

No. 24-6240

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DEJWAN SIMMS,

Plaintiff-Appellant,

v.

EDWARDS, Correctional Officer at North Kern State Prison;
CORRECTION OFFICER #1,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of California,
No. 1:22-cv-00028-BAM, Hon. Barbara McAuliffe

PLAINTIFF-APPELLANT'S OPENING BRIEF

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STATEMENT REGARDING ORAL ARGUMENT

Counsel for Mr. Simms respectfully request oral argument. This appeal raises important questions regarding the correct application of the Prison Litigation Reform Act’s requirement that prisoners exhaust “available” administrative remedies before bringing federal lawsuits challenging the conditions of their confinement. Counsel for Mr. Simms submit that this Court’s decisional process will be aided significantly by oral argument. *See* Fed. R. App. P. 34(a)(2). Additionally, Morrison & Foerster LLP, co-counseling with the MacArthur Justice Center, is representing Mr. Simms pro bono in this matter, and the appeal will be argued by undersigned counsel, an associate at Morrison & Foerster LLP who has not previously presented oral argument in court.

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INTRODUCTION

Defendants-appellees, correctional officers at North Kern State Prison, denied Dejwan Simms emergency medical care necessary to treat life-threatening complications following surgery at an outside hospital. Defendants ignored Mr. Simms' obvious physical distress and mental impairment, as well as his repeated complaints of extreme pain and difficulty breathing, to rush him back to the prison so they could get off work on time. Based on those facts, the district court recognized that Mr. Simms stated cognizable Section 1983 claims against defendants for deliberate indifference to his medical needs in violation of the Eighth Amendment. But it entered judgment against Mr. Simms for failing to exhaust available administrative remedies as required by the Prison Litigation Reform Act (PLRA). That was wrong: The PLRA's exhaustion requirement does not apply here because no administrative remedies were available to Mr. Simms.

Mr. Simms timely grieved the wrongful denial of health care through the prison's health care grievance process. That channel was correct because Mr. Simms was grieving a "decision[], action[], condition[], or omission[] that ha[d] a material adverse effect" on his health or welfare. Cal. Code Regs. tit. 15, § 3999.226(a). But the prison mistakenly denied that grievance, contrary to the applicable regulations and with no explanation why the wrongful denial of medical care would fall outside health care jurisdiction. Mr. Simms attempted to comply

with the rejection notice's directions, which instructed him to resubmit his complaint, either through the custody grievance process or as a health care grievance with an explanation of why the denial of medical care was within health care jurisdiction. But those efforts were also repeatedly rejected, with similarly opaque explanations and directions allowing resubmission as a health care grievance. Eventually, Mr. Simms attempted to submit a custody grievance, which was reviewed by a different office. But by then it was too late: his custody grievance was rejected as untimely.

Even though Mr. Simms followed the applicable regulations and directions at every turn, his grievances were repeatedly and improperly rejected. Administrative remedies were thus unavailable—making the PLRA's exhaustion requirement inapplicable—for three independent reasons. First, the prison erroneously rejected Mr. Simms' health care grievance. Neither the prison nor defendants (nor the district court) identified any regulation suggesting that a grievance arising from the denial of necessary *medical care* falls outside of *health care* jurisdiction. That is because no such regulation exists. Mr. Simms correctly grieved a decision that denied him health care and adversely affected his health through the health care grievance process. The prison's improper and baseless rejection of his health care grievance prevented him from exhausting his administrative remedies through those channels.

In such circumstances, the result is no different than if the administrative remedies did not exist in the first place.

Second, if Mr. Simms could not exhaust administrative remedies by grieving the denial of necessary medical care to treat life-threatening surgical complications through the health care grievance process, then the prison's grievance procedures are so confusing and opaque that they are effectively unavailable. The applicable regulations do not define the term "health care jurisdiction," let alone provide any explanation for why it was not present here. The rejection notices, which repeatedly indicated that Mr. Simms could resubmit his grievance to the health care grievance office, only confirmed his belief that he could grieve denial of medical care through the health care grievance process. And while the correct grievance procedures would be unknowable to any prisoner, they posed a heightened challenge for Mr. Simms, who has a documented learning disability that requires prison staff to ensure they are communicating with him effectively.

Third, the prison thwarted Mr. Simms' efforts to exhaust administrative remedies by misleading him regarding the correct procedures to do so. Mr. Simms submitted a health care grievance because he was told that his complaint raised health care issues. But the prison subsequently rejected Mr. Simms' grievance, taking the contradictory position that it raised issues outside the health care jurisdiction.

Mr. Simms lacked an available administrative process to challenge the mistreatment he suffered following his surgical procedure. He properly pursued those claims in district court. The district court's order granting summary judgment should be reversed.

STATEMENT OF THE ISSUE

The PLRA requires exhaustion only of administrative remedies that are “available,” meaning “‘capable of use for the accomplishment of a purpose,’ and that which ‘is accessible or may be obtained.’” *Ross v. Blake*, 578 U.S. 632, 642 (2016) (quoting *Booth v. Churner*, 532 U.S. 731, 737-38 (2001)). The issue presented is whether administrative remedies were unavailable where:

1. Mr. Simms' initial grievance was rejected on a basis that appears in no applicable regulation or guidance;
2. Neither the regulations nor the prison clearly explained why Mr. Simms ostensibly could not grieve the denial of necessary health care through a health care grievance;
3. Mr. Simms was told he had the option to submit his complaint as a health care grievance and that, in fact, his complaint raised a health care issue; and
4. Mr. Simms has a documented learning disability that requires prison staff to ensure they are communicating with him effectively.

RELEVANT STATUTORY PROVISIONS

Pursuant to Circuit Rule 28-2.7, the full text of Cal. Code Regs. tit. 15, §§ 3999.225-3999.237 and Cal. Code Regs. tit. 15, §§ 3480-3487 (repealed 2022) are set forth in the addendum bound with this brief.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over Mr. Simms' 42 U.S.C. § 1983 claims under 28 U.S.C. § 1331. The district court entered summary judgment for defendants on September 23, 2024. ER-3; ER-4-16. Mr. Simms filed a timely notice of appeal on October 10, 2024. ER-132-149; Fed. R. App. P. 4(a)(1)(A), 4(a)(4)(A)(iv). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE CASE

A. Legal Background

Under the PLRA, prisoners cannot bring federal lawsuits challenging the conditions of their confinement unless they first exhaust “such administrative remedies as are available.” 42 U.S.C. § 1997e(a). “[T]he prison’s requirements, and not the PLRA, . . . define the boundaries of proper exhaustion.” *Jones v. Bock*, 549 U.S. 199, 218 (2007).

A prisoner’s “failure to exhaust is an affirmative defense under the PLRA.” *Id.* at 216. It is therefore the defendant’s burden to plead and “prove that there was an available administrative remedy, and that the prisoner did not exhaust that

available remedy.” *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014); *Jones*, 549 U.S. at 204-05, 216. If the defendant carries its “burden . . . to prove that there was an available administrative remedy, . . . the burden shifts to the prisoner to come forward with evidence showing that there is something in his particular case that made the existing and generally available administrative remedies effectively unavailable to him.” *Albino*, 747 F.3d at 1172. However, “the ultimate burden of proof remains with the defendant.” *Id.*

B. Factual Background

1. Mr. Simms was denied medical care necessary to treat life-threatening complications following surgery

In October 2020, Mr. Simms was incarcerated at North Kern State Prison. ER-7. He has a documented learning disability, and his file stated that because he was “listed as Learning Disabled, Staff must ensure effective communication is achieved and his learning disability needs are addressed for any disciplinary issues.” ER-143.

On October 16, 2020, Mr. Simms underwent nasal surgery at an outside hospital. ER-128. He was transported back to the prison by two correctional officers, defendant Edwards and her partner (together or separately, “defendants”).¹

¹ At the time the district court granted summary judgment, Mr. Simms had not been able to identify the second defendant correctional officer. The district court therefore dismissed that defendant without prejudice. ER-117-119. If remand is granted, Mr. Simms intends to amend his complaint to identify the second defendant.

ER-128. After surgery, the doctors had a difficult time waking Mr. Simms up, and he remained lethargic and disoriented. ER-128. Although defendants observed Mr. Simms' post-surgery "mental and physical state," they insisted on rushing him back "into chains" and the transport van, leaving no time for post-surgery recovery or examination. ER-128-129 (capitalization altered).

On the ride back to the prison, Mr. Simms repeatedly told defendants that he "was finding it hard to breathe," "was coughing up blood, and was in extreme pain." ER-129 (capitalization altered). Defendants ignored Mr. Simms and continued back to the prison, telling him that they needed to "get off work on time" because they were "not getting Overtime." ER-129-130 (capitalization altered).

By the time Mr. Simms and defendants reached the prison, Mr. Simms could hardly breathe and was coughing up blood. ER-129. Mr. Simms' body temperature had dropped, and a nurse was unable to take his blood pressure. ER-129. A doctor examined Mr. Simms and quickly determined that Mr. Simms had fluid in his lungs. ER-129. The doctor ordered that Mr. Simms be immediately returned to the outside hospital for treatment. ER-129.

Mr. Simms learned that blood had entered his lungs during the nasal surgery. ER-128. That surgical complication was life-threatening. ER-129. Following the incident, Mr. Simms continues "to suffer extreme pain" in his face and lungs and must "use a C-PAP to aid" his breathing when he sleeps. ER-130.

2. *Mr. Simms timely grieved the October 16, 2020 incident*

a) Mr. Simms' health care grievance

California prison regulations provide that prisoners who wish to grieve “applied health care policies, decisions, actions, conditions, or omissions that have a material adverse effect on their health or welfare” may submit a health care grievance. Cal. Code Regs. tit. 15, § 3999.226(a). Pursuant to that regulation, Mr. Simms filed a health care grievance describing defendants’ deliberate indifference to his need for medical treatment and denial of health care. ER-79-82. As required by the applicable regulations, Mr. Simms submitted his grievance within 30 days of October 16, 2020. ER-79 (submission date of November 12, 2020); Cal. Code Regs. tit. 15, § 3999.227(b).

“All submitted health care grievances” are screened to determine whether they comply with the requirements of Cal. Code Regs. tit. 15, § 3999.227 or may be rejected pursuant to Cal. Code Regs. tit. 15, § 3999.234. Cal. Code Regs. tit. 15, § 3999.228(c). Mr. Simms’ health care grievance was rejected at the institutional level on November 16, 2020. ER-83. The rejection notice² Mr. Simms received stated that his health care grievance had been rejected “for the following reason(s):

² If a health care grievance is rejected, the prison must provide the prisoner with a rejection notice that “provide[s] written instruction regarding further action the patient must take to qualify the health care grievance . . . for processing and the timeframe necessary . . . to correct and resubmit the health care grievance” to a specified office. Cal. Code Regs. tit. 15, § 3999.234.

Not Health Care Jurisdiction: California Code of Regulations, Title 15, Section 3999.226(a)(4) states, ‘The grievant shall not submit a health care grievance for issues outside the health care jurisdiction.’” ER-83. The rejection notice did not cite any regulation or other guidance explaining why the “issues” Mr. Simms grieved were “outside the health care jurisdiction.” ER-83. Instead, it simply stated that “[y]our concerns regarding custody staff should be addressed through the appropriate custody channels or explain why you believe this issue is within the health care jurisdiction.” ER-83. The notice further directed Mr. Simms to “[t]ake the necessary corrective action provided in this notice, and resubmit the health care grievance to the Health Care Grievance Office where you are housed within 30 calendar days.” ER-83.

Mr. Simms appealed the rejection of his health care grievance to the headquarters level. ER-80; *see also* Cal. Code Regs. tit. 15, §§ 3999.225(k), 3999.229(a) (permitting prisoner who is “dissatisfied with the institutional level health care grievance disposition” to appeal to the Health Care Correspondence and Appeals Branch). As directed by the rejection notice he had received, Mr. Simms “explain[ed] why” he believed his grievance was “within the health care jurisdiction.” ER-80; ER-83. He stated that defendants were “never suppose[d] to let me leave the hospital like that I was coughing up blood before we left the hospital they knew something was wrong right there and they ignored me.” ER-80

(capitalization altered). Mr. Simms explained, again, that the incident involved a “medical mistake,” that he “could have died that day,” and that therefore “[t]his is medical jurisdiction and my claim is with medical.” ER-80 (capitalization altered). Mr. Simms further noted that although the rejection notice was dated November 16, 2020, he had not received it until December 16, 2020. ER-80.

Mr. Simms’ appeal was also rejected. ER-85. The headquarters-level rejection notice indicated that Mr. Simms’ appeal was rejected pursuant to Cal. Code Regs. tit. 15, § 3999.227(m), which “states, ‘The grievant shall submit the institutional level health care grievance for processing to the HCGO [Health Care Grievance Office] where the grievant is housed.’” ER-85. The rejection notice directed Mr. Simms to “[s]ubmit your health care grievance to your institution’s Health Care Grievance Office,” and to “[t]ake the necessary corrective action provided in this notice, and resubmit the health care grievance within 30 calendar days.” ER-85. It did not direct Mr. Simms to file a custody grievance nor communicate that the issues raised in his grievance or appeal were outside of health care jurisdiction.

Mr. Simms again followed the rejection notice’s directions by resubmitting his health care grievance to the prison’s health care grievance office. ER-78. On February 22, 2021, his health care grievance was again rejected on the basis of Cal. Code Regs. tit. 15, § 3999.226(a)(4). ER-78. Specifically, the rejection stated that

“[y]our concerns regarding your complaint against correctional officers should be addressed through the appropriate custody channels or explain why you believe this issue is within the health care jurisdiction” and directed Mr. Simms to “[t]ake the necessary corrective action provided in this notice, and resubmit the health care grievance to the Health Care Grievance Office where you are housed within 30 calendar days.” ER-78 (emphasis omitted). As with the first rejection notice, the second institutional-level rejection cited no regulation or other guidance defining “the health care jurisdiction” or explaining why the medical issues Mr. Simms’ grievance raised fell outside of it. ER-78. The only difference between the first rejection notice and the February 22 rejection notice was a single sentence stating that “[a] green CDCR 602 (for custody issues) has been attached for your use.” ER-78 (emphasis omitted).

b) Mr. Simms’ custody grievance

On March 10, 2021, Mr. Simms filed a custody grievance regarding the October 16, 2020 incident. ER-73-76. Under the regulations, a prisoner may submit a grievance to the Department of Corrections and Rehabilitation “to dispute a policy, decision, action, condition or omission by the Department or departmental staff that

causes some measurable harm to their health, safety, or welfare.” Cal. Code Regs. tit. 15, § 3481(a) (repealed 2022).³

At the time Mr. Simms submitted his custody grievance, the regulations required that a custody grievance be submitted “within 30 calendar days” of the prisoner “discovering an adverse policy, decision, action, condition, or omission.” Cal. Code Regs. tit. 15, § 3482(b) (repealed 2022). A claim rejected as untimely did not exhaust administrative remedies. Cal. Code Regs. tit. 15, §§ 3486(m), 3487(a) (repealed 2022). On March 12, 2021, Mr. Simms’ custody grievance was rejected as untimely. ER-77. The rejection notice stated, “Your grievance has been rejected due to you not submitting your grievance within 30 days of 10/16/2020. However, due to you [sic] allegation of staff misconduct, an inquiry only will be conducted; however, you will not be notified of the outcome.” ER-77. The rejection notice informed Mr. Simms that “[i]f you are dissatisfied with this response, you may appeal the rejection decision to CDCR’s Office of Appeals.” ER-77.

Mr. Simms appealed the rejection of his custody grievance on April 15, 2021. ER-72. Unlike the health care grievance process, the custody grievance process provides that “[a] claim that is rejected may be appealed for review by the Office of Appeals.” Cal. Code Regs. tit. 15, § 3487(c) (repealed 2022). The regulations that

³ This brief describes the regulations that applied to Mr. Simms’ grievance, which was filed in 2021.

applied at the time of Mr. Simms' grievance required that an appeal from a rejection or other "decision made by an Institutional or Regional Office of Grievances" had to be submitted "within 30 calendar days of [the prisoner] discovering the decision." Cal. Code Regs. tit. 15, § 3485 (repealed 2022). Mr. Simms' appeal was rejected as untimely. ER-72. The rejection notice stated, "The date you received a claim decision response from the Department was 3/12/2021; the date you submitted this claim was 4/15/2021. You should have submitted your claim on or before 4/11/2021 to meet the 30 calendar day requirement set forth in the regulations." ER-72.

Mr. Simms also submitted a separate custody grievance that described why he had initially attempted to grieve the denial of necessary medical treatment through the health care grievance process. ER-93-96. Mr. Simms explained, "I submit[t]ed my claim on time[.] It was not my fault I did not know that it was a custody issue[.] I was told that it was a health care issue so I submit[t]ed my claim to the health care grievance office representative." ER-93-95 (capitalization altered). Mr. Simms recounted his efforts to grieve the October 16 incident, stating that he had first attempted to resubmit the health care grievance with an explanation of why it was within the health care jurisdiction, and had then resubmitted his grievance as a custody grievance, only to have that grievance rejected as untimely. ER-93-96.

The second custody grievance was rejected as "substantially duplicative" of Mr. Simms' initial custody grievance. ER-97. Mr. Simms appealed that rejection,

and his appeal was granted on the basis that his second custody grievance should have been rejected for a different reason—that it improperly attempted to grieve “the regulatory framework of the grievance and appeals process.” ER-92. But even though Mr. Simms’ appeal was technically granted, “[t]here [wa]s no applicable remedy.” ER-92.

C. Procedural Background

After the Office of Appeals rejected his claim, Mr. Simms filed suit under 42 U.S.C. § 1983 in the Eastern District of California. ER-126. Mr. Simms was unrepresented throughout the district court proceedings. ER-17-19. The district court screened Mr. Simms’ complaint and found that he stated cognizable Eighth Amendment claims against defendants for deliberate indifference to medical needs and failure to protect. ER-122-124.

Defendants moved for summary judgment solely on the basis that Mr. Simms failed to exhaust administrative remedies as required by the PLRA. ER-40-59. As relevant here, defendants argued that Mr. Simms’ March 10 custody grievance did not exhaust administrative remedies because both the initial grievance and subsequent appeal had been rejected as untimely. ER-44-45. Specifically, Defendants contended that Mr. Simms’ initial custody grievance was properly rejected because it was submitted “nearly five months after the alleged October 16, 2020 incident and well beyond the 30-day time limit.” ER-54. And they contended

that Mr. Simms' appeal from that rejection was also properly rejected "based on the passage of 34 days between the date" the rejection notice was mailed and the date Mr. Simms mailed his appeal. ER-54-55. Defendants did not address Mr. Simms' November 12 health care grievance, or his subsequent attempts to refile it, except to argue that they did not excuse the untimely filing of his custody grievance because, they claimed, Mr. Simms had received "repeated and clear instructions . . . with each rejection that his grievance was 'outside of the health care jurisdiction' and that his grievance should be addressed through 'appropriate custody channels.'" ER-54.

Mr. Simms opposed summary judgment. ER-32-39. Mr. Simms argued that he had "only followed the directions given to him on every answer to his grievance, and didn't realize that he had passed his time limitations until it was far over." ER-36 (capitalization altered). Mr. Simms recounted his efforts to grieve the October 16 incident through the health care grievance process. ER-35. He explained that each of the rejection notices he had received in response to his health care grievance had directed him to resubmit his grievance to the health care grievance office, and that he had simply "followed orders given him every time he received a response to his grievance" by resubmitting and attempting "to explain how he perc[ei]ved his claim to be the responsibility of health care jurisdiction, and not that of custody." ER-35 (capitalization altered). Mr. Simms also explained that the rejection notice for his custody grievance had stated that "due to your allegation of staff misconduct, an

inquiry only!! will be conducted.” ER-35 (capitalization altered, emphasis in original). Mr. Simms argued that “if prison officials actually reviewed the complaint, they had the opportunity to address the complaint internally, [and] this act would meet the exhaustion requirement.” ER-36 (capitalization altered).

Mr. Simms also explained that he has “a documented learning disability, and should have been told clearly that he was filing his grievance in the wrong place and why, as well as how and where he should file.” ER-36-37 (capitalization altered). In support, Mr. Simms attached his “informational chrono, CDC 128-B showing he has a learning disability, and a need to have things explained to him in a way that he would be able to comprehend.” ER-37 (capitalization altered).

The district court granted summary judgment for defendants. ER-4-16. It rejected Mr. Simms’ argument that “his efforts to timely submit his grievance, albeit through the improper channels, combined with his learning disability and the [Health Care Grievance Office]’s failure to explain to him in clearer language that he was filing his grievance to the wrong office, should excuse his failure to timely submit a custody grievance.” ER-14. According to the district court, Mr. Simms’ “many efforts to submit his grievance through health care channels,” “even if made in good faith, do not serve to exhaust his administrative remedies where he was provided notice on multiple occasions that his issue should be addressed through custody channels.” ER-14-15. The district court reasoned that “despite Plaintiff’s argument

that he did not fully understand the rejection notices from the [Health Care Grievance Office] when they stated that the issues should be addressed through appropriate custody channels, Plaintiff understood and followed the directions on the same notices regarding how to resubmit his health care grievance or take corrective actions to appeal to the next level of review.” ER-14. The district court also found that “[e]ven assuming Plaintiff’s untimely submission of [his custody grievance] at the institutional level could be excused by his initial efforts to submit his claims as a health care grievance, Plaintiff has failed to explain why he waited more than thirty days to submit an appeal.” ER-15. The district court therefore dismissed Mr. Simms’ action “without prejudice, for failure to exhaust administrative remedies.” ER-16.

SUMMARY OF ARGUMENT

Defendants denied Mr. Simms crucial emergency medical care necessary to treat life-threatening complications from surgery performed at an outside hospital. Mr. Simms was denied treatment both at the hospital itself and while being transported back to the prison immediately after the procedure. Mr. Simms suffers ongoing and permanent damage to his health and well-being from defendants’ disregard of his medical needs. Although Mr. Simms correctly grieved that incident through the health care grievance process, and although he was repeatedly told that he had the option to resubmit a health care grievance, his health care grievance was

repeatedly rejected on a basis unsupported by any applicable regulation. By the time Mr. Simms attempted to instead file a custody grievance, it was too late, and that grievance was rejected as untimely.

The district court erred in dismissing Mr. Simms' claims for failure to exhaust available administrative remedies. The PLRA requires prisoners to exhaust only those administrative remedies that are available. Here, no such remedies were available to Mr. Simms for three independent reasons.

First, the prison incorrectly rejected Mr. Simms' health care grievance as falling outside of the health care jurisdiction. The applicable regulations provide no support for the prison's position that a claim challenging defendants' deliberate indifference to Mr. Simms' need for *medical care* was outside of *health care* jurisdiction. To the extent the prison takes the position that the denial of health care cannot be grieved through the health care grievance process when the denial involves custody staff, that limitation appears nowhere in the applicable regulations or in any guidance Mr. Simms was provided before he grieved the October 16 incident. The prison's improper rejection of Mr. Simms' health care grievance deprived him of a final disposition that would have exhausted administrative remedies. It thus rendered administrative remedies unavailable—meaning the exhaustion requirement does not apply to this case at all.

Second (and alternatively), the grievance procedures for Mr. Simms' claim are so confusing and opaque that they are effectively unavailable. No regulation defines the scope of "health care jurisdiction" or states that a health care grievance cannot be filed against custody staff. And the prison's rejection notices, far from clarifying the matter, affirmatively confirmed Mr. Simms' belief that he could exhaust administrative remedies by continuing to pursue his health care grievance. Those contradictory and nebulous directives made it impossible for any prisoner to understand that a complaint raising deliberate indifference to medical needs was outside of health care jurisdiction. And the process was especially indecipherable for Mr. Simms, who has a documented learning disability that entitles him to effective communication from prison staff. The absence of effective communication here cost Mr. Simms the opportunity to file a timely custody grievance—an independent reason administrative remedies were unavailable.

Third, the prison thwarted Mr. Simms' efforts to grieve by misleading him as to the correct procedures for doing so. Mr. Simms was told that his complaint involved a health care issue. That is why he initially submitted a health care grievance. But the prison proceeded to reject that grievance, taking the apparently contradictory position that it raised issues outside of the health care jurisdiction. That interference with Mr. Simms' attempt to grieve also rendered administrative remedies unavailable.

Defendants' assertion that Mr. Simms failed to timely appeal the rejection of his custody grievance is not an alternative basis to find non-exhaustion. The exhaustion requirement did not apply at all because administrative remedies were unavailable. And the notices Mr. Simms received in response to his custody grievance stated that his complaint was being investigated, which Mr. Simms reasonably understood to mean that the complaint was being handled internally and that no appeal was necessary. For both those reasons, Mr. Simms did not need to appeal the rejection of his custody grievance before bringing suit in federal court.

STANDARD OF REVIEW

This Court reviews “de novo a district court’s summary judgment ruling that an inmate has not exhausted his claims within the meaning of the Prison Litigation Reform Act.” *Fordley v. Lizarraga*, 18 F.4th 344, 350 (9th Cir. 2021). Summary judgment is appropriate only if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Albino*, 747 F.3d at 1168 (quoting Fed. R. Civ. P. 56(a)). When reviewing “a district court’s summary judgment ruling,” this Court “view[s] the evidence in the light most favorable to the non-moving party.” *Id.*

“[C]ourts should construe liberally motion papers and pleadings filed by *pro se* inmates.” *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010). Although “an ordinary *pro se* litigant, like other litigants, must comply strictly with the summary

judgment rules,” *pro se* prisoners are “expressly exempted from this rule.” *Id.* Because “an inmate’s choice of self-representation is less than voluntary” and “is coupled with the further obstacles placed in a prisoner’s path by his incarceration,” courts “should avoid applying summary judgment rules too strictly” to a *pro se* prisoner’s filings. *Id.* (citation omitted).

ARGUMENT

Mr. Simms was not required to exhaust administrative remedies because no administrative remedies were available to him. The unsupported rejection of his initial health care grievance, the bewildering and confusing process involved, and the contradictory messages he received from prison officials, rendered administrative remedies unavailable for his claim that correctional officers prevented him from receiving necessary medical treatment.

A. The PLRA’s Exhaustion Requirement Does Not Apply When Administrative Remedies Are Effectively Unavailable

The PLRA contains a significant “textual exception to mandatory exhaustion.” *Ross*, 578 U.S. at 642. “[T]he exhaustion requirement hinges on the ‘availability’ of administrative remedies: An inmate, that is, must exhaust available remedies, but need not exhaust unavailable ones.” *Id.* (quoting 42 U.S.C. § 1997e(a)). That exception “has real content.” *Id.* Because “the ordinary meaning of the word ‘available’ is ‘capable of use for the accomplishment of a purpose,’ and that which ‘is accessible or may be obtained,’” a prisoner “is required to exhaust

those, but only those, grievance procedures that are ‘capable of use’ to obtain ‘some relief for the action complained of.’” *Id.* (some quotation marks omitted).

The Supreme Court has identified three examples of the “kinds of circumstances in which an administrative remedy, though officially on the books, is not capable of use to obtain relief.” *Id.* at 643. “First, . . . an administrative procedure is unavailable when (despite what regulations or guidance materials may promise) it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates.” *Id.* Second, “an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use.” *Id.* Third, administrative remedies are unavailable “when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.” *Id.* at 644. “[W]hen one (or more)” of these circumstances arise, “an inmate’s duty to exhaust ‘available’ remedies does not come into play.” *Id.* at 643.

These examples are not exhaustive. *Andres v. Marshall*, 867 F.3d 1076, 1078 (9th Cir. 2017). This Court has “found administrative remedies effectively unavailable in several circumstances” other than the three identified in *Ross*, including where a prison mistakenly rejects a grievance, where the prison failed to respond to an emergency grievance for months and past the expiration of its own deadlines, and where the prisoner could not access the policies, forms, or other

information needed to submit a grievance. *Eaton v. Blewett*, 50 F.4th 1240, 1245 (9th Cir. 2022) (collecting Ninth Circuit decisions).

B. Administrative Remedies Were Unavailable Because Mr. Simms' Health Care Grievance Was Erroneously Rejected

Administrative remedies were unavailable to Mr. Simms because the prison rejected his health care grievance on a basis unsupported by the applicable regulations. When “prison officials decline[] to reach the merits of a particular grievance for reasons inconsistent with or unsupported by applicable regulations, administrative remedies [are] effectively unavailable.” *Albino*, 747 F.3d at 1173 (internal quotation marks omitted). This exception applies if (1) the prisoner “actually filed a grievance or grievances that, if pursued through all levels of administrative appeals, would have sufficed to exhaust the claim that he seeks to pursue in federal court,” and (2) “prison officials screened his grievance or grievances for reasons inconsistent with or unsupported by applicable regulations.” *Sapp v. Kimbrell*, 623 F.3d 813, 823-24 (9th Cir. 2010). Both requirements are satisfied here.

First, Mr. Simms' health care grievance would have exhausted administrative remedies for his Eighth Amendment claims had he been able to pursue the grievance through all levels of administrative appeals. There is no dispute that Mr. Simms' health care grievance challenged the same wrongful denial of medical care and failure to protect that form the basis for his Eighth Amendment claims. *Compare*

ER-79-81 *with* ER-126-131. But because Mr. Simms' health care grievance was erroneously rejected, he did not receive an institutional-level disposition that could be appealed to the headquarters level. Cal. Code Regs. tit. 15, §§ 3999.229(a), § 3999.234(b). The institutional-level rejection of Mr. Simms' health care grievance also led to the rejection of his health care grievance appeal, which was rejected because the regulations required him to resubmit rather than appeal the rejection. ER-113 (citing Cal. Code Regs. tit. 15, § 3999.227(m)). Mr. Simms was thus improperly deprived of the opportunity to seek headquarters' level review, which would have "constitute[d] the final disposition on [his] health care grievance and exhaust[ed] administrative remedies." Cal. Code Regs. tit. 15, § 3999.230(h); *see also* Cal. Code Regs. tit. 15, § 3999.226(g) (a rejected health care grievance does not exhaust the prisoner's administrative remedies).

Second, Mr. Simms' health care grievance was rejected on an unsupported basis: that defendants' deliberate indifference to Mr. Simms' need for medical care was "outside the health care jurisdiction." ER-111. The prison's rejection notices cited Cal. Code Regs. tit. 15, § 3999.226(a)(4), which states that "[t]he patient shall not submit a health care grievance for issues outside the health care jurisdiction." ER-111 (first institutional-level rejection notice); ER-106 (second institutional-level rejection notice). But nothing in that provision—or any other regulation applicable to the health care process—remotely suggests that deliberate indifference to

Mr. Simms’ clear need for emergency health care is outside the health care jurisdiction. Cal. Code Regs. tit. 15, § 3999.226(a)(4). To the contrary, Cal. Code Regs. tit. 15, § 3999.226 applies to a “complaint[] of applied health care policies, decisions, actions, conditions, or omissions”—a broad scope that plainly encompasses defendants’ decisions and actions denying Mr. Simms necessary treatment for the life-threatening complications he experienced following surgery. Tellingly, besides citing Cal. Code Regs. tit. 15, § 3999.226(a)(4), none of the rejection notices identified any regulation (or any other guidance) indicating that the obviously health care-related issues raised in Mr. Simms’ grievance were outside of the health care jurisdiction. ER-106; ER-111; ER-113.

That Mr. Simms was denied medical care by custody staff, and not some other entity, does not change the result. The regulation cited in the rejection notices, Cal. Code Regs. tit. 15, § 3999.226(a)(4), contains no such limitation on health care jurisdiction. Nor do any other “regulations pertaining to health care . . . limit health care grievances to medical staff only.” *Muhammad v. Orr*, No. 2:19-cv-01289-KJM, 2022 WL 362771, at *8 (E.D. Cal. Feb. 7, 2022) (citing Cal. Code Regs. tit. 15, § 3999.227(g)); *see also* Cal. Code Regs. tit. 15, §§ 3999.225-3999.237 (no such limitation). To the contrary, federal judges interpreting the same regulations that governed Mr. Simms’ health care grievance have concluded that those regulations “do not limit health care grievances to medical staff only,” and thus that a health

care grievance *does* exhaust administrative remedies for an Eighth Amendment claim against a correctional officer who delayed the provision of medical care. *Orr*, 2022 WL 362771, at *8; *see also id.* (observing that § 3999.227 expressly applies to “any involved staff member” and does not exclude custody staff); *Muhammad v. Orr*, No. 2:19-cv-01289-KJM, 2022 WL 4226246, at *1 & n.1 (E.D. Cal. Sept. 13, 2022) (adopting in relevant part the report and recommendation at 2022 WL 362771).

Mr. Simms’ health care grievance was therefore rejected “for reasons inconsistent with or unsupported by applicable regulations.” *Sapp*, 623 F.3d at 824. That erroneous rejection—even if made in good faith—wrongly prevented Mr. Simms from exhausting administrative remedies through the health care grievance process, making administrative remedies unavailable for his deliberate indifference and failure to protect claims. *Albino*, 747 F.3d at 1173; *see Nunez v. Duncan*, 591 F.3d 1217, 1226 (9th Cir. 2010) (even an innocent error can render administrative remedies unavailable).

C. Administrative Remedies Were Unavailable Because The Process For Grieving Custody Staff’s Deliberate Indifference To Medical Needs Was Indiscernible And Impossible To Navigate

The result would be the same even if the prison were correct that Mr. Simms’ health care grievance raised issues outside of the health care jurisdiction: Administrative remedies would still have been unavailable because there is no way

Mr. Simms or any prisoner in his position could have known that defendants' deliberate indifference to Mr. Simms' need for medical care, arising out of medical treatment he had received, could not be grieved through the health care grievance process.

“When rules are so confusing that no reasonable prisoner can use them, then they're no longer available.” *Ross*, 578 U.S. at 644 (alterations and quotation marks omitted). “In this situation, some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it.” *Id.* at 643-44. When remedies are “essentially unknowable” because “no ordinary prisoner can make sense of what [they] demand[],” they “are not capable of accomplishing their purposes” and thus are not “available” as required for the PLRA's exhaustion requirement to apply. *Id.* at 644 (quotation marks omitted). Accordingly, a prisoner is not required to exhaust “an administrative scheme” that is “so opaque that it becomes, practically speaking, incapable of use.” *Id.* at 643.

Here, the complete absence of discernible guidance regarding the correct procedure for grieving defendants' deliberate indifference to Mr. Simms' need for medical treatment made any administrative remedies so completely “unknowable” that they were effectively unavailable. Mr. Simms reasonably believed that denial of medical care by prison officials following surgery at an outside hospital should be grieved through the health care grievance process. Nothing in the applicable

regulations suggested otherwise. Mr. Simms’ understanding was confirmed, rather than corrected, by the rejection notices he received, which repeatedly gave him the option of resubmitting a health care grievance. This process would be impossible for any prisoner to navigate—but especially for Mr. Simms, who has a documented learning disability that required prison staff to ensure effective communication. As a result of Mr. Simms’ reasonable understanding that he should grieve denial of medical care through the health care grievance procedures, he lost the opportunity to submit a timely custody grievance. ER-116; Cal. Code Regs. tit. 15, § 3482(b) (repealed 2022); ER-9. Because Mr. Simms was confronted by “an administrative scheme” that was “so opaque” it was “practically speaking, incapable of use,” he was not required to exhaust the remedies supposedly provided by that scheme. *Ross*, 578 U.S. at 643-44.

1. The applicable regulations do not substantiate the prison’s supposed limits on health care jurisdiction

If defendants were correct that Mr. Simms’ complaint could not be submitted as a health care grievance, then the grievance process is so opaque that it was “essentially unknowable” and thus unavailable. *Ross*, 578 U.S. at 644 (internal quotation marks omitted). In particular, nothing in the regulations would have alerted any reasonable prisoner to the limit on health care jurisdiction cited by the prison when it rejected Mr. Simms’ health care grievance. As explained above, the rejection notice cited Cal. Code Regs. tit. 15, § 3999.226(a)(4), which prohibits

submission of health care grievances “for issues outside the health care jurisdiction.” ER-111. But Cal. Code Regs. tit. 15, § 3999.226 does not explain what issues are and are not within “health care jurisdiction.” Nor does any other applicable regulation explain what “issues” are within the scope of “health care jurisdiction” or define that phrase. *See* Cal. Code Regs. tit. 15, §§ 3999.225-3999.237. Perhaps for that reason, the prison has never identified the regulation that ostensibly placed Mr. Simms’ grievance outside of health care jurisdiction.⁴

And while that lack of explanation alone makes the grievance procedure unusably opaque, Cal. Code Regs. tit. 15, § 3999.226(a) compounds the confusion by stating that “[t]he health care grievance process provides an administrative remedy to patients under health care’s jurisdiction for review of complaints of applied health care policies, decisions, actions, conditions, or omissions that have a material adverse effect on their health or welfare.” Cal. Code Regs. tit. 15, § 3999.227(g)(1) further suggests that a health care grievance may complain about the action or decision of “any involved staff member[.]”—not just health care staff.

⁴ Defendants’ summary judgment briefing represented that Mr. Simms’ efforts to exhaust administrative remedies through the health care grievance process were “improper” but never explained why or identified a regulation supporting that assertion. ER-47-48; ER-54-55; ER-26-27. The district court, too, assumed that Mr. Simms’ attempt to grieve denial of medical care was outside the health care jurisdiction without identifying any basis for that assumption. ER-14-15 (summary judgment order finding that Mr. Simms’ “issue should be addressed through custody channels” without explaining why).

See also Orr, 2022 WL 362771, at *8. An ordinary prisoner would read those provisions to embrace claims involving denial of necessary medical care, regardless of who effectuated the denial.

That custody rather than health care staff denied Mr. Simms health care does not change the analysis. Again, no applicable regulation places such a limit on health care jurisdiction. And at least one district court judge interpreting the same regulations has agreed, holding that the health care grievance process is not limited to grievances against health care staff and adopting a magistrate judge's finding that a health care grievance exhausted administrative remedies for an Eighth Amendment claim against a corrections officer. *Muhammad*, 2022 WL 4226246, at *1. If the prison's contrary understanding of the scope of health care jurisdiction is correct, the regulations are "so confusing" that even an Article III judge could not correctly "discern" it. *Ross*, 578 U.S. at 643-44. If that is the case, then an "ordinary prisoner" certainly could not be expected to navigate the process. *Id.*

This Court has recently recognized, in an unpublished disposition, that administrative remedies for a similar claim of medical misconduct by custody staff were unavailable because predecessor grievance regulations did not make clear how such misconduct could be grieved. In *Peasley v. Spearman*, No. 18-56648, 2022 WL 2301992 (9th Cir. Jun. 27, 2022), this Court reversed the district court's dismissal, for non-exhaustion, of a California prisoner's claim that security officers

violated the Eighth Amendment by denying him medical care. *Id.* at *2. Peasley’s initial grievance was rejected by the Inmate Appeals Office, which advised that Peasley’s “appeal ha[d] been forwarded to health care staff for review and processing.” *Id.* at *2. But the medical care appeals office rejected Peasley’s resubmitted grievance on the ground that Peasley should “submit a green inmate/parolee appeal CDCR 602 form to the Inmate Appeals Office if he would like to proceed with a staff complaint against custody.” *Id.* (quotation marks omitted). The *Peasley* panel found that administrative remedies were unavailable, and the exhaustion requirement was inapplicable, because “it is unclear whether an appeals office’s jurisdiction turns on the issue involved or on the staff involved.”⁵ *Id.*

Mr. Simms confronted the same problem here: The applicable regulations do not explain the scope of health care jurisdiction, including whether it “turn[ed] on the issue involved” (as Mr. Simms believed) or “the staff involved” (as the prison appeared to conclude when it rejected Mr. Simms’ health care grievance). *See id.* As in *Peasley*, the failure to provide guidance on that crucial gateway determination

⁵ The regulations governing CDCR grievance procedures at the time of Peasley’s grievances predated the regulations governing Mr. Simms’ grievances. Opening Brief at 6 n.1, *Peasley v. Spearman*, No. 18-56648 (9th Cir. Feb. 19, 2021), ECF32. But the result in *Peasley* is still persuasive here because the regulations governing Mr. Simms’ health care grievance similarly fail to explain the basis for health care jurisdiction. *Supra*, at 28-30.

made “the administrative procedure . . . ‘so confusing . . . that no reasonable prisoner’” could use it, and therefore “‘no longer available.’” *Id.* (quoting *Ross*, 578 U.S. at 644).

2. *The prison’s rejection notices further muddled the grievance procedures*

The notices rejecting Mr. Simms’ health care grievance did not clarify the correct grievance procedures—instead, they compounded the confusion.

As an initial matter, whatever their content, those notices could not have provided the guidance needed to make administrative remedies available because they were all received more than 30 days after the incident Mr. Simms sought to grieve. ER-111 (first rejection notice dated November 16, 2020, 31 calendar days after October 16, 2020); ER-106 (second rejection notice dated February 22, 2021). Thus, even if, as the district court wrongly believed, those notices clarified that Mr. Simms was required to grieve indifference to medical needs by custody staff through “custody channels,” the instructions came too late. Cal. Code Regs. tit. 15, § 3482(b) (repealed 2022); ER-14-15. The failure to provide discernible guidance on how to grieve such an incident in the first instance rendered administrative remedies unavailable regardless of what Mr. Simms could conceivably have learned from the rejection notices.

In any event, the rejection notices only exacerbated the confusion. The institutional-level notices stated that “[y]our concerns regarding custody staff should

be addressed through the appropriate custody channels *or* explain why you believe this issue is within the health care jurisdiction.” ER-106; ER-111 (emphasis altered). Yet those notices (like the regulations themselves) contained no explanation of the scope of health care jurisdiction or what showing was required to satisfy it. ER-106; ER-111. They did not state that a complaint against custody staff was outside of health care jurisdiction and confusingly suggested that the scope of health care jurisdiction might depend on either the “issue” Mr. Simms raised or the identity of the staff members whose conduct he was grieving. ER-106; ER-111.

Peasley is again instructive. *Peasley* received a rejection notice indicating that he should “submit a green inmate/parolee appeal CDCR 602 form to the Inmate Appeals Office if he would like to proceed with a staff complaint against custody.” *Peasley*, 2022 WL 2301992, at *2 (quotation mark omitted). As the panel there correctly recognized, that instruction did not make the grievance process discernible in the face of conflicting and incomplete guidance on the scope of a given office’s jurisdiction. *Id.*

The rejection notices Mr. Simms received were even more opaque than the notice in *Peasley* because they presented two apparently equally viable options for proceeding with his grievance: either (1) pursue the grievance through custody channels or (2) resubmit it again as a health care grievance with an explanation of why he believed “this issue is within the health care jurisdiction.” ER-106; ER-111.

The notices also directed Mr. Simms to “[t]ake the necessary corrective action provided in this notice, and resubmit the health care grievance to the Health Care Grievance Office where you are housed within 30 calendar days”—an instruction that might reasonably have been interpreted to require resubmission of a health care grievance rather than a custody grievance. ER-106; ER-111. Any reasonable person reading the notices Mr. Simms received would have been more confused—not less—about the proper administrative process to grieve an incident of deliberate indifference to medical care involving custody staff.

The rejection of Mr. Simms’ health care grievance appeal heightened the confusion by further misleading Mr. Simms about how to proceed. That rejection directed Mr. Simms to “[s]ubmit your health care grievance to your institution’s Health Care Grievance Office.” ER-113. It did not suggest that Mr. Simms should or even could submit a custody grievance. Far from “provid[ing] notice” that Mr. Simms’ “issue should be addressed through custody channels,” ER-14-15, the rejection notices only confirmed his belief that the issue could be pursued as a health care grievance.

Indeed, the rejection notices not only failed to explain the correct grievance procedures, but actually put them even further out of reach. As the district court recognized, Mr. Simms merely “followed the directions on the [rejection] notices regarding how to resubmit his health care grievance or take corrective actions to

appeal to the next level of review” when he continued to grieve defendants’ deliberate indifference to his medical needs through the health care grievance process. ER-14. As a result, Mr. Simms did not submit a custody grievance until nearly five months after the date of his surgery and defendants’ ensuing denial of health care. ER-54. Even though the delay resulted from Mr. Simms’ efforts to follow the prison’s instructions, the district court thought Mr. Simms’ “protracted” efforts to comply with the rejection notices was evidence that those efforts could not excuse the untimely grievance of his custody submission. ER-10; ER-14-16.

That the prison’s only guidance to Mr. Simms induced him to pursue a purportedly incorrect procedure further confirms that the correct procedures were essentially unknowable and therefore unavailable. When a prison “misle[ads]” a prisoner “so as to prevent their use of otherwise proper procedures,” the “interference” “renders the administrative process unavailable.” *Ross*, 578 U.S. at 644. The prison’s repeated statements that Mr. Simms *could* submit his complaint as a health care grievance led him on a “wild goose chase,” pursuing a process that the prison ultimately concluded could not exhaust his administrative remedies. *Nunez*, 591 F.3d at 1226. Those misrepresentations, whether “innocent or otherwise,” made the grievance process even more opaque. *Id.* The prison’s confusing instructions, on top of the absence of any clear guidance prior to

Mr. Simms' grievance being rejected, made it impossible for him to utilize the grievance procedures to exhaust administrative remedies.

3. *The grievance process was particularly indiscernible for Mr. Simms due to his learning disability*

The absence of any guidance and misleading rejection notices would have made the grievance process unavailable to any prisoner—but especially to Mr. Simms, who has a documented learning disability. ER-36-38. Whether or not “administrative remedies” were “effectively unavailable” depends on the circumstances of a prisoner’s “particular case.” *Eaton*, 50 F.4th at 1245. Under that standard, a reviewing court must “account for individual capabilities” when determining whether “the relevant administrative procedures were explained in terms intelligible to lay prisoners.” *Ramirez v. Young*, 906 F.3d 530, 535 (7th Cir. 2018) (quotation marks omitted); *accord Coopwood v. Wayne County*, 74 F.4th 416, 424 (6th Cir. 2023) (noting that “[s]everal of our sister circuits” have held that “the availability of remedies under the PLRA requires an analysis of an inmate’s individual capacities” and collecting cases, including *Eaton*). “[A] mental or intellectual impairment can make a grievance process as unavailable as physical incapacitation.” *Smallwood v. Williams*, 59 F.4th 306, 319 (7th Cir. 2023).

Mr. Simms' individual characteristics confirm that administrative remedies were not available to him. Mr. Simms' file indicates that he is “listed as Learning Disabled.” ER-38; ER-143. And it specifically directs prison staff that they “must

ensure effective communication is achieved and [Mr. Simms'] learning disability needs are addressed for any disciplinary issues.” ER-38; ER-143; *see also* Cal. Code Regs. tit. 15, § 3999.226(b) (“Health care staff shall ensure effective communication is achieved and documented when there is an exchange of health care information involving patients with a . . . developmental disability and/or learning disability.”).

Here, the prison did the opposite: It expected Mr. Simms to divine that defendants’ indifference to his medical needs and denial of necessary health care could not be grieved through the health care process, contrary to the terms of the applicable regulations and in the absence of any explanatory guidance that an ordinary prisoner could have understood. It sent him rejection notices describing two alternative avenues to pursue his grievance, even though only one was (in the prison’s view) actually viable. And it refused to excuse his untimely submission of a custody grievance despite his reasonable and timely attempts to grieve defendants’ indifference to his medical needs through the health care process. *Supra*, at 8-13. A prisoner who required particularly “effective” communication due to a documented learning disability would find that gauntlet—already indiscernible to ordinary prisoners and Article III judges—impossible to navigate.

D. The Prison Affirmatively Thwarted Mr. Simms’ Effort to Exhaust Administrative Remedies

Administrative remedies were unavailable for yet another, independent reason: Even if defendants’ position that Mr. Simms’ complaint was outside of the

health care jurisdiction were correct, the prison affirmatively thwarted Mr. Simms' efforts to exhaust by misleading him about which grievance process he should utilize. "[W]hen prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation," their "interference with an inmate's pursuit of relief renders the administrative process unavailable." *Ross*, 578 U.S. at 644. Mr. Simms explained that he submitted a health care grievance because he "was told" that his complaint involved "a health care issue"—guidance that would have made sense to him given that the applicable regulations did not suggest otherwise. ER-93-96 (capitalization altered); *see supra*, at 28-32. Yet the prison subsequently took the opposite position, rejecting Mr. Simms' health care grievance and denying him the opportunity to exhaust administrative remedies on the basis that his complaint supposedly raised issues outside of the health care jurisdiction. ER-78. Whether "innocent or otherwise," the misleading direction Mr. Simms initially received interfered with his ability to pursue a timely custody grievance rendering administrative remedies unavailable for that additional reason. *Nunez*, 591 F.3d at 1226.

E. Mr. Simms' Untimely Custody Appeal Does Not Establish Failure to Exhaust

The district court wrongly concluded that regardless of whether the opaque grievance procedures rendered administrative remedies unavailable, Mr. Simms' claims could be dismissed for non-exhaustion because his custody grievance appeal

was submitted four days late. ER-15; ER-48. The district court's reasoning is doubly incorrect. As an initial matter, administrative remedies were already unavailable by the time Mr. Simms filed his custody grievance. And regardless, Mr. Simms reasonably believed that no appeal was necessary because he was told his complaint was being investigated.

1. Mr. Simms was not required to exhaust administrative remedies that were not available

The timeliness of Mr. Simms' custody grievance appeal is irrelevant because Mr. Simms was not required to exhaust administrative remedies that were not available. *Ross*, 578 U.S. at 643. For the multiple independent reasons explained above, the custody grievance process was not available including because Mr. Simms' health care grievance was erroneously rejected, the prison never adequately communicated—in either its regulations or its rejection notices—its position that Mr. Simms' medical issue was only grievable through the custody grievance process, and Mr. Simms was affirmatively told that his complaint raised a health care issue. *See supra*, at 23-38. By the time Mr. Simms arguably ascertained that the prison expected him to grieve defendants' indifference to his medical needs through the custody grievance process—when the prison actually provided him a CDCR 602 custody grievance form to use—it was far too late for Mr. Simms to file a timely custody grievance, a fact defendants have never contested. ER-54-56. The

custody grievance process was thus unavailable to Mr. Simms long before he even submitted his custody grievance.

Mr. Simms' supposed failure to timely submit an appeal from the rejection of his custody grievance therefore cannot justify dismissal for non-exhaustion because by that point the exhaustion requirement did not apply to him. *See Ramirez*, 906 F.3d at 539-40 (because "remedies were not available to [the prisoner] at a time when he could have filed a timely grievance" he "did not need to satisfy the PLRA's exhaustion requirement"). When administrative remedies are effectively unavailable, "an inmate's duty to exhaust 'available' remedies does not come into play." *Ross*, 578 U.S. at 643. "The unavailability of the process lifts the PLRA exhaustion requirement entirely and provides immediate entry into federal court." *Ramirez*, 906 F.3d at 540 (quotation marks omitted). Thus, because administrative remedies were effectively unavailable to him, Mr. Simms was not required to exhaust a custody grievance before bringing a federal-court challenge.

2. Mr. Simms reasonably interpreted the prison's misleading rejection notices to mean no appeal was necessary

A custody appeal was also unavailable because the prison's notices rejecting Mr. Simms' custody grievances misleadingly stated that his complaint was being investigated, leading him to believe that no further appeal was available or necessary to exhaust his grievance. The notice rejecting Mr. Simms' first custody grievance stated, "Your grievance has been rejected due to you not submitting your grievance

within 30 days of 10/16/2020. However, due to you [sic] allegation of staff misconduct, an inquiry only will be conducted; however, you will not be notified of the outcome.” ER-77. A subsequent notice rejecting Mr. Simms’ grievance of the denial of his initial custody grievance reiterated that “[w]hile your grievance (#97524) has been cancelled, an inquiry is being conducted to determine the validity of your claim.” ER-97. Both notices therefore indicated that despite the untimely submission of Mr. Simms’ initial custody grievance, his allegation of staff misconduct was being investigated. Based on the prison’s representations, Mr. Simms reasonably concluded that his grievance was being “address[ed] . . . internally” and no appeal was necessary to exhaust administrative remedies at that time. *See* ER-35-36.

In *Brown v. Valoff*, this Court held, on similar facts, that a prisoner would understand a comparable notice to mean “that no further relief will be available through the appeals process,” making it unnecessary to pursue further administrative review “before proceeding to court.” 422 F.3d 926, 937-40 (9th Cir. 2005). There, the prisoner received a “second level response memorandum” that advised “that a thorough investigation would be conducted through the Office of Internal Affairs; that the Administration would decide on the ‘appropriate action’ to be taken if necessary: that [the prisoner] would not be apprised of any disciplinary action taken as a result of this complaint; and that monetary compensation is beyond the scope of

the appeals process.” *Id.* at 937. This Court recognized that a prisoner “could reasonably have . . . understood” the memorandum to indicate “that no further relief will be available through the appeals process, but the confidential staff complaint investigation would go forward and could result in some administrative action based on his complaint.” *Id.* at 937-38. That possibility was a “strong indication that no further relief was ‘available’” and that a further appeal was unnecessary to exhaust administrative remedies. *Id.* at 938-40.

Brown confirms that Mr. Simms did not have to pursue a custody appeal to exhaust administrative remedies because he reasonably understood from the prison’s communications that his complaint was being investigated and therefore that no appeal was necessary. The rejection notices thus “thwart[ed]” Mr. Simms “from taking advantage of a grievance process through . . . misrepresentation.” *Ross*, 578 U.S. at 644. And Mr. Simms was particularly vulnerable to being misled by the rejection notices because, as explained above, he has a documented learning disability that requires prison staff to ensure “effective communication.” *Supra*, at 36-37. The prison’s misleading rejection notices are thus an additional reason that the custody appeal process was unavailable to Mr. Simms.

CONCLUSION

This Court should reverse the district court’s grant of summary judgment in favor of defendants and remand for further proceedings.

Dated: February 24, 2025

Respectfully submitted,

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STATEMENT OF RELATED CASES

The undersigned attorney states the following: I am unaware of any related cases pending in this Court.

Dated: February 24, 2025

/s/ Joel F. Wacks

Joel F. Wacks

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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STATUTORY ADDENDUM

**STATUTORY ADDENDUM
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Cal. Code Regs. tit. 15 § 3999.225

§ 3999.225. Definitions.

For the purpose of Subchapter 2, Article 5 only, the following definitions apply:

- (a) Accepted means that the health care grievance qualified for processing at the level submitted.
- (b) Administrative remedy means the non-judicial process provided to address patient health care grievances in which a patient may allege an issue and seek a remedy and the Health Care Grievance Office and Health Care Correspondence and Appeals Branch have an opportunity to intervene and respond. A headquarters' level health care grievance appeal disposition exhausts administrative remedies.
- (c) Amendment means a headquarters' instruction to the institution to revise a previously written institutional level health care grievance response which requires correction or clarification prior to conducting a headquarters' level grievance appeal review.
- (d) Appeal means a patient's submission of a health care grievance to the headquarters' level for review of the institutional level disposition.
- (e) Business day means Monday through Friday excluding State holidays.
- (f) Chief Executive Officer (health care) means the highest level health care executive assigned to a CDCR institution.
- (g) Disposition means the outcome of the health care grievance review at the level submitted.
- (h) Expedited health care grievance means a health care grievance determined by clinical staff to require expeditious handling.
- (i) Headquarters' level directive means a written mandate by the headquarters' level reviewing authority to the institutional level reviewing authority requiring the action as identified in the directive, after headquarters' review of a health care grievance appeal.
- (j) Health care discipline means medical, dental, or mental health.
- (k) Health Care Correspondence and Appeals Branch (HCCAB) means the office responsible for statewide oversight of the grievance program and the headquarters' level health care grievance appeal review.
- (l) Health care grievance means a written complaint submitted by a patient using a CDCR 602 HC, pursuant to section 3999.226(a).

(m) Health Care Grievance Office (HCGO) means the office responsible for coordinating the institutional level health care grievance review.

(n) Health care grievance package means the CDCR 602 HC and the CDCR 602 HC A, Health Care Grievance Attachment and all supporting documents. A health care grievance is not a record of care and treatment rendered and shall not be filed in the central file or health record.

(o) Health care grievance process means all steps involving patient preparation and health care staff receipt, review, disposition, and exhaustion of submitted health care grievances.

(p) Health care staff means any administrative and/or clinical staff involved in the health care grievance process under health care's reviewing authority.

(q) Intervention means available administrative action or redress deemed necessary by health care staff to address an identified health care grievance.

(r) Material adverse effect means harm or injury that is measurable or demonstrable (even if that measurement or demonstration is subjective for the patient) or the reasonable likelihood of such harm or injury due to a health care policy, decision, action, condition, or omission.

(s) Multiple health care grievances means health care grievances received from more than one patient on an identical issue.

(t) Patient means an incarcerated person who is seeking or receiving health care services.

(u) Rejected means that the submitted health care grievance or appeal of grievance disposition did not qualify for processing for the reasons stated in the rejection.

(v) Response means the written notification provided to the patient relative to the disposition, rejection, or withdrawal of a health care grievance or health care grievance appeal.

(w) Reviewing authority means health care staff authorized to approve and sign health care grievance responses to ensure procedural due process. The reviewing authority does not conduct a clinical review.

(1) The reviewing authority shall not be an individual who participated in the event or decision being grieved.

(2) Health care grievances and staff complaints submitted at the institutional level are approved and signed by the Chief Executive Officer (health care) or designee. Circumstances may warrant the headquarters' level reviewing authority to assign a designee.

(3) Health care grievances and staff complaints submitted at contracted, community correctional, or out-of-state facilities are approved and signed by an executive level designee. Circumstances may warrant the headquarters' level reviewing authority to assign a designee.

(4) Health care grievance appeals and staff complaints submitted at the headquarters' level are approved and signed by the Deputy Director, Policy and Risk Management Services, or designee.

(x) Staff misconduct means health care staff behavior or activity that violates a law, regulation, policy, or procedure, or is contrary to an ethical or professional standard.

(y) Supporting documents means any document the patient may need to substantiate allegations made including, but not limited to, property inventory sheets, property receipts, trust account statements, and written requests for interviews, items, or health care services. Supporting documents do not include documents that only restate the issue(s) grieved, argue its merits, or introduce new issues not identified in the current health care grievance form(s), or documents accessible to health care staff, such as patient health records.

(1) If submitting a health care grievance related to a reasonable accommodation decision, supporting documents include the reasonable accommodation request package and response.

(2) If submitting a health care grievance appeal, supporting documents include the original institutional level health care grievance response.

Cal. Code Regs. tit. 15 § 3999.226

§ 3999.226. Right to Grieve.

(a) The health care grievance process provides an administrative remedy to patients under health care's jurisdiction for review of complaints of applied health care policies, decisions, actions, conditions, or omissions that have a material adverse effect on their health or welfare.

(1) Health care grievances are subject to an institutional level review and may receive a headquarters' level grievance appeal review, if requested by the patient.

(2) Health care grievances shall be processed pursuant to the provisions of Subchapter 2, Article 5, Health Care Grievances, unless exempt from its provisions pursuant to court order or superseded by law or other regulations.

(3) Patients shall not use the health care grievance process to request health care services without a previous attempt to seek health care assistance through approved processes.

(4) The patient shall not submit a health care grievance for issues outside the health care jurisdiction.

(b) Health care staff shall ensure effective communication is achieved and documented when there is an exchange of health care information involving patients with a hearing, vision, and/or speech impairment; developmental disability and/or learning disability; Test of Adult Basic Education (TABE) reading score of 4.0 or less, which includes zero or no TABE score; and/or Limited English Proficiency, and in health care grievance communications with such patients.

(c) The patient has the right to submit one health care grievance every 14 calendar days, unless it is accepted as an expedited grievance. The 14 calendar day period shall commence on the calendar day following the patient's last accepted health care grievance.

(d) Health care grievance forms shall be available to all incarcerated persons.

(e) Staff shall not take reprisal against the patient for filing a health care grievance.

(f) A patient who abuses the health care grievance process may be subject to health care grievance restriction pursuant to section 3999.236.

(g) Health care grievances are subject to a headquarters' level disposition before administrative remedies are deemed exhausted pursuant to section 3999.230. A health care grievance or health care grievance appeal rejection or withdrawal does not exhaust administrative remedies.

Cal. Code Regs. tit. 15 § 3999.227

§ 3999.227. Preparation and Submittal of a Health Care Grievance.

- (a) The patient is limited to the use of one CDCR 602 HC to describe the specific complaint that relates to their health care which they believe has a material adverse effect on their health or welfare, and one CDCR 602 HC A, if additional space is needed.
- (b) The patient shall complete Section A of the CDCR 602 HC and submit to the HCGO where the patient is housed within 30 calendar days of:
- (1) The action or decision being grieved, or;
 - (2) Initial knowledge of the action or decision being grieved.
- (c) An individual may help the patient prepare the health care grievance unless the act of providing such assistance results in any of, but not limited to, the following:
- (1) Acting contrary to the provisions pursuant to sections 3163 and 3270.
 - (2) Allowing an individual to exercise unlawful influence or assume control over another.
 - (3) Unlawful access to the patient's protected health information or personally identifiable information.
- (d) An individual may not submit a health care grievance on behalf of another person.
- (e) The patient is limited to one issue or set of issues related to a single health care discipline that can reasonably be addressed in a single health care grievance response.
- (f) The patient shall print legibly or type in a standard font on the lines provided on the health care grievance form(s). There shall be only one line of text on each line provided on the health care grievance form(s).
- (g) The patient shall document clearly and coherently all information known and available to them regarding the issue.
- (1) The patient shall include any involved staff member's last name, first initial, title or position, and the date(s) and description of their involvement.
 - (2) If the patient does not have information to identify involved staff member(s), the patient shall provide any other available information that may assist in processing the health care grievance.

- (h) The patient may request an interview by initialing the appropriate box on the CDCR 602 HC.
- (i) The patient shall sign and date an original CDCR 602 HC. If the original health care grievance is not available, the patient may obtain a copy stamped “treat as original” from the HCGO for submission.
- (j) The patient shall include supporting documents necessary for the clarification and/or resolution of the issue(s) prior to submitting the health care grievance pursuant to section 3999.225(z).
- (k) If unable to obtain some supporting documents, the patient shall submit the health care grievance with all available documents and an explanation of why the remaining documents are not available.
- (l) The patient shall present their health care grievance in a single submission.
- (m) The patient shall submit the institutional level health care grievance for processing to the HCGO where the grievant is housed.
- (n) The patient may not use threatening, obscene, demeaning, or abusive language, except if the grievant alleges health care staff used such language.
- (o) The patient shall not deface the health care grievance package.
- (p) The patient shall not contaminate the health care grievance or attach physical, organic or inorganic objects, particles, other materials, or samples. Examples of contaminants or attachments include, but are not limited to, food, medication, clothing, razor blades, needles, human hair, tissue, and/or bodily fluids such as blood, saliva, or excrement. Health care grievances received that are suspected to contain hazardous or toxic material that may present a threat to the safety and security of staff, incarcerated persons, or the institution shall be referred to custody staff for potential disciplinary sanctions.
- (q) The patient shall not submit a health care grievance which includes information or accusations the grievant knows to be false or makes a deliberate attempt to distort the facts.

Cal. Code Regs. tit. 15 § 3999.228

§ 3999.228. Institutional Level Health Care Grievance Review.

(a) The institutional level is for initial clinical/administrative review of health care grievances.

(b) Health care staff at a level no less than a Registered Nurse, utilizing clinical expertise within the scope of his or her licensure, shall triage each health care grievance within one business day of receipt and:

(1) Determine if the health care grievance identifies a health care issue that may require clinical intervention.

(2) Determine if the health care grievance warrants expedited processing.

(3) Determine if the health care grievance is administrative or clinical.

(c) All submitted health care grievances shall be screened to identify whether the submitted health care grievance complies with the requirements under section 3999.227 and may be rejected pursuant to section 3999.234.

(d) Any health care grievance received outside the time limits pursuant to section 3999.227 may be accepted at the discretion of the HCGO if it is determined that the health care grievance should be subject to further review for reasons including, but not limited to:

(1) Good cause exists for untimely submission of the health care grievance.

(2) Issues stated in the health care grievance allege facts that warrant further inquiry.

(e) Health care grievances accepted as clinical in nature shall receive a clinical review by the appropriate health care discipline as determined during the triage.

(f) An interview with the patient shall be conducted in any of the following circumstances:

(1) The patient requested an interview by initialing the appropriate box on the CDCR 602 HC.

(2) Health care staff has determined an interview is necessary.

(3) The patient has been identified as the first patient to submit an accepted health care grievance that has been designated as a multiple health care grievance pursuant to section 3999.232.

(4) The health care grievance is deemed a health care staff complaint and in such case, health care staff shall conduct the interview pursuant to section 3999.231.

(g) If the patient refuses the health care grievance interview, the HCGO shall complete the health care grievance without patient input.

(h) Health care staff who participated in the event or decision being grieved may not interview the patient.

(i) Time limits for processing a health care grievance commence on the day it is received by the HCGO and shall be completed and returned to the patient within 45 business days, unless processed as an expedited health care grievance pursuant to section 3999.233(b).

(j) Health care grievance responses shall be approved and signed pursuant to section 3999.225(x).

Cal. Code Regs. tit. 15 § 3999.229

§ 3999.229. Preparation and Submittal of a Health Care Grievance Appeal.

(a) If dissatisfied with the institutional level health care grievance disposition, the patient may appeal the disposition by completing and signing Section B of the CDCR 602 HC and submitting the health care grievance package to HCCAB via the United States Postal Service within 30 calendar days plus five calendar days for mailing from the date noted on the CDCR 602 HC, in the “Date closed and mailed/delivered to patient” section on page 1 of 2.

- (1) The requirements of sections 3999.227(c) through (g) and (j) through (q) apply to this section.
- (2) The health care grievance package shall include the original institutional level grievance response.
- (3) The patient shall not include new issues that were not included in the original health care grievance.
- (4) For appeals of health care grievances processed on an expedited basis at the institutional level, the patient shall forward the health care grievance package to the HCGO where the patient is housed if continued expedited processing is requested.

Cal. Code Regs. tit. 15 § 3999.230

§ 3999.230. Headquarters' Level Health Care Grievance Appeal Review.

(a) The headquarters' level is for review of appeals of institutional level health care grievance dispositions.

(b) Health care staff at a level no less than a Registered Nurse, utilizing clinical expertise within the scope of his or her licensure, shall:

(1) Triage each health care grievance appeal within one business day of receipt and:

(A) Determine if the health care grievance appeal identifies a health care issue that may require clinical intervention.

(B) Determine if the health care grievance appeal warrants continued expedited processing as requested by the patient pursuant to section 3999.229(a)(4).

(2) Determine if a clinical review is warranted.

(3) Review the patient's health record and applicable clinical and/or custodial information, as necessary, to aid in drafting the headquarters' level response and coordinate with the appropriate health care discipline as necessary, when an accepted health care grievance appeal is determined to warrant a clinical review.

(c) All submitted health care grievance appeals shall be screened to identify whether the health care grievance appeal complies with the requirements under sections 3999.227 and 3999.229 and may be rejected pursuant to section 3999.234.

(d) Any health care grievance appeal received outside the time limits pursuant to sections 3999.227 and 3999.229 may be accepted at the discretion of the HCCAB if it is determined that the health care grievance appeal should be subject to further review for reasons including, but not limited to:

(1) Good cause exists for untimely submission of the health care grievance appeal.

(2) Issues stated in the health care grievance appeal allege facts that warrant further inquiry.

(e) If determined to be necessary by HCCAB staff, an interview with the patient may be conducted.

(f) Time limits for processing a health care grievance appeal commence on the day it is received by the HCCAB and shall be completed and returned to the patient within 60 business days, unless processed as an expedited health care grievance appeal pursuant to section 3999.233(b).

(g) Headquarters' level health care grievance appeal responses shall be approved and signed pursuant to section 3999.225(x).

(h) The headquarters' level review constitutes the final disposition on a health care grievance and exhausts administrative remedies but does not preclude amending a response previously made at the headquarters' level.

(i) At its sole discretion, HCCAB may address new issues not previously submitted or included in the original health care grievance.

(j) A headquarters' level disposition addressing new issues exhausts administrative remedies.

(k) Amendments. HCCAB shall notify the HCGO and patient when it is determined a health care grievance response requires amendment.

(1) The HCGO shall complete the amended response and return the health care grievance package to the patient within 30 calendar days of notice issuance.

(2) The patient shall have 30 calendar days plus five calendar days for mailing from the amended health care grievance response issue date to resubmit the entire original health care grievance package for a headquarters' level grievance appeal review.

(l) Headquarters' level directive. When it is determined intervention is appropriate, HCCAB may issue a headquarters' level directive to the institutional level reviewing authority; the headquarters' level directive shall be completed within 60 calendar days of the health care grievance appeal disposition. The 60 calendar day period may be extended by HCCAB after notification from the HCGO that there is a delay in the completion of a headquarters' level directive and the estimated completion date.

Cal. Code Regs. tit. 15 § 3999.231

§ 3999.231. Health Care Staff Complaints.

(a) Health care grievances determined to be health care staff complaints after receiving a clinical triage shall be processed pursuant to Subchapter 2, Article 5.1 and not as a citizen's complaint.

(b) The HCGO shall present health care grievances alleging health care staff misconduct to the reviewing authority within five business days of receipt. The reviewing authority shall review the complaint and determine if:

(1) The allegation will be addressed as a health care grievance or as a health care staff complaint.

(2) The allegation will be processed as a health care staff complaint but does not warrant referral for an allegation inquiry or investigation, or the request for an investigation has been declined, in which case a confidential inquiry report shall be completed pursuant to section 3999.231(f).

(3) The allegation will be processed as a health care staff complaint and warrants referral to the applicable authority for an allegation inquiry or investigation.

(c) A health care staff complaint alleging excessive or inappropriate use of force shall be addressed pursuant to the procedures described in sections 3268 through 3268.2.

(d) A health care staff complaint alleging staff sexual misconduct shall be processed pursuant to the procedures described in section 3084.9.

(e) If the health care staff complaint alleges health care or other issues unrelated to the allegation of health care staff misconduct, the HCGO shall notify the grievant that those unrelated issues shall be grieved separately and within 30 calendar days plus five calendar days for mailing from the date noted on the written notification.

(f) Confidential Inquiry Report. Health care staff with supervisory authority over the subject of the health care staff complaint shall:

(1) Conduct an inquiry to determine if health care staff behavior or activity violated a law, regulation, policy, or procedure, or was contrary to an ethical or professional standard, even if the grievant has paroled, discharged, or is deceased.

(2) Interview the following to reach a determination concerning the allegation(s):

(A) The patient.

(B) All necessary witnesses.

(C) The subject of the health care staff complaint, unless no longer employed by CDCR or on a leave of absence.

1. The subject of the health care staff complaint will be given notice of the interview at least 24 hours prior to the interview. If the subject chooses to waive the 24-hour requirement, he or she must indicate this at the time they are given notice. If waived, the subject may be interviewed immediately.

(3) Prepare a confidential inquiry report and include evidence to support a determination of the findings concerning the allegation(s).

(4) The HCGO shall maintain the original and any redacted versions of the confidential inquiry report.

(A) The confidential inquiry report shall not be released to incarcerated persons under any circumstances.

(B) The subject of the health care staff complaint is entitled to know whether or not he or she violated policy and may view the confidential inquiry report in the HCGO under the following conditions:

1. With approval from the institutional litigation coordinator.

2. With redaction of other staffs' information including, but not limited to, identity, interview content, potential discipline, or inquiry findings.

(C) Requests for release of a confidential inquiry report relating to litigation shall be forwarded to the headquarters' health care Litigation Coordinator for review and approval to release.

(g) The institutional level response to a health care staff complaint shall inform the patient of either:

(1) The decision to conduct a confidential inquiry and the outcome.

(2) The decision to refer the matter to the applicable investigating authority.

(h) Time limits for processing health care staff complaints shall be completed and returned to the patient pursuant to sections 3999.228(i) or 3999.230(f).

(i) Institutional level health care staff complaint responses shall be approved and signed pursuant to section 3999.225(x).

(j) The headquarters' level is for administrative review of the institutional level response of a health care staff complaint for which the patient is dissatisfied with the institutional level disposition or if the patient alleges headquarters' health care staff misconduct.

(k) Headquarters' level health care staff complaint responses shall be approved and signed pursuant to section 3999.225(x).

Cal. Code Regs. tit. 15 § 3999.232

§ 3999.232. Multiple Health Care Grievances.

(a) Each identified multiple health care grievance shall be individually processed.

(1) The patient who submitted the first accepted multiple health care grievance shall be identified. The identified patient shall receive an interview pursuant to section 3999.228(f)(3). No other patient will receive an interview unless health care grievance staff needs further clarification related to the issue.

(2) A response to each patient shall be provided containing a statement to indicate that the health care grievance was processed as one of multiple health care grievances.

Cal. Code Regs. tit. 15 § 3999.233

§ 3999.233. Exceptions to Health Care Grievance Process Time Limits.

(a) Exceptions to health care grievance process time limits pursuant to sections 3999.228(i) and 3999.230(f) shall be permitted only when:

(1) Patient, staff, or witnesses are not available prior to the expiration of the response time limits to provide information to prepare the health care grievance or health care grievance appeal response.

(2) The complexity of the decision, action, or policy requires additional research.

(3) Involvement of other departments, agencies, or jurisdictions is necessary.

(4) A state of emergency requires the postponement of nonessential administrative decisions and actions pursuant to section 3383(a).

(b) Expedited health care grievances and health care grievance appeals identified pursuant to sections 3999.228(b)(2) or 3999.230(b)(1)(B) shall be processed and returned to the patient within five business days from the date of receipt.

(c) Headquarters' level directives shall specify the timeframe for completion for expedited health care grievance appeals.

(d) The HCGO shall notify the patient and HCCAB if there is a delay in the completion of a headquarters' level directive and the estimated completion date.

Cal. Code Regs. tit. 15 § 3999.234

§ 3999.234. Health Care Grievance and Health Care Grievance Appeal Rejection.

(a) A health care grievance or health care grievance appeal may be rejected for reasons, which include, but are not limited to:

(1) The patient did not submit the health care grievance or health care grievance appeal pursuant to Subchapter 2, Article 5.

(2) The health care grievance concerns an anticipated action or decision.

(3) The patient submitted the health care grievance without a prior attempt to obtain health care services through approved processes. In this case, HCGO staff shall submit a request for health care services, if medically necessary, to the appropriate facility clinic on behalf of the patient.

(4) An individual submitted a health care grievance or health care grievance appeal on behalf of another person.

(5) The patient is temporarily outside health care jurisdiction for an indeterminate amount of time, including, but not limited to, out-to-court or at an offsite hospital, and not expected to return before the time limits for responding to the health care grievance or health care grievance appeal have expired.

(6) The health care grievance duplicates the patient's previous health care grievance upon which a decision was rendered or is pending and the patient has not provided any new information that would indicate additional review is warranted.

(7) A health care grievance is submitted as a group grievance by more than one patient related to a policy, decision, action, condition, or omission affecting all members of the group.

(b) When a health care grievance or health care grievance appeal is rejected, a response to the patient shall provide written instruction regarding further action the patient must take to qualify the health care grievance or health care grievance appeal for processing and the timeframe necessary, as determined by the HCGO or HCCAB, to correct and resubmit the health care grievance or health care grievance appeal to the identified office.

(1) If the patient submits a health care grievance or health care grievance appeal more than twice without complying with the written instruction, the health care grievance or health care grievance appeal will be adjudicated based on available information. Adjudication of a health care grievance or health care grievance

appeal without complying with written instruction to correct submission does not preclude consideration for abuse pursuant to section 3999.236(a)(2).

Cal. Code Regs. tit. 15 § 3999.235

§ 3999.235. Health Care Grievance and Health Care Grievance Appeal Withdrawal

- (a) With the exception of health care grievances determined to be health care staff complaints, the patient may withdraw a health care grievance or health care grievance appeal by requesting to have the processing stopped at any point up to receiving a signed response.
- (b) The request to withdraw a health care grievance or health care grievance appeal shall identify the reason for the withdrawal in Section E of the CDCR 602 HC, and shall be signed and dated by the patient. The patient may also submit a written request to the reviewing authority, including the reason for withdrawal, patient signature, and date.
- (c) If there is agreed-upon relief noted in writing at the time of a withdrawal and the relief is not provided, the patient may submit a new separate health care grievance on that issue within 30 calendar days of the failure to receive relief.
- (d) The withdrawal of a health care grievance or health care grievance appeal does not preclude further administrative action regarding the issues being grieved.
- (e) The decision to accept a request to withdraw a health care grievance or health care grievance appeal is at the discretion of the HCGO or HCCAB.
 - (1) The patient shall be provided a response of acceptance of the request to withdraw a health care grievance or health care grievance appeal.
 - (2) If the request to withdraw a health care grievance or health care grievance appeal is not accepted, the processing of the health care grievance or health care grievance appeal shall continue and a response shall be issued, unless the patient is paroled, deceased, or discharged pursuant to section 3999.237.

Cal. Code Regs. tit. 15 § 3999.236

§ 3999.236. Abuse of the Health Care Grievance Process.

(a) The following are abuse of the health care grievance process and may lead to health care grievance restriction:

(1) The submission of more than one health care grievance for initial review within a 14 calendar day period, unless it is accepted as an expedited grievance.

(2) The repeated filing of a health care grievance or health care grievance appeal that has been rejected and resubmitted without complying with rejection response instructions pursuant to section 3999.234(b).

(3) The patient continues to submit health care grievances or health care grievance appeals contrary to section 3999.227.

(b) After the HCGO identifies health care grievance abuse and provides a written and verbal warning to the patient, the headquarters' level reviewing authority shall have the discretion to authorize preparation and issuance of a notice restricting the patient to one routine health care grievance every 30 calendar days for a period of up to one year. Any subsequent violation of the health care grievance restriction may result in an extension of the restriction for up to an additional one-year period upon approval by the headquarters' level reviewing authority.

Cal. Code Regs. tit. 15 § 3999.237

§ 3999.237. Changes in Health Care Jurisdiction.

(a) If the patient is temporarily outside health care jurisdiction for an indeterminate amount of time, including, but not limited to, out-to-court or at an offsite hospital, and not expected to return before the time limits for responding to the health care grievance or health care grievance appeal have expired, the health care grievance or health care grievance appeal may be rejected pursuant to section 3999.234(a). Upon return to health care jurisdiction, the patient may resubmit the health care grievance or health care grievance appeal pursuant to section 3999.234(b).

(b) Paroled. If the patient paroled before the time limits expire for responding to a health care grievance or health care grievance appeal, the patient shall not receive a response.

(c) Deceased or Discharged. If the patient is deceased or discharged before the time limits expire for responding to a health care grievance or health care grievance appeal, a response will not be prepared.

Cal. Code Regs. tit. 15 § 3480 (repealed 2022)

§ 3480. Implementation Date and Definitions.

(a) The provisions of this Article shall apply to all inmate and parolee grievances received by the Department of Corrections and Rehabilitation on or after June 1, 2020.

(b) For purposes of this article, the following definitions shall apply:

(1) “Administrative remedy” means the non-judicial process provided by the Department to address inmate and parolee complaints.

(2) “Allegation inquiry” refers to the process of gathering preliminary information concerning a claim that involves an allegation of staff misconduct.

(3) “Appeal” means a written request from a claimant for review by the Office of Appeals of a decision issued by the Institutional or Regional Office of Grievances.

(4) “Appeal package” means form CDCR 602-2 (03/20) and all of its supporting documents.

(5) “Claim” means a single complaint arising from a unique set of facts or circumstances.

(6) “Claimant” refers to an inmate or parolee under the custody or control of the Department who files a grievance or appeal with the Department.

(7) “Coordinator” means the official responsible for the administrative functions of the Office of Grievances or Office of Appeals, depending on their assignment.

(8) “Department” and “departmental staff” refers exclusively to the Department of Corrections and Rehabilitation and to all employees, contractors, and volunteers associated with the Department, respectively.

(9) “Formal investigation” refers to a criminal or administrative investigation by the Office of Internal Affairs concerning a claim that involves an allegation of staff misconduct.

(10) “Grievance” means a written request from a claimant for review by the Institutional or Regional Office of Grievances of one or more claims.

(11) “Grievance package” means form CDCR 602-1 (03/20) and all of its supporting documents.

(12) “Reviewing Authority” means the official at the Office of Grievances or Office of Appeals who is responsible for reaching a decision on each claim raised in a grievance or appeal, respectively.

(13) “Serious bodily injury” means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(14) “Staff misconduct” means an allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, which, if true, would more likely than not subject a staff member to adverse disciplinary action.

(15) “Supervisory review” refers to the process of gathering preliminary information concerning a claim that does not involve an allegation of staff misconduct.

Cal. Code Regs. tit. 15 § 3481 (repealed 2022)

§ 3481. Claimant's Ability to Grieve and to Appeal.

(a) A claimant has the ability to submit a written grievance containing one or more claims, subject to the requirements in section 3482, to dispute a policy, decision, action, condition, or omission by the Department or departmental staff that causes some measurable harm to their health, safety, or welfare. In response, a claimant shall receive a written decision as described in section 3483 from the Institutional or Regional Office of Grievances, hereby established in the Division of Adult Institutions and Division of Adult Parole Operations, respectively, clearly explaining the reasoning for the Reviewing Authority's decision as to each claim. A claimant also has the ability to submit a written appeal concerning one or more claims, subject to the requirements in section 3485, to dispute the decision by the Institutional or Regional Office of Grievances. In response, a claimant shall receive a written decision as described in section 3486 from the Office of Appeals clearly explaining the reasoning for the Reviewing Authority's decision as to each claim.

(b) The Director of the Division of Adult Institutions shall appoint Institutional Reviewing Authorities authorized to approve or disapprove each claim in a grievance received by an inmate, but in no case shall that official be of a rank lower than a Chief Deputy Warden. The Director of the Division of Adult Parole Operations shall appoint Regional Reviewing Authorities authorized to approve or disapprove each claim in a grievance submitted by a parolee, but in no case shall that official be of a rank lower than a Chief Deputy Parole Administrator. The Secretary shall appoint the Reviewing Authority authorized to grant or deny each claim in an appeal submitted by an inmate or a parolee, but in no case shall that official be of a rank lower than the Associate Director of the Office of Appeals.

(c) A claimant may choose to informally resolve a claim; however, any attempt to informally resolve a claim does not extend the time for submitting a grievance or an appeal.

(d) Staff shall not retaliate against a claimant for seeking to informally resolve a claim or for submitting a grievance or appeal.

(e) A claimant does not have the ability to submit a grievance or appeal to dispute a policy, decision, action, condition, or omission that was not made by the Department or departmental staff but instead was made by an entity or official outside of the Department, including, but not limited to, a county jail, a private hospital, or the Interstate Commission for Adult Offender Supervision; nor by an entity or official that is quasi-independent of the Department, including, but not limited to, the Board of Parole Hearings, the Prison Industry Authority, or the Commission on

Correctional Peace Officer Standards and Training. This article does not preclude a claimant from filing a complaint with the outside entity or official.

(f) Form CDCR 602-1 (03/20), "Grievance," hereby incorporated by reference, shall be made available to inmates in all housing units and in all prison law libraries and to parolees at all parole offices statewide.

(g) When submitting a grievance or appeal, or for purposes of a related interview, if a claimant requests assistance based on a disability, lack of literacy, or need for translation services, or departmental staff detect the need for such assistance, then staff shall provide reasonable accommodations and utilize effective communication techniques as required by the Americans with Disabilities Act.

Cal. Code Regs. tit. 15 § 3482 (repealed 2022)

§ 3482. Preparation and Submittal of a Grievance.

(a) Where to Submit a Grievance.

(1) An inmate who wishes to submit a grievance shall do so in writing to the Institutional Office of Grievances at the prison, re-entry facility, or fire camp where they are housed. Every Warden, in consultation with the Director of the Division of Adult Institutions, shall issue a separate local rule in compliance with subdivision (c) of section 5058 of the Penal Code which shall be made available in all the law libraries at that institution, identifying the address where grievances may be mailed, the availability of electronic kiosks or tablets for submitting grievances, the physical location in each housing unit of all lock-boxes where grievances may be submitted, and the specific departmental staff permitted to collect grievances from those lock-boxes. Grievances shall be collected from lock-boxes at least once per business day by departmental staff not regularly assigned to that housing unit. Additional rules regarding the preparation and submittal of a grievance may be promulgated by the Division of Adult Institutions so long as they are consistent with this Article.

(2) A parolee who wishes to submit a grievance shall do so in writing to the Regional Office of Grievances in the parole region where they are supervised. Every Regional Parole Administrator, in consultation with the Director of the Division of Adult Parole Operations, shall issue a written advisement to a parolee within 15 calendar days of the parolee's release from prison identifying the address where grievances may be mailed, the availability of electronic kiosks or tablets for submitting grievances, and the physical location where grievances may be submitted. Additional rules regarding the preparation and submittal of a grievance may be promulgated by the Division of Adult Parole Operations so long as they are consistent with this Article.

(b) A claimant shall submit a claim within 30 calendar days of discovering an adverse policy, decision, action, condition, or omission by the Department. Discovery occurs when a claimant knew or should have reasonably known of the adverse policy, decision, action, condition, or omission. The time limit for a parolee to submit a grievance shall not be extended while the parolee is on suspended status, meaning the parolee has absconded. The deadline to submit a claim shall be extended for the period of time that a claimant is:

- (1) in the custody of another authority for court proceedings;
- (2) in the care of an outside hospital; or

(3) temporarily housed in a medical or mental health crisis bed.

(c) To submit a grievance, a claimant shall:

(1) type or print legibly on an official form CDCR 602-1 (03/20) or complete the form electronically, if available;

(2) describe all information known and available to the claimant regarding the claim, including key dates and times, names and titles of all involved staff members (or a description of those staff members), and names and titles of all witnesses, to the best of the claimant's knowledge;

(3) describe any attempt to resolve the claim informally and, if there was such an attempt, provide the details of that attempt, including key dates and times, names and titles of all involved staff members (or a description of those staff members), and the results of that attempt, to the best of the claimant's knowledge;

(4) include all supporting documents available to the claimant related to the claim or identify to the best of the claimant's ability all relevant records with sufficient specificity for those records to be located; and

(5) sign and date the form CDCR 602-1 (03/20).

(d) When completing form CDCR 602-1 (03/20), a claimant shall not:

(1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;

(2) include information or accusations known to the claimant to be false; or

(3) contaminate the grievance package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff, in which case the grievance shall be safely discarded and the entire grievance disallowed.

(e) The grievance package submitted by the claimant shall be stored electronically by the Department. The form CDCR 602-1 (03/20) shall contain a notification to the claimant that the documents submitted will not be returned to the claimant.

Cal. Code Regs. tit. 15 § 3483 (repealed 2022)

§ 3483. Grievance Review.

(a) The Reviewing Authority for each Office of Grievances shall designate at least one official to assess each written grievance within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the official shall immediately commence an appropriate response as required by all applicable laws and regulations. The claimant shall be notified of the Department's course of action within five business days. Regardless of such notification, the Reviewing Authority shall issue a written response to the claimant as required in subsection 3483(i).

(b) The Grievance Coordinator shall ensure that claims meeting the following criteria are redirected to the appropriate authority described below to process according to all applicable laws and regulations.

(1) An issue concerning medical, dental, or mental health services provided by the Correctional Health Care Services Division or a dispute concerning a policy, decision, action, condition, or omission by the Correctional Health Care Services Division or its staff shall be redirected to that Division.

(2) A request for a reasonable accommodation based on a disability shall be redirected to the Institutional or Regional Americans with Disabilities Act coordinator.

(3) A request for an interview, item, assistance, or service shall be redirected to the Facility Captain or Parole District Administrator responsible for responding to such requests from the claimant in question.

(4) A request for records pursuant to the California Public Records Act or the California Information Practices Act shall be redirected to the Institutional or Regional Public Records Act coordinator.

(5) An allegation against an inmate or parolee shall be redirected to the Facility Captain or Parole District Administrator where the majority of the facts and circumstances that gave rise to the claim occurred.

(c) The Grievance Coordinator shall ensure that claims meeting the following criteria are reassigned to the appropriate authority described below who shall respond to the claim.

(1) The Grievance Coordinator shall ensure that a claim is reassigned to another Institutional or Regional Office of Grievances if a majority of the facts and circumstances that gave rise to the claim occurred there. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date that the sending Office of Grievances received it.

(2) The Grievance Coordinator shall ensure that a request to implement a remedy is reassigned to the Remedies Compliance Coordinator referred to in subsection 3483(k)(2).

(d) The Reviewing Authority shall refer claims alleging staff misconduct to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation pursuant to section 3484.

(e) A claim may be rejected as described in section 3487.

(f) The Grievance Coordinator shall ensure that an acknowledgment of receipt of a grievance is completed within 14 calendar days of its receipt indicating the date the grievance was received, whether it was disallowed pursuant to subsection 3482(d)(3), whether any particular claim was redirected or reassigned pursuant to this section, and the deadline for the Department's response to all remaining claims.

(g) A claimant or witness shall be interviewed if departmental staff responsible for reviewing a claim determine it would assist in resolving the claim. The interview shall be conducted in a manner that provides as much privacy for the claimant as operationally feasible. If a claimant is unavailable to be interviewed or refuses to be interviewed, then those facts shall be documented in the written response prepared by the Reviewing Authority.

(h) The Reviewing Authority shall ensure that any individual whose personal interaction with a claimant forms part of the claim is excluded from participating in the grievance process as to that claim, including any interview of a claimant conducted as part of the grievance process.

(1) If the individual in question is a Warden, then an Associate Director, Deputy Director, or the Director from the Division of Adult Institutions shall serve as the Reviewing Authority for that claim.

(2) If the individual in question is a Regional Parole Administrator, then a Deputy Director or the Director from the Division of Adult Parole Operations shall serve as the Reviewing Authority for that claim.

(3) Participating in a committee meeting to discuss a claimant or that includes a claimant in attendance does not, by itself, constitute personal interaction.

(i) The Reviewing Authority shall ensure that a written response is completed no later than 60 calendar days after receipt of the grievance, unless other statutory or regulatory authority requires a response in less than 60 calendar days, and approve one of the following decisions as to each claim in the grievance:

(1) “Disapproved,” meaning that the Reviewing Authority found by a preponderance of the evidence available that all applicable policies were followed and that all relevant decisions, actions, conditions, or omissions by the Department or departmental staff were proper (whether substantively, procedurally, or both);

(2) “Approved,” meaning that the Reviewing Authority did not find by a preponderance of the evidence available that all applicable policies were followed or that all relevant decisions, actions, conditions, or omissions by the Department or departmental staff were proper (whether substantively, procedurally, or both), in which case the Reviewing Authority shall order an appropriate remedy;

(3) “No Jurisdiction,” meaning that the claim concerns a policy, decision, action, condition, or omission by an independent entity or official which requires that the claimant file a complaint with that entity or official, as described in subsection 3481(e);

(4) “Redirected,” as described in subsection 3483(b);

(5) “Reassigned,” as described in subsection 3483(c);

(6) “Rejected,” as described in subsection 3487(a);

(7) “Disallowed,” as described in subsection 3482(d)(3);

(8) “Under Inquiry or Investigation,” meaning that the claim is under an allegation inquiry or formal investigation by departmental staff or another appropriate law enforcement agency;

(9) “Pending Legal Matter,” meaning that the substance of the claim concerns pending litigation by a party other than the claimant (excluding class action litigation), pending legislation, or pending regulatory action; or

(10) “Time Expired,” meaning that the Department was not able to respond to the claim in the time required pursuant to subsection 3483(i).

(j) The Reviewing Authority’s written decision shall be mailed to the claimant and a copy placed in the claimant’s central file.

(k) Implementation of Remedy.

(1) If the Reviewing Authority approves a claim, then the corresponding remedy shall be implemented no later than 30 calendar days after the decision was sent to the claimant. If the remedy requires budget authorization outside the Department's existing authority, then it shall be implemented no later than one year after the decision was sent to the claimant.

(2) If the remedy has not been implemented and the applicable deadline has passed, then a claimant may submit form CDCR 602-3 (03/20), "Request to Implement Remedies," hereby incorporated by reference, directly to the Remedies Compliance Coordinator by regular mail sent to the "Remedies Compliance Coordinator, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811." Correspondence directed to this address shall not be opened by any departmental staff other than those in the unit.

(l) Additional rules may be promulgated by the Division of Adult Institutions and the Division of Adult Parole Operations so long as they are consistent with this Article.

(m) Exhaustion.

(1) Completion of the review process by the Institutional or Regional Office of Grievances resulting in a decision found in subsections 3483(i)(1) through 3483(i)(7) does not constitute exhaustion of all administrative remedies available to a claimant within the Department. Nor does completion of the review process resulting in a decision to reject a claim pursuant to section 3487. Exhaustion requires a claimant to appeal such decisions as provided in section 3485.

(2) Completion of the review process by the Institutional or Regional Office of Grievances resulting in a decision found in subsections 3483(i)(8) through (i)(10) does constitute exhaustion of all administrative remedies available to a claimant within the Department. No appeal is available because the claim was exhausted at the conclusion of the review by the Institutional or Regional Office of Grievances.

Cal. Code Regs. tit. 15 § 3484 (repealed 2022)

§ 3484. Allegations of Staff Misconduct.

(a) All claims alleging staff misconduct shall be presented by the grievance coordinator to the Reviewing Authority who shall review the claim and determine if:

(1) The claim warrants a request for an allegation inquiry in which case the claim shall be referred to the Office of Internal Affairs, Allegation Inquiry Management Section. An allegation inquiry shall be conducted whenever the claim meets the definition of staff misconduct but the Reviewing Authority does not have a reasonable belief that the misconduct occurred.

(2) The claim warrants a request for a formal investigation in which case the claim shall be referred to the Office of Internal Affairs, Central Intake Unit. A formal investigation shall be conducted whenever the claim meets the definition of staff misconduct and the Reviewing Authority has a reasonable belief that the misconduct occurred.

(b) A confidential report shall be prepared by the Office of Internal Affairs after the completion of an allegation inquiry or formal investigation summarizing all of the evidence that was gathered, including all significant factual findings. This document shall not be provided to the claimant and no other copies shall be kept or maintained except as needed by a Reviewing Authority or the staff working in an Office of Grievances or Office of Appeals in order to respond to a claim, after which the report shall be returned to the Office of Internal Affairs.

(c) Staff with the Office of Internal Affairs may interview the claimant and as many witnesses as necessary to help determine if the allegation is true. The subject of the allegation of staff misconduct may also be interviewed by staff with the Office of Internal Affairs trained to conduct administrative interviews and shall be given notice of the interview at least 24 hours in advance. If the subject chooses to waive the 24-hour notice requirement then the subject may be interviewed immediately.

(d) When the allegation of staff misconduct concerns a use of force incident, then the Reviewing Authority shall refer the claim to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation if the alleged use of force by staff resulted in serious bodily injury or the alleged use of force was not reported in accordance with sections 3268.1 or 3268.3.

(e) If the staff misconduct in question involves a person who is employed by a different hiring authority than the Reviewing Authority, then it shall be the responsibility of the Reviewing Authority to confer with that hiring authority before the referral to the Office of Internal Affairs in order to avoid duplicative referrals.

Cal. Code Regs. tit. 15 § 3485 (repealed 2022)

§ 3485. Preparation and Submittal of an Appeal.

(a) A claimant who wishes to appeal a decision made by an Institutional or Regional Office of Grievances concerning one or more claims they previously submitted in a grievance shall do so in writing by regular mail sent to the “Office of Appeals, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811” or by electronic kiosk or tablet, if available. Correspondence directed to this address shall not be opened by any departmental staff other than those in the Office of Appeals.

(b) A claimant who wishes to appeal a decision found in subsections 3483(i)(1) through 3483(i)(6) shall submit an appeal within 30 calendar days of discovering the decision by the Institutional or Regional Office of Grievances. Discovery occurs when a claimant knew or should have reasonably known of the decision. The time limit for a parolee to submit an appeal shall not be extended while on suspended status, meaning the parolee has absconded. The deadline to submit an appeal of a claim shall be extended for the period of time that a claimant is:

- (1) in the custody of another authority for court proceedings;
- (2) in the care of an outside hospital; or
- (3) temporarily housed in a medical or mental health crisis bed.

(c) To submit an appeal, a claimant shall:

- (1) type or print legibly on an official form CDCR 602-2 (03/20), “Appeal of Grievance,” hereby incorporated by reference, or complete the form electronically, if available;
- (2) describe in detail why the decision provided by the Institutional or Regional Office of Grievances is inadequate; and
- (3) sign and date the form CDCR 602-2 (03/20).

(d) When completing form CDCR 602-2 (03/20), a claimant shall not:

- (1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;
- (2) include information or accusations known to the claimant to be false; or
- (3) contaminate the appeal package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff, in which case the appeal shall be safely discarded and the entire appeal disallowed; or

(4) include new claims that were not included in the original grievance, in which case the claim shall be reassigned pursuant to subsection 3486(c)(1).

(e) The appeal package submitted by the claimant shall be stored electronically by the department. The form CDCR 602-2 (03/20) shall contain a notification to the claimant that the documents submitted will not be returned to the claimant.

Cal. Code Regs. tit. 15 § 3486 (repealed 2022)

§ 3486. Appeal Review.

(a) The Reviewing Authority for the Office of Appeals shall designate at least one official to assess each written appeal within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the official shall refer the matter to the Institutional or Regional Office of Grievances where the majority of the facts and circumstances that gave rise to the claim occurred to be handled pursuant to subsection 3483(a).

(b) The Appeal Coordinator shall ensure that claims meeting the following criteria are redirected to the appropriate authority described below to process according to all applicable laws and regulations.

(1) An issue concerning medical, dental, or mental health services provided by the Correctional Health Care Services Division or a dispute concerning a policy, decision, action, condition, or omission by the Correctional Health Care Services Division or its staff shall be redirected to that Division.

(2) A request for a reasonable accommodation based on a disability shall be redirected to the Institutional or Regional Americans with Disabilities Act coordinator.

(3) A request for an interview, item, assistance, or a service shall be redirected to the Facility Captain or Parole District Administrator responsible for responding to such requests for the claimant in question.

(4) A request for records pursuant to the California Public Records Act or the California Information Practices Act shall be redirected to the Institutional or Regional Public Records Act coordinator.

(5) An allegation against an inmate or parolee shall be redirected to the Facility Captain or Parole District Administrator where the majority of the facts and circumstances that gave rise to the claim occurred.

(c) The Appeal Coordinator shall ensure that claims meeting the following criteria are reassigned to the appropriate authority described below who shall respond to the claim.

(1) A claim which was not first submitted in a grievance to an Institutional or Regional Office of Grievances shall be reassigned to the Institutional or Regional Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date the Office of Appeals received it.

(2) A claim which was first submitted in a grievance but not answered by an Institutional or Regional Office of Grievances shall be reassigned to the Institutional or Regional Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date that the claim was first received but not answered by an Institutional or Regional Office of Grievances.

(3) A request to implement a remedy shall be reassigned to the Remedies Compliance Coordinator referred to in subsection 3486(k)(2).

(d) If the Office of Appeals determines that a claim involves staff misconduct and that claim was not referred to the Office of Internal Affairs for an allegation inquiry or formal investigation by the Office of Grievances, then the Office of Appeals shall refer that claim to the individuals below who shall consider whether completion of an allegation inquiry or formal investigation is required pursuant to section 3484.

(1) If the claim was made by an inmate, then an Associate Director, Deputy Director, or the Director from the Division of Adult Institutions shall serve as the Reviewing Authority for that claim.

(2) If the claim was made by a parolee, then a Deputy Director or the Director from the Division of Adult Parole Operations shall serve as the Reviewing Authority for that claim.

(e) A claim may be rejected as described in section 3487.

(f) The Appeal Coordinator shall ensure that an acknowledgment of receipt of the appeal is completed within 14 calendar days of its receipt indicating the date the appeal was received, whether it was disallowed pursuant to subsection 3485(d)(3), whether any particular claim was redirected or reassigned pursuant to this section, and the deadline for the Department's response to all remaining claims.

(g) The full record of each claim shall be made available to the Office of Appeals for purposes of conducting its reviews. The record shall include the claimant's grievance, the claimant's appeal, both acknowledgment letters, all related interviews conducted for the Institutional or Regional Office of Grievances, any relevant

documentation prepared for the Office of Grievances, any allegation inquiry reports prepared for the Office of Grievances, any records contained in the Department's information technology system, and all Department rules and memoranda. The record shall not include any new information provided by the claimant to the Office of Appeals that was not made available to the Office of Grievances for their review.

(h) The Reviewing Authority shall exclude any individual whose personal interaction with the claimant forms part of the claim from participating in the appeal process as to that claim. If the individual in question is the Associate Director of the Office of Appeals, then the Director from the Division of Correctional Policy Research and Internal Oversight shall serve as the Reviewing Authority for that claim.

(i) The Reviewing Authority shall ensure that a written response is completed no later than 60 calendar days after receipt of the appeal, unless other statutory or regulatory authority requires a response in less than 60 calendar days, and approve one of the following decisions as to each claim in the appeal:

- (1) "Denied," meaning that the Reviewing Authority found by a preponderance of the evidence available that the decision of the Institutional or Regional Office of Grievances was proper;
- (2) "Granted," meaning that the Reviewing Authority did not find by a preponderance of the evidence available that the decision by the Institutional or Regional Office of Grievances was proper, in which case the Reviewing Authority shall set aside the decision of the Institutional or Regional Office of Grievances and order an appropriate remedy;
- (3) "No Jurisdiction," meaning that the claim concerns a policy, decision, action, condition, or omission by an independent entity which requires that the claimant file a grievance with that entity, as described in subsection 3481(e);
- (4) "Redirected," as described in subsection 3486(b);
- (5) "Reassigned," as described in subsection 3486(c);
- (6) "Rejected," as described in subsection 3487(a);
- (7) "Disallowed," as described in subsection 3485(d)(3);
- (8) "Under Inquiry or Investigation," meaning that the claim is under an allegation inquiry or formal investigation by departmental staff or another appropriate law enforcement agency;

(9) “Pending Legal Matter,” meaning that the substance of the claim concerns pending litigation by a party other than the claimant (excluding class action litigation), pending legislation, or pending regulatory action; or

(10) “Time Expired,” meaning that the Department was not able to respond to the claim in the time required pursuant to subsection 3486(i).

(j) The Reviewing Authority’s written decision shall be mailed to the claimant and a copy placed in the claimant’s central file. If the Reviewing Authority grants a claim, then a copy of the decision shall be simultaneously sent to the appropriate Institutional or Regional Grievance Coordinator.

(k) Implementation of Remedy.

(1) If the Office of Appeals grants a claim, then the Institutional or Regional Reviewing Authority shall ensure that the corresponding remedy is implemented no later than 30 calendar days after the decision was sent to the claimant. If the remedy requires budget authorization outside the Department’s existing authority, then it shall be implemented no later than one year after the decision was sent to the claimant.

(2) If the remedy has not been implemented and the applicable deadline has passed, then the claimant may submit form CDCR 602-3 (03/20) directly to the Remedies Compliance Coordinator by regular mail sent to the “Remedies Compliance Coordinator, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811.” Correspondence directed to this address shall not be opened by any departmental staff other than those in the unit.

(l) Additional rules may be promulgated by the Office of Appeals so long as they are consistent with this Article.

(m) Completion of the review process by the Office of Appeals constitutes exhaustion of all administrative remedies available to a claimant within the Department. A claim is not exhausted if it was disallowed pursuant to subsections 3482(d)(3) or 3485(d)(3) or rejected pursuant to subsection 3487(a).

Cal. Code Regs. tit. 15 § 3486.01 (repealed 2022)

§ 3486.01. Allegations of Staff Misconduct Toward an Incarcerated Person or Parolee.

(a) Right to submit complaint alleging staff misconduct

(1) Any person can submit a complaint of staff misconduct when they believe departmental staff have engaged in behavior that resulted in a violation of law, policy, regulation, or procedure, or an ethical or professional standard.

(A) Inmates shall submit CDCR Form 602-1, Grievance, (Rev. 01/22), which is incorporated by reference, pursuant to section 3482(a)(1). Parolees shall submit CDCR Form 602-1 pursuant to section 3482(a)(2).

(B) CDCR Form 602-HC, Health Care Grievance, (Rev. 10/18), which is incorporated by reference, shall be submitted pursuant to section 3999.226(a)

(C) Inmates shall submit CDCR Form 1824, Reasonable Accommodation Request, (Rev. 09/17), which is incorporated by reference, pursuant to section 3482(a)(1). Parolees shall submit CDCR Form 1824 pursuant to section 3482(a)(2).

(D) Citizens complaints shall be submitted in writing pursuant to section 3417.

(2) Staff shall not retaliate against a complainant or witness for submitting a complaint or reporting staff misconduct.

(3) The department shall ensure all complaints of staff misconduct are properly documented, objectively reviewed, thoroughly investigated, and discipline imposed or referred for criminal prosecution, when warranted, as provided in this Article, as well as Article 2 of Subchapter 5.

(b) Definitions - For purposes of this article, the following definitions shall apply:

(1) “Allegation Decision Index” refers to the index, incorporated by reference in this Article, which identifies the criteria utilized by the Centralized Screening Team to determine whether a complaint should be referred to the Office of Internal Affairs for investigation.

(2) “Allegation Inquiry” refers to the process of gathering relevant facts and evidence by a Local Designated Investigator (LDI) concerning a complaint that involves an allegation of staff misconduct.

(3) “Allegation Inquiry Report” refers to the confidential report prepared by an LDI following an Allegation Inquiry.

(4) “Centralized Screening Team” (CST) refers to the entity that reviews documentation to determine if the documentation contains a Routine Issue, alleges misconduct toward an incarcerated person or parolee, or alleges misconduct not involving an incarcerated person or parolee.

(5) “Clarification Interview” refers to an interview conducted by CST staff when clarification is required to make a screening decision.

(6) “Complaint” refers to any documentation or verbal statements received by the Department from any source that alleges Staff Misconduct.

(7) “Complainant” refers to the person making a complaint against departmental staff.

(8) “Investigation Report” refers to the confidential report prepared by an OIA investigator following an Investigation.

(9) “Department” and “Departmental Staff” refer exclusively to all CDCR employees, contractors, and volunteers.

(10) “Designated Case” refers to a case assigned to an Employment Advocacy and Prosecution Team (EAPT), Vertical Advocate (VA).

(11) “Employment Advocacy and Prosecution Team” (EAPT) refers to the entity in the Office of Legal Affairs responsible for providing legal counsel and representation during the employee investigation, discipline, and appeal process.

(12) “Hiring Authority” has the same meaning in this Article as in subsection 3392(a)(11).

(13) “Investigation” refers to the gathering of facts and evidence by an OIA Investigator concerning an allegation of Staff Misconduct.

(14) “Locally Designated Investigator” (LDI) refers to departmental staff trained by OIA to collect evidence and conduct Allegation Inquires.

(15) “Office of Internal Affairs” (OIA) refers to the entity with authority to investigate allegations of employee misconduct.

(16) “OIA Investigator” refers to a peace officer within the OIA assigned to conduct a confidential investigation.

(17) “Routine Issue” refers to any documentation received by CST that does not contain an allegation of Staff Misconduct.

(18) “Staff Misconduct” refers to behavior that results in a violation of law, regulation, policy, or procedure, or actions contrary to an ethical or professional standard.

(19) “Third Party” refers to a person or persons not directly involved in the incident or interaction that resulted in the allegation of staff misconduct.

(20) “Vertical Advocate” (VA) refers to an EAPT attorney who represents the department in designated cases during investigations, the employee discipline process, administrative hearings, and appellate proceedings.

(c) Implementation Dates - The provisions of this Article shall apply to staff misconduct complaints received by the department as follows:

(1) CDCR Form 602-1, Grievance, fully implemented at the following facilities on May 31, 2022;

- (A) Richard J Donovan Correctional Facility
- (B) California State Prison, Los Angeles County
- (C) California State Prison, Corcoran
- (D) Substance Abuse Treatment Facility
- (E) Kern Valley State Prison
- (F) California Institution for Women

(2) CDCR Form 602-1 fully implemented at the following facilities on September 30, 2022;

- (A) California Correctional Institution
- (B) California Health Care Facility
- (C) Correctional Training Facility
- (D) California Medical Facility
- (E) California State Prison, Sacramento
- (F) Mule Creek State Prison

(3) CDCR Form 602-1 fully implemented at the following facilities on November 30, 2022;

- (A) Calipatria State Prison
- (B) Centinela State Prison
- (C) California Institution for Men
- (D) California Rehabilitation Center
- (E) Chuckawalla Valley State Prison

(F) Ironwood State Prison

(4) CDCR Form 602-1 fully implemented at the following facilities on January 31, 2023;

(A) North Kern State Prison

(B) Wasco State Prison

(C) Avenal State Prison

(D) California City Correctional Facility

(E) Central California Women's Facility

(F) California State Prison, Solano

(G) Salinas Valley State Prison

(H) Pleasant Valley State Prison

(I) Pelican Bay State Prison

(J) San Quentin State Prison

(K) California Correctional Center

(L) High Desert State Prison

(M) Valley State Prison

(N) Folsom State Prison

(O) California Men's Colony

(P) Sierra Conservation Center

(Q) Community Beds

(R) Division of Adult Parole Operations

(5) CDCR Form 602-HC, Health Care Grievance, on March 31, 2023;

(6) CDCR Form 1824, Reasonable Accommodation Request, on April 30, 2023;

(7) All other complaints (e.g., third party complaints, citizen complaints, staff, ombudsman, advocacy letters and any related interviews, etc.) received either electronically, telephonically, or in writing on June 30, 2023.

Cal. Code Regs. tit. 15 § 3486.1 (repealed 2022)

§ 3486.1. Centralized Screening

(a) If departmental staff receives a written complaint from a complainant alleging staff misconduct toward an incarcerated person or parolee, the department staff receiving the complaint shall refer the complaint to CST and notify their supervisor to determine if it contains information constituting an imminent risk to personal safety, institutional security, or involves sexual abuse or acts of sexual misconduct as defined by the federal Prison Rape Elimination Act (PREA) and the California Sexual Abuse in Detention Elimination Act.

(b) For allegations of staff misconduct not involving an incarcerated person or parolee, the hiring authority shall not refer the allegation to CST, but may initiate an Allegation Inquiry, impose corrective action, or request an investigation or approval of direct action, pursuant to the department's applicable Internal Affairs investigations policies and procedures.

(c) Complaints of misconduct not involving departmental staff.

(1) If a hiring authority receives a complaint of misconduct, that does not involve departmental staff, the hiring authority shall advise the complainant that the subject of the complaint is not employed by CDCR and is outside the Department's jurisdiction.

(2) For all allegations of misconduct, excluding sexual abuse or sexual misconduct allegations as defined in PREA, the complainant shall be advised to file a complaint directly with the appropriate outside entity.

(3) For allegations of sexual abuse or sexual misconduct as defined by PREA, the hiring authority receiving the complaint shall notify the appropriate outside entity of the allegations as required by law, and inform the complainant of this referral.

(d) Verbal Complaints

(1) Department staff shall document in writing any verbal complaints received that involve an allegation that an incarcerated person or parolee was subject to unnecessary or excessive use of force, staff-on-offender sexual misconduct, or sexual harassment. The departmental staff receiving the complaint shall refer the complaint to CST, and immediately forward the complaint to their hiring authority.

(2) For all other verbal complaints, departmental staff shall provide the complainant with information on how to submit their complaint in writing.

- (3) For all verbal complaints not documented in writing by the complainant, the hiring authority retains the authority to resolve these matters through the employee discipline process if warranted.
- (e) The Centralized Screening Team (CST) shall review all complaints received and make a screening decision of whether it contains a routine issue, allegation(s) of staff misconduct toward an incarcerated person or parolee, or allegation(s) of staff misconduct not related to an incarcerated person or parolee.
- (f) Assigned CST staff shall review each document received to determine if it contains information constituting an imminent risk to personal safety, institutional security, or involves sexual abuse or acts of sexual misconduct as defined by the federal Prison Rape Elimination Act (PREA) and the California Sexual Abuse in Detention Elimination Act. In those instances, CST shall immediately notify the hiring authority via the Business Information System (BIS), of the affected institution or program for appropriate action.
- (g) CST shall conduct a clarification interview if required to make a screening decision.
- (h) When an allegation of staff misconduct toward an incarcerated person or parolee is identified by CST, CST shall utilize the Allegation Decision Index (01/22), which is incorporated by reference, to determine whether the complaint will be referred to OIA for investigation or to the hiring authority for an Allegation Inquiry.
- (1) If the misconduct described in the allegation is listed on the Allegation Decision Index, CST shall refer the allegation to OIA for investigation.
- (2) If the misconduct described in the allegation is not listed on the Allegation Decision Index, CST will refer the allegation to the hiring authority for an Allegation Inquiry, unless after review CST determines the serious nature of the allegation or complexity of the investigation warrants assignment to OIA.
- (i) CST's screening decision shall be documented in the department's Business Information System (BIS).
- (j) The hiring authority shall be notified of CST's screening decision via BIS.
- (k) The complainant shall be notified in writing that their complaint has been received by CST within thirty (30) business days of receipt.

Cal. Code Regs. tit. 15 § 3486.2 (repealed 2022)

§ 3486.2. Staff Misconduct Investigations and Allegation Inquiries Involving Misconduct Toward Incarcerated Persons or Parolees.

(a) OIA Investigation Processing.

(1) Upon receipt of a complaint from CST, OIA staff shall analyze the complaint and identify any initial information or documentation that needs to be obtained.

(2) If additional information or documentation is needed, OIA Staff shall request and obtain the information or documentation from departmental staff.

(3) OIA staff shall then assemble the documents and recordings into an investigation file.

(4) An OIA manager shall review the investigation file and assign the investigation using the Investigation Assignment Index, (01/22), which is incorporated by reference.

(5) An OIA manager shall make the investigation assignment decision in consultation with EAPT for designated cases.

(b) OIA Staff Misconduct Investigations.

(1) The department shall ensure that each OIA Investigation is conducted pursuant to existing laws, regulations, and CDCR policies and procedures.

(2) OIA investigators shall conduct an investigation for all allegations of staff misconduct toward incarcerated persons or parolees listed in the Allegation Decision Index and any other allegation referred to OIA by CST.

(3) Completion of Investigations.

(A) OIA investigators shall conduct thorough investigations, and ensure all relevant evidence is gathered and reviewed, and necessary interviews are conducted.

(B) At the conclusion of an investigation, the assigned OIA investigator shall prepare a confidential draft investigation report which summarizes the facts and evidence gathered during the investigation.

(4) Investigation Report Review.

(A) An OIA manager shall review the draft Investigation Report, and supporting exhibits and recordings, to determine whether the investigation is sufficient, complete, and unbiased.

(B) For designated cases, the VA shall review the draft Investigation Report and all supporting exhibits and recordings, and provide feedback to OIA.

(C) After the Investigation Report is finalized, the confidential final Investigation Report and all supporting exhibits and recordings, shall be provided to the VA for designated cases, and the hiring authority.

(D) The hiring authority shall receive the final Investigation Report, exhibits, and recordings, and if the investigation is sufficient, make a determination in accordance with section 3486.3, Staff Misconduct Determination.

(E) If the hiring authority finds the investigation insufficient to make a determination in accordance with section 3486.3, they shall request additional investigation.

(c) Allegation Inquiry Process.

(1) When CST refers an allegation of staff misconduct to the hiring authority, the hiring authority shall have the Allegation Inquiry conducted by an LDI.

(2) The LDI shall be at least one rank higher than the highest-ranking subject allegedly involved in the misconduct.

(3) Completion of Allegation Inquiries.

(A) LDIs shall conduct thorough allegation inquiries, and ensure all relevant evidence is gathered and reviewed, and necessary interviews are conducted. The LDI shall complete the Allegation Inquiry except when one of the following situations occurs:

1. If the LDI discovers evidence of staff misconduct listed in the Allegation Decision Index, the LDI shall cease further inquiry, document the evidence in an Allegation Inquiry Report which summarizes the facts and evidence gathered during the inquiry, and refer the Allegation Inquiry to OIA for a complete investigation with notification to the hiring authority.

2. If the LDI finds evidence of staff misconduct not listed in the Allegation Decision Index that the LDI believes may result in adverse action, the LDI shall cease further inquiry, document the evidence in an Allegation Inquiry Report, and refer the Allegation Inquiry to the hiring authority for review. If the hiring authority agrees, the Allegation Inquiry shall be referred to OIA for investigation. If the hiring authority does not believe adverse action may result, the matter shall be returned to the LDI for completion of the Allegation Inquiry.

(B) Upon completion of the Allegation Inquiry, the LDI shall author a confidential draft Allegation Inquiry Report with all supporting exhibits, and provide a copy to the hiring authority for notification, and an OIA manager for review and approval.

(4) Allegation Inquiry Report Review.

(A) An OIA manager shall review the draft Allegation Inquiry Report, and supporting exhibits, to determine whether the Allegation Inquiry is sufficient, complete, and unbiased.

(B) Once approved by an OIA manager, the Allegation Inquiry report shall be provided to the hiring authority.

(C) If the hiring authority reviews the approved Allegation Inquiry Report, determines the Allegation Inquiry is sufficient, complete and unbiased, and determines adverse action will not be imposed, the hiring authority shall make a determination in accordance with section 3486.3, Staff Misconduct Determination.

(D) If the hiring authority determines that the Allegation Inquiry Report contains a preponderance of evidence to sustain the allegations and impose adverse action, the hiring authority shall request approval from OIA for direct adverse action.

(E) If the hiring authority determines the Allegation Inquiry resulted in evidence that misconduct likely to result in adverse action occurred but preponderance of evidence does not exist, the hiring authority shall request investigation by OIA.

(F) If the hiring authority requests OIA investigation or approval for direct adverse action, OIA in consultation with EAPT will determine whether an investigation should be conducted, or whether there is a preponderance of evidence for approval of direct adverse action.

Cal. Code Regs. tit. 15 § 3486.3 (repealed 2022)

§ 3486.3. Staff Misconduct Determination.

(a) Upon receipt and review of a confidential Investigation Report as described in section 3486.2(b)(4)(D), Allegation Inquiry Report as described in section 3486.2(c)(4)(C), or approval from OIA for direct adverse action, the hiring authority shall render a determination on each allegation and each subject identified in the allegation as follows:

(1) NOT SUSTAINED: The investigation or inquiry failed to disclose a preponderance of evidence to prove or disprove the allegation made in the complaint.

(2) UNFOUNDED: The investigation or inquiry conclusively proved that the act(s) alleged did not occur; or the act(s) may have, or in fact, occurred but the individual employee(s) named in the complaint(s) was not involved.

(3) EXONERATED: The facts, which provided the basis for the complaint or allegation, did in fact occur; however, the investigation or inquiry revealed that the actions were justified, lawful, and proper.

(4) SUSTAINED: The investigation or inquiry disclosed a preponderance of evidence to prove the allegation(s) made in the complaint.

(5) NO FINDING: The investigation revealed that another agency was involved and the complainant has been referred to that agency or the complainant is no longer available for clarification of facts/issues.

(b) When an allegation of staff misconduct is sustained, the hiring authority shall make a determination regarding corrective or adverse action in accordance with section 3392, Employee Discipline.

(c) The hiring authority shall notify the complainant, in writing, of the finding(s) of the original complaint within thirty (30) days of the determination of the disposition of the complaint.

(1) The notification of the findings regarding the staff misconduct complaint shall be limited to whether the original complaint is sustained, not sustained, exonerated, or unfounded.

(2) At no time shall any information related to any personnel action be conveyed to the complainant in the matter.

(d) The Business Information System shall be updated to reflect all determinations made regarding the allegation of staff misconduct.

Cal. Code Regs. tit. 15 § 3487 (repealed 2022)

§ 3487. Rejection of a Claim

(a) A claim shall only be rejected by an Institutional or Regional Office of Grievances or Office of Appeals for one or more of the following reasons:

- (1) the claimant did not submit the claim within the timeframe required by subsection 3482(b) for grievances or subsection 3485(b) for appeals;
- (2) the claim concerns an anticipated policy, decision, action, condition, or omission by the Department or departmental staff;
- (3) the claim is substantially duplicative of a prior claim by the same claimant, except when the prior claim was rejected pursuant to subsection 3487(a)(2);
- (4) the claim concerns harm to a person other than the person who signed the grievance or appeal; or
- (5) the claim concerns the regulatory framework for the grievance and appeal process itself.

(b) If a claim is rejected as untimely under subsection (a)(1), then the claimant shall be notified of the following dates as determined by the Reviewing Authority: the date the claim was discovered, the date the claim was received, and the deadline for receipt of the claim pursuant to either subsection 3482(b) or 3485(b), whichever is applicable.

(c) A claim that is rejected may be appealed for review by the Office of Appeals pursuant to the procedures in section 3485. If the Office of Appeals grants the appeal, then the claim shall be reassigned to the Office of Grievances at the institution or region where the majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances shall treat the claim as received on the date that the Office of Appeals issued its decision and shall issue its own decision in compliance with subsection 3483(i).

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the ACMS system on February 24, 2025.

Dated: February 24, 2025

/s/ Joel F. Wacks

Joel F. Wacks

ny-2828054