

Plaintiff's Name David Knapp
 Inmate No. T-72724
 Address P.O. Box. 5242
Corcoran, California. 93212

FILED
 FEB 13 2009
 CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 BY _____ DEPUTY CLERK

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

David Knapp
 (Name of Plaintiff)

CV 1-08-780-ROS
 (Case Number)

vs.

FIRST AMENDED COMPLAINT

J. Clark Kelso; N. Grannis;
A. Enenmoh; K. Lee; G. Martinez;
Does 1 through 4 Inclusive.

Civil Rights Act, 42 U.S.C. § 1983

(Names of all Defendants)

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

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

(PC) Knapp v. California Department of Corrections and Rehabilitation et al

Doc. 11 Att. 2

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

Describe previous or pending lawsuits in the space below.

(If more than one, use back of paper to continue outlining all lawsuits.)

1. Parties to previous lawsuit:

Plaintiff _____

Defendants _____

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

3. Docket Number _____

4. Assigned Judge _____

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

6. Filing date (approx.) _____

7. Disposition date (approx.) _____

RECEIVED

FEB 13 2009

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

II. Exhaustion of Administrative Remedies

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

Yes No _____

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

Yes No _____

If your answer is no, explain why not _____

C. Is the process completed?

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

No _____ If your answer is no, explain why not.

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

III. Defendants

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

A. Defendant J. Clark Kelso is employed as Appointed Receivership Medical Health Care at _____

B. Case 1:08-cv-00780-ROS Document 8 Filed 02/13/2009 Page 3 of 43
Additional defendants M. Grannis, Chief Inmate Appeals Branch; Dr. A. Enenmoh, Chief Medical Officer California Substance Abuse Treatment Facility; Dr. K. Lee, California Substance Abuse Treatment Facility; G. Martinez, Correctional Health Services Administrator II California Substance Abuse Treatment Facility; Doe, Head Registered Nurse, California Substance Abuse Treatment Facility; Doe, Nurse, California Substance Abuse Treatment Facility; Doe, Head Pharmacist, For the California Substance Abuse Treatment Facility; Doe, Pharmacist, for the California Substance Abuse Treatment Facility.

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.)

Please see the attached pages.

V. Relief.

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

Plaintiff seeks a preliminary injunction, monetary damages, the cost of the suit and plaintiff respectfully request a jury trial. This honorable court has the power to order the defendants' to provide plaintiff with once prescribed medications timely, in order to prevent needless pain and suffering.

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

Date 02/11/2009

Signature of Plaintiff _____

(revised 2/10/2006)

GENERAL ALLEGATIONS

[1] This is a civil complaint for injunctive relief, and damages for the defendants' deliberate indifference to the serious medical needs of plaintiff, David Knapp, for denying, delaying, and intentional interfering with his once prescribed medications, and medical treatment during the plaintiff's confinement by the California Department of Corrections and Rehabilitation (hereinafter-CDCR). The plaintiff alleges claims under 42 U.S.C. § 1983, as well as claims under the California Penal Code §§ 2650, 2652, and 2653. Plaintiff further alleges the California Torts of Medical Negligence, and General Negligence.

JURISDICTION

[2] This court has jurisdiction over this complaint because it arises under the laws of the United States. The jurisdiction of this court is invoked under 28 U.S.C. §§ 1331, and 1343 et. seq., plaintiff's claim for injunctive relief are authorized by 28 U.S.C. §§ 2283, and 2284, and Federal Rule 65 of the Federal Rule of Civil Procedure. This Court has supplemental jurisdiction of plaintiff's pendant State court claims under 28 U.S.C. § 1337(a).

VENUE

[3] Venue is appropriate in this court because all of the defendants' reside in this district, and all of the acts and omissions giving rise to this lawsuit occurred in this district. Therefore, venue is proper under 28 U.S.C. § 1391.

INTRADISTRICT ASSIGNMENT

[4] This lawsuit should be assigned to the Fresno Division of this Court because all of the events or omissions which give rise to this lawsuit occurred in Kings County.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

[5] Plaintiff has filed numerous Inmate/Parolee Appeals and Americans with

1 Act appeals through the prison grievance system relative to defendants conduct
2 described herein. Plaintiff has on four prior occasions used the four step
3 grievance procedure that is in place within the California Department of Correc-
4 tions and Rehabilitation (CDCR) to try and resolve his medical issues and his
5 disability issues. Plaintiff has afforded (CDCR) correction officials time and
6 opportunity to address his complaints internally, and to take corrective actions.
7 .."several years."

8 [6] Plaintiff's first appeal was filed on May 11, 2006, and on December 01,
9 2006, denied at the Director's level of review. Local Log No. SATF 06-1847, IAB
10 Case No. 0603546.

11 [7] Plaintiff's second appeal was filed on June 21, 2006, and on December 19,
12 2006, denied at the Director's level of review. Local Log No. SATF 06-2385, IAB
13 Case No. 0604918.

14 [8] Plaintiff's third appeal was filed on January 09, 2008, and on April 23,
15 2008, denied at the Director's level of review. Local Log No. SATF 08-00198, IAB
16 Case No. 0722312.

17 [9] Plaintiff filed a timely claim with the California Victim Compensation
18 and Government Claims Board on March 22, 2008, and on the fortyfifth day by law
19 the claim was deemed denied.

20 PREVIOUS CIVIL COMPLAINTS BY PLAINTIFF

21 [10] Plaintiff has not filed any other civil complaints dealing with facts that
22 are involved in this civil complaint.

23 PARTIES

24 [11] Plaintiff is a forty-one (41) years of age male caucasian american resid-
25 ent of the state of California, currently incarcerated by the California Depart-
26 ment of Corrections and Rehabilitation (CDCR), at the California Substance Abuse

1 Treatment Facility (SATF) State Prison in Corcoran California, County of Kings.
2 At all times mentioned in this civil complaint plaintiff has been a prisoner of
3 the State of California in the care and custody of the California Department of
4 Corrections and Rehabilitation (CDCR), and at all times during his incarceration
5 the plaintiff has had to rely on the medical care providers at (CDCR) prisons
6 to provide him with the necessary medical care that he requires in order to be
7 able to perform daily activities.

8 **COMPLIANCE WITH THIS HONORABLE COURT'S ORDERS**

9 [12] On or about January 20, 2009 plaintiff received an order by this
10 honorable Court dated January, 16, 2009, dismissing his complaint with leave to
11 amend. As part of the order the Court dismissed (CDCR) on the basis Defendant
12 (CDCR) was not a proper Defendant. This honorable Court further stated that the
13 complaint failed to link defendants with injuries. The Court also ordered the
14 dismissal of plaintiff's ADA claim. Among other requirements the honorable Court
15 advised that the instructions required him to provide information regarding the
16 Court's jurisdiction, and to provide information about the defendants, and divide
17 the lawsuit into separate counts. Plaintiff has complied with all of the Orders,
18 to the best of his ability.

19 [13] All of the defendants' list below have been responsible for providing
20 plaintiff with medical treatment, and at all times mentioned herein all of the
21 defendants' have been acting under color of State law, in the course and scope of
22 their employment and are suit in their official and individual capacities.

23 [14] Plaintiff is informed and believes, and thereon alleges, that defendant
24 J. Clark Kelso is, and at all relevant times herein was employed by the (CDCR)
25 and appointed by order of the honorable Judge Thelton E. Henderson, United States
26 District Court, to the receivership and to the operation of the (CDCR) medical

1 health care delivery system of the state of California's (CDCR) prisons. The
2 plaintiff is further informed and believes, and thereon alleges, that defendant
3 J. Clark Kelso will be leaving this position in the future, where upon the
4 plaintiff will seek to amend the complaint to add the new head of the health
5 care delivery system as a defendant, as is necessary. As the head of the health
6 care delivery system defendant Kelso is and has been responsible for promulgat-
7 ing, supervising the promulgation of, implementing, supervising the implementa-
8 tion of, monitoring compliance with, supervising the monitoring of compliance with,
9 enforcing and/or supervising the enforcement of policies and procedures affecting
10 the medical care of all inmates within the (CDCR). In this position defendant
11 Kelso is and has been responsible for assuring that all inmates receive proper
12 medical care, including proper diagnosis and treatment, and that ADA inmates are
13 not discriminated against due to a disability. At all time mentioned defendant
14 Kelso was acting under color of state law, in the course and scope of his appoin-
15 ted employment, and is sued herein in his official and individual capacities.

16 [15] Plaintiff is informed and believes, and thereon alleges, that at the
17 present times mentioned in this complaint defendant N. Grannis, was and is the
18 Chief Inmate Appeals Branch, for the Director of Corrections. Defendant Grannis
19 is responsible for the supervision of all subordinate personnel, as well as for
20 the safety and protection of all the inmates at the different institutions, . . .
21 including the plaintiff. As Chief inmate appeals branch, defendant Grannis is
22 and has been responsible for promulgating, supervising the promulgation of,
23 implementing superving the implementation of, monitoring compliance with,
24 supervising the monitoring of compliance with, enforcing and/or supervising the
25 enforcement of policies and procedures affecting but not limited to, the medical
26 care of all inmates within the (CDCR), that file Inmate Appeals. In this position

1 defendant Grannis is and has been responsible for assuring that all inmates
2 receive proper medical care, including proper diagnosis and treatment, and that
3 ADA inmates are not discriminated against due to a disability. At all times
4 mentioned defendant Grannis was acting under color of state law, in the course
5 and scope of his/her employment, and is sued herein in his/her official and
6 individual capacities.

7 [16] Plaintiff is informed and believes, and thereon alleges, that defendant
8 A. Enenmoh, M.D., was during all times relevant herein employed by the (CDCR) as
9 (Acting) Chief Medical Officer (CMO) at (SATF-Corcoran) institution. Plaintiff is
10 informed and believes, and thereon alleges, that defendant Enenmoh has personal
11 knowledge of plaintiff's medical conditions since becoming (CMO). Plaintiff is
12 futher informed and believes, and thereon alleges, that defendant Enenmoh is a
13 properly trained and licensed Chief medical doctor who is and has been responsi-
14 ble for the medical care of all inmates at (SATF-Corcoran). This included, but is
15 not limited to, the supervision, direction, and/or proper training of medical
16 staff at (SATF-Corcoran) in the delivery of health care services and management
17 of health care programs; involvement in the determination of proper medical care
18 for inmates, including, but not limited to, having authority to order and approve
19 medical tests and treatment to be done; having authority to assure that inmates
20 receive continuing proper medical care; having authority and responsibility for
21 assuring the proper and timely ordering of perscribed medications, and stocking
22 of medical supplies; and communication of medical needs to correctional custody
23 staff, and generally, making sure that proper medical treatment is provided to
24 all inmates. The plaintiff is further informed and believes, and thereon alleges,
25 that the defendant Enenmoh was responsible for assuring that (SATF-Corcoran)
26 medical staff, and all other medical providers with whom the (CDCR) contracted

1 in the providing medical care to inmates at (SATF-Corcoran), provide proper
2 medical care to the inmates, and that all such individuals knew and understood,
3 and acted pursuant to (CDCR) policy. At all times mentioned defendant Enenmoh
4 was acting under color of state law, in the course and scope of his/her employ-
5 ment, and is sued herein in his/her official and individual capacities.

6 [17] Plaintiff is informed and believes, and thereon alleges, that defendant
7 K. Lee, M.D., was during all times relevant herein employed by the (CDCR) as a
8 Medical Doctor (M.D.) at (SATF-Corcoran) institution. Plaintiff is informed and
9 believes, and thereon alleges, that defendant Lee has had personal knowledge of
10 plaintiff's medical conditions since becoming (M.D.) for E-Facility. Plaintiff
11 is further informed and believes, and thereon alleges, that defendant Lee is a
12 properly trained and licensed medical doctor who is and has been responsible for
13 the medical care of all inmates at (SATF-Corcoran). This included, but is not
14 limited to, the supervision, direction, and/or proper training of all subordinate
15 medical personnel at (SATF-Corcoran) in the delivery of health care services and
16 management of health care programs; involvement in the determination of proper
17 medical care for inmates, including, but not limited to, having authority to
18 order and to approve medical tests and treatment to be done; having authority to
19 issue that inmates receive continuing treatment and proper medical care; having
20 authority and the responsibility for assuring the proper and timely ordering of
21 prescription medications, and stocking of medical supplies; and communication of
22 medical needs to correctional custody staff, and generally, making sure that
23 proper medical treatment is provided to all inmates. The plaintiff is further
24 informed and believes, and thereon alleges, that the defendant Lee was responsi-
25 ble for assuring that (SATF-Corcoran) medical staff, and all other medical pro-
26 viders with whom the (CDCR) contracted in the providing medical care to inmates

1 (SATF-Corcoran), provide proper medical care to the inmates, and that all such
2 individuals knew and understood, and acted pursuant to (CDCR) policy. At all
3 times mentioned defendant Lee was acting under color of state law, in the course
4 and scope of his employment, and is sued herein in his official and individual
5 capacities.

6 [18] Plaintiff is informed and believes, and thereon alleges, that the defend-
7 ant G. Martinez was during all times relevant herein employed by (CDCR) as the
8 Correctional Health Services Administrator II (CHSA) at (SATF-Corcoran). The
9 plaintiff is informed and believes, and thereon alleges, that the defendant
10 Martinez is a properly trained and qualified correctional health services admini-
11 strator II, who is and has been responsible for the medical care of all inmates
12 at (SATF-Corcoran). This includes, but is not necessary limited to, the supervi-
13 sion, direction, and/or proper training and supervision of all the staff that
14 are subordinate medical staff at (SATF-Corcoran) in the delivery of the health
15 care services and management of health care programs; the involvement in determi-
16 nation of proper medical services for inmates, including, but not limited to;
17 having authority to order and expedite medical treatment and to insure that the
18 inmates receive proper continuing medical treatment; communication of medical
19 needs to correctional custody and medical staff, and generally, making sure that
20 proper medical treatment is provided to all inmates. Plaintiff is further inform-
21 ed and believes, and thereon alleges, that defendant Martinez is also responsible
22 for assuring that medical staff, and all other medical providers with whom the
23 (CDCR) contracts with in providing medical care to inmates at (SATF-Corcoran),
24 provide proper medical care to inmates, and that all such individuals know and
25 understand, and act pursuant to all (CDCR)'s policies and procedures. At all
26 times mentioned defendant Martinez was acting under color of state law, in the

1 course and scope of his/her employment, and is sued herein in his/her official and
2 individual capacities.

3 [19] Plaintiff is informed and believes, and thereon alleges, that the four
4 defendants designed herein as Does 1 through 4, inclusive, consist of one individual
5 employed by (CDCR) as a Registered Nurse (RN), and one individual employed
6 by (CDCR) as Head Pharmacist, and one individual employed as Pharmacist, and one
7 individual employed as Head Registered Nurse (HRN). Plaintiff is informed and
8 believes, and thereon alleges, that Does 1 through 4, are properly trained and
9 licensed registered nurses and pharmacists. Who is and has been responsible for
10 the medical care and delivery of medication for all inmates at (SATF-Corcoran).
11 Plaintiff will seek to amend his complaint to add the true names of Does 1
12 through 4, when their true names become known. At all times mentioned Does 1
13 through 4, where acting under color of state law, in the course and scope of
14 his/her employment, and is sued in his/her official and individual capacities.

15 [20] Since approximately January 2006, plaintiff has had to take daily medica-
16 tions in order to control and alleviate severe and extreme excruciating pain,
17 caused by Rheumatoid Arthritis, Osteoporosis, and Disc Herniation of L1-2, and
18 L2-3. Plaintiff requires medications such as Tramadol, Indocin, Gabapentin,
19 Neurontin, fosamax, Alendronate Sodium, Micardis, and Calcium Carbonate.

20 [21] Plaintiff has suffered greatly from his medical conditions, and each time
21 he has been forced to go without once prescribed medication, his medical condit-
22 ions become crippling. plaintiff has become suicidal when taken off of his once
23 prescribed pain medication. From approximately May 11, 2006, to the present, the
24 medical personnel have [r]epeatedly denied, delayed, and intentionally interfered
25 with plaintiff's mandated medical treatment, and once prescribed medications. The
26 plaintiff's medical conditions have been diagnosed by several different prison

1 physician's as a chronic medical condition, and has been placed on "chronic Care"
2 by those physicians. Plaintiff has been being denied medication prescription
3 refills within the mandated 24 hours as was mandated by the Federal Courts. The
4 defendant's continuous refusal to provide plaintiff with his once prescribed
5 medications that are vital to control and alleviate his serious and on going
6 medical conditions and his pain and suffering, are the direct cause of plaintiff's
7 alleged, suicide attemps and confinement in the Institutions (CIC) for [s]uicide
8 watch.

9 [22] The defendants' have subjected plaintiff to hostility and abuse in the
10 apparent retaliation for plaintiff's efforts to secure proper medications, and
11 treatment. Said conduct of the defendants has included, but not necessarily been
12 limited to, withholding medications for weeks at a time, calling plaintiff to
13 Facility E medical unit, and forcing plaintiff to wait irregularly long periods
14 of time in extreme heat of 100° degrees, or in the inclement weather, and then
15 informing plaintiff hours later that medical does not have his medical file, so
16 plaintiff can not be seen. This is unexcusable and unjustifiable treatment when
17 there is an inside waiting tank.

18 [23] Plaintiff has been forced to suffer severe pain that will not go away
19 without the use of pain medication. Plaintiff has been placed numerious times
20 on suicide watch, and then has been told that they could care less if plaintiff
21 was to die from not eating, because plaintiff will eat if he gets hungry enough.
22 This is the medical attitude when plaintiff can not eat because he can not hold
23 his food down due to his extreme pain. Medical's answer is to deem plaintiff to
24 be on a hunger strike and attempting to commit suicide, due to his refusal to
25 eat until plaintiff is given his pain medication, even though plaintiff has on
26 several occasions informed the that he can not eat and hold his food down.

1 STATEMENT OF FACTS

2 [24] Defendant J. Clark Kelso is, and at all relevant times herein employed
3 by the (CDCR), and was appointed by order of the honorable Judge Thelton E.
4 Henderson, United States District Court, to the receivership and the operation
5 of the (CDCR)'s medical health care delivery system of the States of California's
6 State Prisons. J. Clark Kelso has been aware of plaintiff's serious medical
7 conditions since his receivership due to policy which was implemented by him,
8 that all third level medical appeals must be forwarded to his office.

9 [25] Plaintiff has further wrote J. Clark Kelso personal letters informing
10 him that plaintiff was suffering severe consequences when forced to go without
11 his once prescribed medications, and that plaintiff has been placed in the
12 Institution's (CIC) on several occasions for suicide watch due to his being
13 refused for several days and weeks at a time his once prescribed medications.
14 The three times plaintiff has wrote to the receiver, his letters have went
15 unanswered.

16 [26] Defendant N. Grannis is, Chief Inmate Appeals Branch, and has been
17 aware of plaintiff's serious medical conditions since about December 01, 2006,
18 at which time N. Grannis denied plaintiff's medical appeal. Local Log No. SATF-
19 06-1847, IAB Case No. 0603546. This was one of three appeals that N. Grannis
20 denied at the Director's level of review.

21 [27] Defendant N. Grannis was informed that plaintiff was suffering severe
22 consequences when forced to go without his medications, on three different and
23 separate occasions. Defendant N. Grannis signed all three of plaintiff's appeals,
24 his December 01, 2006 appeal, his December 19, 2006 appeal, Local Log. No. SATF-
25 06-2385, IAB Case No. 0604918, and his April 23, 2008 apeal, Local Log No. SATF-
26 08-00198, IAB Case No. 0722312, which were the third and fine level of review.

[28] The defendant's deliberate indifference for plaintiff's serious medical needs can be inferred by his/her egregious conduct, and by the fact that not less than three times plaintiff has made defendant N. Grannis aware of his pain and suffering. This is clear proof of an actual connection and link between the actions of the defendant and the repeated alleged deprivations that have been suffered by the plaintiff.

[29] Defendant Doctor A. Enenmoh, Chief Medical Officer (CMO) has been aware of plaintiff's serious medical conditions and his continuous pain and suffering since approximately March 05, 2008, at which time A. Enenmoh partially granted his appeal in part. The defendant was informed that plaintiff was suffering severe consequences when forced to go without his medications, on several occasions.

[30] Defendant A. Enenmoh signed plaintiff's appeal dated March 05, 2008. Therefore, this defendant has been aware of plaintiff's pain and suffering for almost a year, and has not taken any action to abate plaintiff's pain and his suffering, or the obvious deliberate indifference to plaintiff's serious medical needs, even though it has been within his inherit power and position of authority to do so.

[31] Defendant K. Lee, Medical Doctor, has been aware of plaintiff's serious medical needs and continuous pain and suffering since about March 05, 2008. This defendant K. Lee was informed that plaintiff was suffering severe consequences when forced to go without his once prescribed medications on several different and separate occasions during scheduled medical appointments, but has refused to take any necessary steps to insure plaintiff's medications are renewed and provided timely. Defendant K. Lee did informed plaintiff that some of his medication was nonformulary pending (CMO) approval, which is saying the State

1 can not afford to provide those medications any longer. K. Lee has informed the
2 plaintiff that his hands were tied due to the (CMO) A. Enenmoh refusing to allow
3 certain medical treatment due to lack of funding.

4 [32] Defendant G. Martinez, Correctional Health Care Services Administrator
5 II (CHCSA) has been aware of plaintiff's pain and suffering and severe continuous
6 consequences when forced to go without his medications, on several different and
7 separate occasions. Defendant G. Martinez has been aware of plaintiff's medical
8 conditions and of his pain and suffering since August 20, 2006.

9 [33] The defendant was informed of plaintiff's pain and suffering and severe
10 pain and consequences when forced to go without his medications in writing, on
11 several different and separate occasions. Defendant G. Martinez signed several
12 of the plaintiff's Inmate/Parolee Appeals. Therefore, this defendant has been
13 aware of plaintiff's pain and suffering for atleast two years, and has taken no
14 action to abate plaintiff's pain and suffering, or the obvious deliberate
15 indifference to plaintiff's serious medical needs, even though it has been in
16 her inherit power and position of authority to do so.

17 [34] Defendant Does 1 through 4, consist of One Registered Nurse (RN); One
18 Head Registered Nurse (HRN); One Pharmacist; and One Head Pharmacist. Defendant
19 Does have been aware of plaintiff's pain and suffering when forced to go without
20 his once prescribed medications. These said defendant Does were informed by the
21 plaintiff in writing, on several different and separate occasions through sick
22 call forms, medication refill forms, and by plaintiff verbally informing two of
23 the Defendant Does. Plaintiff is unable to identify these Does by name and should
24 be able to identify them through the discovery process.

25 [35] Plaintiff has linked each of the defendants' with his Injuries, and can
26 and will support his allegations at the appropriate pleading stage. Plaintiff has

1 alleged that he has suffered a specific injury as a result of specific conduct
2 of the defendants' and has shown an affirmative link between the injuries and
3 the conduct of the defendants'.

4 [36] The plaintiff's specific injuries consist of Rheumatoid Arthritis,
5 Generalized Osteoporosis, disc herniation of his L1-2, and L2-3. Plaintiff's
6 medical conditions have went untreated for extended periods of time causing his
7 medical conditions to [d]eteriorate. When plaintiff is forced to go without his
8 pain medication his pain is crippling and it is a purposeful act and failure to
9 respond to plaintiff's pain and medical needs by these named defendants' which
10 is the cause of plaintiff's severe pain and suffering.

11 [37] The defendants' refuse to even follow their own Operational Procedure
12 (OP)-430. Plaintiff has attached hereto for the Court's convenience a true and
13 correct copy of his Government Claims Form as Exhibit-A. This exhibit has at
14 page two the cited OP-430, which was cited to in support of plaintiff's Inmate/
15 Parolee Appeal. As this honorable Court can see there is not any reason for
16 plaintiff to be forced to go without his once prescribed medications at all.

17 = FIRST CLAIM FOR RELIEF =

18 **A. Deliberate Indifference To Plaintiff's Serious Medical Needs In Violation
19 Of The Eighth And Fourteenth Amendments Of The United States Constitution.**

20 [38] Plaintiff refers to and incorporates by reference herein the alleged
21 allegations of paragraphs 1 through 37, inclusive, as if alleged herein.

22 [39] Plaintiff's medical conditions, as described herein, constitute a
23 serious medical need in that failure to treat the conditions has resulted in
24 further significant injury, and the ongoing failure to treat his medical needs
25 is very likely to cause more serious injury.

26 [40] Plaintiff's said injury has included, but not necessarily been limited

1 to, extreme excruciating pain that is crippling. Plaintiff cannot leave his cell
2 for meals or activities, cannot read his letters from loved one's, or write back
3 to his loved one's, or draw in order to support himself. Plaintiff's pain has had
4 severe consequences that have become crippling when left untreated without any
5 medications, so much so that plaintiff has had to go to this prison's (CTC) for
6 [s]uicide watch. There is no doubt that his medical conditions significantly have
7 affected his daily activities each and everyday.

8 [41] Plaintiff is informed and believes, and thereon alleges, that all of the
9 defendant's have acted intentionally in the manner described above, and with the
10 knowledge of plaintiff's pain and suffering, and with the knowledge that further
11 risk of serious harm could result from their actions and from their refusal to
12 act.

13 [42] Defendant's conduct violates 42 U.S.C. § 1983, because that conduct does
14 constitute deliberate indifference to plaintiff's serious medical needs in the
15 direct violation of his Eighth and Fourteenth Amendment Right to be free from
16 cruel and unusual punishment.

17 [43] As a further proximate result of defendant's conduct, plaintiff is also
18 informed and believes, and thereon alleges, that he will suffer special damages
19 in the future, in the form of medical expenses for treatment of his medical condi-
20 tions, and loss of income.

21 [44] In acting as described herein above, defendant's acted despicably, know-
22 ingly, Willfully, and maliciously, or with the reckless and callous disregard for
23 the plaintiff's federally protected rights, entitling the plaintiff to an award
24 of exemplary and punitive damages.

25 [45] In acting as described herein above, the plaintiff can demonstrate a very
26 strong likelihood of success on the merits, and the possibility of irreparable

1 injury to the plaintiff, entitling plaintiff to preliminary relief.

2 = SECOND CLAIM FOR RELIEF =

3 A. Denying, Delaying, And Intentionally Interfering With Once Prescribed Medical
4 Treatment And Once Prescribed Medications In Violation Of The Eighth And
Fourteenth Amendments Of The United States Constitution.

5 [46] Plaintiff refers to and incorporates by reference herein the alleged
6 allegations of paragraphs 1 through 45, inclusive, as if alleged herein.

7 [47] Plaintiff's medical conditions, as described herein, constitutes a serious
8 medical need in that failure to treat the conditions has resulted in further
9 significant injury, and the ongoing failure to treat his medical needs is very
10 likely to cause more serious injury. The defendants denying, delaying, and their
11 intentionally interfering with plaintiff's once prescribed medications, and
12 treatment, has resulted in further significant injury and servere aggravation of
13 plaintiff's serious medical conditions.

14 [48] Plaintiff's said injury has included, but not necessarily been limited to,
15 extreme excruciating pain that is crippling. Plaintiff cannot leave his cell for
16 meals or activities, cannot read his letters from loved one's, or write back to
17 his loved one's, or draw inorder to support himself. Plaintiff's pain has had
18 severe consequences that have become crippling when left untreated without any
19 medications, so much so that plaintiff has had to go to this prison's (CTC) for
20 [s]uicide watch. There is no doubt that his medical conditions significantly have
21 effected his daily activities each and everyday.

22 [49] Plaintiff is informed and believes, and thereon alleges, that all of the
23 defendants have acted intentionally in the manner described above, and with the
24 knowledge of plaintiff's pain and suffering, and with the knowledge that further
25 risk of serious harm could result from their actions and from their refusal to
26 act.

1 [50] Defendant's conduct violates 42 U.S.C. §.1983, because that conduct does
2 constitute deliberate indifference to plaintiff's serious medical needs in the
3 direct violation of his Eighth and Fourteenth Amendment Right to be free from
4 cruel and unusual punishment.

5 [51] As a further proximate result of defendant's conduct, plaintiff is also
6 informed and believes, and thereon alleges, that he will suffer special damages
7 in the future, in the form of medical expenses for treatment of his medical condi-
8 tions, and loss of income.

9 [52] In acting as described herein above, defendant's acted despicably, knowingly,
10 willfully, maliciously, or with the reckless and callous disregard for the plain-
11 tiff's federally protected rights, entitling the plaintiff to an award of exemplary
12 and punitive damages.

13 [53] In acting as described herein above, the plaintiff can demonstrate a very
14 strong likelihood of success on the merits, and the possibility of irreparable
15 injury to the plaintiff, entitling plaintiff to preliminary relief.

16 = THIRD CLAIM FOR RELIEF =

17 A. Medical Negligence Inadequate Medical Care Failure Of State Employees To
18 Provide Adequate Medical Care Following Accepted Medical Standards, And General
19 Negligence In General Defendants Purposely Ignored Plaintiff's Medical Needs.

20 [54] Plaintiff refers to and incorporates by reference herein the alleged
21 allegations of paragraphs 1 through 53, inclusive, as if alleged herein.

22 [55] Plaintiff's medical conditions, as described herein, constitutes a serious
23 medical need in that failure to treat the conditions has resulted in further
24 significant injury, and the ongoing failure to treat his medical needs is very
25 likely to cause more serious injury. The defendant's denying, delaying, and their
26 intentionally interfering with plaintiff's once prescribed medications, and treat-
ment, has resulted in further significant injury and severe aggravation of the

1 plaintiff's serious medical conditions.

2 [56] Plaintiff's said injury has included, but not necessarily been limited to,
3 extreme excruciating pain that is crippling. Plaintiff cannot leave his cell for
4 meals or activities, cannot read his letters from loved one's, or write back to
5 his loved one's, or draw in order to support himself. Plaintiff's pain has had
6 severe consequences that have become crippling when left untreated without any
7 medications, so much so that plaintiff has had to go to this prison's (CTC) for
8 [s]uicide watch. There is no doubt that his medical conditions significantly have
9 effected his daily activities each and everyday.

10 [57] Plaintiff is informed and believes, and thereon alleges, that the defendant's
11 have acted intentionally in the manner described above, and with knowledge
12 of plaintiff's pain and suffering, and risk of further serious harm that could
13 result from their actions and refusal to act.

14 [58] Defendants exercised negligence to plaintiff's health and safety by their
15 denying, delaying, and intentionally interfering with plaintiff's once prescribed
16 medication, and medical treatment. The defendants owed plaintiff a duty to pro-
17 vide adequate medical care, including but not limited to, medications in a timely
18 manner, rescheduling routine doctor visits for medication renewals, monitoring
19 granted appeals for medical to assure compliance therewith.

20 [59] The breach of duty was the proximate result of plaintiff's pain and suffer-
21 ing, as a further proximate result of defendants conduct, plaintiff has had to
22 suffer, and continues to suffer general damages in the form of severe pain and
23 suffering, and emotional distress. Plaintiff is informed and believes, and there-
24 on alleges, that he will continue to suffer such damages in the future.

25 [60] As a futher proximate result of defendants conduct, plaintiff is informed
26 and believes, and thereon alleges, that he will suffer special damages in the

1 future, in the form of medical expenses for treatment of his conditions, and the
2 loss of income.

3 [61] In acting as described herein above, defendants acted despicably,
4 knowingly, willfully, and maliciously, or with reckless or callous disregard for
5 plaintiff's State protected rights, entitling plaintiff to an award of exemplary
6 and punitive damages.

7 **= PRELIMINARY INJUNCTION =**

8 [62] Under the traditional standard, a preliminary injunction may issue if
9 the court determines that (1) the moving party will suffer irreparable injury if
10 the relief is denied; (2) there is a strong likelihood that the moving party will
11 prevail on the merits at trial; (3) the balance of potential harm favors the
12 moving party; and (4) the public interest favors granting relief. Plaintiff is
13 entitled to preliminary injunctive relief, based on the allegation herein alleged.

14 **= CONCLUSION =**

15 [63] WHEREFORE, plaintiff David Knapp, respectfully prays for judgment
16 against the defendants' as follows:

17 1. Declare that the acts and omissions described herein violated the
18 plaintiff's rights under the United States Constitution and the law of the United
19 States;

20 2. Enter preliminary injunctions ordering defendants' and their
21 successors, agents, employees, and all persons acting in concert with them to
22 protect the plaintiff from further deliberate indifference of his medical needs;

23 3. Enter judgment in favor of plaintiff against each defendant, jointly
24 and severally

25 4. For general damages, according to proof;

26 5. For special damages, according to proof;

1 6. For punitive damages, according to proof;
2 7. For cost of suit; and
3 8. For such other and futher relief as the court may deem just and
4 proper.

5 **= DEMAND FOR JURY TRIAL =**

6 [64] Plaintiff hereby formally demands a jury trial on all issues.

7 **= VERIFICATION =**

8 [65] I have read the foregoing complaint and hereby verify that the matters
9 alleged therein are true, except as to matters alleged on information and my
10 own belief, and as to those matters, I believe them to be true and correct. I
11 hereby certify under the penalty of perjury pursuant to 28 U.S.C. § 1746, that
12 the foregoing is true and correct. Executed on February 10, 2009.

13
14 Signature: _____

15 David Knapp CDC # T-72724

16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID KNAPP

v.

Case Number:

J. Clark Kelso, et. al.

PROOF OF SERVICE

I hereby certify that on February 10, 2009, I served a copy

of the attached First Amended Complaint

by placing a copy in a postage paid envelope addressed to the person(s) hereinafter

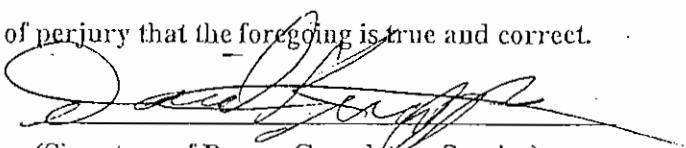
listed, by depositing said envelope in the United States Mail at

Corcoran-(SATF) State Prison

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK
2500 TULARE STREET, SUITE 1501
FRESNO, CALIFORNIA. 93721

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


(Signature of Person Completing Service)

EXHIBIT



GOVERNMENT CLAIMS PROGRAM

400 R Street, 5th Floor • Sacramento, California 95811
 Mailing Address: P.O. Box 3035 • Sacramento, California 95812
 Toll Free Telephone Number 1-800-955-0045 • Fax Number: (916) 491-6443
 Internet: www.vcgb.ca.gov

STATE OF CALIFORNIA
 ARNOLD SCHWARZENEGGER, Governor



David Knapp T72724
 PO Box 5242
 Corcoran, CA 93212

ROSARIO MARIN
 Secretary
 State and Consumer Services Agency
 Chairperson
 JOHN CHIANG
 State Controller
 Board Member
 MICHAEL A. RAMOS
 San Bernardino County District Attorney
 Board Member
 KAREN McGAGIN
 Executive Officer

June 03, 2008

RE: Claim G574100 for David Knapp, T72724

Dear David Knapp,

The Victim Compensation and Government Claims Board (VCGCB) received your claim on March 25, 2008.

Based on its review of your claim, Board staff believes that the court system is the appropriate means for resolution of these claims, because the issues presented are complex and outside the scope of analysis and interpretation typically undertaken by the Board. The claim has been placed on the consent agenda. The VCGCB will act on your claim at the August 21, 2008 hearing. You do not need to appear at this hearing. The VCGCB's rejection of your claim will allow you to initiate litigation should you wish to pursue this matter further.

If you have questions about this matter, please mention letter reference 99 and claim number G574100 when you call or write your claim technician/analyst at (800) 955-0045.

Sincerely,

Government Claims Program
 Victim Compensation and Government Claims Board

cc: B-23 Corrections and Rehabilitation, Attn: Donna Corbin

Ltr 99 Complex Issue Reject



STATE OF CALIFORNIA
ARNOLD SCHWARZENEGGER, Governor

GOVERNMENT CLAIMS PROGRAM
400 R Street, 5th Floor • Sacramento, California 95811
Mailing Address: P.O. Box 3035 • Sacramento, California 95812
Toll Free Telephone Number 1-800-955-0045 • Fax Number: (916) 491-6443
Internet: www.vcgb.ca.gov

ROSARIO MARIN
Secretary
State and Consumer Services Agency
Chairperson

JOHN CHIANG
State Controller
Board Member

MICHAEL A. RAMOS
San Bernardino County District Attorney
Board Member

KAREN McGAGIN
Executive Officer

David Knapp T72724
PO Box 5242
Corcoran, CA 93212

March 27, 2008

RE: Claim G574100 for David Knapp, T72724

Dear David Knapp,

Board staff reviewed the claim information and determined it is incomplete.

Please provide the following information:

Please provide the \$25 filing fee by check or money order made payable to the State of California. Please write your claim number on the check and envelope and send it in the enclosed envelope. If you are unable to pay the filing fee, you may ask for a "Filing Fee Waiver Request".

In order to complete the processing of your claim, please provide a certified copy of your Trust Fund Account as requested on line five of the Waiver request form.

IMPORTANT NOTICE:

In order for tort claims to be considered complete, the above referenced questions must be answered in writing within six months of the original date of incident (see Government Code Section 901 and 911.2). If you respond later than six months, but prior to one year from the original date of incident, you must apply without delay for leave to present a late claim (Government Code Sections 911.2 through 911.4, inclusive, 946.6). The Board has no jurisdiction over tort claims presented more than one year from the original date of incident.

Please return your written response and a copy of this notice to the VCGCB and indicate claim number G574100 on all correspondence. We must receive a written response to this notice before we can process your claim further.

If you have questions about this matter, please mention letter reference 98 and claim number G574100 when you call or write your claim technician/analyst at (800) 955-0045.

Sincerely,

Government Claims Program
Victim Compensation and Government Claims Board

Ltr 98 Incomplete Claim

Government Claims Form
California Victim Compensation and Government Claims Board
P.O. Box 3035
Sacramento, CA 95812-3035

1-800-955-0045 • www.governmentclaims.ca.gov

State of California

For Office Use Only
Claim No.:

Is your claim complete?

- New!** Include a check or money order for \$25 payable to the State of California.
- Complete all sections relating to this claim and sign the form. Please print or type all information.
- Attach receipts, bills, estimates or other documents that back up your claim.
- Include two copies of this form and all the attached documents with the original.

Claimant Information

1	KNAPP	DAVID	2	Tel: <input type="text"/> <input type="text"/>
	Last name	First Name	MI	3 Email: <input type="text"/>
4	P.O. BOX. 5242 Prison # T-72724		CORCORAN	CAL. 93212
	Mailing Address	City	State	Zip
5	Best time and way to reach you:			
6	Is the claimant under 18?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If YES, give date of birth: 8 20 1966
		MM	DD	YYYY

Attorney or Representative Information

7	<input type="text"/>	8	Tel: <input type="text"/> <input type="text"/>
	Last name	First Name	MI 9 Email: <input type="text"/>
10	<input type="text"/>	City	State Zip
11	Relationship to claimant:		

Claim Information

12	Is your claim for a stale-dated warrant (uncashed check) or unredeemed bond? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
	State agency that issued the warrant. If NO, continue to Step 13		
	Dollar amount of warrant:	Date of issue:	<input type="text"/> <input type="text"/> <input type="text"/>
	Proceed to Step 12	MM	DD
13	Date of Incident: October 15, 2007		
	Was the incident more than six months ago?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	If YES, did you attach a separate sheet with an explanation for the late filing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
14	State agencies or employees against whom this claim is filed: N. GRANNIS, Chief Inmate Appeals; G. MARTINEZ, Health Services Administrator II; and DOES 1 THROUGH 6, Inclusive.		

15	Dollar amount of claim: To be determined by a Jury.		
	If the amount is more than \$10,000, indicate the type of civil case.	<input type="checkbox"/> Limited civil case (\$25,000 or less)	<input type="checkbox"/> Non-limited civil case (over \$25,000)
	Explain how you calculated the amount:		
	Compensatory; Exemplary Damages; Nominal Damages; Mental Anguish; and Punitive.		

16	Location of the incident:	California Substance Abuse Treatment Facility Corcoran State Prison		
17	Describe the specific damage or injury:	See Attached Inmate/Parolee Appeal.		
18	Explain the circumstances that led to the damage or injury:	Prison officials denying, delaying and intentionally interfering with medical treatment.		
19	Explain why you believe the state is responsible for the damage or injury:	Deliberate Indifference to plaintiff's serious medical needs, Recklessness for plaintiff's health and safety.		
20	Does the claim involve a state vehicle?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
	If YES, provide the vehicle license number, if known:			

Auto Insurance Information

21	Name of Insurance Carrier			
	Mailing Address	City	State	Zip
	Policy Number:	Tel:		
	Are you the registered owner of the vehicle?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	If NO, state name of owner:			
	Has a claim been filed with your insurance carrier, or will it be filed?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	Have you received any payment for this damage or injury?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
	If yes, what amount did you receive?			
	Amount of deductible, if any:			
	Claimant's Drivers License Number:	Vehicle License Number:		
	Make of Vehicle:	Model:	Year:	
	Vehicle ID Number:			

Notice and Signature

22	I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to \$10,000 (Penal Code section 72).
	March 22, 2008

23	Signature of Claimant or Representative	Date
	Mail the original and two copies of this form and all attachments with the \$25 filing fee or the "Filing Fee Waiver Request" to: Government Claims Program, P.O. Box 3035, Sacramento, CA, 95812-3035. Forms can also be delivered to the Victim Compensation and Government Claims Board, 630 K Street, Sacramento.	

24	For State Agency Use Only	
	Name of State Agency	Fund or Budget Act Appropriation No.
	Name of Agency Budget Officer or Representative	Title
	Signature	Date

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

Location: Institution/Parole Region

Top/Middle

Category

1. _____ 1. _____

2. _____ 2. _____

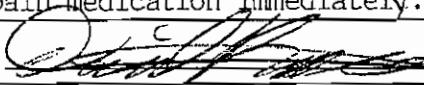
You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate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

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
KNAPP	T-72724	VOCATION	E2-202 low

A. Describe Problem: Appellant has been refused once prescribed pain medication for the treatment of Rheumatoid Arthritis, Generalized Osteoporosis, and for disc herniation L1-2, and L2-3. Appellant is in extreme excruciating pain and has repeatedly requested to be seen by a qualified physician. Appellant's medical condition has been on going since July 27, 2004, and appellant has had repeated problems with receiving his medications. The systematic problems are due to either the pharmacy not refilling medications, the (RN-Nurses) not sending some refill request to the pharmacy, or not being timely sceduled in a timely manner to see a physician to renew expired medications. "Continued on Attachment"

If you need more space, attach one additional sheet.

B. Action Requested: 1) To recieve once prescribed pain medication in a timely manner. 2) For steps to be taken to correct the systemic problemes with the pharmacy. 3) To be promptly sceduled to see a physician before medications expire when a timely request is made. 4) To be provided once prescribed pain medication immediately. 5) To process this appeal as an emergency medical.

Inmate/Parolee Signature: 

Date Submitted: October 15, 2007

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL

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

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed

Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: _____

--

First Level Granted P. Granted Denied Other _____

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

Interviewed by: _____

Staff Signature: _____ Title: _____ Date Completed: _____

Division Head Approved: _____ Returned _____

Signature: _____ Title: _____ Date to Inmate: _____

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

Signature: _____ Date Submitted: _____

Second Level Granted P. Granted Denied Other _____

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: _____ Due Date: _____

See Attached Letter

Signature: _____ Date Completed: _____

Warden/Superintendent Signature: _____ Date Returned to Inmate: _____

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

Signature: _____ Date Submitted: _____

For the Director's Review, submit all documents to: Director of Corrections

P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

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

See Attached Letter

Date: _____

= DESCRIBE PROBLEM CONTINUED ==

Appellant is being forced to suffer extreme pain due to his being refused renewal of his once prescribed pain medication, and his being denied access to be seen by a physician in order to have his pain medication renewed. Appellant can not stand the pain that he is being forced to suffer.

= MEMORANDUM OF POINTS AND AUTHORITIES =

Penal Code section 2650. Protection of person of prisoner; unauthorized injury; punishment, states: The person of a prisoner sentenced to imprisonment in the State prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not convicted or sentenced.

Penal Code section 2652. Cruel, corporal or unusual punishments; treatment injurious to health; prohibited devices; offense, states: It shall be unlawful to use in the prisons, any cruel, corporal or unusual punishment or to inflict any treatment or allow any lack of care whatever which would injure or impair the health of the prisoner, inmate or person confined; and punishment by the use of strait-jacket, gag, thumb-screw, shower-bath or tricing up of prisoners, inmates or persons confined is hereby prohibited.

Penal Code section 2653. Order by physician requiring particular medical treatment; modification or cancellation; violation, states in part: If a physician employed by the Department of Corrections or the Department of the Youth Authority certifies in writing that a particular medical treatment is required to prevent a violation of section 147, 673, 2650, or 2652, or is required to prevent serious and imminent harm to health of a prisoner, the order for that particular medical treatment may not be modified or canceled by any employee of the department without the approval of the chief medical officer of the institution or the physician in attendance.

Rosado v. Alameida, 349 F.Supp.2d 1340, 1346 (S.D. Cal. 2004) (California law requires (CDCR) to provide inmates with medically necessary health care services, defined as those "that are determined by the attending physician to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome data as being effective medical care. 15 CCR § 3350(a)(b)(3)).

Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) Under 42 U.S.C. § 1983, to maintain an Eighth Amendment claim based on prison medical treatment, an inmate must

show "deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285 (1976). In the Ninth Circuit, the test for deliberate indifference consists of two parts. McGucken v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the plaintiff must show a "serious medical need" by demonstrating that "failure to treat a prisoner's condition could result in further significant injury or the 'unnecessary and wanton infliction of pain.'" Id. at 1059 (citing Estelle, 429 U.S. at 104, 97 S.Ct. 285). Second, the plaintiff must show the defendant's response to the need was deliberately indifference. Id. at 1060. This second prong--defendant's response to the need was deliberately indifferent--is satisfied by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference. Id. Indifference may appear when prison officials deny, delay, or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care." Id. at 1059 (quoting Hutchinson v. United States, 838 F.2d 390, 392 (9th Cir. 1988)).

Furthermore, the Operational Procedure (OP) 430, Medication Management at page 11, 13. Medication Renewals a. On a weekly basis, the pharmacy will provide to the PCP-Primary Care Provider, a list on non-psychotropic medications that will expire the following week. The PCP is responsible for ensuring medication continuity. b. If an order for a medication for an ongoing condition has expired, the RN/MTA/LPT shall obtain a telephone order for a fourteen (14) day continuation of medication from the PCP or psychiatrist. During the fourteen (14) day extention period, staff shall schedule the inmate-patient to see PCP or psychiatrist for renewal of the medication.

The medical staff are not following the OP-430; or the laws, and appellant is being forced to suffer extreme pain due to the medical personnel's refusal to obey the rules and regulation and laws governing prisoner treatment. Furthermore, if this appeal is not processed as an "emergency medical appeal" it will be more than evident that this Institutions appeals coordinators, chief medical officer, and warden are deliberately indifferent to serious medical needs of prisoners. The chief medical officer, and warden are liable for its failure to develop and to implement necessary policies, and for failure to adequately train its medical staff.

Appellant is further forwarding a letter to the chief medical officer(CMO), and to the warden, with a copy of this appeal. This will thereby made them directly responsible for appellant's continued pain and suffering.

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: APR 23 2008

In re: David Knapp, T72724
California Substance Abuse Treatment Facility and
State Prison at Corcoran
P.O. Box 7100
Corcoran, CA 93212-7100

IAB Case No.: 0722312 Local Log No.: SATF-08-00198

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner K. J. Allen. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that he has arthritis and osteoporosis and the medication he has been prescribed by staff at the California Substance Abuse Treatment Facility (SATF) does not work. The appellant states that staff changed his medication, and the new medication is not relieving his pain. The appellant states that he is in consistent pain. He requests on appeal that he be provided his old medication or be provided with a medication that controls his pain. The appellant also requests that his physical therapy be started as soon as possible.

II SECOND LEVEL'S DECISION: The reviewer found that a completed review of the appeal and the appellant's Unit Health Record was conducted. The appellant was examined by Dr. Lee on January 23, 2008. Based upon this examination, the patient consultation, and the appellant's medical history, Dr. Lee ordered prescribed medication that included: Indomethacin 25mg; Gabentin 600mg; Fosamax 70mg; Micardis 40mg; and Calcium Carbonate 500mg. The doctor found no medical necessity to order physical therapy as a treatment option for the appellant's medical condition. Therefore, the appeal was granted in part at the Second Level of Review.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The appellant's claim that he has not been provided with appropriate medical care by staff at the SATF is not supported by the information contained within the appeal. Doctors found no indication that the appellant's request for physical therapy was medically necessary or that he was being denied proper medical care. The appellant was prescribed the medication by his primary care physician (PCP) to provide him the best possible relief of his pain. The appellant is encouraged to submit a CDC Form 7362, Health Care Services Request, to speak with his PCP if he desires additional medical care or medication(s).

The Department only provides medical services for inmates that are based on medical necessity and supported by outcome data. The departmental appeals process does not allow inmates to self-diagnose their own medical condition and then expect a medical doctor to implement the inmate's recommendation for a course of treatment. The information in the appeal indicates that staff are treating the appellant's condition and are continuing to monitor his progress.

The appellant has failed to provide any evidence that staff failed to provide him with necessary medical care, nor has he provided any compelling information that would warrant a modification to the decision reached by medical staff at the institution. Relief at the Director's Level of Review is unwarranted.

B. BASIS FOR THE DECISION:

Armstrong Remedial Plan: ARPI, ARPII.A

California Code of Regulations, Title 15, Section: 3085, 3350, 3352, 3354

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

DAVID KNAPP, T72724

CASE NO. 0722312

PAGE 2

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



W.A.
GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, SATF
Health Care Manager, SATF
Appeals Coordinator, SATF
Medical Appeals Analyst, SATF

STATE OF CALIFORNIA

**REASONABLE MODIFICATION OR
ACCOMMODATION REQUEST
CDC 1824 (1/95)**

INSTITUTION/PAROLE REGION:	LOG NUMBER:	CATEGORY:
SATF M	08 OCT 98	18. ADA

NOTE: THIS FORM IS TO BE USED ONLY BY INMATES/PAROLEES WITH DISABILITIES*In processing this request, it will be verified that the inmate/parolee has a disability which is covered under the Americans With Disabilities Act.*

NOR

E-2-24-L

INMATE/PAROLEE'S NAME (PRINT)	CDC NUMBER	ASSIGNMENT	HOURS/WATCH	HOUSING
KNAPP, D.	T-72724			E-2-202

In accordance with the provisions of the Americans With Disabilities Act (ADA), no qualified individuals with a disability shall, on the basis of disability, be excluded from participation in, or be denied the benefits of the services, activities, or programs of a public entity, or be subjected to discrimination.

You may use this form to request specific reasonable modification or accommodation which, if granted, would enable you to participate in a service, activity or program offered by the Department/institution/facility, for which you are otherwise qualified/eligible to participate.

Submit this completed form to the Institution or facility's Appeals Coordinator's Office. A decision will be rendered within 15 working days of receipt at the Appeals Coordinator's Office and the completed form will be returned to you.

If you do not agree with the decision on this form, you may pursue further review. The decision rendered on this form constitutes a decision at the FIRST LEVEL of review.

To proceed to SECOND LEVEL, attach this form to an Inmate/Parolee Appeal Form (CDC 602) and complete section "F" of the appeal form.

Submit the appeal with attachment to the Appeals Coordinator's Office within 15 days of your receipt of the decision rendered on this request form.

If you are not satisfied with the SECOND LEVEL review decision, you may request THIRD LEVEL review as instructed on the CDC 602.

MODIFICATION OR ACCOMMODATION REQUESTED

DESCRIPTION OF DISABILITY:

ARTHRITIS AND OSTEOPOROSIS CONDITIONS.

WHAT VERIFICATION DO YOU HAVE OF YOUR DISABILITY?

CSATF PHYSICIAN

AND MY MEDICAL FILE.

RECEIVED

JAN 11 2008

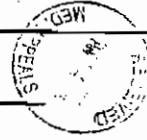
DR. C. ADDO

DESCRIBE THE PROBLEM: THE MEDICATION I'M CURRENTLY RECEIVING DOES NOT WORK, AND I WAS TAKEN OFF THE MEDICATION THAT HELPED. ALSO I'M NOT GETTING ANY PHYSICAL THERAPY I WAS PRESCRIBED. I AM IN PAIN AND WAS SUICIDAL WHEN THEY TOOK ME OFF OF THE TRAMADOL. I TOLD THE PHYSIATRIST WHEN I WAS LAST SEEN WHAT SPECIFIC MODIFICATION OR ACCOMMODATION IS REQUESTED?

TO EITHER BE GIVEN

THE MEDICATION I WAS ON BEFORE OR SOMETHING THAT WORKS. ALSO TO HAVE MY PHYSICAL THERAPY STARTED AS SOON AS POSSIBLE

INMATE/PAROLEE'S SIGNATURE

1-9-08
DATE SIGNED

REASONABLE MODIFICATION OR ACCOMMODATION REQUEST
CDC 1824 (1/95)

REVIEWER'S ACTION

1/11/08
2/4/08

TYPE OF ADA ISSUE

DATE ASSIGNED TO REVIEWER:

DATE DUE:

 PROGRAM, SERVICE, OR ACTIVITY ACCESS (Not requiring structural modification)

Auxiliary Aid or Device Requested

Other MEDICATION, DISAGREEMENT WITH TREATMENT, REFERRAL ISSUES.

 PHYSICAL ACCESS (requiring structural modification)

DISCUSSION OF FINDINGS:

SEE ATTACHED.

01-23-08

DATE INMATE/PAROLEE WAS INTERVIEWED

K. LEE, MD

PERSON WHO CONDUCTED INTERVIEW

DISPOSITION

GRANTED

DENIED

PARTIALLY GRANTED

BASIS OF DECISION:

SEE ATTACHED.

NOTE: If disposition is based upon information provided by other staff or other resources, specify the resource and the information provided. If the request is granted, specify the process by which the modification or accommodation will be provided, with time frames if appropriate.

DISPOSITION RENDERED BY: (NAME)

G. MILLER, HCAC

TITLE HEALTH CARE

APPEALS COORDINATOR

INSTITUTION/FACILITY

CSATF

APPROVAL

ASSOCIATE WARDEN'S SIGNATURE

J. M. Miller, CHSAC

DATE SIGNED

1/30/08

DATE RETURNED TO INMATE/PAROLEE'S

1/11/2008 9:00 AM

STATE OF CALIFORNIA

**INMATE/PAROLEE
APPEAL FORM**

CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

DEPARTMENT OF CORRECTIONS

Category

Attachment
to 08-198

1. _____

1. _____

2. _____

2. _____

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

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Knapp	T-72724		E2-202

A. Describe Problem:

Revolving door stated 1-A-00

If you need more space, attach one additional sheet.

B. Action Requested:

Revolving door

Inmate/Parolee Signature:

Date Submitted:

C. INFORMAL LEVEL (Date Received: _____)

Staff Response:

BYPASS

Staff Signature:

Date Returned to Inmate:

D. FORMAL LEVEL

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

BYPASS

Signature: _____ Date Submitted: _____

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

CDC Appeal Number:

--

First Level Granted P. Granted Denied Other _____

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

Interviewed by: _____

Staff Signature: _____

Title: _____ Date completed: _____

Division Head Approved: _____

Returned: _____

Signature: _____

Title: _____ Date to inmate: _____

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

Appellant is dissatisfied for the following reasons: First, every time there is a different treating physician, appellant's once prescribed medications are changed, or when a different Chief Medical Officer (CMO) takes over, Second, appellant's medical conditions are permittive, and will only worsen over time. Third, appellant needs PT.

Signature: _____

Date submitted: February 15, 2008

Second Level Granted P. Granted Denied Other _____

STATE APPEALS

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: _____

Feb 16 2008

Due Date: _____

See Attached Letter

Signature: _____

Date completed: _____

Warden/Superintendent Signature: _____

Date Returned to Inmate: Mar 07 2008

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

AS THE ORIGNAL ISSUE STATES - I WAS TAKEN OFF MEDICATION THAT WORKED, 2ND IT WAS REPLACED BY MEDICATION THAT DOES NOT WORK. ITS THAT SIMPLE. THE ISSUE IS THAT THE INSTITUTION MADE A POLICY DECISION TO REMOVE PARTICULAR MEDICATIONS FROM INMATES - THAT ISN'T MEDICINE BECAUSE IF YOU TAKE AWAY A MEDICATION SAY A POLICY DECISION AND THAT MEDICATION WAS WORKING - THEN WOULDNT THE POLICY BE CANCELING THIS INMATE. AND WHY? WHY MUST I SUFFER BECAUSE THE INSTITUTION HAS ITS DOCTORS PRESCRIBE REPLACEMENT MEDICATIONS. WHEN IN FACT THE MEDICATION I WAS PREVIOUSLY USING WORKED. HOW IM MISERABLE! PLEASE FIX THIS. SO WHERE I GET A MEDICATION THAT WORKS FOR ME. THANKYOU

Signature: _____

Date Submitted: _____

For the Director's Review, Submit all documents to: Director of Corrections

P.O. Box 942883

Sacramento, CA 94283-0001

Attn: Chief-Inmate Appeals

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

See Attached Letter

Date: _____

STATE APPEALS

NOTE: SEND COPY OF PHARMACY ORDER FOR MEDICATION TO PHARMACY AFTER EACH ORDER IS SIGNED.

Order Date	Time	Problem #	Physician's Order and Medication (Orders must be dated, timed, and signed.)
1/23/08			Indomethacin 25 mg. t po tid prn x today. gabapentin 600 mg t po tid x 90 day Dr. Neumann.
1/23	NOON		Calcium Carb 500 mg t po tid x 90 day 1/23/08 miocard 80 mg 1 Day x 90 day Received 2/1/08
1/23			Fosamax 70 mg po q week. x 90 day. Received 2/1/08 flu. 3 month.
			dated 1/23/08 opinions
			COPY
			be firm HAD T FAP

ALLERGIES: RVRVA INSTITUTION C.S.A.T.C ROOMING E 21202

u8

Confidential client information See W & I Code, Sections 4514 and 5328

CDC NUMBER, NAME (LAST, FIRST, MI)

Kraff, David T72724 8-26-68

PHYSICIAN'S ORDERS

DIVISION OF ADULT INSTITUTIONS

California Substance Abuse Treatment Facility and State Prison at Corcoran
900 Quebec Ave.
P.O. Box 7100
Corcoran, CA 93212



Date: March 5, 2008

To: KNAPP, T72724
California Substance Abuse Treatment Facility and
State Prison at Corcoran

Subject: SECOND LEVEL APPEAL RESPONSE
LOG NO.: SATF-M-08-00198

ISSUE:

It is the appellant's position that the medication he is currently receiving does not work and he was taken off the medication that worked. The appellant states that he is not getting any physical therapy that he was prescribed. The appellant states that he is in pain and was suicidal when they took him off Tramadol. The appellant states that he told the physical therapist the last time he was seen.

At the First Level Review the appellant is requesting to be given the medication he was on before or something that works and to have his physical therapy start as soon as possible.

At the Second Level Review the appellants states that he is dissatisfied. The appellant states that every time there is a different treating physician his once prescribed medications are changed or when a different CMO takes over. The appellant states his medical conditions are permanent and will only worsen over time. The appellant states that he needs physical therapy.

INTERVIEWED BY:

Dr. K. Lee interviewed the appellant on January 23, 2008 regarding these appeal issues.

REGULATIONS:

The rules governing this issue are taken from the California Code of Regulations (CCR) Title 15, and the Department Operations Manual (DOM).

The CCR Title 15, Section 3350 (a) Provision of Medical Care and Definitions states "The department shall only provide medical services for inmates, which are based on medical necessity and supported by outcome data as effective medical care. In the absence of available outcome data for a specific case, treatment will be based on the judgment of the physician that the treatment is considered effective for the purpose intended and is supported by diagnostic information and consultations with appropriate specialists. Treatments for conditions which might otherwise be excluded may be allowed pursuant to section 3350.1(d)."

KNAPP, T72724
CASE NO. M-08-00198
PAGE 2

The CCR Title 15, Section 3350 (b) For the purposes of this article, the following definitions apply: (1) Medically Necessary means health care services that are determined by the attending physician to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome data as being effective medical care.

The CCR Title 15, Section 3354 Health Care Responsibilities and Limitations states "Authorized Staff. Only facility-employed health care staff, contractors paid to perform health services for the facility, or persons employed as health care consultants shall be permitted, within the scope of their licensure, to diagnose illness or, prescribe medication and health care treatment for inmates. No other personnel or inmates may do so.

SUMMARY:

At the Second Level a comprehensive review of the appellant's Unit Health Record (UHR), First Level Appeal Response, along with the pertinent departmental policies/procedures was completed.

Documentation in the UHR reveals that Dr. Lee examined the appellant and reviewed the UHR on January 23, 2008. Based on that exam, patient consultation and history, the doctor ordered prescription medications including Indomethacin (Indocin) 25 mg, Gabapentin (Neurontin) 600 mg, Fosamax (Alendronate Sodium) 70 mg, Micardis 40 mg, and Calcium Carbonate 500 mg, (see attached copy of Physicians order). However, the doctor found no medical necessity to order Physical Therapy (PT) as treatment for the appellant's current health condition. Subsequently the appellant's prescription for Indomethacin was changed to Salsalate for pain.

Contact was made with the pharmacy and it was verified that the appellant is currently receiving the Gabapentin and the Salsalate.

As the appellant has not provided any additional information that indicates that his medical condition has changed or provided any information that was not available to the doctor at the time of the examination of the appellant and review of the UHR on January 23, 2008, the decision rendered at the First Level of Review is upheld.

DECISION:

The appeal is PARTIALLY GRANTED at the Second Level of Review.

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

A. ENENMOSHO MD
Chief Medical Officer (Acting)



DATE: March 5, 2008

CSATF APPEALS
MAR 07 2008

DIVISION OF ADULT INSTITUTIONS

California Substance Abuse Treatment Facility and State Prison at Corcoran
900 Quebec Ave.
P.O. Box 7100
Corcoran, CA 93212



Date: January 29, 2008

KNAPP, D., CDCR #T72724
California Substance Abuse Treatment
Facility and State Prison at Corcoran
P. O. Box 7100
Corcoran, CA 93212

First Level Response
Log # SATF-M-08-00198

ISSUE:

In the section of the CDCR 1824 Reasonable Modification or Accommodation Request Form entitled "Describe the Problem", the appellant states he is dissatisfied with prescription medication he is receiving to treat his medical condition. Additionally, he states he is not receiving physical therapy (PT).

In the section of the CDCR 1824 Reasonable Modification or Accommodation Request Form entitled "What Specific Modification or Accommodation is Requested", the appellant wants medication that works, and to begin PT.

INTERVIEWED BY:

The appellant was interviewed and evaluated regarding the health care complaints raised in this appeal at the First Level of Review by K. Lee, MD in the Facility E medical clinic on January 23, 2008.

REGULATIONS:

The rules governing this issue are taken from the California Code of Regulations (CCR) Title 15, and the Department Operations Manual (DOM).

The CCR Title 15, Section 3350(a) Provision of Medical Care and Definitions states "The Department shall only provide medical services for inmates which are based on medical necessity and supported by outcome data as effective medical care. In the absence of available outcome data for a specific case, treatment will be based on the judgment of the physician that the treatment is considered effective for the purpose intended and is supported by diagnostic information and consultations with appropriate specialists. Treatments for conditions which might otherwise be excluded may be allowed pursuant to section 3350.1(d)."

The CCR Title 15, Section 3354 states, "Authorized Staff. Only facility-employed health care staff, contractors paid to perform health services for the facility or persons employed as health care consultants shall be permitted, within the scope of their licensure, to diagnose illness or prescribe medication and health care treatment for inmates. No other personnel or inmates may do so".

KNAPP, D., CDCR #T72724
APPEAL LOG #SATF-M-08-00198
JANUARY 29, 2008
PAGE 2

Neither the appeals process nor the CCR Title 15 allows inmates to demand a particular medication, diagnostic study, or plan for treatment. Only health care professionals are allowed to make these decisions at CSATF/SP, Corcoran.

Neither the appeals process nor the CCR Title 15 allows inmates to self-diagnose their own medical condition and then expect a medical doctor to implement the inmate's recommendation for a course of treatment.

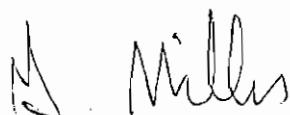
SUMMARY: *TRY NEW MEDS AND MAKE PT REQUEST*
SUBMITTING THIS TO FLR
SEEING DOCTOR

Documentation in the Unit Health Record (UHR) reveals Dr. Lee examined the appellant and reviewed the UHR on January 23, 2008. Based on exam, patient consultation, and history, Dr. Lee ordered prescription medications including Indomethacin (Indocin) 25 mg., Gabapentin (Neurontin) 600 mg., Fosamax (Alendronate sodium) 70 mg., Micardis 40 mg., and Calcium carbonate 500 mg., (see copy Physician's Orders attached). However, the Primary Care Physician (PCP) found no medical necessity to order physical therapy (PT) as treatment for the appellant's current health condition.

DECISION:

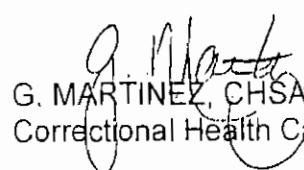
This appeal is **PARTIALLY GRANTED**. The appellant's medication request is granted. His request for PT is denied at the First Level of Review (FLR).

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



G. MILLER, HCAC
Health Care Appeals Coordinator

Date: January 29, 2008


G. MARTINEZ, CHSA II
Correctional Health Care Administrator II

Date: 1/30/08

Attachment

CSATF APPEALS
JAN 31 2008