

**EMERGENCY INJUNCTION REQUEST**

**FILED**

1 COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS **JAN, 22 7 2013** § 1983

2 Name: ESPINOZA, JUAN RICHARD W. WIEKING  
3 (Last) (First) CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

4 Prisoner Number: AC1503

5 Institutional Address: CORRECTIONAL TRAINING FACILITY - NORTH  
6 P.O. Box 705 / SOLEDAD, CA 93960

7  
8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 JUAN ESPINOZA,  
11 (Enter your full name.) IN PRO SE,  
12 vs.  
13 CTF DR. ZAHED AHMED;  
14 CTF DR. BRIGHT;  
15 (Enter the full name(s) of the defendant(s) in this action.)

**13-5047 JST**

Case No. CV-05047 JST (PR)  
(Leave blank; to be provided by Clerk of Court)  
• **IMMEDIATE** •  
COMPLAINT UNDER THE  
CIVIL RIGHTS ACT,  
42 U.S.C. § 1983

**REQUEST FOR PRELIMINARY  
INJUNCTIVE ORDER  
(RECURRENT PAIN NOW  
INADEQUATELY TREATED)**

17 I. Exhaustion of Administrative Remedies.

18 *Note: You must exhaust available administrative remedies before your claim can go forward. The court will dismiss any  
19 unexhausted claims.*

20 A. Place of present confinement CTF-NORTH STATE PRISON <sup>Box 705</sup> Soledad, CA

21 B. Is there a grievance procedure in this institution? YES  NO

22 C. If so, did you present the facts in your complaint for review through the grievance  
23 procedure? YES  NO

24 D. If your answer is YES, list the appeal number and the date and result of the appeal at each  
25 level of review. If you did not pursue any available level of appeal, explain why.

26 1. Informal appeal: \_\_\_\_\_  
27 all appeal levels exhausted; refer to initial Complaint's  
28 Page #1 for departmental appeal log #number;

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3 UNITED STATES DISTRICT COURT  
4 NORTHERN CALIFORNIA DISTRICT  
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=====

7 \*\* AMENDED COMPLAINT \*\*

8  
9 cv-05047 JST (PR)

10  
11 To The Honorable U.S. Court:

12  
13 Foremost, the Court hereat would upholding the fundamental principles  
14 of fairness by factoring this party hereof's status as an indigent im-  
15 prisoned pro se litigant who is substantially at a hardship in moving  
16 forth hereat without benefit of attorney.

17  
18 Accordingly, Plaintiff should be granted widest-latitude in regard to  
19 any scant technical deficiencies present in the re-submitting of same's  
20 bona fide civil rights claim under the 8th Amendment's prohibition  
21 against Cruel & Unusual Punishment (to wit, Deliberate Indifference to  
22 Plaintiff's serious need for pain-causing hemmeroid-surgery).

23  
24 This re-submitting such bona-fide civil rights claim hereat is done in  
25 compliance with the 12/23/13 -filed Order in case cv-05047 JST; an order  
26 that \* required that a "simple and concise...AMENDED COMPLAINT in the cap-  
27 tion and the civil case number...within the designated time".

28 \* see pg.3 of 3, of attached Order; attached hereon;

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4 GOOD CAUSE SHOWING  
5 FOR TIMELINESS OF  
6 AMENDED COMPLAINT  
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10 As to the Order's requirement that the Amended Complaint be filed within  
11 30 days, Plaintiff points out that while the filing-date of 12/23/13 has  
12 not resulted in a 30-day lapse as of the date of filing of this Amended  
13 Complaint, there are also two more pivotal and relevant points that ren-  
14 der this document "timely-filed".  
15

16 Those two pivotal and relevant points are that:

- 17 1.) the fact that the date of mailing (12/18/14)  
18 fell on a weekend, with the following Monday  
19 being a federal holiday (to wit, 12/19/14);  
20 2.) caselaw, Huizar v. Carey [Mailbox Rule], provides  
21 that mail is deemed filed on the date upon which  
22 it is surrendered into care of prison officials;  
23

24 On the latter enumerated point, Court hereof should factor that the  
25 Proof of Service hereto reflects a mail-date that precedes deadline.  
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4 GOOD CAUSE SHOWING FOR  
5 NEED TO REFER TO EXHIBITS  
6 IN ORIGINAL COMPLAINT DUE TO  
7 INAVAILABILITY OF  
8 EXHIBITS ALREADY IN COURT'S CARE  
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12 Due to inavailability of initially-filed exhibits that are material  
13 to Plaintiff's ability to provide relevant CDCR departmental forms'  
14 tracking and/or log numbers.

15  
16 Said departmental forms' tracking/log numbers are pivotal in their abil-  
17 ity to establish that Defendant-party Dr. Zahed Ahmed did factually  
18 neglect and refuse Plaintiff any needed secondary hemmeroid surgery  
19 knowing that Plaintiff had a history with that serious medical condition  
20 for a minimum of two years yet received only cursory topical o/ntment  
21 despite Plaintiff pleading for adequate treatment due to o/ntment's lack  
22 effecacy, with ensuing recurrent pain left agonizingly untreated.

23  
24 While Plaintiff shall reference those now-unavailable departmental forms  
25 so as to reap the benefits of their intrinsic value in establishing the  
26 8th Amendment-violative duration of Plaintiff's Delay/Denial of adequate  
27 timely pain-relieving hemmoroid surgery once Plaintiff made Dr. Ahmed  
28 privy to resurgent issues relating to hemmroids **after** one surgery had



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2. First formal level: \_\_\_\_\_  
all appeal levels exhausted; refer to initial Complaint's  
\_\_\_\_\_

3. Second formal level: \_\_\_\_\_  
all appeal levels exhausted; refer to initial Complaint's  
\_\_\_\_\_

4. Third formal level: \_\_\_\_\_  
all appeal levels exhausted; refer to initial Complaint's  
\_\_\_\_\_

E. Is the last level to which you appealed the highest level of appeal available to you?  
YES  NO

F. If you did not present your claim for review through the grievance procedure, explain why.  
\_\_\_\_\_

not applicable

II. Parties.

A. Write your name and present address. Do the same for additional plaintiffs, if any.  
\_\_\_\_\_

JUAN ESPINOZA # AC1503  
CTF-NORTH STATE PRISON  
P.O. Box 705 / SOLEDAD, CA 93960

B. For each defendant, provide full name, official position and place of employment.  
• CTF PRISON DR. ZAHED AHMED, CTF STATE PRISON  
SOLEDAD, CA.

• CTF PRISON DR. D. BRIGHT, CTF STATE PRISON  
SOLEDAD, CA

1 **III. Statement of Claim.**

2 State briefly the facts of your case. Be sure to describe how each defendant is involved and  
3 to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If  
4 you have more than one claim, each claim should be set forth in a separate numbered paragraph.

5 GTF DR. ZAHED AHMED REPEATEDLY ACTED WITH DELIBERATE  
6 INDIFFERENCE TO PLAINTIFF HEREOF'S SIGNIFICANT RECURRENT  
7 PAIN--RELATED TO NEED FOR HEMMOROID SURGERY-- OVER A  
8 PERIOD OF YEARS (SEE DEPARTMENTAL FORM #CDCR 602  
9 ALREADY IN COURT-RECORD UNDER CASE #CV-05047 JST)  
10 -- AND THEREBY EFFECTED DENIAL OF CARE AS TO A  
11 SERIOUS PAIN-INDUCING MEDICAL CONDITION; DENIAL OF  
12 CARE OF PRISONER, ITSELF 8<sup>TH</sup> AMENDMENT VIOLATIVE.

13 DR. AHMED COMPOUNDED THIS CIVIL RIGHTS VIOLATION  
14 BY PROVIDING BELOW-STANDARD CURSORY TOPICAL TREAT-  
15 MENT DESPITE PLAINTIFF'S REPEATED PLEADING FOR MORE

16 **IV. Relief.**

[SEE PAGE 3A HERENT] ...

17 Your complaint must include a request for specific relief. State briefly exactly what you  
18 want the court to do for you. Do not make legal arguments and do not cite any cases or statutes.

19 MONETARY DAMAGES IN THE AMOUNT AWARDED IN BINDING, PER-  
20 SUASIVE PRECEDENT CASELAW \*SCHAUB V. VONWALD (TO WIT, \$750K  
21 PUNITIVE) ARE HEREBY DEMANDED VIA JURY TRIAL. HOWEVER,  
22 AND MORE IMMEDIATE TO THIS PLAINTIFF'S PRESENT AND  
23 [CONT'D., PG. 3d]...

24 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

25 Signed this 19 day of JANUARY, 20 14

26 \* JUAN ESPINOZA  
27 (Plaintiff's signature)

28 Please continue to the next page.

1 ADEQUATE PAIN MANAGEMENT AND FOR FOLLOW-UP  
2 REFERRAL FOR ADDITIONAL HEMMOROID SURGEY (SEE  
3 CDCR FORM #7362'S ALREADY WITHIN COURT'S GRASP  
4 UNDER CV-05047).

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10 IT IS OF NOTE THAT PLAINTIFF'S INITIAL SURGERY  
11 (BACK IN SEPTEMBER 2012?) CAME ABOUT ONLY AS  
12 A RESULT OF REPEATED PRISON MEDICAL APPEALS AND  
13 EVENTUAL WRIT OF MANDATE FILING INTO MONTEREY  
14 SUPERIOR COURT; THIS, ALL IN THE WAKE OF OVER  
15 TWO YEARS UNDER DR. AHMED'S CARE AND THOSE  
16 TWO YEARS RESULTING IN NOTHING BUT CURSORY CARE  
17 (TO WIT, PROCTOZOLE OINTMENT ONLY).

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19  
20 THE DEPARTMENTAL PRISON MEDICAL APPEALS AND THE  
21 WRIT OF MANDATE ARE ALREADY WITHIN THE COURT'S  
22 GRASP UNDER CV-05047; WHILE COMPLAINT ITSELF  
23 IS "AMENDED" FILING, EXHIBITS THAT SUPPORT ITS CLAIMS  
24 DO NOT SHIFT NOR CHANGE AND ARE ACCORDINGLY  
25 QUITE RELEVANT-- AND APPLICABLE-- AND WARRANTING  
26 OF INCLUSION AND FACTORING HEREUPON.  
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1  
2 ANOTHER PIVOTAL SHOWING FOR THE DEPTH AND GRAVITY  
3 OF THIS PLAINTIFF'S SUFFERINGS, DUE TO DR. AHMED'S  
4 LONG-ONGOING DELIBERATE INDIFFERENCE OF THIS PRI-  
5 SONER'S PAIN ISSUES (AND NEED FOR REFUSED SURGICAL  
6 CARE ARBITRARILY WITHHELD), LIES IN PLAINTIFF'S  
7 HAVING TO RESORT TO PURSUIT OF ADMINISTRATIVE  
8 REDRESS BY PLACING THE MATTER BEFORE AHMED'S  
9 STATE MEDICAL BOARD TO HAVE HIM DISCIPLINARILY  
10 REMOVED FROM OVERSEEING PLAINTIFF'S CARE AS  
11 SAME'S PRIMARY CARE PROVIDER.  
12

13  
14 SAID MEDICAL BOARD COMPLAINT WAS EXHIBITED IN  
15 THE INITIAL CIVIL FILING UNDER CV-05047, AND--  
16 BEING ALREADY IN COURT RECORDS-- THAT SUPPORTING  
17 DOCUMENT IS HEREBY DESIGNATED AS RELEVANT  
18 HEREUPON, AND FACTORED ACCORDINGLY, IN THE  
19 DETERMINATION AS TO WHETHER DR. AHMED HAS  
20 INDEED EFFECTED DELAY OF TREATMENT; HAS UNDULY  
21 INFLICTED EXACERBATION OF PLAINTIFF'S DAILY PAIN  
22 FOR OVER TWO YEARS (BY REFUSING TO PRESCRIBE MUCH  
23 MORE THAN CURSORY TREATMENT: TOPICAL OINTMENT);  
24 AND HAS ACCORDINGLY VIOLATED PLAINTIFF'S 8TH AMEND-  
25 MENT RIGHT TO BE FREE OF DELIBERATE INDIFFERENCE  
26 AND CRUEL & UNUSUAL PUNISHMENT AS A PRISONER.  
27  
28

1 AS TO DR. BRIGHT BEING A BONA FIDE DEFENDANT  
2 IN THIS MATTER, LEGAL DOCTRINE respondeat sup-  
3 ERUM HAS TO BE JUSTIFIABLY FACTORED IN THIS  
4 PARTICULAR CASE, FOR IF DEFENDANT AHMED  
5 CANNOT HAVE SAME'S CONSTITUTIONALLY-VIOLATIVE  
6 DELIBERATE INDIFFERENCE EXTINGUISHED AND MUST  
7 BE ACCOUNTABLE AND LIABLE, SO, TOO, THEN, MUST  
8 DR. BRIGHT (UPON WHOSE DIAGNOSTIC MISASSESSMENTS  
9 AHMED FASHIONED HIS OPINIONS UPON WHEN  
10 DECIDING TO FOREGO ADEQUATE, NON-TOPICAL  
11 PAIN TREATMENT AND MEDICALLY-NECESSARY  
12 SECONDARY HEMMORROID SURGERY, LEAVING PLAIN-  
13 TIFF TO ADMINISTRATIVELY AND JUDICIALLY GRIEVE  
14 AND PLEAD FOR OVER TWO YEARS AND COUNTING).

17 OUR CONSTITUTION PROHIBITS THIS.

18 THE 8TH AMENDMENT DOES NOT ALLOW THIS.

20 NEITHER SHOULD THIS U.S. COURT HEREOF.

23 RESPECTFULLY SUBMITTED,  
24 X JUAN ESPINOZA  
25 JOSE ESPINOZA,  
26 PLAINIFF

27 LAURINCE B. WEIGH SIMPSON,  
"COUNSEL SUBSTITUTE" / WORK-  
28 PRODUCT DRAFTER HEREOF

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LONG-SUFFERING CIRCUMSTANCE OF INADEQUATELY  
TREATED HEMORRHOIDAL PAIN NOW REMAINING IN  
DIRE WANT OF 8TH AMENDMENT-UPHOLDING SURGERY,  
PLAINTIFF BESEECHES PRELIMINARY EMERGENCY  
INJUNCTIVE ORDER FOR:

- 1.) OFF-SITE SURGERY, EXPEDIENTLY;
- 2.) NON-TOPICAL, ADEQUATE, PAIN-REDUCING  
MEDICATION IN THE INSTANT INTERIM;
- 3.) REASSIGNMENT TO CASELOAD OF A  
CTF PRISON DOCTOR OTHER THAN  
PLAINTIFF'S CARE-PROVIDER (DE-  
FENDANT AHMED) -- ON GROUNDS OF  
"CONFLICT", MINIMALLY -- PENDING  
OUTCOME OF STATE MEDICAL BOARD  
FINDINGS IN COMPLAINT # 03 2013235142.

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**MAGISTRATE JUDGE JURISDICTION**

Please indicate below by checking **one** of the two boxes whether you choose to consent or decline to consent to magistrate judge jurisdiction in this matter. Sign this form below your selection.

**Consent to Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment.

OR

**Decline Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment.

Signed this 19 day of JANUARY, 20 14

**X** JUAN ESPINOZA  
(Plaintiff's signature)

# EXHIBIT COVER PAGE

#1

EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

ORDER, FILE DATED 12/23/13;

NUMBER OF PAGES TO THIS EXHIBIT: 3 PAGES

JURISDICTION: (CHECK ONLY ONE)

MUNICIPAL COURT

SUPERIOR COURT

APPELLATE COURT

STATE SUPREME COURT

UNITED STATES DISTRICT COURT

#CV-05047 JST  
(AMENDMENT COMPLAINT)

STATE CIRCUIT COURT

UNITED STATES SUPREME COURT

GRAND JURY

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JUAN ESPINOZA,  
Plaintiff,

v.

DR. AHMED, et al.,  
Defendants.

Case No. 13-cv-05047-JST (PR)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

Plaintiff, a prisoner at the Correctional Training Facility (CTF) in Soledad, California, has filed a pro se complaint under 42 U.S.C. § 1983 alleging that prison officials at CTF improperly have delayed his hemorrhoid surgery. Plaintiff names Dr. Ahmed, Dr. D. Bright, Dr. R. Javate and Chief Medical Appeals Officer L.D. Zamora, but adds no facts whatsoever linking them to his allegations of wrongdoing.

**DISCUSSION**

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.* § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
2 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
3 violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S.  
4 42, 48 (1988).

5 B. Legal Claims

6 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
7 proscription against cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976).

8 A "serious medical need" exists if the failure to treat a prisoner's condition could result in further  
9 significant injury or the "unnecessary and wanton infliction of pain." McGuckin v. Smith, 974  
10 F.2d 1050, 1059 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part on other  
11 grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A  
12 prison official is "deliberately indifferent" if he knows that a prisoner faces a substantial risk of  
13 serious harm and disregards that risk by failing to take reasonable steps to abate it. Farmer v.  
14 Brennan, 511 U.S. 825, 837 (1994).

15 Neither negligence nor gross negligence warrant liability under the Eighth Amendment.  
16 Id. at 835-36 & n4. An "official's failure to alleviate a significant risk that he should have  
17 perceived but did not, . . . cannot under our cases be condemned as the infliction of punishment."  
18 Id. at 838. Instead, "the official's conduct must have been 'wanton,' which turns not upon its effect  
19 on the prisoner, but rather, upon the constraints facing the official." Frost v. Agnos, 152 F.3d  
20 1124, 1128 (9th Cir. 1998) (citing Wilson v. Seiter, 501 U.S. 294, 302-03 (1991)). Prison officials  
21 violate their constitutional obligation only by "intentionally denying or delaying access to medical  
22 care." Estelle, 429 U.S. at 104-05.

23 Plaintiff's allegations will be dismissed with leave to amend to set forth specific facts  
24 showing how each named defendant was deliberately indifferent to plaintiff's serious medical  
25 needs, if possible. Plaintiff also must link each named defendant with his allegations of  
26 wrongdoing so as to show how each defendant actually and proximately caused the deprivation of  
27 his federal rights of which he complains. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).  
28 A prison official cannot be liable for damages under § 1983 simply because he is responsible for

1 the actions or omissions of another. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

2 **CONCLUSION**

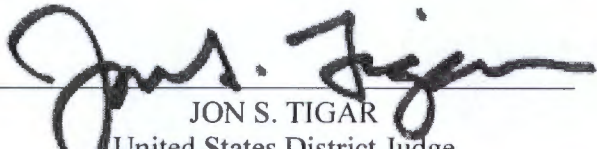
3 For the foregoing reasons, the complaint is dismissed with leave to amend, as indicated  
4 above, within **thirty (30)** days of this order. The pleading must be simple and concise and must  
5 include the caption and civil case number used in this order (13-5047 JST (PR)) and the words  
6 **AMENDED COMPLAINT** on the first page. **Failure to file a proper amended complaint**  
7 **within the designated time will result in the dismissal of this action.** The Clerk of the Court  
8 shall send plaintiff a blank civil rights form along with his copy of this order.

9 Plaintiff is advised that an amended complaint supersedes the original complaint. "[A]  
10 plaintiff waives all causes of action alleged in the original complaint which are not alleged in the  
11 amended complaint." London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981).

12 Defendants not named in an amended complaint are no longer defendants. See Ferdik v. Bonzelet,  
13 963 F.2d 1258, 1262 (9th Cir. 1992).

14 **IT IS SO ORDERED.**

15 Dated: December 19, 2013

16   
17 JON S. TIGAR  
18 United States District Judge

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JUAN ESPINOZA,  
Plaintiff,  
v.  
AHMED, et al.,  
Defendants.

Case No. 13-cv-05047-JST (PR)

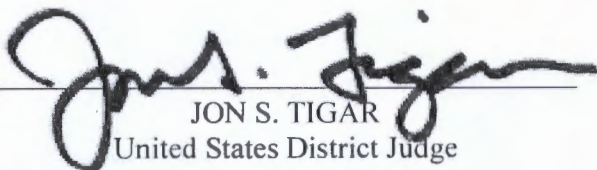
**ORDER GRANTING LEAVE TO  
PROCEED IN FORMA PAUPERIS**

Re: Dkt. Nos. 5, 6

Plaintiff's application to proceed in forma pauperis is GRANTED. The total filing fee due is \$350.00. The initial partial filing fee due for plaintiff is \$0.00 (zero dollars), due to the apparent lack of funds in his inmate trust account at this time. The Clerk shall send a copy of this order and the attached instructions to plaintiff, the prison's trust account office, and the court's financial office.

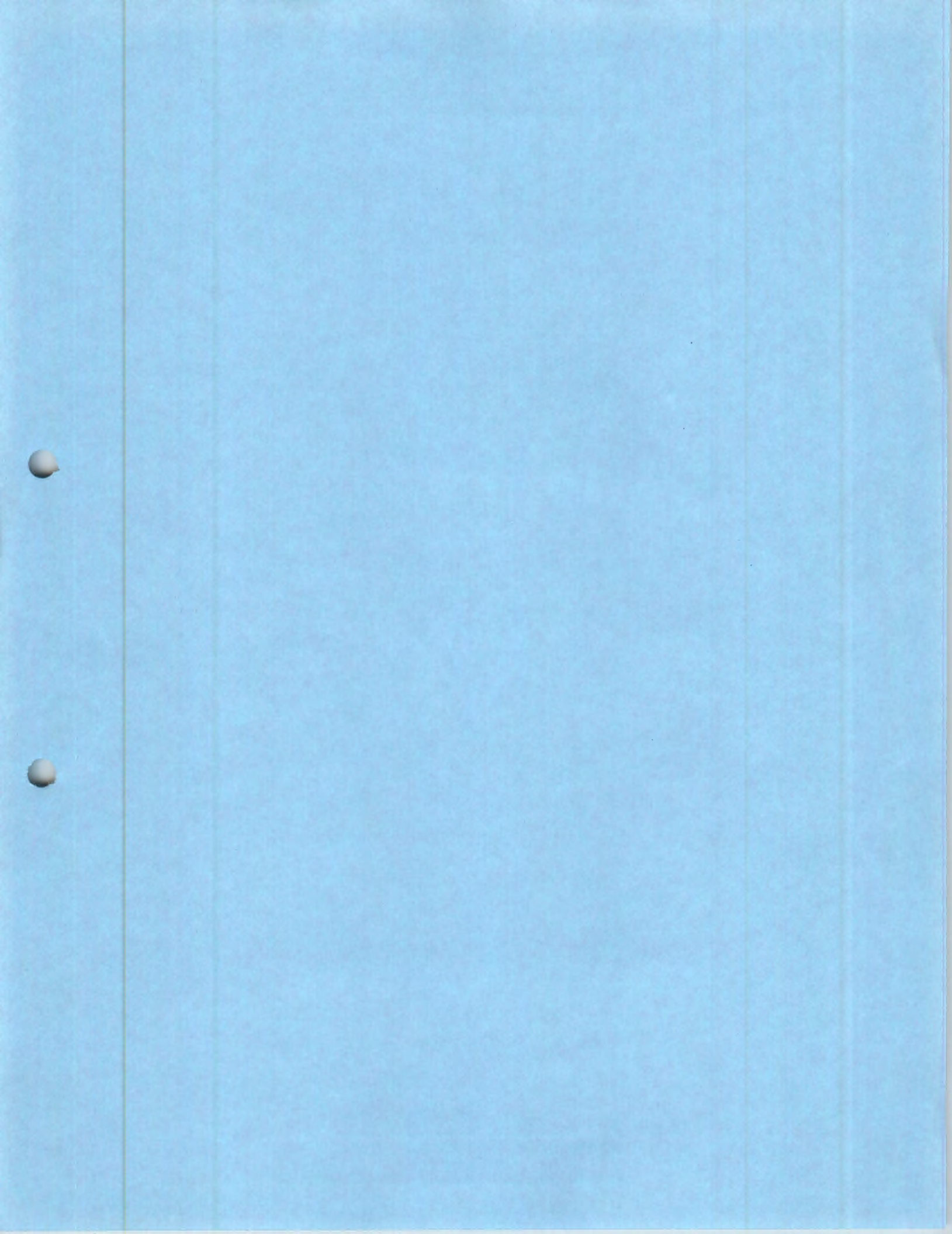
**IT IS SO ORDERED.**

Dated: December 19, 2013

  
JON S. TIGAR  
United States District Judge

United States District Court  
Northern District of California





JUAN ESPINOZA #A41523  
GREEN / FB92L / Box 705  
Seledra, CA 95762

CONFIDENTIAL  
LEGAL MAIL

RECEIVED

JAN 2 : 2014

RICHARD W. WICKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA



UNITED STATES DISTRICT  
ATTN: HONORABLE JON S. TIG  
450 GOLDEN GATE AVE  
SAN FRANCISCO, CALIF.

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