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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FILED
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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, OTIS SHAW, RAY STODERD, RAYMOND JOHNS, JOSEPH LONG, LESLIE RHOADES, GILBERT AVILES, PAUL DECASAS, STEVEN BAUTISTA, and all others similarly situated,

Plaintiffs,

v.

GRAY DAVIS, Governor; B. TIMOTHY GAGE, Director, Department of Finance; ROBERT PRESLEY, Secretary, California Youth and Corrections Agency; STEVEN CAMBRA, acting Director, Department of Corrections; SUSANN STEINBERG, M.D., Deputy Director for Health Care Services, DANIEL THOR, M.D., MTA COOPER, T. BUI, M.D., DONALD CALVO, M.D., SHANKAR RAMAN, M.D., BRIAN YEE, M.D., D. SMITH, M.D., M.A. VAN PELT, M.D., BHAVIESH SHAH M.D., ANDREW WONG, M.D., DANIEL

C 01 1351

COMPLAINT

CLASS ACTION

FULLER, M.D., MICHAEL SONGER, M.D. M. LEVIN, M.D., JOSEPH SIEGEL, M.D., SERGEANT DAVIS, EDGAR CASTILLO, M.D., K. NGUYEN, M.D., MOHAN SUNDARESON, M.D., DR. CLINTON, SANDFORD HEPPS, M.D., STEPHEN WYMAN, M.D., L. RICHNAK, M.D., RICHARD SANDHAM, M.D., and C. PARK, DDS.,

Defendants.

I. NATURE OF ACTION

1. Plaintiffs are nine California state prisoners who have been seriously injured because of defendants' deliberate indifference to their serious medical needs in violation of the cruel and unusual punishment clause of the U.S. Constitution. They bring this civil rights action on behalf of themselves and all other California prisoners because the medical care system operated by the California Department of Corrections (CDC) does not and, with current systems and resources, cannot properly care for and treat the prisoners in its custody. These unconstitutional conditions have caused widespread harm, including severe and unnecessary pain, injury and death. Such conditions also have caused prisoners with some disabilities not to have access to prison programs, services and activities in violation of the Americans with Disabilities Act (ADA) and § 504 of the Rehabilitation Act (§ 504). Because defendants know that plaintiffs and all other prisoners live under conditions creating an unreasonable risk of future harm but have not responded reasonably to this dire situation, they ask the Court to issue an

injunction compelling defendants to immediately furnish them with constitutionally adequate medical care.

II. JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiffs seek declaratory and injunctive relief under 28 U.S.C. §§ 1343, 2201 and 2202, 29 U.S.C. §794a and 42 U.S.C. §§ 1983 and 12101 et seq.

III. VENUE

3. Venue is proper under 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to plaintiffs' claims occurred within the Northern District of California.

IV. INTRADISTRICT ASSIGNMENT

4. Actions giving rise to venue of this case in the Northern District of California occurred in Marin and Monterey Counties. Accordingly, pursuant to Local Rule 3-2(c), this case arises in the San Francisco Division.

V. PARTIES

A. Plaintiffs

5. Plaintiff Marciano Plata is a prisoner incarcerated at Salinas Valley State Prison at Soledad, California with very limited ability to communicate in English. Defendants were deliberately indifferent to his serious medical needs by failing to provide adequate care and treatment for injuries he sustained as a result of several falls. In November 1997 Plata fell while working in the kitchen at Calipatria State Prison, injuring his

right knee, back and head. He was examined by a Medical Technical Assistant(MTA) who did not provide Plata with any treatment or a referral to a physician. Plata was forced to walk back to his prison cell without any assistance. After receiving no response to his requests to be examined at sick call, Plata fell at work again after his right knee buckled and was temporarily unable to move. Plata was taken to the infirmary where X-rays were taken, but no other treatment was provided. Plata continued to be denied medical care by MTAs even though he was experiencing headaches and dizzy spells. He fell a third time when his right knee buckled at work. He was lifted into a wheelchair by other inmates and taken to the infirmary where an MTA denied Plata medical care and treatment. On March 9, 1998 Plata was transferred to Salinas Valley State Prison where he had no access to sick call during lockdowns. Plata finally had an appointment with a physician, but language barriers prevented any meaningful communication. Without notice or any understanding of why he needed surgery or what was wrong with his knee, Plata was taken to a community hospital for surgery in October 1999. Upon his discharge from the hospital, Plata was returned to Salinas Valley where he was forced to walk unaided on his surgically repaired knee from the infirmary to his housing unit, causing him severe pain and inflammation of his foot. After surgery, plaintiff has not received any follow-up care or physical therapy at Salinas Valley. Plata informed MTA Cooper that he was not receiving any post-operative care and treatment, but no treatment was provided. As the Health Care Manager at Salinas Valley, Dr.

Thor failed to adequately supervise and train staff and put in place procedures so that Plata would receive medically appropriate care. As the Chief Medical Officer at Calipatria, Dr. Levin failed to adequately supervise and train staff and put in place procedures so that Plata would receive medically appropriate care.

6. Plaintiff Otis Shaw is a 52 year old prisoner at San Quentin suffering from end stage renal disease who has kidney dialysis three times a week. After receiving an operation to insert a synthetic graft into his arm to facilitate dialysis, he was returned to the prison infirmary for post-operative care. Two weeks later, Dr. T. Bui explicitly noted that his wound was still oozing, but made no attempt to determine why, and ordered that Shaw be moved. Shaw was placed in an unsanitary cell and did not receive further nursing care for the wound. Shaw had to clean the wound and change the bandages himself, which he could not adequately do because the wound's location on his upper arm made it impossible for him to use both hands. Ten days later, the still-oozing wound became infected, requiring him to be hospitalized for two weeks. As the Health Care Manager at San Quentin, Dr. Calvo failed to adequately supervise and train staff and put in place procedures so that Shaw would receive medically appropriate care.

7. Plaintiff Raymond Stoderd is a prisoner at California State Prison - Corcoran who suffers from AIDS and chronic pain syndrome. Stoderd experienced deliberate indifference to his serious medical needs because prison officials treated his pain

with methadone and then abruptly discontinued that treatment at least eight times, causing him to suffer withdrawal, an extremely painful condition which involves uncontrolled shaking, vomiting, insomnia, headaches, dizziness, hot flashes, sweats, chills and loss of appetite. Dr. Shankar Raman ordered abrupt discontinuation of Stoderd's methadone prescription several times despite knowing of both the risk of withdrawal symptoms and that Stoderd had previously suffered severe withdrawal symptoms. Through letters from Stoderd's counsel Dr. Brian Yee was made aware of the repeated abrupt discontinuations of Stoderd's methadone prescription. As the Health Care Manager at Corcoran Dr. Yee failed to adequately supervise and train staff and put in place procedures so that Stoderd would receive medically appropriate care.

8. Plaintiff Raymond Johns is a 76 year old condemned prisoner at San Quentin. He is blind in his left eye and going blind in his right eye due to cataracts. He has experienced deliberate indifference to his serious medical needs because Dr. D. Smith, a contract ophthalmogist, hired by San Quentin, ordered that surgery to remove Johns's cataracts not be performed until the vision in his right eye is also compromised, and Dr. Donald Calvo, the Health Care Manager at San Quentin, personally approved this decision. Dr. M.A. Van Pelt denied Johns's administrative appeal requesting the operation. Dr. Calvo is the Health Care Manager at San Quentin and as such is responsible for developing and implementing the policy preventing Johns from receiving adequate care. Dr. Calvo also failed to adequately

supervise and train staff and put in place procedures so that Johns would receive medically appropriate care.

9. Plaintiff Joseph Long is a 24 year old paraplegic who is a prisoner at Salinas Valley State Prison. Due to unreasonable delays in assessing and treating chronic bladder infections, he experienced unnecessary pain from urinary tract infections that also led to urinary incontinence. Dr. Bhaviesh Shah assessed that Long had a urinary tract infection, but did not ensure that Long was seen by a urologist during the almost five months that he was incarcerated at Wasco State Prison Reception Center. Dr. Andrew Wong prescribed antibiotics to treat Long's infections but did not refer him to a urologist, despite persistent signs of infection and despite the fact that he was initially referred to a urologist in June 2000 and that he was never seen by one. Dr. Daniel Fuller reviewed his case in response to a letter from Long's counsel but did not ensure that Long was seen by a urologist. Dr. Daniel Thor was made aware of Long's medical condition in late January 2001 based on a letter from Long's counsel. As the Chief Medical Officer at Salinas Valley State Prison Dr. Thor failed to ensure that Long receive adequate treatment and failed to adequately supervise and train staff and put in place procedures so that Long would receive medically appropriate care. As the Health Care Manager at Wasco State Prison, Dr. Michael Songer failed to adequately supervise and train staff and put in place procedures so that Long would receive medically appropriate care.

10. Plaintiff Leslie Rhoades is a prisoner at Calipatria State Prison. Mr. Rhoades has suffered from severe pain in his left hip since a car accident which occurred shortly before being arrested on October 7, 1996. This condition has made it extremely difficult for him to walk. Mr. Rhoades began his prison term on October 8, 1997. In December 1997, an x-ray was taken which was negative as to damage to the hip bone. But the hip was still found on examination to be subluxating, meaning it was popping in and out of the hip socket. On July 9, 1998, a CDC orthopedist, Dr. David Smith, stated that Mr. Rhoades' hip was dislocated, with the hip visibly popping in and out of the socket. Dr. Smith determined that Mr. Rhoades required a stabilization procedure or possibly a total hip replacement. Dr. Smith then began requesting on a nearly monthly basis beginning in July 1998 that an MRI scan be conducted to determine the appropriate course of treatment. Dr. Smith also continually requested that Mr. Rhoades be transferred to a CDC hospital facility for treatment.

11. While the MRI for Mr. Rhoades was eventually approved in December 1998, a December 21, 1999 "MRI was cancelled as per Watch Commander secondary to custody concerns during transportation." According to Dr. M. Levin, the MRI was not done at that time because the only experienced transportation team at the prison was unavailable that day. No MRI was scheduled during the next six months. Finally, on June 25, 1999, Rhoades was taken for an MRI. However, one of the guards accompanying Mr. Rhoades walked too close to the MRI machine and had his weapons

sucked into the MRI's magnet, breaking the machine and preventing the MRI from being done. Rhoades did not have an MRI scan until July 16, 1999, despite continuing requests from Dr. Smith, and only after his attorney made an appeal to the Chief Medical Officer and his attorney met with Rhoades at Calipatria.

12. No appointment was set up to present and discuss the MRI results with Rhoades until October 7, 1999. Mr. Rhoades was then informed that the MRI confirmed what the December 1997 x-ray had already found, that the hip bone was not damaged. However, Mr. Rhoades's left hip continued to pop in and out and cause severe pain. In addition, the right hip had begun to do the same thing. Mr. Rhoades was told by Dr. Smith that he did not know what was causing the hip to subluxate, but further x-rays would be taken. The Chief Medical Officer, Dr. M. Levin, wrote to Rhoades's attorney on November 1, 1999 and stated that x-rays would be taken on November 4, 1999 showing "subluxation views" of the hips. Dr. Levin stated that the doctor must do the manipulation of the hips to show the subluxations. He stated that "this is not an x-ray procedure that can just be done simply by the technician." However, these x-rays were taken without any assistance by a physician. The technician was not able to take an x-ray of Rhoades's hips in the subluxated position due to the fixed position of the x-ray machine. However, upon review of the x-rays that were taken, Dr. Smith determined that the hips were no longer subluxating.

13. In December 1999 Rhoades was transferred to CIM to obtain a second opinion by another orthopedist. He was seen by

Dr. Pospisic who recommended that surgery be performed to repair the hip condition and that Rhoades be given a wheelchair so that he would not have to walk. Rhoades used the wheelchair for the remainder of his time at CIM. In January 2000 Rhoades was examined by a consulting doctor at Riverside General Hospital who said that surgery would not help repair the condition, but recommended an MRI for assistance in assessment of the condition. The MRI was done two months later in March 2000. Dr. Joseph Siegel then reported to Rhoades's counsel that the working diagnosis was atrophy of the left gluteus minimus muscle. In June 2000 Rhoades was examined by another Riverside General Hospital consulting doctor who agreed that surgery would not be helpful, but that Rhoades should have physical therapy in order to determine which muscles were damaged.

14. Rhoades was transferred back to Calipatria State Prison in October 2000. Upon his arrival at Calipatria Sergeant Davis forced Rhoades to walk from the reception area to his housing unit, a distance of over 1000 yards, even though Davis was notified by the MTA and by Rhoades that he had not walked for over nine months, and even though Davis was told by the MTA that a wheelchair was available in the central health clinic for Rhoades to use. Rhoades was handcuffed and, using a cane for assistance, took ten to fifteen minutes to walk from the reception area to his housing unit. The next morning his left hip, leg and foot were swollen and he was unable to get out of bed to go to meals for the next two days. It took over a month for Rhoades's medical records to be forwarded from CIM to

Calipatria, further delaying steps towards diagnosing and treating his condition. The recommendations by the Riverside General Hospital doctors and by Dr. David Smith, the Calipatria orthopedist, to have Rhoades undergo physical therapy in order to assess the damage to his hip muscles was not acted upon until January 2001 when Rhoades filed a Reasonable Modification or Accommodation Request. Dr. Levin, the Calipatria Chief Medical Officer approved transfer to a medical facility where Rhoades could obtain physical therapy, and he is awaiting such a transfer. He continues to suffer acute pain in his hips, back and legs and is suffering detrimental effects of taking painkillers for several years. As the Chief Medical Officer at Calipatria, Dr. Levin failed to adequately supervise and train staff and put in place procedures so that Rhoades would receive medically appropriate care. As the Chief Medical Officer at California Institution for Men, Dr. Stephen Wyman failed to adequately supervise and train staff and put in place procedures so that Rhoades would receive medically appropriate care.

15. Plaintiff Gilbert Aviles is a prisoner at the Substance Abuse Treatment Facility (SATF) who transferred from Wasco State Prison Reception Center on June 18, 1999. He is a paraplegic who requires the use of a catheter to relieve his bladder, either an in-dwelling "foley" (which remains in the body for extended periods) or single use type. From the beginning of his incarceration in October 1998 through August 1999, at both Waco and SATF, he used an in-dwelling foley catheter. During this time period, physician orders in Mr. Aviles's medical

records stated that his catheter was to be changed every 14 days. However, at both Wasco and SATF his catheter was in fact not changed for periods of two months or more, causing him to suffer severe urinary tract infections which required at least two hospitalizations. Further, the catheters provided at Wasco were past their expiration dates. For example, Mr. Aviles was provided with a catheter at Wasco on or about June 4, 1999 that had an expiration date of February 1999. When the catheter balloon broke upon insertion, another catheter was provided with an expiration date of March 1995. This catheter was left in for two months until Mr. Aviles was hospitalized on or around August 3-6, 1999 with a urinary tract infection. Mr. Aviles has become increasingly resistant to antibiotics due to the frequent infections. While ill from the urinary tract infections, Mr. Aviles was unable to eat many meals, or to take part in social or recreational programs, including daily yard time. It was not until Mr. Aviles's attorney visited SATF and wrote letters to Health Care Manager Edgar Castillo that Mr. Aviles started to receive an adequate supply of in-and-out catheters in August 1999 and was able to avoid further infections. As the Health Care Manager at Wasco, Dr. Michael Songer failed to adequately supervise and train staff and put in place procedures so that Aviles would receive medically appropriate supplies in a timely manner. As the Health Care Manager at SATF, Dr. Castillo failed to adequately supervise and train staff and put in place procedures so that Aviles would receive medically appropriate supplies in a timely manner.

16. Plaintiff Paul Decasas is a 34-year-old prisoner housed at SATF. He has a serious seizure disorder. He was being treated as an inpatient through medication at the California Institution for Men Hospital. Dr. Mohan Sundareson and Dr. Clinton signed discharge orders allowing Decasas to be transferred from CIM to SATF even though his seizures had not been brought under control. Upon discharge he was transferred to SATF, a prison with no inpatient hospital, to participate in a civil addict drug treatment program; he cannot be released from prison until he satisfactorily completes this program. Once at SATF his condition was not monitored properly by Dr. K. Nguyen, his treating physician, he did not always receive his prescribed medications, and as a result he continued to experience frequent seizures. During one seizure, Decasas used a bite stick to protect his tongue and shattered it. A nurse refused to replace the bite stick, although he was at risk for having seizures at any time. Decasas's seizures continued until his counsel's intervention precipitated a change in his medication. As a result of the CDC's inadequate medical care, Mr. Decasas was denied access to the benefits of the substance abuse program for several months. As the Health Care Manager at SATF Dr. Edgar Castillo failed to ensure that Decasas receive adequate treatment and failed to adequately supervise and train staff and put in place procedures so that Decasas would receive medically appropriate care. As the Health Care Manager and Chief Medical Officer at CIM, Dr. Hepps failed to ensure that Decasas receive adequate treatment and failed to adequately supervise and train

staff and put in place procedures so that Decasas would receive medically appropriate care.

17. Plaintiff Steven Bautista is a prisoner at California State Prison - Sacramento. While he was incarcerated at High Desert State Prison he began suffering a priaprism, which is a persistent penile erection, on January 29, 1999 as a result of taking Trazodone (Desyrel)which was prescribed by Dr. Richnak, a psychiatrist employed by the prison, for major depression. Dr. Richnak prescribed this medication without informing Bautista of the possible side effects, which include priaprism. Bautista's condition was brought to the attention of Dr. Sandham on January 30. Dr. Sandham failed to adequately treat Bautista's medical condition. Dr. Sandham noted that the priaprism had started 23 hours earlier and believed that it was a side-effect of the antidepressant Trazodone, which Bautista had been taking for one and a half months. Dr. Sandham ordered that Bautista discontinue taking the Trazodone, that he apply ice packs to his genital area, and that he take Motrin. Dr. Sandham told Bautista that he would see him the next day; however, he did not evaluate Bautista's condition again until two days later. On February 1, Dr. Sandham issued an order for application of ice to the genital area for twenty minutes and again the next morning, as well as Roboxin and that Bautista be cell fed. On February 2, Bautista was seen by Dr. Sandham in the prison emergency room. The doctor noted that the priaprism had started 96 hours earlier. He prescribed Terbutaline but this did not reverse the priaprism. He then spoke to a consulting urologist who recommended

pseudoephedrine, but this medication was also ineffective. Bautista was admitted to the prison infirmary. The next morning, on February 3, Bautista was transferred to the consulting urologist's office. The urologist worked with the patient most of the day in his office with various therapies but to no avail. The inmate was subsequently hospitalized later the same day but surgery was not performed until the morning of February 4, 1999. Mr. Bautista was left with permanent impotence and disfigurement, resulting in exacerbation of his depressive state. He continues to suffer serious urological problems including pain and difficulty urinating. The medical care provided to Mr. Bautista was inadequate as acute priaprism is a urological emergency requiring prompt intervention so as to prevent the possibility of impotence. There was an inexcusable delay in accessing the proper urological care from the onset of the priaprism on January 29, 1999 until February 3, 1999 which was on the sixth day of the acute condition. As the Health Care Manager at High Desert, Dr. Park failed to adequately supervise and train staff and put in place procedures so that Bautista would receive medically appropriate care.

B. Defendants

18. Defendant Gray Davis is the Governor of the State of California and the Chief Executive of the state government. He is sued herein in his official capacity. As Governor he is obligated under state law to supervise the official conduct of all executive and ministerial officers and to see that all offices are filled and their duties lawfully performed.

Defendant Davis has control over the monies allocated to the CDC by submitting a budget and by exercising his authority to veto or sign legislation appropriating funds. Defendant Davis has the authority to appoint and remove the subordinate defendants named herein. Defendant Davis retains the ultimate state authority over the care and treatment of the plaintiff class.

19. Defendant B. Timothy Gage is the Director of the Department of Finance and is sued in that capacity. Mr. Gage supervises the Department of Finance, which is responsible for approving the CDC budget requests, including budget items for provision of medical care.

20. Defendant Robert Presley is Secretary of the Youth and Adult Corrections Agency of the state of California and is sued herein in this capacity. The Youth and Adult Corrections Agency supervises the operation of the CDC.

21. Defendant Steven Cambra is the acting Director of the CDC and is sued herein in that capacity. The CDC is responsible for the operation of the California state prison system, including the provision of constitutionally adequate medical care. As Director, Defendant Cambra is responsible for the operation of all the prison facilities, including decisions concerning staff deployment and training that directly affect plaintiffs' abilities to obtain adequate medical care.

22. Defendant Susann Steinberg, M.D. is the Deputy Director for Health Care Services for the CDC and is sued in that capacity. As Deputy Director, Dr. Steinberg is responsible for

supervising the provision of medical care for all prisoners within the custody of the department.

23. Defendant Daniel Thor, M.D., was at all relevant times the Health Care Manager at Salinas Valley State Prison and is sued in his individual capacity. As Health Care Manager, Dr. Thor is responsible for supervising the provision of adequate medical care for prisoners at Salinas Valley.

24. Defendant MTA Cooper was at all relevant times an MTA at Salinas Valley and is sued in his individual capacity.

25. Defendant T. Bui, M.D., was at all relevant times a physician employed at San Quentin State Prison and is sued in his individual capacity.

26. Defendant Donald Calvo, M.D., was at all relevant times the Health Care Manager at San Quentin State Prison and is sued in his individual capacity. As Health Care Manager, Dr. Calvo was responsible for supervising the provision of adequate medical care for prisoners at San Quentin.

27. Defendant M. Levin, M.D., was at all relevant times the Health Care Manager at Calipatria State Prison and is sued in his individual capacity. As Health Care Manager, Dr. Levin was responsible for supervising the provision of adequate medical care for prisoners at Calipatria.

28. Defendant Shankar Raman, M.D., was at all relevant times a physician employed at California State Prison - Corcoran and is sued in his individual capacity.

29. Defendant Brian Yee, M.D., was at all relevant times the Health Care Manager at California State Prison - Corcoran and

is sued in his individual capacity. As Health Care Manager, Dr. Yee was responsible for supervising the provision of adequate medical care for prisoners at Corcoran.

30. Defendant D. Smith, M.D., was at all relevant times a contract ophthalmologist hired by San Quentin State Prison and is sued herein in his individual capacity.

31. Defendant M.A. Van Pelt, M.D., was at all relevant times a physician at San Quentin State Prison and is sued herein in his individual capacity.

32. Defendant Bhaviesh Shah, M.D., was at all relevant times a physician employed at Wasco State Prison and is sued in his individual capacity.

33. Defendant Andrew Wong, M.D., was at all relevant times a physician employed at Wasco State Prison and is sued in his individual capacity.

34. Defendant Daniel Fuller, M.D.,was at all relevant times a physician employed at Salinas Valley State Prison and is sued in his individual capacity.

35. Defendant Michael Songer, M.D., was at all relevant times the Health Care Manager at Wasco State Prison and is sued in his individual capacity. As Health Care Manager, Dr. Songer was responsible for supervising the provision of adequate medical care for prisoners at Wasco.

36. Defendant Stephen Wyman, M.D., was at all relevant times the Health Care Manager and Chief Medical Officer at California Institution for Men and is sued in his individual capacity. As Health Care Manager and Chief Medical Officer, Dr.

Wyman was responsible for supervising the provision of adequate medical care for prisoners at Wasco.

37. Defendant Joseph Siegel, M.D., was at all relevant times a physician employed at California Institution for Men and is sued in his individual capacity.

38. Defendant Sergeant Davis was at all relevant times a sergeant at Calipatria State Prison and is sued in his individual capacity.

39. Defendant Edgar Castillo, M.D., was at all relevant times the Health Care Manager at SATF and is sued in his individual capacity. As Health Care Manager, Dr. Castillo was responsible for supervising the provision of adequate medical care for prisoners at SATF.

40. Defendant K. Nguyen, M.D., was at all relevant times a physician employed at SATF and is sued in his individual capacity.

41. Defendant Sanford Hepps, M.D., was at all times relevant to plaintiff Decasas's claims the Health Care Manager and Chief Medical Officer at the California Institution for Men and is sued in his individual capacity. As Health Care Manager, Dr. Hepps was responsible for supervising the provision of adequate medical care for prisoners at CIM.

42. Defendant Mohan Sundareson, M.D., was at all relevant times a physician employed at CIM and is sued in his individual capacity.

43. Defendant Dr. Clinton, M.D., was at all relevant times a physician employed at CIM and is sued in his individual capacity.

44. Defendant L. Richnak, M.D., was at all relevant times a psychiatrist employed at High Desert State Prison and is sued in his individual capacity.

45. Defendant Richard Sandham, M.D., was at all relevant times a physician employed at High Desert State Prison and is sued in his individual capacity.

46. Defendant C. Park, DDS, was at all relevant times the Health Care Manager at High Desert State Prison and is sued in his individual capacity. As Health Care Manager, Dr. Park was responsible for supervising the provision of adequate medical care for prisoners at High Desert.

VI. CLASS ACTION ALLEGATIONS

47. The named plaintiffs bring this action on their own behalf and, pursuant to Rules 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of a class of all prisoners who are now, or will in the future be, under the custody of the CDC but excluding any prisoners confined at Pelican Bay State Prison.

(a) Thousands of prisoners in CDC custody suffer from serious medical conditions. All prisoners are at risk of developing a serious medical condition while in prison and thousands need care and treatment to prevent serious medical conditions. All prisoners are entirely dependent on defendants

for the provision of medical treatment. The size of the class is so numerous that joinder of all members is impracticable.

(b) The conditions, practices and omissions that form the basis of this complaint are common to all members of the class and the relief sought will apply to all of them.

(c) The claims of the named plaintiffs are typical of the claims of the class.

(d) The prosecution of separate actions by individual members of the class would create a risk of inconsistent and varying adjudications which would establish incompatible standards of conduct for the defendants.

(e) The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members which would, as a practical matter, substantially impair the ability of other members to protect their interests.

(f) Defendants have acted or refused to act on grounds generally applicable to the class, making appropriate injunctive and declaratory relief with respect to the class and subclass as a whole.

(g) There are questions of law and fact common to the members of the class, including defendants' violations of the Eighth and Fourteenth Amendments to the United States Constitution, the ADA and § 504.

(h) The named plaintiffs are capable, through counsel, of fairly and adequately representing the class and protecting its interests.

VII. STATEMENT OF CLASS CLAIMS

48. The medical care provided by defendants in each of its prison is woefully inadequate and violates the constitutional rights of the named plaintiffs and the plaintiff class under the Eighth and Fourteenth Amendments of the United States Constitution to be free from cruel and unusual punishment. There are a multitude of problems with the delivery of medical care to plaintiffs and the plaintiff class, including but not limited to, the following:

a. MTAs are inadequately trained to perform their duties and have conflicting custodial responsibilities. MTAs are the "gatekeepers" for plaintiffs' access to any medical care. Prisoners who wish to be seen by a doctor must first submit a request to an MTA. The first person who responds to a prisoner with an acute medical incident often is an MTA. MTAs are often called upon to make initial medical diagnoses of prisoner medical conditions. Many MTAs, however, have inadequate medical training. MTAs therefore may not, and have not in the past, recognized the symptoms a patient displays until that condition has become so acute as to be life threatening. MTAs are peace officers and are expected to perform custodial functions which interfere with their ability to provide adequate medical care.

b. There are insufficient numbers of qualified medical staff, including physicians, nurses and MTAs.

c. There is a lack of training and supervision of all medical personnel.

d. Prisoners' medical records often are disorganized and incomplete.

e. There is a lack of adequate medical screening of incoming prisoners.

f. There are lengthy delays in accessing care, including delays to see a primary physician, to obtain a referral to see a specialist, to see a specialist after obtaining the referral, to obtain medical testing and to obtain treatment. These delays are compounded when inmates are transferred to new institutions, often causing further delays in the provision of medical care.

g. There are frequent failures to provide prisoners with access to care altogether. Often, medical staff do not take sufficient steps necessary to make diagnoses. There are often failures to provide treatment when a diagnosis or symptom is discovered. Medical staff do not provide care because they do not use interpretative services to communicate with prisoners who speak languages other than English.

h. Laboratory and other medical tests are frequently delayed, never done or not reported.

i. There is poor emergency response caused by lack of expertise of MTAs and custody concerns.

j. Correctional officers frequently interfere with the provision of medical care.

k. There is a lack of quality control procedures, including lack of physician peer review, quality assurance and

death reviews. Even if deficiencies are identified, there is inadequate follow-up to prevent future problems.

l. There is a lack of established protocols for dealing with chronic illnesses such as diabetes, heart disease and HIV. The care of HIV+ inmates is particularly inadequate. Problems include, but are not limited to, (i) frequent failure to instruct and assist inmates in following the strict regimen needed to take their drug combinations successfully, (ii) irregular, untimely, and sometimes incorrect administration of medications, and (iii) failure to adequately monitor and treat secondary infections.

m. Defendants are unable to recruit sufficient, competent medical staff and to retain those staff who are hired.

n. Necessary medical care is often denied based solely on an inmate's expected release date, even when this date is over one year away.

o. Defendants lack sufficient knowledge about the medical care system to properly monitor and improve the delivery of medical care.

49. The CDC receives federal financial assistance as that term is used in 29 U.S.C. § 794(b)(1)(A).

50. By denying plaintiffs and the plaintiff class adequate medical care plaintiffs are not able to participate and are therefore denied meaningful access to programs, services and activities that they are otherwise qualified to participate in and benefit from, thereby subjecting them to discrimination based on their disabilities.

CLAIMS FOR RELIEF

I.

(All Plaintiffs v. Davis, Cage, Presley, Cambra & Steinberg)

(§ 1983)

51. The conduct described herein has been and continues to be performed by defendants and their agents or employees in their official capacities and is the proximate cause of the named plaintiffs' and the plaintiff class' ongoing deprivation of rights secured by the United States Constitution under the Eighth and Fourteenth Amendments.

52. The constitutional deprivations described herein are the proximate result of the official policies, customs and pervasive practices of defendants. Defendants have been and are aware of all of the deprivations complained of herein, and have condoned or been deliberately indifferent to such conduct.

II.

(All Plaintiffs v. Davis, Cage, Presley, Cambra & Steinberg)

53. As a result of defendants' policies and practices which result in inadequate medical care, plaintiff Decasas and other members of the class with disabilities other than mobility, sight, hearing, learning and developmental disabilities have been excluded from the substance abuse programs, education, vocation, work furlough and work credit, recreation, dining hall and other meals, yard time, visiting, classification, discipline, telephone, emergency and other programs and services for which they are otherwise qualified that defendants offer to individuals

under their custody and control, thereby subjecting them to discrimination in violation of the ADA and § 504.

III.

(Plata v. Thor, Cooper, & Levin)

(§ 1983)

54. Defendants Thor, Cooper, and Levin were deliberately indifferent to plaintiff Plata's medical needs and have violated plaintiff Plata's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. Defendants acted under color of state law and knew or should have known that their conduct or omissions created an unreasonable risk of harm to Plata. As a direct and foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered and will continue to suffer physical injuries to his knee, leg, foot, back and head that have also caused pain and suffering, emotional distress and other injuries. Defendant Cooper's acts were willful, intentional, wanton and in conscious disregard of plaintiff's rights.

IV.

(Shaw v. Bui & Calvo)

(§ 1983)

55. Defendants Bui and Calvo were deliberately indifferent to plaintiff Shaw's medical needs and have violated plaintiff Shaw's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. Defendants acted under color of state law and knew or should have known that their conduct or omissions created an unreasonable risk of harm to

Shaw. As a direct and foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered physical injuries to his arm and a resulting debilitating infection; defendants have also caused pain and suffering, emotional distress and other injuries by failing to provide medically appropriate treatment. Defendant Bui's acts were willful, intentional, wanton and in conscious disregard of plaintiff's rights.

V.

(Stoderd v. Raman & Yee)

(§1983)

56. Defendants Raman and Yee have been deliberately indifferent to plaintiff Stoderd's medical needs and have violated plaintiff Stoderd's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. These defendants acted under color of state law and knew or should have known that their conduct or omissions created an unreasonable risk of harm to Stoderd. As a direct and foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered pain and suffering, emotional distress and other injuries from their discontinuation of his pain medications. Defendants' acts were willful, intentional, wanton and in conscious disregard of plaintiff's rights.

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VI.

(Johns v. Smith, Calvo, & Van Pelt)

(§1983)

57. Defendants Smith, Calvo, & Van Pelt have been deliberately indifferent to plaintiff Johns's medical needs and have violated plaintiff Johns's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. These defendants acted under color of state law and knew or should have known that their conduct or omissions created an unreasonable risk of harm to Johns. As a direct and foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered and will continue to suffer pain and suffering, emotional distress and other injuries from their refusal to correct his correctable eye condition until he goes completely blind. Defendants' acts were willful, intentional, wanton and in conscious disregard of plaintiff's rights.

VII.

(Long v. Shah, Wong, Fuller, Songer, & Thor)

(§1983)

58. Defendants Shah, Wong, Fuller, Songer, and Thor have been deliberately indifferent to plaintiff Long's medical needs and have violated plaintiff Long's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. These defendants acted under color of state law and knew or should have known that their conduct or omissions created an unreasonable risk of harm to Long. As a direct and

foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered and will continue to suffer permanent injury of incontinence as well as pain and suffering, emotional distress and other injuries from their failure to provide timely and appropriate treatment and specialist referrals. Defendants Shah, Wong, Fuller, and Thor's acts were willful, intentional, wanton and in conscious disregard of plaintiff's rights.

VIII.

(Rhoades v. Levin, Davis, & Wyman)

(§1983)

59. Defendants Levin, Davis, and Wyman have been deliberately indifferent to plaintiff Rhoades's medical needs and have violated plaintiff Rhoades's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. These defendants acted under color of state law and knew or should have known that their conduct or omissions created an unreasonable risk of harm to Rhoades. As a direct and foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered and will continue to suffer permanent injury to his hip as well as pain and suffering, emotional distress and other injuries from their failure to provide timely and appropriate treatment and specialist referrals. Defendants Levin and Davis's acts were willful, intentional, wanton and in conscious disregard of plaintiff's rights.

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IX.

(Aviles v. Songer & Castillo)

(§1983)

60. Defendants Songer and Castillo have been deliberately indifferent to plaintiff Aviles's medical needs and have violated plaintiff Aviles's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. These defendants acted under color of state law and knew or should have known that their conduct or omissions created an unreasonable risk of harm to Aviles. As a direct and foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered and will continue to suffer permanent injury as well as pain and suffering, emotional distress and other injuries from their failure to provide timely and appropriate treatment and supplies.

X.

(Decasas v. Nguyen, Castillo, Sundareson, Clinton & Hepps)

(§1983)

61. Defendants Nguyen, Castillo, Sundareson, Clinton and Hepps have been deliberately indifferent to plaintiff Decasas's medical needs and have violated plaintiff Decasas's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. These defendants acted under color of state law and knew or should have known that their conduct or omissions created an unreasonable risk of harm to Decasas. As a direct and foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered and

will continue to suffer permanent injury as well as pain and suffering, emotional distress and other injuries from their failure to provide timely and appropriate treatment. Defendants Nguyen, Sundareson, and Clinton's acts were willful, intentional, wanton and in conscious disregard of plaintiff's rights.

XI.

(Bautista v. Richnak, Sandham & Park)

(§1983)

62. Defendants Richnak, Sandham,& Park have been deliberately indifferent to plaintiff Bautista's medical needs and have violated plaintiff Bautista's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. These defendants acted under color of state law and knew or should have known that their conduct or omissions created an unreasonable risk of harm to Bautista. As a direct and foreseeable result of these defendants' violations of plaintiff's constitutional rights, plaintiff has suffered and will continue to suffer permanent impotence and disfigurement that has also caused pain and suffering, emotional distress and other injuries. Defendants Richnak and Sandham's acts were willful, intentional, wanton and in conscious disregard of plaintiff's rights.

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VIII. PRAYER FOR RELIEF

WHEREFORE, the named plaintiffs and the class they represent request that this Court grant them the following relief:

(a) Declare the suit is maintainable as a class action pursuant to Federal Rule of Civil Procedure 23(b)(1) and 23(b)(2);

(b) Adjudge and declare that the acts, omissions, policies, and conditions described above are in violation of the Eighth and Fourteenth Amendments, which grant constitutional protection to the plaintiffs and the class they represent;

(c) Adjudge and declare that the acts, omissions, policies, and conditions described above are in violation of the ADA and § 504;

(d) Preliminarily and permanently enjoin defendants, their agents, employees and all persons acting in concert with them, from subjecting the named plaintiffs and the class they represent to the unconstitutional and unlawful acts, omissions, policies, and conditions described above;

(e) Award only the named plaintiffs monetary damages, compensatory and punitive, in an amount to be determined at trial;

(f) Award plaintiffs the costs of this suit, and reasonable attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1988, 29 U.S.C. § 794a(b), and 42 U.S.C. § 12205;

(g) Retain jurisdiction of this case until defendants have fully complied with the orders of this Court, and there is a

reasonable assurance that defendants will continue to comply in the future absent continuing jurisdiction; and

(h) Award such other and further relief as the Court deems just and proper.

Dated: April 4, 2001

Respectfully submitted,

DONALD SPECTER
Attorney for Plaintiffs