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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

Margaret Farrell,

Plaintiff,

v.

JERRY L. HARPER, Director, California
Youth Authority,

Defendant.

No. RG03079344

**AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Plaintiff Margaret Farrell hereby brings this action for injunctive and declaratory relief pursuant to California Code of Civil Procedure sections 525, 526 and 1060, directed to defendant JERRY HARPER, and by this complaint alleges as follows:

INTRODUCTION

1. Juvenile wards of the state are confined within the California Youth Authority (CYA) for rehabilitation, training and treatment. (Welf. & Inst. Code § 1700.) The CYA's illegal and inhumane conditions violate this statutory mandate and numerous other legal requirements. Rehabilitation is impossible when the classroom is a cage and wards live in constant fear of physical and sexual violence from CYA staff and other wards. Training is not possible while CYA programs are not available and CYA staff are inadequate in both numbers and experience. Treatment is impossible while forced administration of psychotropic medication is used as a tool to control behavior, and when psychologists and psychiatrists are not available to the vast majority of wards. The severe, unconstitutional and illegal problems conditions in the CYA are not new and they are not a secret.

2. This taxpayer action is brought by Margaret Farrell to compel defendant Jerry Harper, Director of the CYA, to stop using taxpayer funds to further the illegal conditions that exist in the CYA. Plaintiff seeks a declaration that defendant Harper has spent taxpayer funds on illegal policies, practices, and procedures, and seeks an injunction requiring defendant to either stop accepting wards for whom he does not have adequate facilities to provide care pursuant to Welfare and Institutions Code section 736, or refrain from spending taxpayer funds to further the illegal actions set forth below.

JURISDICTION

3. This Court has jurisdiction to grant injunctive relief on behalf of Plaintiff pursuant to Code of Civil Procedure sections 525 and 526.

4. This Court has jurisdiction to grant declaratory relief on behalf of Plaintiff pursuant to Code of Civil Procedure section 1060.

PARTIES

A. Plaintiff

5. Plaintiff Margaret Farrell is a citizen of California and a resident of Reseda in Los Angeles County. She has paid taxes to the State of California within one year of

1 the commencement of this action. As a taxpayer, plaintiff Farrell has no administrative
2 remedies to exhaust. Ms. Farrell's nephew, Edward Jermaine Brown, is a CYA ward.
3 She brings this action as a taxpayer, pursuant to Code of Civil Procedure section 526a,
4 against state official Jerry L. Harper, Director of the CYA, to enjoin his expenditure of
5 funds to promulgate, administer, and enforce the CYA's illegal policies, practices, and
6 procedures.

7 B. Defendant

8 6. Jerry L. Harper is the Director of the CYA and is sued herein in that
9 capacity. As Director, Harper is responsible for the operation of all the CYA staff and
10 facilities, including decisions concerning the budget, staff deployment, programming, and
11 staff training that directly affect the expenditure of funds on CYA wards.

12 7. Defendant uses tax revenues collected from plaintiff Farrell and others by
13 the State of California to administer, operate, and maintain CYA facilities.

14 **FACTUAL ALLEGATIONS**

15 8. The CYA is a state agency charged by law with the rehabilitation of
16 youthful offenders. It is required by the California Legislature to substitute training and
17 treatment for punishment of its wards. (Welf. & Inst. Code § 1700.) The CYA houses
18 approximately 6,000 male and female wards in eleven correctional facilities. Defendant
19 Harper uses public funds to further illegal actions, as described in paragraphs 9-113
20 below.

21 9. The CYA, by its own admission, utterly fails to fulfill its statutory duties of
22 treatment, training, and rehabilitation. For example, the CYA admits that it does not
23 provide wards at N.A. Chaderjian Youth Correctional Facility with adequate treatment
24 and programming services. (Budget Concept Paper, FY 2001-02; Budget Concept Paper
25 FY 2002-03.) Staff at this CYA facility, which houses some of the most at-risk youth in
26 the system, are "unable to provide quality treatment to wards due [to] the high number of
27 difficult and complex cases at the facility." Without additional staff, "N.A. Chaderjian
28 will continue to operate without adequate treatment services, which leads to an unsafe

1 environment for staff and wards.” Wards at Ventura Youth Correctional Facility are also
2 “consistently denied the treatment services to which they are entitled” by California law,
3 according to the Office of the Inspector General in a Management Review Audit on June
4 2002.

5 10. More generally, the CYA’s own Treatment Delivery Focus Group found in
6 November 2001 that, because untrained, inexperienced correctional officers are staffing
7 counselor positions, “we are unable to effectively deliver treatment and training to the
8 wards under our care and supervision.” (Memorandum from Treatment Delivery Focus
9 Group to Deputy Director Anderson, November 16, 2001.) One result of the CYA’s
10 failure to provide rehabilitation to wards is that “wards are give[n] time-adds because
11 their board ordered programs cannot be met.” In other words, the CYA’s illegal actions
12 result in lengthier sentences for wards, thus requiring taxpayers to fund due process
13 violations.

14 11. Defendant Harper has long been aware of the CYA’s chronic, serious
15 illegalities. As the CYA states:

16 In August 2000 the department performed an analysis of critical issues and
17 reports.... The analysis revealed the following broad areas of concerns:
18 conditions of confinement; use of force; safety and security; management of
19 policy, procedure and practice; correctional treatment centers; staff
20 resources and training; ward rights; drug and sex offender treatment;
21 education services; leadership; gangs; research; and [] documentation. In
22 practically every issue, inconsistent policy, procedure and practice was
23 either explicitly noted or implied as an underlying factor.”

24 (Budget Change Proposal EX03A, FY 2002-03.) The illegal conditions in the CYA have,
25 if anything, worsened since that time.

26 A. Physical Safety of Wards

27 12. CYA staff regularly subject wards to the excessive use of force. The
28 policies and procedures are not adequate to ensure the physical safety of wards under the
care and protection of the CYA and to protect them from abuse by CYA staff that is
cruel, willfully inhumane, and excessive. The CYA spends taxpayer funds illegally by
not ensuring that the lawful policies now in place are properly implemented and that staff

1 are trained to follow them.

2 13. It is common practice within the CYA for staff and/or guards to slam a
3 ward down, pull his arms behind his back, force a knee into his back, and use excessive
4 amounts of Mace or other chemical agents even after the ward is restrained. Wards also
5 have their heads slammed against walls and rails and are beaten and burned by tear gas
6 canisters and Maced without provocation. For example, a ward was repeatedly sprayed
7 with chemical agents for declining to undergo a strip search after being placed in a
8 holding room. In another example, a ward was knocked unconscious when shot directly
9 in the head at close range by CYA staff with a "foam baton" gun. In a third example,
10 CYA officers placed a handcuffed ward face down on a bed and repeatedly struck his
11 head.

12 14. Although California law mandates that chemical restraints shall be used
13 only to restrain wards, and not for punishment or retaliation (Cal. Code of Regs., tit. 15, §
14 4040(d)), CYA staff often use chemical agents on wards who either do not require
15 restraining or already are restrained. Additionally, staff place other excessive restrictions
16 on wards, in the form of restraint chairs and "spit masks" (which often must be worn by
17 wards for a month or more) or confinement to a temporary detention or suicide watch
18 room for extended periods of time without legitimate justification.

19 15. Many CYA staff do not abide by the rules and policies that currently exist
20 to govern the use of force on wards. The policies are often not provided to staff, and staff
21 training is inadequate. In addition, the CYA administration has failed to provide
22 individual institutions with oversight and clear policy direction on the use of force. Staff
23 often fail to report the use of force and the CYA does not adequately investigate use-of-
24 force incidents or discipline staff when appropriate. As a result of these failures, CYA's
25 use-of-force policies are not implemented, which causes and exacerbates the illegalities
26 of the CYA system.

27 16. Moreover, some of the use-of-force policies are themselves unlawful. For
28 example, there is no standardized CYA policy governing use of spit masks. The CYA's

1 chemical restraints policy does not set dosage limits on the use of chemical restraints.
2 The policies and procedures for inventory controls and records for weapons, ammunition,
3 and chemical agents are inadequate. Without adequate policies and procedures, there is
4 insufficient management control over the use of force and the application of chemicals on
5 wards.

6 17. The San Luis Obispo County Grand Jury, in its investigation of the CYA's
7 Paso Robles Youth Correctional Facility in 2000, found that "[a]ccountability procedures
8 are ineffective for signaling possible unauthorized use of chemical restraint by individual
9 employees, nor are other adequate safeguards in place." For example, the Grand Jury
10 found excessive use of chemical restraints at Cambria Cottage, the Paso Robles lockup
11 unit: "[T]here has been an excessive use of chemical restraint. Foggers have been used
12 there as weapons for individual punishments as well as for extracting some wards from
13 their cells."

14 18. Defendant Harper also has failed to develop sufficient policies and
15 procedures to protect the physical safety of wards from abuse by other wards and has
16 failed to implement the policies and procedures that do exist. For example, many CYA
17 facilities house victims of sexual violence and/or homosexual wards with convicted sex
18 offenders. Wards who are homosexual or who are known to have been victimized in the
19 past are the most frequent targets of sexual assault. Thus, the CYA is exposing some of
20 its most vulnerable wards to some of its most dangerous.

21 19. Rape, sexual assault, and sexual harassment are common within the CYA.
22 Some wards are housed in the same living facility as others who have previously raped or
23 sexually assaulted them. Staff are routinely indifferent to wards' pleas for protection
24 from those who have assaulted them.

25 20. Defendant Harper has failed to implement the CYA's own guidelines for
26 responding to wards' reports of sexual assault, including failing to investigate such
27 allegations promptly and properly, and has failed to develop and implement policies to
28 ensure that CYA staff members receive instruction in dealing with sexual assault and are

1 held accountable when they disregard policy. As a result, sexual assaults in the CYA are
2 common and often go unpunished.

3 21. The California Correctional Peace Officers Association reports, for
4 example, that violent female wards at Ventura "prey on weaker/mentally ill wards" and
5 "management... has no plan to defuse, eliminate or reduce violence within the female
6 population." (CCPOA Agenda, CYA Director's Meeting, Tuesday, August 15, 2000.)

7 22. Defendant Harper has also failed to establish policies and procedures to
8 protect wards from the well-known and ubiquitous danger of attack by gang members and
9 does not have a consistent policy for dealing with gang-related violence. Moreover, he
10 has failed to provide intervention services for gang conflict. The use of long-term
11 lockdowns as the sole response to gang violence results in more physical violence
12 because wards are simply locked in their rooms for weeks or months with no
13 programming.

14 23. Gang-related violence occurs in the form of both one-on-one attacks and
15 large-group disturbances. Wards often are seriously injured in such attacks, which often
16 involve dangerous weapons such as knives or similar objects. The CYA does not have
17 adequate policies and procedures to ensure that wards do not have access to material that
18 can be made into dangerous weapons. For example, debris such as broken glass, nails, a
19 tent stake, a 12-inch piece of pipe, a six-inch piece of metal, and an 18-inch strand of
20 rope have been left in the corner of a sports field, accessible to wards, in a CYA facility.
21 Moreover, CYA staff fail to search wards for weapons to prevent contraband from
22 entering the facilities and fail to use metal detectors properly.

23 24. In addition to their failure to prevent ward-on-ward violence, CYA staff
24 have encouraged, permitted, and/or provided wards with the opportunity to fight one
25 another.

26 B. Segregation

27 25. CYA wards are subjected to extremely harsh punishment in the form of
28 "lockup," "Temporary Detention," "disciplinary housing," placement on "Special

1 Management Units" (SMU), and "lockdowns." Such punishment is effected either by
2 sending a ward to a special housing unit used specifically for such punishment or by
3 changing the rules of confinement for a ward or group of wards while they remain in
4 regular housing units.

5 26. The physical conditions within special lockup units are often abysmal.
6 Defendant Harper has failed to establish policies and procedures adequate to protect the
7 rights of wards undergoing such punishment. He has also failed to ensure that the
8 policies now in place are properly implemented and that staff are trained to follow them.

9 27. Many CYA lockup rooms are filthy, with dried mucus, blood, and/or feces
10 on the walls, unusable toilets, and broken windows. Wards are subject to obvious health
11 risks from these unsanitary, unconstitutional, and illegal conditions. Wards on lockup are
12 often fed only "blender meals," which are entire meals (e.g., a sandwich, vegetable, and
13 milk) that have been put into a blender and liquified and then fed to the ward via a straw
14 through his or her cell door. In other examples, wards confined on lockup have received
15 inadequate rations or dangerously undercooked food, causing these youths to lose
16 significant amounts of weight.

17 28. Wards' activities while on lockup are so severely limited as to be punitive.
18 Wards live under a regime called "23/1," which forces them to stay inside their cells for
19 23 hours of the day and provides only one hour of "program" time outside of the cell,
20 which takes place in cages called Special (or Secure) Program Areas or "SPAs." Thus,
21 when wards on lockup are allowed to attend educational classes or counseling sessions,
22 they are required to do so either in a cage or through a small slot in the cell door. Wards
23 on lockup often are not permitted access to reading material, television, or radio and their
24 opportunities to keep in contact with their families through telephone calls and visits are
25 eliminated or severely curtailed. Although CYA policy mandates that wards on lockup
26 shall be given the opportunity for one hour of large-muscle exercise outside of their
27 rooms each day, in practice this regulation is ignored and wards on lockup can go for
28 many months with little or no exercise.

1 29. Wards often are not allowed to attend school or any other form of program,
2 including religious services, while in segregation. Wards are denied parole because they
3 cannot complete required programs in lockup; they then serve their maximum term and
4 are released from the CYA with dishonorable discharges. The California Department of
5 Education investigated the CYA's delivery of special education services to wards on
6 lockdown or temporary detention and found that the CYA "is not consistently
7 implementing the IEPs [Individual Education Plans] of wards/students in the restricted
8 program" and that "IEP team meetings are not conducted when a ward is placed in the
9 restricted program as directed in the CYA's Restricted Program policy manual" and as
10 required under federal law. (California Department of Education Compliance Report #I-
11 1079-00/01, September 14, 2001.)

12 30. Wards in segregation are there primarily due to the CYA's determination
13 that they have misbehaved or failed to follow mandated programs. However, they are not
14 provided with any behavior modification or rehabilitative programs to train them to
15 improve their conduct.

16 31. Many wards with serious mental illnesses are held in lockup under these
17 extremely harsh and restrictive conditions, which exacerbates their mental illnesses and
18 causes them to decompensate.

19 32. CYA wards spend an alarming amount of time in segregation. The CYA's
20 policies and practices on locking wards up in segregation are so excessive as to violate
21 accepted professional practices, particularly for wards who are mentally ill and/or
22 suicidal.

23 33. For example, a pastoral delegation to Fred C. Nelles Youth Correctional
24 Facility reported in a document sent to Mr. Harper on November 27, 2001, that they were
25 shocked and depressed by the isolation and the use of cages, or as you call
26 them SPAs. The accommodations were, in our opinion, inhumane. We
27 were also alarmed by the length of time the young men spend in isolation.
Many we talked to had been there several months already and were not sure
when they would return to the main population.

28 The delegation of clergy further stated regarding the lockup units at Nelles: "The paucity

1 of education, physical exercise, religious programming and social interaction for young
2 people of this age is nothing short of abusive." The CYA chaplain's group pointed out
3 similar dangers to Mr. Harper, stating:

4 There have been three suicides in the CYA system since February. We are
5 hearing from the wards that the amount of time they spend in their rooms
6 agitates the stress and tensions that they already experience by being locked
7 up. The over use of solitary confinement (23-1) including their length of
8 stay in solitary confinement units and the use of SPAs for their one hour out
9 of their rooms also contributes to this concern. Many wards have confided
10 to us that they are hesitant to seek help for stress or depression for fear that
11 they will be put on suicide watch, which is worse than solitary confinement.
12 Isolation[] increases the likelihood of suicide, it does not decrease it.

13 34. The CYA admits that its policies regarding the use of restricted programs
14 lack consistent placement criteria and are marked by the "inconsistent delivery of
15 mandated services in the areas of education, recreation, telephone calls, visiting, ward
16 grievances, legal resources, religious services, mail, nutrition, clothing/bedding, mental
17 health services and counseling and treatment." (Budget Change Proposal EX03A, FY
18 2002-03.) In addition, the CYA admits to having "no consistent monitoring of the use
19 of 23/1 restricted programs." Furthermore, the CYA is aware that its use of cages in the
20 restricted programs is ineffective and cruel: the CYA's own Special Programs
21 Administrator has recommended "complete removal of all special program areas [SPAs]
22 with time of the essence. These hardware devices are used in a similar manner to other
23 mechanical restraints in the absence of intensive treatment interventions and should not
24 be used alternatively... [I]t is a matter of general knowledge that the current excessive use
25 of long term 'lock down' facilities to manage behavior problems exceed any reasonable
26 standards for juvenile facilities."

27 35. Thus, under defendant Harper, the CYA disregards wards' due process
28 rights in committing them to lockup units or disciplinary housing. Defendant Harper has
29 failed to promulgate adequate procedures to permit wards to challenge their placement in
30 lockup units. As a result, he is operating the CYA, and spending taxpayer money,
31 illegally.

32 36. CYA wards are disciplined through a process called the Disciplinary

1 Decision Making System (DDMS). Wards subject to DDMS proceedings are often
2 denied the opportunity to present their cases, to present witnesses in their favor or to
3 question witnesses testifying against them. Often, hearings are not held in a timely
4 manner and wards' cases are heard by biased decisionmakers. Often wards are
5 disciplined arbitrarily, with no explanation for why the disciplinary action is being taken.

6 37. Wards often do not receive notice of the reason for their placement in
7 lockup. Under CYA policy, wards can be placed in a lockup unit for up to five weeks
8 without a hearing on the necessity for restricted housing or on the disciplinary charge. In
9 practice, wards often are locked up for many months at a time and up to a year without
10 periodic review of their status.

11 38. Wards are involuntarily housed in lockup units purportedly for their own
12 protection without providing them with an opportunity to challenge the decision. In other
13 cases, the CYA actually creates the need for protective custody by knowingly transferring
14 wards to a facility where the gang or ethnic group to which they belong is vastly
15 outnumbered by rival groups, rendering them unable to live safely in the general
16 population.

17 39. Although CYA policy requires that administrative lockdowns (program
18 restrictions placed on a group of wards, even entire facilities, due to safety and security
19 concerns) last only so long as necessary to restore safety of the facility, the CYA often
20 extends the administrative lockdown well beyond the time in which the security threat
21 has been identified and addressed, in violation of wards' due process rights. The CYA
22 also places and keeps wards in lockdown based on their racial/ethnic status or purported
23 group affiliation rather than their actual threat to safety and security.

24 40. Lockdown conditions parallel the harsh deprivations found in the lockup
25 conditions described above. However, defendant Harper has failed to take appropriate
26 measures to mitigate the extreme hardship and severe program restrictions placed on
27 wards on lockdowns for extended periods of time, thus ensuring that they are not
28 provided with programs that are required to be available even during a period of

1 heightened security.

2 41. Defendant Harper has long been aware of the illegalities regarding the
3 CYA's segregation policies and practices. A "Standards Development Project" document
4 dated November 9, 2000, identifies severe problems with education, mental health care,
5 and recreation delivery for wards on 23/1 and other restricted programming. A "Security
6 Review Report" regarding lockup at the O.H. Close Youth Correctional Facility found
7 numerous violations in August 2000, including the following: cages ("SPAs") are used
8 for the one-hour per day of large muscle exercise for wards; "[t]he current staffing pattern
9 on Inyo Lockup Unit is insufficient, and stretches the existing resources to dangerous
10 levels when problems occur"; "[t]here is no clear indication on the unit as to which wards
11 are on suicide watch"; "ward rooms are in need of cleaning and maintenance"; wards on
12 temporary detention are not receiving special education; some wards slept on mattresses
13 on the floor; loose rocks and cut wood (potential weapons) littered the ground, and
14 wards' movement was often unmonitored (which allows for attacks by wards on other
15 wards).

16 42. In addition, a Youth and Adult Correctional Agency investigation found in
17 2000 that "[w]ards in isolation need adequate and appropriate large muscle exercise in an
18 appropriate area including some time outside. The use of caged shower areas or cages
19 (referred to as secured program areas, or SPAs) as opposed to fenced recreation yards for
20 large muscle exercise is inappropriate and contrary to good and accepted correctional
21 practice." (Institutions Operational Quality Assurance Project, August 9-11, 2000, and
22 September 6-8, 2000.)

23 C. Medical and Dental Care

24 43. CYA wards are denied adequate medical treatment. Defendant Harper has
25 failed to establish policies and procedures to protect the rights of wards in need of
26 medical care. He has also failed to ensure that the policies now in place are implemented
27 and that qualified staff are hired in adequate numbers and are trained to follow the
28 policies.

1 44. The CYA has insufficient numbers of qualified medical staff, including
2 physicians, nurses and Medical Technical Assistants (MTAs). For example, Preston
3 Youth Correctional Facility only has one doctor, with no relief available when he is sick
4 or on vacation. The CYA admits this staffing is seriously inadequate. (Budget Concept
5 Paper, FY 2002-03.)

6 45. In another example, El Paso de Robles Youth Correctional Facility cannot
7 meet the medical needs of its more than 750 wards. The entire medical department staff
8 informed the facility's Superintendent on May 31, 2001, that they did not have enough
9 nurses to fulfill "public health aspects of vaccinations and infectious diseases significant
10 to this at-risk population of teenage males." They further stated that "[i]t is clear that the
11 imbalance between demands for medical and mental health care services mandated by the
12 law, and staff responsible for responding to those demands, has reached a near alarming
13 level at our institution. In order to comply with the law and adhere to the agency's
14 policies and procedures, and to uphold the ethical standards of medical and mental health
15 care in providing treatment and rehabilitation for the wards, our institution is in urgent
16 need of a least one additional registered nurse, one MTA [medical technical assistant],
17 four additional psychologists, and one full-time psychiatrist."

18 46. The CYA admits it does not have adequate staff to provide basic nursing
19 care for its wards, including medication administration, daily sick call, infections disease
20 screening and follow-up, immunizations, and urgent/emergent care. Medication is
21 delivered by unlicensed staff, which has resulted in failure to document the
22 administration of the medication and an inability to monitor its effectiveness. Wards
23 have no opportunity to ask questions about the medication and no chance to weigh the
24 results of refusal. (Budget Concept Paper, FY 2003-04.)

25 47. The medical staff that the CYA does have are inadequately trained and
26 supervised.

27 48. Wards who require medical care are subjected to lengthy delays, including
28 delays to see a primary physician, to obtain a referral to see a specialist, to see a specialist

1 after obtaining the referral, to obtain medical testing, and to obtain treatment. For
2 example, a pregnant ward at Ventura Youth Correctional Facility was not provided with a
3 timely consultation with a specialist. As a result, the ward did not receive adequate
4 treatment for her urinary infection, which contributed to her subsequent premature
5 delivery. In addition to the physical and emotional pain and trauma suffered by the ward
6 and her baby, the hospital bills for the intensive care of the one-pound, eight-ounce baby,
7 paid by California taxpayers, exceeded \$568,000.

8 49. The CYA frequently fails to provide wards with access to care. Pregnancy
9 care for female wards is inadequate, according to a Management Review Audit by the
10 Office of the Inspector General in June 2002. Often medical staff do not take sufficient
11 steps necessary to make diagnoses. When a diagnosis is made or a symptom discovered,
12 medical staff often fail to provide treatment. Several wards have been denied their
13 requests to be tested for HIV and other sexually transmitted diseases, in spite of the
14 presence of symptoms of such diseases.

15 50. The administration and delivery of medications is also seriously inadequate
16 as, for example, a nurse surveyor found at the four-facility CYA complex called the
17 Northern California Youth Correctional Center (DeWitt Nelson, Karl Holton, O.H. Close,
18 and N.A. Chaderjian Youth Correctional Facilities). The serious deficiencies include the
19 following: dates in medical files did not accurately reflect the dates on which medication
20 was administered; discontinued medications were reprinted with new medication orders;
21 expired medications, including some more than two years out of date, were being
22 administered; drug, needle, and syringe-control records were not properly maintained,
23 nurses poured medications without consulting the medical record and without
24 documenting the administration; wards refused medication dosages up to 11 times before
25 the matter was referred to a physician; no daily glucose monitoring for diabetics;
26 physician orders were not noted by nurses taking orders; sick call with a physician only
27 once a week (although the National Commission on Correctional Health Care "Standards
28 for Health Services in Juvenile Detention and Confinement Facilities" as well as the

1 Institute for Medical Quality standards for juvenile facilities require a minimum of five
2 days a week for facilities with over 100 wards). Medication policies were also seriously
3 deficient in failing to address current practice and failing to cover how to report refusals
4 of medication or treatment.

5 51. Wards' medical records often are disorganized and incomplete and
6 incoming wards are not adequately screened. As part of the survey of the Northern
7 California Youth Correctional Center in April 2001, an outside expert reviewed the health
8 record system at the four institutions. The expert report found inadequate organization,
9 communication, and follow-up. The report also found that no system exists to track
10 consents for routine or psychotropic medications at some facilities, that basic written
11 policies are not available and not known to staff, and that medical files are lost when
12 wards are transferred within the CYA.

13 52. The CYA responds inadequately to wards' emergency medical needs due to
14 the lack of expertise of custody and medical staff and the unnecessary and inappropriate
15 placement of custody concerns over emergency medical care.

16 53. Defendant Harper has long been aware of serious deficiencies in the CYA's
17 medical care system. In Fall 2000, a Youth and Adult Correctional Agency investigation
18 found major illegalities regarding the CYA's medical staffing, administration of
19 medications to wards (including the use of nurses for "activities that by law may only be
20 performed by a pharmacist or physician") and involuntary medication practices that
21 diverge from community standards (Institutions Operational Quality Assurance Project,
22 August 9-11, 2000, and September 6-8, 2000.) The investigation found that the CYA
23 "lacks a systematic approach to delivering medical and mental health services to wards"
24 and recommended significant overhauls.

25 54. In spite of this evaluation, defendant Harper has failed to develop
26 meaningful policy guidelines regarding the provision of medical care, including quality
27 control procedures such as physician peer review, quality assurance and death reviews.
28 The CYA admits that the only way to ensure that medical care policies are properly

1 implemented is to perform local compliance inspections. The CYA does not do so.
2 (Budget Concept Paper, FY 2003-04.) Even when serious deficiencies are identified,
3 there is inadequate follow-up to prevent future problems. Defendant Harper has also
4 failed to ensure that the policies now in place are implemented and that qualified staff are
5 hired in adequate numbers and are trained to follow them.

6 D. Mental Health Care

7 55. Wards are denied adequate mental health treatment.

8 56. The CYA admits that it fails to provide even minimally adequate mental
9 health care to its wards:

10 [T]he present configuration of mental health programs does
11 not come close to meeting the diverse mental health needs of
12 our population.... This means that many wards will not
13 receive the mental health services required to reduce their
14 level of danger to the community. Additionally, we will not
be able to successfully defend ourselves from the litigation
that has been filed against us in this area. This means that the
courts will intercede and order us to provide costly and
necessary services.

15 (Budget Concept Paper, FY 2003-04.) The CYA further admits that it "lacks
16 organizational structural, level of care and resources to adequately meet the mental health
17 treatment needs of the youthful offenders." (Budget Change Proposal Analysis, FY
18 2002-03.) Other admissions in the same CYA document include the following:

- 19 • The Department does not have the professional personnel or expertise to
20 troubleshoot or resolve systemic problems related to mental health, consult
21 on difficult cases or centrally distribute clinical information to mental
22 health professionals. These factors impact continuity of patient care and
23 successful transition between programs, and from the institution setting to
24 parole.
- 25 • Many of the deficiencies that the Federal Government discovered in these
26 other states [successfully sued over the past seven years for unconstitutional
27 conditions] also exist in California. As with the states discussed above, the
28 [CYA] does not currently have an organized and integrated delivery system
of mental health services. Until these deficiencies are addressed, the
Department is at risk of future litigation with the Federal Government.
- Currently there is no effective central coordination of statewide
departmental mental health services. Planning has been reactive, piecemeal
and fragmented.... There is no oversight to assure consistent treatment and
appropriate patient care follow-up. This impacts continuity of patient care,
successful transition between programs and transition from the institutional

1 setting to parole.

2 57. A study by Stanford University psychiatrists found the CYA's
3 "organizational culture not conducive to mental health treatment" and discovered "a lack
4 in continuity of care" for wards. (Steiner, Humphreys & Redlich, The Assessment of the
5 Mental Health System of the California Youth Authority, December 31, 2001.)

6 58. The CYA also admits it is "understaffed by all national standards."
7 (Budget Change Proposal Analysis, FY 2002-03.) The appropriate ratio of psychologists
8 to wards, by the CYA's own estimates, is 1:60. (*Id.*) The CYA operates with a ratio of
9 1:288. (*Id.*) That means the CYA needs an additional 71.5 psychologist positions. In
10 addition, the CYA requires an additional 18.6 psychiatrist positions to bring it to the
11 national standard of 1:200. (*Id.*) As discussed above in the section on medical care, the
12 CYA also admits it does not have adequate staff to provide appropriate basic nursing care
13 for its wards, including delivery of medications, and admits that the only way to ensure
14 that medical care policies are properly implemented is to perform local compliance
15 inspections, which the CYA does not do. (Budget Concept Paper, FY 2003-04.) The
16 Stanford study found that all CYA institutions were understaffed and that "external
17 forces... cause staff to use their time ineffectively." (Steiner, Humphreys & Redlich, The
18 Assessment of the Mental Health System of the California Youth Authority, December
19 31, 2001.)

20 59. For example, El Paso de Robles Youth Correctional Facility cannot meet
21 the mental health needs of its more than 750 wards. The entire medical department staff
22 informed the facility's Superintendent on May 31, 2001, that it has "definite deficiencies"
23 in the mental health care delivery process, due largely to a "virtually intolerable"
24 workload. There is only one full-time psychologist and one part-time contract
25 psychiatrist (40 hours per month) to serve the needs of more than 750 wards, of whom 91
26 have histories of suicide attempts and more than 200 are on the waiting list of
27 psychological evaluations and/or psychotherapy. The CYA has admitted similar
28 deficiencies at the Wintu ITP at the Northern Youth Correctional Reception Center and

1 Clinic and at the N.A. Chaderjian Youth Correctional Facility. (Budget Concept Papers,
2 FY 2002-03.)

3 60. In addition, due to its inadequate staffing the CYA cannot meet its legal
4 obligation to provide evaluations for those wards that the Youthful Offender Parole Board
5 (YOPB) seeks to retain in custody following their original discharge date. If the YOPB
6 determines that a ward would be dangerous to the public due to a "mental or physical
7 deficiency, disorder, or abnormality," it may seek to retain the ward for an additional two
8 years by requesting the prosecutor to petition the court for such an order. (Welf. & Inst.
9 § 1800.) Mental health evaluations prepared by CYA staff are essential to this process.
10 However, they are often improperly and inadequately prepared, often presenting
11 inaccurate information and based on a lack of knowledge on the part of staff generating
12 the report. (Budget Concept Paper, FY 2000-01; Budget Change Proposal Analysis, FY
13 2002-03.) Reports are also often late, which the CYA admits can and does "result in the
14 premature release of an offender clinically assessed as mentally ill and recognized by
15 staff as dangerous to the public safety." (Budget Change Proposal Analysis, FY 2002-
16 03.)

17 61. The CYA has an inadequate number of treatment beds. According to the
18 CYA's own analysis, there are only 523 mental health beds available to serve a
19 population of at least 3,173 wards requiring treatment. (Budget Change Proposal
20 Analysis, FY 2002-03.)

21 62. Medical records are disorganized and incomplete and mental health
22 assessment is inadequate. For example, female wards at Ventura Youth Correctional
23 Facility do not receive timely mental health assessments. (Office of the Inspector
24 General, Management Review Audit, Ventura Youth Correctional Facility, June 2002.)
25 CYA staff inappropriately rely on an unreliable screening tool to determine the required
26 level of care. In addition, CYA staff do not clearly identify and flag files for wards who
27 have suicide histories. Documentation regarding suicide risks is inadequately maintained
28 in the files and Suicide Risk Lists are improperly maintained. (Report to the Director on

1 Compliance with the Suicide Prevention Assessment and Response Policy, November 1,
2 2001.)

3 63. Administration of medication is so haphazard as to be dangerous to wards.
4 The nurse surveyor report regarding conditions at the Northern California Youth
5 Correctional Center found numerous deficiencies described above in the section on
6 medical care (Paragraphs 43-54) that apply as well to administration of psychiatric
7 medications. In addition, the report found that court-ordered psychiatric medications
8 were not administered. The Stanford study found that "modern psychopharmacology" is
9 not practiced in the CYA. It is impossible for the CYA to monitor administration and
10 effectiveness of psychotropic medications with a dearth of mental health professionals.

11 64. Wards who are suicidal or self-mutilating do not receive adequate care or
12 treatment. At least one ward has successfully committed suicide as a result of inadequate
13 care. Wards who are placed on suicide watch are not properly monitored and they do not
14 receive sufficient clinical intervention. (Report to the Director on Compliance with the
15 Suicide Prevention Assessment and Response Policy, November 1, 2001.) Instead of
16 direct physical observation, wards are placed in "camera rooms," where their activities
17 are intermittently monitored by video. These "camera rooms" are often filthy and unsafe
18 and have not been modified to eliminate fixtures that could be used by a ward to commit
19 suicide. CYA policies inappropriately permit wards to be retained in "camera rooms" for
20 three days regardless of their mental condition, thereby imposing punishment on wards
21 for seeking mental health services. For example, ward Darren Striplin has been
22 diagnosed with severe depression, schizophrenia, and borderline personality disorder and
23 is taking several medications for these conditions. Nevertheless, when Darren has been
24 on suicide watch at Chaderjian, his visits with the psychiatrists rarely last longer than
25 about five minutes and he is not provided with counseling or any other treatment.

26 65. Wards who attempt suicide are often punished by being restricted to their
27 rooms for a set number of days. Enforced isolation is dangerous and unnecessarily
28 punitive. The CYA chaplain's group told Mr. Harper in October 2001 (quoted above in

1 the section on Segregation at Paragraph 33) that the practice of holding wards in isolation
2 for excessive amounts of time caused them concerns for wards' mental health,
3 particularly for those wards who are already suicidal.

4 66. Suicidal wards also receive mental health care while locked in cages. As
5 quoted above in the section on Segregation at Paragraph 33, a pastoral delegation to Fred
6 C. Nelles Youth Correctional Facility informed Mr. Harper on November 27, 2001, that
7 they found the cages, or SPAs, inhumane and were shocked at the sight of a suicidal ward
8 receiving counseling in a cage, with the psychologist halfway across the room.

9 67. Staff are not adequately trained on the use of cut-down tools (to rescue
10 wards who attempt to hang themselves), and the tools' location is not standardized.
11 (Report to the Director on Compliance with the Suicide Prevention Assessment and
12 Response Policy, November 1, 2001.) As an internal CYA report informed defendant
13 Harper a year ago, this means that new staff might not be able to find the tools, and the
14 delay could be fatal.

15 68. Many wards have been involuntarily medicated with psychotropic drugs for
16 behavior problems and without clinical justification. Involuntary medication often is
17 administered without a hearing and, if the ward is a minor, without the legally required
18 consent of a parent or guardian. The nurse surveyor report regarding conditions at the
19 four-facility Northern California Youth Correctional Center found that psychotropic
20 medications are administered without signed consents. For example, ward Edward
21 Jermaine Brown was subjected to inappropriate forced medication that was administered
22 without appropriate review by clinical staff. He was coerced into taking psychotropic
23 medication by threats of longer periods of solitary confinement. Although Jermaine was
24 a minor, he was given psychotropic medication without the consent of a parent or
25 guardian, even though CYA clinical staff have acknowledged that such consent is legally
26 required.

27 69. Defendant Harper has long known of the inadequacies of the CYA's mental
28 health care delivery system. A CYA Mental Health Strategic Plan Committee met in

1 March 2000 and acknowledged that "[t]he current array of treatment programs do not
2 meet the mental health needs of a significant portion of the YA population." In February
3 2001, the Chief of the Health Care Services Division wrote to Mr. Harper stating that
4 CYA does not have enough psychologists or psychiatrists. He reported that 70 additional
5 psychology positions must be filled to bring the CYA up to national standards.

6 70. Despite his awareness of these systemic illegalities, defendant Harper has
7 failed to develop meaningful policy guidelines regarding the provision of mental health
8 care, including quality control procedures such as physician peer review, quality
9 assurance and death reviews. Even when serious deficiencies are identified, there is
10 inadequate follow-up to correct them. Defendant Harper has also failed to ensure that the
11 policies now in place are implemented and that qualified staff are hired in adequate
12 numbers and are trained to follow the policies. The CYA's failure to treat mentally ill
13 wards is dangerous to them and to all Californians. According to staff at the Fred C.
14 Nelles Youth Correctional Facility, "many of our most dangerous and dysfunctional
15 wards are simply released back into the community when they reach their maximum
16 confinement, having received little to no psychological services." The "most dangerous
17 remain isolated... and become more and more dysfunctional due to the lack of healthy
18 interpersonal contact." (Budget Concept Paper, FY 2002-03.)

19 E. Programming/Rehabilitation

20 71. Under defendant Harper, the CYA does not provide wards with the general
21 treatment, programming, and rehabilitation to which they are entitled under California
22 law.

23 (a) *Education*

24 72. Wards do not receive adequate access to education.

25 73. For years, the CYA administration has been aware of chronic, serious
26 deficiencies in the CYA education system and has not corrected them. Wards typically
27 receive only a fraction of the educational program to which they are legally entitled, the
28 work they receive does not track their high school graduation plan, and they often are not

1 given credit for work completed while in segregation. Wards are required to have a high
2 school graduation plan, but the CYA's educational services often fail to provide the
3 classes wards need to graduate from high school.

4 74. California Education Code section 46141 requires 240 minutes of education
5 per student per day. The CYA does not provide students with this statutory requirement.
6 For example, in fiscal year 2000-01, wards at Ventura Youth Correctional Facility
7 received "only 54% of their assigned educational programming" and an average of 644
8 classes were cancelled each month. (Office of the Inspector General, Management
9 Review Audit, Ventura Youth Correctional Facility, June 2002.) Paso Robles wards who
10 participate in the substance abuse program are prohibited from going to school. Wards in
11 school at O.H. Close Youth Correctional Facility were held back from school to act as
12 janitors on their living units.

13 75. There are several reasons for the CYA's failure to meet legal educational
14 requirements. First, the CYA does not have enough teachers. A CYA teachers' group
15 stated in 2002 that "the problem of under-staffing, insufficient training, and lack of
16 adequate classroom space still exists as it did in 1990," when the CYA was successfully
17 sued over its failure to provide the statutorily required special education to wards.
18 (Committee of Concerned Educators of Northern California Youth Authority and the
19 California State Employee Association - SEIU Local 1000, The Matthews Report, p. 7.)
20 The report continued, "[c]lasses are closed due to chronic under-staffing," among other
21 reasons, and "[m]inutes of direct instruction in appropriate classroom settings have
22 decreased, due to the department's insistence on forcing their faculty out onto crowded,
23 dangerous living units each day to pass packets of materials through cracks in cell doors."
24 Despite serious staffing shortages, the CYA took steps in March 2002 to lay off 91
25 temporary and part-time staff, 40 of whom provided special education services.

26 76. Second, substitute teachers are either nonexistent or present in such
27 inadequate numbers that classes are often simply cancelled when the regular teacher is
28 unavailable.

1 77. Third, students on temporary detention, lockup and Special Management
2 Units are denied the educational services required by law. For example, the federal
3 Department of Education found in 2002 that non-English-speaking wards in the CYA are
4 often not provided with educational services during lockdown. (Letter from Director
5 Stefan Rosenzweig to CYA Superintendent, Education Services Branch, of February 1,
6 2002.) Wards on "restricted program" or segregation do not get their legally mandated
7 special education services. (California Department of Education Compliance Report # I-
8 1079-00/01, September 14, 2001.)

9 78. Not only does the CYA fail to provide students with the quantity of general
10 educational services required by law, the CYA does not provide statutorily prescribed
11 special education services, such as tutors or special education classes. Wards with
12 disabilities are not tested, they are not provided with necessary behavior assessments and
13 support, and the CYA does not have adequate educational psychologists to provide
14 necessary services. Conversely, some wards receive schoolwork that is not challenging,
15 is redundant and is inappropriate for their skill level.

16 79. Approximately 34 percent of CYA's high school population, or 1,700
17 wards, receive special education. (California Department of Education Compliance
18 Report # I-1079-00/01, September 14, 2001.) These students do not receive all of their
19 required Individual Education Plan (IEP) services, in large part because special education
20 is even more severely understaffed than regular education programming. For example, in
21 June 2002, wards were provided with only 208 hours of Special Day Classes at Dewitt
22 Nelson High School, although their IEPs called for 350; at N.A. Chaderjian, only 1,249
23 hours of Special Day Classes were provided, despite wards' need for 1,412; at Johanna
24 Boss High School, only 3,556 hours were provided, despite wards' need for 4,183; at
25 Marie C. Romero High School, only 1,472 hours were provided, despite wards' need for
26 2,439; at Mary B. Perry High School, only 968 hours were provided, despite wards' need
27 for 1,148; at Lyle Egan High School, only 1,937 hours were provided, despite wards'
28 need for 2,235. In sum, in just one month, wards at these CYA high schools were not

1 provided with thousands of hours of special education classes legally required by their
2 IEPs. Moreover, as discussed above in the section on Segregation, wards on restricted
3 programming are regularly denied required special education services.

4 80. Wards are frequently required, as a condition for parole, to obtain a General
5 Education Degree (GED) and/or high school diploma. Wards who are prevented from
6 meeting these goals due to lack of educational opportunities have decreased chances of
7 being released on parole, and may have to "max out" their time at CYA, receiving a
8 dishonorable discharge. This violation of wards' rights to education requires California
9 taxpayers to pay additional, unnecessary funds to keep them in custody.

10 81. The federal Department of Education Office for Civil Rights (OCR) found
11 extensive deficiencies in the CYA's educational system for non-English speaking wards
12 in 2002.¹ The OCR "considers these problems to be major and of serious concern."
13 (Letter from Director Stefan Rosenzweig to CYA Superintendent, Education Services
14 Branch, of February 1, 2002.) As a general matter, the CYA "is not providing the
15 instruction and services called for in its plan to teach students English and provide them
16 an equal opportunity to access the core curriculum." Other deficiencies include the
17 following: the CYA "does not have an adequate system for ensuring that the program for
18 [English learner] students is fully and appropriately implemented at all sites"; the CYA
19 "has no ability to collect, access, track and review system-wide data" on these students; at
20 many schools, staff do not place English learners in the appropriate classes; and most
21 CYA teachers who teach English learners "do not have the certification or training
22 necessary to meet the needs of those students," in part because the CYA does not keep
23 accurate records of such certification and training. Many of these problems were also
24 found in the federal Department of Education's Office for Civil Rights compliance
25

26
27 ¹The CYA estimates that 13-14 percent of its non-graduate students are limited
28 English proficiency. (Letter from Director Stefan Rosenzweig to CYA Superintendent of
Education, December 30, 1999.)

1 review of the CYA in 1999. (Letter from Director Stefan Rosenzweig to CYA
2 Superintendent of Education, December 30, 1999.)

3 (b) *Substance abuse treatment*

4 82. Substance abuse treatment in the CYA is grossly inadequate. Three
5 quarters of all wards committed to the CYA have histories of drug use and 60 percent
6 (approximately 3,600 of the CYA's population of 6,000) have been identified as serious
7 substance abusers. (Budget Concept Paper, FY 2003-04.) However, the CYA does not
8 have adequate numbers of substance abuse treatment beds. As of April 2002, there are
9 approximately 998 "formal" treatment beds, with 889 wards on the waiting list, and 670
10 "informal" treatment beds, with 465 wards on the waiting list. "Informal" treatment is
11 defined to include programs that offer as little as eight hours of treatment over a three-
12 week period. (*Id.*)

13 83. Moreover, the substance abuse programs themselves are seriously deficient.
14 Staff running the programs have little specific training and supervision, and treatment is
15 provided only sporadically for wards on lockup or lockdown.

16 84. The failure to provide adequate or appropriate substance abuse treatment to
17 wards is costly to taxpayers: 40 percent of technical parole revocations of wards "had a
18 primary violation offense related to drugs. The cost of returning one of these wards to the
19 institution for a year is approximately \$43,700." (Budget Concept Paper, FY 2003-04.)

20 (c) *Sex offender treatment*

21 85. The CYA does not provide adequate treatment for convicted sex offenders.
22 The CYA admits it has an inadequate number of treatment beds for sex offenders and it
23 does not comply with Welfare and Institutions Code section 727.6, which requires sex
24 offender treatment for wards committed for sexually violent offenses. (Budget Concept
25 Paper, FY 2003-04.) As of April 2002, there are 783 wards in need of sex offender
26 treatment incarcerated in the CYA and only 169 specialized treatment beds. There are an
27 additional 137 "informal" sex offender treatment slots, but these programs are inadequate
28 and ineffective and are provided by untrained staff.

1 86. This has been a chronic problem in the CYA: as of March 2001, there were
2 1,102 identified sex offenders in CYA institutions, but only 312 in treatment beds.
3 (Budget Concept Paper, FY 2002-03.) As of December 1999, there were 1,052 sex
4 offenders and only 259 placed in treatment beds. (*Id.*)

5 87. As a result, the majority of sex offenders committed to the CYA are housed
6 in general population with no treatment at all. The CYA admits that "many of these
7 wards are released to the community without appropriate treatment interventions and
8 aftercare resources and are at greater risk of re-offending." (Budget Concept Paper, FY
9 2002-03).

10 88. In addition, sex offenders who cannot attend sex-offender programs ordered
11 by the Youthful Offender Parole Board due to lack of availability spend a longer time
12 incarcerated due to the CYA's failures to comply with the law.

13 (d) *Exercise*

14 89. Defendant Harper has failed to develop and implement policies and
15 procedures to ensure that wards under the CYA's care receive adequate opportunities to
16 exercise. As a result, the CYA does not provide adequate exercise programs to wards and
17 wards are confined in unhealthful, punitive conditions. Wards are regularly forced to
18 miss exercise programs if they attend school or church, or even if they shower. Wards on
19 lockup or lockdown status frequently have no access to exercise at all: the one hour per
20 day they are allowed to spend outside their rooms is typically spent in dog-kennel-type
21 cages.

22 (e) *Physical Facilities*

23 90. CYA's inadequate physical facilities create a punitive environment for
24 wards, render CYA's statutory duty of rehabilitation impossible, and put the health of
25 wards at unreasonable risk of harm. In many housing units, there are broken windows,
26 dirty vents, leaky roofs, cracked floor tiles, and inadequate plumbing. Wards often must
27 endure extreme temperatures. Often the water is turned off in wards' cells for up to four
28 hours at a time, leaving them unable to flush the toilet or to wash themselves.

1 91. Many of the cells are filthy, particularly rooms in lockup units or suicide-
2 watch rooms, where dried mucus, blood and/or feces on the walls is commonplace. The
3 CYA has failed to develop and implement the necessary policies and procedures to
4 ensure that its physical facilities are adequately maintained.

5 92. For example, in one CYA facility, an independent state inspector found that
6 maintenance was severely deficient and that with problems such as leaky roofs, holes in
7 ceilings, broken windows, and leaky pipes that had flooded a sidewalk area, the facility
8 had "deteriorated to an unacceptable level."

9 93. There are serious infirmities in the physical facilities used for mental health
10 diagnosis and treatment, including ward intake at reception centers and suicide watch
11 facilities.

12 (f) *Religion*

13 94. CYA wards are denied reasonable access to opportunities to exercise their
14 religion in violation of the California Constitution, Article I, section 4 (freedom of
15 religion) and Welfare and Institutions Code section 1705 (freedom of religion for CYA
16 wards). Defendant Harper admitted to systemic problems with wards' ability to access
17 religious programs in a Memorandum to the Secretary of the Youth and Adult
18 Correctional Agency dated July 10, 2001.

19 95. Four months after Mr. Harper wrote to the Secretary of YACA to describe
20 systemic problems with the CYA's delivery of religious services, the violations remained.
21 The pastoral delegation to Fred C. Nelles Youth Correctional Facilities found that wards
22 are often excluded from religious services as punishment. The CYA chaplains' group
23 stated that "staff restricts the numbers of wards who can attend church services in a
24 manner that is arbitrary and lacks anything to do with discipline or security issues."
25 (Memorandum from DaaiyAllah H. Fardam, President of the Youth Authority Chaplains,
26 to Mr. Harper, October 19, 2001.)

27 96. Wards at Fred C. Nelles Youth Correctional Facility in "lower phases"
28 (who are entitled to fewer privileges) are often precluded from any access to religious

1 services or programs. Other lower-phase wards in the CYA must often choose between
2 dayroom programming or religious programming.

3 F. Access to Courts & Redress of Grievances

4 97. The CYA fails to provide wards with an adequate grievance system.
5 Defendant Harper, as head of the CYA, is required to "establish and maintain a fair,
6 simple, and expeditious system for resolution of grievances of all persons committed to
7 the Youth Authority." (Welf. & Inst. Code § 1766.5.) In reality, the CYA's grievance
8 system is ineffectual and unfair.

9 98. Although both California law and CYA rules set forth a number of
10 requirements for the grievance system, in practice these requirements are frequently
11 disregarded by CYA staff. (See Welf. & Inst. Code § 1766.5; Cal. Code of Regs., tit. 15,
12 § 4085 *et seq.*) The result is that the CYA grievance system does not afford wards a fair
13 opportunity to pursue administrative remedies against the CYA. Because exhaustion of
14 administrative remedies is a requirement for wards who bring lawsuits against the CYA,
15 the lack of a legitimate grievance system effectively prohibits wards' access to the courts.

16 99. Wards are often denied the opportunity even to complete a grievance form.
17 Even when wards are permitted to submit grievances, they are largely ignored. Worse
18 yet, wards are often retaliated against for filing grievances about CYA staff members,
19 even though under California law, "[t]he system should provide for safeguards against
20 reprisals against any grievant." (Welf. & Inst. Code § 1766.5.)

21 100. For example, ward Michael Resendiz attempted to file a grievance for
22 excessive use of force by staff members at Southern Youth Correctional Reception Center
23 and Clinic. Staff refused to provide him with a grievance form. Three staff members
24 came to Michael shortly thereafter and promised to alter a behavior report written on him
25 if he refrained from filing a grievance against staff. Because Michael feared being sent
26 back to court or receiving a time add (an additional period of incarceration), he went
27 along with their scheme and declined to file a grievance.

28 101. In another example, ward Claudia Medina was given a serious "Level B"

1 write-up at Ventura Youth Correctional Facility for attempting to provide an attorney
2 with a blank grievance form.

3 102. Wards are also punished for filing "too many" grievances and are dissuaded
4 from doing so with the threat of a disciplinary write-up.

5 103. The Office of the Inspector General has found serious deficiencies in the
6 CYA grievance system. For example, the Inspector General found that "the quality and
7 completeness of the investigations conducted by the [Stark Youth Correctional Facility]
8 and by California Youth Authority's Internal Affairs Unit is suspect. There is evidence to
9 suggest that the management of the California Youth Authority may have failed to act
10 properly on some of the investigative results." At Preston Youth Correctional Facility, the
11 Inspector General found that "[t]he superintendent's performance is significantly out of
12 compliance with laws, regulations, or departmental policy, and immediate attention is
13 required to remedy the situation." An audit of Nelles Youth Correctional Facility
14 uncovered the fact that many cases are not fully investigated and that grievances are not
15 resolved in a timely manner: 50 percent of the grievances submitted in the four years
16 preceding the audit had not been resolved, and several of those unresolved grievances
17 were "potentially serious." Additionally, the Inspector General found that grievances
18 against CYA staff are not investigated in a timely manner, a violation of particular
19 concern in light of the one-year deadline for the CYA to take administrative action
20 against employees. The Nelles audit reflected that grievance documents are frequently
21 lost, stating "[t]he absence of a system to ensure accountability, combined with evidence
22 that grievances are in fact lost, raises the specter of possible staff abuse, such as staff
23 simply throwing away ward grievances."

24 104. The San Luis Obispo County Grand Jury found that wards at the lockup
25 unit at El Paso de Robles Youth Correctional Facility "had no grievance log and no
26 grievance clerk, and there was little evidence that any wards had initiated written
27 grievances while there." The Grand Jury found that "the grievance procedure there has
28 been emphatically disallowed by those in charge of the system." Wards informed Grand

1 Jury members that they did not file grievances because they feared retaliation. The
2 grievances clerks in other housing units lacked "adequate knowledge of the grievance
3 procedure to assure full access by the wards they are selected to serve."

4 105. An investigation by the Youth and Adult Correctional Agency found that
5 "due to inattention over the years and failure to monitor efficacy, the grievance system is
6 inconsistently applied and ineffective." (Institutions Operational Quality Assurance
7 Project, August 9-11, 2000, and September 6-8, 2000.)

8 106. In addition to his failure to provide wards with an adequate grievance
9 procedure, defendant Harper fails to provide adequate law library access and access to the
10 courts. Wards in the CYA are frequently denied access to the law library, or are
11 permitted to use it for an insufficient period of time. An outside arbitrator has concluded
12 that "[i]t seems quite clear that [Northern Youth Correctional Reception Center and
13 Clinic's] library is not operating properly."

14 G. Disability Discrimination

15 107. Wards in the CYA are discriminated against based on physical, sensory,
16 developmental, cognitive, mental, and learning disabilities, in violation of Government
17 Code sections 4450 and 11135 and Education Code sections 56000 *et seq.* Wards with
18 disabilities are denied access to CYA facilities, programs, services, and activities due to
19 their disabilities and face harassment and humiliation based on their disabilities. The
20 CYA has failed to develop adequate policies or procedures to ensure equal access to
21 programs, services, and activities and freedom from disability harassment.

22 108. The CYA admits that it violates the rights of wards with cognitive
23 disabilities:

24 [T]he Department does not operate special programs for individuals with
25 cognitive and intellectual impairments. Those that are cognitively or
26 intellectually impaired have difficulty adjusting to crowded dormitory
27 situations where noise levels are higher and sources of behavioral stimuli
28 are less controlled. More socially skilled and manipulative peers frequently
target them for exploitation. In the absence of adequate frustration
management and verbal skills, they have a tendency to engage in aggressive
behaviors, are often considered parole ineligible, and spend longer periods
in detention than their more intellectually and socially competent peers.

1 Establishment of behaviorally oriented treatment with a system of rewards
2 for accomplishments and successive approximations can be very effective
3 in working with intellectually impaired offenders. Such programs require
4 clinical supervision by trained mental health professionals. At this time,
5 Intensive Treatment Programs are not staffed or trained to effectively treat
6 and manage this population. A reduction in program beds with a
7 corresponding increase in staff/ward ratio will allow Intensive Treatment
8 Programs to "specialize" to meet the needs of unserved or underserved
9 mental health populations such as cognitively/intellectually impaired wards
10 and those requiring intensive psychiatric services.

11 (Budget Change Proposal Analysis, Fiscal Year 2002-03.) The CYA further admits that
12 "[d]evelopmentally disabled and cognitively impaired offenders are among those for
13 whom treatment services are inadequate." (Budget Concept Paper, FY 2000-01.)

14 109. In addition, wards with learning and other cognitive disabilities are not able
15 to participate in counseling groups or programs where the reading material is too difficult
16 for them. The inability to participate in such programs can and often does prevent these
17 wards from obtaining a higher "phase" classification and from making progress towards
18 their parole requirements. The CYA fails to provide learning disabled wards with the
19 necessary access to special educational programming, thereby impeding their academic
20 progress and often their chances of parole.

21 110. The CYA does not have a sufficient number of special education teachers
22 and tutors to assist wards with learning disabilities. Wards who show signs of learning
23 disabilities often are not tested and are refused special assistance from their teachers. The
24 Youth and Adult Correctional Agency's investigatory team found in 2000 that the CYA
25 does not meet the statutory requirements for Individual Education Plans: facilities were
26 not completing meaningful IEPs on time, and the resources to implement them were not
27 always available. (Institutions Operational Quality Assurance Project, August 9-11,
28 2000, and September 6-8, 2000.) The California Department of Education made similar
findings in 2001 with regard to wards held in segregation. (California Department of
Education Compliance Report # I-1079-00/01, September 14, 2001.)

111. Wards with physical and sensory disabilities, including deaf wards, are not
provided with readily accessible physical facilities and with reasonable modifications

1 necessary to allow them to participate in CYA programs, services, and activities. Deaf
2 and hard-of-hearing wards are not provided with equally effective communication and
3 equal access to ward privileges such as telephone use. The Youth and Adult Correctional
4 Agency's investigatory team found that "[s]taff members who deal with disabled wards
5 are untrained in the requirements of the ADA and appropriate accommodations for those
6 wards. Hearing-impaired wards, for example, were not provided a translator for a
7 significant program activity. The Team also observed that disabled wards were housed in
8 other special treatment units, with accommodations either missing or provided
9 inconsistently." (Institutions Operational Quality Assurance Project, August 9-11, 2000,
10 and September 6-8, 2000.)

11 112. Wards who are disabled due to mental illness also are discriminated against
12 within the CYA system. Through measures such as forced and inappropriate medication,
13 unnecessary confinement to suicide watches and camera rooms, inadequate therapy, and
14 placement on lockup facilities (Special Management Units) due to their mental illness, the
15 CYA deprives these wards of access to CYA programs, services, and activities equivalent
16 to what is available for non-disabled wards.

17 H. Sex Discrimination

18 113. Female wards in the CYA are denied equal access to education: far fewer
19 college level courses are offered to female wards than to male wards. As a result it takes
20 much longer for female wards to obtain college degrees. In addition, the Youth and Adult
21 Correctional Agency found that there is "a critical lack of vocational education
22 opportunities for female wards," and remarked that they are not equivalent to those
23 offered male wards. (Institutions Operational Quality Assurance Project, August 9-11,
24 2000, and September 6-8, 2000.)

25 **FIRST CAUSE OF ACTION: ILLEGAL ENDANGERMENT TO PHYSICAL**
26 **SAFETY OF WARDS**

27 114. Plaintiff realleges and incorporates by reference herein all of the allegations
28 contained in paragraphs 1 through 113, inclusive, as though they were fully set forth

1 herein.

2 115. Defendant uses public funds, in violation of Code of Civil Procedure
3 section 526a, to confine wards in unlawful conditions that put their physical safety at
4 unreasonable risk of harm. Defendant's illegal actions, which result in the unlawful
5 conditions, include, but are not limited to, the following:

6 (a) the continued acceptance of wards into the CYA when the CYA is unable to
7 provide for their physical safety, in violation of Welfare and Institution Code § 736 (CYA
8 shall only accept a ward "if it has adequate facilities to provide... care");

9 (b) the illegal use of excessive force against wards (see, for example, paragraphs
10 12-17 above), in violation of the California Constitution, art. I, §§ 1 (right to enjoy life,
11 liberty, and safety), 7 (right to due process), and 17 (no cruel or unusual punishment);
12 Penal Code §§ 147 (willful inhumanity or oppression toward prisoners), 149
13 (unnecessary assaults by peace officers), and 673 (ban on "cruel, corporal or unusual
14 punishment" and the "inflict[ion of] any treatment or allow[ance of] any lack of care
15 whatever which would injure or impair the health of the [ward]"); and Cal. Code of
16 Regs., tit. 15, §§ 4039 and 4040 (restrictions on use of force and chemical and
17 mechanical restraints);

18 (c) the illegal, punitive use of chemical restraints against wards (see, for example,
19 paragraphs 13-14 and 17 above), in violation of the California Constitution, art. I, §§ 1
20 (right to enjoy life, liberty, and safety), 7 (right to due process), and 17 (no cruel or
21 unusual punishment); Penal Code §§ 147 (willful inhumanity or oppression toward
22 prisoners), 149 (unnecessary assaults by peace officers), and 673 (ban on "cruel, corporal
23 or unusual punishment" and the "inflict[ion of] any treatment or allow[ance of] any lack
24 of care whatever which would injure or impair the health of the [ward]"); and Cal. Code
25 of Regs., tit. 15, §§ 4039 and 4040 (restrictions on use of force and chemical and
26 mechanical restraints);

27 (d) the illegal, punitive use of physical restraints (such as spit masks) against
28 wards (see, for example, paragraphs 14 and 16 above), in violation of the California

1 Constitution, art. I, §§ 1 (right to enjoy life, liberty, and safety), 7 (right to due process),
2 and 17 (no cruel or unusual punishment); Penal Code §§ 147 (willful inhumanity or
3 oppression toward prisoners), 149 (unnecessary assaults by peace officers), and 673 (ban
4 on "cruel, corporal or unusual punishment" and the "inflict[ion of] any treatment or
5 allow[ance of] any lack of care whatever which would injure or impair the health of the
6 [ward]"); and Cal. Code of Regs., tit. 15, §§ 4039 and 4040 (restrictions on use of force
7 and chemical and mechanical restraints);

8 (e) the failure to protect wards from known risk of harm from other wards,
9 including gang violence (see, for example, paragraphs 18-24 and 41 above), in violation
10 of the California Constitution, art. I, §§ 1 (right to enjoy life, liberty, and safety), 7 (right
11 to due process), and 17 (no cruel or unusual punishment); Penal Code §§ 147 (willful
12 inhumanity or oppression toward prisoners) and 673 (ban on "cruel, corporal or unusual
13 punishment" and the "inflict[ion of] any treatment or allow[ance of] any lack of care
14 whatever which would injure or impair the health of the [ward]"); and

15 (f) the failure to protect wards from known risk of sexual assault from other wards
16 (see, for example, paragraphs 19 and 20 above), in violation of the California
17 Constitution, art. I, §§ 1 (right to enjoy life, liberty, and safety), 7 (right to due process),
18 and 17 (no cruel or unusual punishment); Penal Code §§ 147 (willful inhumanity or
19 oppression toward prisoners) and 673 (ban on "cruel, corporal or unusual punishment"
20 and the "inflict[ion of] any treatment or allow[ance of] any lack of care whatever which
21 would injure or impair the health of the [ward]").

22 **SECOND CAUSE OF ACTION: ILLEGAL CONDITIONS OF SEGREGATION**

23 116. Plaintiff realleges and incorporates by reference herein all of the allegations
24 contained in paragraphs 1 through 113, inclusive, as though they were fully set forth
25 herein.

26 117. Defendant uses public funds, in violation of Code of Civil Procedure
27 section 526a, to confine wards in unlawful conditions of segregation that put their
28 physical safety at unreasonable risk of harm. Defendant's illegal actions, which result in

1 the unlawful conditions, include, but are not limited to, the following:

2 (a) the continued acceptance of wards into the CYA for whom the CYA is unable
3 to provide legal conditions of segregation, in violation of Welfare and Institution Code §
4 736 (CYA shall only accept a ward "if it has adequate facilities to provide... care");

5 (b) the illegal, unsafe, and unhygienic physical conditions of segregation facilities
6 (see, for example, paragraphs 26, 27, and 41 above), in violation of the California
7 Constitution, art. I, §§ 1 (right to enjoy life, liberty, and safety), 7 (right to due process),
8 and 17 (no cruel or unusual punishment); and Penal Code § 673 (ban on "cruel, corporal
9 or unusual punishment" and the "inflict[ion of] any treatment or allow[ance of] any lack
10 of care whatever which would injure or impair the health of the [ward]");

11 (c) inadequate and dangerously prepared food provided in segregation facilities,
12 including "blender meals," inadequate rations, and undercooked food (see, for example,
13 paragraph 27 above), in violation of the California Constitution, art. I, §§ 1 (right to
14 enjoy life, liberty, and safety), 7 (right to due process), and 17 (no cruel or unusual
15 punishment); and Penal Code § 673 (ban on "cruel, corporal or unusual punishment" and
16 the "inflict[ion of] any treatment or allow[ance of] any lack of care whatever which
17 would injure or impair the health of the [ward]"); and Cal. Code of Regs., tit. 15, § 4125
18 (nutritionally adequate and acceptable diet required);

19 (d) the illegal denial of reading material and television and radio access in
20 segregation facilities (see, for example, paragraphs 28 and 34 above), in violation of the
21 California Constitution, art. I, §§ 7 (right to due process and to equal protection of the
22 law) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on "cruel, corporal
23 or unusual punishment");

24 (e) the illegal denial of telephone calls to their families for wards housed in
25 segregation facilities (see, for example, paragraphs 28 and 34 above), in violation of the
26 California Constitution, art. I, §§ 7 (right to due process and to equal protection of the
27 law) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on "cruel, corporal
28 or unusual punishment"); and Cal. Code of Regs., tit. 15, § 4699 (wards shall be allowed

1 to make "periodic telephone calls");

2 (f) the illegal denial of visits for wards who are housed in segregation facilities
3 (see, for example, paragraphs 28 and 34 above), in violation of the California
4 Constitution, art. I, §§ 7 (right to due process and to equal protection of the law) and 17
5 (no cruel or unusual punishment); Penal Code § 673 (ban on "cruel, corporal or unusual
6 punishment"); and Cal. Code of Regs., tit. 15, § 4696 (visiting shall take place at least
7 once a week and shall not be restricted as a disciplinary measure);

8 (g) the illegal denial of exercise for wards who are housed in segregation facilities,
9 who are often given their "exercise" in cages (see, for example, paragraphs 28, 34, 41,
10 and 42 above), in violation of the California Constitution, art. I, §§ 7 (right to due process
11 and to equal protection of the law) and 17 (no cruel or unusual punishment); Penal Code
12 § 673 (ban on "cruel, corporal or unusual punishment" and the "inflict[ion of] any
13 treatment or allow[ance of] any lack of care whatever which would injure or impair the
14 health of the [ward]");

15 (h) the dangerous overuse of extreme isolation for wards in segregation facilities,
16 including but not limited to wards with mental illness (see, for example, paragraphs 28,
17 31-34, and 41 above), in violation of the California Constitution, art. I, §§ 1 (right to
18 enjoy life, liberty, and safety) and 17 (no cruel or unusual punishment); Penal Code § 673
19 (ban on "cruel, corporal or unusual punishment" and the "inflict[ion of] any treatment or
20 allow[ance of] any lack of care whatever which would injure or impair the health of the
21 [ward]");

22 (i) the illegal denial of access to education, including but not limited to special
23 education, to wards housed in segregation facilities (see, for example, paragraphs 28-29,
24 34, and 41 above), in violation of the California Constitution, art. I, § 10 (right to
25 education); and Welf. & Inst. Code §§ 1120 *et seq.* (right to education for CYA wards);

26 (j) the illegal denial of access to religious programming to wards housed in
27 segregation facilities (see, for example, paragraphs 29 and 34 above), in violation of the
28 California Constitution, art. I, §§ 4 (freedom of religion) and 7 (right to due process and

1 to equal protection of the law); and Welf. & Inst. Code § 1705 (freedom of religion for
2 CYA wards);

3 (k) the practice of placing wards in segregation without due process of law,
4 including inconsistent segregation placement criteria; denial of impartial decisionmakers,
5 timely hearings, notice of the reason for the segregation placement, the opportunity to
6 present their cases and witnesses and to question witnesses testifying against them; and
7 denial of the right to challenge their placement in segregation altogether (see, for
8 example, paragraphs 34 and 36-38 above), in violation of the California Constitution, art.
9 I, §§ 1 (right to enjoy life, liberty, and safety), 7 (right to due process and to equal
10 protection of the law), and 17 (no cruel or unusual punishment); Penal Code § 673 (ban
11 on “cruel, corporal or unusual punishment” and the “inflict[ion of] any treatment or
12 allow[ance of] any lack of care whatever which would injure or impair the health of the
13 [ward]”); and Cal. Code of Regs., tit. 15, §§ 4630 and 4635(a) and 4637 (procedural due
14 process requirements for discipline and segregation);

15 (l) the practice of extending administrative lockdowns beyond the time the reason
16 for the lockdown exists (see, for example, paragraphs 39 and 40 above), in violation of
17 the California Constitution, art. I, §§ 1 (right to enjoy life, liberty, and safety), 7 (right to
18 due process and to equal protection of the law), and 17 (no cruel or unusual punishment);
19 Penal Code § 673 (ban on “cruel, corporal or unusual punishment” and the “inflict[ion of]
20 any treatment or allow[ance of] any lack of care whatever which would injure or impair
21 the health of the [ward]”); and Cal. Code of Regs., tit. 15, §§ 4630 and 4635(a) and 4637
22 (procedural due process requirements for discipline and segregation); and

23 (m) the practice of placing wards and groups of wards on administrative lockdown
24 based on racial/ethnic status and purported group affiliation rather than the actual level of
25 danger purportedly posed by individual wards (see, for example, paragraph 39 above), in
26 violation of the California Constitution, art. I, § 7 (right to due process and to equal
27 protection of the law); and Cal. Code of Regs., tit. 15, §§ 4630 and 4635(a) and 4637
28 (procedural due process requirements for discipline and segregation).

1 **THIRD CAUSE OF ACTION: ILLEGAL CONDITIONS OF MEDICAL CARE**

2 118. Plaintiff realleges and incorporates by reference herein all of the allegations
3 contained in paragraphs 1 through 113, inclusive, as though they were fully set forth
4 herein.

5 119. Defendant uses public funds, in violation of Code of Civil Procedure
6 section 526a, to provide wards with unlawfully inadequate medical care that puts their
7 physical safety at unreasonable risk of harm. Defendant's illegal actions, which result in
8 the unlawful conditions, include, but are not limited to, the following:

9 (a) the continued acceptance of wards into the CYA for whom the CYA is unable
10 to provide medical treatment, in violation of Welfare and Institution Code § 736 (CYA
11 shall only accept a ward "if it has adequate facilities to provide... care");

12 (b) the failure to provide adequate medical staff, including doctors, nurses, and
13 Medical Technical Assistants (see, for example, paragraphs 44-46 and 53), in violation of
14 the California Constitution, art. I, §§ 7 (right to due process) and 17 (no cruel or unusual
15 punishment); Penal Code § 673 (ban on "cruel, corporal or unusual punishment" and the
16 "inflict[ion of] any treatment or allow[ance of] any lack of care whatever which would
17 injure or impair the health of the [ward]"); and Cal. Code of Regs., tit. 15, §§ 4611 (right
18 to medical care on intake) and 4730 *et seq.* (right to medical care);

19 (c) the failure to provide medical staff with adequate training and supervision (see,
20 for example, paragraph 47), in violation of the California Constitution, art. I, §§ 7 (right
21 to due process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on
22 "cruel, corporal or unusual punishment" and the "inflict[ion of] any treatment or
23 allow[ance of] any lack of care whatever which would injure or impair the health of the
24 [ward]"); and Cal. Code of Regs., tit. 15, §§ 4611 (right to medical care on intake) and
25 4730 *et seq.* (right to medical care);

26 (d) the failure to provide timely medical treatment, diagnosis, referrals to
27 specialists, appointments with specialists, and testing (see, for example, paragraphs 48-
28 49), in violation of the California Constitution, art. I, §§ 7 (right to due process) and 17

1 (no cruel or unusual punishment); Penal Code § 673 (ban on “cruel, corporal or unusual
2 punishment” and the “inflict[ion of] any treatment or allow[ance of] any lack of care
3 whatever which would injure or impair the health of the [ward]”); and Cal. Code of
4 Regs., tit. 15, §§ 4611 (right to medical care on intake) and 4730 *et seq.* (right to medical
5 care);

6 (e) the failure to provide adequate administration and delivery of prescribed
7 medications (see, for example, paragraphs 50 and 53), in violation of the California
8 Constitution, art. I, §§ 7 (right to due process) and 17 (no cruel or unusual punishment);
9 Penal Code § 673 (ban on “cruel, corporal or unusual punishment” and the “inflict[ion of]
10 any treatment or allow[ance of] any lack of care whatever which would injure or impair
11 the health of the [ward]”); and Cal. Code of Regs., tit. 15, §§ 4611 (right to medical care
12 on intake) and 4730 *et seq.* (right to medical care);

13 (f) the failure to maintain organized and complete medical files (see, for example,
14 paragraph 51), in violation of the California Constitution, art. I, §§ 7 (right to due
15 process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on “cruel,
16 corporal or unusual punishment” and the “inflict[ion of] any treatment or allow[ance of]
17 any lack of care whatever which would injure or impair the health of the [ward]”); and
18 Cal. Code of Regs., tit. 15, §§ 4611 (right to medical care on intake) and 4730 *et seq.*
19 (right to medical care);

20 (g) the failure to screen wards properly on their arrival in the CYA system (see, for
21 example, paragraph 51), in violation of the California Constitution, art. I, §§ 7 (right to
22 due process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on “cruel,
23 corporal or unusual punishment” and the “inflict[ion of] any treatment or allow[ance of]
24 any lack of care whatever which would injure or impair the health of the [ward]”); and
25 Cal. Code of Regs., tit. 15, §§ 4611 (right to medical care on intake) and 4730 *et seq.*
26 (right to medical care);

27 (h) the failure to track consents for medication (see, for example, paragraphs 51
28 and 53), in violation of the California Constitution, art. I, §§ 7 (right to due process) and

1 17 (no cruel or unusual punishment); Penal Code § 673 (ban on “cruel, corporal or
2 unusual punishment” and the “inflict[ion of] any treatment or allow[ance of] any lack of
3 care whatever which would injure or impair the health of the [ward]”); Welf. & Inst.
4 Code § 1755.3 (medical consent); and Cal. Code of Regs., tit. 15, §§ 4611 (right to
5 medical care on intake) and 4730 *et seq.* (right to medical care);

6 (i) the failure to provide adequate emergency medical treatment, including but not
7 limited to the inappropriate placement of custody concerns over emergency medical care
8 (see, for example, paragraph 52), in violation of the California Constitution, art. I, §§ 7
9 (right to due process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on
10 “cruel, corporal or unusual punishment” and the “inflict[ion of] any treatment or
11 allow[ance of] any lack of care whatever which would injure or impair the health of the
12 [ward]”); and Cal. Code of Regs., tit. 15, §§ 4611 (right to medical care on intake) and
13 4730 *et seq.* (right to medical care); and

14 (j) the failure to provide quality control procedures such as physician peer review,
15 quality assurance, and death reviews (see, for example, paragraph 54), in violation of the
16 California Constitution, art. I, §§ 7 (right to due process) and 17 (no cruel or unusual
17 punishment); Penal Code § 673 (ban on “cruel, corporal or unusual punishment” and the
18 “inflict[ion of] any treatment or allow[ance of] any lack of care whatever which would
19 injure or impair the health of the [ward]”); and Cal. Code of Regs., tit. 15, §§ 4611 (right
20 to medical care on intake) and 4730 *et seq.* (right to medical care).

21 **FOURTH CAUSE OF ACTION: ILLEGAL CONDITIONS OF**
22 **MENTAL HEALTH CARE**

23 120. Plaintiff realleges and incorporates by reference herein all of the allegations
24 contained in paragraphs 1 through 113, inclusive, as though they were fully set forth
25 herein.

26 121. Defendant uses public funds, in violation of Code of Civil Procedure
27 section 526a, to provide wards with unlawfully inadequate mental health care that puts
28 their physical safety at unreasonable risk of harm. Defendant's illegal actions, which

1 result in the unlawful conditions, include, but are not limited to, the following:

2 (a) the continued acceptance of wards into the CYA for whom the CYA is unable
3 to provide mental health treatment, in violation of Welfare and Institution Code § 736
4 (CYA shall only accept a ward “if it has adequate facilities to provide... care”);

5 (b) the failure to provide adequate mental health care clinicians (see, for example,
6 paragraphs 58-59, 69), in violation of the California Constitution, art. I, §§ 7 (right to due
7 process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on “cruel,
8 corporal or unusual punishment” and the “inflict[ion of] any treatment or allow[ance of]
9 any lack of care whatever which would injure or impair the health of the [ward]”); Welf.
10 & Inst. Code § 1078 (mental health care training); Cal. Code of Regs., tit. 15, §§ 4730 *et*
11 *seq.* (right to medical care);

12 (c) the failure to provide adequate and timely evaluations of those wards the
13 YOPB seeks to retain in custody pursuant to Welfare & Institutions Code § 1800 (see, for
14 example, paragraph 60), making it impossible for the YOPB to fulfill the requirements of
15 Welfare & Institutions Code § 1800;

16 (d) the failure to provide an adequate number of mental health treatment beds (see,
17 for example, paragraph 61), in violation of the California Constitution, art. I, §§ 7 (right
18 to due process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on
19 “cruel, corporal or unusual punishment” and the “inflict[ion of] any treatment or
20 allow[ance of] any lack of care whatever which would injure or impair the health of the
21 [ward]”); Cal. Code of Regs., tit. 15, §§ 4730 *et seq.* (right to medical care);

22 (e) the failure to maintain organized and complete mental health files (see, for
23 example, paragraph 62), in violation of the California Constitution, art. I, §§ 7 (right to
24 due process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on “cruel,
25 corporal or unusual punishment” and the “inflict[ion of] any treatment or allow[ance of]
26 any lack of care whatever which would injure or impair the health of the [ward]”); Cal.
27 Code of Regs., tit. 15, §§ 4730 *et seq.* (right to medical care);

28 (f) the failure to provide timely mental health assessments and screenings (see, for

1 example, paragraph 62), in violation of the California Constitution, art. I, §§ 7 (right to
2 due process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on “cruel,
3 corporal or unusual punishment” and the “inflict[ion of] any treatment or allow[ance of]
4 any lack of care whatever which would injure or impair the health of the [ward]”); Cal.
5 Code of Regs., tit. 15, §§ 4730 *et seq.* (right to medical care);

6 (g) the failure to identify suicide risks (see, for example, paragraph 62), in
7 violation of the California Constitution, art. I, §§ 7 (right to due process) and 17 (no cruel
8 or unusual punishment); Penal Code § 673 (ban on “cruel, corporal or unusual
9 punishment” and the “inflict[ion of] any treatment or allow[ance of] any lack of care
10 whatever which would injure or impair the health of the [ward]”); Cal. Code of Regs., tit.
11 15, §§ 4730 *et seq.* (right to medical care);

12 (h) the failure to provide adequate administration and delivery of prescribed
13 medications (see, for example, paragraph 63), in violation of the California Constitution,
14 art. I, §§ 7 (right to due process) and 17 (no cruel or unusual punishment); Penal Code §
15 673 (ban on “cruel, corporal or unusual punishment” and the “inflict[ion of] any
16 treatment or allow[ance of] any lack of care whatever which would injure or impair the
17 health of the [ward]”); Welf. & Inst. Code §§ 1078 (mental health care training); Cal.
18 Code of Regs., tit. 15, §§ 4730 *et seq.* (right to medical care), 4733 (informed consent for
19 administration of psychotropic medications), 4746 (administration of psychotropic
20 medications), 4746.5 (voluntary psychotropic medication), and 4747 (involuntary
21 psychotropic medication);

22 (i) the failure to provide appropriate treatment for suicidal wards (see, for
23 example, paragraphs 64-67), in violation of the California Constitution, art. I, §§ 7 (right
24 to due process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on
25 “cruel, corporal or unusual punishment” and the “inflict[ion of] any treatment or
26 allow[ance of] any lack of care whatever which would injure or impair the health of the
27 [ward]”); Welf. & Inst. Code §§ 1078 (mental health care training); Cal. Code of Regs.,
28 tit. 15, §§ 4730 *et seq.* (right to medical care);

(j) the involuntarily medication of wards for without sufficient clinical justification and without appropriate consent (see, for example, paragraph 68), in violation of the California Constitution, art. I, §§ 7 (right to due process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on "cruel, corporal or unusual punishment" and the "inflict[ion of] any treatment or allow[ance of] any lack of care whatever which would injure or impair the health of the [ward]"); Welf. & Inst. Code §§ 1078 (mental health care training); Cal. Code of Regs., tit. 15, §§ 4730 *et seq.* (right to medical care), 4733 (informed consent for administration of psychotropic medications), 4746 (administration of psychotropic medications), 4746.5 (voluntary psychotropic medication), and 4747 (involuntary psychotropic medication); and

(k) the lack of quality control procedures such as physician peer review, quality assurance, and death reviews (see, for example, paragraph 70), in violation of the California Constitution, art. I, §§ 7 (right to due process) and 17 (no cruel or unusual punishment); Penal Code § 673 (ban on "cruel, corporal or unusual punishment" and the "inflict[ion of] any treatment or allow[ance of] any lack of care whatever which would injure or impair the health of the [ward]"); Cal. Code of Regs., tit. 15, §§ 4730 *et seq.* (right to medical care).

**FIFTH CAUSE OF ACTION: FAILURE TO FULFILL STATUTORY DUTIES OF
TREATMENT AND REHABILITATION**

122. Plaintiff realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 113, inclusive, as though they were fully set forth herein.

123. Defendant uses public funds, in violation of Code of Civil Procedure section 526a, to incarcerate wards without providing the statutorily required treatment and rehabilitation. Defendant's illegal actions, which result in the unlawful conditions, include, but are not limited to, the following:

(a) the illegal denial of education to wards, including but not limited to special education and instruction for non-English-speaking wards (see, for example, paragraphs

1 72-81 above), in violation of the California Constitution, art. I, § 7 (due process clause)
2 and generally (*Serrano v. Priest* (1977) 18 Cal.3d 728, 765 (right to education)); Ed.
3 Code §§ 46141 (minimum daily instruction time) and 56000 *et seq.* (special education
4 requirements); Welf. & Inst. Code § 736 (CYA shall only accept a ward “if it has
5 adequate facilities to provide. . . care”), 1004 (CYA must “provide for [wards’] care,
6 supervision, education, training, [and] employment... and promotion of their welfare),
7 1120 *et seq.* (right to education for CYA wards), and 1700 (CYA must substitute
8 “offender training and treatment” for “retributive punishment”);

9 (b) the failure to provide adequate substance abuse treatment for wards (see, for
10 example, paragraphs 82-84 above), in violation of the California Constitution, art. I, § 7
11 (due process clause); Welf. & Inst. Code §§ 736 (CYA shall only accept a ward “if it has
12 adequate facilities to provide... care”), 1004 (CYA must “provide for [wards’] care,
13 supervision, education, training, [and] employment... and promotion of their welfare), and
14 1700 (CYA must substitute “offender training and treatment” for “retributive
15 punishment”);

16 (c) the illegal denial of sex offender treatment for wards (see, for example,
17 paragraphs 85-88 above), in violation of the California Constitution, art. I, § 7 (due
18 process clause); Welf. & Inst. Code §§ 727.6 (mandatory sex offender treatment), 736
19 (CYA shall only accept a ward “if it has adequate facilities to provide... care”), 1004
20 (CYA must “provide for [wards’] care, supervision, education, training, [and]
21 employment... and promotion of their welfare), and 1700 (CYA must substitute “offender
22 training and treatment” for “retributive punishment”);

23 (d) the failure to provide exercise opportunities for wards (see, for example,
24 paragraph 89 above), in violation of the California Constitution, art. I, § 7 (due process
25 clause); Welf. & Inst. Code §§ 736 (CYA shall only accept a ward “if it has adequate
26 facilities to provide... care”), 1004 (CYA must “provide for [wards’] care, supervision,
27 education, training, [and] employment... and promotion of their welfare), and 1700 (CYA
28 must substitute “offender training and treatment” for “retributive punishment”);

1 (e) the failure to provide adequate physical facilities for wards' housing and
2 programming (see, for example, paragraphs 90-93 above), in violation of the California
3 Constitution, art. I, § 7 (due process clause); Welf. & Inst. Code §§ 736 (CYA shall only
4 accept a ward "if it has adequate facilities to provide... care"), 1004 (CYA must "provide
5 for [wards'] care, supervision, education, training, [and] employment... and promotion of
6 their welfare), and 1700 (CYA must substitute "offender training and treatment" for
7 "retributive punishment"); and

8 (f) the denial of opportunities for wards to practice religion (see, for example,
9 paragraphs 94-96 above), in violation of the California Constitution, art. I, §§ 4 (freedom
10 of religion) and 7 (due process clause); Welf. & Inst. Code §§ 736 (CYA shall only
11 accept a ward "if it has adequate facilities to provide... care"), 1004 (CYA must "provide
12 for [wards'] care, supervision, education, training, [and] employment... and promotion of
13 their welfare), 1700 (CYA must substitute "offender training and treatment" for
14 "retributive punishment"), and 1705 (freedom of religion for CYA wards).

15 **SIXTH CAUSE OF ACTION: ACCESS TO COURTS AND REDRESS OF**
16 **GRIEVANCES**

17 124. Plaintiff realleges and incorporates by reference herein all of the allegations
18 contained in paragraphs 1 through 113, inclusive, as though they were fully set forth
19 herein.

20 125. Defendant uses public funds, in violation of Code of Civil Procedure
21 section 526a, to incarcerate wards without providing the statutorily required grievance
22 procedures and access to courts. Defendant's illegal actions, which result in the unlawful
23 conditions, include, but are not limited to, the following:

24 (a) the continued acceptance of wards into the CYA for whom the CYA is unable
25 to provide legally adequate grievance procedures and access to courts, in violation of
26 Welfare and Institution Code § 736 (CYA shall only accept a ward "if it has adequate
27 facilities to provide . . . care");

28 (b) the practice of denying wards the opportunity to file grievances (see, for

example, paragraphs 98-100, 103-104), in violation of the California Constitution, art. I, §§ 3 (right to petition for redress of grievances) and 7 (due process clause); Welf. & Inst. Code § 1766.5 (CYA grievance procedure requirements); Cal. Code of Regs., tit. 15, §§ 4085 *et seq.* (grievance procedure), and 4131 (access to courts);

(c) the practice of ignoring wards' grievances and failing to provide a response (see, for example, paragraphs 98-99, 103), in violation of the California Constitution, art. I, §§ 3 (right to petition for redress of grievances) and 7 (due process clause); Welf. & Inst. Code § 1766.5 (CYA grievance procedure requirements); Cal. Code of Regs., tit. 15, §§ 4085 *et seq.* (grievance procedure), and 4131 (access to courts);

(d) the practice of retaliating against wards who file grievances (see, for example, paragraphs 99, 102, and 104), in violation of the California Constitution, art. I, §§ 3 (right to petition for redress of grievances) and 7 (due process clause); Welf. & Inst. Code § 1766.5 (CYA grievance procedure requirements); Cal. Code of Regs., tit. 15, §§ 4085 *et seq.* (grievance procedure), and 4131 (access to courts); and

(e) the practice of denying wards the opportunity to use a law library (see, for example, paragraph 106), in violation of the California Constitution, art. I, §§ 3 (right to petition for redress of grievances) and 7 (due process clause); Cal. Code of Regs., tit. 15, §§ 4131 (access to courts), 4132 (right to be informed of new court decisions), and 4701 (law library requirements).

SEVENTH CAUSE OF ACTION: DISABILITY DISCRIMINATION

126. Plaintiff realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 113, inclusive, as though they were fully set forth herein.

127. Defendant uses public funds illegally, in violation of Code of Civil Procedure section 526a, to discriminate against wards based on disability. The CYA's discriminatory practices include, but are not limited to, the following:

(a) the continued acceptance of wards into the CYA for whom the CYA is unable to provide non-discriminatory conditions, in violation of Welfare and Institution Code §

1 736 (CYA shall only accept a ward "if it has adequate facilities to provide. . . care");

2 (b) the denial of access to CYA programs, services, and activities due to wards'
3 disabilities (see, for example, paragraphs 107-112), in violation of Ed. Code §§ 56000 *et*
4 *seq.* and Gov. Code §§ 4450 and 11135;

5 (c) the harassment and humiliation of wards based on their disabilities (see, for
6 example, paragraphs 107, 108, and 112), in violation of Gov. Code §§ 4450 and 11135;

7 (d) the failure to protect wards with cognitive disabilities from exploitation by
8 other wards (see, for example, paragraph 108), in violation of Gov. Code §§ 4450 and
9 11135;

10 (e) the failure to provide accommodations for cognitively disabled prisoners so
11 that they are not considered ineligible for parole or spend longer in detention because of
12 their disabilities (see, for example, paragraph 108), in violation of Gov. Code §§ 4450
13 and 11135;

14 (f) the failure to provide statutorily required education services for wards with
15 learning and other cognitive disabilities (see, for example, 109-110), in violation of Ed.
16 Code §§ 56000 *et seq.* and Gov. Code §§ 4450 and 11135;

17 (g) the failure to provide wards with disabilities with readily accessible physical
18 facilities (see, for example, paragraph 111), in violation of Gov. Code §§ 4450 and
19 11135;

20 (h) the failure to provide wards who are deaf and hard of hearing with equally
21 effective communication (see, for example, paragraph 111), in violation of Gov. Code §§
22 4450 and 11135;

23 (i) the failure to provide wards who are deaf and hard of hearing with equal access
24 to ward privileges such as telephone use (see, for example, paragraph 111), in violation of
25 Gov. Code §§ 4450 and 11135; and

26 (j) the failure to provide wards whose mental illness constitutes a disability with
27 equal access to CYA programs, services, and activities (see, for example, paragraph 112),
28 in violation of Gov. Code §§ 4450 and 11135.

1 **EIGHTH CAUSE OF ACTION: SEX DISCRIMINATION**

2 128. Plaintiff realleges and incorporates by reference herein all of the allegations
3 contained in paragraphs 1 through 113, inclusive, as though they were fully set forth
4 herein.

5 129. Defendant uses public funds illegally, in violation of Code of Civil
6 Procedure section 526a, to discriminate against wards based on sex. The CYA's
7 discriminatory practices include, but are not limited to, the following:

8 (a) the continued acceptance of wards into the CYA for whom the CYA is unable
9 to provide non-discriminatory conditions, in violation of Welfare and Institution Code §
10 736 (CYA shall only accept a ward "if it has adequate facilities to provide . . . care");

11 (b) the denial of equal access for female wards to college level classes (see, for
12 example, paragraph 113), in violation of the California Constitution, art. I, §§ 7 (equal
13 protection and due process clauses), 8 (a person may not be disqualified from entering or
14 pursuing a business, profession, vocation or employment because of sex), and 31(a) (no
15 discrimination or preferential treatment on the basis of sex); Education Code § 221.5
16 (nondiscrimination in vocational and educational opportunities); and

17 (c) the denial of equal access for female wards to vocational classes (see, for
18 example, paragraph 113), in violation of the California Constitution, art. I, §§ 7 (equal
19 protection and due process clauses), 8 (a person may not be disqualified from entering or
20 pursuing a business, profession, vocation or employment because of sex), and 31(a) (no
21 discrimination or preferential treatment on the basis of sex); Education Code § 221.5
22 (nondiscrimination in vocational and educational opportunities).

23 **GENERAL ALLEGATIONS**

24 130. Plaintiff is without a plain, speedy and adequate remedy in the ordinary
25 course of the law to compel Defendant to enforce and comply with the legal requirements
26 described herein.

27 131. Plaintiff has suffered and will continue to suffer irreparable injury unless
28 and until this Court enjoins the Defendant from continuing his illegal conduct.

1 132. Defendant's illegal conduct is ongoing and threatens to be continued in the
2 future.

3 133. An actual controversy has arisen between Plaintiff and Defendant in that
4 Plaintiff contends Defendant operates, establishes, manages, conducts or maintains Youth
5 Authority facilities in violation of state law.

6 134. A judicial declaration is necessary so that the parties may ascertain their
7 rights in this controversy.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, the Plaintiff requests that this Court grant the following relief:

10 (b) Adjudge and declare that the acts, omissions, policies, and
11 conditions described above are unconstitutional and/or unlawful;

12 (c) Preliminarily and permanently enjoin Defendant, his agents,
13 employees and all persons acting in concert with them, from subjecting CYA wards to the
14 unconstitutional and/or unlawful acts, omissions, policies, and conditions described in the
15 paragraphs above;

16 (d) Award Plaintiff the costs of this suit, and reasonable attorneys' fees
17 and litigation expenses;

18 (e) Retain jurisdiction of this case until Defendant has fully complied
19 with the orders of this Court, and there is a reasonable assurance that Defendant will
20 continue to comply in the future absent continuing jurisdiction; and

21 (f) Award such other and further relief as the Court deems just and
22 proper.

23
24 Dated: September 17, 2003

25 PRISON LAW OFFICE

26
27 By Donald Specter
28 DONALD SPECTER
Attorney for Plaintiff

DECLARATION OF SERVICE BY MAIL

Case Name: Farrell vs. Harper

No. RG03079344

Superior Court of California, County of Alameda

I am employed in the County of Marin, California. I am over the age of 18 years and not a party to the within entitled cause: my business address is Prison Law Office, General Delivery, San Quentin, California 94964.

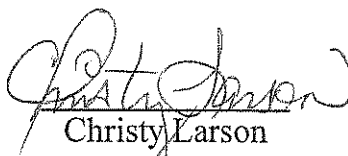
On, September 18, 2003, I served the attached:

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

in said cause, placing, or causing to be placed, a true copy thereof, enclosed in a sealed envelope **VIA Federal Express Over Night** addressed as follows:

Monica Anderson, DAG
Office of the Attorney General
1300 "I" Street, Suite 125
Sacramento, CA 95814-2919

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at San Rafael, California on September 18, 2003.


Christy Larson