

A. MONTES a.k.a.

Case 1:06-cv-01651-OWW-WMW

Document 40

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Raymond Montezuma #177922
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA.

ROY A. MONTES,
Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILIT-
ATION et al.,

Defendants.

Civil Case No. 1:06-CV-01651-
OWW-WMW-P.

THIRD AMENDED
COMPLAINT.

(PC) Roy Andres Montes v. Lockyer et al

Doc. 59 Att. 1

Plaintiff Roy A. Montes seeks redress under 42 U.S.C. Section 1983, for the deprivation of First, Eighth and Fourteenth Amendment rights under the United States Constitution. He alleges that he has been subjected to cruel and unusual punishment motivated by vindictive official retaliation and oppression for filing a previous civil complaint against the City of Los Angeles.

This Third Amended Complaint no longer lists the Attorney General, William Lockyer, as a party or defendant in this cause of action. However, there are several unidentified defendants listed which will be identified upon appropriate and exhaustive discovery. (See Bivens v. Six Unknown Named Agents of

This action is authorized by 42 U.S.C. Section §1983, and this Court's ORDER (Document 38) dated January 16, 2008.

I. JURISDICTION AND VENUE.

1. This is a civil action authorized by 42 U.S.C. Section §1983 to redress the deprivation, under color of state law, of rights secured under the Constitution of the United States. The Court has jurisdiction under 28 U.S.C. Section 1331 and 1343 subd. (a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. Section 2283 & 2284 and Rule 65 of the Federal Rules of Civil Procedure. Plaintiff also seeks money damages.

2. The United States District Court for the Eastern District of California is an appropriate venue under 28 U.S.C. Section 1391 subd. (b)(2) because it is where the events giving rise to this claim occurred.

II. PLAINTIFF

3. Plaintiff Roy A. Montes, proceeding in pro se, is and was at all times mentioned herein a prisoner of the State of California in the custody of the California Department of Corrections and Rehabilitations, and of the Los Angeles County Men's Central Jail - Sheriff's Department. Plaintiff is currently confined at Pelican Bay State Prison in Crescent City, California.

III. DEFENDANTS

4. Defendant California Department of Corrections and Rehabilitation (CDCR) is legally responsible for the overall operation of each institution under its jurisdiction. The CDCR is sued in its official capacity.

5. Defendant County of Los Angeles, California (which is a charter city) is legally responsible for each jail institution under its jurisdiction, and their overall operation.

6. Defendant Lee Baca is Sheriff of the County of Los Angeles, California. He is legally responsible for the overall operation of the Mens Central Jail and Twin-Towers Facilities.

7. Defendant Lydia C. Hense is the Warden of North Kern State Prison - Reception Center (N.K.S.P. - R.C.). She is legally responsible for the operation of N.K.S.P. - R.C. and for the welfare of all the inmates of that prison.

8. Defendant J.G. Adams is the Warden of California State Prison - Corcoran (CSP). He is legally responsible for the operation of CSP and for the welfare of all the inmates of that prison.

9. Defendant M. Conroy is Associate Warden of California Correctional Institute - State Prison, Tehachapi. (CCI-SP.) She is legally responsible for the operation of CCI-SP and for the welfare of all the inmates of that prison.

10. Defendant T. Malloy is the Captain and Superintendent of North Kern State Prison - Reception Center (N.K.S.P. - R.C.) He is legally responsible for the operation of N.K.S.P. and for the welfare of all the inmates of that prison.

11. Defendant Sergeant Ostein is a supervisory correctional officer of the CDCR who, at all times mentioned in this complaint, was assigned to North Kern State Prison - Reception Center (N.K.S.P. - R.C.), D-Yard Program Office.

12. Defendant Sergeant Sorrel is a supervisory correctional officer of the CDCR who, at all times mentioned in this complaint, was assigned to North Kern State Prison - Reception Center and Wasco State Prison - Reception Center (W.S.P. - R.C.) Ad - Seg.

13. Defendant Sergeant Mayo (Badge No. 48955) is a correctional officer of the CDCR who, at all times mentioned in this complaint, was assigned to California Correctional Institute - State Prison (CCI-SP) Tehachapi.

14. Defendant Garcia is a correctional officer of the CDCR, who at all times mentioned in this complaint was assigned to Wasco State Prison - Reception Center (W.S.P. - R.C.) Ad - Seg.

15. Defendant Pinzon is a correctional officer of the CDCR who, at all times mentioned in this complaint, was assigned to California Institution for Men - State Prison - Reception Center (C.I.M. - S.P. / R.C.) Chino.

16. Defendant J. Emerson (Badge No. 50245) is a correctional officer of the CDCR, who at all times mentioned in this complaint was assigned to California Correctional Institute - State Prison (CCI-SP) Tehachapi.

17. Defendant E. Allison (Badge No. 47179) is a correctional officer of the CDCR who at all times mentioned in this complaint was assigned to California Correctional Institute - State Prison (CCI-SP) Tehachapi.

18. Defendant Alvarez (Badge No. 42109) is a correctional officer of the CDCR who, at all times mentioned in this complaint was assigned to California Correctional Institute - State Prison (CCI-SP) Tehachapi.

19. Defendant Brackholt is a correctional officer of the CDCR who, at all times mentioned in this complaint, was assigned to California Correctional Institute - State Prison (CCI-SP) Tehachapi.

20. Defendant Noland is a correctional officer of the CDCR who, at all times mentioned in this complaint, was assigned to California Correctional Institute - State Prison (CCI-SP) Tehachapi.

21. Defendant Davis is a correctional officer of the CDCR who, at all times mentioned in this complaint, was assigned to California State Prison - Corcoran (CSP).

22. Defendant Miranda is a correctional officer of the CDCR who, at all times mentioned in this complaint, was assigned to California State Prison - Corcoran (C.S.-P.).

24. Defendant Medina is a correctional assistant (C.A.) of the Los Angeles County Mens Central Jail who, at all times mentioned in this complaint, was assigned to the Twin-Towers Facility.

25. Defendant Johnson is a deputy sheriff of the Los Angeles Mens Central Jail - Twin-Towers facility; who at all times mentioned in this complaint was assigned at said jail facility.

26. Defendant Martinez is a deputy sheriff of the Los Angeles Mens Central Jail - Twin-Towers facility who at all times mentioned in this complaint was assigned at said jail facility.

27. Defendant Lee is a deputy sheriff of the Los Angeles Mens Central Jail - Twin Towers facility who at all times mentioned in this complaint was assigned at said jail facility.

28. Each defendant, except the CDCR (who is sued solely in its official capacity) is sued individually and in his, or her, official capacity. At all times mentioned in this complaint each defendant acted under the color of state law.

IV. FACTS

29. Plaintiff has been subjected to relentless and perennial (pervasive) oppression in the form of humiliation, intimidation and egregious disparaging treatment by correctional officials within the jail and prison system. Said pervasive official oppression entails provoking and inciting violence (i.e. conducive of entrapment), the excessive use of force, deliberate indifference and exposure to unsafe conditions, sexual harassment, and cold temperatures.

30. To the extent said official oppression began during plaintiff's previous lawsuit, i.e. stemming from the Rampart Police Scandal (see discussion post), plaintiff has inferred that the official oppression complained of was initially motivated by vindictive official retaliation for filing the complaint. The official oppression has since snow-balled and propagated into a campaign of satanic hatred against plaintiff.

Inception of the Official Oppression

31. Said official oppression first began after an interview with Los Angeles Police, Rampart Division Detectives at S.A.T.F.-SP on or about September 25, 1999. Shortly after the interview between plaintiff and the detectives, it was publicly announced, through the media, that ex-Rampart detectives Raphael Perez and Nino Darden were being investigated for corrupted practices, including the planting of false evidence. Among those named as victims was plaintiff Roy A. Montes.

32. Plaintiff gradually began to notice that he was being increasingly scorned and isolated by both peers and correctional officials pervasively.

33. Eventually plaintiff began experiencing being pressured into confrontations and relentlessly provoked by both officials and inmates who tended to regard him with biased spite, hatred and scorn. The best word to describe this scenario is satanic.

34. Plaintiff found himself hopelessly against the wall being hated, provoked, and, to add insult to injury, pepper-sprayed and prefectually deemed "violent" and "hostile" - a supposed threat to the safety and security of the institution.

Implied Derogatory Exploitation

35. Officials frequently mutter detrimental comments under their breath while at plaintiff's assigned cell and also during escort, conveying words to the effect of the following: "I hate you"; "kill yourself"; "It's personal"; "It's terrible"; "Nobody wants you"; "I don't like you"; "go home"; "starve yourself"; and myriad other derogatory and disparaging comments on a pervasive level. Accordingly, officials' attitudes are distinctly and flagrantly belligerent toward plaintiff. Officials tend to slam plaintiff's tray-slot (ie. on his assigned cell-door) extra loud, negligently connive and pretend that they cannot hear when he calls to them while passing by his cell, and manhandle and humiliate him during escorts most times.

36. It becomes evident to plaintiff that he is being black-listed by correctional officials and inmates influenced by them.

37. Plaintiff is consequently believed to be being pressured to commit suicide; (2) starve himself on-call; (3) and/or succumb to becoming a transsexual / homosexual within prison.

Flagrant Sexual Insinuations

38. Within the California correctional environment there exists an axiomatic, tacit code of expressions and prison vernacular utilized to indicate reputations among the talent. To illustrate officials tend to emulate these expressions by pointing at a particular person, while performing such insinuations as deliberately raising the heel of a foot (in a flagrant manner), displaying the tongue suggestively, placing hands on the waist in a meaningful manner, and bending the hand at the wrist. Known by fluke, these tacit expressions generally lead prison talent to believe that the person indicated is, in the vernacular, "on the leva" - which is to say the person is regarded as scornfully repudiated among peers. (I.e. A reject.)

39. Plaintiff has been continuously, pervasively and relentlessly subjected to this type of glaring exploitation by both officials and those influenced by them.

40. Among the frequent insinuations exhibited, along with those described above, are the following: pointing batons toward plaintiff's anal area on escort; placing arms around plaintiff's waist inappropriately during escort; flicking and wagging tongues at plaintiff during escort; pressing-up against plaintiff during escort; and myriad other insinuating details intending detriment, humiliation and denigration.

41. On or about April 10, 2003, at CIM-SP (Chino), correctional officer Pinzon arrived at plaintiff's assigned cell cocking his foot up against the bars and displaying a protruding bulge from his genital area, while grinning suggestively. Plaintiff filed an administrative complaint (CDCR 602) which was not answered in a timely manner. Plaintiff also complained of the sexual misconduct to lieutenant Acosta, who subsequently had plaintiff placed on suicide watch and stripped of his clothing and linen, thus both intimidating him and exposing him to cold temperatures.

Excessive Use of Force

Incident One - Guard Brutality

42. On or about October 25, 2001, while at W.S.P./R.C. Ad-Seg Unit, plaintiff was escorted to Sergeant Sorrel's office for a telephone interview with plaintiff's then civil attorney James S. Muller. The call pertained to a settlement conference offer in the previous lawsuit against the City of Los Angeles stemming from the Rampart Scandal. C.O. Garcia was present during the telephone call.

43. Since that phone call, plaintiff began noticing that C.O. Garcia would provoke and harass him.

44. On October 30, 2001, at approximately 7:00 a.m., at W.S.P.-R.C. Ad-Seg Unit, C.O. Garcia arrived at plaintiff's assigned cell clamorously yelling and banging on the door demanding that plaintiff wake-up. After plaintiff awoke, C.O. Garcia walked away laughing derisively.

45. After breakfast, C.O. Garcia arrived at plaintiff's assigned cell demanding that he cuff-up. Plaintiff complied and was manhandled to the patio area

where he was violently slammed against a cage. Plaintiff was then thrown to the ground into a prone position, while Garcia got on top of plaintiff and began punching him in the face and slamming his face several times against the pavement. Plaintiff suffered abrasions to the face and a chipped tooth.

46. After the incident plaintiff was escorted to Sergeant Sorrel's office and threatened with false allegations of assault on a police officer should he complain of the incident. After Sergeant Sorrel's watch was over, plaintiff began yelling for an M.T.A. to treat and document his injuries. M.T.A. Reyes was called and was allowed to conduct an examination in the dark where she complained that she couldn't see. (I.e. To document the injuries adequately.)

47. Plaintiff filed an administrative complaint for officer misconduct. Appeal respondents waited until days to interview plaintiff, by which time the abrasions had significantly healed. The complaint was not heard from again. Additionally an unidentified C.O. went to plaintiff's assigned cell stating the words "you're fighting against something huge - you'll never win."

Incident Two - Guard Brutality

48. On or about November 13, 2003 plaintiff complained that he could not be among general population inmates because of safety concerns.

49. On or about November 6, 2003, while housed at the MCI-Twin Towers Facility 6th floor, general population, plaintiff expressed safety concerns related to the "Sureños" prison gang. Deputy sheriffs Martinez and Johnson then stripped him of his clothing and linen, placing him in a cell by himself with cold temperatures blaring from the ventilation grate. The only article of clothing plaintiff had was one pair of boxer shorts and one sheet.

50. After banging on the door for attention, deputy sheriffs Martinez and Johnson rushed into plaintiff's assigned cell beating him and forcibly removing the only sheet plaintiff had to cover himself.

51. Subsequently he was sent to Ad-Seg under false allegations of "failure to comply with an order." After doing time in Ad-Seg, plaintiff was finally housed in K-10 status, although under the pretext that he was violent and hostile to staff and inmates.

52. It is commonly known that the grievance channel at MCT is inadequate and that complaints are hardly ever processed. Plaintiff was afraid to file a grievance because (1) it would be futile, and (2) he did not want to incur further torment and the possibility of being set-up by deputy sheriffs. At MCT, K-10 pods, deputies are known to open the cell-doors of rival inmates simultaneously to incite violence. Plaintiff was afraid of being victimized.

Incident Three - Guard Brutality

53. After filing an administrative complaint at N.K.S.P./R.C. for deliberate indifference to safety concerns (See discussion post) plaintiff was transferred to CCI-SP; Tehachapi SHU. There the constant official oppression and antagonizing (see discussion ante) continued unabated.

54. On July 1, 2006, at CCI-SP 4B1C, at approximately 8:00 a.m. plaintiff was attacked by C.O. Emerson after being antagonized. The incident began during showers when he was being manhandled, without provocation, by C.O. Williams. Plaintiff decided to barricade himself in his assigned cell in protest.

55. A few minutes later C.O. Brockholt arrived at plaintiff's assigned cell announcing in a loud voice that plaintiff's Central-file indicates that he is "a homosexual who likes it in the ass." After a brief moment, plaintiff was ordered to cuff-up to which he complied. He was then manhandled to the rotunda area where C.O. Emerson pulled him to the ground slamming plaintiff's face against the pavement repeatedly. Plaintiff was then interviewed by an unidentified sergeant and placed on strip-cell status. (I.e. he was stripped of all clothing, linen, property and mattress.)

Incident Four - Guard Brutality

56. On October 2, 2006, at CCI-SP 4B1C, at approximately 7:00 a.m., plaintiff was assaulted by C.O. Allison during escort from the shower. The incident began when plaintiff respectfully complained of being burned by the scalding hot water in the shower, after the cold water abruptly shut-off. C.O. Allison responded in a crude and spiteful manner calling plaintiff a "retard". After being told to cuff-up, plaintiff complied. As he was walking, C.O. Allison made a sexual gesture with his baton, pointing it at plaintiff's anal area. Plaintiff became angry and protested loudly, calling Allison a coward. C.O. Allison demanded that plaintiff refrain from "looking" at him.

57. Plaintiff refused to refrain from looking at Allison. He was then twirled around and violently slammed against the pavement. C.O. Allison got ontop of plaintiff, in spite of the fact that he was not resisting. Leg restraints were placed on his ankles.

58. After a brief period plaintiff was pulled to a standing position. He then looked at Allison again and called him a coward. Plaintiff was then twirled around and slammed to the floor again, after which Allison again got on top of plaintiff. C.O. Alvarez then pepper-sprayed plaintiff for over 13 seconds (i.e. until the canister was emptied) and sprayed directly into the facial orifices, (i.e. mouth, nose, eyes and ears.) C.O. Allison then commenced rubbing the pepper-spray residue, which was on plaintiff's face, into plaintiff's right eye with his hand.

59. After decontamination C.O. Allison indicated that he had assaulted the plaintiff because he had been looking at him. Plaintiff was housed on strip-cell status, where he was exposed to cold-temperatures from the blustering vent, and charged with false allegations of "Battery on a Peace-Officer."

60. Plaintiff supplement a previous staff misconduct complaint to include the said incident involving Allison. The complaint alleged official oppression and a pattern of abuses. (See attached 602 form No. 06-02371.) Said 602 was bypassed to the second-level of review. At the third level, i.e. the final level, it was ordered that there be an answer at the First Level. Therefore, the supplement (dated October 11, 2006) should have also been reviewed insofar as the 602 process was remanded to the First Level and at that juncture the supplement was attached as part of the original complaint. (See attached letter dated January 18, 2007.)

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In spite of the fact the supplement was already a permanent part of the 602 when it was remanded to the First Level, the issues propounded on the supplement, including the incident involving Allison, Alvarez and Emerson, remained unaddressed.

Incident Five - Abuse of Mechanical Restraints

62. On August 9, 2006, during shower escort, C.O. Noland (who was previously mistaken for C.O. Popejoy) applied handcuffs onto plaintiff's wrist inappropriately causing a small abrasion on plaintiff's wrist. Plaintiff was led to believe that the abrasion was caused deliberately insofar as C.O. Noland grinned insidiously after applying the handcuffs. Plaintiff propounded the incident as evidence of official antagonizement and oppression. (See CDCR 602 No. 06-02371 attached herewith.)

Unsafe Conditions

Incident One - Deliberate Indifference

63. On June 22, 2004 plaintiff was interviewed by gang-investigator C.A. Medina, who was aware of plaintiff's safety concerns related to the "sureños" prison gang, at MCJ-Twin Towers 7th floor. Plaintiff was then transferred to MCJ 3600 floor, K-10 Pod. At 3600 there are two main stories: the top tiers are reserved for protective-custody inmates, and the bottom tiers are reserved for violent non-protective custody inmates. In spite of his documented safety concerns, plaintiff was housed on the bottom tier on the pretext that it was "protective-custody over-flow" (I.e. Due to overcrowding.)¹

1. Deputy sheriffs made no attempt to house plaintiff appropriately even when there eventually became a cell-opening on the top-tier.

64. He was thus exposed to attack by enemy sureño inmates. Deputies are known to open the cell-doors of rival inmates simultaneously to incite violence. Also sureños are known to "spear" inmates with home-made weapons projected through the bars of the cells.

65. Plaintiff made continuous efforts to alert deputies of his safety concerns, to be appropriately housed on the top-tier. Deputy Lee would loudly proclaim that there were no open cells in the upstairs protective-custody section, in front of sureños, whenever plaintiff addressed the issue.

66. Plaintiff filed a grievance against Lee, but the grievance was not answered. In the grievance plaintiff complained of official oppression.

67. On or about July 1, 2005 plaintiff was attacked by two sureño gang members who slashed at plaintiff with a razor-blade instrument. Plaintiff sustained cuts on his right wrist, left hand and left arm. The gashes required emergency hospital treatment and stitches.

Incident Two - Deliberate Indifference.

68. On November 18, 2005 plaintiff arrived at N.K.S.P./R.C. Receiving & Release Unit for prison term assessment. Plaintiff was called to the control booth where an unidentified correctional officer told him that records from his previous incarceration at Salinas Valley State Prison indicated that he was Raymond Montezello # P-97422, an alias. Plaintiff was classified as S.N.Y (i.e. protective-custody) at Salinas Valley State Prison.

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69. Plaintiff was housed in the general population yard in spite of documented safety concerns. On or about December 22, 2005 plaintiff was escorted to the N.K.S.P./R.C. D-Yard Program Office where he was interviewed by Sergeant Ostein.

70. Sergeant Ostein indicated that plaintiff's C-file showed that plaintiff was SNY. Plaintiff explained his safety issues. Ostein then claimed to know the Mexican Mafia member "Perico" and related that he was not at N.K.S.P./R.C. However Ostein knew that sureños are active foot soldiers of the Mexican Mafia and that there were sureños at the D-Yard.

71. Sergeant Ostein elected to send plaintiff back to the D-Yard, in spite of his documented safety concerns, advising him to alert staff if any issues arise. Plaintiff was also threatened with Ad-Seg placement if he should refuse to return to the D-Yard.

72. On January 9, 2006 plaintiff fought with an active sureño at the D-Yard. He was pepper-sprayed and charged with "assault on an inmate." He was then interviewed by Captain Malloy, who knew of plaintiff's safety concerns, and despite the circumstances was placed on Ad-Seg status.

73. Plaintiff filed a 602 (i.e. administrative complaint) which was reportedly lost through the institutional mail system. (See attached CDCR 602.)

Intimidation Strategies and Official Oppression

74. On May 10, 2007 plaintiff filed a CDCR 602 regarding the need for an issue of laundry. C.O. Davis and C.O. Miranda came to plaintiff's assigned cell to conduct a cell search because plaintiff had complained of laundry to the Warden J.G. Adams of CSP-Corcoran.

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75. Plaintiff's personal property was scattered everywhere, and he noticed that, for the second time since his arrival at CSP-Corcoran, page 3 of the first amended complaint in this action was missing¹. Plaintiff was led to believe that officers were attempting to intimidate him to abandon the complaint.

76. When plaintiff asked for the reason why his personal effects (ie. papers, documents, etc...) had been searched, C.O. Davis replied that plaintiff "shouldn't be writing letters to the Warden."

Food Contamination

77. On various occasions throughout the jail and prison system, plaintiff has discovered miniscule pieces of raw beans, or other hard, starchy objects, embedded in his food. Plaintiff has unknowingly bit into these objects and has suffered various tooth fractures as a result.

78. Plaintiff has also been infected with pubic rashes resembling scabies, which he suspects were caused by food contamination insofar as the rashes materialized while plaintiff was on solitary confinement.

79. On May 19, 2007 plaintiff was taken to the 4A-2L rotunda, ie. at CSP-Corcoran, holding cages for haircuts. C.O. Alcantar stood in front of plaintiff flagrantly and deliberately scratching his pubic area profusely.

80. The next day plaintiff noticed the rash in his pubic area. He was given medication for treatment and it eventually dissipated. Plaintiff filed a CDCR

1) The first time happened when plaintiff received his personal property after transfer. Page 3 of the First Amended Complaint listed defendant prison officials.

602 administrative complaint against C.O. Alcantar for sexual misconduct and food contamination. Said complaint was not answered by the respondents.

81. On June 16, 2007 an official resembling Alcantar arrived to distribute trays at 4A-3R, CSP-Corcoran. Said official grinned insidiously while passing plaintiff his dinner tray and telling plaintiff to eat "all of it".

82. During tray pick-up, the same officer arrived chuckling derisionally.

83. The next day plaintiff noticed that the rash had again materialized. It was incipient that plaintiff had been infected by the insinuating official. Plaintiff was being oppressed and intimidated to abandon his complaints against prison officials.

Causative Link

84. All of the incidents and circumstances mentioned above are acts of official oppression entailing humiliation, intimidation, spite and antagonism. Plaintiff is being coerced, psychologically tortured and pressured by officials throughout California's correctional institutions. The official oppression began during plaintiff's former lawsuit stemming from the L.A.P.D. Rampart Unit scandal of 1999.

85. It has since propagated and snow-balled into a full-blown pervasive cruel and unusual punishment of egregious official oppression clearly motivated by biased spite, hatred and contempt.

86. The constant exposure to this egregious exploitation has greatly exacerbated plaintiff's stress level and has effectively caused exacerbated mental deterioration.

87. It is therefore inferred that officials have deliberately and intentionally exacerbated plaintiff's mental illness. They have also played into plaintiff's delusive ideations, conniving ignorance of their resounding belligerence and flagrant hatred, implicitly compelling increasing mental degeneracy, depression and disconsolance.

88. From their constant, resounding insinuations, officials have effectively led plaintiff to believe that he is constantly being pressured to commit suicide, at other times to refrain from eating meals (so as to starve himself) and yet at other times to succumb to becoming a prison transexual-homosexual.

IV. LEGAL CLAIMS

89. Plaintiff realleges and incorporates by reference paragraphs 1-88.

90. The official oppression complained of is conducive of deliberate indifference to plaintiff's health and safety. Said oppression was motivated by vindictive official retaliation for the filing complaints against law enforcement officials and peace-officers.

91. In oppressing plaintiff pervasively, constantly and with deliberate indifference officials have violated plaintiff Roy A. Montes' rights and constituted cruel and unusual punishment as well as violations of free speech. (U.S. Const. First, Eighth and Fourteenth Amendments.)

92. Prison and jail officials violate the Eighth Amendment when they act with deliberate indifference to a prison condition that exposes a prisoner to an unreasonable risk of serious harm. (Helling v. McKinney (1993) 509 U.S. 25, 33.) Prison officials act with deliberate indifference when

then ignore an obvious and serious danger. (Farmer v. Brennan (1991) 511 U.S. 825, 835.) Exposure to General Population where enemy "sureños" reside (ie. in spite of documented safety concerns) presents an unreasonable risk of serious harm. (See Robinson v. Prunty (C.A. 9 (Cal) 2001) 249 F.3d 862, 864-865.)

93. Officials who openly display disrespect or contempt "in any manner intended to or reasonably likely to . . . incite or provoke violence" acts with deliberate indifference. (California Code of Regulation, Title 15, Section 3004.(b) Rights and Respects of Others.)

94. Plaintiff has filed numerous administrative complaints and has written letters to Wardens and jail officials:

1.) Lydia C. Hense

Plaintiff wrote a letter to Lydia C. Hense complaining of official oppression and deliberate indifference, by Sgt. Ostein, of safety concerns. In her response Ms. Hense failed to address the issue of Sgt. Ostein and documented safety concerns, claiming that plaintiff's complaints were not substantiated. (See attached letter; compare with CDCR 128 chronos.) Additionally the CDCR 602 was reportedly "lost" through the institutional system.

2. A.W. Carrasco

Plaintiff wrote a letter to Associate Warden M. Carrasco complaining of official oppression and incidents of guard brutality. She sent Captain Steadman to interview plaintiff. Captain Steadman characterized the CDCR as the "California Department of Corruption" and that plaintiff's complaints would not achieve any relief. (I.e. That plaintiff's complaints were being processed by a frivolous system.)

3. J.G. Adams

Plaintiff wrote a letter to Warden J.G. Adams complaining about a laundry issue. Mr. Adams responded by sending officers Miranda and Davis to ransack plaintiff's personal effects and remove legal documents as an act of intimidation.

4. Deputy Sheriff Lee

Plaintiff filed a grievance complaint against deputy Lee for official oppression and deliberate indifference to safety concerns. Said grievance was never answered.

5. The CDCR 602 Process

Most of plaintiff's 602 complaints have been lost, unanswered or ignored.

95. In spite of plaintiff's continuous efforts to alert officials of the constant oppression and intimidation by correctional officers and jail personnel, officials have failed to conduct a thorough and adequate investigation. The most that has been done is that officials have questioned the officers, who deny involvement, and have sent other officials to conduct perfidious and frivolous interviews.

96. "The civil law generally calls a person reckless who acts or (if a person has a duty to act) fails to act in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known". (Farmer v. Brennan, supra, 511 U.S. 825, at p. 836.)

97. "[I]t does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk." (Id. at p. 843.)

98. To the extent officials inept inquiries had no effect on providing any remedial measures, in fact officers continued to oppress plaintiff, officials acts or omissions resulted in the tacit authorization of officer misconduct and of the official code of silence.

(See Madrid v. Gomez (1995) 889 F. Supp. 1146, 1148.)

99. The test for determining deliberate indifference is subjective and includes inference from circumstantial evidence. (Farmer v. Brennan, supra at p. 842.)

100. Here a factfinder may conclude that a prison official or officials knew of a substantial risk of serious harm from the very fact that the risk was obvious. (Ibid.)

101. In other words, a jury could find that the defendants in this case acted, or failed to act, with deliberate indifference.

Sheriff Lee Baca

102. Plaintiff was housed in "protective-custody overflow", apparently because of jail population overcrowding. While there, plaintiff was at risk of imminent danger and suffered a brutal attack by documented enemies. (I.e. "sureños")

103. The responsibility for operating county jails in California is placed by law upon the Sheriff. (Redman v. County of San Diego (1991) 942 F.2d 1435, 1446; see Penal Code Section §4000.)

104. "The sheriff is required by statute to take charge of and keep the county jail and the prisoners in it, and is answerable for the prisoner's safekeeping." (Ibid; Cal. Penal Code § 4006.)

105. "Supervisory liability exists even without overt personal participation in the offensive act if supervisory officials implement a policy so deficient that the policy itself is a repudiation of constitutional rights and is 'the moving force of the constitutional violation.'" (Ibid.)

106. Defendant Sheriff Lee Baca was acting according to the custom and procedural policies of Defendant Los Angeles County and the Los Angeles County Sheriff's Department, and the laws empowering him as a Los Angeles County

employee, in causing the physical assault to plaintiff in that the Menard Jail was filled beyond capacity, thus creating both a supervision and safety problem. By means of such overcrowding, such being known by the County of Los Angeles and the Los Angeles County Sheriff's Department, and that it was the custom and procedural policy of the Los Angeles County and the Los Angeles County Sheriff's Department to continue operation of said detention facility despite such safety hazards, and for the further reason that, due to such overcrowding, Plaintiff was placed in an area of said detention facility with a high security posting, and thus a greater risk of harm to his well being, though such area was known by defendant, that such area was not proper for the detention of Plaintiff, and that it was the custom and procedural policy of the County of Los Angeles and the Los Angeles County Sheriff's Department to place prisoners in improper detention areas within the facility in order to accommodate the overcrowding of said detention facility.

Excessive Use of Force - Pattern of Guard Brutality

107. Plaintiff has been beaten and pepper-sprayed by officials while he was handcuffed and unable to pose a threat. During these incidents, plaintiff has not attacked, attempted to attack or attempted to escape from an official. The use of force complained of in these incidents were applied maliciously and sadistically for the very purpose of causing harm.

(Hudson v. McMillian (1992) 503 U.S. 1, 8, 112 S.Ct. 995, 117 L.Ed. 2d. 156; Whitley v. Albers (1986) 475 U.S. 312, 320-321, 106 S.Ct. 1078, 89 L.Ed. 2d 251.)

108. A retaliation claim essentially entails three elements: (1) the plaintiff engaged in protected conduct, (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct, and (3) there is a causal connection between prior two elements, in that adverse action was motivated at least in part by the plaintiff's protected conduct. (Thaddeus-X v. Blatter (1999) 175 F.3d 378, 394.)

109. The official oppression complained of began during the highly publicized Rampart Scandal and escalated significantly. Plaintiff alleges that the pervasive oppression was at least partly motivated by the previous lawsuit involving Rampart gang-detectives. Also, the oppression incipiently intensified whenever plaintiff would file CDCR 602 complaints, which would mysteriously end-up lost.

110. In this case the pervasive official oppression has propagated and significantly intensified despite settlement of the previous claim. Thus what began as retaliation continued and evolved into a pervasively egregious campaign of unabated spite and hatred against plaintiff.

111. The circumstances flagrantly speak for themselves. Petitioner has alleged that he is being punished for filing a civil complaint stemming from the Rampart Police Scandal. He further alleges that he is also being punished for filing grievances and administrative complaints against officials. Under

(Austin v. Terhune (2004) 367 F.3d 1167, 1171.)

112. Plaintiff is clearly and implicitly led to believe that he is being punished for practicing the right to access the courts. This is not vindicated by a tacit "brotherhood" or code of silence among officers within California's law enforcement community. (U.S. Constitution First Amendment - Petitioning the Government for a redress of grievances.)
113. In *Bart v. Telford* (7th Cir. 1982) 677 F.2d 622, 625 "The Bart court actually held that 'an entire campaign of harrassment' was actionable because although it was 'trivial in detail' it 'may have been substantial in gross' ". (*Thaddeus-X v. Blatter*, supra; at p. 398.)
114. Retaliation against a prisoner is actionable if it is capable of deterring a person of ordinary firmness from exercising his or her right to access the courts. (*Id* at p. 398.)
115. As a result of the constant pressure, spite, humiliation and detriment entailed in the pervasive and egregious campaign of official oppression, plaintiff has suffered stigmata and high levels of mental anguish and emotional distress. Plaintiff has developed exacerbated levels of stress, hopelessness, and depression. The intimidation, scorn and repudiation involved has affected plaintiff's ability to previously file a complaint on these issues in that he has hoped the oppression would be pacified by not propounding these circumstances to the courts. Defendants have taken advantage of plaintiff's vulnerable mentality, and reputation among prisoners, relentlessly.

116. The degree of reprehensibility of the defendants' conduct, along with the actual or potential harm suffered by plaintiff, is significant to incur money damages on jury trial. (Siggers v. Barlow (2006) 433 F.Supp.2d 811, 816-818.)

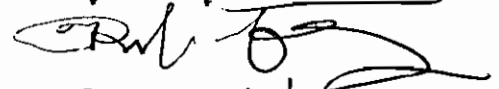
VI. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court enter judgement granting plaintiff:

117. A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States
118. A preliminary and permanent injunction ordering defendants to transfer plaintiff to a federal prison
119. A preliminary and permanent injunction ordering defendants California Department of Corrections and Rehabilitation and County of Los Angeles to surcease the pervasive campaign of official oppression against plaintiff
120. Compensatory damages in the amount of \$250,000 against each defendant jointly and severally
121. Punitive damages in the amount of \$200,000 against each defendant
122. A trial on all issues triable by a jury
123. Plaintiff's costs in this suit

Dated: January 26, 2008

Respectfully Submitted,


Roy A. Montes

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and as to those, I believe them to be true, I certify under penalty of perjury that the foregoing is true and correct. Crescent City, California. January 26, 2008.

Roy A. Montes v. California Dept. of Corrections and Rehabilitation, et al., Case No.
1:06-CV-01651-OWW-WMW P

I declare that:

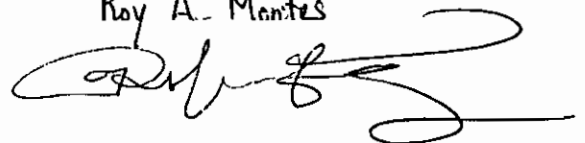
I am a prisoner of Pelican Bay State Prison in the county of Humboldt, California. I am over the age of 18 years. The address of the prison I am incarcerated at is: Pelican Bay State Prison, B1-213, P.O. BOX 7500, Crescent City, California 95532.

On January 29, 2008 I served the attached Third Amended Complaint on the California Attorney General by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Pelican Bay State Prison addressed as follows:

California Attorney General 455 Golden Gate Avenue, Suite 11000,
San Francisco, California 64102 Attn: Deputy Attorney General Rochelle East

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 29, 2008, at Crescent City, California.

Roy A. Montes



COPY

NAME and NUMBER MONTEZELLO, RAYMOND P-97422

CDC-128-8 Rev. 4/74

Inmate Montezello has expressed fears for his safety and they appear to be legitimate. During an interview with him he explained that he was a former member of the Temple St. gang, but his gang does not accept him due to his having lived with a homosexual. In addition Montezello had received \$140,000 from Los Angeles Police Department due to the Rampart Division CRASH unit scandal. This was confirmed in a telephone conversation with Montezello's mother and Sgt. Duran of the LAPD. Montezello said that Eric Gonzalez whom he knew as "Perico" was in control of his street gang for the Mexican Mafia (EMM). Note: Identity of Gonzalez is unconfirmed. "Perico" said to Montezello that EMM expected each gangster that received money to pay them half of what they had received. Montezello said he paid \$2,000 but stopped, as he did not believe the EMM deserved the money. The issue of homosexuality would stop his gang membership, and his non-payment to EMM would jeopardize his safety.

IGI REVIEW S. W. FRANCIS, LT.
SAFETY INST. GANG INVESTIGATOR, CIM

April 10, 2003

DATE

GENERAL CHRONO



Custody: MAX-S to MAX CS: 142 LEVEL: IV WG/PG: D2/D Eff: Date: 1/9/06

Type/Release Date: MEPD 6/21/44

TT: 40-Life BPT: 11/08 Assignment/Action Taken: SHU ANNUAL/In Person/CCCMS Rev/Waive Staff

COPY

INMATE Asst/A & 1.9 mo agg consec SHU term RVR dated 10/2/06 adj MERD to 8/2/08/Refer
CSR E/SHU Audit & reaffirm COR-SHU/Chg yard from IEM-W/A to #28 RM-SNY
Yard/Chg S/C to D/C WLC & Chg MAX-S to MAX Custody.

Inmate MONTEZELLO'S case was reviewed by ICC in person this date for the purpose of SHU ANNUAL REVIEW. Subject stated that he was in good health and was ready to proceed. Dr. Stoner, Staff Psychologist, was present during Committee and interviewed Subject regarding his current CCCMS status. Dr. Stoner determined Subject did not require a staff assistant based on CCCMS, and Subject waived Staff Assistant. Effective communication was established. Subject was originally placed in ASU on 1/9/06 at NKSP-RC for Battery on an Inmate. Subject received a 6 month Aggravated SHU Term with a MERD of 5/24/06, based on CDC 115 dated 1/9/06, Log #FD-06-01-0009, for the specific act of Assault on an Inmate-insufficient force to cause serious injury. WGPG is D2/D effective 1/9/06 through 90 days loss of credit is appropriate based on this disciplinary. Subject received an 18 month Aggravated, Consecutive SHU Term based on CDC 115 dated 3/12/06, Log #FD-06-03-0069 for the specific act of Aggravated Battery on a Peace Officer, resulting in an adjusted MERD of 8/24/07. WGPG is D2/D effective 3/12/06 through 150 days loss of credit is appropriate based on this disciplinary. CSR action of 5/24/06 endorsed Subject for COR-SHU placement. Subject was received at CCI-IVB SHU on 5/30/06 from NKSP-RC-ASU.

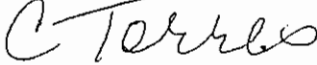
CDC ANNUAL REVIEW: This review period covers 11/18/05 through 11/17/06; During this period Subject received 5 serious RVR'S, as a result Classification score was adjusted from 66 to 142. Subject did not obtain minimum custody, nor did he participate in work, vocational/academic training.


SHU ANNUAL REVIEW: Subject's case was reviewed for the purpose of an Annual Review of his current placement. The current CDC 114D dated 1/9/06 documents sufficient detail to support SHU retention.


COMMITTEE DECISION: After reviewing all case factors, Committee elects to assess and impose a 9 month aggravated consecutive SHU term on RVR Log #4BSH-06-10-0480, dated 10/2/06, for Attempted Battery on a Peace Officer resulting in an adjusted MERD of 8/2/08. Factors in aggravation, mitigation, and suspension were discussed. Committee elects to assess the aggravated SHU term based on similar conduct, refer to RVR dated 3/12/06. WGPG is D2/D effective 10/2/06 through 150 days loss of credit is appropriate based on this disciplinary. Refer CSR for SHU audit & reaffirm COR-SHU endorsement. Committee notes Subject was previously endorsed SNY per CSR action of 4/14/03. Safety concerns stem from a homosexual relationship which was discovered by the Southern Hispanics and his refusal to pay EME gang members half of a lawsuit settlement (see 128-B's dated 1/10/06, 4/10/03, & 10/31/01). Subject stated that he is not a homosexual and that was a rumor started by a Southern Hispanic. Exercise yard categories were discussed and explained with the Subject. Committee acts to change the Subject from the Individual Exercise Module (IEM)-Walk Alone exercise yard to the #28 Reintegrated Mix-SNY Exercise Yard based on Inmate's request and Committee's review of the Central File. ICC reviewed Subject's Central File to determine housing assignment, noting Subject has been on single cell status since 2/2/06 due to RVR dated 10/30/00 for Battery on an Inmate (in cell) and RVR dated 1/26/06 for Mutual Combat (in cell). Subject informed Committee that he does not have a current cell partner and requested to be placed on double cell status. Both RVR'S dated 10/30/00 & 1/26/06 report no serious injuries and has been a year since the last in cell incident, therefore ICC elects to change single cell status to double cell status with like concerns (another Inmate endorsed SNY) and change MAX-S custody to MAX Custody. Subject is in agreement with both his yard and cell status. Subject actively participated in Committee discussion and decision stating that he agrees with committee's actions. Subject was advised of his appeal rights, as well as, behavioral expectations.

CASE FACTORS: (DOB 1/10/78) Subject is a 29-year old, Hispanic, Mult-Termer, PVWNT received into CDC on 11/18/05 from Los Angeles County, for the offense of 2nd Degree Murder with a Firearm. Non Controlling: Asslt W/D Wpn & Poss of C/s. GPL: Unknown. Reading level: 12.9. Subject was reviewed for DDP/DPP and does not meet the criteria. Medical status: Full Duty with Camp based on CDC 128C dated 11/22/05. Psych Concerns: CCCMS-per CDC 128C dated 12/27/06. Subject was reviewed for MDO consideration and does meet the criteria. TB code is: 22 per CDC 128C dated 5/30/06. Escapes: None. Arson: None. Sex Related Offenses: None. HWDs: Clear. Past substance use: Cocaine, Alcohol. CDC 812/812C notes enemies: yes. Gang Affiliation: Temple Street Gang member. Moniker: "Skinny", "Scotter", "Little Casper", and "Casper". Confidential information: Clear. Registration required: H&S 11590. Notification required: PC 296 & PC 3058.6. Restitution ordered: 10,200. Past disciplinary history consists of notable CDC-115s for: Battery on an Inmate (6), Mutual Combat, Obstructing a P/O, Willfully resisting a P/O, Aggravated Battery on P/O, & Attempted Battery on P/O. Subject is disqualified from Minimum Support Facility, Fire Camp, Community Correctional Facility, Substance Abuse Program, Restitution Center, or Community Correctional Re-entry Center Programs based on VIO/LIF. Next anticipated review date is 12/4/07 for SHU ANNUAL REVIEW. Subject is a SHU Inmate.

COMMITTEE:


C. TORRES, CC-I
J. RAMOS, FC(A)
DR. STONER, PSYCH STAFF


F. GONZALEZ, CDW
CHAIRPERSON


V. MCLAUGHLIN, C&PR
RECORDER

DIVISION OF ADULT INSTITUTIONS

NORTH KERN STATE PRISON - RECEPTION CENTER

P. O. Box 567

Delano, California 93216-0567

(661) 721-2345



June 26, 2006

California Correctional Institution
Inmate Raymond Montezello, P-97422
IV-B 204L
P. O. Box 1031
Hwy 202
Tehachapi, CA 93581

STAFF COMPLAINT

Dear Mr. Montezello,

I am in receipt of your letter dated May 18, 2006, regarding a staff complaint about your housing status when you arrived at North Kern State Prison (NKSP). I have read your concerns and have reviewed the information you provided as well as the factors surrounding the information in your letter.

You stated in your letter on November 18, 2005, you arrived at NKSP from Los Angeles County Twin Towers Correctional Facility. You stated while housed there you were in protective custody. However, when you arrived at NKSP, you were placed on a General Population (GP) yard. You stated NKSP staff was aware you paroled from a Sensitive Needs Yard (SNY) at Salinas Valley State Prison and placed you on the GP yard. You related sometime between December 25, 2005 and January 1, 2006, the Facility D Program Sergeant informed you he was aware of your SNY status and he elected to keep you on the yard disregarding your safety concerns. You stated eventually you were involved in an altercation. Due to this, you have requested an investigation to be conducted into your allegations of "staff misconduct and cruel and unusual punishment."

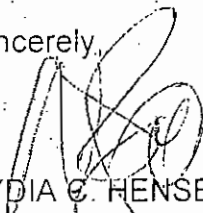
A review of the Los Angeles County Jail (LACJ) records revealed you were classified as K-10, on Administrative Segregation (AdSeg) status. Your classification and housing placement was due to your assaultive behavior toward inmates and staff. Further review depicted you were housed in Twin Towers, however, failed to reveal you were classified for PC housing placement.

A review of your Central File and housing revealed you were placed on an SNY at Salinas Valley State Prison. However, upon further review, it was discovered Correctional Lieutenant D. Maurer authored a CDCR 128B dated January 10, 2006, which documented your safety concerns and prior SNY placement. The aforementioned documentation was the first indication you informed

NKSP of your safety concerns. At the conclusion of the review of all relevant information, it has been determined initially you failed to notify custody staff of your housing concerns and therefore, were housed in the GP. Once you made NKSP staff aware of your safety needs, they were addressed.

Due to the aforementioned information, I do not believe there was any negligence on behalf of the NKSP staff to house you inappropriately.

Sincerely,



LYDIA C. HENSE
Warden (A)
North Kern State Prison

181034

208

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

**INMATE/PAROLEE
APPEAL FORM**
CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. CCJ
2. _____

1. 06 02371
2. _____

X 7

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

(a) Montezello (b) Hammond

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
MONTEZELLO	P97422	---	4B1C-104

A. Describe Problem: On 8-9-06 At Approx 3:30 P.M., WHILE BEING HANDCUFFED BY C.O. POPEJOY (OR AN OFFICER FITTING HIS DESCRIPTION) DURING 3RD WATCH SHOWERS, I WAS ASKED TO PLACE MY HANDS THROUGH THE TRAY SLOT. OFFICER POPEJOY DELIBERATELY PRESSED THE HINGES OF HIS STATE-ISSUED HANDCUFFS AGAINST MY WRIST AND PRESSED THE HANDCUFFS TOGETHER SO AS TO CAUSE AN ABRASION. I SUBSEQUENTLY ASKED TO SPEAK TO A SERGEANT AND WAS REFUSED, UNTIL I BEGAN REACTING SO AS TO ATTRACK ATTENTION.

VIOLATIONS - SEE CCR 3270.; 3268.2.(b)(1)&(3); 3268.(3); U.S. CONST. 8TH AM

If you need more space, attach one additional sheet. CCRS 3391.(a)

B. Action Requested: REPRIMAND AGAINST POPEJOY, AS WELL AS APOLOGY UNPROFESSIONAL AND UNETHICAL BEHAVIOR WHICH GOES AGAINST CONSCIENCE OF A MATURING SOCIETY.

Inmate/Parolee Signature: [Signature] Date Submitted: 8-9-06

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: **BYPASS**

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL

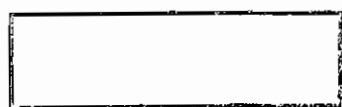
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

BYPASS

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: _____



RECEIVED
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 OCT 19 2006
 BRANCH APPEALS

*CI should
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 as staff
 complat*

Roy A. Montes a.k.a.
Raymond Montezello #P97422
California Correctional Institute
P.O. BOX 1031
Tehachapi, California 93581

October 19, 2006

Attn: Director of California Corrections
P.O. BOX 942883
Sacramento, CA 94283-0001

RE: Campaign of consistent Staff Misconduct / Supplement

Dear Sir or Madam,

This letter is submitted in reference to several staff assaults and deliberate indifference which I have suffered. The enclosed CXC 602 form seems to be the only one of its kind (I.e. Staff Misconduct) which has actually been processed, despite numerous unanswered / Lost complaints submitted in the past. The issue in the enclosed 602 seems petty. However, it is only one of numerous aggravations which amount to an overall violation of 8th Amendment U.S. Constitution civil rights against Cruel and Unusual Punishment. The following is a formatted summary in support of my complaints, which can be viewed in context of information on records.

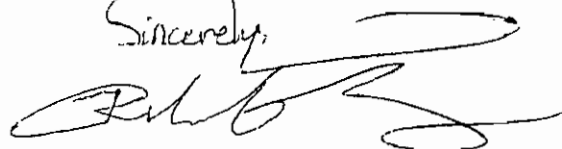
- 1) On October 30, 2001, while at Wasco State Prison, I, Roy A. Montes a.k.a. Raymond Montezello #P97422, was taken to the Ad-Seg patio while Mechanically restrained and physically retained, and slammed face-down into the ground where C.O. Garcia climbed atop of me and proceeded to slam my face violently onto the pavement, several times. Nothing came of the reported complaint.

- 2) On or about 12-22-05, I was interviewed by Sgt. Ostein at the N.K.S.P. D yard program office with regard to previous SHU endorsement and confidential information. I was sent back to the General Population D-Yard and told to "let staff know" if any concerns arise. I was consequently threatened by an inmate and confronted an attack. Furthermore, I was illegally placed on Ad-Seg status for the charge of "Battery on an inmate".
- 3.) While at N.K.S.P. Ad-Seg Unit, for the incident in the former paragraph, I was consistently antagonized by Correctional Officers on a daily basis. Numerous complaints were forwarded to no avail, both verbal and written on 602 forms. After having one of the Correctional Officers, or rather, after experiencing one of the C.O.'s hands tampering with my dinner tray right before my eyes, I became frustrated and indignant. Consequently, I decided to splash water onto the C.O.'s face hoping that the harassment would cease. Instead, I received a SHU term. My complaint was never processed.
- 4) On July 1, 2006, I was taken to the 4B-1 Rotunda, while mechanically restrained, by C.O. Emerson, who slammed me face down onto the concrete and began slamming my face and head against the concrete. Sgt. Novec, C.O. Williams, C.O. Wilburn, and C.O. Brockholt were present. My property and mattress were taken away and I spent the night in my underwear exposed to the cold air and without any bedding. Again, my submitted 602 complaints went unprocessed and were said to be "lost" by Lt. Sanders. Additionally, the C.O.'s involved in the incident deny that the assault occurred. (CCI-fac)
- 5) On October 2, 2006, while at the location stated in the former paragraph (California Correctional Institute - 4B1) at approx. 7:00 a.m. I was escorted from the shower via to my assigned cell. I had complained about the cold water being turned off in mid-shower leaving scalding hot water suddenly burning into my skin. C.O. Allison, who was escorting me conveyed agitation and indifference by proceeding to assault me and degrade me with various foul language. I became upset and responded with my own opinions of his cowardly conduct. (I.e. Aggravating me with his foul verbiage.) C.O. Allison demanded that I face forward and not "look at" him while he escorted me. I refused saying that since I was not resisting any part of the movement, I was not obliged to refrain from looking at him while speaking to him. Allison slammed me face down onto

the pavement (while I was mechanically restrained at the wrists and held by him) where I was climbed on (by Allison) and had my face slammed against the pavement. C.O. Allison then ordered ankle-chains and directed my ankles to be restrained. I did not resist. C.O. Allison then yanked me to my feet and began pointing his baton in the direction of my anus, telling me to look forward. I said "What are you going to do?" Without warning, C.O. Allison slammed me face down onto the pavement, again, where he placed his knee on my back and slammed my face against the concrete. He then proceeded to spray D.C. Pepper Spray into my eyes, nose, mouth and ears for over 13 seconds (while another unidentified C.O. also contributed to the pepper spray), after which he, C.O. Allison, began rubbing the residue of the pepper-spray onto my eye and face. I was subsequently yanked to my feet and slammed into a wall. When asked for the reason I was sprayed, C.O. Allison responded "You were looking at me. You're not supposed to look at me." False allegations of "Attempted battery on a Peace Officer" ensued and I was placed on strip-cell status where I suffered exposure to cold weather for about 3 days. My legal property, along with the rest of my personal effects, were removed and taken.

Additionally, tenacious and non-stop antagonism has occurred during the periods between the above incidents. As for the reason for this atrocious misconduct, I can only venture an opinion: Racial and Ethnic Hatred on a collective level. Such ill-will has occurred ever since my settlement regarding the Rampart Police Scandal. I request the following: Money damages in the amount of \$150,000 for malicious and sadistic physical assaults, emotional distress and punitive damages, along with an injunction for legal name change, medical care, dental care and nominal damages with declaratory statement.

Thank you for your time and consideration.

Sincerely,


INMATE APPEALS BRANCH

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



January 18, 2007

Appeals Coordinator
California Correctional Institution
P.O. Box 1031
Tehachapi, CA 93581

RE: MONTEZELLO, CDC #P-97422 Institution Appeal Log #CCI 06-02371
Program

To the Appeals Coordinator:

A response is needed at the next appropriate level of review.

Please clarify why this appeal was processed as Program and not as a Staff Complaint. Please complete and return the requested documents to this office by February 17, 2007.

Handwritten signature of N. Grannis, consisting of stylized initials.

N. GRANNIS, Chief
Inmate Appeals Branch

State of California

Memorandum

AMENDED SECOND LEVEL
KA 3-29-07

Date : March 24, 2007

To : Montezello, P-97422
CCI-IVB-7B-103Subject: **STAFF COMPLAINT RESPONSE - APPEAL # CCI-0-06-02371**

APPEAL ISSUE: Inmate Montezello, P-97422, alleges that Officer J. Popejoy (or an officer fitting his description) pressed handcuffs against his wrist to cause an abrasion. Montezello further alleges that this was not an accident, but that the officer deliberately placed the handcuffs on incorrectly to cause the abrasion, thus committing battery against him. Montezello further alleges that he asked to speak to a Sergeant, but this request was refused, until he began to act-up to attract attention, so the Sergeant had to respond to his cell.

DETERMINATION OF ISSUE: A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review your appeal has been handled as follows:

- PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY
 REFERRED TO THE OFFICE OF INTERNAL AFFAIRS (Note: You will be notified of the conclusion of any internal affairs investigation)

SUMMARY FOR APPEAL INQUIRY:

You were interviewed on February 24, 2007, by B. Trone, Correctional Lieutenant, and stated, that you had nothing further to add to his appeal and that he covered all of it with the supplement that he attached to the original appeal. The following witnesses were questioned: Officer Noland, Officer Bushman, Officer Popejoy, and Sergeant Rohland. The following information was reviewed as a result of your allegations of staff misconduct: Medical Report of Injury (CDC-7219) and supplement that was provided by you.

FINDINGS FOR AN APPEAL INQUIRY:

Your appeal is PARTIALLY GRANTED at the First level Second level, as an inquiry into your allegation has been conducted. ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, results of any inquiry/investigation will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process.

Inmate Montezello, P-97422

Page 2

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review up to, and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

Please print and sign below:

F. GONZALEZ | *F. Gonzalez*
Warden/CDW/HCM (Second Level)

3-29-07
Date

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

JUL 03 2007

Date:

In re: Montezello, P-97422
California State Prison, Corcoran
P.O. Box 8800
Corcoran, CA 93212-8800

IAB Case No.: 0613015

Local Log No.: CCI 06-02371

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner M. Hodges-Wilkins, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that on August 9, 2006, Correctional Officer (CO) J. Popejoy (or an officer fitting his description) handcuffed the appellant deliberately pressing the hinges of the handcuffs against the appellant's wrist and pressed the handcuffs together causing an abrasion.

The appellant requests that CO Popejoy be reprimanded and that he apologize to the appellant for unprofessional and unethical behavior.

II SECOND LEVEL'S DECISION: The reviewer found that an inquiry was conducted into the appellant's allegations. The appellant was notified of the completion of the inquiry, that all staff personnel matters are confidential in nature, and that as such the results of the inquiry will not be shared with staff, members of the public, or inmates.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: Upon review of the documentation submitted, it is determined that the appellant's allegations have been reviewed and evaluated by administrative staff and an inquiry has been completed. The appellant was notified of the completion of the inquiry. Although the appellant has the right to submit an appeal as a staff complaint, the request for administrative action regarding staff is beyond the scope of the appeals process. The appellant has added new issues and requests to his appeal. The additional requested action is not addressed herein as it is not appropriate to expand the appeal beyond the initial problem and the initially requested action (CDC Form 602, Inmate/Parolee Appeal Form, Sections A and B).

B. BASIS FOR THE DECISION:

California Penal Code Section: 832.7, 832.8

California Code of Regulations, Title 15, Section: 3004, 3391

Administrative Bulletin 05/03: PROCESSING OF ADULT INMATE/PAROLEE APPEALS, CDC FORM 602, WHICH ALLEGE STAFF MISCONDUCT

C. ORDER: No changes or modifications are required by the institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, COR
Appeals Coordinator, COR

**INMATE/PAROLEE
APPEAL FORM**
CDC 602 (12/87)

Location: Institution/ Parole Region _____ Log No. _____ Category 6
 1. _____ 1. _____
 2. _____ 2. _____

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Montezello	P-97422	-	4A2L-53

A. Describe Problem: On 5/4/06 a CDC 602 Complaint Form was completed and sent for administration with regard to guard harassment and deliberate indifference to safety concerns. Due to the complexity of the issues involved in the circumstances, said 602 was screened-out on 5/11/06. The 602 was resubmitted on 5/23/06. Additionally, a letter was also submitted to the Warden of N.K.S.P.-R.C. on 5/18/06 with regard the the aforementioned CDCR staff misconduct. (See attached.) The aforementioned 602 was returned after transfer to CCI-SP. Again, it was resubmitted and subsequently "lost," apparently. Appeals Coordinator K. Sampson attests that the 602 was never recieved by her staff at CCI-SP. Her position in this regard was transmitted by Lt. B. Sanders during an

If you need more space, attach one additional sheet.

Enc: Attached Letters and add. page

B. Action Requested: Name Change, just compensation for pain and suffering (I.e. money damages), removal of harmful records from my C-file (I.e. false statements regarding my sexual preference) which were based on rumors and misconstrued information. The legal name change to be established is KARL BAADER FRANCK.

INMATE/PAROLEE SIGNATURE

Inmate/Parolee Signature: [Signature] Date Submitted: 4-22-07

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____ Date Returned to Inmate: _____

RECEIVED
 2nd LEI
 JUL - 9 2007
 INMATE APPEALS BRANCH

D. FORMAL LEVEL

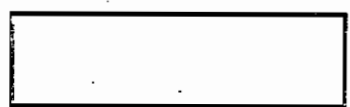
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

In the additional attached page, the following specific language is provided: "In an apparrant gesture of deliberate indifference and ignominy, Sgt. Ostein pressured me to remain on the G-P yard" despite knowledge of documented safety concerns. (See attached.) Also, the copy of the letter was removed from this 602 complaint. This appeal does not address more than one issue. (I.e. Deliberate Indifference

Signature: [Signature] Date Submitted: 6-8-07

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: _____



(Continued from CDC 602 attached herein.)

interview conducted on 9/6/06 in reference to yet further incidents of CDCR staff misconduct. Lt. Sanders characterized the 602 as "lost" through the mail. Despite the fact I'm not obliged to seek further 602 remedies, this 602 is provided as security with regard to the veracity of my exhaustion of the process. The 602 (in question) was submitted in reference to a pervasive pattern of guard intimidation, brutality, defamity, and deliberate indifference. (See attached letter dated June 26, 2006 which gives reference to some of the issues involved.) As stated on the letter, I was placed in a G.P. yard despite documented safety concerns which CDCR staff were apparently aware of. In her response, Warden Hense of N.K.S.P.-R.C. conveyed an attitude of caustic indifference. Supposedly I "failed to notify staff" of documented safety concerns. However, there is no law obligating me to provide confidential information from my C-file. Whether those records were available to CDCR staff or not is irrelevant to my safety needs. In any event there can be no dispute as to the implicit fact that staff were aware. First, records from my previous incarceration at an SNY yard (I.e. S.V.S.P.) were reviewed immediately upon my reception at N.K.S.P.-R.C. on 11/18/05. At that juncture my previous CDC number and alias name (I.e. Raymond Marzello #P-97422) were reinstated with **expressed** reference to S.V.S.P. Secondly, I was interviewed by Sgt. Ostin of N.K.S.P.-R.C., D-Yard Program Office, who expressed explicit knowledge of my safety concerns, confidential file, debriefings, and SNY placement at S.V.S.P. In an apparent gesture of deliberate indifference and ignominy, Sgt. Ostin pressured me to remain on the G.P. yard pending an incident, during which I was to "alert staff" of my safety concerns.

See Back Page.

Pg. 1.

Second-Level Review Request At First Level.

Cont.

Apparently the Warden, and/or his administrative staff, have refused to grant name change insofar as this CDCR 602 is being returned. (See generally Calif. Admin. Code, Title 15, Section § 3294.5 - Inmate Name Change.) (Cf. also attached complaint part B. Action Requested.) In addition, I now amend the appeal to include monetary damages and injunction in the form of transfer to a federal penitentiary in order to serve my sentence without the constant, egregious harassment. It is axiomatic that these measures are necessary along with a quantitative assessment of gross disparagement and pervasive intimidation as shown in the flagrant circumstances. Any denial of these axioms is a preemptor admission of the facts in actuality, insofar as they would be deemed ambiguous alluded to. There can be no question there exists deliberate indifference in my C-file and Mental Health file alone. I'm clearly being deprived of my sanity and dignity. (See Cal. Admin. Code, Title 15, Section § 3368 - Aversive Therapy. I've been severely beaten by C.O.'s on numerous occasions throughout the years. On 10-30-01 I was at WSP-R.C. D-6 Ad-Seq. At app. 7:00 a.m. C.O. Garcia arrived at my assigned cell pounding the door loudly and demanding that I "wake up" in an antagonizing manner. He walked away laughing derisively. A few minutes later I was hand-cuffed and taken to the pod where I was slammed against a metal holding cage, thrown onto the pavement into prone position and my head slammed against the concrete. I was also punched several times. Sgt. Sorrel threatened to file false allegation in the event of complaint. Further threats and discouragements caused me to abandon the issues. Clearly, I was prevented from seeking redress and further subject to continued psychological torture. Nothing appeared staff. Spiteful attitudes and implicit denigration also sublimated mental anguish and emotional distress. Consequently,

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

ARNOLD SCHWARZENEGGER, GOVERNOR

DIVISION OF ADULT INSTITUTIONS
CALIFORNIA STATE PRISON - CORCORAN
P.O. Box 8800
Corcoran, CA 93212



Date: **June 22, 2007**


To: **I/M Montezello P97422, 4A3R-49L**

Subject: **602 Appeal return**

On this date your appeal regarding a name change is being returned to you the reasons listed below:

- 1: You cannot be dissatisfied if no decision has been made
- 2: This issue has not been answered at the informal or any other level, therefore, you cannot be dissatisfied and you cannot fill out these sections until a response has been entered.

Please fill out correctly and resubmit.

 _____ Date 6-22-07
M. CALHOUN
Correctional Sergeant
Facility 4A3
CSP-Corcoran

State of California
CDC FORM 695
Screening For:
CDC 602 Inmate/Parolee Appeals
CDC 1824 Reasonable Modification or Accommodation Request

COK

49

MM
4930
492

RE: Screening at the INFORMAL Level

May 17, 2007

MONTEZELLO, P97422
FDB6ADT20000220L

Log Number: NKSP-D-
(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

Your appeal contains allegations of staff misconduct. However, upon close examination of your appeal, it has been determined that you did not provide any specific detail(s) demonstrating misconduct. See attached memorandum.

You have more than one issue in your appeal. Separate and resubmit. Please review memorandum on Alleged Staff Misconduct.

M. Martney
Appeals Coordinator
North Kern State Prison

NOTE: Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

MM

State of California
CDC FORM 695
Screening For:
CDC 602 Inmate/Parolee Appeals
CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the FIRST Level

June 15, 2007

MONTEZELLO, P97422

4A3R0000000049L


Log Number: CSPC-5-

(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

You are appealing an action or decision that has not yet occurred. Such issues are not appealable until they happen. (CCR 3084.3(c)(3)).

You need to follow the procedure for a legal name change as outlined in CCR, Title 15 3294.5. If you are denied the name change, you may file your appeal at that time.


Appeals Coordinator
CSP-Corcoran

NOTE: Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

ARNOLD SCHWARZENEGGER, GOVERNOR

INMATE APPEALS BRANCH

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



August 7, 2007

MONTEZELLO, RAYMOND, P97422
California State Prison, Corcoran
P.O. Box 8800
Corcoran, CA 93212-8800

RE: IAB# 0701012 CASE INFO/RECORDS

Mr. MONTEZELLO:

The Inmate Appeals Branch, California Department of Corrections and Rehabilitation (CDCR) acts for the Director, Division of Adult Institutions, at the third level of appeal. The Branch examines and responds to inmate and parolee appeals that are submitted on a CDC Form 602, Inmate/Parolee Appeal Form, after the institution or parole region has responded at the Second Level of Appeal. The Inmate Appeals Branch has received an appeal from you and has determined that it does not comply with the appeal procedures established in California Code of Regulations (CCR) Title 15, Article 8, and is being screened-out and returned to you pursuant to CCR 3084.3 for the following reason(s):

The CDC 602, Inmate/Parolee Appeal Form, must be completed through the Second Level of Review on behalf of the Warden or Parole Region Administrator.

Institution and parole staff are available to assist you in obtaining additional copies of forms and documents required to submit an appeal. The inmate library offers resources and assistance to obtain general information regarding regulations, procedures, policies, and government agency addresses. Additionally, your assigned Counselor or Parole Agent, or the Appeals Coordinator can answer any questions you may have regarding the appeals process. The Inmate Appeals Branch appreciates your responsible use of the appeal system to address your grievance.

A handwritten signature in black ink, appearing to read "N. Grannis".

N. GRANNIS, Chief
Inmate Appeals Branch

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

**INMATE/PAROLEE
APPEAL FORM**
CDC 802 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. (CI)
2. _____

1. 06-02720
2. _____

7

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

P97422

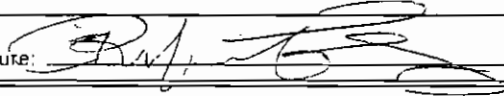
NAME a.k.a.	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Montezello Raymond	P97422	N/A	4B4C-1014

A. Describe Problem: On 7/1/06, during 2nd Watch at app. 10:00 a.m. at 4B4C rotunda, I was beaten while handcuffed, by ~~C.O. Emerson~~ Emerson in the presence of Sgt. ~~Noyce~~ Noyce, C.O. ~~Willman~~ Willman, (C.O. ~~Stockholm~~ Stockholm), and ~~G.D. Williams~~ Williams. My property was also taken, as well as state issued material including mattress. Subsequently, 2 602's were written, both of which were never recieved by the Appeals Coordinator. In addition, 602 was submitted with regard to misconduct by staff at N.K.SP. - that also came up missing. I wrote a letter to the A.W. at CCI, and a response was delivered with language to the effect that my inquiries had prevailed over my complaints. Thus administrative representatives of the CDC neglect my complaints, which proves that they fail to properly train and supervise their employees. This reflects the entire CDC.

RECEIVED
 DEPT. OF CORRECTIONS
 9/22/06

If you need more space, attach one additional sheet. In response to letter from A.W. Carrasco 9/9/06 (9/22/06)

B. Action Requested: Name change, declaratory statement on C-File, and reprimand for the officers involved in the on-going misconduct. This harassment is phenomenal and atrocious. My Constitutional Rights are being openly violated deliberately. (U.S. Const. Amend 8th)

Inmate/Parolee Signature:  Date Submitted: 9-24-06

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: **BYPASS**

RECEIVED
 DEC 12 2006
 INMATE APPEALS
 BRANCH 1

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Report, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

BYPASS

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim
CDC Appeal Number: _____



First Level Granted P. Granted Denied Other _____

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: _____ Due Date: _____

Interviewed by: _____

**BYPASS
BYPASS**

Staff Signature: _____ Title: _____ Date Completed: _____

Division Head Approved: _____ Returned: _____

Signature: _____ Title: _____ Date to Inmate: _____

RECEIVED
FEB 15 2008

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

**BYPASS
BYPASS**

Signature: _____ Date Submitted: _____

Second Level Granted P. Granted Denied Other _____

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 10-12-06 Due Date: 11-8-06

See Attached Letter

Signature: M. Camacho AW Date Completed: 11-29-06

Warden/Superintendent Signature: [Signature] CDW Date Returned to Inmate: 11-30-06

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

The appeal statement stipulates that I supposedly "withdrew complaint." However, I've not withdrawn complaint. Additionally I've not been granted a legal name change to Frank Bieder Franck. Due to the insinuating circumstances regarding my past gang affiliation, a name change is quite imminent. There are social factors of adjustment at stake. Title 15, Cal. Admin. Code Sect. 8270, states language to the effect rehabilitation is a primary objective of the CDCR. Furthermore, it is quite apparent, from my complaints, that I've suffered a great deal. Monetary compensation will be sought.

Signature: [Signature] Date Submitted: 12-5-06

For the Director's Review, submit all documents to: Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: Granted P. Granted Denied Other _____

See Attached Letter

FEB 26 2007

Date: _____

State of California

Department of Corrections and Rehabilitation

M e m o r a n d u m

Date: November 10, 2006

To: Inmate Montezello, P97422

~~CCI-IVB, 8B104L~~ 4B8B5H 104L

Subject: **STAFF COMPLAINT RESPONSE-APPEAL # CCI-0-06-02720**

APPEAL ISSUE:

Appellant is filing a staff complaint against several Correctional Officers for battery. Appellant alleges that on July 1, 2006, Officer Emerson in the presence of E. Noyce, Correctional Sergeant, Officers Williams, Stockholm and Wilburn beat Appellant while in handcuffs in the rotunda. Appellant's property was then taken. Appellant believes that the Administrative representatives of the California Department of Corrections and Rehabilitation neglect his complaints, and fail to properly train and supervise their employees. This is reflected in a response to a letter from M. Carrasco, Associate Warden, Units IVB and IVA. Appellant requested that he be allowed to change his name.

DETERMINATION OF ISSUE:

A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review your appeal has been handled as follows:

PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY

REFERRED TO THE OFFICE OF INTERNAL AFFAIRS (Note: You will be notified of the conclusion of any internal affairs investigation)

SUMMARY FOR APPEAL INQUIRY:

You were interviewed on November 10, 2006, by M. Bryant, Correctional Lieutenant. You stated that you had no further information to add to the appeal. You were advised on how to have your named changed. The following witness(es) was/were questioned: Sergeant Noyce, Officer Williams. The witnesses stated that nothing happened and that the inmate was seen after the alleged incident by Medical Staff on July 4, 2006, with no noticed injuries, complaints of injuries or allegations of staff misconduct. The following information was reviewed as a result of your allegations of staff misconduct: Two responses to letters, and CDC-115's.


FINDINGS FOR APPEAL INQUIRY:

Your appeal is PARTIALLY GRANTED at the First Level Second Level, as an inquiry into your allegations has been conducted and you withdrew complaint. ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, results of any inquiry/investigation will not be shared with staff, members of the public, or inmates. Although you have a right to submit a staff complaint, a request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process.

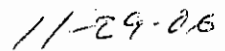
Inmate Montezello, P97422
Second Level Appeal Response
CCI-0-06-02720
Page 2

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review up to, and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

Please print and sign below:



F. GONZALEZ, Chief Deputy Warden Units IVA & IVB



Date

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: FEB 26 2007

In re: Montezello, P-97422
California Correctional Institution
P.O. Box 1031
Tehachapi, CA 93581

IAB Case No.: 0606883 Local Log No.: CIM 06-02720

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner S. Wright, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that on July 1, 2006, Correctional Officer (CO) Emerson in the presence of Correctional Sergeant (Sgt.) E. Noyce CO Williams, Stockholm, and Wilburn beat him while in handcuffs in the rotunda. The appellant alleges that his property was also taken. The appellant believes that the administrative representative of the CDCR neglected his complaints, and failed to properly train and supervise their employees. The appellant contends that this is reflected in a response to a letter from M. Carrasco, Associate Warden for Units "IV-A" and "IV-B." The appellant requests; a name change; a declaratory statement on his Central File; and reprimand for the officers involved.

II SECOND LEVEL'S DECISION: The reviewer found the appellant was interviewed on November 10, 2006, by Correctional Lieutenant M. Bryant. A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review, the appellant's appeal has been processed as a Staff Complaint Appeal Inquiry. The following witnesses were interviewed: Sgt. Noyce, and CO Williams. The witnesses stated that nothing happened and that the inmate was seen after the alleged incident by medical staff on July 4, 2006, with no noticed injuries, complaints of injuries or allegations of staff misconduct. The following information was reviewed: Two responses to letters, and CDC Form 115, Rules Violation Report. The appellant's appeal was partially granted at the Second Level of Review (SLR).

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: Upon review of the documentation submitted, it is determined that the appellant's allegations have been reviewed and evaluated by the administrative staff and an appeal inquiry has been completed at the SLR.

In event that staff misconduct was substantiated, the institution would take the appropriate course of action. All staff personnel matters are confidential in nature and not privy to the inquiries of other staff, the general public or the inmate population, and would not be released to the appellant. However, upon completion of final review, or culmination of an appeal inquiry, the appellant is to be notified by the respective staff that an inquiry has been completed. On January 10, 2007, the examiner reviewed the related confidential appeal inquiry report and verified that developed information supports the reviewer's conclusion. Although the appellant has the right to submit an appeal as a staff complaint, the request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the appeals process.

B. BASIS FOR THE DECISION:

California Penal Code Section: 832.5, 832.7, 832.8
California Code of Regulations, Title 15, Section: 3001, 3004, 3005, 3268, 3391
Administrative Bulletin 05/03: PROCESSING OF ADULT INMATE/PAROLEE APPEALS,
CDC FORM 602, WHICH ALLEGE STAFF MISCONDUCT

C. ORDER: No changes or modifications are required by the institution

MONTEZELLO, P-97422
CASE NO. 0606883
PAGE 2

This decision exhausts the administrative remedy available to the appellant within CDCR.

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, CCI
Appeals Coordinator, CCI
Appeals Coordinator, CIM