

1 All evidence cited herein is attached to the separately bound in Request for Judicial Notice  
 2 or in Defendants' nine (9) supporting declarations by Michael Ayala, Martha Castaneda, Edward  
 3 Cervera, Cheyenne De Leon, Tim Fowler, A.J. Garcia, Terry Price, Keith Rosemond and  
 4 Elizabeth Vann.

5 A statement of undisputed facts, submitted in support of a summary judgment motion,  
 6 cannot be used against the moving party at trial as an admission. (*Myers v. Trendwest Resorts,*  
 7 *Inc.* (2009) 178 Cal.App.4th 735, 747-748.) These Undisputed Material Facts are set forth for  
 8 purposes of this motion only. Because in a summary judgment motion the CDCR cannot dispute  
 9 Plaintiff's evidence, Plaintiff's allegations in his discovery responses, deposition and complaint  
 10 are included as "undisputed material facts." By including such allegations within this statement,  
 11 CDCR in no way agrees that these allegations accurately state what actually occurred. CDCR  
 12 reserves its right to present evidence challenging Plaintiff's allegations at trial. (*See id.*)

13 Please note that for ease of reference below, all names and sources of evidence which are  
 14 abbreviated have been highlighted in **bold** where they are first referenced and abbreviated.

15 **ISSUE NO. 1: The first cause of action for discrimination and retaliation is without merit.**

16 Plaintiff alleges exactly the same conduct as grounds for retaliation, discrimination and  
 17 harassment. (e.g., see FAC, pp. 39-40, ¶¶ 52-59, Ex. H to Request for Judicial Notice); so to  
 18 avoid wasting paper, the same list of material facts will not be restated separately for the first and  
 19 second causes of action.

UNDISPUTED FACTS AND SUPPORTING EVIDENCE	
20 21 22 1. Plaintiff David P. Tristan, Jr. ("Plaintiff" 23 or "Agent Tristan" or "Tristan") has been 24 employed by the <b>California Department of</b> 25 <b>Corrections ("CDCR")</b> since 1992 and 26 became a Correctional Officer in 1995. He 27 worked at Richard J. Donovan Correctional 28 Facility in San Diego until he attended the Parole Agent Academy in the early 2000s. He became a Parole Agent I in the Chula Vista office of Region IV Parole Division of CDCR in 2003.	

1 **Plaintiff's First Amended Complaint**  
2 **[hereinafter 1st Am. Compl.]**, ¶ 10 (attached  
3 to the **Request for Judicial Notice**  
**[hereinafter, "RJN"]** as Ex. H).

4 2. Plaintiff's First Cause of Action purports to  
5 state **Fair Employment and Housing Act**  
6 **("FEHA")** claims for discrimination and  
7 retaliation in one cause of action. His Second  
Cause of Action alleges that he was subjected  
to harassment under the FEHA.

8 Plaintiff alleges that CDCR engaged in  
9 discrimination, harassment and retaliation  
against him in violation of FEHA when CDCR  
10 engaged in a litany of trivial personnel actions  
including such allegations as he was unable to  
11 log into his computer for a short period of time,  
his supervisors did not submit his workers'  
12 compensation paperwork quickly enough, he  
was required to work overtime to complete his  
13 caseload, he was required to cancel a vacation  
because the unit was short staffed, he was  
14 offered the opportunity to transfer to a different  
unit, and he was required to serve as officer of  
15 the day on the day of the fires in San Diego in  
16 October, 2007. Plaintiff also alleges that CDCR  
failed to adequately assist him in obtaining  
17 workers' compensation benefits and filing a  
workers' compensation claim, failed to  
18 accurately document the incident leading to his  
injury, instituting an internal affairs  
19 investigation and allegedly not allowing him to  
return to work in a light duty capacity in a  
20 timely manner.

21 Plaintiff's 2008 allegations involve his claim  
22 CDCR failed to negotiate an acceptable "Light  
Duty Agreement" with him when he returned to  
23 work in a limited capacity in 2008. .

24 **Deposition of Plaintiff David P. Tristan, Jr.**  
25 **["Tristan Depo."]** Vol. I, pp. 63:20-65:1  
26 (attached to **Declaration of Elizabeth Vann**  
**["Vann Decl."]** as Ex. A); Vol. III, 479:6-  
481:9; Exhibits 3 and 4 (Vann Decl., Ex. C)  
27 1st Am. Compl., ¶¶12, 20, 39, 47-50, 52-59  
28 (RJN, Ex. H).

1 **Plaintiff's Amended Response to Special**  
2 **Interrogatories ["Am. Resp. to Spec. Rogs"]**  
3 Nos. 16, 19 (Vann Decl., Ex. K).

4 **Plaintiff's Amended Responses to**  
5 **Employment Form Interrogatories ["Am.**  
6 **Resp. to Form Rogs"]**, No. 202.1(a) pp. 3 :3-  
7 17, 5:208, No. 202.1(c), p. 23:9-24, No.  
8 203.1(b) p. 60:13-24 (Vann Decl., Ex. I).

9 3. The primary role of a Parole Agent assigned  
10 to a Field Unit is to supervise a caseload of  
11 parolees and early released inmates. A Parole  
12 Agent is required to perform a variety of peace  
13 officer duties that are both physical and  
14 administrative in nature.

15 The job functions of a Parole Agent include  
16 working directly with parolees and releasees, as  
17 well as their friends, relatives, community  
18 service agencies and law enforcement to  
19 arrange for various necessary services. Parole  
20 Agents also continually monitor and verify an  
21 individual's participation in release programs  
22 and parole requirements. Where parole  
23 violation or criminal activity is alleged or  
24 suspected, an Agent's caseload supervisory  
25 responsibilities include conducting interviews,  
26 surveillance, searches and seizure,  
27 apprehensions and arrests.

28 In order to perform these tasks, the essential  
functions of a Parole Agent require Agents to  
be able to defend themselves against an armed,  
dangerous, and violent parolee and engage in  
prolonged standing or walking, climbing,  
bending, stooping, squatting, kneeling,  
pivoting, or lifting more than ten pounds.

Castaneda Decl., ¶6; Garcia Decl., ¶2.

4. Plaintiff's problems with his employment  
with CDCR began on October 21, 2005, when  
he suffered a knee injury after he pursued and  
arrested an escaping parolee on foot.

Plaintiff reported to work on Monday, October  
24, 2005 with a visibly swollen right knee.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

As a result of the injury, Plaintiff filed a Workers' Compensation claim on or about October 25, 2005. On Tuesday, October 25, 2010, Plaintiff was provided with the appropriate **State Compensation Insurance Fund ("SCIF")** forms, filled out his portion, and turned them in to Defendant Garcia, who returned the completed forms to Plaintiff on the same day. These forms were received by the Return to Work Coordinator's office on October 26, 2005 and provided to the SCIF that day.

1st Am. Compl., ¶¶13-16, 22 (RJN, Ex. H); Tristan Depo., Vol. I, pp. 115:14-21; 117:5-12; 138:1-140:13 (Vann Decl., Ex. A); **Declaration of A.J. Garcia [hereinafter Garcia Decl.] ¶5; Declaration of Martha Castaneda [hereinafter "Castaneda Decl.,"] ¶5.**

5. On October 28, 2005, the return to work office was notified of activity restrictions imposed by Plaintiff's treating physician, Dr. Markman, including no jumping, twisting, or involvement in altercations for 21 days.

Because Plaintiff's doctor was restricting him from performing some of the essential functions required of a Parole Agent, Plaintiff was placed on temporary disability leave on or about October 28, 2005.

Prior to this date, Plaintiff was not aware of the distinction between **Industrial Disability Leave ("IDL")** and **Enhanced Industrial Disability Leave ("EIDL")** and did not know that he would receive additional pay if he qualified for EIDL.

1st Am. Compl., ¶22; Castaneda Decl., ¶8, Exhibit D; Garcia Decl., ¶7; Tristan Depo., Vol. I, pp. 153:1-23; 156:11-157:25 (Vann Decl., Ex. A).

6. Initially there was a dispute as to whether

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff's injury qualified for EIDL as opposed to ordinary IDL.

Under IDL, an employee is entitled to receive their full normal pay for the first 22 working days following an employee's injury and two-thirds gross monthly salary for the remaining period, during which time the employee can supplement with leave credits to receive full normal pay.

In contrast, under EIDL, an employee receives the equivalent of their net take home salary tax free for up to one year, but specific eligibility requirements apply. Pursuant to CDCR's Department Operations Manual, a Parole Agent is eligible to receive EIDL when injured on the job as a result of an assault or criminal act of violence by a parolee.

Castaneda Decl., ¶ 9; Fowler Decl., ¶ 5.

7. Initially, Return to Work Coordinator Martha Castaneda believed Plaintiff's injury did not qualify for EIDL, because the information available to her indicated the injury was sustained when Plaintiff jumped a fence, rather than as a result of a violent contact with a parolee.

Subsequently, Plaintiff informed Castaneda that violent contact with the parolee was involved in the arrest when he had the parolee in a prone position on the ground and had to place his right knee on the parolee's back to get the subject to release his hands to be handcuffed.

Castaneda was aware that the scenario described by Plaintiff would constitute a reportable use of force, and such a use of force would be required to be documented in a Field Incident Report. However, in this case no Field Incident Report had been submitted documenting this alleged altercation. In addition, Castaneda did not believe the conduct Plaintiff described met the requirement of the policy of violent contact or an assault, because the parolee was not assaulting Plaintiff.

Castaneda informed Plaintiff that she did not

1 believe this information qualified him for  
2 EIDL, but that she would review any additional  
3 documentation he provided in support of his  
4 request.

5 Castaneda Decl., ¶¶10, 11.

6 8. Plaintiff's claim for EIDL benefits was  
7 approved by Parole Administrator Jeff Fagot on  
8 January 12, 2006, retroactively approving  
9 EIDL back to October 21, 2005. Accordingly,  
10 as a result of this determination, Plaintiff was  
11 awarded EIDL benefits for his October 2005  
12 injury, entitling him to 100% of his pay during  
13 his disability period, for up to one year.  
14 Plaintiff received his backpay EIDL benefits  
15 retroactively from October, 2005 – January,  
16 2006.

17 Plaintiff had surgery on his knee in May or  
18 June of 2006. Plaintiff requested and received  
19 a six month extension of his EIDL benefits in  
20 or about October, 2006. Between the time of  
21 his injury on October 25, 2005 and January,  
22 2008 Plaintiff was paid either through EIDL  
23 benefits or regular salary. He is not aware of  
24 any lost income during this time.

25 Plaintiff has been employed continuously since  
26 that time and has never been demoted or  
27 transferred at any time in his employment with  
28 CDCR.

Castaneda Decl., ¶13; Fowler Decl., ¶10.

Tristan Depo., Vol. II, pp. 203:6-204:8 (Vann  
Decl., Ex. B); Tristan Depo., Vol. III, pp.  
449:3 – 20, Ex. 19 (Vann Decl., Ex. A); Tristan  
Depo., Vol. III, pp. 449: 21-24; 464:1-13;  
465:25-466:1 (Vann Decl., Ex. C); Vol. VII,  
pp. 1133:19-1134:16 (Vann Decl., Ex. G Am.  
Resp. to Form Rogs, No. 201 (Vann Decl., Exs.  
H and I).

9. In December 2005, the CDCR instituted an  
Internal Affairs Investigation, with respect to  
Plaintiff, Parole Agent I Larry Ferguson, and  
Parole Agent II Michael Ayala, to investigate  
the unreported use of force incident on October  
21, 2005, which incident was the basis for

1 Plaintiff's EIDL claim.  
2 **Declaration of Tim Fowler (hereinafter,**  
3 **"Fowler Decl.")**, ¶6, Ex. A; Tristan Depo. Vol.  
4 IV, pp. 523:17 – 524:13, 525:21-526:14, Ex. 25  
5 (Vann Decl., Ex. D).

6 10. Assistant Parole Administrator Tim Fowler  
7 recommended recommend an investigation be  
8 instituted because of questions regarding  
9 Plaintiffs attempt to get improved EIDL  
10 benefits, including that Plaintiff had now  
11 alleged his injury was due to his use of physical  
12 force to handcuff the parolee, but had not  
13 submitted an Incident Report documenting any  
14 use of force within 24 hours of the incident as  
15 required by CDCR policy. Moreover, Plaintiff  
16 had allegedly provided different versions of the  
17 events surrounding his injury to other  
18 employees. In addition, there were concerns  
19 that Plaintiff's Assistant Unit Supervisor,  
20 Parole Agent II Michael Ayala may have told  
21 Plaintiff not to file a report documenting the  
22 use of force.

23 Fowler also was concerned that Plaintiff and  
24 other Parole Agents may have failed to follow  
25 CDCR's use of force reporting procedures.  
26 Fowler had been informed that Plaintiff's  
27 Assistant Unit Supervisor, Parole Agent II  
28 Michael Ayala, allegedly told Plaintiff not to  
file a report documenting the use of force. As a  
result, Fowler requested this investigation to  
determine whether not only whether Plaintiff,  
but also whether Agents Ferguson and Ayala  
had engaged in any misconduct in connection  
with this incident.

Fowler Decl., ¶5-6, Ex. A.

11. The investigation was conducted by the  
Office of Internal Affairs and resulted in a  
finding that no misconduct had been sustained.  
In May 2006, Regional Administrator Fagot  
notified Plaintiff in accordance with CDCR  
policy that the allegations against him were not  
sustained, and no action would be taken as a  
result of the investigation.

1 At all times during the course of the  
2 investigation, the period of review, and  
3 following disposition, Plaintiff continued in his  
4 position as a Parole Agent I and there was no  
5 adverse affect on his salary, benefits and  
6 employment status as a result of the  
7 investigation.

8 Fowler Decl., ¶¶7-8, Ex. B.

9 Tristan Depo., Vol. IV, pp. 525:21-526:14;  
10 526:19-527:5; 531:8-14, Exs. 25 and 26 (Vann  
11 Decl., Ex. D).

12 12. CDCR policy required an investigation of  
13 alleged misconduct to be completed within one  
14 year of the discovery of the alleged  
15 misconduct, and it often took a full year before  
16 an investigation was officially resolved. In this  
17 matter, the investigation was completed in  
18 January 2006 and the CDCR finished its  
19 decision making process and notified Plaintiff  
20 that the investigation was concluded in May  
21 2006. Since the investigation was requested in  
22 November 2005 relating to an October 2005  
23 incident, the investigation was completed and  
24 the matter resolved within the one year period  
25 in accordance with CDCR policy.

26 Fowler Decl., ¶9, Ex. B.

27 13. In October 2005, Parole Region IV did not  
28 permit Parole Agents who could not perform all  
of the essential functions of the position to  
work in a light duty capacity with some of the  
essential functions being temporarily waived.  
This policy was based on a July 12, 2005  
memorandum issued by Jim L'Etoile, the then  
Acting Deputy Director of CDCR's **Division of  
Adult Parole Operatoins ("DAPO")** which  
explained that the essential job functions of  
Parole Agents could not be waived due to  
medical limitations because Parole Agents were  
required to be physically capable of performing  
the required functions of their jobs at all times.  
This policy remained in effect in Parole Region  
IV at the time of Plaintiff's injury in October of  
2005.

Castaneda Decl., ¶7, Ex. "C".



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

14. Plaintiff was on disability leave from October 28, 2005 through January 16, 2007.

On January 10, 2007, Plaintiff faxed a copy of medical documentation signed by Dr. Hanson which indicated that as of that date, he could perform "office duty" and could work 8-hour shifts. Because the note did not actually indicate whether Plaintiff could return to work as a Parole Agent, and did not state what his restrictions were, if any, Castaneda directed the return to work coordinator, Farida Hanna, to ask Agent Tristan to have his doctor provide clarification. On January 11, 2007, Plaintiff provided medical documentation to Castaneda from Dr. Hanson indicating he could return to work on modified (light) activity, with the following restrictions: "Office duty; Hours 8-5:00; no altercations with parolees; no transportation of parolees." Plaintiff did not request light duty at any time before January 10, 2007.

Castaneda Decl., ¶¶9, 14 and 17, Exs. "F" and "G".

15. Initially Castaneda denied Plaintiff's light duty request based on the no-light-duty policy articulated by Jim L'Etoile (Castaneda Decl., Ex. "C") but shortly thereafter she was notified that Region IV of DAPO had changed its position based on input from CDCR Headquarters. Starting in January 2007 and continuing to the present it has been Region IV's policy to provide light duty assignments to Parole Agents who cannot perform the essential functions of their position for a limited duration as operational needs allow, but for a period not to exceed 60 days. These assignments are individually assessed by the Hiring Authority in light of the operational needs of the affected employee's facility, institution, or region.

Castaneda Decl. ¶16, Ex. "H".

16. Based on this change, Plaintiff was permitted to return to work in a limited term light duty assignment effective on or about January 16, 2007.

1 Castaneda Decl., ¶17; Garcia Decl. ¶10, Ex. D.  
2 Tristan Depo., Vol. II, pp. 217:6-9 (Vann  
3 Decl., Ex. B).

4 17. Between July 12, 2005 and the time  
5 Plaintiff returned to work on limited term light  
6 duty in January 2007, Parole Region IV did not  
7 waive the essential functions of the Parole  
8 Agent position, or allow any other Parole  
9 Agent to return to work in a light duty capacity.  
10 Castaneda Decl., ¶17.

11 18. Agents Garcia and Ayala worked together  
12 to determine appropriate assignments for  
13 Plaintiff while he was on Limited Term Light  
14 Duty, and Plaintiff was not assigned an  
15 excessive workload between January, 2007  
16 and March, 2007.  
17 Garcia Decl., ¶¶12-16, Exs. D-F.

18 **Declaration of Michael Ayala [“Ayala  
19 Decl.”], ¶¶9-14, Exs. C-D.**

20 19. On or about March 5, 2007, Castaneda  
21 received a medical note from Dr. Hanson, dated  
22 March 5, 2007, informing her that as of March  
23 6, 2007, Plaintiff could return to work as a  
24 Parole Agent I with no restrictions. On this  
25 basis, Plaintiff was medically cleared to return  
26 to full duty. Plaintiff was cleared by CDCR to  
27 return to performing field work after he  
28 completed his then-lapsed firearms certification  
and Parole Agent Safety Training on March 13,  
2007.

Castaneda Decl., ¶18, Ex. “I”; Ayala Decl.,  
¶16.

20. In or around early April 2007, Fowler  
became aware that Plaintiff was alleging his  
supervisor, Agent Michael Ayala, had  
subjected him to a “disparate treatment/hostile  
work environment.” Because Fowler  
associated these terms with complaints of  
discrimination or harassment, he believed  
Plaintiff may have intended to implicate Equal  
Opportunity issues, and forwarded his  
complaint to the CDCR’s Office of Civil Rights  
for intake.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Fowler Decl., ¶11, Ex. C.

21. Administrator Fowler considered separating Plaintiff and Agent Ayala during the pendency of the investigation by transferring one of them to a different unit, but determined it would not be necessary. Since the complaint did not involve abusive language, inappropriate touching, or threats of violence, Fowler felt that the subjects about which Plaintiff complained, which included alleged excessive work load, denials of overtime, and vacation leave did not warrant imposing a transfer on either employee. Fowler was also aware that Plaintiff was unwilling to transfer out of the Chula Vista office and Ayala's removal from Unit 1 would have disrupted its functioning at that time because his services were required in order to cover the former duties of Parole Agent III Garcia who had recently retired.

Fowler Decl., ¶12.

22. In support of his whistleblowing retaliation claim, Plaintiff alleges that he reported to Maritza Rodriguez in a letter dated March 13, 2007 that he was being assigned an excessive workload after returning to work on light duty in January, 2007. He subsequently made complaints to her that his workload upon return to full duty in March, 2007 was also excessive.

Tristan Depo., Vol. V, 710:19 -711:6, 772:13-774:19, 775:24-777:22, depo Exs. 30, 33 and 34 (Vann Decl., Ex. E).

23. The workload provided to Plaintiff when he returned to work in January 2007 was assigned for legitimate, nondiscriminatory reasons. Prior to Plaintiff's return to work on light duty on January 17, 2007, Garcia and Ayala discussed how to assign an equitable workload to Plaintiff upon his return to Unit #1. Plaintiff was not permitted to perform any field duties, requiring other Agents in the unit to spend additional hours in the field. In an effort to balance job responsibilities, Plaintiff was assigned as the OD on a daily basis, allowing the other Agents to spend more time in the field. Plaintiff was also given Unit #1's

1 Release Program Studies (“RPS” or “pre-  
2 paroles”), and a caseload which is represented  
3 on the February, 2005 Caseload Roster for  
4 Plaintiff. This was expected to be a temporary  
5 workload assignment since Plaintiff was  
6 expected to return to full duty within 60 days  
7 and the requirements could be completed  
8 within the office and while Plaintiff was  
9 performing OD duties.

10 Ayala Decl., ¶¶9-13, Ex. C.

11 Garcia Decl., ¶¶9-14, Ex. D.

12 24. Each assigned caseload carries a  
13 numerical workload point value and the  
14 caseload assigned to Plaintiff while on light  
15 duty carried a point value of 141. This was well  
16 below the highest workload in the unit of 154  
17 and met the union contract requirements that all  
18 Agent’s workloads be within 20 points of one  
19 another.

20 Ayala Decl., ¶14, Ex. D.

21 Garcia Decl., ¶15, Ex. F.

22 25. Plaintiff was not counseled or disciplined,  
23 or the subject of any other adverse action, for  
24 not completing all assigned work while on light  
25 duty.

26 Ayala Decl., ¶16.

27 26. The workload provided to Plaintiff by  
28 Acting Unit Supervisor Tryna Woods and  
Ayala when Plaintiff returned to full duty in  
March 2007 was assigned for legitimate,  
nondiscriminatory reasons as soon as he  
completed lapsed training required to permit  
him to return to field work. Plaintiff’s newly  
assigned caseload carried a workload of 194  
points, which was within 20 points of the  
lowest agent workload in the unit of 180 points,  
as required by the governing union contract.

Ayala Decl., ¶¶16-17, Ex. E.

27 27. Plaintiff’s new caseload assigned in mid-  
28 March, 2007, is reflected in the March 28, 2007  
Caseload Roster for Plaintiff and was designed  
to allow for many of his cases to develop over

1 time from the pre-parole status so that he would  
2 be familiar with the case prior to a parolee's  
3 release and could supervise the parolee from  
4 the beginning. It was also designed with the  
5 knowledge that the requirements of some of the  
6 assigned cases had already been met by other  
7 Agents, or by Plaintiff, while he was on light  
8 duty, and would not require additional work in  
9 March. Additionally, the required work was  
10 waived for March, April and May on 25 of the  
11 assigned cases, which represented 48 of  
12 Plaintiff's workload points (or 38 % of his  
13 active cases), allowing additional time for  
14 Plaintiff to get up to speed and get these cases  
15 back in compliance.

16 Ayala Decl., ¶¶18-21, Ex. F.

17 28. Plaintiff was not counseled or disciplined,  
18 or the subject of any other adverse action, for  
19 not completing all assigned work in the new  
20 caseload assigned to him in March 2007.

21 Ayala Decl., ¶22.

22 29. Ayala's denial of Plaintiff's request  
23 demand to leave his OD coverage early at 11  
24 a.m. on March 13, 2007, to allow him to have  
25 an hour for lunch and an hour for driving to his  
26 scheduled 1 p.m. training, as well as the denial  
27 of a 1/2 hour of overtime to drive to training,  
28 was based on legitimate, nondiscriminatory  
reasons. Plaintiff had previously been  
scheduled as the OD from 8 a.m. to 12 p.m.,  
had ample notification of this schedule, and  
needed only half an hour to drive to the training  
location approximately 19 miles away. This  
allowed for a half-hour lunch break and the  
denial of overtime was something that Plaintiff  
was permitted to appeal thereafter through the  
grievance process. Additionally, permitting  
Tristan to leave early would have adversely  
affected another Agent in the Unit.

Ayala Decl., ¶22, Ex. G.

30. On December 26, 2007, Ayala promoted to  
Parole Agent III and was then assigned to his  
current position as the of Chula Vista Unit  
#IV, thus having no more responsibilities over

1 Unit #I or the Agents assigned thereto.  
2 Unit Supervisor Garcia retired February 2007.  
Ayala Decl., ¶ 1; Garcia Decl., ¶1.

3 31. Plaintiff made requests for Employee  
4 Opportunity Transfers (“EOT”) to a Field Unit  
5 Notice Agent (“FUNA”) position in San Diego  
6 County in 2006 and 2007. There was only one  
7 vacancy for a FUNA Parole Agent I located  
8 within San Diego County that was filled via the  
9 EOT process in these years. This selection was  
made by Plaintiff’s union, which selected an  
Agent with greater seniority than Plaintiff and  
Region IV Parole did not have input into this  
selection.

10 Castaneda Decl., ¶ 22.  
11 Tristan Depo., Vol. V, pp. 710:22-711:9;  
789:2-12; Exs. 30 and 35 (Vann Decl., Exh. E).

12 32. After Plaintiff voluntarily relinquished his  
13 scheduled vacation in April, 2007, it was re-  
14 offered to him by his Acting Unit Supervisor  
and Regional District Administrator but he  
declined.

15 Tristan Depo., Vol. V, pp. 775:24-777:22; Ex.  
16 34 (Vann Decl., Exh. E).

17 33. In January 2008, Plaintiff re-injured his  
18 knee when he jumped down a set of fire escape  
stairs in the course of pursuing and  
19 apprehending a parolee.  
1st Am. Compl., ¶48 (RJN Ex. H).

20 34. On February 5, 2008, Return to Work  
21 Coordinator Cheyenne De Leon received  
22 paperwork relating to Plaintiff’s injury of  
23 January 28, 2008, including the Employee’s  
24 Claim (SCIF 3301), Employer’s Report (SCIF  
3067), and a note by Dr. Peter Hanson dated  
25 January 30, 2008 indicating that Plaintiff could  
26 return to work with modified (light) activity  
restricted to semi-sedentary work. De Leon  
submitted this paperwork to SCIF on February  
7, 2008 to initiate the processing of Plaintiff’s  
claim.

27 **Declaration of Cheyenne De Leon**  
28 **(hereinafter, “De Leon Decl.”), ¶4, Exh. A.**