

Vincent C. Bruce, #J84086
 Pelican Bay State Prison
 P.O. Box 7500
 Crescent City, CA 95532

FILED

MAR 16 2009

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

IN PRO SE

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

VINCENT C. BRUCE,
 plaintiff.

Case No.

1:07cv-00269-AWI-DLB-PC

v.

NOTICE OF CHANGES
 RE: THIRD AMENDED
 COMPLAINT

JEANNE WOODFORD, et.al,
 defendants.

RECEIVED

TO: THE HONORABLE COURT

MAR 12 2009

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

(PC) Bruce v. Woodford, et al.

Doc. 20 Att. 1

Plaintiff Vincent C. Bruce apologizes to
 the court for adding the Calif. Correctional
 Institution defendants and their actions to
 this case.

Plaintiff has omitted those defendants
 and will file a complaint against them. Also
 omitted are the medical indifference defen
 dants and Director Jeanne Woodford per
 the Court's Order Requiring plaintiff to file
 a Third Amended Complaint.

Petitioner has reproduced the retaliatory
 allegations in the Third Amended Complaint
 and added allegations regarding defendant
 Adams' causation of inadequate clothing.

Dated March 8, 2009

Vincent C. Bruce
 Vincent C. Bruce

Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

IN PROSE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VINCENT C. BRUCE,
plaintiff
v.

CASE NO.:
CV-00269-AWI-DLB-PC

DERRAL G. ADAMS, Warden,
EDDIE SANCHEZ, Chief Deputy Warden,
LYDIA HENSE, Associate Warden,
J. WARD, Associate Warden,
K. CLARK, Associate Warden,
D. FULKS, Associate Warden,
T. P. WAN, Correctional Captain,
S. FRAUENHEIM, Correc. Counsekr, II,
A. LIOREN, Correctional Lieutenant,
SCHOTTEGEN, Correc. Lieutenant,
F. P. FIELDS, Correc. Lieutenant,
E. TRIPP, Correctional Officer,
defendants.

THIRD AMENDED
COMPLAINT FOR
VIOLATION OF
CIVIL RIGHTS

(Demand For Jury Trial)

I.

PRELIMINARY STATEMENT

1. This is a civil rights action filed by Vincent C. Bruce, a state prisoner, seeking damages and declaratory and injunctive relief under 42 U.S.C. § 1983. Plaintiff alleges that while he was at the California Substance Abuse Treatment Facility he was confined in segregation for over 56 (fifty six) weeks in retaliation for protected First Amendment activities including lodging grievances and jailhouse lawyer activities.

2. Plaintiff also challenges the imposition of a disciplinary finding of guilt for the alleged Leading A Hunger Strike on the grounds that he was denied the Due Process guaranteed by the Fourteenth Amendment and that the finding constituted retaliatory action.

II.

PARTIES

3. Plaintiff is a 46 year old African-American male and is, and was at all times mentioned herein, a prisoner of the State of California, Department of Corrections and Rehabilitation (CDCR). Throughout all of the events described herein plaintiff was confined at the California Substance Abuse Treatment Facility and State Prison (SATE).

4. Defendant Derral G. Adams is the Warden at SATE. He is legally responsible for the over-all operation of SATE and for the welfare of all inmates at the prison.

5. Defendant Eddie Sanchez was the Chief Deputy Warden at SATE during the events described herein. He is legally responsible for assist-

the Warden at SATF with the operation of the prison.

6. Defendant Lydia Hense was Associate Warden at SATF during the events described herein. She is legally responsible for assisting the Warden at SATF with the operation of the prison.

7. Defendant J. Ward. was Associate Warden at SATF during the events described herein. She is legally responsible for assisting the Warden at SATF with the operation of the prison.

8. Defendant K. Clark was Associate Warden at SATF during the events described herein. He is legally responsible for assisting the Warden at SATF with the operation of the prison.

9. Defendant D. Fulks is a former captain promoted to Associate Warden during the events described herein. He is legally responsible for assisting the Warden with the operation of the prison.

10. Defendant T.P. Wan is a correctional Lieutenant for CDCR who at all times held the rank of Lieutenant or Captain, and was assigned to SATF.

11. Defendant S. Frauenheim is a correctional counselor II, who at all times mentioned herein was assigned to SATF.

12. Defendant A. Lloren was at all times mentioned herein, a correctional Lieutenant assigned to SATF.

13. Defendant Schotlegen was at all times mentioned herein, a correctional Lieutenant assigned to SATF.

14. Defendant F.P. Fields, III, was at all times mentioned herein, a correctional Lieutenant assigned to SATF.

15. Defendant E. Tripp was at all times mentioned herein a correctional officer for SATF.

16. J. Does 1-10, prospective defendants.

17. Defendants are sued individually and officially.

III.

FACTS

RETALIATION FOR FIRST AMENDMENT ACTIVITIES AND BIASED DISCIPLINARY HEARING OFFICER

18. Plaintiff had been housed at SATF since January of 2002. As of February 2004 plaintiff had been disciplinary free for six years, held a paying job assignment as an 'Assistance Giver' to disabled inmates and had been elected to the Men's Advisory Council as an inmate representative. The Men's Advisory Council (M.A.C.) is a CDCR approved inmate body which voices inmates' concerns and complaints to the Warden and other prison officials.

19. Between April 2002 and February 2004, SATF prison officials instituted numerous restrictions on the facility where plaintiff was housed. These restrictions included, but were not limited to, elimination of education and vocation classes and training, drastic reduction of credit earning job assignments and work hours, denial of religious services, visiting restrictions, employee reprisals and misconduct toward inmates and perfunctory denial of grievances. Most, if not all of the restrictions and deprivations were contrary to departmental regulations and policy and state law.

20. On February 27, 2004, approximately six dozen SATF inmates began fasting in a peaceful protest in support of their grievances and complaints concerning the above-mentioned illegal

restrictions. Plaintiff fasted also.

21. Defendant Fulks and defendant Wan summoned plaintiff and three other M.A.C. members to act as spokespersons for the fasting inmates. Plaintiff presented defendants Fulks and Wan with a written list of the inmates grievances and copies of several inmate appeals including one plaintiff had submitted. Defendant Fulks and Wan copied the appeals and grievances and discussed them with plaintiff and other M.A.C. members. Twice, Fulks referred to repercussions if plaintiff and M.A.C. members did not persuade the inmates to end their fasting and withdraw their complaints.

22. Defendants Fulks and Wan discussed the "hunger strike" and complaints with defendant Clark and reviewed regulations and told plaintiff and the other inmates they broke no rules by having a hunger strike and the facility would run normal program.

23. On Saturday (the next day) and on Sunday several dozen more inmates joined in the hunger strike and local newspapers published articles concerning the hunger strike, and the inmates complaints.

24. On Sunday, February 29, 2008 defendants Adams, Sanchez, Clark and Fulks held a meeting and decided to lock up plaintiff and two other other spokespersons, limit access to the media and cover-up what the inmates were complaining about.

25. These four defendants then ordered the M.A.C. chairman to tell the fasting inmates that plaintiff and two others were already on the way to Pelican Bay State Prison (the state's

most severe segregation unit); that plaintiffs' appliances and property were being sent home and all three of the inmates would receive SHU terms.

26. A SHU term can only be implemented if an inmate is found guilty of serious misconduct that involves specific types of misconduct. This statement evidences these defendants' predetermination of any misconduct charges, and retaliatory intent.

27. After plaintiff and two others were locked up in segregation and the remaining inmates were told the threats by the defendants, most of the fasting inmates ceased refusing food and withdrew their complaints. Defendants Fulks and Wan selected two other inmates who were still fasting and who complained about the defendants' reprisals, and locked them up in segregation on the same charges plaintiff and two other inmates received: 'Conspiracy To Assault Staff and Orchestrating A Hunger Strike'. The remaining fasting inmates ceased their peaceful protest and withdrew their complaints.

28. A few weeks later plaintiff and four other inmates were exonerated of the allegations they conspired to assault staff but received disciplinary reports charging them with 'Inciting A Hunger Strike'. The report was authored by defendant Tripp, reviewed by defendant Wan and approved by defendant Clark. None of the other hunger strike participants received disciplinary reports.

29. Defendants Adams, Sanchez, Hense, Word, Clark, Fulks, Wan and Fraenheim had meetings and discussions regarding plaintiff's grievances, role in the hunger strike and the dis-

disciplinary charges. These defendants were aware of and discussed plaintiff's meeting with the Ombudsman for CDCR and complaining about the prison officials actions. The ombudsman meeting occurred the first week of March 2004.

30. These defendants also agreed to misrepresent to the media and CDCR what the inmates were complaining about.

31. In June and August 2004, defendant Hense conducted a sham investigation into written complaints plaintiff was being retaliated against for First Amendment activities. The sham investigation was conducted on behalf of CDCR's director and defendant Adams. Defendant Ward also conducted a sham investigation on behalf of defendant Adams in February 2005, covering up for the defendants' retaliatory actions.

32. Defendants Adams, Sanchez, Hense, Ward, Clark, Folks, Wan, Frovenheim, Lloren, Fields and Tripp were all aware that plaintiff had a documented history of presenting grievances, filing appeals and assisting other inmates with grievances before, during and after the hunger strike. And the defendants were aware that plaintiff had a history of involvement in jailhouse lawyer activities. The defendants also believed that plaintiff had orchestrated the contacting of the media and had tried to organize a picket of the prison. The above defendants used the disciplinary process as a cover and ruse to silence and punish plaintiff for the above-mentioned First Amendment activities.

33. Each of the above-mentioned defendants were aware that there was no written rule prohibiting participation in, leading or inciting

A peaceful hunger strike.

34. Defendants Sanchez, Hense, Ward, Frauenheim, Wan and Lloren participated in classification reviews retaining plaintiff in segregation, and used such reviews as a pretext to keep plaintiff in segregation for his filing of grievances, presentation of complaints and jailhouse lawyer activities. There were approximately 6 to 8 such reviews occurring between March 2004 and April 2005.

35. In August 2004, defendant Lloren found plaintiff guilty of Inciting A Hunger Strike. Although Lloren acknowledged the hunger strike was peaceful and the charge of Inciting requires a finding of violent conduct, he still found plaintiff guilty of the charge. The guilty finding was vacated a few weeks later by a CDCR auditor for multiple due process violations. Defendant Lloren's intention to find plaintiff guilty regardless of evidence and deliberate violation of due process safeguards is circumstantial evidence of his retaliatory intent. Defendant Lloren was the immediate subordinate of defendant Wan.

36. In November 2004, defendants Tripp, Wan and Hense recharged plaintiff with Inciting A Hunger Strike.

37. Defendant Fields was then assigned the dual role of hearing the disciplinary report and conducting a prehearing review of the disciplinary report, supplemental reports, and all evidence to determine if plaintiff could be found guilty in a way that would pass CDCR independent auditors.

38. After an exhaustive review of all the reports and evidence, defendant Fields changed the charge to Leading A Hunger Strike and disclosed

additional evidence to plaintiff that he intended to rely on to find plaintiff guilty.

39. Defendant Fields then conducted his sham disciplinary hearing on February 3, 2005 on his new charge and found plaintiff guilty. Defendant Fields admitted he changed the charge because there was insufficient evidence supporting the previous charge, evidencing his bias, predetermination of the charge and retaliatory intent.

40. Defendant Fields' prehearing review and changes to the charges and evidence were prohibited by CDCR regulations and state law, evidencing his retaliatory intent.

41. The defendants retaliatory acts did not advance any legitimate penological goal or objective, was not a reasonable exercise of authority and would have a chilling effect on an ordinary person.

42. Plaintiff received a twelve month SHU term from a classification committee chaired by defendant Ward and then plaintiff was transferred to another prison.

43. Plaintiff is informed and believes that defendants Adams, Sanchez, Hense, Ward, Clark, Fulks, Wan, Frauenheim and Tripp wanted plaintiff transferred due to his advocacy on behalf of other inmates, his grievances and jail-house lawyer activities.

INADEQUATE NOTICE OF SANCTIONABLE CONDUCT

44. Plaintiff alleges that defendants' interpretation of disciplinary rules to include a prohibition against Inciting, leading or Participating in a peaceful Hunger Strike is so unusual and arbitrary that a person of ordinary intelligence would not understand as plaintiff did not, that

that such conduct is prohibited.

45. Plaintiff's disciplinary report alleged that plaintiff violated rule "3005(a)" of the California Code of Regulations, Title 15 (CCR) which states:

"Inmates shall obey all laws, regulations, and local procedures, and refrain from behavior which might lead to violence or disorder, or otherwise endangers facility, outside community or another person."

46. In defendants' regulations the term "strike" is defined in section 3000 as "any concerted act".... of employees... in a refusal of such employees... to perform work or services."

47. The dictionary defines "strike" as applying to an employee refusing to work.

48. At no place in defendants' written rules or regulations is fasting individually or collectively prohibited, nor is the term "hunger strike" mentioned except in regards to medical monitoring, and medical procedures.

49. Individual and group-hunger strikes occur regularly and frequently throughout CDCR and at SATF including three plaintiff participated in. This is the first instance that plaintiff is aware of, that an inmate was charged with participating in, or leading a hunger strike, as a serious rule violation.

50. At no time during the hunger strike were any inmates ordered to stop fasting by prison officials. The hunger strike was a form of political speech.

51. Plaintiff's confinement in disciplinary segregation for over fifty-six weeks and the imposition of a 12 month SHU term

imposed upon plaintiff an atypical and significant hardship in relation to the ordinary incidents of prison life.

52. Confinement in general population and segregation differ materially and otherwise from each other with disciplinary segregation involving severe restrictions on property, visits, telephone access, canteen, personal packages, and indoor and outdoor recreation. Disciplinary segregation is substantially different and harsher than discretionary segregation.

53. As a result of defendants' unconstitutional actions, plaintiff suffered and continues to suffer severe emotional and psychological distress.

54. Plaintiff also suffered physical injury that was more than de minimus, including severe pain and distress from lack of medical care, exposure to inclement weather without adequate clothing, and other injury that is directly attributable to plaintiffs' retaliatory confinement in segregation and related constitutional deprivations.

INADEQUATE CLOTHING

55. Plaintiff was housed in SATF's segregation unit from February 2004 until April 2005 and while in ad. seg was permitted outdoor exercise opportunities three times per week for a total of 10 hours each week.

56. Per defendants' policy at SATF, plaintiff was only allowed to wear outside from March 2004 through October 2004, one t-shirt, one boxers, one pair of socks and one pair of "kung fu" style shoes made of thin fabric.

57. From October 2004 until March 2005, plaintiff was allowed to wear a pair of

pants and short-sleeved shirt, in addition to the underclothing and shoes.

58. Plaintiff had no means of determining weather conditions before going outside. Once outside, no matter how severe the weather was, staff would not bring plaintiff back in until the exercise period was over, sometimes up to four and a half hours.

59. Plaintiff suffers from chronic hypertension and high-blood pressure and has been medically instructed to exercise regularly and get as much fresh air as possible to manage his medical condition.

60. During plaintiff's confinement in segregation he made numerous requests for additional clothing to the lieutenants in charge of segregation, defendants Schottegen and Fields, and to their subordinates but these requests were denied.

61. Plaintiff's grievances on this matter were initially discarded by defendant Schottegen or discarded by his subordinates and condoned by him. One grievance was finally filed and was denied by defendant Fields and by defendant Adams, but was granted at the Director's level.

62. If the defendants (Fields and Adams) had followed existing CDCR policy regarding providing clothing to ad seg inmates and granted the grievance it would substantially reduced the amount of times plaintiff was exposed to inclement weather without adequate clothing.

63. Per CDCR policy, Warden Adams did create written operational procedures

governing the administration of the ad seg units at SATF. These written procedures were required to follow and implement CDCR rules and regulations and to adhere to state law and federal constitutional requirements, including how much clothing ad seg inmates are to be provided.

64. Prior to plaintiff's deprivation of adequate clothing, CDCR's Director's office issued written instructions to all prison wardens, including defendant Adams, requiring more ad seg clothing, including jackets in inclement weather, than defendant Adams written policies provided for.

65. Defendant Adams' written policy was so deficient and unreasonable that it was a repudiation of the constitutional right to adequate clothing, was the moving force behind this constitutional violation, and constituted wanton and unnecessary infliction of pain and punishment.

66. Other wardens at other prisons implemented ad seg operational procedures allowing ad seg inmates to wear in addition to underclothing and shoes - a jumpsuit, jacket and thermal underwear in inclement weather in compliance with CDCR's instructions and clothing policy.

67. As a result of the inadequate clothing, plaintiff was exposed to intolerably cold, rainy and/or windy inclement weather on at least 30 occasions for periods up to four and a half hours. Plaintiff estimates the temperature in the fall and winter months would frequently dip below 50°, sometimes below 40°, and with wind chill factors, on occasion would descend below 30° while plaintiff was outdoors.

68. As a result of this exposure to severe cold and inclement weather, plaintiff

suffered hypothermia, including but not limited to severe pain in his hands and feet, face, neck, legs, and other parts of his body. The pain and injury prevented plaintiff from performing his daily activities for several hours upon returning from outside.

69. Defendants Adams, Schottegen and Fields were all aware that the clothing issued to plaintiff was inadequate for inclement weather and would each wear thick jackets when outdoors in the same inclement weather plaintiff was subjected to.

70. These defendants even failed to follow CDCR regulations which state:

"Each inmate shall be provided... the distinctive protective and/or extra clothing required by the climate..."
(See CCR, sec. 3030(b)).

71. The physical injury suffered by plaintiff was more than de minimus.

72. Per the CDCR, defendants Adams, Sanchez, Hense, Ward, Clark, Fulks and Wan have a duty to establish policies and procedures for the administration of SATE, and defendants have a duty to perform and execute their duties in a manner consistent with state and federal law.

These defendants have a duty to train and supervise subordinate employees. Defendants have failed in their duties and have been deliberately indifferent to their subordinates violations of federal and state law resulting in the constitutional violations alleged herein.

73. Defendants, and each of them have through their customs, acts, and omissions, have condoned a custom and policy at SATE of

maintaining a Code of Silence, an unwritten but widely understood code designed to encourage prison employees to remain silent regarding improper behavior of their fellow employees. As a result of defendants failure to train subordinates and their active opposition to investigations of misconduct by employees, these defendants have ratified and perpetuated this policy which substantially contributed to the constitutional violations alleged herein.

74. The defendants, and each of them have a history of a consistent pattern of deliberate, willful indifference to the constitutional rights of prisoners.

75. Plaintiff has exhausted his administrative remedies with respect to all claims brought herein.

IV

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

First Amendment - Retaliation For Grievances

76. Defendants Adams, Sanchez, Hense, Ward, Clark, Fulks, Wan, Frovenheim, Lloren, Fields and Tripp violated plaintiff's First Amendment right to lodge grievances by confining plaintiff in segregation for over 56 weeks, and using the disciplinary process as a cover or ruse to punish and silence plaintiff in retaliation for lodging grievances.

77. Defendants retaliatory action advanced no legitimate penological goal; was not a reasonable exercise of authority, and would have a chilling effect on an ordinary person.

SECOND CAUSE OF ACTION

First Amendment - Retaliation - Jailhouse Lawyer

78. Defendants Adams, Sanchez, Hense, Ward, Clark, Fulks, Wan, Frovenheim, Lloren, Fields, and Tripp through their acts and omissions deprived plaintiff of his First Amendment Rights by confining him in segregation and transferring him to another prison based wholly, or in part, on his jailhouse lawyer activities including providing legal assistance to other inmates.

79. The retaliatory action did not advance any legitimate penological goal and would have a chilling effect on an ordinary person.

THIRD CAUSE OF ACTION

First Amendment - Retaliation For Free Speech

80. Defendants Adams, Sanchez, Hense, Ward, Clark, Fulks, Wan, Frovenheim, Lloren, Fields and Tripp, through their acts and omissions, violated plaintiff's First Amendment right to exercise free speech by placing plaintiff in segregation for 56 weeks and transferring him for his alleged role in complaining about conditions at defendants' prison, his alleged role in contacting the media, and role in trying to organize a picket of the prison, where such actions did not violate any rule or regulation of the prison.

81. The retaliatory action did not advance any legitimate penological goal and would have a chilling effect on an ordinary person.

FOURTH CAUSE OF ACTION

Fourteenth Amendment - Unfair Notice Of Sanctionable Conduct

82. Defendants Adams, Sanchez, Hense, Ward, Clark, Fulks, Wan, Lloren, Fields, and Tripp

through their acts and omissions violated Plaintiff's Fourteenth Amendment right to Due Process by failing to provide fair notice that Leading A Hunger Strike was sanctionable conduct. The rule invoked as to plaintiff's conduct was vague as applied.

FIFTH CAUSE OF ACTION

Fourteenth Amendment - Impartial Factfinder

83. Defendant Fields deprived plaintiff of his Fourteenth Amendment due process right to an impartial disciplinary hearing officer on the charge of Inciting or Leading A Hunger Strike.

SIXTH CAUSE OF ACTION

Eighth Amendment - Cruel And Unusual Punishment

84. Defendants Adams, Schattegen and Fields through their acts and omissions violated plaintiff's Eighth Amendment right to be free from cruel and unusual punishment by depriving plaintiff of the minimally adequate clothing to protect him from inclement weather, where such deprivation amounted to deliberate indifference.

IV.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays for the following relief:

(i) A declaratory judgment that the defendants actions and practices described herein violate plaintiff's rights as described herein;

(ii) A preliminary and permanent injunction which prohibits defendants, their agents, employees and successors to cease harassment, retaliation and reprisals for plaintiff's First Amend-

ment activities;

(iii) Expunge from plaintiff's c-file any reference to being charged with and found guilty of Leading A Hunger Strike

(iv) Compensatory damages of a \$100⁰⁰ per day, for each day plaintiff was held in segregation

(v) Compensatory damages to cover plaintiff's deprivation of constitutional rights and plaintiff's anguish and stress.

(vi) Punitive damages of \$50,000⁰⁰ from any defendant found to have deprived plaintiff of his rights

(vii) Plaintiff's cost of suit

(viii) Reasonable attorney fees and costs

(ix) Trial by jury

(x) Any further relief the court deems just.

Dated: March 6, 2009

Respectfully submitted,

V. C. R.

Vincent C. Bruce
Plaintiff