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ATTORNEYS FOR PLAINTIFFS

FILED

MAY - 2 1994

**CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

14 **VINCENT CERVANTES and STEVEN WILLIAMS;**
15 **on their own behalf and on behalf of the**
16 **class of all persons similarly situated**

PLAINTIFFS,

17 **VS.**

18 **STATE OF CALIFORNIA; PETE WILSON, Governor of)**
19 **the State of California; JOE SANDOVAL,**
20 **Secretary of the Youth and Adult Correctional)**
21 **Agency; CRAIG L. BROWN, Undersecretary of the)**
22 **California Youth and Adult Correctional)**
23 **Agency; JAMES H. GOMEZ, Director of the)**
24 **California Department of Corrections; JUDITH)**
25 **A. MCGILLIVRAY, Deputy Director of the)**
26 **Department of Corrections, Parole and)**
27 **Community Services Division; and Does 1)**
28 **through 200.**

DEFENDANTS.

NO.

DATE:

TIME:

DEPT:

**CIVIL COMPLAINT-CLASS ACTION FOR DECLARATORY AND INJUNCTIVE
RELIEF AND FOR DAMAGES**

42 U.S.C. sec. 1983 and 28 U.S.C. sec. 1343(a)(3), 2201-2202

JURY TRIAL DEMAND

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JURISDICTION

1. Jurisdiction of this court is invoked pursuant to the provisions of Title 28 U.S.C. sec. 1343(3). The individual defendants are persons who have deprived and continue to deprive plaintiffs of their federally guaranteed constitutional and civil rights under color of state law, in violation of Title 42 U.S.C sec. 1983.

2. Declaratory judgment and injunctive relief are sought under the terms of Title 28 U.S.C. secs. 2201 and 2202. Members of plaintiff class, on an ongoing basis, are being irreparably harmed by defendants' illegal actions, and there is no sufficient, alternative remedy to redress plaintiffs' complaint.

VENUE

3. Venue is properly in this court, pursuant to Title 28 U.S.C sec. 1391(b)(1), in that this judicial district is the residence of one or all of the defendants in this civil action, and all of the defendants are residents of the State of California.

PARTIES

PLAINTIFFS

PLAINTIFF STEVEN G. WILLIAMS

4. Plaintiff STEVEN G. WILLIAMS is a prisoner under the custody and control of the California Department of Corrections, at the California State Prison at Chino.

5. On March 10, 1994, Williams was found not guilty of the crime of robbery, after trial by jury.

6. Williams is awaiting a parole revocation hearing, on the grounds on which he has already been acquitted.

14. Although this incident arose out of an alleged domestic dispute, the available disposition was limited to reimprisonment, and little or no consideration was given by the hearing officers to having the incident resolved by assigning Cervantes to non-prison, alternative programs or resources in the community.

DEFENDANTS

DEFENDANT STATE OF CALIFORNIA

15. Defendant State of California is the governmental entity by whom the other defendants are employed. The State is sued for injunctive relief only.

DEFENDANT PETE WILSON

16. Defendant Pete Wilson is Governor of the State of California.

17. As Governor, and pursuant to his constitutional authority under California Constitution, Article V, section 1, and pursuant to state statutes, Mr. Wilson is responsible for the appointment of the Defendants Secretary and Deputy Secretary of the Youth and Adult Corrections Agency, the Defendant Director of Corrections, the Defendant Deputy Director of the Department of Corrections, Parole and Community Services Division.

18. The Governor, in union with those whom he appoints, named in the preceding paragraph, and by and through those persons employed by the other defendants', including Does 1 through 200, named as defendants herein, make substantive policy, follow practice and procedure of their making, so as to control and regulate the custody of the entire membership of plaintiff class.

19. Pursuant to California Penal Code Section 3062,

1 Defendant Wilson has power to revoke the parole of any prisoner,
2 just as the parole authority has such power, and the Governor's
3 written authority is sufficient to authorize any peace officer to
4 arrest any prisoner.

5 20. For the reasons described in further detail in this
6 complaint, upon information and belief, Defendant Wilson is
7 responsible for the creation and enforcement of informal or
8 covert policies and practices whereby the rights, privileges and
9 immunities of the plaintiff class are adversely affected, in
10 violation of the United States Constitution and of other laws.

11 21. Defendant Joe Sandoval is the Secretary to the
12 Defendant Wilson, in charge of the California Youth and Adult
13 Correctional Agency, which gubernatorial agency funds all costs
14 and employs and directs all staff for executing all actions
15 complained of herein. Pursuant to California Government Code
16 section 11154, and except as otherwise alleged in this complaint,
17 the appointment and employment of necessary officers and
18 employees of the Agency are made by Mr. Sandoval, with the
19 express or implied approval of the Defendant Governor Wilson.

20 22. Defendant Sandoval is appointed by and serves at the
21 pleasure of Defendant Wilson, the appointment subject to Senate
22 confirmation, pursuant to Government Code section 12801.

23 23. Pursuant to California Government Code sections 12800,
24 12801, and 12850.4, Defendant Sandoval may exercise the authority
25 vested in the Governor in respect to the Youth and Adult
26 Correctional Agency.

27 24. Pursuant to California Government Code sections 12850.2
28 and 12851, Defendant Sandoval is advisor to the governor and

1 assists in establishing major policy and program matters
2 effecting the Youth and Adult Correctional Agency, including
3 matters of public interest relating to the agency.

4 . . .

5 25. Pursuant to California Government Code section 12850.6,
6 Defendant Sandoval has immediate supervisory authority over the
7 Department of Corrections and he must hold the head of that
8 department (Defendant Gomez) responsible for management control
9 over the administrative, fiscal, and program performance of the
10 department.

11 26. Defendant Craig L. Brown is the Undersecretary to the
12 Defendant Wilson, in charge of the California Youth and Adult
13 Correctional Agency. Pursuant to California Government Code
14 Section 12811.1, Defendant Brown is appointed by Defendant
15 Wilson, upon the recommendation of Defendant Sandoval, and serves
16 at the pleasure of Defendant Wilson, and as Undersecretary of the
17 Agency, upon information and belief, pursuant to California
18 Government Code Sections 7 and 1194, he is authorized to act in
19 performance of any of the duties delegated to him by the
20 Secretary.

21 27. Defendant James H. Gomez is Director of the California
22 Department of Corrections. Pursuant to California Penal Code
23 sections 5051 and 5051.5, Mr. Gomez is also appointed by the
24 Governor, with the advice and consent of the Senate, and serves
25 at the pleasure of the Defendant Wilson.

26 28. As Director of the Department of Corrections, and
27 pursuant to California Penal Code Section 5053, Mr. Gomez is the
28 chief administrative officer of the Department of Corrections.

1 In that capacity Mr. Gomez acts under the direction and control
2 of the Defendants Wilson, Sandoval, Brown, and others, and
3 implements Agency policy by and through his employees, and in
4 union and in collaboration with other officers of the Agency,
5 including the Deputy Director of the Department of Corrections
6 for the Paroles and Community Services Division.

7 29. Also, pursuant to section 5054 of the California Penal
8 Code, the Defendant Director of the Department of Corrections is
9 the custodian of all California state prisoners.

10 30. Defendant Judith A. McGillivray is Deputy Director of
11 the Department of Corrections, Parole and Community Services
12 Division. As such, Ms. McGillivray enforces and executes the
13 policy of the Department of Corrections, Parole and Community
14 Services Division, under immediate direction of the defendant
15 Director of Corrections.

16 31. Defendant Deputy Director McGillivray serves in office
17 pursuant to the provisions of California Penal Code sec. 3000(g),
18 and as such she is appointed by the Defendant Governor Wilson,
19 serves at his pleasure, and is subject to confirmation by the
20 Senate of the State of California.

21 32. Pursuant to California Government Code sections 7 and
22 1194, Defendant McGillivray may exercise all authority of
23 Defendant Director Gomez.

24 33. Upon information and belief, Defendant McGillivray is
25 immediately responsible for the day to day operations of parolee
26 arrests, parole revocation and parole revocation proceedings.

27 34. Does 1 through 200 are named as defendants. These
28 persons are agents or employees of the named defendants. "Does 1

1 through 200" are fictitious names for these persons, whose real
2 names are not yet known, but which will become known in due
3 course.

4 . . .

5 35. The foregoing defendants, individually and in union,
6 make and execute policy, practice and procedure of the Youth and
7 Adult Correctional Agency affecting (1) most persons seeking
8 release to parole, (2) persons on parole, (3) persons being
9 threatened with revocation of parole or whose parole is being
10 revoked and (4) the revocation process in its entirety, (5) the
11 disposition of all revoked parole, (6) the planning of prisons
12 and other penal resources, including community treatment
13 resources, (7) allocation of budget resources for the foregoing,
14 and (8) numerous and almost all other functions affecting the
15 parole population and the processes which influence the parole
16 population in the State of California.

17 36. Thus, and as is more fully set out below, Defendant
18 Wilson, Defendants Secretaries of the Youth and Adult
19 Correctional Agency, in collaboration with, and by and through
20 the Defendants Directors of the Department of Corrections have
21 exclusive control of parolees during the entire term of their
22 sentence, including, but not limited to the following terms of
23 sentence: (1) while they are serving their initial term, (and
24 prior to parole release); (2) while they are on parole after
25 release from their initial term, (3) while charged with a
26 violation of parole, (4) during proceedings to determine guilt or
27 innocence of the charges, and (5) after any violation has been
28 found and disposition made returning the parolee to prison

1 custody.

2 37. The California Youth and Adult Corrections Agency and
3 its subagency, the California Department of Corrections are
4 Executive Branch agencies, which perform an executive function of
5 government, pursuant to California Government Code sections
6 12080, 12811, and 12851.

7 38. Pursuant to California Penal Code sec. 3000(g) the
8 California Department of Corrections is the governmental agency
9 which has the immediate, day to day charge of management and
10 custody of California adult parolees.

11 39. The California Department of Corrections sets the
12 conditions of parole pursuant to the terms of California Code of
13 Regulations sec. 3901.9.1 et seq. The California Department of
14 Corrections also sets the length of parole, within limits,
15 pursuant to California Code of Regulations sec. 3901.11.1.

16 40. Pursuant to California Penal Code secs. 3000(b) and
17 3060, the California Department of Corrections is the parole
18 authority and therefore, subject to the supervisory or
19 supplemental powers of the defendant Wilson, who, as alleged
20 above, has full power to suspend or revoke the parole of any
21 parolee and to order any parolee returned to prison, who is
22 serving a sentence under the California Determinate Sentencing
23 Law. (Penal Code sec. 1170, et seq.).

24 41. Prior to 1993, the revocation of prisoners' parole was
25 instigated by the Department of Corrections and later adjudicated
26 by the Board of Prison Terms, a different agency of government.
27 (established by Act of State Legislature pursuant to Penal Code
28 Sec. 3040) However, beginning in 1993, pursuant to California

1 Statutes of 1992, Ch. 695, Senate bill 97 (Torres), the power to
2 conduct hearings on revocation of parole, and to remand parolees
3 to prison, was moved from the Board of Prison Terms to the
4 California Department of Corrections.

5 42. Consequently, since 1993, under current California law,
6 among other things, the Department of Corrections revokes
7 prisoners' parole, institutes revocation proceedings, and
8 conducts revocation hearings and sentencings.

9 CLASS ACTION ALLEGATIONS

10 43. Pursuant to Rule 23 of the Federal Rules of Civil
11 Procedure, this suit is brought on behalf of named plaintiffs on
12 their own behalf and on behalf of all other persons similarly
13 situated.

14 44. The class is composed of the following persons, subject
15 to Defendants' dominion and control: (1) California parolees who
16 are at large, (2) California parolees in custody, as alleged
17 parole violators, and who are awaiting revocation of their state
18 parole, and (3) California parolees who are in custody, having
19 been found in violation of parole and who have been thereupon
20 sentenced to prison custody.

21 45. The instant suit should be certified as a class action,
22 for the following reasons:

23 46. This is a civil rights proceeding

24 47. Generally, relief requested is declaratory and
25 injunctive; other than for the two named individual plaintiffs,
26 particularized damages for individual plaintiffs are not sought
27 in these proceedings.

28 48. The Defendants and by and through the Department of

1 Corrections, as a successor in function of the California Board
2 of Prison Terms, continue a practice of revocation of parole and
3 remand of parolees to prison, in violation of law, as alleged
4 herein, which practice has been continuing unabated for many
5 years.

6 49. The Defendants' alleged illegal pattern and practice of
7 violation of law is generally applicable to all members of
8 plaintiffs' class.

9 50. Alternatively, the pattern and practice of Defendants'
10 and their agents in handling parole revocation are so utterly
11 arbitrary and capricious, that the actions of Defendants and
12 their agents are lawless.

13 51. One of Plaintiffs' claims is that they are not
14 receiving their right to counsel under Gagnon v. Scarpelli, 1973,
15 411 U.S. 778. As will later be alleged in more detail,
16 unrepresented by counsel, the members of plaintiffs' class are
17 generally unable to assert their constitutional rights under
18 Morrissey v. Brewer, 1972, 408 U.S. 471.

19 52. Upon information and belief, there are few or no
20 parolees who have the financial means to fund litigation, such as
21 this.

22 53. Moreover, there are very few attorneys who have
23 sufficient familiarity with the issues presented here as to be
24 able, competently to present the challenges being made here.
25 Thus, individual parolees have no sufficient legal means to seek
26 redress of their grievances, on a case by case basis.

27 54. By contrast, the State of California has teams of well-
28 paid attorneys with nearly unlimited resources, with which to

1 defend against the claims of the members of any claims of
2 individual parolees.

3 55. The equitable remedy available to an individual
4 parolee, even if he were represented by counsel, would be fraught
5 with the prospect of mootness, for the following reasons:

6 a. The period during which a parolee is in custody
7 awaiting the uncounseled "screening" process (plea bargaining),
8 which is being complained about in this suit, is about 2-3 weeks;

9 b. Evidentiary hearings, also complained about
10 herein, when they are held, are being held in the range of 6
11 weeks to 4 months after arrest;

12 c. The maximum term which a parolee may serve in
13 custody, if (s)he is found in violation and remanded to prison is
14 1 year;

15 d. The probable remedy available to an individual
16 parolee aggrieved by Defendants' actions, (in the unlikely event
17 that one were to be afforded) is remand for further proceedings,
18 such as appointment of counsel, new plea negotiations, and/or a
19 new evidentiary hearing. Such a remedy (if afforded) would be
20 useless to an individual parolee who, in likelihood, will already
21 have served most, if not all of his illegal custody when such
22 relief might be granted.

23 56. Thus, the constitutional and other violations alleged
24 by plaintiff class are occurring repeatedly, and upon information
25 and belief, are almost always evading review, and, if and when
26 reviewed, are being afforded an inadequate remedy.

27 57. The members of the class are so numerous that joinder
28 of all members is impracticable. The size of the class is

1 estimated to be about 90,000 persons on parole and not in
2 custody; and about 40,000 persons serving time as parole
3 violators in custody.

4 . . .

5 58. The instant suit involves questions of law or fact
6 common to all the members of the class:

7 a. In general, the common questions of law and fact
8 involve the summary remand to prison of parolees without due
9 consideration of the right to counsel and without due process of
10 law, in violation of Gagnon v. Scarpelli, 1973, 411 U.S. 778, and
11 Morrissey v. Brewer, 1972, 408 U.S. 471.

12 b. Claims of the representative parties plaintiff are
13 typical of the claims of the class, and plaintiff Prisoners
14 Rights Union is an organization whose members, individually and
15 collectively are aggrieved by the various claims made on this
16 complaint.

17 c. The representative parties plaintiff will fairly
18 and adequately protect the interest of the class.

19 d. There is risk that individual parolees, who may
20 wish to seek redress, unrepresented by counsel, will devote
21 valuable resources to litigation which, for lack of counsel, will
22 not likely result in preservation and development of all the
23 claims, facts and circumstances which entitle such individual
24 parolees to relief under constitutional law.

25 59. Moreover, there is risk of inconsistent or varying
26 adjudications which might be obtained by individual members of
27 the class which would establish incompatible standards of conduct
28 for the Defendants; and,

1 60. There is risk that such individual litigants, for lack
2 of counsel or resources, would be unable to properly frame and
3 develop the constitutional issues, and which litigants might
4 unwittingly achieve precedent which is adverse to the
5 constitutional rights of the membership of the class, who have
6 not participated in any such individual litigation.

7 61. In the event any individual litigants were to succeed
8 in obtaining relief on the grounds stated in this complaint,
9 their success would not necessarily provide any relief to the
10 thousands of other members of the class who were similarly
11 entitled to relief, but who, for lack of resources and counsel,
12 are unable to seek such redress.

13 62. The allegations made herein are that the defendants are
14 engaged in a pattern of violating Gagnon and Morrissey. Whether,
15 the defendants are acting in a coordinated violation of law, or
16 whether they are acting arbitrarily, capriciously and
17 inconsistently, also in violation of law---in either event, the
18 Defendants are acting illegally, in routine violation of Gagnon
19 and Morrissey, and relief should be made available, generally, to
20 all the members of the class.

21 63. As will appear in more detail in the prayer for relief,
22 a declaration and a general, final injunction will serve to
23 redress the claims of the unnamed members of the class against
24 the illegal actions of the Defendants.

25 64. There are common questions of law and fact, described
26 above, and these common questions predominate over questions
27 affecting only individual members, and class action is superior
28 to other methods for adjudicating the controversy.

1 65. The attorneys for plaintiffs in this proceeding are
2 suitable to serve the needs of the plaintiff class: (1) the
3 plaintiffs' attorneys are, generally, active in criminal law and
4 prisoners rights and remedies; (2) only a very few attorneys,
5 other than those who bring this complaint, are familiar with the
6 issues raised in the complaint; (3) one of the allegations of
7 plaintiff class is that their right to counsel is being denied,
8 and so, no superior method and no effective alternative method of
9 obtaining counsel for the class is known than by this lawsuit
10 brought by these attorneys.

11 DENIAL OF DUE PROCESS OF LAW

12 66. In general, and as will be more fully alleged below,
13 plaintiffs are continually being denied due process of law, in
14 that (1) there is no fairness or scrutiny of the process whereby
15 (a) parolees are being arrested; or whereby (b) parole revocation
16 proceedings are being instigated; (2) prompt preliminary parole
17 revocation hearings are not being conducted; (3) written notice
18 of charges is not promptly given; (4) reasonable opportunity for
19 investigation is not afforded; (5) defendants are following a
20 pattern and practice of denying counsel to parolees in violation
21 of existing constitutional standards, in almost all cases of
22 parole revocation; also, plaintiffs are being denied (6)
23 opportunity to present live evidence and written evidence, and
24 the opportunity to confront and cross examine adverse witnesses
25 is routinely denied; (7) as a matter of fact and law, hearing
26 before Department of Corrections officials does not afford a
27 "neutral and detached" hearing body; (8) decision making is based
28 on no known lawful criteria, and therefore any reasons given for

1 the decision are meaningless and suspect; (9) Upon revocation,
2 all or almost all parolees are sent back to prison, without
3 regard for alternative dispositions.

4 . . .

5 ARREST AND HOLD

6 67. Upon information and belief, in practice, the
7 individual parolee's officer may recommend or cause the issuance
8 of an arrest warrant by instigating the violation and revocation
9 process.

10 68. Under color of state law, and pursuant to unwritten
11 policy and procedure, or pursuant to no adequate written or
12 unwritten policy and procedure, warrants are issued and holds are
13 placed and violations are charged, and revocations are instituted
14 without fair, sound and prior---if any---consideration being
15 given to the reasonableness and necessity for the action.

16 69. The discretion to arrest, to hold, to transfer to
17 prison, or to institute revocation, is exercised in such a way,
18 by the parole agents, alone and in concert with other, unknown,
19 non-neutral persons, under unknown criteria, at unknown times,
20 with unknown ultimate responsibility, so that the exercise of
21 such power or discretion (a) is routinely abused and (b) cannot
22 be fairly and timely reviewed, either by the parolee or by any
23 interested party or body.

24 70. Once a parolee is arrested, a "hold" prohibits a
25 parolee's release from custody pending administrative hearing.
26 Upon information and belief, the parolee's parole agent
27 influentially participates in the decision whether to place or to
28 withdraw a hold on the parolee.

1 71. Upon information and belief, in numerous or most
2 revocation cases, it is the parolee's agent who has arrested the
3 parolee and/or who has lodged charges against him and is thus
4 prosecuting the parolee as a violator.

5 72. Under current California law and practice, there is no
6 neutral and detached person or body which assesses whether a
7 parolee can or should be released pending adjudication of the
8 cause for the detention.

9 73. Upon information and belief, while Defendants'
10 discretion to withdraw a hold, exists in principle, it is rarely,
11 if ever, invoked in favor of release pending hearing.

12 74. Consequently, upon information and belief, parolees are
13 frequently confined to jail or prison, pending "screening" (plea
14 bargaining) and pending administrative hearing, regardless of
15 whether or not they are being violated solely on "technical"
16 allegations, and whether or not any criminal charges pending are
17 minor or misdemeanors.

18 75. Upon information and belief, parole holds (prohibiting
19 release from jail or prison custody) are routinely placed on
20 parolees charged with new criminal offenses, preventing them from
21 making bail in any amount, regardless of the parolee's risk of
22 flight, regardless of the seriousness of the allegations of the
23 new offense, and regardless of the evidentiary support for the
24 new allegations, whereas such parolees are entitled to bail or
25 release on recognizance in the new criminal case.

26 76. As a matter of pattern or practice, attorneys who are
27 assigned to represent the parolee, as a defendant in a new
28 criminal case in the criminal courts, do not challenge and do not

1 deem they are charged to challenge the placement of a hold by
2 defendants.

3 77. Upon information and belief, within the broad scope of
4 Department of Corrections' discretion, a large majority of the
5 parolees being processed as parole violators are "discretionary"
6 violators, that is, they could be handled by referral to local
7 resources, by imposition of other conditions of parole, rather
8 than by processing for revocation.

9 78. There is currently no consistent definition of the term
10 "technical" parole violator among correctional agencies and
11 parole authorities for reporting and data classification, whereas
12 public officials have called for such a definition, at least
13 since 1990, in part, to allow decision-makers to separate out the
14 minor from the major offenders.

15 79. Parolees whose revocation does not involve a new
16 violation of criminal law, are a large and significant percentage
17 of those whose parole is being violated by defendants, on a
18 continuing basis.

19 80. The revocation of parole for those who are not in
20 violation of the criminal law is initiated arbitrarily,
21 capriciously or without any adequate or proper criteria,
22 guidelines or scrutiny, processes and procedures, whereas these
23 criteria, etc., should have been and have not been established by
24 defendants.

25 81. Decisions to revoke "technical" violators are based, in
26 part, on factors extraneous to the merits of the alleged
27 violations, and are made without due regard for the needs of
28 particular parolees for detention or alternative sanctions.

1 82. In the 1980's the number and rate of drug abusers and
2 drug addicts being returned to prison as parole violators has
3 increased geometrically.

4 . . .

5 SPEEDY REVOCATION HEARINGS ARE NOT AFFORDED

6 NO PRELIMINARY PAROLE REVOCATION HEARINGS ARE CONDUCTED

7 83. With the rare exception described in the next
8 paragraph, no prompt and preliminary parole revocation hearings
9 are conducted in California, whereas a parolee is entitled to a
10 preliminary examination into the cause of his detention "as
11 promptly as convenient after arrest". Morrissey 408 US at 485.

12 84. Pursuant to California Code of Regulations, Title 15
13 Sec. 3901.21.11, prerevocation hearings are held only for the
14 purpose of retaining jurisdiction over a parolee when his parole
15 is about to expire and the defendants wish to retain jurisdiction
16 over him, but when the revocation authorities do not yet have
17 enough basis in fact to conduct a final violation hearing.

18 85. Parolees are routinely removed from their community of
19 residence, soon after arrest and pending hearing on the
20 violation.

21 86. In part, in order to alleviate local jail crowding,
22 revocation hearings and proceedings are often not conducted in
23 the community near where the alleged violation occurred.

24 87. As a result of the arbitrary removal of parolees from
25 their "at liberty" status, as alleged above, and as a result of
26 their removal from their community of residence, as alleged
27 above, and for lack of preliminary revocation hearings, prompt
28 investigation is impossible and quasi-judicial scrutiny of the

1 prima facie cause of the parolee's detention is routinely denied.

2 PAROLEES ARE FREQUENTLY DENIED SPEEDY FINAL

3 PAROLE REVOCATION HEARINGS

4 . . .

5 88. Parolees are often held in custody, without being
6 afforded a final revocation hearing, where the said hearings are
7 unreasonably and unnecessarily delayed, in excess of the time
8 limits provided for by constitutional due process of law.

9 89. While a delay of about 120 days from arrest until final
10 revocation hearing is not alleged to be excessive as a matter of
11 law, plaintiffs do allege that such delay does violate the due
12 process rule of Morrissey because there are no privileges
13 afforded parolees pending final revocation (such as preliminary
14 hearings, counsel, investigation, nor any forum for challenging
15 refusal to withdraw holds).

16 CONDUCT OF DISCRETION BY THE DEPARTMENT OF

17 CORRECTIONS PURSUANT TO UNKNOWN POLICY

18 90. All actions challenged by this complaint and relating
19 to the process of parole violation and revocation, including, but
20 not limited to: placement of holds, issuance of arrest warrants
21 and the making of arrests (other than those warrants and arrests
22 made in the first instance by another jurisdiction), charging,
23 plea negotiation, investigation of claims made by witnesses
24 adverse to parolees, investigation of claims made by a parolees'
25 defense witnesses, consideration of parolees' request for
26 appointment of counsel, processing and consideration of any
27 appeal of denial of request for appointment of counsel,
28 scheduling of evidentiary hearings, prosecution of charges, fact

1 determination, disposition and sentencing are conducted by or
2 pursuant to the practice and procedures of the Defendants Gomez
3 and McGillivray, or their agents, all of whom are employees of
4 the California Department of Corrections, and answerable to and
5 regulated by policy formed by Defendants Wilson, Sandoval and
6 Brown.

7 91. Plaintiffs' parole agents are peace officers employed
8 by the California Department of Corrections.

9 92. At present, defendants are placing emphasis on the
10 punitive enforcement of parole conditions and law.

11 93. Defendant Gomez' agency, California Department of
12 Corrections, does not adhere to the California Administrative
13 Procedure Act, California Government Code Secs. 11340-11529,
14 which, if it were enforced against defendants, would provide
15 certain procedural and substantive safeguards against the
16 exercise of deprivatory, administrative action.

17 94. Upon information and belief, by the allocation and
18 prioritization of staff and services, defendants have virtually
19 unlimited control, with little or no oversight from the public or
20 the other branches of government, over the policy and practices
21 affecting parole revocations.

22 95. Upon information and belief, for many years, the
23 specific policies and practices of the Department of Corrections,
24 and of its predecessor agency, the Board of Prison Terms, and of
25 the Office of the Governor, and of the Agencies of the other
26 defendants, with regard to parolees, have been unknown to the
27 public, to the Bar, and to the Legislative and Judicial branches
28 of government.

1 96. However, upon information and belief, changes are being
2 continually instituted in the parole revocation policies and
3 practice, and such changes have been driven, in part, by an
4 interest in efficiency and in factors collateral to the fairness
5 of the proceedings, and have not been driven by an interest in
6 the preservation of due process of law under Morrissey and the
7 right to counsel under Gagnon.

8 97. Upon information and belief, in or about the past ten
9 years, the absolute numbers of parole violations alleged, the
10 number and percentage of parolees being found guilty after
11 administrative hearing, the number of parolees being returned to
12 prison, have increased geometrically, and, during this
13 approximate ten year period, there were no published, substantive
14 or procedural changes in law as might account for the changes
15 described.

16 98. Upon information and belief, there exist either
17 "standardized criteria" or guidelines or internal policy
18 statements which exist with regard to the processing of parole
19 violators.

20 99. Upon information and belief, Defendant Wilson and the
21 other defendants have issued, participated in, or have had
22 knowledge of and have influenced the policy or practices of the
23 Department of Corrections, relating to parole violations.

24 100. Any criteria or policies, mentioned in paragraphs 97-
25 98, if they exist, are unpublished, and upon information and
26 belief, are unknown to the parolees, to the public, to the
27 members of the Bar, and likewise unknown to the legislative and
28 judicial branches of government.

1 101. Upon information and belief, Defendant Wilson is
2 undertaking to increase the rate or revocation and
3 reincarceration of parolees, according to policy, practice and
4 procedure which is currently unknown to the public and which is
5 driven by interests which do not give due regard to the
6 satisfaction of parolees' needs, nor to the preservation of
7 parolees' constitutional rights, nor to preservation of public
8 safety or concern for the public fisc.

9 102. Upon information and belief, the process of revocation
10 of parole is driving prison crowding and stimulating prison
11 growth, which in turn, impairs the republican form of government,
12 interferes with public safety, and thwarts the entitlement of
13 prisoners to be exempt from cruel and unusual punishment.

14 "WAIVERS" OF MORRISSEY AND GAGNON ARE NOT
15 KNOWING AND VOLUNTARY

16 103. Plaintiffs are being unlawfully coerced to give up
17 their constitutional right to due process and other rights, in
18 the adjudication and disposition of allegations of violation of
19 parole.

20 104. Parolees who have been arrested are approached by a
21 member of the staff of the Department of Corrections about 2
22 weeks after a parole hold has been placed on the parolee's
23 custody.

24 105. The purpose of this visit is plea "negotiations",
25 called "screening".

26 106. The interview, in the nature of plea negotiations, is
27 conducted pursuant to some unpublished practice and procedure, or
28 alternatively at the unbridled discretion of the staff member of

1 the Department of Corrections.

2 107. A usual outcome of these interviews is that the
3 parolee, in custody, will waive his rights to Morrissey v. Brewer
4 (due process) and Gagnon v. Scarpelli (counsel), supra.

5 108. Upon information and belief, there is no procedure
6 available whereby a parolee can obtain counsel to assist in the
7 decision whether to waive a hearing under Morrissey. Rather,
8 the waivers taken by Defendants' agents, and alleged in this
9 complaint to be void, are routinely simultaneous waivers of (1)
10 the right to due process and (2) the right to counsel.

11 109. Upon information and belief, in the event a parolee
12 fails to waive his right to hearing and counsel, and rather,
13 presses for the right to counsel, it is the pattern or practice
14 of the Defendants' agents to deny the request for counsel, in
15 virtually all such cases, on the invalid ground, among other
16 invalid grounds, that the parolee is competent to represent
17 himself or that the charges are not difficult to defend.

18 110. Statistical information regarding the numbers of
19 appointments of counsel, and the frequency of uncounseled parolee
20 waivers of due process is not currently published data, and but
21 for a public records act request, California Government Code sec.
22 6250-6268, made in 1991 by an attorney for the members of the
23 plaintiff class, and but for diligence by counsel herein on
24 behalf of plaintiffs, upon information and belief, no member of
25 the public has ready access to the facts surrounding the high
26 rate of waivers of revocation hearings, complained about herein.

27 111. Under current Department of Corrections procedures, the
28 information about numbers of hearings, and the numbers of

1 purported waivers of hearing and counsel are not published.
2 However, such data, for the annual year 1993, have been provided
3 to plaintiffs' counsel by oral communication with Defendant
4 McGillivray.

5 PLEA BARGAINING OR "SCREENING"

6 112. Upon information and belief, screening (plea
7 bargaining) was instituted in about 1985, not as a fairness
8 mechanism, but largely to speed up revocations.

9 113. When a hearing is conducted, under current
10 circumstances, the Department of Corrections hearing panel (often
11 or usually composed of one person), an employee of the
12 Department, approves the recommendations of the California
13 Department of Correction's parole agents in about 98% of the
14 cases.

15 114. Upon information and belief, the improbability of
16 acquittal and the probability of return to prison on some charge,
17 is generally known to parolees.

18
19 115. Upon information and belief, parolees are commonly
20 aware of the fact, alleged elsewhere in this complaint, that due
21 process, as is described in Morrissey and Gagnon are routinely
22 ignored or disobeyed by Defendants and their agents in the
23 conduct of pre-hearing revocation proceedings and in the conduct
24 of the final revocation hearings, when conducted.

25 116. Upon information and belief, there exist unpublished
26 criteria, whereby Department of Corrections staff are influencing
27 and inducing parolees to give up their rights to due process and
28 to counsel. Alternatively, Department of Corrections staff are

1 in fact influencing and inducing parolees to give up their rights
2 to due process and to counsel.

3 117. Decisions whether to revoke a parolee's parole, or to
4 conduct a criminal prosecution on a new offense, or to do both,
5 are made on criteria, which are not public or known, except to
6 prosecutors.

7 118. Alternatively the decision to revoke parole or to
8 conduct new criminal proceedings is discretionary with individual
9 peace officers or prosecutors, made without any criteria at all,
10 and is arbitrary and capricious.

11 119. Thus, a parolee cannot plea bargain his parole
12 revocation charges without risk that his negotiation (or refusal
13 to negotiate) will result in the bringing of separate criminal
14 charges or will affect any pending criminal charges.

15 120. The process of having the custodian (Department of
16 Corrections) seeking waiver of a person's constitutional rights
17 while the person is being interrogated and while the person is in
18 custody, does not serve fundamental fairness.

19 121. The parolee does not have the benefit of consultation
20 with counsel prior to the plea negotiations, nor the benefit of
21 the presence of counsel in the plea negotiations session, so the
22 plea bargaining cannot fully and fairly benefit an accused where
23 he is unable to proffer the strengths of his defense and the
24 valid challenges to be made to the State's case.

25 122. Fairness in plea bargaining consists, in part, of the
26 parties' relative capacity to investigate and to argue
27 persuasively about the import of the evidence produced. Under
28 current "screening" procedures, parolees (in custody and without

1 counsel) have no such capacity to investigate and argue.

2 123. Upon information and belief, there is likelihood that
3 Defendants' weak cases are readily plea bargained, in the parole
4 revocation process.

5 124. Upon information and belief, the screener, representing
6 the interest of summary prosecution and adjudication, typically
7 presents the worst case scenario to a parolee, and unless the
8 parolee is willing to gamble with his freedom and the outcome, he
9 is induced to plead guilty.

10 125. Within the meaning of constitutional due process, the
11 giving of a guilty plea is not barter; rather, it is supposed to
12 be the settling of facts.

13 126. During plea bargaining sessions, by considering not
14 only what offenders say, but what witnesses, victims, police, and
15 others say, negotiators purport to agree on 'what happened' and
16 are better able to determine appropriate charges and sentences in
17 given cases.

18 127. However, there is no such agreement on "what happened"
19 in the screening process, as it is current enforced.

20 128. Moreover, in the parole revocation "screening" session,
21 for lack of an attorney, no one is competently representing the
22 best interests of the parolee.

23 129. For lack of an attorney, there are also violations of
24 the 5th Amendment in the screening process.

25 a. If the uncounseled parolee is astute enough to
26 invoke his Fifth Amendment right, he will likely be denied the
27 opportunity for a screening, inasmuch as the parolee cannot
28 explore the possible consequences of an admission without making

1 admissions.

2 b. Besides, if the parolee engages in screening and
3 later rejects the screening offer, he will probably have given an
4 admission to the Department of Corrections screening officer and
5 he has risked that such evidence will become known to the
6 Department of Corrections hearing officer, a fellow employee of
7 the screening officer, within the Department of Corrections,
8 which hearing officer will ultimately hear his case.

9 130. In the screening session, the parolee does not know
10 what are the practices and policies of the California Department
11 of Corrections.

12 131. Typically, and upon information and belief, in the
13 parole revocation process, law enforcement officers second guess
14 the process of adjudication and overcharge to compensate for the
15 negotiation process.

16 132. Upon information and belief, some guilty parolees plead
17 guilty to inaccurate accounts of their criminal or unlawful
18 behavior.

19 133. In no other forum known to plaintiffs can plea
20 bargaining result in a term of incarceration after plea
21 bargaining which has been conducted between a prosecutor and an
22 unrepresented defendant.

23 134. As a consequence of the summary "screening" conducted
24 in most parole revocation matters, and for lack of judicial or
25 quasi-judicial scrutiny in the bargaining process, there is
26 little or no opportunity for evidence to be challenged carefully.

27 135. Plaintiffs are generally unable to conduct any
28 preliminary investigation prior to the bargaining session, and

1 where adversarial challenge to the evidence is discouraged or not
2 possible, plaintiffs' appraisal of the evidence is likely to be
3 erroneous.

4 . . .

5 136. Organizational pressures brought to bear by defendants
6 encourage quick bargaining, and such pressures undermine any
7 interest in resolving the "screening" with a high degree of
8 certainty about the guilt of a parolee, about the factual
9 underpinning of guilt, and about the public policy in favor of
10 dispositions, alternative to prison.

11 137. A proliferation in plea negotiations has resulted in
12 the increase in incarcerative terms for those who, if due process
13 were satisfied, would receive placement in community facilities,
14 treatment and social services assistance, instead of state prison
15 commitment.

16 138. Upon information and belief, as contrasted with
17 criminal sentencing generally, where there is both great
18 discretion and great disparity is in adjudicative decisions
19 whether or not to incarcerate, the "screening" staff of the
20 Department of Corrections rarely, if ever, consider releasing a
21 prisoner, and rarely consider or effect some disposition other
22 than reimprisonment.

23 139. Routinely, parolees' decision whether to waive an
24 evidentiary hearing is unduly influenced and coerced, in part,
25 but not limited to by the remarks of the screening officer and/or
26 parolees' knowledge of the virtual certainty that a hearing will
27 result in revocation, by the threat of a longer term after
28 hearing, and by the circumstances of the parolees' confinement,

1 such as by unpleasant jail lockup during the screening session
2 and pending revocation hearing, the failure of work time credits
3 to accrue while in jail, and by other adverse consequences.

4 . . .

5 140. Upon information and belief, the waiver/screening
6 process is attended only by a staff person of the Department of
7 Corrections and the parolee, and there is no public participation
8 in, observation or scrutiny of the process.

9 DENIAL OF COUNSEL

10 141. Any purported written "waivers" of counsel are not
11 knowingly given, in that, the signature on the "waiver" form also
12 purports to be a "waiver" of counsel, and upon information and
13 belief, whereas the Department of Corrections "screener" tells
14 the parolee he is asking the parolee to waive his "hearing"
15 rights, the "screener" does not specifically, separately and
16 affirmatively advise of the right to counsel.

17 142. Upon information and belief, Defendants' policy is to
18 determine a parolee's entitlement to counsel only if the parolee
19 affirmatively requests counsel.

20 143. Under the circumstances described above, most parolees
21 sign paperwork which purports to waive both hearing and counsel
22 all in one phase.

23 144. The vast majority of parolees revoked and remanded to
24 prison are neither expressly advised of the right to counsel and
25 do not knowingly or expressly waive counsel.

26 145. In the event a parolee demands counsel, with the
27 exception of rare cases, the request is denied, and for reasons
28 which do not comport with the requirements of the United States

1 Constitution and Gagnon v. Scarpelli.

2 146. In the event a parolee requests counsel, pursuant to
3 Title 15 California Code of Regulations, sec. 3901.27.1 et seq.,
4 staff of the California Department of Corrections, either the
5 screening officer himself/herself or another staff member,
6 according to California regulations, is supposed to determine the
7 parolee's right to counsel, based, in part, on a presumption of
8 entitlement to counsel.

9 147. While fuzzy state administrative regulations, in part,
10 purport to provide for appointment of counsel, the Defendants and
11 their employees typically refuse to appoint counsel except in
12 very rare cases, the stringent criteria for appointment, or
13 general policy disfavoring such appointments, in fact, being
14 unpublished.

15 148. The California Code of Regulations, regarding the
16 implementation of rights to counsel under Gagnon, are so
17 contradictory, vague and ambiguous as to allow for an informal,
18 covert, deprivatory policy, believed to exist, against the
19 appointment of counsel and in favor of the wholesale denial of
20 counsel to parolees charged with a violation.

21 149. The defendants are exercising unguided discretion or
22 abusing discretion in the appointment of counsel for parolees.

23 150. It is not known who specifically is responsible for
24 attorney determinations, inasmuch as California regulations
25 authorize the delegation of that power to unspecified California
26 Department of Corrections "staff".

27 151. California regulations provide that the denial of an
28 attorney by Department of Corrections may be referred for review

1 by other "appropriate department staff" of the Department of
2 Corrections.

3 a. It is unknown who such referral staff are.

4 . . .

5 b. Review is to be conducted by a "the hearings
6 division appeals unit" of the Department of Corrections.

7 c. It is unknown who and what constitutes such unit.

8
9 d. It is unknown what criteria or policy is enforced
10 by the hearings division appeals unit, except that it is believed
11 that the informal policy of the unit, if it exists, is wholesale
12 denial of the requests to appointment of counsel presented to it.

13 152. Upon information and belief, by practice and procedure
14 in many, if not most cases, the screening officers, not being
15 neutral and detached, influence or determine the outcome of a
16 request for counsel, in that the screening officers, who are
17 primarily interested in disposing of the allegations by adducing
18 a guilty plea, are also taking down the necessary information
19 from the client, in order personally to determine, or to refer
20 for determination on the "colorable" quality of the parolee's
21 claims, such as would entitle him to an attorney.

22 153. Plaintiffs have no assurances that any information
23 shared with the screening officer will not become available to
24 other employees of the Department of Corrections.

25 154. Upon information and belief, in those cases in which
26 counsel is appointed, the parolee's counsel is appointed by and
27 paid by the California Department of Corrections.

28 155. The Department of Corrections cannot and should not

1 reasonably and fairly determine what is a responsible use of
2 attorney time in the representation of a parolee.

3 156. The pay scale and criteria for attorney representation,
4 set by the Defendants, make unduly burdensome or impossible the
5 fair, full and reasonable representation of parolees.

6 157. A reasonably competent attorney must identify errors in
7 the hearing process, believed to be fairly frequent, and would be
8 obligated, as a matter of reasonable care, to pursue relief by
9 administrative appeal or from an appropriate court.

10 158. Among other limits and restrictions, the reasonable and
11 supplemental legal services, such as the perfecting of
12 administrative and judicial review, are not compensated by the
13 Department of Corrections.

14 159. Counsel who serve as appointed counsel for the
15 Department of Corrections are largely inexperienced.

16 160. Upon information and belief, the hourly rate of pay,
17 and limit on hours for representation is intended to serve or
18 serves to discourage competent representation of parolees.

19 161. Other than by this lawsuit, no mechanism is known
20 whereby to enforce the parolees rights under Gagnon v. Scarpelli.

21 162. In the event a parolee is pending new criminal charges,
22 his court-appointed counsel in the criminal matter is of little
23 or no assistance to him in the parole revocation matter.

24 163. Because the California Department of Corrections
25 exclusively screens and pays the attorneys involved in the
26 revocation process, there are few criminal law attorneys who are
27 experienced in, and able and willing to represent parolees in the
28 parole revocation process.

1 164. As a matter of budget and practice, Public Defenders
2 and other court appointed counsel who represent parolees on new
3 criminal charges, do not presume to represent parolees in a
4 contemporaneous parole revocation proceeding.

5
6 165. Because the vast majority of the parolees are
7 essentially coerced into waiving counsel and taking the screening
8 deal within about 10 days of their arrest, often in a location
9 far removed from the site of the arrest, it is difficult or
10 impossible for counsel to intervene to thwart the unlawful
11 waivers.

12 166. Under the current circumstances, a competent attorney,
13 knowing that preliminary Morrissey hearings are not given, that
14 holds are rarely dropped, that bail is not given, that hearings
15 are delayed, that hearings almost always result in
16 reimprisonment, largely due to the lack of neutrality of the
17 hearing examiner, rather than due to the guilt or innocence of
18 the parolee, and that successful representation would almost
19 certainly require expensive judicial intervention, such a
20 competent attorney would likely recommend to a parolee that the
21 preservation of his constitutional rights would be expensive,
22 time consuming and ineffectual to afford the parolee prompt or
23 any relief from the constitutional violations which he could
24 assert.

25 167. In any event, almost all parolees are unable to retain
26 counsel.

27 168. The policy of the predecessor agency, Board of Prison
28 Terms had been, and upon information and belief, the policy of

1 the Department of Corrections is to disallow, a parolee who is
2 not indigent to appear with retained counsel. Rather, it still
3 is the policy of the Defendants and the Department of Corrections
4 to deny retained counsel the opportunity to appear, unless the
5 Department first finds that the parolee qualifies for counsel, as
6 if he were indigent, under their policy, described above, which
7 is to deny counsel in almost all cases.

8 169. The policy of the Department of Corrections forces any
9 competent, retained attorney to expend valuable time and
10 resources in bringing legal appeals or judicial proceedings on
11 the preliminary issue of the parolee's right to representation
12 and on the retained counsel's duty and entitlement to represent
13 the parolee in the revocation proceedings.

14 170. Very few parolees are represented by retained counsel
15 in revocation proceedings.

16 171. Administrative appeals are not promptly given, and, in
17 any event, could not promptly relieve a parolee of an illegal
18 revocation procedure, in that denials of appointment of counsel
19 are routinely delayed, ignored, and thereby are rendered moot by
20 the occurrence of the final revocation hearing, conducted without
21 counsel, or by the re-parole of the parolee, at the conclusion of
22 his term.

23 HEARINGS DO NOT COMPLY WITH MORRISSEY
24 LACK OF NEUTRAL AND DETACHED ARBITER
25 FOR ADJUDICATION AND DISPOSITION

26 172. In 1993, by California law passed in 1992, the power to
27 revoke a parole and remand a parolee to prison was removed from
28 the Board of Prison Terms to the Department of Corrections.

173. The removal was based on the stated facts (1) that the

1 Board of Prison Terms had been adopting the California Department
2 of Corrections' parole agents' recommendations in 98% of its
3 cases, and that (2) it would save money to have the revocation
4 function be conducted in the California Department of
5 Corrections.

6 174. Under current law, revocation hearings may be, and
7 routinely are conducted by a panel of one person, employed by the
8 Department of Corrections.

9 175. Under due process of law, the revocation hearing
10 involves a two-step process: (1) the first step involves the
11 resolution of factual questions of whether the parolee has in
12 fact violated one or more of the conditions of supervision. (2)
13 The second step is a predictive and discretionary one: should the
14 parolee be reincarcerated or are alternatives appropriate?

15 176. Due process serves not only (1) the integrity of the
16 process of fact finding, but also, (2) the full and fair
17 consideration of options for disposition, and also serves (3) the
18 interest in preserving the dignity of the litigants, and (4) the
19 integrity, legitimacy and credibility of the revocation process.

20 177. Due process, through adjudication of facts and choice
21 of options for dispositional alternatives, is an important
22 component of the social process whereby decision-making give
23 meaning to our public values.

24 REFUSAL OF WITNESSES IN HEARINGS

25 178. Pursuant to state regulations, but in violation of due
26 process, witnesses may be subpoenaed to Morrissey hearings only if
27 the proposed witness is adverse to the interests of the parolee.

28 179. Witness requests, whether of adverse or exculpatory

witnesses, are to be screened by the "hearing coordinator", an employee of Defendants.

180. Under California Code of Regulations, Title 15 Sec. 3901.25.7, the parole hearings division of the Defendants' agencies has final responsibility to decide whether to issue a subpoena, and such responsibility may be delegated to California Department of Corrections staff.

181. When and if granted, upon information and belief, a subpoena must be served by parolee or by some designated agent of the parolee, and may not be served by an official Marshall or by an agent of the Defendants.

182. No procedure exists for the prompt enforcement of the power of subpoena.

183. In the likely event that an unrepresented parolee asks California Department of Corrections staff for attendance of witnesses, but fails promptly and formally to request the issuance of subpoenas, subpoenas are not issued and served, and the witnesses need not attend, whereas due process requires compulsory attendance of the witnesses.

184. Defendants are executing a pattern and practice of denying plaintiffs the right to have testimony adduced in their behalf from any live, percipient witnesses in Morrissey hearings, and are instead basing decisions on evidence which is purely documentary and which is second and third hand hearsay, or even confidential, so that the "evidence" adduced is often utterly unreliable and unworthy of weight.

LACK OF DEFINITIVE DECISION CRITERIA

185. There are no known, published decision criteria for

1 "adjudication" and disposition of the parolees who come before
2 the hearing examiner of the Department of Corrections.

3 186. Inasmuch as all or nearly all persons brought before
4 are reimprisoned (i.e. their reimprisonment is confirmed), it is
5 alleged upon information and belief, that any reasons given for
6 the adjudication and disposition, do not serve substantial
7 justice, but rather serve the policy of the defendants, which is
8 arbitrary and capricious, and which is believed to incorporate,
9 to be influenced by, and to include one or more of the following:
10 (1) numerical quotas; (2) election year politics; (3) defendants'
11 budget allocations; (4) post hoc assessment of prison space; (5)
12 knowing or intentional maintenance of overcrowding; (6)
13 implementation of parole officers' capacity for caseload
14 handling; (7) response to parole officers' and Legislative
15 lobbying for an increased "rate" of incarceration; (8) other
16 considerations which should not fairly and properly influence the
17 processes of fact finding and reimprisonment.

18 FAILURE TO USE ALTERNATIVE DISPOSITIONS

19 187. As a consequence of the fact that the Defendants run
20 the entire parole revocation process and also conduct prison
21 planning, the Defendants are in a position to determine, appear
22 to determine, and do determine what parole findings and
23 dispositions are suitable to the personal policy of Defendants or
24 to the political policy and advantage of the Governor and of the
25 Youth and Adult Corrections Agency.

26 188. Such dispositions have little or nothing to do with the
27 relative guilt or innocence of an alleged parole violator, and
28 nothing to do with objective and predictive criteria for invoking

1 re-incarceration as a disposition, upon a finding that a parolee
2 is in violation of parole.

3 189. With few exceptions, which are unknown to plaintiffs,
4 parolees who are charged, upon finding of violation, after waiver
5 or after hearing, are remanded to prison.

6 190. As a consequence of the overlapping custodial,
7 adjudicative, and sentencing duties of defendants, (both to
8 maintain and plan prisons, to determine guilt or innocence, and
9 to determine whether re-imprisonment is appropriate), as a matter
10 of public policy there is no reasoned factual basis underlying
11 the adjudication and disposition processes, nor under the
12 facilities planning process.

13 191. It is in the interest of defendants, and upon
14 information and belief, it is defendants' intent and desire to
15 vary the prison population for their own political and budgetary
16 interests, to the disadvantage of the rights and needs of the
17 parolees, to the disadvantage of the people of the State of
18 California, and to the disadvantage of alternative dispositions,
19 such as community treatments, which would become available to
20 parolees, but for the allocation of a high percentage of public
21 resources for imprisonment.

22

23 LACK OF PUBLIC SCRUTINY IN REVOCATION PROCESS

24 192. The conduct of the parole revocation "process" is
25 beyond any realistic public scrutiny of any kind. Almost all
26 revocation actions are unattended by and unscrutinized by the
27 public, by the bar, or by the representatives of government in
28 the legislative and judicial branches of government.

1 193. Virtually all revocation actions which result in the
2 remand of a parolee to prison are attended only by the parolee
3 and by one or more persons employed by the California Department
4 of Corrections, except in rare cases where visitors are allowed,
5 in the broad discretion of Defendants, for "educational and
6 informational" purposes, and if such visitors have given
7 sufficient advance notice of a desire to attend.

8 CREDITS

9 194. According to current California regulations, Title 15
10 CCR § 3901.35.1, parolees can be denied worktime credits against
11 their prison sentence where the authorities find at the
12 revocation hearing that the parolee is unsuitable for reduction
13 of the period of confinement because of the circumstances and
14 gravity of the parole violation, or because of prior criminal
15 history.

16 195. As exercised in the California parole revocation
17 process, upon information and belief, this broad discretion,
18 without further limiting criteria, and under all the
19 circumstances described above in this complaint, is routinely
20 exercised arbitrarily or abused, so as to constitute a violation
21 of due process.

22 196. Moreover, upon information and belief, the power to
23 grant or to retain credits can be used and is being used to
24 punish a parolees refusal of the previously proffered plea
25 bargain.

26 /

27 /

28 /

CALIFORNIA ADMINISTRATIVE AND JUDICIAL
REMEDIES ARE UNAVAILING TO PAROLEES

197. While there is a process of administrative review from disposition of guilt and reincarceration after hearing, the administrative review is neither prompt, nor effectual.

198. By regulations, California Department of Corrections officials are responsible to do reviews of the hearing process.

199. The identity of persons conducting any such reviews is unknown.

200. The criteria or policy, if any, enforced by the appeals unit, is unknown, except that it is believed that the informal policy of the unit, if it exists, is wholesale affirmance of the appeals presented to it.

201. Any such appellate review is supposed to enforce "established parole hearings division policy". Such policy, except as described in the preceding paragraph, is unknown.

202. The California Department of Corrections routinely fails to promptly allow, consider and dispose of administrative appeals after administrative hearing.

203. Routine delays in the process of administrative appeals makes any such appeals moot or unhelpful to the parolees. Such delays include: months' delay in making available a tape recording of the hearing; and months' delay in deciding the administrative appeal.

204. In those rare judicial challenges made to the parole revocation process, the state attorney routinely claims that administrative appeal is an avenue of relief that must be exhausted before a parolee is entitled to request judicial

1 process.

2 205. The relatively short---usually 6 month or 1 year---
3 terms imposed by the California Department of Corrections,
4 pursuant to the terms of California Penal Code sec. 3057, make it
5 essentially impossible to do a state petition for habeas corpus
6 to relieve the unlawful confinements in individual cases, with or
7 without first exhausting state remedies.

8 206. Pursuant to California Superior Court Rules of Court,
9 Rule 260, a petition for habeas corpus relief will usually be
10 pending at least 60-90 days before any relief will be granted.

11 207. The relief provided in state habeas corpus, if the
12 petition does not first become moot, while the case is pending,
13 is likely to be limited to a Morrissey rehearing.

14 208. Thus, any prior error or omission, committed by the
15 Defendants or the California Department of Corrections hearing
16 examiner may be "cured", even if egregious, without consequence
17 to the parolee's custody status.

18 209. Because grants of habeas corpus by the superior court
19 are not published authority, there is no record of any recent
20 grants of habeas corpus whereby the California Department of
21 Corrections is obligated under law to obey due process.

22 CAUSE OF ACTION

23 DENIAL OF DUE PROCESS OF LAW

24 210. Neither charging, plea negotiations, adjudication or
25 disposition are being conducted by a neutral evaluator or
26 arbitrator, but rather are decisions being made by the Executive
27 Branch of State government, and being made for reasons which may
28 be, appear to be, and are being contaminated by political

1 considerations having nothing to do with the guilt or innocence
2 of the parolee, the level of his guilt, and the needs of the
3 parolee or the needs of the public for protection, in violation
4 of due process of law under the 14th Amendment of the United
5 States Constitution.

6 211. Plaintiffs infer and allege, based upon all the
7 allegations made herein, that the Defendants, including
8 defendants Wilson and Gomez, through pronouncements and
9 enforcement of policy, which are not public and furthermore which
10 are unknown to the bench, to the bar and to the Legislature, do
11 direct, dictate and influence the following: criteria for the re-
12 arrest of parolees, the numbers of persons arrested as parole
13 violators, the practice and procedure used in the "screening"
14 (plea bargain) process, the nature and content of the plea
15 bargain "deals" offered, the procedures, illegal such as they
16 are, for conducting parole revocation hearings, the alternative
17 sentencings available, if any, and the rate at which alternative
18 sentencings will be invoked.

19 212. In short, the Defendants discretionarily control about
20 50% of the population which is annually admitted to prison,
21 without any judicial or quasi-judicial intervention or
22 participation, in violation of due process of law under the 14th
23 Amendment of the United States Constitution.

24 213. Failure to conduct prompt preliminary hearings,
25 transportation of parolee to prison pending final adjudication,
26 plea bargaining with parolee while parolee is in custody and
27 unrepresented by counsel, coercion, by overstatement of the
28 department's case, by failure fully to advise parolees of the

1 entitlements under Morrissey, failure to enforce Gagnon,
2 wholesale refusal to enforce Gagnon, discouragement of
3 entitlement to counsel, thwarting of the assertion of the right
4 by advising of the unlikelihood that it would be granted, failure
5 to promptly and in good faith pursue the parolee's rights under
6 Gagnon before a neutral decision-maker on its enforcement, lack
7 of certainty or constancy in the appellate process whereby the
8 right to counsel is supposed to be enforced, and indeed, use of
9 the administrative review process as a delaying tactic whereby to
10 instill in the parolee the prospect that any pursuit of the right
11 to counsel would ultimately harm the parolee's chances of prompt
12 release from custody; discouragement of the exercise of the right
13 to counsel and of the right to a hearing by counseling a more
14 harsh outcome, if the right to counsel and hearing is pursued,
15 such as the prospect of remaining in an overcrowded jail, long
16 delays before a Morrissey hearing can be held, without advisal of
17 and conduct of a preliminary parole revocation hearing, failure
18 to advise of the constitutional right to have a hearing officer
19 make judgment about the severity of the charge and the relative
20 consequences of a finding of guilt of some, but not all of the
21 charges, failure to conduct neutral and diligent investigation
22 for parolee before arrest, before plea negotiations and before
23 hearing, failure to advise of the constitutional entitlement to
24 subpoena any relevant evidence, discouragement or denial of
25 subpoena for defense witnesses; failure to assist in obtaining,
26 serving, and enforcing subpoenas; advisals of parolees that these
27 circumstances are normal and that therefore the Morrissey hearing
28 is not likely to assist the parolee's lot; intentionally or

1 negligently misleading parolees about the weight of the evidence
2 and the sustainability of the charges, failing to negotiate any
3 alternatives to prison; making no investigation about and taking
4 no regard for the needs of the inmate for drug treatment or other
5 therapeutic interventions nor for the needs of the public for
6 sound policy, including protection; among other things alleged
7 and to be shown, individually and collectively violate due
8 process of law under the 6th and 14th Amendments to the United
9 States Constitution.

10 214. Defendants' use of informal or unpublished criteria,
11 issued by Defendants or by their agents, for charging, lodging of
12 parole holds, and issuance of arrest warrants; for consideration
13 of release pending administrative or judicial consideration of
14 alleged wrongdoing; for plea negotiations; for conducting parole
15 revocation hearings and for regulating evidence and live
16 testimony at such hearings, for making findings of violation, and
17 for making dispositions of violation, and in combination with all
18 the other actions complained about herein, violates due process
19 of law under the 14th Amendment to the United States
20 Constitution.

21 215. Alternatively, the discretion described in performance
22 of the functions noted in the proceeding two paragraphs is
23 routinely abused and exercised in so utterly arbitrary and
24 capricious a manner as to violate due process of law.

25 REMEDY

26 WHEREFORE, PLAINTIFFS RESPECTFULLY PRAY FOR THE FOLLOWING
27 RELIEF:

28 1. Authorization that the matter may proceed as a class

1 action, and the approval of such notice to members of the class
2 as is just, in conformity with the rules of court and in
3 conformity with due process.

4 2. Declaratory relief that, under the circumstances
5 described herein, placement of the parole revocation process in
6 defendants' dominion and control violates due process of law, and
7 that therefore, the provisions of the Statutes of California,
8 namely, Laws of 1992, Chapter 695, which purports to authorize
9 transfer of broad authority over parole revocation to the
10 Governor and to the other defendants are unconstitutional in
11 violation of due process of law.

12 3. That Defendants and their agents be enjoined forthwith
13 from conducting parole revocation hearings and parole revocation
14 dispositions of any kind.

15 4. Pending final resolution of this matter, that parolees'
16 arrest warrants and holds be first considered for sufficiency by
17 a California State administrative law judge, that parolees who
18 are arrested be forthwith arraigned, or be arraigned within 48
19 hours, before such an administrative law judge, for prompt
20 determination of release pending hearing, for determination of
21 entitlement to counsel, for setting of prompt preliminary parole
22 revocation hearing, and for setting of prompt, final parole
23 revocation hearing.

24 5. As a final resolution of this matter, that the
25 sufficiency review and arraignment and other preliminary matters
26 described in the proceeding paragraph be permanently conducted by
27 California State administrative law judges or before such other
28 neutral and detached hearing body as satisfies due process of

1 law.

2 6. That Defendants and their agents be enjoined from
3 conducting plea negotiations with parolees unless and until
4 counsel has been appointed and the negotiation can be made by and
5 through counsel on the parolee's behalf.

6 7. That the defendants, to the extent only that the
7 defendants may retain any lawful residuary control over parole
8 and the parole revocation process, shall be preliminarily and
9 permanently enjoined to comply with Morrissey and Gagnon.

10 8. That defendants shall publish procedural and
11 substantive rules and regulations and provide notice and conduct
12 public hearings on its practice and procedures in parole
13 revocation matters, in compliance with the California
14 Administrative Procedure Act or with substantially similar
15 provisions as may satisfy due process of law.

16 9. Damages in an amount to be determined after trial, for
17 the named individual plaintiffs Williams and Cervantes.

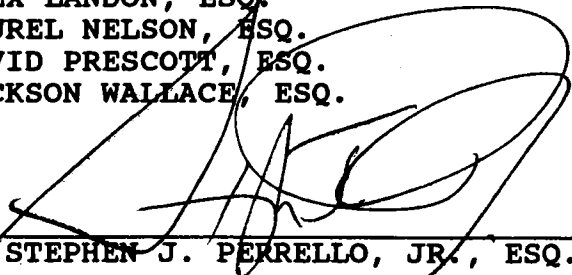
18 10. Reasonable attorneys' fees.

19 11. Costs of suit.

20 12. Such other and further relief, as to the court, may
21 seem just and proper in the premises.

22 DATED May 1, 1994

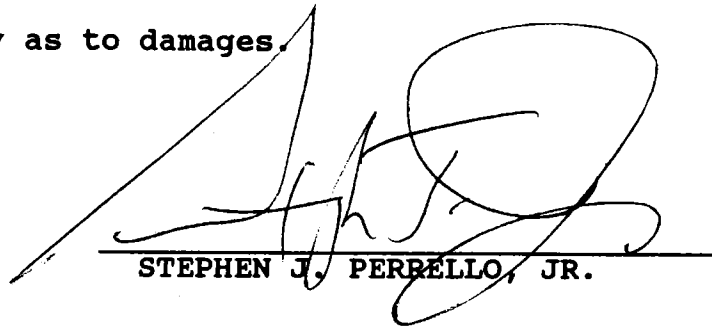
PAUL COMISKEY, ESQ.
RICHARD HERMAN, ESQ.
ALEX LANDON, ESQ.
LAUREL NELSON, ESQ.
DAVID PRESCOTT, ESQ.
JACKSON WALLACE, ESQ.

27 BY: 

28 STEPHEN J. PERRELLO, JR., ESQ.

JURY TRIAL DEMAND

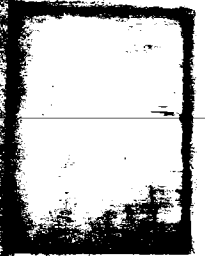
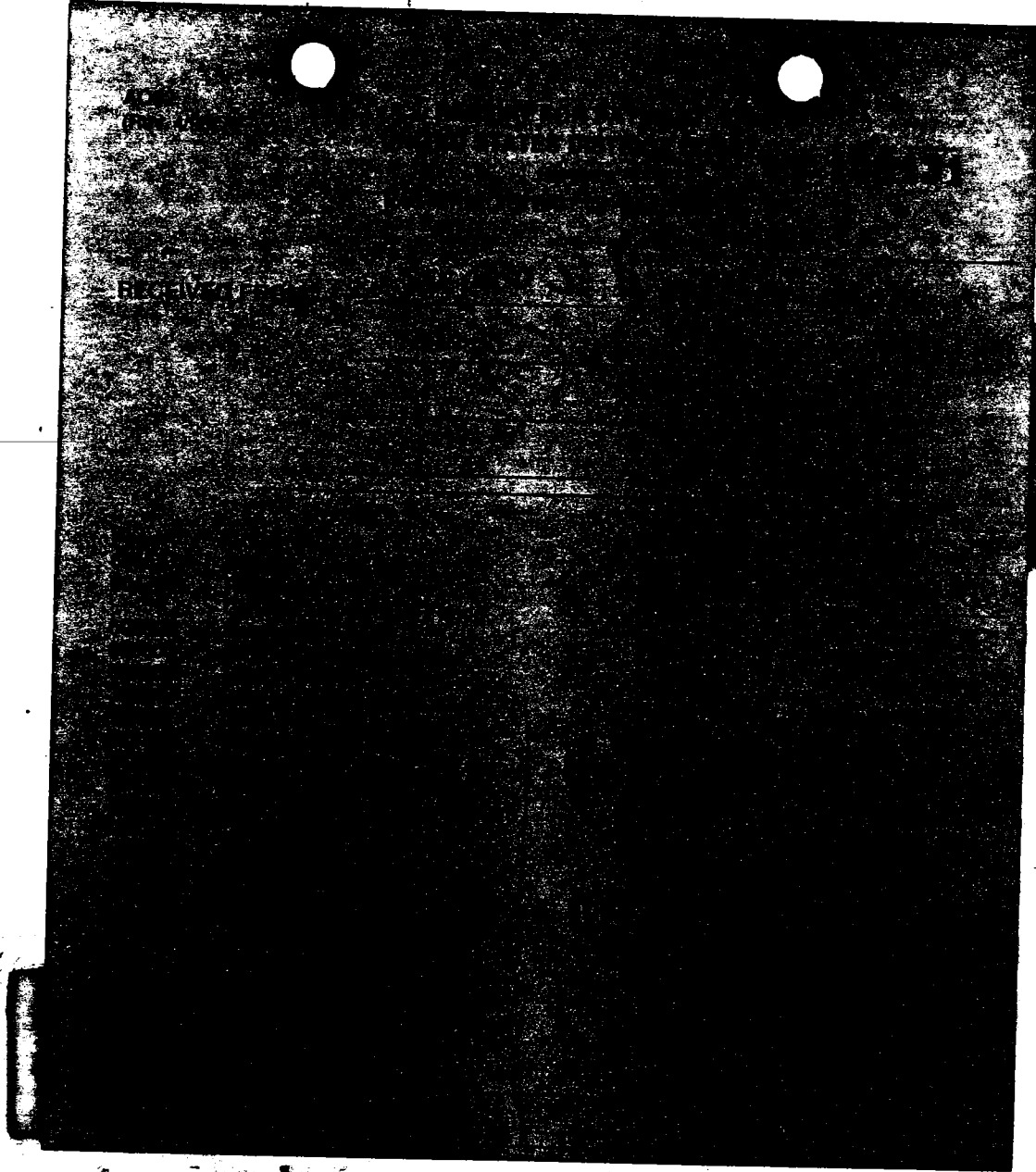
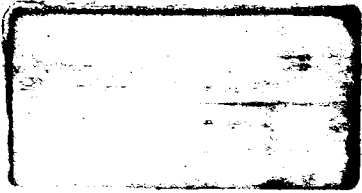
Plaintiffs demand jury as to damages.



STEPHEN J. PERBELLO, JR.

DATED: May 1, 1994

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Judge: 1 LR Mag: GGH

DEPUTY CLERK'S CHECKLIST FOR NEW CIVIL ACTIONS

Case Number: CV-S- 94- 0671 ERL GGH

Civil Actions (excluding prisoner matters):

* Basis of Jurisdiction: 3
If diversity (4) identify):

Plaintiff: _____

Defendant: _____

* Cause of Action: 42 USC 1983

* Nature of Suit: 440

* Origin: 1

ATTORNEY(S) BAR NUMBER INCLUDED (YES/NO)

FEE PAID (YES/NO/GOV'T) Receipt # 158131

ISSUED SUMMONS (YES/NO/NOT REQUIRED)

MAG CONSENT FORMS (GIVEN/NOT REQUIRED)

NOTC re COUNSEL IDENTIFICATION (GIVEN/NOT REQUIRED)

PSC ORDER (GIVEN/NOT REQUIRED)

DATE: 8/1/94 TIME: 1030

COMMENTS:

FORM COMPLETED BY: me

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

VINCENT CERUANTES

STEVEN WILLIAMS ON

their own BEHALF & OTHERS SIMILARLY SIT.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF MONTERREY
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

STATE of CALIFORNIA,

PETE WILSON, GOV., JOE SANDOVAL,

CRAIG L. BROWN, JAMES H.

GOMEZ, JUDITH A. MCGILLIVRAY

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

STEPHEN J. PERRELLO, JR.

P.O. Box 880738

(619)

SAN DIEGO CA 92168 277-5900

ATTORNEYS (IF KNOWN)

JAMES BROWNING CDC

501 J ST.

STE 206

SACTO CA (916) 324-1980

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | ☒ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☒ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

42 U.S.C. § 1983; 28 USC § 1343(a)(3), 2201-2202
CIVIL CLASS ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employees' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury—Med Malpractice ☐ 365 Personal Injury—Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (13658) ☐ 862 Black Lung (923) ☐ 863 DMC/DMM (406(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party, 26 USC 7608	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 480 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☐ 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 10,000.00

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5-2-94

SIGNATURE OF ATTORNEY OF RECORD

U.S.

94-0671

LRKGGH

Case: 720-1

Parties: Plaintiffs Vincent Cervantes and Steven Williams

Title: Civil Complaint-Class Action for Declaratory and Injunctive Relief for Damages

Date Filed: 5/2/1994

Date Served: 5/2/1994

Date Received: 2/18/04

These are all from

1994

Please incorporate them using

Tab ~~32a~~ 32a
Tab 32b
32c) example