

Plaintiff's Name Jonathan L. Dell
CDCR No. K97847
Address Kern Valley State Prison
P.O. Box-5103 Facility-C-5-210
Delano, CA. 93216

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

Jonathan L. Dell

1:16-cv-01769-MJS-(PC)

(Name of Plaintiff)

(Case Number)

vs.

CIVIL RIGHTS COMPLAINT UNDER:

42 U.S.C. 1983 (State Prisoner)

B. Espinoza

B. Boque

C. James

V. Paskweitz

B. Yzaguirre

Continue on next page

(Names of all Defendants)

I. Previous Lawsuits (list all other previous or pending lawsuits on additional page):

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

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

Describe previous or pending lawsuits in the space below. (If more than one, attach additional page to continue outlining all lawsuits in same format.)

1. Parties to this previous lawsuit:

Plaintiff none

Defendants none

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

3. Docket Number _____

4. Assigned Judge _____

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Defendants continue from previous page

B. Billings

C. Izabal

L. A. Martinez

B. A. Celdon

Jeff Gallagher

Ronald Broomfield

Bonnie Godwin

Dave Dawey

Dr. S. Barnett

K. Arriola

6. Filing Date (approx.) _____ 7. Disposition Date (approx.) _____

II. Exhaustion of Administrative Remedies

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). Prior to filing suit, inmates are required to exhaust the available administrative remedy process, Jones v. Bock, 549 U.S. 199, 211, 127 S.Ct. 910, 918-19 (2007); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002), and neither futility nor the unavailability of money damages will excuse the failure to exhaust, Porter v. Nussle, 534 U.S. 516, 524, 122 S.Ct. 983, 988 (2002). If the court determines that an inmate failed to exhaust prior to filing suit, the unexhausted claims will be dismissed, without prejudice. Jones, 549 U.S. at 223-24, 127 S.Ct. at 925-26.

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 _____

C. Is the process completed?

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

PLAINTIFF'S ATTEMPTS TO EXHAUST HIS ADMINISTRATIVE REMEDIES WAS IMPEDED AT EVERY STAGE OF THE PROCEEDINGS LEAVING PLAINTIFF WITHOUT AN AVAILABLE REMEDY TO EXHAUST HIS GRIEVANCE. CORCORAN STATE PRISON OFFICIALS TOOK UNFAIR ADVANTAGE OF PLAINTIFF'S EXHAUSTION REQUIREMENT BY NOT PROCESSING PLAINTIFF'S PROPERLY FILED APPEAL (SEE NEXT PAGE)

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

1 (CONTINUE FROM EXHAUSTION REQUIREMENT)

2 TO PREVENT PLAINTIFF'S EFFORTS TO EXHAUST. EVERY TIME PLAINTIFF
3 ATTEMPTED TO EXHAUST HIS APPEAL WAS EITHER REJECTED OR NOT RESPONDED
4 TO. PLAINTIFF'S DOCUMENTS IN RESPONSE TO HIS ATTEMPTS AND
5 THE REJECTION THEREOF IS IN PLAINTIFF'S LEGAL MATERIALS WHICH
6 WAS SEPARATED FROM PLAINTIFF WHEN HE WAS TRANSFERRED FROM
7 CORCORAN STATE PRISON AND HE HAS NOT RECEIVED HIS LEGAL MATERIALS
8 TO THIS DATE.

9
10 HOWEVER, CONSIDERING THE SERIOUSNESS OF PLAINTIFF'S
11 APPEAL ISSUES, HE DIRECTED AN APPEAL DIRECTLY TO THE CHIEF
12 INMATE APPEALS OFFICE IN SACRAMENTO TO ENSURE THAT HIS
13 ISSUES WERE ACKNOWLEDGED. ALSO TO HIGHLIGHT THE ABUSIVE
14 MANNER IN WHICH PLAINTIFF WAS TREATED AT CORCORAN.

15
16 PLAINTIFF EXPLAINED EVERYTHING THAT OCCURRED IN DETAIL.
17 PLAINTIFF REQUESTED THAT HE BE HOUSED AT ANOTHER INSTITUTION FOR
18 SAFETY CONCERNS AND ASKED THE CHIEF APPEALS OFFICE IF THEY
19 COULD ROUTE HIS APPEAL TO CORCORAN'S APPEALS OFFICE TO ENSURE
20 THAT HIS ISSUES WERE PROPERLY ADDRESSED. THE CHIEF INMATE
21 APPEALS OFFICE ALSO REJECTED PLAINTIFF'S APPEAL.

III. Defendants

List each defendant's full name, official position, and place of employment and address in the spaces below. If you need additional space please provide the same information for any additional defendants on separate sheet of paper.

A. Name _____ is employed as See Complaint Pages 8 thru 11

Current Address/Place of Employment _____

B. Name _____ is employed as _____

Current Address/Place of Employment _____

C. Name _____ is employed as _____

Current Address/Place of Employment _____

D. Name _____ is employed as _____

Current Address/Place of Employment _____

E. Name _____ is employed as _____

Current Address/Place of Employment _____

IV. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary. Must be in same format outlined below.)

Claim 1: The following civil right has been violated (e.g. right to medical care, access to courts, due process, free speech, freedom of religion, freedom from cruel and unusual punishment, etc.):

See Complaint Page #18

Supporting Facts (Include all facts you consider important to Claim 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Claim 1.):

See General Allegations Pages* 12 thru 18

Claim 2: The following civil right has been violated (e.g. right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.):

See Complaint Page # 19

Supporting Facts (Include all facts you consider important to Claim 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Claim 2.):

See General Allegations Page # 12 thru 18

JURISDICTION

1
2
3 1. This is a Civil RIGHTS Action Authorized by 42 U.S.C. § 1983
4 To redress the deprivation, under color of state law, of rights
5 secured by the Constitution of the United States

6
7 2. The Court has Jurisdiction under U.S.C. § 1331 and 1343
8 (2) (3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §
9 2201 and 2202. Plaintiff's claim for injunctive relief are author
10 ized by 28 U.S.C. § 228 and Rule 65 of the Federal Code of
11 Civil Procedures

12
13 3. The United States District Court for the Eastern District
14 of California is an appropriate venue under 28 U.S.C. § 1391
15 (B)(2) because it is where the events giving rise to this
16 claim occurred

II

PARTIES
PLAINTIFF

4. Plaintiff Jonathan L. Dell, is and was at all times mentioned here in is a prisoner of the state of California in custody of California Department of Corrections. He is currently confined in Kern Valley State Prison.

Defendants

5. Defendant B. Espinoza is a Correctional Officer of the California Dept... of Corrections (CDCR) who, at all times mentioned in this Complaint, held the rank of regular Correctional Officer (C/O) and was assigned to Corcoran State Prison (CSP)

6. Defendant B. Hoover, is a Correctional Officer of the California Dept... of Corrections (CDCR) who, at all times mentioned in this Complaint, held the rank of regular Correctional Officer (C/O) and was assigned to Corcoran State Prison (CSP)

7. Defendant C. James, is a Correctional Officer of the California Dept... of Corrections (CDCR) who, at all times mentioned in this Complaint, held the rank of Correctional Sergeant and was assigned to Corcoran State Prison (CSP)

1 8. Defendant V. Paskewitz is a Correctional Officer of the California
2 Dept... of Corrections (CDCR) who at all times mentioned in this complaint,
3 held the rank of regular Correctional Officer (CO) and was assigned
4 to Corcoran State Prison (C.S.P.)

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6 9. Defendant R. Yzaguirre is a Correctional Officer of the California
7 Dept... of Corrections (CDCR) who at all times mentioned in this
8 Complaint held the rank of regular Correctional Officer (CO) and was
9 assigned to Corcoran State Prison (C.S.P.)

10
11 10. Defendant B. Billings is a Correctional Officer of the
12 California Dept... of Corrections who at all times mentioned in this
13 Complaint held the rank of regular Correctional Officer (CO) and
14 was assigned to Corcoran State Prison (C.S.P.)

15
16 11. Defendant C. Izabal is a Correctional Officer of the California
17 Dept... of Corrections ^(CDCR) who at all times mentioned in this Complaint
18 held the rank of regular Correctional Officer (CO) and was assigned
19 to Corcoran State Prison (C.S.P.)

20
21 12. Defendant L.A. Martinez is a Correctional Officer of the
22 California Dept... of Corrections who at all times mentioned in this
23 Complaint, held the rank of Correctional Lieutenant (L.T.) and was
24 assigned to Corcoran State Prison (C.S.P.)

1 B. Defendant B.A. Celedon, is a Correctional officer
2 of the California Dept... of Corrections (CDCR) at all
3 times mentioned in this Complaint, held the rank of
4 regular Correctional officer (CO) and was assigned
5 to Corcoran state Prison (C.S.P.)
6

7 14. Defendant JEFF Gallagher, is a Correctional
8 officer of the California Dept... of Corrections (CDCR)
9 who at all times mentioned in this Complaint, held
10 the rank of Captain (CAPT) and was assigned to
11 Corcoran state Prison (C.S.P.)
12

13 15. Defendant Ronald Broomfield, is a Correctional
14 officer of the California Dept... of Corrections, ^(CDCR) who at
15 all times mentioned in this Complaint, held the rank
16 of Captain (CAPT) and was assigned to Corcoran state
17 Prison (C.S.P.)
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19 16. Defendant Bonnie Godwin, is acting Warden (AW)
20 of the California Dept... of Corrections (CDCR) who, at
21 all times mentioned in this Complaint, held the rank
22 of acting Warden (AW) and was assigned to Corcoran
23 state Prison (C.S.P.)
24

25 17. Defendant Dave Davey, is a warden of the Cali
26 -fornia Dept... of Corrections (CDCR) who at all times
27 mentioned in this Complaint, held the rank of Warden

1 - and was assigned to Corcoran State Prison (CSP)

2

3 18. Defendant, DR. S. Barnett, is a Psychologist at the
4 California Dept. ... of Corrections (CDCR), who at all times
5 mentioned in this Complaint, held the position of Psychologist
6 (PSYC) and was assigned to Acute Care Hospital (ACH) at
7 Corcoran State Prison (C.S.P)

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9 19. Defendant K. Arriola, is a Registered Nurse at the
10 California Dept. ... of Corrections (CDCR) who at all times
11 mentioned in this Complaint, held the position of Registered
12 Nurse (R.N) and was assigned to Acute Care Hospital
13 (ACH) at Corcoran State Prison (C.S.P)

14

15 20. Each Defendant is sued in their individual capacity,
16 At all times mentioned in this Complaint each defendant
17 acted under the color of state Law.

18

19 21. Plaintiff Jonathan L. Dell, Attempted to use the
20 Prison Grievance Procedure available at C.S.P-Cof to
21 try to resolve Problems. The administrative appeals office
22 refused to process Plaintiff's appeal.

23

24 22. Plaintiff forwarded an appeal to the appeals office
25 in Sacramento which was also rejected.

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General Allegations

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3 1. ON August, 22-2014 I was escorted to Acute Care Hospital
4 (ACH) at Concoran State Prison for suicide evaluation, the
5 (2) escorting officers were R. Espinoza and R. Roque. The (2) officers
6 were assigned to Enhanced out Patient ad/seq 3A03. I was
7 housed in ad-Seq 3A04, cell 203.

8
9 2. I was placed in a holding cell by the above mentioned escorting
10 staff. After waiting for more than a hour with the handcuffs
11 behind my back, i slipped the handcuffs to the front of my person.

12
13 3. SGT. C. James confronted me about repositioning my handcuffs
14 to the front of my person. I told her "When it was time
15 for me to be escorted, i'd place the handcuffs back behind
16 my back!" SGT. C. James walked away from the holding cage.

17
18 4. I was met face to face at the holding cage by (ACH)
19 Psychologist DR. S. Barnett. DR. Barnett asked me "Would i come into
20 her office to talk!" I responded angrily "NO. im suicidal, homicidal,
21 i tore up my state clothing, flooded my cell. All i wanted to
22 do was hurt myself".

23
24 5. DR. Barnett walked away from my cage and had a conver-
25 sation with (C/S) Espinoza and Roque standing near-by on
26 a wall listening to the exchange between myself and DR.
27 Barnett.

6. Clo^s Espinoza and Roque finished the conversation with DR Barnett and walked out of my eyesight, moments later they returned. Clo Espinoza stated "we're going to take you back to your cell." I responded "I'm suicidal I'm not going back!" Clo Espinoza looked back at Clo Roque and proceeded to unlock the cage real slow. I was still handcuffed and my hands were still placed in the front of my person's.

7. When Clo Espinoza opened the holding cage I remained seated. he lifted his arms up with clenched fist in a boxer's position. After remaining seated for a few seconds, Clo Espinoza reached into the holding cage and grabbed me by my upper arms at which point, he pulled me out the cage and threw me to the floor right outside the holding cage.

8. Then Clo Espinoza straddled me with himself sitting at my waist area and immediately started punching downward. All I could do was protect my face. After Clo Espinoza punched the handcuffs while trying to punch me in the face, he then started punching me in the midsection my chest/abdominal and ribs cage area. While Clo Espinoza was assaulting me, Clo Roque was behind him kicking me and yelling obscenities.

9. At this time I seen Clo Paskwitz and Clo Yzaquime on each side of Clo Espinoza and began to pull him off my person's. Clo Paskwitz said to Clo Espinoza "You need to stop, your going to get us in trouble."

10. As other staff responded and restrained C/O ESPINOZA, C/Os Yzaguirre and Paskwitz began to forcefully turn me over in a prone position. Looking back over my shoulder at C/O ESPINOZA being restrained, I began to verbally disrespect him for what he'd just done to me "punching me in midsection/Face"

11. C/O ESPINOZA broke away from officers holding him, and in the standing position he began to stomp down on my lower legs and dragged his boots on my shins drawing blood immediately. While C/O ESPINOZA was dragging the rough heels of his boots on my shins, I looked directly at SGT-James and stated "You just standing there allowing him to assault me!" SGT-James didn't respond and stood there with a blank expression on her face.

12. I was face down with my arms stretched out in front of me and C/Os Yzaguirre-C/O Paskwitz and C/O Billings were trying to reposition me, to enable them to remove the handcuffs and reapply the handcuffs behind my back.

13. After several minutes of resisting staff, I complied with C/O Yzaguirre statements for me to relax so himself and other officers could unlock the handcuffs to reposition them behind my back starting with my left hand 1st. After my hands were cuffed behind my back, a spit mask was put over my face. Leg irons were placed on my ankles extremely tight. I was then escorted to the entrance of ACH-Facility.

14. At this time I was under escort by C/O Espinoza and Billings. SGT James approached the ACT-FAC entrance from the incident area with a grenade "Pin" in her hand and asked all the officers to check there equipment. C/O Billings reached down and checked the grenade in his ankle holster, the O.G. grenade in his ankle holster exploded.

15. I was then escorted outside of the ACT-FAC entrance and placed in the Prone Position by C/O Espinoza. C/O Espinoza was kneeling down to make sure I remained in the Prone Position while in the Prone Position I looked up at C/O Espinoza and stated "You and I both know what just occurred, don't write me up for assault on staff, I didn't do shit to you guys

16. C/O Espinoza responded "I have to write you up, to many people seen what happened, I've gotta cover my ass!"

17. I immediately began calling all the C/O's gathered in front of ACT-FAC entrance "~~scumbag~~ scumbags and crooked ass motherfuckers." I directed the following statements to C/O's Yzaguirre and Paskowitz "You guys seen this dude assaulting me, and now you'll go help him lie on me." C/O Paskowitz responded "Fuck you, we didn't see shit, next time you'll do what you told."

18. A ambulance had pulled up to return me back to my assigned cell, 3ACT-203. At the same time a white van pulled up and LT-Martinez got out of the van and addressed the officers on the scene. I don't recall who stated "I was

1 not admitted to the crisis bed and they were using the
2 ambulance to return me to the ad-seg unit 3A04-203.

3
4 19. I screamed to LT-Martinez that "i was suicidal and
5 if returned to my cell, I would definitely hang myself."
6 LT. Martinez instructed a near-by clo to retrieve a wheel
7 chair and some sheets. He instructed another SGT- by
8 the name of SZTUKOWSKI to contact the wardens secretary.
9 I stated to LT. Martinez that "I'd just been assaulted by
10 clo's Espinoza and Roque inside the hospital and the officers
11 gathered around witnessed it and they were attempting to cover
12 it up by denying me medical attention and returning me back
13 to my cell in ad-seg

14
15 20. I was screaming at a R.N. named K. Anniola standing
16 near-by "MY Ribs hurt, my elbows and knees/shins are bleeding,
17 can i please receive a 7219 "Medical InjURY Report" to document
18 my injuries, im suicidal and the Police just beat me up inside
19 the hospital." R.N. Anniola came towards me to look at my
20 injuries when LT. Martinez immediately instructed him to
21 get away from me and go inside the hospital.

22
23 21. A wheelchair was brought out as requested by LT. Marti
24 nez. LT. Martinez instructed the officers to place me in the
25 wheelchair and use sheets to strap me down and keep
26 me in a isolated position. SGT-James stated to LT. Martinez
27 "The DR. said he was not admitted and could be returned
28 to his housing unit." LT. Martinez responded "In his present

1 - state held he right back here "Act-Fac" before the night is over.

2
3 22. I don't recall exactly what cops placed me in the wheel
4 chair. I was in waist chains/leg irons/spit mask and a sheet
5 was secured around my torso to the wheel chair extremely
6 tight to restrict my movement. My legs were secured with
7 a sheet in a similar fashion. Myself confined to the wheel
8 -chair was placed in a holding tank for hours. My medical
9 needs "Bloody elbows-shins-Sore rib cage" were never addressed.

10
11 23. After several hours strapped in the wheelchair I was
12 given a 7:19 medical injury examination. the moment i began
13 to direct medical staff ~~to~~ the injured areas that were
14 bleeding. escorting staff stated "Nothing's wrong with him." Then
15 ~~the~~ escorting staff urged medical staff to conclude the medical
16 exam. I didn't receive any band-aids/Alcohol Pads or any other
17 medical attention specifically for my injuries

18
19 24. I was escorted to 4A SHU visiting holding cage a temp
20 -orary crisis bed over flow cell at the time. Temporary crisis
21 bed over flow cell was against erc crisis bed procedures.
22 I was held there for 3-days. the blood on my elbows and
23 shins had dried up on my skin. I wasn't given any medical
24 attention or showers for 3-days. I was escorted from 4A SHU
25 crisis bed over flow to Act-Facility, unit-D for 1 day. Then
26 I was transferred to C.S.P Solano, crisis bed unit.

1 25. I IMMEDIATELY MADE SOLANO'S TREATMENT TEAM AWARE OF
2 ALL THAT TRANSPIRED, MY BEING ASSAULTED BY CORCORAN CORRECTIONAL
3 OFFICERS R. ESPINOZA AND R. ROQUE.

4
5 CLAIM ONE

6
7 Excessive use of force in pulling Plaintiff out
8 the holding cage, throwing him to the floor and pun-
9 -ching Plaintiff in the face-midsection-abdominal, rib
10 cage area, and kicking, dragging heel of boots on Plai-
11 -ntiff's legs and shins. In violation of the Eight Am
12 endment to the United States Constitution.

13
14 Plaintiff hereby incorporate by reference all of the
15 paragraphs of the general allegations of this complaint and
16 make them a part of this first cause of action as though
17 fully set forth here at.

18
19 Defendant's conduct as here in alleged was despicable and inten-
20 -ded by defendants to cause injury to Plaintiff and was done by
21 defendant with willful and conscious disregard to Plaintiff's rig-
22 -hts, and subjected Plaintiff to cruel and unusual punishment,
23 and was comprised of intentionally, and calculated to deprive
24 Plaintiff of legal rights, or to otherwise cause injury, such
25 as to constitute malice, fraud, and or oppression under California
26 Civil Code § 3294, entitling Plaintiff to Punitive Damages in an
27 amount appropriate to Punish (18) or to set an example of defendant.

CLAIM TWO

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The defendants were deliberately indifferent to Plaintiff's serious medical needs; Plaintiff was subjected to cruel and unusual punishment by defendants not allowing Plaintiff to receive medical treatment for injuries to his mid-section, ribcage-stomach, back and legs, in violation of the Eight Amendment to the U.S. Constitution.

Plaintiff hereby incorporate by reference all of the paragraphs in the general allegations of this complaint and make them a part of the first cause of action as well as this second cause of action as though fully set forth here at.

As a proximate result of the acts, omissions, and conduct of all defendants as alleged herein, Plaintiff has suffered and continues to personally suffer physical, mental and emotional pain and distress.

The overt acts and conduct of defendants and each of them, as alleged stemmed from a conspiracy, either express or implied, to injure Plaintiff and to deprive Plaintiff of his civil rights as alleged herein.

Relief Requested

A. Award Compensatory Damages in the following amount.

1 1. \$25,000.00 against the following defendants,
2 R. Espinoza - B. Boque - C. James - V. Paskweitz - B. Yzagui
3 - Me - R. Billings - C. Izabal - L.A. Martinez - R.A. Celedon
4 DR. S. Barnett - K. Arriola Jointly and severally,
5 For the use of Excessive Force against Plaintiff in viola-
6 -tion of Plaintiff's Eight Amendment rights of the U.S.
7 Constitution.

8 2. \$25,000.00 against all defendants named in
9 Civil Complaint for overt acts and conduct for conspir-
10 -acy to injure the Plaintiff, and deny Plaintiff access
11 to medical treatment for injuries he sustained from
12 the attack on his persons in violation of the Eight
13 and Fourteenth amendments to the U.S. Constitution.

14
15 B. Award Punitive damages in the following amount:
16 1. \$50,000.00 against all defendants named in
17 Civil Complaint.

18
19 2. Plaintiff request trial on all issues triable by
20 Jury.

21 Award such other and further relief as the
22 Court deem just and proper.

23
24 Jury Demand.

25 Dated: November 16th 2016

26 Jonathan L. Dell #K97842, Kern Valley State Prison
27 P.O. Box-5103, C-5-210, Delano, CA. 93216

VERIFICATION

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state of California }
County of KERN } SS:

I The undersigned, being first sworn say:
I am the Plaintiff in this action. All the facts
alleged in the above Complaint not otherwise supported
by citation, Exhibits or other documents, are true
on my own Personal Knowledge.

I Jonathan L. Dell, Declare under Penalties
of Perjury that the foregoing is true and correct.

Executed at Delano in California on Day
of November 16th 2016, at P.O. Box 5103, C-5-210
Delano, CA. 93216

Jonathan L. Dell
Jonathan L. DELL

APPLICATION FOR *IN*
FORMA PAUPERIS