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10 Gloria Molina, Zev Yaroslavsky, Don Knabe,
11 Michael D. Antonovich, Sheriff Leroy D. Baca,
12 and Policarpio Enriquez, M.D.

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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 MAURICE PIERRE OLIVIER,
17
18 Plaintiffs,

19 vs.

20 LOS ANGELES COUNTY BOARD
21 OF SUPERVISORS; GLORIA
22 MOLINA; YVONNE B. BURKE;
23 ZEV YABOSLAVSKY, DON
24 KNABE; MICHAEL D.
25 ANTONOVICH; LOS ANGELES
26 COUNTY SERHIFF'S
27 DEPARTMENT; LEROY BACA;
28 LOS ANGELES COUNTY
CENTRAL JAIL; POLICARPIO
ENRIQUEZ, M.D.,

Defendants.

Case No. CV 08-07169 JFW (AGR)
Magistrate Judge Alicia G. Rosenberg

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES AND
DECLARATION OF DEPUTY
KEVIN KELLEY IN SUPPORT
THEREOF**

*[[Proposed] Order filed concurrently
herewith]*

Date: December 8, 2009
Time: 10:00 a.m.
Crtm: D - 8th Floor

TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR
COUNSEL OF RECORD:

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1 PLEASE TAKE NOTICE that on December 8, 2009, at 10:00 a.m., or as
2 soon thereafter as counsel may be heard, in Courtroom D of the above-referenced
3 court located at 312 N. Spring St., Los Angeles, California 90012, Defendants
4 Gloria Molina, Zev Yaroslavsky, Don Knabe, Michael D. Antonovich, Sheriff
5 Leroy D. Baca, and Policarpio Enriquez, M.D. (collectively "Defendants") will
6 move this Court for an order dismissing Plaintiff Maurice Pierre Olivier's
7 ("Plaintiff") First Amended Complaint as against Defendants on the following
8 grounds:

- 9 1. Plaintiff failed to exhaust his administrative remedies prior to
10 bringing this lawsuit as required by the Prison Litigation Reform
11 Act, 42 U.S.C. § 1997e(a). Fed. R. Civ. Proc. 12(b).
- 12 2. Plaintiff has failed to allege facts establishing that the individual
13 Defendants had any personal involvement in the alleged violation of
14 Plaintiff's rights. Fed. R. Civ. Proc. 12(b)(6).

15 This Motion will be based upon this Notice of Motion, the Memorandum
16 of Points and Authorities and Declaration of Deputy Kevin Kelley attached hereto
17 the pleadings on file in this case, and upon such further evidence as may be
18 presented at or before the hearing.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction.**

3 There are several grounds upon which to dismiss Plaintiff's First Amended
4 Complaint ("FAC") against Defendants. First, Plaintiff has failed to exhaust his
5 administrative remedies prior to bringing his lawsuit as required by the Prison
6 Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). Further, Plaintiff has
7 failed to allege facts that the individual Defendants had any personal involvement
8 in the alleged violations of Plaintiff's rights.

9 While Plaintiff's FAC is unclear as to his specific causes of action, Plaintiff
10 brings this suit under § 1983. Plaintiff's § 1983 allegations regarding floor
11 sleeping purportedly occurred from July 12, 2006 to July 17, 2006, and his
12 allegations regarding his conditions of confinement purportedly occurred from
13 September 1, 2006 through October 15, 2006. Further, Plaintiff's allegations
14 regarding his medical needs purportedly occurred from September 18, 2006
15 through January 23, 2007.

16 On August 12, 2009, Plaintiff Maurice Pierre Olivier ("Plaintiff") filed his
17 FAC. For the reasons below, Defendants' Motion to Dismiss should be granted.

18 **II. Plaintiff's First Amended Complaint Should Be Dismissed Because**
19 **Plaintiff Failed To Exhaust His Administrative Remedies As Required**
20 **By The Prison Litigation Reform Act.**

21 The PLRA requires prison litigants to exhaust all of their administrative
22 remedies prior to seeking relief under any federal law. The pertinent portion of
23 the PLRA states:

24 No action shall be brought with respect to prison conditions
25 under Section 1983 of this title, or any other Federal law,
26 **by a prisoner confined in any jail, prison, or other**
27 **correctional facility until such administrative remedies as**
28 **are available are exhausted.**

1 42 U.S.C. § 1997e(a) (emphasis added).

2 The United States Supreme Court has held that the requirements of the
3 PLRA should be strictly applied. *Booth v. Churner*, 532 U.S. 731, 740-741
4 (2001) (the PLRA requires exhaustion of administrative remedies regardless of
5 type of relief sought); *Porter v. Nussle*, 534 U.S. 516, 532 (2002) (“[W]e hold
6 that the **PLRA’s exhaustion requirement applied to all inmate suits about**
7 **prison life**, whether they involve general circumstances or particular episodes,
8 and whether they allege excessive force or some other wrong.” (Emphasis added).

9 In *Porter*, the Supreme Court explained that the administrative remedies
10 “need not meet federal standards, nor must they be plain, speedy, and effective.”
11 *Id.* at 524. Furthermore, “[t]he language of the PLRA ... indicates that Congress
12 had internal prison grievance procedures in mind when it passed the PLRA.”
13 *Rumbles v. Hill*, 182 F.3d 1064, 1069 (9th Cir. 1999) overruled on other grounds;
14 *see also, Alexander v. Tippah County, Miss.*, 351 F.3d 626, 630 (5th Cir. 2003)
15 (“Under § 1997e(a), a prisoner must exhaust such administrative remedies as are
16 ‘available,’ whatever they may be.”).

17 Further, as evident from the express language of the PLRA, the required
18 exhaustion of administrative remedies must occur prior to the filing of the subject
19 lawsuit. *See, e.g., Richardson v. Goord*, 347 F.3d 431, 434 (2nd Cir. 2003) (“a
20 prisoner must exhaust his or her administrative remedies prior to filing a claim
21 under § 1983”).

22 Moreover, “[a]n action containing both exhausted and unexhausted claims
23 at the time of filing should be dismissed without prejudice.” *Givens v. City and*
24 *County of San Francisco*, 2002 WL 31478180 *2 (N.D. Cal. 2002). For instance,
25 in *Givens*, the plaintiff’s complaint alleged that the administrative grievance he
26 had filed pertained to the mail procedures at the jail, but the majority of plaintiff’s
27 claims in his complaint pertained to other jail conditions about which plaintiff had
28 not filed any administrative grievances. *Id.* at *2. The Court held that “Section

1 1997e(a) requires that plaintiff present **all** of his claims to each level of
2 administrative review before raising the claims in a § 1983 action in federal
3 court,” and dismissed plaintiff’s complaint with prejudice. *Id.* (emphasis added);
4 *see also, Graves v. Norris*, 218 F.3d 884, 885-86 (8th Cir. 2000) (dismissing
5 § 1983 prisoner action containing exhausted and unexhausted claims because the
6 plain language of § 1997e(a) requires that available administrative remedies be
7 exhausted as to all of the claims brought in a prisoner action); *Terrell v. Brewer*,
8 935 F.2d 1015, 1018-19 (9th Cir. 1990) (where only a portion of plaintiff’s claims
9 had been exhausted “the proper remedy [was] dismissal without prejudice”). As
10 evident from the language of the PLRA, the required exhaustion of administrative
11 remedies must occur prior to the filing of the subject lawsuit. *See, e.g.*,
12 *Richardson v. Goord*, 347 F.3d 431, 434 (2nd Cir. 2003) (“a prisoner must
13 exhaust his or her administrative remedies prior to filing a claim under § 1983”).

14 Here, the requirement of the exhaustion of administrative remedies applies
15 because, as is clear from the FAC, Plaintiff was incarcerated when this action was
16 filed on August 12, 2009. In fact, Plaintiff has been in continuous custody since
17 July 12, 2006. (*See, Declaration of Kevin Kelley* [“Kelley Decl.”], ¶ 9.)

18 Though it was required of him, Plaintiff did not exhaust his administrative
19 remedies prior to filing this § 1983 action. Indeed, Plaintiff admits in his FAC
20 that he never completed the grievance procedure for the facts relating to this
21 lawsuit. (Complaint, p. 2.) In fact, Plaintiff admits that he never even filed a
22 grievance relating to the subject matter of his Complaint. (FAC, p.2.) As a
23 justification for his failure to exhaust the administrative remedies available to
24 him, Plaintiff makes the unsupported assertions that jail administrators “lack
25 authority statutory or otherwise to resolve Constitutional issues of due process”
26 and “protections secured by U.S. Treaties pursuant to Art. II Sec. [2] supersede
27 restrictions imposed” by the United States Code. (FAC, p. 2.)

28 Under any scenario, Plaintiff failed to exhaust his remedies. Even

1 assuming, *arguendo*, that Plaintiff filed a grievance, he is not exempt from his
2 duty to fully exhaust his remedies, and Plaintiff himself admits that he has done
3 neither. (FAC, p. 2.) Plaintiff's FAC appears to allege three separate claims: (1)
4 he was forced to sleep on a concrete floor for six days; (2) his cell was unsanitary;
5 and (3) County employees failed to follow up on medical recommendations for
6 prescription medications, eyeglasses, and dental procedures (FAC, pp. 5-6.) In
7 addition to Plaintiff's own admission that he has failed to pursue administrative
8 remedies relating to these claims, LASD records confirm that there is no record of
9 related grievances having been filed by Plaintiff. (Kelley Decl., ¶ 13.)

10 Therefore, Plaintiff's lawsuit is barred because Plaintiff failed to exhaust
11 his administrative remedies as required by the PLRA prior to filing suit.

12 **III. The Individual Defendants Should Also Be Dismissed Because Plaintiff**
13 **Has Failed To Allege Any Personal Involvement In The Alleged**
14 **Violation Of Plaintiff's Rights.**

15 To establish a cause of action under 42 U.S.C. § 1983, Plaintiff must show
16 that: (1) Defendant acted under color of state law, and (2) Defendant deprived
17 him of rights secured by the United States Constitution or federal law. *See, Barry*
18 *v. Fowler*, 902 F.2d 770, 772 (9th Cir. 1990); *Karim-Panahi v. Los Angeles*
19 *Police Dept.*, 839 F.2d 621, 624 (9th Cir. 1986). An individual subjects a
20 plaintiff to the deprivation of a constitutional right, within the meaning of § 1983,
21 if he does an affirmative act, or omits to perform an act which he is legally
22 required to do, that **caused** the deprivation of the complainant's rights. *Johnson*
23 *v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (emphasis added); *Arnold v.*
24 *International Bus. Machs. Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981).

25 In addition, it is well established under Section 1983 that there is no
26 vicarious liability pursuant to a theory of respondeat superior. *Monell v.*
27 *Department of Social Services of New York*, 436 U.S. 658 (1978); *City of St.*
28 *Louis v. Praprotnik*, 485 U.S. 112 (1988). Instead, in order for a defendant to be

1 liable under Section 1983, the defendant must have **acted personally** to cause the
2 alleged constitutional deprivation, either by “**personal participation** in the
3 deprivation,” or “**by setting in motion** a series of acts by others which the actor
4 knows or reasonably should know would cause others to inflict the constitutional
5 injury.” *Rizzo v. Goode*, 423 U.S. 362, 371 (1976); *Johnson v. Duffy*, 588 F.2d
6 740, 743-744 (9th Cir. 1978) (emphasis added); *McRorie v. Shimoda*, 795 F.2d
7 780, 783 (9th Cir. 1986). In this regard, the Ninth Circuit has held that “[v]ague
8 and conclusory allegations of official participation in civil rights violations are not
9 sufficient to withstand a motion to dismiss.” *Pena v. Gardner*, 976 F.2d 469, 471
10 (9th Cir. 1992) (quoting *Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d
11 266, 268 (9th Cir. 1982)).

12 Here, Plaintiff has named as Defendants County employees in supervisory
13 positions who had no direct involvement in inflicting his alleged constitutional
14 injuries. Plaintiff’s § 1983 claims are completely devoid of any factual
15 allegations establishing that Sheriff Leroy Baca, or County Board of Supervisors
16 Gloria Molina, Zev Yaroslavsky, Don Knabe, and Michael D. Antonovich, had
17 direct contact with Plaintiff or that they had actual, personal, first-hand
18 involvement in the alleged violations giving rise to this action. As noted above,
19 under *Pena v. Gardner*, vague and conclusory allegations that Sheriff Baca and
20 Supervisors Molina, Yaroslavsky, Knabe and Antonovich failed to implement
21 policies to prevent Plaintiff’s alleged injuries are insufficient to withstand a
22 motion to dismiss. *Pena, supra*, 976 F.2d at 471. With regard to Policarpio
23 Enriquez, M.D., Plaintiff alleges only that Dr. Enriquez treated him and offered
24 several medical recommendations, and that Dr. Enriquez had a duty to verify that
25 the appropriate departments followed up on the recommendations. (FAC, p. 50.)
26 Plaintiff fails to allege any facts establishing that Dr. Enriquez’s conduct
27 constituted any kind of constitutional deprivation.
28

1 Plaintiff does not allege, nor could he truthfully allege, that Defendants
2 **personally** participated in any alleged violation, that Defendants **personally**
3 disregarded Plaintiff's alleged medical concerns, or that Defendants **personally**
4 directed any County employee to violate Plaintiff's rights. *See, Black v. Lane*, 22
5 F.3d 1395, 1401 (7th Cir. 1994) ("an official meets the personal involvement
6 requirement when [h]e acts or fails to act with a deliberate or reckless disregard
7 of plaintiff's constitutional rights").

8 Therefore, Plaintiff's FAC should be dismissed.

9 **IV. Conclusion.**

10 Based on the foregoing, Defendants respectfully request this Court grant
11 their Motion to Dismiss.

12
13 Dated: November 9, 2009

LAWRENCE BEACH ALLEN & CHOI, PC

14
15 By s/ Daniel Lee

16 Daniel Lee
17 Attorneys for Defendants
18 Gloria Molina, Zev Yaroslavsky,
19 Don Knabe, Michael D. Antonovich,
20 Sheriff Leroy D. Baca, and
21 Policarpio Enriquez, M.D.
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DECLARATION OF DEPUTY KEVIN KELLEY

I, Kevin Kelley, declare as follows:

1. The following is based upon my personal knowledge and if called upon, I could and would testify competently thereto. I have been employed with the Los Angeles County Sheriff's Department ("LASD") since August 2007. I am currently assigned as the Custodian of Records for the Men's Central Jail ("MCJ") Legal Unit.

2. I am familiar with the administrative remedies procedure for inmates at the Los Angeles County Jails and, particularly, for inmates at MCJ. The process described below has been in place throughout my tenure as Custodian of Records for the MCJ Legal Unit.

3. The administrative remedies procedure for Los Angeles County Jail inmates is initiated when an inmate completes and submits an Inmate Complaint Form (or a written complaint of any kind) which may address any number of issues including, but not limited to, personnel conduct, medical care, classification actions and conditions of confinement. In the Los Angeles County Jail system, Inmate Complaint Forms are made available to inmates at various locations in the vicinity of their housing locations. They may also be obtained by making a request of any jail staff member.

4. The written complaints can be deposited throughout the day in complaint boxes marked "Inmate Complaints," located in each inmate housing location. They may also be given directly to any jail staff employee. Policy requires that the Inmate Complaint boxes be checked at least once per shift by a supervisor of the rank of Sergeant or above. Any jail staff person who receives a written complaint is responsible for routing it to the appropriate supervisor. When a Complaint Form is collected from the Inmate Complaint box, it is hand carried to the on-duty Watch Commander or delivered to the Inmate complaint Coordinator for logging, processing, and review.

1 5. All written complaints are logged into the Facilities Automated
2 Statistical Tracking (F.A.S.T.) system, given a reference number and assigned
3 an investigator. An Inmate Complaint Form's reference number is written at
4 the top of the Inmate Complaint Form. If a particular Inmate Complaint Form
5 does not have a reference number written on it, this usually means that the
6 Inmate Complaint Form is either not authentic or was never submitted by the
7 inmate.

8 6. The investigator assigned to handle the Inmate Complaint contacts
9 the inmate and attempts to resolve the complaint. If the complaint is resolved
10 to the inmate's satisfaction, the inmate acknowledges his satisfaction by
11 signing and dating the back of the Inmate Complaint Form. The investigator
12 forwards the complaint to the shift Watch Commander for review.

13 7. If, however, the inmate is not satisfied or his Complaint is denied,
14 the inmate can appeal to the Watch Commander to exhaust his remedies.

15 8. All information regarding Inmate Complaint Forms, such as dates
16 of complaints and dispositions, are entered into the LASD F.A.S.T. computer
17 system.

18 9. According to LASD records, Plaintiff Maurice Olivier ("Plaintiff")
19 was in custody with the LASD from July 12, 2006 through August 6, 2007, when
20 Plaintiff was transferred to Wasco State Prison. According to Plaintiff's First
21 Amended Complaint ("FAC"), he is currently incarcerated in Calipatria State
22 Prison.

23 10. On or about October 20, 2009, I conducted an inquiry to determine
24 whether Plaintiff exhausted his administrative remedies as to the issues raised in
25 his FAC by submitting, and appealing from (via the multiple levels of appeal in
26 the LASD administrative remedies procedure), any Inmate Complaints during his
27 incarceration.
28

1 11. I am informed and believe that Plaintiff is asserting claims relating to
2 floor sleeping, conditions of confinement (i.e. unsanitary cell, denial of blanket,
3 pillow, toothbrush, razors), and failure to follow up on medical evaluations (i.e.
4 for eyeglasses and dental problem).

5 12. In conducting this inquiry, I executed comprehensive searches of the
6 LASD computer database, which contains such information, i.e., the dates, the
7 subject matters, and dispositions of Inmate Complaint Forms received and
8 logged. This database is regularly updated by the facility at which each Inmate
9 Complaint Form is received.

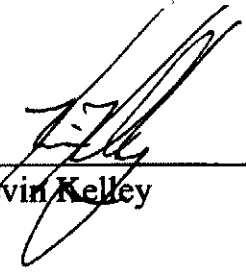
10 13. Based upon my review, I determined that Plaintiff submitted **no**
11 Inmate Complaints regarding the subject matter of the instant lawsuit, i.e., floor
12 sleeping for any period during which he was incarcerated with the County of Los
13 Angeles; failure to provide medical care relating eyeglasses, prescriptions, and
14 dental care; and, issues relating to conditions of his confinement. Instead,
15 Plaintiff submitted only three Inmate Complaints, none of which relates to the
16 claims in his operative pleadings, and all of which were addressed by LASD
17 staff.¹ As evident from the above, Plaintiff has not even begun the process of
18 exhausting his administrative remedies as to the subject matter of this lawsuit.
19 Accordingly, Plaintiff has not exhausted his administrative remedies concerning
20 his claims in this matter.

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25 ¹ Based on my review, Plaintiff filed only the following three Inmate Complaints:
26 1. 9/11/06 – Complaint regarding lice in his cell; Plaintiff was seen and
27 treated, his cell was inspected by a nurse and no lice was found.
28 2. 6/18/07 – Request to see a doctor **to receive a special diet**; Plaintiff was
referred to a dietary specialist and saw a doctor on 6/27/07.
3. 6/19/07 – Request to see a doctor **to receive a special diet**; this was a
follow-up to the previous complaint, Plaintiff was referred to a dietary
specialist and saw a doctor on 6/27/07.

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I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 5 day of November 2009, at Los Angeles, California.



Kevin Kelley

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Ana Escamilla, am employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action; my business address is 100 West Broadway, Suite 1200, Glendale, CA 91210.

On November 9, 2009, I served the foregoing **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF DEPUTY KEVIN KELLEY IN SUPPORT THEREOF** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Maurice P. Oliver, CDC F-83603
Calipatria State Prison
Unit D-5, Cell 204
P. O. Box 5002
Calipatria, CA 92233

BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Glendale, California, in the ordinary course of business. I am aware that on motion of the party service, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 9, 2009, at Glendale, California.

Declarant

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MAURICE PIERRE OLIVIER,
Plaintiffs,

vs.

LOS ANGELES COUNTY BOARD
OF SUPERVISORS; GLORIA
MOLINA; YVONNE B. BURKE;
ZEV YABOSLAVSKY, DON
KNABE; MICHAEL D.
ANTONOVICH; LOS ANGELES
COUNTY SERHIFF'S
DEPARTMENT; LEROY BACA;
LOS ANGELES COUNTY
CENTRAL JAIL; POLICARPIO
ENRIQUEZ, M.D.,
Defendants.

Case No. CV 08-07169 JFW (AGR)
Magistrate Judge Alicia G. Rosenberg

**PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

*[Notice of Motion and Motion to
Dismiss Plaintiff's First Amended
Complaint concurrently herewith]*

Date: December 8, 2009
Time: 10:00 a.m.
Crtn: D – 8th Floor

This matter came on for hearing on December 8, 2009 before the Honorable Magistrate Alicia G. Rosenberg in Courtroom D of the above-entitled Court. After considering all of the papers and the arguments on counsel, the Court sustained in its entirety the Motion to Dismiss Plaintiff's First Amended Complaint filed by Defendants Gloria Molina, Zev Yaroslavsky, Don Knabe, Michael D. Antonovich,

1 Sheriff Leroy D. Baca, and Policarpio Enriquez, M.D., in the above-captioned
2 action.

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
4 claims against Defendants are hereby dismissed with prejudice.

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7 Dated: _____, 2009

8 The Honorable Magistrate
9 Alicia G. Rosenberg

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11 Submitted by:
12 LAWRENCE BEACH ALLEN & CHOI, PC

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14 By _____
15 Daniel Lee
16 Attorneys for Defendants
17 Gloria Molina, Zev Yaroslavsky,
18 Don Knabe, Michael D. Antonovich,
19 Sheriff Leroy D. Baca, and
20 Policarpio Enriquez, M.D.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Ana Escamilla, am employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action; my business address is 100 West Broadway, Suite 1200, Glendale, CA 91210.

On November 9, 2009, I served the foregoing **[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Maurice P. Oliver, CDC F-83603
Calipatria State Prison
Unit D-5, Cell 204
P. O. Box 5002
Calipatria, CA 92233

BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Glendale, California, in the ordinary course of business. I am aware that on motion of the party service, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 9, 2009, at Glendale, California.

Declarant