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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MARLIN RIGGS, et al,)	Case No. 1:09-cv-00010-BLW
)	
Plaintiffs,)	
)	
vs.)	DECLARATION OF
)	JOSE PIÑA
)	
PHILIP VALDEZ, et al,)	
)	
Defendants.)	

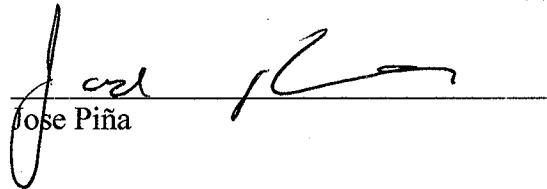
I, Jose Piña, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am over the age of 18 and am competent to testify.

2. On October 9, 2009, I was incarcerated at the Idaho Correctional Center (ICC) in the West Wing.
3. On that evening, I was in the chow hall eating dinner when at least 10 prisoners began attacking other prisoners in the chow hall. Some of the attacking prisoners started hitting me, too. I tried to defend myself, as I was afraid that I would get severely injured if I didn't.
4. When the fight ended, officers took me and other prisoners into the hall. I learned that the attack was gang related. I don't know why they attacked me, though, as I was not associated with any gangs. I was seated near some of the rival gang members, so perhaps the attackers thought I was affiliated with them. But I was an innocent bystander.
5. I was taken to segregation, and I was issued a Disciplinary Offense Report (DOR) for fighting.
6. I should not have been issued a DOR for fighting. For one thing, ICC staff should not have transferred those rival gang members into the West Wing. The move was likely to result in violence, and I'm sure they knew it. Second, I had not been fighting. I simply tried to defend myself when attacked, as I believe anyone would have done.
7. I wanted to challenge the DOR because I was not guilty of fighting, and I also wanted to complain about the fact that staff had placed me in a dangerous situation by moving rival gang members into the West Wing.
8. During my DOR hearing, I explained to the Hearing Officer why I should not have been charged with fighting and why the charges should be dismissed. However, I was found guilty.
9. I submitted a written appeal. Attached as "Piña Exhibit 1" is my Disciplinary Appeal form. The appeal form notes that a separate page was attached to the form. I was not able to photocopy my written statement prior to submitting it. It explained the reasons why I should not have been found guilty, including the fact that I was an innocent bystander and that staff had moved rival gang members into West Wing. But I do not recall specifically how it was worded.
10. I heard the officer in segregation, whose name I believe was Officer Soto, tell another prisoner who had asked for grievance forms that the only way we could raise our safety issue was through the DOR process. When I asked Officer Soto for the forms I needed to file, he gave me the form I used for Exhibit 1. I used his form.

11. As shown on the bottom portion of Piña Exhibit 1, my appeal was denied. The appellate authority admitted that I was "not the aggressor." Yet, rather than dismiss the charges as they should have done, they merely reduced them.
12. Later, I submitted an appeal to the Idaho Department of Corrections. Attached as "Piña Exhibit 2" is the appeal I filed. I made sure to raise my failure to protect claim. ("The ICC Administration caused the assault to happen when they moved rival gang members together. They failed to protect me, then punished me.") (Emphasis added.) The response I received to my failure to protect claim is set forth on the bottom of Exhibit 2. All that occurred was a lessening of my charges. This did nothing to remedy the fact that I was assaulted due to the prison's failure to protect me and that I had a DOR conviction.
13. I followed ICC's administrative exhaustion process as best as I could, and I used the form that Officer Soto gave me. I expressly raised a failure to protect claim. As far as I was told, I followed all the proper procedures to exhaust this issue.

Dated this 23 of July, 2010.


Jose Piña