

1 OTIS M. THOMAS 0-57401
2 SVSP
3 P.O. Box 1050
4 SOLEDAD CALIFORNIA 93960-1050
5 ATTORNEY of RECORD

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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA
JUL 05 2006
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Handwritten signature]

9 OTIS M. THOMAS,
10 PLAINTIFF

NO. C-06-3581 MMC(PR)
AMENDED COMPLAINT

11 v

12 WARDEN M. S. EVANS
13 CORRECTIONAL SERGEANT M. J. KIRCHER.
14 CORRECTIONAL CAPTAIN G. PONDER. AND DOES 1-15
15 INCLUSIVE)
16 DEFENDANT.

GENERAL ALLEGATIONS

17 1. This is a COMPLAINT for INJUNCTIVE RELIEF AND DAMAGES for
18 DEFENDANTS DIRECTIVE-INFRINGING ON PLAINTIFF CONSTITUTIONAL RIGHT
19 TO OUT DOOR EXERCISE, EQUAL PROTECTION, POLITICAL BELIEFS WITHOUT
20 SETTING FORTH ANY LEGITIMATE PENOLOGICAL INTERESTS TO JUSTIFY THAT
21 INFRINGEMENT DURING PLAINTIFFS' CONFINEMENT BY THE CALIFORNIA
22 DEPARTMENT OF CORRECTIONS ("DOC") AT SALINAS VALLEY STATE PRISON
23 ("SVSP")

JURISDICTION

24 2. This ACTION ARISES UNDER 42 U.S.C. SECTION 1983, AND JURISDICTION
25 IS BASED UPON 28 U.S.C. SECTION(S) 1331 AND 1343.

①

26
27
28 PLAINTIFF OTIS M. THOMAS FIRST AMENDED COMPLAINT IN CASE UNMBER
C-06-3581 MMC(PR).

1 3. ALL OF THE CONDUCT GIVING RISE TO THE CLAIMS ALLEGED HEREIN
2 AROSE IN MONTEREY COUNTY, CALIFORNIA, THEREFORE, VENUE IS PROPER
3 UNDER 28 U.S.C. SECTION 1391(B)(2).

4 PARTIES

5 4. PLAINTIFF OTIS M. THOMAS WAS AT ALL RELEVANT TIMES MENTIONED
6 HEREIN AN INMATE IN THE CUSTODY, CONTROL, AND CARE OF (CDCR)
7 EMPLOYEES AT SALINAS VALLEY STATE PRISON.

8 M.S. EVANS WAS THE WARDEN DURING THE EVENTS HE IS SUED IN HIS
9 INDIVIDUAL CAPACITY.

10 M.J. KIRCHER WAS A SERGEANT DURING THE EVENTS HE IS SUED IN
11 HIS INDIVIDUAL CAPACITY.

12

13 G. PONDER WAS A CAPTAIN DURING THE EVENTS HE IS SUED IN HIS
14 INDIVIDUAL CAPACITY.

15 AT ALL TIMES DURING THESE INCIDENTS MENTIONED IN THIS COMPLAINT
16 EACH DEFENDANT WAS AND IS ACTING UNDER THE COLOR OF STATE

17 LAW

18 FACTS

19 5. ON JULY 14TH 05 TWO CORRECTIONAL OFFICERS WERE ASSAULT
20 AT SALINAS VALLEY STATE PRISON ON FACILITY "Z"

21

22 6. THE PRISON WAS PLACED ON LOCKDOWN, THEN INTERVIEWS WERE
23 DONE IN AUGUST AND IN SEPTEMBER AND IN OCTOBER AND NOVEMBER,
24 AND I HAVE SIGNED ALL OF THE INTERVIEW FORMS. AND THEN
25 OFFICIALS WERE TRYING TO FORCE ME TO SIGN A 128 B CHRONO
26 THAT IS NOT A PART OF THE (CDCR) RULE MADE AVAILABLE TO
27 ME. THEN ON 11-4-05 A MEMORANDUM WAS GIVEN TO ME SAYING
28 THAT I HAVE BEEN IDENTIFIED AS EITHER FAILING TO SUCCESSFULLY
PLAINTIFF OTIS M. THOMAS FIRST AMENDED COMPLAINT IN CASE NUMBER
C-06-3581

1 COMPLETE THE INTERVIEW PROCESS OR INTERVIEWING IN SUCH AS
2 FASHION THAT STAFF CANNOT DETERMINE THE THREAT TO STAFF OR
3 OTHER INMATES SEE PLAINTIFF EXHIBIT A (PXA).

4

5 7. THE MEMORANDUM WENT ON TO SAY I WOULD ONLY BE ALLOWED
6 PERSONAL HYGIENE CANTEEN DRAW ONLY, NO QUARTERLY PACKAGES,
7 NO SPECIAL PURCHASE, NON-CONTACT VISITING. THIS MEMORANDUM
8 WAS AUTHORED BY G-PONDER.

9

10 8. SIMILARLY SITUATED INMATES WERE ALLOWED CANTEEN FOOD QUARTERLY
11 PACKAGES, SPECIAL PURCHASES AND CONTACT VISITING.

12

13 9. ON 11-6-05 PLAINTIFF FILED A INMATE APPEAL SEE (PXA)

14

15 10. IN THE APPEAL PLAINTIFF EXPRESSED THAT HE WANTED HIS OUTDOOR
16 EXERCISE AND SAME PRIVILEGES AS SIMILAR SITUATED PRISONERS.
17 I ALL SO STATED THAT I DID INTERVIEW AND SIGNED THE
18 INTERVIEW FORM STATING THAT I HAD NO INTENTIONS ON
19 ASSAULTING ANY STAFF AND THAT I WAS WILLING TO PROGRAM
20 POSITIVELY.

21

22 11. THERE WAS A CHRONO ATTACHED TO THE INTERVIEW FORM
23 STATING UNSPECIFIED DISCIPLINE FOR ANY INFRACTIONS. THE
24 CHRONO ALSO ASKED PLAINTIFF QUESTION ABOUT CONSPIRACIES
25 BY INMATES IN THE PRISON.

26

27

28

(3)

PLAINTIFF OTIS M. THOMAS FIRST AMENDED COMPLAINT IN CASE NUMBER
L-06-3581 MMC (PR)

1 12. I ASK SERGEANT M. J. KIRCHER TO SHOW ME THE RULE WHERE
2 IT SAYS I HAVE TO SIGN THIS CHRONO AGREEING TO UNSPECIFIED
3 DISCIPLINE AND ASKING ME QUESTIONS ABOUT OTHER INMATES

4
5 13. SERGEANT M. J. KIRCHER GOT MAD AND KICK ME OUT OF
6 HIS OFFICE.

7
8 14. SENCE JULY 14-05 I HAVE NOT HAD ANY OUT DOOR EXERCISE
9 AND HAVE NOT ENJOYED ANY OF THE PRIVILEGES SIMILAR
10 SITUATED PRISONER ARE ENJOYING.

11
12 15. I HAVE PLACED WARDEN M. S. EVANS ON NOTICE AND HE HAS
13 FAILED TO ACT TO CURE THESE KNOWN CONSTITUTIONAL VIOLATIONS

14
15 CLAIMS OF RELIEF

16 1. THE ACTIONS M. J. KIRCHER AND G. PONDER OF DENYING PLAINTIFF
17 OUTDOOR EXERCISE FOR MORE THAN 11 MONTHS AND COUNTING
18 CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION
19 OF THE EIGHTH AMENDMENT TO U.S. CONSTITUTION.

20
21 2. THE ACTIONS OF M. J. KIRCHER AND G. PONDER TO DENY
22 PLAINTIFF THE SAME ENTITLEMENTS AS SIMILAR SITUATED
23 PRISONERS DENIED PLAINTIFF EQUAL PROTECTION IN VIOLATION OF
24 THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

25
26 3. THE ACTIONS OF M. J. KIRCHER AND G. PONDER TO DENY
27 PLAINTIFF ENTITLEMENTS FOR HIS POLITICAL BELIEF WHEN HE DID
28 NOT SIGN THE 128 B INFRINGED ON PLAINTIFFS

1 RIGHT TO POLITICAL BELIEFS IN VIOLATION OF THE FIRST
2 AMENDMENT TO THE U.S. CONSTITUTION

3

4 4. THE INACTIONS AND THE ACTIONS OF MRS. EVANS TO ALLOW AND
5 NOT CARE THE CONSTITUTIONAL VIOLATIONS ONCE PLAINTIFF
6 PLACED HIM ON NOTICE AND ASKED HIM TO SEE THAT
7 PLAINTIFF GOT HIS ENTITLEMENTS DENIED PLAINTIFF OUTDOOR
8 EXERCISE EQUAL PROTECTION AND THE RIGHT TO POLITICAL
9 BELIEFS. EIGHTH, FOURTEENTH AND FIRST AMENDMENT VIOLATIONS
10 RESPECTIVELY.

11

12 PRAYER FOR RELIEF

13

14 WHEREFORE, PLAINTIFF OTIS THOMAS PRAYS FOR JUDGMENT
15 AGAINST ALL DEFENDANTS AS FOLLOWS:

16

17 1. FOR INJUNCTIVE RELIEF IN THE FORM OF PROPER ENTITLEMENTS.

18 2. FOR GENERAL DAMAGES, ACCORDING TO PROOF.

19 3. FOR SPECIAL DAMAGES ACCORDING TO PROOF.

20 4. FOR PUNITIVE DAMAGES ACCORDING TO PROOF.

21 5. FOR REASONABLE ATTORNEY FEES PURSUANT TO 42 U.S.C. § 1988.

22 6. FOR COST OF THE SUIT, AND

23 7. FOR SUCH OTHER AND FURTHER RELIEF AS THE COURT MAY DEEM
24 JUST AND PROPER.

25 DATED: JUNE 30, 2006.

OTIS M. THOMAS
OTIS MICHAEL THOMAS
ATTORNEY OF RECORD

26

27

28

STATE OF CALIFORNIA
COUNTY OF MONTEREY

(C.C.P. SEC. 466 & 2015.5; 28 U.S.C. SEC. 1746)

I, OTIS MICHAEL THOMAS declare under penalty of perjury that: I am the PLAINTIFF in the above entitled action; I have read the foregoing documents and know the contents thereof and the same is true of my own knowledge, except as to matters stated therein upon information, and belief, and as to those matters, I believe they are true.

Executed this 30 day of JUNE, 2006, at Salinas Valley State Prison, Soledad, California 93960-1050.

(Signature) Otis Michael Thomas
DECLARANT/PRISONER

PROOF OF SERVICE BY MAIL
(C.C.P. SEC 1013(a) & 2015.5; 28 U.S.C. SEC. 1746)

I, _____, am a resident of California State Prison, in the County of Monterey, State of California; I am over the age of eighteen (18) years and am/am not a party of the above entitled action. My state prison address is: P.O. Box 1050, Soledad, California 93960-1050.

On JUNE 30, 2006, I served the foregoing: AMENDED COMPLAINT UNDER 42-U.S.C. 1983 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

(Set forth exact title of document(s) served)

On the party(s) herein by placing a true copy(s) thereof, enclosed in sealed envelope(s), with postage thereof fully paid, in the United States Mail, in a deposit box so provided at Salinas Valley State Prison, Soledad, California 93960-1050.

A COMPLAINT BY A PRISONER AMENDED COMPLAINT TO THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE SAN FRANCISCO, CA 94102-3483

(List parties served)

There is delivery service by United States Mail at the place so addressed, and/or there is regular communication by mail between the place of mailing and the place so addressed.

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

DATED: 30, 2006

Otis Michael Thomas
DECLARANT/PRISONER

DEAR. hon

C-8-112 Low P.O. Box 1050
Soledad, CA 960-1050

I AM WRITING YOU THIS LETTER BECAUSE I CAN NOT GET ANY COPIES OF MY "AMENDED COMPLAINT" BECAUSE THE C/O'S WILL NOT TAKE MY AMENDED COMPLAINT TO THE LAW LIBRARY. AND I HAVE SENT TO THE LAW LIBRARY A TRUST ACCOUNT WITHDRAWAL ORDER FOR "PAPER" AND FOR ENVELOPES AND FOR A "NEW PEN FILLER" BUT THEY WILL NOT SEND OR GIVE ME ANY "PAPER" SO I CAN WRITE UP MY FIRST SET OF INTERROGATORIES AND MY REQUEST FOR PRODUCTION OF DOCUMENTS (SET ONE) AND I HAVE NOT BEEN ABLE TO GO OUT SIDE MY CELL FOR OVER (11) MONTHS FROM 7-14-05 AND TILL NOW.

SO ~~ALL~~ ALL I CAN DO IS JUST PRAY FOR SOME HELP FROM THE COURTS.

Thank you for your time truly your MR. OTT
Michael Thomas

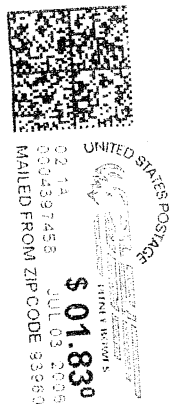
DATE 7-2-06 TIME IS 6:38 PM

P.S. I HOPE AND I PRAY THAT YOU CAN PLEASE-PLEASE-PLEASE SEND ME A COPY BACK
THANK YOU AGAIN

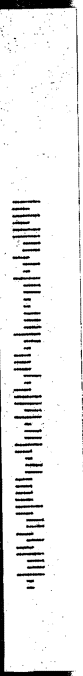
SALINAS VALLEY STATE PRISON
OTIS MICHAEL THOMAS D-54421
C-8-112 low

P.O. Box 1050
Soledad CA 95960-1050

LEGAL MAIL



OFFICE OF THE CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE
SAN FRANCISCO CALIFORNIA 94102





S. King

7/2/06