

Case 1:16-cv-01235-AWI-MJS Document 24 Filed 02/06/17 Page 1 of 10

Plaintiff's Name Albert Hayes
Inmate No. V-40204
Address P.O. Box 5244
CSAT-F/S.A. at Corcoran
Corcoran, CA 93212

Original
RECEIVED
FEB 06 2017
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

FILED
FEB 06 2017
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY CLERK

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

ALBERT HAYES
(Name of Plaintiff)

1:16-cv-01235 AWI-MJS (PC)
(Case Number)

vs.
SCOTT KERWAN;
M. VOONG;
J. P. Corral

(Names of all Defendants)

SECOND **AMENDED CIVIL RIGHTS COMPLAINT UNDER:**
 42 U.S.C. 1983 (State Prisoner)
 Bivens Action [403 U.S. 388 (1971)] (Federal Prisoner)

I. Previous Lawsuits (list all other previous or pending lawsuits on additional page):

- A. Have you brought any other lawsuits while a prisoner? Yes No
- B. If your answer to A is yes, how many? 1

Describe previous or pending lawsuits in the space below. (If more than one, attach additional page to continue outlining all lawsuits in same format.)

1. Parties to this previous lawsuit:

Plaintiff Hayes, Albert
Defendants W. Rosser

2. Court (if Federal Court, give name of District; if State Court, give name of County)

U.S. Dist. Court, Central District

3. Docket Number CV-08-2755-LJE (FFM) 4. Assigned Judge Cormac J. Carney

5. Disposition (Was the case dismissed? Appealed? Is it still pending?)

Dismissed without prejudice, appealed to 9th Cir affirmed
Dismissed
page 1

II. Exhaustion of Administrative Remedies

NOTICE: Pursuant to the Prison Litigation Reform Act of 1995, "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Prior to filing suit, inmates are required to exhaust the available administrative remedy process, Jones v. Bock, 549 U.S. 199, 211, 127 S.Ct. 910, 918-19 (2007); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002), and neither futility nor the unavailability of money damages will excuse the failure to exhaust, Porter v. Nussle, 534 U.S. 516, 524, 122 S.Ct. 983, 988 (2002). If the court determines that an inmate failed to exhaust prior to filing suit, the unexhausted claims will be dismissed, without prejudice. Jones, 549 U.S. at 223-24, 127 S.Ct. at 925-26.

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes No

B. Have you filed an appeal or grievance concerning ALL of the facts contained in this complaint?

Yes No

C. Is the process completed?

Yes If your answer is yes, briefly explain what happened at each level.

During December 2014, the first level rejected/cancelled the appeal on the ground "pointless verbiage and inability of staff to identify the issue even though, ignored plaintiff's requests for "staff assistant" due to his inability to clearly express himself in writing results from his hearing/speech disabilities. ^{During 2015} The second level rejected/cancelled the ^{second} appeal as untimely. The third level of review denied to address the above-mentioned issue and ^{the} disability discrimination ^{issue} resulted from improper denied assistance "utilizing untimely participating in the appeal process for which exhausted the administrative remedies."

No if your answer is no, explain why not.

III. Defendants

List each defendant's full name, official position, and place of employment and address in the spaces below. If you need additional space please provide the same information for any additional defendants on separate sheet of paper.

A. Name Scott Kernan in Official Capacity is employed as Secretary of the CDCR.
Current Address/Place of Employment P.O. Box 942883, Sacramento CA, CDCR Head-
quarter in Sacramento.
page 2

B. Name M. VODON 9th District is employed as acting Chief inmate Appeal Officer

Current Address/Place of Employment P.O. Box 942 883 Sacramento CA, CDCR Head-
quarters in Sacramento

C. Name J. P. Connal, in Official Capacity is employed as CSAT-F Appeal Coordinator

Current Address/Place of Employment 900 Quebec Ave. P.O. Box 7100, Colton CA - CSAT-F

D. Name _____ is employed as _____

Current Address/Place of Employment _____

E. Name _____ is employed as _____

Current Address/Place of Employment _____

IV. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary. Must be in same format outlined below.)

Claim 1: The following civil right has been violated (e.g. right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.):

A claim for injunctive relief for violations of plaintiff Hayes's federal protected civil rights of Title IX, of the American with Disabilities Act, "ADA" and the 14th Amendt U.S. Const. by denial to provided ADA ancillary "assistance" utiliz-
ing in prison's customary administrative appeal process, discriminated against him.

Supporting Facts (Include all facts you consider important to Claim 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Claim 1.):

1.) I am plaintiff Albert Hayes, is deaf with speech impediment, difficulty in expressing myself even in writing. Because I cannot sign well using "ADA" American sign language, I am requires to use "Assistance" staff assistant" in clarify my communication effective to understand and participate in all administrative process events. But have been force to rely on poorly educated inmates to help me in drafted grievances which the inmate do not wanted their identity known to staff due to fear of retaliation against them. as I have suffer in chain reaction events.

2.) On November 10, 2014, I filed with the Administrative Grievance (with the Administrative Grievance helped) a administrative grievance with the prisons Appeal Coordinator J. P. Corral complain of missing/lost personal sentimental property righteously registered to me to possessed, which on 11/18/14, the administrative Complaint was returned back to me with a notice stated it been rejected due to its reasons given was "pointless verbiage that the staff cannot be reasonably expected to understand, identify the issue under appeal. (Appeal Log # SAT-F-D-14-05729) Even though, the drafted grievance was ramblingly at length, difficulty in described the problem to the appeal Coordinator Mr. Corral.

3.) In the Appeal Coordinator's appeal notice, Mr. Corral instructed me to also remove the page mark exhibits, and also exhibit of handwritten documents (contain my explanation of trying to obtain copy of the "Receipt for lost property" from L/P H. Perez, (cont. on Additional Page 4-A, attached hereto.)

Claim 2: The following civil right has been violated (e.g. right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.):

[Redacted area]

Supporting Facts (Include all facts you consider important to Claim 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Claim 2.):

[Redacted area]

Attachment of ADDITIONAL PAGES FOR
"SUPPORTING FACT," For CLAIM #1.

1
2 who failed to respond to my earlier attempts to secure a copy
3 of same. Mr. Corral rejected the appeal grievance as "pointless
4 verbiage." I complied to removed the exhibits and resubmitted
5 to Mr. Corral's Appeal office.

6 4.) After removed the exhibit I resubmitted the appeal
7 grievance and with a accommodation requests for "staff assist-
8 ant," assist me in clarify my appeal issue for process and remedy
9 due to my having difficult in expressing myself in writing, my disability
10 problem ^{causes} which I quote to Section 3084.1(c), and §3084.5(b)(1), Cal.
11 Code of Regulations, Title 15.

12
13 5.) On December 23, 2014, Mr. Corral acted to cancelled my
14 my appeal grievance and ignored my requested for "assistance needed"
15 utilizing in clarify the appeal issues, and he returned back my appeal
16 document. On 12/27/14, I submitted a Second CCR 602 Appeal
17 grievance to Mr Corral's office, appealing and challenging the
18 wrongly cancellation of Appeal (SAT-F-D-14-05729). This Second
19 Appeal was also rejected by Mr. Corral on January 7, 2015, on a
20 failure to attach a copy of the cancellation appeal documents
21 (@SAT-F-D-14-05729) to the Second Appeal submitted.

22
23 6.) On January 27, 2015, I resubmitted the same Second Appeal
24 document with a copy of the "cancelled Appeal" documents to Mr
25 Corral's office and again, requested for accommodation staff assistant
26 even though, in the past, assistance have been provided in aid
27 me in effective participating in administrative processes events.

28 On 2/9/15, the second appeal was accepted by Mr. Corral for
Second level review (Appeal # SAT-F-D-15-00058).

(Page 4-A)

7.) On February 20, 2015, I received a appeal Notice from Mr. Corral that my second Appeal been cancelled on alleging of failure to submit the appeal document for review/ remedy within the thirty (30) date even though, the stamped date on the Appeal document showing the Receipt-filed date of February 9, 2015; thirteen (13) days after the executed date 1/27/15, on which Mr. Corral ignored the facts I've submitted timely and requested for accommodation assistance, (pursuant to 3084.1(c) and §3084.5(b)(1), C.R. Tit 15.) I quote to.

8.) I Complains the "pointless verbiage" grounds practice use shall not be apply to my disabilities which Mr. Corral ignored and cancelled my administrative appeal in part on, and ^{also} under a new different Appeal Log # SAT-F-D-15-00933, which I had arguing is a clearly error of mis numbering the appeal, and timeliness, which the prescribed 30 days time limit set had been met, and complaining of disability discrimination occurs by excluding me from the administrative appeal services which all were not respond to, nor address by Mr. Corral at all. (See attached Exh. "D"; pg #13 hereto.)

9.) On February 26, 2015, I submitted a Appeal Grievance to the Third-Level of Reviewer, Mr. M. Voong, the Acting Chief Inmate Appeal Officer, complains of disability discrimination and misnumber-
^{second} the appeal by given new different number that confused the appeal tracking or trail monitor and which I complain also the cancellation was wrongly done as the result of discriminating against me due to Mr. Corral's intention ignore to provides, requires assistance which excluded me from the prison's appeal services, ^{and} suffer from chain reaction events of denied me ^{the} needed assistance utilizing in appeal process (see at paginated #1 thru #5 of Exh. A hereto,) which I complains of needed assistance in understanding staff's communicated (see pg #9).

20.) On May 22, 2015, I received the third-level responded from Mr. Voong^{and} at no available to address ^{resolve} the disability discrimination^{issue}, as well as to correct Mr Corral's indifference to provide assistance as requires and requested. In the administrative appeal documents, I've quoted to Title 15, Section 3084.1(c), states: "Department staff shall ensure that inmate including those who have difficulty communicating are provided equal access to the appeals process," and quoted to Section 3084.5(b)(1), states: when an inmate has difficulty describing the problem in writing, the Appeal Coordinator shall ensure that the inmate receive assistance in completing and/or clarifying the appeal issues," in which I complains my disability in communicating in writing was an factual basis for accommodate^{me} requested for assistance.

11.) Mr. Voong intention ignored the requested for assistance and the disability, difficult complain by communicated in a form-letter and threatened to diminish my administrative rights to file further administrative grievance, challenging any wrong act done by appeal agency and now, Mr Corral itself communicating threatened to place me on the black-list (to be punished) which chilling me to fear, to pursue any further challenging their mistreating me differently, adverse affecting my health, medical problems and program functional down falls in the prison administrative appeal system. I suffer significantly hardship affecting me^{with} unwanted chilly, and unwanted chain reaction of excluded me^{which} Mr. Voong ignored to resolve (see paginated # of Exh., hereto).

12.) I complain: I was deprived the use of need "assistance" throughout the administrative appeal process and I feel strongly discriminating against me even though, I am a 69 years old disabled A.A. dependent and wheelchair bound, poorly educated with a 5th grade reading level and force to rely on poor educated inmate help, I

1 pleading to Mr. Corral and Mr. VOONG, but no respond to address
 2 and resolve the disabilities issues I repeatedly complains for assistance
 3 at each level up to the highest-rank level of review for staff assistant.

4 13.) Mr. Scott Kernan, on informations and belief, I believes as
 5 Mr. Corral and Mr. VOONG's boss, ^{is} the secretary of California
 6 Department of Corrections and Rehabilitation ^{and} is legal responsible
 7 for managing and supervise Mr. Corral and Mr. VOONG as employee. I
 8 Believe Mr. Kernan is also responsible for the constitutional rights
 9 and federal protected A.D.A. rights violated by Mr. Corral / Mr. VOONG's
 10 disability discriminating conduct act of denied me auxiliary aid,
 11 done under color of state law I strongly believes happened and Mr.
 12 Kernan is the one defendant who can appropriately respond to injunctive
 13 Relief.

14 14.) I am direct suing under Title I of the American with Dis-
 15 abilities Act, the vicarious wrongly act of Mr Kernan who suppose
 16 to managing and supervise Mr Corral / Mr. VOONG to avoid discrim-
 17 ination conduct. On informations and belief, I believes Mr Kernan
 18 became aware of my requested for accommodated staff assistant help
 19 through ^{his} administrative appeal system (Dept), and was aware of my dis-
 20 abilities situations through the grievances filed with administrative
 21 appeal agency since Mr. Kernan is ^{the} boss of CSZC appeal system.

22 15.) On informations and belief, I strongly believes ^{Mr. Kernan} has the
 23 ministerial authority to have monitoring ^{the} accommodation requests
 24 of disabled ^{inmates} pursuant to the requesting I submitted in the appeal
 25 grievances and I strongly believes Mr. Kernan's ignorance breached
 26 it duties to manage and supervise Mr. Corral and Mr. VOONG act, and
 27 knew it or should have known of the existence discrimination
 28 problems at SAT-F Appeal Coordinator office, which had result to
excluding me from the appeal service, and discriminate/mistreated me.

16.) I have been experiencing suffers from named-defendant Mr. Corral and Mr. Voon's ^{act of} ignorance ^{which} affecting me with undue mental conflict pains, physical and psychological emotional stress from constant wrongly depriving me "staff Assistant" utilizing in ^{Custody} appeal process and will continue to be irreparably harm and suffer from unwanted chain reaction events as the results from ill-treating me differently, violating my Constitutional and Civil rights to ADA auxiliary-help had far worse affecting me handicapping in performing my job assignment which gone down hill degrading me from 7.8 recognition-given ^{Credit} to 4.2 unsatisfactory performed where I am unable to meet eligible standard of producing essential worth, quantity works, all result from ill-treating me differently ^{and refused} to provides assistance. I believe violated my ADA Civil rights entitlement attributing from ^{named} ~~named~~ defendant's act of ignorance to provides assistance as requires by Court ordered Remedial Implementation, at pg. 36, IV, #23 (a) of Armstrong v. Davis, Calif Rules Regs Codes §§ 3084.1(c) and 3084.5(b)(1); ADA Law § 12132-34, title 42 U.S.C and et seq Law that follow.

17.) I feel also discriminating against my disabilities where the SATF Medical Health Care Appeal Coordinator provides "Assistance" utilizing throughout ^{medical} appeal process (See Exhibit "D," paginated #12 hereto) But the Custody Appeal Coordinator named-defendant Corral ignored to provide services of assistance to resolve the "pointless verbiage" and other communication problems due to my hearing/speech difficulties, inability to clearly express myself in writing that requires a "staff assistant in aid me in participatingly. (Exh. "B," pg. #65 and Exh. "D," pg. #11 hereto.)

V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

I respectfully prays for the following relief:

1.) A preliminary and permanent injunction that the defendant's, each of their acts, ^{of} ignorance and practice described herein violated Plaintiff's ADA federal protected civil rights be stop!

2.) Vacate the defendant's appeal denied and order defendant to provides Plaintiff Hayes ^{the} "ancillary" assistance as warrant (due to his disabilities situations) to utilize in clarify his grievance issues throughout Administrative custody appeal process, and any other further relief that the Court deems just warrants. Costs of suit and Reasonable Attorney's fee pursuant to 42 U.S.C. § 1988.
I declare under penalty of perjury that the foregoing is true and correct.

Date: February 2, 2017 Signature of Plaintiff: Albert Hayes

Albert Hayes, Plaintiff
IN PROSE

(Revised 4/4/14)