discretion, and thus are not entitled to immunity.
4 [Dkt. No. 49, p. 18]. Plaintiff also argues “the injury is the result of DOR actions not
5 result of state judgment; therefore, the state is not immune and suit can proceed to
6 circuit court.” [Id. at p. 19]. In the Second Opposition, Plaintiff further argues the
7 Commerce Clause “gives congress jurisdiction over this case,” and appears to assert
8 Defendants have “no discretion in actively misrepresenting information to the ALJ.”
9 [Dkt. No. 58, p. 7]. Plaintiff provides no legal support for these arguments.

10 Sovereign immunity may only be waived if a state waives its Eleventh
11 Amendment immunity or if Congress shows an intent to abrogate a state’s immunity.
12 See Dittman, 191 F.3d at 1025 (“[i]n the absence of a waiver by the state or a valid
13 congressional override, ‘under the eleventh amendment, agencies of the state are
14 immune’”) (quoting Mitchell v. Los Angeles Community College Dist., 861 F.2d 198, 201
15 (9th Cir. 1989)). The State of California has not waived its sovereign immunity.
16 Moreover, the Supreme Court has held that “§ 1983 was not intended to abrogate a
17 State’s Eleventh Amendment immunity.” Graham, 473 U.S. at 169 n.17. In addition, the
18 Supreme Court expressly overruled the notion that Congress could abrogate sovereign
19 immunity when acting pursuant to the Commerce Clause. Seminole Tribe v. Florida,
20 517 U.S. 44, 72 (1996) (superseded by statute on other grounds) (“[e]ven when the
21 Constitution vests in Congress complete law-making authority over a particular area,
22 the 11th Amendment prevents congressional authorization of suits by private parties
23 against unconsenting States.”). Furthermore, although Defendants do not explicitly
24 raise the issue, the Supreme Court has ruled that a state, a state agency, and a state

1 official sued in her official capacity for monetary relief are not suable “persons”
2 pursuant to Section 1983. Will v. Mich. Dep’t of State Police, 491 U.S. 58, 64 (1989). As
3 such, it is clear from the face of the Complaint that Defendants are entitled to sovereign
4 immunity. All of Plaintiff’s Section 1983 claims must be dismissed.

5 In Opposition, Plaintiff raises, for the first time, a Section 1983 claim for
6 violations of the Commerce Clause and the First Amendment. [Dkt. No. 49, pp. 16-17,
7 21]. Although this claim was raised for the first time in opposition to the motions, in the
8 interest of judicial efficiency, the Court will consider the claim in order to determine
9 whether leave to amend is appropriate. However, as described in the Opposition, the
10 claim is a Section 1983 claim brought against a state, state agency, or state employees
11 sued in their official capacities for monetary damages only. As such, the claim is also
12 barred, for the same reasons discussed above. Allowing Plaintiff to amend the
13 Complaint to explicitly state this claim would be futile. All Section 1983 claims against
14 Defendants must be dismissed.

15 **C. Section 504 of the Rehabilitation Act**

16 Although each of Plaintiff’s claims is explicitly brought pursuant to Section 1983,
17 see [Dkt. No. 15, pp. 12-13, 18], in his Opposition, Plaintiff pivots and states, “[t]o clarify
18 FAC for [Motion to Dismiss], plaintiff does plead violations of 504 under Rehab Act.”
19 [Dkt. No. 49, p. 24]. Plaintiff similarly asserts “Plaintiff brings two claims, violation of
20 Rehabilitation Act and 1983 Violation of plaintiff’s Civil Rights,” in the Second
21 Opposition. [Dkt. No. 58, p. 14]. In the interest of judicial efficiency and because the
22 Rehabilitation Act was discussed in the FAC, the Court will analyze whether Plaintiff has
23 stated a claim under the Rehabilitation Act in order to determine whether leave to
24 amend is appropriate.

1 Defendants argue that, assuming Plaintiff intended to state a separate claim for
2 violations of the Rehabilitation Act, Plaintiff fails to state a claim upon which relief can
3 be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). [Dkt. No. 43, p. 30;
4 Dkt. No. 53, p. 32]. The legal sufficiency of a plaintiff's asserted claim or claims in his or
5 her complaint is tested with a Rule 12(b)(6) motion. Strom v. United States, 641 F.3d
6 1051, 1067 (9th Cir. 2011). Dismissal is proper under Rule 12(b)(6) when the complaint
7 either fails to allege a "cognizable legal theory" or fails to allege sufficient facts "to
8 support a cognizable legal theory." Caltex Plastics, Inc. v. Lockheed Martin Corp., 824
9 F.3d 1156, 1159 (9th Cir. 2016); Balisteri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th
10 Cir. 1990).

11 To overcome a Rule 12(b)(6) motion to dismiss, a complaint must allege "enough
12 facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v.
13 Twombly, 550 U.S. 544, 570 (2007). "The plausibility standard is a screening
14 mechanism designed to weed out cases that do not warrant either discovery or trial."
15 Twombly, 550 U.S. at 558-59. "A claim has facial plausibility when the plaintiff pleads
16 factual content that allows the court to draw the reasonable inference that the defendant
17 is liable for the misconduct." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). On a motion
18 to dismiss pursuant to Rule 12(b)(6), the court must "construe the complaint in the
19 light most favorable to the plaintiff, taking all her allegations as true and drawing all
20 reasonable inferences from the complaint in her favor." Doe v. U.S., 419 F.3d 1058,
21 1062 (9th Cir. 2009). However, courts are not bound to accept as true "a legal
22 conclusion couched as a factual allegation" nor does the court need to accept as true
23 allegations that contradict facts that may be judicially noticed by the court. Twombly,
24 550 U.S. at 555; Gonzalez v. Planned Parenthood of L.A., 759 F.3d 1112, 1115 (9th Cir.

1 2014) (quoting Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001)
2 (rehearing denied) (“[t]he court need not, however, accept as true allegations that
3 contradict matters properly subject to judicial notice or by exhibit.”); see also
4 Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295-96 (9th Cir. 1998) (“[w]e are not
5 required to accept as true conclusory allegations which are contradicted by documents
6 referred to in the complaint.”). The plaintiff’s “[f]actual allegations must be enough to
7 raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555. Even “a
8 liberal interpretation of a civil rights complaint may not supply essential elements of the
9 claim that were not initially pled.” Ivey v. Bd. of Regents of Univ. of Alaska, 673 F.2d
10 266, 268 (9th Cir. 1982).

11 Ordinarily, the court may not consider any materials outside the pleadings on a
12 Rule 12(b)(6) motion without converting the motion into a motion for summary
13 judgment. United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003). However, in
14 limited circumstances, such as when a document is attached to the complaint, the court
15 may consider it part of the pleadings. Ritchie, 342 F.3d at 908; Fed. R. Civ. P. 10(c).

16 The Rehabilitation Act of 1973 was designed to grant federal funding to states
17 who provided vocational rehabilitation services to individuals with disabilities.
18 42 U.S.C. §§ 701, 791, 794. To state a claim under Section 504 of the Rehabilitation Act,
19 a plaintiff must show “(1) he is an individual with a disability; (2) he is otherwise
20 qualified to receive the benefit; (3) he was denied the benefits of the program solely by
21 reason of his disability; and (4) the program receives federal financial assistance.”
22 Duvall v. Cty. of Kitsap, 260 F.3d 1124, 1135 (9th Cir. 2001). Defendants do not contest
23 that Plaintiff meets the first, second, or fourth elements. [Dkt. No. 43, pp. 30-31; Dkt.
24 No. 53, p. 33]. However, Defendants assert Plaintiff fails to state a claim under Section

1 504 because he fails to show he was denied benefits solely by reason of his disability
2 (third element). [Dkt. No. 43, pp. 31-32; Dkt. No. 53, p. 33].

3 As to the third element, Plaintiff refutes Defendants' claim and asserts DOR
4 denied him VRS to attend law school "solely by reason of his disability[,] stating that he
5 took 20 years to complete a Masters Degree because he is disabled." [Dkt. No. 49, p.
6 24]. He also argues Defendants ignored his explanation that his disability made
7 teaching difficult, and thus he did not want to pursue teaching as an employment goal.
8 [Id. at p. 25]. However, the FAC contradicts the notion Plaintiff was denied VRS to
9 attend law school solely by reason of his disability.

10 On several occasions, Plaintiff acknowledges, in both the FAC and the
11 Oppositions, that multiple non-discriminatory reasons existed for DOR's decision not to
12 fund law school, including budgetary concerns and department policies. For example,
13 the FAC alleges, "Ignacio Alegre informed Mr. Avila that his budget expenses were to
14 [sic] high due to out of state tuition and for him . . . to withdraw from classes so that Mr.
15 Alegre could recoup some of the cost." [Dkt. No. 15, ¶ 16]. The FAC further alleges
16 Defendants "abused their power . . . to release funding[,] protected the DOR budget[,]
17 and denied services to Mr. Edward Avila." [Id. at ¶ 37]. In the Opposition, Plaintiff also
18 acknowledges he "was treated with an irrational basis in that is of denying VRS because .
19 . . [Defendants were] protecting their money in budget." [Dkt. No. 49, p. 23]. The
20 Opposition also acknowledges "DOR incentive for this adverse decision can be argued
21 partly based on budget protections but DOR argued solely on the basis of his disability
22 taking twenty years." [Id. at p. 24]. Plaintiff also asserts "DOR policy is to keep budget
23 low through discretion thus adversely affecting the plaintiff." [Id. at p. 25]. Plaintiff
24 further alleges that "DOR conduct denied services upon arrival to CA based on

1 residency." [Dkt. No. 58, p. 15]. Plaintiff clearly recognizes that budgetary concerns and
2 residential issues were factors in DOR's decision.

3 Moreover, DOR counselors exercise discretion in the development of an IPE.
4 34 C.F.R. § 361.45. An eligible individual does not have "an entitlement to any
5 vocational rehabilitation services." 29 U.S.C. § 723(b)(9); 29 U.S.C. § 722(a)(3)(B). The
6 Office of Administrative Hearing's decision on the matter lists numerous reasons
7 Plaintiff was denied a law school IPE,

8 including that educational training to obtain a Juris Doctor degree is not
9 written in [Plaintiff's] IPE, that [Plaintiff] took over 20 years to complete
10 the graduate degree he holds in history, that [Plaintiff] already possesses
11 the necessary education and skill sets to obtain competitive, gainful
employment, that further educational training is not necessary for
[Plaintiff] to secure entry level employment, and that [Plaintiff] has not
conducted an exhaustive search of the job market.²

12 [Dkt. No. 15, Exh. A, p. 26]. Although Plaintiff disagrees with the ultimate finding, [Dkt.
13 No. 49, p. 14], he does not dispute that those were the findings made by OAH, which
14 recognizes the discretion DOR may exercise in such decisions. The OAH decision clearly
15 notes the several reasons for DOR's decisions, which Plaintiff acknowledges.

16 Based on the allegations and attached documents in the FAC and Oppositions, it
17 appears there were a variety of reasons for Defendants to arrive at their decision. As
18 such, Plaintiff has not sufficiently alleged he was denied program benefits "solely" by
19 reason of his disability, and thus he fails to state a claim for violation of Section 504 and
20 could not do so if leave to amend were granted. See Duvall, 260 F.3d at 1135. Due to the

21
22
23
24 ² This document was attached to the FAC so the Court may properly consider it as part
of the pleadings on a motion to dismiss. Ritchie, 342 F.3d at 908; Fed. R. Civ. P. 10(c).

1 fact that all claims must be dismissed without leave to amend, the Court declines to
2 address Defendants' other arguments in support of dismissal at this time.

3 **IV. LEAVE TO AMEND**

4 Plaintiff's claims against Defendants are dismissed without leave to amend. All
5 Section 1983 against Defendants are barred by sovereign immunity. As such, allowing
6 leave to amend would be futile. Further, Plaintiff was already granted the opportunity
7 to amend, and still failed to state a claim upon which relief can be granted. Plaintiff has
8 provided no information to convince the Court that further leave to amend would cure
9 any of the identified deficiencies. If anything, additional information provided by
10 Plaintiff in the Oppositions, such as the recognition that many factors were at play in
11 DOR's decision, only serves to further undermine the viability of Plaintiff's claims.
12 Plaintiff has failed to state any claim for violation of a constitutional or federally
13 protected right. Disagreement with a state official alone does not state a cognizable
14 claim. Leave to amend will not cure the deficiencies and is not recommended.

15 **V. CONCLUSION**

16 For the foregoing reasons, it is recommended that the District Judge issue an
17 Order (1) accepting this Report and Recommendation; (2) granting Defendants' Motions
18 to Dismiss [Dkt. Nos. 43, 53] without leave to amend; and (3) dismissing all claims
19 against the State of California, California DOR, Ignacio Alegre, Lechelle Brueggeman,
20 Erica Frees, Sherri Han-Lam, and Sheila Truong.

21 **IT IS SO ORDERED.**

22 Dated: January 4, 2021

23 _____/s/ Autumn D. Spaeth_____
24 THE HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge

Case: 8:19cv613 Doc: 91

Edward Avila
2807 Honolulu Drive
Weslaco, TX 78596

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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Case Name: Edward Avila v. State of California et al

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NOTICE OF DEFICIENCIES in Request to Issue Summons. The following errors were found: Summons previously issued November 26, 2019 [20]. Judgment enter and case closed February 10, 2021 [71]. Case currently on appeal [84]. The summons cannot be issued until this defect has been corrected. Please correct the defect and re-file your request. (kh)

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EDWARD AVILA

PLAINTIFF(S)

v.

STATE OF CALIFORNIA , et al.

DEFENDANT(S).

CASE NUMBER:

8:19-cv-00613-JVS-ADS

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07/27/21 90 Request for Summons

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Clerk, U.S. District Court

Date: September 2, 2021

By: /s/ Kristee Hopkins
kristee_hopkins@cacd.uscourts.gov
Deputy Clerk

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Case: 8:19cv0613 Doc: 92

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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Document Number: 92

Docket Text:

NOTICE OF DISCREPANCY AND ORDER: by Judge James V. Selna, **ORDERING** Motion Fed Rules Civil Procedures 24(b)(3) submitted by Plaintiff Edward Avila received on 09/13/2021 is not to be filed but instead rejected. Denial based on: Case closed/Judgment entered 2/10/21. Case currently on appeal #21-55712. (es)

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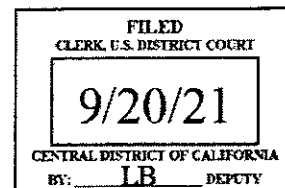
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UNITED STATES DISTRICT COURT
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NOTICE OF DOCUMENT DISCREPANCIES

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From: Lisa Bredahl, Deputy Clerk Date Received: 9/13/21
Case No.: SACV 19-00613JVS(ADSx) Case Title: Avila v State of California
Document Entitled: Motion Fed Rules Civil Procedures 24(b)(3)

Upon the submission of the attached document(s), it was noted that the following discrepancies exist:

- ☐ Local Rule 5-4.1 Documents must be filed electronically
- ☐ Local Rule 6-1 Written notice of motion lacking or timeliness of notice incorrect
- ☐ Local Rule 7-19.1 Notice to other parties of ex parte application lacking
- ☐ Local Rule 7.1-1 No Certification of Interested Parties and/or no copies
- ☐ Local Rule 11-3.1 Document not legible
- ☐ Local Rule 11-3.8 Lacking name, address, phone, facsimile numbers, and e-mail address
- ☐ Local Rule 11-4.1 No copy provided for judge
- ☐ Local Rule 11-6 Memorandum/brief exceeds 25 pages
- ☐ Local Rule 11-8 Memorandum/brief exceeding 10 pages shall contain table of contents
- ☐ Local Rule 15-1 Proposed amended pleading not under separate cover
- ☐ Local Rule 16-7 Pretrial conference order not signed by all counsel
- ☐ Local Rule 19-1 Complaint/Petition includes more than 10 Does or fictitiously named parties
- ☐ Local Rule 56-1 Statement of uncontroverted facts and/or proposed judgment lacking
- ☐ Local Rule 56-2 Statement of genuine disputes of material fact lacking
- ☐ Local Rule 83-2.5 No letters to the judge
- ☐ Fed. R. Civ. P. 5 No proof of service attached to document(s)
- ☒ Other: Case closed/Judgment entered 2/10/21. Case currently on appeal #21-55712.

Please refer to the Court's website at www.cacd.uscourts.gov for Local Rules, General Orders, and applicable forms.

ORDER OF THE JUDGE/MAGISTRATE JUDGE

IT IS HEREBY ORDERED:

- ☐ The document is to be filed and processed. The filing date is ORDERED to be the date the document was stamped "received but not filed" with the Clerk. Counsel* is advised that any further failure to comply with the Local Rules may lead to penalties pursuant to Local Rule 83-7.

Date

U.S. District Judge / U.S. Magistrate Judge

- ☒ The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to counsel.* Counsel* shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the Court.

September 20, 2021
Date

James V Selna
U.S. District Judge James V Selna

* The term "counsel" as used herein also includes any pro se party. See Local Rule 1-3.

COPY 1 - ORIGINAL-OFFICE

COPY 2 - JUDGE

COPY 3 - SIGNED & RETURNED TO FILER

COPY 4 - FILER RECEIPT

1 Edward Avila
2 2807 Honolulu Drive
3 Westlaco, Texas 78596
4 (956) 246-3903
5 avilaedward1972@gmail.com
6 Plaintiff in Pro Se

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11
12 Edward Avila,
13 Plaintiff,
14 vs.
15
16 STATE OF CALIFORNIA, et. al
17 Defendant.

Case No.:
8:19-cv-00613-JVS-ADSx
PLEADING
Motion Fed Rules Civil Procedures 24 (b)(3),
Delay or Prejudice, in exercising its
discretion, the court must consider whether
the intervention will (did) unduly delay or
prejudice the adjudication of the original
parties' rights.

18
19
20 **Introduction**

21
22 1. Issue is, defendant, The Great State of California failed to abide by the Tom Bane Civil
23 Rights Act therefore indirectly committing a violation of Federal Rules and Civil Procedure 24
24 (b)(3) by inaction (hence forth known in this document as FRCP 24 (b)(3). Rule, does not allow
25 for interference that would unduly delay or prejudice the adjudication of the original parties'
26 rights. In action is action and upon notifying the defendant of the interference via response to
27 motion to dismiss, the defendant failed to uphold the law. The inaction of the California Attorney
28 General to uphold the Tom Bane Civil Rights Act 52.1 (b) abused its power resulting in Plaintiff

1 suffering unduly delay and prejudice the adjudication resulting in tolling.

2 (https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum
3 =52.1.)

4
5
6 **Statement of Facts**
7

8 2. Plaintiff informed the court and the defendant of the harassment received by in-laws who
9 in turn were not held accountable thus leading to a series of events that led to tolling. Several
10 police reports dictating the misdemeanor vandalisms that plaintiff endured and an admission by
11 one in-law was submitted to the California Attorney General and we, plaintiff and his family,
12 were informed that such action was a family matter by Santa Ana Police Department. The
13 inaction of the California Attorney General emboldened the in-laws to escalate the situation
14 whereby the plaintiff had to flee out of necessity. Plaintiff suffered assault in front of his wife
15 and children. Plaintiffs' in-law felt compelled to protect their mother, plaintiff's mother-in-law
16 who suffers from medical condition that put her at high risk from death if contracting covid 19
17 and due to the crowded living condition during the time of pandemic, approached plaintiff
18 through his two fists at plaintiff's face then raised his two middle fingers inches from plaintiff's
19 face stating, "you guys have to move." Plaintiff and his family believed his in-law intended to
20 cause harmful contact. The plaintiff and his family reasonably believed such harmful contact
21 thus causing apprehension. Just prior to such, plaintiff in communication with resident homeless
22 person who would frequent the Seven Eleven liquor store at the end of his street was informed
23 by the homeless person that the battery the plaintiff suffered on 9/11/2020 was committed at the
24 behest of plaintiff's in-laws, "your in-laws were happy you got beat up."

25
26 3. Rule, this Motion FRCP 24 (b)(3) is not timely due to tolling, plaintiff fled with his
27 family out of the crowded conditions and apprehension of assault and battery. Plaintiff, having
28 nowhere else to go, fled to another state, Texas. "California Civil Rights Act 52.1 (b) states the

1 Attorney General... may bring other appropriate civil action for injunctive and other appropriate
2 equitable relief in the name of the people of the State of California." California department of
3 Rehabilitation, the State of California denied plaintiff access to law school violating 1983 as
4 noted in Gregory C. Mallett, Plaintiff-appellant, v. Wisconsin Division of Vocational
5 Rehabilitation and Judy R. Norman-nunnery, Defendants-appellees, 130 F.3d 1245 (7th Cir. 1997).
6 Plaintiff would not have been forced into overcrowding conditions that lead to the series of
7 events that brings plaintiff here, requesting tolling through motion 24 (b)(3). Now comes
8 defendant, California Attorney General, the state, abusing their power through in action by
9 allowing the actions of a third party that is none soluble thus places the plaintiff in a position of
10 delay and prejudice of adjudication, (Exhibit A, plaintiff resubmits to the court the recording of
11 conversation with State of California through its employee, who clearly states permission to
12 appeal, denial of services due to budget, and a denial of plaintiff his right to record thus a
13 violation of Plaintiff's First Amendment.) The notification from the homeless person as to prior
14 battery onto the plaintiff at the behest of his in-laws is taken as heresy but the denial of services
15 due to budge is fact and hereby submitted in this Motion 24 (b)(3) as Lodged Exhibit A.

16
17
18
19 **Conclusion**

20
21 4. For the forgoing reasons, Plaintiff's respectfully lodges with the court (Exhibits A) and
22 requests the court to rule on motion 24 (b)(3).

23
24 **Declaration**

25
26 5. I, Edward Avila, declares under penalty of law that the foregoing is true and correct.
27 Executed on July 28, 2021.

July 24, 2021



Edward Avila

En Pro Se

THE STATE OF CALIFORNIA.

Julia A. Clayton

California Department of Justice

Office of the Attorney General

455 Golden Gate Avenue, Suite 11000

San Francisco, CA 94102

1 Edward Avila (Full Name)
2 avilaedward1972@gmail.com (Email Address)
3 2807 Hacienda Drive (Address Line 1)
4 Weslaco TX 79596 (Address Line 2)
5 (956)246 3943 (Phone Number)
6 Plaintiff in Pro Per
7 (Indicate Plaintiff or Defendant)

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 Edward Avila,
11

12 Plaintiff,

13 vs.

14 California et al.
15
16

17 Defendant(s).
18
19
20
21
22

Case No.: 8:19-cv-00613-JVS-ADSx

Plaintiff's
(Indicate Plaintiff or Defendant)

**DECLARATION IN SUPPORT OF
OPPOSITION TO MOTION**

24(b)(3) and Motion 5.1

Hearing Date: _____

Hearing Time: _____

Judge: James V. Seina
(Judge's name)

Place: 10C
(courtroom number)

23 I, Edward Avila, declare as follows:
24 (print name)

25 1. I am the Plaintiff in the above-entitled case.
26 (Indicate Plaintiff or Defendant)

27 2. I have personal knowledge of the following facts, and, if called as a
28 witness, I could and would competently testify thereto.

1 3. State of California - Department of General
2 Services Government Claims Form was submitted to California
3

4 4. Plaintiff is disabled and requested many times
5 for extension to compensate for loss of reasonable accommodations
6 thus causing loss of Plaintiff's First Amendment Right

7 5. Plaintiff followed Channing D. Phillips instructions
8 to serve United States Attorney General
9

10 6. Motion Fed Rules Civil Procedure 24(b)(3)
11 was submitted to be served.
12

13 7. Motion Fed Rule Civil Procedure 5.1 was
14 submitted to be served
15

16 8. Proposed order Granting FRCP 5.1 and
17 24(b)(3) for Plaintiff to be allowed reasonable accommodation
18 of time and half and leave to amend complaint, submitted

19 9. exhibit A is recording of California
20 Department of Rehabilitation denying plaintiff's First
21 Amendment and abuse of power for budget reasons, submitted

22 10. Local Rule 4.1, motion must be
23 put on docket applies
24
25
26
27
28

1 11. _____

2
3
4 12. _____

5
6
7 13. _____

8
9
10 14. _____

11
12
13 15. _____

14
15
16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed on 9/3/21, in Westco
18 (date of signing) (city, state of signing)

19 Edward Avila
20 (signature)

21 Edward Avila
22 (name)

23 Plaintiff in Pro Per
24 (indicate Plaintiff or Defendant)

25
26
27
28

1
2
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4
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6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 Edward Avila

11 Plaintiff,

12 vs.

13 State of California

14 et al

15
16 Defendant(s).

Case No.: 8:14-cv-00213-JVS-ADS

(PROPOSED) ORDER GRANTING
MOTION F.R.C.P. 5

Contesting Constitutionality of
Rules of Court, 28 USC §§
2071-2077

17
18 Having considered Plaintiff's Motion and finding good cause therefore,
(Indicate Plaintiff or Defendant)

19 IT IS HEREBY ORDERED that Plaintiff's Motion
(Indicate Plaintiff or Defendant)

20 Plaintiff allowed time and half in all proceedings
(Describe your motion)
21 and leave to amend complaint.
22
23

24 is GRANTED.

25 Dated: _____

Signed: _____

26
27 Hon. _____
(Judge's name)

1 Edward Avila (Full Name)
2 2807 Hornetula Dr. (Address Line 1)
3 Weslaco TX 78596 (Address Line 2)
4 (956)246-3903 (Phone Number)
5 Plaintiff in Pro Per
6 (Indicate Plaintiff or Defendant)
7
8
9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

11 Edward Avila,
12 Plaintiff,
13 vs.
14 State of California et al
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 Defendant(s).

Case No.: 8:19-cv-00613-JWS-ADSx

PROOF OF SERVICE BY MAIL

22 I, Traseema Avila, declare as follows:
23 (name of person serving documents)

24 My address is 231 Amber Dr,
25 Weslaco, TX 78596, which is located in the
26 county where the mailing described below took place.
27
28

On 9/7/21, I served the document(s) described as:
(date of mailing)

Motion 24(b)(3)

(list the names of the documents you are mailing)

Motion 5.1

One CD recording

Declaration in Support of opposition to motion

Proposed Order

Notice of Improper Service

California Government Claims Form DGS OREM 06/Rev 09/2016

Copy of U.S. Postal Receipts

on all interested parties in this action by placing a true and correct copy thereof in
a sealed envelope, with first-class postage prepaid thereon, and deposited said
envelope in the United States mail at or in Weslaco TX,
(city and state of mailing)
addressed to:

Julia H. Clayton US Atty Gen (name)

Clerk of Court (name)

CA Dept Justice US Dept Justice (address)

225 E. Temple Street (address)

433 Golden Gate Ave. 950 Rin Ave (address)

Suite T5-134 (address)

San Francisco, CA 94102 N.W. (address)

Los Angeles, CA 90012 - (address)

Washington DC

20530-001

3332

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/7/21 at Weslaco, TX.
(date) (city and state of signing)

Trasema Avila
(sign)

Trasema Avila
(print name)

1
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Exhibit A



U. S. Department of Justice

Channing D. Phillips
Acting United States Attorney

District of Columbia

*Judiciary Center
555 Fourth Street, NW
Washington, DC 20530*

August 3, 2021

BY REGULAR MAIL

Edward David Avila
2807 Honolulu Drive
Weslaco, TX 78596

RE: Improper Service

Dear Sir / Madam,

Our Office recently received papers from you concerning a pending legal action or matter. We are returning your correspondence because it was sent to our Office in error. Our Office does not have jurisdiction over the case or matter to which your papers pertain.

If you are attempting to serve the United States or its agencies, officials, or employees under Federal Rule of Civil Procedure 4(i)(1)(A) or other similar provision, you should serve your papers on the U.S. Attorney's Office for the judicial district in which your case is pending. Our Office is not authorized to accept service of papers pertaining to actions filed outside of our judicial district (i.e., the District of Columbia).

Also, please note that our Office is not authorized to accept papers required to be sent to or served on the Attorney General of the United States or other federal agencies, corporations, officers, or employees. *See, e.g., Fed. R. Civ. P. 4(i)(1)(B), 4(i)(2), 4(i)(3).* To the extent that you are attempting to serve the U.S. Attorney General, your mailing must be sent by registered or certified mail to: U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

Ultimately, your mailing directed to the U.S. Attorney's Office for the District of Columbia was insufficient to effect proper service on the United States in this case or matter.

Sincerely,

CHANNING D. PHILLIPS
Acting United States Attorney

By: 

BRIAN P. HUDAK
Acting Chief, Civil Division

UNITED STATES DISTRICT COURT

for the

Edward Avila

Plaintiff(s)

v.

Civil Action No.

State of California

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

US Attorney Office
555 4th St NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Edward Avila
2807 Honolulu Dr
Westaco, TX 78592

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l)).

This summons for *(name of individual and title, if any)* US Attorney Office
was received by me on *(date)* 7/24/21.

☐ I personally served the summons on the individual at *(place)*

on *(date)*

; or

☒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* 7/24/21, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)*

, who is

designated by law to accept service of process on behalf of *(name of organization)*on *(date)*

; or

☐ I returned the summons unexecuted because

; or

☐ Other *(specify)*:

My fees are \$

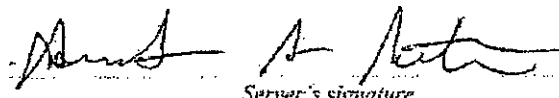
for travel and \$

for services, for a total of \$

0.00

I declare under penalty of perjury that this information is true.

Date:

7/24/21

Server's signature

Anthony A. Avila

Printed name and title

7/24/21

Server's address

Additional information regarding attempted service, etc:

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES
Government Claim Form
DGS ORIM 06 (Rev. 05/2016)



For Office Use Only

Government Claims Program
Office of Risk and Insurance Management
Department of General Services
P.O. Box 989052, MS 414
West Sacramento, CA 95798-9052

1-800-955-0045 • www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx

Clear Form

Print Form

Is your claim complete?

- ☒ Include a check or money order for \$25 payable to the State of California.
- ☒ Complete all sections relating to this claim and sign the form. Please print or type all information.
- ☒ Attach copies of any documentation that supports your claim. Please do not submit originals.

Claimant Information Use name of business or entity if claimant is not an individual

1	Avila	Edward	2	Tel: (956) 246-3903	
	Last name	First Name	MI	3	Email: avilaedward1972@gmail.com
4	1621 W. Cubbon Street	Santa Ana	CA	92703	
	Mailing Address	City	State	Zip	
5	Inmate or patient number, if applicable: N/A				
6	Is the claimant under 18? N/A If Yes, please give date of birth:				
7	N/A				

If you are an insurance company claiming subrogation, please provide your insured's name in section 7.

8 OAH No. 201871120

If your claim relates to another claim or claimant, please provide the claim number or claimant's name in section 8.

Attorney or Representative Information

9	Avila	Edward	D	10	Tel: 956-246-3903	
	Last name	First Name	MI	11	Email:	
12	1621 W. Cubbon St.	Santa Ana	CA	92703		
	Mailing Address	City	State	Zip		
13	Relationship to claimant: Plaintiff					

Claim Information Please add attachment(s) as necessary

14	Is your claim for a state-dated warrant (uncashed check)? <input type="radio"/> Yes <input type="radio"/> No If No, skip to Step 15.	
	State agency that issued the warrant:	
	Dollar amount of warrant:	Date of issue:
	Warrant number:	MM/DD/YYYY
15	Date of incident: 12/20/2018	
	Was the incident more than six months ago? <input type="radio"/> Yes <input checked="" type="radio"/> No	
	If YES, did you attach a separate sheet with an explanation for the late filing? <input type="radio"/> Yes <input checked="" type="radio"/> No	
16	State agencies or employees against whom this claim is filed: Department of Rehabilitation	
17	Dollar amount of claim: 2,736,550 +	
	If the amount is more than \$10,000, indicate the type of civil case:	<input type="radio"/> Limited civil case (\$25,000 or less) <input checked="" type="radio"/> Non-limited civil case (over \$25,000)
	Explain how you calculated the amount: United States Department of Labor medium pay for lawyer is \$119,250 x 20 years Adjusted for interest at x.03 annually Loss of Grants at \$56,000 for five years Breach of contract to make me whole from loss of future earning is \$2,385,000 x 0.03% + \$280,000 total: \$2,736,550 compensatory damages + unspecified punitive damages	

18	Location of the incident: Department of Rehabilitation Orange/Santa Ana Branch Office 790 The City Drive, Suite 110, Orange, CA, 92868
19	Describe the specific damage or injury: Breach of Contract, "A party will be liable only if a failure to reach ultimate agreement resulted from a breach on that party's obligation to negotiate or to negotiate in good faith." Copeland v. Basking Robins U.S.A. Department of Rehabilitation entered into a contract and then breached the contract through Closure citing (CCR, title 9, Section 7179(a) and (b)(2) and 7179.3(a)(6)(4). Thus to make me whole I am seeking loss of future earning, loss grant opportunity, and punitive damages under the 1973 Rehabilitation Act and violation of my Civil Rights.
20	Explain the circumstances that led to the damage or injury: Department of Rehabilitation entered into a contract IEP under the 1973 Rehabilitation Act and presented an Undue Influence for an IEP on Aug. 22, 2017, that kept me from seeking Law School. I was admitted to Law School and filed OAH No. 2018071120. Pursuant to court order in negotiation of a new IEP, the Department of Rehabilitation Manager and Councilor failed to negotiate in good faith and even conspired to verbally attack me. I recorded this IEP meeting under California Education Code section 56341.1(g)(1) and 1973 Rehab. Act. with sufficient notice.
21	Explain why you believe the state is responsible for the damage or injury: California Department of Rehabilitation failed to negotiate in good faith and breached the IEP contract by implementing State Of California Closure Report-Not Rehabilitated DR229B (Rev. 07/17) in addition to violating my civil rights thus owes me a duty to make me whole.
22	Does the claim involve a state vehicle? <input type="radio"/> Yes <input checked="" type="radio"/> No If YES, provide the vehicle license number, if known:
Auto Insurance Information	
23	Name of Insurance Carrier <div style="border: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Mailing Address <div style="border: 1px solid black; height: 15px; margin-bottom: 5px;"></div> </div> <div style="width: 10%;"> City <div style="border: 1px solid black; height: 15px; margin-bottom: 5px;"></div> </div> <div style="width: 15%;"> State <div style="border: 1px solid black; height: 15px; margin-bottom: 5px;"></div> </div> <div style="width: 30%;"> Zip <div style="border: 1px solid black; height: 15px; margin-bottom: 5px;"></div> </div> </div> Policy Number: <div style="border: 1px solid black; width: 150px; height: 15px; display: inline-block;"></div> Tel: <div style="border: 1px solid black; width: 100px; height: 15px; display: inline-block;"></div> Are you the registered owner of the vehicle? <input type="radio"/> Yes <input checked="" type="radio"/> No If NO, state name of owner: <div style="border: 1px solid black; width: 100%; height: 15px;"></div> Has a claim been filed with your insurance carrier, or will it be filed? <input type="radio"/> Yes <input checked="" type="radio"/> No Have you received any payment for this damage or injury? <input type="radio"/> Yes <input checked="" type="radio"/> No If yes, what amount did you receive? <div style="border: 1px solid black; width: 100%; height: 15px;"></div> Amount of deductible, if any: <div style="border: 1px solid black; width: 100%; height: 15px;"></div> Claimant's Drivers License Number: <div style="border: 1px solid black; width: 150px; height: 15px; display: inline-block;"></div> Vehicle License Number: <div style="border: 1px solid black; width: 150px; height: 15px; display: inline-block;"></div> Make of Vehicle: <div style="border: 1px solid black; width: 100px; height: 15px; display: inline-block;"></div> Model: <div style="border: 1px solid black; width: 100px; height: 15px; display: inline-block;"></div> Year: <div style="border: 1px solid black; width: 50px; height: 15px; display: inline-block;"></div> Vehicle ID Number: <div style="border: 1px solid black; width: 100%; height: 15px;"></div>
Notice and Signature	
24	I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to \$10,000. (Penal Code section 72). <div style="border: 1px solid black; width: 100%; height: 20px; margin-top: 5px;"></div> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> Signature of Claimant or Representative <div style="border: 1px solid black; width: 100%; height: 20px; margin-top: 5px;"></div> </div> <div style="width: 35%;"> Date: <div style="border: 1px solid black; width: 100%; height: 20px; margin-top: 5px;"></div> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div style="width: 40%;"> Printed Name <div style="border: 1px solid black; width: 100%; height: 20px; margin-top: 5px;"></div> </div> <div style="width: 55%;"></div> </div>
25	Mail this form and all attachments with the \$25 filing fee or the "Filing Fee Waiver Request" for Government Claims Program, P.O. Box 989052, MS 414, West Sacramento, CA 95798-9052. Forms can also be delivered to the Office of Risk and Insurance Management, 707 3rd street, 1st Floor ORIM, West Sacramento, CA 95605.

SENDER: COMPLETE THIS SECTION

☒ Complete items 1, 2, and 3.
☒ Print your name and address on the reverse so that we can return the card to you.
☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

US Attorney Office
555 4th N.W.
Washington, DC 20530

9590 9402 6644 1060 2472 97

2. Article Number (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature: *[Signature]* ☐ Agent ☒ Addressee

B. Received by (Printed Name): *[Signature]* C. Date of Delivery: *[Signature]*

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below: *[Signature]* JUL 30 2021

3. Service Type

<input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation® <input type="checkbox"/> Signature Confirmation Restricted Delivery
--	---

U.S. Postal Service® CERTIFIED MAIL RECEIPT

Postmark: JUL 30 2021

Postage: \$7.45

Extra Services & Fees (check box, add fee as appropriate):

<input type="checkbox"/> Return Receipt (hardcopy)	\$3.50
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Total Postage and Fees: \$7.45

Sum to: \$7.45

US Attorney General's Office
450 Pennsylvania Ave.
Washington, DC 20530

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

22TH 4075 0000 0627 0202

SENDER: COMPLETE THIS SECTION

☒ Complete items 1, 2, and 3.
☒ Print your name and address on the reverse so that we can return the card to you.
☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

US Attorney General
US Dept of Justice
450 Pennsylvania Ave.
NW Washington DC 20530-0001

9590 9402 6644 1060 2473 03

2. Article Number (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature: *[Signature]* ☐ Agent ☒ Addressee

B. Received by (Printed Name): *[Signature]* C. Date of Delivery: *[Signature]*

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below: *[Signature]* AUG 17 2021

3. Service Type

<input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation® <input type="checkbox"/> Signature Confirmation Restricted Delivery
--	---

U.S. Postal Service® CERTIFIED MAIL RECEIPT

Postmark: JUL 24 2021

Postage: \$7.45

Extra Services & Fees (check box, add fee as appropriate):

<input type="checkbox"/> Return Receipt (hardcopy)	\$3.50
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Total Postage and Fees: \$7.45

Sum to: \$7.45

US Attorney Office
450 Pennsylvania Ave.
Washington, DC 20530

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

22TH 4075 0000 0627 0202



WESLACO
109 N BORDER AVE
WESLACO, TX 78596-9998
(800)275-8777

08/11/2021 02:14 PM

Product	Qty	Unit Price	Price
3-MO Box			\$0.00
Box ZIP Code: 78599			
Box Number: 1895 WESLACO, TX 78599			
Box Size: Size 2 - 5 in x 5.5 in			
Rental Period: 3 Month Pay As You Go			
Rental Start Date: 05/06/2021			
Next Renewal Date: 07/31/2021			
Key Fee			
Keys Delivered: 2			
Keys Ordered: 0			
Total			\$0.00

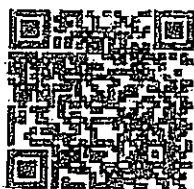
Grand Total: \$0.00

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Preview your Mail
Track your Packages
Sign up for FREE @
<https://informedelivery.usps.com>

All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

Tell us about your experience.
Go to: <https://postalexperience.com/Pos>
or scan this code with your mobile device.



or call 1-800-410-7420.

UFN: 489585-0596
Receipt #: 840-57800363-3-4826302-1
Clerk: 08



WESLACO
109 N BORDER AVE
WESLACO, TX 78596-9998
(800)275-8777

08/13/2021 12:45 PM

Product	Qty	Unit Price	Price
Priority Mail® 2-Day 1			\$7.91
Flat Rate Env			
Washington, DC 20530			
Flat Rate			
Expected Delivery Date			
Tue 08/17/2021			
Certified Mail®			\$3.61
Tracking #:			
7020129000051044122			
Return Receipt			\$2.81
Tracking #:			
9590 9402 0644 1060 2473 03			
Total			\$14.41

Priority Mail® 3-Day 1			\$7.91
Flat Rate Env			
Los Angeles, CA 90012			
Flat Rate			
Expected Delivery Date			
Tue 08/17/2021			
Tracking #:			
9505 5156 1198 1225 5736 80			
Insurance			\$0.01
Up to \$50.00 included			
Total			\$7.91

Priority Mail® 2-Day 1			\$7.91
Flat Rate Env			
San Francisco, CA 94102			
Flat Rate			
Expected Delivery Date			
Mon 08/16/2021			
Tracking #:			
9505 5156 1198 1225 5736 97			
Insurance			\$0.01
Up to \$50.00 included			
Total			\$7.91

Grand Total: \$30.30

Debit Card Remitted \$30.30

Card Name: VISA
Account #: XXXXXXXXXX6091
Approval #: 010822
Transaction #: 344
Receipt #: 034852
Debit Card Purchase: \$30.30
AID: A0000F 0980840 Chip
AL: US DEB
PIN: Verified

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Text your tracking number to 28777 (2USPS)
to get the latest status. Standard Message
and Data rates may apply. You may also
visit www.usps.com USPS Tracking or call
1-800-222-1811.



WESLACO
109 N BORDER AVE.
WESLACO, TX 78596-9998
(800)275-8777

05/08/2021 10:59 AM

Product	Qty	Unit Price	Price
---------	-----	------------	-------

Priority Mail® 2-Day 1			\$7.95
------------------------	--	--	--------

Flat Rate Env

San Francisco, CA 94102

Flat Rate

Expected Delivery Date

Tue 05/11/2021

Tracking #:

9505 5156 1198 1128 5466 37

Insurance

Up to \$50.00 included

\$0.00

Total \$7.95

PM Express 2-Day 1			\$26.35
--------------------	--	--	---------

Flat Rate Env

Los Angeles, CA 90012

Flat Rate

Signature Waiver

Scheduled Delivery Date

Mon 05/10/2021 03:00 PM

Money Back Guarantee

Tracking #:

E371843022505

Insurance

Up to \$100.00 included

\$0.00

Total \$26.35

Grand Total: \$34.30

Cash \$50.00

Change -\$15.70

USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit www.usps.com USPS Tracking or call 1-800-222-1811.

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or scan this code with your mobile device.



WESLACO
109 N BORDER AVE
WESLACO, TX 78596-9998
(800)275-8777

05/22/2021 10:59 AM

Product	Qty	Unit Price	Price
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Priority Mail® 2-Day 1			\$7.95
------------------------	--	--	--------

Flat Rate Env

San Francisco, CA 94102

Flat Rate

Expected Delivery Date

Tue 05/25/2021

Tracking #:

9505 5156 1199 1142 4297 17

Insurance

Up to \$50.00 included

\$0.00

Total \$7.95

Priority Mail® 2-Day 1			\$7.95
------------------------	--	--	--------

Flat Rate Env

San Francisco, CA 94119

Flat Rate

Expected Delivery Date

Tue 05/25/2021

Tracking #:

9505 5156 1199 1142 4297 24

Insurance

Up to \$50.00 included

\$0.00

Total \$7.95

Grand Total: \$15.90

Cash \$20.00

Change -\$4.10

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Tell us about your experience.
Go to: <https://postalexperience.com/Pos>
or scan this code with your mobile device.





WESLACO
109 N BORDER AVE
WESLACO, TX 78596-9998
(800)275-8777

07/24/2021 10:36 AM

Product	Qty	Unit Price	Price
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Priority	1	\$7.95	\$7.95
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Priority Mail® 2-Day 1			\$7.95
------------------------	--	--	--------

Flat Rate Env			
---------------	--	--	--

Washington, DC 20530			
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Flat Rate			
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Expected Delivery Date			
------------------------	--	--	--

Tue 07/27/2021			
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Certified Mail®			\$3.60
-----------------	--	--	--------

Tracking #:			
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7020129000051044115			
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Return Receipt			\$2.85
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Tracking #:			
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9590 9462 6644 1060 2472 97			
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Total			\$14.40
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Priority Mail® 3-Day 1			\$7.95
------------------------	--	--	--------

Flat Rate Env			
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Van Nuys, CA 91411			
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Flat Rate			
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Expected Delivery Date			
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Thu 07/29/2021			
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Tracking #:			
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9505 5156 1197 1205 5549 83			
-----------------------------	--	--	--

Insurance			\$0.00
-----------	--	--	--------

Up to \$50.00 included			
------------------------	--	--	--

Total			\$7.95
-------	--	--	--------

Priority Mail® 2-Day 1			\$7.95
------------------------	--	--	--------

Flat Rate Env			
---------------	--	--	--

San Francisco, CA 94102			
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Flat Rate			
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Expected Delivery Date			
------------------------	--	--	--

Tue 07/27/2021			
----------------	--	--	--

Tracking #:			
-------------	--	--	--

9505 5156 1197 1205 5549 90			
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Insurance			\$0.00
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Up to \$50.00 included			
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Total			\$7.95
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Priority Mail® 3-Day 1			\$7.95
------------------------	--	--	--------

Flat Rate Env			
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Los Angeles, CA 90012			
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Flat Rate			
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Expected Delivery Date			
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Wed 07/28/2021			
----------------	--	--	--

Tracking #:			
-------------	--	--	--

9505 5156 1197 1205 5550 03			
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Insurance			\$0.00
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Up to \$50.00 included			
------------------------	--	--	--

Total			\$7.95
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Grand Total:			\$46.20
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Debit Card Remitted			\$46.20
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Card Name: VISA			
-----------------	--	--	--

Account #: XXXXXXXXXX6091			
---------------------------	--	--	--

Approval #: 022065			
--------------------	--	--	--

Transaction #: 014			
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Receipt #: 033489			
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Debit Card Purchase: \$46.20			
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AID: A0000000980840			Chip
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AL: US DEBIT			
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WESLACO
109 N BORDER /
WESLACO, TX 7859
(800)275-87,

05/11/2021 12:40 PM

Product	Qty	Unit Price	Price
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Priority Mail® 2-Day 1			\$7.95
------------------------	--	--	--------

Flat Rate Env			
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San Francisco, CA 94102			
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Flat Rate			
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Expected Delivery Date			
------------------------	--	--	--

Fri 05/14/2021			
----------------	--	--	--

Tracking #:			
-------------	--	--	--

9505 5156 1198 1131 5475 46			
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Insurance			\$0.00
-----------	--	--	--------

Up to \$50.00 included			
------------------------	--	--	--

Total			\$7.95
-------	--	--	--------

Priority Mail® 3-Day 1			\$7.95
------------------------	--	--	--------

Flat Rate Env			
---------------	--	--	--

Los Angeles, CA 90012			
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Flat Rate			
-----------	--	--	--

Expected Delivery Date			
------------------------	--	--	--

Sat 05/15/2021			
----------------	--	--	--

Tracking #:			
-------------	--	--	--

9505 5156 1198 1131 5475 5			
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Insurance			\$0.00
-----------	--	--	--------

Up to \$50.00 included			
------------------------	--	--	--

Total			\$7.95
-------	--	--	--------

Grand Total:			\$15.90
--------------	--	--	---------

Debit Card Remitted			\$15.90
---------------------	--	--	---------

Card Name: VISA			
-----------------	--	--	--

Account #: XXXXXXXXXX6091			
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Approval #: 072259			
--------------------	--	--	--

Transaction #: 487			
--------------------	--	--	--

Receipt #: 032926			
-------------------	--	--	--

Debit Card Purchase: \$15.90			
------------------------------	--	--	--

AID: A0000000980840			Chip
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AL: US DEBIT			
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PIN: Verified			
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1 Edward David Avila (Full Name)
2 2407 Honolulu Drive (Address Line 1)
3 Westland, TX 78596 (Address Line 2)
4 (956) 246 3903 (Phone Number)

5 Plaintiff in Pro Per
6 (Indicate Plaintiff or Defendant)

7
8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 Edward Avila

12 Plaintiff,

13 vs.

14 State of California

15 et al

16
17
18
19
20 Defendant(s).

Case No.: 8:19-cv-023-JVS-ADSx

PROOF OF SERVICE BY MAIL

21
22
23 I, Anthony A. Avila, declare as follows:
(name of person serving documents)

24 My address is 2620 Hawaii Westland TX
25 78596, which is located in the
26 county where the mailing described below took place.
27
28

On 7/24/21, I served the document(s) described as:
(date of mailing)

Motion 5.1

(list the names of the documents you are mailing)

Motion 24.(b)(3)

SUMMONS in civil Action

on all interested parties in this action by placing a true and correct copy thereof in
a sealed envelope, with first-class postage prepaid thereon, and deposited said
envelope in the United States mail at or in _____,
(city and state of mailing)

addressed to:

<u>State of California</u>	<u>US Attorney</u> (name)	<u>clerk of court</u> (name)
<u>Julia A Clayton</u>	<u>555 4th St NW</u> (address)	<u>225 E Temple St</u> (address)
<u>455 Graham Gate Ave</u>	<u>Washington</u> (address)	<u>Suite TS-134</u> (address)
<u>Suite 11000</u>	<u>DC 20530</u> (address)	<u>Los Angeles, CA 90012</u> (address)
<u>San Francisco</u>		
<u>CA 94102</u>		

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/24/21 at Weslaco
(date) (city and state of signing)

Anthony A. Avila
(signature)
Anthony A. Avila
(print name)

1 Edward Avila
2 2807 Honolulu Drive
3 Weslaco, Texas 78596
4 (956) 246-3903
5 avilaedward1972@gmail.com
6 Plaintiff in Pro Se

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11
12 Edward Avila,
13 Plaintiff,
14 vs.
15
16 STATE OF CALIFORNIA, et. al
17 Defendant.

Case No.:
8:19-cv-00613-JVS-ADSx
PLEADING
Motion Fed Rules Civil Procedures 5,
Contesting Constitutionality of Rules of
Court, 28 U.S.C. §§ 2071-2077

18
19
20 **Introduction**
21

22 1. The "Rules of the Court" violate disabled citizens access to the third branch of
23 government, the Judicial Branch by denying them their First Amendment, the right to a voice.
24

25 **Statement of Facts**
26

27 2. The rules of the court dictated that the court should provide reasonable accommodations
28 but failed to make the courts available to all disabled people.

1 In an effort to improve access by individuals who are deaf or hearing-impaired
2 and persons with other communications disabilities, the Judicial Conference,
3 modifying a recommendation of the Court Administration and Case Management
4 Committee, adopted a policy that all federal courts should provide reasonable
5 accommodations to persons with communications disabilities.
6 (<https://www.fjc.gov/sites/default/files/materials/24/Disability%20and%20the%20Federal%20Courts.pdf>)

7 It is irrational to accept the notion that some disabled people should have a voice and others do
8 not. Allowing additional time for plaintiff would not present undue financial or administrative
9 hardship as in comparison to the drastic impact that the current rules have in denying plaintiffs
10 access to the courts. Plaintiff requests time and half to respond to court as reasonable
11 accommodations to compensate for his communication disabilities, (<https://www.lsc.gov/bur-impact/publications/other-publications-and-reports/justice-gap-report?fbclid=IwAR3dGAXlJISnH75Qkk87T7JKg3TeSCruRh90TG4UVwTynBPOPcjlKkhLU>
12 Y).

13
14
15
16 3. Plaintiff did not have a voice in Federal Court under Federal Court Rules. The Federal
17 Court accepts and acknowledges the Plaintiff has a disability and has a right to reasonable
18 accommodations. Plaintiff did not receive time and half to respond to court therefore leaving
19 important details out of his briefs due to his disability in communication. Denial of plaintiff's
20 voice constitutes denial of plaintiff's United States Constitutional Right under his First
21 Amendment.

22 Conclusion

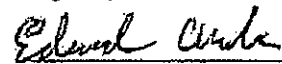
23
24
25 4. For the forgoing reasons, Plaintiff respectfully lodges with the Court (Exhibits A.)
26 Plaintiff requests time and half in all proceedings. Plaintiff
27 requests leave to amend.
28

Declaration

5. I, Edward Avila, declares under penalty of law that the foregoing is true and correct.

Executed on July 24, 2021.

July 24, 2021



Edward Avila

En Pro Se

THE STATE OF CALIFORNIA.

Julia A. Clayton

California Department of Justice

Office of the Attorney General

455 Golden Gate Avenue, Suite 11000

San Francisco, CA 94102

US Attorney Office.

555 4th St NW,

Washington, DC 20530

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Exhibit A



P

USPS MAIL

\$7.95

Origin: 78598
09/07/21
4855850598-0

PRIORITY

PRIORITY MAIL 3-DAY®

MAIL

0 lb 8.40 oz

100%

reflections apply

1 destination

EXPECTED DELIVERY DAY: 09/11/21

SHIP TO:

C032

SHIP TO:

225 E TEMPLE ST
LOS ANGELES CA 90012-3326

insured

see the

USPS TRACKING® #

1 destination

FLAT

ONE RATE



9506 5156 1197 1250 5674 26

TRACKED ■ INSURED



PS00001000014

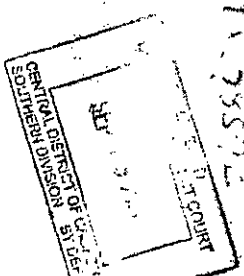
EPI4F May 2020
OD: 12 1/2 x 9 1/2



USPS MAIL

FROM: Edward A. de

225 E Temple St
Los Angeles, CA 90012-3326



TO:

Clerk of Court

225 E Temple Street

State TS-09

Los Angeles, CA 90012-3326

21-55712

Edward Avila
2807 Honolulu Drive
Weslaco, TX 78596

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 15 2021

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

EDWARD AVILA,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants-Appellees.

No. 21-55712

D.C. No.

8:19-cv-00613-JVS-ADS

Central District of California,
Santa Ana

ORDER

Before: McKEOWN, W. FLETCHER, and BYBEE, Circuit Judges.

A review of the record and appellant's response to this court's July 14, 2021 order to show cause demonstrates that this court lacks jurisdiction over this appeal because the May 25, 2021 notice of appeal was not filed within 30 days after the district court's judgment entered on February 10, 2021 or the post-judgment order entered on April 12, 2021. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *see also Bowles v. Russell*, 551 U.S. 205 (2007) (court lacks authority to create equitable exceptions to jurisdictional requirement of timely notice of appeal). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 14 2021

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

EDWARD AVILA,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants-Appellees.

No. 21-55712

D.C. No.

8:19-cv-00613-JVS-ADS

Central District of California,
Santa Ana

ORDER

The district court's judgment was entered on the docket on February 10, 2021. Appellant filed a timely tolling motion pursuant to Federal Rule of Civil Procedure 60 on March 8, 2021. *See* Fed. R. App. P. 4(a)(4). The district court's order denying appellant's motion for relief from the judgment was entered on the docket on April 12, 2021. Appellant's notice of appeal was filed in the district court on May 25, 2021. Accordingly, the record suggests that this court may lack jurisdiction over this appeal because the notice of appeal was not filed within 30 days after entry of the district court's judgment or the district court's post-judgment order. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 4(c); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional).

Within 21 days after the date of this order, appellant shall move for voluntary dismissal of the appeal, or show cause why it should not be dismissed for

lack of jurisdiction. If appellant elects to show cause, a response may be filed within 10 days after service of the memorandum.

If appellant does not comply with this order, the Clerk shall dismiss this appeal pursuant to Ninth Circuit Rule 42-1.

Briefing is suspended pending further order of the court.

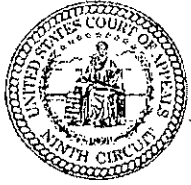
FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Corina Orozco
Deputy Clerk
Ninth Circuit Rule 27-7

21-55712

Edward Avila
2807 Honolulu Drive
Weslaco, TX 78596



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

July 07, 2021

No.: 21-55712
D.C. No.: 8:19-cv-00613-JVS-ADS
Short Title: Edward Avila v. State of California, et al

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Motions filed along with the notice of appeal in the district court are not automatically transferred to this court for filing. Any motions seeking relief from this court must be separately filed in this court's docket.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

The due dates for filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.

Appellants who are filing pro se should refer to the accompanying information sheet regarding the filing of informal briefs.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 07 2021

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

EDWARD AVILA,

Plaintiff - Appellant,

v.

STATE OF CALIFORNIA;
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION; IGNACIO
ALEGRE, Orange County Department
of Rehabilitation, official capacity;
LECHELLE BRUEGGEMAN, Orange
County Department of Rehabilitation,
official capacity; ERICA M. FREES,
Orange County Department of
Rehabilitation, official capacity;
SHEILA TRONG, Orange County
Department of Rehabilitation, official
capacity; SHERII HAM-LAN, Orange
County Department of Rehabilitation,
official capacity,

Defendants - Appellees.

No. 21-55712

D.C. No. 8:19-cv-00613-JVS-ADS
U.S. District Court for Central
California, Santa Ana

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

Wed., September 8, 2021 Appellant's opening brief and excerpts of record
shall be served and filed pursuant to FRAP 31 and
9th Cir. R. 31-2.1.

Fri., October 8, 2021

Appellees' answering brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

The optional appellant's reply brief shall be filed and served within 21 days of service of the appellees' brief, pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Ruben Talavera
Deputy Clerk
Ninth Circuit Rule 27-7



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

ATTENTION ALL PARTIES AND COUNSEL
PLEASE REVIEW PARTIES AND COUNSEL LISTING

We have opened this appeal/petition based on the information provided to us by the appellant/petitioner and/or the lower court or agency. EVERY attorney and unrepresented litigant receiving this notice MUST immediately review the caption and service list for this case and notify the Court of any corrections.

Failure to ensure that all parties and counsel are accurately listed on our docket, and that counsel are registered and admitted, may result in your inability to participate in and/or receive notice of filings in this case, and may also result in the waiver of claims or defenses.

PARTY LISTING:

Notify the Clerk immediately if you (as an unrepresented litigant) or your client(s) are not properly and accurately listed or identified as a party to the appeal/petition. To report an inaccurate identification of a party (including company names, substitution of government officials appearing only in their official capacity, or spelling errors), or to request that a party who is listed only by their lower court role (such as plaintiff/defendant/movant) be listed as a party to the appeal/petition as an appellee or respondent so that the party can appear in this Court and submit filings, contact the Help Desk at <http://www.ca9.uscourts.gov/cmecf/feedback/> or send a letter to the Clerk. If you or your client were identified as a party to the appeal/petition in the notice of appeal/petition for review or representation statement and you believe this is in error, file a motion to dismiss as to those parties.

COUNSEL LISTING:

In addition to reviewing the caption with respect to your client(s) as discussed above, all counsel receiving this notice must also review the electronic notice of docket activity or the service list for the case to ensure that the correct counsel are

listed for your clients. If appellate counsel are not on the service list, they must file a notice of appearance or substitution immediately or contact the Clerk's office.

NOTE that in criminal and habeas corpus appeals, trial counsel WILL remain as counsel of record on appeal until or unless they are relieved or replaced by Court order. *See* Ninth Circuit Rule 4-1.

REGISTRATION AND ADMISSION TO PRACTICE:

Every counsel listed on the docket must be admitted to practice before the Ninth Circuit AND registered for electronic filing in the Ninth Circuit in order to remain or appear on the docket as counsel of record. *See* Ninth Circuit Rules 25-5(a) and 46-1.2. These are two separate and independent requirements and doing one does not satisfy the other. If you are not registered and/or admitted, you MUST, within 7 days from receipt of this notice, register for electronic filing AND apply for admission, or be replaced by substitute counsel or otherwise withdraw from the case.

If you are not registered for electronic filing, you will not receive further notices of filings from the Court in this case, including important scheduling orders and orders requiring a response. Failure to respond to a Court order or otherwise meet an established deadline can result in the dismissal of the appeal/petition for failure to prosecute by the Clerk pursuant to Ninth Circuit Rule 42-1, or other action adverse to your client.

If you will be replaced by substitute counsel, new counsel should file a notice of appearance/substitution (no form or other attachment is required) and should note that they are replacing existing counsel. To withdraw without replacement, you must electronically file a notice or motion to withdraw as counsel from this appeal/petition and include your client's contact information.

To register for electronic filing, and for more information about Ninth Circuit CM/ECF, visit our website at <http://www.ca9.uscourts.gov/cmecf/#section-registration>.

To apply for admission, see the instructions and form application available on our website at <https://www.ca9.uscourts.gov/attorneys/>.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 11 2022

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

EDWARD AVILA,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants-Appellees.

No. 21-55712

D.C. No.

8:19-cv-00613-JVS-ADS

Central District of California,
Santa Ana

ORDER

Before: McKEOWN, W. FLETCHER, and BYBEE, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 8) is denied. *See*
9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 19 2022

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

EDWARD AVILA,

Plaintiff - Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants - Appellees.

No. 21-55712

D.C. No. 8:19-cv-00613-JVS-ADS
U.S. District Court for Central
California, Santa Ana

MANDATE

The judgment of this Court, entered October 15, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: David J. Vignol
Deputy Clerk
Ninth Circuit Rule 27-7