

1 I. FACTS¹

2 Plaintiff was transferred to Coyote Ridge Corrections Center
3 (CRCC) on July 18, 2013. On July 25, 2013, Plaintiff submitted
4 grievance number 13542140 regarding general population access to the
5 law library. Defendant Fluaitt was acting as grievance coordinator at
6 that time. On July 26, 2013, Plaintiff submitted a request for
7 priority access to the law library based on a pending deadline in
8 Washington Supreme Court Cause No. 88842-6. This request was denied
9 because Defendant Wonders determined there was not an immediate
10 deadline in that case. On July 29, 2013, Plaintiff filed a request for
11 priority access to the law library in Washington Court of Appeals
12 Cause No. 69541-0-I. This request was denied because Defendant Wonder
13 determined that the deadline, which was for paying a filing fee, did
14 not meet the standards for priority access.

15 Plaintiff's grievance was denied and returned to him on July 31,
16 2013. On August 1, 2013, Plaintiff appealed the grievance to level 2.
17 On August 7, 2013, Plaintiff filed another grievance indicating a
18 desire to appeal the denial of grievance number 13542140 to the next
19 level. On August 9, 2013, Plaintiff submitted grievance number
20 13542782 regarding access to the law library. On August 12, 2013,

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22 ¹ In connection with their motions, each party submitted a statement
23 of facts. See ECF Nos. 27 & 41 at 2-4. Any disputed facts or
24 quotations are supported by a citation to the record. When
25 considering this motion and creating this factual section, the Court
26 (1) believed the undisputed facts and the non-moving party's
evidence, (2) drew all justifiable inferences therefrom in the non-
moving party's favor, (3) did not weigh the evidence or assess
credibility, and (4) did not accept assertions made by the non-
moving party that were flatly contradicted by the record. See
Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); *Scott v.*
Harris, 550 U.S. 372, 380 (2007).

1 Plaintiff filed an initial grievance related to access to the law
2 library. On August 13, 2013, Defendant Fluaitt determined that
3 grievance number 13542782 were related to grievance number 1354210 and
4 combined the grievances under number 1354210. On August 14, 2013,
5 Defendant Fluaitt advised Plaintiff that his August 12, 2013 grievance
6 was on the same topic as his other grievances and would therefore be
7 added to that file. On August 15, 2013, Plaintiff filed another
8 grievance related to access to the law library. On August 19, 2013,
9 Plaintiff filed an additional grievance regarding access to the
10 library. On August 22, 2013, Defendant Fluaitt sent a letter to
11 Plaintiff advising him that he may be issued an infraction if he
12 continued to file numerous grievances on the same topic.

13 On August 6, 2013, Plaintiff again submitted a request for
14 priority access in his Washington Supreme Court case, and this request
15 was approved based on an impending deadline in that case. On September
16 3, 2013, Plaintiff submitted an additional request for priority access
17 related to the Washington Supreme Court case, and that request was
18 again approved. On October 8, 2013, Plaintiff submitted another
19 request for priority access, and it was approved.

20 In June 2012, the Washington Department of Corrections (DOC) and
21 the Washington State Library entered into a contract, under which the
22 Washington State Library was to provide law library services to CRCC.
23 Under the terms of the contract, if Washington State Library staff
24 were not available, CRCC employees were not permitted to open the
25 library and the library remained closed. There were staffing
26 difficulties at the CRCC law library from July 2013 through spring

1 2014, which resulted in the law library being closed repeatedly. One
2 month during this period the law library was open for only 12 days and
3 another month the law library was open for a total of only 61 hours.
4 In April 2014, the contract was amended to transfer the provision of
5 law library services to the DOC.

6 In 2013, DOC began the transition to providing legal resources
7 to inmates via an electronic database, rather than through paper
8 books. Westlaw provided the electronic database for CRCC from January
9 1, 2013, through December 31, 2015. LexisNexis was contracted to
10 provide electronic database services from December 31, 2015, through
11 December 31, 2017. On July 12, 2013, Defendant Gonzalez directed
12 prison officials to dispose of old law books as a result of the
13 transition to the electronic database. ECF No. 28-7.

14 One particular resource, the Washington Practice Series, is
15 published by West Publishing. Hard copies of this resource were
16 available in the CRCC law library prior to the transition to
17 electronic resources. When Westlaw was providing the electronic
18 database services, the Washington Practice Series was available in the
19 electronic database. When LexisNexis became the service provider, this
20 resource was no longer provided in the electronic database.

21 On March 12, 2016, Plaintiff filed complaint number 16606206
22 regarding the fact that the Washington Practice Series books were
23 outdated. On March 16, 2016, Plaintiff filed a corresponding level 1
24 grievance. On March 24, 2016, Defendant Fluaitt responded that the
25 Washington Practice Series books should be available on LexisNexis and
26 that LexisNexis had been contacted to correct the issue. On March 27,

1 2016, Plaintiff appealed the grievance to level 2. On April 11, 2016,
2 Defendant Zwicky responded that the law libraries are going electronic
3 and updates will be made electronically. On April 17, 2016, Plaintiff
4 appealed the grievance to level 3. At level 3, the grievance number
5 was changed to 16608781. On May 23, 2016, DOC responded that it was
6 working with LexisNexis to resolve the issue.

7 On May 18, 2016, Plaintiff filed complaint number 16610598
8 alleging that prison officials had retaliated against him for filing
9 grievances regarding the out-of-date Washington Practice Series by
10 removing the books from the library. On May 24, 2016, Plaintiff
11 submitted a rewrite of this complaint. A prison official responded
12 that the LexisNexis electronic database had replaced the Washington
13 Practice Series. On May 28, 2016, Plaintiff filed a corresponding
14 level 1 grievance. A prison official responded that LexisNexis had
15 replaced the reference books and that the references books would be
16 removed from CRCC. Plaintiff appealed the grievance to level 2 on June
17 9, 2016. On June 14, 2016, a prison official responded that
18 Plaintiff's grievance had already been addressed through grievance
19 number 16608781.

20 On June 2, 2014, CRCC instituted a policy regarding carbon paper
21 that restricted the use of carbon paper to the law library and made
22 carbon paper contraband when possessed outside of the law library. The
23 DOC has a policy against accepting compact discs (CDs) through the
24 mail, including CDs containing legal material. The DOC has a policy
25 against inmates receiving non-religious calendars through the mail.

26 /

1 the Sixth Amendment claims is appropriate to avoid prejudice to
2 Defendants. Accordingly, Plaintiff's Sixth Amendment claims are
3 dismissed with prejudice. Fed. R. Civ. P. 41(a)(2).

4 **B. Calendars, Carbon Paper, and CDs**

5 The Court next addresses Plaintiff's claims related to the use
6 and possession of calendars, carbon paper, and CDs within the CRCC
7 facility. Plaintiff has alleged that restrictions on the use of carbon
8 paper and the inability to obtain CDs through the mail constitute a
9 violation of his rights under the First and Fourteenth Amendments by
10 denying him meaningful access to the courts. *See, e.g.*, ECF No. 1-4 at
11 21-22; ECF No. 41 at 4. Plaintiff alleges that his inability to obtain
12 calendars through the mail interferes with his First Amendment rights
13 of association and free speech. *See, e.g.*, ECF No. 41 at 4. Defendants
14 respond that, due to institutional safety concerns, these restrictions
15 are necessary and do not substantially interfere with Plaintiff's
16 constitutional rights. *See, e.g.*, ECF No. 26 at 12 (carbon paper and
17 CDs); ECF No. 56 at 9 (calendars). The Court finds that there are no
18 questions of material fact related to these claims, and they are
19 therefore appropriate for resolution by summary judgment.

20 Generally, prison administrators must be given "wide-ranging
21 deference in the adoption and execution of policies and practices that
22 in their judgment are needed to preserve internal order and discipline
23 and to maintain institutional security." *Bell v. Wolfish*, 441 U.S.
24 520, 547 (1979). Nevertheless, "[p]rison walls do not form a barrier
25 separating prison inmates from the protections of the Constitution."
26 *Turner v. Safley*, 482 U.S. 78, 84 (1987). Accordingly, in order to

1 determine whether a particular prison policy is permissible – even if
2 it infringes to a degree on the constitutional rights of inmates –
3 courts apply a four-factor test: (1) whether there is a “‘valid,
4 rational connection’ between the prison regulation and the legitimate
5 governmental interest put forward to justify it”; (2) “whether there
6 are alternative means of exercising the right that remain open to
7 prison inmates”; (3) “the impact accommodation of the asserted
8 constitutional right will have on guards and other inmates, and on the
9 allocation of prison resources generally”; and (4) the absence or
10 availability of ready alternatives. *Id.* at 89-90.

11 1. Carbon Paper

12 CRCC declared carbon paper to be contraband on June 2, 2014, and
13 directed that carbon paper use be limited to the law library. ECF
14 No. 28-2. Plaintiff claims that this policy “is meant to hinder,
15 restrict, deter or deny meaningful access to the courts.” ECF No. 1-4
16 at 21. Defendants respond that the policy was both a reaction to the
17 fact that inmates were using the carbon paper to make tattoos and due
18 to the penological interest in reducing copies of legal pleadings
19 because inmates use pleadings as currency. ECF No. 26 at 12; ECF No.
20 28 at 2-3. Plaintiff argues that there is “no penological interest”
21 served by the restriction on carbon paper. ECF No. 41 at 22. Plaintiff
22 notes that he has never witnessed anyone using carbon paper for
23 tattoos, many other permitted items are used for tattooing, and the
24 restriction acts primarily as a deterrent to litigation because of the
25 increase in copying expenses. ECF No. 41 at 22-23.

1 The Court finds that, despite the burden the carbon paper
2 restriction may impose on Plaintiff's ability to efficiently produce
3 and file court documents, the restriction is permissible. While the
4 restriction might make it less convenient for Plaintiff to make
5 copies, the Court finds that the restriction does not interfere with
6 Plaintiff's access to the courts because Plaintiff can make copies in
7 other ways, including by handwriting, and he has access to carbon
8 paper to make copies while in the law library. *Phillips v. Hust*, 588
9 F.3d 652, 656 (9th Cir. 2009) ("We thus had no trouble also concluding
10 that inmates had no right to a typewriter to prepare their legal
11 documents where the court rules permitted pro se litigants to hand-
12 write their pleadings." (referencing *Lindquist v. Idaho State Bd. of*
13 *Corrs.*, 776 F.2d 851, 856 (9th Cir. 1985))). Regardless, even if the
14 Court found that the restriction impinged on Plaintiff's
15 constitutional rights, the Court would uphold the restriction under
16 the *Turner* test, as outlined below.

17 Applying the *Turner* test, the prison has a legitimate interest
18 in preventing the use of carbon paper for tattoos and preventing the
19 production of copies of legal documents for use as currency. The
20 restriction imposed - limiting carbon paper use to the law library -
21 is rationally related to these goals. There are also alternatives open
22 to inmates, such as using the carbon paper while in the law library or
23 paying for copies to be made. While potentially time-consuming,
24 inmates could also handwrite copies of their filings. As to the third
25 factor, accommodating Plaintiff's request to have access to carbon
26 paper outside of the law library would effectively negate the

1 restriction and create the risk of carbon paper being used for
2 tattooing or to create copies of pleadings that could then be used as
3 currency. There are no real alternatives to the carbon paper
4 restriction. The prison considered the use of carbonless forms to
5 create duplicates, which would have resolved the tattooing issue, but
6 officials ultimately appear to have rejected this alternative because
7 it would not have addressed the issue of pleading copies being used as
8 currency. See 42-5, Ex. 403-408. Thus, the restriction on carbon paper
9 is permissible. Defendants are entitled to judgment as a matter of
10 law, and the Court therefore grants summary judgment in favor of
11 Defendants on this claim.

12 2. CDs

13 Plaintiff argues that the restriction on inmate receipt of legal
14 CDs, including CDs from attorneys and CDs including discovery,
15 interferes with his right of access to the courts. ECF No. 1-4 at 21-
16 22. Defendants respond that the CD restriction "does not create a
17 legitimate interference with [Plaintiff's] ability to litigate" and
18 the DOC has "legitimate security concerns" regarding CDs from non-
19 approved vendors because reviewing CDs would require significant staff
20 resources, and the CDs could include viruses that would impair the
21 operations of the prison. ECF No. 26 at 12. In addition, Defendants
22 note that labels and other identifying information on CDs could be
23 replicated, making it difficult to know with certainty the source of
24 any CD. ECF No. 26 at 12.

25 Again, the Court finds that this restriction does not
26 significantly interfere with Plaintiff's access to the courts.

1 Plaintiff is generally allowed to possess hard copies of materials
2 that would otherwise be provided on CDs. Although obtaining hard
3 copies may be more cumbersome and more expensive, those factors alone
4 are insufficient to amount to a restriction on Plaintiff's access to
5 the courts. *Cf. Tedder v. Odel*, 890 F.2d 210, 211-12 (9th Cir. 1989)
6 (clarifying that, even when a party is indigent and qualifies for in
7 forma pauperis status, other trial expenses, such as fees for
8 witnesses, may be imposed); see also *Beck v. Symington*, 972 F. Supp.
9 532, 534 (D. Ariz. 1997) ("The touchstone of an inmate's right of
10 access to the courts is that his access be 'adequate, effective, and
11 meaningful.' This right has never been interpreted to mean that an
12 inmate's access must also be free of charge." (internal citation
13 omitted)).

14 As with the restriction on carbon paper discussed above, even if
15 the CD restriction affected Plaintiff's right of access to the courts,
16 it would be valid under the *Turner* test. The prison has legitimate
17 interests in preventing the exposure of the prison computer system to
18 viruses and in avoiding the substantial time it would require for
19 employees to review the content of CDs prior to permitting inmate
20 access. As previously mentioned, Plaintiff has an alternative to
21 obtaining documents on CD because he is generally permitted to possess
22 hard copies of documents. *Overton v. Bazzetta*, 539 U.S. 126, 135
23 (2003) ("Alternatives . . . need not be ideal, however; they need only
24 be available."). Allowing Plaintiff to have access to a CD would be
25 problematic because, even though it may not exhaust significant
26 resources to review the content of Plaintiff's CD, it would be

1 extremely difficult for the prison to accommodate the review of CDs
2 for all inmates, and the prison has an interest in applying its
3 policies uniformly. Finally, there are no clear alternatives available
4 to the policy of prohibiting CDs that do not come from authorized
5 vendors. Although it might make sense at some point in the future for
6 the prison to permit CDs from verifiable entities such as attorneys,
7 the Court, or law enforcement agencies, the Court appreciates the fact
8 that there are currently limits on the ability to verify the source of
9 CDs. Accordingly, the DOC's restriction on CDs is permissible, and
10 Defendants are entitled to judgment as a matter of law.

11 3. Calendars

12 Plaintiff argues that the DOC restriction on calendars not from
13 an approved vendor or a religious organization violates his First
14 Amendment free speech rights. ECF No. 41 at 30. Defendants respond
15 that the calendar restriction ensures compliance with content, size,
16 and material restrictions, and thereby reduces the risk of contraband
17 entering the prison and avoids the significant expenditure of staff
18 time that would be required to review all calendars. ECF No. 56 at 8-
19 10; ECF No. 57 at 2-3.

20 This restriction does impinge on Plaintiff's First Amendment
21 right to receive mail, but the Court nevertheless finds that the
22 restriction is appropriate. See *Witherow v. Paff*, 52 F.3d 264, 265
23 (9th Cir. 1995) (explaining that inmates have a First Amendment right
24 to send and receive mail, but that the right can be limited based on
25 legitimate penological needs). Applying the *Turner* test, the Court
26 finds that DOC has a legitimate interest in ensuring that calendars

1 comply with content, size, and material restrictions to prevent
2 inmates from obtaining contraband and to promote penological
3 objectives by not allowing certain content and enforcing the prison's
4 property policy. DOC also has a legitimate interest in limiting the
5 amount of time expended by staff in reviewing incoming mail. The
6 calendar restriction is rationally related to these interests.

7 While the policy may not be the least restrictive means of
8 furthering CRCC's interests, a prison is not required to use the least
9 restrictive means possible. *Turner*, 539 U.S. at 136 ("*Turner* does not
10 impose a least-restrictive-alternative test"). Requiring
11 inmates to purchase calendars from an approved vendor ensures that all
12 calendars comply with the prison's guidelines and generally avoids the
13 need for staff to inspect the calendars. Allowing a limited exception
14 for religious calendars coming directly from a publishing company or
15 book vendor is also reasonable, given the free exercise rights of
16 inmates.² While the exception would seem to result in the need for
17 staff to review incoming religious calendars for compliance with
18 prison guidelines, the general policy would still effectively limit
19 the materials requiring review.

20 In addition, inmates have an alternative to receiving
21 nonreligious calendars through the mail in that they can purchase the
22 calendars from the approved vendor. While accommodating a single
23 inmate's request to receive a calendar through the mail may not be

24 ² It is a separate issue, which is not before the Court, whether the prison's
25 policy of allowing only religious calendars from publishing companies and
26 book vendors could pose an issue under the Establishment Clause of the
First Amendment. See *McCreary Cty., Ky. v. Am. Civil Liberties Union of
Ky.*, 545 U.S. 844, 860 (2005)(explaining that the First Amendment requires
"governmental neutrality . . . between religion and nonreligion").

1 particularly burdensome for the prison – as it would not be extremely
2 time-consuming to review one calendar and ensure compliance with
3 prison regulations – CRCC has an interest in the uniform application
4 of policy. Allowing inmates to receive calendars more generally would
5 consume staff resources and increase the likelihood that contraband
6 would be introduced into the facility. Finally, although there are
7 alternatives to reduce the likelihood of contraband – such as allowing
8 calendars more generally from publishers or book vendors or allowing
9 postcard calendars that obviously comply with prison regulations –
10 there are no obvious alternatives that would also advance the interest
11 of reducing the need for staff to review incoming calendars.
12 Accordingly, the Court finds that the calendar restriction is
13 permissible, despite any infringement of Plaintiff’s First Amendment
14 right to free speech and to receive mail. Defendants are therefore
15 entitled to judgment as a matter of law on this claim.

16 **C. Grievances**

17 Plaintiff’s claims against Defendant Fluaitt relate to her
18 handling of the grievance system. Plaintiff argues that the grievance
19 procedure is inadequate, that Fluaitt’s performance was deficient, and
20 that Fluaitt retaliated against Plaintiff in relation to his filing of
21 grievances. As to these claims, the Court again finds that there are
22 no issues of material fact, making these claims appropriate for
23 resolution on summary judgment.

24 1. Procedures

25 First, to the extent that Plaintiff criticizes DOC’s grievance
26 procedures, arguments of an entitlement to specific grievance

1 procedures are largely precluded by Ninth Circuit case law holding
2 that "[t]here is no legitimate claim of entitlement to a grievance
3 procedure." *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988); see also
4 *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) ("[I]nmates lack
5 a separate constitutional entitlement to a specific prison grievance
6 procedure."). "Because inmates . . . do not have a substantive right
7 to prison grievance procedures, the failure of prison officials to
8 comply with those procedures is not actionable under § 1983." *Butler*
9 *v. Bowen*, 58 F. App'x 712 (9th Cir. 2003).

10 A prisoner's right of meaningful access to the courts does,
11 however, extend to an established prison grievance procedure. *Bradley*
12 *v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995). The Ninth Circuit has
13 held that the right to file prison grievances is "[o]f fundamental
14 import to prisoners." *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir.
15 2005). Accordingly, to the extent Plaintiff argues that he was not
16 permitted to use the grievance procedure, due to Defendant Fluaitt's
17 conduct or otherwise, that claim is actionable.

18 A Ninth Circuit panel has noted, however, that an inmate's
19 grievance rights may be limited "in order to allow prison officials to
20 achieve legitimate correctional goals and maintain institutional
21 security." *Schroeder v. Smythe*, 29 F.3d 634, at *1 (9th Cir. 1994)
22 (table) (quoting *Walker v. Sumner*, 917 F.2d 382, 385 (9th Cir. 1990)).
23 In that case, the Ninth Circuit held that a restriction on filing
24 grievances was permissible and did not violate an inmate's First
25 Amendment rights when "[i]t simply affected the number of grievances
26 [the inmate] could file each day without censoring the content of his

1 one daily grievance" because the restriction prevented a "drain on
2 prison resources" and "maintain[ed] discipline in the prison by
3 enforcing prison rules." *Schroeder*, 29 F.3d 634, at *2; see also *Clark*
4 *v. Beard*, No. 11-CV-03520-YGR (PR), 2015 WL 4452470, at *4 (N.D. Cal.
5 July 20, 2015) (finding that an inmate has "no First Amendment right
6 to file appeals" of grievance decisions and that the inmate in that
7 case had failed to demonstrate "a constitutional right to file an
8 unlimited number of non-emergency appeals").

9 Here, Plaintiff argues that his rights were violated when
10 Defendant Fluaitt chastised Plaintiff for filing too many grievances
11 on the same topic and threatened an infraction if Plaintiff continued
12 to file multiple grievances on the same topic. Plaintiff notes that
13 the practices engaged in by CRCC grievance officials also include:
14 "grievances not being returned, or untimely returned then summarily
15 dismissed as not meeting five day deadline window for appeal; changing
16 Log ID numbers midstream; not filing grievances or losing them when
17 they are critical of staff; summarily dismissing grievances at the
18 second level to avoid headquarters review, especially when critical of
19 practices and procedures to reduce litigation for lack of exhaustion."
20 ECF No. 41 at 37.

21 As to Plaintiff's primary claim, Plaintiff's rights were not
22 violated because he was chastised and threated with an infraction for
23 filing numerous grievances on the same topic. Plaintiff claims that
24 each grievance raised a distinct issue – which appears to be true –
25 but the grievances at issue all addressed the same topic of access to
26 the law library. It was not unreasonable for CRCC to limit the number

1 of grievances Plaintiff could file on that topic within a short period
2 of time, given the need to conserve prison resources noted by
3 Defendants. ECF No. 56 at 8; see also *Schroeder*, 29 F.3d 634.

4 As to the list of other practices included in Plaintiff's Cross-
5 Motion for Summary Judgment, the return of grievances, the Log ID
6 numbers, and the dismissal of grievances are the type of specific
7 grievance procedures to which inmates do not have a right. The alleged
8 practice of not filing grievances or losing grievances could interfere
9 with an inmate's right of access to the courts, which applies to
10 access to the grievance system. In this case, however, there is no
11 evidence that Defendants have failed to file or have lost Plaintiff's
12 grievances - many of his filed and processed grievances are included
13 in the record - and, more importantly, Plaintiff has failed to allege
14 any injury suffered due to an inability to access the grievance
15 system. See *Al-Hizbullahi v. Nimrod*, 122 F. App'x 349, 350-51 (9th
16 Cir. 2005) (citing *Lewis v. Casey*, 518 U.S. 343, 353-55 (1996)).
17 Defendants are entitled to judgment as a matter of law on these
18 issues.

19 2. Retaliation

20 Second, to the extent Plaintiff claims that Defendant Fluaitt
21 retaliated against Plaintiff for his valid use of the grievance
22 system, the Court finds that there is no question of material fact and
23 that Defendant Fluaitt is entitled to judgment as a matter of law.
24 Plaintiff and Defendants agree that Ms. Fluaitt sent Plaintiff a
25 letter advising Plaintiff that if he continued to submit multiple
26 grievances on the same topic, he would be subject to sanction. The

1 Court finds that, as a matter of law, this action does not constitute
2 retaliation.

3 "[P]urely retaliatory actions" taken against an inmate due to
4 the inmate's valid use of the grievance process constitute a violation
5 of an inmate's constitutional rights. *Rhodes*, 408 F.3d at 567;
6 *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009); see also *Knight*
7 *v. Nimrod*, 14 F. App'x 921, 922 (9th Cir. 2001) (unpublished)
8 ("[D]isciplinary rules that discourage a prisoner from filing a
9 grievance violate the right of access to the courts." (citing *Bradley*,
10 64 F.3d at 1279)). An inmate can bring an action for such conduct if
11 the inmate can demonstrate "that he was retaliated against for
12 exercising his constitutional rights and that the retaliatory action
13 does not advance legitimate penological goals, such as preserving
14 institutional order and discipline." See *Barnett v. Centoni*, 31 F.3d
15 813, 816 (9th Cir. 1994); see also *Gomez v. Vernon*, 255 F.3d 1118,
16 1127 (9th Cir. 2001) (holding that "repeated threats of transfer
17 because of [the plaintiff's] complaints about the administration of
18 the [prison] library" were sufficient to support a retaliation claim).

19 The Ninth Circuit applies a five-element test for First
20 Amendment retaliation: "(1) An assertion that a state actor took some
21 adverse action against an inmate (2) because of (3) that prisoner's
22 protected conduct, and that such action (4) chilled the inmate's
23 exercise of his First Amendment rights, and (5) the action did not
24 reasonably advance a legitimate correctional goal." *Rhodes*, 408 F.3d
25 at 567-68 (internal footnote omitted). In *Garcia v. Maddock*, the Ninth
26 Circuit held that "the prison's attempts to restrict excessive

1 nonemergency grievances support legitimate penological goals." 64 F.
2 App'x 10, 12-13 (9th Cir. 2003)

3 Plaintiff's claim fails under this test for multiple reasons.
4 Defendant Fluaitt did not clearly take an "adverse action" against
5 Plaintiff because Ms. Fluaitt only advised Plaintiff that he would be
6 subject to sanction in the future. In addition, and most importantly,
7 Plaintiff's conduct was not "protected conduct" because, as discussed
8 above, Plaintiff did not have a constitutional right to file multiple
9 grievances on the same topic, even if the grievances differed slightly
10 in their details. It is also not clear that Plaintiff's First
11 Amendment rights were chilled or that he has suffered some other
12 injury because he has continued to file numerous grievances on a
13 variety of topics. The Court finds that "a person of ordinary
14 firmness" would not have been deterred from filing valid grievances
15 based on Ms. Fluaitt's letter. See *Rhodes*, 408 F.3d at 568-69 ("[T]he
16 proper First Amendment inquiry asks whether an official's acts would
17 chill or silence a person of ordinary firmness from future First
18 Amendment activities." (internal quotation marks and emphasis
19 omitted)). Finally, as explained above, the DOC Defendants had a
20 legitimate correctional goal of limiting the number of grievances and
21 conserving prison resources. Overall, Plaintiff has failed to present
22 evidence of a retaliatory act by Defendant Fluaitt. See *Schroeder*, 29
23 F.3d 634, at *2 ("[The Plaintiff] has offered no evidence, other than
24 bare allegations, to raise a genuine issue of material fact regarding
25 his retaliation claim." (internal quotation marks omitted)).

1 Defendants are therefore entitled to judgment as a matter of law on
2 this issue.

3 **D. Law Library**

4 Plaintiff raises claims under the First, Eighth, and Fourteenth
5 Amendments based on issues related to the law library at CRCC.

6 Inmates possess a "fundamental constitutional right of access to
7 the courts," and prison authorities must either provide adequate law
8 libraries or adequate assistance from legally trained individuals in
9 order to satisfy this right. *Bounds v. Smith*, 430 U.S. 817, 828
10 (1977). There is, however, no "abstract, freestanding right to a law
11 library or legal assistance." *Lewis*, 518 U.S. at 352. Instead, the
12 right to an adequate law library or legal assistance exists only when
13 necessary to promote an inmate's right of access to the courts. *Id.* An
14 inmate must therefore demonstrate that any "alleged shortcomings in
15 the prison library or legal assistance program have hindered, or are
16 presently hindering, his efforts to pursue a nonfrivolous legal
17 claim." *Id.* An inmate's right of access to the courts is also limited
18 to certain types of claims: "The 'tools' that *Lewis* and *Bounds*
19 'require[] to be provided are those that the inmates need in order to
20 attack their sentences, directly or collaterally, and in order to
21 challenge the conditions of their confinement.'" *Hebbe v. Pliler*, 627
22 F.3d 338, 343 (9th Cir. 2010) (internal citation omitted).

23 Plaintiff alleges that he was given insufficient access to the
24 law library, such that he was unable to meet a filing deadline in a
25 case. Plaintiff also claims that the law library is deficient because
26 it lacks certain resources. As a result of these issues, Plaintiff

1 argues that he has been denied his constitutional right of access to
2 the courts under the First and Fourteenth Amendments. Plaintiff also
3 argues that his Eighth Amendment rights have been violated because
4 Defendants were deliberately indifferent to injuries caused by
5 problems with the law library. Finally, Plaintiff claims that
6 Defendant Gonzalez retaliated against him by removing books from the
7 law library. The Court addresses these claims in turn.

8 1. Defendant Sherbo

9 The Court first addresses Plaintiff's claims against Defendant
10 Sherbo. Plaintiff argues that Defendant Sherbo, as an employee of the
11 Washington State Library and project manager under the contract
12 between DOC and the State Library, violated his right of access to the
13 courts by failing to adequately staff the law library. ECF No. 41 at
14 11. Defendants argue that Ms. Sherbo has no duty to provide for
15 Plaintiff's access to the courts because she is not a Department of
16 Corrections employee. ECF No. 26 at 17-18. The Court finds that
17 Plaintiff has failed to demonstrate a violation by Defendant Sherbo of
18 any duty owed to Plaintiff.

19 In order to bring a claim under § 1983, a plaintiff must
20 demonstrate that he was deprived of his rights due to the conduct of a
21 state actor. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) ("A
22 person 'subjects' another to the deprivation of a constitutional
23 right, within the meaning of section 1983, if he does an affirmative
24 act, participates in another's affirmative acts, or omits to perform
25 an act which he is legally required to do that causes the deprivation
26 of which complaint is made."). A supervisor may be liable under § 1983

1 only "if there exists either (1) his or her personal involvement in
2 the constitutional deprivation, or (2) a sufficient causal connection
3 between the supervisor's wrongful conduct and the constitutional
4 violation." *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011)
5 (quoting *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)). "[A]
6 plaintiff must show the supervisor breached a duty to plaintiff which
7 was the proximate cause of the injury." *Id.* (quoting *Redman v. Cty. of*
8 *San Diego*, 942 F.2d 1435, 1447 (9th Cir. 1991)) (internal quotation
9 marks omitted)).

10 In the context of law libraries, "the fundamental constitutional
11 right of access to the courts requires *prison authorities* to assist
12 inmates in the preparation and filing of meaningful legal papers by
13 providing prisoners with adequate law libraries or adequate assistance
14 from persons trained in the law. *Bounds*, 430 U.S. at 828 (emphasis
15 added). This duty applies to "prison authorities," and the Court finds
16 no support for Plaintiff's argument that Defendant Sherbo, as a non-
17 prison authority, can be liable for a violation of an inmate's right
18 of access to the courts.

19 First, there is no indication that Defendant Sherbo owed a duty
20 to Plaintiff regarding access to the courts. In addition, there is no
21 evidence that Defendant Sherbo took any affirmative action under color
22 of state law or failed to take a required action that resulted in a
23 deprivation of Plaintiff's rights. Defendant Sherbo, working for the
24 Washington State Library, did have a contractual duty to provide law
25 library services to CRCC, but it was still ultimately the duty of DOC
26 officials to ensure that Plaintiff's right of access to the courts was

1 not impaired. *Cf. Gilmore v. Lynch*, 319 F. Supp. 105, 112 (N.D. Cal.
2 1970), *aff'd sub nom. Younger v. Gilmore*, 404 U.S. 15 (1971)
3 ("Assuming that the Department provides adequately for inmate legal
4 needs, the back-stopping function now performed by the State Library
5 will become superfluous."). Plaintiff is not otherwise entitled to
6 enforce Defendant Sherbo's contractual obligations. Accordingly,
7 Plaintiff's § 1983 claim against Ms. Sherbo fails.³

8 2. Access to Law Library

9 Plaintiff claims that he was not allowed access to the library
10 when he had a pending deadline in state court, and that the case was
11 dismissed as a result of his failure to comply with that deadline. ECF
12 No. 41 at 7-9; ECF No. 42 Ex. 5. Defendants respond that Plaintiff did
13 not have a substantive deadline, but only a deadline to pay a filing
14 fee, and that access was not required for the type of claims involved.
15 ECF No. 56 at 2-3. Plaintiff also argues that, subsequently, the law
16 library was often closed and he was denied access due to the frequent
17 closures. DOC Defendants respond that closures were due to a contract
18 with the Washington State Library and staffing difficulties that, once
19 discovered, were remedied by making changes to that contractual
20 relationship and allowing staffing vacancies to be satisfied by DOC
21 employees. The Court finds that these claims present no genuine
22 disputes of material fact and are appropriate for resolution on
23 summary judgment.

24
25 ³ Regardless of the Court's findings as to Defendant Sherbo, the Court finds
26 that no violation of Defendant's right of access to the courts occurred, as
explained below. Accordingly, even if the Court had found that Defendant
Sherbo was a proper defendant for Plaintiff's § 1983 claim, that claim
would fail.

1 In order to establish a violation of the right of access to the
2 courts, an inmate must demonstrate that he was attempting to bring a
3 qualifying claim – related to his crime of conviction, conditions of
4 confinement, or civil rights – and that the prison’s failure to
5 provide an adequate law library or legally trained assistance hindered
6 the inmate’s ability to bring such a claim. *Hebbe*, 627 F.3d at 342-43.
7 “[T]he Constitution does not guarantee a prisoner unlimited access to
8 a law library. Prison officials of necessity must regulate the time,
9 manner and place in which library facilities are used.” *Lindquist*, 776
10 F.2d at 858. Nevertheless, “[t]he existence of an adequate law library
11 does not provide for meaningful access to the courts if the inmates
12 are not allowed a reasonable amount of time to use the library.” *Id.*
13 at 854. Thus, the following efforts can all constitute unreasonable
14 restrictions on adequate access to a law library: (1) arbitrarily
15 denying or ignoring requests for library access despite space
16 availability, (2) permitting prisoners insufficient time in the
17 library, (3) providing inadequate notice of library turnouts,
18 (4) scheduling turnouts to conflict with other activities, or
19 (5) arbitrarily removing inmates from the library. *Gluth v. Kangas*,
20 951 F.2d 1504, 1508 (9th Cir. 1991).

21 The Court first addresses Plaintiff’s claim that Defendants
22 interfered with his ability to meet a case deadline, which resulted in
23 the case being dismissed. As an initial matter, the Court finds that
24 Plaintiff’s relevant case, which involved a challenge to child support
25 payment calculations ECF Nos. 33-1 & 33-2, is not the type of case for
26

1 which access to the courts is guaranteed for inmates. Accordingly, the
2 Court finds that Plaintiff is not entitled to relief on this claim.

3 The Court notes, however, that CRCC should be cautious in
4 determining what types of case deadlines merit priority access for
5 inmates. Though Plaintiff's deadline was facially a deadline to pay a
6 filing fee, Plaintiff claims that he needed library time in order to
7 effectively contest the requirement to pay the fee. Seemingly
8 procedural deadlines, like the deadline to pay a fee, may thus require
9 research. When cases raise claims for which inmates have rights of
10 access to the courts, priority access to the law library should not be
11 denied simply because a deadline appears to be procedural if the
12 inmate can explain why research is necessary and prison administrators
13 find that such an explanation is valid and made in good faith.⁴

14 Regardless, in this instance, Plaintiff has not demonstrated
15 that he suffered any injury as a result of not being granted access to
16 the law library. Defendants submitted the docket in Plaintiff's
17 relevant case, ECF No. 33-1 at 14, and it appears that Plaintiff filed
18 his order of indigency with the Washington Court of Appeals in order
19 to demonstrate an inability to pay the filing fee. Plaintiff does not
20

21
22 ⁴ Defendants also indicate that when there is a question as to whether an
23 inmate requires access to the library for a court deadline, prison
24 officials sometimes contact the attorney general's office. See ECF No. 31
25 at 3; ECF No. 42 Ex. 12 at 1-2. Although attorneys are bound by ethical
26 requirements and must not make misrepresentations that would be adverse to
pro se opposing parties, the state assistant attorney generals may often
have a different view of the case than does the opposing party inmate, and
a state attorney's opinion as to whether research is required may not
adequately reflect the inmate's case strategy and view of the issues.
Prison officials should generally defer to an inmate's good faith
representation that research is necessary if the inmate provides a
sufficient explanation.

1 articulate what – if anything – he could have submitted to avoid the
2 dismissal of his case.

3 Given the fact that Plaintiff’s child support case was not the
4 type of case in which inmate access to the courts is guaranteed, and
5 because the uncontested evidence does not reveal any injury resulting
6 from Plaintiff’s inability to access the law library, rather than as a
7 result of failing to pay a required fee in compliance with court
8 order, the Court finds that Plaintiff has failed to demonstrate
9 entitlement to relief on this claim.

10 Plaintiff also argues that he has been denied access to the
11 courts more generally due to numerous closures of the law library. In
12 this case, the Court finds that, although the law library at CRCC was
13 closed and unavailable to inmates for significant periods of time,
14 Plaintiff has failed to demonstrate any injury as a result of the
15 closures. As discussed above, there is no freestanding right to a law
16 library apart from a need to access the library in order to exercise
17 one’s right to access the courts. *See Lewis*, 518 U.S. at 351.
18 Plaintiff has not demonstrated that the restrictions on access due to
19 the numerous closures of the library hindered his ability to access
20 the courts.

21 In addition, there is significant evidence in the record that
22 Defendants were making efforts to accommodate inmates and ensure that
23 the law library closures did not affect inmates’ abilities to access
24 the courts. *See, e.g., ECF No. 42 Ex. 13, Ex. 32, Ex. 33.* While
25 staffing issues for the CRCC law library did arise – primarily due to
26 the illness and death of one staff member and limitations in the

1 contract between DOC and Washington State Library – Defendants took
2 steps to resolve the issues. See, e.g., ECF No. 28-4, 28-6 at 148; ECF
3 No. 42 at Exs. 13, 33, 76. There is no evidence that the library
4 closures actually denied Plaintiff access to the courts.

5 3. Adequacy of Law Library

6 Plaintiff also alleges that the law library at CRCC is
7 inadequate because it does not include certain reference materials,
8 including the Washington Practice Series. ECF No. 41 at 15-21.
9 Defendants argue that DOC provided “adequate research tools through
10 case law, statute and other references materials.” ECF No. 26 at 11.

11 First, the Court finds that the condition of the CRCC library
12 does not implicate a liberty or property interest under the Fourteenth
13 Amendment Due Process Clause. The holdings regarding liberty interests
14 in the cases cited by Plaintiff, *Olim v. Wakinekona*, 461 U.S. 238
15 (1983), and *Hewitt v. Helms*, 459 U.S. 460 (1983), were significantly
16 constrained by *Sandin v. Conner*, 515 U.S. 472 (1995). In *Sandin*, the
17 Supreme Court held that liberty interests protected by the Due Process
18 Clause in the prison context “will generally be limited to freedom
19 from restraint which . . . imposes atypical and significant hardship
20 on the inmate in relation to the ordinary incidents of prison life.”
21 *Sandin*, 515 U.S. at 484. Under the rule announced in *Sandin*, the DOC
22 Law Library Resource List does not create a liberty interest in access
23 to the resources on that list because the resources do not relate to
24 an inmate’s freedom from restraint, and deprivation of the resources
25 does not impose atypical or significant hardship on inmates. See
26 *Mitchell v. Dupnik*, 75 F.3d 517, 523 (9th Cir. 1996).

1 In addition, the DOC has not created a property interest in the
2 Offender Betterment Fund. Prison policy clearly establishes that
3 monies from the fund "will be used solely for offender betterment
4 activities that enhance the security and orderly operation of a
5 facility by reducing idleness and encouraging positive development of
6 family and community ties." ECF No. 42 Ex. 15 at 215. In addition,
7 "[t]he authority to spend from the [Offender Betterment Fund] is
8 vested with the Secretary." ECF No. 42 Ex. 15 at 215. Plaintiff
9 therefore does not have a protected property interest in the monies in
10 the Offender Betterment Fund or the items purchased through the fund.
11 See *St. Hilaire v. Lewis*, 26 F.3d 132 (9th Cir. 1994) (table).
12 Accordingly, Defendants' decision to remove the Washington Practice
13 Series from the CRCC law library - and other use of Offender
14 Betterment Fund monies related to the law library - did not violate
15 Plaintiff's procedural due process rights under the Due Process Clause
16 of the Fourteenth Amendment.

17 The Court now turns to Plaintiff's claim that Defendants'
18 failure to provide certain reference materials affected Plaintiff's
19 right of access to the courts. The resources that must be provided in
20 a prison law library in order to avoid impairing the right of access
21 to the courts are "those that the inmates need in order to attack
22 their sentences, directly or collaterally, and in order to challenge
23 the conditions of their confinement." *Lewis*, 518 U.S. at 355. A prison
24 "need not provide its inmates with a library that results in the best
25 possible access to the courts." *Lindquist*, 776 F.2d at 856; *Phillips*,
26 588 F.3d at 656 ("[W]hat *Bounds* required was that the resources meet

1 minimum constitutional standards sufficient to provide meaningful,
2 though perhaps not 'ideal,' access to the courts.").

3 As explained above, there is no independent constitutional right
4 to a prison law library. Instead, law libraries or legal assistance
5 are "only the means for ensuring 'a reasonably adequate opportunity to
6 present claimed violation of fundamental constitutional rights to the
7 courts.'" *Lewis*, 518 U.S. at 351 (citations omitted). "[A]n inmate
8 cannot establish relevant actual injury simply by establishing that
9 his prison's law library or legal assistance program is subpar in some
10 theoretical sense." *Id.* The right of access to the courts "does not
11 guarantee inmates the wherewithal to transform themselves into
12 litigating engines capable of filing everything from shareholder
13 derivative actions to slip-and-fall claims." *Id.* at 355. Instead, "a
14 library that meets minimum constitutional standards" is all that is
15 required. *Lindquist*, 776 F.2d at 856.

16 In *Lindquist*, the Ninth Circuit held that a prison library need
17 not contain the Pacific Reporter 2d, Shepard's Citations, a number of
18 other reference books, and early editions of the Federal Supplement.
19 *Id.* at 856. Other circuits have addressed the adequacy of prison law
20 library resources on a case-by-case basis and found that law libraries
21 are adequate when they contain a reasonable combination of case
22 reporters, statutes, and secondary sources. See *Petrick v. Maynard*, 11
23 F.3d 991, 994 n.3 (10th Cir. 1993)(compiling cases). Although the
24 American Association of Law Libraries collection list or other lists
25 of recommended resources may be relevant to determining whether a law
26 library's resources are adequate, see *Bounds*, 430 U.S. at 819 n.4,

1 compliance with any particular list, including the DOC Law Library
2 Resource List, is not required.

3 In this case, Plaintiff fails to demonstrate that he suffered an
4 actual injury based on the condition of the CRCC law library. While
5 Plaintiff notes that he was denied access to the courts based on the
6 inadequacy of the resources in the law library, he does not point to a
7 qualifying case that he was unable to bring or that was dismissed
8 based on the lack of resources in the library. By itself, this
9 inability to demonstrate an actual injury regarding access to the
10 courts would defeat Plaintiff's claim.

11 It is also not clear that the law library violated the terms of
12 the DOC Law Library Resource List, as it appears that Defendants
13 attempted, in good faith, to provide the resources on that list. See
14 ECF Nos. 28-9 at 188 (LexisNexis contract bid demonstrating that DOC
15 requested that any contractor provide the Washington Practice Series
16 and that LexisNexis indicated that "Washington Criminal Practice in
17 Courts of Limited Jurisdiction" was a comparable resource), 28-11
18 (August 15, 2016 order form reflecting DOC's purchase of the
19 Washington Practice Series). DOC policy itself appears to only require
20 that the law library include "relevant and up-to-date constitutional,
21 statutory, and case law materials, applicable court rules, and
22 practice treatises." ECF No. 41 Ex. 16 at 233.

23 Regardless, the Court finds that the law library at CRCC
24 complied with the access to court requirements as announced in *Bounds*.
25 "Unless there is a breach of constitutional rights, . . . § 1983 does
26 not provide redress in federal court for violations of state law."

1 *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1060 (9th Cir.
2 2012) (quoting *Schlette v. Burdick*, 633 F.2d 920, 922 n.3 (9th Cir.
3 1980)). Here, even if Defendants violated DOC policy by failing to
4 provide the Washington Practice Series or other resources to inmates,
5 there was no breach of Plaintiff's constitutional rights. The CRCC
6 library appears to have, at all times, provided adequate materials to
7 enable Plaintiff to access the courts. Even if the LexisNexis system
8 was difficult for Plaintiff to use or not as helpful as the Washington
9 Practice Series, it provided access to numerous cases, statutes, and
10 secondary sources sufficient to satisfy the *Bounds* requirement. ECF
11 No. 28-10 Ex. J.

12 Although Plaintiff is understandably frustrated by the changes
13 to the law library and the removal of resources that he found helpful,
14 he has failed to present facts demonstrating a violation actionable
15 under § 1983. Accordingly, the Court finds that there is no dispute of
16 material fact, and that Defendants are entitled to judgment in their
17 favor on this claim as a matter of law.

18 4. Deliberate Indifference

19 Plaintiff also argues that Defendants were deliberately
20 indifferent regarding the deficiencies of the law library, in
21 violation of the Eighth Amendment. Defendants argue that this claim
22 should be dismissed as frivolous.

23 The Eighth Amendment of the U.S. Constitution prohibits "cruel
24 and unusual punishments." Two conditions must be satisfied to prove an
25 Eighth Amendment claim against prison officials. *Farmer v. Brennan*,
26 511 U.S. 825, 834 (1994). First, "a prison official's act or omission

1 must result in the denial of 'the minimal civilized measure of life's
2 necessities.'" *Id.* (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347
3 (1981)). This standard is satisfied when the institution "furnishes
4 sentenced prisoners with adequate food, clothing, shelter, sanitation,
5 medical care, and personal safety." *Hoptowit v. Ray*, 682 F.2d 1237,
6 1246 (9th Cir. 1982), *abrogated on other grounds by Sandin*, 515 U.S.
7 472; *Farmer*, 511 U.S. at 833. Second, a prison official must have a
8 sufficiently culpable state of mind, which is defined in prison-
9 conditions cases as a state of mind of "'deliberate indifference' to
10 inmate health or safety." *Id.* The Eighth Amendment "requires neither
11 that prisons be comfortable nor that they provide every amenity that
12 one might find desirable." *Rhodes*, 452 U.S. at 347, 349.

13 Here, Plaintiff argues that Defendants were deliberately
14 indifferent by failing to provide adequate library materials. While
15 the adequacy of a prison law library raises other constitutional
16 concerns – as discussed above – a prison is not required to provide
17 legal resources under the Eighth Amendment. Such resources do not
18 constitute "life's necessities." In addition, even if Defendants were
19 deliberately indifferent to the situation – and the Court finds that
20 Defendants were not indifferent and made efforts to remedy the
21 situation – any indifference would not be in relation "to inmate
22 health or safety," as required for a violation of the Eighth
23 Amendment. Thus, Plaintiff's Eighth Amendment claim regarding the
24 sufficiency of the CRCC law library fails. The Court therefore grants
25 summary judgment on this claim in favor of Defendants.

26 /

1 5. Retaliation Claims

2 Plaintiff also raises a retaliation claim against Defendant
3 Gonzalez based on the removal of the Washington Practice Series from
4 the CRCC law library. Plaintiff argues that the books were removed as
5 a result of Plaintiff exercising his right to file grievances and
6 grieving the out-of-date quality of the books. ECF No. 41 at 30.
7 Defendants respond that the removal of the books was not ordered to
8 punish or otherwise affect Plaintiff, but simply because Defendant
9 Gonzalez had ordered the books removed years before when the DOC
10 switched to electronic legal resources. ECF No. 26 at 15-16; *see also*
11 ECF No. 28-7.

12 As explained above, to prove a claim of First Amendment
13 retaliation, a plaintiff must prove that a state actor took an adverse
14 action against an inmate based on the inmate's protected conduct, and
15 that the adverse action did not advance a legitimate correctional
16 goal. *Brodheim*, 584 F.3d at 1269. The Court finds that Plaintiff has
17 failed to present sufficient facts to support his claim of retaliation
18 by Defendant Gonzalez.

19 Defendant Gonzalez did not take an adverse action against
20 Plaintiff because of Plaintiff's filing of grievances. Defendant
21 Gonzalez had previously ordered the books removed, ECF No. 28-7, so
22 their removal was required, regardless of Plaintiff's grievances.
23 Further, because Defendant did not have a right to the Washington
24 Practice Series books, removal of these books was not clearly
25 "adverse" to Plaintiff in any meaningful way. The removal also
26 advanced a legitimate correctional goal. As cited by Plaintiff, a

1 panel of the Ninth Circuit has indicated that a prison may be required
2 to update the legal reference materials that it provides to inmates,
3 see *Mead v. Reed*, 946 F.2d 898, *1 (9th Cir. 1991) (table) (affirming
4 a district court order that all materials at a prison law library "be
5 kept current in order to meet constitutional standards"). Further, the
6 Court finds that resource materials being out-of-date would be
7 relevant to a court's finding as to whether a prison law library was
8 adequate and DOC policy requires that resources be kept up-to-date,
9 ECF No. 41 Ex. 16 at 233. Defendant Gonzalez therefore had an interest
10 in removing the books, rather than allowing out-of-date resources to
11 be present in the law library after the transition to electronic legal
12 resources.

13 While Plaintiff suggests that Defendant Gonzalez did not order
14 removal of the books until Plaintiff had filed his complaint, ECF
15 No. 41 at 30, and Defendant Gonzalez presents evidence that he had
16 previously ordered removal of the books, ECF No. 28-7, the Court finds
17 that these discrepancies do not create a material dispute of fact.
18 Plaintiff's position is contradicted by documentary evidence, the
19 authenticity of which has not been disputed. In addition, as explained
20 above, Plaintiff's claim fails regardless of whether Defendant
21 Gonzalez ordered the removal of the books as a result of Plaintiff's
22 claim because the action was not adverse to Plaintiff and Defendant
23 Gonzalez had a legitimate penological interest in ordering the books
24 removed. Defendants are entitled to judgment as a matter of law.

25 //

26 /

1 **IV. CONCLUSION**

2 In sum, the Court finds that there are no genuine disputes as to
3 any issue of material fact in this case and that Defendants are
4 entitled to judgment as a matter of law on all claims raised by
5 Plaintiff. Defendants' Motion for Summary judgment is therefore
6 granted. Plaintiff's Cross-Motion for Summary Judgment is denied to
7 the extent Plaintiff requests that summary judgment be granted in his
8 favor and granted to the extent Plaintiff requests dismissal of his
9 Sixth Amendment claims.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 **1. Defendants' Motion for Summary Judgment, ECF No. 26, is**
12 **GRANTED.**

13 **2. Plaintiff Donald Hunt's Cross-Motion for Summary Judgment,**
14 **ECF No. 41, is DENIED IN PART AND GRANTED IN PART.**
15 Plaintiff's request that summary judgment be granted in his
16 favor is denied. To the extent the Court construes the
17 motion as a Motion to Dismiss Sixth Amendment Claims under
18 Federal Rule of Civil Procedure 41, the Motion is granted.

19 **3. Plaintiff's claims are DISMISSED WITH PREJUDICE.**

20 **4. This case shall be CLOSED.**

21 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
22 Order, enter judgment in favor of Defendants and provide copies to
23 Plaintiff and all counsel.

24 **DATED** this 20th day of July 2017.

25 s/Edward F. Shea
26 EDWARD F. SHEA
Senior United States District Judge