

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

**Mark Alan Char v. Michael Jefferson, Casey Irvine, Fia Duarte,
Scott Harrington, Lyle Antonio, Joanna White, Robin Matsunaga,
Mandy Feldt, Vince Moe, Edward Vaovasa, Michael Keopuhiwasr.,
Calvin Mock, Jr., Shannon Cluney, Deane Hatakeyama, Maura
Tresch, Romey Glidewell**

Char · No. CIV. NO. 23-00474 LEK-KJM · Decided January 29, 2026

OPINION

Char

PER CURIAM.

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

MARK ALAN CHAR, CIV. NO. 23-00474 LEK-KJM

Plaintiff, vs.

MICHAEL JEFFERSON, CASEY IRVINE,

FIA DUARTE, SCOTT HARRINGTON,

LYLE ANTONIO, JOANNA WHITE,

ROBIN MATSUNAGA, MANDY FELDT,

VINCE MOE, EDWARD VAOVASA,

MICHAEL KEOPUHIWASR., CALVIN

MOCK, JR., SHANNON CLUNEY, DEANE

HATAKEYAMA, MAURA TRESCH, ROMNEY

GLIDEWELL,

Defendants.

ORDER GRANTING THE DEFENDANTS’

MOTIONS FOR SUMMARY JUDGMENT AND JOINDER

On September 10, 2025, Defendants Michael Jefferson, Casey H. Irvine, Fia Duarte, Scott Harrington, Lyle Antonio, Joanna Jacklyn White, and Calvin R. Mock, Jr., in their official capacities, and Scott Harrington, Lyle Antonio, Joanna Jacklyn White, and Calvin R. Mock, Jr., in their individual capacities (“Defendants”), filed their Motion for Summary Judgment Regarding Failure to Exhaust Administrative Remedies (“Defendants’ Motion”), and Defendant Michael Jefferson, in his individual capacity (“Jefferson”), filed his Motion for Summary Judgment for Failure to Exhaust Administrative Remedies (“Jefferson’s Motion”). [Dkt. nos. 116, 119.] On September 10, 2025, Defendants Casey Irvine and Fia Duarte, in their individual capacities

(“Irvine” and “Duarte”), filed a substantive joinder in Jefferson’s Motion (“Joinder”). [Dkt. no. 122.] On October 17, 2025, pro se Plaintiff Mark Alan Char (“Char”) filed a declaration in opposition to Defendants’ Motion, Jefferson’s Motion, and the Joinder (“Char’s Declaration”). [Dkt. no. 129.] On October 28, 2025, Defendants, Irvine and Duarte, and Jefferson filed their respective replies. [Dkt. nos. 130, 131, 132.] On December 3, 2025, Defendants, Jefferson, and Irvine and Duarte (collectively “Moving Parties”) filed a joint supplement in support of their respective requests for summary judgment (“Supplement”). [Dkt. no. 134.] The Court finds these matters suitable for disposition without a hearing pursuant to Rule LR7.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawaii (“Local Rules”). Jefferson’s Motion, Defendants’ Motion, and the Joinder are granted for the reasons set forth below. In other words, summary judgment is granted in favor of the Moving Parties as to all of Char’s claims, and Char has no remaining claims in this case.

BACKGROUND

I. Char’s Claims and Allegations The operative pleading is the first amended version of Char’s Prisoner Civil Rights Complaint, filed on February 8, 2024 (“First Amended Complaint”). [Dkt. no. 8.] The alleged incidents giving rise to Char’s claims in this case occurred at Halawa Correctional Facility (“HCF”), a state prison where Char was incarcerated at the time.¹ See First Amended Complaint at PageID.64, § A.2. This Court screened the First Amended Complaint and permitted the following claims to go forward: -Char’s Title 42 United States Code Section 1983 claim alleging that Jefferson, Irvine, and Duarte violated the Eighth Amendment prohibition against cruel and unusual punishment by using excessive force against him (“Count I”); -Char’s Section 1983 Eighth Amendment claim against Defendants Scott Harrington (“Harrington”), Lyle Antonio (“Antonio”), Joanna Jacklyn White (“White”), and Calvin R. Mock, Jr. (“Mock”) alleging that they threatened his safety because they failed to take appropriate action after being informed of Jefferson’s threat to Char (“Count II”); and -Char’s intentional infliction of emotional distress (“IIED”) claim against Jefferson (“Count IV”). See Order: (1) Dismissing in Part First Amended Prisoner Civil Rights Complaint with Partial Leave Granted to Amend; and

(2) Denying Motion for Appointment of Counsel, filed 2/28/24

(dkt. no. 11) (“2/28/24 Order”), at 1-2, 29;² see also First Amended Complaint at PageID.73-76 (Count I), PageID.77-84 ¹ Char is currently incarcerated at HCF. See VINE, <https://vinelink.vineapps.com/search/HI/Person> (name search for Mark Char) (last visited Jan. 28, 2026).

² The 2/28/24 Order is also available at 2024 WL 839555.

(Count II), PageID.95-96 (Count IV).³ Each of the Moving Parties is sued in his or her individual capacity and official capacity. See First Amended Complaint at PageID.64, § A.3; id. at PageID.66-67, §§ A.4-8; id. at PageID.67, § A.10. Char was granted leave to amend some of the claims in the First Amended Complaint that were dismissed, see 2/28/24 Order at 29-30, but he elected not to file a second amended complaint, see letter to the Court from Char, filed 3/25/24

(dkt. no. 12) (“3/25/24 Letter”). In Count I, Char alleges that, on August 21, 2021, Jefferson told Char “he was going to beat [Char] up again real soon.”⁴ [First Amended Complaint at PageID.73, § C.3.] Char also alleges that, on November 25, 2021, Irvine “started to harass Char then refused to give Char his Thanksgiving Day turkey dinner.”⁵ [Id.] According to Char, he attempted to make a 3 Defendants argue it is unclear whether the 2/28/24 Order allowed Char to pursue a claim for injunctive relief requiring the return of his cane, which he alleges was taken from him. See Defs.’ Motion, Mem. in Supp. at 5 n.1. Char’s allegations regarding his cane are only relevant to his excessive force claims against Jefferson and Irvine and to Char’s IIED claim against Jefferson. See 2/28/24 Order at 11-12, 26-27. There is no pending claim seeking an injunction requiring the return of Char’s cane. 4 Char alleges Jefferson is employed as a corrections officer/sergeant at HCF. [First Amended Complaint at PageID.64, § A.3.] 5 Char alleges Irvine is employed as a corrections officer at HCF. [First Amended Complaint at PageID.66, § A.4.] complaint about Irvine to a captain and, while he was waiting for the captain to arrive at his cell, Jefferson attacked him without provocation. [Id. at PageID.73-74.] Char states that he was in protective custody when the attack occurred. See id. at PageID.78. Char alleges that Irvine participated in the attack by picking up Char’s cane, which Jefferson had knocked out of Char’s hand, and by encouraging Jefferson to beat Char. According to Char, Duarte was standing nearby and watched the attack.⁶ Char also alleges the attack was recorded by the HCF security cameras, and HCF personnel, including White,⁷ watched the recording. [Id. at PageID.74.] Char also alleges that Irvine and Duarte had the opportunity to intervene and stop Jefferson from attacking Char, but they failed to do so. [Id. at PageID.74-75.] In Count II, Char alleges that he was also beaten by Jefferson on January 12, 2020 and, after that incident, Char’s 6 Char alleges Durate is employed as a corrections officer at HCF. [First Amended Complaint at PageID.66, § A.5.] 7 Char alleges White was a corrections officer/captain at HCF. [First Amended Complaint at PageID.67, § A.8.] Char also alleges White was the administrative captain who was in charge of the medium security special housing unit (“Medium SHU”) during the relevant period. [Id. at PageID.79.] Char was apparently in protective custody in the Medium SHU at the time of the alleged assault on November 25, 2021. See id. at PageID.73, § C.3; id. at PageID.77, PageID.79. attorney sent Harrington, the HCF warden, a letter advising Harrington that Jefferson should not have contact with Char. According to Char, Harrington disregarded counsel’s request. [Id. at PageID.77.] Char states that, on September 28, 2021, he sent Harrington and Antonio, the HCF deputy warden, a “lampoon letter” informing them of Jefferson’s August 21, 2021 threat, but Harrington and Antonio still refused to keep Jefferson away from Char. [Id.] Char alleges Harrington and Antonio created opportunities for Jefferson to carry out his threat against Char, including the November 25, 2021 assault. [Id. at PageID.78.] Char argues they had a duty to protect him, but they failed to act reasonably to protect him from the constitutional violation that they knew or should have known would occur. [Id. at PageID.78-79.] Char alleges that, as the administrative captain in charge of the Medium SHU, White was responsible for the safety of all inmates in that unit. Char wrote

White approximately twenty-four letters informing her that she was in dereliction and breach of her duty because she allowed HCF staff to harass, threaten, and abuse him. According to Char, White only provided one response, dated April 28, 2021, and, in that response, White refused to protect Char. Char alleges White has admitted that she and other officials were provided with the lampoon letter that Char sent to Harrington and Antonio. Thus, Char argues White was aware of Jefferson's intent to assault him, but White failed to take reasonable action. Char also alleges White allowed Jefferson to enter Char's cell on January 12, 2020, and White failed to discipline Jefferson for the first assault of Char. Char argues that, based on her knowledge of the first assault and Char's complaints, White knew or should have known that Jefferson would carry out his threat to assault Char again. See *id.* at PageID.79-80. Char alleges that Mock was one of the officials who read Char's lampoon letter.⁸ Thus, Char argues Mock was aware of Jefferson's intent to assault Char, and Mock failed to take necessary actions to ensure Char's safety, effectively approving and condoning the intentional acts. [*Id.* at PageID.82-83.] In Count IV, Char reiterates his allegations regarding Jefferson and argues Jefferson's actions support an IIED claim. See *id.* at PageID.95-96.

II. The Motions and the Joinder The Moving Parties all argue they are entitled to summary judgment as to Char's claims against them because Char failed to exhaust his administrative remedies. [Defs.' Motion at 2; Jefferson's Motion at 2; Joinder, Mem. in Supp. at 1.] In light of the limited issue presented in Jefferson's Motion, ⁸ Char alleges Mock is a corrections officer and chief of security at HCF. [First Amended Complaint at PageID.67, § A.10.] Defendants' Motion (collectively "Motions"), and the Joinder, whether the threat and assault described in the factual allegations of the First Amended Complaint actually occurred is not before this Court at this time.

A. The Inmate Grievance Program The State of Hawai'i Department of Correction and Rehabilitation ("DCR"), formerly known as the Department of Public Safety ("DPS"), has an Inmate Grievance Program ("IGP") to allow inmates under its jurisdiction "to seek a formal and constructive process to address inmate complaints relating to any aspect of his/her conditions of confinement through a credible, confidential, and independent administrative remedy process." See Jefferson's Concise Statement of Facts in Support of His Motion for Summary Judgment, filed 9/10/25 (dkt. no. 120) ("Jefferson's CSOF"), Declaration of Charles J. Laux ("Laux Jefferson Decl."),⁹ Exh. A (DPS Department Administration Policy and Procedures Policy No. COR.12.03, effective 4/7/20 ("COR.12.03")) at § 1.0.10 Inmates are required to use the IGP to 9 Charles J. Laux ("Laux") is a DCR Inmate Grievance Specialist ("IGS"). [Laux Jefferson Decl. at ¶ 1.] ¹⁰ The Laux Jefferson Declaration and Exhibits A through J attached thereto appear to be identical to the declaration and exhibits that Irvine and Duarte submitted. Compare Laux Jefferson Decl. & Exhs. A-J, with Irvine and Duarte's Concise Statement of Facts in Support of Their Motion for Summary Judgment, filed 9/10/25 (dkt. no. 123) ("Irvine and Duarte's (. . . continued) raise any complaints or concerns, and the IGP is "the means for receiving, processing, and resolving inmate complaints, including but not limited to policies, procedures, practices, regulations, conditions and staff conduct." [*Id.* at §§ 4.2, 4.3.] At the first

step of the IGP, an inmate submits a grievance within fourteen days of the event that is the basis for the grievance (“step-1 grievance”). See *id.* at § 5.4.a. The inmate must use the PSD 8215, Administrative Remedy Form. See *id.* at § 5.4.c. If the grievance is accepted, it is deemed filed when it is entered in the Corrections Information Management System. See *id.* at § 5.6.a. From that point, the section supervisor must provide a written response within twenty working days.¹¹ See *id.* at §§ 5.6.a, 5.6.d-e. The response period may be extended once for an additional twenty working days. See *id.* at § 5.6.c. The lack of a response within the required period CSOF”), Declaration of Charles J. Laux & Exhs. A-J. Defendants also submit a declaration by Laux. See Defs.’ Concise Statement of Facts in Support of Their Motion for Summary Judgment, filed 9/10/25 (dkt. no. 117) (“Defs.’ CSOF”), Declaration of Charles Laux (“Laux Defs. Decl.”). The Laux Defendants Declaration and the Laux Jefferson Declaration are similar, but not identical. The instant Order will cite to the Laux Jefferson Declaration, unless distinct information in the Laux Defendants Declaration is relevant. ¹¹ There are different requirements for emergency grievances. See, e.g., Laux Jefferson Decl., Exh. A (COR.12.03) at §§ 5.4.c.3, 5.6.b. Those provisions are not at issue in this case. constitutes a denial of the grievance at that level. See *id.* at § 5.6.d. The second step of the IGP is an appeal of the denial of the step-1 grievance to the warden, branch administrator, or core program administrator (“step-2 grievance”). The inmate must file the step-2 grievance within five days after receiving the denial of the step-1 grievance. The warden, branch administrator, or core program administrator must respond to the step-2 grievance within twenty working days. See *id.* at § 5.6.e. Because Sections 5.6.c and 5.6.d refer to grievances generally, see *id.* at pg. 9, it appears that they also apply at the step-2 grievance stage. The third step of the IGP is an appeal of the denial of the step-2 grievance to the division administrator (“step-3 grievance”). The inmate must file the step-3 grievance within five days after receiving the denial of the step-2 grievance. The division administrator must respond to the step-3 grievance within twenty working days. See *id.* at § 5.6.f. Section 5.6.c applies at the step-3 grievance stage. See *id.* at § 5.6.g. The division administrator’s decision on a step-3 grievance is “the final and ultimate recourse in the Administrative Remedy Process.” See *id.* The division administrator’s decision or lack of response during the required period “begins the time and clock for the inmate to seek review of the ‘final and ultimate recourse in the Administrative Remedy Process’ through the legal system.” See *id.* at §§ 5.6.g-h. Inmates must use the IGP “in good faith and in an honest, respectful and straightforward (to the point) manner,” and they are cautioned that “[a]ny substantiated abuse of this program may result in disciplinary action and/or process restrictions.” [*Id.* at § 5.1.e.] An inmate is only permitted to submit one issue on each grievance form, but “a reasonable number of closely related issues” may be submitted on one form. See *id.* at § 5.4.c.1. B. Char’s Grievance Restriction In 2019, Char was placed on a grievance restriction that limited him to submitting one grievance a week for the period from November 4, 2019 to November 4, 2021. See Laux Jefferson Decl., Exh. B at PageID.1094 (memorandum dated 11/1/19 to Char from Laux and Leono Ogi, another IGS (“Ogi” and “11/1/19 Restriction

Memo”)). The 11/1/19 Restriction Memo required Char to comply with the following procedure: You will submit an interunit (Inmate Request) to the Grievance Office, requesting ONE (1) grievance, which will include date of incident and subject matter, and any staff involvement. You will receive your grievance and a mailroom receipt which you will sign and return that you have received the grievance. You will only sign and date on Notice of Return (NORD) and/or Receipt of Acknowledge (ROA). Any extraneous writing will result in further restriction and/or disciplinary action. You may not utilize Grievances from any other source, if you do, you risk further restriction. You may not store unused Grievances. You are required to submit the Grievances during the issuance week. [Id.] If Char submitted a grievance in accordance with this procedure, it was responded to pursuant to the IGP process. See Laux Jefferson Decl. at ¶ 11. However, if Char submitted a grievance that did not comply with this procedure, it was considered an unauthorized grievance, and it was administratively closed. In other words, it was not processed as a step-1 grievance. An administratively closed, unauthorized grievance did not count toward Char’s one-grievance-per-week limit. See id. at ¶¶ 13-14. Char was cautioned that his failure to comply with the procedure that was outlined in the 11/1/19 Restriction Memo would “result in further restriction to the Grievance Process” and the “Administrative Closure [of the noncompliant grievance] without further notification to [him].” [Laux Jefferson Decl., Exh. B at PageID.1094 (11/1/19 Restriction Memo).] In 2020, Char’s grievance restriction was modified to allow him to appeal. See id. at PageID.1095 (memorandum dated 6/25/20 to Char from Laux and Ogi (“6/25/20 Modification Memo”)). Char signed a form acknowledging that he received the 6/25/20 Modification Memo. See id. at PageID.1096 (Inmate Acknowledgment of Receipt of Grievance Response form signed by Char on 6/25/20). In 2021, the restriction period was extended to November 4, 2023. See id. at PageID.1093 (memorandum dated 2/8/21 to Char from Laux and Ogi (“2/8/21 Extension Memo”)). Char did not sign the acknowledgment form for the 2/8/21 Extension Memo. See id. at PageID.1097 (unexecuted Inmate Acknowledgment of Receipt of Grievance Response form). In connection with the matters currently before this Court, Char disagrees regarding the date that the grievance restriction was originally imposed, and he also argues that the restriction was imposed for retaliatory purposes, but he does not contest the fact that he was subject to a grievance restriction at the time of the alleged threat on August 21, 2021 and the alleged assault on November 25, 2021. See Char’s Decl. at ¶ 15 (stating that Char’s first grievance restriction was from 11/13/18 to 11/3/19 and that Laux retaliated against him by imposing a second grievance restriction). C. Alleged Failure to Exhaust Laux states that he searched Char’s grievance records and did not find a grievance or an Inmate Request form related to the alleged assault by Jefferson on November 25, 2021. See Laux Jefferson Decl. at ¶¶ 17, 19. Based on the timing of the incident, the week of November 28, 2021 was the earliest that Char could have made a request for a blank grievance form to submit a grievance about the incident. Char did not submit a grievance about the alleged incident during the week of November 28, 2021 or the week of December 5, 2021. See id. at ¶¶ 20-22. During those two weeks, Char only

submitted one grievance, Grievance No. 007514, dated November 27, 2021 and received on November 30, 2021. See *id.* at ¶ 24; Laux Jefferson Decl., Exh. C (Grievance No. 007514). Grievance No. 007514 states that, on November 27, 2021, a HCF captain took Char's cane. Grievance No. 007514 does not mention Jefferson, nor does it mention the alleged November 25, 2021 assault. See Laux Jefferson Decl., Exh. C. Grievance No. 007514 was deemed an unauthorized grievance and was not processed. See Laux Jefferson Decl. at ¶ 24. Because Grievance No. 007514 was not processed, Char still could have submitted another grievance that week under the terms of his grievance restriction. See *id.* In a grievance dated January 7, 2022, Char mentioned being assaulted by Jefferson, although the grievance addressed another matter. See *id.* at ¶ 25; *id.*, Exh. D (redacted version of Grievance No. 007667, dated 1/7/22 and received on 1/19/22). Grievance No. 007667 was deemed an unauthorized grievance. Further, even if Grievance No. 007667 complied with the terms of Char's grievance restriction, it could not be a timely grievance of the November 25, 2021 incident because it was dated forty- three days after the incident, and received fifty-five days after the incident. See Laux Jefferson Decl. at ¶ 25. Defendants submit Char's Grievance No. 007563, which Char dated October 29, 2021 and which was received on November 2, 2021. [Laux Defs. Decl., Exh. I.] Grievance No. 007563 includes the allegation that, during the first shift from August 21, 2021 to August 22, 2021, Jefferson threatened Char that he would beat up Char soon. [*Id.*] Grievance No. 007563 was deemed an unauthorized grievance because Char did not follow the procedures applicable under his grievance restriction. See Laux Defs. Decl. at ¶ 24. Laux points out that, at other times, Char has complied with the terms of his grievance restriction. See Laux Jefferson Decl. at ¶¶ 27-32; see also, e.g., *id.*, Exh. E (documents associated with Grievance No. 000308, which Char dated 6/3/20), Exh. H (documents associated with Grievance No. 000311, which Char dated 6/23/20), Exh. I (documents associated with Grievance No. 000314, dated 7/8/20, which was a step-2 grievance appealing the denial of step-1 Grievance No. 000307),¹² Exh. J (documents associated with Grievance No. 000323, which Char dated 8/2/20, a step-3 grievance ¹² The documents associated with Grievance No. 000307, which Char dated May 26, 2020, are attached to the Laux Defendants Declaration as Exhibit E. [Dkt. no. 117-7.] appealing the denial of step-1 Grievance No. 000310 and the denial of step-2 Grievance No. 000318); Laux Defs. Decl., Exh. C (documents associated with Grievance No. 000305, which Char dated 5/14/20). Laux states that, in his search of Char's records, he did not see documentation that Char exhausted the three-step IGP process regarding the alleged November 25, 2021 assault by Jefferson. See Laux Jefferson Decl. at ¶ 23; see also *id.* at ¶ 33. III. Char's Response to the Motions and Joinder A. Scope of the Record on Summary Judgment Local Rule 56.1(e) states, in relevant part: Any party who opposes the motion [for summary judgment] shall file and serve with the opposing documents a separate document containing a single concise statement that admits or disputes each fact set forth in the movant's concise statement. The opposing party shall, if appropriate, admit in part and deny in part a fact asserted by the movant, stating specifically what is admitted and what is denied. The opposing party shall also assert, in a

separate section of its concise statement, any additional facts the party believes the court should consider, set forth in the same manner as in the movant's concise statement, as described in LR56.1(b). . . . Further, "[f]or purposes of a motion for summary judgment, material facts set forth in the movant's concise statement will be deemed admitted unless controverted by a separate concise statement of the opposing party." Local Rule LR56.1(g). The Moving Parties all filed the required notice and warning, which addressed, among other things, the requirement to file a responsive concise statement. See Defs.' Notice and Warning to Pro Se Prisoner, filed 9/10/25 (dkt. no. 118), at 3; Jefferson's Notice and Warning to Pro Se Prisoner Pursuant to LR99.56.2, filed 9/10/25 (dkt. no. 121), at 3; Irvine and Duarte's Notice and Warning to Pro Se Prisoner, filed 9/10/25 (dkt. no. 124), at 3; see also Local Rule LR99.56.2 (requiring the filing and service of a "Notice and Warning to Pro Se Prisoner"). This Court also pointed out that Char was required to file a concise statement of fact responding to each of the three concise statements. See Minute Order – EO: Order Setting the Briefing Schedule for the Motions for Summary Judgment and the Substantive Joinder, filed 9/12/25 (dkt. no. 126), at PageID.1301. Char did not file a response to either Jefferson's CSOF, Defendants' CSOF, or Irvine and Duarte's CSOF. Although ordinarily, the moving party's uncontested statements of material fact would be deemed admitted under Local Rule 56.1(g), the Ninth Circuit Court of Appeals has explained that "an ordinary pro se litigant, like other litigants, must comply strictly with the summary judgment rules. Pro se inmates are, however, expressly exempted from this rule." [Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010)] (citation omitted). "We have, therefore, held consistently that courts should construe liberally motion papers and pleadings filed by pro se inmates and should avoid applying summary judgment rules strictly." Id. This rule exempts pro se inmates from strict compliance with the summary judgment rules, but it does not exempt them from all compliance. See Blaisdell v. Frappiea, 729 F.3d 1237, 1241 (9th Cir. 2013) ("This rule relieves pro se litigants from the strict application of procedural rules and demands that a court not hold missing or inaccurate legal terminology or muddled draftsmanship against them." (emphasis added)); Marrero v. Ives, 682 F.3d 1190, 1192 (9th Cir. 2012) (even if the petitioner's filings were construed liberally, he still failed to identify evidence supporting his claim). Soto v. Sweetman, 882 F.3d 865, 872 (9th Cir. 2018) (emphases in Soto). This Court also notes that Char attempted to address Jefferson's CSOF, Defendants' CSOF, and Irvine and Duarte's CSOF in his declaration. See, e.g., Char's Decl. at ¶ 3 (arguing summary judgment is not appropriate because there are genuine issues of material fact, which he argues he has identified pursuant to Local Rule 56.1(e)); id. at ¶¶ 6-7 (citing Char's Exhibits A and B as evidence contradicting a statement in ¶ 3 of the Laux Jefferson Declaration). In light of the above, in ruling on the Motions and the Joinder, this Court will consider the statements of material fact in the First Amended Complaint or in Char's Declaration that are based on Char's personal knowledge.¹³ See Jones v. 13 Char signed the First Amended Complaint and his declaration under penalty of perjury. See First Amended Complaint at PageID.104; Char's Decl. at pg. 6. Blanas, 393 F.3d 918, 923 (9th Cir. 2004) ("we must consider as evidence in his

opposition to summary judgment all of [the pro se prisoner plaintiff's] contentions offered in motions and pleadings, where such contentions are based on personal knowledge and set forth facts that would be admissible in evidence, and where [the plaintiff] attested under penalty of perjury that the contents of the motions or pleadings are true and correct" (citations omitted)). Therefore, to the extent that statements, based on personal knowledge, in Char's Declaration address statements of fact in Jefferson's CSOF, Defendants' CSOF, or Irvine and Duarte's CSOF, this Court will consider those statements of fact to be disputed. If there is no statement based on personal knowledge addressing a statement of fact in Jefferson's CSOF, Defendants' CSOF, or Irvine and Duarte's CSOF, that statement of fact will be deemed admitted. This Court notes that, if Jefferson's CSOF, Defendants' CSOF, or Irvine and Duarte's CSOF contains either 1) a statement of fact that is not necessary to the determination of the issues currently before this Court, or 2) a statement of law presented as a statement of fact, in that instance Char's failure to respond to the statement would not be deemed an admission of the statement.

B. Char's Statements and Exhibits

Char argues the Motions and the Joinder should be denied because there are genuine issues of material fact regarding whether his unauthorized grievances constituted exhaustion of his administrative remedies. See Char's Decl. at ¶¶ 2-3. In the alternative, Char argues his failure to exhaust is not a bar to his claims because there was no administrative remedy available to him, see id. at ¶ 49, because, for example, he made almost daily requests for a grievance form, but the request was denied over fifteen hundred times, see id. at ¶ 50. Char submits a list of 291 grievances that he attempted to file and that Char alleges Laux refused to process. See id. at ¶ 8; id., Exhs. A-B. According to this list, Char submitted: -two grievances within fourteen days after alleged threat by Jefferson on August 21, 2021 - Grievance No. 001642, dated August 27, 2021; and Grievance No. 001648, dated September 4, 2021; see id., Exh. B; and -four grievances within fourteen days after alleged assault by Jefferson on November 25, 2021 - Grievance No. 007514, dated November 27, 2021; Grievance No. 002024, dated December 3, 2021; and Grievance Nos. 002027 and 002028, both dated December 5, 2021, see id., Exh. B. Of these six grievances, only Grievance No. 007514 was submitted with the Motions and the Joinder. See Laux Jefferson Decl., Exh. C (Grievance No. 007514); see also Laux Jefferson Decl. at ¶ 24 (stating Grievance No. 007514 violated the terms of Char's grievance restriction and was therefore an unauthorized grievance).

IV. The Moving Parties' Supplement

This Court ordered the Moving Parties to supplement the summary judgment record by filing: the other five grievances during the relevant periods; any other grievance that Char submitted either during the fourteen-day period after August 21, 2021 or during the fourteen-day period after November 25, 2021; a declaration or affidavit authenticating the exhibits. See Minute Order – EO: Order Directing the Defendants to Supplement the Record in Support of the Motions for Summary Judgment and the Substantive Joinder, filed 11/19/25 (dkt. no. 133), at PageID.1351. The Moving Parties' Supplement includes Grievance Nos. 001642, 001648, and 002028, along with the DPS documentation regarding the disposition of each. See Supplement, Supplemental Declaration of Charles Laux ("Laux Suppl.

Decl.”), Exh. A at PageID.1363 (Department of Public Safety Grievance Detail, dated 6/17/24, regarding Grievance No. 001642); id. at PageID.1364 (Grievance No. 001642, dated 8/27/21); Laux Suppl. Decl., Exh. B at PageID.1365 (Department of Public Safety Grievance Detail, dated 6/17/24, regarding Grievance No. 001648); id. at PageID.1366 (Grievance No. 001648, dated 9/4/21); Laux Suppl. Decl., Exh. D at PageID.1369 (Department of Public Safety Grievance Detail, dated 8/19/24, regarding Grievance No. 002028); id. at PageID.1370 (Grievance No. 002028, dated 12/7/21). Grievance No. 001642, Grievance No. 001648, and Grievance No. 002028 all violated the terms of Char’s grievance restriction and thus were unauthorized grievances. See Laux Suppl. Decl. at ¶¶ 4-5, 8. Laux states that he searched for Grievance No. 002024 and Grievance No. 002027, and determined that the HCF Grievance Office did not issue those grievance numbers to Char. Further, Laux did not locate any grievance, submitted by any inmate, bearing one of those numbers. See id. at ¶ 9. According to Laux, Grievance No. 007514 and Grievance No. 002028 are the only grievances that Char submitted during the fourteen days after the November 25, 2021 alleged assault. See id. at ¶ 6.

DISCUSSION

The sole issue presented in the Motions and the Joinder is whether Char exhausted his administrative remedies before filing his claims in this case. The [Prison Litigation Reform Act (“PLRA”)] requires prisoners to exhaust “such administrative remedies as are available” before filing suit in federal court. 42 U.S.C. § 1997e(a). Exhaustion must be proper — in “compliance with deadlines and other critical procedural rules, with no exceptions for special circumstances.” *Ramirez v. Collier*, — U.S. —, 142 S. Ct. 1264, 1275, 212 L. Ed. 2d 262 (2022) (internal quotation marks and citations omitted). As we have “previously emphasized,” however, the PLRA’s exhaustion requirement extends only to available administrative remedies, and “a failure to exhaust a remedy that is effectively unavailable does not bar a claim from being heard in federal court.” *McBride v. Lopez*, 807 F.3d 982, 986 (9th Cir. 2015). . . . “[T]he ordinary meaning of the word ‘available’ is ‘capable of use for the accomplishment of a purpose,’ and that which ‘is accessible or may be obtained.’” *Ross v. Blake*, 578 U.S. 632, 642, 136 S. Ct. 1850, 195 L. Ed. 2d 117 (2016) (quoting *Booth v. Churner*, 532 U.S. 731, 737–38, 121 S. Ct. 1819, 149 L. Ed. 2d 958 (2001)). The assessment of availability is a “pragmatic analysis,” *Munoz v. United States*, 28 F.4th 973, 975 (9th Cir. 2022), in which the court “must apply [the availability standard] to the real-world workings of prison grievance systems,” *Ross*, 578 U.S. at 643, 136 S. Ct. 1850. The [United States] Supreme Court has identified three examples of circumstances in which administrative remedies are effectively unavailable: (1) when the grievance system “operates as a simple dead end — with officers unable or consistently unwilling to provide any relief to aggrieved inmates”; (2) when the system is “so opaque that it becomes, practically speaking, incapable of use”; and (3) “when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.” Id. at 643–44, 136 S. Ct. 1850. We also have found

administrative remedies effectively unavailable in several circumstances. See *Andres v. Marshall*, 867 F.3d 1076, 1078 (9th Cir. 2017) (describing Ross examples as “non- exhaustive”). In *Fordley v. Lizarraga*, we held that a prison’s failure to respond to an emergency grievance over the course of several months, and in contravention of its own deadlines, rendered administrative remedies unavailable. 18 F.4th 344, 358 (9th Cir. 2021). In *Sapp v. Kimbrell*, we similarly held that a prison’s improper screening of a grievance would render administrative remedies effectively unavailable. 623 F.3d 813, 823 (9th Cir. 2010). In *Nunez v. Duncan*, we held that an inmate was excused from the exhaustion requirement where the inmate was unable to access a policy necessary to bring a timely administrative appeal. 591 F.3d at 1226. We reached the same conclusion in cases where inmates were unable to access information about the administrative grievance process, *Albino [v. Baca]*, 747 F.3d [1162,] 1177 [(9th Cir. 2014) (en banc)], or the form necessary to submit a grievance, *Marella v. Terhune*, 568 F.3d 1024, 1026 (9th Cir. 2009). *Eaton v. Blewett*, 50 F.4th 1240, 1244–45 (9th Cir. 2022) (some alterations in *Eaton*). A defendant asserting the affirmative defense of failure to exhaust has the burden to show that there was an administrative remedy available to the plaintiff that the plaintiff did not exhaust. *Id.* at 1245. If the defendant carries this burden, the burden shifts to the plaintiff “to show that something in his particular case made the generally available administrative remedies effectively unavailable to him.” *Fordley v. Lizarraga*, 18 F.4th 344, 351 (9th Cir. 2021) (citation omitted). The Moving Parties have carried their burden to show that there was an administrative remedy process that was generally available to Char, in spite of his grievance restriction, at the time of the events that are the bases of his claims in this case. See *supra* Background Sections II.A-B; see also *Eaton*, 50 F.4th at 1245. They have also carried their burden to show that Char failed to complete the three-step IGP process for either the August 21, 2021 alleged threat by Jefferson or the November 25, 2021 alleged assault by Jefferson. See *supra* Background Sections II.C, IV. The burden therefore shifts to Char to show that there is a genuine issue of fact as to whether the generally available administrative remedy process was effectively unavailable to him. See *Fordley*, 18 F.4th 344, 351; *Fed. R. Civ. P.* 56(a) (“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”). I. Claims Based on Jefferson’s Alleged Threat Count II, Char’s threat-to-safety claim, is based on the alleged failure to take necessary action in response to Jefferson’s threat against Char. See First Amended Complaint at PageID.77-80, PageID.82-83. According to Char, the alleged threat was made on August 21, 2021. [*Id.* at PageID.73, § C.3.] Under the IGP, Char was required to submit a grievance about the threat within fourteen days after it occurred. See *Laux Jefferson Decl.*, Exh. A (COR.12.03) at § 5.4.a. Under the terms of Char’s grievance restriction, in order to submit a step-1 grievance, Char first had to submit an Inmate Request form for a grievance form. See *id.*, Exh. B at PageID.1094 (11/1/19 Restriction Memo). Char identified two grievances that he submitted within fourteen days after the alleged threat by Jefferson - Grievance No. 001642, dated August 27, 2021; and Grievance No. 001648, dated September 4, 2021. See Char’s Decl.,

Exh. B. Grievance No. 001642 alleges that, on August 13, 2021, when “Sgt. Niheu” (“Niheu”) gave Char his one-per-week grievance form, Niheu denied his request for three additional Inmate Request forms and Niheu refused to provide the supplies that Char requested. See Laux Suppl. Decl., Exh. A at PageID.1364 (Grievance No. 001642). Grievance No. 001642 was not processed on the ground that it violated the terms of Char’s grievance restriction because it was submitted “without requesting via the Inmate Grievance Office as is required by his restriction.” See id. at PageID.1363 (DPS’s Grievance No. 001642 detail) (emphasis omitted). In Grievance No. 001648, Char alleges that, on September 3, 2021, Niheu retaliated against him for filing Grievance No. 001642 by “refus[ing] to give [Char his] once a week hindered grievance.” See Laux Suppl. Decl., Exh. B at PageID.1366 (Grievance No. 001648) (emphasis omitted). Grievance No. 001648 was not processed for the same reasons that Grievance No. 001642 was not processed. See id. at PageID.1365 (DPS’s Grievance No. 001648 detail). Char claims there was a conspiracy, led by White and Laux, to prevent him from exhausting the IGP process by withholding grievance forms from him, and White instructed sergeants assigned to the Medium SHU not to give Char grievance forms.¹⁴ See Char’s Decl. at ¶ 23. Presumably, Char’s position is that this conspiracy included Niheu’s refusal to provide Char with grievance forms that he described in Grievance No. 001642 and Grievance No. 001648. Char states that, in the last seven years or more, inmates in the Medium SHU submitted an Inmate Request form to the third-shift sergeant/ACO, who would “usually . . . but not always” give the inmate a grievance form. See Char’s Decl. at ¶¶ 10-11. Char cites examples from 2020 when he was given from three to ten grievance forms in a single day by sergeant/corrections officer in the Medium SHU. See id. at ¶¶ 25-26. Char argues a sergeant/corrections officer in the Medium SHU has the authority under COR.12.03 to distribute grievance forms. See id. at ¶ 26; see also Laux Jefferson Decl., 14 Char does not identify any evidence supporting his conspiracy allegations, and he does not have personal knowledge of the alleged conspiracy. Therefore, this Court will not consider Char’s conspiracy allegation in determining whether there is a triable issue of fact that precludes summary judgment. See Jones, 393 F.3d at 923. Char’s conspiracy allegation is only relevant insofar as it is part of the theory behind Char’s threat-to-safety claim. Exh. A (COR.12.03) at § 5.4.c (“The inmate shall obtain PSD 8215, Administrative Remedy Form from staff.”).¹⁵ Thus, Char contends that the thirty-nine grievances he described in paragraph 25 were authorized grievances, see Char’s Decl. at ¶ 26, and he would have been able to exhaust the grievance(s) he intended to submit on the forms that he requested from Niheu. In considering the Motions and the Joinder, this Court cannot make a determination regarding the credibility of Char’s statements about the distribution of grievance forms in the Medium SHU. See *Estate of Lopez ex rel. Lopez v. Gelhaus*, 871 F.3d 998, 1009 n.10 (9th Cir. 2017) (“At the summary judgment stage, ‘[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.’” (alteration in *Lopez*) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986))). However, even if Char is correct that the standard

practice during the relevant period was for a sergeant/corrections officer to distribute grievance forms to inmates in the Medium SHU, the terms of Char's grievance restriction required him to submit his 15 This Court considers the version of COR.12.03 that was in effect at the time of the alleged threat on August 21, 2021 and the alleged assault on November 25, 2021. This Court rejects Char's argument that the version of COR.12.03 that was in effect at the time that his grievance restriction was imposed should apply. See Char's Decl. at ¶ 42. inmate request to the Grievance Office to obtain a grievance form. See Laux Jefferson Decl., Exh. B at PageID.1094 (11/1/19 Restriction Memo). Thus, even if Char could present admissible evidence at trial to prove his allegation that Niheu withheld grievance forms from him during the two-week period after the August 21, 2021 threat by Jefferson, the withholding of the forms did not "thwart [Char] from taking advantage of [the] grievance process." See Ross, 578 U.S. at 644. Even if Char had obtained both of the required forms from Niheu in the Medium SHU, and even if this Court assumes that Char would have used the grievance form he obtained from Niheu to submit a grievance reporting the August 21, 2021 threat by Jefferson, the grievance Char submitted on the form that he obtained from Niheu would not have been processed because it would have violated the terms of his grievance restriction. See Laux Jefferson Decl., Exh. B at PageID.1094 (11/1/19 Restriction Memo, requiring Char to submit an inmate request to the Grievance Office to request a grievance form). Char has not identified any evidence in the record suggesting that he was prevented from obtaining a grievance form from the Grievance Office during the two-week period after August 21, 2021. Further, Char has not identified any other evidence in the record that raises a genuine dispute of fact as to the issue of whether there were other circumstances that prevented him from exhausting the IGP process regarding any claim arising from the August 21, 2021 alleged threat by Jefferson. Even viewing the record in the light most favorable to Char,¹⁶ he has failed to identify a genuine dispute of fact as to the issue of whether the generally available administrative remedy process was effectively unavailable to him at the time of the alleged threat by Jefferson on August 21, 2021. This Court therefore concludes that Harrington, Antonio, White, and Mock are entitled to judgment as a matter of law as to Char's threat- to-safety claim because Char failed to exhaust his administrative remedies before filing the instant case. Defendants' Motion is granted as to Count II. Similarly, to the extent that portions of Char's claims against Jefferson in Counts I and IV are based upon Jefferson's alleged threat on August 21, 2021, there are no genuine issues of material fact, and Jefferson is entitled to judgment as a matter of law because Char failed to exhaust his administrative remedies. Jefferson's Motion is therefore granted as to the portions of Counts I and IV alleging claims against Jefferson, in his individual capacity, based on his alleged threat on August 21, 2021. Defendants' Motion is granted as to 16 In considering the Motions and the Joinder, this Court must view the record in the light most favorable to Char as the nonmoving party. See *Harris v. Cnty. of Orange*, 17 F.4th 849, 855 (9th Cir. 2021). the portions of Counts I and IV alleging claims against Jefferson, in his official capacity, based on his alleged threat on August 21, 2021. II. Claims Based on the Alleged Assault

The alleged assault by Jefferson, which Irvine allegedly participated in and encouraged, and in which both Irvine and Duarte failed to intervene, occurred on November 25, 2021. See First Amended Complaint at PageID.73, § C.3. In order to comply with COR.12.03 and the terms of his grievance restriction, Char had to request a grievance form and submit his grievance about the alleged assault within fourteen days after the assault occurred. See Laux Jefferson Decl., Exh. A (COR.12.03); *id.*, Exh. B at PageID.1094 (11/1/19 Restriction Memo). Char identified four grievances that he submitted within fourteen days after the alleged assault by Jefferson - Grievance No. 007514, dated November 27, 2021; Grievance No. 002024, dated December 3, 2021; and Grievance Nos. 002027 and 002028, both dated December 5, 2021. See Char's Decl., Exh. B. However, Char neither submitted a copy of these grievances nor stated what each of these grievances addressed. The Moving Parties have provided Laux's testimony that: neither Char nor any other HCF inmate submitted a grievance bearing the number 002024 or 002027; see Laux Suppl. Decl. at ¶ 9; and Grievance No. 007514 and Grievance No. 002028 are the only grievances that Char submitted during the fourteen days after the November 25, 2021 alleged assault, see *id.* at ¶ 6. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). Even viewing the record in the light most favorable to him, Char has failed to identify any admissible evidence that rebuts Laux's testimony that Grievance No. 007514 and Grievance No. 002028 are the only grievances that Char submitted within fourteen days after November 25, 2021. Char's conclusory list of grievance numbers and associated dates is insufficient to raise a genuine dispute of fact as to the issue of whether Char submitted more than two grievances in the fourteen-day period after November 25, 2021. Grievance No. 007514 alleges that, on November 27, 2021, Captain Eddie Vauvasa, identified in this case as Edward Vaovasa ("Vaovasa"), joined the conspiracy against Char by threatening to use force against Char unless Char gave Vaovasa his new cane.¹⁷ See Laux Jefferson Decl., Exh. C (Grievance No. 007514). Grievance No. 007514 was not processed on the ground that it violated the terms of Char's grievance restriction because it was submitted "without requesting via the Inmate Grievance Office as is required by his restriction." See Laux Suppl. Decl., Exh. C at PageID.1367 (DPS's Grievance No. 007514 detail) (emphasis omitted). In Grievance No. 002028, Char alleges that, on December 7, 2021, a nurse, Mandy Feldt, R.N. ("Feldt") refused to have Char transported to a medical appointment that was made for him while he was at a hospital emergency room.¹⁸ See Laux Suppl. Decl., Exh. D at PageID.1370 (Grievance No. 002028). Grievance No. 002028 was not processed for the same reasons that Grievance No. 007514 was not processed. See *id.* at PageID.1369 (DPS's Grievance No. 002028 detail). Neither Grievance No. 007514 nor Grievance No. 002028 mentions the alleged assault by Jefferson on November 25, 2021. ¹⁷ Vaovasa was named as a defendant in the First Amended Complaint. See First Amended Complaint at PageID.68, § A.13. Two of Char's claims against Vaovasa were dismissed with leave to amend, but Char chose not to file a second

amended complaint. See 2/28/24 Order at 19, 25; 3/25/24 Letter. 18 Feldt was named as a defendant in the First Amended Complaint. See First Amended Complaint at PageID.68, § A.12. Two of Char's claims against Feldt were dismissed with leave to amend, but Char chose not to file a second amended complaint. See 2/28/24 Order at 18, 23; 3/25/24 Letter. Thus, even construing the record in the light most favorable to Char, they are not attempts to exhaust his administrative remedies regarding the alleged assault by Jefferson on November 25, 2021. Further, Char has not identified any evidence in the record suggesting that he was prevented from obtaining a grievance form from the Grievance Office during the two-week period after November 25, 2021. Char has failed to present any evidence or to identify any evidence presented by the Moving Parties that raises a genuine dispute of fact as to whether there were other circumstances that prevented him from exhausting the IGP process regarding any claim arising from the November 25, 2021 alleged assault by Jefferson. Even viewing the record in the light most favorable to Char, he has failed to identify a genuine dispute of fact as to the issue of whether the generally available administrative remedy process was effectively unavailable to him at the time of the alleged assault by Jefferson on November 25, 2021. This Court therefore concludes that Jefferson, Irvine, and Duarte are entitled to judgment as a matter of law as to Char's excessive force claim, and Jefferson is entitled to judgment as a matter of law as to Char's IIED claim, because Char failed to exhaust his administrative remedies before filing the instant case. Jefferson's Motion is granted as to the portions of Counts I and IV alleging claims against Jefferson, in his individual capacity, based on the November 25, 2021 alleged assault. In addition, Irvine and Duarte's Joinder is granted as to the portions of Count I alleging claims against them, in their individual capacities, related to the November 25, 2021 alleged assault. Similarly, Defendants' Motion is granted as to: the portions of Count I alleging claims against Jefferson, Irvine, and Duarte, in their official capacities, based on the November 25, 2021 alleged assault; and the portion of Count IV alleging a claim against Jefferson, in his official capacity, based on the alleged assault.

CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment Regarding Failure to Exhaust Administrative Remedies, Jefferson's Motion for Summary Judgment for Failure to Exhaust Administrative Remedies, and Irvine and Duarte's substantive joinder in Jefferson's Motion, all of which were filed September 10, 2025, are GRANTED. Summary judgment is granted in favor of the Moving Parties as to all of the remaining claims in Char's First Amended Complaint, filed February 8, 2024. There being no remaining claims in this case, the Clerk's Office is DIRECTED to enter final judgment and close the case on February 27, 2026. PageID.1434 IT IS SO ORDERED. DATED AT HONOLULU, HAWAII, January 29, 2026, <i>)</i> ETT, Se 8 os : /s/ Leslie E. Kobayashi Leslie E. Kobayashi PA Senior U.S. District Judge QZ 4 fey xa >

MARK ALAN CHAR VS. MICHAEL JEFFERSON, ET AL; CV 23-00474 LEK-KJM; ORDER GRANTING THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

AND JOINDER

36

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/united-states-district-court-for-the-district-of-hawaii-united-states-district-court-for-the-district/2026/mark-alan-char-v-michael-jefferson-casey-irvine-fia-duarte-58kaa8rk>