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5 Attorneys For Plaintiffs

6 Terry Rivera, individually and as the
7 Administrator of the Estate of Jose V. Rivera

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

11 **TERRY RIVERA, individually and**)
12 **as the Administrator of the Estate**)
13 **of Jose V. Rivera,**)

14 **Plaintiffs,**)

15 **v.**)

16 **DENNIS SMITH; HARLEY**)
17 **LAPPIN; ROBERT McFADDEN;**)
18 **SPECIAL INVESTIGATIONS**)
19 **SPECIALIST ZIRAGOSA;**)
20 **OPERATIONS LIEUTENANT;**)
21 **ASSOCIATE WARDEN BELL;**)
22 **ASSOCIATE WARDEN D.**)
23 **SHINN; JESSE ESTRADA;**)
24 **MARIE OROSZCO; FOOD**)
25 **SERVICES DEPARTMENT**)
26 **SUPERVISOR; COMMISARY**)
27 **SUPERVISOR; UNIT**)
28 **SECRETARY DRAYTON; UNIT**)
MANAGER BOWLES; and DOES)
1 through 200, inclusive,)

Defendants.)

Case No.:

**COMPLAINT FOR
CONSTITUTIONAL
VIOLATIONS BY FEDERAL
OFFICERS**

DEMAND FOR JURY TRIAL

Plaintiff, individually and as Administrator of the Estate of Jose V. Rivera,
alleges:

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COMPLAINT FOR CONSTITUTIONAL VIOLATIONS BY FEDERAL OFFICERS

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JURISDICTION AND VENUE

1. The claims in this action arise under the Fifth Amendment of the United States Constitution. Jurisdiction is conferred on this Court by 28 United States Code Section 1343 (federal question).

2. Venue lies in the Eastern District of California, the judicial district in which the claim arose, pursuant to 28 United States Code section 1391, subdivision b.

3. At all times relevant herein, the defendants, and each of them, were duly appointed, qualified and acting Employees of the United States Government and at all times each defendant was acting in the course and scope of such employment and under color of law.

2.

PARTIES

4. At all relevant times decedent Correctional Officer Jose V. Rivera was a citizen of the United States and a resident of the city of Chowchilla, California. At all relevant times, Correctional Officer Jose V. Rivera was employed by the United States as a correctional officer at the United States Penitentiary at Atwater, California ("USP Atwater").

5. Plaintiff Terry Rivera is the surviving mother of Correctional Officer Rivera, who died unmarried and without children. Plaintiff Terry Rivera sues individually and as the Administrator of the Estate of Jose Rivera.

6. Defendant Harley Lappin at all relevant times was the Director of the Federal Bureau of Prisons and at all relevant times was acting in the course and scope of his employment with the United States.

7. Defendant Robert McFadden at all relevant times was the Regional Director, Western Region, for the Federal Bureau of Prisons and at all relevant times was acting in the course and scope of his employment with the United

1 States.

2 8. Defendant Dennis Smith at all relevant times was a resident of the
3 State of California, at all relevant times was the Warden of USP Atwater and at all
4 relevant times was acting in the course and scope of his employment with the
5 United States.

6 9. Plaintiff is informed and believes and thereon alleges that Special
7 Investigations Specialist Ziragosa is and at all relevant times was, a resident of the
8 State of California, at all relevant times was a Lieutenant in the SIS office at USP
9 Atwater and at all relevant times was acting in the course and scope of
10 employment with the United States.

11 10. Plaintiff is informed and believes and thereon alleges that Operations
12 Lieutenant is and at all relevant times was, a resident of the State of California, at
13 all relevant times was a Lieutenant in the SIS office at USP Atwater and at all
14 relevant times was acting in the course and scope of employment with the United
15 States.

16 11. Plaintiff is informed and believes and thereon alleges that Associate
17 Warden Bell is and at all relevant times was, a resident of the State of California,
18 at all relevant times associate warden at USP Atwater and at all relevant times was
19 acting in the course and scope of employment with the United States.

20 12. Plaintiff is informed and believes and thereon alleges that Associate
21 Warden D. Shinn is and at all relevant times was, a resident of the State of
22 California, at all relevant times was an associate warden at USP Atwater and at all
23 relevant times was acting in the course and scope of employment with the United
24 States.

25 13. Plaintiff is informed and believes and thereon alleges that Food
26 Services Department Supervisor is and at all relevant times was, a resident of the
27 State of California, at all relevant times was the supervisor of the Food Services
28 Department at USP Atwater and at all relevant times was acting in the course and

1 scope of employment with the United States.

2 14. Plaintiff is informed and believes and thereon alleges that
3 Commissary Supervisor is and at all relevant times was, a resident of the State of
4 California, at all relevant times was the supervisor of the Commissary at USP
5 Atwater and at all relevant times was acting in the course and scope of
6 employment with the United States.

7 15. Plaintiff is informed and believes and thereon alleges that Unit
8 Secretary Drayton is and at all relevant times was, a resident of the State of
9 California, at all relevant times was a secretary of Unit 5A at USP Atwater and at
10 all relevant times was acting in the course and scope of employment with the
11 United States.

12 16. Plaintiff is informed and believes and thereon alleges that Unit
13 Manager Bowles is and at all relevant times was, a resident of the State of
14 California, at all relevant times was a unit manager of Unit 5A at USP Atwater and
15 at all relevant times was acting in the course and scope of employment with the
16 United States.

17 17. Defendant Maria Orozco is, and at all relevant times was, a resident
18 of the State of California, at all relevant times was a Unit Manager at USP Atwater
19 and at all relevant times was acting in the course and scope of her employment
20 with the United States.

21 18. Defendant Jesse Estrada is and at all relevant times was, a resident of
22 the State of California, at all relevant times was a Lieutenant in the SIS office at
23 USP Atwater and at all relevant times was acting in the course and scope of his
24 employment with the United States.

25 **3.**

26 **CORRECTIONAL OFFICER JOSE V. RIVERA**

27
28 19. Correctional Officer Jose V. Rivera was 22 years old on June 20,

1 2008 when he was murdered by two inmates at the United States Penitentiary at
2 Atwater, California (“USP Atwater”). Officer Rivera was a four-year veteran of
3 the Navy, and had completed two tours of military duty in Iraq. He began his
4 career with the Bureau of Prisons as a Correctional Officer on August 5, 2007 and
5 was in his probationary year when he died.

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7 **4.**

8 **BACKGROUND**

9
10 **A. Prior Hostage Situation**

11 20. In October 2007, inmates in Housing Unit 5A at USP Atwater took a
12 correctional officer hostage in order to protest the fact that gangs were controlling
13 cell assignments and charging a “tax” on cells. After negotiations, the hostage
14 was released with only minor injuries.

15 21. An investigation was conducted following the hostage situation. It
16 was discovered that the hostage-takers had obtained stainless steel rods from the
17 Food Service Department’s industrial dishwasher conveyor belt and fashioned
18 them into ice-pick type weapons, which were used to take the hostage. Further, at
19 all relevant times, several repairs were made to the dishwasher conveyor belt in
20 the Food Services Department to replace missing stainless steel rods.

21 22. In response to the investigation, defendant Food Services Department
22 Supervisor, Associate Warden D. Shinn, who was at all relevant times the warden
23 in charge of operations, and Dennis Smith, who was at all relevant times the
24 Warden, continued to permit unsupervised and unmonitored access to the
25 dishwasher conveyor belt, continued to permit unsupervised and unmonitored
26 extraction of parts from the dishwasher conveyor belt and continued to permit
27 conversion of those parts into weapons.

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1 **B. Intoxication**

2 23. At all relevant times, intoxicants were easily obtained by inmates at
3 USP Atwater. Inmate mail and interviews provided information to defendants,
4 and each of them, that inmates “cooked” the sugar out of soda to provide
5 ingredients for intoxicants; that intoxicants were sold and transported in empty
6 plastic bottles sold in the Commissary.

7 24. Defendants, and each of them, were specifically on notice that
8 intoxicants were being created and used by inmates. This notice came in the form
9 of: (1) inmate mail; (2) inmate interviews; (3) confiscated intoxicants; and, (4)
10 intoxicated inmates.

11 25. At all relevant times, and in violation of protocols, intoxicated
12 inmates were routinely locked in their cells to “sleep it off” rather than: (1) being
13 taken to the Lieutenant’s office; (2) being issued an incident report; and (3) being
14 disciplined.

15 26. At all relevant times, and in violation of protocols, intoxicants
16 confiscated from inmates were routinely logged in and disposed of without an
17 incident report being written or discipline imposed on the inmate from whom they
18 had been confiscated.

19 **C. Weapons**

20 27. At all relevant times, weapons were plentiful at USP Atwater.

21 28. At all relevant times, and in violation of protocols, if a weapon was
22 discovered in an inmate’s quarters, there would be no disciplinary action taken
23 against the inmate.

24 **D. Cell Assignments**

25 29. At all relevant times, inmates transferred to USP Atwater were
26 routinely not provided with specific cell assignments. Rather, they were
27 frequently assigned to a unit and told that, if they have not received a cell
28

1 assignment by count time, to just find a cell on their own.

2
3 **E. Searches**

4 30. At all relevant times, and in violation of protocols, routine pat
5 searches for weapons or contraband were not being conducted at USP Atwater.

6 31. At all relevant times, and in violation of protocol, mass searches were
7 not thorough and only targeted specific items, such as ingredients for making
8 intoxicants, rather than being generalized and looking for all contraband and
9 weapons.

10
11 **F. Unit Keys**

12 32. At all relevant times, the only person on Unit #5A who had a key to
13 the unit, and therefore who had immediate access to the unit, was the Unit Officer.
14 If the Unit Officer was attacked while in the unit, no rescuers could access the unit
15 until the Compound Officer was called and could arrive with a key.

16
17 **G. Disciplinary Issues**

18 33. At all relevant times, disciplinary issues, including the failure to issue
19 incident reports and enforce discipline mandates with respect to weapons
20 possessions and intoxication, and the failure to timely process incident reports and
21 disciplinary actions, led inmates at USP Atwater to believe they would not be held
22 accountable for their actions. This, in turn, created a dangerous environment for
23 staff and inmates. Similarly, mismanagement of disciplinary sanctions, the
24 secured housing unit and the annex to the secured housing unit, resulted in
25 inappropriate inmate release from, or failure to assign inmates to, secured housing.

26
27 **H. Cell Counts**

28 34. Routine cell counts were conducted at approximately 3:30 p.m. daily.
During cell counts, inmates were required to be in their cells. Standard protocol

1 required that when cell count was called, inmates were to report to their cells.
2 Typically, however, when cell counts were called, inmates were allowed to roam
3 in the public areas until the duty officer reached them. If they were not in a cell at
4 that point, an incident report could be issued. As a matter of practice, the inmates
5 were allowed to go into any available cell for count and were not required to be
6 present in their assigned cells. This practice allowed inmates to be at large while
7 the duty officer was alone in the unit.

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9 **5.**

10 **FACTS**

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12 35. On June 19, 2008, inmate James Guerrero arrived at USP Atwater
13 from USP Coleman as a 309 disciplinary transfer. He was originally assigned a
14 cell in Unit 2B by the Unit Manager, Marie Orozco. During intake screening,
15 inmate Guerrero was interviewed by Special Investigation Specialist technician
16 Ziragosa. Inmate Guerrero indicated that he would not cell with any other inmates
17 on Unit 2. SIS Ziragosa convinced inmate Guerrero, a Guamanian, to cell with
18 another Guamanian, inmate Jose Sablan in Unit 5A.

19 36. In fact, given his disciplinary history, Guerrero should not have been
20 housed in the general prison population, but should have been assigned to the
21 secured housing unit (SHU).

22 37. Marie Orozco was in another part of the prison during the dinner
23 hour. While there, she was contacted in person by SIS Lieutenant Jesse Estrada,
24 who informed her that inmate Guerrero was going to be sent to Unit 5A rather than
25 Unit 2 where Orozco had preliminarily assigned him. Orozco questioned Estrada
26 as to whether Estrada felt like Guerrero should first go to SHU. Estrada contended
27 that Guerrero needed to “program” and needed to be in general population.
28 Orozco responded by saying, “Going to put him with another killer?”, referring to
inmate Sablan. Estrada again stated that Guerrero needed to be in general

1 population so he could program. Orozco then said, "Okay if that is what you are
2 going to do. We'll be lucky if he doesn't end up killing somebody before the
3 night is out."

4 38. During the afternoon of June 20, 2008, the day after Guerrero's
5 admission to Unit 5A, the Asian/Pacific Islanders in that unit began consuming
6 intoxicants and continued to drink for an undetermined period of time before the
7 3:30 p.m. cell count.

8 39. Correctional Officer Rivera was assigned as the Unit Officer to Unit
9 5A that day.

10 40. At approximately 3:18 p.m., Officer Rivera called count and, as he
11 had been trained, began to secure the unit in anticipation of the 3:30 p.m. cell
12 count.

13 41. At approximately 3:20 p.m., Officer Rivera approached a group of
14 Asian/Pacific Islander inmates near cell 116, including Sablan and Guerrero, who
15 were intoxicated. After a brief conversation with Officer Rivera, the group began
16 to break up. Guerrero grabbed a plastic chair, raised it in the air and dropped it to
17 the floor. At that point, Sablan and Guerrero left the first tier and went up to the
18 second tier of the unit while Officer Rivera began securing the lower tier in
19 preparation for the cell count. Officer Rivera finished securing the bottom tier and
20 went up to the second tier and started securing the cells on the second tier.
21 Officer Rivera began to close the door on cell 223 while Guerrero and Sablan were
22 standing outside the cell. Just as Officer Rivera was closing cell 223, Guerrero
23 stepped inside, while Sablan stayed outside. Sablan pulled a weapon from his
24 pocket and began stabbing Officer Rivera in the torso.

25 42. Officer Rivera began to run away from Sablan and both Sablan and
26 Guerrero pursued Officer Rivera. Officer Rivera began to descend to the first
27 floor of the unit. Sablan stabbed Officer Rivera again as they ran down the
28 stairwell. Officer Rivera turned while on the stairwell and head-butted Guerrero

1 in an attempt to defend himself. Sablan swung his arm with the weapon in his
2 hand, attempting to strike Officer Rivera.

3 43. Officer Rivera reached the bottom of the stairwell and ran in the
4 direction of cell 108. Officer Rivera activated his body alarm at that time. Officer
5 Rivera was tackled around the legs by Guerrero near cell 105. Officer Rivera was
6 held to the ground by Guerrero. Sablan got on top of Officer Rivera and began to
7 stab him repeatedly.

8 44. The Unit Secretary (defendant Drayton) entered the unit through the
9 Unit Team Door. She was followed into the unit several seconds later by the Unit
10 Manager (defendant Bowles), also through the Unit Team Door. The Unit
11 Manager requested assistance, but neither she nor the Unit Manager intervened or
12 rendered assistance during the assault.

13 45. Other personnel attempted to enter the unit through the main door but
14 were unable to do so because the door was locked and only Officer Rivera, as Unit
15 Officer, had a key. Other personnel could not enter the unit to assist until the
16 Compound Officer arrived with a key to open the door, resulting in considerable
17 delay in intervention in the assault.

18 46. Officer Rivera was taken to an outside hospital and pronounced dead.

19 47. It was later determined that the weapon used by Sablan to kill Officer
20 Rivera was an ice-pick type weapon fashioned from a rod pilfered from the Food
21 Service Department dishwasher conveyor belt.

22 48. As evidenced by the foregoing facts, defendants, and each of them,
23 were responsible for, and participated in, the creation, development, promotion,
24 encouragement and advancement of the dangerous conditions alleged in this
25 complaint including, without limitation, the assignment of the assailants to a lower
26 level of custody than warranted by their violent history and known violent
27 propensities, intoxication of inmates, availability of weapons to inmates, the
28 failure of procedures and processes regarding cell counts that would protect Unit

1 Officers conducting cell counts, the inability of rescuers to access the unit, and
2 lack of a cohesive and comprehensively-enforced discipline policy.

3 49. At all relevant times defendants, and each of them acted with
4 deliberate indifference to the known and obvious dangers presented by the
5 assailants by subjecting decedent Corrections Officer Rivera to those dangerous
6 conditions, resulting in his tragic and unnecessary death.

7
8 **FIRST COUNT**

9 50. Plaintiff incorporates by reference each and every preceding
10 paragraph.

11 51. Defendants, and each of them, participated in, or were responsible
12 for, the classification, placement, incarceration and over-all handling of the
13 assailants while they were incarcerated at USP Atwater.

14 52. Defendants, and each of them, were specifically aware that the
15 assailants were likely to assault and kill decedent Correctional Officer Rivera,
16 other correctional staff and/or other inmates.

17 53. Defendants, and each of them, were specifically aware of the dangers
18 posed by the assailants as they were and are extremely dangerous.

19 54. Defendants, and each of them had a deep and unequivocal
20 appreciation of the extreme violent propensities and dangerous mental instability
21 of the assailants which posed a direct and appreciable danger to themselves, other
22 inmates, correctional officers, including Correctional Officer Rivera, and staff.

23 55. On or about June 20, 2008, defendants were aware of the assailants'
24 dangerousness and defendants were aware of the dangerous condition they had
25 created in the manner in which they allocated the assailants' housing assignments
26 and the manner in which they classified and placed the assailants.

27 56. Defendants, and each of them, willingly and knowingly participated
28 in the creation of the dangerous conditions that resulted in the death of
Correctional Officer Jose Rivera. Defendants' conduct was outrageous,

1 despicable and malicious and shocks the conscience. Correctional Officer Rivera
2 was knowingly, repeatedly and wrongfully subjected to the dangerous and violent
3 propensities of the assailants and yet defendants, and each of them, acted with
4 deliberate indifference in refusing to properly classify the assailants, in allowing
5 the assailants to obtain intoxicants, in allowing the assailants to obtain weapons, in
6 permitting only a single person on the unit to possess a key to the door, in
7 permitting a lax discipline policy, among other things, and thereby exposing
8 Correctional Officer Rivera to danger.

9 57. As a result of the deliberate indifference of defendants, and each of
10 them, in the creation and maintenance of a dangerous condition, Correctional
11 Officer Rivera was killed in the line of duty on June 20, 2008.

12 58. The conduct of defendants, and each of them, was motivated by evil
13 motive or intent, or involved reckless or callous indifference to the federally
14 protected constitutional rights of Correctional Officer Rivera under the Fifth
15 Amendment. The conduct of defendants, and each of them exhibited oppression,
16 malice, gross negligence, willful or wanton misconduct or reckless disregard for
17 the Fifth Amendment rights of Correctional Officer Rivera.

18 WHEREFORE, plaintiff demands judgment in this action against
19 defendants and each of them, jointly and severally, for compensatory damages,
20 punitive damages and attorneys' fees, all in an amount to be determined at the time
21 of trial, and for such other and further relief as the Court may deem just and
22 equitable.

23 Dated: June 7, 2010

LAW OFFICES OF MARK PEACOCK

24
25 By: 

26 MARK J. PEACOCK
27 Attorney for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury in this action.

Dated: June 7, 2010

LAW OFFICES OF MARK PEACOCK

By: 

MARK J. PEACOCK
Attorney for Plaintiffs

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