

1 35. On February 6, 2008, De Leon asked
2 Plaintiff's supervisor, Parole Agent III Keith
3 Rosemond, whether Rosemond could
4 accommodate the work restrictions in the note
5 from Plaintiff's Dr. Hansen. Plaintiff's work
6 restrictions. Rosemond had been informed by
7 Plaintiff that his doctor instructed him to stay
8 off of his leg and keep it elevated. Since Dr.
9 Hanson's note did not excuse Plaintiff to be off
10 of work, De Leon requested that Plaintiff
11 provide a note excusing his absence from work.

12 De Leon Decl., ¶5.

13 **Declaration of Keith Rosemond**
14 **("hereinafter, Rosemond Decl."), ¶4.**

15 36. On or about February 13, 2008, Plaintiff
16 provided a note from Dr. Carlos Solorzano
17 stating he was unable to attend work from
18 February 5, 2008 through February 28, 2008.
19 On this same date, Dr. Solorzano's note was
20 accepted by Region IV as excusing Plaintiff
21 from work and De Leon provided a copy of it
22 to SCIF.

23 De Leon Decl., ¶6, Ex. B.

24 Rosemond Decl., ¶5.

25 37. Neither De Leon, nor anyone else at
26 CDCR, made any decisions regarding the
27 physician(s) Plaintiff was permitted to treat
28 with for purposes of receiving disability
benefits in connection with his Workers'
Compensation claim.

De Leon Decl., ¶7-9, Exs. D-F.

38. On February 28, 2008, De Leon received a
note from Dr. Robert Maywood indicating
Plaintiff could return to modified duty until
March 18, 2008 with restrictions of "Desk
work only, no contact with prisoners, suspects;
can alternate sit/stand as needed." Further
clarification of Dr. Maywood's note was
required because the note stated he could not
have contact with prisoners or suspects and did
not address whether he could have contact with
parolees.

De Leon Decl., ¶10, Ex. G.

1 39. On February 29, 2008, Plaintiff provided a
2 revised note from Dr. Maywood indicating his
3 restrictions precluded contact with parolees.
4 De Leon advised Plaintiff that he could not
5 return to work until that restriction was lifted or
6 he was returned to full duty, because there was
7 no way to ensure he would not have contact
8 with parolees, since they regularly visit the
9 Chula Vista Region IV Parole office. Plaintiff
10 agreed to provide an update after his next
11 appointment on March 18, 2008.

12 De Leon Decl. ¶10, Exh. H.

13 40. On or about March 18, 2008, Plaintiff
14 provided another doctor's note from Dr.
15 Maywood which continued the same
16 restrictions through April 1, 2008.

17 De Leon Decl., ¶10.

18 41. On April 1, 2008, Plaintiff provided De
19 Leon with a note from Dr. Maywood indicating
20 he could not return to work through April 22,
21 2008.

22 De Leon Decl., ¶10.

23 42. On April 23, 2008, Plaintiff provided a
24 note to De Leon indicating that he could return
25 to modified duty thru May 20, 2008, with
26 restrictions that included no prolonged standing
27 or walking, climbing, bending, or stooping,
28 squatting, kneeling or pivoting, or lifting over
ten pounds.

De Leon Decl., ¶10, Ex. I.

43. Rosemond and De Leon determined that
Plaintiff's revised restrictions allowing contact
with Parolees could be accommodated.

Rosemond Decl., ¶6.

44. Plaintiff reported to work on April 25,
2008, and informed Rosemond that he was
taking medication for back pain, including a
muscle relaxer that caused him dizziness and
drowsiness. Rosemond was concerned that
Agent Tristan could not safely perform his
duties while taking this medication, and

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consulted with De Leon regarding the matter.
De Leon Decl., ¶10.
Rosemond Decl., ¶6.

45. De Leon and Rosemond determined that further clarification regarding the side effects of Plaintiff's medications was needed to evaluate whether Plaintiff's use of the medications could be accommodated. Plaintiff was instructed to return to work on the following Monday April 28, 2008, with a doctor's note indicating what medication he was taking and any associated side effects.
De Leon Decl., ¶10.
Rosemond Decl., ¶6.

46. On May 5, 2008, Plaintiff informed De Leon and Rosemond that he was no longer taking the medications at issue.
De Leon Decl., ¶10.
Rosemond Decl., ¶6.

47. On May 6, 2008, De Leon and Rosemond advised Plaintiff to report to work at 8:00 a.m. on May 7, 2008. De Leon provided Parole Agent III Rosemond with a standard form Limited Duty Agreement setting forth the restrictions that De Leon had received from Plaintiff's doctor.
De Leon Decl., ¶11, Exh. J.
Rosemond Decl., ¶6.

48. On May 7, 2008, Plaintiff refused to sign the proposed Limited Duty Agreement presented to him because he felt it did not list what his specific duties would be and, in Agent Tristan's opinion, did not list the duties he could not perform.
De Leon Decl., ¶12; Rosemond Decl., ¶7.
Castaneda Decl., ¶20, Ex. J; Tristan Depo., Vol. VI, pp. 935:9-939:23 (Vann Decl., Exh. F).

49. The purpose of a limited duty agreement is to set forth the physical limitations imposed by the employee's physician and advise his

1 supervisors of these requirements so that the
2 employee is not asked to perform any duty
3 which would require a restricted activity. It is
4 not possible to specifically address every
5 possible duty that the employee may be called
6 upon to perform during the duration of their
7 limited duty because the daily duties and
8 assignments of a Parole Agent are flexible and
9 change on a daily basis depending on the needs
10 of a particular case or the Unit.

11 Castaneda Decl., ¶ 21.

12 Rosemond Decl., ¶10.

13 50. De Leon explained the purpose of the
14 limited duty agreement to Plaintiff. In
15 response, Plaintiff expressed that he was
16 concerned that he was being asked to perform
17 excessive duties since the agreement allowed
18 him to be assigned as Officer of the Day while
19 also handling a caseload. In an effort to
20 address his concerns, Castaneda and De Leon
21 agreed to prepare an amended Light Duty
22 Agreement based on information provided by
23 Rosemond regarding Plaintiff's duties. This
24 amended Light Duty Agreement was provided
25 to Tristan on May 8, 2008, but Plaintiff still
26 refused to sign it, claiming it was not clear
27 what his duties were and their frequency with
28 which he would have to perform them. De
29 Leon again explained the purpose of the
30 agreement and Plaintiff still refused to sign.
31 Instead, Tristan requested that De Leon meet
32 with him and a union representative.

33 De Leon Decl., ¶¶12, 13, Ex. K; Castaneda
34 Decl., ¶20, Exs. J, K; Rosemond Decl., ¶7, Ex.
35 B; see also Tristan Depo. Vol. VI at p. 944:4 to
36 p. 948:8 (Vann Decl., Exh. F).

37 51. On May 8, 2008, De Leon did not agree to
38 meet with the union representative because this
39 was not a disciplinary matter. De Leon and
40 Castaneda asked Plaintiff to put his concerns in
41 writing for consideration, but Plaintiff did not
42 comply with this request.

43 Castaneda Decl., ¶20; De Leon Decl., ¶13.

44 52. Instead of putting any of his concerns in

1 writing to the Return to Work Coordinator's
2 office as requested by De Leon and Castaneda,
3 Plaintiff sent an e-mail to Regional
4 Administrator Martin O'Neal claiming that
5 Rosemond and De Leon were trying to force
6 him to sign an agreement that did not
7 appropriately specify his duties and imposed
8 excessive duty, since he could be required to
9 act as Officer of the Day ("OD") while also
10 carrying a caseload.

11 Castaneda Decl., ¶20; De Leon Decl., ¶13.

12 53. Castaneda again contacted Plaintiff, and
13 advised him via email that the Return to Work
14 Coordinator believed the limited duty
15 agreement adequately addressed his
16 restrictions, but asked him specifically to
17 submit any further concerns that he had in
18 writing so the parties could work together to
19 resolve them.

20 Castaneda Decl., ¶20.

21 54. Plaintiff did not respond to this email and
22 refused to document his concern to, or
23 participate in any further dialogue with the
24 Return to Work office about his concerns.

25 Castaneda Decl., ¶20.

26 55. Shortly thereafter, Plaintiff announced to
27 Rosemond that he was filing a stress-related
28 claim for workers' compensation as a result of
the events relating to the Light Duty
Agreement, and provided Rosemond with an
Employee's Claim for Workers' Compensation
(SCIF 3301) and the Employer's Report (SCIF
3067) and Rosemond signed and provided
copies to Plaintiff that day. Plaintiff then left
the office, alleging he was suffering from
emotional distress.

De Leon Decl., ¶13; Rosemond Decl., ¶¶8-9,
Exs. C-D.

56. At all times during the negotiations
regarding his Limited Duty Agreement in May,
2008, CDCR staff communicated with Plaintiff
in a good faith effort to reach an agreement
correctly stating the duties he was and was not
permitted to perform in accordance with the

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| <p>medical restrictions placed on him by Dr. Hanson. Castaneda Decl., ¶ 21; De Leon Decl., ¶14. Rosemond Decl., ¶10.</p> | |
| <p>57. The Limited Duty Agreement presented to Plaintiff provided an appropriate level of detail because it outlined Plaintiff's functional limitations and set forth duties that his supervisor envisioned he was capable of performing without engaging in the restricted activity. In addition, all of the duties listed in the amended agreement were appropriate functions of a Parole Agent and Plaintiff could perform any of them without engaging in any activity he was medically restricted from performing per Dr. Hanson. Castaneda Decl., ¶21 Ex. K; De Leon Decl., ¶14. Rosemond Decl., ¶10, Exs. J and K.</p> | |
| <p>58. During the discussions regarding his Limited Duty Agreement, Plaintiff took the position that he would not agree to sign any agreement in which he may be required to work as the OD and perform work on his own caseload because he was concerned about the volume of work he anticipated receiving. These concerns were not an appropriate reason for Plaintiff to refuse to sign the Limited Duty Agreement. These issues could have been addressed with the Unit Supervisor after the Limited Duty Agreement was signed and if and when Plaintiff's anticipated issues even arose. Various options were available to resolve these issues if, and at the time, they occurred, including reassignment of workload, waiving of specifications, or granting permission to work overtime. Castaneda Decl., ¶ 21; Rosemond Decl., ¶10.</p> | |
| <p>59. Plaintiff's May 8, 2008 workers' compensation claim was processed without delay. SCIF was notified of the claim on May 8, 2008, and the SCIF forms 3001 and 3067 were provided to it on May 16, 2008.</p> | |

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| Rosemond Decl., ¶ 9, Exs. C-D; De Leon Decl., ¶15, Exs. L-M. | |
| 60. Although Plaintiff's May 8, 2008 workers' compensation claim was initially denied by SCIF, Plaintiff had provided medical documentation indicating that as of May 8, 2008, he could not return to work due to an anxiety disorder. This documentation was accepted by CDCR to excuse Plaintiff from work. De Leon Decl., ¶17. | |
| 61. From May 8, 2008 until March 22, 2010, Plaintiff was excused from work based on medical documentation submitted in connection with either or both of his January 28, 2008 and May 8, 2008 claims. Plaintiff returned to work on or about March 22, 2010 in a limited term light duty assignment based on work restrictions outlined in a medical report by Dr. William Shoemaker dated March 16, 2010. Plaintiff did not request to be returned to work on light duty from May 8, 2008 until his return in March, 2010. De Leon Decl., ¶18, Ex. "O". | |
| 62. SCIF initially denied Plaintiff's request for workers' compensation benefits based on his emotional distress claim, and as a result, Plaintiff was required to use accumulated leave credits to receive income for the month of May, 2008. De Leon Decl., ¶¶ 16-17, Ex. N. | |
| 63. On or about May 28, 2008, SCIF approved IDL benefits for Plaintiff for the period of May 7 to 28, 2008 on Plaintiff's January 28, 2008 knee injury claim. De Leon Decl., ¶17. | |
| 64. At no time did anyone employed with CDCR discriminate against or harass Plaintiff on the basis of any protected characteristic, or retaliate against him for any conduct engaged in by him, including conduct in connection | |

1 with his seeking workers' compensation
2 benefits and light duty assignments. All of the
3 actions of Cheyenne de Leon, Martha
4 Castaneda, Tim Fowler, A.J. Garcia, Michael
5 Ayala and Keith Rosemond in this matter were
6 based upon the rules and policies pertaining to
7 eligibility for disability benefits and Region
8 IV's policy regarding light duty assignments
9 for Parole Agents, and at all times these
10 employees were attempting to properly follow
11 those rules.

12 Ayala Decl., ¶24; Castaneda Decl., ¶22.
13 De Leon Decl., ¶19; Fowler Decl., ¶13.
14 Garcia Decl., ¶17; Rosemond Decl., ¶11.

15 65. Plaintiff does not believe Return to Work
16 Coordinator Tara Heller had any intention to
17 discriminate against him at any time.

18 Tristan Depo., Vol. V, 828:9-13 (Vann Decl.,
19 Ex. E).

20 66. On or about January 29, 2009 Plaintiff
21 submitted a Charge of Discrimination against
22 CDCR only to the Department of Fair
23 Employment and Housing indicating that he
24 was harassed and retaliated against for
25 "retaliation for whistleblowing against
26 supervisors." Plaintiff's narrative in the
27 complaint states the following: "I WAS
28 RETALIATED AND HARASSED FOR
PARTICIPATING IN A WHISTLEBLOWING
INVESTIGATION, WHERE MY
SUPERVISOR'S KNOWING ATTEMPTED
TO HAVE ME TERMINATED FOR
REFUSING TO BE INVOLVED IN A 'CODE
OF SILENCE,' COVER-UP. I HAVE
SOUGHT RELIEF FROM MY
ADMINISTRATION REGARDING THE
ONGOING HARASSMENT AND
RETALIATION, HOWEVER THERE HAS
BEEN NO ATTEMPT TO PROVIDE RELIEF
FROM MY PERSECUTERS." [sic; emphasis
original.] On this form, Plaintiff had the
opportunity to indicate that he felt he had been
the victim of harassment, discrimination or
retaliation on the basis of other categories such
as race, national origin, disability, and age, and

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| 1 2 3 4 5 | <p>did not do so. Plaintiff never amended this DFEH complaint.</p> <p>Tristan's Charge of Discrimination to the Dept. of Fair Employment and Housing, dated January 29, 2009 (RJN, Ex. A, p. 2).</p> <p>Tristan Depo., Vol. I, pp. 60:7-18; 62:20-63:13, Ex. 1 (Vann Decl., Ex. A).</p> | |
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Issue 2: Plaintiff's Second Cause of Action for Harrassment is Without Merit. As noted above, Plaintiff makes exactly the same allegations in support of harassment as he does for the first cause of action for retaliation and discrimination. (First Amended Complaint, Ex. H to Request for Judicial Notice, cf. ¶¶52-55 and 56-59). In discovery Plaintiff also identifies Defendants' conduct as simultaneously constituting retaliation, discrimination and harassment. Therefore, instead of restating every one of the foregoing facts, they are incorporated by reference.

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| 11 12 | <p>67. Defendants hereby incorporate each and every preceding material fact as if fully set forth herein.</p> | |
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| 13 14 15 16 | <p>68. The only cause of action Plaintiff asserts against individual defendants Michael Ayala, A.J. Garcia and Maritza Rodriguez is the Second Cause of Action for Harassment under FEHA.</p> <p>1st Am. Compl., ¶¶56-59 (RJN, Ex. H).</p> | |
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| 17 18 19 20 21 22 23 24 25 | <p>69. In response to his Charge to the Department of Fair Employment and Housing ("DFEH"), Plaintiff received a Right to Sue letter against CDCR only. Plaintiff only filed one charge with the DFEH, and did not file a claim with the Equal Employment Opportunity Commission ("EEOC").</p> <p>Tristan's Charge of Discrimination to the Dept. of Fair Employment and Housing and its letters in response, all dated January 29, 2009 (RJN, Ex. A, pp. 2-6).</p> <p>Tristan Depo., Vol. I, pp. 59:7-63:15 (Vann Decl., Ex. A).</p> | |
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| 26 27 | <p>70. Plaintiff did not file a DFEH Charge as to any of the individual defendants, Ayala, Garcia or Rodriguez.</p> <p>Tristan's Charge of Discrimination to the Dept.</p> | |
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| 1 | of Fair Employment and Housing, dated | |
| 2 | January 29, 2009 (RJN, Ex. A, p. 2). | |
| 3 | Tristan Depo., Vol. I, pp. 60:7-18; 62:20-63:13, | |
| 4 | Ex. 1 (Vann Decl., Ex. A). | |
| 5 | 70.A. Plaintiff was asked by interrogatory "to | |
| 6 | identify the protected class to which you belong | |
| 7 | that is the basis for your harassment claim." His | |
| 8 | response demonstrates his inability to tie the | |
| 9 | alleged harassment to any particular class or | |
| 10 | characteristic, and instead offers a smorgasbord | |
| 11 | of choices: "[d]isabled employee; injured | |
| 12 | employee; whistleblower; Hispanic employee." | |
| 13 | Special Rogs., No. 16 (Vann Decl., Ex. J). | |
| 14 | Am. Resp. to Spec. Rogs., No. 16 (Vann Decl. | |
| 15 | Ex. K). | |
| 16 | 70.B. Plaintiff felt his harassers were part of a | |
| 17 | "Hispanic clique" that was retaliating and | |
| 18 | harassing him because he, too, was Hispanic | |
| 19 | and had refused to participate in an illegal | |
| 20 | cover-up about the October 21, 2005 incident | |
| 21 | in which Plaintiff injured his knee. Plaintiff | |
| 22 | admitted that he did not know if these alleged | |
| 23 | harassers were actually Hispanic. Plaintiff also | |
| 24 | admitted that nobody at work ever made a slur, | |
| 25 | derogatory remark or other disparaging | |
| 26 | comment towards him. | |
| 27 | Tristan Depo., Vol. V, 823:11-835:17; Vol VII, | |
| 28 | 1132:8-1133:6 (Vann Decl., Exs. E, G). | |
| Issue 3: Plaintiff's Third Cause of Action for Whistleblowing under Labor Code 1102.5 Has No Merit. | | |
| 21 | 71. Defendant hereby incorporates each and | |
| 22 | every preceding Material Fact as if fully set | |
| 23 | forth herein. | |
| 24 | 72. Plaintiff did not file a tort claim with the | |
| 25 | California Government Claim and Victim | |
| 26 | Compensation Board. | |
| 27 | Tristan Depo., Vol. I, pp. 63:16-19 (Vann | |
| 28 | Decl., Ex. A). | |
| | Declaration by James Reinmiller, Custodian of | |
| | Records, California Victim Compensation & | |
| | Gov't Claims Bd., dated July 10, 2009 (RJN, | |
| | Ex. B). | |

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| <p>73. In support of his whistleblower retaliation claim, Plaintiff alleges that he was subjected to retaliation for whistleblowing and engaging in a “code of silence investigation” when CDCR failed to adequately assist him in obtaining disability benefits and filing a workers’ compensation claim, and subjected him to retaliation and harassment when he complained that he felt his October 21, 2005 arrest of Vincent Estrada was not appropriately documented. Plaintiff alleges that CDCR engaged in this conduct because he was a “whistleblower.”</p> <p>1st Am. Compl., ¶¶60-69 (RJN, Ex. H).</p> <p>Tristan Depo., Vol. V, pp. 837:2-838:6 (Vann Decl., Exh. E).</p> <p>Am. Resps. to Spec. Rog, No. 19 (Vann Decl., Ex. K).</p> | |
| <p>74. Plaintiff submitted a complaint of “Disparate Treatment/Hostile Work Environment” to Regional Administrator Jeff Fagot on or about April 2, 2007. This complaint alleged that he felt he was the victim of harassment, discrimination and retaliation for whistleblowing. The Complaint was referred by Tim Fowler to CDCR’s Equal Employment Opportunity Office on or about April 3, 2007, and was investigated by Office of Civil Rights investigator Gail Richie, who concluded that his allegations did not warrant an EEO investigation because they concerned Whistleblowing allegations instead of EEO protected activity or did not have merit. The complaint was subsequently forwarded to Internal Affairs for investigation of the Whistleblowing allegations.</p> <p>Tristan Depo., Vol. V., pp. 809:7- 13; 812:1-12; 818:20-819:5 820:2-9; 822:12-24, Depo. Exs. 37-40 (Vann Decl., Exh. E).</p> <p>Fowler Decl. ¶11, Exh. C.</p> | |
| <p>75. In support of his whistleblowing retaliation claim, Plaintiff alleges that he participated in two investigations the first of which occurred in August, 2005 when he was questioned about an</p> | |

1 incident where agent Parole Agent David Ayala
2 allegedly pushed him; and the second being the
3 investigation conducted regarding his own
4 possible misconduct in connection with his
5 October, 2005 workers' compensation claim.

6 1st Am. Compl., ¶¶47-50 (RJN, Ex. H).

7 Tristan Depo., Vol. III, 479:6-481:9, Exs. 3, 4,
8 37 (Vann Decl., Ex. C).

9 76. In support of his claim that he was subject
10 to whistleblower retaliation for participating in
11 these investigations, Plaintiff also alleges a
12 litany of trivial events running nineteen single-
13 spaced pages, including such allegations as he
14 was unable to log into his computer for a short
15 period of time; his supervisors did not submit
16 his workers' compensation paperwork quickly
17 enough; he was required to work overtime to
18 complete his caseload; he was required to
19 cancel a vacation because the unit was short
20 staffed; he was offered the opportunity to
21 transfer to a different unit, and he was required
22 to serve as **Officer of the Day ("OD")** on the
23 day of the fires in San Diego in October, 2007.

24 1st Am. Compl., ¶¶47-50 (RJN, Ex. H).

25 Tristan Depo., Vol. I, pp. 63:20-65:1; Vol. III,
26 479:6-481:9; Exhibits 3, 4, 37 (Vann Decl.,
27 Exs. A, C).

28 77. At all times during the course of Plaintiff's
employment, Plaintiff continued to be
employed in his position as a Parole Agent I
and there was no adverse affect on his salary,
benefits and employment status as a result of
any of the events alleged in his whistleblower
retaliation complaint. Plaintiff received EIDL
or IDL benefits as appropriate for all of his
workers' compensation claims, and his EIDL
claim was even extended for a period of six
months at his request, allowing him to continue
receiving 100% of his salary.

Fowler Decl., ¶¶7-8, Ex. B.

Tristan Depo., Vol. III, pp. 449: 21-24; 464:1-
13; 465:25-466:1; Vol. IV, pp. 525:21-526:14;
526:19-527:5; 531:8-14, Plaintiff's Depo Vol.
VII, pp. 1133:19-1134:16; Depo. Exs. 25 & 26

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| <p>(Vann Decl., Exs. C, D and G).</p> | |
| <p>78. As part of his claim for whistleblower retaliation, as well as discrimination and harassment under FEHA, Plaintiff claims that Parole Agent Garcia did not provide him with a performance evaluation, which Plaintiff alleges prevented him from being promoted or becoming a Rangemaster.</p> <p>Not having a recent evaluation would not have been a barrier to promoting for Plaintiff because he never successfully passed the examination for Parole Agent II and for that reason alone was not eligible for promotion to Parolè Agent II.</p> <p>1st Am. Compl., ¶47(c) (RJN, Ex. H).</p> <p>Am. Resp. to Form Rogs, No. 202.2, p. 57:3-4 (Vann Decl., Ex. I); Tristan Depo, Vol. IV pp. 802:2-805:25 (Vann Decl., Exh. D).</p> | |
| <p>79. The fact that Plaintiff did not become a Rangemaster is not indicative of discrimination, harassment or retaliation. Becoming a Rangemaster is a highly competitive and selective process whereby Parole Agents are selected to act as firearms instructors and supervisors of shooting range target practice. Rangemaster certified parole agents do not receive any added pay or benefits including overtime, and their duties as Rangemaster must be performed within working hours in addition to their preexisting duties as a Parole Agent. An employee who is on light duty would not be eligible for Rangemaster Certification.</p> <p>Declaration of Edward Cervera ("Cervera Decl."), ¶¶3-10.</p> | |
| <p>80. Being a Rangemaster is not a prerequisite to obtaining any other position or any promotion within DAPO. While the Rangemaster certification is a positive voluntary activity, it is not a stepping stone to promotion, as evidenced by the fact that Cervera has not been promoted from Parole Agent I even after 20 years of Rangemaster experience.</p> | |

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| 1 | Cervera Decl., ¶3. | |
| 2 | 81. Rangemaster training is offered on a | |
| 3 | sporadic, unpredictable basis, and requires | |
| 4 | agents to first pass a prequalification course, | |
| 5 | testing the agent's ability to clear safety jams | |
| 6 | and malfunctions of the weapons, train other | |
| 7 | shooters, and exert command presence over the | |
| 8 | range firing line. Many agents with significant | |
| 9 | prior firearms experience, including former | |
| 10 | range instructors in CDCR Corrections and | |
| 11 | those with similar military experience, do not | |
| 12 | pass this prequalification course. | |
| 13 | Cervera Decl., ¶3. | |
| 14 | 82. Employees who pass this test must pass an | |
| 15 | oral interview with existing Rangemasters and | |
| 16 | the area Training coordinator. The interview | |
| 17 | panel covers a predetermined list of questions | |
| 18 | with each candidate, and scores each candidate | |
| 19 | based on the responses given. A true and | |
| 20 | correct copy of the most recent interview | |
| 21 | worksheet is attached to this declaration as | |
| 22 | Exhibit 1. The panel evaluates candidates | |
| 23 | based upon their technical skill, knowledge | |
| 24 | about the weapons and range safety, their | |
| 25 | experience, leadership qualities, teaching | |
| 26 | ability, and looks for those with a genuine | |
| 27 | interest in shooting. | |
| 28 | Cervera Decl. ¶6-7 | |
| | 83. Typically within Region IV, about 12 | |
| | agents compete for one or two spots to attend | |
| | Rangemaster training academy. | |
| | Cervera Decl., ¶8. | |
| | 84. It would be speculative for any parole | |
| | agent to assume that he or she could become a | |
| | Rangemaster upon expressing an interest in | |
| | doing so, particularly when he or she has not | |
| | attempted the prequalification course. It is a | |
| | highly competitive process and only a fraction | |
| | of the candidates who apply are selected for | |
| | training. Many agents who are talented and | |

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| <p>experienced with firearms and range procedures are not selected, in fact, most are unsuccessful within any given selection process.</p> <p>Cervera Decl., ¶10.</p> | |
| <p>85. Plaintiff never applied to be a Rangemaster.</p> <p>Tristan Depo., Vol. II, p. 324:14-16 (Vann Decl., Ex. B).</p> | |
| <p>86. Agent Ferguson prepared and submitted a Parole Violation Report (CDC 1676, CDC 1521-B and CDC 1521-D) and a Probable Cause Report (CDC 1502-B) regarding the arrest incident of October 21, 2005, which led to Plaintiff's knee injury.</p> <p>Ayala Decl., ¶5, Ex. A.</p> <p>Tristan Depo., Vol. II pp. 233:11-234:5 (Vann Decl., Ex. B).</p> | |
| <p>87. On October 28, 2005, Plaintiff reviewed the report submitted by Agent Ferguson regarding the arrest. Plaintiff claims the Supporting Information section of Agent Ferguson's Parole Violation Report contains false information but cannot point to any information that is untrue. In support of his claim that the report is false, Plaintiff states that it does not include him and gives the reader a false sense that Agent Ferguson was the only agent involved in the incident, even though the Probable Cause charging document stated he was present at the scene assisting in the arrest. Plaintiff also states it is false because no "use of force" report was prepared regarding the arrest and possible use of a handgun. Even though Plaintiff did not see Ferguson point his gun at anyone, and does not describe any force used against the parolee other than to state he was "actively resisting" arrest and not willingly allowing himself to be handcuffed.</p> <p>Ayala Decl., ¶5, Ex. A.</p> <p>Tristan Depo., Vol. II, pp. 228:18-229:4; 231:9-13; 236:21-242:23; 246:24-247:16, Depo. Ex. 12 (Vann Decl., Ex. B).</p> | |