

FILED
DEC 03 2007
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY *[Signature]*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT GARCIA
(Name of Plaintiff)
P.O. Box, 2900
(Address of Plaintiff)
REYESA, CA, 95671

1:07-cv-01750 AWI DLB
(Case Number) LPC

vs.

COMPLAINT

(PC) Garcia v. Mastel et al

MASIEL, F. OJEDA

RES, JUDICATA

Doc. 11 Att. 2

A. BAIDERAMA, L. SILVA, SGT.

JURY TRIAL DEMAND

DAVIS, LT. AKIN, R. HALL
(Names of Defendants)

I. Previous Lawsuits:

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

B. If your answer to A is yes, how many?: _____ Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper using the same outline.)

1. Parties to this previous lawsuit:

Plaintiff N/A
Defendants _____

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

N/A

3. Docket Number N/A

4. Name of judge to whom case was assigned N/A

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

6. Approximate date of filing lawsuit N/A

7. Approximate date of disposition N/A

II. Exhaustion of Administrative Remedies

A. Is there a grievance procedure available at your institution? Yes No

B. Have you filed a grievance concerning the facts relating to this complaint?
 Yes No

If your answer is no, explain why not _____

C. Is the grievance process completed? Yes No

III. Defendants

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

A. Defendant A. MASIEL is employed as A CORRECTIONAL OFFICER at CSATF / STATE PRISON, CORCORAN, CA.

B. Additional defendants FOJEDA, A. BANDERANA, L. SILVA, LT. T. AKIN, RHAIL, ARE CORRECTIONAL OFFICERS EMPLOYED AT THE CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY - STATE PRISON, CORCORAN. SGT. DAVIS. IS ALSO INCLUDED AS A DEFENDANT.

IV. Statement of Claim

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

THIS IS AN ACTION ARISING UNDER THE UNITED STATES CONSTITUTION AND UNDER FEDERAL LAW SPECIFICALLY, 42, U.S.C 1983 AND 1985, ALLEGING THE VIOLATIONS OF PLAINTIFFS, ROBERT GARCIA, CIVIL RIGHTS, HUMAN AND CONSTITUTIONAL RIGHTS BY DEFENDANTS AND EACH OF THEM FOR DELIBERATELY AND MALICIOUSLY *1. CONSPIRACY TO ASSAULT *2. DELIBERATE INDIFFERENCE TO PLAINTIFFS HEALTH SAFETY BY OTHER INMATES, *3. CONSPIRACY TO COVER UP ASSAULT BY OTHER INMATES *4 UNNECESSARY AND EXCESSIVE FORCE RESULTING IN SERIOUS INJURY BY CORRECTIONAL OFFICER *5. ASSAULT AND BATTERY *6. CRUEL AND UNUSUAL PUNISHMENT *7. CONSPIRACY TO COVER -> (SEE ATTACHED SHEET).

V. Relief.

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

PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF. *1. INJUNCTIVE RELIEF PLACING PLAINTIFF ON SINGLE CELL STATUS MANDATED BY THE COURT TO THE CALIFORNIA DEPT OF CORRECTIONS FOR MY SAFETY OF ASSAULT BY ANY CELL MATE, AND *2 TO BE TRANSFERRED TO A PROTECTIVE HOUSING UNIT "PHU" FOR PROTECTION BY OTHER INMATES ASSAULT, *3. JUDGMENT AGAINST DEFENDANT, A. MASIEL FOR \$100,000 IN PUNITIVE, COMPENSATORY AND NOMINAL DAMAGES, *4. JUDGMENT AGAINST DEFENDANT, F. OJEDA FOR \$100,000 IN PUNITIVE, COMPENSATORY AND NOMINAL DAMAGES, *5 JUDGMENT AGAINST DEFENDANT, A. BAIDERAMA ->

SEE ATTACHED SHEET.

Signed this 20 day of NOVEMBER 2007.

R Garcia

(Signature of Plaintiff)

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

11-20-07

(Date)

R Garcia

(Signature of Plaintiff)

"STATEMENT OF CLAIM"
CONTINUED

* 2.

up THE CONSTITUTIONAL AND CRIMINAL VIOLATIONS ALL OF WHICH HAVE VIOLATED PLAINTIFFS EIGHTH AMENDMENT, AND TO THE UNITED STATES CONSTITUTION, ALONG WITH STATE AND LOCAL LAWS WHILE PLAINTIF WAS INCARCERATED AT THE CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY STATE PRISON AT CORCORAN WITHIN THE CALIFORNIA DEPT OF CORRECTIONS AND REHABILITATION.

PLAINTIFF, ROBERT GARCIA, WAS AT ALL TIMES MENTIONED HEREIN, INCARCERATED AT THE CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY - STATE PRISON AT CORCORAN, WITHIN THE CALIFORNIA DEPT OF CORRECTIONS AND REHABILITATION. * 2. DEFENDANT, A. MASIEL IS EMPLOYED BY THE DEPARTMENT OF CORRECTIONS AT THE CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY - AND DID WILLFULLY AND MALICIOUSLY VIOLATE PLAINTIFFS, CIVIL RIGHTS WHILE SHE WAS A CORRECTIONAL OFFICER AT "CSATF", SHE IS SUED IN HER OFFICIAL AND INDIVIDUAL CAPACITY. * 3. DEFENDANT, F. OJEDA IS EMPLOYED BY THE DEPARTMENT OF CORRECTIONS AT THE CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY, AND DID WILLFULLY AND MALICIOUSLY VIOLATE PLAINTIFFS CIVIL RIGHTS WHILE SHE WAS A CORRECTIONAL OFFICER AT "CSATF". SHE IS SUED IN HER OFFICIAL AND INDIVIDUAL CAPACITY. * 4. DEFENDANT A. BALDERAMA, IS EMPLOYED BY THE DEPARTMENT OF CORRECTIONS AT THE CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY, AND DID WILLFULLY AND MALICIOUSLY VIOLATE PLAINTIFFS CIVIL RIGHTS WHILE SHE WAS A CORRECTIONAL OFFICER AT "CSATF" SHE IS SUED IN HER OFFICIAL AND INDIVIDUAL CAPACITY. * 5 DEFENDANT, L. SILVA IS EMPLOYED BY THE DEPARTMENT OF CORRECTIONS AT THE SUBSTANCE ABUSE TREATMENT FACILITY, AND DID WILLFULLY AND MALICIOUSLY VIOLATE PLAINTIFFS CIVIL RIGHTS WHILE HE WAS A CORRECTIONAL OFFICER AT "CSATF" HE IS SUED IN HIS OFFICIAL AND INDIVIDUAL CAPACITY. * 6. LT. T. AKIN IS EMPLOYED BY THE



STATEMENT OF CLAIMS
CONTINUED

* 3.

1 DEPARTMENT OF CORRECTIONS AT THE SUBSTANCE ABUSE TREATMENT
2 FACILITY AND DID WILLFULLY AND MALICIOUSLY VIOLATE PLAINTIFFS CIVIL
3 RIGHTS WHILE HE WAS A CORRECTIONAL OFFICER AT "CSATF" HE IS
4 SUED IN HIS OFFICIAL AND INDIVIDUAL CAPACITY. * 7. SGT. DAVIS
5 IS EMPLOYED BY THE DEPARTMENT OF CORRECTIONS AT THE
6 SUBSTANCE ABUSE TREATMENT FACILITY AND DID WILLFULLY AND
7 MALICIOUSLY VIOLATE PLAINTIFFS CIVIL RIGHTS WHILE HE WAS A
8 CORRECTIONAL OFFICER AT "CSATF" HE IS SUED IN HIS
9 OFFICIAL AND INDIVIDUAL CAPACITY. * 8. R. HALL, IS EMPLOYED
10 BY THE DEPARTMENT OF CORRECTIONS AT THE SUBSTANCE ABUSE
11 TREATMENT FACILITY, AND DID WILLFULLY AND MALICIOUSLY VIOLATE
12 PLAINTIFFS CIVIL RIGHTS WHILE HE WAS A CORRECTIONAL OFFICER
13 AND APPEALS COORDINATOR AT "CSATF" HE IS SUED IN
14 HIS OFFICIAL AND INDIVIDUAL CAPACITY. —

15 ON, 5-22-2005 WHILE PLAINTIFF WENT TO THE EXERCISE YARD
16 IN THE ADMINISTRATIVE SEGREGATION UNIT, OFFICER, A. MASIEL
17 CONSPIRED AND RECRUITED TWO INMATES TO PHYSICALLY ASSAULT
18 PETITIONER, MALICIOUSLY AND DELIBERATELY. SINCE MY ARRIVAL
19 IN THE AD-SEG UNIT ON 5-14-2005, OFFICER MASIEL HAS
20 MADE IT A POINT TO GET INMATES AS WELL AS STAFF
21 AGAINST ME. WHILE BEING QUESTIONED BY SGT, DAVIS ON THE
22 DAY OF THE INCIDENT REGARDING THE ASSAULT, SGT, DAVIS
23 TOOK THE STEPS TO PUT ME ON "WALK ALONE" YARD STATUS
24 PENDING CLASSIFICATION COMMITTEE REVIEW. DURING MY
25 APPEARANCE AT CLASSIFICATION, "ASSOCIATE WARDEN, SHERMAN"
26 DIRECTED LT, T. AKIN TO HAVE THIS INCIDENT INVESTIGATED,
27 LT. T. AKIN DIRECTED SGT, DAVIS TO CONDUCT THE INVESTIGATION.
28 I SPOKE TO SGT, DAVIS AND MY ASSIGNED PSYCHOLOGIST



1 "DOCTOR, E. DE ALMEIDA" AS TO WHY I FELT THE REASONS FOR
2 THIS TO HAVE OCCURED, AFTER CONCURRING WITH MY DOCTOR
3 THE DECISION WAS MADE BY SGT, DAVIS TO PUT ME ON "SINGLE
4 CELL STATUS" FOR MY PROTECTION UNTILL THE INVISTIGATION WAS
5 DONE. AT THAT POINT SGT, DAVIS MADE A NOTE IN MY AD-SEG
6 LOCK UP FOLDER REGARDING HIS DECISION. ON, 8-13-05 WHILE
7 I WAS IN A HOLDING CAGE AWAITING TO SEE THE DOCTOR,
8 OFFICER "F. OJEDA" STARTED TO YELL OUT OF THE CONTROLE
9 BOOTH TO OFFICER "LOPEZ", STATING; "WHATS WRONG WITH
10 THIS PERVERT". REFERING TO ME. SHE ALSO TOLD OFFICER, A.
11 BAIDERAMA, "LOOK WHAT GOES AROUND COMES AROUND". AT THAT
12 POINT OFFICER PROCEEDED TO GET ON THE UNIT INTERCOM AND
13 BEGAN TO ANNOUNCE MY NAME AND CELL NUMBER OVER THE
14 LOUD SPEAKER SO ALL INMATES IN THE UNIT COULD HEAR HER
15 SAYING; "THAT I WAS A BIG PERVERT". "YOU GUYS KNOW WHAT
16 TIME IT IS, ON SIGHT" A REFERENCE MEANING TO GET ME
17 AT ANY CHANCE POSSIBLE TO CAUSE ME "PHYSICAL HARM", THEN
18 CAME TO THE WINDOW OF THE CONTROLE BOOTH AND YELLED A
19 THREAT AGAINST MY LIFE TO GET ME TAKEN OUT. AT THAT TIME
20 OFFICER, A. BAIDERAMA ALSO BEGAN TO THREATEN ME STATING
21 THAT SHE WAS GOING TO MAKE SURE I GOT MY ASS KICKED.
22 BECAUSE OF THESE THREATS ON MY LIFE I BROUGHT IT TO
23 THE ATTENTION OF SGT, DAVIS ON 8-24-2005 AND ASKED HIM
24 ABOUT THE INVESTIGATION, AND HE ACKNOWLEDGED THE
25 INVESTIGATION NEVER TAKING PLACE AND DIDNT WANT TO
26 ADDRESS THE ISSUE. ON, 8-27-2005, I ASKED OFFICER, A.
27 BAIDERAMA WHY SHE HAD DELIBERATELY FABRICATED A C.D.C
28 115 RULE VIOLATION REPORT AGAINST ME, SHE IN TURN



1 BECAME AGITATED AND ANGRY AND STATED THAT I SHOULDN'T BE
2 WAVING MY PRIVATES TO OFFICERS THAT WALKED BY, "BUT THATS
3 OKAY BECAUSE LIKE I TOLD YOU BEFORE, IM GOING TO MAKE
4 SURE YOU GET YOUR ASS KICKED YOU PERVERT. THIS WAS THE
5 SECOND TIME OFFICER, A. BAIDERAMA. MADE THREATS TO MY
6 SAFETY AND ATTEMPTED TO STAGE VIOLENCE AGAINST ME. SHE
7 WAS VERY ADDAMENT ABOUT HER THREATS TOWARDS ME. THE
8 CORRECTIONS OFFICERS IN THIS COMPLAINT HAVE CONSPIRED AND
9 PLOTTED WITH INTENT ON HAVING ME PHYSICALLY HARMED AND HAVE
10 SEAPORDIZED MY LIFE IN THE PRISON SYSTEM BY LABELING ME
11 A SEX OFFENDER, "OF WHICH IM NOT". IM IN PRISON FOR
12 ROBBERY NOT ANY SEX CRIME! IT WASNT UNTIL SEPTEMBER
13 1, 2005 WHEN I SUBMITTED A FORMAL STAFF COMPLAINT, REGARDING
14 THE ASSAULT OF 5-22-2005 AND THE THREATS BY STAFF,
15 THAT AN INQUIRY TOOK PLACE BY THE ADMINISTRATION, HAD I
16 NOT SUBMITTED A STAFF COMPLAINT NO INQUIRY WOULD OF
17 TAKEN PLACE. LT. T. AKIN, STATES IN HIS MEMORANDUM DATED,
18 NOVEMBER, 5, 2005 THAT AN INQUIRY HAS BEEN MADE AND
19 DETERMINED) TO BE NOT SUSTAINED. "SEE EXHIBIT, A-1"
20 ANYONE INVOLVED IN ANY TYPE OF MISCONDUCT AND HAS BEEN
21 CAUGHT OR ACCUSED, IS AUTOMATICALLY GOING TO DENY IT
22 JUST AS THE OFFICERS HAVE DONE IN THIS CASE, AND LT. T.
23 AKIN IS BASING HIS FINDINGS NOT TO BE SUSTAINED BASED ON
24 THEIR DENIAL AND COVER UP. IT SHOULD BE RECOGNIZED BY
25 THE COURT THAT LT. T. AKIN DOES NOT MENTION OR ADDRESS
26 THE INCIDENT THAT TOOK PLACE ON 5-22-2005 ON THE
27 EXERCISE YARD WHEN I WAS ASSAULTED), NOR DOES HE MAKE
28 ANY EXPLANATION AS TO WHY NO ONE RECEIVED A RULE VIOLATION

STATEMENT OF CLAIM
CONTINUES

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1 REPORT, C.D.C. 115 A PROCEDURE AND PROCESS THAT TAKES PLACE
2 WHEN AN INCIDENT HAPPENS AND THE GOVERNING RULES OF THE
3 INSTITUTION ARE VIOLATED. NOR DOES LT. AKIN EXPLAIN WHY THE
4 VIDEO FROM THE MONITOR VIEWING THE EXERCISE YARD
5 MYSTERIOUSLY CAME UP EMPTY. IT IS OBVIOUS THAT AN INVESTIGATION
6 HAS NEVER TAKEN PLACE AND ANY ATTEMPTS ARE BEING DISREGARDED
7 AND COVERED UP IT SHOULD ALSO BE RECOGNIZED BY THE COURT
8 THAT ON, 10-3-2005 WHEN I WAS MOVED TO ANOTHER ADMINISTRATIVE
9 SEGREGATION UNIT BECAUSE OF MY STAFF COMPLAINT ON THESE
10 OFFICERS, I CAME ACROSS INMATE "JEROME OCARANZA # P42251
11 AND INMATE MICHAEL HERNANDEZ # J40913, THEY CLAIM TO BE
12 NEPHEWS OF OFFICER, F. OJEDA. THEY INFORMED ME THAT OFFICER
13 F. OJEDA APPROACHED THEIR CELL ONE EVENING AND TOLD THEM
14 TO GET ME AND "FUCK ME UP" OR GET SOMEONE TO DO IT, AND
15 SEND WORD TO WHICHEVER INSTITUTION I WENT TO SO OTHER
16 INMATES COULD HARM ME. THEY TOLD HER NO AND THEY WERE
17 THREATENED BY HER IF THEY DIDNT, WHICH SHE EVENTUALLY DID.

18 ON, 11-13-2005 WHILE I WAS AT THE CENTRAL TREATMENT
19 CENTER RECEIVING MEDICAL ATTENTION. OFFICER, F. OJEDA ARRIVED
20 TO RELIEVE ANOTHER OFFICER FOR A BREAK. IT WAS APPROXIMATELY
21 3:00 A.M. WHEN OFFICER, F. OJEDA DISCOVERED THAT IT WAS ME
22 WHO WAS BEING TREATED. AT THAT POINT SHE BEGAN TO VERBALLY
23 SLANDER AND ASSAULT ME TELLING OTHER OFFICERS AND MAKING
24 IT A POINT THAT ANOTHER INMATE HEARD WHAT SHE SAID, BY
25 CALLING ME A PERVERT. AT THAT POINT I TOLD HER TO KEEP
26 TALKING SO I ADD THIS MISCONDUCT TO MY COMPLAINT
27 AND THAT SHE WAS WRONG FOR CONTINUOUSLY TRYING TO
28 GET OTHER STAFF AND INMATES AGAINST ME TO HURT ME. SHE

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1 TOLD ME "FUCK YOUR COMPLAINT. I ALREADY TALKED TO LT. AKIN
2 AND IT'S MY WORD AGAINST YOURS! IM GOING TO GET YOUR ASS
3 PERVERT, AND SHE WALKED OUT. THE MEMORANDUM BY APPEALS
4 COORDINATOR, R. HALL, DATED, 12-21-2005, STATES THAT I HAD
5 FAILED TO PROVIDE ANY INFORMATION OR EVIDENCE THAT WAS
6 CONSIDERED DURING THE INFORMAL INQUIRY. IT IS OBVIOUS
7 THAT NO INQUIRY OR INVESTIGATION HAS EVER BEEN MADE BY
8 R. HALL. HE MAKES NO MENTION OF EVER INTERVIEWING BOTH
9 INMATES "JEROME OCARANZA" OR "MICHAEL HERNANDEZ" WHO OFFICER
10 F. OJEDA APPROACHED TO CAUSE ME PHYSICAL HARM. THEY DO NOT
11 ADDRESS ANY OF THE ISSUES OR THE FACT THAT I WAS TAKEN OFF
12 THE EXERCISE YARD AND PUT ON WALK ALONE FOR MY PROTECTION
13 NOR DO THEY MAKE ANY NOTATION OF EVER INTERVIEWING DOCTOR
14 E. DE ALMEIDA, WHOM I'VE SPOKE TO AND HE SAYS HE'S NEVER
15 BEEN INTERVIEWED REGARDING THIS CASE, NOTHING HAS EVER
16 BEEN GRANTED AS THEY SAY. THEY HAVE CONSPIRED WITH EACH-
17 OTHER AND COVERED THIS WHOLE ISSUE TO MAKE IT SEEM
18 AS THOUGH NOTHING HAS EVER TAKEN PLACE. SINCE THIS
19 INCIDENT TOOK PLACE, I'VE BEEN TOLD BY SEVERAL PEOPLE THAT
20 IM SUPPOSE TO GET HURT BECAUSE OF THE OFFICERS LABELING
21 ME A SEX OFFENDER OF WHICH IM NOT! — OFFICER, MASCIEL
22 DELIBERATELY AND WILLINGLY CONSPIRED WITH TWO INMATES TO
23 ASSAULT ME ON 5-22-05 ON THE EXERCISE YARD. OFFICER, OJEDA
24 ATTEMPTED TO RECRUIT HER TWO NEPHEWS TO ASSAULT ME AS
25 WELL AS DELIBERATELY TRY TO INFLUENCE AND INCITE OTHER
26 INMATES TO ASSAULT ME. "SGT, DAVIS" ACKNOWLEDGED ME
27 BEING ASSAULTED ON 5-22-05 BY TWO INMATES ON THE
28 EXERCISE YARD, AND PUT ME ON WALK ALONE YARD STATUS

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1 AND SINGLE CELL FOR MY PROTECTION. HOWEVER SGT, DAVIS
2 FAILED TO TAKE THE PROPER STEPS TO INVESTIGATE THE
3 INCIDENT AND DELIBERATELY CHOSE NOT TO HAVE THE
4 ASSAULTS OR MYSELF WRITTEN UP WITH A RULE VIOLATION
5 REPORT IN AN ATTEMPT TO COVER UP THE INCIDENT AND
6 CONSPIRACY BY OFFICER MARTEL TO HAVE ME ASSAULTED.
7 LT. AKIN ALSO FAILED TO INTERVIEW DOCTOR E. DE ALMAIDA
8 AND BOTH INMATES "OCARANZA AND HERNANDEZ" IN AN
9 ATTEMPT TO DELIBERATELY CONSPIRE WITH THE OTHER OFFICERS
10 MENTIONED TO COVER UP THIS INCIDENT IN DIRECT VIOLATION
11 OF MY EIGHTH AMENDMENT RIGHT TO PROTECTION FROM ASSAULT
12 AND THREAT AND VIOLENCE BY OTHER INMATES AND FAILING
13 TO TAKE REASONABLE MEASURES TO GUARANTEE MY SAFETY.
14 INSTEAD, DEFENDANTS ACTED MALICIOUSLY AND SABOTICALLY
15 FOR THE VERY PURPOSE OF CAUSING ME HARM. —

16 INCLUDED IS A DECLARATION BY INMATE LUIS FIGUEROA DATED
17 5-22-06 — PLAINTIFF WROTE A COMPLAINT AGAINST SAID
18 OFFICERS IN THIS COMPLAINT AND WAS MOVED TO ANOTHER
19 ADMINISTRATIVE SEGREGATION BECAUSE OF MY COMPLAINT.

20 ON 10-3-05 WHILE PLAINTIFF WAS BEING ESCORTED TO A
21 HOLDING CAGE BY OFFICER, L. SILVA IN "E-1-AD-SEG, I TOLD HIM
22 THAT HIS GRIP ON MY LEFT ARM WAS HURTING MY SHOULDER THAT WAS
23 BRUISED BY A PREVIOUS AGGRIVATION. OFFICER, SILVA, STATED; "I DONT
24 GIVE A SHIT, DEAL WITH IT." AS WE ARRIVED AT THE HOLDING CAGE
25 OFFICER, SILVA CONTINUED TO DELIBERATELY PULL ON MY ARM IN AN
26 AGRESIVE MANOR, AS HE MOVED ME TO THE SIDE TO OPEN THE
27 CAGE DOOR. I BEGAN TO PANIC AND YELLED TO HIM THAT HE
28 WAS HURTING ME AND TO STOP HIS AGRESIVENESS, OVER MY

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STATEMENT OF CLAIM

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1 LEFT SHOULDER. OFFICER SILVA AGAIN STATED; "FUCK YOU" AND
2 LIFTED MY ARMS BEHIND MY BACK AND PROCEEDED TO VIOLENTLY
3 SLAM ME INTO THE BACK OF THE HOLDING CAGE CAUSING SEVER
4 PAIN TO MY LEFT SHOULDER, AT WHICH POINT I TURNED MY HEAD
5 AND CALLED HIM A FUCKEN ASSHOLE ONLY TO BE MET WITH A VIOLENT
6 POWERFUL SLAP AND PUSH WITH HIS OPEN PALM TO MY FACE, PUSHING
7 MY HEAD VIOLENTLY TO THE BACK OF THE CAGE, AT WHICH POINT
8 I LOST CONSCIOUSNESS DUE TO THE SEVER PAIN BEING INFLICTED
9 TO MY LEFT SHOULDER AND MY HEAD BEING SLAMMED INTO THE
10 BACK OF THE HOLDING CAGE. WHEN I CAME TO, I WAS BEING
11 PEPPER SPRAYED BECAUSE I COULDN'T BREATHE. I ASKED TO BE
12 TAKEN TO THE SHOWER TO BE DECONTAMINATED FROM THE PEPPER
13 SPRAY. OFFICER SILVA TOLD ME "HELL NO." AND SAID; "YOU LIKE TO
14 WRITE STAFF COMPLAINTS, HUH?" GIVING ME A CLEAR INDICATION
15 THAT HIS ACTIONS TOWARDS ME WERE DELIBERATE AND IN RETALIATION
16 FOR A PRVIOUS STAFF COMPLAINT ON OFFICERS IN THIS COMPLAINT
17 FOR WHICH WAS THE REASON I WAS BEING MOVED OUT OF THAT
18 BUILDING. I WAS SEEN BY "LVN, M. KENNEDY APPROXIMATELY 15'
19 MINUTES LATER FOR WHOM I HAD NO COMMENT DUE TO BEING
20 ANGRY AND MY BODY NUMB AND BURNING FROM THE PEPPER SPRAY.
21 APPROXIMATELY AN HOUR LATER I WAS MOVED TO ANOTHER AD-SEG.
22 I TOLD OFFICER SANCHES THAT I NEEDED MEDICAL ATTENTION. HE
23 TOLD ME THE NURSE WOULD BE IN WITHIN AN HOUR. WHEN THE
24 NURSE ARRIVED I TOLD HER I WAS IN EXTREME PAIN AND THAT
25 I FELT MY LEFT SHOULDER WAS BROKEN. SHE TOLD ME THERE WAS
26 NOTHING WRONG, AND WHEN I ASKED HER FOR HER NAME, SHE TOLD
27 ME IT WAS NONE OF MY BUSINESS "AND TO GO FUCK MYSELF" AND
28 SHE WALKED AWAY DENYING ME MEDICAL ATTENTION. THE FOLLOWING

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STATEMENT OF CLAIM

1 DAY ON 10-4-05, I ASKED FOR MEDICAL ATTENTION AND WAS
2 ESCORTED TO THE FACILITY CLINIC BY OFFICERS, ROMERO AND
3 CULBERT. AFTER AN EXAMINATION BY NURSE SMITH, SHE HAD ME
4 ESCORTED TO THE CENTRAL TREATMENT CENTER. FOR X-RAYS, THAT
5 SAME AFTERNOON I WAS SEEN BY DR. NGUYEN AND NURSE
6 SMITH. DR. NGUYEN REFERRED ME TO BE SEEN BY THE ORTHOPEDIC
7 DOCTOR, AND PRESCRIBED VICODINE FOR THE PAIN. THE FOLLOWING
8 DAY ON 10-5-05 I WAS SEEN BY THE ORTHOPEDIC DOCTOR AND
9 WAS SCHEDULED FOR SURGERY TO REPAIR THE INJURY INFLICTED
10 BY OFFICER SILVA. — ON DECEMBER, 1, 2005 I
11 HAD SURGERY ON MY LEFT SHOULDER TO REPAIR THE
12 INJURY I SUSTAINED BY OFFICER, L. SILVA, SEE EXHIBIT
13 "C" — PLEASE NOTE EXHIBIT "D" DECLARATIONS BY
14 INMATE, LUIS FIGAROA AND INMATE RONALD RAY

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CONTINUED

"Relief"

1 FOR, \$ 100,000 IN PUNITIVE, AND COMPENSATORY AND NOMONAL
2 DAMAGES, JUDGMENT AGAINST DEFENDANT, L. SILVA FOR
3 100,000 IN PUNITIVE, COMPENSATORY AND NOMONAL DAMAGES
4 JUDGMENT AGAINST DEFENDANT, SGT. DAVIS FOR \$ 100,000
5 IN PUNITIVE; COMPENSATORY AND NOMONAL DAMAGES.
6 JUDGMENT AGAINST DEFENDANT, LT. AKIN FOR \$ 100,000
7 IN PUNITIVE, COMPENSATORY AND NOMONAL DAMAGES.
8 JUDGMENT AGAINST DEFENDANT, R. HALL FOR \$ 100,000
9 IN PUNITIVE, COMPENSATORY AND NOMONAL DAMAGES.
10 JUDGMENT FOR THE COST OF THIS ACTION.

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12 DATED: 11-20-07

13 SIGNED:

14 R. Garcia # T-51858
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"EXHAUSTION OF ADMINISTRATIVE"
"REMEDIES"

PLAINTIFF STATES THAT HE HAS EXHAUSTED ALL AVAILABLE ADMINISTRATIVE REMEDIES WITHIN THE CALIFORNIA DEPARTMENT OF CORRECTIONS, AND PLAINTIFF CANNOT SEEK FURTHER REVIEW WITHIN THE DEPT OF CORRECTIONS. SEE EXHIBITS "A" AND "B"

"DECLARATION"

I ROBERT GARCIA DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT I AM 18 YEARS AND OLDER AND AM THE PLAINTIFF TO THE WITHIN CAUSE OF ACTION AND HAVE READ THE FOREGOING CIVIL RIGHTS COMPLAINT AND THE FACTS STATED THEREIN ARE TRUE AND CORRECT AND AS TO THOSE MATTERS STATED THEREIN ON INFORMATION AND BELIEF, I DO BELIEVE THEM TO BE TRUE AND IF CALLED TO TESTIFY TO THOSE MATTERS, I WILL DO SO WILLINGLY AND COMPETENTLY AS IS, EXECUTED THIS 20TH OF NOVEMBER 2007.

Robert Garcia # 751858
DECLARANT / PLAINTIFF.

EXHIBIT COVER PAGE

A
EXHIBIT

Description of this Exhibit:

*EXHAUSTION OF ADMINISTRATIVE
REMEDIES*

Number of pages to this Exhibit: 11 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

State of California

Department of Corrections

Memorandum

Date: November 5, 2005To: INMATE GARCIA, T-51858
California Substance Abuse Treatment Facility and
State Prison at CorcoranSubject: FIRST LEVEL APPEAL RESPONSE
LOG NO.: SATF-Z-05-03667ISSUE:

Lieutenant T. Akin, investigated appellant's appeal at the First Level of Review.

It is the appellant's position that Correctional Officers A. Masiel, A. Balderama and Officer F. Ojeda placed his safety in jeopardy by disclosing false personal information to the inmate population.

The appellant requests on appeal that the officers be relieved of their duties, severely reprimanded and ordered to take hate crime and management classes. The appellant also request placement on single cell status and a full investigation into the allegations.

INTERVIEWED BY: *On October 23, 2005 T. Akin Correctional Lieutenant interviewed you in order to provide you the opportunity to fully explain your issues. You were given the opportunity to read and sign the CDC form 1858, Rights and Responsibility Statement. Inmate Garcia speaks English and is able to comprehend the appeal process. Therefore, no special accommodations were necessary.*

California Code of Regulations
3004. Rights and Respect of Others.

(a) Inmates and parolees have the right to be treated respectfully, impartially, and fairly by all employees. Inmates and parolees have the responsibility to treat others in the same manner. Employees and inmates may use first names in conversation with each other when it is mutually acceptable to both parties.

(b) Inmates, parolees and employees will not openly display disrespect or contempt for others in any manner intended to or reasonably likely to disrupt orderly operations within the institutions or to incite or provoke violence.

(c) Inmates, parolees and employees will not subject other persons to any form of discrimination because of race, religion, nationality, sex, political belief, age, or physical or mental handicap.

CONCLUSION: *Lt. T. Akin investigated appellant's appeal at the First Level of Review. Subsequently appellant's appeal was partially granted in that an investigation was conducted. Appellant was informed that an investigation was conducted and finding regarding appellants allegations were not sustained.*

Upon review of the documentation submitted, it is determined that the appellant's allegations have been reviewed and evaluated by administrative staff and a fact finding investigation has been completed at the First Level of Review.

EXHIBIT A

CASE NO. SATF-Z-05-03667
PAGE 2

In the event that staff misconduct was substantiated, the institution would take the appropriate course of action. All staff personnel matters are confidential in nature and not privy to the inquiries of other staff, the general public or the inmate population, and would not be released to the appellant. However, upon completion of final review, or culmination of an investigation, the appellant is to be notified by the respective investigative body that an inquiry has been completed and whether the complaint was no finding, not sustained, unfounded, exonerated, or sustained.

Although the appellant has the right to submit an appeal as a staff complaint, the request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the appeals process.

DECISION: The appeal is *partially granted*. An investigation was conducted. However, *placement on single cell status requires review by the appropriate committee*. The other issues requested are beyond the scope of the appeals process.

The inquiry has been completed and your complaint was determined to be **not sustained**. The appellant is advised that this issue may be submitted for a Second Level of Review if desired.



T. AKIN
Correctional Lieutenant
Administrative Segregation Unit



L. Polk
Associate Warden
Complex I

CSATF APPEALS

NOV 14 2005

State of California

Memorandum

Date: December 21, 2005

To: Garcia, T-51858
California Substance Abuse Treatment Facility and
State Prison at CorcoranSubject: SECOND LEVEL APPEAL RESPONSE
LOG NO.: SATF Z-05-03667**ISSUE:**

You contend that Correctional Officers (C/O's) Masiel, A. Balderama, and Ojeda are placing your safety in danger by fabricating stories about you and communicating this information to the inmate population. You request that you be placed on single cell status, that the above-mentioned C/O's be relieved of their duties, that an investigation be conducted, and that the officers be reprimanded and ordered to participate in hate crime classes.

INTERVIEWED BY:

T. Akin, Correctional Lieutenant (Lt.), on 10/23/05.

REGULATIONS:

The rules governing this issue are taken from the California Penal Code (PC) and the California Code of Regulations (CCR), Title 15.

- ❖ PC 832.7 (a) (e). Personnel records; confidentiality; discovery; exceptions; complaint disposition notification
- ❖ PC 832.8. Personnel records
- ❖ CCR 3004. Rights and Respect of Others.
- ❖ CCR 3391 (a). Employee Conduct.

SUMMARY:

R. Hall, Appeals Coordinator, investigated your appeal at the Second Level of Review (SLR).

Upon review of the documentation submitted, it is determined that your allegations have been reviewed and evaluated by administrative staff and an Informal Inquiry has been completed.

In the event that staff misconduct was substantiated, the institution would take the appropriate course of action. All staff personnel matters are confidential in nature and not privy to the inquiries of other staff, the general public or the inmate population, and would not be released to you. However, upon completion of final review, or culmination of an investigation, you are to be notified by the respective investigative body that an

Garcia, T-51858
Log # Z-05-03667
Page 2

inquiry has been completed and whether the complaint was unsubstantiated or substantiated. In this case, the complaint was not sustained.

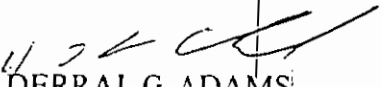
Although the appellant has the right to submit an appeal as a staff complaint, the request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the appeals process.

You have failed to provide any additional information/evidence at the SLR that was not considered during the Informal Inquiry or that is sufficient to modify the First Level Decision.

DECISION:

The appeal is **partially granted**. Partially granted in that supervisory staff promptly addressed your allegation of staff misconduct and an Informal Inquiry was completed. Denied in that your complaint of staff misconduct was not sustained. Also denied in that you will not be placed on single cell status as a result of this appeal.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.


DERRAL G. ADAMS
Warden

California Substance Abuse Treatment Facility and State Prison at Corcoran

CSATF APPEALS
DEC 23 2005

EXHIBIT A

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001
DIRECTOR'S LEVEL APPEAL DECISION

Date: **JUL 14 2006**

In re: Garcia, T-51858
California Substance Abuse Treatment Facility and
State Prison at Corcoran
P.O. Box 7100
Corcoran, CA 93212-7100

IAB Case No.: 0507273

Local Log No.: SATF 05-03667

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

I APPELLANT'S ARGUMENT: It is the appellant's position that several custody staff assigned to the Administrative Segregation Unit (ASU) have fabricated stories about him and told them to inmates who could harm him. He contends that custody conspired with inmates to have him "jumped (beaten)" on the ASU yard. He states that he has spoken with administrative, supervisory and Mental Health Services Delivery System staff about his concerns and his need to be single celled. He states staff have accused him of exposing himself to female staff and they have announced the allegation to the other inmates in the ASU. He claims that his allegations have been covered-up by staff and he now fears for his safety. At the Second Level of Review (SLR) he states that two inmates, Inmates Hernandez, J-40913 and Ocaranza, P-42251, informed him that Correctional Officer Ojeda asked them to assault the appellant. He requests continued single cell status, that the custody staff named by him be relieved of their duties and severely reprimanded with orders to take hate crimes, management and training classes and that a thorough investigation be conducted. At the Director's Level of Review (DLR) he states that his two witnesses were not interviewed by the SLR. He also introduces several more allegations of misconduct that were not a part of the original appeal and that were not introduced until the DLR nor were they presented to the institution for response. These issues will not be addressed by the DLR, as the appellant should have presented his allegations to the institution.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant has not been subjected to misconduct on the part of named staff. The reviewer affirms that appropriate supervisory staff have been assigned to conduct a fact-finding investigation into this matter. The fact-finding investigator reviewed the submitted material and interviewed the involved parties. Based upon developed information, the fact-finding investigator determined that the allegation of staff misconduct was not sustained.

III DIRECTOR'S LEVEL DECISION: Appeal is granted in part.

A. FINDINGS: A review of the appeal and all attached documents reflects that the appellant submitted the names of two inmates to the SLR as witnesses to his allegations of staff attempting to have other inmates beat him up. The appellant provided the names of Inmates Hernandez, J-40913 and Ocaranza, P-42251, as witnesses who were approached by an officer and asked to beat up the appellant. The appellant claims that the CO was also a family member of one of the inmates. It is noted that the SLR did not interview either of the two inmate witnesses to ascertain the credibility of the appellant's claims and to get a statement from either witness. The institution will be directed to interview both inmates in order to determine if a formal investigation should be conducted into the appellant's allegations of staff misconduct. Inmate Hernandez, J-40913, is currently housed at the California State Prison, Los Angeles County and Inmate Ocaranza, P-42251 is currently paroled to Region I Paroles.

B. BASIS FOR THE DECISION:

California Penal Code Section: 832.7, 832.8

California Code of Regulations, Title 15, Section: 3004, 3270, 3271, 3391

GARCIA, T-51858
CASE NO. 0507273
PAGE 2

~~EXHIBIT A~~

C. ORDER: The California Substance Abuse Treatment Facility and State Prison at Corcoran (SATF) shall interview both inmates in order to determine if a formal investigation should be conducted into the appellant's allegations of staff misconduct. Inmate Hernandez, J-40913, is currently housed at the California State Prison, Los Angeles County and Inmate Ocaranza, P-42251 is currently paroled to Region I Paroles.

This issue was discussed with the office of the Chief Deputy Warden.

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



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, SATF
Appeals Coordinator, SATF

RG 8.31.06

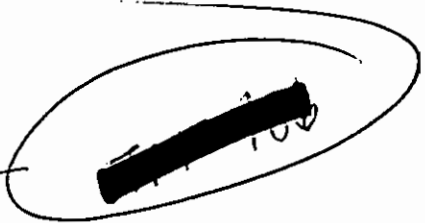
MODIFICATION ORDER

August 7, 2006

AW FAC. A/B

RE: GARCIA, T51858
FEB1T1000000147L
SATF-Z-05-03667
STAFF COMPLAINTS

3RD
LEVEL



A7720

Please be informed that as a result of a Level III Decision, the above referenced appeal has been GRANTED IN PART. Please complete this modification order to comply with the decision.

DUE DATE: 09/05/2006

OTHER

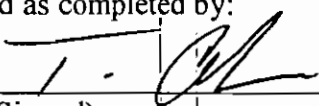
CSATF shall interview both inmates in order to determine if a formal investigation should be conducted into the appellant's allegations of staff misconduct. I/M Hernandez, J40913 is currently housed at CSP/Los Angeles County & I/M Ocaranza is currently paroled to Region I Paroles.

The modification was completed in the following manner:

I/M OCARANZA P-42251 AND I/M HERNANDEZ J-40913
WERE INTERVIEWED ON AUGUST 11, 2006

(You must attach a copy of any documents proving compliance, such as CDC Form 128-G, Classification Chrono; CDC Form 128-C, Medical Chrono; CDC Form 115, Rules Violation Report, etc.)

Certified as completed by:


 Name (Signed) _____ Title LT Location ASU
T. AKIN
 Name(Printed) _____ Date 8/28/06

CSATF APPEALS
AUG 31 2006

EXHIBIT - A

State of California

Department of Corrections and Rehabilit

Memorandum

Date : August 28, 2006

To : INMATE GARCIA, T-51858

Subject : DIRECTORS LEVEL MODIFICATION ORDER # 0507273, APPEAL # SATF-05-03667

The Directors level modification order is for the institution to interview additional witnesses that were provided at the second level.

INTERVIEWED BY: *On August 11, 2006 T. Akin Correctional Lieutenant interviewed inmate Ocaranza P-42251 who is currently on parole. The phone call was facilitated by parole agent Avitia. During the phone interview, Ocaranza stated he did not have any comment on the allegation. Based on his statement the interview was terminated.*

On August 11, 2006 T. Akin Correctional Lieutenant interviewed inmate Hernandez, J-40913 who is currently housed at the CSP/Los Angeles County. The phone call was facilitated by Sgt. J. Rachal at CSP/LACL. During this interview, inmate Hernandez made allegations against Officer Ojeda. However, when questioned about details he was unable to provide information such as where he was housed. This indicates he was fabricating the allegations. He was also unable to explain why other inmates in the area did not hear the alleged comments made by Officer Ojeda.

The two witnesses were not provided by the appellant during the first level of the appeal. The witnesses have not provided any additional information to corroborate the allegation by the appellant.

Considering the above information, your appeal is **not sustained**.



T. AKIN
Correctional Lieutenant
Administrative Segregation Unit



K. Allison
Associate Warden
Complex I

CSATF APPEALS
AUG 31 2006

EXHIBIT - A

State of California

Department of Corrections and Rehabilitation

Memorandum



Date:

To: N. Grannis, Chief
Inmate Appeals Branch

Subject: **COMPLETION OF DIRECTOR'S LEVEL MODIFICATION ORDER
IAB LOG #0507273, INSTITUTION LOG #SATF 05-03667
APPELLANT: GARCIA CDC #T-51858**

A modification order in the above appeal has been completed as ordered. The order was as follows:

The California Substance Abuse Treatment Facility and State Prison at Corcoran (SATF) shall interview both inmates in order to determine if a formal investigation should be conducted into the appellant's allegations of staff misconduct. Inmate Hernandez, J-40913, is currently housed at the California State Prison, Los Angeles County and Inmate Ocaranza, P-42251 is currently paroled to Region I Paroles.

The modification was completed in the following manner:

INMATE OCARANZA P-42251 AND Inm HERNANDEZ J-40913		
WERE INTERVIEWED ON AUGUST 11, 2006		

(Attach a copy of any relevant documents such as CDC Form 128-G, Classification Chrono; CDC Form 128-C, Medical Chrono; CDC Form 115, Rules Violation Report, etc.)

Certified as completed by:

T. ALIWA	LT	754
Name	Title	Location

EXHIBIT - A

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001
DIRECTOR'S LEVEL APPEAL DECISION

Date: JUL 14 2006

In re: Garcia, T-51858
California Substance Abuse Treatment Facility and
State Prison at Corcoran
P.O. Box 7100
Corcoran, CA 93212-7100

IAB Case No.: 0507273

Local Log No.: SATF 05-03667

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

I APPELLANT'S ARGUMENT: It is the appellant's position that several custody staff assigned to the Administrative Segregation Unit (ASU) have fabricated stories about him and told them to inmates who could harm him. He contends that custody conspired with inmates to have him "jumped (beaten)" on the ASU yard. He states that he has spoken with administrative, supervisory and Mental Health Services Delivery System staff about his concerns and his need to be single celled. He states staff have accused him of exposing himself to female staff and they have announced the allegation to the other inmates in the ASU. He claims that his allegations have been covered-up by staff and he now fears for his safety. At the Second Level of Review (SLR) he states that two inmates, Inmates Hernandez, J-40913 and Ocaranza, P-42251, informed him that Correctional Officer Ojeda asked them to assault the appellant. He requests continued single cell status, that the custody staff named by him be relieved of their duties and severely reprimanded with orders to take hate crimes, management and training classes and that a thorough investigation be conducted. At the Director's Level of Review (DLR) he states that his two witnesses were not interviewed by the SLR. He also introduces several more allegations of misconduct that were not a part of the original appeal and that were not introduced until the DLR nor were they presented to the institution for response. These issues will not be addressed by the DLR, as the appellant should have presented his allegations to the institution.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant has not been subjected to misconduct on the part of named staff. The reviewer affirms that appropriate supervisory staff have been assigned to conduct a fact-finding investigation into this matter. The fact-finding investigator reviewed the submitted material and interviewed the involved parties. Based upon developed information, the fact-finding investigator determined that the allegation of staff misconduct was not sustained.

III DIRECTOR'S LEVEL DECISION: Appeal is granted in part.

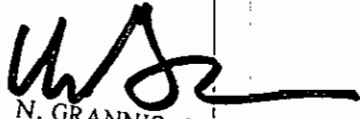
A. FINDINGS: A review of the appeal and all attached documents reflects that the appellant submitted the names of two inmates to the SLR as witnesses to his allegations of staff attempting to have other inmates beat him up. The appellant provided the names of Inmates Hernandez, J-40913 and Ocaranza, P-42251, as witnesses who were approached by an officer and asked to beat up the appellant. The appellant claims that the CO was also a family member of one of the inmates. It is noted that the SLR did not interview either of the two inmate witnesses to ascertain the credibility of the appellant's claims and to get a statement from either witness. The institution will be directed to interview both inmates in order to determine if a formal investigation should be conducted into the appellant's allegations of staff misconduct. Inmate Hernandez, J-40913, is currently housed at the California State Prison, Los Angeles County and Inmate Ocaranza, P-42251 is currently paroled to Region I Paroles.

B. BASIS FOR THE DECISION:
California Penal Code Section: 832.7, 832.8

GARCIA, T-51858
CASE NO. 0507273
PAGE 2

C. ORDER: The California Substance Abuse Treatment Facility and State Prison at Corcoran (SATF) shall interview both inmates in order to determine if a formal investigation should be conducted into the appellant's allegations of staff misconduct. Inmate Hernandez, J-40913, is currently housed at the California State Prison, Los Angeles County and Inmate Ocaranza, P-42251 is currently paroled to Region I Paroles.

This issue was discussed with the office of the Chief Deputy Warden.
This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, SATF
Appeals Coordinator, SATF

EXHIBIT COVER PAGE

B
EXHIBIT

Description of this Exhibit:

*EXHAUSTION OF ADMINISTRATIVE
REMEDIES.*

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

DEPARTMENT OF CORRECTIONS AND REHABILITATION

INMATE APPEALS BRANCH

P. O. BOX 942883

SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISIONEXHIBIT
" B "Date: **MAY 22 2006**In re: Garcia, T-51858
California Substance Abuse Treatment Facility and
State Prison at Corcoran
P.O. Box 7100
Corcoran, CA 93212-7100

IAB Case No.: 0509855

Local Log No.: SATF 05-04593

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

I APPELLANT'S ARGUMENT: It is the appellant's position that on October 2, 2005, Correctional Officer (CO) Silva separated his shoulder when escorting him to a holding cell while in restraints. He contends that he informed the CO that his grip was hurting his shoulder and the CO responded with a profanity and told him to deal with it while pulling his arm to move him. He claims that he panicked, yelled at the CO, who at that time then lifted his arm behind his back and slammed him into the back of the cell causing the appellant severe pain, at which time he used a profanity against the CO and may have inadvertently spit on the CO, as he spoke. He claims that he passed out and came too with the CO using Oleoresin Capsicum spray on him. He does recall that the CO made mention of staff complaints to him and he feels this was a form of retaliation for the complaints. He states that he requested to be decontaminated and to receive medical care for his shoulder, but was told no. Licensed Vocational Nurse M. Kennedy cursed at him and refused to provide him with medical care. He states that when he was provided medical care it became necessary to transport him to the Correctional Treatment Center for x-rays and he was referred to the orthopedic specialist who scheduled him for surgery to repair the injury inflicted by CO Silva. He requests that CO Silva face charges of staff misconduct for falsifying documents, assault with injury and he be removed from his assigned position, that he be thoroughly investigated and be severely reprimanded and that the CDC Form 115, Rules Violation Report be dismissed, that he be given an override to the Richard J. Donovan Correctional Facility at Rock Mountain and that his shoulder be repaired. At the Director's Level of Review he states that surgery was done to repair his shoulder, but it is not the same since the injury.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant has not been subjected to misconduct on the part of named staff. The reviewer affirms that appropriate supervisory staff have been assigned to conduct a fact-finding investigation into this matter. The fact-finding investigator reviewed the submitted material and interviewed the involved parties. Based upon developed information, the fact-finding investigator determined that the allegation of staff misconduct was not sustained. The appeal was granted in part in that surgery was performed on the appellant's shoulder to repair it. All other requests were denied by the Second Level of Review (SLR).

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: Upon review of the documentation submitted, it is determined that the appellant's allegations have been reviewed and evaluated by administrative staff and a fact-finding investigation has been completed at the SLR.

In the event that staff misconduct was substantiated, the institution would take the appropriate course of action. All staff personnel matters are confidential in nature and not privy to the inquiries of other staff, the general public or the inmate population, and would not be released to the appellant. However, upon completion of final review, or culmination of an investigation, the appellant is to be notified by the respective investigative body that an inquiry has been completed and whether the complaint was unsubstantiated or substantiated. In this case, the institution has reported the disposition to the appellant.

GARCIA, T-51858
CASE NO. 0509855
PAGE 2

EXHIBIT
"B"

Although the appellant has the right to submit an appeal as a staff complaint, the request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the appeals process.

B. BASIS FOR THE DECISION:

California Penal Code Section: 832.7, 832.8

California Code of Regulations, Title 15, Section: 3005, 3268.1, 3271, 3350, 3354, 3391

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

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



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, SATF
Appeals Coordinator, SATF

EXHIBIT COVER PAGE

C
EXHIBIT

Description of this Exhibit:

*DIAGNOSTIC AND THERAPUTIC PROCEDURE
TO SHOULDER SURGERY AND 7219 CDC
FORM OF MEDICAL EVALUATION ON THE DAY
OF ASSAULT.*

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

AUTHORIZATION FOR AND CONSENT TO SURGERY OR SPECIAL DIAGNOSTIC OR THERAPEUTIC PROCEDURES

To: Robert Garcia
(Name of Patient)

1. Your attending physician is Dr. _____ and your supervising physician or surgeon is Dr. David Smith

2. The hospital maintains personnel and facilities to assist your physicians and surgeons in their performance of various surgical operations and other special diagnostic or therapeutic procedures. These operations and procedures may all involve risks of unsuccessful results, complications, injury, or even death, from both known and unforeseen causes, and no warranty or guarantee is made as to result or cure.

You have the right to be informed of such risks as well as the nature of the operation or procedure; the expected benefits or effects of such operation or procedure; and the available alternative methods of treatment and their risks and benefits. Except in cases of emergency, operations or procedures are not performed until you have had the opportunity to receive this information and have given your consent. You have the right to consent to or to refuse any proposed operation or procedure at any time prior to its performance.

3. Your physicians and surgeons have recommended the following operation or procedure:
Revision/Repair of previous Anterior Capsular Repair Left Shoulder with Removal of Mersilene Tape. Using Alternate method of Repair Under General Anesthesia

Upon your authorization and consent, this operation or procedure, together with any different or further procedures which in the opinion of the supervising physician or surgeon may be indicated due to any emergency, will be performed on you. The operations or procedures will be performed by the supervising physician or surgeon named above (or in the event that that physician is unable to perform or complete the procedure, a qualified substitute supervising physician or surgeon), together with associates and assistants, including anesthetists, pathologists and radiologists from the medical staff of Corcoran District Hospital to whom the supervising physician or surgeon may assign designated responsibilities. The persons in attendance for the purpose of performing specialized medical services such as anesthesia, radiology or pathology are not agents, servants, or employees of the hospital or your supervising physician or surgeon. They are independent contractors and therefore are your agents, servants, or employees.

4. By your signature below you authorize the pathologist to use his or her discretion in disposing of any member, organ, or other tissue removed from your person during the operation or procedure set forth above.

5. To make sure that you fully understand the operation or procedure, your physician will fully explain the operation or procedure to you before you decide whether or not to give consent. If you have any questions you are encouraged and expected to ask them.

6. Your signature on this form indicates (1) that you have read and understand the information provided in this form, (2) that the operation or procedure set forth above has been adequately explained to you by your physician or surgeon, (3) that you have had a chance to ask questions, (4) that you have received all of the information you desire concerning the operation or procedure and (5) that you authorize and consent to the performance of the operation or procedure.

Date: December 1, 2005

Signature: R Garcia
(Patient/Parent/Conservator/Guardian)

Time: 0753

If signed by other than patient, indicate relationship:

Witness: Marianne Ronderan

PATIENT IMPRINT

0052850660
0000041174 SMITH, DAVID G.
GARCIA R T51858 R
12/03/1962 07 MALE

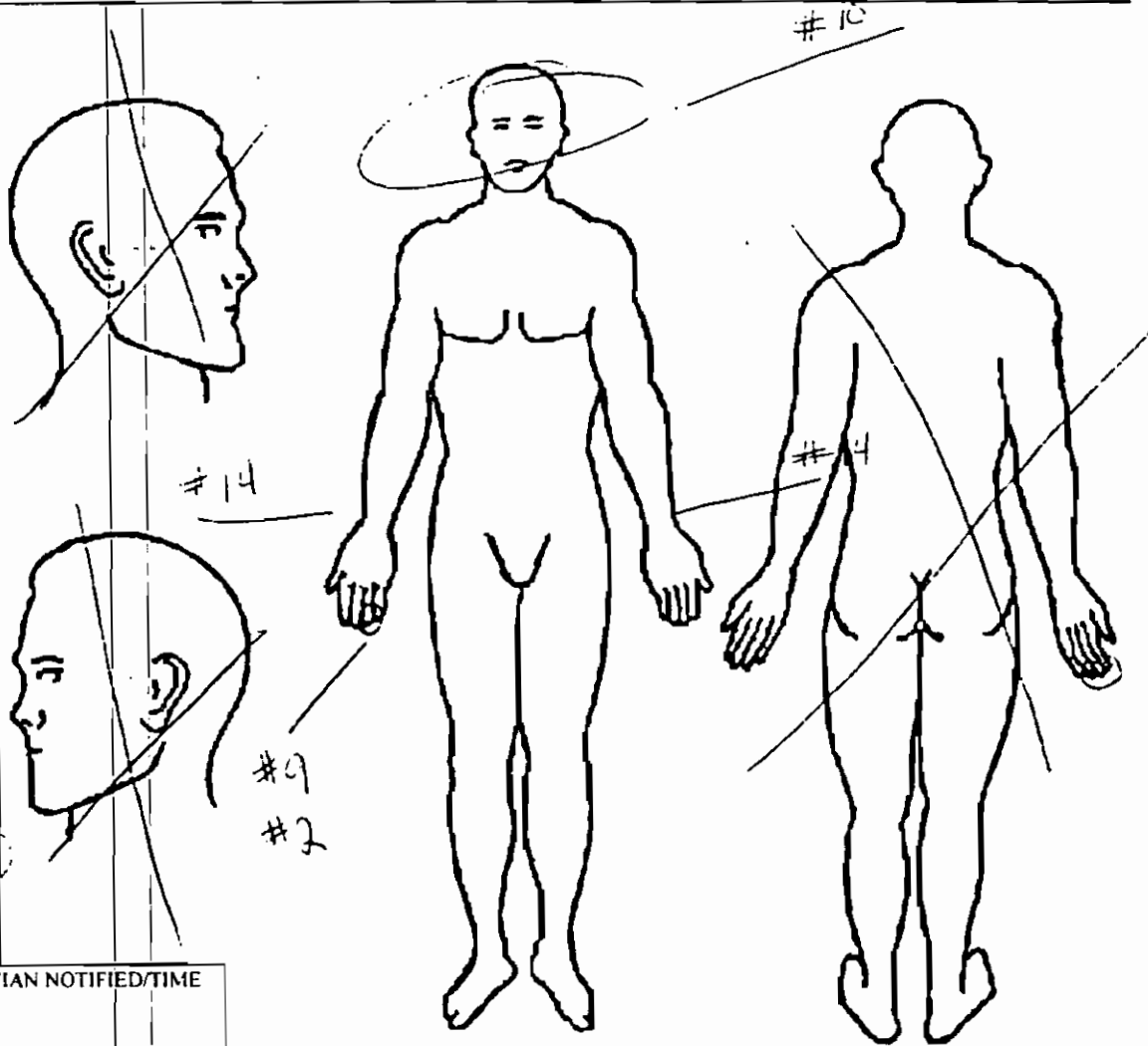
CORCORAN DISTRICT HOSPITAL
1310 HANNA AVENUE • P.O. BOX 758
CORCORAN, CALIFORNIA 93212

NAME OF INSTITUTION SATF	FACILITY/UNIT ad seg	REASON FOR REPORT (circle) USE OF FORCE UNUSUAL OCCURRENCE	INJURY UNUSUAL OCCURRENCE	ON THE JOB INJURY PRE AD-SEG ADMISSION	DATE 10-3-05
THIS SECTION FOR STATE ONLY	NAME LAST Garcia	FIRST Robert	CDC NUMBER TS1958	HOUSING LOC. 305	NEW HOUSING LOC.
THIS SECTION FOR CAAFF ONLY	NAME LAST	FIRST	BADGE #	RANK CLASS	ASSIGNMENT/RDOs
THIS SECTION FOR VISITOR ONLY	NAME LAST	FIRST	MIDDLE	DOB	OCCUPATION
HOME ADDRESS		CITY	STATE	ZIP	HOME PHONE
PLACE OF OCCURRENCE ad seg case	DATE/TIME OF OCCURRENCE 10-3-05 1750	NAME OF WITNESS(ES) Ad seg staff			
TIME NOTIFIED 1750	TIME SEEN 1750	ESCORTED BY C/O	MODE OF ARRIVAL (circle) AMBULATORY ON SITE	LITTER <input type="checkbox"/>	WHEELCHAIR <input type="checkbox"/>
				AGE 47	RACE M
					SEX M

BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE

comment

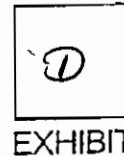
INJURIES FOUND?	YES/NO
1. Abrasion/Scratch	<input type="checkbox"/>
2. Active Bleeding	<input checked="" type="checkbox"/>
3. Broken Bone	<input type="checkbox"/>
4. Bruise/Discolored Area	<input type="checkbox"/>
5. Burn	<input type="checkbox"/>
6. Dislocation	<input type="checkbox"/>
7. Dried Blood	<input type="checkbox"/>
8. Fresh Tattoo	<input type="checkbox"/>
9. Gash/Laceration/Slash	<input type="checkbox"/>
10. H.C. Spray Area	<input type="checkbox"/>
11. Itch	<input type="checkbox"/>
12. Irritation	<input type="checkbox"/>
13. Irritation	<input type="checkbox"/>
14. Reddened Area	<input type="checkbox"/>
15. Skin Flap	<input type="checkbox"/>
16. Swollen Area	<input type="checkbox"/>
17. Tumor	<input type="checkbox"/>
18.	<input type="checkbox"/>
19.	<input type="checkbox"/>
C. SPRAY EXPOSURE?	YES/NO
DECONTAMINATED?	YES/NO
If decontamination instructions given?	YES/NO
If fused decontamination?	YES/NO
15 min. checks	
Staff issued exposure packet?	YES/NO
NOTIFIED/TIME	PHYSICIAN NOTIFIED/TIME



ME/DISPOSITION checked for ad seg C-8	REPORT COMPLETED BY/TITLE (PRINT AND SIGN) M. Kennedy LVA MEd	BADGE #	RDOs
---	---	---------	------

(Medical data is to be included in progress note or emergency care record filed in UHR)

EXHIBIT COVER PAGE



Description of this Exhibit: *DECLARATIONS BY INMATES
LUIS FIGAROA AND RONALD RAY.*

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

DECLARATION BY INMATE
LUIS FIGUEROA

my name is Luis Figueroa and I do declare under penalty of perjury that the foregoing is true and correct that on May, 22 2005 I was told by inmate Rodriguez and inmate Martinez to assault inmate Robert Garcia when he was put back in the cell with me both inmates Rodriguez and Martinez told me and other inmates in ad-seg that they had just assaulted and jumped inmate Garcia on the exercise yard for officer "A. Masiel" accusing inmate Garcia of inappropriately disrespecting female staff and saying that wherever inmate Garcia went the word was going to follow so he could get assaulted.

DATE: 5-27-06

Luis Figueroa #K07396

DECLARATION OF RONALD LAY JR # K37748

I RONALD LAY JR DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT THAT IN OR AROUND AUGUST AND SEPTEMBER OF 2006 I WAS TOLD ~~BY~~ BY MY HOMEBOY "ACE" THAT THERE WAS A "GREEN LIGHT" ON INMATE GARCIA BECAUSE OF AN INCIDENT THAT HAPPEND AT SATF SUBSTANCE ABUSE TREATMENT FACILITY INVOLVING OFFICER'S AT THAT FACILITY. AND I WAS TOLD THAT OFFICER'S WOULD LOOK THE OTHER WAY IF I ASSAULTED INMATE GARCIA.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND IF CALLED UPON TO TESTIFY TO THIS DECLARATION I COULD AND WOULD DO SO COMPETENTLY AS IS EXECUTED THIS 5TH DAY OF AUGUST 2007 AT REPRESA, CALIFORNIA.

DATED: 8/5/2007

SIGNED Ronald Lay Jr. K37748

BY: RONALD LAY JR K37748

C.S.P. SAC A4-223

P.O. Box 290066

REPRESA, CA. 95671

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): ROBERT GARCIA # 751858 CSP-SAC P.O. BOX 2900 REPRESA, CA. 95671	
TELEPHONE NO.:	FAX NO.:
ATTORNEY FOR (Name):	
INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY: UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA	
CASE NAME:	
CIVIL CASE COVER SHEET <input type="checkbox"/> Limited <input type="checkbox"/> Unlimited	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)
CASE NUMBER:	
ASSIGNED JUDGE:	

Please complete all five (5) items below.

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) Other PVPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PVPD/WD (23) Non-PVPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input checked="" type="checkbox"/> Civil rights (e.g., discrimination, false arrest) (08) <input type="checkbox"/> Defamation (e.g., slander, libel) (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (e.g., legal malpractice) (25) <input type="checkbox"/> Other non-PVPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Other employment (15) Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (e.g., money owed, open book accounts) (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (e.g., quiet title) (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11)	<input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Claims involving mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Toxic tort/Environmental (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (e.g., sister state, foreign, out-of-county abstracts) (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination and related actions pending in one or more courts in other counties, states or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial post-disposition judicial disposition

3. Type of remedies sought (check all that apply):

a. <input checked="" type="checkbox"/> monetary	b. <input checked="" type="checkbox"/> nonmonetary, declaratory or injunctive relief	c. <input checked="" type="checkbox"/> punitive
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4. Number of causes of action (specify):

5. This case is is not a class action suit.

Date:

GARCIA ROBERT 11-20-07
 (TYPE OR PRINT NAME)

R. Garcia # 751858
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 982.2.)
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet shall be used for statistical purposes only.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT GARCIA # 151858
PLAINTIFF

Case Number:

A. MASIEL, F. OJEDA, A. BALDERAMA

PROOF OF SERVICE

L. SILVA, SST DAVIS, LT. AKIN, R. HALL
DEFENDANTS

I hereby certify that on NOVEMBER 20 - 2007, I served a copy
of the attached U.S.C. 1983, CIVIL RIGHTS COMPLAINT.

by placing a copy in a postage paid envelope addressed to the person(s) hereinafter
listed, by depositing said envelope in the United States Mail at
CSP-SACRAMENTO, P.O. Box 2900
REPRESA, CA 95611

(List Name and Address of Each
Defendant or Attorney Served)

UNITED STATES DIST COURT EASTERN DISTRICT
1130, O STREET, 5TH FLOOR, ROOM 500
FRESNO, CA. 93721

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

R. Garcia # 151858 11-20-07
(Signature of Person Completing Service)