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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Gregory Lynn Norwood,

Plaintiff,

vs.

M. Robinson, et al.,

Defendants.

) No. CV 08-00172-ROS

) **ORDER**

Pending before the Court are Defendants’ Motions to Dismiss (Doc. 27, 35). For the following reasons, the motions will be granted.

**BACKGROUND**

Plaintiff is a California state prisoner. In August 2006, Plaintiff was transferred between locations. In connection with that transfer, some of Plaintiff’s personal property was confiscated by Defendant Robinson. Plaintiff claims he filed an administrative grievance based on the confiscation. Plaintiff had other property confiscated in September 2006. On September 27, 2006, Plaintiff filed a grievance regarding his property. The informal response to the grievance was that the property at issue was not allowed pursuant to prison regulations. Plaintiff appealed that denial through multiple levels, eventually receiving a “Director’s Level Appeal Decision” denying his request. At no point in the grievance process did Plaintiff raise a claim that his property had been confiscated in retaliation for his prior filing of grievances.

1 In November 2006, Plaintiff filed another grievance complaining that the prison was  
2 not delivering his quarterly package in a timely manner. Plaintiff did not receive a package  
3 sent in September 2006 until December 2006. The prison instituted this policy following an  
4 attack on a staff-member. Plaintiff's grievance claimed the policy was "a retaliatory  
5 practice" because "facility searches have already taken place." The meaning of this  
6 allegation is unclear, but it appears Plaintiff believed the policy was retaliating against  
7 African Americans because an African American had attacked the staff member. Plaintiff  
8 believed there was no longer a need for delaying delivery of packages because a complete  
9 search of the prison had been completed.

10 Plaintiff's amended complaint contains causes of action premised on Defendants  
11 Robinson and Sigston, both prison officials, retaliating against him for filing a grievance by  
12 confiscating his property. These Defendants also allegedly retaliated against Plaintiff by  
13 failing to deliver his packages in a timely manner. Plaintiff alleges Defendant Sampson, the  
14 grievance coordinator, knew of Robinson's actions and took no action to correct them. The  
15 retaliatory acts allegedly violated Plaintiff's First Amendment rights.

16 Defendants now move to dismiss the complaint on the basis that Plaintiff did not  
17 exhaust his administrative remedies. In particular, Defendants argue that Plaintiff's  
18 administrative claims did not make any allegations regarding First Amendment retaliation.  
19 Instead, the claims are addressed simply to the confiscation of Plaintiff's property and his  
20 disagreement with the policy regarding delivery of packages. Defendants are correct.

## 21 ANALYSIS

### 22 A. Motion to Dismiss Standard

23 Defendants seeks dismissal based on Plaintiff's alleged failure to exhaust his  
24 administrative remedies. When deciding such a motion, "the court may look beyond the  
25 pleadings and decide disputed issues of fact." *Wyatt v. Terhune*, 315 F.3d 1108, 1120 (9th  
26 Cir. 2003). If Plaintiff did not exhaust his administrative remedies, this suit must be  
27 dismissed without prejudice. *Id.*

### 28 B. Plaintiff Did Not Exhaust His Claims

1           The Ninth Circuit addressed the requisite level of specificity for inmate grievances in  
2 *Griffin v. Arpaio*, 557 F.3d 1117 (9th Cir. 2009). There, the court found that a grievance  
3 need only “alert[] the prison to the nature of the wrong for which redress is sought.” *Id.* at  
4 1120. This is a “low floor,” but the grievance must “provide enough information . . . to allow  
5 prison officials to take appropriate responsive measures.” *Id.* See also *Johnson v. Johnson*,  
6 385 F.3d 503, 522 (5th Cir. 2004) (“[T]he grievance must provide administrators with a fair  
7 opportunity under the circumstances to address the problem that will later form the basis of  
8 the suit . . .”).

9           Plaintiff’s only claims are based on alleged retaliation in violation of the First  
10 Amendment.<sup>1</sup> Plaintiff’s first claim is that his property was confiscated because he  
11 previously filed grievances. But the grievances Plaintiff filed in connection with his  
12 confiscation claim did not make any mention that the actions were motivated by Plaintiff’s  
13 previous grievances. In fact, Plaintiff’s grievance claims his property was taken for “no  
14 reason” and there was no “penological justification” supporting the confiscation. There is  
15 no mention in these materials, including the responses by prison officials, that Plaintiff  
16 believed he was being punished for exercising his First Amendment rights. Plaintiff did not  
17 provide any indication that “the nature of the wrong” at issue was a First Amendment  
18 violation. *Griffin*, 557 F.3d at 1120. Therefore, Plaintiff did not exhaust his administrative  
19 remedies regarding this claim.

20           The grievance regarding untimely delivery of care packages presents a closer  
21 question. Plaintiff’s original grievance asserts that the policy of delaying the delivery of  
22 packages is a “retaliatory practice.” Plaintiff’s grievance, however, makes it clear that the  
23 “retaliation” at issue was not a First Amendment claim. Instead, Plaintiff’s grievance  
24 asserted that prison officials delayed delivery of packages to all African American inmates.  
25 It is undisputed that the delayed delivery of packages was pursuant to a policy regarding the  
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27           <sup>1</sup> The Court previously screened the complaint and determined other causes of action  
28 could not proceed. (Doc. 23).

1 issuance of packages to inmates affected by a lockdown. Plaintiff did not assert that the  
2 delay in delivering his packages was the result of an exercise of his First Amendment rights.  
3 Therefore, Plaintiff did not exhaust his administrative remedies on this claim.

4 **C. Plaintiff Fails To State A Claim Regarding Package Delivery**


5 Plaintiff's suit would be dismissed even if the Court concluded that Plaintiff *did*  
6 exhaust his administrative remedies regarding the delayed package claim. "The five basic  
7 elements of a viable claim of First Amendment retaliation [are] (1) An assertion that a state  
8 actor took some adverse action against an inmate (2) because of (3) that prisoner's protected  
9 conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights,  
10 and (5) the action did not reasonably advance a legitimate correctional goal." *Brodheim v.*  
11 *Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). The complaint does not adequately plead each of  
12 these requirements.

13 According to the complaint, there was a policy in place granting officials 90 days in  
14 which to deliver packages. Relying on this policy, officials delayed delivery of *all* packages  
15 to *all* inmates on lockdown. Plaintiff does not allege any facts showing that the withholding  
16 of his package was "because of [his] protected conduct." *Id.* In fact, Plaintiff has pled  
17 exactly the opposite in that all packages were withheld due to prison policy. Plaintiff's  
18 allegations fail to state a viable First Amendment retaliation claim. *Cf. Brodheim*, 584 F.3d  
19 at 1271 (stating "plaintiff must show that his protected conduct was the substantial or  
20 motivating factor behind the defendant's conduct").

21 Accordingly,

22 **IT IS ORDERED** the Motions to Dismiss (Doc. 27, 35) are **GRANTED**. The Clerk  
23 shall close this case.  
24

25 DATED this 29<sup>th</sup> day of April, 2010.

26   
27 Roslyn O. Silver  
28 United States District Judge