No. 21-15905

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Maged Labib Karas,

Plaintiff-Appellant,

v.

California Department of Corrections and Rehabilitation, et al.,

Defendants-Appellees.

On Appeal from a Final Judgment of the
United States District Court for the Eastern District of California
No. 20-cv-1488, Judge John A. Mendez

REPLACEMENT REPLY BRIEF FOR PLAINTIFF-APPELLANT MAGED LABIB KARAS

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Introduction

In 2009, Maged Karas was earning good-time credits—which would grant him early release from prison—at high speed. At his post-trial sentencing hearing, the California Superior Court ordered that he receive those credits at the highest rate then available. All parties agreed to that rate, including the prosecutor, and Karas was awarded credits in accordance with the court's order. *See* ER-19-20, 22.

At some unknown point during Karas's prison term, the California Department of Corrections and Rehabilitation lowered his credit-earning rate without notifying him or giving him an opportunity to contest the decision. That change in rate meant he would spend years longer in prison. When CDCR lowered Karas's credit-earning rate, it deprived him of liberty. The Fourteenth Amendment guarantees him the right to notice and an opportunity to be heard prior to any liberty deprivation, and because CDCR didn't give him those protections, its officials violated the Due Process Clause.

CDCR would rather not address due process at all. It attempts to avoid the issue by arguing that Karas was never entitled to the credit-earning rate he was given, so he wasn't entitled to any process when that rate was revoked. That argument is wrong. CDCR attempts to resolve the question of what procedural protections Karas needed by relying on the result that it believes those procedures would have reached. That isn't how due process works. Before a state deprives a person of liberty, it must resolve the

propriety of that deprivation through "constitutionally adequate procedures" to counter "the risk of an erroneous termination." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541, 543 (1985). Regardless of what CDCR may believe about Karas's entitlement to the higher credit-earning rate, the Due Process Clause promised him fair procedures before that rate was revoked, and he didn't get them.

CDCR's misguided focus on what it believes is the credit-earning rate Karas was entitled to—as opposed to what procedures Karas was entitled to before his rate was revoked—causes it to err in assessing what those procedures needed to be. CDCR argues that Karas was not entitled to any process beyond his 2009 trial because its credit allocation was consistent with the outcome of his criminal proceedings. But at trial, as then authorized under California Penal Code Section 2900.5, the Superior Court determined that Karas was entitled to a higher credit-earning rate than the one CDCR later awarded him. And the Superior Court awarded that higher rate to Karas. The trial could not have provided sufficient process for the lower rate because that rate was determined by CDCR well *after* the trial, when Karas was in CDCR's custody. Before CDCR lowered Karas's rate, further process was required.

Good-time credits lead to earlier parole eligibility, which means earlier release from prison. And that expectation is a liberty interest protected by the Due Process Clause. This Court should reject CDCR's attempt to avoid the issues this case raises and decide the question presented: what Karas,

and other California prisoners like him, are promised by the Fourteenth Amendment's guarantee that they may not be "deprived of … liberty without due process of law."

Argument

I. California's good-time credits scheme creates a liberty interest that due process protects.

CDCR argues that Karas cannot have been denied due process when it lowered his credit-earning rate because he cannot establish that he was "legally entitled to earn credit at th[at] rate[.]" CDCR Br. 2. We first address the flaw in that reasoning. When a person has been deprived of liberty without due process, "it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87 (1988) (citation omitted).

We then briefly reprise our fundamental point that California's statutory scheme creates a liberty interest in good-time credits. Because the Due Process Clause protects those credits, they cannot be revoked without notice and an appropriate hearing to determine whether revocation is warranted.

A. CDCR argues that Karas is not entitled to credits, but Karas is suing for process to determine that entitlement.

1. Karas's right to process. CDCR seeks to justify revoking Karas's credits without a hearing on the ground that process would have resulted in the revocation of Karas's credits anyway. But a person's "right to a hearing does

not depend on a demonstration of certain success." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 544 (1985). If a protected liberty interest is created by state laws or policies, recipients of that interest are entitled "to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated," regardless of whether the process results in their keeping the interest. *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).

In other words, Karas's right to process did not arise simply because he was entitled to the credits he was given—it arose because he *was given* those credits, by a California court no less. State statutes that grant protected benefits entitle a certain class of people to those benefits. *See, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254 (1970). Once a person is granted the benefit and placed in that class by the state, a separate entitlement to process arises to protect them from the "grievous loss" that would be caused by "erroneous deprivation." *Matthews v. Eldridge*, 424 U.S. 319, 333, 335 (1976) (citation omitted).

Due process works this way in all contexts in which government creates legal entitlements. For instance, when state law creates a protected interest in parole, parolees have an entitlement to process before their parole is revoked to determine "that the individual has in fact breached the conditions of parole." *Morrissey v. Brewer*, 408 U.S. 471, 483-84 (1972). Honest state officials surely believe the parolee is not in fact entitled to parole, but, regardless, all parolees have "an interest in not having parole revoked

because of erroneous information" and therefore have a right to process. *Id.* at 484.

The parole situation is akin to Karas's. California created a protected interest to which a class of people are entitled because its good-time credit statute provides that qualifying prisoners "shall" receive the higher credit-earning rate. Cal. Penal Code § 2933(b); *see* Opening Br. 12-18 (explaining why California law creates a liberty interest in good-time credits). Karas was placed in that class by a court and actually earned credits at that rate, so he possessed the liberty interest in question. *See* ER-19-21. Therefore, he has an entitlement to process before his credit-earning rate can be lowered because states "may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." *Arnett v. Kennedy*, 416 U.S. 134, 167 (1974) (Powell, J., concurring).

2. No issue preclusion. CDCR's argument that Karas's due-process claim is issue-precluded suffers from a similar conflation of substance and process. *See* CDCR Br. 17-19. After Karas learned in 2016 that CDCR had lowered his credit-earning rate, he filed an unsuccessful petition for habeas relief in the California Superior Court. *See* Motion for Judicial Notice (MJN), Doc. 44, at 6-10 (June 27, 2023). CDCR now argues that this due-process suit is precluded by the Superior Court's habeas decision "that CDCR is properly applying [the] credit-earning limitation." CDCR Br. 19. But this is simply a different gloss on CDCR's same misguided point. The issue the habeas court

decided was one that is not before this Court: Karas's substantive entitlement to a higher credit rate.

Issue preclusion applies only when "the issue at stake was identical in both proceedings[.]" *Love v. Villacana*, 73 F.4th 751, 754 (9th Cir. 2023) (citation omitted). In determining whether two proceedings share identical issues, this Court considers whether there is a "substantial overlap between the evidence or argument[s]" advanced in the prior proceeding and the proceeding said to be precluded. *Resolution Tr. Corp. v. Keating*, 186 F.3d 1110, 1116 (9th Cir. 1999) (citing *Kamilche Co. v. United States*, 53 F.3d 1059, 1052 (9th Cir. 1996) (quoting Restatement (Second) of Judgments § 27 cmt. c. (1982))). The arguments advanced in this lawsuit and Karas's habeas petition don't overlap at all. The habeas court did not consider whether Karas was afforded due process when CDCR lowered his credit-earning rate. *See* MJN 92-93. Its decision was based instead on an inquiry into the correctness of the credit-earning rate Karas was awarded. *See id.* The words "due process" appear nowhere in the decision denying Karas's habeas petition, nor in the habeas petition itself. *See* MJN 6-10, 92-93.

It was in the Section 1983 suit now before this Court that Karas first alleged he had been denied due process. *See* ER-14, 27. Karas is not attempting to "relitigate the credit-earning issue," CDCR Br. 14, but to litigate for the first time a different issue—his entitlement to due process of law.

B. California law creates a liberty interest in good-time credits, so Karas is entitled to process before those credits are revoked.

As our opening brief explains (at 12-18), California law creates a protected liberty interest in good-time credits. Karas was granted those credits, and then deprived of them by CDCR, so he was entitled to due process.

1. California's good-time credit scheme. If state law requires prison officials to grant good-time credits to prisoners, due process must be observed when those credits are revoked. *See Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). Like the Nebraska credit statute in *Wolff*, California's statute creates a "right to good time" by providing that prisoners "shall" receive credits under specified circumstances, *id.* at 546 n.6 (citation omitted); *see* Cal. Penal Code § 2933(b); Opening Br. 12-17. Therefore, the state has created a liberty interest protected under the Due Process Clause.

California's scheme protects not only credits already granted but also a prisoner's credit-earning rate, which represents the distinct expectation that one will receive future credits. Thus, this Court has recognized that Arizona prisoners are entitled to due process when they are "discontinued from earning 2/1 (two for one) good time credits." *See McFarland v. Cassady*, 779 F.2d 1426, 1427-28 (9th Cir. 1986); *see also Montgomery v. Anderson*, 262 F.3d 641, 644-45 (7th Cir. 2001) (holding that Indiana "must afford due process before reducing a prisoner's credit-earning class"); *Wilson v. Jones*, 430 F.3d 1113, 1120 (10th Cir. 2005) (finding an infringement of a liberty interest when an Oklahoma prison "reduced [an inmate's] credit earning class"). That

liberty interest may differ slightly from the interest in previously earned credits identified in *Wolff*, 418 U.S. at 544, but the Fourteenth Amendment protects both, and both are at issue in Karas's case.

2. Karas was granted a liberty interest. When the Superior Court granted Karas the higher credit-earning rate, it triggered due-process protections to which he was entitled before his rate could be lowered. Karas actually possessed that rate because for a time he earned credits commensurate with it. He is not suing for a benefit he never had but for process to remedy the deprivation of a benefit the state had already granted him.

CDCR does not dispute that Karas was initially granted 150 days of pre-sentence credit based on 301 days of confinement. CDCR Br. 10-11; *see* MJN 40-41. He earned credits at that rate because the California Superior Court was authorized to determine "the total number of days to be credited," which is "the duty of the court imposing the sentence[.]" Cal. Penal Code § 2900.5(d) (2009). Because CDCR subsequently lowered Karas's credit-earning rate to 15%, *see* ER-21, his case is distinguishable from unsuccessful lawsuits by prisoners alleging that they deserved a *higher* credit-earning rate than they were granted at trial. CDCR cites many cases with that fact pattern, but it fails to cite a single case in which a prisoner—like Karas—sued state officials who, acting behind closed doors, *lowered* the rate the prisoner was granted at trial. *See, e.g.*, *Panes v. Vasquez*, No. 8:17-cv-01305-DMG-KES, 2018 WL 7916135 (C.D. Cal. 2018) (cited at CDCR Br. 21).

Panes is representative of the cases that CDCR cites. There, when the sentencing judge told Vasquez that entering his plea would limit him to a 15% credit-earning rate and asked if he understood, he responded "Yes sir." *Panes*, 2018 WL 7916135, at *7. Vasquez later sued, alleging that he "was deprived of his right to earn fifty-percent prison conduct credits without due process." *Id.* at *2. The court concluded that Vasquez had failed to allege a "deprivation of credit that would trigger due process protections." *Id.* at *6. These facts couldn't be more different from Karas's circumstances. Vasquez was suing for something he had never been given, something the trial judge told him he would never receive. To speak in the Fourteenth Amendment's terms, one cannot be "deprived" of something one never had, so the procedural protections against deprivation never come into play. Karas, in contrast, received a credit-earning rate at trial that CDCR lowered without notice and an opportunity to be heard. Because California gave Karas credits at a rate that CDCR then revoked, he lost something quite valuable.

3. CDCR deprived Karas of a liberty interest. CDCR both deprived Karas of good-time credits that he had actually earned and lowered his credit-earning rate, in each case depriving him of protected liberty. Under the applicable standard of review, this Court must accept as true Karas's allegations that these deprivations took place and should not take judicial notice of disputed documents that purportedly show otherwise.

a. Credits already earned. When CDCR lowered Karas's credit-earning rate, it deducted post-sentence credits he had earned above that rate. The

district court dismissed Karas's suit based only on his amended complaint, so it was required to accept as true all factual allegations in that complaint and construe them in the light most favorable to Karas. *Harper v. Nedd*, 71 F.4th 1181, 1184 (9th Cir. 2023). Under the same standard, this Court must accept as true Karas's well-pleaded allegation that CDCR "subject[ed] him to [a] 15 percent credit earning" rate in 2016, ER-21, and, as a result, CDCR deducted credits that Karas had earlier earned.

CDCR argues that it never deducted post-sentence credits Karas had received but simply awarded him the lower rate when he entered its custody. *See* CDCR Br. 21-22. And it requests that this Court take judicial notice of internal prison records from 2010 indicating that he was receiving the lower rate at that time, thus purportedly showing that CDCR only ever awarded Karas the lower rate and never deducted his credits. CDCR Br. 11 (citing MJN 99-101). As we now show, these documents, even taken at face value, fail to disprove Karas's allegation that CDCR deprived him of post-sentence credits. And, in any case, this Court should not take judicial notice of the documents.

CDCR's prison records are silent as to Karas's credit-earning rate before 2010. *See* MJN 99. This leaves months after Karas's incarceration in October 2009 in which he has plausibly alleged to have been earning credits at a higher rate. Should the Court take judicial notice of these documents, Karas has still alleged that CDCR deducted post-sentence credits.

But this Court should not take notice of these documents. This Court has warned against "[t]he overuse and improper application of judicial notice[.]" *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). Profligate use of judicial notice at the pleadings stage indulges the interests of defendants, who "face an alluring temptation to pile on numerous documents to their motions to dismiss to undermine the complaint, and hopefully dismiss the case at an early stage." *Id.* This Court could have been speaking of Karas's case when it noted that unscrupulous use of judicial notice "risks premature dismissals of plausible claims." *Id.*

Accepting the truth of the particular documents that CDCR has put before this Court would be especially problematic. "CDCR's … internal records pertaining to an inmate's time credits" are not "judicially noticeable documents because they are subject to reasonable dispute." *Pratt v. Hedrick*, No. C 13-4557 SI, 2015 WL 3880383, at *2 (N.D. Cal. 2015). Though a CDCR "official publication" might receive judicial notice, that is "quite different from an individual inmate's records[.]" *Id.* Internal prison records aren't the kind of public, undisputed records of which judicial notice is rightfully taken, like prior court proceedings, city ordinances, or official maps. *See United States v. S. Cal. Edison Co.*, 300 F. Supp. 2d 964, 973 (E.D. Cal. 2004) (collecting cases).

After all, if this Court were to take judicial notice of the facts within CDCR's prison records, we would be left with a highly incomplete story. The records include no information about who lowered Karas's credit-earning

rate, when it was lowered, and what processes were in place to ensure that decision was not erroneous. *See* MJN 97-102. Thus, CDCR has not presented "sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). The decision to "dismiss plaintiffs' federal claims" should not be "rooted in defendants' factual assertions" to begin with, because "factual challenges to a plaintiff's complaint have no bearing on the legal sufficiency of the allegations[.]" *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). This Court must accept Karas's allegations as true and reject CDCR's attempt to hamstring this case on factual grounds to avoid the due-process issues.

b. Credit-earning rate. Regardless, even on CDCR's version of the facts, CDCR's reduction of Karas's rate itself deprived him of liberty. It is undisputed that, at his sentencing, Karas was not subject to the 15% credit-earning cap in California Penal Code Section 2933.1. *See* CDCR Br. 10. It is also undisputed that at some point thereafter CDCR applied that cap, thereby lowering Karas's rate. *See id.* at 11. When CDCR lowered his rate, it needed to afford him procedural due process.

CDCR asserts that Karas's rate was never lowered because it had an "independent duty to calculate post-sentence credits under state law." CDCR Br. 1. That statement is true as far as it goes, but it leaves out the court's exclusive role in determining the appropriate credit-earning rate. CDCR may have had a duty to *calculate* credits, but that calculation hinged on the court's earlier sentencing decision, which *determined* Karas's credit-earning rate. That authority—to determine the appropriate sentence and

corresponding credit-earning rate—was the sentencing court's alone. As the California Supreme Court has put it, "[t]he imposition of sentence and the exercise of sentencing discretion are fundamentally and inherently judicial functions." *People v. Navarro*, 7 Cal. 3d 248, 258 (1972). So CDCR's "duty to calculate" credits in its "exclusive jurisdiction to determine the individual's entitlement to post-sentence credits," CDCR Br. 1, is just the ministerial task of "calculat[ing] an inmate's release date based upon the information provided by the court," *Richardson v. Cal. Dep't of Corr. and Rehab.*, No. 18-cv-04620-YGR, 2020 WL 109166, at *5 (N.D. Cal. 2020).

Thus, when faced with "sentencing discrepancies" in how credit earning is calculated, CDCR is required to "refer them to the court for resolution" and notify the inmate "[n]o more than 30 days after case records staff complete the computation of a term or credit," Cal. Code Regs. tit. 15, § 3371.1, a requirement it did not meet in Karas's case. The Superior Court, not CDCR, is the final arbiter of the determinations on which credit rates depend, so when CDCR gave Karas a rate significantly lower than did the Superior Court, it revoked the court's decision. Now, CDCR must accord Karas the process that he initially did not receive by reconciling its decision with that of the sentencing court.

In a similar vein, CDCR argues that the sentencing court's decision was "limited to pre-sentence credits, and thus its erroneous conclusion did not bind CDCR." CDCR Br. 21-22. Not so. Both Karas's pre- and post-sentence credit rate hinged on interpretation of the same statutory scheme. If

California Penal Code Section 2933.1 applied to Karas, *see* Cal. Penal Code § 2933.1 (2009), as CDCR maintains, his rate should have been limited to 15% in both the pre- and post-sentence contexts, and if it didn't, the rate should have been higher than 15% in both contexts. *See* Cal. Penal Code §§ 4019, 2933 (2009).

In sum, on this record, CDCR deprived Karas of something California granted him that directly affects his release from confinement: a straightforward deprivation of liberty that triggered a right to procedural due process.

II. Karas did not receive procedural due process when CDCR reclassified him and deprived him of good-time credits.

Once it is determined that due process applies, the next question is what process is due. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The district court found that California's credit-earning scheme did not create a liberty interest, so it did not address whether CDCR afforded Karas adequate procedural protections. If this Court takes up this question in the first instance, it should hold that Karas has alleged that CDCR did not provide adequate process.

A. Karas's trial could not have afforded him due process because at the time of his sentencing CDCR had not yet changed his status nor revoked his credits.

CDCR does not (and could not) dispute that due process requires notice and an opportunity to be heard. It argues principally that Karas received all the process he was due at his 2009 criminal trial because, it maintains, Karas

was convicted of a crime corresponding to a 15% credit-earning rate. CDCR 23. But Karas could not have received adequate process at trial regarding his credit-earning rate. Those proceedings occurred *prior to* the deprivation that he is challenging in this suit. Thus, the criminal proceedings, culminating in his sentencing, gave him no process as to the credit-earning rate that CDCR would later determine corresponded to his charges—a rate lower than the rate he received at sentencing. Due process required CDCR to reconcile the Superior Court's determination with its application of the lower credit-earning rate after Karas's incarceration. That reconciliation occurred neither at trial nor during the administrative grievance process. *See* Opening Br. 22.

This basic misunderstanding leads CDCR to rely on *Neal v. Shimoda*, 131 F.3d 818, 831 (9th Cir. 1997), for the proposition that Karas's criminal proceedings afforded him due process for CDCR's later change in his credit-earning rate. CDCR Br. 23-24. But *Neal* does nothing to undermine Karas's position. There, this Court held that plaintiff Martinez had received all the process he was due at his criminal proceedings, *id.* at 831, because the Hawaii Parole Authority applied the *same* "sex offender" label that attached to the outcome of Martinez's criminal proceedings, *id.* at 823. For Karas, CDCR applied a *different* label and outcome than applied at his criminal proceedings. The Superior Court determined that Karas was a "serious" offender and applied credits at the rate corresponding with that offense. *See* MJN 65 ("It is a serious strike crime … that would be the finding of the Court as to credits."); *see also* MJN 98. CDCR then, unilaterally, and without notice

to Karas, applied a *different* label—"violent" offender—and gave Karas a *lower* credit-earning rate. *Neal* instructs that due process is needed when a state agency determination differs from the outcome of a criminal proceeding. *See* 131 F.3d at 831-32 (analysis as to plaintiff Neal).

CDCR's reliance on the California Court of Appeal's decision in *People v. Fitzgerald*, 59 Cal. App. 4th 932 (1997), fails for much the same reason. There, CDCR never applied a different determination than that of a sentencing court. Rather, the Attorney General petitioned *a court* to address a perceived discrepancy in the sentencing court's determination of the pre-sentence credits. *Id.* at 934-36. Here, CDCR never asked the Superior Court to revisit its determination regarding Karas's credit-earning rate—even though California regulations required CDCR to seek "resolution" from the court whenever there are "sentencing discrepancies." *See* Cal. Code Regs. tit. 15, § 3371.1.

B. Karas did not receive adequate process during the administrative grievance proceedings.

CDCR does not meaningfully contest that Karas has yet to receive an explanation for the discrepancy between the Superior Court's credit-earning determination—a determination that even the State agreed to at sentencing, *see* MJN 65—and the credit-earning rate CDCR later applied. *See* CDCR Br. 24-25, 27. Its only attempt to argue otherwise is a footnoted suggestion that it properly applied the credit-earning rate that lacks any acknowledgement of the Superior Court's contrary sentencing decision. *Id.* at 27 n.12.

Because CDCR has largely ignored Karas's arguments, it is worth briefly recalling the ways in which CDCR's grievance scheme failed to provide Karas due process. First, Karas was not provided a written explanation reconciling CDCR's classification with that of the sentencing court's determination prior to the September 1, 2016 interview at which Karas would be expected to contest the reclassification. *See* Opening Br. 8, 22. And CDCR's notice about the interview was untimely because it came after, not prior to, the interview itself. *Id.* at 22.

Moreover, neither CDCR's second-level appeal memo nor its third-level appeal decision resolved the discrepancy between the sentencing court's holding and the application of credit rates by CDCR. Opening Br. 22; *see* MJN 21-22, 79-80. CDCR's second-level appeal response indicated that CDCR needed further information from the sentencing court "regarding [Karas's] credit earning status," including transcripts from the sentencing court. ER-23. CDCR ordered those transcripts but failed to wait for them at the third-level review. MJN 22. CDCR thus effectively decided the case without giving full attention to the documents Karas submitted nor waiting to consider the evidence or rationale of the sentencing court.[1]

[1] Had CDCR received documents from the Superior Court addressing Karas's original sentencing, Karas would have been entitled to notice of what was in those documents so that he could fully defend his position. *See Wolff v. McDonnell*, 418 U.S. 539, 563 (1974) (holding that inmates are entitled to "the evidence relied upon and the reasons for the disciplinary action taken").

For all these reasons, Karas was not provided the process he was due.

III. This suit is not barred by qualified immunity.

CDCR argues (at 27-31) that defendant Diaz, the sole individual defendant named in Karas's original complaint, see ER-33, is entitled to qualified immunity. It bears noting that Karas amended his complaint to name four other defendants, ER-12, but CDCR makes no qualified-immunity argument as to them. At any rate, CDCR is mistaken. Qualified immunity "is only an immunity from a suit for money damages, and does not provide immunity from a suit seeking declaratory or injunctive relief." *Hydrick v. Hunter*, 669 F.3d 937, 939-40 (9th Cir. 2012). Karas is not seeking damages. He seeks a declaration that his due-process rights were violated and a forward-looking injunction requiring CDCR officials to provide him the process that he is due. ER-31-32. No CDCR official, Diaz included, is entitled to qualified immunity.[2]

Conclusion

This Court should reverse the district court's judgment and remand for further proceedings.

[2] CDCR also asserts (at 31) that it is entitled to Eleventh Amendment immunity. That immunity does not bar this suit because Karas has sought declarative and injunctive relief against CDCR officials to whom the Eleventh Amendment does not apply. *See Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985) (citing *Ex parte Young*, 209 U.S. 123 (1908)).

Respectfully submitted,

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