

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 09 2023
JEFFREY P. COLWELL
CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 22-cv-02334 (GPG)
(To be supplied by the court)

JOHN MIKALL PAUL SWIETLICKI, Plaintiff

v.

Jury Trial requested:
(please check one)
 X Yes No

SIOBHAN BURTLOW,

JAMES MOORE,

JOSHUA LESSAR,

BRIAN STEPHENS, Defendant(s).

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

John Mikall Paul Swietlicki, DOC# 65891, P.O. Box 999, Cañon City, CO 81215-0999

(Name, prisoner identification number, and complete mailing address)

n/a

(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☒ Convicted and sentenced state prisoner

☐ Convicted and sentenced federal prisoner

☐ Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: Siobhan Burtlow, Warden, Fremont Correctional Facility

(Name, job title, and complete mailing address)

P.O. Box 999, Cañon City, CO 81215-0999

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☒ Yes ☐ No (check one). Briefly explain:

Defendant Burtlow, as warden, is responsible for managing Fremont

Correctional Facility and supervising its officers.

Defendant 1 is being sued in his/her ☒ individual and/or ☐ official capacity.

Defendant 2: James Moore, Administrative Services Major, Fremont Correctional Facility
(Name, job title, and complete mailing address)

P.O. Box 999, Cañon City, CO 81215-0999

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? X Yes ___ No (*check one*). Briefly explain:

Major Moore is responsible for managing and supervising Fremont

Correctional Facility's officers, and including.

Defendant 2 is being sued in his/her X individual and/or ___ official capacity.

Defendant 3: Joshua Lessar, Lieutenant, mailroom, Fremont Correctional Facility
(Name, job title, and complete mailing address)

P.O. Box 999, Cañon City, CO 81215-0999

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? X Yes ___ No (*check one*). Briefly explain:

Lieutenant Lessar is responsible for the operation of Fremont Correctional

Facility's mailroom, and managing and supervising its officers.

Defendant 3 is being sued in his/her X individual and/or ___ official capacity.

Additional pages are attached.

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

X 42 U.S.C. § 1983 (state, county, and municipal defendants)

___ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)
(federal defendants)

X Other: (*please identify*) Further invoked pursuant to 28 U.S.C. §§ 1331, 1343

Please see Section I on p. 29 for preliminary statement.

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

CLAIM ONE: 1st Amend, denial of confidential legal communications (Stephens and Lessar)

Supporting facts:

1. Plaintiff hereby incorporates all the other paragraphs of this Complaint as if fully set forth herein.
2. The District of Colorado is an appropriate venue under 28 U.S.C. §§1331 and 1343(a)(3) because it is where the events giving rise to this claim occurred.
3. Plaintiff, John Mikall Paul Swietlicki, DOC #65891, is and was at all times mentioned herein a prisoner of the State of Colorado in the custody of the Colorado Department of Corrections, confined in Fremont Correctional Facility in Cañon City, Colorado.
4. At all times mentioned in this Complaint, each defendant was an individual residing in the State of Colorado and a citizen of the United States.
5. Each defendant to this claim is a person for the purposes of 42 U.S.C. §1983.
6. Mr. Swietlicki is a United States citizen, and as such is protected from government intrusion into correspondence with his retained legal counsel by the First Amendment of the United States Constitution.

Additional pages are attached.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? ____ Yes X No (*check one*).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): _____

Docket number and court: _____

Claims raised: _____

Disposition: (is the case still pending?
has it been dismissed?; was relief granted?) _____

Reasons for dismissal, if dismissed: _____

Result on appeal, if appealed: _____

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

X Yes ____ No (*check one*)

Did you exhaust administrative remedies?

X Yes ____ No (*check one*)

G. REQUEST FOR RELIEF

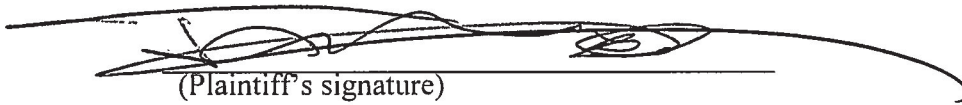
State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF."

1. A jury trial on all issues triable by jury.
2. A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States.
3. Punitive damages on all federal claims as allowed by law and in an amount to be determined at trial against all individual defendants.
4. Punitive damages on state law claims upon suitable amendment after completion of substantial discovery.
5. Any and all court/filing fees, attorneys' fees and costs.
6. Pre- and post-judgment interest as appropriate.
7. Any additional relief this court deems just, proper, or equitable.

H. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. *See* 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.



(Plaintiff's signature)

January 3rd, 2023
(Date)

(Revised February 2022)

B. DEFENDANT(S) INFORMATION (CON'T)

Defendant 4: Brian Stephens, Sergeant, mailroom, Fremont Correctional Facility
(Name, job title, and complete mailing address)

P.O. Box 999, Cañon City, CO 81215-0999

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? X Yes ___ No (*check one*). Briefly explain:

Sergeant Stephens' posted assignment is to Fremont Correctional

Facility's mailroom.

Defendant 4 is being sued in his/her X individual and/or ___ official capacity.

D. STATEMENT OF CLAIMS (CON'T.)

CLAIM ONE (CON'T.)

7. There is no qualified immunity for persons acting in their individual capacities.
8. As a result of the allegations contained in this Complaint, Defendants Lessar and Stephens are liable under 42 U.S.C. §1983 for violating Mr. Swietlicki's First Amendment rights by denying him the ability to communicate confidentially with his lawyer.
9. 42 U.S.C. §1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress...
10. On July 12th, 2021, the Fremont Correctional Facility (FCF) mailroom received "Legal Mail" addressed to Plaintiff from his retained counsel, Kevin Hastings, with a postmark of July 10th, 2021 from Seattle, WA. Approximately $\frac{1}{4}$ " below the return address was the following red stamp: LEGAL MAIL, OPEN IN THE PRESENCE OF INMATE, K. HASTINGS WSBA# 42316.
11. On July 12th, 2021, the same day, Plaintiff received a "Notice of Rejection/Disposition of Mail" (AR Form 300-38D), stating, "Your mail to/from: PFAU COCHRANE VERTETIS AMALA," with "LEGAL MAIL" circled, indicating that the mail did not conform to proper legal mail standards. This form also

indicated, "DISPOSITION: Declared contraband; offender must designate disposition within 10 days."

12. Defendants Stephens and Lessar signed off on this Notice, dated 7/12/21.
13. In the options section of the form, Plaintiff was not given a reasonable solution to receive his privileged and confidential "LEGAL MAIL." This created a paradox, and chilled Plaintiff's right to communicate with his attorney in private.
14. These actions chilled the Plaintiff's right to free speech, in the form of privileged communications with his retained legal counsel in a non-frivolous federal case. The case is identified as "Chapter 11, Case No. 20-10343 (LSS) (Jointly Administered) (U.S.B.C. Del.)," presided over by Judge Laurie Selber Silverstein in the U.S. District Court of Delaware. Plaintiff is represented by Kevin Hastings as a witness and victim under seal and outside the public record, furthermore kept confidential.
15. Because the maintenance of confidentiality in attorney-client communications is vital to the ability of an attorney to effectively counsel her client, interference with this confidentiality impedes the client's First Amendment right to obtain legal advice.
16. Plaintiff has been specifically advised by his counsel not to communicate via non-confidential channels. The Defendants' actions therefore violated Plaintiff's First Amendment rights by denying him those confidential communications.

17. This is a civil action authorized by 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. §§1331 and 1343(a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.
18. Punitive damages are only available in a §1983 action when "the defendant's conduct is shown to be motivated by evil motive or intent," or when it involves reckless or callous indifference to the protected rights of others.
19. The acts or omissions of Defendants Lessar and Stephens as described herein were taken in violation of Mr. Swietlicki's constitutional rights, and Plaintiff is entitled to punitive damages against these defendants in that their actions were taken maliciously, willfully, or with a wanton disregard of Mr. Swietlicki's constitutional rights.
20. Plaintiff is entitled to attorney's fees and costs pursuant to 42 U.S.C. §1988, prejudgment interest and costs as allowable by federal law.

CLAIM TWO: 4th Amend., unreasonable seizure of legal mail
Defendants Stephens and Lessar
Supporting facts:

21. Plaintiff hereby incorporates all the other paragraphs of this Complaint as if fully set forth herein.
22. The District of Colorado is an appropriate venue under 28 U.S.C. §§1331 and 1343(a)(3) because it is where the events giving rise to this claim occurred.

23. Plaintiff, John Mikall Paul Swietlicki, DOC #65891, is and was at all times mentioned herein a prisoner of the State of Colorado in the custody of the Colorado Department of Corrections, confined in Fremont Correctional Facility in Canon City, Colorado.

24. At all times mentioned in this Complaint, each defendant was an individual residing in the State of Colorado and a citizen of the United States.

25. Each defendant is a person for the purposes of 42 U.S.C. §1983.

26. Mr. Swietlicki is a United States citizen, and as such is protected from unreasonable searches and seizures by the Fourth Amendment of the United States Constitution.

27. There is no qualified immunity for persons acting in their individual capacities.

28. As a result of the allegations contained in this Complaint, Defendants Lessar and Stephens are liable under 42 U.S.C. §1983 for violating Mr. Swietlicki's Fourth Amendment rights due to the illegal search and seizure of his clearly and appropriately identified legal mail.

29. 42 U.S.C. §1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress...

30. As noted in item 10, on July 12th, 2021, the FCF mailroom illegally seized "Legal Mail" from PFAU COCHRANE VERTETIS AMALA, ATTORNEYS AT LAW, from his retained counsel, Kevin Hastings, WSBA #42316.
31. The FCF mailroom illegally seized another piece of "Legal Mail" sent by Kevin Hastings on June 22nd, 2022. Neither of these letters were ever provided to Plaintiff, nor were they returned to Mr. Hastings, making these actions not mere searches, but actual seizures of Plaintiff's confidential communications regarding the non-frivolous federal case mentioned in item 14.
32. Attorneys have an expectation of privacy in attorney-client consultation based on attorney-client privilege, and do not lose it just because the communications take place in a prison.
33. The destruction or withholding of inmates' legal papers burdens a constitutional right, and can only be justified if it is reasonably related to a legitimate penological interest. Plaintiff asserts Defendants have no such legitimate penological interest.
34. This is a civil action authorized by 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. §§1331 and 1343(a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

- 35./Punitive damages are only available in a §1983 action when "the defendant's conduct is shown to be motivated by evil motive or intent," or when it involves reckless or callous indifference to the protected rights of others.
36. The acts or omissions of Defendants Stephens and Lessar as described herein were taken in violation of Mr. Swietlicki's constitutional rights, and Plaintiff is entitled to punitive damages against these defendants in that their actions were taken maliciously, willfully, or with a reckless or wanton disregard of Mr. Swietlicki's constitutional rights.
37. Plaintiff is entitled to attorney's fees and costs pursuant to 42 U.S.C. §1988, prejudgment interest and costs as allowable by law.

CLAIM THREE: 1st Amend., conspiracy and retaliation for complaint
All named defendants
Supporting facts:

38. Plaintiff hereby incorporates all the other paragraphs of this Complaint as if fully set forth herein.
39. The District of Colorado is an appropriate venue under 28 U.S.C. §§1331 and 1343(a)(3) because it is where the events giving rise to this claim occurred.
40. Plaintiff, John Mikail Paul Swietlicki, DOC #65891, is and was at all times mentioned herein a prisoner of the State of Colorado in the custody of the Colorado Department of Corrections, confined in Fremont Correctional Facility in Canon City, Colorado.
41. At all times mentioned in this Complaint, each defendant was

an individual residing in the State of Colorado and a citizen of the United States.

42. Each defendant to this claim is a person for the purposes of 42 U.S.C. §1983.

43. Mr. Swietlicki is a United States citizen, and as such is protected from government retaliation for the exercise of free speech in the form of petitioning the government for redress of grievances by the First Amendment of the United States Constitution.

44. There is no qualified immunity for persons acting in their individual capacities.

45. As a result of the allegations contained in this Complaint, Defendants Burtlow, Moore, Lessar, and Stephens are liable under 42 U.S.C. §1983 for violating Mr. Swietlicki's First Amendment rights by retaliating against his exercise of constitutionally protected speech, specifically complaints and grievances.

46. 42 U.S.C. §1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress...

47. As noted in item 10, on July 12th, 2021, the FCF mailroom illegally seized "Legal Mail" from PFAU COCHRANE VERTETIS AMALA, ATTORNEYS AT LAW, from his retained counsel, Kevin

Hastings, WSBA #42316.

48. Defendant Stephens signed off on the "Notice of Rejection/Disposition of Mail," dated 7/12/2021.
49. Defendant Stephens consulted with Defendant Lessar, his superior officer, and Defendant Lessar likewise signed off on this Notice on 7/12/2021, thus beginning a conspiracy to violate the Plaintiff's rights.
50. The return address on this letter, along with the red stamp, satisfy all requirements for the identification of legal mail per DOC Administrative Regulation 300-38, and additionally is nearly identical to the labeling on mail received without issue by the Plaintiff from this very Court. Therefore, Defendants' claim that the letter was not properly labeled is a fiction.
51. On July 12th, 2021, the same day, Plaintiff returned the disposition form to the mailroom, indicating that the letter was being denied improperly. He also filed an AR 300-38 appeal of the denial, filed a grievance, and sent letters explaining the situation to Defendant Burtlow, DOC Executive Director Dean Williams, the DOJ, and his retained counsel.
52. On July 26th, 2021, Plaintiff was sent a typed and signed memorandum from Defendant Moore. In it, he states that the July 12th letter "was rejected because it was not in accordance with AR300-38D."
53. As with Defendants Stephens and Lessar, Plaintiff asserts that by making such a baseless statement, Defendant Moore

became party to the conspiracy by intentionally covering for Defendants Stephens and Lessar's First Amendment violation.

54. On July 27th, 2021, Plaintiff was sent a typed and signed memorandum in response to his letter to Defendant Burtlow, with a subject line of "Legal Mail Issues." In it Defendant Burtlow stated, "This issue was thoroughly investigated and the following was found. The mail in question [...] was received without the required documentation to be considered a confidential contact."

55. As with Defendant Moore, Defendant Burtlow's claim is simply untrue. This means either she lied about having conducted an investigation, or she lied about its results. Plaintiff asserts that Defendants Burtlow and Moore reached an agreement to cover for Defendants Stephens and Lessar's First Amendment violation of rejected mail on July 12th, 2021.

56. On or around August 9th, 2021, a package of family photos, correctly and completely addressed to the Plaintiff, arrived at the FCF mailroom. The package came from Shutterfly, a commercial company which produces photo prints and ships directly to customers.

57. On September 30th, 2021, Shutterfly sent an e-mail to Ms. Kelli Acord, who ordered the pictures for the Plaintiff, informing her that the package had been refused and had been returned to them. She asked them to resend the package.

58. Sometime in October 2021, the pictures were again refused by the FCF mailroom. Plaintiff was only informed of these refus-

als on November 14th, 2021, by Ms. Acord.

59. Plaintiff has successfully received family photos from Ms. Acord via Shutterfly dozens of times since 2016 with no issues raised by the FCF mailroom, and other inmates have likewise utilized their services continuing to this day.
60. Plaintiff asserts, upon information and belief, that Defendant Burtlow identified Plaintiff as a "troublemaker" upon learning he had written the Executive Director and due to his many grievances on several issues, including the mailroom, and that she then communicated this to Defendant Lessar, with the express or implied instruction to harass Plaintiff. Defendant Lessar then passed on this intention to Defendant Stephens.
61. On November 14th, 2021, Plaintiff received a photocopy of a letter from Ms. Acord informing him of the refused packages. She also sent the seven photos that had been refused, but copies of only five were provided to Plaintiff. Plaintiff filed one grievance for the refused packages which was assigned number R-FF21/22-00201881, and another for the two photos that were not provided, assigned number R-FF21/22-00201691. Final denials of both grievances were dated March 2nd, 2022.
62. On November 30th, 2021 at approximately 6:10 PM, Plaintiff was given a complete but severely crumpled set of photocopies of the pictures. In fact Sgt. Castanos, who gave Plaintiff this damaged mail, commented, "They came that way from the

mailroom." He also stated, "Nothing else in the Unit 7 mail bag was damaged today." He wrote a detailed "Chron" (DOC chronological computer journal) describing this severe damage as proof he witnessed it.

63. On that same day, Plaintiff utilized the grievance procedure asserting retaliation and harassment and was assigned number R-FF21/22-00202597 with a final response of December 16th, 2021, granting Plaintiff's remedy.

64. On December 16th, 2021, Defendant Lessar personally delivered a complete and undamaged set of photocopies of the pictures to Plaintiff, in order to grant relief on the grievance mentioned above. Plaintiff inquired about his other grievances, and Defendant Lessar insisted he was not violating the Plaintiff's rights. Defendant Lessar then asked, "What have you got against the Boy Scouts, anyway?" Plaintiff advised Defendant Lessar that he should probably not say anything further, and he could "tell it to the judge." At that time, Defendant Lessar left.

65. Between that day and June 2nd, 2022, there were no further incidents with the FCF mailroom. For nearly six months, all of Plaintiff's legal mail, including several letters from Pfau Cochrane which were labeled identically to the July 12th letter, was delivered without issue.

66. Plaintiff asserts this entire sequence of events were part of a conspiracy of harassment and intimidation by Defendants Stephens and Lessar. The Plaintiff's protests over the July

12th letter drew the ire of the mailroom staff and Defendant Burtlow, leading them to retaliate by denying the Shutterfly photos. When the photos arrived in the letter from Ms. Acord, due to a policy change the mailroom was only authorized to provide photocopies, but only a partial copy was provided. When Plaintiff grieved that situation, the next copy provided was intentionally crumpled into a ball then smoothed out. And the fact that a complete copy was eventually provided demonstrates that there was never any legitimate penological interest in denying Plaintiff the photos. Plaintiff therefore asserts that the refusals of the photos, then the missing and damaged photocopies, were part of a conspiracy to retaliate against the Plaintiff by Defendants Stephens and Lessar, at the prompting of Defendant Burtlow.

67. Defendant Lessar's December 16th comment about the Boy Scouts is troubling for two reasons. First, Plaintiff never divulged the content of his confidential legal mail to any FCF staff. This demonstrates that Defendant Lessar had in fact read Plaintiff's confidential legal mail - the very situation the law is meant to prevent. Second, given the case involves claims for victims of sexual abuse, Lessar's comment, coming from an agent of authority over the Plaintiff, was clearly intended as harassment: a claim that Defendant Lessar held shameful information about the Plaintiff, to dissuade him from further protest or testimony.

68. That Defendants Stephens and Lessar's actions were intention-

al and coordinated is further demonstrated by the fact that all adverse actions against the Plaintiff ceased after Plaintiff implied he was seeking legal action on December 16th, and did not reoccur for nearly six months.

69. Defendants Moore and Burtlow also entered into the conspiracy by covering for the actions of Defendants Stephens and Lessar in official but informal communications with the Plaintiff. Defendant Moore chose to send a memo to Plaintiff rather than reply to his appeal; in fact the appeal was never answered.
70. Defendant Burtlow again infringed on Plaintiff's First Amendment rights on January 4th, 2022, when she denied Plaintiff's pre-approved "Legal Visit" with Mr. Ryan Smith, a member of Plaintiff's criminal defense team. Plaintiff was summoned to the visiting room at 10:00 AM. At 10:15 AM, the visit was denied and Mr. Smith was turned away at the gate. Mr. Smith was told by the visiting room staff that the decision to turn him away had been made by Defendant Burtlow. Plaintiff utilized the grievance process and was assigned number R-FF21/22-00204855, with a final denial on April 20th, 2022.
71. Denying Plaintiff's legal visit violated his First Amendment rights and chilled his exercise of free speech regarding his appeal of his criminal case, Colorado case #14CR95. Plaintiff asserts this denial was further retaliatory activity by Defendant Burtlow.
72. Plaintiff asserts, upon information and belief, that the retaliatory activity then paused for the next five months due

to communication between Defendants Lessar and Burtlow regarding Plaintiff's intimation that he was filing a lawsuit.

During those months, he continued utilizing the grievance process, both on extant grievances and on issues with his medical care: in other words, his "troublemaker" status did not abate. Nonetheless, Plaintiff received several letters from Pfau Cochrane, identically labeled, without incident.

73. Plaintiff asserts, upon information and belief, that when no lawsuit appeared to be forthcoming, Defendant Burtlow again asserted the desire for harassment of Plaintiff, retaliating for the other grievances he had been filing.

74. On June 1st, 2022, FCF received more "Legal Mail" addressed to Plaintiff from Kevin Hastings. The red stamp on the envelope was identical to those mentioned previously.

75. On June 1st, 2022, the same day, Plaintiff again received a "Notice of Rejection/Disposition of Mail" form with the same issues raised as in the July 12th, 2021 incident.

76. Defendants Stephens and Lessar signed off on this Notice as well, dated 6/1/22.

77. Plaintiff utilized the grievance process and was assigned number R-FF21/22-00213593, with a final denial on November 10th, 2022.

78. These actions chilled the Plaintiff's First Amendment right to free speech, in the form of privileged communications with his retained legal counsel in non-frivolous federal case mentioned in item #14.

79. Plaintiff asserts this was further retaliatory activity by Defendants Stephens and Lessar.
80. On July 25th, 2022, FCF mailroom opened "Legal Mail" from Kevin Hastings, with the same return address and stamp as previous letters, outside of Plaintiff's presence, then forwarded it to Plaintiff's living unit for delivery. At approximately 6:30 PM, Sgt. V. Garcia handed him the opened envelope and said, "Hey, this is supposed to be legal mail," said it "was wrong," and informed the Plaintiff she would be "Chronning" the incident. The envelope was not marked as having been accidentally opened per AR 300-38.and the First Amendment.
81. Plaintiff utilized the grievance process and was assigned number R-FF22/23-00216205, and is still awaiting a final disposition.
82. Plaintiff asserts this was further retaliatory activity by Defendants Stephens and Lessar, and that those Defendants have read this privileged communication.
83. On August 15th, 2022, Plaintiff utilized the CIPS inmate phone system to contact his retained counsel for his criminal case, Barbara A. Snow, Colorado bar #48578. Plaintiff submitted his counsel's credentials, registered address, and registered phone number as required by DOC Administrative Regulation for unmonitored and unrecorded confidential calls.
84. At the onset of this call, it was stated via recording that the call was "subject to monitoring and recording." Plaintiff

immediately hung up rather than yield his right of confidentiality. This had a chilling effect on his right to confidentially speak with his attorney. Plaintiff utilized the grievance process and was assigned number R-FF22/23-00217387, and it was granted on November 4th, 2022 after Ms. Snow contacted the facility.

85. Ms. Snow has indicated to Plaintiff that her phone number has been registered with other clients who are or have been incarcerated in the Colorado DOC, and calls to her were unmonitored and held confidential for those clients. Therefore, Plaintiff asserts this was further retaliatory activity taken under an agreement or intimidation by Defendants Moore and Burtlow.

86. These actions chilled the Plaintiff's First Amendment right to free speech, in the form of privileged communications with his retained legal counsel in his criminal case.

87. Upon information and belief, Plaintiff asserts a claim of a "campaign of harassment" as shown in cumulative and ongoing acts detailed herein.

88. Plaintiff was engaged in activities stated herein, and had a constitutional right to do so. This is "protected conduct" and is part of his First Amendment rights.

89. Defendants created an "adverse action" that would have stopped an "average person" from continuing with their suit, and conspired to aid and cover up attempts to suppress rights violations.

90. There is a "causal connection." Plaintiff was attempting to exercise his rights, and Defendants conspired to justify their actions, and to retaliate against and harass Plaintiff.
91. Although prison officials may limit inmates' ability to file administrative grievances provided the limitations are reasonably related to legitimate penological interests, officials may not retaliate against prisoners for filing grievances that are truthful and not otherwise offensive to such interests. The actions of Defendants herein did not reasonably advance a legitimate penological goal.
92. The reason why such retaliation offends the Constitution is that it threatens to inhibit exercise of the protected right. Retaliation is thus akin to an "unconstitutional condition" demanded for the receipt of a government-provided benefit.
93. The loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury.
94. Lastly, as a prisoner, Mr. Swietlicki asserts he presents a "vulnerable target" to the Defendants. As of filing of this Complaint, Plaintiff asserts this "campaign of harassment" continues, and he will continue to grieve the issues accordingly as they emerge.
95. This is a civil action authorized by 42 U.S.C §1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. §§1331 and 1343(a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §§2201 and

2202.

96. Punitive damages are only available in a §1983 action when "the defendant's conduct is shown to be motivated by evil motive or intent," or when it involves reckless or callous indifference to the protected rights of others.
97. The acts or omissions of Defendants Burtlow, Moore, Lessar, and Stephens as described herein were taken in violation of Mr. Swietlicki's constitutional rights, and Plaintiff is entitled to punitive damages against these defendants in that their actions were taken maliciously, willfully, or with a reckless or wanton disregard of Mr. Swietlicki's constitutional rights.
98. Plaintiff is entitled to attorney's fees and costs pursuant to 42 U.S.C. §1988, prejudgment interest and costs as allowable by federal law.

CLAIM FOUR: 14th Amend., denial of due process under the law
Defendants Stephens, Lessar, and Moore
Supporting facts:

99. Plaintiff hereby incorporates all the other paragraphs of this Complaint as if fully set forth herein.
100. The District of Colorado is an appropriate venue under 28 U.S.C §§1331 and 1343(a)(3) because it is where the events giving rise to this claim occurred.
101. Plaintiff, John Mikall Paul Swietlicki, DOC #65891, is and was at all times mentioned herein a prisoner of the State of Colorado in the custody of the Colorado Department of Corrections, confined in Fremont Correctional Facility in Canon City, Colorado.

102. At all times mentioned in this Complaint, each defendant was an individual residing in the State of Colorado and a citizen of the United States.

103. Each defendant is a person for the purposes of 42 U.S.C. §1983.

104. Mr. Swietlicki is a United States citizen, and as such is granted equal protection under the law by the Fourteenth Amendment of the United States Constitution.

105. There is no qualified immunity for persons acting in their individual capacities.

106. As a result of the allegations contained in this Complaint, Defendants Stephens, Lessar, and Moore are liable under 42 U.S.C. §1983 for violating Mr. Swietlicki's Fourteenth Amendment rights by repeatedly denying him due process under both DOC Administrative Regulations and established law.

107. 42 U.S.C. §1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress...

108. On July 12th, 2021, Plaintiff filed an AR 300-38 appeal form for his denied "Legal Mail." This form was never replied to formally by Defendant Moore, denying Plaintiff his Fourteenth Amendment right to due process under the law.

109. On August 9th, 2021, and again sometime in October 2021,

Defendants Stephens and Lessar refused mail from Shutterfly without utilizing form AR 300-38D to notify Plaintiff and allow him the opportunity to appeal the denial or disposition the items. This denied Plaintiff his Fourteenth Amendment right to due process under the law.

110. On numerous instances between July 12th, 2021, and October 9th, 2022, Defendant Lessar responded to Plaintiff's grievances of Defendant Lessar's own actions. In fact, Defendant Lessar was the initial responder on every one of Plaintiff's grievances of the mailroom. Plaintiff asserts this denied his Fourteenth Amendment right to due process under the law because in order to avoid an obvious conflict of interest, his complaints should be referred to a prison official other than the person who originally disapproved the correspondence.

111. Defendants Stephens and Lessar have denied multiple items of Plaintiff's mail from July 12th, 2021 to the present day. In no case did those Defendants notify the senders of those items of their denial, as required by both AR 300-38 and the First and Fourteenth Amendments of the Constitution. This violated Plaintiff's Fourteenth Amendment right to due process under the law.

112. This is a civil action authorized by 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C §§1331 and 1343(a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §§2201

and 2202.

113. Punitive damages are only available in a §1983 action when "the defendant's conduct is shown to be motivated by evil motive or intent," or when it involves reckless or callous indifference to the protected rights of others.

114. The acts or omissions of Defendants Stephens, Lessar, and Moore as described herein were taken in violation of Mr. Swietlicki's constitutional rights, and Plaintiff is entitled to punitive damages against these defendants in that their actions were taken maliciously, willfully, or with a reckless or wanton disregard of Mr. Swietlicki's constitutional rights.

115. Plaintiff is entitled to attorney's fees and costs pursuant to 42 U.S.C. §1988, prejudgment interest and costs as allowable by federal law.

I. PRELIMINARY STATEMENT

1. John Mikall Paul Swietlicki is an inmate at the Fremont Correctional Facility (FCF) who, as a result of Defendants' malicious or reckless actions, was denied his constitutionally protected legal mail on July 12th, 2021.
2. Mr. Swietlicki protested the Defendants' actions through both formal and informal channels, which Defendants responded to by establishing a conspiracy for a campaign of harassment and retaliation which has continued to the present day.
3. Defendants' actions chilled Mr. Swietlicki's First Amendment right to free speech, and unduly burdened his ability to

confidentially communicate with his retained legal counsel.

4. Defendants' indefinite seizure of his legal correspondence additionally violated his Fourth Amendment right to be free of improper searches and seizures.
5. Defendants were also recklessly indifferent to the proper procedures established by both DOC Administrative Regulations and established laws and standards, thereby violating his Fourteenth Amendment right to due process under the law.

J. PRAYER FOR RELIEF

Please see section G, "Request for Relief."

John M.P. Swietlicki
D.O.C. # 65891
Fremont Cor. Fac. (FCF)
P.O. Box 999
Canon City, CO 81215-0999

Legal Mail



United States District Court
U.S. Courthouse, Room A105
901 19th Street
Denver, CO 80294-3589

Legal Mail

Legal Mail

DATE REC'D 30175 ASM
ID# INT
STAFF LAST NAME mahe2
STAFF LAST NAME ScireHob 65891
INT