

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 24 2026

FOR THE NINTH CIRCUIT

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

LIONEL TATE, Sr.,

Plaintiff - Appellant,

v.

L. CHAVEZ; CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION; UNIVERSITY OF  
CALIFORNIA, DAVIS; J. MANN;  
MICHAEL GEOFFREY MOORE; M. GO;  
REGENTS OF THE UNIVERSITY OF  
CALIFORNIA; L. MEYERS,

Defendants - Appellees.

No. 24-5349

D.C. No. 2:22-cv-00211-DJC-CKD

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Daniel J. Calabretta, District Court, Presiding

*opening Brief Filed 10-1-2024*  
Submitted February 18, 2026\*\*  
*Reply Brief Filed ON 11-19-2024*

Before: CALLAHAN, FRIEDLAND, and BRESS, Circuit Judges.

California state prisoner Lionel Tate, Sr., appeals pro se from the district

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). *Appellees WAIVED ORAL ARGUMENT by NOT FOLLOWING THE BRIEF Schedule*

APPENDIX - A

court's summary judgment in his 42 U.S.C. § 1983 action alleging Eighth Amendment violations and negligence. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Williams v. Paramo*, 775 F.3d 1182, 1191 (9th Cir. 2015). We affirm.

The district court properly granted summary judgment to defendant Mann because Tate failed to exhaust administrative remedies for his Eighth Amendment claim and failed to raise a genuine dispute of material fact as to whether he complied with the presentment requirements of the California Government Claims Act for his negligence claim. *See Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (PLA intended to "reduce the quantity and improve the quality of prisoners' suits" (explaining that exhaustion requires "using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits)" (citation and internal quotation marks omitted)); *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 627 (9th Cir. 1988) (explaining that failure to comply with California presentment procedures bars pendent state law tort claims against employees of public entities).

To the extent Tate challenges the district court's dismissal of his claims against the California Department of Corrections and Rehabilitation, the district court properly dismissed the claims as barred by Eleventh Amendment immunity. *See Jensen v. Brown*, 131 F.4th 677, 696 (9th Cir. 2025) (explaining that the "Eleventh Amendment bars suits against the State or its agencies for all types of

relief, absent unequivocal consent by the state” (citation and internal quotation marks omitted)); *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004) (setting forth standard of review).

The district court did not abuse its discretion in granting defendants’ motion for an extension of time to file an answer to Tate’s amended complaint. See *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258 (9th Cir. 2010) (setting forth standard of review); *FTC v. Gill*, 265 F.3d 944, 957 (9th Cir. 2001) (explaining that the district court has broad discretion to control its docket).

The district court did not abuse its discretion in denying Tate’s motions for default judgment. See *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (setting forth standard of review and factors that courts may consider in determining whether to enter default judgment).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions and requests are denied.

**AFFIRMED.**

False and  
misleading  
discretion

APPENDIX-'C'

FINDINGS AND RECOMMENDATIONS  
DATED OCTOBER 30, 2023

APPENDIX-'C'

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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 LIONEL TATE, SR.,

12 Plaintiff,

13 v.

14 L. CHAVEZ, et al.,

15 Defendants.  
16

No. 2:22-cv-0211 DJC CKD P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff has filed a motion asking that default judgment be entered in this action against  
18 the only remaining defendant, defendant Mann. Plaintiff asserts that some of his legal materials  
19 have been destroyed by corrections employees other than defendant Mann. This is not a basis for  
20 entry of judgment as plaintiff has not demonstrated how destruction of his materials has  
21 prejudiced this case and/or how such acts can be attributed to defendant Mann.

22 Plaintiff is warned that if he files frivolous motions he runs the risk of the court dismissing  
23 this action under Rule 41(b) of the Federal Rules of Civil Procedure.

24 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's October 16, 2023  
25 "Motion for Default Judgment" (ECF No. 43) be denied.

26 These findings and recommendations are submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
28 after being served with these findings and recommendations, any party may file written

APPENDIX - C

1 objections with the court and serve a copy on all parties. Such a document should be captioned  
2 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
3 objections shall be served and filed within fourteen days after service of the objections. The  
4 parties are advised that failure to file objections within the specified time may waive the right to  
5 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: October 30, 2023

  
7 CAROLYN K. DELANEY  
8 UNITED STATES MAGISTRATE JUDGE  
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**U.S. District Court**

**Eastern District of California – Live System**

**Notice of Electronic Filing**

The following transaction was entered on 10/30/2023 at 11:45 AM PDT and filed on 10/30/2023

**Case Name:** (PC) Tate v. Chavez, et al.,

**Case Number:** 2:22-cv-00211-DJC-CKD

**Filer:**

**Document Number:** 45

**Docket Text:**

**FINDINGS and RECOMMENDATIONS** signed by Magistrate Judge Carolyn K. Delaney on  
10/30/2023 **RECOMMENDING** that the [43] Motion for Default Judgment be denied. Referred  
to Judge Daniel J. Calabretta. Objections due within 14 days after being served with these  
findings and recommendations. (Spichka, K.)

**2:22-cv-00211-DJC-CKD Notice has been electronically mailed to:**

Matthew Roman &nbsp; &nbsp; matthew.roman@doj.ca.gov, jolene.delrio@doj.ca.gov,  
Pamela.Holmes@doj.ca.gov, Sharon.Claiborne@doj.ca.gov, TORT-ECF@doj.ca.gov

R. Lawrence Bragg &nbsp; &nbsp; lawrence.bragg@doj.ca.gov, docketingSACCLS@doj.ca.gov,  
ecfcoordinator@doj.ca.gov, kellie.burr@doj.ca.gov

**2:22-cv-00211-DJC-CKD Electronically filed documents must be served conventionally by the filer  
to:**

Lionel Tate, Sr  
C-88165  
CALIFORNIA STATE PRISON, SOLANO (4000)  
P.O. BOX 4000  
VACAVILLE, CA 95696-4000

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

# APPENDIX - 'E'

## FINDINGS AND RECOMMENDATIONS

DATED JUNE 17, 2024

APPENDIX - E

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LIONEL TATE, SR.,

Plaintiff,

v.

L. CHAVEZ, et al.,

Defendants.

No. 2:22-cv-0211 DJC CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. On October 24, 2022, the court screened plaintiff's amended complaint as the court is required to do under 28 U.S.C. § 1915A(a). The court found that plaintiff could proceed against defendant Mann for claims arising under the Eighth Amendment and California negligence law regarding Mann's transporting of plaintiff to the Sierra Conservation Center on September 15, 2016. Defendant Mann's motion for summary judgment (ECF No. 48) is before the court.

I. Summary Judgment Law

Summary judgment is appropriate when it is demonstrated that 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). A party asserting that a fact cannot be disputed must support the assertion by "citing to particular parts of materials in the record, including depositions, documents,

1 electronically stored information, affidavits or declarations, stipulations (including those made for  
2 purposes of the motion only), admissions, interrogatory answers, or other materials. . .” Fed. R.  
3 Civ. P. 56(c)(1)(A).

4 Summary judgment should be entered, after adequate time for discovery and upon motion,  
5 against a party who fails to make a showing sufficient to establish the existence of an element  
6 essential to that party’s case, and on which that party will bear the burden of proof at trial. See  
7 Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). “[A] complete failure of proof concerning an  
8 essential element of the nonmoving party’s case necessarily renders all other facts immaterial.”  
9 Id.

10 If the moving party meets its initial responsibility, the burden then shifts to the opposing  
11 party to establish that a genuine issue as to any material fact actually does exist. See Matsushita  
12 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to establish the  
13 existence of this factual dispute, the opposing party may not rely upon the allegations or denials  
14 of their pleadings but is required to tender evidence of specific facts in the form of affidavits,  
15 and/or admissible discovery material, in support of its contention that the dispute exists or show  
16 that the materials cited by the movant do not establish the absence of a genuine dispute. See Fed.  
17 R. Civ. P. 56(c); Matsushita, 475 U.S. at 586 n.11. The opposing party must demonstrate that the  
18 fact in contention is material, i.e., a fact that might affect the outcome of the suit under the  
19 governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); T.W. Elec. Serv.,  
20 Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir. 1987), and that the dispute is  
21 genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving  
22 party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987).

23 In the endeavor to establish the existence of a factual dispute, the opposing party need not  
24 establish a material issue of fact conclusively in its favor. It is sufficient that “the claimed factual  
25 dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at  
26 trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary judgment is to ‘pierce  
27 the pleadings and to assess the proof in order to see whether there is a genuine need for trial.’”

28 ////

1 Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory committee's note on 1963  
2 amendments).

3 In resolving the summary judgment motion, the evidence of the opposing party is to be  
4 believed. See Anderson, 477 U.S. at 255. All reasonable inferences that may be drawn from the  
5 facts placed before the court must be drawn in favor of the opposing party. See Matsushita, 475  
6 U.S. at 587. Nevertheless, inferences are not drawn out of the air, and it is the opposing party's  
7 obligation to produce a factual predicate from which the inference may be drawn. See Richards  
8 v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902  
9 (9th Cir. 1987). Finally, to demonstrate a genuine issue, the opposing party "must do more than  
10 simply show that there is some metaphysical doubt as to the material facts . . . . Where the record  
11 taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no  
12 'genuine issue for trial.'" Matsushita, 475 U.S. at 587 (citation omitted).

13 II. Eighth Amendment Claim

14 Defendant Mann argues that he is entitled to summary judgment as to plaintiff's Eighth  
15 Amendment claim because plaintiff did not exhaust his available administrative remedies. Under  
16 42 U.S.C. § 1997e(a) "[n]o action shall be brought with respect to prison conditions under section  
17 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other  
18 correctional facility until such administrative remedies as are available are exhausted."

19 The California Department of Corrections and Rehabilitation (CDCR) provides prisoners  
20 the right to appeal administratively "any policy, decision, action, condition, or omission by the  
21 department or its staff that the inmate or parolee can demonstrate as having a material adverse  
22 effect upon his or her health, safety, or welfare." Cal. Code Regs. tit. 15, § 3084.1(a). The  
23 process is initiated by submitting a CDCR Form 602. Id. at § 3084.2(a).

24 At the time of the events giving rise to plaintiff's claim, California prisoners were required  
25 to submit appeals within thirty days of the event being appealed, and the process was initiated by  
26 submission of the appeal at the first level. Id. at §§ 3084.7(a), 3084.8(b). There  
27 were three levels of appeal and third level of review exhausted administrative remedies. Id. at §§  
28 3084.7, 3084.7(d)(3).

1 Defendant points to evidence indicating that plaintiff never filed a grievance as to any  
2 aspect of defendant's transportation of plaintiff to the Sierra Conservation Center on September  
3 15, 2016. ECF No. 48-4 at 1-24. In his opposition to defendant's motion for summary judgment,  
4 plaintiff does not deny that he failed to submit a grievance, does not argue that administrative  
5 remedies were somehow unavailable to him, and does not provide any evidence that he did  
6 exhaust available administrative remedies. Accordingly, defendant Mann is entitled to summary  
7 judgment as to plaintiff's remaining Eighth Amendment claim based upon plaintiff's failure to  
8 exhaust available administrative remedies.

9 III. Negligence Claim

10 As for plaintiff's negligence claim, defendant argues that plaintiff did not comply with the  
11 California Government Claims Act, which requires that before a claim arising under California  
12 law can be asserted in court against a state employee, the claim must be presented to the  
13 "California Government Claims Program." See Cal. Gov't Code § 810 et seq. Defendant  
14 provides an affidavit from a Government Claims Program employee indicating that plaintiff never  
15 submitted a claim as to anything that occurred in September, 2016. ECF No. 48-4 at 25.

16 In his opposition to defendant's motion for summary judgment, plaintiff asserts that he  
17 sent a claim to the California Victim Compensation and Government Claims Board. ECF No. 49  
18 at 3. However, that entity was dissolved on June 27, 2016, before the events forming the basis of  
19 plaintiff's negligence claim occurred. As of that date, claims presented pursuant to the  
20 "California Government Claims Program" had to be submitted to the California Department of  
21 General Services. See Cal. Gov't Code § 900.2.

22 IV. Conclusion

23 There being no genuine issue of material fact as to plaintiff's failure to exhaust available  
24 administrative remedies with respect to his Eighth Amendment claim, and plaintiff's failure to  
25 present his negligence claim in accordance with the California Government Claims Act,  
26 defendant Mann is entitled to summary judgment; the court need not respond to the other  
27 arguments raised by Mann in his motion.

28 Accordingly, IT IS HEREBY RECOMMENDED that:

- 1 1. Defendant Mann's motion for summary judgment (ECF No. 48) be granted; and
- 2 2. This case be closed.

3 These findings and recommendations are submitted to the United States District Judge  
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
5 after being served with these findings and recommendations, any party may file written  
6 objections with the court and serve a copy on all parties. Such a document should be captioned  
7 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
8 objections shall be served and filed within fourteen days after service of the objections. The  
9 parties are advised that failure to file objections within the specified time may waive the right to  
10 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: June 17, 2024

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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APPENDIX - 'G'

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ORDER: DENYING PANEL REHEARING

APPENDIX - 'G'

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JUN 18 2026

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

LIONEL TATE, Sr.,

Plaintiff - Appellant,

v.

L. CHAVEZ; et al.,

Defendants - Appellees.

No. 24-5349

D.C. No. 2:22-cv-00211-DJC-CKD

Eastern District of California,  
Sacramento

ORDER

Before: CALLAHAN, FRIEDLAND, and BRESS, Circuit Judges.

The petition (Docket Entry No. 47) for panel rehearing is denied.

All pending requests are denied.

This court will not entertain further filings in this closed case.

APPENDIX - 'G'

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LIONEL TATE, SR.,

Plaintiff,

v.

L. CHAVEZ, et al.,

Defendants.

No. 2:22-cv-211 DJC CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 17, 2024, the Magistrate Judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed June 17, 2024, are adopted in full;

3 2. Defendant Mann's motion for summary judgment (ECF No. 48) is granted;

4 and

5 3. The Clerk of Court is directed to close this case.

6  
7 IT IS SO ORDERED.

8 Dated: August 14, 2024

  
Hon. Daniel J. Calabretta  
UNITED STATES DISTRICT JUDGE

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