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12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
13 **COUNTY OF ALAMEDA**

15 Margaret Farrell,
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Plaintiff,
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v.
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JERRY L. HARPER, Director, California
19 Youth Authority,

Defendant.
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21
22

No.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

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24 Plaintiff Margaret Farrell hereby brings this action for injunctive and declaratory
25 relief pursuant to California Code of Civil Procedure sections 525, 526 and 1060,
26 directed to defendant JERRY HARPER, and by this complaint alleges as follows:
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1 **INTRODUCTION**

2 1. Juvenile wards of the state are confined within the California Youth
3 Authority (CYA) for rehabilitation, training and treatment. (Welf. & Inst. Code § 1700.)
4 These important objectives cannot be achieved under the inhumane conditions that
5 currently exist in the CYA. Rehabilitation cannot succeed when the classroom is a cage
6 and wards live in constant fear of physical and sexual violence from CYA staff and other
7 wards. Effective training is not possible when CYA programs are not available and CYA
8 staff are inadequate in both numbers and experience. Treatment is undermined when
9 forced administration of psychotropic medication is used as a tool to control behavior,
10 and it is impossible when psychologists and psychiatrists are not available to the vast
11 majority of wards. The severe, unconstitutional and illegal problems plaguing the CYA
12 are not new and they are not a secret. Defendant Jerry Harper, Director of the CYA,
13 lacks the resources, staff, and management controls necessary to provide appropriate
14 assistance, services and treatment.

15 2. This taxpayer action is brought by Margaret Farrell to compel defendant
16 Harper to remedy the illegal, inhumane, discriminatory and punitive conditions that exist
17 throughout the CYA. Plaintiff seeks a declaration that defendant Harper has wasted
18 taxpayer funds on illegal policies, practices, and procedures, and seeks an injunction
19 requiring defendant to meet his constitutional and statutory obligations.

20 **JURISDICTION**

21 3. This Court has jurisdiction to grant injunctive relief on behalf of plaintiff
22 pursuant to Code of Civil Procedure sections 525 and 526.

23 4. This Court has jurisdiction to grant declaratory relief on behalf of plaintiff
24 pursuant to Code of Civil Procedure section 1060.

25 **PARTIES**

26 A. Plaintiff

27 5. Plaintiff Margaret Farrell is a citizen of California and a resident of Reseda
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1 in Los Angeles County. She has paid taxes to the State of California within one year of
2 the commencement of this action. As a taxpayer, plaintiff Farrell has no administrative
3 remedies to exhaust. Ms. Farrell's nephew, Edward Jermaine Brown, is a CYA ward.
4 She brings this action as a taxpayer, pursuant to Code of Civil Procedure section 526a,
5 against state official Jerry L. Harper, Director of the CYA, to enjoin his expenditure of
6 funds to promulgate, administer, and enforce the CYA's illegal and wasteful policies and
7 practices.

8 B. Defendant

9 6. Jerry L. Harper is the Director of the CYA and is sued herein in that
10 capacity. As Director, Harper is responsible for the operation of all the CYA staff and
11 facilities, including decisions concerning the budget, staff deployment, programming, and
12 staff training that directly affect the expenditure of funds on CYA wards.

13 7. Defendant uses tax revenues collected from plaintiff Farrell and others by
14 the State of California to administer, operate, and maintain CYA facilities.

15 **FACTUAL ALLEGATIONS**

16 8. The CYA is a state agency charged with the rehabilitation of youthful
17 offenders. It is directed by the California Legislature to substitute training and treatment
18 for punishment of its wards. (Welf. & Inst. Code § 1700.) The CYA houses
19 approximately 6,000 male and female wards in eleven correctional facilities.

20 9. Defendant Harper's agency violates the rights of wards and wastes taxpayer
21 money on illegal and often abhorrent conditions and practices, many of which are
22 detailed below. The CYA, by its own admission, utterly fails to fulfill its statutory duties
23 of treatment and rehabilitation. For example, the CYA admits that it does not provide
24 wards at N.A. Chaderjian Youth Correctional Facility with adequate treatment and
25 programming services. (Budget Concept Paper, FY 2001-02; Budget Concept Paper FY
26 2002-03.) Staff at this CYA facility, which houses some of the most at-risk youth in the
27 system, are "unable to provide quality treatment to wards due [to] the high number of
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1 difficult and complex cases at the facility.” Without additional staff, “N.A. Chaderjian
2 will continue to operate without adequate treatment services, which leads to an unsafe
3 environment for staff and wards.” Wards at Ventura Youth Correctional Facility are also
4 “consistently denied the treatment services to which they are entitled” by California law,
5 according to the Office of the Inspector General in a Management Review Audit of June
6 2002.

7 10. More generally, the CYA’s own Treatment Delivery Focus Group found in
8 November 2001 that, because untrained, inexperienced correctional officers are staffing
9 counselor positions, “we are unable to effectively deliver treatment and training to the
10 wards under our care and supervision.” (Memorandum from Treatment Delivery Focus
11 Group to Deputy Director Anderson, November 16, 2001.) One result of the CYA’s
12 failure to provide rehabilitation to wards is that “wards are give[n] time-adds because
13 their board ordered programs cannot be met.”

14 11. Defendant Harper has long been aware of the CYA’s chronic, serious
15 illegalities and its leadership failures. As the CYA states:

16 In August 2000 the department performed an analysis of critical issues and
17 reports.... The analysis revealed the following broad areas of concerns:
18 conditions of confinement; use of force; safety and security; management of
19 policy, procedure and practice; correctional treatment centers; staff
20 resources and training; ward rights; drug and sex offender treatment;
21 education services; leadership; gangs; research; and [] documentation. In
22 practically every issue, inconsistent policy, procedure and practice was
23 either explicitly noted or implied as an underlying factor.”

24 (Budget Change Proposal EX03A, FY 2002-03.) CYA’s deficiencies have, if anything,
25 worsened since that time.

26 A. Physical Safety of Wards

27 12. CYA staff regularly subject wards to the excessive use of force, in violation
28 of the California Constitution, Article I, sections 1 (right to enjoy life, liberty, and safety),

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1 7 (right to due process), and 17 (no cruel or unusual punishment)¹; Penal Code sections
2 147 (willful inhumanity or oppression by peace officers), 149 (unnecessary assaults by
3 peace officers), and 673 (ban on “cruel, corporal or unusual punishment” and the
4 “inflict[ion of] any treatment or allow[ance of] any lack of care whatever which would
5 injure or impair the health of the [ward]”); and the California Code of Regulations, title
6 15, sections 4039 and 4040 (restrictions on use of force and chemical and mechanical
7 restraints). Defendant Harper has failed to establish policies and procedures adequate to
8 ensure the physical safety of wards under the care and protection of the CYA and to
9 protect them from abuse by CYA staff that is cruel, willfully inhumane, and excessive.
10 Mr. Harper has also failed to ensure that the policies now in place are properly
11 implemented and that staff are trained to follow them. As a result, he has wasted and
12 continues to waste taxpayer funds by operating a system rife with unsafe and illegal
13 conditions of confinement.

14 13. It is common practice within the CYA for staff and/or guards to slam a
15 ward down, pull his arms behind his back, force a knee in his back, and use excessive
16 amounts of Mace or other chemical agents even after the ward is restrained. Wards also
17 have had their heads slammed against walls and rails and have been beaten and burned by
18 tear gas canisters and Maced for no reason. For example, a ward was repeatedly sprayed
19 with chemical agents for declining to undergo a strip search after being placed in a
20 holding room. In another incident, a ward was knocked unconscious when shot directly
21 in the head at close range by CYA staff with a “foam baton” gun. In a third incident,
22 CYA officers placed a handcuffed ward face down on a bed and repeatedly struck his
23 head.

24 14. Although California law mandates that chemical restraints shall be used
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27 ¹This and all future references to Article I, section 17, of the California
28 Constitution (cruel or unusual punishment clause) apply to those wards held in the CYA
pursuant to criminal convictions.

1 only to restrain wards, and never for punishment or retaliation (Cal. Code of Regs., tit.
2 15, § 4040(d)), CYA staff often use chemical agents on wards who either do not require
3 restraining or already are restrained. Additionally, staff place other excessive restrictions
4 on wards, in the form of restraint chairs and “spit masks” (which often must be worn by
5 wards for a month or more) or confinement to a temporary detention or suicide watch
6 room for extended periods of time without legitimate justification.

7 15. Many CYA staff do not abide by the rules and policies that currently exist
8 to govern the use of force on wards. The policies are often not provided to staff, and staff
9 training is inadequate. In addition, the CYA administration has failed to provide
10 individual institutions with oversight and clear policy direction on the use of force. Staff
11 often fail to report the use of force and the CYA does not adequately investigate use-of-
12 force incidents or discipline staff when appropriate. As a result of these failures,
13 implementation of CYA use-of-force policies throughout the system is inadequate, which
14 causes and exacerbates the illegalities of the CYA system.

15 16. Moreover, the use-of-force policies are themselves inadequate. For
16 example, there is no standardized policy to govern use of spit masks. The CYA’s
17 chemical restraints policy does not set dosage limits on the use of chemical restraints.
18 The policies and procedures for proper inventory controls and records for weapons,
19 ammunition, and chemical agents are inadequate. Without such policies and procedures,
20 there is insufficient management control over the use of force and the application of
21 chemicals on wards.

22 17. The San Luis Obispo Grand Jury, in its investigation of Paso Robles Youth
23 Correctional Facility in 2000, found that “[a]ccountability procedures are ineffective for
24 signaling possible unauthorized use of chemical restraint by individual employees, nor
25 are other adequate safeguards in place.” The Grand Jury found excessive use of chemical
26 restraints at Cambria Cottage, the Paso Robles lockup unit: “[T]here has been an
27 excessive use of chemical restraint. Foggers have been used there as weapons for
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1 individual punishments as well as for extracting some wards from their cells.” Although
2 the Paso Robles Superintendent and Chief of Security knew of these problems, there is no
3 evidence that they conducted investigations of any individual incidents.

4 18. Defendant Harper also has failed to develop sufficient policies and
5 procedures to protect the physical safety of wards from abuse by other wards and has
6 failed adequately to implement those policies and procedures that do exist. As a result,
7 conditions in the CYA violate the California Constitution, Article I, sections 1 (right to
8 enjoy life, liberty, and safety), 7 (right to due process), and 17 (no cruel or unusual
9 punishment). For example, many CYA facilities house victims of sexual violence and/or
10 homosexual wards with convicted sex offenders. Wards who are homosexual or who are
11 known to have been victimized in the past are the most frequent targets of sexual assault.
12 Thus, the CYA is exposing some of its most vulnerable wards to some of its most
13 dangerous.

14 19. Rape, sexual assault, and sexual harassment are common within the CYA.
15 Some wards are housed in the same living facility as others who have previously raped or
16 sexually assaulted them. Staff are routinely indifferent to wards’ requests for protection
17 from those who have assaulted them.

18 20. Defendant Harper has failed properly to implement the CYA’s own
19 guidelines for responding to wards’ reports of sexual assault, including failing to
20 investigate such allegations promptly and properly, and has failed to develop and
21 implement policies to ensure that CYA staff members receive instruction in dealing with
22 sexual assault and are held accountable when they disregard policy.

23 21. The California Correctional Peace Officers Association reports that violent
24 female wards at Ventura “prey on weaker/mentally ill wards” and “management... has no
25 plan to defuse, eliminate or reduce violence within the female population.” (CCPOA
26 Agenda, CYA Director’s Meeting, Tuesday, August 15, 2000.)

27 22. Defendant Harper has failed to establish policies and procedures to protect
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1 wards from the well-known and ubiquitous danger of attack by gang members and does
2 not have a consistent policy for dealing with gang-related violence. Moreover, he has
3 failed to provide intervention services for gang conflict. The use of long-term lockdowns
4 as the sole response to gang violence results in more physical violence because wards are
5 simply locked in their rooms for weeks or months with no programming and no
6 constructive release for their frustration, tension and fear.

7 23. Gang-related violence occurs in the form of both one-on-one attacks and
8 large-group disturbances. Wards often are seriously injured in such attacks, which can
9 involve dangerous weapons such as knives or similar objects. The CYA does not have
10 adequate policies and procedures to ensure that wards do not have access to material that
11 can be made into dangerous weapons. Debris such as broken glass, nails, a tent stake, a
12 12-inch piece of pipe, a six-inch piece of metal, and an 18-inch strand of rope have been
13 left in the corner of a sports field, accessible to wards, in at least one CYA facility.
14 Moreover, CYA staff fail to search wards for weapons adequately to prevent contraband
15 from entering the facilities and fail to use metal detectors properly.

16 24. In addition to their failure to prevent ward-on-ward violence, CYA staff
17 have actually encouraged, permitted, and/or provided wards with the opportunity to fight
18 each other.

19 B. Segregation

20 25. CYA wards are subject to extremely harsh punishment in the form of
21 “lockup,” “Temporary Detention,” “disciplinary housing,” placement on “Special
22 Management Units” (SMU), and “lockdowns.” Such punishment is effected either by
23 sending a ward to a special housing unit used specifically for such punishment or by
24 changing the rules of confinement for a ward or group of wards while they remain in
25 regular housing units.

26 26. The physical conditions within special lockup units are often abysmal, in
27 violation of the California Constitution, Article I, sections 1 (right to enjoy life, liberty,
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1 and safety), 7 (right to due process), and 17 (no cruel or unusual punishment); Penal
2 Code section 673 (ban on “cruel, corporal or unusual punishment” and the “inflict[ion of]
3 any treatment or allow[ance of] any lack of care whatever which would injure or impair
4 the health of the [ward]”); and the California Code of Regulations, title 15, section 4125
5 (nutritionally adequate and acceptable diet required). Defendant Harper has failed to
6 establish policies and procedures adequate to protect the rights of wards undergoing such
7 punishment. He has also failed to ensure that the policies now in place are properly
8 implemented and that staff are trained to follow them. As a result, he has wasted and
9 continues to waste taxpayer funds by operating a system rife with unsafe and illegal
10 conditions of confinement.

11 27. Many lockup rooms are filthy, with dried mucus, blood, and/or feces on the
12 walls, inadequate or nonfunctional toilets, and broken windows. Wards are subject to
13 health risks due to these unsanitary conditions. Wards on lockup are often fed only
14 “blender meals,” which are entire meals (*e.g.*, a sandwich, vegetable, and milk) that have
15 been put into a blender and liquified and then fed to the ward through a straw through his
16 or her cell door. Other times, wards confined on lockup have received inadequate rations
17 or dangerously undercooked food, causing these adolescents and young adults to lose
18 significant amounts of weight.

19 28. Wards’ activities while on lockup are so severely limited as to be punitive.
20 Wards live under a regime commonly called “23/1,” which forces them to stay inside
21 their cells for 23 hours of the day and provides only one hour of “program” time outside
22 of the cell, which takes place in cages called Special (or Secure) Program Areas or
23 “SPAs.” Thus, when wards on lockup are allowed to attend educational classes or
24 counseling sessions, they are required to do so either in a cage or through a small slot in
25 the cell door. Wards on lockup often are not permitted access to reading material,
26 television, or radio and their opportunities to keep in contact with their families through
27 telephone calls and visits are severely curtailed in violation of the California Code of
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1 Regulations, title 15, sections 4696 (visiting shall take place at least once a week and
2 shall not be restricted as a disciplinary measure) and 4699 (wards shall be allowed to
3 make “periodic telephone calls”). Although CYA policy mandates that wards on lockup
4 shall be given the opportunity for one hour of large-muscle exercise outside of their
5 rooms each day, in practice this regulation is ignored and wards on lockup can go for
6 months or even more than a year with little or no exercise.

7 29. Wards often are not allowed to attend school or any other form of program,
8 including religious services, while in segregation, in violation of the California
9 Constitution, Article I, section 4 (freedom of religion), and Welfare and Institutions Code
10 sections 1120 *et seq.* (right to education for CYA wards) and 1705 (freedom of religion
11 for CYA wards); *see also Serrano v. Priest* (1977) 18 Cal.3d 728, 765-66 (fundamental
12 right to education). Some wards are denied parole because they cannot complete required
13 programs in lockup; they then serve their maximum term and are released from the CYA
14 with a dishonorable discharge. The California Department of Education investigated the
15 CYA’s delivery of special education services to wards on lockdown or temporary
16 detention and found that the CYA “is not consistently implementing the IEPs [Individual
17 Education Plans] of wards/students in the restricted program” and that “IEP team meetings
18 are not conducted when a ward is placed in the restricted program as directed in the
19 CYA’s Restricted Program policy manual” and as required under federal law. (California
20 Department of Education Compliance Report #I-1079-00/01, September 14, 2001.)

21 30. Wards in segregation are there primarily due to the CYA’s determination
22 that they have misbehaved or failed to follow mandated programs. However, they are not
23 provided with any behavior modification or rehabilitative programs to assist them in
24 improving their conduct.

25 31. Many wards with serious mental illnesses are held in lockup under these
26 extremely harsh and restrictive conditions, which exacerbates their mental illnesses and
27 causes them to decompensate.

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1 32. CYA wards spend an alarming amount of time in segregation. The CYA’s
2 policies and practices on locking wards up in segregation is so excessive as to violate
3 accepted professional practices, particularly for wards who are mentally ill and/or
4 suicidal.

5 33. A pastoral delegation to Fred C. Nelles Youth Correctional Facility
6 reported in a document sent to Mr. Harper on November 27, 2001, that they were
7 shocked and depressed by the isolation and the use of cages, or as you call
8 them SPAs. The accommodations were, in our opinion, inhumane. We
9 were also alarmed by the length of time the young men spend in isolation.
Many we talked to had been there several months already and were not sure
when they would return to the main population.

10 The delegation of clergy further stated regarding the lockup units at Nelles: “The paucity
11 of education, physical exercise, religious programming and social interaction for young
12 people of this age is nothing short of abusive.” The CYA chaplain’s group expressed a
13 similar concern to Mr. Harper, stating:

14 There have been three suicides in the CYA system since February. We are
15 hearing from the wards that the amount of time they spend in their rooms
16 agitates the stress and tensions that they already experience by being locked
17 up. The over use of solitary confinement (23-1) including their length of
18 stay in solitary confinement units and the use of SPAs for their one hour out
of their rooms also contributes to this concern. Many wards have confided
to us that they are hesitant to seek help for stress or depression for fear that
they will be put on suicide watch, which is worse than solitary confinement.
Isolation[] increases the likelihood of suicide, it does not decrease it.

19 34. The CYA admits that its policies regarding the use of restricted programs
20 lack consistent placement criteria and are marked by the “inconsistent delivery of
21 mandated services in the areas of education, recreation, telephone calls, visiting, ward
22 grievances, legal resources, religious services, mail, nutrition, clothing/bedding, mental
23 health services and counseling and treatment.” (Budget Change Proposal EX03A, FY
24 2002-03.) In addition, the CYA has “no consistent monitoring of the use of 23/1
25 restricted programs.” Furthermore, the CYA is aware that its use of cages on the
26 restricted programs is ineffective and cruel: the CYA’s own Special Programs
27 Administrator has recommended “complete removal of all special program areas [SPAs]
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1 with time of the essence. These hardware devices are used in a similar manner to other
2 mechanical restraints in the absence of intensive treatment interventions and should not
3 be used alternatively... [I]t is a matter of general knowledge that the current excessive use
4 of long term 'lock down' facilities to manage behavior problems exceed any reasonable
5 standards for juvenile facilities.”

6 35. Under defendant Harper, the CYA disregards wards' due process rights in
7 committing them to lockup units or disciplinary housing, in violation of the California
8 Constitution, Article I, section 7 (right to due process); and the California Code of
9 Regulations, title 15, sections 4630, 4635(a), and 4637 (procedural due process
10 requirements for discipline and segregation). Defendant Harper has failed to promulgate
11 adequate procedures to permit wards to challenge their placement in lockup units. As a
12 result, he is operating the CYA illegally and expending taxpayer funds wastefully.

13 36. CYA wards are disciplined through a process called the Disciplinary
14 Decision Making System (DDMS). Wards subject to DDMS proceedings are often
15 denied the opportunity to present their cases, to present witnesses in their favor or to
16 question the witnesses testifying against them. In some instances, hearings are not held in
17 a timely manner and wards' cases are heard by biased decisionmakers. Often wards are
18 disciplined arbitrarily, with no explanation for why the disciplinary action is being taken.

19 37. Wards often do not receive notice of the reason for their placement in
20 lockup. Under CYA policy, wards can be placed in a lockup unit for up to five weeks
21 without a hearing on the necessity for restricted housing or on the disciplinary charge. In
22 practice, wards often are locked up for many months at a time and up to a year without
23 periodic review of their status. At one facility, 21 percent of wards on temporary
24 detention had not signed the requisite form indicating that they had received notice of
25 why they were placed on temporary detention, how long the temporary detention was to
26 last, and what their rights to appeal were.

27 38. Some wards are involuntarily housed in lockup units purportedly for their
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1 own protection without providing them with an opportunity to challenge the decision. In
2 other cases, the CYA actually creates the need for protective custody by knowingly
3 transferring wards to a facility where the gang or ethnic group to which he belongs is
4 vastly outnumbered by rival groups, rendering him unable to live safely in the general
5 population.

6 39. Although CYA policy requires that administrative lockdowns (program
7 restrictions placed on a group of wards, even entire facilities, due to safety and security
8 concerns) last only so long as necessary to restore safety of the facility, the CYA often
9 extends the administrative lockdown well beyond the time in which the security threat
10 has been identified and addressed. The CYA also places and keeps wards in lockdown
11 based on their racial/ethnic status or purported group affiliation rather than their actual
12 threat to safety and security, in violation of their right to equal protection of the law and
13 freedom from impermissible discrimination based on race and ethnic status under the
14 California Constitution, Article I, section 7.

15 40. Lockdown conditions parallel the harsh deprivations found in the lockup
16 conditions described above. However, defendant Harper has failed to take appropriate
17 measures to mitigate the extreme hardship and severe program restrictions placed on
18 wards on lockdowns for extended periods of time, thus ensuring that they are not
19 provided with programs that should be available even during a period of heightened
20 security, in violation of California law.

21 41. Defendant Harper has long been aware of the problems with the CYA's
22 segregation policies and practices. A "Standards Development Project" document dated
23 November 9, 2000, identifies problems with education, mental health care, and recreation
24 delivery for wards on 23/1 and other restricted programming. A "Security Review
25 Report" regarding lockup at the O.H. Close Youth Correctional Facility found numerous
26 violations in August 2000, including the following: cages ("SPAs") are used for the one-
27 hour per day of large muscle exercise for wards; "[t]he current staffing pattern on Inyo
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1 Lockup Unit is insufficient, and stretches the existing resources to dangerous levels when
2 problems occur”; “[t]here is no clear indication on the unit as to which wards are on
3 suicide watch”; “ward rooms are in need of cleaning and maintenance”; wards on
4 temporary detention are not receiving special education; some wards slept on mattresses
5 on the floor; loose rocks and cut wood (potential weapons) littered the ground, and
6 wards’ movement was often unmonitored (which allows for attacks by wards on other
7 wards). In addition, a Youth and Adult Correctional Agency investigation found in 2000
8 that “[w]ards in isolation need adequate and appropriate large muscle exercise in an
9 appropriate area including some time outside. The use of caged shower areas or cages
10 (referred to as secured program areas, or SPAs) as opposed to fenced recreation yards for
11 large muscle exercise is inappropriate and contrary to good and accepted correctional
12 practice.” (Institutions Operational Quality Assurance Project, August 9-11, 2000, and
13 September 6-8, 2000.)

14 42. Despite his awareness over many years of these problems, defendant
15 Harper continues to waste taxpayer money on illegal segregation policies, practices, and
16 procedures.

17 C. Medical and Dental Care

18 43. CYA wards are denied adequate medical treatment in violation of the
19 California Constitution, Article I, sections 7 (right to due process) and 17 (no cruel or
20 unusual punishment); Penal Code section 673 (ban on “cruel, corporal or unusual
21 punishment” and the “inflict[ion of] any treatment or allow[ance of] any lack of care
22 whatever which would injure or impair the health of the [ward]”); Welfare and
23 Institutions Code section 1755.3 (medical consent); and the California Code of
24 Regulations, title 15, sections 4611 (right to medical care on intake) and 4730 *et seq.*
25 (right to medical care). Defendant Harper has failed to establish policies and procedures
26 adequate to protect the rights of wards in need of medical care. He has also failed to
27 ensure that the policies now in place are properly implemented and that properly qualified
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1 staff are hired in adequate numbers and are trained to follow them. As a result, he has
2 wasted and continues to waste taxpayer funds by operating a system rife with unsafe and
3 illegal conditions of confinement.

4 44. The CYA has insufficient numbers of qualified medical staff, including
5 physicians, nurses and Medical Technical Assistants (MTAs). For example, Preston
6 Youth Correctional Facility only has one doctor, with no relief available when he is sick
7 or on vacation. The CYA admits this staffing is inadequate. (Budget Concept Paper, FY
8 2002-03.)

9 45. Similarly, El Paso de Robles Youth Correctional Facility cannot meet the
10 medical needs of its more than 750 wards. The entire medical department staff informed
11 the Superintendent on May 31, 2001, that they did not have enough nurses to fulfill
12 “public health aspects of vaccinations and infections diseases significant to this at-risk
13 population of teenage males.” They further stated that “[i]t is clear that the imbalance
14 between demands for medical and mental health care services mandated by the law, and
15 staff responsible for responding to those demands, has reached a near alarming level at
16 our institution. In order to comply with the law and adhere to the agency’s policies and
17 procedures, and to uphold the ethical standards of medical and metal health care in
18 providing treatment and rehabilitation for the wards, our institution is in urgent need of a
19 least one additional registered nurse, one MTA [medical technical assistant], four
20 additional psychologists, and one full-time psychiatrist.”

21 46. The CYA admits it does not have adequate staff to provide appropriate
22 basic nursing care for its wards, including medication administration, daily sick call,
23 infections disease screening and follow-up, immunizations, and urgent/emergent care.
24 Medication is delivered by unlicensed staff, which has resulted in failure to document the
25 administration of the medication and an inability to monitor its effectiveness. Wards
26 have no opportunity to ask questions about the medication and no chance to weigh the
27 results of refusal. (Budget Concept Paper, FY 2003-04.)

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1 47. The medical staff that CYA does have are inadequately trained and
2 supervised.

3 48. Wards who require medical care are subjected to lengthy delays, including
4 delays to see a primary physician, to obtain a referral to see a specialist, to see a specialist
5 after obtaining the referral, to obtain medical testing, and to obtain treatment. A pregnant
6 ward at Ventura Youth Correctional Facility was not provided with a timely consultation
7 with a specialist; as a result, she was not provided with adequate treatment for her urinary
8 infection, which contributed to her subsequent premature delivery. In addition to the
9 physical and emotional pain and trauma suffered by the ward and her baby, hospital bills
10 for the intensive care of the one-pound, eight-ounce baby exceeded \$568,000.

11 49. The CYA frequently fails to provide wards with access to care altogether.
12 For example, pregnancy care for female wards is inadequate, according to a Management
13 Review Audit by the Office of the Inspector General in June 2002. Often medical staff
14 do not take sufficient steps necessary to make diagnoses. When a diagnosis or symptom
15 is discovered, medical staff often fail to provide treatment. Several wards have been
16 denied their requests to be tested for HIV and other sexually transmitted diseases, in spite
17 of the presence of symptoms of such diseases.

18 50. The administration and delivery of medications is also seriously inadequate.
19 A nurse surveyor report found numerous problems at the four-facility complex called the
20 Northern California Youth Correctional Center (including DeWitt Nelson, Karl Holton,
21 O.H. Close, and N.A. Chaderjian Youth Correctional Facilities) in April 2001. The
22 deficiencies include the following: dates in the medical file did not accurately reflect the
23 date the medication was administered; discontinued medications were reprinted with new
24 medication orders; expired medications, including some more than two years out of date,
25 were being administered; drug, needle, and syringe-control records were not properly
26 maintained, nurses poured medications without consulting the medical record and without
27 documenting the administration; wards had refused medication dosages up to 11 times

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1 before the matter was referred to a physician; no daily glucose monitoring for diabetics;
2 physician orders were not noted by nurses taking orders; sick call with a physician only
3 once a week (although the National Commission on Correctional Health Care “Standards
4 for Health Services in Juvenile Detention and Confinement Facilities” as well as the
5 Institute for Medical Quality standards for juvenile facilities require a minimum of five
6 days a week for facilities with over 100 wards). Medication policies were also deficient,
7 in failing to address current practice and failing to cover how to report refusals of
8 medication or treatment.

9 51. Wards’ medical records often are disorganized and incomplete and
10 incoming wards are not adequately screened. As part of the survey of the Northern
11 California Youth Correctional Center in April 2001, an outside expert reviewed the health
12 record system at the four institutions. The report found inadequate organization,
13 communication, and follow-up. The report also found that no system exists to track
14 consents for routine or psychotropic medications at some facilities, that basic written
15 policies are not available and not known to staff, and that files are lost when wards
16 transfer.

17 52. The CYA responds inadequately to wards’ emergency medical needs due to
18 the lack of expertise of custody and medical staff and the unnecessary and inappropriate
19 placement of custody concerns over emergency medical care.

20 53. Defendant Harper has long been aware of serious deficiencies in the CYA’s
21 medical care system. In Fall 2000, a Youth and Adult Correctional Agency investigation
22 found major problems with the CYA’s medical staffing, administration of medications to
23 wards (including the use of nurses for “activities that by law may only be performed by a
24 pharmacist or physician”) and involuntary medication practices that diverge from
25 community standards (Institutions Operational Quality Assurance Project, August 9-11,
26 2000, and September 6-8, 2000.) The investigation found that the CYA “lacks a
27 systematic approach to delivering medical and mental health services to wards” and
28

1 recommended significant overhauls.

2 54. In spite of this evaluation, defendant Harper has failed to develop
3 meaningful policy guidelines regarding the provision of medical care, including quality
4 control procedures such as physician peer review, quality assurance and death reviews.
5 The CYA admits that the only way to ensure that medical care policies are properly
6 implemented is to perform local compliance inspections. The CYA does not do so.
7 (Budget Concept Paper, FY 2003-04.) Even when deficiencies are identified, there is
8 inadequate follow-up to prevent future problems. Defendant Harper has also failed to
9 ensure that the policies now in place are properly implemented and that properly qualified
10 staff are hired in adequate numbers and are trained to follow them. As a result, he has
11 wasted and continues to waste taxpayer funds by operating a system rife with unsafe and
12 illegal conditions of confinement.

13 D. Mental Health Care

14 55. Wards are denied adequate mental health treatment in violation of the
15 California Constitution, Article I, sections 7 (right to due process) and 17 (no cruel or
16 unusual punishment); Penal Code section 673 (ban on “cruel, corporal or unusual
17 punishment” and the “inflict[ion of] any treatment or allow[ance of] any lack of care
18 whatever which would injure or impair the health of the [ward]”); Welfare and
19 Institutions Code section 1078 (mental health care training); California Code of
20 Regulations, title 15, sections 4730 *et seq.* (right to medical care), 4733 (informed
21 consent for administration of psychotropic medications), 4746 (administration of
22 psychotropic medications), 4746.5 (voluntary psychotropic medication), and 4747
23 (involuntary psychotropic medication).

24 56. The CYA admits that it fails to provide minimally adequate mental health
25 care to its wards:

26 [T]he present configuration of mental health programs does
27 not come close to meeting the diverse mental health needs of
28 our population.... This means that many wards will not
receive the mental health services required to reduce their

1 level of danger to the community. Additionally, we will not
2 be able to successfully defend ourselves from the litigation
3 that has been filed against us in this area. This means that the
4 courts will intercede and order us to provide costly and
5 necessary services.

6 (Budget Concept Paper, FY 2003-04.) The CYA further admits that it “lacks
7 organizational structural, level of care and resources to adequately meet the mental health
8 treatment needs of the youthful offenders.” (Budget Change Proposal Analysis, FY
9 2002-03.) Other admissions in the same document include the following:

10 • The Department does not have the professional personnel or expertise to
11 troubleshoot or resolve systemic problems related to mental health, consult
12 on difficult cases or centrally distribute clinical information to mental
13 health professionals. These factors impact continuity of patient care and
14 successful transition between programs, and from the institution setting to
15 parole.

16 • Many of the deficiencies that the Federal Government discovered in these
17 other states [successfully sued over the past seven years for unconstitutional
18 conditions] also exist in California. As with the states discussed above, the
19 [CYA] does not currently have an organized and integrated delivery system
20 of mental health services. Until these deficiencies are addressed, the
21 Department is at risk of future litigation with the Federal Government.

22 • Currently there is no effective central coordination of statewide
23 departmental mental health services. Planning has been reactive, piecemeal
24 and fragmented.... There is no oversight to assure consistent treatment and
25 appropriate patient care follow-up. This impacts continuity of patient care,
26 successful transition between programs and transition from the institutional
27 setting to parole.

28 57. A study by Stanford University psychiatrists found the CYA’s
“organizational culture not conducive to mental health treatment” and discovered “a lack
in continuity of care” for wards. (Steiner, Humphreys & Redlich, The Assessment of the
Mental Health System of the California Youth Authority, December 31, 2001.)

58. The CYA admits it is “understaffed by all national standards.” (Budget
Change Proposal Analysis, FY 2002-03.) The appropriate ratio of psychologists to
wards, by the CYA’s own estimates, is 1:60. (*Id.*) The CYA operates with a ratio of
1:288. (*Id.*) That means the CYA needs an additional 71.5 psychologist positions. In
addition, the CYA requires an additional 18.6 psychiatrist positions to bring it to the
national standard of 1:200. (*Id.*) As discussed above in the section on medical care, the

1 CYA also admits it does not have adequate staff to provide appropriate basic nursing care
2 for its wards, including delivery of medications, and admits that the only way to ensure
3 that medical care policies are properly implemented is to perform local compliance
4 inspections, which the CYA does not do. (Budget Concept Paper, FY 2003-04.) The
5 Stanford study found that all CYA institutions were understaffed and that “external
6 forces... cause staff to use their time ineffectively.” (Steiner, Humphreys & Redlich, The
7 Assessment of the Mental Health System of the California Youth Authority, December
8 31, 2001.)

9 59. For example, El Paso de Robles Youth Correctional Facility cannot meet
10 the mental health needs of its more than 750 wards. The entire medical department staff
11 informed the facility’s Superintendent on May 31, 2001, that it has “definite deficiencies”
12 in the mental health care delivery process, due largely to a “virtually intolerable”
13 workload. There is only one full-time psychologist and one part-time contract
14 psychiatrist (40 hours per month) to serve the needs of more than 750 wards, of whom 91
15 have histories of suicide attempts and more than 200 are on the waiting list of
16 psychological evaluations and/or psychotherapy. The CYA has admitted similar
17 deficiencies at the Wintu ITP at the Northern Youth Correctional Reception Center and
18 Clinic and at the N.A. Chaderjian Youth Correctional Facility. (Budget Concept Papers,
19 FY 2002-03.)

20 60. In addition, due to its inadequate staffing the CYA cannot meet its
21 obligation to provide evaluations for those wards the Youthful Offender Parole Board
22 (YOPB) seeks to retain in custody following their original discharge date. If the YOPB
23 determines that a ward would be dangerous to the public due to a “mental or physical
24 deficiency, disorder, or abnormality,” it may seek to retain the ward for an additional two
25 years by requesting the prosecutor to petition the court for such an order. Welf. & Inst. §
26 1800. Mental health evaluations prepared by CYA staff are essential to this process.
27 However, they are often improperly and inadequately prepared, often presenting
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1 inaccurate information and based on a lack of knowledge on the part of staff generating
2 the report. (Budget Concept Paper, FY 2000-01; Budget Change Proposal Analysis, FY
3 2002-03.) Reports are also often late, which the CYA admits can and does “result in the
4 premature release of an offender clinically assessed as mentally ill and recognized by
5 staff as dangerous to the public safety.” (Budget Change Proposal Analysis, FY 2002-
6 03.)

7 61. The CYA has an inadequate number of treatment beds. According to the
8 CYA’s own analysis, there are only 523 mental health beds available to serve a
9 population of at least 3,173 wards requiring treatment. (Budget Change Proposal
10 Analysis, FY 2002-03.) In the last fiscal year, the CYA’s budget was reduced by \$4.5
11 million, which had been appropriated for expansion of substance abuse, sex offender
12 specialized counseling, and mental health resources programs.

13 62. Medical records are disorganized and incomplete and mental health
14 assessment is inadequate. For example, female wards at Ventura Youth Correctional
15 Facility do not receive timely mental health assessments. (Office of the Inspector
16 General, Management Review Audit, Ventura Youth Correctional Facility, June 2002.)
17 CYA staff inappropriately rely on an unreliable screening tool to determine the required
18 level of care. In addition, CYA staff do not clearly identify and flag files for wards who
19 have suicide histories. Documentation regarding suicide risks is inadequately maintained
20 in the files and Suicide Risk Lists are improperly maintained. (Report to the Director on
21 Compliance with the Suicide Prevention Assessment and Response Policy, November 1,
22 2001.)

23 63. Administration of medication is so inadequate as to be dangerous to wards.
24 The nurse surveyor report regarding conditions at the Northern California Youth
25 Correctional Center found numerous deficiencies described above in the section on
26 medical care that apply as well to administration of psychiatric medications. In addition,
27 the report found that court-ordered psychiatric medications were not administered. The
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1 Stanford study found that “modern psychopharmacology” is not practiced in the CYA. It
2 is impossible for the CYA to monitor administration and effectiveness of psychotropic
3 medications with a dearth of mental health professionals.

4 64. Wards who are suicidal or self-mutilating do not receive adequate care or
5 treatment. At least one ward has successfully committed suicide as a result of inadequate
6 care. Wards who are placed on suicide watch are not properly monitored and they do not
7 receive sufficient clinical intervention. (Report to the Director on Compliance with the
8 Suicide Prevention Assessment and Response Policy, November 1, 2001.) Instead of
9 direct physical observation, wards are inappropriately placed in “camera rooms,” where
10 their activities are intermittently monitored by video. These “camera rooms” are often
11 filthy and unsafe; they have not been modified to eliminate fixtures that could be used by
12 a ward to commit suicide. CYA policies inappropriately permit wards to be retained in
13 “camera rooms” for three days regardless of their mental condition, thereby imposing
14 punishment on wards for seeking mental health services. Ward Darren Striplin has been
15 diagnosed with severe depression, schizophrenia, and borderline personality disorder and
16 is taking several medications for these conditions. Nevertheless, when Darren has been
17 on suicide watch at Chaderjian, his visits with the psychiatrists rarely last longer than
18 about five minutes and he is not provided with counseling or any other treatment.

19 65. Wards who attempt suicide are often punished by being restricted to their
20 rooms for a set number of days. Enforced isolation is dangerous and unnecessarily
21 punitive. The CYA chaplain’s group told Mr. Harper in October 2001 (quoted above in
22 the section on Segregation) that the practice of holding wards in isolation for excessive
23 amounts of time caused them concerns for wards’ mental health, particularly for those
24 wards who are already suicidal.

25 66. Suicidal wards also receive mental health care while locked in cages. As
26 quoted above in the section on Segregation, a pastoral delegation to Fred C. Nelles Youth
27 Correctional Facility informed Mr. Harper on November 27, 2001, that they found the

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1 cages, or SPAs, inhumane and were shocked at the sight of a suicidal ward receiving
2 counseling from a cage, with the psychologist halfway across the room.

3 67. Staff are not adequately trained on the use of cut-down tools (to rescue
4 wards who attempt to hang themselves), and the tools' location is not standardized.
5 (Report to the Director on Compliance with the Suicide Prevention Assessment and
6 Response Policy, November 1, 2001.) As an internal CYA report informed defendant
7 Harper a year ago, this means that new staff might not be able to find the tools, and the
8 delay could be fatal.

9 68. Many wards have been involuntarily medicated with psychotropic drugs for
10 behavior problems and without sufficient clinical justification. Involuntary medication
11 often is administered without a hearing and, if the ward is a minor, without the consent of
12 the parent or guardian. The nurse surveyor report regarding conditions at the four-facility
13 Northern California Youth Correctional Center found that psychotropic medications are
14 administered without signed consents. Ward Edward Jermaine Brown was subjected to
15 inappropriate forced medication that was administered without appropriate review by
16 clinical staff. He was coerced into taking psychotropic medication by threats of longer
17 periods of solitary confinement. Although Jermaine was a minor, he was given
18 psychotropic medication without the consent of a parent or guardian, even though CYA
19 clinical staff have acknowledged that such consent is required.

20 69. Defendant Harper has long known of the inadequacies of the CYA's mental
21 health care delivery system. A CYA Mental Health Strategic Plan Committee met in
22 March 2000 and acknowledged that "[t]he current array of treatment programs do not
23 meet the mental health needs of a significant portion of the YA population." In February
24 2001, the Chief of the Health Care Services Division wrote to Mr. Harper stating that
25 CYA does not have enough psychologists or psychiatrists. He reported that 70 additional
26 psychology positions must be filled to bring the CYA up to national standards; the
27 request for such funding had been denied for two years, and the request for 24 additional
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1 psychiatrists had been denied as well.

2 70. Despite his awareness of these systemic problems, defendant Harper has
3 failed to develop meaningful policy guidelines regarding the provision of mental health
4 care, including quality control procedures such as physician peer review, quality
5 assurance and death reviews. Even if deficiencies are identified, there is inadequate
6 follow-up to prevent future problems. Defendant Harper has also failed to ensure that the
7 policies now in place are properly implemented and that properly qualified staff are hired
8 in adequate numbers and are trained to follow them. As a result, he has wasted and
9 continues to waste taxpayer funds by operating a system rife with unsafe and illegal
10 conditions of confinement. The failure to treat mentally ill wards is dangerous to them
11 and to all Californians. According to staff at the Fred C. Nelles Youth Correctional
12 Facility, “many of our most dangerous and dysfunctional wards are simply released back
13 into the community when they reach their maximum confinement, having received little
14 to no psychological services.” The “most dangerous remain isolated... and become more
15 and more dysfunctional due to the lack of healthy interpersonal contact.” (Budget
16 Concept Paper, FY 2002-03.)

17 E. Programming/Rehabilitation

18 71. Under defendant Harper, the CYA does not provide wards with the general
19 treatment, programming, and rehabilitation to which they are entitled under California
20 law. See, e.g., Welf. & Inst. Code §§ 736 (CYA shall only accept a ward “if it has
21 adequate facilities to provide... care”), 1004 (CYA must “provide for [wards’] care,
22 supervision, education, training, [and] employment... and promotion of their welfare), and
23 1700 (CYA must substitute “offender training and treatment” for “retributive
24 punishment”).

25 (a) *Education*

26 72. Wards do not receive adequate access to education. This is a violation of
27 the California Constitution. *Serrano v. Priest* (1977) 18 Cal.3d 728, 765 (right to
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1 education). *See also* Ed. Code §§ 46141 (minimum daily instruction time), 56000 *et seq.*
2 (special education requirements); and Welf. & Inst. Code § 1120 *et seq.* (right to
3 education for CYA wards).

4 73. For years, the CYA administration has been aware of chronic, serious
5 problems with the education system and has not corrected those problems. Wards
6 typically receive only a fraction of the educational program to which they are entitled, the
7 work they receive does not track their high school graduation plan, and they often are not
8 given credit for work completed while in segregation. Wards are required to have a high
9 school graduation plan, but the CYA's educational services often fail to match what
10 wards need to graduate from high school.

11 74. California Education Code section 46141 requires 240 minutes of education
12 per student per day. The CYA does not provide students with this statutory requirement.
13 For example, in fiscal year 2000-01, wards at Ventura Youth Correctional Facility
14 received "only 54% of their assigned educational programming" and an average of 644
15 classes were cancelled each month. (Office of the Inspector General, Management
16 Review Audit, Ventura Youth Correctional Facility, June 2002.) Paso Robles wards who
17 participate in the substance abuse program are prohibited from going to school. Wards in
18 school at O.H. Close Youth Correctional Facility were held back from school to act as
19 janitors on their living units. The enrollment rate at DeWitt Nelson High School in 2000
20 was only 89 percent.

21 75. There are several reasons for this failure to meet state educational
22 requirements. First, the CYA does not have enough teachers. A CYA teachers' group
23 stated in 2002 that "the problem of under-staffing, insufficient training, and lack of
24 adequate classroom space still exists as it did in 1990," when the CYA was successfully
25 sued over its failure to provide the statutorily required special education to wards.
26 (Committee of Concerned Educators of Northern California Youth Authority and the
27 California State Employee Association - SEIU Local 1000, The Matthews Report, p. 7.)

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1 The report continued, “[c]lasses are closed due to chronic under-staffing,” among other
2 reasons, and “[m]inutes of direct instruction in appropriate classroom settings have
3 decreased, due to the department’s insistence on forcing their faculty out onto crowded,
4 dangerous living units each day to pass packets of materials through cracks in cell doors.”
5 Despite serious staffing shortages, the CYA took steps in March 2002 to lay off 91
6 temporary and part-time staff, 40 of whom provided special education services.

7 76. Second, substitute teachers are either nonexistent or present in such
8 inadequate numbers that classes are often simply cancelled when the regular teacher is
9 unavailable.

10 77. Third, students on temporary detention, lockup and Special Management
11 Units are denied the educational services required by law. For example, the federal
12 Department of Education found in 2002 that non-English-speaking wards in the CYA are
13 often not provided with educational services during lockdown. (Letter from Director
14 Stefan Rosenzweig to CYA Superintendent, Education Services Branch, of February 1,
15 2002.) Wards on “restricted program” or segregation do not get their legally mandated
16 special education services. (California Department of Education Compliance Report # I-
17 1079-00/01, September 14, 2001.)

18 78. Not only does the CYA fail to provide students with the quantity of general
19 educational services required by law, the CYA does not provide statutorily prescribed
20 special education services, such as tutors or special education classes. Wards with
21 disabilities are not tested, they are not provided with necessary behavior assessments and
22 support, and the CYA does not have adequate educational psychologists to provide
23 necessary services. Conversely, some wards receive schoolwork that is not challenging,
24 is redundant and is inappropriate for their skill level.

25 79. Approximately 34 percent of CYA’s high school population, or 1,700
26 wards, receive special education. (California Department of Education Compliance
27 Report # I-1079-00/01, September 14, 2001.) These students do not receive all of their
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1 required Individual Education Plan (IEP) services, however, in large part because special
2 education is even more severely understaffed than regular education programming. For
3 example, in June 2002, wards were provided with only 208 hours of Special Day Classes
4 at Dewitt Nelson High School, although their IEPs called for 350; at N.A. Chaderjian,
5 only 1,249 hours of Special Day Classes were provided, despite wards' need for 1,412; at
6 Johanna Boss High School, only 3,556 hours were provided, despite wards' need for
7 4,183; at Marie C. Romero High School, only 1,472 hours were provided, despite wards'
8 need for 2,439; at Mary B. Perry High School, only 968 hours were provided, despite
9 wards' need for 1,148; at Lyle Egan High School, only 1,937 hours were provided,
10 despite wards' need for 2,235. In sum, in just one month, wards at these CYA high
11 schools were not provided with thousands of hours of special education classes required
12 by their IEPs. As discussed above in the section on Segregation, wards on restricted
13 programming are regularly denied required special education services.

14 80. Wards are frequently required, as a condition for parole, to obtain a General
15 Education Degree (GED) and/or high school diploma. Wards who are prevented from
16 meeting these goals due to lack of educational opportunities have decreased chances of
17 being released on parole, and may have to "max out" their time at CYA, receiving a
18 dishonorable discharge.

19 81. The federal Department of Education Office for Civil Rights (OCR) found
20 extensive deficiencies in the CYA's educational system for non-English speaking wards
21 in 2002.² The OCR "considers these problems to be major and of serious concern."
22 (Letter from Director Stefan Rosenzweig to CYA Superintendent, Education Services
23 Branch, of February 1, 2002.) As a general matter, the CYA "is not providing the
24 instruction and services called for in its plan to teach students English and provide them
25

26
27 ²The CYA estimates that 13-14 percent of its non-graduate students are limited
28 English proficiency. (Letter from Director Stefan Rosenzweig to CYA Superintendent of
Education, December 30, 1999.)

1 an equal opportunity to access the core curriculum.” Other deficiencies include the
2 following: the CYA “does not have an adequate system for ensuring that the program for
3 [English learner] students is fully and appropriately implemented at all sites”; the CYA
4 “has no ability to collect, access, track and review system-wide data” on these students; at
5 many schools, staff do not place English learners in the appropriate classes; and most
6 CYA teachers who teach English learners “do not have the certification or training
7 necessary to meet the needs of those students,” in part because the CYA does not keep
8 accurate records of such certification and training. Many of these problems were also
9 found in the federal Department of Education’s Office for Civil Rights compliance
10 review of the CYA in 1999. (Letter from Director Stefan Rosenzweig to CYA
11 Superintendent of Education, December 30, 1999.) Defendant Harper has been aware of
12 these deficiencies for years and has not resolved them.

13 (b) *Substance abuse treatment*

14 82. Substance abuse treatment in the CYA is inadequate. Three quarters of all
15 wards committed to the CYA have histories of drug use and 60 percent (approximately
16 3,600 of the CYA’s population of 6,000) have been identified as serious substance
17 abusers. (Budget Concept Paper, FY 2003-04.) However, the CYA does not have
18 adequate numbers of substance abuse treatment beds. As of April 2002, there are
19 approximately 998 “formal” treatment beds, with 889 wards on the waiting list, and 670
20 “informal” treatment beds, with 465 wards on the waiting list. “Informal” treatment is
21 defined to include programs that offer as little as eight hours of treatment over a three-
22 week period. (*Id.*)

23 83. Moreover, the substance abuse programs themselves are deficient. Staff
24 running the programs have little specific training and supervision, and treatment is
25 provided only sporadically for wards on lockup or lockdown.

26 84. The failure to provide adequate or appropriate substance abuse treatment to
27 wards is costly to taxpayers: 40 percent of technical parole revocations of wards “had a
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1 primary violation offense related to drugs. The cost of returning one of these wards to the
2 institution for a year is approximately \$43,700.” (Budget Concept Paper, FY 2003-04.)

3 (c) *Sex offender treatment*

4 85. The CYA does not provide adequate treatment for convicted sex offenders.
5 The CYA admits it has an inadequate number of treatment beds for sex offenders and it
6 does not and cannot comply with Welfare and Institutions Code section 727.6, which
7 requires sex offender treatment for wards committed for sexually violent offenses.

8 (Budget Concept Paper, FY 2003-04.) As of April 2002, there are 783 wards in need of
9 sex offender treatment incarcerated in the CYA and only 169 specialized treatment beds.
10 There are an additional 137 “informal” sex offender treatment slots, but these programs
11 are inadequate and ineffective, provided by untrained staff.

12 86. This has been a chronic problem in the CYA: as of March 2001, there were
13 1,102 identified sex offenders in CYA institutions, but only 312 in treatment beds.
14 (Budget Concept Paper, FY 2002-03.) As of December 1999, there were 1,052 sex
15 offenders and only 259 placed in treatment beds. (*Id.*)

16 87. As a result, the majority of sex offenders committed to the CYA are housed
17 in general population with no treatment at all. The CYA admits that “many of these
18 wards are released to the community without appropriate treatment interventions and
19 aftercare resources and are at greater risk of re-offending.” (Budget Concept Paper, FY
20 2002-03).

21 88. In addition, sex offenders who cannot attend sex-offender programs ordered
22 by the Youthful Offender Parole Board due to lack of availability spend a longer time
23 incarcerated due to the CYA’s inadequacies, which harms them and wastes taxpayer
24 money.

25 (d) *Exercise*

26 89. Defendant Harper has failed to develop and implement policies and
27 procedures to ensure that wards under the CYA’s care receive adequate opportunities to
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1 exercise. As a result, the CYA does not provide adequate exercise programs to wards.
2 Wards are regularly forced to miss exercise programs if they attend school or church, or
3 even if they shower. Wards on lockup or lockdown status frequently have no access to
4 exercise at all: the one hour per day they are allowed to spend outside their rooms is
5 typically spent in dog-kennel-type cages.

6 (e) *Physical Facilities*

7 90. CYA's inadequate physical facilities create a punitive environment for
8 wards and render CYA's statutory duty of rehabilitation impossible. In many housing
9 units, there are broken windows, dirty vents, leaky roofs, cracked floor tiles, and
10 inadequate plumbing. Wards often must endure extreme temperatures. Often the water is
11 turned off in wards' cells for up to four hours at a time, leaving them unable to flush the
12 toilet or to wash themselves. Many of the cells are filthy, particularly rooms in lockup
13 units or suicide-watch rooms, where dried mucus, blood and/or feces on the walls is
14 commonplace. The CYA has failed to develop and implement the necessary policies and
15 procedures to ensure that its physical facilities are adequately maintained.

16 91. In at least one CYA facility, an independent state inspector found that
17 maintenance was deficient and that with problems such as leaky roofs, holes in ceilings,
18 broken windows, and leaky pipes that had flooded a sidewalk area, the facility had
19 "deteriorated to an unacceptable level."

20 92. Due to state budget cuts, the CYA is currently operating with a \$2 million
21 reduction in minor capital outlay funds, which are used to repair, upgrade, and enhance
22 its facilities. Additionally, the CYA is being directed to make significant additional
23 reductions in current year operating costs, and is planning to reduce special repair and
24 deferred maintenance funds to meet this goal.

25 93. There are serious infirmities in the physical facilities used for mental health
26 diagnosis and treatment, including ward intake at reception centers and suicide watch
27 facilities.

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1 (f) *Religion*

2 94. CYA wards are not provided with reasonable access to opportunities to
3 exercise religion in violation of the California Constitution, Article I, section 4 (freedom
4 of religion) and Welfare and Institutions Code section 1705 (freedom of religion for CYA
5 wards). Defendant Harper admitted to systemic problems with wards' ability to access
6 religious programs in a Memorandum to the Secretary of the Youth and Adult
7 Correctional Agency dated July 10, 2001.

8 95. Four months after Mr. Harper wrote to the Secretary of YACA to describe
9 systemic problems with the CYA's delivery of religious services, the problems remained.
10 A pastoral delegation to Fred C. Nelles Youth Correctional Facilities found that wards are
11 often excluded from religious services as punishment. The CYA chaplains' group
12 expressed concerns that "staff restricts the numbers of wards who can attend church
13 services in a manner that is arbitrary and lacks anything to do with discipline or security
14 issues." (Memorandum from DaaiyAllah H. Fardam, President of the Youth Authority
15 Chaplains, to Mr. Harper, October 19, 2001.)

16 96. Wards at Fred C. Nelles Youth Correctional Facility in "lower phases"
17 (who are entitled to fewer privileges) are often precluded from any access to religious
18 services or programs. Other lower-phase wards in the CYA must often choose between
19 dayroom programming or religious programming.

20 _____ F. Access to Courts & Redress of Grievances

21 97. The CYA fails to provide wards with an adequate grievance system.
22 Defendant Harper, as head of the CYA, is required to "establish and maintain a fair,
23 simple, and expeditious system for resolution of grievances of all persons committed to
24 the Youth Authority." Welf. & Inst. Code § 1766.5. In fact, the CYA's grievance system
25 is ineffectual and unfair.

26 98. Although both California law and CYA rules set forth a number of
27 requirements for the grievance system, in practice these requirements are frequently
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1 disregarded by CYA staff. *See* Welf. & Inst. Code § 1766.5; Cal. Code of Regs., tit. 15,
2 § 4085 *et seq.* The result is that the CYA grievance system does not afford wards a fair
3 opportunity to pursue administrative remedies against CYA. Because exhaustion of
4 administrative remedies is a requirement for wards who bring lawsuits against the CYA,
5 the lack of a legitimate grievance system effectively prohibits wards' access to the courts
6 in violation of the California Constitution, Article I, section 3 (freedom of association,
7 right to petition for redress of grievances).

8 99. Wards have been denied the opportunity even to complete a grievance form.
9 Even when wards are permitted to submit grievances, they are largely ignored. Worse
10 yet, wards are often retaliated against for filing grievances about CYA staff members,
11 even though under California law, “[t]he system should provide for safeguards against
12 reprisals against any grievant.” (Welf. & Inst. Code § 1766.5.)

13 100. Ward Michael Resendiz attempted to file a grievance for excessive use of
14 force by staff members at Southern Youth Correctional Reception Center and Clinic.
15 Staff refused to provide him with a grievance form. Three staff members came to
16 Michael shortly thereafter and promised to alter a behavior report written on him if he
17 refrained from filing a grievance against staff. Because Michael feared being sent back to
18 court or receiving a time add (an additional period of incarceration) due to his
19 participation in the fight, he went along with their scheme and declined to file a
20 grievance.

21 101. Ward Claudia Medina was given a “Level B” write up at Ventura Youth
22 Correctional Facility for attempting to provide an attorney with a blank grievance form.

23 102. Wards are also punished for filing “too many” grievances and are dissuaded
24 from doing so with the threat of a disciplinary write up.

25 103. The Office of the Inspector General has found serious deficiencies in the
26 CYA grievance system. For example, the Inspector General found that “the quality and
27 completeness of the investigations conducted by the [Stark Youth Correctional Facility]
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1 and by California Youth Authority's Internal Affairs Unit is suspect. There is evidence to
2 suggest that the management of the California Youth Authority may have failed to act
3 properly on some of the investigative results." At Preston Youth Correctional Facility, the
4 Inspector General found that "[t]he superintendent's performance is significantly out of
5 compliance with laws, regulations, or departmental policy, and immediate attention is
6 required to remedy the situation." An audit of Nelles Youth Correctional Facility
7 uncovered the fact that not all cases are fully investigated and that grievances are not
8 resolved in a timely manner: 50 percent of the grievances submitted in the four years
9 preceding the audit had not been resolved, and that some of the unresolved grievances
10 were "potentially serious." Additionally, the Inspector General found that grievances
11 against CYA staff are not investigated in a timely manner, a problem of particular
12 concern in light of the one-year deadline for taking administrative action against
13 employees. The Nelles audit reflected concern that grievance documents are frequently
14 lost, going so far as to state, "[t]he absence of a system to ensure accountability,
15 combined with evidence that grievances are in fact lost, raises the specter of possible staff
16 abuse, such as staff simply throwing away ward grievances."

17 104. In a similarly damning report, the San Luis Obispo Grand Jury found that
18 wards at the lockup unit at El Paso de Robles Youth Correctional Facility "had no
19 grievance log and no grievance clerk, and there was little evidence that any wards had
20 initiated written grievances while there." The Grand Jury found that "the grievance
21 procedure there has been emphatically disallowed by those in charge of the system."
22 Wards informed Grand Jury members that they did not file grievances because they
23 feared retaliation. The grievance clerks in other housing units lacked "adequate
24 knowledge of the grievance procedure to assure full access by the wards they are selected
25 to serve."

26 105. An investigation by the Youth and Adult Correctional Agency found that
27 "due to inattention over the years and failure to monitor efficacy, the grievance system is
28

1 inconsistently applied and ineffective.” (Institutions Operational Quality Assurance
2 Project, August 9-11, 2000, and September 6-8, 2000.)

3 106. In addition to his failure to provide wards with an adequate grievance
4 procedure, defendant Harper fails to provide the law library access and access to the
5 courts required by state law. Cal. Code of Regs., tit. 15, §§ 4131 (access to courts), 4132
6 (right to be informed of new court decisions), and 4701 (law library requirements).
7 Wards in the CYA are frequently denied access to the law library, or are permitted to use
8 it for an insufficient period of time. An outside arbitrator has concluded that “[i]t seems
9 quite clear that [Northern Youth Correctional Reception Center and Clinic’s] library is
10 not operating properly.”

11 G. Disability Discrimination

12 107. Wards in CYA face discrimination based on physical, sensory,
13 developmental, cognitive, mental, and learning disabilities, in violation of Government
14 Code sections 4450 and 11135 and Education Code sections 56000 *et seq.* Wards with
15 disabilities are denied access to CYA facilities, programs, services, and activities due to
16 their disabilities and face harassment and humiliation based on their disabilities. The
17 CYA has failed to develop adequate policies or procedures to ensure equal access to
18 programs, services, and activities and freedom from disability harassment.

19 108. The CYA admits that it violates the rights of wards with cognitive
20 disabilities:

21 [T]he Department does not operate special programs for individuals with
22 cognitive and intellectual impairments. Those that are cognitively or
23 intellectually impaired have difficulty adjusting to crowded dormitory
24 situations where noise levels are higher and sources of behavioral stimuli
25 are less controlled. More socially skilled and manipulative peers frequently
26 target them for exploitation. In the absence of adequate frustration
27 management and verbal skills, they have a tendency to engage in aggressive
28 behaviors, are often considered parole ineligible, and spend longer periods
in detention than their more intellectually and socially competent peers.
Establishment of behaviorally oriented treatment with a system of rewards
for accomplishments and successive approximations can be very effective
in working with intellectually impaired offenders. Such programs require
clinical supervision by trained mental health professionals. At this time,
Intensive Treatment Programs are not staffed or trained to effectively treat

1 and manage this population. A reduction in program beds with a
2 corresponding increase in staff/ward ratio will allow Intensive Treatment
3 Programs to “specialize” to meet the needs of unserved or underserved
4 mental health populations such as cognitively/intellectually impaired wards
5 and those requiring intensive psychiatric services.

6 (Budget Change Proposal Analysis, Fiscal Year 2002-03.) The CYA further admits that
7 “[d]evelopmentally disabled and cognitively impaired offenders are among those for
8 whom treatment services are inadequate.” (Budget Concept Paper, FY 2000-01.)

9 109. In addition, wards with learning and other cognitive disabilities are not able
10 to participate in counseling groups or programs where the reading material is too difficult
11 for them. The inability to participate in such programs can and often does prevent these
12 wards from obtaining a higher “phase” classification and from making progress towards
13 their parole requirements. The CYA fails to provide learning disabled wards with the
14 necessary access to special educational programming, thereby impeding their academic
15 progress and often their chances of parole in violation of Education Code sections 56026
16 and 56340.

17 110. The CYA does not have a sufficient number of special education teachers
18 and tutors to assist wards with learning disabilities. Wards who show signs of learning
19 disabilities often are not tested and are refused special assistance from their teachers. The
20 Youth and Adult Correctional Agency’s investigatory team found in 2000 that the CYA
21 does not meet the statutory requirements for Individual Education Plans: facilities were
22 not completing meaningful IEPs on time, and the resources to implement them were not
23 always available. (Institutions Operational Quality Assurance Project, August 9-11,
24 2000, and September 6-8, 2000.) The California Department of Education made similar
25 findings in 2001 with regard to wards held in segregation. (California Department of
26 Education Compliance Report # I-1079-00/01, September 14, 2001.)

27 111. Wards with physical and sensory disabilities, including deaf wards, are not
28 provided with readily accessible physical facilities and with reasonable modifications
29 necessary to allow them to participate in CYA programs, services, and activities. Deaf

1 and hard of hearing wards are not provided with equally effective communication and
2 equal access to ward privileges such as telephone use. The Youth and Adult Correctional
3 Agency’s investigatory team found that “[s]taff members who deal with disabled wards
4 are untrained in the requirements of the ADA and appropriate accommodations for those
5 wards. Hearing-impaired wards, for example, were not provided a translator for a
6 significant program activity. The Team also observed that disabled wards were housed in
7 other special treatment units, with accommodations either missing or provided
8 inconsistently.” (Institutions Operational Quality Assurance Project, August 9-11, 2000,
9 and September 6-8, 2000.)

10 112. Wards who are disabled due to mental illness also face discrimination
11 within the CYA system. Through measures such as forced and inappropriate medication,
12 unnecessary confinement to suicide watches and camera rooms, inadequate therapy, and
13 placement on lockup facilities (Special Management Units) due to their mental illness, the
14 CYA deprives these wards of access to CYA programs, services, and activities equivalent
15 to what is available for non-disabled wards.

16 _____H. Sex Discrimination

17 113. Female wards in the CYA are denied equal access to education: far fewer
18 college level courses are offered to female wards than to male wards. As a result it takes
19 much longer for female wards to obtain college degrees. The Youth and Adult
20 Correctional Agency found that there is “a critical lack of vocational education
21 opportunities for female wards,” and remarked that they are not equivalent to those
22 offered male wards. (Institutions Operational Quality Assurance Project, August 9-11,
23 2000, and September 6-8, 2000.) This unequal access violates the equal protection
24 guarantees of the California Constitution. *See* Cal. Const., art. I, sections 7 (equal
25 protection clause), 8 (a person may not be disqualified from entering or pursuing a
26 business, profession, vocation or employment because of sex) and 31(a) (no
27 discrimination or preferential treatment on the basis of sex); and Education Code section
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1 221.5 (nondiscrimination in vocational and educational opportunities).

2 **CAUSE OF ACTION**

3 114. Plaintiff realleges and incorporates by reference herein all of the allegations
4 contained in paragraphs 1 through 113, inclusive, as though they were fully set forth
5 herein.

6 115. Defendant has expended tax moneys and threatens to and will continue to
7 expend tax moneys as alleged herein in violation of state law, including but not limited to
8 the following:

- 9 • the CYA’s excessive use of force against wards and failure to protect wards from
10 known risk of violence from other wards violates the California Constitution, art. I,
11 §§ 1 (right to enjoy life, liberty, and safety), 7 (right to due process), and 17 (no
12 cruel or unusual punishment); Penal Code §§ 147 (willful inhumanity or
13 oppression toward prisoners), 149 (unnecessary assaults by peace officers), and
14 673 (ban on “cruel, corporal or unusual punishment” and the “inflict[ion of] any
15 treatment or allow[ance of] any lack of care whatever which would injure or
16 impair the health of the [ward]”); and Cal. Code of Regs., tit. 15, §§ 4039 and
17 4040 (restrictions on use of force and chemical and mechanical restraints).
- 18 • the CYA’s policies and practices on segregation, including lockup and lockdown
19 of wards, violate the California Constitution, art. I, §§ 1 (right to enjoy life,
20 liberty, and safety), 4 (freedom of religion), 7 (right to due process and to equal
21 protection of the law), 10 (right to education), and 17 (no cruel or unusual
22 punishment); Penal Code § 673 (ban on “cruel, corporal or unusual punishment”
23 and the “inflict[ion of] any treatment or allow[ance of] any lack of care whatever
24 which would injure or impair the health of the [ward]”); Welf. & Inst. Code §§
25 1120 *et seq.* (right to education for CYA wards) and 1705 (freedom of religion for
26 CYA wards); and Cal. Code of Regs., tit. 15, § 4125 (nutritionally adequate and
27 acceptable diet required), 4630 and 4635(a) and 4637 (procedural due process
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1 requirements for discipline and segregation), 4696 (visiting shall take place at least
2 once a week and shall not be restricted as a disciplinary measure), and 4699
3 (wards shall be allowed to make “periodic telephone calls”).

4 • the CYA’s inadequate medical care violates the California Constitution, art. I, §§
5 7 (right to due process) and 17 (no cruel or unusual punishment); Penal Code §
6 673 (ban on “cruel, corporal or unusual punishment” and the “inflict[ion of] any
7 treatment or allow[ance of] any lack of care whatever which would injure or
8 impair the health of the [ward]”); Welf. & Inst. Code § 1755.3 (medical consent);
9 and Cal. Code of Regs., tit. 15, §§ 4611 (right to medical care on intake) and 4730
10 *et seq.* (right to medical care).

11 • the CYA’s inadequate mental health care violates the California Constitution, art.
12 I, §§ 7 (right to due process) and 17 (no cruel or unusual punishment); Penal Code
13 § 673 (ban on “cruel, corporal or unusual punishment” and the “inflict[ion of] any
14 treatment or allow[ance of] any lack of care whatever which would injure or
15 impair the health of the [ward]”); Welf. & Inst. Code §§ 1078 (mental health care
16 training); Cal. Code of Regs., tit. 15, §§ 4730 *et seq.* (right to medical care), 4733
17 (informed consent for administration of psychotropic medications), 4746
18 (administration of psychotropic medications), 4746.5 (voluntary psychotropic
19 medication), and 4747 (involuntary psychotropic medication).

20 • the CYA’s failure to provide adequate treatment, programming, and
21 rehabilitation in areas such as education, sex offender treatment, substance abuse
22 treatment, exercise, adequate physical facilities, and religion, violates the
23 California Constitution, art. I, §§ 1 (right to enjoy life, liberty, and safety), 4
24 (freedom of religion), 7 (due process clause), and generally (*Serrano v. Priest*
25 (1977) 18 Cal.3d 728, 765 (right to education)); Ed. Code §§ 46141 (minimum
26 daily instruction time) and 56000 *et seq.*(special education requirements); Welf. &
27 Inst. Code §§ 727.6 (mandatory sex offender treatment), 736 (CYA shall only
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1 accept a ward “if it has adequate facilities to provide... care”), 1004 (CYA must
2 “provide for [wards’] care, supervision, education, training, [and] employment...
3 and promotion of their welfare), 1120 *et seq.* (right to education for CYA wards),
4 1700 (CYA must substitute “offender training and treatment” for “retributive
5 punishment”), and 1705 (freedom of religion for CYA wards).

6 • the CYA’s inadequate grievance system and law library access violates the
7 California Constitution, art. I, §§ 3 (freedom of association, right to petition for
8 redress of grievances) and 7 (due process clause); Welf. & Inst. Code §§ 1766.5;
9 Cal. Code of Regs., tit. 15, §§ 4085 *et seq.* (grievance procedure), 4131 (access to
10 courts), 4132 (right to be informed of new court decisions), and 4701 (law library
11 requirements).

12 • the CYA discriminates against wards with disabilities in violation of Ed. Code §§
13 56000 *et seq.* and Gov. Code §§ 4450 and 11135.

14 • the CYA discriminates against female wards in violation of the California
15 Constitution, art. I, §§ 7 (equal protection and due process clauses), 8 (a person
16 may not be disqualified from entering or pursuing a business, profession, vocation
17 or employment because of sex, and 31(a) (no discrimination or preferential
18 treatment on the basis of sex) and Education Code § 221.5 (nondiscrimination in
19 vocational and educational opportunities).

20 116. Defendant’s illegal expenditure of tax moneys constitutes a waste of public
21 funds.

22 117. Plaintiff is without a plain, speedy and adequate remedy in the ordinary
23 course of the law to compel defendant to enforce and comply with the legal requirements
24 described herein.

25 118. Plaintiff has suffered and will continue to suffer irreparable injury unless
26 and until this Court enjoins the defendant from continuing his illegal conduct.

27 119. An actual controversy has arisen between plaintiff and defendant in that
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1 plaintiff contends defendant operates, establishes, manages, conducts or maintains Youth
2 Authority facilities in violation of state law.

3 120. A judicial declaration is necessary so that the parties may ascertain their
4 rights in this controversy.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the plaintiff requests that this Court grant the following relief:

7 (b) Adjudge and declare that the acts, omissions, policies, and
8 conditions described above are unconstitutional and unlawful;

9 (c) Preliminarily and permanently enjoin defendant, his agents,
10 employees and all persons acting in concert with them, from subjecting CYA wards to the
11 unconstitutional and unlawful acts, omissions, policies, and conditions described in the
12 paragraphs above;

13 (d) Award plaintiff the costs of this suit, and reasonable attorneys' fees
14 and litigation expenses;

15 (e) Retain jurisdiction of this case until defendant has fully complied
16 with the orders of this Court, and there is a reasonable assurance that defendant will
17 continue to comply in the future absent continuing jurisdiction; and

18 (f) Award such other and further relief as the Court deems just and
19 proper.

20 Dated: January 16, 2003

21 PRISON LAW OFFICE

LATHAM & WATKINS

22 By _____
23 DONALD SPECTER

By _____
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