UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RAY CURTIS GRAHAM
Plaintiff

V.

1) **RISSIE OWENS**, Individually and in her Official Capacity as Chairperson of the Texas Board of Pardons and Paroles;

2) **STUART JENKINS**, Individually and in his Official Capacity as Director of the Parole Division of the Texas Department of Criminal Justice;

3) **JOSE ALISEDA JR.**;
4) **CHARLES AYCOCK**;
5) **CONRITH DAVIS**;
6) **JACKIE DENOYELLES**;
7) **LINDA GARCIA**; and
8) **JUANITA M. GONZALEZ**; Individually and in their respective Official Capacities as Members of the Texas Board of Pardons and Paroles;

9) **THOMAS G. FORDYCE**
10) **PAMELA D. FREEMAN**,
11) **TONY GARCIA**
12) **ELVIS HIGHTOWER**
13) **JAMES PAUL KIEL JR.**,
14) **EDGAR MORALES**,
15) **JAMES C. POLAND**,
16) **LYNN RUZICKA**,
17) **CHARLES SHIPMAN**,
18) **CHARLES C. SPEIER**, and
19) **HOWARD A. THRASHER SR.**; Individually and in their respective Official Capacities as Commissioners of the Board of the Texas Board of Pardons and Paroles;

CAUSE NO.A-08-CA-006-SS

20) **JAY PATZKE**, in his Official Capacity as Director of Region I of the Parole Division of the Texas Board of Pardons and Paroles;

21) **FRANK BECKER**, in his Official Capacity as a Supervisor of Parole Officers within Region I of the Parole Division of the Texas Board of Pardons and Paroles; and

22) **MARK FRYHOFF**, in his Official Capacity as a Parole Officer within Region I of the Parole Division of the Texas Board of Pardons and Paroles;

Defendants

PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE OF SAID COURT:

COMES NOW Ray Curtis Graham, Plaintiff in the above captioned and numbered cause and, pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and Title 42 U.S.C. Section 1983 and 1988; and in accordance with direction received from the Court, files this his First Amended Complaint, and in this connection would respectfully show unto the Court as follows:

I.

JURISDICTION

The Plaintiff's First Amended Complaint raises questions arising under the United States Constitution and federal law, and this Court therefore has "federal question" jurisdiction pursuant to Title 28, U.S.C. Section 1331, and Title 42, U.S.C. Section 1983. Further, the present Complaint includes claims that seek equitable declaratory and injunctive relief against the Defendants, over which this Court has jurisdiction under Title 28, U.S.C. Sections 1343(a) and 2201.

II.

PARTIES

(A)

Plaintiff RAY CURTIS GRAHAM ("Plaintiff") is a resident of the City of Athens, Henderson County, Texas. The Plaintiff is married, is presently on parole and under the supervision of the Parole Division of the Texas Board of Pardons and Paroles, and is projected to complete the period of his parole on February 2, 2013.

(B)

Defendant RISSIE OWENS ("Owens") is the Chairperson of the Board of Pardons and Paroles in and for the State of Texas. Defendant Owens is being sued individually, and in her Official Capacity as an Agent of the State of Texas, and has previously entered an appearance in this case.

(C)

Defendant STUART JENKINS ("Jenkins") is the Director of the Parole Division of the Texas Department of Criminal Justice in and for the State of Texas. Defendant Jenkins is being sued individually, and in his Official Capacity as an Agent of the State of Texas, and has previously entered an appearance in this case.

(D)

Defendants JOSE ALISEDA JR. ("Aliseda"), CHARLES AYCOCK ("Aycock"), CONRITH DAVIS ("Davis"), JACKIE DENOYELLES ("DeNoyelles"), LINDA GARCIA ("L. Garcia"), and JUANITA M. GONZALEZ ("Gonzalez"), are each Board Members of the Board of Pardons and Paroles in and for the State of Texas. These

Defendants are being sued both individually, and in their Official Capacities as Agents of the State of Texas, and have previously entered an appearance in this case.

(E)

Defendants THOMAS G. FORDYCE ("Fordyce"), PAMELA D. FREEMAN ("Freeman"), PAMELA D. FREEMAN ("Freeman"), TONY GARCIA ("T. Garcia"), JAMES PAUL KIEL JR. (Kiel"), EDGAR MORALES, ("Morales"), JAMES C. POLAND, ("Poland"), LYNN RUZICKA ("Ruzicka"), and CHARLES SHIPMAN (Shipman"), CHARLES C. SPEIER ("Speier"), are each Commissioners of the Board of Pardons and Paroles in and for the State of Texas. These Defendants are being sued only in their Official Capacities as Agents of the State of Texas, and have previously entered an appearance in this case.

(F)

Defendants ELVIS HIGHTOWER ("Hightower") and HOWARD A. THRASHER SR.(Thrasher"), are each Commissioners of the Board of Pardons and Paroles in and for the State of Texas. These Defendants are being sued both individually, and in their Official Capacities as Agents of the State of Texas, and have previously entered an appearance in this case.

(G)

Defendant JAY PATZKE ("Patzke") is the Director of Region I of the Parole Division of the Texas Department of Criminal Justice in and for the State of Texas. Defendant Patzke is being sued only in his Official Capacity as an Agent of the State of Texas, and has previously entered an appearance in this case.

(H)

Defendant FRANK BECKER ("Becker") is a Supervisor of Parole Officers within Region I of the Parole Division of the Texas Department of Criminal Justice in and for the State of Texas. Defendant Becker is being sued only in his Official Capacity as an Agent of the State of Texas. The Plaintiff expects that Defendant Becker will be served with process in this case within 10 days.

(I)

Defendant MARK FRYHOFF ("Fryhoff") is a Parole Officer within Region I of the Parole Division of the Texas Department of Criminal Justice in and for the State of Texas. Defendant Fryhoff is being sued only in his Official Capacity as an Agent of the State of Texas, and has previously entered an appearance in this case.

III.

(A)

FACTS

1.

Over 26 years ago, when the Plaintiff was twenty-two (22) years of age, he was arrested and indicted under Texas law for the offenses of Aggravated Rape ("Rape"), Burglary of a Habitation ("Burglary"), and Theft of a Motor Vehicle ("Theft"). As part of a plea agreement negotiated between Plaintiff and the State of Texas, the Plaintiff subsequently entered a plea of guilty to the Burglary and Theft offenses. In accordance with a plea agreement, the trial court accepted Plaintiff's pleas of guilty on the foregoing offenses; found the Plaintiff guilty of Burglary and Theft as alleged; sentenced the Plaintiff to a term of fifteen (15) years confinement in the Institutional Division of the

Texas Department of Criminal Justice (hereinafter "TDCJ"); and dismissed the Rape accusation against Plaintiff after entering a "plea in bar" to the Rape accusation. When imposing the negotiated term of Plaintiff's punishment, in 1982, the trial court at no time considered or made any finding of fact as to whether Plaintiff posed "a threat to society by reason of his lack of sexual control" in light of the alleged offense of Aggravated Rape that was dismissed.

2.

On or about January 9, 1985, Plaintiff was released on parole for the remainder of his original fifteen (15) year sentence. Upon Plaintiff's release on parole in January of 1985, Texas parole officials made no finding of fact as to whether Plaintiff prospectively posed "a threat to society by reason of his lack of sexual control," or whether Plaintiff, at that time, posed "a threat to society by reason of his lack of sexual control" in light of the alleged offense of Aggravated Rape that was dismissed in 1982. Upon Plaintiff's release from confinement in January of 1985, no special conditions of parole were imposed by Texas parole officials based on any finding that Plaintiff's was a "sex offender."

3.

On March 1, 1985, the Plaintiff was charged by information under Texas law for the felony offense of "Burglary of a Habitation" in Tarrant County, Texas. The Plaintiff entered a plea of guilty to that offense, was found guilty by the trial court, and was sentenced by the trial court to fifteen (15) years confinement. The parole of Plaintiff's prior sentences to confinement (for Burglary and Theft in 1982) was also revoked at this time. Neither the trial court in 1985 when sentencing Plaintiff to confinement for his conviction for "Burglary of a Habitation," nor Texas parole when revoking the parole of

Plaintiff's prior sentences to confinement (for Burglary and Theft in 1982), considered or made any findings of fact as to whether Plaintiff prospectively posed "a threat to society by reason of his lack of sexual control," or whether the Plaintiff, at that time, posed "a threat to society by reason of his lack of sexual control" in light of the alleged offense of Aggravated Rape that was dismissed in 1982.

4.

In January of 1988, Plaintiff was again released on parole by Texas parole authorities. At this time, no special conditions of parole, including but not limited to those associated with "sex offender" conditions, were imposed; and on this occasion Texas parole authorities made any findings of fact as to whether Plaintiff prospectively posed "a threat to society by reason of his lack of sexual control," or whether the Plaintiff, at that time, posed "a threat to society by reason of his lack of sexual control" in light of the alleged offense of Aggravated Rape that was dismissed in 1982.

5.

In December of 1988, the Plaintiff was indicted under Texas law by a Tarrant County Grand Jury for the offense of "Robbery by Threat" (Robbery"). On December 18, 1989, the Plaintiff entered a negotiated plea of guilty to the offense of Robbery in the 297th Judicial District Court of Tarrant County, Texas. In accordance with a plea agreement on that offense the trial court accepted Plaintiff's plea of guilty, found the Plaintiff guilty of the offense alleged in the Indictment, and sentenced the Plaintiff to a term of twenty (20) years confinement in the Institutional Division of the Texas Department of Criminal Justice. When imposing the negotiated terms of Plaintiff's punishment, the trial court at no time considered or made any finding of fact as to

whether Plaintiff prospectively posed "a threat to society by reason of his lack of sexual control," or whether the Plaintiff, at that time, posed "a threat to society by reason of his lack of sexual control" in light of the alleged offense of Aggravated Rape that was dismissed in 1982. The parole of Plaintiff's sentences to confinement in 1982 (for Burglary and Theft in 1982), as well as his sentence to confinement in 1989 (for Robbery), were revoked at this time. When revoking Plaintiff's parole on this occasion, Texas parole officials neither considered nor made any findings of fact as to whether Plaintiff prospectively posed "a threat to society by reason of his lack of sexual control," or whether the Plaintiff, at that time, posed "a threat to society by reason of his lack of sexual control" in light of the alleged offense of Aggravated Rape that was dismissed in 1982.

6.

In 1990 the Plaintiff was again released on parole. When releasing Plaintiff on parole at this time Texas parole officials neither considered nor made any findings of fact as to whether made any findings of fact as to whether Plaintiff prospectively posed "a threat to society by reason of his lack of sexual control" in light of the alleged offense of Aggravated Rape that was dismissed in 1982.

7.

On February 8, 1993, the Plaintiff was charged by information for the felony offense of "Attempt to Commit Murder" ("Attempted Murder") in Tarrant County, Texas. The Plaintiff entered a plea of guilty to that offense, was found guilty by the trial court, and was sentenced by the trial court to twenty (20) years confinement. The Plaintiff's paroles arising out of his prior convictions in 1982 and 1989 were also

revoked. Neither the trial court when sentencing Plaintiff to confinement on his conviction for Attempted Murder, nor Texas parole authorities when revoking Plaintiff's parole arising out of his prior Burglary, Theft and Robbery convictions, considered or made any findings of fact as to whether Plaintiff prospectively posed "a threat to society by reason of his lack of sexual control," or whether the Plaintiff, at that time, posed "a threat to society by reason of his lack of sexual control" in light of the alleged offense of Aggravated Rape that was dismissed in 1982.

8.

In 2003, following his incarceration for his Attempted Murder conviction, the Plaintiff was released on parole. When releasing Plaintiff on parole at that time, Texas parole officials made no finding of fact as to whether Plaintiff prospectively posed "a threat to society by reason of his lack of sexual control," or whether the Plaintiff, at that time, posed "a threat to society by reason of his lack of sexual control" in light of the alleged offense of Aggravated Rape that was dismissed in 1982. Upon Plaintiff's release on parole in 2003 four special conditions of parole were imposed by Texas parole officials. Respectively, conditions "S" and "SISP" placed Plaintiff on the Super Intensive Supervision Program (the highest and more restrictive level of supervision); condition "L" required Plaintiff to complete a substance abuse treatment program; and condition "V2" prohibited Plaintiff from having any contact with the victim. None of the foregoing special conditions of parole were imposed as the result of any accusation or suspicion that Plaintiff was a "sex offender."

9.

The special conditions of parole listed in the preceding paragraph were to expire on December 11, 2004. When December 11, 2004 arrived, however, Plaintiff was nonetheless required, without any justification being given by Defendants, to continue abiding by the identified special conditions and to continue on the SISP caseload.

10.

On December 22, 2005, Plaintiff filed a formal written request, in the form of a motion to the parole division, to be removed from the Super Intensive Supervision Program. TDCJ parole board and parole division summarily rejected the written request to remove Plaintiff from the SISP program and caseload.

11.

On July 1, 2003, the predecessor to Defendant Jenkins, Brian Collier, in his official capacity as Executive Director of the Texas Parole Division, issued a "Policy and Operating Procedure" ("Collier POP") concerning the implementation of what is officially referred to as "Condition X."[1] In the Collier POP, after emphasizing that "sex offenders have their own unique issues that [parole] officers are required to address on a case-by-case basis," Collier instructed parole officials under his institutional control that "any time special condition 'X' is in effect" certain special conditions of parole would be "mandatory." Under the Collier POP other special conditions could be imposed at the "discretion" of Supervising Parole Officers. Although revised and amended on November 7, 2005, the foregoing policy directive, in all material respects relevant to this suit, remains in effect.[2]

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[1] No. PD/POP-3.6.2 (July 1, 2003).
[2] No. PD/POP-3.6.2 (November 7, 2005).

12.

Since assuming his role as successor to Collier as Executive Director of the Texas Parole Division, Defendant Jenkins has adhered to the Collier POP in all respects; and by his acts and omissions, Defendant Jenkins has ratified the Collier POP as described above. No procedures designed to provide parolees with notice or an opportunity to be heard, prior to imposition of mandatory or discretionary components of Condition X, have ever been provided to Plaintiff by the Defendants herein.

13.

Under the Collier POP, "mandatory" components of Condition X require imposition of special parole conditions of parole that compel parolees to submit to "sex offender treatment," which consists of a condition that a parolee attend "psychological counseling until such time as the treatment provider, in conjunction with the Parole Division, determines that treatment is no longer required."

14.

On January 8, 2004, Defendant Owens, as Policy Board Chairman of the Texas Board of Pardons and Paroles, issued a policy directive ("Owens POL") that ratified in all relevant respects the policy directive issued by Defendant Collier on July 1, 2003.[3] The original Collier POP, which was re-issued by Defendant Collier on November 7, 2005, as well as two policy directives issued by Defendant Owens ratifying the Collier POP, remains in effect.[4] Like the "Owens POL," the Collier POP as ratified by Defendant Jenkins continues to authorize Supervising Parole Officers to impose at their own discretion, upon approval by a majority vote of a Parole Board Panel, "[o]ther special

[3] No. BPP-POL. 04-01.15 (Jan. 8, 2004).
[4] No. BPP-POL. 06-07.01 (July 20, 2006).

conditions deemed necessary for adequate supervision" of a parolee, as such "special conditions or "components are described within Condition X. It is the usual and customary practice of the Defendants Owens and Jenkins to permit and allow Supervising Parole Officers to unilaterally impose various restrictions on parolees, as described within Condition X, in the unfettered discretion of Supervising Parole Officers, without prior approval of a Parole Board Panel.

15.

On November 2, 2007, the Defendants provided written notice to Plaintiff stating that they were "considering" the imposition of Condition X as a special condition of Plaintiff's parole. The Defendants' notice, however, did not inform Plaintiff whether the Defendants' grounds for considering imposition of Condition X was based on an alleged prior conviction of Plaintiff for a "sex offense," or whether the Defendants' grounds for considering imposition of Condition X was based upon Defendants' belief that Plaintiff posed "a threat to society by reason of his lack of sexual control."[5] Instead, the Defendants' "notice" merely stated that:

> "On 6/03/1980 you were indicted for the aggravated rape of an adult female by threats and force. This offense occurred on 5/14/1980 and was disposed of by a plea bargain on 7/12/1982 for Burglary of a Habitation."

16.

The "notice" provided to Plaintiff by Defendants, referred to in the preceding paragraph, did not provide "a summary of the evidence" or any other means by which Plaintiff could discern the basis upon which intended to justify imposition of Condition X. Although the said "notice" informed Plaintiff that he had "the right ['no later than

[5] *Coleman v. Dretke*, 395 F.3d 216, 225 (5th Cir. 2004).

11/30/2007'] to submit a statement and any documentation on [his] behalf to a give a reason why sex offender conditions should not be imposed,"[6] and thus shifted the burden of persuasion to Plaintiff to globally establish that Condition X was not warranted on any possible basis; to the extent that Defendants were contemplating imposing Condition X based on a determination that Plaintiff posed "a threat to society by reason of his lack of sexual control," the Defendants' "notice" wholly failed to enable Plaintiff to "mold his argument to respond to the precise issues" which the Defendants regarded "as crucial" to their determination that Condition X would be imposed.[7]

17.

The information concerning Plaintiff's Indictment for Rape in 1980, as described in paragraph 15, supra, was transmitted to the Defendants as part of Plaintiff's "pen packet" when Plaintiff was imprisoned by Defendants following his conviction for Burglary of a Habitation in 1982. At the time that the Defendants served Plaintiff with notice (on November 2, 2007) of the fact that they were considering the imposition of Condition X, the Defendants had been in actual possession of the information concerning Plaintiff's prior Indictment for Rape continuously for at least 25 years.

18.

During the week immediately prior to serving Plaintiff with written notice that imposition of condition X was going to be considered by Defendants (November 2, 2007), a Parole Board panel that included Defendant DeNoyelles voted to amend the conditions of Plaintiff's parole to impose "Special Condition 0.33-Sex Offender

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[6] Doc. 6-5, at 3.
[7] *Cf., Matthews v. Eldridge*, 424 U.S. 319 345-346 (1976).

Evaluation."[8] This "Sex Offender Evaluation" condition, which consists of a psychological evaluation designed to determine whether a parolee poses a risk for commission of sexual offenses in the future, was requested by Defendant Fryoff in accordance with directions he had received from Defendant Latham. Defendants Latham and Fryhoff concluded that such an evaluation of Plaintiff was necessary because they had determined that Plaintiff did not have a prior "sex offense" conviction (and therefore did not meet the Defendants' "criteria" for "automatic" imposition of Condition X), and because they, the Defendants, were otherwise without any evidence whatsoever to support a request to impose of Condition X as a condition of Plaintiff's parole.[9]

19.

On November 27, 2007, as directed by Defendant Fryhoff, the Plaintiff submitted to the required "Sex Offender Evaluation." The Plaintiff's Sex Offender Evaluation was performed by one Dr. David Stebbins, who had been selected by the Defendants to perform the evaluation. The Plaintiff alleges that at the time that Plaintiff's evaluation was performed, Dr. Stebbins' principal source of income was derived from providing "Sex Offender Treatment" to Texas parolees who, as the result of his own evaluations, had been subjected to the imposition of Condition X by Defendants.

20.

On November 27, 2007, the same day that the Plaintiff's evaluation was performed, Dr. Stebbins rendered a written evaluation and transmitted a copy of his report to the Defendants. In accordance with Parole Division and Parole Board policy,

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[8] Doc. 6-6, at 2.

[9] *See, Transcript of Hearing on Plaintiff's App. For Preliminary Injunction*, 42 (Testimony of Defendant Latham)(noting that without the required evaluation the Defendants would not have had "any information" to support imposition of Condition X.)(hereinafter "*Hearing Transcript*").

the Defendants provided neither the Plaintiff nor his counsel with a copy of the Stebbins evaluation, notwithstanding the Defendants' knowledge that Stebbins's report, according to the Defendants' own lay-assessment, would provide the sole basis for a determination that imposition of Condition X was warranted. It was not until December 17, 2007, after lengthy unjustifiable delays and obstructions, that Plaintiff was able to secure a copy of Stebbins report directly from Stebbins himself.

21.

On November 30, 2007, the last day that Defendants permitted Plaintiff to submit a response to their "notice" dated November 2, 2007, the Plaintiff through his counsel submitted a written response to Defendants' "notice." Due to a policy established by the Defendants (of deliberately not providing a copy of the required evaluation to parolees), Plaintiff was compelled to submit his response without notice that the Stebbins evaluation had been completed, without knowledge of the contents of Stebbins' report, and without being provided with any opportunity to examine of "mold" his response to the conclusions reached by Stebbins.

22.

On December 14, 2007, Ms. "D. Torres," a "Program Specialist" for the Defendants, personally appeared before a Parole Board Panel which had been assigned the task of voting on whether imposition of Condition X would be imposed in Plaintiff's case. At that time Torres presented the Parole Board Panel, which included Defendants Hightower and Thrasher, with a written summary of Plaintiff's parole file that she had prepared, along with a copy of Defendant Fryhoff's request that Condition X be imposed as a condition of Plaintiff's parole. In addition to this material, Torres presented the

Parole Board Panel with the evaluation report rendered by Dr. Stebbins, as well as the lengthy response submitted by Plaintiff on November 30, 2007. The Plaintiff's response alone included a five-page single-spaced narrative of objections by Plaintiff's counsel; a 24-page draft of the legal claims that Plaintiff intended to file in the event that Condition X was imposed; a 5-page single-spaced evaluation report prepared by an independent clinical psychologist retained by Plaintiff; and a report containing the results of a polygraph examination of Plaintiff that had likewise been secured by Plaintiff.

23.

In the course of her personal presentation to the Parole Board Panel described in the preceding paragraph, Program Specialist Torres verbally "walked" the Parole Panel Members through the evidence she had proffered, presented argument in support of imposing Condition X against Plaintiff, and verbally answered questions raised by the Panel relating to both the nature of the request being made by Defendant Fryhoff and the evidence she had presented ostensibly justifying Fryhoff's request. The Plaintiff, in accordance with the Defendants' official policy, was not afforded an opportunity to personally appear, or respond to Torres' presentation, before the Parole Board Panel.[10]

24.

Although "clearly established law" applicable to the Due Process Clause of the Federal Constitution required that a "finding" be made that Plaintiff possessed "a threat to society by reason of his lack of sexual control" before Condition X could constitutionally be imposed,[11] official policy of the Defendants continues to authorize

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[10] *See, Transcript of Hearing on Plaintiff's App. For Preliminary Injunction*, 56 (Testimony of Defendant Latham).

[11] *Coleman v. Dretke, supra,* 395 F.3d 216 at 225.

imposition of Condition X against parolees in Texas without such a finding being made. On December 14, 2007, the Parole Board Panel consisting of Defendants Hightower and Thrasher did not consider or make such a finding, but instead, in accordance with the official policy of the policymaking Defendants named herein, merely noted that Plaintiff had been served with the "Coleman" notice described in paragraph 15, *supra*, and thereafter perfunctorily voted to impose Condition X without examining the contents of the "packet" presented by Program Specialist Torres including Plaintiff's written response.

25.

In light of the facts previously alleged herein, the Plaintiff further alleges that Defendants' decisions to impose or permit imposition of Condition X are governed by nothing more than a vacuous and arbitrary "broad-discretion" standard that is neither guided by, nor measured by, any evidentiary burden whatsoever. Furthermore, it is apparent that the Defendants named herein have neither adopted nor followed any policy or procedure which provides Texas parolees, including Plaintiff, with meaningful notice, or a fair opportunity to be heard, before Condition X is imposed.

26.

On December 17, 2007, Defendant Fryhoff served Plaintiff with a "Notice of Special Conditions" which formally notified Plaintiff that the Parole Board Panel had authorized imposition of Condition X and its various components. Pursuant to authority conferred by the Parole Board Panel's action, Defendant Fryhoff then ordered Plaintiff to enroll and participate in "a sex offender treatment program." As with any other condition

of parole, Plaintiff's failure to comply with this special condition or component of Condition X provides grounds for the immediate revocation of his parole.

(B)

Legal Claims

1.

The policies and procedures adopted and implemented by Defendants with respect to the imposition of Condition "X," and the manner in which the challenged component of Condition X has been imposed by Defendants, have deprived Plaintiff, and will continue to deprive Plaintiff, of his constitutional rights to procedural due process and "fundamental fairness" in violation of the Fourteenth Amendment to the United States Constitution.

2.

The moment after Plaintiff was released on parole, Plaintiff held a constitutionally protected liberty interest, subjected to deprivation only after provision of procedural due process, in being free from conditions of parole that would impose "atypical and significant hardships" on him in relation to the ordinary incidents of parole. In this connection, Plaintiff alleges that the Special Condition of parole imposed on Plaintiff by the Defendants, which requires Plaintiff to participate in a "Sex Offender Treatment Program," inflicts an "atypical and significant hardship" on Plaintiff in relation to the ordinary incidents of parole.

3.

The policies and procedures adopted and implemented by the Defendants arbitrarily deny and restrict Plaintiff's constitutionally protected liberty interests, and

operate to create a constitutionally intolerable risk of an erroneous deprivation of those liberty interests.

4.

Additional procedural safeguards could easily provide Plaintiff with meaningful notice, a meaningful opportunity to be heard, and knowledge of the factual basis upon which official action is to be undertaken, and such procedural safeguards would have greatly reduced the risk of an erroneous deprivation of Plaintiff's liberty interests.

5.

There is no legitimate governmental interest that outweighs the benefits of reducing the risk of an erroneous deprivation through use of the procedural safeguards stated in the preceding paragraph.

IV.

Relief Requested

The Plaintiff respectfully moves the Court to:

1) Enter an Order, in accordance with Rule 57 of the Federal Rules of Civil Procedure, that Plaintiff's request for a Declaratory Judgment, as described below, be "advanced" on the Court's calendar and set for a "speedy hearing";

2) After hearing and trial, if necessary, issue a Declaratory Judgment (under 28 U.S.C. §2201) finding that the process employed by the Defendants in the present case violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution because it failed to provide Plaintiff with the procedural safeguards of meaningful notice, a fair opportunity to be heard, or prior knowledge of the factual basis upon which an official discretionary decision was to be made, and because no finding

was made that Plaintiff possessed "a threat to society by reason of his lack of sexual control," before Condition X was imposed;

3) After hearing or trial, if necessary, award Plaintiff compensatory damages against Defendants Owens, Jenkins, Aliseda, Aycock, Davis, DeNoyelles, L. Garcia, Gonzalez, Hightower and Thrasher, jointly and severally, in their respective *Individual* Capacities, for their active participation in subjecting, or causing Plaintiff to be subjected, to deprivations of his federally protected constitutional rights, all in violation of *clearly established* law;

4) Issue a permanent injunction (under 28 U.S.C. §1343) prohibiting the Defendants, their agents, successors, assigns, or anyone acting in concert with them, from engaging in any actions intended for the purpose, or likely to cause, interference with the Plaintiff's liberty interests, as described herein, unless or until Plaintiff is first provided by the Defendants with:

a) Notice sufficient to enable Plaintiff to "mold" his responsive pleadings to the "precise issues" which the Defendants regard as crucial to their determination that Condition X should be imposed;

b) Knowledge of the evidentiary basis upon which an official discretionary decision to impose Condition X is to be made;

c) Both an opportunity to personally appear, with or without counsel, and a meaningful opportunity to be heard, at any hearing wherein imposition of Condition X is considered; and

c) An affirmative finding of fact, based on a preponderance of the evidence presented, that has determined Plaintiff poses "a threat to society by reason of his lack of sexual control."

6) Award Plaintiff nominal damages (under 42 U.S.C. §1983) for the violations of Plaintiff's *absolute* constitutional right to procedural due process alleged herein;

7) Award Plaintiff reasonable costs and reasonable attorney's fees (under 42 U.S.C. §1988) which are shown to have been necessarily incurred by Plaintiff in prosecuting this matter; and

8) Award Plaintiff any other relief to which he may show himself entitled.

Respectfully submitted,

Scott Pawgan*
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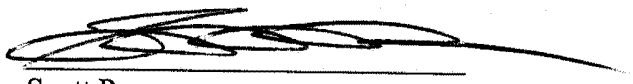
Of Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served upon opposing counsel and all parties in accordance with the Federal Rules of Civil Procedure on February 1, 2008.



Scott Pawgan