

**FILED**

AUG 17 2009

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY [Signature]  
DEPUTY CLERK

*Copy*

1 CHRISTOPHER J. MARTINEZ  
2 # J. 14422  
3 SALINAS VALLEY STATE PRISON  
4 P.O. BOX 1050  
5 SOLEDAD, CA. 93960

7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA..

**LODGED**

11 CHRISTOPHER J. MARTINEZ	JUN 16 2009	No: CV 1-08-875-NVW
12 PLAINTIFF,	CLERK, U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA	FIRST AMENDMENT TO
13	BY <u>[Signature]</u> DEPUTY CLERK	COMPLAINT.. (ADDITION
14 CORRECTIONAL OFFICER A. SMITH, ET AL.		OF DEFENDANTS)..
15 DEFENDANTS.		42 U.S.C. 31983

(PC) Martinez, v. Smith, et al.

Doc. 20 Att. 2

17 TO: THE HONORABLE NEIL V. WAKE, UNITED STATES  
18 DISTRICT JUDGE ..

21 THIS SERVES AS THE FIRST AMENDMENT TO PLAINTIFF'S  
22 COMPLAINT TO WHICH ANOTHER DEFENDANT HAS BEEN ADDED IN  
23 LIGHT OF YOUR ORDER DATED: JANUARY 15<sup>TH</sup>, 2009 ..

24 IN THAT ORDER; MEDICAL STAFF WAS DISMISSED WITHOUT  
25 PREJUDICE, AS A CAUSE OF ACTION AGAINST A SPECIFIC MEMBER  
26 OF C.C.I. MEDICAL STAFF WAS NOT SUFFICIENTLY CLAIMED WITHIN  
27 INITIAL COMPLAINT. PAGE 3-B NAMES THE ADDITIONAL DEFENDANT,  
28 & OUTLINES THEIR CONDUCT IN RELATION TO PLAINTIFF'S COMPLAINT.

*[Handwritten mark]*

Plaintiff's Name CHRISTOPHER J. MARTINEZ  
Inmate No. # J-14422  
Address SALINAS VALLEY STATE PRISON  
PO BOX 1050  
SOLEDAD, CA. 95060

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

CHRISTOPHER J. MARTINEZ

(Name of Plaintiff)

(Case Number)

vs.

COMPLAINT

Civil Rights Act, 42 U.S.C. § 1983

R.A. SMITH - BADGE # 57648  
J. ALVARADO - BADGE # 67051  
G.M. GOULD - BADGE # 37118  
J. EDWIN - BADGE # 72615  
M.T.A. M. BURNEL - BADGE # 52142  
C.C.T. - MEDICAL STAFF

(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

B. If your answer to A is yes, how many? N/A  
Describe previous or pending lawsuits in the space below.  
(If more than one, use back of paper to continue outlining all lawsuits.)

I. 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 " 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.) "

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 N/A  
"  
"  
"  
"

C. Is the process completed?

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

SECOND LEVEL REVIEW - PARTIALLY GRANTED - IN THAT AN INQUIRY INTO PLAINTIFFS COMPLAINTS WERE CONDUCTED? DIRECTOR LEVEL REVIEW - DENIED - STATING SECOND LEVEL REVIEW WAS SUFFICIENT? PLEASE SEE ATTACHED DOCUMENTS...

No  If your answer is no, explain why not.

N/A  
"  
"  
"  
"  
"

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 Officer A. Smith - Badge #57649 is employed as A Correctional Officer at The California Correctional Institution.

- B. Additional defendants <sup>2.</sup> % J. ALVARADO - BADGE # 67051 CORRECTIONAL OFFICER AT C.C.I.
- <sup>3.</sup> % M. GOULD - BADGE # 31118, CORRECTIONAL OFFICER AT C.C.I.
- <sup>4.</sup> % J. SANN - BADGE # 72615 CORRECTIONAL OFFICER AT C.C.I.
- <sup>5.</sup> % M. KURRER - BADGE # 52192 MEDICAL TECHNICAL ASSISTANT AT C.C.I. AT TIME OF INCIDENT
- <sup>6.</sup> MEDICAL STAFF AT C.C.I. FACILITY 4-A & FACILITY 4-B.

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.)

On 4/9/07 at approximately 9:20am, my living quarters (Facility 4A-3B #107 occupied by Plaintiff & Inmate B. Rodgers C.D.C. # V.09501) was approached by 3 Correctional Officers while numerous others maintained positions throughout the dayroom area. We were instructed to "strip down" to our "boxers & underwear" & then submit to restraints (hand-cuffs). After complying with staff's request, Inmate Rodgers submitted first allowing restraints to be placed on his wrists by staff utilizing the "food port" on the cell door. After which, Inmate Rodgers stepped towards the back of the cell awaiting for me to do as he'd done. As I approached the food port, I held up my "right arm" pointing to my wrist & stated to staff: "I have a broken hole in my wrist, so take that into consideration when you apply the restraints". (Note: My support wrap/brace wasn't being utilized at the

— See Attachments —

V. Relief.

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

I am seeking both compensatory damages as well as punitive damages for negligence, assault & battery, physical, emotional & mental injuries based on prison officials malicious & sadistic use of force (unreasonable, cruel & unusual punishment), causing severe physical pain & suffering, & deliberate indifference for the denial of medical treatment, as well as psychological anguish! In violation of the Eighth Amendment protected by the United States Constitution!! → Compensatory Damages totaling: \$250,000.00 (50,000.00 x 5) Punitive Damages totaling: \$500,000.00! Total Damages: \$750,000.00...

— See Attachment —

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

Date 4/11/08

Signature of Plaintiff

B. Additional defendants <sup>①</sup> HAROLD TATE M.D. (CHIEF MEDICAL OFFICER)  
C.C.I. MEDICAL STAFF... <sup>②</sup> J. McCONNELL F.N.P.-C., C.C.I.  
MEDICAL STAFF

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.)

IN RELATION TO MEDICAL STAFF & THEIR INVOLVEMENT  
PERTAINING TO THIS COMPLAINT.. BEGINNING ON THE MORNING OF 4.10.07  
PLAINTIFF SUBMITTED MUCH MORE THAN SEVERAL REQUESTS TO SEE THE  
DOCTOR REGARDING MY WIFE & THE CONSTANT & CONTINUOUS PAIN WHICH  
PLAINTIFF WAS SUFFERING FROM. PLAINTIFF DID NOT SEE ANY MEDICAL  
STAFF UNTIL 5.10.07 DESPITE THESE REQUESTS; AS WELL AS PLEAS TO M.I.A.'s  
& MEDICAL HEALTH WORKERS. THE HEALTH CARE SERVICES REQUEST FORM  
"7362" LISTS THE CATEGORIES FOR THE APPOINTMENT SCHEDULES TO SEE A  
DOCTOR AS FOLLOWS: 1. "EMERGENCY" (IMMEDIATELY), 2. "URGENT" (WITHIN 24 HRS.),  
3. "ROUTINE" (WITHIN 14 CALENDAR DAYS). AS A FORM OF REPRISAL & RETALIATION;  
PRISON OFFICIALS INSTRUCTED/ORDERED THE MEDICAL STAFF TO PURPOSELY DENY  
PLAINTIFF'S CONCERNS & REQUESTS FOR

V. Relief.

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

SEE PART V SECTION ON PREVIOUS PAGE!

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

Date 2/11/09

Signature of Plaintiff 

1 TIME BECAUSE I HAD BEEN ASLEEP, & WAS INSTRUCTED BY MEDICAL  
 2 (STAFF NOT TO WEAR IT DURING THOSE TIMES FOR CIRCULATION REASONS)..  
 3 AT WHICH POINT; A STAFF MEMBER SHOUTED: "YOU'D BETTER CUFF UP RIGHT  
 4 NOW!" I CLEARLY REITERATED THE FACT THAT I HAD A MEDICAL CONCERN/  
 5 INJURY, & PROCEEDED TO PLACE MY HANDS THROUGH THE FOOD PORT IN  
 6 ORDER TO SUBMIT TO RESTRAINTS.. MY LEFT HAND WAS "YANKED" IMM-  
 7 -EDIATELY & PLACED IN A RESTRAINT. AS I SUBMITTED MY RIGHT  
 8 HAND, I WAS GRABBED BY MY WRIST, "YANKED" FORCEFULLY & TWISTED..  
 9 DUE TO THE EXCRUCIATING PAIN INFLICTED BY THIS ACTION; IT CAUSED  
 10 ME TO SCOUT: "OW!" & "FLINCH"! AT THIS MOMENT; A STAFF MEMBER  
 11 LATER IDENTIFIED AS OFFICER J. ALVARADO, PROCEEDED TO PULL MY LEFT  
 12 ARM (IN RESTRAINT) THROUGH THE FOOD PORT, APPLYING DOWNWARD PRE-  
 13 -SSURE IN AN ATTEMPT AS PLAINTIFF CONTENDS, TO BREAK MY ARM..  
 14 SIMULTANEOUSLY; OFFICER A. SMITH ADMINISTERED THE ENTIRE CON-  
 15 -TENTS OF HIS M.K.9 STREAMER (PER HIS REPORT) INTO THE FOOD PORT.  
 16 STRIKING ONLY BOTH OF MY FOREARMS WHICH WERE IN THE FOOD PORT  
 17 OPENING; MY LOWER BACK, & BUTTOCKS AREA.. THE FORCE OF THE  
 18 STREAM OF SPRAY BEING ADMINISTERED CAUSED IT TO "ISPLASH" SO TO  
 19 SPEAK, THUS EFFECTIVELY REACHING THE TOP OF MY BACK & NECK  
 20 AREAS! THIS FACT IS SUBSTANTIATED BY 'VIDEO FOOTAGE' OF THE IN-  
 21 -CIDENT VIEWED BY PLAINTIFF DURING DISCIPLINARY PROCEEDINGS..  
 22 AT NO TIME DID I RESIST IN A FASHION REMOTELY CLOSE TO JUSTIFYING  
 23 SUCH USE OF FORCE, & PLAINTIFF CONTENDS THAT THE STAFF IN QUEST-  
 24 -TION ENTERED INTO THESE "TACTICAL SEARCHES" WITH THE PREDISPOSI-  
 25 -TION TO INFLICT HURT & HARM UPON ANY INDIVIDUAL DEEMED UNCOOP-  
 26 -ERATIVE!! ONCE THE CONTENTS OF OFFICER SMITH'S "STREAMER"  
 27 WAS USED UP; PLAINTIFF BELIEVES IT TO BE STAFF MEMBER, OFFICER  
 J. EDWIN WHO STATED: "BOTH HIS ARMS ARE ACCESSIBLE, CUFF HIM UP!"



1 THE RESPONSE WAS: "FUCK THAT", "THIS MOTHERFUCKER IS MINE"! TO  
 2 WHERE I WAS THEN SPRAYED AGAIN BY STAFF MEMBER, OFFICER M.  
 3 GOULD; WITH A SECOND BURST FROM HIS M.K.9 FOGGER (PER HIS RE-  
 4 -PART).. THE ENTIRE TIME; BOTH OF MY ARMS WERE BEING MANIP-  
 5 -ULATED & PULLED IN ORDER TO CAUSE THE UNNECESSARY & WANTON IN-  
 6 -FLICTION OF PAIN; VIOLATING CONTEMPORARY STANDARDS OF DECENCY.  
 7 WHEN PRISON OFFICIALS KNOWINGLY, MALICIOUSLY, & SADISTICALLY USE  
 8 SUCH FORCE TO CAUSE HARM! I WAS FINALLY PLACED IN RESTRAINTS  
 9 & ESCORTED OUTSIDE, WHERE NUMEROUS CORRECTIONAL OFFICERS IN-  
 10 -QUIRED AS TO WHAT HAPPENED? OFFICER ALVARADO SPOKE LOOSLY  
 11 STATING: "HE SAYS HIS WRIST IS RUINED", "SO HE JERKED WHILE WE WERE  
 12 CUFFING HIM"! I THEN SPOTTED STAFF MEMBER, SERGEANT WOPPELL-  
 13 BADGE #52742, WHO WAS AWARE OF MY MEDICAL STATUS, AS JUST  
 14 AWH PRIOR HE SPOKE TO ME CONCERNING THE INJURY WHILE I WAS  
 15 RETURNING FROM RECEIVING MEDICAL ATTENTION.. I ASKED THAT HE  
 16 CONFIRM THAT FACT (MY INJURY) BY INDEED STATING THIS; YET HE RE-  
 17 -FUSED TO DO SO! [IT SHOULD ALSO BE NOTED THAT OFFICER ERWIN  
 18 WAS MOST DEFINITELY AWARE OF PLAINTIFF'S INJURY, IN THAT AT THE  
 19 TIME OF SAID INCIDENT; HE WAS A "REGULAR" BUILDING STAFF, & ON SEV-  
 20 -ERAL OCCASIONS MADE COMMENT OF IT!]. I WAS THEN TAKEN  
 21 TO A HOLDING AREA & INTERVIEWED BY INSTITUTIONAL GANG INVEST-  
 22 -IGATORS, WHO TOOK PHOTOGRAPHS OF TATTOOS, AS WELL AS DIRECT &  
 23 PROFILE PHOTOGRAPHS! RELEVANT BECAUSE IN THOSE PHOTO'S; IT IS  
 24 CLEARLY EVIDENT THAT THERE IS NO O.C. SPRAY VISIBLE AS BEING  
 25 ADMINISTERED TO THE FRONT OF MY BODY, OR FACE! PERTINENT IN  
 26 THAT PLAINTIFF NEVER SPUN AROUND AS STAFF ALLEGES, OTHERWISE  
 27 IT WOULD BE VISIBLE (O.C. SPRAY), & CONFLICTS WITH STAFF'S  
 JUSTIFICATIONS FOR USING SUCH FORCE!! C.C.R. 58C. 3278

1 (CONTROL OF INMATES) STATES IN PART: "All employees who super  
 2 -VISE INMATES MUST HAVE TRAINING DESIGNED TO GIVE THEM KNOWLEDGE  
 3 OF EMOTIONAL DISTURBANCES COMMON TO INMATES, & UNDERSTANDING OF  
 4 THEIR OWN FEELINGS & THE USE OF SUCH KNOWLEDGE IN WAYS WHICH  
 5 WILL MINIMIZE THE NEED FOR THE USE OF PHYSICAL FORCE." SEC.  
 6 3391(c) OUTLINES THE EXPECTATIONS OF THE DEPARTMENT CONCERN-  
 7 -ING "EMPLOYEE CONDUCT". (SEE ALSO: ARTICLE 22, SEC. 33090.3.1).  
 8 HAD ALL ASPECTS BEEN COVERED & ADDRESSED IN RELATION TO THESE  
 9 "TACTICAL SEARCHES", BY THE "TACTICAL TEAMS"; APPROPRIATE CON-  
 10 SIDERATIONS COULD'VE BEEN IMPLEMENTED WHERE MEDICAL CONCERNS  
 11 EXISTED! MORESO, IN THAT ONE OF THE PRIMARY OFFICERS ASS-  
 12 -IGNED TO REMOVE PLAINTIFF & INMATE RODGERS FROM OUR CELL,  
 13 (OFFICER J. ERWIN) WAS AWARE OF PLAINTIFF'S INJURY, & SHOULD'VE  
 14 TAKEN THE LIBERTY TO INFORM OFFICER ALVARADO & OFFICER SMITH  
 15 THAT INDEED, A MEDICAL CONCERN EXISTED, & PRECAUTIONS SHOULD  
 16 BE TAKEN! THAT UNNECESSARY OR UNREASONABLE FORCE WASN'T  
 17 NEEDED OR JUSTIFIED!! UNDER EIGHTH OR FOURTEENTH AMENDMENT,  
 18 PRISON OFFICIAL IS DELIBERATELY INDIFFERENT TO PRISONER'S NEEDS  
 19 WHEN HE KNOWS OR SHOULD HAVE KNOWN OF SUFFICIENTLY SERIOUS DAN-  
 20 -GER TO INMATE.. (CRIMINAL LAW - 1213.10(i)). DELIBERATE  
 21 INDIFFERENCE OCCURS WHEN PRISON OFFICIALS KNOW THAT INMATES  
 22 FACE SUBSTANTIAL RISK OF SERIOUS HARM & DISREGARDS THAT RISK  
 23 BY FAILING TO TAKE REASONABLE MEASURES TO ABATE IT! (MADRID  
 24 ✓ GOMEZ 889 F.Supp. 1146).. AMOUNTING TO RECKLESS DISRE-  
 25 -GARD.. DELIBERATE INDIFFERENCE HAS BEEN VARIOUSLY DESCRIBED  
 26 AS: THE POSSESSION OF ACTUAL KNOWLEDGE OF IMPENDING HARM,  
 27 EASILY PREVENTABLE; SO THAT A CONSCIOUS CULPABLE REFUSAL TO PRE-  
VENT HARM COULD BE INFERRED FROM A FAILURE TO PREVENT IT"...



1 HOWEVER; PROPER PLANNING WAS NOT USED & ALL CONCERN FOR  
 2 INDIVIDUALS WHO MAY NOT HAVE BEEN ABLE TO COMPLY IMMEDIATE-  
 3 -LY; WERE DELIBERATELY DISREGARDED BY PRISON OFFICIALS, &  
 4 THOSE UNFORTUNATE INDIVIDUALS (INCLUDING PLAINTIFF) FELL  
 5 VICTIM TO OVERZEALOUS & EAGER, ROGUE CORRECTIONAL OFFICERS  
 6 & THEIR WILLINGNESS TOWARDS STRETCHING THE BOUNDARIES OF  
 7 "USE OF FORCE", EFFECTIVELY AMOUNTING TO THE ADMINISTRATION OF  
 8 UNREASONABLE, UNNECESSARY, & WANTON INFLECTION OF PAIN; ACT-  
 9 -ING WITH A CULPABLE STATE OF MIND.. WHOSE PURPOSE WAS  
 10 NOT TO MAINTAIN ORDER OR COMPLIANCE; BUT RATHER TO ASSERT  
 11 POWER & DOMINANCE WITH THEIR MALICIOUS & SADISTIC USE  
 12 OF FORCE TO CAUSE HARM; PHYSICAL PAIN & SUFFERING, & PSY-  
 13 -COLOGICAL ANGUISH!! (THE FOLLOWING INMATES ARE WITNESSES/  
 14 VICTIMS TO THE SAME TREATMENT BY OFFICERS ON THIS DATE:  
 15 IM ROGERS #V.08501, IM MURRAY #P.35324, IM LOVE #J.62153,  
 16 IM HOLT #H.17313, & IM GARNER #T.74218.)

17 IN RELATION TO MEDICAL STAFF & THEIR INVOLVEMENT;  
 18 I WAS INTERVIEWED BY MEDICAL TECHNICAL ASSISTANT M. ...  
 19 BURREL - (NOW A CORRECTIONAL OFFICER) - WHO DOCUMENTED ON A  
 20 C.A.C. 7219 FORM (MEDICAL REPORT OF INJURY, OR UNUSUAL  
 21 OCCURRENCE) THAT O.C. SPRAY WAS UTILIZED, YET NEGLECTED  
 22 TO LIST THAT IT WAS ONLY APPARENT ON MY BACK & BUTTOCKS  
 23 AREAS; & THAT NO INJURIES APPEARED TO BE VISIBLE, DESPITE  
 24 SEVERE REDNESS & BRUISING ON MY LEFT ARM & MY CONTINUAL  
 25 COMPLAINTS ABOUT BOTH OF MY WRISTS BEING IN EXCRUCIATING  
 26 PAIN! THAT INTERVIEW CONCLUDED THE DAY'S EVENTS, AS I  
 27 WAS THEN RE-HOUSED IN ADMINISTRATIVE SEGREGATION..  
 SINCE THEN; BEGINNING ON THE MORNING OF 4.10.07; I



1 HAD PUT IN MUCH MORE THAN "SEVERAL" REQUESTS TO SEE THE  
 2 DOCTOR REGARDING MY WRIST & THE CONSTANT & CONTINUOUS  
 3 PAIN WHICH I AM SUFFERING FROM! I DID NOT SEE ANYONE  
 4 UNTIL 5.10.07. DESPITE THOSE REQUESTS; AS WELL AS PLEAS TO  
 5 M.T.A.'s & MENTAL HEALTH WORKERS? EVEN THE "HEALTH CARE  
 6 SERVICES REQUEST FORM - 7362" LISTS THE CATEGORIES FOR THE  
 7 APPOINTMENT SCHEDULES TO SEE A DOCTOR AS FOLLOWS: "EMER-  
 8 -GENCY" (IMMEDIATELY), <sup>2</sup>"URGENT" (WITHIN 24 HOURS), <sup>3</sup>"ROUTINE"  
 9 (WITHIN 14 CALENDAR DAYS). . . IT IS PLAINTIFF'S CONTENTION  
 10 THAT AS A FORM OF REPRISAL: PRISON OFFICIALS INSTRUCTED / OR-  
 11 -DERED THE MEDICAL STAFF TO PURPOSELY AVOID & NEGLECT MY  
 12 CONCERNS & REQUESTS FOR TREATMENT, EXHIBITING "DELIBERATE  
 13 INDIFFERENCE" ON THEIR PART (MEDICAL): IN THE HOPES THAT  
 14 MY INJURED WRIST WOULD HEAL IN ORDER TO CLAIM THAT NOTHING  
 15 WAS ACTUALLY WRONG WITH IT! NO ONE HAS YET TO EXPLAIN WHY  
 16 THERE WAS SUCH A DELAY IN PLAINTIFF RECEIVING SUFFICIENT  
 17 MEDICAL CARE, OR WHY THAT DELAY EXCEEDED EVEN THE NORMAL  
 18 TIME FRAME OF "ROUTINE" CARE? MAKING IT QUITE OBVIOUS  
 19 THAT ALL PARTIES CONCERNED ACTED IN CONCERT & WITH INTENT!  
 20 C.C.R. SEC. 3350(b)(1) STATES IN PERTINENT PART THE DEFINITION  
 21 OF "MEDICALLY NECESSARY": "IT MEANS HEALTH CARE SERVICES  
 22 THAT ARE DETERMINED BY THE ATTENDING PHYSICIAN TO BE REASON-  
 23 -ABLE & NECESSARY TO PROTECT LIFE, PREVENT SIGNIFICANT ILL-  
 24 -NESS, OR DISABILITY, OR ALLEVIATE PAIN!" THIS IN ITSELF MAN-  
 25 -DATES THAT IF A PRISONER WITH KNOWN INJURIES EXPRESSES  
 26 ADAMANTLY THAT HE IS EXPERIENCING SEVERE PAIN, & FEARS THAT  
 27 SAID INJURY MAY HAVE BEEN REAGGRAVATED OR WORSENERED BY OR  
 CAUSED FROM AN INCIDENT WITH STAFF; SUCH CONCERNS SHOULD

1 BE ADDRESSED FORTHWITH WITH MEDICAL ATTENTION! FAILURE TO DO SO  
 2 KNOWINGLY; CONSTITUTES DELIBERATE INDIFFERENCE TO MEDICAL NEEDS,  
 3 AMOUNTING TO AN EIGHTH AMENDMENT VIOLATION! (CRIMINAL LAW §118)!

4 DELIBERATE INDIFFERENCE BY PRISON PERSONNEL TO A PRISONERS SER-  
 5 -IOUS ILLNESS OR INJURY CONSTITUTES CRUEL & UNUSUAL PUNISHMENT,  
 6 CONTRAVENING THE EIGHTH AMENDMENT.. THIS IS TRUE WHETHER THE  
 7 INDIFFERENCE IS MANIFESTED BY PRISON DOCTORS IN THEIR RESPONSE  
 8 TO THE PRISONERS' NEEDS, OR BY PRISON GUARDS IN INTENTIONALLY  
 9 DENYING OR DELAYING ACCESS TO MEDICAL CARE; OR INTENTIONALLY  
 10 INTERFERING WITH THE TREATMENT ONCE PRESCRIBED! (ESTELLE v

11 GAMBLE, 429 U.S. 97). IT WAS THEREFORE CONCLUDED THAT  
 12 DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS OF PRISONERS  
 13 CONSTITUTES THE UNNECESSARY & WANTON INFLECTION OF PAIN!

14 THE STATE HAS AN OBLIGATION TO PROVIDE THE PERSONS IN IT'S  
 15 CUSTODY WITH A HEALTH CARE SYSTEM WHICH MEETS MINIMAL STAN-  
 16 -DARDS OF ADEQUACY. AS A PART OF THAT BASIC OBLIGATION; THE STATE  
 17 & IT'S AGENTS HAVE AN AFFIRMATIVE DUTY TO PROVIDE REASONABLE  
 18 ACCESS TO MEDICAL CARE; TO PROVIDE COMPETENT, DILIGENT MEDICAL  
 19 PERSONNEL; & TO ENSURE THAT PRESCRIBED CARE IS IN FACT DELIVERED!  
 20 (JUSTICE STEVENS)..

21 AFTER BEING NOTIFIED OF MY CONCERNS, INJURY, & PAIN;  
 22 MEDICAL STAFF'S FAILURE TO TAKE REMEDIAL ACTION! AMOUNTS TO  
 23 PHYSICAL TORTURE & PAIN WITHOUT PENOLOGICAL PURPOSE, & THEIR  
 24 DELIBERATE INDIFFERENCE TO THEM VIOLATES PLAINTIFF'S EIGHTH  
 25 AMENDMENT RIGHT TO BE FREE FROM CRUEL & UNUSUAL PUNISHMENT;  
 26 STATING A CAUSE OF ACTION UNDER §1983 !!

27 ATTACHED EXHIBITS INCLUDE: A- PHYSICIANS ORDERS, B-  
 INTERDISCIPLINARY PROGRESS NOTES, & C- X-RAY & M.P.I. ORDERS

1 & RESULTS .. EACH CONTAINS THE DATES WHEN SPECIFIC TESTS  
 2 WERE ORDERED, AS WELL AS THE DATES THAT THEY WERE ACTUALLY  
 3 DONE ?. AFTER MY SECOND X-RAY ON 5-24-07 (WHICH SHOWED LITTLE  
 4 CHANGE OR HEALING TO FRACTURE); DR. MCCONNELL INFORMED ME  
 5 THAT I WOULD BE SEEN BY AN ORTHOPEDIC SPECIALIST; HOWEVER,  
 6 THAT DID NOT HAPPEN UNTIL THE SUBMISSION OF NUMEROUS REQUESTS  
 7 & AN ORDER PLACED BY ANOTHER DOCTOR ON 9-13-07 (3 MONTHS  
 8 LATER).. I WAS INTERVIEWED ON 10-5-07 VIA "TELE-MEDS" BY  
 9 MARSHALL S. LEWIS, M.D. WHO AFTER THE PHYSICAL EXAMINATION;  
 10 ORDERED THE FOLLOWING TREATMENT PLAN: "THIS PATIENT WILL BE  
 11 SENT FOR A M.R.I. OF THE RIGHT WRIST. EXTENSIVE BLOOD WORK WILL  
 12 BE PERFORMED. THE PATIENT IS TO RETURN FOR EVALUATION. IT IS  
 13 FELT THE PATIENT SHOULD BE GIVEN AN APPOINTMENT IN THE OFFICE  
 14 FOR TWO WEEKS SO THAT WE CAN EVALUATE HIM MORE CLOSELY.  
 15 HE WILL ALSO BE SENT FOR E.M.G./NERVE CONDUCTION TESTS OF  
 16 THE RIGHT UPPER EXTREMITY TO RULE OUT CARPAL TUNNEL SYN-  
 17 -DROME."

18 NONE OF THESE TESTS WERE PERFORMED WHILE I WAS  
 19 HOUSED AT C.C.I. - TENACHAPI, DESPITE "FOUR ORDERS" AFTER THAT!  
 20 (10.10.07/11.6.07/11.8.07/1.2.08).. AFTER BEING TRANSFERRED TO  
 21 S.V.S.P.; I WAS SEEN BY MEDICAL STAFF ON 1-23-08 & REFERRED  
 22 TO AN ORTHOPEDIC SURGEON, AS WELL AS PLACED ON LIST FOR M.R.I. ?  
 23 THE M.R.I. WAS COMPLETED ON 2-6-08 & CLEARLY SHOWS THAT  
 24 THE INJURY WAS IN FACT SIGNIFICANTLY WORSE THAN DIAGNOSED AT  
 25 C.C.I., & SHOULD'VE BEEN CAUGHT & TREATED WITH EARLIER TESTS !  
 26 EXHIBIT D CONTAINS INFORMATION RELATED TO SUCH AN INJURY,  
 27 AS WELL AS THE TREATMENT OF SUCH ! FURTHERMORE; IT OUTLINES  
 THE PROBLEMS FACED WHEN TREATMENT ISN'T SUFFICIENT !!

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ALL PARTIES LISTED SHOULD BE HELD ACCOUNTABLE FOR THEIR  
ACTIONS & FOR THEIR WILLFUL INTENT IN VIOLATING PLAINTIFFS  
RIGHTS PROTECTED UNDER THE EIGHTH AMENDMENT TO THE UNITED  
STATES CONSTITUTION !!

1 TREATMENT, EXHIBITING "DELIBERATE INDIFFERENCE" ON THEIR PART; IN  
 2 THE HOPES THAT PLAINTIFFS INJURED MUST WOULD DEAL IN CHARGE  
 3 TO CLAIM THAT NOTHING WAS ACTUALLY WRONG WHEN IT? ALL PARTIES  
 4 CONCERNED ACTED IN CONCEPT & WITH INTENT!

5 C.C.R. (Sec. 3350 (b)(1)) STATES IN PERTINENT PART THE DEFINITION  
 6 OF "MEDICALLY NECESSARY": "IT MEANS HEALTH CARE SERVICES  
 7 THAT ARE DETERMINED BY THE ATTENDING PHYSICIAN TO BE REASON-  
 8 ABLE & NECESSARY TO PROTECT LIFE, PREVENT SIGNIFICANT ILLNESS,  
 9 OR DISABILITY, OR ALLEVIATE PAIN". THIS IN ITSELF MANDATES  
 10 THAT IF A PRISONER WITH KNOWN INJURIES EXPRESSES VIVIDLY  
 11 THAT HE IS EXPERIENCING SEVERE PAIN, & FEARS THAT SAID INJURY  
 12 MAY HAVE BEEN REAGGRAVATED OR WORSENER BY OR CAUSED FROM  
 13 AN INCIDENT WITH STAFF; SUCH CONCERNS SHOULD BE ADDRESSED  
 14 FORTHWITH WITH MEDICAL ATTENTION! FAILURE TO DO SO KNOWINGLY;  
 15 CONSTITUTES DELIBERATE INDIFFERENCE TO MEDICAL NEEDS, AMOUNTING  
 16 TO AN EIGHTH AMENDMENT VIOLATION.. (CRIMINAL LAW § 78)!

17 DELIBERATE INDIFFERENCE BY PRISON PERSONNEL TO A PRISONER'S  
 18 SERIOUS ILLNESS OR INJURY CONSTITUTES CRUEL & UNUSUAL PUNISH-  
 19 MENT, CONTRAVENING THE EIGHTH AMENDMENT.. THIS IS TRUE  
 20 WHETHER THE INDIFFERENCE IS MANIFESTED BY PRISON DOCTORS IN  
 21 THEIR RESPONSE TO THE PRISONER'S NEEDS, OR BY PRISON GUARDS  
 22 IN INTENTIONALLY DENYING OR DELAYING ACCESS TO MEDICAL CARE;  
 23 OR INTENTIONALLY INTERFERING WITH THE TREATMENT ONCE PRESCRIBED!  
 24 (ESTELLE v GAMBLE, 429 U.S. 97)..

25 AFTER BEING NOTIFIED OF MY CONCERNS, INJURY, & PAIN; MEDICAL  
 26 STAFFS FAILURE TO TAKE REMEDIAL ACTION AMOUNTS, TO PHYSICAL TOR-  
 27 TURE & PAIN WITHOUT PENOLOGICAL PURPOSE, & THEIR DELIBERATE  
 28 INDIFFERENCE TO THEM VIOLATES PLAINTIFFS EIGHTH AMENDMENT

1 RIGHT TO BE FREE FROM CRUEL & UNUSUAL PUNISHMENT; STATING A CAUSE  
2 OF ACTION UNDER §1983!

3 AFTER PLAINTIFF'S SECOND X-RAY ON 5-24-07 (WHICH SHOWED  
4 LITTLE CHANGE OR HEALING TO FRACTURE); DR. MCCONNELL IN-  
5 FORMED PLAINTIFF THAT: "ALTHOUGH SHE WAS PUTTING IN A REFERRAL  
6 TO BE SEEN BY AN ORTHOPEDIC SPECIALIST; IT LIKELY WOULDN'T  
7 HAPPEN"? WHEN ASKED WHY "SHE WOULD MAKE SUCH A STATE-  
8 MENT; DR. MCCONNELL STATED: "THAT'S HOW THEY "GET BACK" AT  
9 INMATES WHO ASSAULT STAFF"! "THEY DON'T WANT US TO HELP YOU!"  
10 PLAINTIFF SUBMITTED NUMEROUS REQUESTS AFTER THIS, INCLUDING  
11 A GRIEVANCE, BEFORE ANOTHER REFERRAL WAS PLACED BY ANOTHER  
12 DOCTOR ON 9-13-07? (3 MONTHS LATER). PLAINTIFF WAS INTER-  
13 VIEWED ON 10-5-07 VIA "TELE-MEDS" BY MARSHALL S. LEWIS,  
14 M.D. WHO AFTER THE PHYSICAL EXAMINATION; ORDERED THE  
15 FOLLOWING TREATMENT PLAN: "THIS PATIENT WILL BE SENT FOR A  
16 M.R.I. OF THE RIGHT WRIST. EXTENSIVE BLOOD WORK WILL BE  
17 PERFORMED. THE PATIENT IS TO RETURN FOR EVALUATION. IT IS  
18 FELT THE PATIENT SHOULD BE GIVEN AN APPOINTMENT IN THE OFFICE  
19 FOR TWO WEEKS SO THAT WE CAN EVALUATE HIM MORE CLOSELY.  
20 HE WILL ALSO BE SENT FOR E.M.G./NERVE CONDUCTION TESTS OF  
21 THE RIGHT UPPER EXTREMITY TO RULE OUT CARPAL TUNNEL SYNDROME."  
22 NONE OF THESE TESTS WERE PERFORMED WHILE PLAINTIFF WAS  
23 HOUSED AT C.G.I. - TSHACHAPI, DESPITE "FOUR ORDERS" AFTER  
24 THAT! (10-10-07, 11-6-07, 11-8-07, 1-2-08)..

25 PLAINTIFF'S GRIEVANCE RELATED TO MEDICAL CONCERNS & THE  
26 LACK OF TREATMENT WAS REVIEWED AT THE SECOND LEVEL BY  
27 CHIEF MEDICAL OFFICER HAROLD TATE, M.D.. PLAINTIFF WAS  
28 INTERVIEWED BY MR. TATE IN DECEMBER 2007 WHERE AFTER

1 REITERATING THE CONTINUOUS PAIN & LIMITED MOBILITY CONCERNS:  
 2 I WAS TOLD THAT: "I WOULD RECEIVE NO MEDICAL TREATMENT AT  
 3 THIS INSTITUTION!" "WHAT DO YOU EXPECT AFTER YOU TUSSELE WITH  
 4 STAFF"? PLAINTIFF INFORMED MR. TATE THAT THAT STATEMENT  
 5 CAN BE CONSIDERED AS RETALIATION, WHERE HE REPLIED: "IT IS  
 6 WHAT IT IS" .. "FOR THE DURATION OF YOUR TIME AT THIS INSTI-  
 7 TUTION; NOTHING FURTHER WILL BE DONE FOR YOU BY MEDICAL  
 8 STAFF!" "THINK ABOUT THAT NEXT TIME YOU DECIDE TO ASSAULT  
 9 STAFF"! PLAINTIFF EXPRESSED INTENTIONS TO CONTINUE WITH PUR-  
 10 SUIT FOR TREATMENT, AS WELL AS SUBMITTING GRIEVANCE TO  
 11 THE NEXT LEVEL OF REVIEW; WHEREUPON MR. TATE TOLD PLAIN-  
 12 TIFF: "I DON'T CARE HOW FAR YOU PURSUE IT; EVEN IF YOU  
 13 TAKE ME TO COURT, I WON'T LOSE"! PLAINTIFF THEN TOLD MR.  
 14 TATE THAT THE ORTHOPEDIC SPECIALIST ORDERED A BATTERY OF  
 15 TESTS TO BE COMPLETED, & HIS RESPONSE WAS THAT "THE SPECIAL-  
 16 IST CAN ONLY "RECOMMEND" TREATMENT, & THAT HE (MR. TATE)  
 17 HAS THE FINAL SAY SO AS TO WHO RECEIVES TREATMENT & WHEN!"  
 18 THAT CONCLUDED PLAINTIFF'S INTERVIEW WITH MR. TATE & AS  
 19 PROMISED; PLAINTIFF RECEIVED NO FURTHER MEDICAL TREATMENT  
 20 FROM C.C.I. Medical Staff..

21 AFTER BEING TRANSFERRED TO SALINAS VALLEY STATE PRISON;  
 22 PLAINTIFF WAS SEEN BY MEDICAL STAFF ON 1-23-08 & REFERRED  
 23 TO THE ORTHOPEDIC SURGEON, AS WELL AS PLACED ON THE LIST FOR  
 24 AN M.R.I. ! THE M.R.I. WAS COMPLETED ON 2-6-08 & CLEARLY  
 25 SHOWS THAT THE INJURY WAS IN FACT SIGNIFICANTLY WORSE THAN  
 26 INITIALLY DIAGNOSED AT C.C.I., & SHOULD'VE BEEN CAUGHT &  
 27 TREATED WITH EARLIER TESTS! EXHIBIT D CONTAINS INFORMATION  
 28 RELATED TO SUCH AN INJURY, AS WELL AS THE TREATMENT OF SUCH.

1 FURTHERMORE: IT OUTLINES THE PROBLEMS & COMPLICATIONS FACED  
2 WHEN TREATMENT ISN'T SUFFICIENT!

3 PLAINTIFF HAS SINCE UNDERGONE TWO (2) PROCEDURES IN  
4 RELATION TO THE INJURY, INCLUDING SURGERY WHERE A 'SCREEN'  
5 WAS INSERTED INTO THE FRACTURED BONE, WHICH IS PERMANENT!  
6 EXHIBIT-E CONTAINS ALL SURGICAL REPORTS & SUBSEQUENT FOLLOW-  
7 UP CONSULTATIONS WITH THE ORTHOPEDIC SURGEON, AS TREATMENT  
8 CONTINUES AT THE TIME OF THIS FILING..

9 ALL PARTIES LISTED SHOULD BE HELD ACCOUNTABLE FOR THEIR  
10 ACTIONS, & FOR THEIR WILLFUL INTENT IN VIOLATING PLAINTIFF'S  
11 RIGHTS PROTECTED UNDER THE EIGHTH AMENDMENT TO THE UNITED  
12 STATES CONSTITUTION!!

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1 I AM ALSO SEEKING ADMINISTRATIVE RELIEF: CORRECTIVE &  
 2 ADVERSE ACTIONS TAKEN AGAINST THE PRIMARY OFFICERS IN THE  
 3 FORM OF COUNSELING & REPRIMAND [ON THE JOB TRAINING & IN  
 4 SERVICE TRAINING] IN RELATION TO DAY TO DAY INTERACTIONS WITH  
 5 THE INMATE POPULATION & THE EXPECTATIONS OF THE DEPARTMENT;  
 6 ANGER & SOCIAL SKILL CLASSES, & THAT SUCH BE DOCUMENTED  
 7 & PLACED IN THEIR RESPECTIVE SUPERVISORY FILE (FORM 1123 -  
 8 EMPLOYEE COUNSELING RECORD).. THE "PENALTY LEVEL" FOR  
 9 THE CONDUCT OF THE OFFICERS IN QUESTION IS SHOWN IN SEC. 33030-  
 10 16, EMPLOYEE DISCIPLINARY MATRIX - & REFLECTS THAT THEY  
 11 ARE IN VIOLATIONS OF NUMEROUS STANDARDS & SHOULD BE HELD  
 12 ACCOUNTABLE TO & FOR THAT.. (GOV. CODE 19572 (C) INEFFIC-  
 13 -IENCY, (D) INEXCUSABLE NEGLECT OF DUTY, (E) INSUBORDINATION,  
 14 (F) DISHONESTY, & (T) OTHER FAILURE OF GOOD BEHAVIOR)..

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