



PP-CA-001-001

 ✓
 -pb
 5/3/0

REC'D ULC 02 1999

1 KEKER & VAN NEST, LLP
 JON B. STREETER - # 101970
 2 JON S. TIGAR - # 145566
 REBECCA K. SULLIVAN - # 189299
 3 710 Sansome Street
 San Francisco, California 94111-1704
 4 Telephone: (415) 391-5400

5 MICHELLE ALEXANDER - #177089
 ALAN L. SCHLOSSER - #49957
 6 THE AMERICAN CIVIL LIBERTIES UNION
 FOUNDATION OF NORTHERN CALIFORNIA
 7 1663 Mission Street, Suite 460
 San Francisco, CA 94103
 8 Telephone: (415) 621-2493

9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

12 CURTIS V. RODRIGUEZ, JOSE LOPEZ,)
 MacARTHUR WASHINGTON, CALIFORNIA)
 13 BRANCHES of the NAACP, and THE)
 CALIFORNIA LEAGUE OF UNITED LATIN)
 14 AMERICAN CITIZENS, INDIVIDUALLY)
 AND ON BEHALF OF ALL OTHERS)
 15 SIMILARLY SITUATED,)

Case No. C-99-20895-JF/EAI

FIRST AMENDED CLASS ACTION
 COMPLAINT FOR DECLARATORY
 RELIEF, INJUNCTIVE RELIEF AND
 DAMAGES

16 Plaintiffs,)

Demand for Jury

17 v.)

18 CALIFORNIA HIGHWAY PATROL,)
 BUREAU OF NARCOTICS ENFORCEMENT,)
 19 CALIFORNIA HIGHWAY PATROL)
 COMMISSIONER D.O. HELMICK, BUREAU)
 20 OF NARCOTICS ENFORCEMENT CHIEF)
 JOE DOANE, DOE DEFENDANT NARDIL,)
 21 DOE DEFENDANT WOODS, DOE)
 DEFENDANT WILSON and Does 4-100,)
 22 inclusive,)

23 Defendants.)

INTRODUCTION

1. This is a class action lawsuit seeking declaratory, injunctive, and monetary relief against the California Highway Patrol ("CHP") and the Bureau of Narcotics Enforcement ("BNE") for engaging in and condoning a continuing pattern and practice of race-based stops, detentions and searches of motorists of color traveling on the public streets and highways of the State of California. The specific abuses giving rise to this action occurred on or in the area of Highway 152 in California, including, but not limited to, the area where Highway 152 intersects with Interstate Highway 5.

2. Plaintiffs in this case, Curtis Rodriguez ("Rodriguez"), Jose Lopez ("Lopez"), MacArthur Washington ("Washington"), California Branches of the NAACP ("NAACP"), and California League of United Latin American Citizens ("LULAC"), represent a class of people of color who have been or will be subjected to the humiliation of being targeted, interrogated, detained and searched by defendants in the area of Highway 152 due to the defendants' policy and practice of what is commonly known as "racial profiling." The moment Mr. Rodriguez, Mr. Lopez and Mr. Washington were stopped by the defendants they became victims of what the United States Court of Appeals for the Ninth Circuit called "an all too familiar set of circumstances – an intrusive law enforcement stop and seizure of innocent persons on the basis of suspicions rooted principally in the race of the 'suspects.'" *Washington v. Lambert*, 98 F.3d 1181, 1182 (1996).

3. To any person of color, regardless of ethnic background, level of education, or economic station in life, the insidious problem of racial profiling by law enforcement officers is all too familiar. It is a continuing reminder that, despite popular notions of progress in race relations, racial discrimination remains a day-to-day reality in our society.

4. By the complaint in this case, plaintiffs seek judicial redress for violations of their civil rights due to racial profiling. But they also seek to confirm what everyone has a right to expect in the United States: that people of color may use the public streets and highways, just like anybody else, without having to suffer the indignities of racial discrimination at the hands of government officials.

5. Plaintiffs' claims are brought pursuant to the Fourth, Fifth and Fourteenth Amendments to the United States Constitution; Title VI of the Civil Rights Act of 1964 and its implementing regulations, 42 U.S.C. § § 1982, 1983, 1985 and 1986; Article 1, Section 7(a) of the California Constitution; California Civil Code §52.1; California Government Code §§11135 and 11139; and the California Common Law.

JURISDICTION

6. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 and 2201. The Court has pendent jurisdiction and supplemental jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. § 1367. Declaratory relief is authorized under 28 U.S.C. §§ 2201 and 2202.

7. All administrative remedies have been exhausted. In compliance with California Government Code § 910 et seq., Mr. Rodriguez, Mr. Lopez, and Mr. Washington have filed administrative claims for damages under the California Tort Claims Act with the California State Board of Control, which has declined to exercise jurisdiction over these actions.

8. A substantial part of the events giving rise to the claims alleged in this Complaint arose in the County of Santa Clara, California. Venue therefore lies in the United States District Court for the Northern District of California, San Jose Division, pursuant to 28 U.S.C. § 84(a), 28 U.S.C. § 1391(b)(2) and Civil Local Rule 3-2(d).

PARTIES

9. Plaintiff Curtis V. Rodriguez is, and at all relevant times herein mentioned was, a citizen of the State of California and a resident of the County of Santa Clara. Mr. Rodriguez is of Latino descent and, by physical appearance, is a person of color.

10. Plaintiff Jose Lopez is, and at all relevant times herein mentioned was, a citizen of the State of California and a resident of the County of Los Angeles. Mr. Lopez is of Latino decent and, by physical appearance, is a person of color.

11. Plaintiff MacArthur Washington is, and at all relevant times herein mentioned was, a citizen of the State of California and resident of the County of Merced. Mr. Washington is African-American and, by physical appearance, a person of color.

1 12. Plaintiff California Branches of the NAACP (the California NAACP) is a non-profit
2 membership organization dedicated to eradicating race-based discrimination throughout California
3 and to securing equal protection of the laws for all persons. Upon information and belief,
4 individual members of the California NAACP regularly travel on the Highways of California,
5 including Highway 152 and Interstate 5, and at various times have been stopped and detained by
6 members of the CHP and/or BNE on the basis of their race. The California NAACP is
7 representative of the class of minority motorists who have been or are being subjected to race-
8 based discrimination by the CHP and/or BNE. The California NAACP participates as a plaintiff
9 only for the purpose of securing declaratory and injunctive relief.

10 13. Plaintiff California League of United Latin American Citizens ("LULAC") is a non-
11 profit membership organization dedicated to eradicating race-based discrimination throughout
12 California and to securing equal protection of the laws for all persons. Upon information and
13 belief, individual members of the LULAC regularly travel on the Highways of California,
14 including Highway 152 and Interstate 5, and at various times have been stopped and detained by
15 members of the CHP and/or BNE on the basis of their race. The California LULAC is
16 representative of the class of minority motorists being subjected to race-based discrimination by
17 the CHP and/or BNE. LULAC participates as a plaintiff only for the purpose of securing
18 declaratory and injunctive relief.

19 14. Defendant California Highway Patrol, headquartered in Sacramento, California is a
20 division of the State of California in charge of patrolling California State highways. Upon
21 information and belief, the CHP receives federal funds through federal grants from the United
22 States Department of Justice or another federal agency. As such, the CHP is legally required to
23 conduct its activities in a racially non-discriminatory manner.

24 15. Upon information and belief, Doe defendant Officer Nardil, sued here in both his
25 individual and official capacities, is a resident of California who is employed by the CHP. All
26 actions taken by Officer Nardil while working as an officer of the CHP were taken under color of
27 state law. In due course, this complaint will be amended to allege the full and correct name of Doe
28 defendant Officer Nardil once that information has been ascertained.

1 16. Upon information and belief, Doe defendant Officer Wilson, sued here in both his
2 individual and official capacities, is a resident of California who is employed by the CHP. All
3 actions taken by Officer Wilson while working as an officer of the CHP were taken under color of
4 state law. In due course, this complaint will be amended to allege the full and correct name of Doe
5 defendant Officer Wilson once that information has been ascertained.

6 17. Upon information and belief, Doe defendant Officer Woods, sued here in both his
7 individual and official capacities, is a resident of California who is employed by the BNE. All
8 actions taken by Officer Woods while working as an officer of the BNE were taken under color of
9 state law. In due course, this complaint will be amended to allege the full and correct name of
10 Doe defendant Officer Woods once that information has been ascertained.

11 18. Upon information and belief, defendant D.O Helmick is Commissioner of the CHP
12 and a resident of California. Upon information and belief, defendant Commissioner Helmick
13 directly or indirectly participated in the authorization, planning and supervision of the actions of
14 the individual CHP officers involved in this case, including Doe defendant Nardil. Upon
15 information and belief, defendant Commissioner Helmick failed adequately to train CHP personnel
16 and to promulgate appropriate policies to prevent race-based vehicular stops, and has established,
17 implemented and enforced illegal and unconstitutional policies and practices that have caused
18 plaintiffs' injuries.

19 19. Defendant Bureau of Narcotics Enforcement ("BNE") is a division of the State of
20 California Attorney General's office, and, upon information and belief, receives federal funds
21 through federal grants from the Department of Justice or another federal agency. As such, the BNE
22 is legally required to conduct its activities in a racially non-discriminatory manner.

23 20. Upon information and belief, defendant Joe Doane is Bureau Chief of BNE and a
24 resident of California. Upon information and belief, defendant Chief Doane directly or indirectly
25 participated in the authorization, planning and supervision of the actions of the individual BNE
26 officers involved in this case. Upon information and belief, Chief Doane failed adequately to train
27 BNE personnel and to promulgate appropriate policies to prevent race-based vehicular stops, and
28 has established, implemented and enforced illegal and unconstitutional policies and practices that

1 have caused plaintiffs' injuries.

2 21. Plaintiffs are informed and believe that Doe defendants 1 through 50 are all officers
3 of the CHP or BNE and were at all relevant times acting in the course and scope of their
4 employment and acting under color of law. Upon information and belief, each of Doe defendants 1
5 through 50 participated in some way in the stop of plaintiffs and others on the basis on race,
6 ethnicity, or national origin. Defendants 1 though 50 are all sued in their individual and official
7 capacities. The true names of these defendants are unknown to plaintiffs. In due course, plaintiffs
8 will amend this complaint to identify these defendants' true names when they have been
9 ascertained.

10 22. Plaintiffs are informed and believe that Doe defendants 51 through 100 are officials
11 and/or supervisory officers of the CHP and/or BNE and were at all relevant times acting in the
12 course and scope of their employment. Upon information and belief, each of Doe defendants 51
13 through 100 directly or indirectly participated in the authorization, planning and supervision of the
14 actions of the individual CHP and/or BNE officers involved in this case. Upon information and
15 belief, one or more of these defendants failed adequately to train CHP personnel and to promulgate
16 appropriate policies to prevent race-based vehicular stops, and all of them have established,
17 implemented and enforced illegal and unconstitutional policies and practices that have caused
18 plaintiffs' injuries. Does 51 through 100 are sued in their individual and official capacities. The
19 true names of these defendants are unknown to plaintiffs; plaintiffs will amend this complaint to
20 identify these defendants' true names when they have been ascertained.

21 23. Upon information and belief, at all relevant times each defendant was the agent
22 and/or employee of each of the remaining defendants, and in doing the things herein alleged was
23 acting within the course and scope of his or her employment and under color of law. Each of the
24 defendants caused, and is responsible for, the unlawful conduct described herein. Each defendant
25 is responsible for plaintiffs' injuries by personally participating in the unlawful conduct; acting
26 jointly and in concert with others who did so; authorizing, acquiescing or failing to take action to
27 prevent the unlawful conduct; promulgating policies and procedures pursuant to which the
28 unlawful conduct occurred; failing and refusing, with deliberate indifference, to implement and

1 maintain adequate training and supervision; and/or by ratifying the unlawful conduct.

2 24. All of the defendants, and each of them, are sued both in their individual and official
3 capacities.

4 **FACTS GIVING RISE TO THIS ACTION**

5 **Operation Pipeline and Other California Drug Interdiction Programs**

6 25. The CHP and BNE have long relied upon race and ethnicity in conducting stops,
7 detentions, interrogations, and searches of motorists. They have engaged in an unabated,
8 continuing pattern and practice of discrimination.

9 26. In recent years, the law enforcement practice of targeting motorists on the basis of
10 race or ethnicity has increased dramatically nationwide, largely due to federally funded drug
11 interdiction programs operated by state and local law enforcement agencies.

12 27. Today, the defendants, like many law enforcement agencies across the country,
13 participate in a federally funded drug interdiction program sponsored by the United States Drug
14 Enforcement Agency ("DEA") known as Operation Pipeline. The stated purpose and mission of
15 Operation Pipeline is to remove drugs and weapons from the nation's highways. The DEA, as the
16 sponsoring agency, provides training and instructors for state and local law enforcement agencies,
17 teaching them how to identify highway travelers as potential drug couriers based on a profile. In
18 addition, plaintiffs believe that the CHP is allowing and encouraging Operation Pipeline-like stops
19 throughout California, such that these abuses are not limited to only those officers technically
20 participating the Operation Pipeline program.

21 28. Operation Pipeline is a roving program of discrimination that, depending on the area
22 in which it is implemented and has its effects, can and does injure motorists of color throughout the
23 state of California. Pipeline and Pipeline-like programs encourage officers to rely upon minor
24 traffic violations that can be used as an excuse or "pretext" to stop motorists that somehow seem
25 "suspicious." Once a stop has been made, officers are trained to seek consent to search – which
26 most unwary motorists readily give – so that there is no need to point to any probable cause should
27 questions about the legality of the search arise later.

28 29. When consent is refused, troopers often detain the motorist until a canine unit

1 performs a sniff test around the exterior of the vehicle. If the dog alerts to something, the detention
2 continues, as the officer will then use the drug dog's reaction as probable cause. If no canine unit
3 is used, troopers sometimes simply ignore motorists when they refuse consent to search, knowing
4 that if drugs are found a court will be unlikely to conclude that a drug courier is more credible than
5 a CHP officer.

6 30. In addition, CHP officers and supervisors know that, if no drugs are found,
7 motorists are unlikely to complain about their illegal tactics. Studies indicate that most motorists do
8 not even know they have the right to refuse consent to search. Those who do know their rights
9 have been violated are often so relieved that their frightening encounter with police has ended
10 without violence or arrest that they simply go on their way without complaint. Some motorists
11 believe that complaining to law enforcement agencies about their illegal and discriminatory
12 practices is futile. Others fear retaliation.

13 31. The CHP first became involved in Operation Pipeline in the late 1980's, but has
14 since become one of the agencies most actively involved in the program, conducting joint
15 operations with local law enforcement agencies and the BNE. Upon information and belief, the
16 CHP now has Pipeline teams running formal operations on all of California's major highways,
17 including Highway 152 and Interstate Highway 5, and has more than 40 canine units at its disposal.

18 32. A report regarding Operation Pipeline and the CHP's racial profiling practices was
19 issued by the Joint Legislative Task Force on Government Oversight on September 29, 1999. The
20 report, which was based on a review of thousands of CHP records and testimony from numerous
21 CHP officers and officials, concluded that Operation Pipeline discriminates against motorists of
22 color in general, and Latino motorists in particular.

23 33. According to the report, the goal of Operation Pipeline is to use "intensified
24 enforcement" of traffic laws to generate a very high volume of traffic stops to screen for drug
25 couriers. Pipeline officers are not expected to write many traffic tickets and are often discouraged
26 from doing so. Instead, troopers are trained to stop and search thousands of motorists for
27 insignificant vehicle code infractions, the vast majority of which result in no more than a verbal
28 warning.

1 34. As a matter of policy, officers are encouraged to use vehicle code violations such as
2 weaving, improper lane changes, burned out license plate lights, tinted windows, following too
3 closely or seat belt violations, as excuses to stop drivers and attempt to search their cars for drugs.
4 Once the officers have an excuse for the stop, they are trained to begin questioning and searching
5 the occupants of the vehicle.

6 35. The Task Force report shows that stops conducted with the goal of drug interdiction
7 frequently result in travelers spending lengthy periods of time standing on the side of the road
8 while being interrogated, fielding repeated questions about their family members, their
9 occupations, their marital status, their immigration status, their criminal histories and their
10 recreational use of drugs or alcohol. Many of these motorists have their pulses taken to detect
11 signs of nervousness, a trait which is then cited as grounds for requesting "consent" to search their
12 car. Other motorists are subjected to field sobriety tests even though there is no evidence that the
13 motorist was under the influence of alcohol or a controlled substance.

14 36. CHP policy permits officers to detain a motorist during any traffic stop for the
15 purpose of conducting a search. Pursuant to this policy, CHP officers routinely detain motorists for
16 the purpose of searching their vehicles, even though the officers have no probable cause, or even
17 reasonable suspicion, that the motorists are carrying illegal drugs or engaged in any criminal
18 activity. These searches involve significant intrusion, humiliation, embarrassment and great
19 inconvenience for thousands of innocent motorists, but the practice is condoned and encouraged by
20 CHP supervisors and management.

21 37. The practice of stopping and searching innocent motorists would be alarming no
22 matter who was subjected to this kind of treatment by government officials. The reality, however,
23 is that motorists of color are targeted and subjected to these practices at grossly disproportionate
24 rates. CHP troopers, consistent with their Operation Pipeline training, are determining who to stop,
25 detain, interrogate and/or search in a racially discriminatory manner.

26 38. As set forth in the Task Force report, the CHP's own figures show that between
27 80% to 90% of all motorists arrested by Pipeline units since 1997 have been members of minority
28 groups, and only 10% have been white. This data strongly suggests that motorists are targeted,

1 stopped and searched on the basis of race by the CHP. Studies of Operation Pipeline programs in
2 other states reveal that, contrary to popular perception, people of color are *not* more likely than
3 whites to be carrying drugs or other contraband in their cars. People of color are arrested at grossly
4 disproportionate rates because they are targeted and searched at grossly disproportionate rates, not
5 because they are more likely to be guilty of carrying drugs in the vehicles. Ironically, the arrest
6 statistics which are the product of racial profiling are often used by law enforcement to justify the
7 continued targeting of motorists of color. The New Jersey Attorney General dubbed this
8 phenomenon: "the perverse illogic of racial profiling."

9 39. The discriminatory impact of the CHP's drug interdiction efforts on minority
10 motorists cannot be justified by law enforcement necessity. Operation Pipeline and Pipeline-like
11 tactics have proven to be extremely costly and largely ineffective, taking a tremendous toll on
12 thousands of innocent motorists every year. According to the CHP's own data, nine out of ten
13 vehicle searches turn up nothing incriminating. Statistical analyses performed in other states show
14 that it is common for between 70% and 95% of all Pipeline stops to produce no arrests or
15 contraband seizures. As a result, thousands of innocent motorists are stopped, searched and treated
16 like criminals by the defendants every year based on nothing more than a police officer's mistaken
17 hunch.

18 40. The CHP's participation in Operation Pipeline, and the proliferation of Pipeline-like
19 training, has occurred with the strong support of CHP management. The Task Force report found
20 that individual officers involved in these operations and training programs have been carrying out
21 what they perceive to be the policy of the CHP, the BNE, the Department of Justice, and the
22 Administration of the State of California in targeting drivers through profiling. In fact, the officers
23 involved in these operations have been repeatedly commended by their supervisors for the jobs
24 they are doing, and encouraged to continue with the Operation Pipeline stops despite the fact that
25 the vast majority of the stops are unsuccessful and involve motorists of color. Officers are under
26 considerable pressure by their supervisors to pull over as many motorists as possible and to
27 conduct as many searches as possible, and therefore spend thousands of hours conducting
28 unwarranted and intimidating stops of innocent motorists, most of whom are people of color.

1 Because these drug interdiction programs can occasionally find drugs and cash, CHP and BNE
2 supervisors and management have continued to encourage Operation Pipeline tactics, despite
3 evidence showing that minority drivers are being targeted and subjected to unwarranted stops,
4 searches, detention and interrogation.

5 41. Plaintiffs allege that CHP and BNE supervisors have been aware that troopers are
6 engaging in racial profiling, yet have failed and refused to stop it, thereby showing deliberate
7 indifference to the rights of motorists of color. The supervisory defendants have failed to take
8 effective action to prevent continuation of the egregious pattern of discrimination against motorists
9 of color, despite their rhetoric to the contrary. Due to the supervisory defendants' inaction,
10 plaintiffs, and the class they seek to represent, have suffered and continue to suffer systematic
11 violations of their civil rights.

12 42. The racially discriminatory impact of Operation Pipeline has been challenged in
13 numerous cases nationwide. New Jersey judges have dismissed more than 600 criminal cases in
14 recent years because of concerns over racial stereotyping by officers in the Operation Pipeline
15 program; the Maryland State Police has settled litigation challenging racial profiling in connection
16 with their drug interdiction efforts; and a federal judge ruled that the Sheriffs Department in Eagle
17 County, Colorado was making "racist assumptions" about drivers who were being pulled over and
18 searched for drugs in connection with their Pipeline program.

19 43. Defendants have turned a deaf ear to the racially imbalanced result of these drug
20 interdiction programs, the complaints of victims, and the trauma these baseless stops and searches
21 have on motorists of color in California. What happened to the plaintiffs, as described below, is
22 not unusual. Their stories are consistent with the defendants' policy, pattern and practice of
23 discriminating on the basis of race when determining whom to target, stop, interrogate, detain
24 and/or search in their drug interdiction efforts. The clear discriminatory effect of these practices,
25 and the discriminatory purpose hidden behind the defendants' practice and policy of willful
26 ignorance, is immoral and illegal. These practices must be stopped.

27 //

28 //

The Illegal Traffic Stops and Searches In This Case

Curtis Rodriguez

44. On June 6, 1998, the CHP acting in concert with agents from the California Department of Justice and BNE carried out a "special narcotics interdiction" operation in the Pacheco Pass area of State Highway 152, south of San Jose. Mr. Rodriguez, accompanied by his associate Arturo Hernandez, happened to drive through the stretch of highway where this operation was taking place on that day. Mr. Rodriguez was at the wheel of his burgundy-colored 1995 Mazda Millenia, and Mr. Hernandez was in the passenger seat. Mr. Rodriguez is an attorney.

45. Mr. Rodriguez and Mr. Hernandez were travelling from San Jose to Merced to take some photographs as part of an investigation of an ongoing case. While driving eastbound on Highway 152, they noticed two traffic stops being executed by the CHP, and both stops were of Latinos. One of the stops involved two CHP vehicles. On the way back from Merced, Mr. Rodriguez and Mr. Hernandez were driving westbound on Highway 152, again in the Pacheco Pass area. They both noticed five traffic stops and at least ten CHP and BNE vehicles within a ten-mile stretch of highway. All of the detained drivers were of Latinos, and most or all of the drivers were standing outside of their cars by the side of the road. Distressed by what they were witnessing, Mr. Rodriguez and Mr. Hernandez decided to document these race-based police stops to prove to others what they had seen. Mr. Hernandez took photographs of the fourth and fifth stops of Latino drivers, while Mr. Rodriguez concentrated on obeying the speed limit and all traffic laws in order to avoid giving the police any excuse to pull them over. Nonetheless, the officers stopped Mr. Rodriguez and searched his vehicle without consent or probable cause.

46. The officer who made the stop, Officer Nardil, told Mr. Rodriguez that he had been stopped because he had his lights on and that he had crossed the line of the lane he was driving in. Both reasons were false and pretextual. Drivers in the area are advised to have their lights on, and Mr. Rodriguez had taken great care to stay perfectly within the middle of his lane in order to avoid accusations of an infraction. When Mr. Rodriguez' counsel inquired of the CHP about the stop as part of the investigation of this lawsuit, the CHP changed even this pretextual basis for the stop; the official version now is that Mr. Rodriguez, while engaged in "random driving," failed to comply

1 with the "requirement that motorists drive with illuminated headlights."

2 47. After stopping Mr. Rodriguez, Officer Nardil asked whether Mr. Rodriguez would
3 consent to a search of the vehicle. Mr. Rodriguez refused. At that point, Officer Nardil stated – in
4 a monotone voice, with a flat affect – that he was in fear for his personal safety, and that he was
5 going to search the car for weapons. He then undertook a search that turned up nothing but the
6 camera that Mr. Hernandez had used to photograph the illegal stops. After a detention that lasted
7 the better part of half an hour, Mr. Rodriguez was released without a ticket or citation. His only
8 "crime," it turned out, was being a Latino male.

9 48. Mr. Rodriguez travels on Highway 152 and Interstate Highway 5 for work-related
10 reasons approximately once a month. Mr. Rodriguez has no intention of changing his job or his
11 residence, and therefore has a reasonable expectation that he will travel these highways in the
12 future. Therefore, based on his stop, his observations of other stops, and his need to use the
13 highways for business and personal reasons, and especially in light of the CHP drug interdiction
14 program's policy and practice as described above, Mr. Rodriguez has a valid and reasonable fear
15 that he will be stopped by the CHP again in the future solely on the basis of his race.

16 **Jose Lopez**

17 49. On April 6, 1999, Jose Lopez, a Latino, was traveling with Stephanie Gevorkian in
18 their 1989 Ford Aerostar minivan north on Interstate Highway 5. Mr. Lopez is a service technician
19 and repairman for Sears. Ms. Gevorkian, who is white, is Mr. Lopez' companion and the mother
20 of his son. Although they are not formally married, Mr. Lopez and Ms. Gevorkian call each other
21 "husband" and "wife." Mr. Lopez and Ms. Gevorkian were traveling from their home in El Monte,
22 California to Ms. Gevorkian's parents' home in Fremont, California. Their son had been visiting
23 his grandparents in Fremont, and his baptism was to take place the next day in Fremont. Mr.
24 Lopez and Ms. Gevorkian were driving to pick up their son, spend time with her family, and
25 celebrate their son's baptism in Fremont before returning home, with their son, to El Monte.

26 50. Near the intersection of Highway 152 and Interstate 5, Mr. Lopez and
27 Ms. Gevorkian noticed a CHP vehicle traveling south on Interstate 5. They looked at the officers.
28 As they looked at the officers, the CHP vehicle made a U-turn across the median and merged into

1 the northbound lane. The officers immediately pulled up alongside Mr. Lopez' minivan. Mr.
2 Lopez kept the minivan in cruise control at the speed limit. The officers looked inside the van, and
3 stared closely at Mr. Lopez's and Ms. Gevorkian's faces. After following Mr. Lopez alongside and
4 behind the van for a few minutes the CHP officers activated the emergency lights and pulled their
5 vehicle over.

6 51. The officers told Mr. Lopez and Ms. Gevorkian that they had been stopped because
7 a small crystal was hanging from the rearview mirror. Ms. Gevorkian immediately apologized,
8 took the crystal down and put it in the glove compartment. Instead of ticketing Mr. Lopez or
9 allowing the couple to go on their way, however, the officers ordered Mr. Lopez out of the car.
10 Mr. Lopez was taken back to the patrol car by one of the officers, while the other officer stood with
11 Ms. Gevorkian on the passenger side of the minivan.

12 52. The officers then interrogated Mr. Lopez and Ms. Gevorkian separately for
13 approximately 30 minutes. The officer with Ms. Gevorkian repeated called her by the wrong
14 name. He asked her many times why there were baby clothes but no baby in the car, and what she
15 and Mr. Lopez did for a living. Several times he asked "what are you doing with that man?" His
16 tone was angry and accusing, and she understood him to be asking why she was with a Latino. He
17 asked her repeatedly if she was nervous, and she replied that she was. He then asked her why,
18 telling her that she wouldn't be if she hadn't done anything wrong. He asked to search the car.
19 Ms. Gevorkian reluctantly gave her consent, fearing the officers' anger if she did not. The search
20 turned up nothing.

21 53. Meanwhile, the other officer repeatedly asked Mr. Lopez where he was born, where
22 he was going, what he did for a living, how he got his driver's license, and what he was doing with
23 Ms. Gevorkian. He focused in particular on Mr. Lopez' drivers' license, which Mr. Lopez
24 assumed was because the officer thought that Mr. Lopez was not a legal resident of this country.
25 After asking the same questions over and over again, the officers spoke together for a few minutes,
26 ordering Mr. Lopez to continue standing on the side of the highway by the patrol car. They then
27 returned to interrogate Ms. Gevorkian and Mr. Lopez separately, again asking the same questions
28 they had previously asked. After approximately five to ten more minutes of questioning the

1 officers told Mr. Lopez he could go. No citations were issued and no arrests were made.

2 54. Ms. Gevorkian and Mr. Lopez were detained and searched without any legal basis,
3 and have been shamed and demeaned by being forced to endure the humiliating questions and
4 treatment from the officers who stopped them. After the stop, Ms. Gevorkian cried and expressed
5 her fear that she would not be able to visit her parents because she and Mr. Lopez cannot travel on
6 Interstate 5 without being stopped. Mr. Lopez is afraid to put anything on his car that would
7 identify him as a Mexican-American because he believes he will be stopped again, especially since
8 this is not the first time Mr. Lopez has been stopped by a CHP officer without any basis. Because
9 they have family and friends in Northern California, but live in Southern California, Mr. Lopez and
10 Ms. Gevorkian have been, and will in the future, travel on Interstate 5 near Highway 152 at least
11 once a month. However, this normal expectation of family visits has been compromised by their
12 stop, and their real and legitimate fear of future stops. In light of this unjustified stop and the
13 policy and practice of CHP drug interdiction programs as set forth above, Mr. Lopez and Ms.
14 Gevorkian have a reasonable belief and fear that they will be stopped again in the future.

15 **MacArthur Washington**

16 55. MacArthur Washington is a California resident of African-American descent. On
17 May 26, 1999, at approximately 2:00 a.m., Mr. Washington was driving near Highway 152 in Los
18 Banos, California. He was in the vicinity of the intersection of Highway 152 and Interstate 5. Mr.
19 Washington was on his way to pick up a co-worker and go to work. Mr. Washington lives in an
20 agricultural area, and has worked for about four years for a firm called Smith Hay. As part of his
21 job, Mr. Washington assists with the cutting, raking and baling of hay, a task that must be
22 performed early in the morning. On the date and at the time in question, Mr. Washington was
23 going to pick up Bobby Smith, another employee of Smith Hay, to begin raking and baling. Mr.
24 Washington was driving a Smith Hay company truck, a late model Sierra 4-wheel drive pick up.

25 56. When Mr. Washington arrived at Bobby Smith's residence, Mr. Smith was not
26 waiting outside. Mr. Washington did not knock or call out, because he wanted to avoid waking an
27 elderly member of Mr. Smith's family who lived in the same house. Instead, after waiting for a
28 few minutes, Mr. Washington drove to a pay phone at a nearby Circle K market to call Ron Smith,

1 Smith Hay's owner and Bobby Smith's uncle, and ask what to do. Ron Smith agreed to meet
2 Mr. Washington at Bobby Smith's house. As Mr. Washington drove out of the Circle K parking
3 lot, he saw a CHP vehicle parked in the oncoming lane with its lights off. The car was facing the
4 front of Mr. Washington's car. When he passed the CHP vehicle, the officers made a U-turn,
5 activated their lights and pulled Mr. Washington over. Mr. Washington was informed that he had
6 been pulled over because the light illuminating his rear license plate was broken.

7 57. There was one CHP officer (Doe Defendant Officer Wilson) and one BNE officer
8 (Doe Defendant Officer Woods) in the CHP vehicle. The officers asked for his license, registration
9 and insurance. They looked inside the truck. They then asked him to get out of the car, and they
10 searched the trunk. At no time did they seek Mr. Washington's consent. The search turned up
11 nothing.

12 58. Although the search had turned up nothing, and although Mr. Washington had not
13 committed any traffic violation, the officers did not allow Mr. Washington to leave. Instead, the
14 BNE officer began to administer field sobriety tests to Mr. Washington. At about this same time,
15 Ron Smith, the owner of Smith Hay and Mr. Washington's boss, came by. The CHP officer, Doe
16 Defendant Officer Wilson, informed Ron Smith that they believed Mr. Washington was driving
17 under the influence. Smith explained that there was no basis for the officers' belief, that he knew
18 Mr. Washington very well, that he was Mr. Washington's AA sponsor, and that Mr. Washington
19 had been sober for over seven years and was on his way to pick up someone for work.
20 Nevertheless, the CHP officers persisted in their search and examination of Mr. Washington.

21 59. Notwithstanding the lack of probable cause to believe that any crime had been
22 committed, the officers then took Mr. Washington to the CHP office on Highway 152 and towed
23 the Smith Hay truck. At the CHP office, Doe Defendant Officer Woods and Doe Defendant
24 Officer Wilson performed the same field sobriety tests again, and checked his pulse many more
25 times. The officers ordered him to blow into a breathalyzer. When the breathalyzer came back
26 zero, the officer continued to insist that Mr. Washington must be intoxicated or under the influence
27 of an illegal substance. Mr. Washington agreed to submit to a blood test, and was taken to the
28 Merced County Satellite Jail in Los Banos. He was kept there until approximately 5:30 that

1 morning.

2 60. Although Mr. Washington was arrested that night for violating Health & Safety
3 Code § 11550 (under the influence of a controlled substance) and Vehicle Code § 23152(a)
4 (driving under the influence), he has never been charged. Mr. Washington has since learned that
5 the blood test taken that night came out negative, proving that Mr. Washington had not been under
6 the influence of any controlled substance or alcohol.

7 61. Mr. Washington was pulled over because of his race. He was not driving
8 erratically, and had not committed any traffic violations. The rear license plate light was not even
9 broken. The sole "offense" Mr. Washington committed was driving while black at two o'clock in
10 the morning.

11 62. Mr. Washington has been very upset since his unjustified stop. As a sober and
12 religious man, it is difficult for him to accept that he was stopped, subjected to unwarranted search
13 and examination, and jailed on the basis of his race.

14 63. Mr. Washington still works for Smith Hay, and still lives near Los Banos,
15 California. He must continue driving on and around Highway 152 on a daily basis, yet his normal
16 expectation to be free from unwarranted stops has been compromised by his real and legitimate
17 fear that he will be stopped and searched without cause in the future. Based on his experience and
18 the policy and practice of the CHP drug interdiction programs as described above, Mr. Washington
19 has a reasonable and justified fear that he will again be subject to race based traffic stops and
20 searches at the hands of the CHP and/or BNE when driving on or around Highway 152 in the
21 future.

22 CLASS ACTION ALLEGATIONS

23 64. For the purposes of all relief sought in this case, plaintiffs Rodriguez, Lopez and
24 Washington bring this action pursuant to Federal Rule of Civil Procedure 23 on behalf of
25 themselves and all others persons similarly situated. Each of these individual class representatives
26 is a person of color who has been stopped, detained, interrogated and searched by CHP and/or BNE
27 officers while travelling on or in the area of Highway 152. The class which plaintiffs seek to
28 represent consists of all people of color who, since June 1998, have been or will be stopped,

1 detained, interrogated and/or searched on Highway 152 or on any road or highway near 152
2 including, but not limited to, Interstate Highway 5, by the CHP or the BNE. These class members
3 are victims of the racially motivated and illegal pattern and practice of discrimination in the
4 enforcement of traffic laws by the CHP and BNE.

5 65. The class of persons defined in paragraph 64 is so numerous that joinder of all
6 members in one action is impracticable.

7 66. There are questions of law and fact common to all members of the class, because all
8 class members have been, or will be, adversely affected by the challenged actions of the
9 defendants. Common questions of fact and law include, but are not limited to: whether CHP and
10 BNE officers target, stop, detain and/or search individual drivers in a racially discriminatory
11 manner; and whether CHP and BNE officers are knowingly trained to employ methods that result
12 in racial profiling and have an unjustified disparate impact on putative class members in violation
13 of federal and state civil rights laws.

14 67. The claims of the representative plaintiffs are typical of the class as a whole who
15 travel on or around Highway 152 and have been stopped, detained and/or searched by the
16 defendants. The experiences of the plaintiffs at the hands of the defendants resulted from the
17 defendants' policy and practice of discriminating on the basis of race and ethnicity, making their
18 claims typical of those held by the class they seek to represent.

19 68. Plaintiffs can and will fairly and adequately protect the interests of the members of
20 the class. Plaintiffs will be adequate representatives of the class in that all of the relevant questions
21 of fact and law applicable to the class also apply to them.

22 69. Plaintiffs have retained counsel who are familiar with the applicable law and
23 experienced in class action litigation, as well as litigation involving criminal law and civil rights.
24 Counsel for plaintiffs have the resources necessary to pursue this litigation.

25 70. This action is properly maintained as a class action. The questions of law and fact
26 common to the members of the class predominate over any questions affecting only individual
27 members, and a class action is superior to other available methods for the fair and efficient
28 adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the

1 management of this action that would preclude its maintenance as a class action.

2 71. The prosecution of separate actions by individual class members would create a risk
3 of inconsistent and varying adjudication concerning the subject of this action, and such
4 adjudication could establish incompatible standards of conduct for defendants under the laws
5 alleged herein.

6 REQUISITES FOR RELIEF

7 72. As a direct and proximate result of the conduct of defendants described above,
8 plaintiffs have been denied their constitutional and statutory rights as stated below and has suffered
9 and continues to suffer mental and emotional distress, humiliation, embarrassment, discomfort,
10 anxiety and pain.

11 73. Defendants' acts were willful, wanton, malicious, oppressive and done with
12 conscious disregard and deliberate indifference for plaintiffs' rights. Therefore, defendants'
13 actions justify an award to plaintiffs of punitive damages in an amount to be determined at trial.

14 74. Defendants' policies, practices, conduct and acts alleged herein have resulted and
15 will continue to result in irreparable injury to plaintiffs, including but not limited to further
16 violations of their statutory and constitutional rights. Plaintiffs have no plain, adequate or complete
17 remedy at law to address the wrongs described herein. Plaintiffs therefore seek injunctive relief
18 restraining defendants from continuing to engage in and enforce the unconstitutional and illegal
19 policies, practices, conduct and acts described herein.

20 75. Defendants acted with discriminatory intent in violation of plaintiffs' legal and
21 constitutional rights, and have directly and proximately caused plaintiffs' humiliation, mental pain
22 and suffering. As a direct, legal, and proximate result of defendants' violations of plaintiffs'
23 statutory, constitutional and common law rights, plaintiffs have been damaged in an amount which
24 is not yet known. Plaintiffs will seek leave of Court to amend this complaint when ascertained, or
25 will amend to conform to proof at time of trial.

26 76. At all times herein mentioned, defendants had an obligation to comply with federal
27 and state laws regarding racial discrimination. Defendants failed to meet these obligations with
28 respect to plaintiffs.

FIRST CAUSE OF ACTION
Race Discrimination in Federally Funded Programs
Title VI of the Civil Rights Act of 1964 and 42 C.F.R. §§ 101 *et seq.*
(Against Defendants CHP and BNE)

77. Plaintiffs incorporate by reference and reallege paragraphs 1-76 of this Complaint.

78. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, provides:

[N]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected discrimination under any program or activity receiving federal financial assistance.

79. Federal regulations implementing Title VI prohibit federally funded programs or activities from having a racially discriminatory impact or effect. The regulations provide that no program receiving financial assistance through the U.S. Department of Justice shall:

Utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

80. Defendants CHP and BNE receive federal financial assistance from the United States Department of Justice, and thus is bound to abide by the terms of Title VI and its implementing regulations, including 28 C.F.R. §42.101 *et seq.*

81. Eleventh Amendment immunity of the State of California, the CHP and BNE was abrogated by Congress in its enactment of Title VI. 42 U.S.C. §2000d-7.

82. The drug interdiction methods employed by the CHP and/or BNE discriminate against motorists of color traveling through California, including plaintiffs, as described herein.

83. Defendants CHP and BNE's violation of 42 U.S.C. § 2000d and its implementing regulations have caused and will continue to cause plaintiffs to suffer tremendous harm and public humiliation in that they have been and will continue to be subjected to CHP and/or BNE's practice of race-based discrimination without judicial intervention.

//

//

//

1 **SECOND CAUSE OF ACTION**

2 Violation of the Fourteenth Amendment and 42 U.S.C. § 1983

3 (Against all defendants in their individual and official capacities except CHP and BNE)

4 84. Plaintiffs incorporate by reference and reallege paragraphs 1-83 of this Complaint.

5 85. Defendants, acting under color of law and in concert with one another, have
6 engaged in a continuing pattern and practice of intentional race discrimination in drug interdiction
7 efforts carried out on, and in the area of, Highway 152. In so doing, defendants have caused
8 plaintiffs, and the class they seek to represent, to suffer deprivation of their fundamental rights to
9 liberty and to be free from unlawful searches, detentions, and seizures on account of their race
10 and/or national origin. These actions violated plaintiffs' rights to equal protection of the laws, in
11 violation of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. §
12 1983.

13 86. Defendants acting under color of law, institute, authorize, tolerate, ratify, permit and
14 acquiesce in policies, practices and customs of detention, searches and seizures which involve
15 intentional race discrimination in the provision of law enforcement services.

16 87. The defendants' acts were done in knowing violation of plaintiffs' legal and
17 constitutional rights, and have directly and proximately caused plaintiffs' humiliation, mental pain,
18 and suffering.

19 **THIRD CAUSE OF ACTION**

20 Violation of the Fourth and Fourteenth Amendments to the United States Constitution
21 42 U.S.C. Section 1983.

22 (Against all defendants in their official and individual capacities except CHP and BNE)

23 88. Plaintiffs incorporate by reference and reallege paragraphs 1- 87 of this Complaint.

24 89. Defendants, acting under color of law and in concert with one another, have violated
25 plaintiffs' rights to be free from unreasonable searches and seizures under the Fourth and
26 Fourteenth Amendments to the United States Constitution. Defendants have subjected plaintiffs,
27 and the class they seek to represent, to lengthy detentions, interrogations and searches, without
28 probable cause or reasonable suspicion to believe that any crime had been committed or that
plaintiffs were carrying drugs of any kind, in violation of the Fourth Amendment guarantee against
unreasonable searches and seizures, and giving rise to plaintiffs claims pursuant to the Fourteenth

1 Amendment and 42 U.S.C. § 1983.

2 90. Defendants, acting under color of law, institute, authorize, tolerate, ratify permit and
3 acquiesce in policies, practices and customs of detentions, interrogations, searches and seizures
4 without probable cause or reasonable, articulable suspicion of crime, in their provision of law
5 enforcement services.

6 91. Defendants' acts were done in knowing violation of plaintiffs' legal and
7 constitutional rights, without good faith, and have directly and proximately caused plaintiffs'
8 humiliation, mental pain and suffering.

9 **FOURTH CAUSE OF ACTION**

10 Violation of the Commerce Clause, Article IV, and Fourteenth Amendment
11 to the United States Constitution 42 U.S.C. Section 1983
(Against all defendants in their individual and official capacities except the CHP and the BNE)

12 92. Plaintiffs incorporate by reference and reallege paragraphs 1-91 of this Complaint.

13 93. Defendants, acting under color of law and in concert with one another, have caused
14 plaintiffs to be penalized and deterred in the exercise of their fundamental right to interstate travel
15 and migration on account of his race and/or ethnicity and/or national origin. These actions violated
16 plaintiffs' right to travel, in violation of the Commerce Clause and the Privileges and Immunities
17 Clauses of Article IV and the Fourteenth Amendment.

18 94. Defendants, acting under color of law, institute, authorize, ratify, permit and
19 acquiesce in policies, practices and customs of detention, searches and seizures which violate
20 plaintiffs' fundamental right to interstate travel.

21 95. Defendants' acts were done in known violation of plaintiffs' legal and constitutional
22 rights, without good faith, and have directly and proximately caused plaintiffs' humiliation, mental
23 pain and suffering.

24 **FIFTH CAUSE OF ACTION**

25 Violation of 42 U.S.C. Section 1983
(Against all defendants in their individual and official capacities except the CHP and the BNE)

26 96. Plaintiffs incorporate by reference and reallege paragraphs 1-95 of this Complaint.

27 97. Defendants, acting under color of law and in concert with one another, have denied
28 plaintiffs their rights to full and equal benefit of the laws and their right to be subject to like

1 punishment under 42 U.S.C. § 1981.

2 98. Defendants' acts were the result of discriminatory intent, and were done in known
3 violation of plaintiffs' legal and constitutional rights, without good faith, and have directly and
4 proximately caused plaintiffs' humiliation, mental pain and suffering.

5 **SIXTH CAUSE OF ACTION**
6 Conspiracy to Violate Civil Rights
7 (42 U.S.C. §§ 1985 and 1986)
(All defendants except CHP and BNE)

8 99. Plaintiffs incorporate by reference and reallege paragraphs 1-98 of this Complaint.

9 100. Defendants, acting under color of law and in concert with one another, and by way
10 of a conspiracy among them, have caused plaintiffs, and the class they represent, to be denied equal
11 protection of the laws and to be deprived of equal privileges and immunities under the laws, on
12 account of plaintiffs' race and/or national origin, by subjecting them to legally unjustified and
13 racially discriminatory detentions and searches, thereby interfering with plaintiffs' travels through
14 California in violation of 42 U.S.C. §1985(3). The supervisory defendants had knowledge of the
15 conspiracy to violate plaintiffs' civil rights and of the violations committed, and had power to
16 prevent these wrongs, but neglected or refused to do so in violation of 42 U.S.C. § 1986.

17 101. Defendants' acts were done in knowing violation of plaintiffs' legal and
18 constitutional rights, and have directly and proximately caused plaintiffs' humiliation, mental pain
19 and suffering.

20 **SEVENTH CAUSE OF ACTION**
21 Violation of Government Code Sections 11135 and 11139

22 102. Plaintiffs incorporate by reference and reallege paragraphs 1-101 of this Complaint.

23 103. Government Code Section 11135(a) prohibits race discrimination in any program or
24 activity that is funded directly by the state or receives any financial assistance from the state.

25 104. State regulations implementing Section 11135 provide that no program receiving
26 financial assistance from the State of California shall have an unjustified discriminatory impact or
27 effect on the basis of race.

28 105. Defendants CHP and BNE receive financial assistance from the State of California.

1 and thus is bound to abide by the terms of Government Code §11135 and its implementing
2 regulations.

3 106. Eleventh Amendment immunity of the State of California was waived by the State
4 of California in its enactment of amendments to Government Code § 11139 in the California Civil
5 Rights Amendments of 1999.

6 107. The drug interdiction methods employed by the CHP and/or BNE discriminate
7 against motorists of color traveling through California, including plaintiffs, as described herein.

8 108. Defendants CHP and BNE's violation of Government Code §11135 and its
9 implementing regulations have caused and will continue to cause plaintiffs to suffer tremendous
10 harm and public humiliation in that they have been and will continue to be subjected to CHP and/or
11 BNE's practice of race-based discrimination without judicial intervention.

12 **EIGHTH CAUSE OF ACTION**

13 Violation of Article 1, Section 7 (a) of the California Constitution

14 109. Plaintiffs incorporate by reference and reallege paragraphs 1-108 of this Complaint.

15 110. Defendants' above-described conduct violated plaintiffs' rights not to be deprived of
16 due process and equal protection of the laws under Article 1, Section 7(a) of the California
17 Constitution.

18 **NINTH CAUSE OF ACTION**

19 Violation of Article 1, Section 13 of the California Constitution

20 111. Plaintiffs incorporate by reference and reallege paragraphs 1-110 of this Complaint.

21 112. Defendants' above-described conduct violated plaintiffs' rights to be free from
22 unreasonable searches and seizures under Article 1, Section 13 of the California Constitution.

23 **TENTH CAUSE OF ACTION**

24 Violation of Civil Code Section 52.1(b)

25 113. Plaintiffs incorporate by reference and reallege paragraphs 1-112 of this Complaint.

26 114. Defendants' above-described conduct interfered and/or attempted to interfere with
27 plaintiffs' exercise and/or enjoyment of their rights as secured by the United States Constitution
28 and/or California Constitution, in violation of California Civil Code section 52.1.

1 **ELEVENTH CAUSE OF ACTION**
2 Intentional Infliction of Emotional Distress

3 115. Plaintiffs incorporate by reference and reallege paragraphs 1-114 of this Complaint.

4 116. Defendants' above-described conduct was extreme and outrageous. Said conduct
5 was done intentionally and with conscious disregard of plaintiffs' rights, and directly and
6 proximately caused plaintiffs humiliation, mental pain and suffering.

7 **TWELFTH CAUSE OF ACTION**
8 Negligent Infliction of Emotional Distress

9 117. Plaintiffs incorporate by reference and reallege paragraphs 1-116 of this Complaint.

10 118. Defendants' above-described conduct constituted a breach of defendants' duty of
11 care to plaintiffs to ensure that defendants did not cause unnecessary or unjustified harm to
12 plaintiffs. It was reasonably foreseeable to all defendants that a breach of that duty by defendants
13 would cause emotional distress to plaintiffs.

14 **THIRTEENTH CAUSE OF ACTION**
15 False Imprisonment

16 119. Plaintiffs incorporate by reference and reallege paragraphs 1-118 of this Complaint.

17 120. Defendants' above-described conduct restrained plaintiffs against their will and
18 without legal justification.

19 121. Defendants' acts were intentional and done in violation of plaintiffs' rights, and
20 have directly and proximately caused plaintiffs humiliation, mental pain and suffering.

21 **FOURTEENTH CAUSE OF ACTION**
22 Declaratory Relief

23 122. Plaintiffs incorporate by reference and reallege paragraphs 1-121 of this Complaint.

24 123. There is a real and actual controversy between plaintiffs and defendants regarding
25 whether defendants may undertake to act as described herein. Plaintiffs contend that defendants
26 violated the United States and California Constitutions and the laws of the United States and of
27 California. On information and belief, defendants deny that their conduct violated the United
28 States and California Constitutions and the laws of the United States and of California. Plaintiffs

1 fear that they will again be subjected to such unlawful and unconstitutional actions, and seeks a
2 judicial declaration that defendants' conduct deprived plaintiffs of their rights under the United
3 States and California Constitutions and the laws of the United States and California.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, plaintiffs pray that the Court, as to all the defendants and each of them
6 jointly and severally:

7 1. Issue a declaratory judgment that defendants' conduct as complained herein was a
8 violation of plaintiffs' rights under the United States and California Constitutions and the laws of
9 the United States and California;

10 2. Issue an injunction (a) prohibiting defendants from engaging in vehicular stops or
11 searches based on race or ethnicity; (b) ordering defendants to establish effective preventative
12 mechanisms to ensure that discriminatory traffic stops and vehicular searches do not continue in
13 the future, including, but not limited to the following:

- 14 (i) to cease and desist from all pretextual stops;
- 15 (ii) to cease and desist from all searches without probable cause of criminal
16 activity;
- 17 (iii) to collect and maintain comprehensive records of all traffic stops in the State
18 of California, including those stops that do not result in the issuance of a
19 citation; and
- 20 (iv) to establish a procedure to enable each person involved in a traffic stop the
21 right to file a grievance to contest illegal acts and acts motivated by bias;
- 22 (v) to establish clear and consistent discipline in the event a grievance is
23 sustained;
- 24 (vi) to establish a Civilian Complaint Review Board;
- 25 (vii) to appoint an independent auditor who will review the records of officers
26 quarterly to determine that there is compliance with these reforms;
- 27 (viii) to establish an early warning system which will collect information such as
28 citizen complaints against an officer and other information regarding

misconduct and will alert the officer's supervisor when a set number of incidents are recorded;

(ix) to establish a mechanism for internal discipline of officers who are found to have engaged in racial profiling and pretextual stops; and

(x) to require that all officers participate in regular and recurring training to assure that the officers do not act due to bias based on race or ethnicity.

3. Award compensatory and general damages against defendants and each of them, for plaintiffs in an amount to be determined according to proof;

4. Award exemplary and punitive damages against all defendants sued in their individual capacities in an amount to be proven at trial;

5. Award statutory damages and penalties pursuant to California Civil Codes section 52(b);

6. Award plaintiffs their costs, expenses and reasonable attorneys' fees pursuant to 42 U.S.C. 1988, California Civil Codes sections 52(b) and 52.1(h), and California Code of Civil Procedure section 1021.5; and

7. Grant such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Federal Rules of Civil Procedure, and Rule 3-6, Local Rules, United States District Court, Northern District of California, plaintiffs demand trial by jury for all the issues plead herein so triable.

DATED: November 30, 1999

KEKER & VAN NEST, L.L.P.

By:


JON B. STREETER
JON S. TIGAR
REBECCA K. SULLIVAN
Attorneys for Plaintiffs

1 DATED: November 30, 1999

THE AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

2
3
4 By: Michelle Alexander
5 MICHELLE ALEXANDER
6 Attorneys for Plaintiffs
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 I am over the age of eighteen years and not a party to this action. My business address is:

3 710 Sansome Street
4 San Francisco, California 94111-1704

5 On the date specified below, I caused the following documents to be served:

6 **FIRST AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF,**
7 **INJUNCTIVE RELIEF AND DAMAGES**

8 (**XX**)(BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the
9 addressee(s) listed below.

10 () (BY FACSIMILE AND MAIL) I caused the document(s) listed above to be served by
11 telefaxing said document(s) to the number(s) listed below at the location(s) shown as follows and
12 also placed the document(s) in a sealed envelope(s) with postage thereon fully prepaid and
deposited the envelope(s) with the United States Postal Service (as described in service by mail
above).

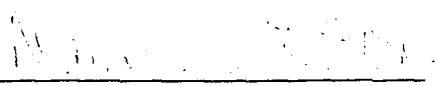
13 () (BY FEDERAL EXPRESS) I caused the document(s) to be served by placing a true copy
14 thereof [to which was attached a copy of this document(s)] in a sealed Federal Express overnight
15 envelope bearing Airbill Nos. listed below. The overnight envelope was then picked up by a
16 Federal Express employee at the above business address in San Francisco, California, and was
addressed as listed below.

17 The envelope(s) was addressed to the following:

18 Tyler B. Pon
19 Supervising Deputy Attorney General
20 Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-3664

21 Executed on November 30, 1999, at San Francisco, California.

22 I, Maureen L. Stone, declare under penalty of perjury that the foregoing is true and correct.

23
24 
25 MAUREEN L. STONE
26
27
28