Robert Anthony Winters California

I. CDCR's "UNHEALTHY AND DANGER-CREATED ANTI-REHABILITATION INCENTIVE ENVIRONMENT: 'WHEN PRISONERS OF WAR AREN'T SUBJECT TO SUCH PROLONGED DEPRIVING AND DEBILITATING INHUMANE LIVING CONDITIONS AS OUR OWN AMERICAN CITIZEN PRISONERS'"

On September 6, 2006 a facility transfer housing of general inmate Southern hispanics from 3B to 3A facility plan of operations was implemented from the promulgated approval of the Director Suzan Hubbard, her headquarter directors, CSP-Corcoran's Warden Derral G. Adams, administrators D. Ortiz and Raul Lopez to name a on-hands-few. 3A Facility Lieutenant John Kavanaugh wrote a commentary entitled ANATOMY OF A FAILED PRISON YARD INTEGRATION Id. *(FN1); which addresses the "substantial risk of serious harm" concerns of housing well documented and longstanding enemy groups/gangs the Southern hispanics on the 3A facility with the Bulldogs, some of which stated pertinent to the inquiry:

> *Based upon the history of violence between the two fractions, and their current capability for violence and significant disruptions to institutional operations was probable. The safety and security of the institution would be in jeopardy. In the early 1990's Corcoran endured litigation and public scrutiny due to so-called "gladiator wars." (FN2) The public's valued trust in our Department was violated. Once again, the Department of Corrections (specifically Corcoran) would arbitrarily place rival inmates on the same exercise yard. --The integration process and the October 12, 2006 riot between the Fresno Bulldogs and Southern hispanic inmates has caused a disruption to institutional services and undue diversion of valuable staff resources. --Officers and supervisors had advised CSP-Corcoran administrators of the violence that would occur and disruption to institutional programs should the integration take place. This integration only smacks of staged gladiator fight with which to entertain the administrators.*

This 3A facility re-integration transfer housing Southern inmate population plan of operations and procedure "bypassed all Administrative Procedure Act (APA) existing 'inmate classification procedural safeguards to critical enemy case-factor information' that had been previously in place since the Departments' 2002 general enemy concern determination to separate the Southern population from the Fresno Bulldogs housed on 3A facility Corcoran." (FN3) This has for over (3) three plus years subjected myself and at least a (100) a hundred or so inmates to either grievous loss, physical harms from the assaults and riots, as well as the debilitating effects from being deprived of the most basic fundamental necessity of "outdoor exercise, fresh air and sunlight, etc." (FN4): A "wanton, callous, and oppressive" cell isolation punishment that I have endured since September 6, 2006 through around October 2007, and after a the state audit investigation, resumed again on April 4, 2008 through to the present date and continuing....

II. JUDICIAL MISCONDUCT: Conspired Retaliations to Obstruct and Deny Me of My 1st Amendment Right to Petition §1983 Civil Action Before the Government for a Redress of Grievances

On October 30, 2008 I had submitted for filing my 42 U.S.C §1983 prison conditions civil complaint; accompanied by "direct and affirmative supporting evidence documents

* (FN_) refers to the Footnotes of referenced relevant evidence, authority citations and definitions, Attached hereto. "Pages 1 -thru 7."

that substantiate the 8th Amendment & 14th Amendment "Cruel and Unusual Punishment" and denial of "Equal Protection Clause in the discriminatory context" living conditions. The most overwhelming direct evidence, of which are, several supervisory amended incident reports and disciplinary program recommendations that were of a intentionally "bias, partial, and/or fraudulent nature" (FN5). Having filed a first and second amended complaint with this and several other affirmative supporting official documents; certainly enough evidence to a ongoing and current irreparable harm to health and safety--for any reasonable court to issue service of complaint and grant injunction against CDCR defendants-prison officials. (FN6) And in spite of the fact I had alleged in my original §1983 complaint that "I had reason to believe several facility officials were planning an "all out staged-stance" to take place between the Southerners and Bulldogs, which ironically took place on November 3, 2008 just four days after the October 30, 2008 date that I submitted the original complaint in question: The morning of November 3, 2008 (30) thirty plus Southerners were allowed unabated to enter 4-Building "armed with manufactured stabbing and slicing weapons" to seriously attack the (10) plus Fresno County hispanic origin and Bulldog inmates who were finally allowed dayroom recreation on that day. I had personally witnessed how this entire staged riot incident unfolded and how facility correctional officers assisted the Southerners' therein.

Unfortunately, for me the same District Court Judge Lawrence J. O'Neill (who was the same unreasonable magistrate district judge overseeing my underlying criminal conviction appeal) was assigned to this current civil action. Due to existing "conflict of interest" and actual prejudices in these judges' 'striking supplemental evidence from the record' that support the original complaint's allegations and to grant injunctive relief to correct this ongoing current and continuous harm to health and safety living conditions, and 'miscontruing of the pleadings to not do it justice:' I had sought for their disqualification and/or for their recusal, because they had ignored the current irreparable harm circumstances of which involved the "increasing conspired retaliations by defendants-prison officials since the filing of my original complaint." Retaliations of which ... affirmatively had prevented me from being able to properly prepare and timely file a Third Amended complaint per these judges' court ordered deadlines to do so. These Judges and their delegated law clerks even prevented the timely filing of my Interlocutory Appeal for Injunctive Relief and Stay of the District Court's Final Judgment al-together; of which they provided an official post-mark return stamp showing they in fact timely received it. Thereby, the district court in having ignored the irreparable harm conspired retaliatory instances identified in the (6) six plus inmate grievance prison appeals that defendants-prison officials have refused to process and/or address. Retaliations involving and not limited to: "Putting me in a cage for hours in handcuff-restraints and threatening me of my welfare, the

ransacking and damaging of personal radio and taking of legal case preparation materials, taking of my prepared Third Amended complaint sent via institutional mail to librarian for duplicate copy service, as well as having the facility law librarian go against departmental and facility policy and procedure by not honoring my informal notice of court ordered deadlines to allow (PLU) Priority Library Use for physical access, that could have allowed me to personally obtain copies of Third Amended complaint/all supporting exhibits, thereby, establishing a conspired pattern of retaliations which inasmuch denied me access to the courts. Seems the district court judges who's impartial conduct is in forefront question, inasmuch had conspired as well in having dismissed my action on March 3, 2010. A sua sponte dismissal that carries no rationale basis in having completely ignored the "heightened scrutiny" standard of review when such fundamental rights are at stake: "liberty interest in being free from bodily restraint and personal security; also right to meaningful access to courts." (FN7)

a. District Court Judges' Overall Irrational Sua Sponte Dismissal

The district courts' overall reasoning in having sua sponte dismissed my § 1983 civil rights action "with prejudice" was for: (1) That I failed to state a cognizable 8th Amendment cruel and unusual punishment claim under the "substantial risk of serious serious harm" (FN8); (2) Because I am not a verified gang member of the adversely affected Fresno Bulldogs, that I had no discriminatory-unequal treatment claim under the Equal Protection Clause of the 14th Amendment. (FN9); and (3) Found I had failed to timely file Third Amended complaint per their court ordered deadlines; in light I was being obstructed from doing so due to ongoing current and continuous conspired retaliations by defendants-prison officials who will continue to do so if no injunctive remedy is enforced thereto. (FN10)

b. Writ of Mandamus and Supplemental Amended Notice of Appeal

On March 18th & 19th of 2010 my Writ of Mandamus and Supplemental Amended Notice of Appeal was received and docketed before the Ninth Circuit Court of Appeals, San Francisco, Case No.: 10-70823. Seeking in part, order granting issuance of writ invoking Judicial Council referral of misconduct to Chief Judge and Judicial Conference for investigation processing procedures in accord Fed. R. App. Proc. 21(a)(1); Procedure P. 2 & 6; 28 U.S.C. Secs. 331, 332(d), 144, 455(a)(b)(1), 1651(a); and Fed. R. Civ. Proc. 45 et seq. For such display of clear error of law in the abuse of discretion and "usurpation of judical power", which in several aspects could be viewed as in conspiring with the defendants-prison officials to "impede, hinder, obstruct, and persuade me from pursuing any further-this action, and to continue to allow such related retaliations of which are depriving me of the equal rights and privileges afforded to me in clear violation of 42 U.S.C. §1985(2)(3)"respectively.

c. Martinez-style report Orders Required: Court Must Not Provide Deference Where Defendants-Prison Officials Provided No Evidence of A Legitimate Penological Interest ...to the Contrary

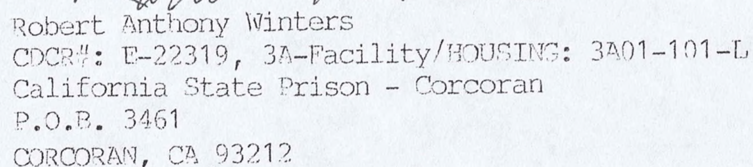
Having repeatedly argued that the defendants-prison officials promulgation of their Sounthern general inmate 3A facility housing plan serves not legitimate penological interest but to "inflict pain and suffering on adversely affected inmates indefinitely" (FN11) It is common case law that the defendants must come forward with such evidence before a court could provide deference to defendants-prison officials, 8(b)-(c), 11(b)(4), 15(d) of the Fed. R. Civ. Proc. (FN12) If the district court judges did not display such a "deep-seated favoritism for defendant-prison officials and antagonism toward me the complainant;" its more than likely the district court would have justly construed the pleadings so as to do it justice 8(e) of Fed. R. Civ. Proc., and have found the "existing denial of access to the courts" and "deliberate indifference to my safety and health," as well as many other prisoners being adversely affected." In doing so, should have issued a Martinez-style report order upon defendants-prison officials --so as "to give the court the benefit of factual detailed information that way to be helpful in identifying a case involving a constitutional challenge to an important, complicated correctional, practice, particulary one that may effect more than one inmate who has filed the action --affecting additional prisoners." (FN13)"

Update: As of now I have been made understood by Facility Property Officers that they are intentionally withholding my quarterly packages that my family has sent. Holding past the 15 day period per both Department and their own rules under local "Operational Procedure #806." "Misdirection of personal belongings may state a claim of retaliation for exercise of First Amendment rights, Crawford-El v. Britton, 523 U.S. 574, 118 S.Ct. 1584 (1998)."

Thank you for your time and concern. If you'd like to review the facts and pleadings in my case to verify for yourself these allegations, just look to the Verification at page 7 of 7 of the Footnotes attached hereto, that give you the Federal Court's website access --to review the filings herein.

God Bless and take care.

Respectfully yours,



Robert Anthony Winters
CDCR#: E-22319, 3A-Facility/HOUSING: 3A01-101-L
California State Prison - Corcoran
P.O.B. 3461
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Date: April 1, 2010

* (FN_) "F O O T N O T E S *

(FN1): See, PEACEKEEPER, Vol. 24, No. 1 JAN/FEB 2007, Re: "ANATOMY OF A FAILED PRISON YARD INTEGRATION" by CSP-Corcoran's 3A Facility Lieutenant John Kavanaugh exposing Executive CDCR Officials knowledge of the "substantial risk of serious harm" to having arbitrarily implemented a transfer housing policy plan to house longstanding and well known documented enemy populations gangs on same 3A-Facility exercise yard. Stating in part: "September 13, 2006 was the target date for the start of the actual integration. Approximately 100 Southern hispanic inmates were relocated from facility 3B to 3A. During this time the normal programing on 3A facility was in disarray. --No recreational out of cell time was allowed for the inmates. On the morning of October 12, 2006 seven Bulldogs and seven Southern inmates were released to the facility 3A east yard. --The institution's (ISU) Investigative Service Unit staff members were present on the facility with a camera, prepared to watch the show. Within minutes of the release of the inmates to the yard, the 14 inmates initiated a riot inwhich they savagely attacked each other. Although the Bulldogs and Southern hispanic inmates were both equally culpable for their individual actions during the riot, Corcoran administrators directed to RVR's (Rule Violations Reports for the Southern hispanics to be mitigated to mutual combat, and that the Fresno Bulldogs receive SHU terms (and D.A. Prosecution referrals) for their conduct." ***Note:** Such selective and intentional unequel display of discriminatory prosecution toward the Fresno Bulldogs is shown patternly throughout the past tree plus years thereafter, as the pleadings in the §1893 action allege....

(FN2): Report -by California Prison (CPF), Re: Corocran State Prison 2001-2002 INSIDE CALIFORNIA BRUTAL MAXIMUM SECURITY PRISON. Tracing the conditions inside CSP-Corcoran which houses 5000 prisoners who call this maximum prison home. Visiting 300 inmates during 8 investigative visits in 2001-2002, and corresponding with many others. The findings of the legal visits established conclusive patterns of abuse of prisoners, from: "A. Staff and Guard Misconduct; B. Violent Cell; D. Food Tampering; E. Preventable Deaths; F. Violations of Health and Safety Regulations; H. Bogus SHU Sentencing; I. Lack of Yard Access; K. Denial of Due Process; N. Mail Tampering, etc...(From 1988 until 1995 the governing policies caused rival gang members and known enemies to be in the same SHU small exercise yards where gunfire was used to quell the expected weaponless stand up fist fights)."

(FN3): Cal. Code of Regulations, Title 15, Div. 3, Secs. §3004(b), §3040(c)(1)-(5), §3044 (c)(1)(5), §3270, §3271, §3322(c), §3375(c)(g)(5)(P); Cal. Penal Codes §5058, §5068, §5080. The classifications determines custody of a prisoner and the institution [and facility §5068 & §5080] in which he will be housed --represents a rule of general applications which must be adopted in compliance of the Administrative Procedure Act. Stoneham v. Rushen, 188 Cal.Rptr. 130, 135 (1982); see Hillery v. Rushen, 720 F.2d 1132, 1135-36 (9th Cir.1983)(The Court also noted the history of California state agencies' efforts to avoid their legal obligation to comply with procedural requirement before enacting regulations. The argument the Director may delegate to himself the power to adopt regulations without following the APA's procedure is simply just another attempted form of "avoidance.").

(FN4): Establishing the defendants-prison officials' "deliberate indifference" in having have -- abused their executive powers through the utilization of Cal. Code of Regulations, Title 15, Division 3, sections §3004(a)(b)(c), §3322(c), §3380(a)(c)(d); Cal. Penal Codes §2081, §2650, §2651, §2652; Government Code §11340(a)(c)(d)(f)(g). If the Legislature declares as such findings, then the Public does not have any interest to turn-a-blind-eye to this established current ongoing and continuous 1st, 8th and 14th Amendments' "inflictions of inhumane prison living conditions:" "Sufficiently serious" enough to be uniformly recognized by the United States Supreme Court, that prison officials duty to protect prisoners --allowing the beating of one (or more prisoners) by (many) others serves not "legitimate penalogical objectiv[e]." Farmer v. Brennan, 511 U.S. 825, at 833 (1994); Helling v. McKinney, 509 U.S. 25, at 35 (1993)(Assessment of not only the magnitude and liklihood of harm (e.g., placing longstanding and well documented enemy gang populations on same facility exercise yard) but society's view on the severity of the risk. (Internal emphasis added).); see also Huffman v. County of Los Angeles, 147 F.3d 1054, at 1959 (9th Cir.1998)(Culpability upon which state officials can be held liable under 'danger creation theory,' held, where it is "shown that state officials participated in creating the dangerous situation, and acted with deliberate indifference to known or obvious danger by subjecting plaintiff to it."); "The --fear and violence, and absence of inadequacy of programs of classification, (maintaining of strong family rehailitative incentive ties through normal contact visits, phone calls, appropriate work skill level pay rate assignments), expected education, physical exercise, vocational training or other constructive activity create a total environment where debilitation is inevitable and which is unfit for human habitation and shocking to the conscious of a reasonably civilized person, Palmigiano v. Garrahy, 443 F.Supp. 956, at 976 (D.R.I.1977), [where] plaintiff's proof was directed at satisfying this second standard, and requires conscious disregard by defendants of a substantial risk of serious injury or illness would be endangered or prolonged....(Internal emphasis added). Id 443 F.Supp. at 984.

(FN5): I had timely and sufficiently "objected to all the magistrate's adopted findings and recommendations of the district court judge". Having filed a sufficient enough Second Amended 42 U.S.C. § 1983 civil complaint, in accord 8(a)(1)(2)(3), 9(b), 10(a)(b)(c), 11(b)(1)(2)(3), and 15(a) of the **Federal Rues of Civil Procedure**. Pointing out the clear error and abuse of discretion and 'usurpation of judicial powers' in finding I have no cognizable 8th and 14th Amendment claims... inasmuch because I am not a verified gang member of adversely effected identified Fresno Bulldogs group, thereby, no finding of "substantial risk of serious harm" existed--

--as to defendants' clear violations of established law under Cal Code of Regulations Title 15, Div 3, sections §3004(a)(b)(c), §3013, §3022, §3268.1(a)(1)(2), §3286, §3380(a)(c)(d), §3391(a)(d), §3413(a)(2)(3)(6)(A) 1., 2., (D); Cal Penal Codes §2081, §2650, §2651, and §2652: Having properly and in its entirety, submitted for filing the Second Amended Complaint, my Objections, motions for expedited injunctive remedial relief; supporting direct evidence of "genuine issues of material facts", and the notice of submission of service and summons to be served on defendants. For having proven 8th and 14th constitutional standing..."Standard Minimum Rules for the Treatment of Prisoners Approved by the First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by resolutions 663 C (XXIV) of July 1957 and 2076 (LXII) of 13 May 1977, Re: EXERCISE AND SPORT: "if not employeed in out door work, every prisoner shall have at least one hour of exercise in the open air, weather permitting"; see also Lopez v. Smith, 203 F.3d 1122, 1133, n.15 (9th Cir.2000)("long term deprivations of outdoor exercise are substantial regardless of effects, to meet the Eighth Amendment test."); Having presented overwhelming proof of discriminatory intent on part of prison officials, Woods v. Edwards, 51 F.3d 577, at 580 (5th Cir. 1995)(The palintiff must demonstrate that prison officials acted with a discriminatory purpose. Id. Discriminatory in the equal protection context implies that the decisionmaker selected a particular course of action at least in part because of, and not simply in spite of, the adverse impact it would have on an identifiable group. Id. "Plaintiff alleging that prison officials has maintained his status in extended lockdown while: (1)"releasing similarly situated [] prisoners in violation of the equal protection clause," and (2) "In retaliation for pressing this case and for pursuing grievances within the prison. It is settled that prison officials cannot act against a prisoner for availing himself of the courts and attempting to defend his constitutional rights."Id. 51 F.3d at 580, n. citing Crowder v. Sinyard, 884 F.2d 804, 812 n.9 (5th Cir.1989), cert.denied, 496 U.S. 924, 110 S.Ct. 2617, 110 L.Ed.2d 638 (1990).); Hilton v. City of Wheeling, 209 F.3d 1005, 1007 (7th Cir.2000)(A person doesn't have to be a member of a particular group to invoke the equal protection clause.)

(FN6): Federal Rules of Civil Procedure 65(a)-(b)(1)(A)(3); 18 U.S.C. §3626(a)(1)(b)(3): Cason v. Seckinger, 231 F.3d 77, 783-784 (11th Cir.2000)(Injunctive relief will not terminate if the court makes written findings that prospective injunctive relief is necessary to correct a current and ongoing violation of federal constitutional right.); Wagner v. Taylor, 836 F.2d 566, 574-576 (D.C.Cir.1987)(the district courts retain jurisdiction to grant interim injunctive relief where plaintiffs

face irreparable injury or imminent retaliation.); see Farmer, supra, 511 U.S. at 845 citing Helling, supra, 509 U.S. at 33 ("It would," indeed, be odd to deny injunction to inmates who plainly proved an unsafe, life-threatening condition at their prison....).

(FN7): Having supplied supplemental pleadings in accord 9(b), 10(b)(c), 11(b)(1)(2)(3), 15(c)(1)(B), 15(d) of the **Federal Rules of Civil Procedure**. Such affirmative and injunctive relief evidence, most of which was unreasonably stricken from the reviewing record by both assigned magistrate and district judge. See, Farmer, supra, 511 U.S. at 845-846 (must come forward with evidence from which it can be inferred that defendant(s)-official(s) were at the time the suit was filed, and are at the time of [] judgment, knowingly and unreasonably disregarding an objectively intolerable risk of harm and that they will continue to do so; and --demonstrate the continuance of that disregard during the remainder of the litigation and into the future. [T]he inmate may rely on the district court's discretion, or developments that post date the pleadings and pretrial motions -- Fed. R. Civ. Proc. 15(d). Id.); See Hydrick v. Hunter, 449 F.3d 978, at 1002 (9th Cir.2006)(clearly established fundamental rights: a liberty interest in freedom from bodily restraint and persoanl security, [] a funadamental right to access to courts. Id. Accordingly, "heightened scruntiny" is the standard for equal protection claims implicating these fundamental rights. Id.); The obvious common objective in this conspiracy is to "obstruct Plaintiff's meaningful access to the court." U.S. Steel Workers v. Phelps Dodge Corp., 865 F.2d 1539, 1540-1541 (9th Cir.1989); see also, Blyden v. Mancusi, 186 F.3d 252, at 265, n.6 (2nd Cir. 1999)("reprisals," as defined by the district court, are by definition not in good faith. --[T]herefore, ...defendant(s) might be found liable for acts amounting to "deliberate indifference to 'reprisals' committed."). Compare (FN5) supra: "...prison officials cannot act against a prisoner for availing himself to the courts and attempting to defend his constitutional rights." Id.

(FN8): First, the deprivation alleged must be, objectively, "sufficiently serious," []; a prison official's act or omission may result in the denial of "the minimal civilized necessities," []. For a claim on failure to prevent harm (like the one here), the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. Id. Second, follows from the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." To violate the Cruel and Unusual Punishment Clause, a prison official must have a "sufficiently culpable state of mind." Id. In prison-conditions cases that state of mind is one of "deliberate indifference to inmate health or safety, [], the standard the parties agrees governs the claim in this case. Farmer, supra, 511 U.S. at 834.

Hence, their is overwhelming evidence showing defendants-prison officials knew of an disregarded an excessive risk to inmates health and safety, as to being both aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and must have drawn from that inference when and after they decided to promulgate and continue the enforcement plan of operations and practices of keeping the "enemy Southern and Bulldog gangs on same re-integrated 3A-facility exercise yard." Which is equivalent of recklessly disregarding that risk. Id. Farmer, 511 U.S. at 836-837. Under the decision today, prison officials may be held liable for failure to remedy a risk so obvious and substantial that the officials must have known about it, and prisoners need not "'await a tragic event [such as an] actua[l] assaul[t] before obtaining relief.'" Id. Farmer, 511 U.S. at 852 Justice BLACKMUN, concurring.

(FN9): See **(FN5) supra**, quoting Hilton, 209 F.3d 1007 (A person doesn't have to be a member of a particular group to invoke the equal protection clause.)

(FN10): See **(FN7) supra** citing U.S. Steel Workers v. Phelps Dodge Corp., 865 F.2d 1540-1541 (The obvious common objective in this conspiracy is to "obstruct Plaintiff's meaningful access to courts."); also in caparison with (FN5), see Toolasprashed v. Bureau of Prisons, 286 F.3d 576, 582 (D.C. Cir.2002)(the court erred as a matter of law that defendants cannot subject prisoners to 'retaliation ' by preparing fabricated and fictitious documents [].Id [V]irtually the same argument [] later raised in his officials motion for reconsideration.Id. "[P]laintiff could not be retaliated against by the []defendants for exercising his constitutional rights to petition the government for redress.... The evidence is clearly in favor of the Plaintiff that the defendants retaliated against plaintiff and the Court cannot ignore the same." Id. 286 F.3d at 582-583. See also, Lewis v. Casey, 116 S.Ct. 2174, 2179, 518 U.S. 343, 349 (1996)("it is for the courts to remedy past and imminent official interference(s) with individual inmate's presentation of claims to the court. Id. [Therefore, district court's repeated ordered deadlines in which to file Third Amended complaint in light of these unabated conspired retaliations obstructing meaningful access to the court] itself constitutes "actual injury" - "actual prejudice" under Bounds, as set-out under the two prong standard." (internal emphasis added and omissions made).). The district judges' (Doc. No. 50) issued order to dismiss action for failing to obey court order to file "Third Amended Complaint:" Having relied on the citations of Thompson v. Housing Authority, 782 F.2d 829, 831 (9th Vir.1986); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-1261 (9th Cir. 1992); Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.1976), by claiming to have allegedly weighed and found "Four" out of the "Five" factors presented in Henderson v. Duncan, 779 F.2d 1421, at 1423 & 1424 (9th Cir.1986)((1) the publics' interest in expeditious resolution of litigation; (2) the Court's need to manage it's docket; (3) that risk of prejudice to defedants; and (5) the availability of less restrictive sanctions).

All of which holds no rationale weighing and finding rationale basis whatsoever to warrant such a harsh dismissal "with prejudice." "Dismissal, however, is so harsh a penalty it should be imposed as a sanction only in extreme circumstances." Henderson, supra, 779 F.2d at 1423; Thompson, 782 F.2d at 831.

(FN11): Farmer, supra, 511 U.S. at 845-846 "plaintiff may seek district court's discretion as to indicated developments that post date the pleadings . . and establish he is entitled to injunction." Compare: (FN5) -thru- (FN8): In the case of Jordan v. Gardner, 986 F.2d 1521, 1531 (9th Cir.1993)(The Court was presented with the prospect of serious psychological suffering, the infliction of which is demonstrably "unnecessary" and, in the constitutional sense of the word, "wanton." The standards of decency in modern society," do not permitt the imposition of such needless harm. The inmates have established a violation of their Eighth Amendment rights, justifying the district courts issuance of the injunction because the Eighth Amendment grounds are sufficient to support injunction.); see also Farmer, 511 U.S. at 856: Jordan v. Gardner, 986 F.2d at 1544 "The Framers understood that cruel and unusual punishment can be administered by the failure of those in charge to give heed to the impact of their actions on those within their care."

(FN12): The §1983 civil complaint's pleadings: "Second Amended complaint, all developing evidence presented in the supplemental pleadings (most of which has been stricken from the record), related motions for injunctive remedy, objections to findings and recommendations, and the record of the district court's adopted orders and judgment." Sufficiently proves the defendants-state prison officials are still failing to follow and enforce their own state statutory and regulations of "inmate classification procedural 'security and safeguard critical case information" when transfer housing known enemy gang onto same facility exercise yard'"resulting in the underlying Eighth Amendment constitutional violation." Violations of that Amendment are judge[d] under the "deliberate indiffrence" standard, rather than **Turner's** "reasonably related" standard. (Internal emphasis added) quoting in part Johnson v. California, 543 U.S. 499, 511, 125 S.Ct. 1141, 1150 (2005); In prison conditions cases that state of mind is one of "deliberate indifference" to inmate health or safety. Farmer, 511 U.S. at 832. Section §1983[] merely provides a cause of action, "contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." Farmer, 511 U.S. at 841. See Crickon v. Thomas, US Court of Appeals-Ninth Circuit, No. 08-35250, Reversed and remanded, Opinion by Judge Johnnie B. Rawlinson, August 25, 2009(According to the Administrative Procedure Act (APA), a reviewing court must set aside an agency action that is arbitrary or capricious. Under this standard, courts will affirm the agency action only if a reasonable basis exits for its decision. A reasonable basis exists if the agency has provided an explanation of how the facts are rationally connected to its decision);

see Walker v. Sumner, 917 F.2d 382, at 386 (9th Cir.1990)(Its only after prison officials have put forth such evidence that court's defer to the officials' judgement."Id. The governmental interest asserted in support of a restrictive policy must be sufficiently articulated to allow for meaningful review of the regulation in question and of its effect on the inmates asserted rights.Id. [W]e reversed district court's grant of summary judgment because the prison officials "failed to provide any evidence that the interests they have asserted are the actual bases for their [] policy."Id. Without requiring some evidence that the prison policies are based on legitimate penological justification, Court concluded, "judicial review of prison policies would not be meaningful."id.); see also In re Player, 53 Cal.Rptr.3d 233, 146 Cal.App.4th 813 (2007) (Although a court must uphold (DOCR) decision regarding classification of a prisoner if it is supported by some evidence, and must afford great deference to an administrative agency's expertise, "where DOCR's interpretation of a regulation is clearly arbitrary or capricious or has no reasonable basis, the court will not hesitate to reject it.")

(FN13): "Fundamental charateristics of injunction include design to accord or protect some or all of the substantive relief sought by complaint in more than a preliminary fashion, In re Arizona, 528 F.3d 652, at 656 and 658 (9th Cir.2008), the Martinez-report order required defendant-prison officials to review the subject matter of the complaint in order: (1) to ascertain the facts and circumstances underlying the complaint; and (2) to consider whether any action can and should be taken by the institution or other appropriate officials to resolve the subject matter of the complaint. Further ordered them to file a written report with the court, which includes: (1) a thorough explanation of the actions described in the complaint; (2) the results, if any, of the review undertaken by officials responsible for the institution; (3) affidavits to support any facts alleged in the report; and (4) copies of any documents pertaining to the administrative record. The remainder of the order schedules various deadlines for discovery and motion practice."Id. 528 F.3d at 655.

VERIFICATION

I, Robert Anthony Winters, the writer of this verified article summation of my §1983 prisoner right action, declares that the foregone to be true and correct to the best of my knowledge, and as to those allegedly based on information and belief I believe to be true and correct, and that all alleged legal theories and factual contentions in support have been presented before both the federal Eastern District Court Fresno California and the Ninth Circuit Court of Appeals San Francisco, and should be available for the Publics view and personal verification on these identified Court's websites: http:/pacer.psc.uscourts.gov (WINTERS v. HUBBARD, ET AL., Eastern District Court Case No. 1:08-cv-01681-LJO-DLB); and www.ca9.uscourts.gov (In re WINTERS v. UNITED STATES DISTRICT COURT FRESNO, and/or WINTERS V. HUBBARD ET AL., Ninth Circuit Court No. 10-70823).

Executed this 31st day of March 2010, in Corcoran, California.

Robert Anthony Winters