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EASTERN DISTRICT OF CALIFORNIA  
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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHN B. CRUZ, JOSEPH Q. KRUKOWSKI, )  
RUBEN D. CRUZ, DOUG MURPHY, JOHN )  
COLE, TIM PENDERGAS, MANUEL BERTAIO, )  
ROGER D. HAUSMAN, CHARLES WILCOX, )  
REBECCA MONTERO-SALCEDO, ANTHONY )  
SHERWOOD, RICHARD RUIZ, and all )  
others similarly situated, )

Plaintiffs, )

v. )

COUNTY OF FRESNO, STEVE MAGARIAN, )  
as SHERIFF, )

Defendants. )

5  
No. F-93-4070 REC JFM

FIRST  
ANSWER TO ~~SECOND~~ AMENDED  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

Defendants COUNTY OF FRESNO and FRESNO COUNTY SHERIFF STEVE  
MAGARIAN answer the Second First Amended Complaint for Declaratory  
and Injunctive Relief in the above-captioned matter as follows:

1. Answering the allegations of collective paragraphs (1) of  
the Second Amended Complaint, defendants admit that plaintiffs'  
action pleads a class action on behalf of inmates in the Fresno  
County jail system, including the Main Jail, South Annex Jail, and  
North Annex Jail, to redress alleged deprivation of plaintiffs'  
rights, privileges and immunities arising under the Constitution

1 and laws of the United States and under 42 U.S.C. section 1983.

2 **OVERCROWDING ALLEGATIONS**

3 Defendants admit that at times relevant to this action the  
4 inmate population in the Fresno County jail system has exceeded  
5 available bed space. Defendants deny "overcrowding" in the jail  
6 system, and deny any violation of the Constitution or other  
7 federal laws.

8 Defendants admit that the South Annex Jail was originally  
9 rated at 511 inmates, but defendants allege that with the  
10 installation of additional beds and pursuant to Fresno County  
11 Superior Court order in Case Nos. 286040-1, 316580-0, and 308318-  
12 5, the rated capacity of the South Annex Jail is currently 854  
13 inmates.

14 Defendants admit that the third and fourth floors of the  
15 South Annex Jail are currently being remodeled, and such  
16 remodeling necessitated temporarily moving 434 inmates out of the  
17 third and fourth floors and into the County's Main Jail and North  
18 Annex Jail.

19 Answering the overcrowding allegations of paragraph 10 of the  
20 Second Amended Complaint, defendants again admit that at times  
21 relevant to this action the inmate population in the Fresno County  
22 jail system has exceeded available bed space. Defendants deny  
23 "overcrowding" in the jail system, and deny any violation of the  
24 Constitution or other federal laws.

25 Defendants admit that the California State Board of  
26 Corrections regularly documents and reports jail population  
27 information in the Fresno County jail system to the Fresno County  
28 Sheriff with a copy to County of Fresno officials.

1 Defendants admit that existing Fresno County Superior Court  
2 orders in Case Nos. 286040-1, 316580-0, and 308318-5 limit the  
3 population in the South Annex Jail to 854 inmates, and at any time  
4 that the average daily population exceeds 854 inmates, the County  
5 Sheriff is required to bring the names of inmates in specific  
6 categories before the Superior Court for considered release from  
7 custody.

8 All other overcrowding allegations contained in collective  
9 paragraphs (1) and paragraph (10) of the Second Amended Complaint  
10 are denied except to the extent such allegations are admitted  
11 herein. Defendants again deny "overcrowding" in the jail system,  
12 and deny any violation of the Constitution or other federal laws.

#### 13 LAW LIBRARY ALLEGATIONS

14 Defendants admit that the law library policy initially  
15 permits an inmate one hour per week access to that facility.  
16 Defendants allege that any inmate may request an additional block  
17 of time for specific reasons, and additional time may then be  
18 provided limited by the number of inmates requesting additional  
19 time and the library hours of operation.

20 Defendants allege that the current inventory of books and  
21 services in the jail law library is adequate.

22 All other law library allegations contained in collective  
23 paragraphs (1) of the Second Amended Complaint are denied except  
24 to the extent such allegations are admitted herein. Defendants  
25 deny any violation of the Constitution or other federal laws.

#### 26 INMATE EXERCISE ALLEGATIONS

27 Defendants admit that during the South Annex Jail remodeling  
28 project, the rooftop exercise area is not available. Defendants

1 allege that prior to commencement of remodeling, inmates in the  
2 South Annex Jail were allotted weekly one and one-half hours  
3 exercise time on the rooftop, and one and one-half hours exercise  
4 time in the second floor gymnasium. Defendants allege that during  
5 the remodeling, inmates in the South Annex Jail are now being  
6 allotted weekly four hours exercise time in the second floor  
7 gymnasium in two separate two hour blocks of time. Defendants  
8 allege that the second floor gymnasium offers table games, ping  
9 pong, and a weight machine.

10 Defendants deny that the second floor gymnasium is also used  
11 for religious services or other types of meetings.

12 Defendants allege that the exercise schedule and facilities  
13 for inmates in the South Annex Jail are adequate.

14 All other inmate exercise allegations in collective  
15 paragraphs (1) of the Second Amended Complaint are denied except  
16 to the extent such allegations are admitted herein. Defendants  
17 deny any violation of the Constitution or other federal laws.

18 2. Answering the allegations of paragraph (2) of the Second  
19 Amended Complaint, defendants admit that plaintiffs action pleads  
20 jurisdiction as stated.

21 3. Defendants admit the allegations of paragraphs 3, 4, 5  
22 and 8 of the Second Amended Complaint.

23 4. Answering the allegations of paragraph 6 of the Second  
24 Amended Complaint, defendants lack sufficient information or  
25 belief to either admit or deny such allegations and on that basis  
26 defendants deny such allegations of the Second Amended Complaint.

27 5. Answering the allegations of paragraph 7 of the Second  
28 Amended Complaint, defendants deny such allegations save and

1 except that defendants admit that separately and in concert they  
2 have acted under color of law in all matters of jail  
3 administration. Defendants deny any violation of the Constitution  
4 or other federal laws, and defendants deny that plaintiffs have  
5 been injured in any manner whatsoever.

6 6. Defendants deny the allegations of paragraph 9 of the  
7 Second Amended Complaint. Defendants deny any violation of the  
8 Constitution or other federal laws.

9 7. Answering the class action allegations of paragraphs 11  
10 through 18 of the Second Amended Complaint, defendants admit such  
11 allegations, save and except that defendants deny the allegations  
12 of paragraph 15 of the Second Amended Complaint.

13 **FIRST AFFIRMATIVE DEFENSE**

14 8. As a First Affirmative Defense, defendants allege that  
15 the Second Amended Complaint fails to state a claim upon which  
16 relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 9. As a Second Affirmative Defense, defendants allege that  
19 federal abstention applies to this action, and this Court should  
20 defer to continuing jurisdiction in this matter by the Fresno  
21 County Superior Court in Case Nos. 286040-1, 316580-0, and 308318-  
22 5.

23 **THIRD AFFIRMATIVE DEFENSE**

24 10. As a Third Affirmative Defense, defendants allege that  
25 they enjoy absolute and qualified immunity.

26 WHEREFORE, defendants pray for judgment in favor of  
27 defendants and for an order that plaintiffs and their attorneys  
28 take nothing by this action; and for such other relief as this

1 Court may deem just and proper.

2 Dated: March 9, 1993

3 PHILLIP S. CRONIN  
4 County Counsel

*J. Wesley Merritt*

5 By J. WESLEY MERRITT  
6 Chief Deputy County Counsel

7 A: Answer.Cruz

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