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9 Attorneys for Plaintiffs
John Farrow, Jerome Wade,
10 And all others similarly situated

FILED
DEC 21 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND
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ISS

ADR **E-MAILING**

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14
15
16 John Farrow, Jerome Wade, on their behalf, and on
behalf of all others similarly situated,

17 Plaintiffs,

18 vs.

19 Contra Costa County Public Defender Robin
20 Lipetzky, in her official capacity, and DOES 1
through 20, et al.,

21 Defendants.
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Case No. TBD

C12-6495

CLASS ACTION COMPLAINT

JCS

DEMAND FOR JURY TRIAL

1 Plaintiffs hereby allege as follows:

2 **INTRODUCTION**

- 3
- 4 1. Indigent, in-custody defendants in Contra Costa County are customarily left in jail without
- 5 counsel, after their first court appearance, for 5 to 13 days.¹
- 6 2. Although the first court appearance is dubbed “arraignment,” no plea is taken, bail is not
- 7 examined, and counsel is not appointed, as required by California law.
- 8
- 9 3. The Public Defender withholds counsel to detainees as a matter of written policy.²
- 10 4. Pursuant to this written policy, an in-custody, indigent criminal defendant’s request for
- 11 court-appointed counsel triggers a “referral to the Public Defender” and an automatic
- 12 continuance for “further arraignment.”
- 13
- 14 5. The automatic continuance is imposed regardless of whether a juvenile is charged as an
- 15 adult, whether it is a misdemeanor or felony complaint, whether the defendant suffers
- 16 from a developmental disability or other infirmity, whether evidence of misidentification
- 17 requires immediate investigation, or other exigent circumstances.
- 18
- 19 6. Although the automatic continuance is customarily between 5 and 13 days – depending
- 20 upon where the case was filed within the county – defendants are never informed of their
- 21 statutory speedy trial rights prior to the imposition of this automatic continuance.
- 22
- 23 7. California’s statutory speedy trial scheme adamantly states that both the criminal
- 24 defendant and the People are entitled to preliminary hearing and trial at the earliest

25

26 ¹ Defendant reserves the right to extend this period, with regard to all particulars of this complaint, if discovery demonstrates that the period is sometimes even longer.

27 ² A copy of policy as shown on the Contra Costa Public Defender’s website is attached hereto and made a part hereof as if set forth verbatim as Exhibit A.

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1 possible time. California's statutory speedy trial time limits, however, are only engaged
2 once a defendant has entered his plea. Therefore, given that the Court does not ask for a
3 plea until counsel arrives, plaintiffs' statutory speedy trial rights are suspended till the
4 Public Defender deigns to come to Court.
5

6 8. Under California law there is no remedy, in the criminal context, for flouting California's
7 statutory speedy trial scheme in this manner. California Civil Code section 52.1,
8 however, provides plaintiffs with a remedy for the Public Defender's forcible interference
9 with their statutory rights.
10

11 9. The Public Defender's policy also denies indigent defendants their federal and state rights
12 to the assistance of counsel at their first appearance in court, or a reasonable time
13 thereafter.
14

15 10. This policy further effectively denies these defendants their right to apply for bail in the 5
16 to 13 day period of the Public Defender's absence.
17

18 11. Additionally, this policy forces in-custody, misdemeanor defendants to give up their
19 statutory right to an immediate probable cause hearing.
20

21 12. Plaintiffs in this action are all clients of the Contra Costa County Public Defender, the
22 Contra Costa County Alternative Public Defender's Office, and private conflicts-counsel,
23 who are, have, or will languish in jail due to the Public Defender's policy of deliberate
24 indifference.
25

26 13. Plaintiffs seek nominal damages, statutory damages, and punitive damages for the
27 criminal defendants affected by the Public Defender's policy of deliberate indifference to
28 the constitutional and statutory rights of the vary people she is obligated to defend.

1 14. Plaintiffs also seek injunctive relief, requiring the Public Defender to appear at
2 arraignment, in compliance with California Government Code section 27706, which states
3 that the Public Defender “shall” represent defendants at “all stages of the proceedings.”
4

5 15. Plaintiffs further seek declaratory relief, declaring the Public Defender’s policy of non-
6 representation illegal.

7 16. Plaintiffs reserve the right to file individual claims for compensatory damages, where
8 injuries other than the deprivation of constitutional rights, can be shown.
9

10 JURISDICTION AND VENUE

11 17. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1343(3) for claims
12 brought under 42 U.S.C. § 1983, and pursuant to 28 U.S.C. §1331 generally.
13

14 18. Venue is proper pursuant to 28 U.S.C. Section 1391(b).

15 19. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. Sections 2201
16 and 2202 and the equitable and inherent powers of this Court.

17 20. Under 28 U.S.C. § 1367(a) the Court has supplemental jurisdiction over the state claims
18 alleged herein.
19

20 21. The amount in controversy is over \$25,000.00 (Twenty-five thousand dollars).

21 22. Plaintiffs seek a temporary restraining order compelling the Public Defender, or a
22 designee, to appear in court and represent all current and future clients from the time of
23 their first appearance in court or a reasonable time thereafter. Plaintiffs further seek
24 preliminary and permanent injunctive relief compelling the Public Defender, or a
25 designee, to appear in court and represent all current and future clients from the time of
26 their first appearance in court or a reasonable time thereafter. Plaintiffs further seek
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28

1 declaratory relief declaring the Public Defender in violation of her constitutional duties,
2 and her legislative mandate pursuant to California Government Code section 27706.

3
4 23. This case arises under the Sixth, Eighth and Fourteenth Amendments to the United States
5 Constitution, 42 U.S.C. section 1983, Article I, sections 12 and 13 of the California
6 Constitution, California Code of Civil Procedure sections 1085 and 1086, California
7 Government Code section 27706, California Civil Code section 52.1(b), and all California
8 Penal Code sections pertaining to arraignment, appointment of counsel, and speedy trial
9 rights.
10

11 **PARTIES**

12 24. Defendant Robin Lipetzky is the duly appointed public defender of Contra Costa County.
13 She is vested by law with the responsibility of representing all indigent defendants at all
14 stages of criminal proceedings pursuant to California Government Code section 27706.
15 Defendant Lipetzky at all times acted in the course and scope of her employment and
16 under color of law. She is sued in her official capacity.
17

18 25. Plaintiffs John Farrow, Jerome Wade, and all those similarly situated, are, and at all
19 material times herein, were citizen of the United States and residents of the state of
20 California who were indigent criminal defendants, arraigned, in custody, and without
21 counsel, in Contra Costa County within the two (2) years before the filing of this
22 Complaint. All asked for court-appointed counsel at arraignment; none waived their
23 speedy trial rights; all remained in custody without counsel for 5 to 13 days after their first
24 Court appearance; and, none can show actual prejudice of any sort other than the
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1 deprivation of their rights under the United States Constitution, the California
2 Constitution, and the laws of the state of California.

3
4 **STATEMENT OF FACTS**

5 26. This action satisfies all of the requirements of Rule 23(a), (b)(1) and (2) of the Federal
6 Rules of Civil Procedure.

7 27. Within six (6) months John Farrow, plaintiff, filed a group Government Tort Claim for
8 himself and for all persons similarly situated. Plaintiff's group claim was denied on or
9 about July 24, 2012, allowing the filing of this class action complaint on state statute and
10 constitutional violations.

11 28. Within six (6) months Jerome Wade, plaintiff, filed a group Government Tort Claim for
12 himself and for all persons similarly situated. Plaintiff's group claim was denied on or
13 about October 17, 2012.³

14 29. Mr. Farrow was arrested on August 30, 2012.

15 30. Mr. Farrow appeared alone in Court for his arraignment on September 2, 2012.

16 31. The Court asked him if he could afford counsel, and he replied that he could not. The
17 Court then asked if he wanted the court to appoint counsel, and Mr. Farrow said that he
18 did. The court then "referred the matter to the Public Defender," and continued the matter
19 to September 15 for "further arraignment," without advising Mr. Farrow of his right to
20 bail, or his right to a speedy preliminary hearing and trial. Mr. Farrow languished in jail,
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27 ³ Plaintiff Wade's claim was denied on timeliness grounds. He has, however, submitted a request for
28 relief with the agency, which the agency must grant pursuant to California Government Code section
911.2 because Mr. Wade was a minor for the entire six month period following the violations complained
of herein.

1 without examination of bail or the protection of statutory speedy trial rights or legal
2 representation, for the next 13 days.

3
4 32. At the "further arraignment," on September 15, 16 days after his arrest, and 13 days after
5 his first appearance in Court, counsel was appointed pursuant to the Public Defender's
6 policy, and Mr. Farrow was permitted to enter a plea.

7 33. Mr. Wade, who was 17 years old, was arrested at his high school on November 8, 2012.

8 34. Mr. Wade appeared in Court alone for his arraignment on November 14, 2011.

9
10 35. The Court asked him if he could afford counsel, and he replied that he could not. The
11 Court then asked if he wanted the court to appoint counsel, and Mr. Wade said that he did.
12 The court then "referred the matter to the Public Defender," and continued the matter to
13 November 21 for "further arraignment," without advising Mr. Wade of his right to bail, or
14 his right to a speedy preliminary hearing and trial. Mr. Wade languished in jail, without
15 examination of bail or the protection of statutory speedy trial rights or legal
16 representation, for the next 7 days.

17
18 36. At the "further arraignment," on November 21, 2011, 13 days after his arrest, and 7 days
19 after his first appearance in Court, as a juvenile charged as an adult, counsel was
20 appointed, and Mr. Wade was permitted to enter a plea.

21
22 **CLASS CLAIMS**

23
24 37. The deprivation of counsel that plaintiffs were subjected to, along with all those similarly
25 situated, and the inevitable denial of statutory speedy trial rights and bail rights ensuing
26 from the Public Defender's deliberate indifference, were performed pursuant to policies,
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1 practices, and customs of defendant Contra Costa County Public Defender, Robin
2 Lipetzky, acting under color of law.

3
4 38. Plaintiffs bring this action on their own behalf, and on behalf of all persons similarly
5 situated, pursuant to Rule 23, Federal Rules of Civil Procedure.

6 39. The class is defined to include all persons who, in the period from and including two (2)
7 years prior to the filing of this Complaint, and continuing until this matter is adjudicated
8 and the practices complained herein cease, were subjected to the deprivation of counsel at
9 their first court appearance and were forced to continue their cases for 5 days or more for
10 appointment of counsel, pursuant to the Public Defender's written policy.

11
12 40. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members of the class
13 are so numerous that joinder of all members is impractical. Plaintiffs do not know the
14 exact number of class members but plaintiffs are informed and believe, and thereupon
15 allege, that the number of individually named plaintiffs together with CLASS MEMBERS
16 exceeds 1000.

17
18 41. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are informed
19 and believe, and thereupon allege, that there are many questions of fact common to the
20 class including, but not limited to whether:
21

- 22 (1) All plaintiffs were indigent, in-custody criminal defendants in Contra Costa
23 County;
24
25 (2) All plaintiffs asked for appointment of the Public Defender;
26
27 (3) All plaintiffs suffered an automatic continuance of between 5 and 13 days as
28 a direct consequence of asserting their right to appointed counsel;

- 1 (4) All were forced to continue their cases without any knowledge of their bail
2 rights or statutory speedy trial rights.
- 3 (5) All plaintiffs were deprived of counsel for a period of between 5 and 13
4 days;
- 5 (6) All plaintiffs were deprived of their statutory speedy trial rights and their
6 right to a prompt bail hearing for the 5 to 13 day period without counsel;
- 7 (7) All plaintiffs were deprived of said rights due to the written policy of the
8 Public Defender.
- 9 (8) The Public Defender maintains records concerning the relevant facts with
10 regard to each plaintiff.
- 11 (9) The Public Defender knew that the actions alleged herein violated state and
12 federal law when she committed said actions.

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16 42. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are informed
17 and believe, and thereupon allege, that there are many questions of law common to the
18 class including whether:

- 19 (1) A forced 5 to 13 day delay between an indigent in-custody defendant's
20 first appearance in court and representation by the Public Defender, or her
21 proxy, is unreasonable under the 6th Amendment to the United States
22 Constitution;
- 23 (2) A forced 5 to 13 day delay between an indigent in custody defendant's
24 first appearance in court and representation by the Public Defender, or her
25 proxy, violates a defendant's federal and state rights to a prompt bail
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1 hearing;

2 (3) A forced 5 to 13 day delay between an indigent in custody defendant's
3 first appearance in court and representation by the Public Defender, or her
4 proxy, violates a defendant's statutory speedy trial rights;

5
6 (4) A forced 5 to 13 day delay between an indigent in custody defendant's
7 first appearance in court and representation by the Public Defender, or her
8 proxy, violates California's Bane Civil Rights Act (Civil Code §§ 52 and
9 52.1.).
10

11 (5) Whether California Government Code section 27706, which states that the
12 Public Defender shall represent indigent defendants at all stages of the
13 proceedings, contemplates representation at the first half of Contra Costa
14 County's bifurcated arraignment proceedings.
15

16
17 43. Plaintiffs are informed and believe, and thereupon allege, that most members of the class
18 will not be able to find counsel to represent them. Plaintiffs are informed and believe, and
19 thereupon allege, that it is desirable to concentrate all litigation in one forum because all
20 of the claims arise in the same location; i.e., Contra Costa County. It will promote
21 efficiency to resolve the common questions of law and fact in one forum, rather than in
22 multiple courts.
23

24 44. Plaintiffs do not know the identities of all the class members. Plaintiffs are informed and
25 believe, and thereupon allege, that the identities of the class members may be ascertained
26 from records maintained by the Contra Costa County Public Defender. Plaintiffs are
27 informed and believe, and thereupon allege, that defendant's records reflect the identities,
28

1 including addresses and telephone numbers, of the defendants whose rights have been
2 transgressed as the result of the Public Defender's policy of deliberate indifference.
3 Plaintiffs are informed and believe, and thereupon allege, that the Contra Costa County
4 Public Defender maintains records of when each defendant initially appeared in Court and
5 the duration of his incarceration without counsel. Plaintiffs are informed and believe, and
6 thereupon allege, that all of the foregoing information is contained in defendant's
7 computer system and that the information necessary to identify the class members, by last
8 known addresses, and the dates of their respective initial appearance and appointment of
9 counsel is readily available from said computer system.

10
11
12 45. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), class members must
13 be furnished with the best notice practicable under the circumstances, including individual
14 notice to all members who can be identified through reasonable effort. Plaintiffs are
15 informed and believe, and thereupon allege, that defendant's computer records contain a
16 last known address for class members. Plaintiffs contemplate that individual notice will
17 be given to class members at such last known address by first class mail. Plaintiffs
18 contemplate that notice will inform class members of the following:
19
20

- 21 i. The pendency of the class action and the issues common to the class;
- 22 ii. The nature of the class action;
- 23 iii. The right to "opt out" of the action within a given time, in which event they
24 will not be bound by a decision rendered in the class action;
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COUNT TWO

(Violation of the 14th Amendment to the U.S. Constitution – substantive due process with respect to statutory speedy trial rights)

49. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the allegations contained in paragraphs 1 through 48, inclusive.

50. Defendant’s policies, practices, and customs regarding the failure to represent plaintiffs, and all those similarly situated, at their first appearance, or a reasonable time thereafter, violated the rights of plaintiffs, under color of law, pursuant to the 14th Amendment due process clause in that the defendant’s deliberate indifference resulted in the denial of statutory speedy trial rights, without a hearing to determine the cause and reasonableness of the denial, and directly and proximately damaged plaintiffs, and all those similarly situated, as herein alleged, entitling plaintiffs, and all class members, to recover damages for said constitutional violations pursuant to 42 U.S.C. § 1983.

51. WHEREFORE, plaintiffs pray for relief, for themselves and for all persons similarly situated, as hereunder appears.

COUNT THREE

(Violation of the 14th Amendment to the U.S. Constitution on behalf of Plaintiffs and all persons similarly situated – procedural due process with respect to statutory speedy trial rights)

52. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the allegations contained in paragraphs 1 through 51, inclusive.

53. Defendant’s policies, practices, and customs regarding the failure to represent plaintiffs, and all those similarly situated, at their first appearance, or a reasonable time thereafter, violated the rights of plaintiffs, under color of law, pursuant to the 14th Amendment due

1 process clause in that the defendant's deliberate indifference resulted in the denial of
2 statutory speedy trial rights, without a hearing to determine the cause and reasonableness
3 of the denial, and directly and proximately damaged plaintiffs, and all those similarly
4 situated, as herein alleged, entitling plaintiffs, and all class members, to recover damages
5 for said constitutional violations pursuant to 42 U.S.C. § 1983.
6

7 54. WHEREFORE, plaintiffs pray for relief, for themselves and for all persons similarly
8 situated, as hereunder appears.
9

10 **COUNT FOUR**

11 **(Violation of the 14th Amendment to the U.S. Constitution**
12 **on behalf of Plaintiffs and all persons similarly situated – procedural due process**
13 **with respect to application for bail or release on own recognizance)**

14 55. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the
15 allegations contained in paragraphs 1 through 54, inclusive.
16

17 56. Defendant's policies, practices, and customs regarding the failure to represent plaintiffs at
18 their first appearance, or a reasonable time thereafter, violated the procedural due process
19 rights of plaintiffs, and all those similarly situated, under color of law, pursuant to the 14th
20 Amendment due process clause in that the deliberate indifference of defendant directly
21 denied plaintiffs' right to a prompt bail hearing, and directly and proximately damaged
22 plaintiffs, and all those similarly situated, as herein alleged, entitling plaintiffs, and all
23 class members, to recover damages for said constitutional violations pursuant to 42 U.S.C.
24 § 1983.
25

26
27 57. WHEREFORE, plaintiffs pray for relief, for themselves and for all persons
28 similarly situated, as hereunder appears.

COUNT FIVE

**(California State Civil Rights Act, Civil Code §§ 52 and 52.1,
on behalf of plaintiffs and all persons similarly situated –
denial of statutory speedy trial rights)**

58. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the allegations contained in paragraphs 1 through 57, inclusive.

59. Defendant’s policies, practices, and customs regarding failure to represent plaintiffs at their first court appearance, or within a reasonable time thereafter, complained herein violated the rights of plaintiffs, and all those similarly situated, by forcing plaintiffs to sacrifice their statutory speedy trial rights as a precondition to appointment of counsel, and directly and proximately damaged plaintiffs, and each of those similarly situated, as herein alleged, entitling said plaintiffs, and each of those they represent, to recover a minimum of \$4000.00 each pursuant to California Civil Code § 52.1 and § 52, in addition to other damages.

60. WHEREFORE, plaintiffs pray for relief, for themselves and for all persons similarly situated, as hereunder appears.

COUNT SIX

(California Code of Civil Procedure §§ 1085 and 1086 – writ of mandate to enforce California Government Code § 27706)

61. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the allegations contained in paragraphs 1 through 60, inclusive.

62. Defendant’s policies, practices and customs violate California Government Code § 27706, which states that the public defender shall represent criminal defendants at all stages of the proceedings. Plaintiffs are directly damaged as the result of said policies, practices

1 and customs, and request a writ of mandate, compelling the Public Defender to comply
2 with her statutory obligation to represent all indigent, in custody defendants by appearing
3 at the first appearance of all indigent, in-custody criminal defendants, or at a reasonable
4 time thereafter.
5

6 63. WHEREFORE, plaintiffs pray for relief, for themselves and for all persons similarly
7 situated, as hereunder appears.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, plaintiffs, on behalf of themselves and all those similarly situated, seek
11 judgment as follows:
12

- 13 1. For declaratory and injunctive relief declaring illegal and enjoining, preliminarily and
14 permanently, defendant's policies, practices, and customs of unlawfully withholding
15 representation from indigent, in-custody defendants from 5 to 13 days after their initial
16 appearance.
17
- 18 2. Certification as a class action of plaintiffs' complaints concerning defendants' policies,
19 practice, and customs of withholding representation from indigent, in-custody defendants
20 from 5 to 13 days after their initial appearance.
21
- 22 3. For compensatory, general, and special damages for each representative and for each
23 member of the class of plaintiffs, as against all defendants;
- 24 4. Exemplary damages as against each of the individual defendants in an amount sufficient
25 to deter and to make an example of those defendants;
26
- 27 5. In addition to compensatory damages as allowed by law, at least \$4000 for each plaintiff
28 pursuant to California Civil Code § 52.1 and § 52, for each violation thereof;

1 6. Attorneys' fees and costs under 42 U.S.C. § 1988, California Civil Code § 52(b)(3),
2 California Civil Code § 52.1(h), and California Code of Civil Procedure § 1021.5.

3
4 7. The cost of this suit and such other relief as the court finds just and proper.
5

6
7 A JURY TRIAL IS DEMANDED.
8
9

10
11
12 Dated: 12-21-2012

Christopher Martin
Attorney at Law

14 Michael Dietrick
15 Attorney at Law

16
17 By: 
18 Christopher Martin

19
20 Attorneys for Plaintiffs
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23
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EXHIBIT A

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Initial Contacts

At the first court appearance (arraignment) when given a copy of the charges—or when questioned in police custody before arrest or charges are brought—a person may request representation by an attorney. At the arraignment or first appearance, persons out of custody will be referred to our office and given a date to return to court with an attorney. Persons in custody will be given a court date and will be visited at the jail by staff from the Department before the next court date. During the initial client interview, a paralegal, law clerk or attorney will:

- determine financial eligibility
- discuss confidentially the client's background
- explain the overall procedure
- discuss the specifics of the client's case

The interviewing attorney and the attorney at the next court date will rarely be the attorney who is assigned to the case for logistical reasons, as well as because of the need to bring to bear specialized knowledge of various areas of law.