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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 SANTIAGO JIMMY DELEON, JR.,  
12 CDCR #BI-0827,

13 Plaintiff,

14 vs.

15 JULIO COLON; VICTOR WARDROPE,  
16 Defendants.

Case No.: 3:20-cv-00791-AJB-BGS

**ORDER GRANTING DEFENDANTS’  
MOTION TO DISMISS  
PLAINTIFF’S FREEDOM OF  
ASSOCIATION, DUE PROCESS,  
AND OFFICIAL CAPACITY  
DAMAGES CLAIMS**

**(ECF No. 7)**

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19 Santiago Jimmy DeLeon (“Plaintiff”), an inmate at Richard J. Donovan State  
20 Prison (“RJD”) in San Diego, California, is proceeding pro se and *in forma pauperis*  
21 (“IFP”) in this civil rights action pursuant to 42 U.S.C. Section 1983. (*See* Compl., ECF  
22 No. 1.) Plaintiff alleges that Defendants Colon and Wardrope violated his constitutional  
23 rights in connection with an incident during which Plaintiff’s toe was crushed by a metal  
24 jack loaded with frozen food while working in the prison kitchen. (*See id.* at 4.)

25 Currently before the Court is Defendants’ motion to dismiss some, but not all, of  
26 Plaintiff’s claims. (*See generally* ECF No. 7.) Specifically, Defendants move to dismiss  
27 Plaintiff’s freedom of association, due process, and damages claims against Defendants  
28 in their official capacity for failure to state a claim. (*See id.* at 2.) Plaintiff has filed an

1 opposition and Defendants have filed a reply. (*See* ECF Nos. 9, 11.) Having carefully  
2 considered Plaintiff’s Complaint and the parties’ briefs, Defendants’ motion to dismiss  
3 Plaintiff’s freedom of association, due process, and official capacity claims is

4 **GRANTED.**

5 **I. Background**

6 **A. Plaintiff’s Allegations**

7 Plaintiff reported for work in the kitchen at RJD on the morning of August 27,  
8 2019. (Compl. at 4.) Plaintiff’s doctor had previously ordered Plaintiff not to lift any  
9 heavy objects, bend over, or squat, and also ordered him to wear orthopedic shoes. (*See*  
10 *id.* at 4, 7.) These restrictions may not have been entered into the prison’s computer  
11 system for tracking such orders. (*See id.* at 9.) Nevertheless, Plaintiff alleges that he  
12 gave his supervisor, Defendant Colon, a form reflecting the medical restrictions. *See id.*)  
13 Colon told Plaintiff that he “would be giv[ing] no recognition to [Plaintiff’s medical]  
14 form because it” was not visible in the computer system. (*See id.*) When Plaintiff  
15 objected to performing work “against medical orders,” Colon threatened to “writ[e] up”  
16 Plaintiff. (*See id.*)

17 Despite Plaintiff’s objections, Colon ordered Plaintiff to load and unload rolling  
18 jacks loaded with several fifty-pound boxes of frozen food. (*See id.* at 4.) Around 7:00  
19 AM, Plaintiff, another inmate, and Defendant Colon loaded a jack with 300 pounds of  
20 vegetables. (*Id.*) As Plaintiff “attempted to pull the jack slowly out of the freezer,”  
21 Defendant “recklessly shoved the load,” and before Plaintiff could react, it “crushed [his]  
22 soft toe boot breaking [his] toe on impact.” (*Id.* at 5.)

23 Plaintiff alleges that Colon told him to wait to seek care, and Plaintiff allegedly sat  
24 “in physical anguish mental stress or duress [sic]” for several hours before he received  
25 medical care. (*Id.* at 10.) Plaintiff’s pain was exacerbated by his foot swelling in  
26 undersized boots he was issued when he arrived at RJD. (*See id.*) Although the context  
27 is unclear, Plaintiff also alleges that Defendant Colon “threat[ened] to carry out harm to  
28 [Plaintiff] . . . .” (*See id.*)

1 Plaintiff subsequently filed several administrative grievances regarding his job  
2 assignments, the equipment he was issued, and the incident in which he was injured. (*See*  
3 *id.* at 6.) Plaintiff alleges that Defendant Colon and Defendant Wardrope retaliated  
4 against him for pursuing these grievances. (*See id.*) Defendant Colon “was making  
5 threats of violence and harm or retali[a]tory actions upon [Plaintiff]” and “fabricated  
6 write ups . . . .” (*See id.* at 10-11.) Defendant Wardrope, who “investigate[d]  
7 [Plaintiff’s] 602 appeal . . . against C.D.C.R. and corrections kitchen staff” allegedly  
8 “supplied a false document into the investigation . . . by providing a medical document of  
9 [another inmate],” which caused Plaintiff’s injuries to be deemed not work related. (*See*  
10 *id.* at 8, 11.) Plaintiff alleges that Wardrope is liable for “conspir[ing] to provide false  
11 documentation in deliberate indifference and is also responsible for training his staff  
12 inmates and proper P.P.E. and training, creating an unsafe work environment, and due  
13 process violation of [Plaintiff’s] 602.” (*See id.* at 11.)

14 Plaintiff alleges that Defendants’ actions violated his First, Eighth, and Fourteenth  
15 Amendment rights. (*See generally id.* at 6, 9-11.) In addition to compensatory and  
16 punitive damages, Plaintiff seeks an injunction preventing Defendants from taking  
17 “retali[a]tory actions on [Plaintiff] and [requiring] that C.D.C.R. provide steel toe boots  
18 and proper P.P.E. and proper training in work areas.” (*See id.* at 13.) Defendants Colon  
19 and Wardrope are named as parties in both their individual and official capacities. (*See*  
20 *id.* at 2-3.)

### 21 **B. Procedural History**

22 The Court granted Plaintiff’s Motion to Proceed IFP and screened his Complaint  
23 pursuant to 28 U.S.C. Sections 1915(e)(2) and 1915A, dismissing Plaintiff’s claims  
24 against the California Department of Corrections and Rehabilitation, California  
25 Correctional Health Care Services, and a doctor, Erica Goyal. (*See* ECF No. 5, at 11.)  
26 The Court also found that Plaintiff’s Complaint stated claims against Defendants Colon  
27 and Wardrope that were “sufficient to survive the ‘low threshold’ set for sua sponte  
28 screening pursuant to 28 U.S.C. Sections 1915(e)(2) and 1915A(b).” (*See id.* at 10

1 (quoting *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012).) Defendants Colon  
2 and Wardrope, having been served with Plaintiff’s Complaint, now move to dismiss  
3 some, but not all, of the claims against them. (*See generally* ECF No. 7, at 2; *see also*  
4 ECF Nos. 12, 13.)

## 5 **II. Legal Standard**

6 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to  
7 dismiss on the grounds that a complaint “fail[s] to state a claim upon which relief can be  
8 granted.” A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) “tests the  
9 legal sufficiency of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001); *Bryan*  
10 *v. City of Carlsbad*, 207 F. Supp. 3d 1107, 1114 (S.D. Cal. Mar. 20, 2018).

11 Because Rule 12(b)(6) focuses on the “sufficiency” of a claim rather than the  
12 claim’s substantive merits, “a court may [ordinarily] look only at the face of the  
13 complaint to decide a motion to dismiss,” *Van Buskirk v. Cable News Network, Inc.*, 284  
14 F.3d 977, 980 (9th Cir. 2002), including the exhibits attached to it. *See* Fed. R. Civ. P.  
15 10(c) (“A copy of a written instrument that is an exhibit to a pleading is a part of the  
16 pleading for all purposes.”); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896  
17 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citing *Amfac Mortg. Corp. v. Ariz. Mall of Tempe,*  
18 *Inc.*, 583 F.2d 426 (9th Cir. 1978) (“[M]aterial which is properly submitted as part of the  
19 complaint may be considered” in ruling on a Rule 12(b)(6) motion to dismiss.) However,  
20 exhibits that contradict the claims in a complaint may fatally undermine the complaint’s  
21 allegations. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (a  
22 plaintiff can “plead himself out of a claim by including . . . details contrary to his  
23 claims.”) (citing *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998)  
24 (courts “are not required to accept as true conclusory allegations which are contradicted  
25 by documents referred to in the complaint.”)); *see also Nat’l Assoc. for the Advancement*  
26 *of Psychoanalysis v. Cal. Bd. of Psychology*, 228 F.3d 1043, 1049 (9th Cir. 2000) (courts  
27 “may consider facts contained in documents attached to the complaint” to determining  
28 whether the complaint states a claim for relief).

1           “To survive a motion to dismiss, a complaint must contain sufficient factual  
2 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*  
3 *v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
4 570 (2007)); *Villa v. Maricopa Cnty.*, 865 F.3d 1224, 1228-29 (9th Cir. 2017). A claim is  
5 facially plausible “when the plaintiff pleads factual content that allows the court to draw  
6 the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*,  
7 556 U.S. at 678. Plausibility requires pleading facts, as opposed to conclusory allegations  
8 or the “formulaic recitation of the elements of a cause of action,” *Twombly*, 550 U.S. at  
9 555, which rise above the mere conceivability or possibility of unlawful conduct. *Iqbal*,  
10 556 U.S. at 678-79; *Somers v. Apple, Inc.*, 729 F.3d 953, 959-60 (9th Cir. 2013).  
11 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
12 statements, do not suffice.” *Iqbal*, 556 U.S. at 678. While a pleading “does not require  
13 ‘detailed factual allegations,’” Rule 8 nevertheless “demands more than an unadorned,  
14 the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (quoting  
15 *Twombly*, 550 U.S. at 555).

16           Therefore, “[f]actual allegations must be enough to raise a right to relief above the  
17 speculative level.” *Twombly*, 550 U.S. at 555. “Where a complaint pleads facts that are  
18 merely consistent with a defendant’s liability, it stops short of the line between possibility  
19 and plausibility of entitlement to relief.” *Iqbal*, 556 U.S. at 678 (citation and quotes  
20 omitted); *accord Lacey v. Maricopa Cnty.*, 693 F.3d 896, 911 (9th Cir. 2012) (en banc).  
21 “In sum, for a complaint to survive a motion to dismiss, the non-conclusory ‘factual  
22 content,’ and reasonable inferences [drawn] from that content, must be plausibly  
23 suggestive of a claim entitling the plaintiff to relief.” *Moss v. United States Secret Serv.*,  
24 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678).

### 25           **III. Discussion**

26           To state a claim under 42 U.S.C. Section 1983, a plaintiff must allege two essential  
27 elements: (1) that a right secured by the Constitution or laws of the United States was  
28 violated, and (2) that the alleged violation was committed by a person acting under the

1 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*, 789 F.3d 1030,  
2 1035-36 (9th Cir. 2015).

3 Plaintiff's Complaint is not neatly divided into individual counts asserting single  
4 causes of action based on a specific constitutional right. Rather, Plaintiff asserts at  
5 various points that Defendants Colon and/or Wardrope were deliberately indifferent to  
6 Plaintiff's medical needs or otherwise violated the Eighth Amendment's prohibition of  
7 cruel and unusual punishment, violated Plaintiff's rights under the due process clause of  
8 the Fourteenth Amendment, or violated the First Amendment either by infringing  
9 Plaintiff's freedom of association or by retaliating against Plaintiff for filing  
10 administrative grievances. (*See generally* Compl. at 4-6, 9-11.)

11 Defendants' motion focuses on two of the constitutional rights Plaintiff alleges  
12 were violated: the First Amendment right to freedom of association and the Fourteenth  
13 Amendment right to due process. (*See* ECF No. 7, at 6-8.) Additionally, Defendants  
14 contend that they are immune from claims for damages for acts taken in their official  
15 capacities pursuant to the Eleventh Amendment. (*See id.* at 8.) The Court will address  
16 each of these issues in turn.

#### 17 **A. Freedom of Association**

18 As mentioned, Plaintiff's Complaint alleges that Defendants violated his First  
19 Amendment right to freedom of association. Defendants point out in their Motion that it  
20 is not clear which, if any, of the facts alleged support such a claim. (*See* ECF No. 7, at 6-  
21 7.) In his Opposition to Defendants' Motion, Plaintiff explains that he "does not oppose  
22 the dismissal of Count #1 of the complaint, namely Freedom of Association Claim."  
23 (ECF No. 9, at 1 (errors in original).) Accordingly, this portion of Defendants' Motion is  
24 **GRANTED**, and Plaintiff's freedom of association claim is dismissed in its entirety and  
25 without leave to amend.

#### 26 **B. Due Process**

27 Like Plaintiff's freedom of association claim, it is not entirely clear from the face  
28 of the Complaint what actions by Defendants allegedly violated Plaintiff's due process

1 rights. Unlike the freedom of association claim, however, Plaintiff opposes Defendants'  
2 Motion, clarifying that the alleged due process violations occurred as part of Defendant  
3 Wardrope's involvement in an administrative appeal Plaintiff filed regarding the incident  
4 in which he was injured. (*See id.* at 4.) Plaintiff alleges that he provided medical  
5 documents to Defendant Wardrope, who "purposely did not/refused to review the  
6 provided current medical documents," and that these documents were appropriately  
7 considered in the grievance process pursuant to state regulations. (*See id.* at 4-5 (citing  
8 15 Cal. Code Reg. §§ 3084.1-3084.3).) Additionally, Plaintiff seemingly argues that  
9 delays in the grievance process and Defendant Wardrope's attachment of another  
10 inmate's medical documents to Plaintiff's appeal, which resulted in the appeal being  
11 denied, also violated his due process rights. (*See id.* at 5-6, 10.) Defendants contend that  
12 these facts do not give rise to a due process claim because they arose in the context of the  
13 administrative grievance process. (*See ECF No. 7*, at 8 ("Since [Plaintiff] does not have a  
14 claim of entitlement to a grievance procedure, he cannot maintain a constitutional claim  
15 because of delays in pursuing such grievances." (citing *Ramirez v. Galaza*, 334 F.3d 850,  
16 860 (9th Cir. 2003)).)

17 The due process clause of the Fourteenth Amendment provides that "[n]o state  
18 shall . . . deprive any person of life, liberty, or property, without due process of law." U.S.  
19 Const. amend. XIV, § 1. To state a claim for violations of procedural due process, Plaintiff  
20 must allege "(1) a liberty or property interest protected by the Constitution; (2) a  
21 deprivation of the interest by the government; [and] (3) lack of process." *See Wright v.*  
22 *Riveland*, 219 F.3d 905, 913 (9th Cir. 2000) (quoting *Portman v. Cnty. of Santa Clara*, 995  
23 F.2d 898, 904 (9th Cir. 1993)).

24 Plaintiff's due process claims must be dismissed because California inmates do not  
25 have a free-standing due process right to any particular administrative grievance process.  
26 *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) ("[I]nmates lack a separate  
27 constitutional entitlement to a specific prison grievance procedure."); *see also Mann v.*  
28 *Adams*, 855 F.2d 639, 640 (9th Cir. 1988) ("There is no legitimate claim of entitlement to

1 a grievance procedure.”); *see also Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993)  
2 (“[A prison] grievance procedure is a procedural right only; it does not confer any  
3 substantive right upon the inmates. Hence, it does not give rise to a protected liberty  
4 interest requiring the procedural protections envisioned by the Fourteenth Amendment.”).  
5 “Even the non-existence of, or the failure of prison officials to properly implement, an  
6 administrative appeals process within the prison system does not raise constitutional  
7 concerns,” *Arellano v. Sedighi*, No. 3:15-cv-02059-AJB-BGS, 2016 WL 4430851, at \*4  
8 (S.D. Cal. Aug. 22, 2016), and inmates do not have a constitutional “right to have [their]  
9 grievances processed or decided in a particular manner.” *Seely v. Gibbons*, 548 F. App’x  
10 502, 503 (9th Cir. 2013).

11 For these reasons, other courts have dismissed due process claims that, like those  
12 asserted by Plaintiff in this case, are based on prison officials’ failure to consider certain  
13 evidence or to appropriately investigate inmates’ allegations in administrative grievances  
14 or appeals. *See, e.g., Mitchell v. Schwarzenegger*, No. 2:09-cv-3012 JAM KJN P, 2011  
15 WL 4928625, at \*11 (E.D. Cal. Oct. 17, 2011) (“Because there is no right to any  
16 particular grievance process, plaintiff cannot state a cognizable civil rights claim for  
17 violation of his due process rights based on allegations that prison officials failed to view  
18 [alleged evidence] or to properly investigate plaintiff’s claims.”), *report &*  
19 *recommendation adopted as modified*, 2012 WL 366570 (E.D. Cal. Jan. 31, 2012);  
20 *Denham v. Aranda*, No. 09-cv-1505-JLS (WVG), 2010 WL 2573207, at \*11 (S.D. Cal.  
21 May 3, 2010) (dismissing due process claims based on, among other things, “inability to  
22 submit further information” in support of administrative appeal). The state regulations  
23 that Plaintiff cites in his Opposition “grant prisoners in state prisons a purely procedural  
24 right: the right to have an administrative appeal. The regulations simply require the  
25 establishment of a procedural structure for reviewing prisoner complaints and set forth no  
26 substantive standards . . . .” *Balzarini v. Schwarzenegger*, No. C 07-2800 MHP (pr),  
27 2007 WL 2778916, at \*3 (N.D. Cal. Sept. 21, 2007) (“An incorrect decision on an  
28 administrative appeal or failure to handle it in a particular way therefore did not amount



1 to a violation of [the plaintiff’s] right to due process.”). As a result, Plaintiff cannot state  
2 a due process claim for Defendant Wardrope’s allegedly mishandling of the investigation  
3 of Plaintiff’s grievance, or his failure to respond promptly to Plaintiff’s grievance.

4 Accordingly, Defendants’ Motion to Dismiss Plaintiff’s due process claim is  
5 **GRANTED**.<sup>1</sup> Because there are no additional facts that could cure these deficiencies,  
6 the dismissal is without leave to amend. *See Gonzalez v. Planned Parenthood*, 759 F.3d  
7 1112, 1116 (9th Cir. 2014) (“Futility of amendment can, by itself, justify the denial  
8 of . . . leave to amend.”) (quoting *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995)).

### 9 **C. Official Capacity**

10 The final part of Defendants’ Motion asserts that Plaintiff’s claims for monetary  
11 damages against Defendants in their official capacities must be dismissed as barred by the  
12 Eleventh Amendment. (*See* ECF No. 7, at 8.) Although Plaintiff opposes this argument,  
13 his opposition does not cite any legal authority suggesting that the Eleventh Amendment  
14 does not apply to his damages claims against Defendants in their official capacities. (*See*  
15 ECF No. 9, at 8 (“Defendants[] . . . claim to be immune from damages in their Official  
16 Capacity, yet, each Defendant was fully aware of the illegal action(s) they were taking . . .  
17 in their Official Capacity . . .”).)

18 To the extent Plaintiff seeks damages, he may not do so in claims against Defendants  
19 in their official capacities. “[A] suit against a state official in his or her official capacity is  
20 not a suit against the official but rather is a suit against the official’s office.” *Will v. Mich.*  
21 *Dep’t of State Police*, 491 U.S. 58, 71 (1989). As a result, Defendants are entitled to  
22 immunity from suit for monetary damages in their official capacities under the Eleventh  
23 Amendment. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 53-54 (1996).  
24 Consequently, Defendants’ motion to dismiss Plaintiff’s official capacity damages claims

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26  
27 <sup>1</sup> To the extent Plaintiff’s remaining claims against Defendant Wardrope are based upon the same facts  
28 as his due process claim, Defendants have not moved to dismiss those claims. As a result, these claims  
are not dismissed and will continue.

1 is **GRANTED**. *See id.*; *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Like Plaintiff's  
2 due process claim, no additional facts could cure the deficiencies in Plaintiff's official  
3 capacity damages claims. As a result, these claims are dismissed without leave to amend.  
4 *See Gonzalez* 759 F.3d at 1116.


5 Nonetheless, as noted previously, Plaintiff seeks both injunctive relief and damages  
6 in this case. (*See Compl.* at 13.) To the extent Plaintiff asserts official capacity claims for  
7 injunctive relief, those claims were not the subject of Defendants' Motion. (*See ECF No.*  
8 7, at 8 (contending that Plaintiff's "*monetary claims* against all Defendants in their official  
9 capacities must be dismissed." (emphasis added).) Accordingly, Plaintiff may continue  
10 pursue his official capacity claims only to the extent he seeks prospective injunctive relief  
11 against Defendants. *See Will*, 491 U.S. at 71, n.10 ("[O]fficial-capacity actions for  
12 prospective relief are not treated as actions against the State." (quoting *Graham*, 473 U.S.  
13 at 167 n.14) (internal quotation marks omitted)). Additionally, aside from the freedom of  
14 association and due process claims dismissed above, Plaintiff's damages claims against  
15 Defendants in their individual capacities also may continue.

#### 16 **IV. Conclusion**

17 For the reasons set forth, the Court **GRANTS** Defendants' Motion to Dismiss  
18 Plaintiff's freedom of association, due process, and official capacity damages claims.  
19 (*See ECF No. 7.*) Because the Court finds that granting leave to amend would be futile,  
20 these claims are **DISMISSED** without leave to amend. *See Gonzalez* 759 F.3d at 1116.

21 **IT IS SO ORDERED.**

22  
23 Dated: April 27, 2021

24   
25 Hon. Anthony J. Battaglia  
26 United States District Judge  
27  
28