

1 David B. Monks, Esq., Bar No. 164232
2 Micaela P. Shelton, Esq., Bar No. 226656
3 KLINEDINST PC
4 501 West Broadway, Suite 600
5 San Diego, CA 92101-3584
6 (619) 239-8131/FAX (619) 238-8707

7 Daniel P. Struck, Arizona Bar No. 012377,
8 (pro hac vice status pending)
9 JONES, SKELTON & HOCHULL, P.L.C.
10 2901 N. Central Ave., Ste. 800
11 Phoenix, AZ 85012
12 (602) 263-1700; FAX: (619) 200-7811

13 Attorneys for Defendants
14 BARBARA HARPER, SUSANA WINTERS,
15 ALVERTIS PAYNE and POLO TERAN

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 ISAAC KIGONDU KINITI,
19 Plaintiff,
20 v.
21 CCA DETENTION OFFICERS
22 HARPER, ALVAREZ, WINTERS,
23 PAYNE AND TERAN,
24 Defendants.

Case No. 05cv1013 DMS(PCL)

**DEFENDANTS' ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Filed: May 9, 2005
Judge: Honorable Dana M. Sabraw
Magistrate: Honorable Peter C. Lewis
Trial: Not Yet Set


25 Defendants Barbara Harper, Susana Winters, Alvertis Payne and Polo Teran, for
26 their Answer to Plaintiff's First Amended Complaint, admit, deny and allege as follows.

27 1. These answering Defendants deny each and every allegation of
28 Plaintiff's First Amended Complaint which is not specifically admitted, denied or
otherwise plead to.

FIRST AMENDMENT VIOLATION ALLEGATIONS

29 2. In answering Plaintiff's First Amended Complaint alleging violations
by Defendants of Plaintiff's First Amendment Rights, Defendants deny same.

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY:  DEPUTY

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FIFTH AMENDMENT VIOLATION ALLEGATIONS

3. In answering Plaintiff's First Amended Complaint alleging violations by Defendants of Plaintiff's Fifth Amendment Rights, Defendants deny same.

EIGHTH AMENDMENT VIOLATION ALLEGATIONS

4. In answering Plaintiff's First Amended Complaint alleging violations by Defendants of Plaintiff's Eighth Amendment Rights, Defendants deny same.

FOURTEENTH AMENDMENT VIOLATION ALLEGATIONS

5. In answering Plaintiff's First Amended Complaint alleging violations by Defendants of Plaintiff's Fourteenth Amendment Rights, Defendants deny same.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Statute of Limitations)

6. As a separate defense, or in the alternative, these answering Defendants allege that the Plaintiff's claims are barred by the applicable statute of limitations.

Second Affirmative Defense

(Failure to State Claim)

7. As a separate defense, or in the alternative, these answering Defendants allege that Plaintiff fails to state a claim upon which relief may be granted.

Third Affirmative Defense

(Failure to Exhaust Administrative Remedies)

8. As a separate defense, or in the alternative, these answering Defendants allege that Plaintiff failed to exhaust administrative remedies prior to filing suit in accordance with the Prison Litigation Reform Act, thereby precluding all claims asserted under 42 U.S.C. § 1983. See 42 U.S.C. § 1997e(a).

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Ninth Affirmative Defense

(No Evidence of Malice or Deliberate Indifference)

14. As a separate defense, and in the alternative, these answering Defendants allege that Defendants were acting in good faith at all times, without malice, and without the requisite state of mind necessary for Plaintiff to prove in order to prevail on a claim of deliberate indifference.

Tenth Affirmative Defense

(No Evidence of Evil Motive or Reckless Callous Indifference to Rights of Plaintiff)

15. As a separate defense, and in the alternative, these answering Defendants allege that there existed no conduct in this case motivated by an evil motive or intent, nor did any conduct involve reckless or callous indifference to the rights of Plaintiff, thereby precluding punitive damages.

Eleventh Affirmative Defense

(No Proximate Cause)

16. As a separate defense, and in the alternative, these answering Defendants alleges that the actions or inactions alleged on the part of Defendants were not the proximate cause of any injuries, losses and damages to Plaintiff.

Twelfth Affirmative Defense

(Failure to Mitigate Damages)

17. As a separate defense, and in the alternative, these answering Defendants allege that Plaintiff failed to mitigate damages.

Thirteenth Affirmative Defense

(No Actual Injury to Plaintiff)

18. As a separate defense, and in the alternative, these answering Defendants allege that Plaintiff suffered no actual injury.

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Fourteenth Affirmative Defense

(No Evidence of Subjective Intent to Violate Constitutional Rights)

19. As a separate defense, and in the alternative, these answering Defendants allege that Plaintiff has failed to set forth the requisite showing of subjective intent necessary to sustain a cause of action alleging a Constitutional violation, thereby warranting dismissal of this lawsuit.

Fifteenth Affirmative Defense

(No Grave Deprivation of Constitutional Rights)

20. As a separate defense, and in the alternative, these answering Defendants allege that Plaintiff has failed to set forth a grave deprivation in regard to his allegation that a Constitutional violation has occurred, thereby warranting dismissal of this lawsuit.

Sixteenth Affirmative Defense

(Limited Rights Regarding Prison Discipline)

21. As a separate defense, and in the alternative, these answering Defendants allege that with respect to prison disciplinary hearings, detainees/inmates are not entitled to the full panoply of rights as afforded in a criminal prosecution. *See Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963 (1974).

Seventeenth Affirmative Defense

(Sufficient Prison Disciplinary Hearings)

22. As a separate defense, and in the alternative, these answering Defendants allege that Plaintiff's prison disciplinary hearings complied with the constitutional requirements set forth by *Wolff v. McDonnell*, 418 U.S. 539, 565-66, 94 S.Ct. 2963 (1974), which requires detainee prison disciplinary hearings provide: (1) written notice of the charges at least 24 hours prior to the hearing; (2) written statement by the fact finder regarding the evidence relied upon and the reasons for the disciplinary action; and (3) a limited right to call witnesses and present documentary evidence unless such poses a hazard to institutional safety and correctional goals.

Eighteenth Affirmative Defense

(No Unrestricted Right to Call Witnesses at Prison Disciplinary Hearings)

23. As a separate defense and in the alternative, these answering Defendants allege that inmates/detainees do not have an unrestricted right to call witnesses at prison disciplinary hearings. *See Mitchell v. Dupnik*, 75 F.3d 517, 525 (9th Cir. 1996); *Bartholomew v. Watson*, 665 F.2d 915, 918 (9th Cir. 1982). Nor do corrections officials need to state the reason for the denial of calling witnesses. Finally, due process does not require a correctional facility to allow an inmate to confront and cross examine witnesses and their accusers as such would threaten discipline of the facility and lengthen the proceedings. *See Baxter v. Palmigiano*, 425 U.S. 308, 96 S.Ct. 1551 (1976); *Mitchell*, 75 F.3d at 526.

Nineteenth Affirmative Defense

(Sufficient Evidence at Disciplinary Hearings)

24. As a separate defense and in the alternative, these answering Defendants allege that Plaintiff's disciplinary proceedings were supported by evidence, thus warranting dismissal of Plaintiff's due process violation claims. *See Hanrahan v. Lane*, 717 F.2d 1137, 1141 (7th Cir. 1984).

Twentieth Affirmative Defense

(No Constitutional Right to Particular Security Classification, etc.)

25. As a separate defense, and in the alternative, these answering Defendants allege that Plaintiff does not have a constitutional right to a particular security classification, cell assignment or compatible cellmate.

Twenty-First Affirmative Defense

(No Actual Injury to Support Access-to-Courts Claim)

26. As a separate defense, and in the alternative, these answering Defendants allege Plaintiff is unable to demonstrate actual injury in the dismissal of a non-frivolous lawsuit, thereby precluding Plaintiff's access to courts claim.

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Twenty-Second Affirmative Defense

(Insufficient Evidence of Violation of Constitutional Rights)

27. As a separate defense, and in the alternative, these answering Defendants allege that verbal threats or rude comments by correctional officers are insufficient to establish a violation of an inmate/detainee's Constitutional rights.

Twenty-Third Affirmative Defense

(Additional Affirmative Defenses)

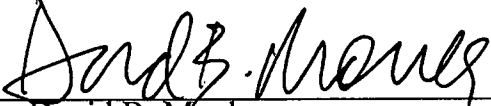
28. Although these answering Defendants do not presently have specific facts in support of its remaining defenses, it wishes to put counsel for Plaintiff on notice that they raise the following affirmative defenses, as set forth in Rule 8, Fed. R. Civ. P., should subsequent discovery disclose facts that support those defenses, including but not limited to: fraud; illegality; payment; release; res judicata; and waiver.

29. WHEREFORE, having fully answered the allegations of Plaintiff's Amended Complaint, these answering Defendants pray that Plaintiff take nothing and that these Defendants be discharged with costs and attorneys fees' incurred pursuant to 42 U.S.C. § 1988 and *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

30. Defendants demand a jury trial as to all triable issues.

KLINEDINST PC

Dated: October 30, 2006

By: 
David B. Monks
Micaela P. Shelton
Attorneys for Defendants
BARBARA HARPER, SUSANA
WINTERS, ALVERTIS PAYNE and
POLO TERAN

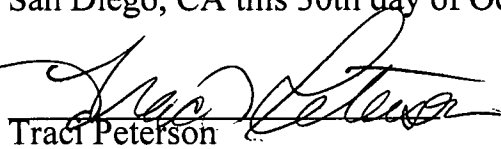
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CERTIFICATE OF SERVICE

I hereby certify that a copy of DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT was this date by placing a copy of the same in the United States Mail, postage prepaid, and sent to their last known address as follows:

Isaac Kigonde Kiniti
A 78-091-772
CCA/San Diego Corrections
PO Box 439043
San Diego, CA 92143-9049

San Diego, CA this 30th day of October 2006.


Traci Peterson