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11 Attorneys for Plaintiff
12 VICTOR GUERRERO

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 VICTOR GUERRERO,
16 Plaintiff,

17 v.

18 CALIFORNIA DEPARTMENT OF
19 CORRECTIONS AND REHABILITATION;
20 STATE PERSONNEL BOARD; and, in their
21 official capacities, JEFFREY BEARD,
22 Secretary of the California Department of
23 Corrections and Rehabilitation; SUZANNE
24 AMBROSE, Executive Officer of State
25 Personnel Board; K. CARROLL, Lieutenant;
26 D. SHARP, Sergeant; BARBARA
27 LEASHORE, Hearing Officer; C. HESTER,
28 Lieutenant; V. MAYOL, Lieutenant; S. COX,
Lieutenant; V. MYERS, Sergeant; JOHN (OR
JANE) DOES 1-100, all of whose true names
are unknown,
Defendants.

) Case No.: C 13-5671-WHA

) **THIRD AMENDED COMPLAINT**
) **FOR EMPLOYMENT**
) **DISCRIMINATION AND**
) **CONSTITUTIONAL VIOLATIONS**

) **[JURY TRIAL DEMANDED]**

29 **NATURE OF THIS ACTION**

30 1. This is an action for relief from employment discrimination in violation of Title VII

1 of the Civil Rights Act of 1964, *as amended*, and of the Fourteenth Amendment to the United
2 States Constitution as secured by 42 U.S.C. § 1983.

3 2. Plaintiff VICTOR GUERRERO alleges that the decision of Defendants and
4 Respondents CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
5 (“CDCR”), STATE PERSONNEL BOARD (“SPB”), and in their official capacities only:
6 JEFFREY BEARD, Secretary of the California Department of Corrections and Rehabilitation;
7 SUZANNE AMBROSE, Executive Officer of State Personnel Board; K. CARROLL, Lieutenant;
8 D. SHARP, Sergeant; BARBARA LEASHORE, Hearing Officer; C. HESTER, Lieutenant; V.
9 MAYOL, Lieutenant; S. COX, Lieutenant; V. MYERS, Sergeant; and JOHN (or JANE) DOES
10 1-100, all of whose true names are unknown (collectively, “Defendants”) to disqualify
11 GUERRERO from eligibility for a Correctional Officer position unlawfully discriminated against
12 him on the basis of his national origin and ancestry, and that Defendants’ policies, practices, and
13 decisions have a disparate impact upon particular national origin minorities, such as Latino/a
14 applicants and/or applicants of non-native United States national origin, for the position of
15 Correctional Officer.

16 3. Plaintiff GUERRERO further alleges that Defendants’ disqualification of his
17 application for a Correctional Officer position violated Title VII and his rights under the United
18 States and California Constitutions, and additionally because, as applied, the regulation, 2 Cal.
19 Code of Reg. § 172 (also referred to herein as “State Personnel Board Rule 172” or “SPB Rule
20 172”), under which he was disqualified represents an unlawful expansion of its enabling statute.

21 4. Plaintiff GUERRERO seeks injunctive and declaratory relief, compensatory damages
22 and his reasonable attorneys’ fees and costs as remedies for Defendants’ violations of his rights.

23 **JURISDICTION AND VENUE**

24 5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1337. This
25 action is authorized and instituted pursuant to Section 706(f)(3) of Title VII of the Civil Rights
26 Act of 1964, *as amended* (“Title VII”), 42 U.S.C. § 2000e-5(f)(3); and Section 1979 of the
27 Revised Statutes of the United States, *as amended* (Section 1983), 42 U.S.C. § 1983.

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1 Correctional Officer position.

2 13. Defendant SUZANNE AMBROSE is, and was at all relevant times, the Executive
3 Officer of SPB.

4 14. Defendant JEFFREY BEARD is, and was at all relevant times, the Secretary of the
5 CDCR.

6 15. Defendant K. CARROLL is, and was at all relevant times, a Lieutenant at the CDCR
7 and is, and was at all relevant times, involved in conducting CDCR background investigations.

8 16. Defendant D. SHARP is, and was at all relevant times, a Sergeant at the CDCR and
9 is, and was at all relevant times, involved in conducting CDCR background investigations.

10 17. Defendant BARBARA LEASHORE is, and was at all relevant times, a Hearing
11 Officer at the SPB and reviews and reviewed appeals regarding the state civil service system.

12 18. Defendant C. HESTER is, and was at all relevant times, a Lieutenant at the CDCR
13 and is, and was at all relevant times, involved in conducting CDCR background investigations.

14 19. Defendant V. MAYOL is/was at all relevant times a Lieutenant at the CDCR and is,
15 and was at all relevant times, involved in conducting CDCR background investigations.

16 20. Defendant S. COX is/was at all relevant times a Lieutenant at the CDCR and is, and
17 was at all relevant times, involved in conducting CDCR background investigations.

18 21. Defendant V. MYERS is, and was at all relevant times, a Sergeant at the CDCR and
19 is, and was at all relevant times, involved in conducting CDCR background investigations.

20 22. Upon information and belief, Defendant(s) and Respondent(s) JOHN (or JANE)
21 DOE(S) 1-100 are individuals, who were involved and/or responsible for CDCR withholding of
22 certification from Plaintiff and SPB's involvement in, affirmation of, and/or failure to prevent
23 that decision, and whose identifies and addresses are unknown at this time.

24 23. All of the acts and failures to act alleged herein were performed by and/or
25 attributable to all Defendants. Each Defendant participated in, approved, and/or ratified the
26 unlawful acts and omissions by the other Defendants complained of herein. Said acts and failure
27 to act were within the scope of the inherent authority, employment, and/or direction and/or
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1 control of the Defendants.

2 **STATEMENT OF FACTS**

3 24. In August 2011, Plaintiff GUERRERO applied for a job as a Correctional Officer
4 with CDCR. As part of the application process, Plaintiff GUERRERO was required to complete
5 a written examination and a physical agility test, and to submit to a background investigation.
6 Plaintiff GUERRERO passed the written and physical examinations and was placed on the
7 Correctional Officer eligibility list

8 25. As part of CDCR's background investigation, Plaintiff GUERRERO filled out a
9 newly-created Background Investigation Questionnaire ("BIQ"), which had been introduced in
10 2009 as part of CDCR's now-abandoned initiative to incorporate a voice stress test, or polygraph
11 test, into its background investigations. Question 75 of the BIQ asked whether the applicant
12 "had or used a social security number other than the one you used on this questionnaire." CDCR
13 included Question 75 in the BIQ because it learned that other agencies used similar questions in
14 their lie detection tests. CDCR, however, did so without consulting a criminologist, industrial-
15 organizational psychologist, or other appropriate experts.

16 26. Plaintiff GUERRERO truthfully answered "yes" to Question #75. He submitted an
17 addendum explaining that he was brought to the United States unlawfully in or around 1990
18 when he was approximately 11 years old and that, when he was approximately 15 years old, he
19 started working to support the family and was provided a Social Security number ("SSN"). His
20 addendum also stated that he used the SSN until March 2007, when he obtained his own SSN.

21 27. In October 2011, Plaintiff GUERRERO participated in CDCR's Pre-Investigatory
22 Interview. At that time, Plaintiff GUERRERO further explained to the background investigator
23 *inter alia* the following: (a) he was given an SSN so he could start working at a place where a
24 family friend worked when he was approximately 15 years old; (b) he did not learn he was
25 undocumented and that the SSN was not his own until he was 17 years old; (c) he used the SSN
26 to obtain work, but paid all required taxes from 1997 to 2007 using an Individual Taxpayer
27 Identification Number ("ITIN"), which is an identification number issued by the Internal
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1 Revenue Service (“IRS”) to persons who are not eligible for an SSN for tax reporting purposes;
2 (d) he became a legal permanent resident of the United States in 2007, was issued his own SSN,
3 and started using his own SSN to file for taxes that same year and retroactively applied for
4 earned income tax credit paid during the years 2005-2007; and (g) he became a United States
5 citizen in 2010.

6 28. On or about January 27, 2012, CDCR sent Plaintiff GUERRERO a letter informing
7 him that he was being “withheld” from the list of eligible candidates for the Correctional Officer
8 position.

9 29. In that letter, Defendants K. CARROLL and D. SHARP stated that Plaintiff
10 GUERRERO’s prior use of an SSN that was not his own, and to his receipt of an ITIN from the
11 IRS, “reflects numerous years of unlawful, unethical behavior.” Lieutenant B. Potter-Goddard
12 likewise signed the letter; however, upon information and belief, Plaintiff believes Lieutenant B.
13 Potter-Goddard to be currently retired and no longer working for CDCR.

14 30. The letter further stated that Plaintiff GUERRERO did not satisfy the requirements of
15 State Personnel Board Rule 172, which, according to the letter, required that “candidates shall
16 possess the general qualifications of integrity, honesty, [and] good judgment”.

17 31. B. Potter-Goddard and Defendants K. CARROLL, and D. SHARP further stated *inter*
18 *alia* that “you [Plaintiff GUERRERO] committed identity theft for eight years but [sic] utilizing
19 a social security number of a United States citizen causing unknown ramifications for that person
20 by having income reported under their number which they were unaware of”.

21 32. The CDCR concluded that this action “shows a lack of honesty, integrity, and good
22 judgment,” and ordered that Plaintiff GUERRERO’s name would be removed from the list of
23 eligible candidates “in compliance with California Government Code § 18935 and State
24 Personnel Board Rule 172”.

25 33. Plaintiff GUERRERO timely appealed CDCR’s decision to SPB in a letter dated
26 February 22, 2012.

27 34. SPB was established under the California Constitution and is responsible for
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1 enforcing the merit-based, job-related recruitment and selection process for the hiring of
2 California state employees.

3 35. Together, CDCR and SPB jointly develop, implement, and enforce the employment
4 policies and/or practices used by CDCR to select applications for the Correctional Officer
5 position and to withhold applicants from certification. There are several ways SPB is involved in
6 and/or directs CDCR's selection process:

7 **36. California Penal Code § 13601 Requires That SPB Approve of CDCR's Selection**
8 **Standards.** Any standard adopted by CDCR for selection of correctional peace officers was
9 subject to SPB approval until July 2012 (when the responsibility for approving CDCR's
10 standards was transferred to the newly-created California Department of Human Resources).

11 37. According to these obligations, SPB developed and issued a "Merit Selection Manual:
12 Policy and Practices," which states there is "[a] requirement that State Personnel Board staff
13 approve all departmental examination processes prior to announcement and/or administration."

14 **38. SPB Frequently Reviews CDCR's Selection Process.** SPB's authority to review
15 CDCR's selection process is robust. SPB holds "informational hearings" regarding CDCR's
16 withhold process, either agreeing to or rejecting the policies CDCR uses during its background
17 investigations. In the past, SPB has used these informational hearings and other review
18 processes to analyze CDCR's policies with respect, for instance, to an applicant's one-time use
19 of a prescription drug, failure to register for the Selective Service, and CDCR's educational
20 requirements. Further, SPB's Test Validation Unit has re-written CDCR's written examination
21 after determining that the examination was invalid, and has rejected CDCR's use of a
22 supplemental questionnaire as imposing more requirements than specified by the job
23 classification.

24 **39. SPB Is or Was Directly Involved in CDCR's Selection Process.** At all times
25 relevant to this case, SPB, not CDCR, conducted the psychological screens for applicants
26 applying to be a Correctional Officer. According to CDCR's training manual, CDCR's
27 background investigators prepared a report for "SPB Psychologists to use in evaluating the
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1 applicant,” and the report contained sufficient detail so as “to provide the psychologist a fair
2 insight into the applicant’s character.”

3 40. Further, SPB actually mandated that an SPB representative serve as the Chairperson
4 for all “Qualifications Appraisal Panel” interviews (“QAP”), which were, until recently, required
5 for Correctional Officer examinations. Indeed, SPB issued an entire manual to ensure that proper
6 procedures for QAP interviews were followed. As stated in that manual, the SPB Chairperson
7 “direct[ed] and control[ed] the interview” and, most importantly, “ensure[d] that . . . the
8 principles and practices of equal employment opportunity [were] followed.” Regarding QAPs
9 for peace officer positions, the SPB Chairperson was directed to follow SPB’s Guidelines on the
10 Consideration of Background Information in Peace Officer QAPs (“Guidelines”). In effect since
11 1985, the Guidelines set forth the exact policy to be used in evaluating whether an applicant’s
12 prior unlawful behavior disqualifies them from the peace officer position.

13 41. **SPB Provides Training to CDCR’s Personnel Officers.** According to its own
14 internal documents, SPB devotes resources to the “development and maintenance” of manuals,
15 and “training programs . . . to provide instruction and consultation to departments on merit-
16 related issues.” SPB’s stated purpose for doing so is to “provide departments with the most up-
17 to-date guidance possible in areas” where delegation has been accomplished, including the
18 withhold process. In addition, according to SPB, its manuals are meant to ensure that CDCR and
19 other state departments “comply with the criteria in the law, regulations and manual sections for
20 the respective [delegated] actions.”

21 42. **SPB Retained Authority over CDCR’s Selection Process Despite Delegation.**
22 Beginning in the early 1990s, SPB began delegating some of its responsibility to recruit and hire
23 civil service employees to the various state agencies. Specifically, in 1992, SPB delegated its
24 authority to state agencies with regard to withholding candidates if the candidate failed to meet
25 the position’s minimum qualifications. In doing so, SPB established a “post-audit program” or
26 appeal system to review department “withhold from certification” decisions due to failure to
27 meet the minimum requirements.
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1 43. However, SPB did not delegate its authority wholesale. Although SPB delegated its
2 withhold authority regarding minimum qualifications, SPB retained authority to withhold from
3 certification those candidates who met the minimum qualifications, but were withheld for other
4 reasons. In 2008, SPB issued a memorandum to all personnel officers to clarify this delegation.
5 In that memorandum, SPB confirmed: “[I]f the withhold action is for any cause other than failure
6 to meet one of the minimum qualifications patterns listed on the class specification, departments
7 are required to submit a written withhold request to SPB.” In addition, this memorandum
8 allowed state agencies to conduct their own background checks, but stated, “[i]f the result of a
9 background check warrants the removal of a candidate from an eligible list, the testing
10 department is required to submit a written request for withhold to the SPB Investigations Unit.”

11 44. In other words, all withholds for reasons other than failure to meet the minimum
12 qualifications required SPB approval. It was not until 2013, when all withhold authority,
13 including for withholds for other reasons, was fully delegated to the state agencies. At the same
14 all withhold authority was delegated, Cal. Gov. Code § 18661 was enacted authorizing SPB to
15 audit departments, including CDCR, for merit system compliance.

16 45. In this case, Mr. Guerrero was not withheld due to his failure to meet the minimum
17 qualifications of a Correctional Officer. Mr. Guerrero was withheld on suitability grounds.
18 CDCR should have been required to ask for SPB’s approval before withholding Mr. Guerrero.
19 Instead, however, SPB directed Mr. Guerrero’s application to the “post-audit program” more
20 appropriate for withholds for failure to meet the minimum qualifications: Mr. Guerrero was told
21 to appeal CDCR’s adverse decision to SPB after-the-fact.

22 46. On appeal, SPB did not hold a formal evidentiary hearing to adjudicate Plaintiff
23 GUERRERO’s appeal. Instead, SPB directed Plaintiff GUERRERO’s appeal to its
24 “investigative process,” which, as applicants are notified, is a process generally based on the
25 written record alone. After the “investigative process,” Defendant LEASHORE, of SPB’s
26 Appeals Division, issued a recommendation that SPB affirm CDCR’s decision.

27 47. Defendant AMBROSE adopted Defendant LEASHORE’S recommendation and
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1 SPB officially affirmed CDCR's decision on or about August 21, 2012.

2 48. Defendant LEASHORE's recommendation cited to State Personnel Board Rule 172,
3 and stated *inter alia* that "[p]eace officers hold a special position of trust and authority and, as
4 such, they are held to a higher standard of conduct than are other employees . . . by displaying a
5 very high degree of integrity honesty, thoroughness, and good judgment."

6 49. SPB reasoned that Plaintiff GUERRERO's use of an SSN that did not belong to
7 him, and his use of an ITIN provided by the IRS, demonstrated "a knowingly [sic] and willful
8 disregard of the law" and, thus, "a lack of honesty, integrity, and good judgment."

9 50. SPB also erroneously noted that Plaintiff GUERRERO initially misstated the year in
10 which he received his own SSN. After an unnoticed phone call to Mr. Guerrero, SPB, without
11 providing any reasoning, determined that his alleged misstatement "showed a lack of
12 thoroughness and accuracy, which are also issues of unsuitability under section 172."

13 51. Defendant SPB concluded that Plaintiff GUERRERO's use of an SSN not assigned
14 to him demonstrated "a lack of thoroughness, accuracy, integrity, honesty, and good judgment."

15 52. SPB did not provide Plaintiff GUERRERO with any information about how or when
16 to appeal its affirmance of CDCR's decision.

17 53. SPB's actions directly conflicted with its obligations under Executive Order S-6-04
18 and Cal. Gov't Code § 18502(2)(b) to provide "leadership, coordination, technical guidance and
19 enforcement regarding [statewide] efforts to fully achieve equal employment opportunity and
20 non-discriminatory employment practices" and to ensure compliance with the civil service
21 policies, procedures, and statutes.

22 54. In 2013, Plaintiff GUERRERO re-applied for a position as a Correctional Officer.
23 Plaintiff GUERRERO again passed the written and physical examinations. On April 22, 2013,
24 Plaintiff GUERRERO completed the background investigation process, and again truthfully
25 answered that he had at one time used an invented SSN to obtain work.

26 55. On July 22, 2013, Plaintiff GUERRERO again participated in CDCR's Pre-
27 Investigatory Interview. Plaintiff GUERRERO again truthfully explained the circumstances
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1 under which he used the false SSN.

2 56. On or about October 21, 2013, Defendants C. HESTER; V. MAYOL; S. COX and
3 V. MYERS sent Plaintiff GUERRERO a letter on behalf of CDCR informing him that he was
4 being removed from the list of eligible candidates for the Correctional Officer position.

5 57. On or about November 18, 2013, Plaintiff GUERRERO again appealed CDCR's
6 decision to SPB. To date, Plaintiff GUERRERO has received three separate requests from SPB
7 for further written information; however, no decision has been issued.

8 58. Plaintiff GUERRERO is informed and believes and thereon alleges CDCR is still
9 using the same list of eligible candidates to fill positions.

10 59. CDCR updated its Personal History Statement in November 2012. In the updated
11 Personal History Statement, CDCR continues to ask applicants about their prior use of a Social
12 Security number, *see* http://www.cdcr.ca.gov/career_opportunities/por/docs/phs.pdf (last visited
13 on September 22, 2014).

14 60. Plaintiff GUERRERO filed administrative charges of employment discrimination
15 with the U.S. Equal Employment Opportunity Commission and the California Department of
16 Fair Employment and Housing on January 24, 2013, and again on December 4, 2013, with
17 respect to the foregoing matters. On December 4, 2013, Plaintiff GUERRERO requested
18 immediate notices of his right to sue thereon.

19 61. On January 29, 2014, Plaintiff received right to sue notices for all three administrative
20 charges. This action is timely filed.

21 //

22 **FIRST CLAIM FOR RELIEF**
23 **National Origin Discrimination in Violation of**
24 **Title VII of the Civil Rights Act of 1964, *as amended***
25 **[42 U.S.C. § 2000e-2]**
26 **Against All Defendants**

27 62. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through
28 61, as though fully set forth herein.

63. Section 703 of Title VII, 42 U.S.C. § 2000e-2, prohibits employment practices that

1 discriminate against persons on the basis of their national origin.

2 64. Plaintiff GUERRERO is informed and believes and thereon alleges that
3 Defendants' disqualification of applicants who have previously used an SSN other than their own
4 has an adverse and disproportionate impact on particular national origin minorities, such as
5 Latinos, who seek to qualify for state employment.

6 65. Plaintiff GUERRERO is informed and believes and thereon alleges that Defendants'
7 disqualification of applicants who have previously used an SSN other than their own has an
8 adverse and disproportionate impact upon the ability of persons other than those of United States
9 national origin to qualify for state employment.

10 66. Defendants' disqualification of applicants for the position of Correctional Officer
11 who have previously used an SSN other than their current SSN is neither manifestly job-related
12 nor consistent with business necessity.

13 67. Less discriminatory alternatives exist to achieve Defendants' stated business
14 purposes.

15 68. As a further proximate result of these unlawful acts, Plaintiff GUERRERO has
16 suffered and continues to suffer injury, including emotional injury.

17 69. Plaintiff GUERRERO is entitled to compensatory damages, injunctive and
18 declaratory relief, and his reasonable attorneys' fees and costs of suit.

19 **SECOND CLAIM FOR RELIEF**

20 **National Origin Discrimination (Third Party Interference) in Violation of**
21 **Title VII of the Civil Rights Act of 1964, *as amended***

22 **[42 U.S.C. § 2000e-2]**

23 **Against Defendant State Personnel Board**

24 70. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through
25 69, as though fully set forth herein.

26 71. Section 703 of Title VII, 42 U.S.C. § 2000e-2, prohibits not only discrimination
27 against an employee by his or her direct employer but, in addition, discrimination against
28 employees by entities that are not their actual or potential direct employers. Specifically, Title

1 VII proscribes actions, by entities that control access to employment, which interfere with a
2 direct employment relationship, whether actual or potential so as to deny employment
3 opportunities on the basis of invidious criteria.

4 72. Pursuant to statute, Defendant SPB is responsible for overseeing the merit-based, job-
5 related recruitment and selection process for the hiring of state employees, including for CDCR.
6 Cal. Gov. Code 18502(2)(b). As such, Defendant SPB is responsible for ensuring that CDCR's
7 employee selection procedures comply with all applicable laws, including Title VII. Cal. Gov't
8 Code § 18500(5).

9 73. Defendant SPB, in its role of considering appeals by applicants for employment
10 from adverse CDCR employment decisions, is also responsible for ensuring that the CDCR
11 decisions appealed from comply with all applicable laws.

12 74. Defendant SPB nonetheless ratified and, indeed, affirmatively upheld CDCR's use of
13 Question 75 to improperly disqualify Plaintiff GUERRERO from employment as a Correctional
14 Officer. Defendant SPB did so instead of fulfilling its responsibilities to ensure CDCR's
15 compliance with Title VII *inter alia* by reversing CDCR's improper disqualification of Plaintiff
16 GUERRERO.

17 75. Furthermore, Defendant SPB is responsible for the promulgation of regulations
18 pursuant to Cal. Gov't Code § 18935, and promulgated SPB Rule 172 pursuant to that statutory
19 responsibility. CDCR relied upon Defendant SPB's interpretation of Cal. Gov't Code § 18935
20 and SPB's promulgation of SPB Rule 172 to improperly disqualify Plaintiff GUERRERO from
21 eligibility for the Correctional Officer position.

22 76. In addition, Defendant SPB, in violation of its statutory responsibilities, failed to
23 exercise sufficient oversight over CDCR's employment practices, including without limitation by
24 failing to ensure that CDCR's background investigation process was free of questions that had
25 the tendency to have a disproportionate adverse impact upon applicants on the basis of national
26 origin.

27 77. For the foregoing reasons, Defendant SPB interfered with the formation of a direct
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1 employment relationship with CDCR so as to restrict Plaintiff GUERRERO's employment
2 opportunities on the basis of invidious criteria.

3 78. Because Defendant SPB's promulgation of SPB Rule 172 served as the basis for
4 CDCR's disqualification of Plaintiff GUERRERO, and also because Defendant SPB is
5 responsible for overseeing CDCR's employee selection procedures, Defendant SPB is a
6 necessary party hereto in that it alone is capable of providing aspects of the injunctive relief
7 Plaintiff GUERRERO seeks.

8 79. Plaintiff GUERRERO is entitled to relief, including declaratory relief, injunctive
9 relief, and his reasonable attorneys' fees and costs of suit.

10 **THIRD CLAIM FOR RELIEF**

11 **For Violation of Equal Protection Clause of Fourteenth Amendment to the**
12 **United States Constitution**
13 **[42 U.S.C. § 1983]**

14 80. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through
15 79, as though fully set forth herein.

16 81. Plaintiff GUERRERO has a right to equal protection of the laws which is secured
17 by the Fourteenth Amendment to the United States Constitution.

18 82. Defendants disqualify the following class of individuals from the Correctional Officer
19 position: individuals who once used a false SSN for the purpose of obtaining and maintaining
20 employment and its incidents. As such, Defendants treat this class of individuals differently than
21 otherwise similarly-situated applicants without any rational basis.

22 83. Alternatively, Defendants disqualify the following class of individuals from the
23 Correctional Officer position: individuals who recently used a false SSN for the purpose of
24 obtaining and maintaining employment and its incidents, however Defendants choose to define
25 "recently." On information and belief, Defendants' definition of "recently" is not based on any
26 analysis, experience, consideration, and/or study of how or when prior use of a false SSN is more
27 likely to hinder the applicant's ability and/or suitability to be a Correctional Officer. As such,
28 Defendants treat this class of individuals differently than otherwise similarly-situated applicants

1 without any rational basis.

2 84. Defendants' policy and/or practice of disqualifying individuals who once used a false
3 SSN for the purpose of obtaining and maintaining employment is wholly inconsistent,
4 undermining any claim that the practice and/or policy is rationally based.

5 85. Alternatively, Defendants' policy and/or practice is that prior use of a false SSN for
6 the purpose of obtaining and maintaining employment is a "single-issue withhold." In other
7 words, an applicant may be disqualified based solely on their prior use of a false SSN for the
8 purpose of obtaining and maintaining employment. There is no rational basis for considering
9 prior use of a false SSN for the purpose of obtaining and maintaining employment as a "single-
10 issue withhold" when comparable misconduct, arguably more related to the applicant's
11 "character" does not operate as a "single-issue withhold."

12 86. The actions of Defendants, through their rejection of Plaintiff GUERRERO's
13 application for a Correctional Officer position and through their pervasive and continuing
14 practice of disqualifying applicants from state employment based solely on an applicant's prior
15 use, for the purpose of obtaining and maintaining employment and its incidents, of a Social
16 Security number not validly issued to them, have caused and will continue to cause such
17 individuals' disqualification from the position, thereby depriving them of the rights, privileges,
18 and immunities secured to them by 42 U.S.C. § 1983 and the Equal Protection Clause of the
19 Fourteenth Amendment to the United States Constitution.

20 87. Defendants' actions are not rationally based on a legitimate government interest. An
21 individual's prior use of a Social Security number not validly issued to him for the purposes of
22 obtaining employment has no bearing on the individual's suitability to be a Correctional Officer.

23 88. Defendants acted under color of state law when unconstitutionally discriminating
24 against Plaintiff GUERRERO and other individuals who have used a Social Security number not
25 validly issued to them.

26 89. As a proximate result of these unlawful acts, the Plaintiff GUERRERO has suffered
27 and continues to suffer irreparable injury.

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INJUNCTIVE RELIEF ALLEGATIONS

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2 98. No plain, adequate, or complete remedy at law is available to Plaintiff GUERRERO
3 to redress the wrongs addressed herein.

4 99. If this Court does not grant the injunctive relief sought herein, Plaintiff
5 GUERRERO will be irreparably harmed.

PRAYER FOR RELIEF

6
7 WHEREFORE, Plaintiff prays for relief as follows:

8 1. For a declaration that Defendants' actions, policies, and practices as alleged herein
9 are unlawful;

10 2. For injunctive relief barring Defendants from disqualifying applicants from state
11 employment based solely on their prior use, for the purpose of obtaining and maintaining
12 employment, of a Social Security number not validly issued to them;

13 3. For injunctive relief directing Defendants to discontinue their unlawful policy and
14 practice of relying on SPB Rule 172 to disqualify applicants who used an SSN other than their own
15 in the past and/or affirm state agency decisions;

16 4. For injunctive relief directing Respondents to set aside their decisions dated January
17 27, 2012, August 21, 2012, and October 21, 2013, disqualifying Plaintiff GUERRERO as a
18 candidate for the position of Correctional Officer, and to restore him to eligibility for that position,
19 or to show cause why a writ of administrative mandate to the same effect should not be issued;

20 5. For injunctive relief directing SPB to grant his appeal and reverse CDCR's October 21,
21 2013 decision disqualifying Plaintiff GUERRERO as a candidate for the position of Correctional
22 Officer, and to restore him to eligibility for that position;

23 6. For an order requiring Defendants to notify their personnel, investigators,
24 administrative law judges, and hearing officers about the prevalent use of SSNs other than their
25 own among immigrant workers and the discriminatory impact a policy barring applicants from
26 state employment based on their prior use of an SSN other than their own would have on particular
27 national origin minorities such as Latinos;

VERIFICATION

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I, MARSHA CHIEN, declare:

- 1. I am an attorney at law duly admitted and licensed to practice before all courts of this State.
- 2. I have my professional office at 180 Montgomery Street, Suite 600, San Francisco, California 94104.
- 3. I am one of the attorneys of record for Victor Guerrero, Plaintiff in this action.
- 4. The Plaintiff is absent from the county in which I have my office.
- 5. For that reason, I am making this verification on his behalf.
- 6. I have read the foregoing Petition for Writ of Mandate and Complaint and know the contents thereof.
- 7. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed at San Francisco, California, on October 29, 2014.

/s/ Marsha J. Chien
MARSHA J. CHIEN