NO._____

SUPREME COURT OF THE UNITED STATES

GAWLIK,JAN.M.
PETITIONER

V.

SEMPLE,SCOTT/COMMISSIONER.ET.AL.,CORRECTIONS OF CONNECTICUT
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO
THE UINITED STATES SUPREME COURT OF
THE SECOND CIRCUIT COURT OF APPEALS
(APPENDIX)

PETITION FOR A WRIT OF CERTIORARI

(APPENDIX OF PETITIONER)

GAWLIK,JAN.M.
PRO-SE
C.C.I.
900 HIGHLAND AVENUE
CHESHIRE,CT.06410
(203)651-6257

ARGUING COUNSEL
OF RECORD

DECEMBER 20th,2023

APPENDIX

(*EXHIBITS INDICATED AT BOTTOM OF PAGE*)

D. Conn.
20-cv-564
Merriam, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of February, two thousand twenty-three.

Present:

Raymond J. Lohier, Jr.,
Steven J. Menashi,
Beth Robinson,
Circuit Judges.

Jan M. Gawlik,

Plaintiff-Appellant,

v.

22-1423

Scott Semple, COM'R, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, et al.,

Defendants-Appellees,

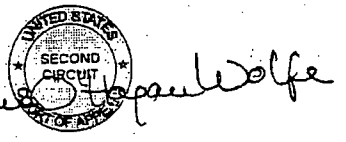
Chaniece Parker, Nurse, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, et al.,

Defendants.

Appellant, pro se, moves for appointment of counsel. Upon due consideration, it is hereby ORDERED that the motion is DENIED. Appellant has not met the threshold requirement for appointment of counsel. *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 174 (2d Cir. 1989) (per curiam). It is further ORDERED that the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (per curiam).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

(EXHIBIT#(B)



[redacted]

From: CMECF@ctd.uscourts.gov
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To: CMECF@ctd.uscourts.gov
Subject: Activity in Case 3:20-cv-00564-SALM Gawlik v. Semple et al Judicial Evaluation Program Survey

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U.S. District Court

District of Connecticut

Notice of Electronic Filing

The following transaction was entered on 6/14/2022 at 4:57 PM EDT and filed on 6/14/2022
Case Name: Gawlik v. Semple et al
Case Number: 3:20-cv-00564-SALM
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WARNING: CASE CLOSED on 06/14/2022
Document Number: No document attached

Docket Text:
JUDICIAL PROCEEDINGS SURVEY - FOR COUNSEL ONLY: The following link to the confidential survey requires you to log into CM/ECF for SECURITY purposes. Once in CM/ECF you will be prompted for the case number. Although you are receiving this survey through CM/ECF, it is hosted on an independent website called SurveyMonkey. Once in SurveyMonkey, the survey is located in a secure account. The survey is not docketed and it is not sent directly to the judge. To ensure anonymity, completed surveys are held up to 90 days before they are sent to the judge for review. We hope you will take this opportunity to participate, please click on this link:

https://ecf.ctd.uscourts.gov/cgi-bin/Dispatch.pl?survey
(Caffrey, A.)

(EXHIBIT#(A)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAN M. GAWLIK

Plaintiff

v.

SCOTT SEMPLE, SCOTT ERFE, CZEREMCHA, WATSON, CHANIECE PARKER, SMITH, BUCKLAND, BROWN, PARKER, CUNNINGHAM, ANGEL QUIROS, CHARLES WILLIAMS, MEJIAS, JOHN B. CERUTI, EDMUND VAYAN, and JAMES ROVELLA

Defendants.

No. 3:20cv564(SALM)

JUDGMENT

This matter came up for consideration on the Motion for Summary Judgment filed by Defendants Brown, Buckland, Cunningham, Czeremcha, Scott Erfe, Parker, Angel Quiros, Scott Semple, Smith, Watson, and Charles Williams, **[Doc. #56]**, before the Honorable Sarah A. L. Merriam, United States District Judge. Defendants Chaniece Parker, Mejias, John B. Ceruti, Edmund Vayan, and James Rovella were dismissed on September 27, 2021, upon entry of an Initial Review Order **[Doc. #25]**. On June 14, 2022, the Court, having considered the full record of the case including applicable principles of law, entered a Ruling that GRANTED the Defendants' Motion for Summary Judgment. It is hereby;

ORDERED, ADJUDGED and DECREED that judgment shall enter in favor of the Defendants Brown, Buckland, Cunningham, Czeremcha, Scott Erfe, Parker, Angel Quiros, Scott Semple, Smith, Watson, and Charles Williams, against the Plaintiff Jan M. Gawlik, consistent with the Court's Ruling and this case shall be closed.

(EXHIBIT#(A)

Dated at New Haven, Connecticut, this 14th day of June, 2022.

DINAH MILTON KINNEY, Clerk

By: /s/
Andrew Caffrey
Deputy Clerk

EOD: 6/14/2022

(EXHIBIT#(A)

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of July, two thousand twenty-three,

Present: ~~Raymond J. Lohier, Jr.,~~
Steven J. Menashi,
Beth Robinson,

Circuit Judges,

Jan M. Gawlik,

Plaintiff - Appellant,

v.

Scott Semple, COM'R, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Scott Erfe, Warden, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Czeremcha, Lieutenant, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Watson, Captain, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Smith, Officer, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Buckland, Officer, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Brown, Officer, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Parker, Officer, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Cunningham, Officer, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Angel Quiros, Dist. Admin., Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, Charles Williams, Rev. Dr., Sued in their Individual and Official Capacities/Dept. of Corrections Personnel,

ORDER
Docket No. 22-1423

(EXHIBIT#(C)

Defendants - Appellees,

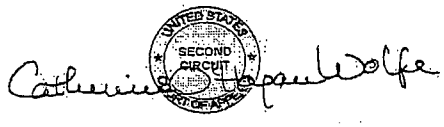
Chaniece Parker, Nurse, Sued in their Individual and Official Capacities/Dept. of Corrections Personnel, John B. Ceruti, State Trooper Lieutenant, Badge #044, Internal Affairs Unit, Sued in their Individual and Official Capacities/Connecticut State Police (DESPP), Edmund Vayan, State Trooper, Detective, Badge #1182, Division of Major Crimes, Sued in their Individual and Official Capacities/Connecticut State Police (DESPP), James Rovella, Commissioner, Dept. of Emergency Services and Public Protection, Superior Respondent, Sued in their Individual and Official Capacities/Connecticut State Police (DESPP), Mejias, State Trooper, Badge #1067, Sued in their Individual and Official Capacities/Connecticut State Police (DESPP),

Defendants.

Appellant Jan M. Gawlik filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



(EXHIBIT#(C)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAN M. GAWLIK

Plaintiff

v.

SCOTT SEMPLE, SCOTT ERFE, CZEREMCHA, WATSON, CHANIECE PARKER, SMITH, BUCKLAND, BROWN, PARKER, CUNNINGHAM, ANGEL QUIROS, CHARLES WILLIAMS, MEJIAS, JOHN B. CERUTI, EDMUND VAYAN, and JAMES ROVELLA

Defendants.

No. 3:20cv564(SALM)

JUDGMENT

This matter came up for consideration on the Motion for Summary Judgment filed by Defendants Brown, Buckland, Cunningham, Czeremcha, Scott Erfe, Parker, Angel Quiros, Scott Semple, Smith, Watson, and Charles Williams, **[Doc. #56],** before the Honorable Sarah A. L. Merriam, United States District Judge. Defendants Chaniece Parker, Mejias, John B. Ceruti, Edmund Vayan, and James Rovella were dismissed on September 27, 2021, upon entry of an Initial Review Order **[Doc. #25]**. On June 14, 2022, the Court, having considered the full record of the case including applicable principles of law, entered a Ruling that GRANTED the Defendants' Motion for Summary Judgment. It is hereby;

ORDERED, ADJUDGED and DECREED that judgment shall enter in favor of the Defendants Brown, Buckland, Cunningham, Czeremcha, Scott Erfe, Parker, Angel Quiros, Scott Semple, Smith, Watson, and Charles Williams, against the Plaintiff Jan M. Gawlik, consistent with the Court's Ruling and this case shall be closed.

(EXHIBIT#(J)

In this term's Supreme Court, every word counts

Richard Wolf
USA TODAY

WASHINGTON — Conservatives are controlling most of the Supreme Court's closely divided cases so far this term by sticking to the words written by Congress.

The justices have settled challenges involving the rights of workers, immigrants, prisoners and patent owners by painstakingly defining the meaning of "for," "shall," "any" and "other," along with "satisfy" and "salesman."

The result has been a series of 5-4 decisions written by justices Neil Gorsuch, Clarence Thomas and Samuel Alito that rely on "textualism" — letting the statutes under review speak for themselves. It's what the late justice Antonin Scalia preached and what President Trump promised he would seek in choosing Gorsuch as Scalia's successor.

"Since the court lost the foremost

See COURT, Page 2A

Court

Continued from Page 1A

textualist in its history, you'd just naturally expect that it would have become a little less textualist. And that just doesn't seem true," says former U.S. solicitor general Paul Clement, who has argued more than 90 cases at the Supreme Court.

"The terms of the debate have shifted," Clement says. "You don't want to walk into the court without a textualist argument."

This is what Gorsuch, the newest justice now entering his second year on the court, promised during his Senate confirmation in 2017 — to "try to understand what the words on the page mean, not import words that come from us."

"If the words are plain, you stop," Gorsuch said.

Thus it was last week, when Gorsuch refused to read into the National Labor Relations Act any rules for handling legal disputes under the Federal Arbitration Act. Gorsuch's opinion for the court held that employers can insist that workers settle labor disputes individually through arbitration.

"This court is not free to substitute its preferred economic policies for those chosen by the people's representatives," he wrote.

Justice Ruth Bader Ginsburg led the liberals' dissent, noting that the NLRA guarantees workers the right to unionize, bargain collectively and "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The dispute boiled down to the word "other" — Gorsuch declaring it must be related to union membership or collective bargaining, Ginsburg contending the law "speaks more embracively."

The court was similarly word-bound in another 5-4 decision written by Gorsuch last month that said an administrative board created to review patents cannot pick and choose which parts of a patent to review. The law passed by Congress is both mandatory and comprehensive, Gorsuch said. The word "shall" generally imposes a nondiscretionary duty. And the word "any" naturally carries an expansive meaning. It means the board must address every claim the petitioner has challenged.

Supreme Court experts say Gorsuch's addition has merely returned the court to Scalia's brand of textualism.

Conservatives have been on a Supreme Court winning streak, thanks to the letter of the laws.
MARK WILSON/GETTY IMAGES

"The court is no more textualist than it was when Scalia was on the court," says Irving Gornstein, executive director of the Supreme Court Institute at Georgetown University Law Center. "The only thing that has changed is that one textualist has been replaced by another."

But Jeffrey Fisher, co-director of the Stanford Law School Supreme Court Litigation Clinic, says Gorsuch "seems to be trying to put some fresh wind in the sails of textualism. And it seems he's having some success."

Justices Samuel Alito and Clarence Thomas also stuck to the letter of the law in recent 5-4 rulings.

Alito ruled that illegal immigrants can be detained indefinitely while their cases are reviewed rather than given intermittent bail hearings.

"Nothing in the statutory text imposes any limit on the length of detention," he said, nor does it say "anything whatsoever about bond hearings."

Breyer argued for the court's four liberal justices that such a law would be unconstitutional and should therefore be reinterpreted. Rather than focus only on the words, he said, the court should consider "the relevant constitutional language, purposes, history, traditions, context and case law."

Elizabeth Wydra, president of the liberal Constitutional Accountability Center, says conservatives often accuse liberals of reading into statutes what they want them to say.

The court's conservatives, Wydra says, also are guilty of that.

"There's going to be a battle about what is actual textualism," she says. "And the liberals aren't giving up that fight."

(EXHIBIT#(I)

Dated at New Haven, Connecticut, this 14th day of June, 2022.

DINAH MILTON KINNEY, Clerk

By: /s/
Andrew Caffrey
Deputy Clerk

EOD: 6/14/2022

(EXHIBIT#(J)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAN M. GAWLIK	:	Civil No. 3:20CV00564(SALM)
v.	:	
SCOTT SEMPLE, et al.	:	June 14, 2022

RULING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Self-represented plaintiff Jan M. Gawlik ("Gawlik" or "plaintiff"), a sentenced inmate[1] at Cheshire Correctional Institution ("Cheshire"), brings this action relating to events occurring during his incarceration in the custody of the Connecticut Department of Correction ("DOC").

Pursuant to Federal Rule of Civil Procedure 56(a), defendants Brown, Buckland, Cunningham, Czeremcha, Erfe, Parker, Quiros, Semple, Smith, Watson, and Williams ("defendants") move for summary judgment on the ground that "there is no triable

[1] The Court may take judicial notice of matters of public record. See, e.g., Mangiafico v. Blumenthal, 471 F.3d 391, 398 (2d Cir. 2006); United States v. Rivera, 466 F. Supp. 3d 310, 313 (D. Conn. 2020) (taking judicial notice of BOP inmate location information); Ligon v. Doherty, 208 F. Supp. 2d 384, 386 (E.D.N.Y. 2002) (taking judicial notice of state prison website inmate location information). The Court takes judicial notice of the Connecticut DOC website, which reflects that Gawlik was sentenced on January 9, 2015, to a term of imprisonment that has not expired. See http://www.ctinmateinfo.state.ct.us/detailsupv.asp?id_inmt_num=138888 (last visited June 13, 2022).

(EXHIBIT#(J)

issue of material fact that the Plaintiff ... , failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act[.]" Doc. #56 at 1. For the reasons set forth below, defendants' Motion for Summary Judgment [Doc. #56] is **GRANTED**.

I. PROCEDURAL BACKGROUND

Plaintiff brought this action on April 27, 2020. See Doc. #1. On that same date, plaintiff filed a motion for leave to proceed in forma pauperis. See Doc. #2. Plaintiff's motion was denied, see Doc. #12, and on September 2, 2020, plaintiff paid the filing fee. On September 27, 2021, Judge Stefan R. Underhill, the then-presiding Judge, conducted an initial review of the Complaint. See Doc. #25. Judge Underhill permitted the following claims to proceed:

> (1) the Eighth Amendment excessive force claim asserted against Lieutenant Czeremcha and Officers Buckland, Brown, Smith, Parker, and Cunningham in their individual capacities; (2) the First Amendment free exercise claim asserted against Lieutenant Czeremcha, Captain Watson and Officers, Smith, Buckland, Brown, Parker, and Cunningham in their individual and official capacities and against Commissioner Semple, Warden Erfe, District Administrator Quiros, and Director Williams in their officials capacities to the extent that Gawlik seeks injunctive relief related to the claim; and (3) the [Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA")] claim asserted against Lieutenant Czeremcha, Captain Watson, Officers, Smith, Buckland, Brown, Parker, and Cunningham, Commissioner Semple, Warden Erfe, District Administrator Quiros, and Director Williams in their official capacities for injunctive and declaratory relief.

(EXHIBIT#(J)

> I will additionally exercise supplemental jurisdiction over the state law assault and battery claims raised against Officers Buckland and Brown in their individual capacities.

Id. at 39. On October 15, 2021, this case was transferred to the undersigned "for all further proceedings." Doc. #28.

On December 14, 2021, defendants filed a Motion to Dismiss the official capacity claims. See Doc. #34. That motion remains pending.[2] On December 20, 2021, the Court entered a Scheduling and Case Management Order that ordered "each defendant [to] determine whether there is a basis to dismiss this action, in whole or in part, for any reason, including but not limited to the following: (a) failure to exhaust administrative

[2] Defendants' motion to dismiss is limited to the official capacity claims. See Doc. #34 at 1. Defendants assert that "[p]laintiff failed to effect official capacity service in accordance with Rule 4 of the Federal Rules of Civil Procedure." Id. Ordinarily, the Court would grant plaintiff another opportunity to effect proper service. See Fed. R. Civ. P. 4(m) ("[I]f the plaintiff shows good cause for the failure[]" to timely effect service, "the court must extend the time for service for an appropriate period." (emphasis added)); Harrison v. New York, 95 F. Supp. 3d 293, 317-20 (E.D.N.Y. 2015) (explaining the factors considered by the Court when determining whether to grant an extension where plaintiff has not shown good cause). However, the question of whether plaintiff has properly exhausted his administrative remedies pursuant to the PLRA is dispositive of the official and individual capacity claims. Thus, the Court finds it appropriate to resolve defendants' motion for summary judgment first, to avoid any unnecessary expense to plaintiff that would result from attempting to properly serve defendants in their official capacities.

(EXHIBIT#(J)

remedies[.]" Doc. #35 at 4. The Scheduling and Case Management Order further stated:

> If a defendant believes that there is a sound basis to assert that the matter should be dismissed for failure to exhaust administrative remedies, but that such a question must be determined by a motion for summary judgment rather than a motion to dismiss, defendant may file a preliminary motion for summary judgment on or before February 11, 2022, on that issue.

Id. (emphasis removed).

On February 8, 2022, as permitted by the Scheduling and Case Management Order, defendants filed a motion for summary judgment, limited to the argument that plaintiff failed to exhaust his administrative remedies. See Doc. #56. The Court granted plaintiff an extension of time to file a response, see Doc. #61, and on March 31, 2022, plaintiff filed an objection to defendants' motion for summary judgment. See Doc. #76. On April 13, 2022, defendants filed a reply. See Doc. #80. On April 21, 2022, plaintiff filed a "reply to defendants reply of objection re: early motion for summary judgment[.]" Doc. #81 at 1 (sic).[3]

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "the movant shows that

[3] The Court notes that this filing is, effectively, a sur-reply. The Local Rules provide: "No sur-replies may be filed without permission of the Court, which may, in its discretion, grant permission upon a showing of good cause." D. Conn. L. Civ. R. 7(d) (emphasis added). The Court has considered the arguments raised in plaintiff's sur-reply; however, plaintiff is reminded of the importance of complying with the Federal and Local Rules.

(EXHIBIT#(J)

there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "The party seeking summary judgment has the burden to demonstrate that no genuine issue of material fact exists." Marvel Characters, Inc. v. Simon, 310 F.3d 280, 286 (2d Cir. 2002). The moving party may discharge this burden by "pointing out to the district court ... that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). "In moving for summary judgment against a party who will bear the ultimate burden of proof at trial, the movant's burden will be satisfied if he can point to an absence of evidence to support an essential element of the nonmoving party's claim." Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995).

In deciding a motion for summary judgment, the Court "must construe the facts in the light most favorable to the non-moving party and must resolve all ambiguities and draw all reasonable inferences against the movant." Beyer v. Cnty. of Nassau, 524 F.3d 160, 163 (2d Cir. 2008) (citation and quotation marks omitted). "If there is any evidence in the record that could reasonably support a jury's verdict for the non-moving party, summary judgment must be denied." Am. Home Assur. Co. v. Hapag Lloyd Container Linie, GmbH, 446 F.3d 313, 315 (2d Cir. 2006) (citation and quotation marks omitted).

(EXHIBIT#(J)

"[I]n a pro se case, the court must view the submissions by a more lenient standard than that accorded to formal pleadings drafted by lawyers. ... This liberal standard, however, does not excuse a pro se litigant from following the procedural formalities of summary judgment." Govan v. Campbell, 289 F. Supp. 2d 289, 295 (N.D.N.Y. 2003) (citations and quotation marks omitted). A plaintiff's "pro se status d[oes] not eliminate his obligation to support his claims with some evidence to survive summary judgment." Nguedi v. Fed. Rsrv. Bank of N.Y., 813 F. App'x 616, 618 (2d Cir.), cert. denied, 141 S. Ct. 825 (2020). "[A] pro se party's bald assertion, completely unsupported by evidence is not sufficient to overcome a motion for summary judgment." Hamilton v. Gen. Motors Hourly-Rate Employee's Pension Plan, 101 F. Supp. 3d 202, 209 (N.D.N.Y. 2015) (citation and quotation marks omitted).

Pursuant to the District of Connecticut Local Rules, "[a] party opposing a motion for summary judgment shall file and serve with the opposition papers a document entitled 'Local Rule 56(a)2 Statement of Facts in Opposition to Summary Judgment,' which shall include a reproduction of each numbered paragraph in the moving party's Local Rule 56(a)1 Statement followed by a response to each paragraph admitting or denying the fact and/or objecting to the fact as permitted by Federal Rule of Civil Procedure 56(c)." D. Conn. L. Civ. R. 56(a)(2)(i) (emphasis

added). When a party fails to controvert a fact set forth in the opposing party's Local Rule 56(a)(1) statement, it will be deemed admitted if it is "supported by the evidence[.]" D. Conn. L. Civ. R. 56(a)(1).

III. FACTUAL BACKGROUND

The following facts are derived from the parties' submissions pursuant to Local Rule 56(a) and the affidavits, declarations, and exhibits attached thereto.

As required, defendants provided the Local Rule 56(b) Notice to Self-Represented Litigant Regarding Summary Judgment, a copy of Local Rule 56, and a copy of Federal Rule 56, to plaintiff in conjunction with their motion for summary judgment. See Doc. #56-5. Despite this Notice, which explicitly informed plaintiff that he was required to "respond to specific facts the movant claims are undisputed (see Local Rule 56(a)(2))" and to "support [his] claims with specific references to evidence[,]" Doc. #56-5 at 2, plaintiff did not file a Rule 56(a)(2) Statement. The Court specifically drew plaintiff's attention to these attachments in its February 15, 2022, Order. See Doc. #61 ("Plaintiff has also been provided with the relevant Local and Federal rules. See Doc. #56-5."). Plaintiff has had ample notice of, and opportunity to meet, the Local Rule 56(a)(2) requirement, and has failed to do so.

(EXHIBIT#(J)

Defendants noted this failure in their reply. See Doc. #80 at 1. Plaintiff responds that he "must be afforded lenien[cy]" because he is not an attorney and that "[i]t is well established that a court is ordinarily obligated to afford a 'special solicitude' to pro-se litigants[.]" Doc. #81 at 1.

> The court is well aware ... that the submissions of a pro se litigant must be construed liberally and interpreted to raise the strongest arguments that they suggest. This policy of liberally construing pro se submissions is driven by the understanding that implicit in the right of self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training. On the other hand, pro se parties are not excused from abiding by the Federal Rules of Civil Procedure.

Wilks v. Elizabeth Arden, Inc., 507 F. Supp. 2d 179, 185 (D. Conn. 2007) (citations and quotation marks omitted).

Plaintiff was provided ample notice of the requirement to file a Local Rule 56(a)(2) statement with his response to defendants' motion for summary judgment. See Cusamano v. Sobek, 604 F. Supp. 2d 416, 426 (N.D.N.Y. 2009) ("[T]he Court extends special solicitude to the pro se litigant largely by ensuring that he or she has received notice of the consequences of failing to properly respond to the motion for summary judgment." (emphasis added)); Wu v. Nat'l Geospatial Intel. Agency, No. 3:14CV01603(DJS), 2017 WL 923906, at *2 (D. Conn. Mar. 8, 2017) (noting that the self-represented plaintiff "was advised on two

separate occasions of the need to comply with Local Rule 56 and specifically of the need to file a Local Rule 56(a)2 Statement" but had failed to do so, and therefore deeming the statements in the movant's Statement of Undisputed Facts admitted).

"[T]o the extent that [defendants'] factual assertions are properly supported by the evidence the Court will deem those assertions admitted." Wu, 2017 WL 923906, at *2 (emphasis added); see also Otero v. Purdy, No. 3:19CV01688(VLB), 2021 WL 4263363, at *10 (D. Conn. Sept. 20, 2021) ("deem[ing] Defendants' 56(a)1 statements to be admitted as they are properly supported by the evidence[]" and the self-represented plaintiff did not file a Local Rule 56(a)(2) statement). However, to the extent that a fact is refuted by plaintiff's response to defendants' motion for summary judgment, the Court will consider that fact disputed. See Wilks, 507 F. Supp. 2d at 185-86 ("For the purposes of this motion, however, the court shall deem admitted all facts set forth in the Defendant's compliant Local Rule 56(a)(1) Statement that are supported by the evidence and not refuted by the Plaintiff's opposition memorandum."). Accordingly, the Court will deem all facts in defendants' Local Rule 56(a)(1) statement that are supported by the evidence admitted, unless plaintiff's submissions directly contradict them. If a fact is disputed, the Court will consider

(EXHIBIT#(J)

the evidence provided by the parties to determine whether the dispute is genuine.

A. DOC Administrative Remedy Procedure

Inmates incarcerated at Connecticut DOC facilities have access to the Inmate Administrative Remedies Process outlined in Administrative Directive 9.6 ("A.D. 9.6"). See generally Doc. #56-3 at 2-15.[4] Plaintiff does not dispute that A.D. 9.6 applies. See Doc. #76 at 3 (referencing A.D. 9.6 as the governing procedure).

A.D. 9.6 states: "The Department of Correction shall provide a means for an inmate to seek formal review of an issue relating to any aspect of an inmate's confinement that is subject to the Commissioner's authority. The Inmate Administrative Remedies Process enables the Department to identify individual and systemic problems, to resolve legitimate complaints in a timely manner and to facilitate the accomplishment of its mission." Doc. #56-3 at 2.

[4] A.D. 9.6 was revised on April 30, 2021. See State of Connecticut Department of Correction, Administrative Directive 9.6: Inmate Administrative Remedies, 3-4 (April 30, 2021), https://portal.ct.gov/-/media/DOC/Pdf/Ad/AD9/AD_0906_Effective_04302021.pdf. Plaintiff's Complaint concerns events allegedly occurring on March 26, 2018. See, e.g., Doc. #1 at 5. Accordingly, all references to A.D. 9.6 throughout this Ruling refer to the version that was in effect from August 15, 2013, through April 29, 2021, which defendants have attached as Exhibit 2. See Doc. #56-3 at 2-15.

(EXHIBIT#(J)

> The type of remedies available to an inmate depends on the nature of the issue or condition experienced by the inmate or the decision made by correctional personnel. For all matters relating to any aspect of a prisoner's confinement that are subject to the Commissioner's authority and that are not specifically identified in subsections (B) through (I) of Administrative Directive 9.6(4), the applicable remedy is the Inmate Grievance Procedure set forth in 9.6(6).

Gulley v. Bujnicki, No. 3:19CV00903(SRU), 2019 WL 2603536, at *3 (D. Conn. June 25, 2019). Because plaintiff's claims do not relate to any of the specifically identified matters in subsections (B) through (I) of A.D. 9.6(4), his claims are subject to the Inmate Grievance Procedure, which is set forth in Subsection 6 of A.D. 9.6. See Doc. #56-3 at 3, 6-11. Plaintiff does not dispute that the Inmate Grievance Procedure applies. The Inmate Grievance Procedure entails an informal step, followed by up to three formal steps.

"An inmate must attempt to seek informal resolution prior to filing an inmate grievance." Id. at 6. An inmate may attempt informal resolution "verbally with the appropriate staff member or with a supervisor/manager. If the verbal option does not resolve the issue, the inmate shall submit a written request via CN 9601, Inmate Request Form." Id. Prison staff are required to respond "within 15 business days from receipt of the written request." Id.

"An inmate may file a grievance if the inmate is not satisfied with the informal resolution offered." Id. at 7. "The

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grievance must be filed within 30 calendar days of the occurrence or discovery of the cause of the grievance." Id. This grievance must be submitted on a "CN 9602, Inmate Administrative Remedy Form[,]" and the inmate must "attach CN 9601, Inmate Request Form, containing the appropriate staff member's response[.]" Id. "If the inmate was unable to obtain a blank CN 9601, Inmate Request Form, or did not receive a timely response to the inmate request, or for a similar valid reason, the inmate shall include an explanation indicating why CN 9601, Inmate Request Form, is not attached." Id. The inmate must submit the CN 9602 by depositing it "in the Administrative Remedies box." Id. This is commonly known as a "Level 1" grievance. Id. at 8.

A.D. 9.6 provides that each Level 1 grievance "shall be reviewed for compliance with the Inmate Grievance Procedure and investigated if the grievance is accepted." Id. DOC staff must respond "in writing within 30 business days of receipt[.]" Id. An inmate's grievance may be "Rejected, Denied, Compromised, Upheld or Withdrawn." Id. at 7.

"An inmate may appeal a Level 1 disposition to Level 2 within five (5) calendar days of receipt of the decision[,]" or "[i]f a response to a Level 1 grievance is not received within 30 business days[.]" Id. at 8. "A grievance appeal filed by an inmate confined in a Connecticut correctional facility shall be decided by the appropriate District Administrator[]" "within 30

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business days of receipt[.]" Id. Level 2 is "the final level of appeal for all grievances except as provided in Section 6(L)" of A.D. 9.6. Id.[5]

The DOC maintains "[a] grievance file ... at each level for each grievance[,]" which "include[s] a copy of the grievance, each response, and any supporting documents submitted in support of the grievance, presented during investigation, or relied upon in the decision." Id. at 9. Additionally, the DOC maintains a "Grievance Log," form CN 9608, which "include[s] the name and number of the grievant, the dates of initial receipt and of the response at that level, a brief description of the problem and the disposition." Id. at 10.

B. Events Underlying the Complaint and Motion

On March 26, 2018, plaintiff was "issued a class A disciplinary Report" "and was to be escorted and confined to [Cheshire's] Restrictive Housing Unit ('RHU') until April 2, 2018." Doc. #56-2 at 3; see also Doc. #76 at 2; Doc. #1 at 5, 49-52. "Before escorting Plaintiff to RHU on March 26, 2018, [defendant] Brown applied wrist restraints to Plaintiff. Brown

[5] In limited circumstances, an inmate may appeal a Level 2 disposition to Level 3. See Doc. #56-3 at 8. Level 3 review is available only if the grievance: "1. challenges Department level policy; 2. challenges the integrity of the grievance procedure; or, 3. exceeds the established 30 business day time limit for a Level 2 grievance response." Id. None of these circumstances are applicable to plaintiff's grievance.

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then secured Plaintiff's right-side while [defendant] Buckland secured Plaintiff's left side, both utilizing the reverse wristlock position." Doc. #56-2 at 3 (citations omitted); see also Doc. #76 at 2-10; Doc. #1 at 5-6, 52, 55. "Upon arrival at RHU," plaintiff was strip searched, during which process defendant "Czeremcha confiscated Plaintiff's rosary and cross." Doc. #56-2 at 3; see also Doc. #76 at 11; Doc. #1 at 8, 53-54. Plaintiff remained in RHU from March 26, 2018, to April 2, 2018. See Doc. #56-2 at 3; Doc. #76 at 2.

On April 12, 2018, plaintiff submitted an Informal Resolution, stating that his cross and rosary were "confiscated, for no reason," during that incident, and asking: "Why was my rosary and cross (confiscated/outside of directive policy." Doc. #1 at 78 (sic); see also Doc. #56-2 at 4; Doc. #56-4 at 49. On April 25, 2018, defendant Czeremcha responded to plaintiff's Informal Resolution, explaining that plaintiff's rosary and cross were confiscated because they are "metal and can pose a threat to safety and security." Doc. #1 at 78 (sic); see also Docs. #56-2 at 4; #56-4 at 49.

Plaintiff filed a Level 1 grievance, asserting that "illegal confiscation of inmates religious articles; (rosary-cross)[]" occurred on March 26, 2018. Doc. #56-4 at 41; Doc. #1 at 68 (sic). Plaintiff dated this grievance **April 26, 2018**. See id. In his Level 2 Appeal, plaintiff asserted that he filed this

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grievance on **April 26, 2018**. See Doc. #56-4 at 40; Doc. #1 at 70. Plaintiff's Complaint also states that this grievance was filed on **April 26, 2018**. See Doc. #1 at 12. In his opposition to defendants' motion for summary judgment, however, plaintiff asserts for the first time that he filed this grievance on **April 25, 2018**. See Doc. #76 at 3. Defendants assert that the grievance was filed on April 26, 2018. See Doc. #56-2 at 4. The grievance was not received until May 3, 2018. See id.; Doc. #56-4 at 41; Doc. #1 at 68.[6]

On May 7, 2018, plaintiff's Level 1 grievance was rejected with the following explanation: "Per Administrative Directive 9.6 section 6C Filing a Grievance. 'The grievance must be filed within 30 calendar days of the occurrence or discovery of the cause of the grievance.'" Doc. #76 at 26 (sic); see also Doc. #56-2 at 4; Doc. #1 at 12, 68. On May 8, 2018, plaintiff filed a Level 2 Appeal, asserting that he "was sustained a religious substantial burden[]" and "filed a timely grievance on 4/26/2018, which is (30 days), as (9.6 A.D. Section 6(c))/ states." Doc. #76 at 28 (sic); see also Doc. #56-2 at 4; Doc. #1 at 70. Plaintiff's Level 2 Appeal was rejected with the following response: "The number of calendar days from the

[6] The Court takes judicial notice of the fact that April 25, 2018, was a Wednesday; April 26, 2018, was a Thursday; and May 3, 2018, was a Thursday.

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occurrence when your religious item was confiscated (3/26/18), to the date you filed your grievance (4/26/18) totals 31 days. Accordingly, your level 2 grievance appeal is rejected. This grievance was filed improperly, therefore it is not exhausted however does not meet the criteria for a level 3 review." Doc. #76 at 28 (sic); see also Doc. #56-2 at 4; Doc. #1 at 70.

Defendants provided a copy of the "Grievance Log" as an exhibit to their motion. The Grievance Log includes the following information for each grievance: inmate name; inmate number; grievance summary; subject code; facility number; fiscal year;[7] and the date received, date disposed, and the disposition at levels one, two, and three, if applicable. See Doc. #56-4 at 6-37. The Log is accompanied by an Affidavit of Correctional Counselor Cooper (the "Cooper Affidavit") certifying that it is a "true and correct copy of the Cheshire C.I. Grievance Log" from "December 2017 [to] August 2018." Id. at 2. Plaintiff does not dispute, or indeed even address, the accuracy of the Grievance Log. See generally Docs. #76, #81.

[7] "Connecticut's fiscal year begins on July 1 of a calendar year and ends on June 30 of the following calendar year." Colon de Mejias v. Malloy, 353 F. Supp. 3d 162, 169 n.3 (D. Conn. 2018), aff'd sub nom. Colon de Mejias v. Lamont, 963 F.3d 196 (2d Cir. 2020). The Grievance Log shows information from December of Fiscal Year 2018 to August of Fiscal Year 2019, which corresponds to December of Calendar Year 2017 to August of Calendar Year 2018. See generally Doc. #56-4 at 6-37.

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The Cooper Affidavit states that plaintiff filed a grievance "regarding rosary beads in RHU" which was received on May 3, 2018. Doc. #56-4 at 3. The Cooper Affidavit further asserts that "[p]laintiff did not file any grievance regarding an excessive force incident, an assault, or battery on March 26, 2018." Id.

The Grievance Log reports that plaintiff's Level 1 grievance for "Rosary Beads in RHU" was received on May 3, 2018, and rejected on May 7, 2018, and that the Level 2 appeal of that grievance was received on May 16, 2018, and rejected on May 31, 2018. See id. at 7. The Grievance Log reveals a total of seven grievances filed by plaintiff during the nine-month period captured; the summaries of the remaining six grievances confirm that they are unrelated to the events of March 26, 2018. See id. at 14, 18, 22, 32, 36.

V. DISCUSSION

A. Applicable Law

The Prisoner Litigation Reform Act ("PLRA") provides: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. §1997e(a). "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life,

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whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." Porter v. Nussle, 534 U.S. 516, 532 (2002).

"The Supreme Court has held that 'the PLRA exhaustion requirement requires proper exhaustion.' That is, 'prisoners must complete the administrative review process in accordance with the applicable procedural rules -- rules that are defined not by the PLRA, but by the prison grievance process itself.'" Johnson v. Killian, 680 F.3d 234, 238 (2d Cir. 2012) (quoting Woodford v. Ngo, 548 U.S. 81, 93 (2006); and then quoting Jones v. Bock, 549 U.S. 199, 218 (2007)). "The PLRA's exhaustion requirement is designed to afford corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case." Johnson v. Testman, 380 F.3d 691, 697 (2d Cir. 2004) (citation and quotation marks omitted).

"Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." Woodford, 548 U.S. at 90-91. "[F]ailure to file a timely grievance constitutes failure to exhaust administrative remedies as required by the PLRA." Cole v. Miraflor, No. 02CV09981(RWS), 2003 WL 21710760, at *2 (S.D.N.Y. July 23, 2003) (emphasis added) (collecting cases); see also Williams v. Comstock, 425

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F.3d 175, 177 (2d Cir. 2005) ("[T]he failure to timely file the grievance in accordance with IGP rules amounted to a failure to exhaust administrative remedies in this case.").

B. Analysis

1. Date of Filing

It is undisputed that plaintiff filed a grievance relating to events that occurred on March 26, 2018. See Doc. #56-4 at 41-42, 45; Doc. #1 at 67-69. The date of that filing is clearly a material fact. The question for the Court is whether there is any genuine dispute as to when plaintiff filed that grievance.

Despite the ample evidence demonstrating that plaintiff's grievance was filed on (or after) April 26, 2018, plaintiff now asserts, for the first time, in his opposition to summary judgment, that he filed his grievance on April 25, 2018. Plaintiff asserts in argument that he "placed his grievance in grievance box on the night of 4/25/2018." Doc. #76 at 3. This assertion is unavailing, and it is insufficient to give rise to a genuine dispute of material fact.

Plaintiff attached a copy of the Level 1 grievance to his Complaint; he typed the date April 26, 2018, on that document three separate times. See Doc. #1 at 67, 68, 69. He also attached a copy of the Level 2 appeal to the Complaint, in which plaintiff states that he "filed a timely grievance on 4/26/18[.]" Id. at 70. In the Complaint itself, plaintiff

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asserts that he "properly filed administrative remedies on 4/26/2018[.]" Id. at 12.

As support for plaintiff's newly asserted claim that he filed his grievance on April 25, 2018, plaintiff argues that his grievance was "picked up and documented on date: 4/26/2018," meaning that "it was picked up on that day early in the morning[.]" Doc. #76 at 17. Plaintiff states that he would not have been able to place the grievance in the box prior to the time when a Correction Officer would have retrieved the grievances from the grievance box, so he must have put it in the box on April 25, 2018. See id. at 3, 17. This argument fails. First, the Grievance Log shows that plaintiff's grievance was "received" on May 3, 2018, not April 26, 2018. See Doc. #56-4 at 7. The grievance itself also shows that it was received on May 3, 2018. See Doc. #56-4 at 41; Doc. #1 at 68. There is no indication in the record of it having been "picked up" on April 26, 2018. The sole basis for April 26, 2018, being the date of filing is **plaintiff's own use of that date.** Second, if plaintiff is correct that a grievance is received the day after it is deposited in the box, that would suggest that this grievance was deposited (and thus treated as filed) on May 2, 2018, not April 25, 2018.[8]

[8] Defendants state April 26, 2018, as the date the grievance was filed in their Statement of Undisputed Material Facts, see Doc.

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The record reveals that plaintiff has consistently claimed that he filed the grievance on April 26, 2018, and changed his position only when defendants filed their motion for summary judgment. "Plaintiff alleges for the first time in opposition to summary judgment that" he filed the grievance on April 25, 2018. Pierre v. City of New York, 531 F. Supp. 3d 620, 628 n.5 (E.D.N.Y. 2021). "A plaintiff, even when proceeding pro se, may not raise new allegations for the first time in opposition to summary judgment." Id. Notably, plaintiff has also failed to provide any evidence, such as a sworn affidavit, to support his assertion that the grievance was filed on April 25, 2018. However, even if plaintiff had provided an affidavit certifying that he filed the grievance on April 25, 2018, it would not be enough to create a genuine dispute of material fact. See Petrisch v. HSBC Bank USA, Inc., No. 07CV03303(KAM)(JMA), 2013 WL 1316712, at *10 (E.D.N.Y. Mar. 28, 2013) ("[I]t is well established that 'a self-serving affidavit that merely reiterates conclusory allegations in affidavit form is insufficient to preclude summary judgment.'" (quoting United Mag. Co. v. Murdoch Magazines Distribution, Inc., 393 F. Supp.

#56-2 at 4, and the Court must construe the facts in the light most favorable to plaintiff. See Beyer, 524 F.3d at 163. Accordingly, the Court accepts the earlier date of April 26, 2018, as the date the grievance was filed, even though it was not received until May 3, 2018. That gives plaintiff a one-week "benefit of the doubt" already.

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2d 199, 211 (S.D.N.Y. 2005), aff'd sub nom. United Mag. Co. v. Curtis Circulation Co., 279 F. App'x 14 (2d Cir. 2008)) (collecting cases). Rather, "[t]he non-moving party may not rely on mere conclusory allegations nor speculation, but instead must offer some hard evidence showing that [his] version of the events is not wholly fanciful." D'Amico v. City of New York, 132 F.3d 145, 149 (2d Cir. 1998) (collecting cases).

Accordingly, the Court finds that plaintiff's unsupported assertion that he filed the grievance on April 25, 2018, is insufficient to raise a genuine dispute as to the material fact of the date the grievance was filed. The Court therefore proceeds to consider the merits of defendants' motion in light of the evidence that the grievance was filed on April 26, 2018.

2. First Amendment Free Exercise and RLUIPA

Defendants contend that they are entitled to judgment as a matter of law with respect to plaintiff's First Amendment and RLUIPA claims because, "for purposes of his First Amendment free exercise claim and RLUIPA claims, Plaintiff did not file a timely level one grievance within thirty calendar days of March 26, 2018, the date on which his rosary and cross were confiscated." Doc. #56-1 at 5. Plaintiff responds that his grievance was timely filed. See Doc. #76 at 1. Specifically, plaintiff contends:

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> [P]laintiff timely filed the exhaustion of administrative remedies within the (30-day) time frame pursuant to the "mailbox rule". The federal courts practice and protocol utilizes the (30/60/90) day time frames in their initial review orders, appeals, ect, for plaintiffs. This plaintiff pursuant to court practice and protocol has adopted also the procedure and practice of a (30/60/90) day time frame to submit all prospective documents to be ruled upon, and, not calendar days.

Doc. #76 at 1.[9]

As an initial matter, the Court notes that it is undisputed that plaintiff filed a grievance regarding his First Amendment and RLUIPA claims. Plaintiff's First Amendment and RLUIPA claims were permitted to proceed based on the confiscation of plaintiff's rosary and cross. See Doc. #25 at 25-29. The grievance at issue contains the following subject line: "RE:Illegal confiscation of inmates religious articles; (rosary-

[9] Plaintiff also asserts, in passing, that "[m]any jurisdiction do not require exhaustion of administrative remedies under the PLRA, due to the fact that it is many times the nature of the constitutional violation inwhich the atrocities are so much that 'shocks the conscience', that many district courts allow the cases to proceed due to its nature." Doc. #76 at 8 (sic). Plaintiff cites only one case to support this proposition: Cruz v. Jordan, 80 F. Supp. 2d 109, 124 (S.D.N.Y. 1999). The court in Cruz held "that plaintiff [wa]s required to exhaust all such administrative remedies as are available before" the action could proceed. 80 F. Supp. 2d at 121 (quotation marks omitted). Accordingly, Cruz does not support plaintiff's assertion that he is not required to exhaust his administrative remedies. The assertion that "many jurisdictions" do not require exhaustion is simply incorrect. PLRA exhaustion is required by federal statute and Supreme Court precedent, meaning that PLRA exhaustion is required in all federal jurisdictions. A plaintiff is exempt from PLRA exhaustion only in very limited circumstances, none of which are applicable here. See Ross v. Blake, 578 U.S. 632, 638 (2016); Rucker v. Giffen, 997 F.3d 88, 93 (2d Cir. 2021).

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cross), violating due process of Dept. of Correction protocol and state and federal laws, causing substantial burden of religion." Doc. #1 at 68; Doc. #56-4 at 41 (sic). Thus, the Court's inquiry is limited to whether this grievance was timely filed.

There is no genuine dispute regarding the fact that plaintiff's grievance was filed on April 26, 2018. See supra Section V.B.1. Because plaintiff filed the grievance on April 26, 2018, his grievance was untimely. A.D. 9.6 requires that grievances "be filed within 30 calendar days of the occurrence or discovery of the cause of the grievance." Doc. #56-3 at 7 (emphasis added). Plaintiff argues that he is "utilizing the (30-day) practice and procedure, not, any courts (31-day) day practice and procedure in federal courts which this plaintiff have never seen in any state or federal courts any (31-day) time frame, only, (30/60/90) day time frames within, initial review orders, appeals, submissions, ect." Doc. #76 at 2 (sic). This argument is unavailing.

The requirements for PLRA exhaustion are defined "'by the prison grievance process itself.'" Johnson v. Killian, 680 F.3d at 238 (quoting Jones, 549 U.S. at 218). Here, the DOC grievance process is outlined in A.D. 9.6, which, as discussed above, requires that the grievance be submitted within thirty calendar days of the incident. See Doc. #56-3 at 7. Thus, any procedural

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rule that applies in this Court is irrelevant to whether plaintiff complied with A.D. 9.6.

Plaintiff appears to assert that federal courts use a unique system of calculating the passage of days that somehow differs from the "calendar days" counted under A.D. 9.6. The computation of time in federal court is governed by Federal Rule of Civil Procedure 6. Rule 6 requires that federal courts "(A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period," unless it is "a Saturday, Sunday, or legal holiday[.]" Fed. R. Civ. P. 6(a)(1). Applying these principles to this case, the calculation of the thirty-day period would begin on March 27, 2018, and end on April 25, 2018. Thus, even if the federal rules were relevant to the question of whether plaintiff complied with A.D. 9.6, plaintiff's argument would still lack merit.

Plaintiff also appears to argue that every month is counted as thirty days, no matter how many days the month has in it.

> Courts many times as an example will rule on a date lets say: 1/1/2022, year as example, and they give the litigant till: 2/1/2022, as an example, to the courts this is a (30-day) time frame even that the month of January has 31 days in it. Another example is a ruling is done on 2/1/2022, year as example, and the court states that the litigant has until: 3/1/2022, but, in February there are only 28 days. The Court and while many of my litigation still considers that a (30-day) time frame even that there is only 28 days in that month of February[.]

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Doc. #76 at 18 (sic). This argument is frivolous, and false.

It is undisputed that the incident at issue occurred on March 26, 2018. See, e.g., Doc. #1 at 5, 68; Doc. #56-2 at 2. Thirty calendar days from March 26, 2018, is April 25, 2018. Plaintiff filed his Level 1 grievance thirty-one days after the incident, on April 26, 2018. The majority of plaintiff's opposition memorandum is dedicated to the assertion that he submitted the grievance on April 25, 2018, which he concedes is "thirty days from the incident of 3/26/2018." Doc. #76 at 2. Because plaintiff acknowledges that April 25, 2018, was thirty days from March 26, 2018, he must also necessarily concede that April 26, 2018, was thirty-one days from March 26, 2018. Thus, because plaintiff has failed to raise any genuine dispute as to the fact that his grievance was filed on April 26, 2018, plaintiff's grievance was filed thirty-one days after the March 26, 2018, incident giving rise to plaintiff's grievance.

Because plaintiff's grievance was filed thirty-one days after the occurrence of the incident he was grieving, his grievance was untimely. See Wilson v. McKenna, 661 F. App'x 750, 753 (2d Cir. 2016) (finding that plaintiff "did not submit a timely Level 1 grievance" where his Inmate Request form was filed "thirty-one days after he allegedly sustained an injury[]" and he never filed an Inmate Administrative Remedy Form); Davis v. Williams, No. 3:16CV01981(JAM), 2019 WL 1012008, at *3 (D.

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Conn. Mar. 4, 2019) (holding that plaintiff failed to exhaust his administrative remedies when he filed a grievance forty days after the incident, even though he "did not receive a timely response" to his Inmate Request Form); Lopez v. Semple, No. 3:18CV01907(KAD), 2021 WL 2312563, at *6 (D. Conn. June 7, 2021) (holding that plaintiff failed to exhaust his administrative remedies when he filed a grievance 78 days after the alleged incident). Thus, the record establishes that plaintiff failed to properly exhaust his administrative remedies with respect to his First Amendment Free Exercise and RLUIPA claims.

3. Eighth Amendment Excessive Force and State Law Assault and Battery

Even if plaintiff's grievance had been timely filed, it would not be sufficient to exhaust plaintiff's excessive force claims. Defendants contend that they are entitled to judgment as a matter of law with respect to plaintiff's Excessive Force and state law assault and battery claims because "Plaintiff did not avail himself of any administrative remedies, let alone exhaust them, with respect to his Eighth Amendment excessive force claim and his state law claims for assault and battery relative to the alleged use of force during his escort to RHU on March 26, 2018[.]" Doc. #56-1 at 5. Plaintiff responds: "Pursuant to Rule #20-Extent of Relief: Section#(3): Plaintiff does not have to defend against all the relief demanded against the defendants in

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grievance, and does not require to articulate in grievance, only allege with supporting evidence, and, the defendants without a reasonable doubt must disprove the video." Doc. #76 at 10 (sic).[10]

As an initial matter, the Court notes that plaintiff's reliance on Federal Rule of Civil Procedure 20 is misplaced. Rule 20 governs the "Permissive Joinder of Parties[,]" and has no bearing on whether plaintiff has properly exhausted his administrative remedies pursuant to the PLRA. Fed. R. Civ. P. 20. Plaintiff's argument focuses on the merits of his claim, repeatedly referencing video evidence of the alleged excessive force incident, rather than the PLRA's requirement that he "'complete the administrative review process in accordance with the applicable procedural rules[.]'" Jones, 549 U.S. at 218 (quoting Woodford, 548 U.S. at 88) (emphasis added). The focus of the exhaustion requirement of the PLRA is procedural, not substantive. The Court's inquiry at this stage is limited to whether plaintiff followed the proper procedural steps, not whether his claim has merit. See Foreman v. Comm. Goord, No. 02CV07089(SAS), 2004 WL 385114, at *6 (S.D.N.Y. Mar. 2, 2004)

[10] Plaintiff asserts that "there is abundant direct 'video' evidence that solidifies the/and defendants in (Eighth Amendment excessive force claim/First Amendment free exercise claim/state assault law claims for assault and battery/RLUIPA-claim), are violations." Doc. #76 at 9 (sic).

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("[T]he question of exhaustion of administrative remedies must be addressed before the Court can consider the merits of plaintiff's claims[.]").

Plaintiff's Eighth Amendment excessive force and state law assault and battery claims were permitted to proceed based on his allegations that "that the defendants applied the handcuffs too tightly and bent back his wrists for the very purpose of causing him pain." Doc. #25 at 18. A review of the Grievance Log reveals that plaintiff did not file any grievances "between March 26, 2018 and April 25, 2018 pertaining to the alleged incident of excessive force, assault, and/or battery on March 26, 2018 as set forth in the Complaint." Doc. #56-1 at 11; accord Doc. #56-4 at 3 ("Plaintiff did not file any grievance regarding an excessive force incident, an assault, or battery on March 26, 2018.").[11] Plaintiff does not dispute this assertion. See generally Docs. #76, #81.

[11] The Grievance Log shows that plaintiff filed a total of seven grievances from December 2017 to August 2018. See Doc. #56-4 at 7, 14, 18, 22, 32, 36. The affidavit of Correctional Counsel Cooper describes the grievances "received from the Plaintiff, Jan Gawlik, Inmate No. 138888" as follows: "February 2, 2018 regarding missing CDs and the wearing of rosary beads[;]" "February 21, 2018 regarding denial of catholic confirmation[;]" "March 12, 2018 regarding religious articles[;]" "May 3, 2018 regarding rosary beads in RHU[;]" "May 10, 2018 regarding the denial of a visit from past victim[;]" "and June 28, 2018 regarding the denial of Catholic Legion of Mary[.]" Doc. #56-4 at 2-3.

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Plaintiff appears to argue that he was not required to raise his claims of excessive force in the April 26, 2018, grievance. See Doc. #76 at 10. He is mistaken. An inmate's grievance "must provide enough information about the conduct of which they complain to allow prison officials to take appropriate responsive measures." Johnson v. Testman, 380 F.3d at 697. "[T]he mere fact that plaintiff filed some grievance ... does not automatically mean that he can now sue anyone who was in any way connected with the events giving rise to that grievance." Turner v. Goord, 376 F. Supp. 2d 321, 324 (W.D.N.Y. 2005); see also Riles v. Semple, No. 3:17CV02178(MPS), 2022 WL 124231, at *2 (D. Conn. Jan. 13, 2022) (finding that the PLRA requires exhaustion of the separate "'components' or 'aspects' of" an inmate's claims). Rather, plaintiff must "specifically describe" the conduct of which he complains to ensure he "give[s] the facility enough information to investigate [his] allegations[.]" Wright v. Potter, No. 9:14CV01041(DNH)(TWD), 2016 WL 5219997, at *5 (N.D.N.Y. June 28, 2016), report and recommendation adopted, 2016 WL 5173283 (N.D.N.Y. Sept. 21, 2016).

The only grievance that plaintiff filed with respect to the March 26, 2018, incident, does not reference any use of excessive force. See Doc. #1 at 67-69; Doc. #56-4 at 41-42, 45. The only mention of force in that grievance is plaintiff's

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speculative allegation that he "would have been chemical pepper sprayed in the eyes and face[]" if he did not "remove [his] rosary and cross from around [his] head." Doc. #1 at 69 (emphasis added); Doc. #56-4 at 45. "[A]n official investigating plaintiff's grievance [would not] reasonably be expected to have explored" any use of force against plaintiff, because his grievance did not put prison officials on notice of his complaint relating to the handcuffs and use of force. Turner, 376 F. Supp. 2d at 325. Rather, plaintiff's grievance was limited to his religious freedom claims. The passing mention of a theoretical (but non-occurring) use of pepper spray in the grievance was offered in support of the religious freedom claim, was wholly unrelated to the tightness of the handcuffs or the bending of his wrists, and was not a separate claim of conduct such that prison officials would be on notice of a separate excessive force claim. See Shehan v. Erfe, No. 3:15CV01315(MPS), 2017 WL 53691, at *8 (D. Conn. Jan. 4, 2017) (finding that an inmate exhausted his administrative remedies "only with respect to those of the plaintiff's claims in this action that he actually asserted in the grievance[]" (emphasis added)).

Thus, the record establishes that plaintiff also failed to exhaust his administrative remedies as to his Eighth Amendment excessive force and state law assault and battery claims.

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VI. CONCLUSION

The record establishes that plaintiff "failed to properly exhaust the administrative remedies available to him before filing suit in federal court[]" as to all of his remaining claims. Wilson, 661 F. App'x at 753. The PLRA requires exhaustion. Failure to exhaust available administrative remedies entitles defendants to summary judgment. See Mckinney v. Prack, 170 F. Supp. 3d 510, 518 (W.D.N.Y. 2016) (granting summary judgment in favor of defendants on plaintiff's 42 U.S.C. §1983 claims where plaintiff failed to exhaust his administrative remedies under the PLRA). The only grievance plaintiff filed related to the events of March 26, 2018, was untimely, and failed to place prison officials on notice of his claims regarding the use of force in application of handcuffs.

Accordingly, and for the reasons set forth herein, defendant's Motion for Summary Judgment [**Doc. #56**] is **GRANTED, as to all defendants, as to all claims.**

Judgment shall enter in favor of defendants.

The Clerk shall close this case.

It is so ordered this 14th day of June, 2022, at Bridgeport, Connecticut.

/s/
HON. SARAH A. L. MERRIAM
UNITED STATES DISTRICT JUDGE

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