STATE OF MICHIGAN

IN THE COURT OF CLAIMS

JOHN CHAPPEL CAIN, RAYMOND C. WALEN, JR., ELTON FLOYD MIZELL, PAUL ALLEN DYE, JOHN CHANDLER EWING, DELBERT M. FAULKNER, C. PEPPER MOORE, on behalf of themselves and all others similarly situated,

Plaintiffs,

MARY GLOVER, SERENA GORDON, AND SUSAN FAIR on behalf of themselves and all others similarly situated,

Plaintiff-Intervenors,

V

No. 88-61119-AZ

MICHIGAN DEPARTMENT OF CORRECTIONS,

Hon. James R. Giddings

Defendant.

RAYMOND C. WALEN, JR. #171194
ELTON FLOYD MIZELL #140327
JOHN CHANDLER EWING #178145
C. PEPPER MOORE #100885
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For Defendant

PLAINTIFFS' THIRD AMENDED COMPLAINT

Jurisdiction

1. Jurisdiction is invoked pursuant to MCL 600.6419 et seq; MSA 27A.6419 et seq; MCL 600.605, .611, .631, .701, .761; MSA 27A.605, .611, .631, .701, .761, and Michigan Constitution Article VI, Sections 1 and 13.

Parties

2. Plaintiffs are now and were at all times giving rise to this action state prisoners confined in custody of the Michigan Department of Corrections.

3. Plaintiffs bring this action on behalf of themselves and as representatives of a class as defined by MCR 3.501. The class consists of all male prisoners who are now or will in the future be confined in general population in custody of the Michigan Department of Corrections.

4. The class is composed of over 20,000 prisoners and is so numerous that joinder of all members is impractical. Common questions of law and fact predominate over individual questions. The representative parties' claims are typical of those of the class. Defendant has acted on grounds generally applicable to the class.

5. The representative parties will fairly and adequately assert and protect the interests of the class.

6. The maintenance of this action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

7. Defendant MICHIGAN DEPARTMENT OF CORRECTIONS [MDOC] is a state administrative agency created by law, operation of which is

governed and limited by Constitutional provisions, Statutes, and promulgated Administrative Rules.

I. PROPERTY.

Facts

Proceedings

8. Defendant MDOC arbitrarily enacted a new Prisoner Personal Property Control Policy Directive, PD-BCF-53.01, which will place drastic restrictions on the types and amount of personal property allowed all general population prisoners, and will eliminate for Close (LEVEL IV) and Maximum (LEVELS V, VI) Custody prisoners Plaintiffs included, numerous items of personal property which have been authorized for nearly a quarter century preceding enactment of the policy.

9. In April 1988 this Court enjoined Defendant's plan to divest prisoners of personal property through implementation of a revised version of Michigan Department of Corrections Policy Directive PD-BCF-53.01; a hearing was set for May 5, 1988.

10. Defendant requested and was granted a continuance until June 16, 1988.

11. Defendant later requested an immediate hearing, and the Court set a May 17, 1988 hearing date.

12. On May 13, 1988, Defendant filed a petition to remove the case to the United States District Court for the Western District of Michigan, and the case was assigned to Judge Robert Holmes Bell who, on June 8, 1988, remanded the case to this Court.

13. This Court held a pretrial conference on August 15, 1988, and defense counsel mentioned no emergency. The Court initially set a hearing date for October 25, 1988, but Defendant didn't want to wait that long. To accommodate the defense, hearing on the order to show cause why a preliminary injunction should not issue was set by the Court for October 3, 1988, at 9:00 a.m.

14. A motion by women prisoners to intervene as Plaintiffs was heard and granted on September 14, 1988, and defense counsel mentioned no emergency.

15. On the morning of the hearing, October 3, 1988, defense counsel announced that on that date Defendant adopted "Emergency Rules" pursuant to MCL 24.248; MSA 3.560(148), those pertinent to this motion being Emergency Rules 3 and 4.

16. Asked by the Court in chambers to articulate the "emergency" necessitating the Emergency Rules, defense counsel was unable to do so.

17. On the record in open court defense counsel Susan A. Harris said that Emergency Rules 3 and 4 (pertaining to property) were needed to convert Ionia Maximum Facility from administrative segregation to maximum security.

18. Michigan Department of Corrections Deputy Director Dan Bolden explained that Defendant has been planning the Ionia Maximum Facility since 1985; Defendant's proposed Exhibit 3 confirms that such plans have been reduced to writing since at least 1986.

19. Based on statements by Assistant Attorney General Susan A. Harris and MDOC Deputy Director Dan Bolden, the Court found that there was no emergency and adjourned the hearing to November 7, 1988 so that the parties could address the effect of Emergency Rules 3 and 4 on this litigation.

20. Defendant's intention in adopting Emergency Rules 3 and 4 was to circumvent this Court's temporary orders restraining implementation of PD-BCF-53.01 and to circumvent a preliminary injunction.

21. Due to the fact that Defendant claims no "emergency" except the need to open the Ionia Maximum Facility, which Defendant has been planning for at least three years, there does not exist the type of "emergency" contemplated by MCL 24.248; MSA 3.560(148).

22. The "finding of emergency" submitted with the October 3, 1988 Emergency Rules alleged that the emergency was brought on by the homicide of two corrections officers, taking of hostages, assaults on staff and other prisoners, and serious unrest for an extended period of time in one segregation unit.

23. The Department's internal investigation of the deaths of the two corrections officers did not find that prisoners' personal property was a factor in those unfortunate events.

24. Prisoners' personal property was not found to be a factor in any hostage takings; in fact, one occurred at Duane L. Waters Hospital where no personal property is permitted.

25. Contrary to the representations made in the finding of emergency, assaults on staff and other prisoners are decreasing according to the Department's own reports and files.

26. Marjorie VanOchten, author of the rules and finding of emergency, testified that the reference to serious unrest in a segregation unit was a reference to 5 block at SPSM. She further testified, contrary to the representation made in the finding of emergency, that the unrest in 5 block referred to ended in early 1988.

27. Overcrowding is not a situation caused by the prisoners, but by the Department's failure to "bring on enough new institutions to take care of the increasing intake."

28. Marjorie VanOchten, the Department's Hearings Administrator, wrote the Emergency Rules.

29. Ms. VanOchten will, as Hearings Administrator, be required to rule on prisoners' appeals under the new Emergency Rules, which appeals may challenge the validity of those rules.

30. Requiring Ms. VanOchten to rule on the validity of rules which she wrote will cause an illegal and unethical conflict of interest.

31. Defendant is in the process of rescinding R791.6621 and R791.6637 which, among other things, give prisoners the right to possess personal property.

32. Defendant's intent in rescinding R791.6621 and R791.6637 is to circumvent this Court's orders restraining implementation of PD-BCF-53.01 and to circumvent a preliminary or permanent injunction.

33. Marjorie VanOchten, the Department's Hearings Administrator, advocated the rescission of R791.6621 and R791.6637.

34. Ms. VanOchten will, as Hearings Administrator, be required to rule on prisoners' appeals related to the rescission of R791.6621 and R791.6637, which appeal may challenge the legality of those rescissions.

35. Requiring Ms. VanOchten to rule on the validity of the rescission of rules when she advocated those rescissions will cause an illegal and unethical conflict of interest.

36. Defendant did not provide notice of the April 1989 public hearing on the proposed rescission of rules R791.6621 and R791.6637 at least 30 days before the public hearing on the proposed rescission.

37. The April 1989 "public hearing" conducted on the rescission of R791.6621 and R791.6637 was a sham hearing.

38. Defendant lobbied heavily to get the Legislature to pass MCL 800.42, a law to limit prisoners' personal property much the same as would PD-BCF-53.01.

39. Defendant's intention in encouraging the enactment of MCL 800.42 is to circumvent this Court's orders restraining implementation of PD-BCF-53.01.

40. Emergency Rules 3 and 4 and rescission of R791.6621 and R791.6637, will eliminate for Close and Maximum Custody prisoners, Plaintiffs included, numerous items of personal property which have been authorized for nearly a quarter century preceding enactment of the Policy and Emergency Rules.

41. MCL 800.42 will eliminate for all prisoners, Plaintiffs included, numerous items of personal property which have been authorized for nearly a quarter century preceding its enactment.

42. The purpose of enacting MCL 800.42 and Emergency Rules 3 and 4 is to defeat or impair rights accrued under R791.6621 and R791.6637.

Behavior Modification

43. Defendant claims that its rationale underlying the plan to restrict property embodied in MCL 800.42, Emergency Rules 3 and 4 and PD-BCF-53.01 is a system which will reward good behavior and punish bad behavior; this will be done through classification of prisoners to various security levels.

Classification

44. Defendant screens prisoners to and places them in a security classification level based on policies, operating procedures, and rules, including PD-DWA-30.02, OP-DWA-30.02, R791.4401, and Emergency Rule 1.

45. Defendant claims its classification rules and policy are based on behavior.

46. Defendant's classification rules and policy are arbitrary and capricious because there is no rational connection between a prisoner's behavior and the security level to which he or she is classified or placed.

47. For example, on the "Confinement Level" side of the security classification screen the out-date is computed wrong over 50% of the time; these errors are compounded rather than corrected on reclassification.

48. Fewer than one in four of the prisoners for whom the information is available are placed at the level to which they screen.

49. The Department distributes to all prisoners and posts in the housing units the minor misconduct rules which do not affect prisoners' classification levels, but it does not routinely distribute and post major misconduct rules, which significantly affect prisoners' classification levels.

50. Misconduct charges on which a prisoner has been found "not guilty" frequently are retained in his file and counted against him.

51. Security classification may be reduced for good work/school performance, but the Department recently found that an audit to assess the accuracy of this information was precluded by the high error rate in recording it.

52. Major misconduct convictions are used in some instances to increase prisoners' security classification.

53. Defendant's delay in ruling on requests for rehearing on major misconduct convictions is nearly two years.

54. In two years time major misconduct for other than escape or assault generally ceases to be a factor in a prisoner's security classification.

55. Prisoners routinely are placed at higher security levels than those to which they are classified due to

a. lack of bedspace,

b. medical needs that are no fault of their own,

c. length of sentence, and

d. the three foregoing factors take precedence over behavior as criteria for security classification.

56. Well-behaved long-term prisoners are housed with and treated the same as prisoners who act out and are violent, especially in the Close (LEVEL IV) security settings.

57. Reclassifications are not done timely.

58. Old and infirm prisoners are frequently housed with rowdy young prisoners who prey upon them in buildings and prisons designed for young healthy people. This results, among other things, in older, more stable prisoners being overclassified because of receiving misconduct reports for such as being late returning from meals.

59. The Department is not properly equipped to deal with physically handicapped prisoners.

a. The only facilities designed to house seriously handicapped male prisoners are at close security and above.

b. There is no barrier-free segregation unit for handicapped prisoners. This means that a wheelchair-bound prisoner is forced to use a catheter and bedpan in segregation and is precluded from showering.

c. This causes frustration which may lead to intemperate behavior leading to misconduct reports and an increase in security classification.

d. There are not sufficient barrier free beds for all handicapped prisoners, and there are no specific written criteria for placement of handicapped prisoners in a barrier-free housing unit.

e. Because there are not sufficient beds for handicapped prisoners, many are forced to general population cells designed for healthy people.

f. When non-ambulatory handicapped prisoners are placed in general population housing units, they are unable to use the dining hall or telephones, neither of which are wheelchair accessible.

g. As a consequence of handicapped prisoners being placed in general population and expected to match the physical capabilities of healthy non-handicapped general population prisoners, they are not always physically able to follow the rules and they frequently receive written misconduct reports for such as lateness caused by their physical infirmities. These adversely affect the prisoners' classification through no fault of their own.

60. More than a third of Michigan's prisoners are diagnosed as mentally ill and in fact are mentally ill.

a. There is no treatment available for most - even those found "guilty but mentally ill" for whom treatment has been court ordered - until shortly before their release.

b. The lack of treatment and lack of appropriate housing leads to an exacerbation of their illness and concomitant acting out which results in higher security placement through no fault of the prisoner.

c. Mentally ill prisoners who do not receive appropriate treatment or appropriate housing spend a disproportionately greater time in punitive higher security levels than other prisoners.

d. Defendant's insufficient training of prison guards and other staff to recognize mentally ill prisoners causes them to write a disproportionate number of disciplinary reports on mentally ill prisoners, resulting in an inappropriately high classification of those prisoners.

61. There are hundreds, perhaps thousands, of prisoners who are deaf and/or hearing impaired and/or non-English speaking.

a. Interpreters are not regularly or timely provided for deaf and/or hearing impaired and/or non-English speaking prisoners during disciplinary, classification, parole board hearings, and other hearings.

b. This failure leads to inappropriate classification orders because the "hearings" held are the antithesis of a hearing because without capable interpreters prisoners are unable to <u>hear</u> or be <u>heard</u> at the "hearings."

c. Deaf and/or hearing impaired and/or non-English speaking prisoners do not receive appropriate treatment from Defendant.

d. Deaf and/or hearing impaired and/or non-English speaking prisoners who do not receive appropriate treatment spend a disproportionately greater time in punitive higher security levels than other prisoners.

e. Defendant's insufficient training of prison guards and other staff to recognize deaf and/or hearing impaired and/or non-English speaking prisoners causes them to write a disproportionate number of disciplinary reports on deaf and/or hearing impaired and/or non-English speaking prisoners, resulting in an inappropriately high classification of those prisoners.

62. A high percentage of Michigan prisoners are learning handicapped within the meaning of Public Law 94-142; 20 U.S.C. 1401-1461.

a. There is not sufficient testing at intake to identify learning handicapped prisoners and teach them to understand the prison rules and the disciplinary process.

b. This failure leads to inappropriate classification of learning handicapped prisoners because they are not able to read, understand and follow the rules and they are preyed upon by other prisoners.

c. Learning handicapped prisoners do not receive appropriate treatment and housing from Defendant.

d. Learning handicapped prisoners who do not receive appropriate treatment spend a disproportionately greater time in punitive higher security levels than other prisoners.

e. Defendant's insufficient training of prison guards and other staff to recognize learning handicapped prisoners causes them to write a disproportionate number of disciplinary reports on learning handicapped prisoners, resulting in an inappropriately high classification of those prisoners.

63. A high percentage of Michigan prisoners suffer from handicaps within the meaning of Title V, Section 504, Rehabilitation Act of 1973; 29 U.S.C. 707-796.

a. There is not sufficient testing at intake to identify handicapped prisoners and teach them to understand the prison rules and the disciplinary process.

b. This failure leads to inappropriate classification of handicapped prisoners because they are not able to read, understand and follow the rules, and they are preyed upon by other prisoners.

c. Handicapped prisoners do not receive appropriate treatment and housing from Defendant.

d. Handicapped prisoners who do not receive appropriate treatment spend a disproportionately greater time in punitive higher security levels than other prisoners.

e. Defendant's insufficient training of prison guards and other staff to recognize handicapped prisoners causes them to write a disproportionate number of disciplinary reports on handicapped prisoners, resulting in an inappropriately high classification of those prisoners.

64. A high percentage of Michigan prisoners suffer from learning disability handicaps within the meaning of MCL 380.1701-1766; MSA 15.41701-41766.

a. There is not sufficient testing at intake to identify learning handicapped prisoners and teach them to understand the prison rules and the disciplinary process.

b. This failure leads to inappropriate classification of learning handicapped prisoners because they are not able to read, understand and follow the rules, and they are preyed upon by other prisoners.

c. Learning handicapped prisoners do not receive appropriate treatment from Defendant.

d. Learning handicapped prisoners who do not receive appropriate treatment spend a disproportionately greater time in punitive higher security levels than other prisoners.

e. Defendant's insufficient training of prison guards and other staff to recognize learning handicapped prisoners causes them to write a disproportionate number of disciplinary reports on learning handicapped prisoners, resulting in an inappropriately high classification of those prisoners.

f. Problems are exacerbated by the Department's failure to evaluate prisoners in accordance with MCL 380.1311; MSA 15.41311 prior to imposing discipline.

65. Over twenty percent of Michigan prisoners are totally illiterate - unable to read and write at all.

a. This high rate of illiteracy and the Department's failure to take appropriate remedial steps to correct it lead to illiterate prisoners being disproportionately classified to higher security levels than warranted because they are not able to read, understand and follow the rules as are literate prisoners.

b. This failure leads to inappropriate classification of illiterate prisoners because they are not able to read, understand and follow the rules and they are preyed upon by other prisoners.

c. Illiterate prisoners do not receive appropriate treatment from Defendant.

d. Illiterate prisoners who do not receive appropriate treatment spend a disproportionately greater time in punitive higher security levels than other prisoners.

e. Defendant's insufficient training of prison guards and other staff to recognize illiterate prisoners causes them to write a disproportionate number of disciplinary reports on illiterate prisoners, resulting in an inappropriately high classification of those prisoners.

66. Over fifty percent of Michigan's prisoners are functionally illiterate - reading at or below sixth grade level.

a. This high rate of illiteracy and the Department's failure to take appropriate remedial steps to correct it lead to illiterate prisoners being disproportionately classified to higher security levels than warranted because they are not able to read, understand and follow the rules as are literate prisoners.

b. This failure leads to inappropriate classification of illiterate prisoners because they are not able to read, understand and follow the rules and they are preyed upon by other prisoners.

c. Illiterate prisoners do not receive appropriate treatment from Defendant.

d. Illiterate prisoners who do not receive appropriate treatment spend a disproportionately greater time in punitive higher security levels than other prisoners.

e. Defendant's insufficient training of prison guards and other staff to recognize illiterate prisoners causes them to write a disproportionate number of disciplinary reports on illiterate prisoners, resulting in an inappropriately high classification of those prisoners.

67. Many prisons are the subject of severe overcrowding, and thousands of prisoners are housed in tents and pole barns.

a. These conditions cause unbearable stress and frustration which in turn cause problems which result in classification of prisoners at higher levels than would be the case if the Department used prisons to house the number of prisoners for which they were designed.

68. Most prisons subject prisoners to excessive idleness due to insufficient educational and recreational programming.

69. Excessive idleness causes unbearable stress and frustration which in turn causes problems which result in classification of prisoners to higher levels than would be the case if the Department alleviated the idleness and relieved stress through educational programming and organized recreation.

70. Emergency Rule 1 and current proposed amendments to R791.4401 eliminate the requirement of a hearing for a security classification increase.

71. The elimination of a hearing before security classification increase causes a grossly disproportionate number of prisoners to have their security classification erroneously increased without a hearing.

72. Under MCL 800.42, Emergency Rules 3 and 4, and PD-BCF-53.01, this will cause them to lose substantial amounts of property due to arbitrary and unwarranted action by the Department.

73. One way to achieve a reduction of security classification and placement is through meeting program classification objectives through work and/or school assignments.

74. Defendant arbitrarily transfers prisoners without regard for the prisoners' completion of program classification objectives.

75. Transfer before program completion frequently precludes prisoners from meeting program classification objectives and obtaining a classification level reduction by maintaining satisfactory performance on work and/or school assignments.

76. Defendant is repealing its Administrative Rules pertaining to program classification [R791.4430, R791.4435]. This will make it much more difficult for even the best behaved prisoners to achieve a reduction in security classification through completion of program classification objectives.

77. Program classification recommendations are not being followed when available.

78. The Department's failure to follow program classification recommendations adversely impacts on prisoners' security classification in that prisoners are blocked from achievement of long term goals by the Department, and the frustration thus caused results in aggression which causes them to receive a disproportionate number of misconduct reports and leads to inappropriate security classification.

79. Vocational testing is not a part of classification.

80. This adversely impacts on prisoners' security classification because without proper vocational testing they are

unable to be placed in the proper work/school program to earn point reductions in their security classification levels.

81. Substance abuse and alcohol addiction screening are not accomplished as part of classification.

82. The Defendant's failure to identify such self-destructive tendencies as substance abuse and alcohol addiction adversely affects prisoners' program and security classification because prisoners security classification is increased for placement in segregation which was due to behavior caused by factors beyond their control.

83. Program classification recommendations from R&GC are not followed up at receiving institutions.

84. Failure to follow up on program recommendations adversely impacts on prisoners' security classification because without follow-up they are not properly placed in a work or school program so as to be able to earn a reduction in their security levels.

85. Failure to evaluate and coordinate program classification needs results in prisoners being shipped to institutions based on the prisoners' security level but on arrival the institutions lack the appropriate programs.

86. Placement in an institution lacking appropriate programming adversely impacts on prisoners' security classification because they are unable to participate in an appropriate work or school program needed to earn a reduction in their security classification levels.

87. Defendant implicitly admitted that its classification system is unconstitutional when it agreed to "design and implement a professionally-based classification plan" in the Consent Judgment in U.S.A. v Michigan, USDC WD Mich No. G84-63CA, July 16, 1984, Section D(1).

Lack of Standards

88. Deputy Director Dan Bolden has unfettered discretion to place prisoners in Level VI, the highest security level.

89. Given the lack of specific written objective standards for placement in Level VI, placement there is almost completely by chance.

90. There are no specific written criteria for "waiver," "departure," or "differences" in placement at a security level different from that to which a prisoner actually screens. This results in arbitrary application of waivers, departures, and differences.

91. The only written criterion for denial of program recommendations is "security." This results in arbitrary denial of program recommendations, which adversely affects a prisoner's security classification.

92. There is no internal audit of security and program classification decisions.

93. Security and program classification decisions are reviewable only by grievance.

94. The MDOC grievance system is an ineffective process of rubber-stamping prior decisions on a prisoner's complaint.

95. Defendant is rescinding Administrative Rule R791.3325 which allows prisoners to file grievances.

96. There is no viable, reliable, or credible audit procedure for placement in Level VI or Administrative Segregation.

97. The lack of a viable, reliable, or credible audit procedure for Level VI and Administrative Segregation placements prevents effective oversight of the entire classification system and encourages and causes arbitrary actions when quick solutions are needed.

98. There is no viable, reliable, or credible audit procedure for the waivers, departures, and differences in placement.

99. The lack of a viable, reliable, or credible audit procedure for waiver, departure, and differences in placements prevents effective oversight of the entire classification system and encourages and causes arbitrary actions when quick solutions are needed.

100. There is no viable, reliable, or credible audit procedure for denial of program recommendations.

101. The lack of a viable, reliable, or credible audit procedure for denials of program recommendations prevents effective oversight of the entire classification system and encourages and causes arbitrary actions when quick solutions are needed.

Access to Courts

102. For a quarter century preceding this Complaint all State prisoners without exception have been allowed possession of personal typewriters.

103. In the last decade the possession has been expanded to include both electric and electronic typewriters of considerable value. This property allowance was properly based on Defendant's promulgated Administrative Rule R791.6637(4) which provides:

> A resident [prisoner] may keep personal property in his or her housing unit, subject to reasonable regulations to safeguard the public health and the security, order, and housekeeping of the facility.

104. The taking of Plaintiffs' personal typewriters will have the collateral adverse effect of irreparably infringing upon Plaintiffs' access to the courts for redress of grievances.

105. As of this date, Plaintiffs are engaged in and maintain both civil actions and criminal appeals.

106. The restrictive time limits for filing in state and federal courts cannot be met without the aid of their personal typewriters, and Plaintiffs ultimately will be required to forfeit many of these viable actions as a direct result of the Defendant's typewriter restrictions, constituting a direct and illegal infringement on Plaintiffs' absolute right of access to the courts.

107. Upon information and belief, one of Defendant's underlying objectives in divesting Close Custody prisoners of non-portable typewriters worth over $200, and in divesting maximum custody prisoners of a typewriter altogether, is to suppress litigation and activity by "jailhouse lawyers" such as

Plaintiffs. The most prolific and successful jailhouse lawyers are in Close and Maximum security institutions, and the typewriter restrictions are aimed at suppressing and stifling activities of such persons, as well as their access to the courts for redress of personal grievances in both civil and criminal matters.

108. As of the date of filing this complaint, there is not a single documented instance of a prisoner who owned his own personal typewriter using it as a weapon.

109. The cost of a personal typewriter is irrelevant to determining whether it poses a threat to prison security.

110. Personal typewriters with memory capability pose no threat to prison security.

111. Personal typewriters which are capable of use as a computer printer, and which are not capable of use as a computer terminal compatible with the Department's mainframe computer, pose no threat to prison security.

112. There is not regularly available to many prisoners for purchase a typewriter which comports with PD-BCF-53.01 effective 9-16-85 which they may purchase.

113. There are currently no State-supplied typewriters available in the SPSM-CC 4 block law library.

114. Because a typewriter which comports with PD-BCF-53.01 effective 9-16-85 is not regularly available for many prisoners to purchase, and because no State typewriter is available for them to use, they are being denied their Constitutional rights to appeal, of access to the courts, and to sue.

115. MCL 800.42(4) prohibits prisoners' possession of books available from the prison law library.

116. In 1985, the State and Defendant entered into a Consent Decree in the case of Hadix v Johnson, USDC ED Mich 80-7358, Section VI(13) of which guarantees prisoners the right to unlimited in-cell possession of legal materials including legal papers and law books which are reasonably necessary to assist the prisoner with pending litigation.

117. Observing that delays in access to prison law library books frequently cause prisoners to miss court deadlines, in April 1989 the Hadix court construed this provision to require allowance of in-cell possession of personal law books available in the institutional law library as well as in-cell possession of personal "brief banks." Neither the State nor the Department appealed this decision.

118. MCL 800.42(4) prohibits prisoners' possession of legal materials which are available in the prison law library.

Inadequacy of Clothing

119. The State-issued clothing in which Defendant proposes to dress close and maximum custody prisoners is inadequate to keep them warm and dry in Michigan's wet weather.

120. The State-issued clothing in which Defendant proposes to dress close and maximum custody prisoners is inadequate to keep them warm and dry in Michigan's winter weather.

121. The State-issued clothing in which Defendant proposes to dress close and maximum custody prisoners is not adequate for

summer use because of the material weight and breathability, fiber content, and design.

122. The State-issued clothing in which Defendant proposes to dress close and maximum custody prisoners is not designed to fit properly.

123. The State-issued clothing in which Defendant proposes to dress close and maximum custody prisoners is designed not to fit properly.

124. Defendant controls these foregoing conditions and is creating them knowing and intending that an injury to prisoners, Plaintiffs included, is substantially certain to result from Defendant's actions.

Inability to Supply

125. The State-issued clothing in which Defendant proposes to dress close and maximum custody prisoners is not available in sufficient quantity and sizes to clothe all the prisoners who will be required to wear it.

126. Defendant has neither the funds, the plans, nor the ability to order and stock a sufficient quantity of State-issued clothing to clothe all prisoners required to be clothed under MCL 800.42, Emergency Rules 3 and 4, PD-BCF-53.01, and PD-BCF-51.01.

127. Poor planning is the Department's hallmark in this regard. Despite a proposed effective date of 10-1-88, no State-issued clothing was ordered in anticipation of implementing the new policy.

128. Huron Valley Womens' Facility Warden Tekla Miller waited until November to order winter longjohns for her prison;

according to her own testimony, they would not be available until January, at the earliest. When they finally arrived at the end of January, they were MENS' underwear!

129. Perhaps the Department's lack of planning is best exemplified by the November 21, 1988 testimony of Huron Valley Womens' Facility Warden Tekla Miller that "the last two things" a womens' prison should run out of are sanitary napkins and toilet paper; her prison ran out of both at least once a month every month from April 1988 to date.

130. Defendant controls these foregoing conditions and is creating them knowing and intending that an injury to prisoners, Plaintiffs included, is substantially certain to result from Defendant's actions.

No Management Plan

131. Defendant has no management plan for the procedure to send home or otherwise store clothing of prisoners whose classification level is raised from level I, II, or III to level IV, V, or VI.

132. Defendant is unable to keep track of the small bit of clothing confiscated under the current policy and rules.

133. Defendant controls these foregoing conditions and is creating them knowing and intending that an injury to prisoners, Plaintiffs included, is substantially certain to result from Defendant's actions.

Health Hazard

134. When MCL 800.42, the Emergency Rules, and PD-BCF-53.01 are implemented, Defendant plans to limit prisoners to three pairs of State-issued socks and underwear or five pairs of personal socks and underwear.

135. In combination with the Defendant's once a week laundry schedule at most prisons, and the prohibition of washing clothes in one's cell, this will preclude Plaintiffs from having a daily change of socks and underwear, causing hazards to health as well as being inadequate, degrading and humiliating.

136. Defendant controls these conditions and is creating them knowing and intending that an injury to prisoners, Plaintiffs included, is substantially certain to result from Defendant's actions.

Inequitable Impact

137. MCL 800.42 and Emergency Rules 3 and 4 as implemented through Policy Directive PD-BCF-53.01 will divest Close Custody prisoners, Plaintiffs included, of many items purchased by Plaintiffs and other prisoners and/or purchased and sent by family from home.

138. At the time Plaintiffs were permitted to purchase and/or receive the property items, they were not informed that Defendant might arbitrarily eliminate their right to their possession resulting in financial loss.

139. At the time Plaintiffs were permitted to purchase and/or receive the property items, they were not told that Defendant might later ban them.

140. In all such property purchases, Defendant has consistently charged Plaintiffs a fee of 5% of each item's purchase price in order to purchase it.

141. When Plaintiffs purchased and/or received such property items, it was with the understanding that they could retain possession of them.

142. Still more property is being or will be taken from Maximum Custody prisoners, which Plaintiffs may become if reclassified by Defendant.

143. Because Plaintiffs have no outside family or friends able to store their property until their release from prison, such divestiture represents financial loss exceeding $1000.

144. Even if Plaintiffs had someone to store their property, MCL 800.42, Emergency Rules 3 and 4, and PD-BCF-53.01 would operate to deprive Plaintiffs of the reasonable use of their property without just compensation and without due process protections.

145. Both current and proposed PD-BCF-53.01 require that used clothing must be brought on a visit and may not be received through the mail.

146. Prisoners whose families live far away or are unable to visit will, if required to send clothes home when their security is increased, be precluded from getting those used items returned to them simply because of their family's inability to visit them.

Violence and Harm

147. Under MCL 800.42, Emergency Rules 3 and 4, and PD-BCF-53.01, Defendant proposes to dress all Close and Maximum Custody prisoners in substantially identical State-issued clothing.

148. Dressing all close and maximum Custody prisoners in substantially identical clothing will have a natural tendency to create danger and inflict injury to prisoners, Plaintiffs included, because prisoners and guards would be unable to readily identify assailants and/or robbers and so this would create an unwarranted and dangerous increase in the risk of harm by assaults and robberies by uncaptured assailants and robbers.

149. Requiring prisoners to all dress in substantially identical State-issued clothing and deprivation of personal clothing without compensation will create an unwarranted risk of danger and injury to prisoners because of the potential for inciting inarticulate prisoners to riot, thus creating an unwarranted and unacceptable risk of injury to Plaintiffs' person and property.

150. Defendant controls these two foregoing conditions and is creating them knowing and intending that an injury to prisoners, Plaintiffs included, is substantially certain to result from Defendant's actions.

Mental Health

151. Dressing all close and maximum Custody prisoners in substantially identical clothing will cause and/or exacerbate depression and mental illness.

152. This will result in despondency causing self-mutilation as well as unwarranted violence against others.

153. Defendant controls the foregoing conditions and is creating them knowing and intending that these types of injury to prisoners, Plaintiffs included, is substantially certain to result from Defendant's actions.

Ex Post Facto Application, Double Jeopardy, & Allocution

154. The proposed changes in property rights so drastically alter the conditions of imprisonment in the State of Michigan as to make imprisonment much harsher than envisioned at the time Plaintiffs were sentenced.

155. The proposed changes in property rights drastically alter the terms of Plaintiffs' sentences which were imposed before these drastic and punitive restrictions, so as to make the sentences much harsher than envisioned by the sentencing judges at the time sentence was imposed.

156. The proposed changes in property rights constitute lack of notice so as to have effectively deprived Plaintiffs of the right of allocution at sentencing.

No Compensation

157. MCL 800.42, Emergency Rules 3 and 4, and PD-BCF-53.01 contain no provision to compensate prisoners for the taking of their property.

158. Defendant will not compensate Plaintiffs for property disallowed under MCL 800.42, Emergency Rules 3 and 4, and the revised version of PD-BCF-53.01.

APA violations

159. MCL 800.42, Emergency Rules 3 and 4, and PD-BCF-53.01 divestiture are intended to defeat or impair rights accrued under Rules R791.6621 and R791.6637.

160. While Plaintiffs have been or will be divested of significant personal property, such has not been uniformly applied to the vast majority of Michigan State prisoners who are affected by and allowed such property under the same statute, emergency rules, and guideline Policy. This discrimination in treatment constitutes invidious discrimination prohibited by MCL 24.232(2); MSA 3.560(132)(2):

> A rule or exception to a rule shall not discriminate in favor of or against any person, and a person affected by a rule is entitled to the same benefits as any other person under the same or similar circumstances.

Legal Claims

PD-BCF-53.01

161. Defendant's security classification and placement rules and policies as written result in arbitrary and capricious classification and placement of prisoners and thus the classification and placement rules and policies violate the Michigan Administrative Procedures Act; and Article I, Sections 2, 16, and 17; and Article VI, Section 28 of the Michigan Constitution; and the Fourteenth Amendment of the United States Constitution.

162. Defendant's security classification and placement rules and policies as applied result in arbitrary and capricious classification and placement of prisoners and thus the

classification and placement rules and policies violate the Michigan Administrative Procedures Act; and Article I, Sections 2, 16, and 17; and Article VI, Section 28 of the Michigan Constitution; and the Fourteenth Amendment of the United States Constitution.

163. PD-BCF-53.01 will operate to deprive prisoners of personal property based on a classification and placement scheme which is arbitrary and capricious. This renders operation of the policy arbitrary and capricious and a denial of equal protection in violation of the Michigan Administrative Procedures Act; Article I, Sections 2, 16, and 17; and Article VI, Section 28 of the Michigan Constitution; and the Fourteenth Amendment of the United States Constitution.

164. Due to the Defendant's arbitrary and capricious classification and placement rules and policies, and due to the arbitrary and capricious application of the classification and placement rules and policies,

a. application of PD-BCF-53.01 to restrict property based on classification and placement under these rules and policies is arbitrary and capricious and illegally discriminatory in violation of MCL 24.232(2); MSA 3.560(132)(2).

b. application of PD-BCF-53.01 to restrict property based on classification and placement under these rules and policies is a denial of equal protection in violation of Article I, Section 2 of the Michigan Constitution.

c. application of PD-BCF-53.01 to restrict property based on classification and placement under these rules and policies is arbitrary and capricious and illegally discriminatory in violation of the Fourteenth Amendment of the United States Constitution.

d. application of PD-BCF-53.01 to restrict property based on classification and placement under these rules

and policies is arbitrary and capricious and illegally discriminatory in violation of Article I, Section 17, of the Michigan Constitution.

e. application of PD-BCF-53.01 to restrict property based on classification and placement under these ruiles and policies is arbitrary and capricious and illegally discriminatory in violation of Article VI, Section 28, of the Michigan Constitution.

165. Principles of estoppel bar Defendant from asserting that its current classification and placement plan is constitutional, in light of its agreement in U.S.A. v Michigan to implement a new plan to cure deficiencies in the current one.

166. The divestiture of property pursuant to PD-BCF-53.01 constitutes a taking for which compensation is required under the Fifth Amendment.

167. The divestiture of property pursuant to PD-BCF-53.01 constitutes a taking for which compensation is required under Article X Section 2 of the Michigan Constitution.

168. The divestiture of property pursuant to PD-BCF-53.01 constitutes a taking for which compensation is required under MCL 213.21 et seq; MSA 8.11 et seq.

169. Under the particular facts of this action, Plaintiffs' personal typewriters constitute an essential component of their constitutional right of court access, and that the guideline subject of complaint will irreparably infringe upon this constitutional right guaranteed by Article I, Sections 2, 3, 12, 13, 17, and 20 of the Michigan Constitution.

170. The deprivation of property through PD-BCF-53.01 constructively constitutes an ex post facto law contrary to Article I, Section 10 of the Michigan Constitution.

171. Enforcement of PD-BCF-53.01 will constitute deprivation of property without due process of law, in violation of the Article 1, Section 17 of the Michigan Constitution and the Fifth and Fourteenth Amendments of the United States Constitution.

172. Implementation of Defendant's requirement that Close and Maximum Custody prisoners must wear substantially identical state-issued clothing will constitute a nuisance per se which will harm all Close and Maximum Custody prisoners, including Plaintiffs.

173. Implementation of Defendant's requirement that prisoners must wear substantially identical state-issued clothing will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

174. Defendant's prohibition of personal clothing, when it is neither prepared nor equipped to furnish prisoners with adequate State-issue clothing, will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

175. Defendant's plan to make level I, II, and III prisoners send their clothing home when they are classified to level IV, V or VI, in light of the Department's failure to have prepared a management plan for this procedure and inability to keep track of the small bit of clothing confiscated at this stage, will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

176. Dressing Plaintiffs in clothing which will not keep them warm and dry and which is not fit for summer wear and which

does not fit properly is arbitrary and capricious, it is a violation of the Defendant's own administrative rules and policies (which require clothing which is adequate and not degrading), and is cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

177. Dressing Plaintiffs in clothing which will not keep them warm and dry and which is not fit for summer wear and which does not fit properly is arbitrary and capricious, it is a violation of the Defendant's own administrative rules and policies (which require clothing which is adequate and not degrading), and is cruel or unusual punishment in violation of Article I, Section 16 of the Michigan Constitution.

178. To the degree that PD-BCF-53.01 impairs prisoners' ability to study and participate in education programs by imposing limitations on school books, it violates Article VIII, Section 1 of the Michigan Constitution.

179. As a matter of law Defendant MDOC is bound to comply with its own voluntarily promulgated Administrative Rules, as well as applicable State statutes and Constitutional provisions; and the above described property divestiture based upon a guideline Policy violates rules and statutes administered by Defendant, compliance with which is mandatory.

180. Defendant's charging a fee for purchase and possession rights to the property items subject of divestiture, as well as generally allowing purchase, receipt, and/or possession of the property irrespective of fee, constitutes an implied contractual agreement that they could keep the items in their possession.

181. Defendant is lawfully bound to comply with the implied contractual agreement as a matter of law.

182. PD-BCF-53.01 constitutes a breach of the implied contractual agreement unenforceable as a matter of law, and it violates Article I, Section 10 of the Michigan Constitution and Article 1, Section 10, of the United States Constitution.

183. The property guideline policy, PD-BCF-53.01, adopted with intent to circumvent the notice and comment requirements of MCL 24.224; MSA 3.560(124) compliance with which is mandatory, is invalid and unenforceable.

184. Defendant's failure to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating PD-BCF-53.01 on general equity grounds.

185. Defendant's failure to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating PD-BCF-53.01 on principles of promissory estoppel.

186. Defendant's failure to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating PD-BCF-53.01 on substantive due process concepts.

187. Defendant's actions set forth above divesting Plaintiffs of significant amounts of personal property are

unlawful because PD-BCF-53.01 is not an interpretive statement of the Rule to which it relates, and the Policy is unlawfully used in lieu of a rule in violation of MCL 24.226; MSA 3.560(126).

188. Defendant's actions set forth above divesting Plaintiffs of significant amounts of personal property are unlawful because PD-BCF-53.01 is not an interpretive statement of any Rule, and the Policy is unlawfully used in lieu of a rule in violation of MCL 24.226; MSA 3.560(126).

189. The proposed changes in property rights drastically alter the conditions of imprisonment in the State of Michigan so as to make imprisonment much harsher than envisioned at the time Plaintiffs were sentenced. This constitutes a violation of Article I, Section 10 of the Michigan Constitution and Article 1, Section 10, Clause 1 of the United States Constitution.

190. The proposed changes in property rights drastically alter the terms of Plaintiffs' sentences which were imposed before these drastic and punitive restrictions, so as to make the sentences much harsher than envisioned by the sentencing judges at the time sentence was imposed. This constitutes a violation of Article I, Section 15 of the Michigan Constitution and the Fifth and Fourteenth Amendments of the United States Constitution.

191. The proposed changes in property rights constitute lack of notice so as to have effectively deprived Plaintiffs of the right of allocution at sentencing. This violates Article I, Sections 2, 15, 17, and 20 of the Michigan Constitution, the Fifth, Sixth and Fourteenth Amendments of the United States

Constitution, and MCL 769.1 and 769.8; MSA 28.1072 and 28.1080, and MCR 6.101(G)(2) and (K).

192. To the degree that PD-BCF-53.01 impairs prisoners' ability to study and participate in education programs by imposing limitations on school books, it violates Article VIII, Section 1 of the Michigan Constitution.

193. To the degree that PD-BCF-53.01 impairs prisoners' ability to practice their religion by imposing limits on religious books, medallions, and other religious articles, it violates Article I, Section 4 of the Michigan Constitution.

194. The facts set forth above demonstrate Defendant's actions of complaint were not done in good faith; were in violation of laws Defendant was bound to enforce and comply with; and were otherwise patently unlawful.

Emergency Rules 3 & 4

195. Emergency Rules 3 and 4 are invalid in that they exceed the authority of MCL 24.248; MSA 3.560(148) because there is no real "emergency."

196. Requiring Ms. VanOchten to rule on rules which she wrote will cause an illegal and unethical conflict of interest.

197. The Hearings Administrator is not authorized by statute to write rules and thus the writing of rules by the Hearings Administrator is ultra vires rendering the rules written by the Hearings Administrator invalid and unenforceable.

198. The Emergency Rules 3 and 4 constitute an amendment intended to defeat or impair rights accrued under the rules they

purport to supersede, and the Emergency Rules are invalid because this violates MCL 24.231(4); MSA 3.560(131)(4).

199. Emergency Rules 3 and 4 are intended to circumvent this Court's temporary restraining orders and this renders them invalid because such action is arbitrary and capricious as a matter of law.

200. Defendant's security classification and placement rules and policies as written result in arbitrary and capricious classification and placement of prisoners and thus the classification and placement rules and policies violate the Michigan Administrative Procedures Act; and Article I, Sections 2, 16, and 17; and Article VI, Section 28 of the Michigan Constitution; and the Fourteenth Amendment of the United States Constitution.

201. Defendant's security classification and placement rules and policies as applied result in arbitrary and capricious classification and placement of prisoners and thus the classification and placement rules and policies violate the Michigan Administrative Procedures Act; and Article I, Sections 2, 16, and 17; and Article VI, Section 28 of the Michigan Constitution; and the Fourteenth Amendment of the United States Constitution.

202. Emergency Rules 3 and 4 will operate to deprive prisoners of personal property based on a classification and placement scheme which is arbitrary and capricious. This renders operation of the emergency rules arbitrary and capricious and a denial of equal protection in violation of the Michigan

Administrative Procedures Act; Article I, Sections 2, 16, and 17; and Article VI, Section 28 of the Michigan Constitution; and the Fourteenth Amendment of the United States Constitution.

203. Due to the Defendant's arbitrary and capricious classification and placement rules and policies, and due to the arbitrary and capricious application of the classification and placement rules and policies,

a. application of Emergency Rules 3 and 4 to restrict property based on classification and placement under these rules and policies is arbitrary and capricious and illegally discriminatory in violation of MCL 24.232(2); MSA 3.560(132)(2).

b. application of Emergency Rules 3 and 4 to restrict property based on classification and placement under these rules and policies is a denial of equal protection in violation of Article I, Section 2 of the Michigan Constitution.

c. application of Emergency Rules 3 and 4 to restrict property based on classification and placement under these rules and policies is arbitrary and capricious and illegally discriminatory in violation of the Fourteenth Amendment of the United States Constitution.

d. application of Emergency Rules 3 and 4 to restrict property based on classification and placement under these rules and policies is arbitrary and capricious and illegally discriminatory in violation of Article I, Section 17, of the Michigan Constitution.

e. application of Emergency Rules 3 and 4 to restrict property based on classification and placement under these ruiles and policies is arbitrary and capricious and illegally discriminatory in violation of Article VI, Section 28, of the Michigan Constitution.

204. Principles of estoppel bar Defendant from asserting that its current classification plan is constitutional, in light of its agreement in U.S.A. v Michigan to implement a new plan to cure deficiencies in the current one.

205. The divestiture of property pursuant to Emergency Rules 3 and 4 constitutes a taking for which compensation is required under the Fifth Amendment.

206. The divestiture of property pursuant to Emergency Rules 3 and 4 constitutes a taking for which compensation is required under Article X, Section 2 of the Michigan Constitution.

207. The divestiture of property pursuant to Emergency Rules 3 and 4 constitutes a taking for which compensation is required under MCL 213.21 et seq; MSA 8.11 et seq.

208. Under the particular facts of this action, Plaintiffs' personal typewriters constitute an essential component of their constitutional right of court access, and that Emergency Rules 3 and 4 will irreparably infringe upon this constitutional right guaranteed by Article I, Sections 2, 3, 12, 13, 17, and 20 of the Michigan Constitution and Article 4, Section 2, Clause 1 and the First and Fourteenth Amendments of the United States Constitution.

209. The deprivation of property through Emergency Rules 3 and 4 constructively constitutes an ex post facto law which is invalid under Article I, Section 10 of the Michigan Constitution.

210. Enforcement of Emergency Rules 3 and 4 will constitute deprivation of property without due process of law, in violation of the Article 1, Section 17 of the Michigan Constitution and the Fifth and Fourteenth Amendments of the United States Constitution.

211. Implementation of Defendant's requirement that Close and Maximum Custody prisoners must wear substantially identical

state-issued clothing will constitute a nuisance per se which will harm all Close and Maximum Custody prisoners, including Plaintiffs.

212. Implementation of Defendant's requirement that prisoners must wear substantially identical state-issued clothing will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

213. Defendant's prohibition of personal clothing, when it is neither prepared nor equipped to furnish prisoners with adequate State-issue clothing, will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

214. Defendant's plan to make level I, II, and III prisoners send their clothing home when they are classified to level IV, V or VI, in light of the Department's failure to have prepared a management plan for this procedure and inability to keep track of the small bit of clothing confiscated at this stage, will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

215. Dressing Plaintiffs in clothing which will not keep them warm and dry and which is not fit for summer wear and which does not fit properly is arbitrary and capricious, it is a violation of the Defendant's own administrative rules and policies (which require clothing which is adequate and not degrading), and is cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

216. Dressing Plaintiffs in clothing which will not keep them warm and dry and which is not fit for summer wear and which does not fit properly is arbitrary and capricious, it is a violation of the Defendant's own administrative rules and policies (which require clothing which is adequate and not degrading), and is cruel and unusual punishment in violation of Article I, Section 16 of the Michigan Constitution.

217. To the degree that Emergency Rules 3 and 4 impair prisoners' ability to study and participate in education programs by imposing limitations on school books, they violate Article VIII, Section 1 of the Michigan Constitution.

218. As a matter of law Defendant MDOC is bound to comply with its own voluntarily promulgated Administrative Rules, as well as applicable State statutes and Constitutional provisions; and the above described property divestiture based upon a guideline Policy violates rules and statutes administered by Defendant, compliance with which is mandatory.

219. Defendant's charging a fee for purchase and possession rights to the property items subject of divestiture, as well as generally allowing purchase, receipt, and/or possession of the property irrespective of fee, constitutes an implied contractual agreement that they could keep the items in their possession.

220. Defendant is lawfully bound to comply with the implied contractual agreement as a matter of law.

221. Emergency Rules 3 and 4 and constitute a breach of the implied contractual agreement unenforceable as a matter of law,

and violate Article I, Section 10 of the Michigan Constitution and Article 1, Section 10, of the United States Constitution.

222. Emergency Rules 3 and 4, adopted with intent to circumvent the notice and comment requirements of MCL 24.224; MSA 3.560(124) compliance with which is mandatory, are invalid and unenforceable.

223. Defendant's failure to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating Emergency Rules 3 and 4 on general equity grounds.

224. Defendant's failure to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating Emergency Rules 3 and 4 on principles of promissory estoppel.

225. Defendant's failure to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating Emergency Rules 3 and 4 on substantive due process concepts.

226. Defendant's actions set forth above divesting Plaintiffs of significant amounts of personal property are unlawful because Emergency Rules 3 and 4 set no standards but instead delegate unfettered discretion to the Director of the Department of Corrections to designate, through a guideline

Policy directive (PD-BCF-53.01) which has not been promulgated as a rule, what items the public may send to prisoners.

227. The Policy is not an interpretive statement of the Rules to which it relates, and the Policy is unlawfully used in lieu of a rule in violation of MCL 24.226; MSA 3.560(126).

228. The Policy is not an interpretive statement of any Rule, and the Policy is unlawfully used in lieu of a rule in violation of MCL 24.226; MSA 3.560(126).

229. Administrative Rules R791.6621 and R791.6637(4) under which Plaintiffs were allowed to purchase and/or acquire the property items subject of Policy divestiture gives rise to protected liberty and property interests and due process rights not to have said property arbitrarily taken without due process protections and just compensation, and these rights may not be defeated or impaired by adoption of Emergency Rules 3 and 4.

230. The proposed changes in property rights drastically alter the conditions of imprisonment in the State of Michigan so as to make imprisonment much harsher than envisioned at the time Plaintiffs were sentenced. This constitutes a violation of Article I, Section 10 of the Michigan Constitution and Article 1, Section 10, Clause 1 of the United States Constitution.

231. The proposed changes in property rights drastically alter the terms of Plaintiffs' sentences which were imposed before these drastic and punitive restrictions, so as to make the sentences much harsher than envisioned by the sentencing judges at the time sentence was imposed. This constitutes a violation of Article I, Section 15 of the Michigan Constitution and the

Fifth and Fourteenth Amendments of the United States Constitution.

232. The proposed changes in property rights constitute lack of notice so as to have effectively deprived Plaintiffs of the right of allocution at sentencing. This violates Article I, Sections 2, 15, 17, and 20 of the Michigan Constitution, the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and MCL 769.1 and 769.8; MSA 28.1072 and 28.1080, and MCR 6.101(G)(2) and (K).

233. To the degree that Emergency Rules 3 and 4 impair prisoners' ability to practice their religion by imposing limits on religious books, medallions, and other religious articles, they violate Article I, Section 4 of the Michigan Constitution.

234. The facts set forth above demonstrate Defendant's actions of complaint were not done in good faith; were in violation of laws Defendant was bound to enforce and comply with; and were otherwise patently unlawful.

Rescission of R791.6621 and R791.6637

235. Defendant deliberately failed to give adequate and timely notice of the proposed rescission of R791.6621 and R791.6637, contrary to the requirements of MCL 24.242; MSA 3.560(142).

236. The "public hearing" held by Defendant regarding the rescission of R791.6621 and R791.6637 was a sham hearing and did not meet the notice and comment requirements of the Michigan Administrative Procedures Act, MCL 24.241; MSA 3.560(141).

237. The Defendant's intent in rescinding R791.6621 and R791.6637 is to defeat or impair rights accrued under those rules.

238. The rescission of R791.6621 and R791.6637 under these circumstances violates MCL 24.231(4); MSA 3.560(131)(4).

239. The Defendant's intent in rescinding R791.6621 and R791.6637 is to circumvent this Court's orders restraining implementation of PD-BCF-53.01, invalidating the rescission because that intent makes the action arbitrary and capricious and invalid as a matter of law.

240. The rescission of R791.6621 and R791.6637 under these circumstances violates Article I, Section 2, Article I, Section 17, Article VI, Section 24, of the Michigan Constitution and the Fourteenth Amendment of the United States Constitution.

241. The failure of Defendant to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating the rescission of R791.6621 and R791.6637 on general equity grounds.

242. The failure of Defendant to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating the rescission of R791.6621 and R791.6637 on principles of promissory estoppel.

243. The failure of Defendant to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes

an arbitrary and capricious act invalidating the rescission of R791.6621 and R791.6637 on substantive due process concepts.

244. Implementation of Defendant's requirement that Close and Maximum Custody prisoners must wear substantially identical state-issued clothing will constitute a nuisance per se which will harm all Close and Maximum Custody prisoners, including Plaintiffs.

245. Implementation of Defendant's requirement that prisoners must wear substantially identical state-issued clothing will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners (Levels IV to VI), Plaintiffs included.

246. Defendant's prohibition of personal clothing, when it is neither prepared nor equipped to furnish prisoners with adequate State-issue clothing, will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

247. Defendant's plan to make level I, II, and III prisoners send their clothing home when they are classified to level IV, V or VI, in light of the Department's failure to have prepared a management plan for this procedure and inability to keep track of the small bit of clothing confiscated at this stage, will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

248. Dressing Plaintiffs in clothing which will not keep them warm and dry and which is not fit for summer wear and which does not fit properly is arbitrary and capricious, it is a

violation of the Defendant's own administrative rules and policies (which require clothing which is adequate and not degrading), and is cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

249. Dressing Plaintiffs in clothing which will not keep them warm and dry and which is not fit for summer wear and which does not fit properly is arbitrary and capricious, it is a violation of the Defendant's own administrative rules and policies (which require clothing which is adequate and not degrading), and is cruel and unusual punishment in violation of Article I, Section 16 of the Michigan Constitution.

250. To the degree that the rescission of Emergency Rules impairs prisoners' ability to study and participate in education programs by imposing limitations on school books, it violates Article VIII, Section 1 of the Michigan Constitution.

251. The proposed changes in property rights drastically alter the conditions of imprisonment in the State of Michigan so as to make imprisonment much harsher than envisioned at the time Plaintiffs were sentenced. This constitutes a violation of Article I, Section 10 of the Michigan Constitution and Article 1, Section 10, Clause 1 of the United States Constitution.

252. The proposed changes in property rights drastically alter the terms of Plaintiffs' sentences which were imposed before these drastic and punitive restrictions, so as to make the sentences much harsher than envisioned by the sentencing judges at the time sentence was imposed. This constitutes a violation of Article I, Section 15 of the Michigan Constitution and the

Fifth and Fourteenth Amendments of the United States Constitution.

253. The proposed changes in property rights constitute lack of notice so as to have effectively deprived Plaintiffs of the right of allocution at sentencing. This violates Article I, Sections 2, 15, 17, and 20 of the Michigan Constitution, the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and MCL 769.1 and 769.8; MSA 28.1072 and 28.1080, and MCR 6.101(G)(2) and (K).

MCL 800.42

254. Defendant's security classification and placement rules and policies as written result in arbitrary and capricious classification and placement of prisoners and thus the classification and placement rules and policies violate the Michigan Administrative Procedures Act; and Article I, Sections 2, 16, and 17; and Article VI, Section 28 of the Michigan Constitution; and the Fourteenth Amendment of the United States Constitution.

255. Defendant's security classification and placement rules and policies as applied result in arbitrary and capricious classification and placement of prisoners and thus the classification and placement rules and policies violate the Michigan Administrative Procedures Act; and Article I, Sections 2, 16, and 17; and Article VI, Section 28 of the Michigan Constitution; and the Fourteenth Amendment of the United States Constitution.

256. MCL 800.42 will operate to deprive prisoners of personal property based on a classification and placement scheme which is arbitrary and capricious. This renders operation of the statute arbitrary and capricious and a denial of equal protection in violation of the Michigan Administrative Procedures Act; Article I, Sections 2, 16, and 17; and Article VI, Section 28 of the Michigan Constitution; and the Fourteenth Amendment of the United States Constitution.

257. Due to the Defendant's arbitrary and capricious classification and placement rules and policies, and due to the arbitrary and capricious application of the classification and placement rules and policies,

a. application of MCL 800.42 to restrict property based on classification and placement under these rules and policies is arbitrary and capricious and illegally discriminatory in violation of MCL 24.232(2); MSA 3.560(132)(2).

b. application of MCL 800.42 to restrict property based on classification and placement under these rules and policies is a denial of equal protection in violation of Article I, Section 2 of the Michigan Constitution.

c. application of MCL 800.42 to restrict property based on classification and placement under these rules and policies is arbitrary and capricious and illegally discriminatory in violation of the Fourteenth Amendment of the United States Constitution.

d. application of MCL 800.42 to restrict property based on classification and placement under these rules and policies is arbitrary and capricious and illegally discriminatory in violation of Article I, Section 17, of the Michigan Constitution.

e. application of MCL 800.42 to restrict property based on classification and placement under these ruiles and policies is arbitrary and capricious and illegally discriminatory in violation of Article VI, Section 28, of the Michigan Constitution.

258. Principles of estoppel bar Defendant from asserting that its current classification plan is constitutional, in light of its agreement in U.S.A. v Michigan to implement a new plan to cure deficiencies in the current one.

259. MCL 800.42 apportions prisoners' property based on security classification levels, but it does not define the criteria for classification to or placement at those levels.

260. There are no rational and uniformly applied criteria for classification and placement.

261. The lack of rational and uniformly applied criteria for classification and placement render application of MCL 800.42 arbitrary and capricious in violation of Article I, Section 17 and Article VI Section 28 of the Michigan Constitution, and a denial of equal protection in violation of Article I, Section 2 of the Michigan Constitution.

262. The failure of MCL 800.42 to define criteria for classification and placement or to order the Director of the Department to promulgate rules defining criteria for classification and placement gives the Department unfettered unreviewable discretion in classification and placement allowing them to place prisoners at any security level regardless of the prisoners' behavior.

263. Giving the Department unfettered and unreviewable discretion to place prisoners at any security level regardless of the prisoners' behavior is arbitrary and capricious and is a violation of Article I, Sections 2, 3, and 17, and Article VI, Section 28 of the Michigan Constitution.

264. Giving the Department unfettered and unreviewable discretion to place prisoners at any security level regardless of the prisoners' behavior is a violation of Article I, Sections 2, 3, and 17, and Article VI, Section 28 of the Michigan Constitution because it does not set any standards which are as reasonably precise as the subject matter requires or permits.

265. MCL 800.42(4) allows the Department to prohibit "personal property" "for any reason."

266. Allowing the Department to prohibit property "for any reason" without any guidance from the statute is a regulation which is not as reasonably precise as the subject matter requires or permits and thus is a violation of Article I, Sections 2, 16, and 17 of the Michigan Constitution and Article VI, Section 28.

267. The divestiture of property pursuant to MCL 800.42 constitutes a taking for which compensation is required under the Fifth Amendment.

268. The divestiture of property pursuant to MCL 800.42 constitutes a taking for which compensation is required under Article X Section 2 of the Michigan Constitution.

269. The divestiture of property pursuant to MCL 800.42 constitutes a taking for which compensation is required under MCL 213.21 et seq; MSA 8.11 et seq.

270. For the quarter-century preceding the enactment of MCL 800.42, prisoners at all classification levels have been allowed typewriters, televisions, sewing machines, and other items which do not fit into a duffel bag and footlocker.

271. MCL 800.42(3)(a) limits a Level IV, V, or VI prisoner's personal property to that which will fit in a footlocker "or" duffel bag.

272. MCL 800.42(3)(a) limits a Level I, II, or III prisoner's personal property to that which will fit in a footlocker "and" duffel bag.

273. MCL 800.42(3)(a) does not allow any prisoner to have a typewriter, television, sewing machine, musical instrument, or other items which don't fit into a footlocker and don't fit into a duffel bag.

274. Deprivation of a typewriter is a direct violation of prisoners' Constitutional right of access to the courts, in violation of Article I, Sections 2, 3, 12, 13, 17, and 20 and Article VI, Section 28 of the Michigan Constitution.

275. Deprivation of a television, sewing machine, musical instrument, or other items which do not fit into a footlocker or duffel bag is an arbitrary and capricious violation of due process and equal protection, contrary to Article I, Sections 2, 16, and 17, and Article IV, Section 28 of the Michigan Constitution.

276. Under the particular facts of this action, Plaintiffs' personal typewriters constitute an essential component of their constitutional right of court access, and that MCL 800.42 will irreparably infringe upon this constitutional right guaranteed by Article I, Sections 2, 3, 12, 13, 17, and 20 of the Michigan Constitution and Article 4, Section 2, Clause 1 and the First and Fourteenth Amendments of the United States Constitution.

277. MCL 800.42(4) prohibits legal materials available in the prison law library. Because of Defendant's inordinate and prejudicial delays in allowing any type of access to a prison law library at all security levels and the high demand for law library materials, this provision violates Article I, Section 2, 3, 12, 13, 17, and 20 of the Michigan Constitution and Article 4, Section 2, Clause 1 and the First and Fourteenth Amendments of the United States Constitution.

278. Principles of estoppel bar the Department of Corrections and the State of Michigan from implementing MCL 800.42(4) in light of their participation in Section VI(13) of the Hadix v Johnson Consent Decree and subsequent acquiescence in the Court's April 1989 interpretation of that section to authorize prisoners in-cell possession of books available from the prison law library as well as "brief banks."

279. MCL 800.42(7)(a) prohibits prisoners from helping one another on legal matters without approval of the institution head. This violates prisoners' rights to legal assistance from other prisoners, contrary to Article I, Section 2, 3, 12, 13, 17, and 20 of the Michigan Constitution and Article 4, Section 2, Clause 1 and the First and Fourteenth Amendments of the United States Constitution.

280. The deprivation of property through MCL 800.42 constructively constitutes an ex post facto law which is invalid under Article I, Section 10 of the Michigan Constitution.

281. Enforcement of MCL 800.42 will constitute deprivation of property without due process of law, in violation of the

Article 1, Section 17 of the Michigan Constitution and the Fifth and Fourteenth Amendments of the United States Constitution.

282. Implementation of Defendant's requirement that Close and Maximum Custody prisoners must wear substantially identical state-issued clothing will constitute a nuisance per se which will harm all Close and Maximum Custody prisoners, including Plaintiffs.

283. Implementation of Defendant's requirement that prisoners must wear substantially identical state-issued clothing will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

284. Defendant's prohibition of personal clothing, when it is neither prepared nor equipped to furnish prisoners with adequate State-issue clothing, will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

285. Defendant's plan to make level I, II, and III prisoners send their clothing home when they are classified to level IV, V or VI, in light of the Department's failure to have prepared a management plan for this procedure and inability to keep track of the small bit of clothing confiscated at this stage, will constitute an intentional nuisance in fact which will harm all Close and Maximum Custody prisoners, Plaintiffs included.

286. Dressing Plaintiffs in clothing which will not keep them warm and dry and which is not fit for summer wear and which does not fit properly is arbitrary and capricious, it is a violation of the Defendant's own administrative rules and

policies (which require clothing which is adequate and not degrading), and is cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

287. Dressing Plaintiffs in clothing which will not keep them warm and dry and which is not fit for summer wear and which does not fit properly is arbitrary and capricious, it is a violation of the Defendant's own administrative rules and policies (which require clothing which is adequate and not degrading), and is cruel and unusual punishment in violation of Article I, Section 16 of the Michigan Constitution.

288. Defendant's charging a fee for purchase and possession rights to the property items subject of divestiture, as well as generally allowing purchase, receipt, and/or possession of the property irrespective of fee, constitutes an implied contractual agreement that they could keep the items in their possession.

289. Defendant is lawfully bound to comply with the implied contractual agreement as a matter of law.

290. Application for MCL 800.42 to property currently possessed by prisoners constitutes a breach of the implied contractual agreement, rendering the statute unenforceable as a matter of law.

291. Application for MCL 800.42 to property currently possessed by prisoners constitutes a breach of the implied contractual agreement, which violates Article I, Section 10 of the Michigan Constitution and Article 1, Section 10, of the United States Constitution.

292. To the degree that MCL 800.42 impairs prisoners' ability to study and participate in education programs by imposing limitations on school books, it violates Article VIII, Section 1 of the Michigan Constitution.

293. Defendant's failure to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating MCL 800.42 on general equity grounds.

294. Defendant's failure to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating MCL 800.42 on principles of promissory estoppel.

295. Defendant's failure to warn Plaintiffs at the time of their acquisition or purchase of property that Defendant might unexpectedly and arbitrarily divest them of the same, constitutes an arbitrary and capricious act invalidating MCL 800.42 on substantive due process concepts.

296. The facts set forth above demonstrate Defendant's actions of complaint were not done in good faith; were in violation of laws Defendant was bound to enforce and comply with; and were otherwise patently unlawful.

297. Defendant's actions set forth above divesting Plaintiffs of significant amounts of personal property are unlawful because MCL 800.42 sets no standards but instead Defendant interprets it as delegating unfettered discretion to

the Director of the Department of Corrections to designate, through a guideline Policy directive (PD-BCF-53.01) which has not been promulgated as a rule, what items the public may send to prisoners.

298. The Policy is not an interpretive statement of the Rule to which it relates, and the Policy is unlawfully used in lieu of a rule in violation of MCL 24.226; MSA 3.560(126).

299. The Policy is not an interpretive statement of any Rule, and the Policy is unlawfully used in lieu of a rule in violation of MCL 24.226; MSA 3.560(126).

300. The proposed changes in property rights drastically alter the conditions of imprisonment in the State of Michigan so as to make imprisonment much harsher than envisioned at the time Plaintiffs were sentenced. This constitutes a violation of Article I, Section 10 of the Michigan Constitution and Article 1, Section 10, Clause 1 of the United States Constitution.

301. The proposed changes in property rights drastically alter the terms of Plaintiffs' sentences which were imposed before these drastic and punitive restrictions, so as to make the sentences much harsher than envisioned by the sentencing judges at the time sentence was imposed. This constitutes a violation of Article I, Section 15 of the Michigan Constitution and the Fifth and Fourteenth Amendments of the United States Constitution.

302. The proposed changes in property rights constitute lack of notice so as to have effectively deprived Plaintiffs of the right of allocution at sentencing. This violates Article I,

Sections 2, 15, 17, and 20 of the Michigan Constitution, the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and MCL 769.1 and 769.8; MSA 28.1072 and 28.1080, and MCR 6.101(G)(2) and (K).

303. To the degree that MCL 800.42 impairs prisoners' ability to practice their religion by imposing limits on religious books, medallions, and other religious articles, it violates Article I, Section 4 of the Michigan Constitution.

304. Plaintiffs will suffer immediate and irreparable injury in the form of loss of property, severe emotional distress and violation of their rights due to rescission of R791.6621 and R791.6637, implementation of MCL 800.42, Emergency Rules 3 and 4, and PD-BCF-53.01 if the relief requested is not granted.

305. The harm to Plaintiffs in the absence of an injunction outweighs the harm to Defendant if an injunction is granted.

Relief

For these reasons Plaintiffs demand judgment against Defendant for an order

1. Prohibiting Defendant's rescission of R791.6621 and R791.6637, aand prohibiting Defendant's implementation of PD-BCF-53.01, Emergency Rules 3 and 4, MCL 800.42, and any similar legislation, rules, or policy;

2. To provide Plaintiffs with full and fair compensation, determined in a jury trial as provided by law, for any and all property items this court may later determine Defendant can lawfully divest Plaintiffs of;

3. For preliminary and permanent enjoinment of Defendant's using guideline Policy directives in lieu of administrative rules;

4. For preliminary and permanent enjoinment of Defendant's divesting Plaintiffs of their personal

typewriters as an integral component of Plaintiffs' right of effective and reasonable access to the courts;

5. For over $10,000 in punitive, exemplary, actual, and general damages for Defendant's violation of mandatory laws, statutes, and implied contractual agreement between the parties directly resulting in Plaintiffs suffering mental anguish, anxiety, and other hardship as a direct and proximate result of the Policy directive subject of complaint;

6. To find and hold Defendant liable for any and all of Plaintiffs' pending litigations lost and/or forfeited as a result of the Policy directive subject of complaint;

7. Plus recovery of out-of-pocket expenses incurred in bringing and maintaining this action.

II. HONOR UNIT.

Facts

1. Since about 1970, 11 Block was maintained as an Honor Block at SPSM-CC. This is offered as an incentive to long term prisoners for good behavior, and it houses only prisoners who (1) maintain full time work or school assignments, (2) have no major misconducts within the past 12 months, and (3) have served more than one calendar year of their sentence.

2. Prisoners in the Honor Unit are allowed the privileges of (1) open doors from 6:30 a.m. to 9:00 p.m., (2) leisure activities on base from 7:00 a.m. to 8:45 p.m., and (3) showers from 7:00 a.m. to 9:00 p.m.

3. This desirable housing unit is an incentive to good behavior, and 11 Block as an Honor Unit is much safer and more pleasant than others. A lot of prisoners who would otherwise

misbehave choose not to so as to maintain their continued Honor status.

4. Base gallery in 11 Block is furnished with tables, a television and microwave, ping-pong table, shuffleboard, pool table, and a washer and dryer purchased with money from the Inmate Benefit Fund which is made up of prisoner store profits and of which Plaintiffs are beneficiaries.

5. All Plaintiffs except Moore were housed in the Honor Unit when this suit was filed. This lawsuit would not have been possible without the open door policy of 11 block allowing Plaintiffs to prepare these pleadings.

6. After this suit was filed, the Michigan Department of Corrections eliminated the Honor Unit from SPSM because, as explained by Assistant Deputy Housing Warden Chris Daniels, quoting Warden Jabe and Assistant Director Dan Bolden, "We will make SPSM such a bad place that no one wants to be there. If we walk through the cell blocks and hear prisoners laughing and having a good time, then it's not bad enough yet. We will eliminate everything that they [prisoners] enjoy."

7. Elimination of the Honor Unit at SPSM is arbitrary, unreasonable, and vindictive and is not related to any legitimate governmental objective; instead it is done by Defendant with the intention of causing actual physical and emotional harm to Plaintiffs and with knowledge that those harms will result.

Legal Claims

8. The arbitrary, unreasonable, and vindictive elimination of the Honor Unit at SPSM, with the Defendant's knowledge and

intention that actual physical and emotional harm to Plaintiffs at SPSM will result, constitutes an intentional nuisance in fact and a nuisance per se.

9. The arbitrary, unreasonable, and vindictive elimination of the Honor Unit at SPSM constitutes denial of a liberty interest without Due Process of Law in violation of the First, Fifth, Eighth, and Fourteenth Amendment.

10. The arbitrary, unreasonable, and vindictive elimination of the Honor Unit at SPSM constitutes denial of a liberty interest without Due Process of Law in violation of Article 1, Section 17 of the Michigan Constitution.

11. The arbitrary, unreasonable, and vindictive elimination of the Honor Unit at SPSM violates the First, Fifth, Eighth, and Fourteenth Amendments because the absence of any incentive to good behavior to SPSM-CC prisoners will create an unreasonable risk of harm to Plaintiffs at SPSM by unruly prisoners.

12. The arbitrary, unreasonable, and vindictive elimination of the Honor Unit from SPSM is retaliation for prisoners' exercise of the right of access to the courts and will unreasonably and unduly restrict that right.

13. Depriving Plaintiffs of the use of tables, television, microwave, washing machine and dryer paid for with Inmate Benefit Fund funds of which Plaintiffs at SPSM are beneficiaries constitutes an illegal taking of property prohibited by the Fifth Amendment unless just compensation is provided.

14. Depriving Plaintiffs of the use of tables, television, microwave, washing machine and dryer paid for with Inmate Benefit

Fund funds of which Plaintiffs at SPSM are beneficiaries constitutes an illegal taking of property prohibited by Article X, Section 2 of the Michigan Constitution unless just compensation is provided.

15. Depriving Plaintiffs of the use of tables, television, microwave, washing machine and dryer paid for with Inmate Benefit Fund funds of which Plaintiffs at SPSM are beneficiaries constitutes an illegal taking of property prohibited by MCL 312.21 et seq; MSA 8.11 et seq, unless (1) Defendant proves necessity for the taking and (2) just compensation is provided.

Relief

For these reasons Plaintiffs demand judgment against Defendant for:

1. An order restraining Defendants from eliminating the Honor Unit at SPSM-CC;

2. An order permanently enjoining elimination of the Honor Unit at SPSM-CC;

3. Over $10,000 for suffering and mental anguish caused by Defendants arbitrary, unreasonable and vindictive elimination of the Honor Unit from SPSM-CC;

4. Any actual damages caused by the nuisances created by Defendant and damages caused by the unruly inarticulate prisoners Defendant intentionally set loose to damage Plaintiffs;

5. Reimbursement of the SPSM Inmate Benefit Fund, of which Plaintiffs are beneficiaries, for the actual cost of any furnishings the Court allows Defendants to remove from 11 Block;

6. Plaintiffs' actual costs of bringing this action.

III. PHONES.

Facts

1. For years there have been six to eight operable collect call telephones on the main South Yard at SPSM-CC as well as five collect call telephones in each cell block available for use by prisoners.

2. Phones are used by Plaintiffs to maintain family ties and access to lawyers and the courts.

3. All Plaintiffs use the collect call phones in the block in aid of their criminal appeals, and there is no adequate substitute.

4. Plaintiff Dye doesn't get visits, and the phone is his only means of maintaining contact with his wife and two young sons.

5. Plaintiffs Ewing and Cain are involved in their respective family businesses; this would be impossible without phones in the blocks.

6. Both Ewing and Cain are defendants in civil litigation involving the continued existence of the family business. The phones in the block are necessary for them to appear at motion hearings by phone under MCR 2.402, and they are necessary for them to make their defense through contact with lawyers and witnesses.

7. This lawsuit would not have been possible without the collect call phones in 11 block.

8. All prisoners have a Michigan Constitutional right to appeal their convictions, to counsel on appeal, to pursue other forms of post-conviction relief, and to sue in court.

9. Most prisoners are illiterate and unable to write intelligible letters to their lawyers or anyone else.

10. Many other prisoners, although possessed of minimal literacy skills, are unable to articulate their legal problems to their lawyers in written form.

11. Restriction on phone access constitutes a direct restriction on prisoners' Constitutional rights to appeal, to counsel, to seek other post-conviction relief from the judgments which put them in prison, as well as the right under Article 1, Section 13 of the Michigan Constitution to sue.

12. Defendant plans arbitrarily, unreasonably, and without good cause to remove the collect call phones from the cell-blocks and require Plaintiffs instead to use the few operable outdoor phones on the main South Yard.

13. Removal of collect call phones from inside the cell blocks will unnecessarily and unduly infringe on Plaintiffs' communication with counsel, the courts, friends, and family.

14. Due to Michigan's frequent inclement weather, removal of indoor phones will deny access to the courts and counsel because prisoners will be unable to take legal papers to the phone with them because there is no shelter from the elements at the outdoor phones, nor is there a writing surface.

15. No legitimate governmental purpose is attained by removal of the phones and it is arbitrary and unreasonable, and it will cause over 1200 people to share about twenty telephones which are not accessible to most during normal business hours.

16. The SPSM North Yard blocks, where Plaintiff Moore is housed, have no inside phones. Prisoners there are required to use telephones on the yard to phone courts and their attorneys; this has proved totally unsatisfactory and inadequate.

17. A typical incident occurred when Plaintiff Moore's lawyer phoned the prison and asked that Moore be allowed to phone him. Guards escorted Moore to the yard phone and, after ten minutes, the guards decided that was enough time to talk to the lawyer, cut off his call, and ordered him to return to the block.

18. This is a direct infringement on prisoners right of access to courts and counsel and to sue.

Legal Claims

19. Elimination of collect call phones from the blocks is an arbitrary, unreasonable, and vindictive infringement on Plaintiffs right of access to courts in violation of the First, Fifth, Sixth, and Fourteenth Amendments.

20. Elimination of collect call phones from the blocks is an arbitrary, unreasonable, and vindictive infringement on Plaintiffs right of access to courts in violation of Michigan Constitution Article I, Sections 3, 13, 17, and 20.

21. Elimination of collect call phones from the blocks is an arbitrary, unreasonable, and vindictive infringement on Plaintiffs right of access to courts in violation of Administrative Rule R791.6615(1).

22. Elimination of collect call phones from the blocks is an arbitrary, unreasonable, and vindictive infringement on

Plaintiffs right of access to courts in violation of PD-DWA-61.01.

23. Elimination of collect call phones from the blocks is an arbitrary, unreasonable, and vindictive infringement on Plaintiffs right of association and access to friends and family in violation of the First and Fourteenth Amendments.

24. Elimination of collect call phones from the blocks is an arbitrary, unreasonable, and vindictive infringement on Plaintiffs right of self-determination in violation of R791.6637(2), which guarantees the right to conduct legitimate personal business.

25. Elimination of the collect call phones from the cell blocks constitutes deprivation of a liberty interest without due process of law in violation of the Fourteenth Amendment.

26. Elimination of the collect call phones from the cell blocks constitutes deprivation of a liberty interest without due process of law in violation of Article 1, Section 17 of the Michigan Constitution.

27. Removal of collect call phones from the cell blocks will create an unreasonable risk of harm to Plaintiffs by danger from unruly inarticulate prisoners who waited too long to use the phone or were denied its use by the sheer number of those waiting in line.

Relief

For these reasons Plaintiffs demand judgment against Defendant for:

1. A temporary order restraining Defendants from eliminating collect call phones from the cell blocks at SPSM-CC;

2. An order permanently enjoining Defendants from removing collect call telephones from the cell blocks at SPSM-CC;

3. Over $10,000 in damages caused by mental anguish and stress caused by elimination of the phones from the cell blocks at SPSM-CC;

4. Damages in the amount of any business losses suffered by Plaintiffs as a consequence of being unable to conduct their business by phone;

5. Damages in the amount of any lawsuits lost by Plaintiffs as a consequence of denial of phone access;

6. Damages in the amount of $1,000,000 for loss of or infringement on Plaintiffs criminal appeals caused by denial of phone access;

7. Full compensation for any physical injuries suffered by Plaintiffs at the hands of unruly inarticulate prisoners who get mad about not being able to use the phone;

8. Plaintiffs actual costs of bringing this action.

IV. YARD.

Facts

1. For years the main South Yard in SPSM has been open to Plaintiffs morning, lunchtime, afternoon, and evening. Plaintiffs use the yard to associate with each other, use the collect call phones, exercise, run, and enjoy the fresh air and out-of-doors.

2. Defendants now arbitrarily propose to eliminate the morning and lunchtime yard hours, sending unemployed prisoners to yard in the afternoons from 12:30 p.m. to 2:45 p.m. with no opportunity for morning yard before the heat of the day sets in;

workers will be sent to yard from 6:15 p.m. to 8:15 p.m. with no access to telephones during business hours.

3. Elimination of morning and lunchtime yard hours will also preclude Plaintiffs, all of whom except Faulkner have jobs, from using the collect call telephones on the yard during business hours when lawyers and courts are open.

4. All of Plaintiff Ewing's telephone hearings (over a dozen) have been conducted between the hours of 9:00 a.m. and 10:00 a.m.

5. Without collect call phones in the cell blocks, elimination of morning yard hours will effectively prohibit Plaintiffs' access to the courts during the morning hours when motion hearings are most commonly held.

6. Prisoners wishing to attend afternoon yard will be forced to forego the opportunity to go to school or law library in the afternoon.

Legal Claims

7. Reduction of yard hours will violate the Eighth and Fourteenth Amendments because it will create an unreasonable risk of harm to Plaintiffs by having too many people on the yard for too short a time.

8. Elimination of morning and lunchtime yard will reduce from six to two the hours of possible phone access and thus will unreasonably and arbitrarily infringe on the Plaintiffs right of access to the courts guaranteed by the First, Fifth, Sixth, Eighth and Fourteenth Amendments.

9. Elimination of morning and lunchtime yard for everyone and afternoon yard for workers, with removal of phones from the blocks, will preclude Plaintiffs from calling courts and lawyers during business hours and thus will unreasonably and arbitrarily infringe on the Plaintiffs right of access to the courts guaranteed by the First, Fifth, Sixth, Eighth and Fourteenth Amendments.

10. Elimination of morning and lunchtime yard for everyone and afternoon yard for workers, with removal of phones from the blocks, will arbitrarily and without good cause infringe on Plaintiffs First and Fourteenth Amendment rights of association by unreasonably and arbitrarily limiting phone availability to call their families and friends.

11. Reduction of yard hours, with removal of phones from the blocks, will arbitrarily and without good cause create an unreasonable risk of harm from unruly and inarticulate prisoners who don't get a chance to make their calls and thus will violate the Eighth and Fourteenth Amendments.

Relief

For these reasons Plaintiffs demand judgment against Defendant for:

1. A temporary order restraining Defendants from reducing yard at SPSM-CC;

2. An order permanently enjoining Defendants from reducing yard hours at SPSM-CC;

3. Over $10,000 in damages caused by mental anguish and stress caused by reduction of yard hours SPSM-CC;

4. Damages in the amount of any business losses suffered by Plaintiffs as a consequence of being unable to conduct their business by phone;

5. Damages in the amount of any lawsuits lost by Plaintiffs as a consequence of denial of phone access;

6. Damages in the amount of $1,000,000 for loss of or infringement on Plaintiffs criminal appeals caused by denial of phone access;

7. Full compensation for any physical injuries suffered by Plaintiffs at the hands of unruly inarticulate prisoners who get mad about not being able to use the phone;

8. Compensation in excess of $10,000 for denial of access to yard for association, exercise, fresh air and out of doors activity;

9. Plaintiffs actual costs of bringing this action.

V. TOTALITY OF CIRCUMSTANCES

Facts

1. The cumulative effect of the Defendants taking of property, elimination of Honor Unit, elimination of cell block collect call telephones, reduction of yard hours, and creation of other arbitrary, unreasonable, and unduly harsh conditions for the sake of gratuitous punishment will cause and is intended by Defendants to cause a reaction by unruly and inarticulate prisoners known as "horizontal violence" which will result in harm to the Plaintiffs by other prisoners and will result in harm to guards by other prisoners the result of which will be an arbitrary and unreasonable drastic curtailment of Plaintiffs liberty within the prison. Defendant knows this and intends that actual physical and emotional harm to Plaintiffs result from these actions.

2. The cumulative effect of the Defendants taking of property, elimination of Honor Unit, elimination of cell block collect call telephones, reduction of yard hours, and creation of other arbitrary, unreasonable, and unduly harsh conditions for the sake of gratuitous punishment and for no legitimate governmental purpose will cause and is intended by Defendants to cause a condition known as "learned helplessness" which will result in emotional harm to the Plaintiffs by Defendants deprivation of incentives and punishment of prisoners who haven't done anything wrong. Defendant knows this and intends that actual physical and emotional harm result to Plaintiffs from these actions.

Legal Claims

3. The cumulative effect of the Defendants taking of property, elimination of Honor Unit, elimination of cell block collect call telephones, and morning yard and creation of other arbitrary, unreasonable, and unduly harsh conditions for the sake of gratuitous punishment is likely to cause a reaction by unruly and inarticulate prisoners known as "horizontal violence" which will result in harm to the Plaintiffs by other prisoners and will result in harm to guards by other prisoners the result of which will be an arbitrary and unreasonable drastic curtailment of Plaintiffs liberty within the prison in violation of the First, Fifth, Eighth and Fourteenth Amendments.

4. The cumulative effect of the Defendants taking of property, elimination of Honor Unit, elimination of cell block collect call telephones, and morning yard and creation of other arbitrary, unreasonable, and unduly harsh conditions for the sake of gratuitous punishment and for no legitimate governmental purpose is likely to cause a condition known as "learned helplessness" which will result in emotional harm to the Plaintiffs by Defendants deprivation of incentives and punishment of prisoners who haven't done anything wrong, in violation of the First, Fifth, Eighth, and Fourteenth Amendments.

5. Defendants intentional inducement of these conditions with knowledge and intention of the probable results will create an intentional nuisance in fact and a nuisance per se.

Relief

For these reasons Plaintiffs demand judgment against Defendant for:

1. A temporary order restraining Defendant from the actions complained of in this complaint;

2. An order permanently enjoining Defendant from the actions complained of in this complaint;

3. Over $10,000 in damages caused by mental anguish and stress caused by the actions complained of in this complaint;

4. Damages in the amount of any business losses suffered by Plaintiffs as a consequence of the actions complained of in this complaint;

5. Damages in the amount of any lawsuits lost by Plaintiffs as a consequence of the actions complained of in this complaint;

6. Damages in the amount of $1,000,000 for loss of or infringement on Plaintiffs criminal appeals caused by the actions complained of in this complaint;

7. Full compensation for any physical injuries suffered by Plaintiffs at the hands of unruly inarticulate prisoners who get mad about the actions complained of in this complaint;

8. Compensation in excess of $10,000 for denial of access to yard for association, exercise, fresh air and out of doors activity;

9. Plaintiffs' actual costs of bringing this action.

Respectfully submitted,

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