

1 JOHN HENRY YABLONSKY CDCR#AL0373
2 17-122
3 480 ALTA RD
4 SANDIEGO, CA92179

DEF

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 JOHN HENRY YABLONSKY, CASE 3;18-cv-1122-CAB-AGS
11 PLAINTIFF,

12 REPLY TO DEFENDANT OPPOSITION
13 TO PLAINTIFF MOTION TO NAME
14 PARTIES ORIGINATING OUT OF
15 THE ORIGINAL SETS OF FACTS
16 BEFORE ORIGINAL FILING OF THE
17 COMPLAINT F.R.C.P. RULE 15(c)(1)(A)

18 VS.

19 CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATIONS,
20 et al,
21 DEFENDANTS, THE HONORABLE ANDREW SCHOPLER

OCTOBER 15 2021 DEADLINE

22 *STATEMENT of FACT*

23 Plaintiff motion to name parties filed on September 20
24 2021 included accurate facts within the complaint, exhibits
25 filed with the Court and were served upon defendants in many
26 aspects, sufficient to place any of the "PROPOSED" defendants
27 to be named knew, should have known they were to be held respon-
28 sible for their actions. On September 8, 2021 defendants filed
an opposition to this request, trying, hoping to escape liability
for attacks the proposed defendants committed upon the
complaint which did not advance one legitimate goal of the

REPLY NAME PARTIES- /

1
2 facility or CDCR itself. That formal appeals were filed within
3 30 days of their actions designated as (RJD D 17 0034) filed
4 on January 2, 2017. (TAKING OF LEGAL FILES) This appeal as
5 **qwella s** as others were aggravated, obfuscated by appeals
6 coordinators within (0034) appeal (RJD D 16 4564) appeal, and
7 (RJD 17-1582) appeal. (MISHANDLING APPEAL SCREENING 3084.1)

8
9 That appeal (RJD D 17 2597) (MISHANDLING LEGAL MAIL)
10 in the mailroom was filed on May 18, 2018. That all these appeals
11 stemmed from (RJD D 16-4564) which was filed on October 13, 2016
12 and was also filed within the 30 day filing window permitted
13 for inmates .CCR 30-84.8(b). These appeals placed proposed
14 defendants on notice they were being addressed formally for
15 their actions which violated protected rights. The complaint
16 was filed with this Court on May 31, 2018, and because litigations
17 coordinators have direct knowledge of this filing because of
18 certified trust sheets that pass through their hands before
19 they provide such records, knew of should have known that specific
20 defendants were being addressed formally in a lawsuit. Furthermore

21 plaintiff filed formal petition for writ of mandate
22 overal claim about library, taking legal files, which
23 the tampering with legal mail. The parties who
24 t mail knew that plaintiff was filing civil actions
25 misconducts at the time they placed labels over
26 n of a courts orders and summons headed to
27 vice upon RJD employees. Certainly the
28 ative investigations into these appeals

1 contacted the parties which would have held some liability
2 to these acts at the time of initial screening , which occurred
3 within 30^{days} of the acts themselves. That the complaint was served
4 upon six of the named defendants, who knew, should have known
5 their co-conspirators were being held responsible for their
6 acts which violated plaintiff protected rights. That service
7 came on or about October 18, 2018 (ECF11-16) This placed the
8 entire facility on notice that plaintiff filed a complaint
9 with allegations that included numerous parties being named
10 at at least ten does. It would have been counsel duty to
11 inquire "WHICH TEN". The exhibits attached to the original
12 filing (some 550 pages) included all the appeals which this
13 complaint are addressing. Which also include which parties
14 whose names were made known by the exhibits, or allegations
15 that they were going to be held liable for their actions.

17 During discovery the defendants responses were evasive,
18 and non cooperative when inquiring about the "WHO" of these
19 acts. Defendants from the library when asked who taught them
20 how to "INSPECT" these papers they stated "THEIR BOSS", forbidd
21 ing the names of parties who may have played significant
22 roles in these attacks. Defendant McGure when asked about
23 who she contacted about the files being take, said she did
24 not contact anyone. yet her e.mail on 11-16-16 suggest she
25 contacted at least two seperate parties . (captain Soto)
26 (sregerant Herenaddez). That is just that one e.mail. Because
27 her interrogatory response said she did not contact anyone

1 and her e.mail says otherwise, suggest she contacted more.
2 Furthermore the letter addressed to her on 11-14-16 @0900
3 and the attacks which occurred by taking critical hand written
4 notes related to a hearing being held just three days later
5 suggest she contacted ISU to take these critical files at
6 a critical point in time and to., hold them until after the
7 hearing in a civil rights lawsuit which named thirteen defendants
8 who acted as government court officer, sheriff. McGuire 11-
9 16-16 e.mail identified this very hearing.
10

11 Because defendants named were served timely based
12 on timely appeals, timely filing of suit, which included parties
13 related to these allegations, gave them notice that the ten
14 does would eventually be named. That plaintiff filed extensions
15 of time for amending the complaint which this Court granted,
16 plaintiff leave to amend, which named these does was served
17 upon these defendants through the use of F.R.C.P. RULE 4(d)(1)
18 (ECF11)(ECF110) At this time on March 29-2021 the "PROPOSED"
19 defendants were served F.R.C.P. RULE 4(d)(1), and once again
20 on April 19, 2021. (Exhibit attached AAA)(ECF125).
21

22 Consistent with F.R.C.P. RULE 15(c)(1)(A) these names
23 should be permitted to be named . FARNKLIN V US WESTING INC F
24 3 f3d 1357(1993):FOMAN V DAVIS 371 US 178(1962)'UNITED STATES
25 EXERL GOHIL v AVENTS INC 2017 US DIST LEXIDS 3236; NOBERE
26 V LA DEPT PUB SAFETY 935 f3d 437(5th cir 2015)
27

28 These defendants who took actions upon plaintiff
while he exercised his protected right should be named.

1 Under the language of (NOBER) these parties have
2 been warned that they were being identified within the original
3 complaint which actually had these parties names located within the
4 exhibits attached. It took plaintiff exhausting time while
5 plaintiff is visually handicapped to identify which parties
6 to name, for specific citations. Furthermore discovery and
7 other forms of facts developing occurred which placed plaintiff
8 on notice exactly which parties to identify within the complaint..

9
10 These facts agree with (NOBER). Under BENSEL V ALLIED
11 PILOT ASSN 387 f3d 298(3rd cir 2004) THAT RELATION BACK TO
12 PARTIES WITHIN THE ORIGINAL SETS OF FACTS OF THE ORIGINAL COMPLAINT
13 DO NOT DESERVE PROTECTIONS OF STATUTE IF THE COMPLAINT WAS
14 FILED TIMELY.) The NINTH CIRCUIT COURT found that the California
15 laws should apply within the federal civil rights complaint.
16 RUMBERG V WEBBER aircraft corp. 424 f.supp 294(C.D.Cal1976)

17 In this case the defendant may not argue additional
18 discovery to warrant the denial of this request. MARITIME
19 ADMIN V CONTINENTAL ILLINOIS NATL BANK OF TRUST 889 f2d 1248
20 2nd cir 1989) Consistent to CCP 583. 240(d) "THAT WHEN SERVICE
21 IS NEARLY IMPOSSIBLE, FUTILE, CAUSES BEYOND PLAINTIFF CONTROL THAT
22 STATUTE MUST BE STRICTLY CONSTRUED". In this instance COVID19
23 PANDEMIC locked petitioner into his cell for nearly one full
24 year without access to resources, and the two opportunities
25 to provide paging were never provided. (NO PAGING WAS PROVIDED)
26 (WHILE COPIES WERE ONLY MADE ONE TIME IN A YEAR. Because plaintiff
27 managed to FACILITATE copies was "BLACKMARKET" convict access.

28 cR

REPLY NAMING PARTIES-5

1 These libberal constues must favor resolving the
2 nerits of the compalint. SHIPLEY V SUGITA(CalApp. 1st Dist1996)
3 50 Cal.App.4th 320-(1996). In this case the accrual of cause
4 must be applied. because one appeal lead to the next attack,
5 then the next which ended by the resolve of (RJD D 7335)
6 and (RJD D 10 6006)) these attacks lasted beyonff their initial
7 filing decision by TLR. The acfrual date of the cause begins
8 at the date of the last maturity date. FIRST NATL BANK v
9 ZEIGLER 24 Cal.App.503(1914); BEEKHUS V PALON 76 Calapp. 680
10 (1926); LEE V BANK OF AMERICA 27 CalApp.4th 197(1994). Statute
11 oif lklimitations does not accrue until, and causes of act...
12 invariably accrue when there is remedy available. IRVINE V
13 BOSSEN 25 Cal.2d 652(1944).

14 Furthermore natural disaster, economic disaster, public
15 calamity deserve generous interpretations. NORMAN J SINGER &
16 J&D SHAMBIE SINGER EMERGENCY LEGISPATION, SA SUTHERLAND STATUTORY
17 CONS. § 76;6 7th ed 2011); SCHREIBER DIST CO. v SERV WELL FERN.
18 CO. 806 f2d 1393(95y cir 1986); CAFASSO 637 f3d at 1058("NORMALLY
19 WHEN A VIABLE CLAIM MAY BE PLEAD UNDER 12(c) A DISTRICT COURT
20 SHOULD FREELY GRANT LEQVE TO AMEND.) The Court may take into
21 consideration paerties plead, documents physiucally attached
22 to those pleadings or incorporated by refertence therein, and
23 documentary support. KHOJA V OREXIGEN THER INC. 899 f3d 988(
24 (th cir 2018)

26 The March 29, 2021 attempt top file TAC the Court
27 Clerk rejected summons because the papers were "rejected".
28 Regardless the request for summons should have been permitted
when the deadline for service had not expired June 2021 yet!!

1 Plaintiff motion filed on September 20, 2021 resulted
2 in this Courts order for briefing on September 30, 2021 which
3 ordered any opposition by defendants by September 8, 2021 and
4 any reply by plaintiff by September 15, 2021 that did not arrive
5 into plaintiff possession until October 7, 2021. Plaintiff has
6 not received any opposition by defendants as of today's date
7 of October 12, 2021, leaving plaintiff only ~~five~~ ^{THREE} days to access
8 the law library, research anything the defendants may have
9 said, to navigate their reasons to not be held responsible for
10 actions which occurred so that plaintiff may file a reply by
11 the fifteenth of September forced this "REPLY" to be based on
12 what plaintiff may think defendants are going to argue.

13
14 WRITING BLINDLY IN HOPE OF MEETING DEADLINE!!

15
16
17 PLAINTIFF DISAGREES WITH DEFENDANTS OPPOSITION

18
19 The defendant's account of accrual dates does not consider
20 that the (4564) appeal was obfuscated when staff stripped records
21 from the attached appeal to justify rejection. Or that this
22 very appeal was allegedly cancelled out on January 9, 2017,
23 prior to the alleged interview by Martinez who stated he was
24 there to interview for the law library appeal on January 18,
25 2017. That this appeal instigated the taking legal files appeal
26 which was erroneously withdrawn on misrepresentation by Martinez
27 and filed as (1582) which was erroneously rejected and cancelled
28 out by appeals coordinators which led to the filing of (4172).

c
REPLY NAMING PARTIES-7

1 TLR granted (4172) in 2018, right before this complaint
2 was filed, stating that (1582) was mishandled, and should have
3 never been the topic of the interview which occurred on
4 January 18, 2017. Appeal (1582) was decided and cancelled
5 in May 2018, right before this case was filed!!

6 The appeals which were filed about taking files, reading
7 legal mail resulted in the false RVR which was decided on
8 February 1, 2018. The result of these appeals were the foundations
9 of the mail tampering when plaintiff sought relief at the lowest
10 Court, and was decided on January 3, 2018.

11 Therefore should this Court consider timeliness for
12 a complaint that was filed timely, relation back, then please
13 consider these appeals addressing the plethora of attacks were
14 cumulative, related to one another, and should accrue until
15 the last appeal related to these attacks occurred which is
16 February 1, 2018. "THE STATUTORY TOLLING DATE BECAUSE THESE
17 ATTACKS ARE RELATED TO ONE ANOTHER, INVOLVE SAME AND SIMILAR
18 PARTIES WHO WORK TOGETHER, AT THE SAME INSTITUTION AND RELATE
19 TO PLAINTIFF EXERCISE INSIDE THE LAW LIBRARY WHICH INSTIGATED
20 THESE ATTACKS BECAUSE STAFF CHOSE TO READ ~~THEY~~ ^{WHILE} SEARCH!!!"

21 A) Which they admit they have never been trained for B) Have
22 no accredited certifications for C) Any legal educations
23 which would avail them the "KNOWLEDGE" what is legal, related
24 to a case, ready for filing . D.O.M. § 101120.15. The "ONLY"
25 prescribed method for searching for contraband is (CCR 3142[d])
26 SHAKING PAPERS UPSIDE DOWN TO "PREVENT READING". Defendants

28 REPLY NAME PARTIES-8

1 argument fails as follows;

2 One defendant now admit that they received timely filing
3 under F.R.CP. RULE 4(d)(1). (DEF 2:23-24) Defendant argue there
4 is nothing to suggest they were counsel for the record. Defendant
5 does not deny that they were also served on March 29, 2021,
6 ASA WELL: AS April 19, 2021 suggest counsel would have ignore
7 DUTY TO AVOID SERVICE EXPENSE as outlined within the WAIVER.
8 These parties were employed by CDCR at the time of these attacks.
9 Counsel was served summons which included (DOES) as described
10 above, and KNEW others would be named. This Court found in
11 the (ECF138 that relation back would have been permitted "IF
12 THE PARTIES HADD BEEN SERVED PRIOR TO THE DEADLINE.. (JUNE 15,
13 2021(COURT RULING 4;4-6) Because these defendants were served
14 twice and counsel refused acceptance, suggest had the Court
15 been notified of that service it would have ruled differently.

16 BUT LATE AMNDMENTS MAY STILL BE DEEMED TIMELY

17 "IF IT RELATES BACK TO THE DATE OF THE TIMELY FILED
18 PLEADING " ASERCO LLC v UNION PAC R&R CO765 f3d 999!!

19 It is true the Court denied request to amend the complaint
20 in its entirety as a third amended complaint the Court considered
21 both federal and state law. FEDERAL LAW SUGGEST NAMING IS APP-
22 PROPRIATE TO NAME DEFENDANTS THAT HAVE BEEN PREVIOUS IDENTIFIED
23 AS DOES AND DENIAL SHOULD BE LIMITED TO ACTIONS THAT WERE NOT
24 PREVIOUSLY IDENTIFIED IN ORIGINAL COMPLAINT. (NOBREE)(DISCUSSED
25 ABOVE) C.C.P. §582 . 280 (d) whether service was impossible,
26 futile causes beyond plaintiff control must be construed!!
27 MARITIME ADMIN Continental, 889 f2d 1248) (1989) Here defendants
28 admit that the service was futile because they rejected it,
twice. (EMPHASIS)

1 As discussed above (NATURAL DISASTER, PUBLIC CALAMITY,
2 ECONOMIC DISASTER) would qualify in this case because the
3 entire 2020 from April until Decenber was such that it locked
4 plaintiff into a cell without any resources, access to library
5 which would have allowed him to prepare and have these papers
6 sdervid. On top of this when plaintiff filed the "alleged third
7 amended complaint in March 2021" clerk of the Court rejected
8 acces to summons to serve anyone claiming the Court rejected
9 the TAC filing, making it impossible for plaintiff fo have
10 these records servied by official agents. The Court found
11 in BENSEL V ALLIED PILOT ASSN 387 f3d 298 that such relation
12 back withi the original d sets of vc facts would stand if
13 they originated out of the same sets of facts outlined in the
14 original complaint. This date is May 2018 and September 2-020,
15 which these facts begin at the dates of the attacks which
16 "EVERYONE HAD BEEN NOTIFIED" they are being named, identified
17 by action . (DISCUSSED ABOVE) Because this Court stated the
18 defenants had not been servied when in fact they had suggest
19 that the Court would have decided otherwise in the July 13,
20 2021 ruling. The Court did suggest adding another cause of
21 action may aslo be timely, "IF SERVED WITHIN THE THREE YEARS"
22 CCP 583,210. The natural disaster PANDEMIC would extend that
23 date under 583, 240(d) because the service was made impossible
24 because of acts beyond plaintiff control. (Court rule3;20-26)
25 (court ruling 4;13-21) Stating that Yablonsky also met that
26 standard.(PRATT V GAMBOA No. 17-cv-4375)

27 The Court added that even federal law allows
28 such actions "IF THE DEFENDANTS HAD BEEN SERVED PRIOR TO DEAD,LINE"

1 Defendants now admit they received such service,
2 rejecting it. This is the defendants failure, since these defendants
3 arose out of the same sets of employees, same sets of facts,
4 at the same sets of causes of action that named defendants had
5 been served, same counsel knew "THE ORIGINAL COMPLAINT INCLUDED
6 DOES" It would have been counsel duty to inquire whether
7 these defendants are still employed by CDCR in some fashion
8 or whether CDCR was still responsible for these parties who
9 were identified as being sued in their "OFFICIAL CAPACITY"
10 as well as individual. therefore rejection of service was
11 an error had plaintiff been notified counsel rejected such
12 service.. Counsel adds that they might not represent these
13 defendants. The fact these defendants were already identified
14 in the original complaint, as (DOES) and their actions were
15 described as well as exhibits supporting their participation
16 in this case suggest they "SHOULD BE NAMED". ZENITH RADIO CORP
17 401 US 321(1971) These defendants were given fair notice.
18 UNITED STATES EXERL GOHIL V AVENTIS INC 2017 US DIST LEXIS
19 3236)" NOBRE V LA DEPT OF PUB SAFETY 935 f3d 437(2016) Under
20 RUMBER AND other law (466 US 147((724 f.supp.141) SUPPLEMENTAL
21 PLEADING MAY BE FILED AT ANY STAGE, EVEN SUMMARY JUDGMENT!!

22 Defendants misargue relation back. (Def2;12-14) The
23 manner which relation back works if plaintiff may explain,
24 is that if the sets of facts outlined within the original
25 complaint identified actions but identified claims not state,
26 or defendants not named, relation back stands on all fours.
27 JOHNSON V MAMMOTH REC INC 975 f2d 604(9th cir 1992) The defendants
28

1 acting in concert, collusions, in combinations of actions deriv-
2 ing from the same sets of actions shall be joined as defendants
3 C.C.P. § 379 ALL PERSONS MAY BE JOINED IN ONE ACTION
4 AS DEFENDANTS IF THERE IS ASSERTED AGAINST THEM ANY
5 RIGHT TO RELIEF JOINTLY, SEVERALLY, IN THE ~~XXE~~ ALTERNATIVE,
6 IN RESPECT OF OR ARISING OUT OF SAME TRANSACTIONS, OCCUR
7 ANCES, SERIES OF TRANSACTIONS OR OCCURANCES, IT IS NOT
8 NECESSARY THAT EACH DEFENDANT BE INTERESTED AS TO EVERY
9 CAUSE OF ACTION OR AS TO ALL RELIEF PRAYED FOR. Where
10 the plaintiff is in doubt as to the person from whom
11 he is entitled to redress, he "MAY" join two or more
12 defendants, with the intent that the question as to
13 which, if any, of the defendants are liable, to what
14 extent may be determined between parties

14 CONCLUSION

15 As a result of these facts, and defendants arguemnt
16 this Court should grant the summons and orders to serve defendants
17 so that this case may get on track. Under California law this
18 case must find trial within five years of the filing.

19 C.C.P. § 583, 310 "AN ACTION SHALL BE BROUGHT TO TRIAL WITHIN
20 FIVE YEARS AFTER THE ACTION COMMENCED UPON THE DEFENDANTS"

21 ~~with~~ the facts of this case, there is sufficient time for
22 service of summons, and should defendants require discovery,
23 there is plenty of time for that to occur without offending
24 statutory deadlines. Within the complaint and exhibits attached
25 there is sufficient records indicating these proposed defendants
26 should be named and defendants argument fails to say otherwise

27 PRAYER

- 27 1) Grant the naming of defendants
- 28 2) Order summons service

October 14, 2021

John Henry Yablonsky

REPLY NAMING PARTIES-12

SWORN DECLARATION BY JOHN YABLONSKY

1
2 That I John Henry Yablonsky an adult over the age of consent
3 make the following declaration regarding plaintiff's reply to
4 defendant's opposition to plaintiff's request to name parties under
the penalty of perjury as follows

5 1) That I am an inmate and party to this action

6
7 2) That the facts outlined within this reply are
8 the truth according to knowledge

9
10 3) That the facts outlined within this reply are
11 memorialized by the second amended complaint
12 filed with this Court and has been served upon
the already named defendants

13 4) That the issues within this reply are supported
14 by statute

15
16 5) That if called to testify will state the same
17 under oath in a court of law under penalty or
18 perjury

19 6) That if called to testify will state the same
20
21
22
23
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25
26
27
28

October 14, 2021

John Yablonsky

REPLY NAMING PARTIES-12