

ORIGINAL

United States District Court
Eastern District of California

Lee Peyton
Plaintiff

FILED

JAN - 3 2007

Case# 06-
CV-1758 OWW-LJO-PC

v.

Jeanne Woodford et al,
Respondents
Patricia Vasquez Woodford

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY *CP* DEPUTY CLERK

Plaintiff's Amended
Complaint For Damages And
Injunctive Relief: Demand For
Jury Trial.

General Allegations

(1) This is a complaint for damages and injunctive relief brought under 42 U.S.C. 1983 against prison officials for violations of plaintiff's rights to be free from cruel and unusual punishment as protected by the Eighth Amendment of the United States Constitution. Specifically at issue are plaintiff's rights to be free from the use of excessive force, to have personal safety, and failure to protect health and safety of plaintiffs; including deliberate indifference. Plaintiff also complains herein about unlawful retaliation ~~and~~ ~~and~~ ~~and~~, constituting cruel and unusual punishment. Petitioner's/plaintiff prays for damages and injunctive relief. Plaintiff has exhausted the administrative remedies for injunctive relief and have not utilized the administrative process for damages, based on futility.

(PC) Peyton v. Vasquez et al

Doc. 52 Att. 2

Jurisdiction

(2) This action is brought pursuant to 42 U.S.C 1983. Therefore jurisdiction is proper under 28 U.S.C. sections 1331 and 1343.

(3) Venue

A substantial portion of the events giving rise to the claims alleged in this complaint arose in Kern County California. Therefore, venue is proper under 28 U.S.C. 1391(b)(2).

Parties

(4) Plaintiff, Lee Peyton is a 27 year old male, African Spanish American of the State of California, currently incarcerated by the California Department of Corrections (CDC) at High Desert State Prison ("HDSP") in Susanville California. Plaintiff Lee Peyton is and was at all relevant times mentioned herein an inmate in the custody, control, and care of CDC employees at various correctional institutions, including HDSP-Susanville. Plaintiff Lee Peyton has been an inmate at HDSP-Susanville since September 8, 2006.

(5) Plaintiff is informed and believes, and thereon alleges, that defendant Jeannce Woodford (Director of Corrections) at all times relevant herein was employed as the Director of C.D.C. As the Director defendant Woodford is and has been responsible for promulgating, supervising the promulgation of, implementing, supervising the implementation of, monitoring compliance with, supervising the monitoring of compliance with, enforcing and/or supervising the enforcement of policies and procedures affecting the general well-being and/or safety and security of all inmates within the C.D.C. In this position defendant Woodford is and has been responsible

for assuring that all inmates are free from, cruel and unusual punishment, excessive force, the right to have personal safety, retaliation, including proper medical care and treatment. At all times mentioned defendant Woodford was acting under the color of state law, in the course and scope of her employment, and is sued herein in her official and individual capacities.

(6) Defendant Sgt Saveedra is, and at all times relevant herein was employed by the CDC as a correctional sergeant at WSP-Wasco. Plaintiffs are informed and believe, and thereon alleges, that defendant Sgt Saveedra is a properly trained correctional sergeant who is and has been responsible for the safety, security, and over all well being of all inmates at WSP-Wasco. At all times mentioned herein defendant Sgt Saveedra was acting under the color of state law, in the course and scope of his employment, and is sued in his official and individual capacities.

(7) Defendant Sgt Shimes is, and at all times relevant herein was employed by the CDC as a correctional sergeant at WSP-Wasco. Plaintiffs are informed and believe, and thereon alleges, that defendant Sgt Shimes is a properly trained correctional sergeant who is and has been responsible for the safety, security, and over all well-being of all inmates at WSP-Wasco. At all times mentioned herein defendant Sgt Shimes was acting under the color of state law, in the course and scope of his employment, and is sued in his official and individual capacities.

(8) Defendant Sgt Blatant is, and at all times relevant herein was employed by the CDC as a correctional sergeant at WSP-Wasco. Plaintiffs are informed and believe, and thereon allege, that defendant Sgt Blatant is a properly trained correctional sergeant who is and has been responsible for the safety, security, and over all well-being of all inmates at WSP-Wasco. At all times mentioned herein defendant Sgt Blatant was acting under the color of state law, in the course and scope of his employment, and is sued in his official and individual capacities.

(9) Defendant J. Garcia is and at all times relevant herein was employed by the CDC as a correctional officer at WSP-Wasco. Plaintiffs are informed and believe, and thereon allege, that defendant J. Garcia is a properly trained correctional officer who is and has been responsible for the safe, security, and over all well-being of all inmates at WSP-Wasco. At all times mentioned herein defendant J. Garcia was acting under the color of state law, in the course and scope of his employment, and is sued in his official and individual capacities.

(10) At all times mentioned in this complaint defendant correctional officer Kirby was employed by the CDC and was a correctional officer involved in the constitutional violations, acting under the color of state law, including the brutality on Plaintiff Peyton, and is sued in his official and individual capacities.

(11) At all times mentioned in this complaint defendant correctional officer Elias was employed by the CDC and was a correctional officer involved in the constitutional violations, acting under the color of state law including the brutality on Plaintiff Peyton, and is sued in his official and individual capacities.

(12)

At all times mentioned in this complaint defendant correctional officer Holburn.

was employed by the CDC and was a correctional officer involved in the constitutional violations, and at all times mentioned herein was acting under the color of state law, and is sued in his individual and official capacities.

(13) At all times mentioned in this complaint each individual defendant, defendants 10-12, were acting in their official capacity and in the scope and course of their employment, Plaintiffs are informed and believe and therefore allege, that defendants 10-12, are properly trained correctional officers who are and have been responsible for the safety, security and overall well-being of all inmate at WSP-Wasco

(14) At all times mentioned in this complaint defendant Proudly was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.

(15) At all times mentioned in this complaint defendant Garcia was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.

(16) At all times mentioned in this complaint defendant Yordi was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.

(17) At all times mentioned in this complaint defendant Bullwood was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.

(18) At all times mentioned in this complaint defendant Hensley was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint

- (19) At all times mentioned in this complaint defendant Rodriguez was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (20) At all times mentioned in this complaint defendant Bras, was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (21) At all times mentioned in this complaint defendant Alvitrus, was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (22) At all times mentioned in this complaint defendant Angelo was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (23) At all times mentioned in this complaint defendant Diaz was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (24) At all times mentioned in this complaint defendant Dela Cruz was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (25) At all times mentioned in this complaint defendant McCoy was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (26) At all times mentioned in this complaint defendant Rendon was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (27) At all times mentioned in this complaint defendant Smith was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.

- (28) At all times mentioned in this complaint defendant Wheat was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (29) At all times mentioned in this complaint defendant DOE #1 aka "Woody" was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (30) At all times mentioned in this complaint defendant Thomas was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (31) At all times mentioned in this complaint defendant Branson was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (32) At all times mentioned in this complaint defendant Farley was employed by the CDC, and was a correctional officer involved in the constitutional violations alleged in this complaint.
- (33) At all times mentioned in this complaint defendant Troy KUTKENDALL was employed by the CDC, and was a correctional officer involved in the constitutional violation alleged in this complaint.
- (34) At all times mentioned in this complaint defendant Huddleston was employed by the CDC, and was a correctional lieutenant involved in the constitutional violations alleged in this complaint.
- (35) At all times mentioned in this complaint defendant Brian Wilson was employed by the CDC, and was a correctional officer involved in the constitutional violation alleged in this complaint.
- (36) At all times mentioned in this complaint defendant Sheryl Williams was employed by the CDC, and was a correctional sergeant involved in the constitutional violation alleged in this complaint.

(37) At all times mentioned in this complaint defendant A.P. Sanyales, was employed by the coc, and was a correctional lieutenant involved in the constitutional violation alleged in this complaint.

(38) At all times mentioned in this complaint defendant 14-37, were acting in their official capacity and in the scope and course of their employment.

(39) At all times mentioned in this complaint defendants 14-37, were acting under the color of state law.

(40) At all times mentioned in this complaint, Plaintiffs are informed and believe, and thereon allege, that defendants 14-37, are properly trained correctional officers who are and have been responsible for the safety, security, and overall well-being of all inmates at WSP-Wasco.

(41) All of the defendants and each of them 14-37, are also sued in their individual and official capacities for the claims alleged in this complaint.

(42) Plaintiffs are informed and believe, and thereon allege that at all times mentioned in this complaint defendant Warden Pat. L. Vasquez was the warden of WSP-Wasco, and was responsible for the supervision of subordinate personnel, as well as for the safety and protection of all inmates at that institution, including Plaintiffs. At all times mentioned herein defendant Vasquez was acting under the color of state law, in the course and scope of her employment, and is sued in ~~the~~ her official and individual capacities.

(43) Plaintiff, Lee Peyton is informed and believes, and thereon alleges that at all times mentioned in this complaint Warden Ken Clark, was the warden of 'SATF' at Corcoran, and was responsible for the super-

vision of subordinate personnel, as well as for the safety and protection of all inmates at that institution, including Plaintiff Lee Peyton. At all times mentioned herein defendant Ken Clark was acting under the color of state law, in the course and scope of his duties of his employment, and is sued in his individual and official capacities.

(44) Facts.

On the date of 1-22-04, Plaintiff, met with his assigned correctional officer/counselor (CC) Mrs Johnson, regarding his transfer, from Wasco Reception to another prison. CC Johnson told plaintiff Peyton that he had (60) sixty points and based on his gang-membership, he had to go to a level (4) 180 prison.

(45) Plaintiff Peyton disputed with CC Johnson that he was not a gang member whatsoever. CC Johnson out-loud stated we have you documented as being a South Sides Sureno 13, based on your probation report. I continued to dispute with CC Johnson, that I was not a gang member, and never was and never would be a Mexican Sureno, and told her she need to take the Sureno gang classification out of my file. CC Johnson asked me did I ever gang bang, and I told her yes, before I came to prison the first time. CC Johnson asked me what did you claim, I told her I was a CRIP, and did not claim affiliation to any gang anymore. CC Johnson stated I'll review your file and archives, and she left while I was still talking.

(46) On 1-24-04 I submitted an emergency 602 to the appeals coordinator, the appeal was dated 1-25-04. Plaintiff's 602 was received on 2-2-04 by CC Johnson and adjudicated on 2-2-04 by CC Johnson. Dissatisfied with the response and fact that my appeal was intercepted by CC Johnson, Plaintiff resubmitted his appeal to the appeals coordinator on 2-3-04, and his appeal was screened out on 2-10-04

(47) On 2-12-04 Plaintiff Peyton sent an inmate request to CCI Johnson request a copy of his (COC) 839 classification form, so that he could comply with the appeals coordinator's screen-out instruction, and resume exhausting his administrative remedies. CCI Johnson failed to respond to Plaintiff Peyton's request.

(48) On 2-25-04 Plaintiff Peyton sent another inmate request to CCI Johnson requesting copy of his (COC) 839 classification form, that proved futile.

(49) Also on 2-25-04 sent a WOL dated 2-25-04 to the appeals coordinator that was intercepted, received and responded to by CCI Johnson on 3-2-04, to which the WOL contested the issue of being classified as a gang-member, specifically "Suren 13".

(50) Dissatisfied Plaintiff Peyton on resubmitted his appeal dated 2-25-04 to the appeals coordinator on 3-8-04. His appeal was screened out on 3-15-04. Plaintiff Peyton resubmitted his appeal to the appeals coordinator on or about 3-15-04 with an inmate request attached explaining that CCI Johnson refused to provide him a copy of the COC 839 form.

(51) On 3-15-04 Plaintiff Peyton filed a Citizen's Complaint against CCI Johnson, for violating his due process.

(52) On 3-19-04 the appeals coordinator screened out his appeal dated 2-25-04 for the second time.

(53) On 3-20-04 Plaintiff Peyton was jumped, assaulted and brutalized

by (5) five Fresno Bulldog gang-members as a result of being incorrectly classified as a "Sureno 13". This occurred in Wasco State Prison facility B - building 4, inside cell 218, and Plaintiff Peyton received multiple injuries sustained all over his body, including being shot in his arm (right bicept) by the Tower officer Garcia with the 31mm launchers.

(54) The suspects to Plaintiff Peytons knowledge were never charged with the assault and battery on his person, nor was any documentation ever afforded to Plaintiff Peyton regarding the assault.

(55) On 5-26-04 Plaintiff Peyton submitted another 602 dated 5-26-04 contesting his gang classification, and disagreement with the gang-labelization.

(56) On 7-4-04 Plaintiff submitted a 602 dated originally 5-21-04 to the appeals coordinator, contesting his gang-classification and need to be placed back on single cell status, to which he had been removed from in absentia by I.C.C. on 4-8-04 without his knowledge (single-cell) as he was in C.T.C. for suicidal ideations. ~~Q~~

(57) The 602 was adjudicated at informal level by CCI D. Alken on July 8, 2004 during I.C.C., wherefore plaintiff Peyton was placed back on single cell-status, and taken off the "crip" yard he had been placed on, on 4-8-04 in absentia, without his knowledge.

(58) On 4-4-05 Plaintiff Lee Peyton submitted another 602 to the appeals coordinator contesting his gang-classification, his appeal was screened-out by the appeals coordinator on 4-6-05. Plaintiff Peyton on or about 4-6-05 resubmitted his appeal to the appeals coordinator, contesting the

screen-out, and attaching the C.P.C 839 form the appeals coordinator sent with the 1st screen-out, including other supporting documentation. Plaintiff Peyton's 602 was screened out on 4-13-05 and forwarded to him at SATF to where he had been transferred on 4-14-05.

"SATF"

- (59) On 4-17-05 Plaintiff Peyton submitted a (CDC) 1824 Reasonable Accommodation request to the appeals coordinator, for assistance to be correctly classified. He was interviewed on 5-6-05 by CCI Mendez, who subsequently denied his (CDC) 1824 Reasonable request for accommodation.
- (60) On 5-25-05 Plaintiff Peyton resubmitted his CDC 1824 with an attached 602 to the appeals coordinator for second level review. On 6-10-05 Plaintiff Peyton's (ADA) (CDC) 1824 was returned to him by officer Escina, minus the 602 he had attached when he sent it for second level response.
- (61) On 6-12-06 Plaintiff Peyton sent an inmate request inquiry to the appeals coordinator asking about his 602 that was attached to the 1824. A response was never given.
- (62) Plaintiff Peyton also sent a gang-classification 602 to the appeals coordinator on 4-17-05, that subsequently went missing in action, and an inmate ~~was sent~~ request inquiry was sent to the appeals coordinator on 5-3-05 questioning the where-abouts/status of my appeal, no response was afforded.
- (63) On 4-25-05 an inmate request was sent to I.E.I. offices requesting interview for gang clearance evaluation. No response was ever afforded.

(64) On 5-10-05 Plaintiff Peyton submitted a 602 appeal to the appeals coordinator contesting his gang classification. His appeal was sent back screened-out on or about 5-12-05 with specific instructions to which he complied to and with and resubmitted his appeal which was received on 5-19-05 by indication of the stamp by the appeals coordinator's office.

(65) On 5-26-05 Plaintiff Peyton's appeal dated 5-10-05 was again screened out alleging he had failed to meet the (15) day time constraints. Plaintiff Peyton resubmitted his appeal on 5-31-05 contesting the incorrect and improper screen-out of his appeal, as he had met the time constraints supported by the three separate stamps by the appeals office, dates of 5-19-05; 5-26-05; and 6-2-05. Finally on 6-2-05 the appeals coordinator screened Plaintiff's appeal out for the third time, exhausting his remedies.

(66) On 6-6-05 Plaintiff Peyton mailed a Citizens Complaint against the appeals coordinator v. Escobar, to the warden Darrell Adams, contesting a violation of his right to due process and deprivation of exhausting his admin-remedies. Plaintiff Citizen's Complaint was returned to him screened out dated 6-22-05, received on 6-24-05 by office Excina.

(67) Plaintiff Peyton sent a 602 directly to the I.G.I. Sgt on 5-23-05, to which was not afforded response at informal level.

(68) On 8-28-05 Plaintiff Peyton sent a second 602 to the I.G.I. Sgt, contesting failure to respond to Plaintiff's prior 602 and correspondences, and requesting evaluation for removal from gang labeling. No response was afforded.

(69) On 9-24-05 Plaintiff Peyton submitted a Citizens Complaint against the I.G.I. Sgt to the appeals coordinator for violating his due process. Yet again the appeals coordinator elected to screen out Plaintiff complaint on 9-27-05, stating to attach gang validation.

(70) On 9-28-05 Plaintiff resubmitted his Citizens Complaint back to the appeals coordinator explaining, that the issues contested in his complaint regarded the I.G.I. violating his due process and plaintiff attached the gang validation for safe measure.

(71) On 9-30-05 Plaintiffs Complaint was screened-out again, alleging he had exceeded the time frames.

(72) On 10-3-05 Plaintiff Peyton resubmitted his Complaint to the appeals coordinator explaining again that it was a complaint for the I.G.I. Sgt violating his due process.

(73) On 10-4-05 the appeals coordinator screened out Plaintiffs Complaint again alleging, Plaintiff had failed to meet the time frames.

(74) On 10-6-05 Plaintiff Peyton resubmitted his complaint to the appeals coordinator for the fourth time, explaining that he was going to file a complaint against the appeals coordinator and file suit against the appeals coordinator for violating his due process, he also explained again in detail that his complaint was a Citizens Complaint against the ~~appeals coordinator~~ I.G.I. Sgt, and why he filed his complaint.

(75) On 10-12-05 Plaintiff Peyton's complaint was screened out for the fourth time exhausting his remedies.

(76) On 10-9-05 Plaintiff Peyton filed a Citizens Complaint against his assigned counselor, for violating his due process by refusing to respond to a 602 Plaintiff sent to his counselor CCI Peterson on 9-18-05

(77) The Complaint against CCI Peterson, requested to be taken before I.C.C. as required. The complaint was exhausted through the director's level.

(78) On 9-29-05 Plaintiff Peyton sent a letter to the Chief Classification office in Sacramento, request assistance to get his classification as a gang member remedied. His letter was returned on or about 12-11-05 instructing Plaintiff to utilize the appeals process.

(79) 11-22-05 Plaintiff Peyton sent an inmate request to L. Smith the appeals coordinators secretary, asking to be returned his copies of his screened out appeal and gang validation papers, she had requested the send on 10-17-05 to which he sent and never received back. His inmate went unanswered.

(80) On 12-1-05 Plaintiff Peyton was taken before I.C.C. and he submitted two inmate requests addressed to I.C.C. to the I.C.C. Chairman Associate Warden Wan. One of the inmate requested & contested that he remain on single cell status, and the second inmate request contested his labelization as a gang-member & enforcement to be labeled thereof.

(81) Plaintiff Peyton was left on single cell status, and told by (Aw) Wan that I.C.C. would meet with him and review his gang classification, to which never occurred.

(82) On 12-4-05 Plaintiff Peyton sent an inmate request to his counselor (CII Peterson) requesting a copy of the 128 Chrono from the 12-1-05 I.C.C. and the chrono that CII Peterson told Plaintiff he would write stating that Plaintiff objected to being classified as a gang-member.

(83) On 12-14-05 Plaintiff Peyton submitted a 602 to the appeals coordinator, contesting again his classification as a gang-member.

(84) On 12-16-05 CII Cooper from the appeals coordinators office called Plaintiff on the phone in his housing unit, She told plaintiff he did not have the right to appeal his classification as a gang member, that he apparently didnt understand the appeals process, and told Plaintiff that she was screening out his appeal, and threatened that if he sent another appeal to the appeals office contesting his gang-classification that she would keep the appeal. That concluded the phone call.

(85) On 12-20-05 Plaintiff Peyton resubmitted his appeal to the appeals coordinator, that was screened-out on 12-16-05. He attached two inmate requests dated 12-20-05, contesting the meritless screen-out. Plaintiff never seen that appeal again.

(86) On 1-2-06 Plaintiff Peyton sent an inmate request addressed to CII Cooper to CII Cooper, putting her on notice that he was filing a Citizens Complaint against her for violating his due process and harboring his appeal. No response was afforded.

(87) On 1-9-06 Plaintiff Peyton sent CII Cooper an inmate notifying her of his intent to sue her for violation of his due process. No response was afforded.

- (88) On 1-8-06 Plaintiff Peyton mailed via legal mail his Citizens Complaint against CCA Cooper to the Warden of SATF. His appeal was filed processed and exhausted through the director's level. His complaint was partially granted twice at institutional level and denied at director's level.
- (89) On 6-25-06 Plaintiff Peyton submitted a Citizens Complaint to the appeals coordinator against CCA Garcia the former appeals coordinator for the act of committing perjury.
- (90) Plaintiff Peyton's complaint against CCA Garcia was screened out on 7-11-06
- (91) On 7-11-06 Plaintiff Peyton sent ~~an~~ an inmate request inquiry to the appeals coordinator ~~at~~ about his complaint. His request was answered on 7-12-06.
- (92) On 7-14-06 Plaintiff Peyton received his screened-out complaint on CCA Garcia back. And on 7-16-06 he resubmitted his complaint to the appeals coordinator.
- (93) On an unknown date the appeals coordinator sent back Plaintiff Peyton's Complaint on CCA Garcia, just as he'd sent it on 7-16-06.
- (94) On 8-6-06 Plaintiff Peyton resubmitted his appeal Complaint against CCA Garcia to the appeals coordinator contesting the screen-out. He received his complaint back & the attached inmate request he contested the screen-out on, on 8-10-06. The bottom of the inmate request had D.O.M. 54100.25. written on it by the appeals coordinator CCA R. Hall.

(95) On 8-14-06 Plaintiff Peyton resubmitted his complaint against ~~CC~~ Garcia to the appeals coordinator contesting the screen-out. He received his complaint back, as he had sent it, on an unremembered date.

(96) On 4-4-04 at approximately 6:05 Am. while Plaintiff Peyton was in his assigned cell facility-B- building 5- cell 209, officer Troy Kuykendall had approached plaintiff Peyton's cell door and began beating on the window of the cell door with his flash light waking Plaintiff up. Plaintiff Peyton asked officer Kuykendall what he wanted. Officer Kuykendall smiled a devious smirk and walked away.

(97) During breakfast feed at approximately 8:10 am. officer Kuykendall and the white inmate poster approached Plaintiff Peyton's cell with his food tray, "because Plaintiff Peyton was on (CTA) confinement to quarters for an offense of disrespect to staff, specifically officer Mrs. M. Morales, that he didn't commit." Officer Kuykendall opened Plaintiff Peyton's cell door and the white inmate poster handed plaintiff his tray. Plaintiff Peyton asked officer Kuykendall what his problem was. Officer Kuykendall told Plaintiff Peyton, "you need to keep your mouth closed and slammed Plaintiff Peyton's cell door closed, after he, officer Kuykendall challenged Plaintiff to step out the cell, which plaintiff didn't do.

(98)

After this at approximately 8:20 am. the inmate posters were instructed to sit on the benches in the T.V. area. Officer's Kuykendall and Brian Wilson approached Plaintiff Peyton's door, the tower officer Hernandez opened the door from control officer Troy Kuykendall pushed Plaintiff's cell-door into a locked-open position. Plaintiff Peyton knew it was going to be a problem with the two officers by instinct, got up off his bunk and pushed the food tray that

was on the floor by the door, out of the door on the ties with my right foot, (plaintiff Peyton was wearing shower shoes during incident), officer Kuykendall elected to kick the food tray back into plaintiff's cell, yelling pick it up. Plaintiff pushed the tray back out onto the tier again, Kuykendall went to push his alarm attached on his shoulder failed his first attempt, succeeded on his second attempt. He then yelled for plaintiff to get down, as plaintiff Peyton was turning towards his left to get down in a prone position, officer Kuykendall kicked the food tray to his left toward cell 208, and immediately officers Kuykendall and Wilson together ran into Plaintiff Peyton's cell grabbed him and forced him to the ground.

(99) Once on the ground, officer Wilson was on Plaintiff's right holding his hands together, while officer Kuykendall was on plaintiff's left, using his button to pull up and back on plaintiff's left bicep causing pain and resulting in injury to his bicep. Officer Kuykendall then took control of Plaintiff Peyton's hands as soon as officer Cesear Rivera reached the cell door, and officer Wilson applied handcuffs on Plaintiff's wrists excessively tight cutting off the feeling in his wrists.

(100) Officer's Kuykendall and Wilson pulled Plaintiff Peyton up and onto his feet and walked him out of the cell, onto the tier with officer Rivera standing next to officer's Wilson, Kuykendall and Plaintiff Peyton. Suddenly officer Kuykendall started to yell he spit on me. Officer Wilson slammed Plaintiff Peyton to the floor a second time onto his chest.

(101) Leg restraints were then placed on Plaintiff Peyton, and officer Rivera pulled Plaintiff onto his feet and escorted him to the holding cage at the B-facility program office.

(102) The three inmate posters who sat on the bench witnessed the whole chain of events, leading to Plaintiff Peyton being assaulted by officers Kuykendall and Wilson.

(103) The assault on Plaintiff Peyton by officers Kuykendall and Wilson was result of Plaintiff Peyton exchanging words with their partner, officer M. Morales, during the night's 1st watch.

(104) Plaintiff Peyton was given a 7219 medical examination by MTA Denis Small, to which she documented Plaintiff Peytons multiple injuries. No medical treatment was afforded for his injuries. The examination of Plaintiff Peyton was concluded at 9:40 a.m. on the morning of 4-4-04.

(105) Plaintiff Peyton spoke with Lt Scott sometime thereafter 9:40 a.m. Plaintiff Peyton told Lt Scott that he was assaulted by the officers and that multiple witnesses (inmates) witnessed the assault including the posters, and told Lt Scott that he wanted to press charges against these officers. Plaintiff Peyton told Lt Scott that if he questioned the inmates and posters, they would confirm that he was assaulted by officers Kuykendall & Wilson. Lt Scott did go to the building to talk to the inmates, the outcome was never made known to Plaintiff Peyton of what inmate witnesses told Lt Scott.

(106) Sgt Sheryl Williams informed Plaintiff Peyton at approximately 10:35 am that he was being charged with Battery on An officer, and being placed in Ad-seq. Sgt Williams read Plaintiff his Miranda Rights and asked if Plaintiff wanted to make a statement. Plaintiff Peyton wrote a written statement dated ~~4-4-04~~ 4-4-04 and gave his statement to Sgt Williams.

- (107) On 4-4-04 at approximately 11:55 a.m. officer Cesar Rivera escorted Plaintiff Peyton to the D-6-Ad-seq unit. On the walk to ad-seq, officer Rivera told Plaintiff that he was going to be in Ad-seq for awhile, and stated just roll with the blows.
- (108) When Plaintiff Peyton and officer Rivera arrived at the D-6-Ad-seq gate, four officers were waiting outside, they had none of their required gear on, such as; belts, batons, O.C. sprays, keys etc. The officers are indentified as J. Garcia, Elias, Kirby, and Holbain, and the tower control officer working that day of 4-4-04 is identified as officer Dela-Cruz.
- (109) Plaintiff Peyton entered thru the gates of D-6-Ad-Seq at approximately 12:00 p.m. on 4-4-04. He was ordered to step into the holding cage on the right side of the B-section fire escape door, by officer J. Garcia who stood next to the cage, Plaintiff complied. He was then taken out of the handcuffs by officer Garcia, and strip-searched by Garcia.
- (110) After being strip searched by officer Garcia, Garcia handed plaintiff a spit mask, ordering that he put it on, plaintiff Peyton complied. officer Garcia then without placing handcuff on petitioner, opened the cage door, and told plaintiff lets go, pointing and inside the B-section fire escape door. Plaintiff began to walk in without his shoes barefoot into the B-section side of the building followed by officers Garcia, Kirby, Elias and Holbain, and when plaintiff asked Garcia which way, Garcia pointed inside the Psych's office next to the fire escape door in B-section, plaintiff complied and walked into the dark office followed by officers Garcia, Kirby, Elias and Holbain and the office door was then closed,

(111) Once the officer door closed Plaintiff Peyton turned around to face the officers with his back against the 1st holding cage, and officer J. Garcia said, "so you wanna assault steff huh", Plaintiff Peyton told officer Garcia, "I aint assault nobody. officer Garcia said yes you did, yes you did and punched plaintiff Peyton in the mouth, officer Kirby followed by punching plaintiff on the left side of his jaw, as officer Elias and Holbun joined in punching Plaintiff Peyton, until he fell to the floor, and then began to kick and punch plaintiff on his head, face and body. After Plaintiff was assaulted which lasted maybe two minutes, Plaintiff isn't for sure how long the assault occurred.

(112) After being assaulted Plaintiff Peyton was led thru the retunda escorted by officer Garcia to his assigned cell 209. Approximately (20) minutes later Plaintiff Peyton talked to Psych Tech Stuart regarding feeling suicidal, officer Garcia came to petitioner Peyton's cell with anger on his face.

(113) Plaintiff Peyton was removed from his cell and placed in the holding cage on B-side of the Ad-seg unit next to the fire door at approximately 12:30, where he remained handcuffed until after the 5:00 pm count. He was denied dinner by officer Kirby.

(114) When it was time to be escorted to C.I.C. officer Kirby who was working over time pulled Plaintiff out of the holding cage and instructed Plaintiff to kneel on the chair to which plaintiff Peyton complied. officer Kirby placed leg restraints on Plaintiff Peyton's ankles. officer Kirby then began slapping petitioner's right cheek from behind, and telling Plaintiff Peyton, "don't get to C.I.C. running your mouth, because he would ~~personally~~ make the situation personal and "beat my fucking ass", goute on goute.

(115) Plaintiff Peyton was then escorted to C.T.C. by officers Angelo and Diaz between 5:30 p.m. and 6:00 p.m. Let the record reflect that officer Diaz whom escorted Plaintiff Peyton is not the same person as defendant Diaz herein.

(116) Plaintiff Peyton was processed into C.T.C. by a Black female nurse. The nurse conduct a full naked 7219 medical examination on Plaintiff, sometime thereafter plaintiff was processed in C.T.C., and a full Admission history and physical was conducted by Dr Kihn Win on 4-5-04. Plaintiff Peyton was given pain medication for his injured left eyes and other injuries, (Naproxen 500 mg). The examination was thru the hospital door, I believe.

(117) Plaintiff Peyton was housed in C.T.C. from 4-4-04 until Monday 4-12-04.

(118) On 4-12-04 officers Kirby and J. Garcia came to pick up Plaintiff to take back to ad-seg. Officer Kirby placed leg restraints on Plaintiff ~~at~~ Peyton excessively tight. While enroute walking from C.T.C to ad-seg Plaintiff Peyton was verbally threatened by both officers, who threatened they were going to do as promised and "Beat my ass for three days in a row. Officer Garcia did most the threatening and talking.

(119) Upon arrival to the Ad-seg unit, Plaintiff was placed inside the holding cage to the right side of the B-section fire door, and continued to be threatened by officer Garcia while officer Kirby stood next to Garcia. Officer Garcia asked plaintiff Peyton, "what did I tell you, didn't I tell you if you ran your mouth we ~~was~~ were gonna beat your ass!?"

(120) Plaintiff Peyton remained quiet while officers Garcia voiced his threats to plaintiff. Officer Garcia then stated were gonna follow through with what we said, "at least fight back this time." Plaintiff just shook his head no.

(121) During the threats made by officer Garcia, Sgt Shimes stood (10) feet away smoking a cigarette, and said and did nothing, and walked back in the building after he finished his cigarette.

(122) In the holding cage next to the fire escape door and inside the building was an inmate who heard and witnessed the entire threats made to plaintiff Peyton. This inmate later came to be Plaintiff Peyton's neighbor and agreed to testify on petitioner's behalf.

(123) Prior to being retained on 4-12-04 from C.T.C. Plaintiff Peyton was seen by Captain Steed on 4-5-04. At which time Plaintiff Peyton told Captain Steed that he was assaulted and beaten upon placement in Ad-seq. Captain Steed told Plaintiff he would send someone to interview him. Lt Smith and Sgt Cooper came later and took Plaintiff Peyton's statement via video cam-corder.

(124) After being threatened by officers Garcia and Kisby as stated above in paragraph (121) Plaintiff Peyton was escorted to cell 119, and placed therein with literally half a mattress.

(125) Approximately (30) minutes later officer's Garcia, Kisby and Avitius came to Plaintiff's cell and told Plaintiff he was going to write a statement that the allegations he had made against them on 4-5-04 wasn't true, because if he didn't they were going to beat and starve plaintiff. Officer Avitius

told Plaintiff Peyton yous going to write a statement and make it sound good. officer Alvitius then gave Plaintiff Peyton a Bic Pen and a pink piece of paper, stating I'll be back. Plaintiff Peyton then nursed the cut on his left ankle sustained from the excessively tight leg restraints placed on by officer Kirby at C.T.C.

(126) Plaintiff Peyton did write a statement on that pink piece of paper, but not to the effect of what they expected. Plaintiff Peyton gave officer Alvitius the statement around (15) minutes later and that concluded the matter.

(127) An hour after Plaintiff Peyton gave the statement to officer Alvitius, he was forced to cell up with another in mate in cell 129. Plaintiff Peyton was placed in cell 129 with half a mattress, and remained with the half of mattress until the middle of May 2004.

(128) Between the dates of 4-12-04 Plaintiff Peyton, and date of 4-27-04, filed and submitted his written Citizen's Complaint to the appeals coordinator. His Citizen's Complaint never made it outside the Ad-seq building according to, harrasing statements made to Plaintiff Peyton, by officer Garcia, in the presence of Plaintiff cell-mate on or about 4-27-04, who officer Garcia stated something to the effect, "check this out holmes, every piece of mail that comes out this cell I know about, didnt we warn you about what would happen if you ratted on us. You wanna play games, then lets play, 'you aint got shit coming."

(129) In the month of May, 2004 Plaintiff Peyton was rehoused upstairs in cell 138. On morning Plaintiff Peyton's knew cell-mate had asked one of the officers for toilet paper. Officer Garcia bring the toilet paper up and told Plaintiff's cell-mate, "tell your cellie his mamma cant help him."

(130) Plaintiff Peyton on 5-6-04 mailed out a letter addressed to the director of corrections, to the director of corrections via legal mail, signed and processed by officer Jodi. In Plaintiff's letter to the director he placed Director Woodford on notice that he was assaulted and brutalized by said officers above, including his feared concern for his life, and that his mother had recently called Wasco State Prison inquiring about Plaintiff's well-being and was disrespected by Captain Hartley. A response from the Director was never returned to Plaintiff. . .

(131) Plaintiff Peyton in secret on 5-5-04 begin to write down written accounts of all the inmate brutalities that he personally witnessed, in the best detailed description, and they are as follows and will be presented as evidence in accordance with 28 U.S.C. 1746:

(132) On 5-1-04 At 9:20 p.m Plaintiff Peyton witnessed officer's Prady and Diaz escorting a hispanic inmate into the building from the B side fire door. The inmates upper torso was hunched over and his arms were being pulled up in an awkward position by officer's Prady and Diaz who were dragging him, while the inmate cried out in pain that his arm was already broke, then officer Prady slammed the inmate into the ground face first in front of cell 125, while officer Diaz walked in the cell to retrieve contraband. Then officer's Prady and Diaz yanked the inmate to his feet, pulled his arms back up awkwardly, and forced the inmate into cell 125 pulling his arms out through the tray slot, and uncuffed the man, and walked away smiling. While these officers were brutalizing this man, there partner officer Davis just stood behind watching and there Sgt, Sgt Saveedra stood in the door way of the staff office

walking and did nothing to stop the assault. Neither officers Prady or Diaz were wearing there required department equipment when they assaulted the unidentified inmate who is identified as ----- DOE#1 until identity is confirmed.

(133) On 5-5-04 at about 11:00 am, I Plaintiff Peyton witnessed a Black inmate being escorted into the front gate of the ad-seq building by two officers. The inmate was hunched over by the force of the two officers. One of the officers is identified as officer Sherry, the other remains unidentified. Officers Alvitus and Elias rushed the Black inmate grabbing him with force and pulling his arms up in an awkward position, and officer Alvitus slapped the inmate in the left side of his face. The inmate was then placed in holding cage and I could no longer see what was happening. The inmate is identified as ISSAC Montgomery.

(134) On 6-1-04 around 6:30 pm, a Black inmate housed in cell 228 was kicking his cell door for reasons unknown. Officer Angelo approached the door of cell 228 and began talking unprofessionally to the inmate calling him bitches and pussies. Officer Angelo told the inmate tell me that to my face. Officers Prady and Diaz came up the stairs got the inmate to cuff up, the Tower officer Ponce then opened the cell door and officers Prady, Diaz and Angelo ran in the cell and beat the inmate for at least three minutes. I was housed in cell 230 and the sounds were vicious. The Ad-seq Sgt Sgt Saveedra stood down stairs and watched his officers beat this inmate who is identified as ----- DOE#2 until identity is confirmed.

(135) Also on 6-1-04 in the morning a Black inmate was brought into

Ad-Seq. He was beaten by officers Garcia and Alvitris and housed into either cell 118 or 122. The inmate was subsequently rehoused in (I.T.C.) on the same day. He sustained injuries of a Black eye, and busted mouth. He is identified as DEQUON BALLARD, His personal written statement is attached hereto as evidence.

(136) On 6-23-04 Plaintiff Peyton sent a letter to Warden Vasquez via legal mail signed and processed out by officer Yodanis, placing Warden Vasquez on notice that he'd been assaulted by her officers,

(137) On 7-1-04 Plaintiff Peyton mailed another letter to Warden Vasquez via legal mail signed and processed out by officer Choate, regarding being taken before I.C.C. so he could verbally voice his concerns.

(138) On 6-22-04 at approximately 6:15 am. officer Garcia approached cell 230, and told the inmate to cuff-up, the Captain wanted to talk to him. officer Garcia removed the inmate from his cell and escorted him down to the staff office and closed the door, and then multiple sounds of thumping took place, while the inmate was being beaten officer Thomas was looking for something in the utility room below the control tower. officer Thomas then walked up to the office window on the office door, peered in, then opened the door and walked in. Approximately (20) seconds later the inmate exited the office ~~up~~ and began to walk towards the stairs alone, he had no handcuffs on, and proceeded up the stairs. officer Garcia, walked out followed by officer Alvitris, and then Boullard, and then Thomas. officer Garcia then shouted that better be the last time you jack off. officer Alvitris had worked the first watch shift the night and morning of 6-22-04 with officer Miss Young.

The inmate is known to Plaintiff Peyton by his "moniker" "which is Boxes. Plaintiff Peyton will obtain his true name from the streets as both are from Oxnard, Ca. For time being Boxes is identified as DOE #3.

(139) On 7-7-04 Plaintiff Peyton wrote to Kerry McClelland at the inspector general's office request help to stop the brutalities, his request was denied by response letter from McClelland dated 7-21-04, he had also wrote to the office of the inspector general after he was assaulted requesting help, His request was denied by Kerry McClelland by response dated 6-9-04.

(140) On 8-12-04 between 7:30 am & 8:00 am plaintiff Peyton watched officer Garcia go upstairs, and pulled a black inmate who is "EOP", mentally challenged, out of cell 232. Officer Garcia walked the inmate down stairs and into the Psych's office and officer Elias followed officer Garcia and the inmate into the office, both officer's Garcia began to punch the inmate and kick him until he fell to the ground, and then continued to punch and kick him. After officer's Garcia and Elias were done beating the inmate, officer Garcia and the inmate exited the psych office and walked towards the stairs, and began to walk up the stairs, then instantaneously officer Garcia turned around with the inmate and walked back down stairs, squeezing the inmates ~~with~~ wrists with the handcuffs, officer Garcia then placed the inmate in holding cage #1 on B-side and left him in handcuffs that were on the inmate excessively tight and left in the cage for a couple hours. While the inmate was getting beaten inside the psych office Sgt Strimes walked out of the B-side staff office with a cup of coffee, glanced inside

the psych office seeing his officers beating the inmate and then walked away thru the setunda. The inmate is identified as DOE#4 until identified.

(141) Two days prior on 8-10-04 in the morning on 2nd watch, a was brought into Adseq. While the inmate was outside in the holding cage outside the B-side fire door, Plaintiff Pyston watched officers Garcia, Elias, Alvitrus and Angelo repeatedly punching the inmate while he was in the cage, while Sgt Saveedra stood behind his officers and watched them beat the inmate. When officers Angelo and Alvitrus escorted the inmate into the building through the B-side fire door, I could not tell if he was bleeding in his facial area because he had a spit mask on. The inmate is identified as inmate Wilson.

(142) On 8-13-04 at approximately 6:00 pm. ~~officer~~ officers Yodi, Proudly, Rodriguez and Garcia, (Garcia defendant #9), approached cell 126 of Adseq, occupied by a white inmate. Officer Proudly began making verbal threats to the inmate, threatening that he officer Proudly and his fellow officers were going to go into the inmates cell and beat him. Officer Proudly begin stating, "do you wanna threaten staff, do you wanna assault staff right now, patronizing the inmate challenging the inmate to a fight and violence. Officer Proudly accused the inmate of threatening officers Yodi, and the inmate stated, "I did not threaten that officer. Officer Proudly then told the inmate, "you aint got shit coming, and refused to give the inmate, a mattress, linen, toiletry etc. Officer Proudly then opened up the toilet maintenance chase, and attempted to turn off all the water to the inmates cell, and ended up busting the piping causing a flood, and the emergency plumber had to be called in to re-weld the pipe,

The inmate is identified as Glenn Herring.

(143) On 5-14-04 at approximately 5:30 pm, dinner time while plaintiff Peyton stood at his cell door waiting for his dinner tray, officers Proudly and Garcia (defendant #9) approached the cell of 126 occupied by inmate Herring, officer Proudly opened his tray slot and handed plaintiff Herring an empty paper food tray (white in color), and stated you gonna learn to respect staff, and proceeded to serve trays. Mta (Lowmy) was handing out medication, and when Mta (Lowmy) got to Herring's cell to give him his medication, Herring told Lowmy that the officer's refused to feed him, Mta (Lowmy) asked Herring why, the officer's refused to feed him, Herring stated I dont know, look at this empty paper tray they gave me. Mta Lowmy said he would talk to the Sgt. "To the best of Plaintiff Peyton's knowledge and almost surety, the Mta was Mta Lowmy.

(cont)

After dinner feeding was concluded, officer Proudly approached Herring's cell, and immediately said you had to go tattle tail, the Sgt aint gonna do nothing or tell me how to run my unit, this is my unit what I say goes. Inmate Herring told officer Proudly yous violating my rights, officer Proudly replied, I dont give a fuck about your rights, you dont have no rights in here, you dont have shit coming and were gonna starve you until you learn to respect staff.

Herring then asked officer Proudly for his name. Officer Proudly stated, my name is officer Proudly, and im gonna starve you, and your gonna appologize to officer Yodi when he comes back on Monday, and you better make sure officer Yodi believes your appology cause if he doesnt then were gonna continue to starve you, and after you

apologize to all the other officers; then your gonna appolized to me, and if I dont believe it, which I wont, then your gonna have a problem. Officer Proudly continued pathonizing ~~me~~ Herring, calling Herring all kinds of names such as bitches, pussies etc, and asked ~~me~~ Herring if he wanted to come out and whoop his ass, cause if ~~me~~ Herring did, then he officer Proudly would open the door, and officer Proudly unlocked the security lock on the top of the door and said what do you wanna do pussy, thats what I thought now go sit down and shut the fuck up. Officer Proudly continued to say sit down and shut the fuck up for another couple minutes, then Officer Proudly left, and went to the staff office.

cont

Around 20-to-30 minutes later officer Proudly came back to inmate Herring's cell, and told Herring, the Sgt wants to talk to you. Herring said I aint gonna cuff up so you can beat me. Officer Proudly replied I dont need to put you in cuffs, I'll whoop your ass like that. Plaintiff Herring then cuffed up and officer Proudly escorted Herring outside of the B-side fire door, and placed him in a holding cage, while Sgt Blatant, stood to the side smoking a cigarette. Its not known to Plaintiff Peyton what words were exchanged while inmate Herring was outside in the holding cage with officer Proudly and Sgt Blatant, but when officer Proudly brought Herring back in the building, he didnt have his socks, shoes, or shirt, any-more, which he had when officer Proudly took him out of his cell, officer Proudly then placed Herring back into his cell 126, with no clothes except his boxers, and still with no mattress, linen, toiletty's etc... officer Proudly also threatened to intercept inmate Herring's outgoing and incoming mail, and had taken the personal papers inmate Herring had in his cell.

(144) Also on 8-14-04 at 7:15 Am during feeding Plaintiff Peyton witnessed officer Dela Cruz approach ~~the~~ Herring's cell and told Herring let me talk to you. officer Dela Cruz opened the tray slot and asked Herring what had occurred the previous night between himself and the third watch officers. Herring told officer Dela Cruz it was a misunderstanding between himself and correctional officer Yodi. "Officer Dela Cruz then stated well you pissed off all the fellas on third watch and your on their shit list, if you act stupid with us, then were gonna act stupid with you, im gonna feed you breakfast this morning but I aint gonna give you a sack lunch, if you wanna eat and get what you got coming then you gotta act right up in here." officer Dela Cruz then told Herring, "depending on how you act this morning, I might give you a lunch around eleven, but im not gonna give you a mattress or linen or anything, you have to clear things up with third watch. officer Dela Cruz never did give Herring a lunch.

(145) On 8-21-04 Plaintiff Peyton witnessed officers' Proudly, Rodriguez, Garcia (defendant #9) and Sgt Saveedra, refuse to feed the Hispanic Bulldog inmate in cell 130. The fellow Bulldog inmates upstairs raised havoc over the treatment of their comrad not being fed his dinner. The inmate was still not fed.

(146) On 8-24-04 at around 4:30 pm, officers' Proudly, Rodriguez, Diaz and Garcia (defendant #9) went into cell 131 and beat an ex-Bulldog drop-out named David for at least (5) five minutes. The sounds of striking David were louder than his painful groans. After the officers were done beating David officer Proudly got a chain from the female officer (white) in the control tower, and attached the chain to the handcuffs.

Officer Proudy then told the tower offices to close the cell door of 131, and officer Proudy began pulling on the chain thru the tray slot, pulling David's arms out-behind-him thru the tray slot to his elbows which is very least likely. Officer Proudy kept yanking on the chain, as if the inmate David was a bull at a rodeo show being subdued. While officer Proudy was yanking on the chain, David was hollering out in pain. Finally officer Garcia or Diaz uncuffed David closed the tray slot and all four officers walked away to the staff office laughing about the assault.

(147) On 8-31-04 at about 7:00 am. officer J. Garcia was collecting food trays, an inmate in cell 130 refused to give up his food tray. Officer J. Garcia said give me that fucking tray, the inmate said no, officer J. Garcia said were gonna come in there and get that fucking tray, officer Garcia then told the control offices to open the doors of cell 130, the cell door was opened and Garcia ran into the cell and started beating the inmate and officer Hensley ran in the cell right after Garcia and together they beat the inmate for about 3 minutes, and then officer Hensley came out of the cell with the inmate in cuffs. Officer Hensley had his right hand around the inmates neck and his left hand pulling down on the cuffs and walked, actually more like dragged the inmate to and into a holding cage outside. When officer Garcia exited the cell he was punched in his face, telling officer that mutha fucka ~~grabbed~~ grabbed me by my balls. When the inmate was brought back in and escorted back to his cell he had cuts on his right cheek area, and his knees were bruised and swollen. The inmate is white B is Doc # 5

(148) On 9-6-04 at 4:00 pm, I witnessed officers Proudy, Garcia (defendant # 9), and Diaz enter into cell 132 and beat a "mentally challenged" inmate for about (5) minutes. When officer Proudy told control offices Rendon to open

cell 132^s door, Rendon opened the door, and officer Proudly ran in the cell first with his baton ~~hiked~~ hiked up in his right hand which he brought down hitting the inmate on his upper shoulder area, from my cell, cell # 127 I could clearly see into cell 132, and I watched officers Proudly, Gladia (defendant #9) punching and kicking the inmate repeatedly for at least (5) minutes. After the officers above were finished beating the inmate they placed him in cuffs and officers Diaz and Proudly drug the inmate out of the cell, Proudly had the inmate by his hair, with his right hand dragging the inmate into the psych staff office and the inmate was placed in a holding cage. Twenty minutes later dinner was served and the inmate was denied his tray. The inmate was left in the holding cage for three hours in hand cuffs, until officers Diaz & Proudly took the inmate out of the holding cage and escorted him to cell 124. Officer Proudly got the chained triangle from control officer Rendon, and gave it to Diaz who attached the triangle chain on the cuffs and pulled the inmates arms out of the tray slot viciously yanking on the chain with his body weight causing the inmate to hold, after Diaz had his fun Proudly took the cuffs of the inmate & closed the tray slot. Prior to the inmate being behoused into cell 124, officer Gladia (defendant #9) went back into cell 132 and threw away all the inmates personal property, all his papers and letters etc. The inmate is identified as John Settle.

(149) On 9-8-04 I made copies of all my affidavits I had written up to the date of 9-6-06, and mailed the copies to Senator Gloria Romero, which was signed and processed out by CC II Olson the law librarian. I never received a response back, to my letters and affidavits sent to Miss Romero.

(150) On 9-14-04 I witnessed officer Alvitris tell inmate Turner, a Black inmate in cell 126, if you don't have your light on next time I pass out breakfast, im doing a walk by refusing to feed him. Officer Alvitris then continued to pass out trays, he approached cell 145 "SNY" inmates and white, who did not have their light on and Alvitris gave them their trays and three extra food trays, and said nothing to the inmates in cell 145.

(151) On 9-20-04 officer Alvitris verbally threatened inmate Bautista in cell 128, stating "don't fuck up because if you do then were gonna come in there and fuck your whole world up."

(152) On 10-21-04 at about 1:30 pm. I caught the late end of an assault on an inmate by officers' J. Garcia, Alvitris, Eric Coy, Hensley, Branson, and Woody. I was told by my neighbor inmate Lopez who was housed in cell 128, "did you see that, as I stepped to the door, I seen these officers through the reflection of the psych office window putting the inmate into the middle cage outside the fire door. I was told by inmate Lopez that he watched officers' Garcia & Alvitris repeatedly kicking and punching the inmate, to which part I did not see. What I did witness was officers' Woody, Branson, and Eric Coy, cleaning up the inmates blood that was all over the psych's office, and watched officer Woody walk thru the retunda from A-side to B-side with a "Red Bio Hazard Bag" in his hand, and entered back into the Psych's office, placed the bloody rags (towels) into the bio hazard bag. It took about (30) minutes for the officers to scrub and clean up the office. Alta Buckner was in the building after the beating and conducted a biased/incomplete 7219 evaluation. Inmate Lopez was rehoused from cell 124 into cell 128, and the brutalized inmate was rehoused into cell 124 without being provided medical treatment for his injuries.

(153) From 7-7-04 while I was housed in cell 222, every night on 3rd watch I watched Sgt Saveedra, and officers; Garcia (defendant #9), Prandy, Diaz, Rodriguez, Bras, and Yodi, go into the I.C.C. office after chowtime and gamble playing poker, with the poker chips. Sgt Saveedra would come out of his office with a brown paper bag, containing the poker cards and poker chips, and Sgt Saveedra and the ~~officers~~ officers would go into the "I.C.C." office and gamble until the 9:00 p.m., security count. I witnessed the gambling from 7-7-04 until 8-1-04 when I was rehoused in cell 127.

(154) On either 8-25-04 or 9-1-04, but definitely on a Wednesday, I witnessed officers Alvitrus and Holbain forcing a hair cut on Doe #4, officers Alvitrus and Holbain forced Doe #4 to sit down in the chair in front of the control tower on B-side, the inmate was in hand cuffs and leg restraints. The inmate did not want his hair cut, and Alvitrus forcefully cut the inmates afro, and his goat fee off. Prior to this and after this inmate was beaten by officers Elias & Garcia on 8-12-04, officer Alvitrus had tried to cut his hair off.

(155) On 10-25-04 after chow officers Prandy and Garcia told control officer Laws to open the doors of cell 124. Officer Laws who had just came out of the restroom opened the doors of cell 124, and officers Prandy & Diaz ran in the cell and began beating the inmate. The inmate was not in cuffs before the doors was opened, the beating took place for close to five minutes, the inmate fighting back for his life, the inmate was then drug out of his cell by officers Prandy & Garcia (defendant #9) and the inmate was fighting for his life, and forced to the ground by Prandy and Garcia in front of cell 124 and beaten some more. Officer Rendon then came out of the staff office over to the front of cell 124, while Prandy & Garcia were still beating

The inmate and Officer Rendon placed handcuffs on the inmate. Rendon got the triangle chain from Jaws in the control tower and Proudly and Shiscia put the triangle on the cuffs, and manhandled the inmate back into cell 124, the door was closed and officer Proudly pulled on the chain pulling the inmates arms backwards out of the tray slot, forcing the inmate to scream out in pain, officer Proudly having fun pulling and yanking on chain and then he decided to take the handcuffs off and closed the tray slot. The inmates name known to me, is Al, and on 11-26-04 before I was released from Ad-Seq Al was housed in cell 129.

(156) On 9-27-04 I witnessed officers Diaz, Proudly, Shiscia (defendant #9) and Yadi escorted an inmate up the stairs and into cell 232, and the sudden I heard whooshing sounds and thumping sounds from up stairs, and I heard the inmate hollering. The inmate is identified as inmate Palacios.

(157) On 12-20-04 I sent a letter and copies of my affidavit to the "FBI", which was signed and processed out by "10 Mrs Hughes, I received no response from the "FBI."

(158) On 7-8-04 I was taken to I.C.C. before Warden Vasquez, I told Warden Vasquez that her officers were brutalizing inmates, starving inmates, depriving inmates of lines, clothing mattresses and the whole nine yards, Warden Vasquez told me I needed to behave, and comply with the rules. Mrs Vasquez ignored, my concerns about the cruel and unusual being imposed upon Ad-Seq inmates.

(159) After all inmates victims were brutalized by the officers above on all incidents, none were afforded treatment for their injuries by medical staff except inmates that went to C.I.C. on suicidal ideation (s) watch.

(160)

On 11-24-04 Plaintiff was taken before I.C.C., escorted by officer J. Stascia, who told Plaintiff we recommended for I.C.C. to kick you out, go on and get out of here, you've been back here to long causing problems for us. Plaintiff entered the multipurpose room where I.C.C. is held, sat down, stated his name and C.I.C. #. Present were Chief Deputy Warden (Acting) Harrington, Associate Warden J. Haviland, Captain Hartley, counselor Allen, and a couple other staff. (COW) Harrington told Plaintiff that I.C.C. was going to release him back to general population, and Plaintiff told Mr. Harrington he did not want to go out of Ad-seg back to general population ~~period~~ period, because of concerns of staff retaliation, for having filed complaints on Ad-seg staff who were brutalizing inmates as stated above. Plaintiff told Mr. Harrington that he desired to stay in Ad-seg for his personal safety until transferred, Plaintiff then asked Mr. Harrington and Associate Warden J. Haviland, what they were going to do about their guards brutalizing inmates, and suddenly Captain Hartley interrupted stating, the committee elects to release you from Ad-seg Mr. Peyton, we have no reason to hold you in Ad-seg any longer, where would you like to be housed?, Plaintiff told committee, I want to be housed back in my cell here in Ad-seg until you put me on a bus.

(161) At this point Captain Hartley became irritated and stated this what

were going to do, were going to bring you back to B-facility, and assign you specifically to B-4, when a bed comes available in B-4, then you will be released, im am specifically assigning you to B-4 with officer Laws because you cant go back to B-5, and your file shows that you have programmed best their while you've been here so I'm assigning you to be housed specifically in B-4.

(162) (COW) Harrington then asked Plaintiff what the status of his reissue-rehear (R.V.R # FB-04-09-0030R) was, Plaintiff told Mr Harrington, "I dont know (Lt) Peters, postponed the hearing a couple weeks ago, because I had not been given a copy of the I.E. Report and my witnesses I requested were not available. Mr Harrington asked Plaintiff well what happened to the IIS, Plaintiff told Mr Harrington I dont know, I aint the police, why you asking me, ask your staff. Mr Harrington asked (Captain Hartley the status of the IIS. Captain Hartley told Mr Harrington that he did know where the R.V.R IIS was, that the entire IIS appeared to be lost!

(163) Associate Warden J. Haviland then asked Plaintiff if he agreed with committees actions, Plaintiff stated no I want to stay in Ad-seg until you transfer me, and I'd like to go to Lancaster. Mr Haviland told Plaintiff were kicking you out because we have no reason to keep you in Ad-seg, your Shu term is done and you cant stay in Ad-seg, your not a threat to the institutional any longer, you can appeal committee actions.

(164) On 11-27-06 a bed was opened for Plaintiff in Building 4 of Facility-B, and Plaintiff was forcefully released from Ad-seg by officers Ponce and Angelo. Plaintiff was then escorted to B-4. Upon arrival in

B-4 - officer Mrs Hughes greeted Plaintiff, and told Plaintiff to step in the office for a minute. Officer Hughes informed Plaintiff that B-4 was an "SNY" building (i.e. Protective custody), and asked Plaintiff if there were going to be any problems. Plaintiff stated yes, you cant keep me in here with these PC's, I aint no "SNY", im G.P. and classified as an active "CRIP" by custody staff. Officer Hughes told Plaintiff Im going to escort you to your cell and call my Sgt, just hang tight. Plaintiff was placed in his cell and officer Hughes contacted her Sgt. Officer Hughes come back and told Plaintiff that per the Sgt he was going to (CTQ) confine to quarters - Plaintiff until the next day when Administration arrived because he couldn't do nothing because Plaintiff had been assigned to B-4 by Administration.

(165) The next morning on 11-28-04 while officer Laws was conducting his 6:15 A.M. security count plaintiff stopped Laws during his walk by count security check, and stated, check this out nigga I cant stay up in here I aint no "PC". Officer Laws stated Peyton when the hell you get out? Plaintiff told officer Laws, I got out last night, I aint staying up in here I aint a "PC" or "SNY", you need to call your (Sgt) before I start ~~some~~ some shit nigga, this aint cool, I can get hurt once I hit a real mainline. Officer Laws told Plaintiff, Im fit to cell feed for now and im fit to call the (Sgt) and see what the hell going on.

(166) At about 9:00 A.M. officer Laws had to tower control officer open Plaintiff's cell door # 209, and Laws hollered Peyton come on down to the office. Plaintiff reported to the office, and sat down. Officer Laws told Plaintiff, look maybe I dont know what you did or who you pissed off but per the (Sgt) Administration assigned you to this building and aint nothing we can do, ya know, you know how to get up outta here do what you need to do, is all I can say,

my hands are tied I aint got no bars. Plaintiff returned to his cell closed his door and began to debate his course of action, because Plaintiff understood I.C.C.'s motive for placing him in a protective custody unit, ~~on~~ with child-molesters and rapists. Plaintiff had only two choices, either: assault a protective custody inmate and pick-up third strike for "Battery", or remain calm and litigate his claims, Plaintiff chose the latter, and suffered.

(167) On 11-28-04 Plaintiff sent a letter directly to warden Pat. J. Vasquez complaining about being placed forcefully into a protective custody housing unit, placing my safety in danger and also for being kicked out of Ad-seq placing me in danger. Plaintiff's letter was signed and processed out by officer Hughes... Plaintiff received a response back to his letter to warden Vasquez on or about 12-28-04 signed by Associate Warden J. Haviland with negative results of being removed from the protective custody building.

(168) Commencing from 11-27-04 to 4-13-05 Plaintiff complained to all the following correctional officers regarding forcefully being housed in a protective custody building, when Plaintiff wasn't and is not a protective custody inmate; officers Hughes; Laws; Bufford, Finell; (Sgt) Marion (Sgt) Smith; (Lt) Gonzalez; (Lt) Lacy; (Lt) Scott; (ISU) (Sgt) Shimes on 12-13-04; and (Captain) Hartley on 3-4-05, and I was still forced housed in a protective custody building.

(169) On 12-22-04 Plaintiff gave a 602 to S&E officer Kady to give to B-Facility (Lt) Lacy regarding plaintiff's housing, that 602 was never answered and stands "missing in action".

(170) Plaintiff sent an inmate request to Captain Hartley on 12-29-04, requesting interview. Plaintiff received no response to his request from Captain Hartley.

(171) On 2-13-05 Plaintiff mailed a Citizen's Complaint against Warden Vasquez to Director of Corrections Jeanne Woodford signed and processed out by officer Hughes, in regarding of placing plaintiff's life in danger by having him housed in a protective custody unit.

(172) On 2-22-05 Plaintiff mailed a copy of his Complaint against Warden Vasquez mailed to the Director on 2-13-05, to Warden Vasquez. Warden Vasquez or her staff sent Plaintiff copy of complaint he sent to Vasquez back to Plaintiff with a yellow sticky, that states, has nothing to do with complaint on officer J. Garcia.

(173) Plaintiff sent Warden Vasquez a Citizen's Complaint Against Warden Vasquez for tampering with plaintiff's mail, and a "Letter of Concern" dated 2-22-04 regarding his housing concerns, to Warden Vasquez on 2-27-05 signed & processed by officer Hughes. Plaintiff received no response from Warden Vasquez regarding his "Letter of Concern." His Complaint against Warden Vasquez for tampering with his mail was returned to him unprocessed in late March, and Plaintiff re-mailed such complaint back to Warden Vasquez on 3-27-05.

(174) On 3-8-05 Plaintiff sent two letters to Warden Vasquez, one in regards of Vasquez engaging in conspiratorial conduct, and the second letter regarding Plaintiff placement/housing neither letter was answered.

(175) Finally on or about 5-21-05 Plaintiff received his Citizen's Complaint back against Warden Warden that he mailed to the director on 2-13-06, back from the Director with instructions to seek second level adjudication with/through the appeals office at Wasco Prison. Plaintiff mailed the Complaint as instructed to Warden Vasquez on 6-9-05, signed and processed out by officer Excina. On or about 8-1-05 Plaintiff received his Citizen's Complaint back screened out with a letter from Ed Sanchez dated 8-1-05 stating Plaintiff had exceeded the time constraints for filing his complaint, and thus exhausting Plaintiff's Admin-Remedies.

(176)

From 11-19-03 to 4-14-05 the duration that plaintiff resided in Wasco State Prison Reception Center, a total of 17 months Plaintiff was denied "meaningful" - "adequate access to the law library, without a person trained in law. Plaintiff was authorized only one visit per week to the law library for a maximum of two hours per visit to research in a loud library, void of any clerks trained in law to assist Plaintiff in learning the fundamentals of law, in order to meet the procedural requirements that needed to be met in petitioner's habeas corpus case No. S124538 and his civil case CV-05-9571, both dismissed for failure to meet procedural requirement to which Plaintiff could have met should had, had the required legal assistance of a person trained in law, who could have guided Plaintiff to specific legal book, that specified what specific procedural guidelines needed to be met and how to articulate Plaintiff claim onto his petitions as required. Each time Plaintiff would ask the Law Librarian Olson, a legal question of how to go about researching something or how to prepare a petition, Mr Olson would tell Plaintiff (genuinely) I don't know!

(177) From 4-4-04 to 11-27-04 while placed/housed in segregation Plaintiff's access to the legal library was constantly obstructed by Ad-seg staff either by intercepting Plaintiff's inmate request forms, requesting access to the legal library which Plaintiff submitted every Sunday through institutional mail, or by Ad-seg staff scratching Plaintiff off the law library list on Wednesdays claiming Plaintiff refused which he did not. Within the time frame of the dates above Plaintiff had no meaningful access to the legal library to research, without the assistance of a person trained in law to assist Plaintiff, and library clerks are prohibited from being in the law library while segregation inmates are therein, leaving (1) segregation inmates in cages in the legal library with a librarian (Ells Olson) who was not trained or capable of assisting law-illiterate prisoners in learning law, preparing petitions etc. The legal library in Wasco Prison Reception didn't even have sample petitions for prisoners to utilize to formulate their petitions (i.e. a sample brief, traverse, or writ of habeas petition) filled out illustrating how claims should be formatted on petitions.

(178) Due to the inadequacies of the legal library above Plaintiff failed to meet the procedural requirements of federal procedure in case # CV-9577, and his state (criminal) habeas corpus was denied by the California Supreme Court due to procedural deficiencies!

(179) On 4-14-05 Plaintiff was transferred from Wasco State Prison to Corcoran Prison - at SATF. Plaintiff accessed the law library about two times before the facility was placed on lock-down the beginning of June 2005 to the end of September 2005 straight, with only access to an inadequate "paging system", including obstruction of "Black" inmates' requests due to retaliation by correctional staff because a Black inmate had allegedly stabbed an officer leading to the unconstitutional lock-down.

(180) After release from facility lock down as just mentioned above Plaintiff accessed the legal library twice before being placed on another short lock-down, and another short lock-down, and so plaintiff while on the main-line at SATF from 4-14-05 to 1-31-06 accessed the legal library about (10) times, and that was inadequate access for the cases petitioner to research for and prepare and ultimately his civil petition CV-05-9577, was dismissed for failure to satisfy technical requirement of 8th Amendment standard.

(181) On 1-31-06 Plaintiff was placed in Ad-seg for allegedly threatening Sgt K. Curtiss, to which since such charges were reversed on CDC appeal and pend rehear and new investigation for perjury, Nevertheless while in Administrative Segregation Plaintiff was denied physical access to the legal library therein The E-1-ASU from 1-31-06 until 5-25-06 and only after having filed complaints for obstruction of access to courts, and obstruction of access to the legal library to utilize law books, conduct research, and prepare my opening brief for "COA" on case # CV-9577 which Plaintiff could not do based on denial of access to legal library, and refusal of prison officials to afford petitioner a pen to write with.

(182) On 3-12-06 Plaintiff filed a Citizens Complaint against law library Amaro for denying him access to the law library therein E-1-ASU (Appeal log # Z-06-01063.

(183) On 3-27-06 Plaintiff filed a Citizen's Complaint on officer Ellis Parra for refusing to afford Plaintiff an ink pen to communicate with the courts and to prepare his brief for "COA" on case # CV-9577 which

was due on or about thereof, April 20, 2006 in the Ninth Circuit Court of Appeals, (Appeal log # 2-06-01648 - pending director adjudication).

(185) On 4-6-06 Plaintiff had to borrow an ink pen from my neighbor Mr. Wilson, to write a frustrated motion to withdraw his appeal from the Court of Appeals explaining Plaintiff was not wasting \$300, and that prison officials were depriving him of a pen to communicate his claims. Plaintiff withdrew his "COA" because it made no sense to waste the courts time, when he was prevented from properly preparing his brief without time and access to research and understand "COA" which he had never done.

(186) On 4-11-06 Plaintiff filed a Citizens Complaint against (Att) Cartagena, the Ad-Seq (Att) for refusing to afford & instruct his law library officer to give Plaintiff access to the legal library and books. (Appeal log 2-06-01525), Plaintiff appeal was partially granted on or about 9-20-06.

(187) As Plaintiff stated above he ~~was~~ was not provided physical access to the legal library until 5-25-06 and by then it was too late to litigate his "COA" for case # CV-9577, including the unnecessary applications for ~~extensions~~ extensions of time(s) he was forced to file with the district courts for case # CV-01334, and CV-6928, to prepare his objections, replies, briefs etc.

(188) From 5-25-06 to 9-8-06 plaintiff was given physical access to the law library maybe (5) times to conduct research in the legal books, and rather had to depend on materials provided to him by prison law office.

(189) On 10-29-05 at SATF-SP in Building 8-A section, during A.M. yard release, control tower officer Torrence of "C" Facility began to release inmates to the yard starting from cells 201 to 210 on the upper tier, and then began opening cells 101 thru 110 on the bottom tier. Plaintiff who was housed in cell 106 came out and walked to his right where the Blacks recreation table was, and during such time inmate Mr. Tisdale was released from his cell, cell 110, next thing plaintiff knew he was utilizing his martial arts defense training to protect ~~himself~~ himself from inmate Mr. Tisdale to prevent harm from Plaintiff's person, and in the course of protecting himself Plaintiff was shot in his right leg thigh area behind by officer Torrence causing injury to plaintiff's leg, and sweeping plaintiff off his feet, Plaintiff jumped up impulsively and continued to protect himself, responding staff arrived, gave plaintiff verbal order to get down on the ground, plaintiff complied, he was then handcuffed and taken to the program office.

(190) At the program office Sgt. K. Custiss, approached plaintiff who was in the cage, and asked plaintiff what happened, Plaintiff told Sgt. Custiss, "I was defending myself." Sgt. Custiss responded telling plaintiff, "yeah we know about Tisdale, he's a piece of shit, and he's been in a fight in every building he's been in."

(191) Shortly there after (Lt) Odle came and spoke with plaintiff, and ordered plaintiff to show him his leg, which was red and swelling up on his thigh, and asked "plaintiff if was okay", and asked plaintiff if was willing to sign a compatibility chrono so plaintiff could remain on the yard, plaintiff replied no and yes.

(192) Subsequently Plaintiff received a 115 for "MUTUAL COMBAT", and was ultimately assessed (90) days forfeiture of credit after being found guilty by SHO YBARRA (LT), for defending him-self.

(193) During the first R.V.R. 115 (LT) Ybarra contacted officer Torrence who plaintiff requested as a witness. Upon connection on the phone (LT) Ybarra stated to officer Torrence, I got some questions for you regarding the fight incident between the piece of shit Tisdale and inmate Peyton. Officer Torrence testified that a couple days prior to the incident and for a period of a couple days, that he (officer Torrence) heard Mr Tisdale talking disrespectfully to Plaintiff, and had heard threatening statements of intended harm upon plaintiff by inmate Tisdale and that inmate Tisdale was speaking about plaintiffs mother and sister in derogatory terms calling them bitches and hoers, and to the effect of having sex with plaintiffs mother and sister all while behind his cell door. Such was officer Torrences testimony at the first hearing. .. Plaintiff appealed the findings of the R.V.R. alleging violations of Due Process Rights and deliberate indifference and failure to protect (appeal log # 06-00242) the R.V.R. 115 was reversed and ordered reissue-rehear. At the second R.V.R. 115 hearing officer Torrences testimony was similiar to the testimony above. SHO (LT) Tolles found plaintiff guilty for same offense above, same credit forfeiture. Plaintiff appealed the findings of the R.V.R. alleging violations of Due Process Rights, deliberate indifference and failure to protect his safety and security (appeal log # 2-06-01949) and the R.V.R. was again ordered reversed-reissue-rehear, officer Torrence testimony was simular, guilty finding and penalty assessment same. Plaintiff filed appeal on 10-1-06 Herein High State Prison, his appeal was not processed, and his inmate request inquiry to the appeals coordinator on 10-15-06 and received no response, plaintiff sent a letter of complaint to Warden T. Felkes about his harbored appeals and hindered due process on 10-31-06 with negative response, thus exhausting his administrative remedies.

First Claim For Relief
Violation of Prisoner's Eighth Amendment Right
To Have Personal Safety

(194)

Petitioner realleges and incorporates by reference each allegation of paragraphs 91-95, inclusive, as if alleged herein.

(195) Defendants James Woodford, Pat. J. Vasquez and Ken Clark violated Petitioner's Eighth Amendment right to have personal safety and to be protected from violence by other prisoners in the form deliberate indifference, by unnecessary and wanton infliction of pain, including physical injury and psychological and emotional distress, as alleged herein.

(196) Plaintiff is informed and believes, and thereon alleges that defendants have acted intentionally in the manner described above and with knowledge of Plaintiff's opposition to being classified as a gang member and having been pumped/assaulted by (E) Fresno Bulldogs as a result of their actions or refusal to act

(197) Defendants conduct violates 42 U.S.C. 1983 because that conduct constitutes deliberate indifference to Plaintiff right to have personal safety in violation of his Eighth Amendment Right to be free from cruel and unusual punishment.

(198) As a proximate result of defendants' conduct plaintiff has suffered and continues to suffer general damages in the form of severe mental and emotional distress. Plaintiff is informed and believes, and thereon

alleges, that he will to continue to suffer such damages in the future.

(199) As a further proximate result of defendant's conduct, plaintiff is informed and believes, and thereon alleges that he will suffer special damages in the future in the form of medical expenses for treatment for his mental health condition, and loss of income.

(200) In acting as described herein above, defendant acted despicably, knowingly, willfully, and maliciously, or with reckless or callous disregard for plaintiff's federally protected rights entitling plaintiff to an award of exemplary and punitive damages.

Second Claim For Relief
Violation of Prisoner's Eighth Amendment
Right To Be Free From the Use of Excessive Force,

- (201) Plaintiff refers to and ~~incorporates~~ incorporates and incorporates by reference herein the allegations of paragraphs (general) 1 through 95, inclusive and paragraphs 96 through 130, inclusive of the first claim as if alleged herein.
- (202) Defendants Troy Kuykendall and Brian Wilson violated Plaintiff's Eighth Amendment Right to be protected from cruel and unusual punishment in the form of excessive force, by their unnecessary and wanton infliction of pain, including physical injury and psychological and emotional distress as alleged herein.
- (203) Specifically defendants knowingly, maliciously and sadistically inflicted physical, emotional, and mental abuse upon plaintiff when they ran inside plaintiff cell and implied unnecessary force upon plaintiff's person in retaliation for having words with their partner Ms. M. Morales the prior night on first watch.
- (204) Defendants' acts, as alleged herein were despicable, knowing, willful, malicious, and carried out with reckless disregard for plaintiff's federally protected rights.
- (205) As a direct and proximate result of the defendants' actions herein alleged, Plaintiff suffered and continues to suffer mental and emotional distress. Plaintiff is entitled to and award of compensatory and punitive damages for injuries suffered.

Third Claim for Relief

Violation of Prisoner's Eighth Amendment
Right to be Free From the Use of Excessive Force,
And Cruel And Unusual Punishment.

- (206) Petitioner alleges and incorporates by reference each ~~allegation~~ of the general allegations of paragraphs 1 through 100 and paragraphs 101 through 150, inclusive, of the first and second claims, as if alleged herein.
- (207) Defendants denied plaintiff his Eighth Amendment Right to be free from Cruel and Unusual Punishment in the form of excessive force, thus denying a basic human need guaranteed to prisoners by the United States Constitution.
- (208) Specifically defendants, J. Garcia, Elias, Holbain and Kisby, knowingly, maliciously and sadistically inflicted physical, emotional and mental abuse when they painfully took plaintiff in the psych's office, and punched and kicked plaintiff all over his ~~body~~ body repeatedly in retaliation and discipline for allegedly assaulting their partner officer Kuykendall.
- (209) Defendants' acts, as alleged herein, were despicable, knowing, willful, malicious, and carried out with reckless disregard for federally protected rights.
- (210) As a direct and proximate result of the defendants actions herein alleged, plaintiff suffered, and continues to suffer, physical injury, and continues to suffer severe and emotional distress. Plaintiff is entitled to an award of compensatory and punitive damages for injuries suffered.

Violation of Prisoner's Eighth Amendment
Right To Have Personal Safety

(211) Petitioner realleges and incorporates by reference each of the general allegations of paragraphs 1 through 130, inclusive and paragraphs 131 through 158, inclusive of claims one through three, as if alleged herein.

212) Defendants denied plaintiff and other prisoners their Eighth Amendment Right to be free from Cruel and Unusual Punishment in the form of deprivation of personal safety and excessive force, thus denying a basic human need guaranteed to prisoners by the United States Constitution.

213) Specifically defendants were deliberately indifferent to plaintiffs, and other prisoners' right to have personal safety when they intentionally, knowingly, and maliciously inflicted physical abuse and humiliation on plaintiff and other prisoners, by beating, starving, kicking, punching, denying bedding, clothing, toiletries, mattresses, sanitation, hygiene etc, to plaintiff and other other prisoners for a period of (8) months, in front of other inmates, and in view of the public. Defendants' actions offend contemporary standards of decency

214) In doing so as alleged herein above, defendants acted with deliberate indifference to plaintiffs and other prisoners' right to personal safety and subjected "them" to unnecessary and wanton infliction of pain, including physical injury and psychological and emotional distress in violation of the Eighth Amendment.

(215) Plaintiff is informed and believes, and thereon alleges that defendant Vasquez was aware, and knew that defendants were committing these outrageous acts. Plaintiff is informed and believes, and thereon alleges that defendant Vasquez

knew that such conduct would be harmful to plaintiff, and all other inmates subjected to such conduct, yet allowed defendants, (mentioned in paragraphs 107 through 158 to remain in positions of authority, and to carry out the offensive behaviors. In doing so defendant Vasquez implemented a policy that repudiated plaintiffs and other prisoners constitutional rights and was unconscionable. Under the doctrine of supervisory liability defendant Vasquez is liable for plaintiffs, and all, and any other victims injuries.

(216) Plaintiff is informed and believes, and thereon alleges that defendant Holbain is in a position of authority such that he could arrange, or order to be arranged further harm on plaintiff by his friends here in High Desert State Prison where he was employed prior to Wasco State Prison where Plaintiff is fearful for his well being and safety. Plaintiff is further informed and believes, and thereon alleges that in fact defendant Holbain will soon be cognizant that plaintiffs is housed in his former gladiators playground, and will ~~arrange~~ arrange for plaintiff to be brutalized, framed, subjected to retaliation and/or all the above.

(217) Defendants, and each of them, subjected Plaintiff and other prisoners to this physical, emotional, and mental abuse under circumstances which did not require the use of any physical force whatsoever.

(218) Defendants' acts as alleged herein, were despicable, knowing, willful, malicious, and carried out with reckless disregard for plaintiffs and other prisoner victims federally protected rights.

(219) As a direct and proximate result of all of the defendants actions herein alleged, Plaintiff suffered, and continues to suffer physical injury. Plaintiff is entitled to an award of compensatory and punitive damages for injuries suffered.

(220) As a further direct and proximate result of all of the defendants' actions herein alleged, Plaintiff suffered and continues to suffer, severe emotional and psychological distress. Plaintiff is entitled to an award of compensatory and punitive damages for injuries suffered.

(221) Plaintiff is entitled to injunctive relief, including but not limited to, an order requiring his transfer away from HOSP, where he will not be subjected to retaliation instigated and/or ratified by defendant Holbui. There is no adequate remedy at law to protect Plaintiff from said retaliation, and without the equitable relief he is susceptible to great and irreparable injury. The balance of hardships tips markedly toward Plaintiff in that there would be little or no prejudice or harm to the defendants should Plaintiff be transferred away from HOSP, but great harm to Plaintiff should he be required to stay at that institution.

Fifth Claim for Relief

(222)

Violation of Prisoner's Eighth Amendment
Right To Be Free From Deliberate
To Serious Medical Needs,

Petitioner realleges and incorporates by reference each of the general allegations of paragraphs 1 through 158 inclusive, and paragraphs 159, inclusive of the first through fourth claims, as if alleged herein.

(223) Plaintiff and other prisoner victims injuries, that were sustained as a result of the uses of excessive force and cruel and unusual punishments constituted serious needed medical treatment for injuries sustained (i.e. broken noses, arms, wrists, ankles, lacerated mouths, eyes, faces etc.)

(224) Plaintiff is informed and believes, and thereon alleges, that defendants have acted intentionally in the manner described above and with knowledge of plaintiff's and other prisoner victims suffering and the risks of further serious harm resulted from their actions or refusals to act.

(225) Defendants conduct violated 42, U.S.C. 1983, because that conduct constituted deliberate indifference to prisoners' serious medical needs in violation of their Eighth Amendment Rights to be free from Cruel and Unusual Punishment.

(226) As a proximate and direct result of the defendants conduct plaintiff suffered and continues to suffer general damages in the form of physical, emotional and psychological distress and pain, and thereon alleges that he will suffer special damages in the future in the form of medical expenses for treatment of his conditions, and loss of income. Plaintiff is entitled to an award of compensatory and punitive ~~exemplary~~ damages.

Sixth Claim for Relief
Violation of Prisoners Eighth Amendment
Right to Be Free From Retaliation and to
Have Personal Safety

(227) Petitioner recites and incorporates by reference each of the general allegations of paragraphs 1 through 159, inclusive, and paragraphs 160 through 175, inclusive of claims one through five, as if alleged herein.

(228) Defendant denied Plaintiff his Eighth Amendment Right to be free from Cruel and Unusual Punishment in the form of deprivation of personal safety, thus denying a basic human need guaranteed to prisoners by the United States Constitution

(229) In doing as alleged herein above, defendant Vasquez acted with deliberate indifference to plaintiff's personal safety, and subjected him to unnecessary risk of physical injury, and psychological and emotional distress, in violation of his rights under the Eight Amendment. Specifically defendant Vasquez was deliberately indifferent to Plaintiff's right to have personal safety when she intentionally, knowingly and maliciously forced Plaintiff to be housed in a protective custody unit, when Plaintiff was not and is not a protective custody prisoner.

(230) Defendant Vasquez acted despicably, knowingly, willfully, maliciously and with reckless and callous disregard for Plaintiff's federally protected rights.

(231) As a direct and proximate result of the defendant's action herein alleged, Plaintiff suffered, and continues to suffer injury. Plaintiff is entitled to an award of compensatory and punitive damages for injuries suffered.

Seventh Claim For Relief

Violation of Prisoner's Due Process Right
To Have Reasonable Meaningful Adequate
Access To a Legal Library and Courts

- (232) Petitioner realleges and incorporates by reference each of the general allegations of paragraphs 1 through 175, inclusive, and paragraphs 176 through 188, inclusive of claims one through six, as if alleged herein.
- (233) Defendants Vasquez and Clark denied Plaintiff his Fourteenth Amendment Right under the Due Process Clause in the form of deprivation of reasonable-meaningful adequate access to a law library, and interference of access to the courts, thus denying Due Process Right, guaranteed to prisoners by the United States Constitutional Mandates.
- (234) In doing so as alleged herein above, defendants acted with intentional disregard to plaintiff's right of ~~the~~ access to and adequate legal library for a reasonable amount of time, with a person trained in law to assist plaintiff, and including interference with plaintiff's access to the courts protection. In doing so, defendants Clark and Vasquez implemented a policy that repudiated Plaintiff's constitutional right, hindering his diligent efforts to pursue his claims, leading to dismissal of his claims for failure to satisfy technical requirements. Under the doctrine of supervisory liability defendants Vasquez and Clark liable for Plaintiff's injuries.
- (235) Defendants acted despicably, knowingly, and with willful and callous disregard for plaintiff's federally protected rights.
- (236) As a direct and proximate result of the defendants' actions herein alleged,

Plaintiff suffered, and continues to suffer injury of impeded dismissed/lost claims.
Plaintiff is entitled to an award of exemplary and punitive damages.

Eighth Claim for Relief
Violation of Prisoner's Eighth Amendment
Right To Have Personal Safety

(237) Petitioner realleges and incorporates by reference each of the general allegations of paragraphs 1 through 188, inclusive and paragraphs 189 through 193, inclusive of claims one through seven, as if alleged herein.

(238) Defendant Clark denied Plaintiff his Eighth Amendment right to be free from cruel and unusual punishment in the form of deprivation of personal safety, thus denying a basic human need guaranteed to prisoners by the United States Constitution

(239) In doing as alleged herein above, defendant Clark acted with deliberate indifference to Plaintiff, and all other inmates personal safety, and subjected him to unnecessary and wanton infliction of pain, including physical injury and psychological and emotional distress in violation of his rights under the Eighth Amendment. Specifically Defendant Clark was deliberately indifferent to Plaintiff and all other prisoners right to have personal safety when he allowed his subordinates to continue to house inmate Tisdale in general population knowing that he had "predator" documented history, but more importantly that he was a specific target for prey, due to being labeled as a "snitch", and had been involved in numerous fights prior to incident with Plaintiff and on the same facility. In doing so defendant Clark implemented a policy that repudiated Plaintiff's constitutional rights and was unconscionable, under the doctrine of supervisory liability defendant Clark is liable for Plaintiff's injuries.

(240) Defendant Clark acted despicably, knowingly, willfully, and with reckless

and callous disregard for Plaintiff's federally protected rights.

(240) As a direct and proximate result of all of the defendants' actions herein alleged, plaintiff suffered, and continues to suffer physical injury. Plaintiff is entitled to an award of compensatory and punitive damages for injuries suffered.

(241) As a further direct and proximate result of all of the defendants' actions alleged herein alleged, Plaintiff suffered, and continues to suffer, severe emotional and psychological distress. Plaintiff is entitled to an award of compensatory and punitive damages for injuries suffered.

(242) Plaintiff is entitled to injunctive relief, including, but not limited to, an order requiring his transfer away from HOSP, where he will not be subjected to retaliation instigated and/or ratified by defendant Holbain. There is no adequate remedy at law to protect Plaintiff from said retaliation, and without the equitable relief sought he is susceptible to great and irreparable injury. The balance of hardships tips markedly toward Plaintiff in that there would be little or no prejudice or harm to the defendants should plaintiff be transferred away from HOSP, but great harm to Plaintiff should he be required to stay at that institution.

Prayer For Relief

Wherefore plaintiff, prays for the following relief:

1. Injunctive relief;
2. Compensatory damages according to proof;
3. Punitive damages according to proof;
4. Reasonable attorney's fees pursuant to 42 U.S.C. 1988;
5. Costs of suit; and
6. Such further relief as the court deems proper.

Demand For Jury Trial

Plaintiff hereby demands a trial by jury.

Dated: December 21, 2006

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ.P.5; 28 U.S.C. § 1746)

I, LEE PEYTON -V-14724, declare:

I am over 18 years of age and a party to this action. I am a resident of HIGH DESERT STATE PRISON Prison, in the county of LASSEN, State of California. My prison address is: POST BOX 3030 - SUSANVILLE CA, 96127.

On 12-26-06, I served the attached: AMENDED COMPLAINT; and EXHIBITS, A THRU Z, (2)(A) THRU Z; and (3)(A) THRU(N)

on the parties herein by placing true and correct copies there of, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am currently confined. The envelope was addressed as follows:

United states District Court
1130 "O" STREET
FRESNO CA 93721

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on 12-26-06
(Date)

Lee Peyton
(Declarant signature)