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FALL 2020







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STAYING THE COURSE IN TIMES OF CHANGE



ART GONZALES
CCSO State President

s the warm summer days come to an end and we move into autumn, I find myself enjoying the season's transition. The leaves change colors from green to orange, brown and yellow, and a chill is in the air. It's a very special time and one of my favorite times of the year. You're probably wondering what this has to do with CCSO and where I'm going with this article. I want to discuss change. Most people hate change, and I'm not saying it is easy, but we've made many necessary changes over the past year and I'm trying to stay positive given everything going on around us.

In 2020, we have been asked to make numerous changes to our daily lives and routines. We must wear masks and eat outside. We must socially distance ourselves from each other. Large gatherings are not permitted, and sporting events are drastically different. I've lost count of how many

times my temperature has been taken. A looming presidential election may create even more change for our country, along with unrest related to law enforcement and the Black Lives Matter movement. 2020 has been a tough year for all of us.

You may be asking yourself, "What do all these changes have to do with supervisors and managers?" We have endured a lot of change so far this year just within the California Department of Corrections and Rehabilitation (CDCR). Our secretary, Ralph Diaz, with whom CCSO had a very positive working relationship, just retired recently (at the time of this writing). Secretary Diaz was always open to meeting with us and gave us a seat at the table. We met with the Division of Adult Institutions numerous times and were able to achieve positive resolutions to many issues affecting supervisors and managers. We are in constant communication with the Office of Labor Relations due to Secretary Diaz forging and requiring that working relationship. CCSO is hopeful this continues with the new secretary, and we will stay the course regardless of who is in charge. The California Department of Human Resources (CalHR) has also been more receptive to meeting with us. For the first time ever, we were in talks with CalHR about the disparity of PLP hours before the pay letter was issued. We have also been working with them on health-benefit issues for our members in rural areas and are hopeful for a positive outcome.

More changes are headed our way with the recent decision to close

Deuel Vocational Institution. Now more than ever, we must push for supervisor transfers. Transfers are vital to those experiencing hardship and needing to relocate. There are also supervisors who may want to switch institutions to gain more experience and new perspectives. It bothers me to know that my years and experience as a supervisor are not enough to obtain a position, and that I may be rejected based on a few questions. Someone who lacks experience can beat you out because of answering the question slightly better. At some point in the past, you answered those similar questions and were hired as a supervisor, yet all those years of onthe-job experience may not give you any advantage over other candidates. That's a shame and this process must be re-evaluated.

One positive update to note is that we are getting closer to having a bill signed that would give excluded employees the ability to seek arbitration. Governor Newsom recently vetoed the bill due to inaccurate information and the lack of understanding the failed grievance process for excluded employees. Although the governor vetoed the bill, his staff reached out for additional information and clarification, and we hope to get his approval and signature next year.

Change can be difficult, but with change comes prosperity. CCSO will continue to move forward with all of our objectives and strive to be a strong organization no matter what we face.



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Backbone of CCSO

Meet the dedicated staff of our Operations Team.

or many organizations, growth is key to unlocking potential and success. At CCSO, we've built a powerful team that has allowed us to take our organization to the next level. The CCSO staff have all been hired because of specific skills they possess, and each person brings a wealth of knowledge and experience to the organization. Their experience ensures members' needs are addressed with the utmost urgency and confidentiality. The importance of care is reflected in the daily processes we use to manage those inquiries. An open line of communication is essential to serve our members when questions or

issues arise. Satisfying members' needs is our highest priority.

Leaders who develop great teams around them are better able to achieve their vision. CCSO is proud of the team we've built. The diversity of the team allows for unique perspectives and creative thinking. For CCSO's Operations Team, "the devil is in the details." Each employee immerses themselves into tasks and projects and works tirelessly to make sure they are



completed swiftly and with precision. The team's strong foundation makes it possible for CCSO to manage day-to-day operations and achieve our mission to serve our members. The CCSO Operations Team is composed of a distinct group of like-minded, strong and dedicated women who work diligently behind the scenes to support our members. The team consist of five key positions: Executive Assistant of Operations, Administrative Services Supervisor, Account Clerk,

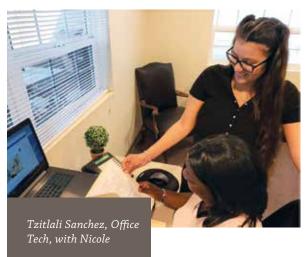








Office Technicians and Media Specialist. Each role has its unique stressors that are conquered individually. These personal achievements become the backbone of CCSO's collective progress, resulting in tremendous value for our membership. This team deserves recognition for their enormous contributions to CCSO. Although our organization is known for providing the best legal support, it's our Operations Team that is responsible for so much



THE BACKBONE OF CCSO

Continued from page 7

44 COMING TOGETHER IS
A BEGINNING; KEEPING
TOGETHER IS A PROCESS;
WORKING TOGETHER IS
A SUCCESS."— HENRY FORD





more. Examples of these tasks include organizational communications, scheduling, event planning, website and social media platform management, Supervisory Release Time Bank requests and reconciliations, product selection and distribution, inter-office training, State Board and Chapter elections, financial services, legal support and data entry, to name a few. Many of the aforementioned tasks and

more are managed daily by the Operations Team. Workplace unity is one of the most valued attributes of productivity. We all work together to contribute to this great organization's success. A teamwork environment promotes an atmosphere that fosters companionship, loyalty and communication. If we come together in honesty and work together in clarity, we can stay together with respect and meet any goal successfully.



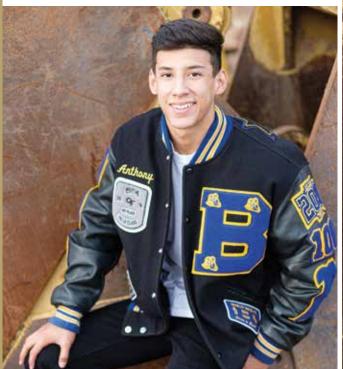
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CCSO'S 200 TOP SCHOLAR CULU OF THE YEAR

Anthony Maldonado is CCSO's Top Scholar of the Year! He is a fine student who stands out because of his community involvement and determination for excellence. Please join us in applauding Anthony and wishing him a bright future.







Anthony Maldonado

Parent: Lt. Michael Maldonado

College: Life Pacific University



LABOR

OIG: INFLUENCE OR OVERSIGHT?



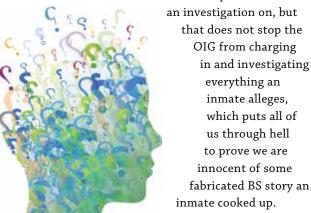
Ford Canutt | CCSO Legislative Specialist

he California Department of
Corrections and Rehabilitation
(CDCR) and its employees have
been subjected to numerous forms
of oversight. Some oversight comes from within
CDCR to ensure its systems and policies are
working correctly. The management comes from
other agencies, like the Office of the Inspector
General (OIG).

I have noticed that most CDCR employees think the OIG is an agency they can turn to for help when some employee-related problem is occurring. You would be dead wrong. First off, the OIG is only concerned with the well-being of inmates or using inmates to justify its continued investigation of CDCR employees.

We all know that inmates are not the most credible persons to base

You might ask why the OIG





is so willing to chase windmills. Well, because their agency is overstaffed with overpaid attorneys who have little to do but make up issues to justify their positions.

For example, in the OIG's most recent report, which goes out to the public, they accuse CDCR supervisors of not properly reviewing their use-of-force reports. When the use of force occurs, the sergeant reviews the Part C that the officers turn in. Then the lieutenant reviews the Part C reports again and fills out a use-of-force overview form. Then the captain reviews the sergeant's and lieutenant's reports and looks over the Part Cs. The associate warden checks the same thing the captain had reviewed. During this process, statements are questioned, and the stories go back and forth until everyone is satisfied that the use of force was justified, or that there is a problem that needs to be addressed. Then the package goes to the use-of-force

Continued on page 12



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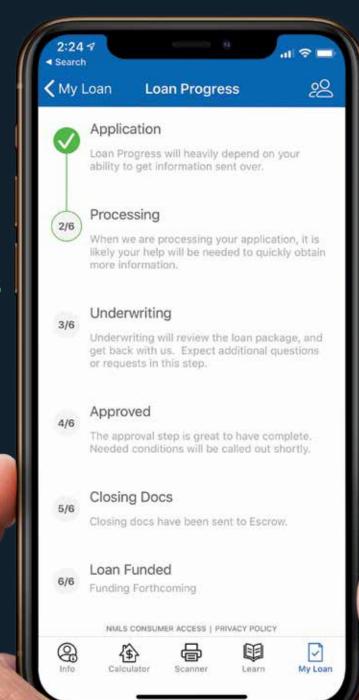
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OIG: INFLUENCE OR OVERSIGHT?

Continued from page 10

committee and is reviewed again, and the committee may or may not find other issues.

In the OIG's public report on this process, they accuse sergeants and lieutenants of not reviewing these use-of-force reports properly. Therefore, causing CDCR, who is afraid of the OIG, to come down on the supervisors. CDCR knows that the OIG is wrong, but for reasons I will explain soon, they follow the OIG's dumb rationale and come down on the supervisors. Everyone seems to forget that these reports went through the captain, the associate warden and the use-of-force committee.

No one in the OIG has worked as a peace officer, been attacked by an inmate nor has ever had to come to the aid of their fellow officer — yet they pretend to be experts on the use of force.

Most experienced supervisors can tell you that no two reports are alike when they are based on what each officer perceives. Some officers are far away, and others are coming in from another direction. During the incident, some officers are using force. So this shows that the OIG has no common sense and should not be involved in the oversight of CDCR's use-of-force policies. At best, the OIG is flawed as it continually determines Part Cs are a little different from each other.

Why does the CDCR allow itself to be manipulated by the OIG when it knows that the OIG can't find their butts if they were glued to their faces? Well, the reason is simple. The OIG has a stranglehold on the CDCR upper management. Most of the wardens are acting to be confirmed and they need the OIG to give them a favorable report. Because of this, the wardens will do almost anything the OIG says, like take unwarranted adverse action against one of their employees or exacerbate an issue.

The OIG is involved in this form of corruption and blackmailing CDCR, the wardens and upper management to do things people know to be wrong or unfair — so the OIG supports their confirmation.

The OIG stopped being an effective agency some time ago. Now it has become a group of state employees getting fat off taxpayer dollars, which leads to stonewalling and indecisiveness within CDCR. I say save us all and shut down the OIG.



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THE GREAT UNKNOWN: A WORKERS' COMPENSATION LAWYER'S PERSPECTIVE ON COVID-19

Edward Singer | The Law Offices of Edward J. Singer, Attorney

s individuals recover from COVID-19, we look toward their future. Are they going to suffer any lasting effects from the disease? Are they going to be able to return to their usual and customary occupation? In extreme cases, are they going to be able to return to the open labor market in any capacity?

Besides the ability to work, these individuals will have health concerns

With workers' compensation, there are laws and legal concepts that address these issues. With COVID-19, there are additional questions for which we do not know the answer — the unknown.

The following questions are of paramount importance:

- ➤ Are there any medical conditions that will crop up in the future as a result of COVID-19 infection?
- ➤ Will the COVID-19 treatment itself cause any long-term effects on the individual?

Ventilators and Long-Term Side Effects

There is concern over the ongoing health of individuals who were placed on ventilators. Specifically, there are concerns that this treatment may have caused long-term health effects, such as physical weakness

and cognitive dysfunction. Side effects of ventilation can include the loss of intellectual functions such as thinking, memory and reasoning, as well as trouble recalling words, performing basic math and concentrating.¹

Long-term effects from ventilators can also include posttraumatic stress disorder, anxiety and depression.

The Five-Year Plan: Limitations to Act — Will There Be a Material Change in One's Condition?

Injured workers have five years from the date of their injury to pursue a claim for new and further disability. Current law provides for a five-year statute to file a Petition to Reopen or an Application for Adjudication. Attorney consultation is recommended and should be done well before the deadlines to ensure that such forms are timely filed.



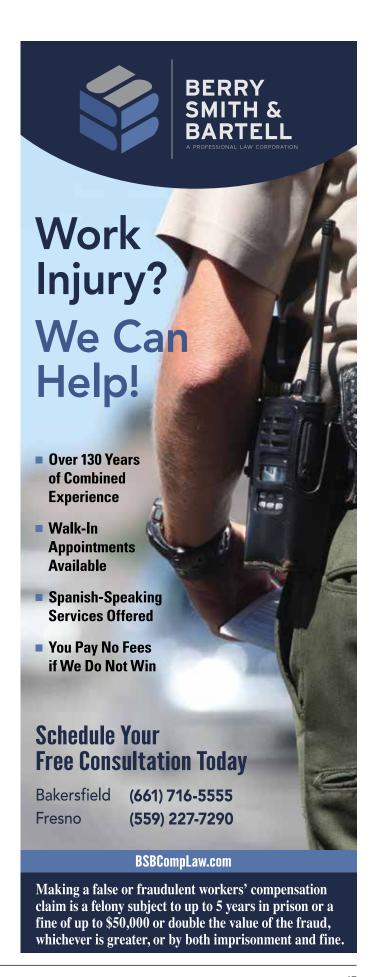
The California government, in addressing COVID-19, added a presumption related to injury claims. This action implied a willingness of the state to adjust laws based upon the nature and course of the disease. Therefore, if medical science shows long-term COVID-19 effects, there is a possibility of additional legislation to address long-term disability effects. If current workers' compensation law does not properly address the issues, then some legislative action may address it. Again, from a lawyer's perspective, this is a part of the great unknown that we are dealing with in terms of COVID-19.

Injured workers with COVID-19 should closely monitor their condition to make sure that their health is not significantly impacted, and they should make sure that their infection is documented.

What Does This All Mean?

Injured workers with COVID-19 should closely monitor their condition to make sure that their health is not significantly impacted. They should make sure that their infection is documented with respect to their condition being an industrial injury. Additionally, if the COVID-19 virus causes further problems, the injured worker needs to re-engage their benefits claim to make sure that all disabilities and medical conditions are covered. Again, COVID-19 treatment may cause other peripheral problems. These other problems will be covered pursuant to workers' compensation law.

If you have any questions or concerns, please feel free to email me at **edward.singer@lawbrea.com**.



https://healthtalk.unchealthcare.org/life-after-a-ventilator

YOUR RIGHTS TO DOCUMENTS DURING AN OIA INVESTIGATION

Michael A. Morguess | Castillo Harper, APC, Associate Attorney

he right to fair and complete notice and disclosure in the context of an administrative investigation and subsequent proceedings has been defined in the law since the long-standing *Skelly* decision back in 1975. Originally, in *Skelly*, the Supreme Court stated that at a minimum, the accused officer is entitled to be provided the materials upon which the administrative action is based, prior to any pre-deprivation due process (*Skelly v. State Personnel Board* [1975] 15 Cal.3d 194, 215).

Since the right to discovery was initially established in *Skelly*, other cases such as *Pasadena Police Officers Assn v*. *City of Pasadena* ([1990], 51 Cal.3d. 564) further defined specifically when an officer or deputy has the right to receive the materials. The court in *Pasadena* held that the peace officer's right to inspect and view all materials and documents only arises *after* the administrative interview/ officer's interrogation has taken place. In addition to case law, the right to discovery and the items to be turned over

to the officer are specifically laid out in the California Public Safety Officers Procedural Bill of Rights Act (POBRA), Government Code Section 3303(g). This, of course, applies to CCSO's members as well (Govt. Code §3301; Pen. Code §830.2[d]).

A more recent explanation of this right was discussed in the case of *James Davis v. County of Fresno et. al.* ([2018] 22 Cal. App. 5th 1122). The court there further expanded the



definition of the "materials" to be turned over to the officer under POBRA Section 3303(g), to include incident reports and transcripts of witness interviews that were attached to a memorandum written by a special probation investigator.

James Davis was a supervising juvenile correctional officer who had been employed and in good standing with Fresno County since 2002, even twice receiving the probation department's "employee of the month" award.

However, in October 2008, one month after receiving one of the awards, Davis filed a complaint with the FBI alleging a county employee had used excessive force. In February 2009, Davis was placed on administrative leave for alleged misconduct. However, the termination was overturned by the Commission in March 2010, when Davis alleged the County acted in retaliation against him for filing the FBI complaint.

The administrative action



at issue in the Davis case stemmed from a 2012 internal complaint submitted by a subordinate correctional officer, Lonny Blue, alleging retaliatory-type conduct on the part of Davis that made it difficult for this officer to carry out his duties. A special probation investigator, Glenn Johnson, was assigned to the investigation of Blue's complaint. As part of that investigation, several witnesses were interviewed and on September 12, 2012, Johnson completed a memorandum to the chief probation officer. That memo was 20 pages long and specifically referred to attachments such as transcripts, interviews, etc., that were noted in the memorandum as being "tabbed" for reference. None of these attachments was provided to either Davis or his counsel; only the memorandum itself was turned over, despite multiple requests by Davis that the "tabbed" attachments be turned over and that failure to do so was a violation of his due process and POBRA rights.

As a result of the investigation, Davis was dismissed from employment at the County and his administrative appeal

The right to discovery and the items to be turned over to the officer in an administrative investigation are specifically laid out in the California Public Safety Officers Procedural Bill of Rights Act (POBRA).

was denied. Davis filed a petition for writ of administrative mandamus, asking the superior court to set aside the Commission's decision. However, the superior court denied Davis' petition. Davis then appealed the superior court's denial to the Fifth Appellate Court. The appellate court reversed the superior court's decision, in part. The issues heard before the appellate court were: Did the County commit a due process violation by not turning over the tabbed attachments to the September 2012 memorandum to Davis? And was that same failure to disclose the attachments a violation of POBRA, specifically Section 3303(g)?

In an unpublished portion of the opinion, the appellate court upheld the superior court's finding that no due process

Continued on page 18

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YOUR RIGHTS TO DOCUMENTS DURING AN OIA INVESTIGATION

Continued from page 17

violation had occurred. In making this ruling, the appellate court relied on the reasoning in *Gilbert v. City of Sunnyvale* ([2005] 130 Cal.App.4th 1264) that the requirements of due process in the context of a *Skelly* require an explanation of the employer's evidence and notice of the substance of relevant supporting evidence sufficient to enable the officer to respond at the pre-termination stage (Id. at 1280). In applying the *Gilbert* requirements for satisfaction of due process, the appellate court found that Davis could not argue, nor did he have any evidence to support,

a claim that his response or ability to respond at *Skelly* was hindered by his lack of access to the attachments (i.e., interviews and transcripts).

However, the appellate court did define the term "report" used in subdivision (g) of Section 3303 to include materials attached to an internal affairs investigation report. In the published part of the opinion, the court found a POBRA violation of that same section on the part of the County for failing to turn over all of the "tabbed" attachments to Davis and/or his counsel. In its discussion, the appellate court's analysis of the term "report" included a public policy discussion in which the court agreed that in order to preserve the integrity of a report itself, and in a larger context, to inspire a public or community confidence in the authenticity of these investigations, it is heavily favored to be inclusive in their analysis of the term "report." Therefore, the appellate court remanded the Davis case back to superior court, where remedies for the POBRA violation could be considered.





Failure to turn over any documents, attachments or exhibits that are attached to an internal affairs memorandum is in fact a POBRA violation.

In conclusion, the published portion of the *Davis* case established that Government Code Section 3303(g) "Documents to be provided" is expansive and includes any documents, attachments or exhibits that are attached to an internal affairs memorandum. Further, failure to turn over these documents is in fact a POBRA violation subject to all the remedies available under POBRA Govt Code Section 3309.5 et. seq.

If you have questions about what documents you are entitled to or are concerned the Department has not turned over all materials to which you are entitled, contact our law offices at (909) 466-5600.

Michael A. Morguess is an associate attorney with Castillo Harper, APC, a firm specializing exclusively in representation of law enforcement officers and other first responders. Michael's practice focuses on petitions for writ of mandate and appellate matters. He is certified by the California State Bar as an appellate specialist. He is licensed in California, Oregon and Washington.

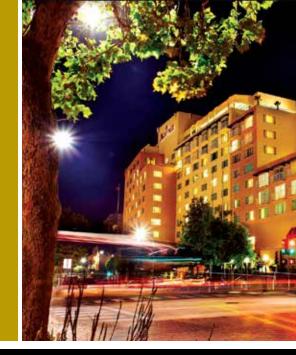
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AN UPDATE ON THE "WALK TIME" UNPAID OVERTIME CASES

The Law Office of Goyette & Associates

he plaintiffs are actively pursuing sergeants' and lieutenants' unpaid overtime claims following the California Supreme Court ruling last year. The litigation is proceeding, and picking up steam, in the San Francisco Superior Court.

As we know, the State treats activities after tool pickup as compensable for officers and yet does not compensate supervisors for this time. In addition, new case law supports the position that time from the point of entry to the facility may be compensable under federal law.

After the last case management conference before Judge Andrew Cheng, the new judge assigned to our case, he ordered:

- > Deposition testimony from selected sergeants and lieutenants: Both sides are close to agreeing on a representative set of 10 prisons from which selected sergeants and lieutenants will be deposed. The idea is for both sides to agree on "typical prisons" that are representative of other prisons. A small number of sergeants and lieutenants from each selected prison may be deposed regarding their work activities, particularly at entry and exit. Our goal is to complete most of the depositions by the end of the year, but that is uncertain at this point. We have contacted and are preparing sergeant and lieutenant candidates to provide deposition testimony. The depositions will occur via video.
- > **Time study:** Due to the COVID-19 outbreaks in the prisons, no "time and motion" study of the amount of time spent on pre- and post-shift tasks has yet occurred, and it is unknown when we will have access to the prisons to begin these measurements.
- ➤ CDCR/CalHR's motion to "decertify" the class: The attorneys for CDCR/CalHR have informed the court that they plan to seek to "decertify" our class, based on

their belief that the pre- and post-shift tasks are too individualized at each prison and each post. The State already *lost* this issue *twice* earlier in the case. CDCR/CalHR also plans to argue that some of the tasks involve minimal time (are *de minimis*) and can be ignored. We contend that the compensable pre- and post-shift tasks at issue in the case are the same at each prison, and the time spent on the tasks is not minimal. Moreover, it recurs daily, which even the State's own policies recognize makes the time compensable. The judge set the deadline for CDCR/CalHR to file this motion as January 29, 2020. However, because we will be entitled to conduct a time and motion study to refute the State's *de minimis* argument, the motion will likely be delayed unless we can access the prisons to conduct our study.



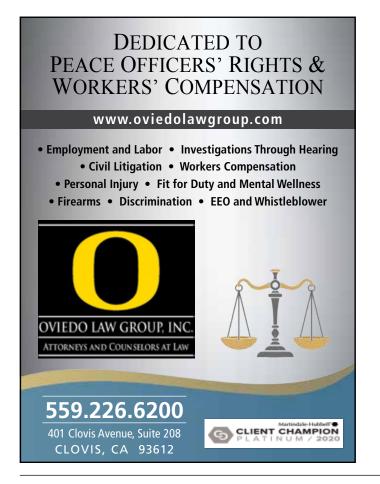
> Mini-trial to decide which pre- and post-shift tasks are compensable: We have asked the court to hold a "mini-trial" before the judge to decide which of the pre- and post-shift tasks are compensable — which is the next logical step in the litigation. The judge decided, for now, that CDCR/CalHR's motion to decertify the class should happen first, but he will reconsider this issue at the next

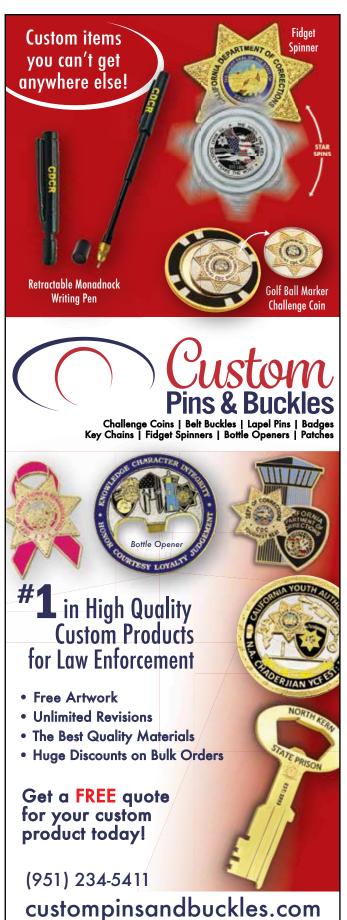
case management conference in December, particularly if the COVID crisis continues to delay our time study.

➤ **Mediation:** While the attorneys for CDCR/CalHR contend it is too soon to go to mediation, the judge ordered both sides to mediate on October 21, 2020.

We will provide further status reports as the litigation continues. •











Beating Breast Cancer

Sabrina Harris-Brennan

Personnel Assignment Sergeant, Deuel Vocational Institution

Editor's note: CCSO is going pink for October in honor of Breast Cancer Awareness Month. Sergeant Sabrina Harris-Brennan bravely shared her experience with breast cancer with us, along with photos of her with friends and supporters.

he past two years have been a roller coaster of three surgeries and treatment path that I am still currently going through. Breast cancer may have changed me physically, but it will never define me or change the person I am and always will be.

Always live to your fullest, laugh as much as you can, love your family, your people and anyone else who might need you along the way during this crazy thing we call life. I choose to smile and always be positive because life is short, and I am lucky to have all the support I have had along my journey.

Thank you to everyone at CCSO for all of the love and support you have shown me since day one. I feel very fortunate to always have you all in my corner. Live, laugh, love #sabbystrong.



Sgt. Harris-Brennan, second from left, with her gym friends





Sgt. Harris-Brennan hiking Half Dome in Yosemite to celebrate her one-year anniversary of beating breast cancer.



Sgt. Harris-Brennan at the Special Olympics Law Enforcement Torch Run



CDCR employees wear pink patches in honor of Breast Cancer Awareness Month.



"GET IN THE FIGHT" CAMPAIGN SUPPORTS COMMUNITIES AFFECTED BY WILDFIRES

Joel Alvarado | Fire Chief, Corcoran State Prison

n the morning of September 5, the skies above Corcoran State Prison (CSP-COR) and the Substance Abuse Treatment Facility (SATF) began to turn amber-orange as the sunlight filtered through the smoke-filled air. Later that day, news began to surface of two large fires burning within the Sierra Nevadas due east of the prisons. The initial fire was named the Creek Fire, which later received national exposure. The weather pattern created by the Creek Fire ignited a separate fire south of where the fire was initiated, called the SQF Complex Fire, which affected Tulare County residents. After nearly a week of firefighting efforts, and with zero containment, Madera, Fresno and Tulare counties issued mandatory evacuations, affecting more than 28 separate mountain communities.



The "Get in the Fight" campaign was spearheaded by CCSO and CCPOA from Corcoran and SATF facilities.

On September 8, CCSO received a request from CCSO Chapter President Sergeant Jim Davidson of the COR institution asking for assistance to aid in the fight to put out this fire. Fire Chief Joel Alvarado initiated the coordination of local support efforts to help aid the affected areas with supplies. With the support of Wardens Ken Clark (CSP-COR) and Stuart Sherman (SATF), an all-call went

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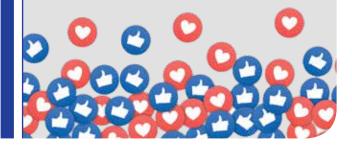




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MEMBER PERSPECTIVES



"GET IN THE FIGHT" CAMPAIGN SUPPORTS COMMUNITIES AFFECTED BY WILDFIRES

Continued from page 24

out to both facilities inviting all staff to participate in a "Get in the Fight" campaign. The campaign was spearheaded by CCSO and CCPOA from Corcoran and SATF facilities. Shortly after the call went out, Fire Chief Rico Collazo from Avenal State Prison joined the campaign efforts. Within two days' time, trailers full of water and Gatorades began to arrive along with snacks to help those in need. Thousands of dollars in supplies were donated by staff as well as the local Walmart in Sanger.

Fire Chiefs Alvarado and Collazo and Hazmat Specialist

Our team was met with sincere appreciation and gratitude from the people on the frontline, community leaders, evacuation facilities and the directly affected communities.

Flowers took to the streets delivering supplies to more than 11 fire departments within Kings County. A stop was made in Fresno to meet with Pastor Hoyer and deliver supplies to his church, which would later help distribute supplies to other churches to help aid families affected by the fire.

News shortly got out that Reedley Community College was activated as a site for evacuees to come and receive aid. Our team was the first on site to help build up an adequate stockpile of supplies so they could immediately begin helping those in need.

As we were unloading at Reedley College, Fire Chief Collazo





received a call from one of the CDCR fire captains who lived in the community being threatened by the Creek Fire. This became our next stop along our journey. As we continued our journey up the road to the Creek fire, we met with crews who had just finished a 24-hour shift as well as our mutual aid partners, Engine 11.

Our efforts reached active-duty first responders, as well as a helicopter fire response team.

Our team was met with sincere appreciation and gratitude from the people on the frontline, community leaders, evacuation facilities and the directly affected communities. A heartfelt thanks to CDCR staff for being there in their time of need! Thank you all for your support in the "Get in the Fight" campaign.

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