



1 inmate and issued a Rules Violation Report.<sup>1</sup> On June 27, 2013, the Institutional Classification  
2 Committee elected to retain Sims in Administrative Segregation for 90 days.<sup>2</sup>

3 According to the Rules Violation Report, on June 18, 2013, Correctional Officer R.  
4 Rakitin observed Sims and Inmate Pratt hitting Inmate Robinson’s upper torso and facial area  
5 with closed fists.<sup>3</sup> Rakitin heard Officer J. Ramsey order the inmates to “get down” several  
6 times, and heard a 40mm weapon fired.<sup>4</sup> Rakitin saw Robinson crouched over in a fetal position,  
7 while Pratt and Sims continued to strike him.<sup>5</sup> Rakitin also ordered the inmates to stop fighting,  
8 and to get down, but neither Pratt nor Sims complied.<sup>6</sup> Rakitin used his pepper spray to no avail,  
9 and then Officer P. Guzman also ordered the inmates to stop fighting, and also released his  
10 pepper spray.<sup>7</sup> Finally, the inmates complied, ceased fighting, and assumed a prone position.<sup>8</sup>  
11 The hearing officer found Sims guilty of the upgraded charge of battery on an inmate with  
12 serious bodily injury.<sup>9</sup>

13 On March 13, 2014, after Sims had filed administrative appeals challenging the rules  
14 violation, at the third level of review, it was determined that the hearing officer failed to  
15 sufficiently articulate how Robertson’s injuries met the standard of “serious bodily injury.”<sup>10</sup>  
16 Sims’ appeal was partially granted, and the Rules Violation Report was ordered to be re-issued

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18 <sup>1</sup> See Docket No. 33-3 (Van Loh Decl., Ex. C).

19 <sup>2</sup> See Docket No. 33-4 (Van Loh Decl., Ex. D) at 2.

20 <sup>3</sup> See Docket No. 33-2 (Van Loh Decl., Ex. B) at 2.

21 <sup>4</sup> See *id.*

22 <sup>5</sup> See *id.*

23 <sup>6</sup> See *id.*

24 <sup>7</sup> See *id.*

25 <sup>8</sup> See *id.*

26 <sup>9</sup> See *id.* at 3.

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28 <sup>10</sup> See Docket No. 31-2 (Voong Decl., Ex. B) at 9-10.

1 and re-heard.<sup>11</sup>

2 On September 12, 2013, Sims again appeared before the Institutional Classification  
3 Committee for his program review.<sup>12</sup> According to Sims, Warden B. Hedricks and Captain Solis,  
4 who were both on the Institutional Classification Committee, received information “exonerating”  
5 Sims of the Rules Violation Report, but they covered up the truth.<sup>13</sup> Sims states that Hedrick  
6 informed him that “everything [Sims is] going through is a result of filing a complaint against []  
7 Correctional Officer J. Collier” and “next time[, Sims will] think twice before reporting a[n]  
8 officer.”<sup>14</sup> The Institutional Classification Committee imposed upon Sims an aggravated 24-  
9 months in the Security Housing Unit.<sup>15</sup>

10 In April 2014, Sims’ Rules Violation Report was reheard, and Sims was again found  
11 guilty of battery on an inmate with serious bodily injury.<sup>16</sup> On May 29, 2014, the Institutional  
12 Classification Committee imposed a continued term in the Security Housing Unit.<sup>17</sup>

13 In the underlying amended federal complaint, Sims alleges that Defendants retaliated  
14 against him by issuing a false Rules Violation Report against him, ignoring a report exonerating  
15 Sims of the charge, refusing to acknowledge a modification order of the Rules Violation Report,  
16 and asking the Institutional Classification Committee to send him to the Security Housing Unit.  
17 Sims claims that Defendants did these things in retaliation for Sims having previously filed a  
18 staff complaint against another officer. He requests monetary damages.

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21 <sup>11</sup> *See id.*

22 <sup>12</sup> *See* Docket No. 33-6 (Van Loh Decl., Ex. F).

23 <sup>13</sup> *See* Docket No. 9 (Am. Compl.) at 3-4.

24 <sup>14</sup> *See id.* at 4.

25 <sup>15</sup> *See* Docket No. 33-6 (Van Loh Decl., Ex. F).

26 <sup>16</sup> *See* Docket No. 33-7 (Van Loh Decl., Ex. G).

27 <sup>17</sup> *See* Docket No. 33-8 (Van Loh Decl., Ex. H).

1 **II.**

2 Failure to exhaust under the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a),  
3 is “an affirmative defense the defendant must plead and prove.”<sup>18</sup> In general, defendants must  
4 produce evidence proving failure to exhaust in a motion for summary judgment.<sup>19</sup> Pursuant to  
5 Fed. R. Civ. P. 56(a), summary judgment is appropriate when “there is no genuine issue as to  
6 any material fact and the moving party is entitled to judgment as a matter of law.” Material facts  
7 are those that may affect the outcome of the case.<sup>20</sup> A dispute as to a material fact is genuine if  
8 there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party.<sup>21</sup>  
9 All evidence must be viewed in the light most favorable to the non-moving party. The district  
10 court may not resolve disputed issues of material fact by crediting one party’s version of events  
11 and ignoring another.<sup>22</sup> Initially, the moving party bears the burden to show that no genuine  
12 issue of material fact exists.<sup>23</sup> If this burden is met, the burden shifts to the non-moving party.<sup>24</sup>

13 The PLRA provides that “[n]o action shall be brought with respect to prison conditions  
14 under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or  
15 other correctional facility until such administrative remedies as are available are exhausted.”<sup>25</sup>  
16 The exhaustion requirement of the PLRA is intended to serve a number of purposes, including  
17 providing an opportunity for corrections officials to address complaints internally, deterring  
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19 <sup>18</sup> *Jones v. Bock*, 549 U.S. 199, 204, 216 (2007).

20 <sup>19</sup> *See Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc).

21 <sup>20</sup> *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Only disputes over facts that  
22 may affect the outcome of the suit under governing law will properly preclude the entry of  
23 summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”).

24 <sup>21</sup> *See id.*

25 <sup>22</sup> *See Wall v. County of Orange*, 364 F.3d 1107, 1111 (9th Cir. 2004).

26 <sup>23</sup> *See Celotex Corp. v. Caltreff*, 477 U.S. 317, 323-24 (1986).

27 <sup>24</sup> *See Fed. R. Civ. P. 56(e).*

28 <sup>25</sup> 42 U.S.C. § 1997e(a).

1 frivolous lawsuits, and creating an administrative record allowing courts to evaluate the relative  
2 merits of claims.<sup>26</sup> “The primary purpose of a grievance,” however, “is to alert the prison to a  
3 problem and facilitate its resolution, not to lay groundwork for litigation.”<sup>27</sup> An action must be  
4 dismissed unless the prisoner exhausted his available administrative remedies before he or she  
5 filed suit, even if the prisoner fully exhausts while the suit is pending.<sup>28</sup>

6 In order to satisfy the administrative remedies exhaustion requirement under Section  
7 1997e(a), an inmate at the California Department of Corrections and Rehabilitation must submit  
8 a complaint on a CDCR Form 602 and proceed through the first, second, and third levels of  
9 appeal.<sup>29</sup> The PLRA’s exhaustion requirement cannot be satisfied “by filing an untimely or  
10 otherwise procedurally defective administrative grievance or appeal.”<sup>30</sup> The PLRA exhaustion  
11 requirement requires proper exhaustion.<sup>31</sup> “Proper exhaustion demands compliance with an  
12 agency’s deadlines and other critical procedural rules because no adjudicative system can  
13 function effectively without imposing some orderly structure on the course of its proceedings.”<sup>32</sup>

14 Defendants have the burden to prove that there was an available administrative remedy  
15 and that the prisoner did not exhaust that available administrative remedy.<sup>33</sup> Once the defendants  
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18 <sup>26</sup> See *Porter v. Nussle*, 534 U.S. 516, 525 (2002).

19 <sup>27</sup> *Griffin v. Arpaio*, 557 F.3d 1117, 1120 (9th Cir. 2009).

20 <sup>28</sup> See *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002).

21 <sup>29</sup> See Cal. Code Regs. tit. 15, § 3084.7; *Barry v. Ratelle*, 985 F. Supp. 1235, 1237-38 (S.D. Cal.  
22 1997).

23 <sup>30</sup> *Woodford v. Ngo*, 548 U.S. 81, 84 (2006).

24 <sup>31</sup> See *id.*

25 <sup>32</sup> *Id.* at 90-91 (footnote omitted).

26 <sup>33</sup> See *Albino*, 747 F.3d at 1172 and 1176 (reversing district court’s grant of summary judgment  
27 to defendants on issue of exhaustion because defendants did not carry their initial burden of  
28 proving their affirmative defense that there was an available administrative remedy that prisoner  
plaintiff failed to exhaust).

1 have carried that burden, the prisoner has the burden of production.<sup>34</sup> That is, the burden shifts  
2 to the prisoner to come forward with evidence showing that there is something in his particular  
3 case that made the existing and generally available administrative remedies effectively  
4 unavailable to him.<sup>35</sup> But, the ultimate burden of proof remains with the defendants.<sup>36</sup>

5 **III.**

6 Defendants provide evidence that Sims submitted four administrative appeals related to  
7 the facts alleged in his amended complaint: (1) SVSP-L-13-04717, (2) SVSP-L-14-00604, (3)  
8 SVSP-L-14-01986, and (4) SVSP-L-14-03422. Sims does not dispute that he has not filed any  
9 other administrative appeals that are related to the facts alleged. The court has reviewed these  
10 appeals, and concludes that none of these administrative appeals exhausted Sims' federal  
11 retaliation claim.

12 First, in SVSP-L-13-04717, Sims complained that he was innocent of the charge of  
13 battery on Robinson.<sup>37</sup> Sims appealed this claim through the first, second, and third levels of  
14 review. At the third level of review, the appeal was partially granted, and the reviewer found  
15 that the evidence did not support the charge of battery on an inmate with serious bodily injury  
16 because there was no statement about how Robinson sustained injuries consistent with serious  
17 bodily injury.<sup>38</sup> It was ordered that the rules violation report be reissued and reheard.<sup>39</sup>

18 Nowhere in SVSP-L-13-04717 does Sims allege that any prison official falsely charged  
19 Sims with battery, or did anything in retaliation against Sims for filing a staff complaint against  
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22 <sup>34</sup> *See id.* at 1172.

23 <sup>35</sup> *See id.*

24 <sup>36</sup> *See id.*

25 <sup>37</sup> *See* Docket No. 31-2 (Voong Decl., Ex. B) at 2, 4.

26 <sup>38</sup> *See id.* at 9.

27 <sup>39</sup> *See id.*

1 another prison official.<sup>40</sup> “[A] grievance suffices if it alerts the prison to the nature of the wrong  
2 for which redress is sought.”<sup>41</sup> The grievance need not include legal terminology or legal  
3 theories unless they are needed to provide notice of the harm being grieved.<sup>42</sup> Nor must a  
4 grievance include every fact necessary to prove each element of an eventual legal claim.<sup>43</sup> But,  
5 the allegations in SVSP-L-13-04717 did not include facts sufficient to alert prison officials to  
6 Sims’ claim that he was being falsely charged with a rules violation because prison officials  
7 were retaliating against him. Because Sims’ appeal in SVSP-L-13-04717 did not submit for  
8 review the question of whether Sims had been subjected to retaliation, the appeal did not “allow  
9 prison officials to take appropriate responsive measures.”<sup>44</sup> Consequently, SVSP-L-13-04717  
10 did not exhaust Sims’ underlying federal claim.

11 Second, in SVSP-L-14-00604, Sims argued that the Institutional Classification  
12 Committee falsely accused him of have a prior rules violation for threatening an inmate, and did  
13 so in retaliation against him for filing a complaint against another officer.<sup>45</sup> At the first level of  
14 review, Sims’ appeal was partially granted to correct Sims’ history. It was determined that  
15 Sims’ prior rules violation was not for threatening an inmate, but for threatening a peace  
16 officer.<sup>46</sup> At the second level of review, Sims’ appeal was partially granted for the same reason,  
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18 <sup>40</sup> See generally Docket No. 31-2 (Voong Decl. Ex. B).

19 <sup>41</sup> *Griffin*, 557 F.3d at 1120 (quoting *Strong v. David*, 297 F.3d 646, 650 (7th Cir. 2002)).

20 <sup>42</sup> See *id.*

21 <sup>43</sup> See *id.*

22 <sup>44</sup> *Id.* (finding a failure to exhaust where grievance complaining of upper bunk assignment did  
23 not allege, as the complaint had, that nurse had ordered lower bunk but officials disregarded that  
24 order) (citation and internal quotation omitted); see, e.g., *Morton v. Hall*, 599 F.3d 942, 946 (9th  
25 Cir. 2010) (grievance that complained of visitation restrictions, and did not mention an assault or  
26 theorize that the visitation restriction imposed was related to the assault, was insufficient to put  
prison officials on notice that staff conduct contributed to the assault).

27 <sup>45</sup> See Docket No. 32-1 (Medina Decl. Ex. A) at 2-3.

28 <sup>46</sup> See *id.* at 7.

1 but denied as to the retaliation allegation.<sup>47</sup> The second level reviewer also acknowledged and  
2 denied Sims' claim that he was being unjustly punished.<sup>48</sup> On March 26, 2014, Sims submitted  
3 an appeal to the third level of review but it was rejected and returned because it did not have the  
4 necessary supporting documents attached.<sup>49</sup> Plaintiff never re-submitted the appeal.<sup>50</sup>

5 Defendants have presented evidence that the third level of appeal was an available  
6 administrative remedy that Sims did not exhaust. In response, Sims refutes Defendants'  
7 assertion that no decision was ever made at the third level of review.<sup>51</sup> However, Sims attaches a  
8 copy of the third level of review's rejection letter in SVSP-L-14-00604, in which it explicitly  
9 informs Sims that his appeal was rejected because it was missing necessary supporting  
10 documents.<sup>52</sup> The letter further informed Sims that he could resubmit the appeal within the  
11 proper time frames, as specified in the California Code of Regulations.<sup>53</sup> There is no evidence  
12 that Sims resubmitted his appeal. "Proper exhaustion demands compliance with . . . deadlines  
13 and other critical procedural rules."<sup>54</sup> Because Sims failed to resubmit his rejected appeal at the  
14 third level of review, SVSP-L-14-00604 could not have exhausted his underlying retaliation  
15 claim.

16 Third, in SVSP-L-14-01986, Sims argued that his rules violation for battery on an inmate

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18 <sup>47</sup> *See id.* at 9.

19 <sup>48</sup> *See id.*

20 <sup>49</sup> *See* Docket No. 31 (Voong Decl.) ¶ 9; Docket No. 31-1 (Voong Decl., Ex. A). The court  
21 notes that Sims points out that on his copy of the CDCR 602 Form, it shows a date stamp of  
22 April 26, 2014 as the date upon which the appeal was rejected at the third level of review. *See*  
23 Docket No. 36-2 (Pl. Opp., Ex. 4) at 16. However, someone had also checked the box next to  
"granted in part." *See id.* The parties disagree on how the "granted in part" box got checked.

24 <sup>50</sup> *See id.*

25 <sup>51</sup> *See* Docket No. 39 at 2.

26 <sup>52</sup> *See* Docket No. 39-1 at 1.

27 <sup>53</sup> *See id.*

28 <sup>54</sup> *Ngo*, 548 U.S. at 90-91.



1 with serious bodily injury should be dismissed or dropped to a lesser charge, on the grounds that  
2 Sims was not allowed to present evidence, and the hearing officer had predetermined Sims'  
3 guilt.<sup>55</sup> At the second level of review, this appeal was partially granted, to reduce the days of lost  
4 privileges.<sup>56</sup> Sims pursued SVSP-L-14-01986 to the third level of review.<sup>57</sup> However, on  
5 September 9, 2014, the appeal was rejected and returned because Sims did not attach the  
6 necessary supporting documents.<sup>58</sup> Because Sims' appeal in SVSP-L-14-01986 did not submit  
7 for review the question of whether Sims had been subjected to retaliation, and Sims did not  
8 comply with the agency's procedures to resubmit the appeal, SVSP-L-14-01986 did not serve to  
9 properly exhaust Sims' federal retaliation claim.<sup>59</sup>

10 Finally, in SVSP-L-14-03422, Sims argued that on March 13, 2014, it was ordered that  
11 his Rules Violation Report be reissued and reheard.<sup>60</sup> Sims complained that prison officials were  
12 violating his procedural due process safeguards with respect to his housing and classification,  
13 and he was being falsely imprisoned.<sup>61</sup> Sims requested a transfer to Corcoran State Prison or  
14 Lancaster State Prison.<sup>62</sup> At the first and second levels of review, Sims' appeal was denied.<sup>63</sup>  
15 Sims submitted SVSP-L-14-03422 to the third level of review, however, it was rejected and  
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17 <sup>55</sup> See Docket No. 32-2 (Medina Decl. Ex. B) at 2-4.

18 <sup>56</sup> See *id.* at 10.

19 <sup>57</sup> See Docket No. 31 (Voong Decl.) ¶ 10.)

20 <sup>58</sup> See *id.*; Docket No. 31-1 (Voong Decl., Ex. A). Although neither party specifically addresses  
21 it, it appears that Sims resubmitted SVSP-L-14-01986 to the third level of review on November  
22 24, 2014. See *id.* The tracking system shows that it was screened out again on December 10,  
2014, but there is no specified reason stated. See *id.*

23 <sup>59</sup> See *Griffin*, 557 F.3d at 1120 (citation and internal quotation omitted); *Ngô*, 548 U.S. at 90-  
24 91.

25 <sup>60</sup> See Docket No. 32-3 (Medina Decl. Ex. C) at 2-4.

26 <sup>61</sup> See *id.*

27 <sup>62</sup> See *id.*

28 <sup>63</sup> See *id.* at 6-9.

1 returned because Sims did not attach the necessary supporting documents.<sup>64</sup> Because Sims’  
2 appeal in SVSP-L-14-03422 did not submit for review the question of whether Sims had been  
3 subjected to retaliation, and Sims did not comply with the agency’s procedures to resubmit the  
4 appeal, SVSP-L-14-03422 did not serve to properly exhaust Sims’ federal retaliation claim.<sup>65</sup>

5 To the extent Sims argues that prison officials improperly screened out his appeals, that  
6 argument is unpersuasive. If prison officials improperly screen out an inmate’s appeals, the  
7 inmate cannot properly complete the grievance process and administrative remedies are  
8 effectively unavailable.<sup>66</sup> However, Sims has not satisfied this exception to exhaustion because  
9 he has failed to show that his appeals at the third levels of review were screened out for reasons  
10 inconsistent with, or unsupported by, applicable regulations.<sup>67</sup> Consequently, Sims has not met  
11 his burden of production, and he has not shown that there is something in his particular case that  
12 made the existing and generally available administrative remedies effectively unavailable to  
13 him.<sup>68</sup>

#### 14 IV.

15 Defendants’ motion for summary judgment is GRANTED. The Clerk shall terminate all  
16 pending motions and close the case.

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18 <sup>64</sup> See Docket No. 31 (Voong Decl.) ¶ 10; Docket No. 31-1 (Voong Decl., Ex. A). Although  
19 neither party specifically addresses it, it appears that Sims resubmitted SVSP-L-14-03422 three  
20 additional times. See *id.* The tracking system shows that each time, the appeal was screened out  
21 for either failing to attach supporting documents, or for improperly attaching a CDCR 22 Form  
response. See *id.*

22 <sup>65</sup> See *Griffin*, 557 F.3d at 1120 (citation and internal quotation omitted); *Ngo*, 548 U.S. at 90-  
23 91.

24 <sup>66</sup> See *Sapp v. Kimbrell*, 623 F.3d 813, 822-23 (9th Cir. 2010).

25 <sup>67</sup> See *id.* at 823-24 (stating that to satisfy this exception, an inmate must show “(1) that he  
26 actually filed a grievance or grievances that, if pursued through all levels of administrative  
27 appeals, would have sufficed to exhaust the claim that he seeks to pursue in federal court, and (2)  
that prison officials screened his grievance or grievances for reasons inconsistent with or  
unsupported by applicable regulations.”).

28 <sup>68</sup> See *Albino*, 747 F.3d at 1172.

1 IT IS SO ORDERED.

2 DATED: 3/14/2016

  
3 PAUL S. GREWAL  
4 United States Magistrate Judge  
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