

**ORIGINAL
FILED**

APR 28 2008

Plaintiff's Name RUBEN ODELL BOULWARE
Inmate No. V16965
Address CALIFORNIA MENS COLONY-
EAST. CELL # 5232, P.O. BOX
8101, SAN LUIS OBISPO, CA.
93409-8101

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

RUBEN ODELL BOULWARE
(Name of Plaintiff)

1:05-CV-01565-LTD-GSA(PC)
(Case Number)

vs.

FIRST AMENDED COMPLAINT

Civil Rights Act, 42 U.S.C. § 1983

ERVIN JR., R. BRAZIEL,
TRUFFLO, HOWELL, B. JONES,
S.S. COX, T. MANDEL,
K. HAWORTH, S. SHAMBER,
ARMSTRONG, W. DUTTON,
A. MCNEAL, R. CLAYTON
INDIVIDUAL CAPACITY ONLY
(Names of all Defendants)

RECEIVED

APR 28 2008

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK
Doc. 23 Att. 2

I. Previous Lawsuits (list all other previous or pending lawsuits on back of this form)

A. Have you brought any other lawsuits while a prisoner? Yes No

(PC) Ruben Odell Boulware v. Green Wall Gang, Et Al.

B. If your answer to A is yes, how many? 2

Describe previous or pending lawsuits in the space below.
(If more than one, use back of paper to continue outlining all lawsuits.)

1. Parties to this previous lawsuit:

Plaintiff BOULWARE

Defendants STAAL, FERRIS, WELLS, VONS Comp. INC. CREEKY II, et al.

2. Court (if Federal Court, give name of District; if State Court, give name of County)

LOS ANGELES COUNTY SUPERIOR COURT CENTRAL-DISTRICT

3. Docket Number BC316841

4. Assigned Judge RITA MILLER

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

VOLUNTARILY DISMISSED

6. Filing date (approx.) 5-24-04

7. Disposition date (approx.) 2006

~~AMOR~~
D.M. DUNSTAN, A.P. KANE
HOFFMAN, TREKLER

UNITED STATES DISTRICT COURT / UNITED STATES COURT
~~NORTHERN DISTRICT OF CALIFORNIA~~ / OF APPEALS 9TH CIRCUIT

CASE NO: 08-15241

JUDGE: _____

FILED DATE: _____

DISPOSITION: PENDING ON APPEAL

~~CONFIDENTIAL~~

D. * THE PLAINTIFF FILED OTHER SUITS DURING HIS
PREVIOUS CONFINEMENT BUT IS UNAWARE OF PARTIES,
DISPOSITION OR COURTROOM.*

II. Exhaustion of Administrative Remedies

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes No

B. Have you filed an appeal or grievance concerning ALL of the facts contained in this complaint?

Yes No

If your answer is no, explain why not

C. Is the process completed?

Yes If your answer is yes, briefly explain what happened at each level.

No If your answer is no, explain why not.

NOTICE: Pursuant to the Prison Litigation Reform Act of 1995, "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997c(a). If there is an inmate appeal or administrative remedy process available at your institution, you may not file an action under Section 1983, or any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002). Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit. Booth, 532 U.S. at 734.

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

A. Defendant ERVIN JR. is employed as CORRECTIONAL OFFICER at FOLSOM STATE PRISON

B. Additional defendants R. BRAZIEL IS A CORRECTIONAL OFFICER, TRUTICO IS A CORRECTIONAL SERGEANT, HOWELL IS A CORRECTIONAL OFFICER, B. JONES IS A CORRECTIONAL LIEUTENANT, S.S. COX IS A CORRECTIONAL LIEUTENANT, T. MANUEL IS A CORRECTIONAL CAPTAIN, K. HAWORTH IS A CORRECTIONAL OFFICER, S. SHAMBRE IS A CORRECTIONAL OFFICER, ARMSTRONG IS A CORRECTIONAL LIEUTENANT, W. DUTTON IS A CORRECTIONAL SERGEANT, A. MCNEAL IS A CORRECTIONAL OFFICER, R. CLAYTON IS A CORRECTIONAL LIEUTENANT

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

SEE ATTACHMENT

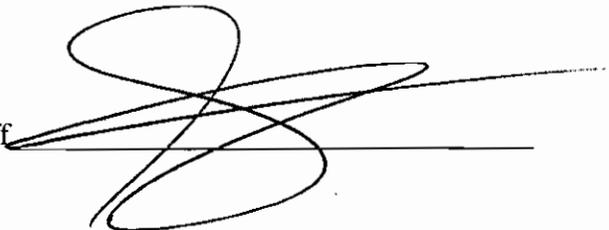
V. Relief.

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

DECLARATORY JUDGMENT THAT DEFENDANTS INDIVIDUALLY AND COLLECTIVELY VIOLATED CLEARLY ESTABLISHED FEDERAL CONSTITUTIONAL RIGHTS; REMOVE ALL FABRICATED RULE-VIOLATION REPORTS FROM THE PLAINTIFFS FILES; RESTORE ALL FORFEITED CREDITS TAKEN AS A RESULT OF FAUSE RULE-VIOLATION. \$ 5,000 PER DEFENDANT IN COMPENSATORY DAMAGES TOTAL \$ 65,000; \$ 35,000 IN PUNATIVE DAMAGES AGAINST ERVIN JR, AND BRAZIEL

I declare under penalty of perjury that the foregoing is true and correct.

Date APRIL 24
APRIL 23, 2008

Signature of Plaintiff 

IV CONT
STATEMENT OF CLAIMS

1. DURING THE MONTH OF JANUARY 2004, PLAINTIFF RUBEN COELL BOULWARE ARRIVED AT FOLSOM STATE PRISON (FSP) LOCATED IN REPRESA, CALIFORNIA TO BEGAN SERVING A PRISON TERM FOR INSURANCE FRAUD.

2. IN SEPTEMBER 2004, THE PLAINTIFF WAS ELECTED AS A MEN'S ADVISORY COUNCIL (MAC) MEMBER AS WELL AS BUILDING #3 SPOKESMAN FOR ALL 1000 INMATES HOUSED BUILDING #3, AS THE SPOKESMAN FOR BUILDING #3, THE PLAINTIFF WAS CHARGED WITH THE DUTY OF PROVIDING "INMATES WITH REPRESENTATION AND A VOICE IN ADMINISTRATIVE DELIBERATIONS AND DECISIONS AFFECTING THE WELFARE AND BEST INTEREST OF ALL INMATE." GENERAL POPULATION INMATES HOUSED IN BUILDING #3 WOULD BRING THEIR COMPLAINTS TO THE PLAINTIFF WHO WOULD RELAY THEIR COMPLAINTS ORALLY OR WRITTEN TO BUILDING #3 CAPTAIN MANUEL.

3. ON SEPTEMBER 5, 2004, THE PLAINTIFF FILED A WRITTEN GRIEVANCE (Log# FSP-04-1376) COMPLAINING ABOUT THE LACK OF OUTDOOR EXERCISE FOR BUILDING #3 INMATES. PLAINTIFF'S REPUTATION AS AN OUTSPOKEN AND LITIGIOUS INMATE WHO WAS CHALLENGING THE "GREEN-WALL" AND THEIR "CODE OF SILENCE" BEGAN TO CIRCULATE THROUGHOUT FSP MAKING THE PLAINTIFF A TARGET FOR RETALIATIONS.

4. ON JANUARY 18, 2005, WHILE ACTING WITHIN THE CAPACITY OF THE MAC SPOKESMAN, THE PLAINTIFF WAS GIVEN ACCESS TO THE TIERS TO CONVERSE WITH THE INMATES REGARDING THE SECOND WATCH PROGRAM. AFTER BEING OUT ON THE TIERS FOR AN HOUR OR SO, THE PLAINTIFF WAS APPROACH BY HAWORTH WHO DEMANDED TO KNOW WHAT THE PLAINTIFF WAS DOING OUT OF HIS CELL. THE PLAINTIFF ADVISED HAWORTH THAT B.C. ADAMS AUTHORIZED HIM TO CONDUCT MAC BUSINESS.

5. HAWORTH BEGAN MAKING DISPARAGING REMARKS ABOUT THE MAC FUNCTIONS AND MEMBERS WITHIN BUILDING #3. THIS CONFRONTATION WAS OBSERVED BY INMATE STEPHEN # D90921 AND OFFICER THOMAS. AT NO TIME DID HAWORTH ORDER THE PLAINTIFF TO LOCK UP IN HIS CELL. IN FACT THE PLAINTIFF WAS ALLOWED TO WALK DOWN FROM THE FIFTH TIER TO THE FIRST TIER TO MEET WITH THE BUILDING #3 SUPERVISORS. ON JANUARY 26, 2005, THE PLAINTIFF RECEIVED A FABRICATED RULE VIOLATION FOR ALLEGEDLY DISOBEYING A DIRECT ORDER. (LQ# 305-01-035) HAWORTH ISSUED THIS FABRICATED RULE VIOLATION BECAUSE THE PLAINTIFF WAS COMPLAINING ABOUT LIVING CONDITIONS IN BUILDING #3 AND THE ISSUANCE OF THIS FABRICATED RULE VIOLATION DID NOT ADVANCE ANY PENOLOGICAL OR LEGITIMATE CORRECTIONAL GOAL.

6. AT THE ORIGINAL DISCIPLINARY HEARING POPOVICH FOUND THE PLAINTIFF GUILTY, BUT PLAINTIFF FILED INMATE GRIEVANCE # FSP-05-0460 AND WAS GRANTED A RE-HEARING BY THE CHIEF DISCIPLINARY OFFICER. AT THE RE-HEARING CLAYTON REFUSED TO ALLOW WITNESS B.C. ADAMS, BUILDING #3 SUPERVISOR TO TESTIFY THAT THE PLAINTIFF WAS PERFORMING HIS JOB AS MAC SPOKESMAN. EVEN A PERPDUERANCE OF EVIDENCE SHOWS THAT THE PLAINTIFF WAS ENGAGED IN MAC BUSINESS, CLAYTON STILL FOUND THE PLAINTIFF GUILTY AND REDUCED THE FABRICATED RULE VIOLATION TO A FABRICATED "MINOR" RULE VIOLATION.

7. HAWORTH WROTE IN THE BODY OF THIS FABRICATED RULE VIOLATION THAT THE PLAINTIFF WAS VERBALLY WARNED ON JANUARY 15, 2005, BY SHAMBEE FOR BEING OUT OF BOUNDS. THE PLAINTIFF WAS CHARGED WITH DISOBEYING A DIRECT ORDER NOT OUT OF BOUNDS. HAWORTH AND MANUEL CIRCUMVENTED THE REQUIREMENTS OF THE DIRECTORS RULES BY PROCESSING THE FABRICATED ADMINISTRATIVE "MINOR" INCIDENT AS A "SERIOUS" ONE TO RETALIATE AGAINST THE PLAINTIFF FOR CONDUCTING MAC DUTIES WITH THE INTENT OF HAVING THE PLAINTIFF REMOVED FROM THE MAC

8. ON JANUARY 27, 2005, PLAINTIFF FILED A MISCONDUCT COMPLAINT AGAINST HAWORTH REGARDING THE ISSUANCE OF THE FABRICATED RULE VIOLATION REPORT. COX JOINED INTO THE "COVER-UP" OF THE FABRICATED RULE VIOLATION BY ALLEGING THAT AN OFFICER BROWN OBSERVED THE CONFRONTATION BETWEEN HAWORTH AND THE PLAINTIFF. COX ALSO ALLEGES INMATE STEPHENS WAS NOT HOUSED IN BUILDING #3. IN FACT BROWN DID NOT OBSERVE THE CONFRONTATION, IT WAS OFFICER THOMAS. INMATE STEPHENS WAS HOUSED INSIDE BUILDING #3 AND THE ALLEGED CONFRONTATION OCCURRED IN FRONT OF INMATE STEPHENS CELL.

9. ON JANUARY 30, 2005, THE PLAINTIFF WROTE A LETTER TO THE SECRETARY OF ADULT & YOUTH CORRECTIONS, DIRECTOR OF CORRECTIONS AND REHABILITATIONS, INSPECTOR GENERALS OFFICE, WARDEN OF FSP, CDC OFFICE OF INTERNAL AFFAIRS AND GOVERNOR SCHWARZENEGGER COMPLAINING ABOUT FSP "CODE OF SILENCE" AND OTHER CONDITIONS AT FSP. THE FOLLOWING DAY, JANUARY 31, 2005, SHAMBLE SUBMITTED ANOTHER FABRICATED RULE VIOLATION REPORT (LOG# 305-02-003) BECAUSE THE PLAINTIFF WAS CONDUCTING MAC BUSINESS. (PREPARING TO RAISE RACIAL BIAS IN INMATE JOB ASSIGNMENTS.) THIS ACTION CHILLED THE PLAINTIFFS EXERCISE OF HIS FIRST AMENDMENT RIGHT TO SEEK REDRESS FROM THE GOVERNMENT AND THIS ACTION DID NOT REASONABLY ADVANCE A LEGITIMATE CORRECTIONAL GOAL. SHAMBLE'S FABRICATED RULE VIOLATION REPORT ALLEGES THAT HE VERBALLY WARNED THE PLAINTIFF ON JANUARY 13, 2005, ABOUT BEING OUT OF BOUNDS WHICH CONTRAVENES HAWORTH'S REPORT THAT THE PLAINTIFF WAS VERBALLY WARNED ON JANUARY 15, 2005. AT THE DATE AND TIME OF THIS INCIDENT THE PLAINTIFF, AS WELL AS OTHER MAC MEMBERS HAVE UNLIMITED ACCESS TO BUILDING #3 INMATES BETWEEN 0630 TO 2100 HOURS.

10. DEFENDANTS MANUEL COX AND ARMSTRONG ENTERED INTO AN AGREEMENT TO KEEP THE PLAINTIFF FROM ACTING AS A MAC MEMBER BY INSTRUCTING OFFICERS INSIDE BUILDING #3 THAT MANUEL HAD SUSPENDED THE PLAINTIFF FROM THE MAC BECAUSE OF THE PENDING FABRICATED RULE VIOLATION REPORTS. DEFENDANT MANUEL TOLD THE MAC CHAIRMAN THAT THE PLAINTIFFS ALLEGATIONS OF "RACIAL ANIMUS" BY WHITE GUARDS TOWARDS AFRICAN-AMERICAN AND HISPANIC INMATES AT FSP WAS GOING TO GET HIM REMOVED FROM THE MAC. THE PLAINTIFF ASKED MANUEL WHY SHE HAD TOLD THE OFFICERS OF HOUSING UNIT #3 THAT THE PLAINTIFF WAS SUSPENDED FROM THE MAC. MANUEL TOLD THE PLAINTIFF THAT UPPER LEVEL ADMINISTRATORS WAS UPSET ABOUT THE LETTER WRITTEN TO THE GOVERNORS OFFICE. MAC MEMBERS CAN ONLY BE SUSPENDED BY THE WARDEN.

11. ON FEBRUARY 8, 2005, THE PLAINTIFF WROTE A LETTER TO THE WARDEN COMPLAINING ABOUT RETALIATIONS AGAINST HIM AS WELL AS OTHER MAC MEMBERS. ON FEBRUARY 5, 2005, PLAINTIFF FILED INMATE GRIEVANCE (LOG# FSP-OS-00417) COMPLAINING ABOUT THE RACIAL DISPARITIES IN HIRING OF AFRICAN-AMERICAN AND HISPANIC INMATES WITHIN FSP. SOMETIME DURING THE MONTH OF FEBRUARY 2005, THE PLAINTIFF SUBMITTED AN INMATE APPEAL ABOUT MEMBERS OF THE "GREEN WALL" GANG WATCHING A 19" INCH COLOR T.V. WHILE REFUSING TO SHOWER THE INMATES. DEFENDANT DUTTON, ERVIN JR., AND SHAMBLE WERE WATCHING THE SUPER BOWL, AND THE PLAINTIFF GAVE THE GRIEVANCE TO DUTTON WHILE ON HIS WAY TO EVENING MEAL.

12. ON FEBRUARY 13, 2005, THE PLAINTIFF WAS RELEASED FOR A SHOWER ALONG WITH OTHER INMATES. ERVIN JR. DEMANDED THAT THE PLAINTIFF REMOVE HIS SHORT PANTS BEFORE GAINING ACCESS TO THE SHOWER. THE PLAINTIFF ADVISED ERVIN JR. THAT THE WARDEN HAD AUTHORIZED THE WEARING OF SHORT PANTS, SWEATS OR THERMOS ALONG WITH TENNIS SHOES OR SHOWER SHOES. ERVIN JR. BECAME VERY BELIGERENT AND DEMANDED THAT THE PLAINTIFF SHOW HIM THIS MEMO FROM THE WARDEN. THE PLAINTIFF AND ERVIN JR. PROCEEDED FROM THE FIFTH TIER TO THE FIRST TIER TO REVIEW THE MEMO. AFTER READING THE MEMO ERVIN JR. SAID "DO YOU THINK THIS IS FUNNY?" THE PLAINTIFF REPLIED "YES!" ERVIN JR. THEN DEMANDED THE PLAINTIFF TO SUBMIT TO A CLOTHED BODY SEARCH. THIS TYPE OF SEARCH CONDUCTED OUT OF A DESIRE TO RETALIATE IS ILLEGAL. AFTER CONDUCTING THIS UNWARRANTED, HUMILIATING AND EMBARRASSING, UNPROFESSIONAL CLOTHED BODY SEARCH ERVIN JR. THEN DEMANDED THAT THE PLAINTIFF SUBMIT TO AN UNCLOTHED BODY SEARCH. AT THE TIME THERE WAS 25 TO 40 INMATES AS WELL AS FEMALE NURSES AND OFFICER'S PRESENT. THE PLAINTIFF RESPECTFULLY DECLINED TO SUBMIT TO AN UNCLOTHED BODY SEARCH AND TURNED AROUND TO VOLUNTARILY SUBMIT TO BEING HAND CUFFED.

13. THE PLAINTIFF ASKED ERVIN JR. WAS HE GAY, WHICH INFURIATED ERVIN JR. AS HE SLAMMED THE PLAINTIFF AGAINST THE SHOWER PANEL DOOR. ERVIN JR. APPLIED THIS UNREASONABLE FORCE MALICIOUSLY AND SADISTICALLY TO CAUSE THE PLAINTIFF HARM. THE PLAINTIFF'S LEFT SHOULDER AND LEFT THUMB WAS BRUISED AND SORE AFTER ERVIN JR. USED FORCE ON HIM. THE PLAINTIFF ASKED ERVIN JR. DID HIS ACTIONS MAKE HIM FEEL LIKE A MAN. MANUEL, DUTTON, ERVIN JR., AND COX INDIVIDUALLY AND COLLECTIVELY SOUGHT TO COVER UP THE UNREASONABLE FORCE USED ON THE PLAINTIFF BY ERVIN JR. BY ISSUING A FABRICATED RULE VIOLATION REPORT AND PLACING HIM IN AD-SEG.

14. ON FEBRUARY 13, 2005, COX PLACED THE PLAINTIFF INSIDE OF AD-SEG. FOR ALLEGEDLY INCITING BEHAVIOR, BUT CHANGED THE CHARGE TO BEHAVIOR WHICH COULD LEAD TO VIOLENCE. MANUEL, DUTTON, ERVIN JR. AND COX INSTITUTED THE FABRICATED RULE-VIOLATION BECAUSE OF THE PLAINTIFF'S COMPLAINING ABOUT CONDITIONS AT FSP BUILDING #3, WHICH CHILLED THE PLAINTIFF'S EXERCISE OF HIS FIRST AMENDMENT RIGHTS AND THE FABRICATED RULE VIOLATION ALONG WITH THE ADVERSE ACTION OF PLACING THE PLAINTIFF INSIDE AD-SEG. THIS ACTION DID NOT REASONABLY ADVANCE A LEGITIMATE CORRECTIONAL GOAL. ARMSTRONG DIRECTED DUTTON TO ADD A SUPPLEMENTAL REPORT REGARDING THE FABRICATED RULE VIOLATION TO CORROBORATE ERVIN JR.'S VERSION. THIS SUPPLEMENTAL REPORT WAS SUBMITTED 30 DAYS PAST THE STATUTORY DEADLINE TO RECEIVE SUCH EVIDENCE.

15.

15. ON FEBRUARY 24, 2005, THE WARDEN OFFICIALLY SUSPENDS THE PLAINTIFF FROM THE MAC BASED UPON THE FABRICATED RULES VIOLATIONS ONE MONTH AFTER MANUEL, ARMSTRONG, COX AND DUTTON HAD UNOFFICIALLY SUSPENDED THE PLAINTIFF FROM THE MAC, ACCORDING TO THE MAC BY-LAWS SIGNED BY THE WARDEN HIMSELF, MANUEL, ARMSTRONG, COX AND DUTTON DID NOT HAVE THE AUTHORITY TO SUSPEND THE PLAINTIFF FROM THE MAC. THIS ADVERSE ACTION CHILLED THE PLAINTIFF RIGHT TO COMPLAIN AND DID NOT REASONABLY ADVANCE A LEGITIMATE CORRECTIONAL GOAL. ON MARCH 27, 2005, THE PLAINTIFF FILED INMATE APPEAL # FSP-05-0460 CHALLENGING THE FINDING IN FABRICATED RULE VIOLATION # 305-01-035 AND WAS GRANTED A RE-HEARING. ON APRIL 1, 2005, THE PLAINTIFF FILED INMATE APPEAL # FSP-05-447 CHALLENGING FABRICATED RULE VIOLATION # 305-02-003.

16. ON APRIL 23, 2005, BRAZIEL REFUSED TO ALLOW THE PLAINTIFF TO ATTEND RELIGIOUS SERVICES BY MAKING THE FALSE AND FABRICATED ALLEGATIONS THAT THE PLAINTIFF HAD THREATENED HIM. BRAZIEL ATTEMPTED TO ENFORCE AN UNDERGROUND RULE THAT PROHIBITED LAUNDRY BAGS ON PRISON YARD. THE PLAINTIFF GAVE BRAZIEL THE MEMO SIGNED BY THE WARDEN WHICH CONTRADICTS BRAZIEL'S POSITION THAT NO LAUNDRY BAGS WERE ALLOWED ON THE EXERCISE YARD. THIS INFURIATED BRAZIEL WHO ORDERED THE PLAINTIFF TO RETURN THE LAUNDRY BAG TO HIS CELL OR NO RELIGIOUS SERVICES. THE PLAINTIFF RETURNED THE LAUNDRY BAG TO HIS CELL AND ATTEMPTED TO GAIN ACCESS TO HIS RELIGIOUS SERVICES. BRAZIEL MADE A BELATED ALLEGATION THAT THE PLAINTIFF HAD THREATENED HIM BEFORE THE PLAINTIFF RETURNED HIS LAUNDRY BAG TO HIS CELL.

17. THE PLAINTIFF WAS THEN ESCORTED TO THE WATCH OFFICE IN THE RAIN AND PLACED INSIDE OF A CAGE OUTSIDE OF THE WATCH OFFICE FOR 2 HOURS. THE PLAINTIFF WAS ORDERED TO STRIP DOWN NAKED AND WAS THEN FORCED TO STAND ON THE WET CONCRETE BAREFOOTED WHILE THIS STRIP SEARCH TOOK PLACE. AT THE TIME THE PLAINTIFF WAS CAGED INSIDE OF THIS CAGE, THERE WAS NO COVERING TO BLOCK THE RAIN AND THE PLAINTIFF WAS NOT ALLOWED TO USE THE BATHROOM OR DRINKING WATER. JONES, COX AND WILLIAMS CONDUCTED AN INTERVIEW TO DETERMINE WHETHER OR NOT THE PLAINTIFF POSE ANY THREAT TO THE SAFETY OF ANY OFFICER OR SECURITY OF FSP. AFTER REVIEWING THE FACTS THE PLAINTIFF WAS RETURNED TO GENERAL POPULATION WITH NO RESTRICTIONS. BECAUSE OF BRAZIEL'S FABRICATED ALLEGATIONS OF A THREAT, THE PLAINTIFF SUBJECTED TO A STRIP SEARCH, CAGING INSIDE A CAGE WHILE EXPOSED TO RAIN WHICH CAUSED THE PLAINTIFF TO BE HUMILIATED AND TO CATCH A COLD.

18. ON APRIL 24, 2005, COX AND TRUTILLO INSTRUCTED HOWELL TO LOCK THE PLAINTIFF INSIDE OF HIS CELL AND NOT ALLOW THE PLAINTIFF TO ATTEND RELIGIOUS SERVICES. THE PLAINTIFF WAS ALLOWED TO ACCESS THE BREAKFAST MEAL, WITH NO RESTRICTIONS ON THE PLAINTIFF. EVEN WITH THE PLAINTIFFS NAME LISTED ON THE RELIGIOUS SERVICE UNLOCK COX, TRUTILLO AND HOWELL LOCKED THE PLAINTIFF'S CELL AND REFUSED TO ALLOW THE PLAINTIFF TO ATTEND RELIGIOUS SERVICES OR TO SHOWER. AFTER SHIFT CHANGE THE PLAINTIFFS CELL WAS OPENED TO ATTEND THE EVENING MEAL. FROM APRIL 25, 2005 TO APRIL 27, 2005, THE PLAINTIFF HAD NO RESTRICTIONS PLACED UPON HIM. ON APRIL 26, 2005, THE PLAINTIFF WAS ASSIGNED AS A CLERK INSIDE OF THE CHAPEL. THIS INFURIATED BOTH JONES AND BRAZIEL TO THE POINT THAT BRAZIEL RE-ALLEGED THE FABRICATED THREAT FROM APRIL 23, 2005, INCIDENT AND JONES ORDERED THE PLAINTIFF LOCKED UP IN AD. SEG. ON APRIL 24, 2005, THE PLAINTIFF FILED INMATE GRIEVANCE # FSP-05-0668 CHALLENGING JONES, BRAZIEL, COX, TRUTILLO AND HOWELL'S DENIAL OF ACCESS TO RELIGIOUS SERVICES, DENIAL OF SHOWER, PLACING PLAINTIFF IN CAGE CAUSING HIM TO CATCH A COLD. COX, TRUTILLO, HOWELL, JONES, BRAZIEL, TOOK SOME OF THE THESE ADVERSE ACTIONS AGAINST THE PLAINTIFF FOR WHINING, COMPLAINING AND FILING GRIEVANCES. THESE ADVERSE ACTIONS CHILLED THE PLAINTIFFS EXERCISE OF HIS FIRST AMENDMENT RIGHTS AND DID NOT ADVANCE ANY CORRECTIONAL GOAL.

19. BETWEEN JANUARY AND APRIL 2005, ERVIN JR., HAWORTH, SHAWBRE, DUTTON, COX, JONES, MANUEL, BRAZIEL AND ARMSTRONG USED THE INMATE DISCIPLINARY PROCESS IN A WRONGFUL MANNER AND NOT PROPER IN THE REGULAR CONDUCT OF A PROCEEDING TO ACCOMPLISH A PURPOSE FOR WHICH IT WAS NOT PROPERLY DESIGNED. ERVIN JR., HAWORTH, SHAWBRE, DUTTON, COX, JONES, MANUEL, BRAZIEL AND ARMSTRONG ACTED WITH THE ULTERIOR MOTIVE TO REMOVE THE PLAINTIFF FROM THE MAC, RETALIATE AGAINST HIM FOR WHINING, COMPLAINING AND FILING GRIEVANCES CHALLENGING PRACTICES AND PROCEDURES AT FSP.

20. ALL OF THE FABRICATED RULE VIOLATION REPORTS, LOG# 305-01-035, LOG# 305-02-003, LOG# 305-02-028 AND LOG# 105-04-120 ALLEGING THAT THE PLAINTIFF VIOLATED SECTIONS OF THE DIRECTOR'S RULES WERE NOT SUPPORTED BY A "MODICUM OF EVIDENCE." DUTTON'S BELATED REPORT TO CORROBORATE ERVIN JR.'S REPORT EXCEEDED THE STATUTORY DEADLINE FOR SUBMISSION OF SUCH REPORTS. EACH INCIDENT SURROUNDING THE PLAINTIFFS ALLEGED VIOLATIONS OCCURRED WHILE THE PLAINTIFF WAS WHINING, COMPLAINING AND FILING GRIEVANCES AT FSP.

FIRST CAUSE OF ACTION

DUE PROCESS VIOLATION

21. PLAINTIFF INCORPORATES PARAGRAPHS I THROUGH V INCLUSIVE, ON FEBRUARY 13, 2005, MANUEL, DUTTON, ERVIN JR., MCNEAL AND COX INDIVIDUALLY AND COLLECTIVELY SOUGHT TO COVER UP THE UNREASONABLE FORCE USED ON THE PLAINTIFF BY ERVIN JR. BY ISSUING FABRICATED RULE VIOLATIONS AND REPORTS TO PLACE THE PLAINTIFF IN AD: SEG.

THE PLAINTIFF WAS INITIALLY PLACED INTO AD-SEG. FOR INCITING OTHER INMATES TO VIOLENCE. MANUEL, DUTTON, ERVIN JR., MCNEAL AND COX CONSPIRED TO PLACE THE PLAINTIFF INTO AD-SEG. AND TO GET THE PLAINTIFF OUT OF FSP. THE PLAINTIFF WAS ASSESSED A CREDIT LOST OF 30 DAYS AND PERMANENTLY SUSPENDED FROM THE MAC BODY.

SECOND CAUSE OF ACTION

RETALIATION CLAIM

22. ON JANUARY 18, 2005, HAWORTH, MANUEL ISSUED AND CLASSIFIED FABRICATED RULE VIOLATION # 305-01-035. SHAMBE, DUTTON AND MANUEL ISSUED AND CLASSIFIED FABRICATED RULE VIOLATION # 305-02-003. CLAYTON, ERVIN JR., DUTTON, MCNEAL, ARMSTRONG AND MANUEL ISSUED, CLASSIFIED SUBMITTED FALSE REPORTS IN SUPPORT OF FABRICATED RULE VIOLATION # 305-02-028. BRAZIEL ISSUED FABRICATED RULE VIOLATION # 105-04-120. COX, TRUSTILLO, AND HOWELL DENIED THE PLAINTIFF A SHOWER AND ACCESS TO RELIGIOUS SERVICES ON APRIL 24, 2005. COX PLACED THE PLAINTIFF IN AD-SEG. ON FEBRUARY 13, 2005. JONES AND BRAZIEL PLACED THE PLAINTIFF IN AD-SEG. ON APRIL 27, 2005. BRAZIEL'S FALSE REPORT AND JONES AND COX'S RETALIATORY MOTIVATION CAUSED THE PLAINTIFF TO BE PLACED INSIDE OF AN OUTDOOR CAGE WHILE IT WAS RAINING, STRIPPED SEARCHED AND HUMILIATED.

THIRD CAUSE OF ACTION

EXCESSIVE FORCE / ~~EXCESSIVE FORCE~~

23. ON FEBRUARY 13, 2005, THE PLAINTIFF REFUSED TO SUBMIT TO AN "UNCLOTHED" BODY SEARCH IN FRONT OF JS-30 INMATES. ERVIN JR. SLAMMED THE PLAINTIFF AGAINST THE SHOWER PANEL DOOR. ERVIN JR. WAS ACTING UNDER COLOR OF STATE LAW WHEN ERVIN JR. MALICIOUSLY AND SADISTICALLY USED UNREASONABLE AND EXCESSIVE FORCE AGAINST THE PLAINTIFF BRUISING HIS LEFT THUMB AND SHOULDER.

SUPERVISOR LIABILITY

24. FACILITY CAPTAIN MANUEL WAS THE MOVING FORCE BEHIND HAWORTH AND SHAMBRE'S FILING OF FALSE RULE VIOLATION REPORTS. MANUEL TOLD THE PLAINTIFF THAT UPPER LEVEL PRISON ADMINISTRATORS WERE NOT HAPPY WITH THE PLAINTIFF WRITING A LETTER TO THE GOVERNORS OFFICE. MANUEL PERSONALLY CLASSIFIED OR REVIEWED THESE FALSE RULE VIOLATION REPORTS AND KNEW THESE REPORTS WERE FALSE AND FAILED TO ACT TO PREVENT THE PLAINTIFF FROM BEING HARMED.

BODY SEARCHES

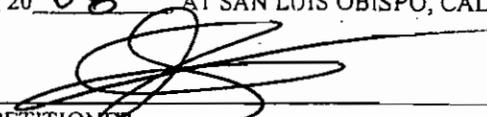
JS. BRAZIEL MADE FALSE RULE VIOLATION REPORT AGAINST THE PLAINTIFF WHICH CAUSED THE PLAINTIFF TO BE PLACED IN AN OUTDOOR @ CAGE WHILE IT WAS RAINING. PLAINTIFF WAS STRIPPED NAKED AND BAREFOOT BASED ON BRAZIEL'S FALSE ALLEGATIONS. BASED ON BRAZIEL'S FALSE CLAIMS THE STRIP SEARCH AND @CAGING IN THE RAIN WAS UNREASONABLE.

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

I am the party of the above entitled actions, a citizen of the United States and over the age of eighteen years, and a resident of San Luis Obispo County. My current address is:

RUBEN ODELL BOULWARE
California Men's Colony-East
P.O. Box 8101 Room S232
San Luis Obispo, CA. 93409-8101

I CERTIFY (OR DECLARE), UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON APRIL 24, 20 08 AT SAN LUIS OBISPO, CALIFORNIA, 93409-8101.



PETITIONER

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

I AM A RESIDENT OF SAID COUNTY, I AM OVER THE AGE OF EIGHTEEN YEARS AND NOT A PARTY TO THE ABOVE ENTITLED ACTION. MY BUSINESS ADDRESS IS:

RUBEN ODELL BOULWARE
CALIFORNIA MEN'S COLONY-EAST
P.O. BOX 8101 / Room S232
SAN LUIS OBISPO, CALIFORNIA 93409-8101

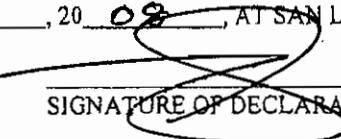
ON APRIL 24, 20 08, I SERVED THE WITHIN _____
PLAINTIFFS FIRST AMENDED COMPLAINT

ON THE PARTY: _____

IN SAID ACTION, BY PLACING A TRUE COPY THEREOF IN A SEALED ENVELOPE WITH POSTAGE THEREON PREPAID, IN THE UNITED STATES MAIL, AT CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO, CALIFORNIA, 93409-8101, ADDRESSED AS FOLLOWS:

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
1130 "O" STREET PM 5000
FRESNO, CALIFORNIA 93721-2201

I DECLARE, UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON APRIL 24, 20 08, AT SAN LUIS OBISPO COUNTY, CALIFORNIA.



SIGNATURE OF DECLARANT