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

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

15 John Farrow, Jerome Wade, on their behalf, and on
16 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. 3:12-cv-06495-JCS

SECOND AMENDED COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiffs hereby allege as follows:

2 **INTRODUCTION**

- 3
- 4 1. In Contra Costa County, prior to the filing of this lawsuit, which caused the county to
- 5 amend its practice, the county public defender, Defendant herein, arbitrarily withheld
- 6 legal representation to indigent, in-custody, criminal defendants in felony matters for a
- 7 period of 5 to 13 days after their initial Court appearance, and sometimes longer, as a
- 8 matter of policy.
- 9
- 10 2. Defendant still withholds legal representation to indigent, in-custody, criminal defendants
- 11 in misdemeanor matters for a period of between 5 and 13 days, and sometimes longer, as a
- 12 matter of policy.
- 13
- 14 3. Although Plaintiffs' first court appearance under this policy is dubbed "arraignment," no
- 15 plea is taken; bail is set without consideration of the favorable information counsel would
- 16 ordinarily provide to the Court regarding defendant's circumstances; the case is referred to
- 17 the probation department for an evaluation and report concerning bail, which is based
- 18 entirely upon information provided by government sources; and counsel is not appointed,
- 19 as specifically and emphatically required by California law.¹
- 20
- 21 4. Pursuant to Defendant's policy, an in-custody, indigent criminal defendant's request for
- 22 court-appointed counsel triggers a "referral to the Public Defender" and an automatic
- 23 continuance for "further arraignment."
- 24
- 25 5. The automatic continuance is forced upon Plaintiffs regardless of whether a juvenile is
- 26 charged as an adult, whether it is a misdemeanor or felony complaint, whether the
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28 ¹ Present tense is used in reference to both past felony policy and current misdemeanor policy.

² Felony criminal defendants may also choose their speedy trial rights over their right to counsel, through

1 criminal defendant suffers from a developmental disability or other infirmity, whether
2 evidence of misidentification requires immediate investigation before memories dim,
3 witnesses disappear, and video images are destroyed, or whether other exigent
4 circumstances exist.

- 5
- 6 6. Although the automatic continuance is customarily between 5 and 13 days – depending
7 upon the vagaries of where the case was filed within the county – Plaintiffs are never
8 informed of their statutory speedy trial rights prior to the imposition of this automatic
9 continuance – in direct violation of California law; and good cause for the continuance is
10 never provided as explicitly required by California Penal Code section 1050.
- 11
- 12 7. This policy thwarts the intent of the California legislature, expressed through California’s
13 statutory speedy trial scheme, which emphatically states the imperative that in custody
14 criminal defendants receive probable cause determinations, through a preliminary hearing,
15 at the earliest possible time due to the crucial liberty interest involved.
- 16
- 17 8. Defendant is on record stating that some criminal defendants in misdemeanor matters,
18 when faced with Defendant’s policy, forego counsel so that they can resolve their cases
19 without having to wait in jail until the public defender arrives. Thus, the public
20 defender’s policy directly assists the prosecution by imposing the cost of a 5 to 13 day jail
21 stay upon the right to counsel, causing many alleged misdemeanants to plead guilty, and
22 get out of jail, when they may be factually innocent or have viable legal defenses.²
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- 24
- 25 9. In *Rothgery v. Gillespie County Texas*, 554 U.S. 191 (2008) the United States Supreme
26 Court stated that counties must provide counsel to indigent criminal defendants at their
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28 ² Felony criminal defendants may also choose their speedy trial rights over their right to counsel, through *Feretta v. California*, 422 U.S. 806 (1975), although Defendant is not on record saying they do.

1 initial court appearances or within a reasonable period of time thereafter in order to
2 provide time for counsel to prepare for “critical stages” of the proceedings. It did not
3 distinguish between those “critical stages” in which a 6th Amendment violation occurs if
4 counsel is not present, but prejudice to the underlying criminal action is not presumed and
5 the more stringent species of “critical stage” where *per se* reversal is required if counsel is
6 absent. “The standard applicable in the first instance is “any stage of a criminal
7 proceeding where substantial rights of a criminal accused may be affected,” while that
8 applicable in the second instance is whether the denial of counsel at a given stage holds
9 such “significant consequences” for the overall proceeding that a prejudice inquiry is
10 impractical.” (*McNeal v. Adams*, 623 F.3d 1283, 1290 (9th Cir. 2010)(Berzon, Circuit
11 Judge, Concurring.)) Plaintiffs’ first cause of action in this lawsuit is based upon the
12 former type of deprivation of counsel, due to the fact that in California, “Although the
13 arraignment is a critical stage of the proceeding entitling the defendant to an attorney, the
14 absence of an attorney at the arraignment is not such a grievous error that it compels a
15 reversal without a showing of prejudice.” (*People v. Cox*, 193 Cal.App.3d 1434, 1440
16 (1987).) And it is further based upon the fact that substantial rights are *affected* at
17 arraignment in California Courts.
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22 10. Plaintiffs’ second and third causes of action for violation of the procedural and substantive
23 aspects of the Due Process Clause of the 14th Amendment, respectively, stem from the
24 fact that in the absence of counsel, Plaintiffs were systematically denied their fundamental
25 right to a “prompt” arraignment and were further barred from entering a plea at
26 arraignment, which would have triggered California’s statutory speedy trial rights as well
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1 as other protections. Plaintiffs assert that this knowing, systematic policy of inaction
2 amounted to a failure to protect constitutional rights as described in *Oviatt by and through*
3 *Waugh v. Pearce*, 954 F.2d 1470 (9th Cir. 1992).³ While Plaintiffs acknowledge that they
4 were later able to assert their speedy trial rights, they maintain that the protections
5 guaranteed by California’s speedy trial scheme had been drained of much of their worth
6 by that time due to the fact the arraignments in question were no longer “prompt” and the
7 preliminary hearings were no longer “speedy” as defined and intended by the California
8 legislature. Plaintiffs’ claims in this regard rely on Penal Code sections 825, 859b, and
9 1050, specifically, but not exclusively, and on the legislative intent expressed through
10 California’s entire statutory speedy trial scheme, taken as a whole, that preliminary
11 hearing and trial must take place at the earliest possible time.
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15 11. Plaintiffs forth cause of action for denial of Equal Protection under the 14th Amendment
16 stems from the fact that indigent criminal defendants are denied representation for 5 to 13
17 days after their initial appearance in Court, due to Defendant’s policy, while criminal
18 defendants who can afford private counsel are furnished “prompt” arraignments, are
19 permitted to enter pleas at their first appearance in Court, are allowed to immediately
20 influence bail determinations with favorable information concerning their circumstances;
21 are able to influence the probation department with favorable information concerning bail
22 circumstances in the days following arraignment, are immediately able to apply for bail or
23 OR, are permitted to immediately assert their statutory speedy trial rights, and are able to
24 immediately begin preparation of their cases for future critical stages of the proceedings.
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28 ³ See also, *Vermont v. Brillon*, 129 S.Ct. 1283 (2009) [speedy trial rights may be triggered by a systematic breakdown in a public defender services].

1 12. Under California law there is no remedy, in the criminal context, for Defendant's policy
2 of systematically forcing indigent criminal defendants to elect between their statutory
3 speedy trial rights and their right to counsel because the absence of counsel at
4 arraignment, while a violation of the 6th Amendment, is harmless error. California Civil
5 Code section 52.1, however, provides Plaintiffs with a remedy for the Public Defender's
6 forcible interference with their statutory rights.
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8 13. Additionally, this policy forces in-custody, misdemeanor defendants to give up their
9 statutory right to an immediate probable cause hearing and forces those eligible for
10 diversion pursuant to Penal Code section 1000 to wait in jail for an additional 5 to 13 days
11 until appointed counsel can advocate for their release under the terms of the statute.
12

13 14. Plaintiffs in this action are all clients of the Contra Costa County Public Defender, the
14 Contra Costa County Alternative Public Defender's Office, and private conflicts-counsel,
15 who are, have, or will languish in jail due to the Public Defender's policy of deliberate
16 indifference.
17

18 15. Plaintiffs seek nominal and statutory damages for the criminal defendants affected by the
19 Public Defender's policy of deliberate indifference to the constitutional and statutory
20 rights of the vary people she is obligated to defend.
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22 16. Plaintiffs also seek injunctive relief, requiring the Public Defender to appear at
23 arraignment, in compliance with *Rothgery v. Gillespie County Texas*, 554 U.S. 191 (2008)
24 and California Government Code section 27706, which states that the Public Defender
25 "shall" represent defendants at "all stages of the proceedings."
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27 17. Plaintiffs further seek declaratory relief, declaring the Public Defender's policy of non-
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1 representation illegal.

2 **JURISDICTION AND VENUE**

3 18. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1343(3) for claims
4 brought under 42 U.S.C. § 1983, and pursuant to 28 U.S.C. §1331 generally. Venue is
5 proper pursuant to 28 U.S.C. Section 1391(b).
6

7 19. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. Sections 2201
8 and 2202 and the equitable and inherent powers of this Court.
9

10 20. Under 28 U.S.C. § 1367(a) the Court has supplemental jurisdiction over the state claims
11 alleged herein. The amount in controversy is over \$25,000.00 (Twenty-five thousand
12 dollars).
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14 21. Plaintiffs seek a temporary restraining order compelling the Public Defender, or a
15 designee, to appear in court and represent all current and future clients from the time of
16 their first appearance in court or a reasonable time thereafter. Plaintiffs further seek
17 preliminary and permanent injunctive relief compelling the Public Defender, or a
18 designee, to appear in court and represent all current and future clients from the time of
19 their first appearance in court or a reasonable time thereafter. Plaintiffs further seek
20 declaratory relief declaring the Public Defender in violation of her constitutional duties,
21 and her legislative mandate pursuant to California Government Code section 27706.
22

23 22. This case arises under the Sixth and Fourteenth Amendments to the United States
24 Constitution, 42 U.S.C. section 1983, Article I, sections 12 and 13 of the California
25 Constitution, California Code of Civil Procedure sections 1085 and 1086, California
26 Government Code section 27706, California Civil Code section 52.1(b), and all California
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1 Penal Code sections pertaining to arraignment, appointment of counsel, and speedy trial
2 rights.

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4 **PARTIES**

5 23. Defendant Robin Lipetzky is the duly appointed public defender of Contra Costa County.

6 She is vested by law with the responsibility of representing all indigent defendants at all
7 stages of criminal proceedings pursuant to California Government Code section 27706.

8 Defendant Lipetzky at all times acted in the course and scope of her employment and
9 under color of law. She is sued in her official capacity.

10
11 24. Plaintiffs John Farrow, Jerome Wade, and all those similarly situated, are, and at all
12 material times herein, were citizen of the United States and residents of the state of
13 California who were indigent criminal defendants, arraigned, in custody, and without
14 counsel, in Contra Costa County within the two (2) years before the filing of this
15 Complaint. All asked for court-appointed counsel at arraignment; none were informed of
16 their right to a prompt arraignment; none were advised of their statutory speedy trial
17 rights; and none waived their statutory speedy trial rights; all had bail set without
18 consideration of favorable information concerning bail that only counsel could provide;
19 all remained in custody without counsel for 5 to 13 days, or longer, after their first Court
20 appearance; all were forced to elect between their right to counsel and their speedy trial
21 rights; all were referred to the county probation department for bail studies and reports,
22 which were conducted between their first and second Court appearances – reports which
23 referenced all facts favorable to the prosecution, and which omitted all favorable
24 information concerning Plaintiffs’ ties to the community, etc., because such information
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1 could not be obtained without counsel; and, all were prejudiced by the deprivation of their
2 rights under the United States Constitution, the California Constitution, and the laws of
3 the state of California, enabling them to state a cause of action under 42 U.S.C. 1983 for
4 nominal damages and injunctive relief as described in *Carey v. Piphus*, 435 U.S. 247
5 (1978).
6

7 **STATEMENT OF FACTS**

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9 25. This action satisfies all of the requirements of Rule 23(a), (b)(1) and (2) of the Federal
10 Rules of Civil Procedure.

11 26. Within six (6) months John Farrow, 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 July 24, 2012, allowing the filing of this class action complaint on state statute and
14 constitutional violations.
15

16 27. Within six (6) months Jerome Wade, Plaintiff, filed a group Government Tort Claim for
17 himself and for all persons similarly situated. On timeliness grounds, Plaintiff's group
18 claim was denied on or about October 17, 2012. The county later acknowledged timely
19 filing due to Mr. Wade's juvenile status and denied the claim on the merits on February
20 26, 2013.
21

22 28. Mr. Farrow was arrested on August 30, 2011.

23 29. Mr. Farrow appeared alone in Court for his arraignment on September 2, 2011.

24 30. The Court asked him if he could afford counsel, and he replied that he could not. The
25 Court then asked if he wanted the court to appoint counsel, and Mr. Farrow said that he
26 did. The court set bail, then "referred the matter to the Public Defender," and continued
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1 the matter to September 15 for “further arraignment,” without advising Mr. Farrow of his
2 right to a prompt arraignment, his right to bail, or his right to a speedy preliminary hearing
3 and trial. Mr. Farrow, through this action, was forced to exchange his right to a prompt
4 arraignment and his speedy trial rights for his right to counsel. Mr. Farrow languished in
5 jail, without meaningful examination of bail or the protection of statutory speedy trial
6 rights or legal representation, for the next 13 days.
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9 31. At his “arraignment” on September 2, 2011 the Court also referred the matter to the
10 probation department for a bail study, which was conducted during the time between Mr.
11 Farrow’s first and second Court appearances. This highly influential report contained no
12 favorable information concerning Mr. Farrow’s circumstances because there was no
13 means for the probation department to determine Mr. Farrow’s ties to the community, job
14 status, etc. in the absence of counsel who could supply such information. The report,
15 however, did include the police report and every negative fact on record related to him.
16

17 32. At the “further arraignment,” on September 15, 16 days after his arrest, and 13 days after
18 his first appearance in Court, counsel was appointed pursuant to the Public Defender's
19 policy, and Mr. Farrow was permitted to enter a plea.
20

21 33. Mr. Farrow immediately asserted his right to a speedy preliminary hearing, and his
22 preliminary hearing was held on September 27, 2011.
23

24 34. Mr. Farrow’s counsel had 13 less days than the prosecutor, after Mr. Farrow’s first court
25 appearance, to prepare for the preliminary hearing.

26 35. Mr. Wade, who was 17 years old, was arrested at his high school on November 8, 2011.

27 36. Mr. Wade appeared in Court alone for his arraignment on November 14, 2011.
28

1 37. Mr. Wade was held illegally for four days due to the fact that he was not arraigned in any
2 fashion until the 6th day after his arrest, in blatant violation of Penal Code section 825.
3 Mr. Wade did not know that this was a violation of his rights, and the police reports did
4 not reference the error. His second arraignment also had been adjusted to fall within the
5 window created by Defendant's policy, as opposed to beyond it, which effectively masked
6 the error because there was no way of discovering the violation without examining the
7 minute orders in the case.
8

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10 38. The county prosecutor appeared at Mr. Wade's first Court appearance on November 14,
11 2011, making this an adversarial encounter.

12 39. At his arraignment on November 14, 2011, the Court set bail, and asked Mr. Wade if he
13 could afford counsel, and he replied that he could not. The Court then asked if he wanted
14 the court to appoint counsel, and Mr. Wade said that he did. The court then "referred the
15 matter to the Public Defender," and continued the matter to November 21 for "further
16 arraignment," without advising Mr. Wade of his right to bail, his right to a prompt
17 arraignment or his right to a speedy preliminary hearing and trial. Mr. Wade, through this
18 action, was forced to exchange his speedy trial rights for his right to counsel. Mr. Wade
19 languished in jail, without examination of bail or the protection of statutory speedy trial
20 rights or legal representation, for the next 7 days.
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23 40. At his "arraignment" on November 14, 2011 the Court also referred the matter to the
24 probation department for a bail study. This highly influential report contained no
25 favorable information concerning Mr. Wade's circumstances because there was no means
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1 for the probation department to determine Mr. Wade's ties to the community, school
2 status, etc. in the absence of counsel who could furnish such information.

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4 41. The original complaint, which was filed on November 10, 2011, four days before Mr.
5 Wade's first appearance in Court, contained 10 counts and enhancements in an 11-page
6 document.

7
8 42. Police investigation was ongoing through the period between Mr. Wade's first and second
9 Court appearance, and the district attorney was also hard at work on the case during this
10 period.

11
12 43. On November 18, 2011, during the period between Mr. Wade's first and second
13 appearance in Court, the district attorney filed an amended complaint adding 15 new
14 charges and enhancements in a 53 page document, thereby increasing Mr. Wade's
15 exposure several fold. The district attorney was able to do this, as a matter of right,
16 without leave of the Court, pursuant to the express terms of Penal Code section 1009, only
17 due to the fact that no plea had been entered at Mr. Wade's first appearance as the result
18 of Defendant's policy.

19
20 44. At the "further arraignment," on November 21, 2011, 13 days after his arrest, and 7 days
21 after his first appearance in Court, as a juvenile charged as an adult, counsel was
22 appointed.

23
24 45. Counsel immediately started review of approximately 600 pages of discovery and
25 eventually became aware that there was a serious *Miranda* issue in the case. Considering
26 that Mr. Wade had been interrogated in front of his high school principal, counsel
27 obtained an investigative authorization, and dispatched an investigator to the high school
28

1 to interview the principal about the interrogation. The investigator interviewed the high
2 school principal on November 28, 2011, and she maintained that she could not remember
3 when or how Mr. Wade was *Mirandized* during the encounter due to failure of memory.
4 Had appointment of counsel not been delayed due to Defendant's policy it is possible that
5 the high school principal would have remembered the details of Mr. Wade's interrogation
6 which may have been helpful in his defense.
7

8 **CLASS CLAIMS**

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10 46. The deprivation of counsel that Plaintiffs were subjected to, along with all those similarly
11 situated, and the inevitable denial of statutory speedy trial rights ensuing from the Public
12 Defender's deliberate indifference, were performed pursuant to policies, practices, and
13 customs of defendant Contra Costa County Public Defender, Robin Lipetzky, acting under
14 color of law.
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16 47. Plaintiffs bring this action on their own behalf, and on behalf of all persons similarly
17 situated, pursuant to Rule 23, Federal Rules of Civil Procedure.
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19 48. The class is defined to include all persons who, in the period from and including two (2)
20 years prior to the filing of the original Complaint on December 21, 2012, and continuing
21 until this matter is adjudicated and the practices complained herein cease, were subjected
22 to the deprivation of counsel at their first court appearance and were forced to continue
23 their cases for 5 days or more for appointment of counsel, pursuant to the Public
24 Defender's written policy.
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26 49. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members of the class
27 are so numerous that joinder of all members is impractical. Plaintiffs do not know the
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1 exact number of class members but Plaintiffs are informed and believe, and thereupon
2 allege, that the number of individually named Plaintiffs together with CLASS MEMBERS
3 exceeds 1000.
4

5 50. In accordance with Federal Rules of Civil Procedure, Rule 23(a), Plaintiffs are informed
6 and believe, and thereupon allege, that there are many questions of fact common to the
7 class including, but not limited to whether:

- 8 (1) All Plaintiffs were indigent, in-custody criminal defendants in Contra Costa
9 County;
- 10 (2) All Plaintiffs asked for appointment of the Public Defender;
- 11 (3) All Plaintiffs suffered an automatic continuance of between 5 and 13 days as
12 a direct consequence of asserting their right to appointed counsel;
- 13 (4) All Plaintiffs were forced to continue their cases without advisement of their
14 statutory speedy trial rights.
- 15 (5) All Plaintiffs were deprived of counsel for a period of between 5 and 13
16 days after their initial arraignment;
- 17 (6) All Plaintiffs were deprived of their right to a prompt arraignment.
- 18 (7) All Plaintiffs were deprived of said rights due to the policy of the Public
19 Defender.
- 20 (8) The Public Defender maintains records concerning the relevant facts with
21 regard to each Plaintiff.
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26 51. The Public Defender knew that the actions alleged herein violated state and federal law
27 when she committed said actions.
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1 52. In accordance with Federal Rules of Civil Procedure, Rule 23(a), Plaintiffs are informed
2 and believe, and thereupon allege, that there are many questions of law common to the
3 class including whether:
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- 5 (1) A forced 5 to 13 day delay between an indigent in-custody defendant's
6 first appearance in court, arraignment, and representation by the Public
7 Defender, or her proxy, is unreasonable under the 6th Amendment to the
8 United States Constitution when arraignment is a critical stage of the
9 proceedings under California law;
10
11 (2) Indigent criminal defendants who have been denied counsel at critical stages
12 also need to prove that they were prejudiced by the denial in question in
13 order to state a civil claim against the county responsible for the deprivation
14 of counsel;
15
16 (3) If they must show prejudice in addition to deprivation of counsel at a critical
17 stage, what quantum of prejudice must they show;
18
19 (4) A forced 5 to 13 day delay between an indigent in custody defendant's
20 first appearance in court, arraignment, and representation by the Public
21 Defender, or her proxy, violates a defendant's federal and state rights to a
22 prompt arraignment.
23
24 (5) A forced 5 to 13 day delay between an indigent in custody defendant's
25 first appearance in court and representation by the Public Defender, or her
26 proxy, as a policy of inaction violates a defendant's statutory speedy trial
27 rights;
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1 (6) A forced 5 to 13 day delay between an indigent in custody defendant's
2 first appearance in court and representation by the Public Defender, or her
3 proxy, violates California's Bane Civil Rights Act (Civil Code §§ 52 and
4 52.1) when that delay forces them to elect between their right to counsel,
5 their statutory speedy trial rights, and other rights counsel must assert;
6

7 (7) Whether a forced 5 to 13 delay between an indigent, in custody defendant's
8 first appearance in Court and representation by the Public Defender, or her
9 proxy, violates the equal protection clause of the 14th Amendment given that
10 criminal defendants who can afford private counsel have the full benefit of
11 the rights furnished at arraignment while those who cannot afford counsel
12 are denied certain rights and receive other marginalized rights without any
13 justification.
14

15 (8) Whether California Government Code section 27706, which states that the
16 Public Defender shall represent indigent defendants at all stages of the
17 proceedings, contemplates representation at the first half of Contra Costa
18 County's bifurcated arraignment proceedings.
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21 53. Plaintiffs are informed and believe, and thereupon allege, that most members of the class
22 will not be able to find counsel to represent them. Plaintiffs are informed and believe, and
23 thereupon allege, that it is desirable to concentrate all litigation in one forum because all
24 of the claims arise in the same location; i.e., Contra Costa County. It will promote
25 efficiency to resolve the common questions of law and fact in one forum, rather than in
26 multiple courts.
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1 54. Plaintiffs do not know the identities of all the class members. Plaintiffs are informed and
2 believe, and thereupon allege, that the identities of the class members may be ascertained
3 from records maintained by the Contra Costa County Public Defender. Plaintiffs are
4 informed and believe, and thereupon allege, that defendant's records reflect the identities,
5 including addresses and telephone numbers, of the defendants whose rights have been
6 transgressed as the result of the Public Defender's policy of deliberate indifference.
7 Plaintiffs are informed and believe, and thereupon allege, that the Contra Costa County
8 Public Defender maintains records of when each defendant initially appeared in Court and
9 the duration of his incarceration without counsel. Plaintiffs are informed and believe, and
10 thereupon allege, that all of the foregoing information is contained in defendant's
11 computer system and that the information necessary to identify the class members, by last
12 known addresses, and the dates of their respective initial appearance and appointment of
13 counsel is readily available from said computer system.
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17 55. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), class members must
18 be furnished with the best notice practicable under the circumstances, including individual
19 notice to all members who can be identified through reasonable effort. Plaintiffs are
20 informed and believe, and thereupon allege, that defendant's computer records contain a
21 last known address for class members. Plaintiffs contemplate that individual notice will
22 be given to class members at such last known address by first class mail. Plaintiffs
23 contemplate that notice will inform class members of the following:
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- 26 i. The pendency of the class action and the issues common to the class;
- 27 ii. The nature of the class action;
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- iii. The right to “opt out” of the action within a given time, in which event they will not be bound by a decision rendered in the class action;
- iv. Their right, if they do “opt out,” to be represented by their own counsel and to enter an appearance in the case; otherwise they will be represented by the named class Plaintiff(s) and the named class Plaintiff(s)’s counsel; and
- v. Their right, if they do not “opt out,” to share in any recovery in favor of the class, and conversely to be bound by any judgment on the common issues adverse to the class.

FIRST CAUSE OF ACTION

(Violation of Sixth Amendment to the U.S. Constitution 42 U.S.C. § 1983)

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

57. Defendant’s policies, practices, and customs regarding the failure to represent Plaintiffs at their first appearance, or a reasonable time thereafter, violated the rights of Plaintiffs, and all those similarly situated, under color of law, pursuant the Sixth Amendment right to the assistance of court-appointed counsel, and directly and proximately damaged Plaintiffs, and all those similarly situated, as herein alleged, entitling Plaintiffs, and all class members, to recover nominal damages for said constitutional violations pursuant to 42 U.S.C. § 1983 and *Carey v. Piphus*, 435 U.S. 247 (1978).

58. WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly situated, as hereunder appears.

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SECOND CAUSE OF ACTION

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

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

60. 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 nominal damages for said constitutional violations pursuant to 42 U.S.C. § 1983 and *Carey v. Piphus*, 435 U.S. 247 (1978).

61. WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly situated, as hereunder appears.

THIRD CAUSE OF ACTION

**(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)**

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

63. 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,

1 violated the rights of Plaintiffs, under color of law, pursuant to the 14th Amendment due
2 process clause in that the defendant's deliberate indifference resulted in the denial of
3 statutory speedy trial rights, without a hearing to determine the cause and reasonableness
4 of the denial, and directly and proximately damaged Plaintiffs, and all those similarly
5 situated, as herein alleged, entitling Plaintiffs, and all class members, to recover nominal
6 damages for said constitutional violations pursuant to 42 U.S.C. § 1983 and *Carey v.*
7 *Piphus*, 435 U.S. 247 (1978).
8
9

10 64. WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly
11 situated, as hereunder appears.

12 **FOURTH CAUSE OF ACTION**

13 **(Violation of the equal protection clause of the 14th Amendment to the U.S. Constitution)**

14 65. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the
15 allegations contained in paragraphs 1 through 64, inclusive.
16

17 66. Defendant's policies, practices, and customs regarding the failure to represent Plaintiffs at
18 their first appearance, or a reasonable time thereafter, violated the equal protection rights
19 of Plaintiffs, and all those similarly situated, under color of law, pursuant to the equal
20 protection clause of the 14th Amendment in that Defendant's policy directly denied
21 Plaintiffs' right to a prompt arraignment, Plaintiffs' right to assistance of counsel, and
22 Plaintiff's statutory speedy trial rights on the basis of their indigence, when similarly
23 situated criminal defendant's who could afford private counsel were furnished "prompt"
24 arraignments, were permitted to enter pleas at their first appearance in Court, were
25 allowed to influence the probation department with favorable information concerning bail
26
27
28

1 circumstances in the days following arraignment, were immediately able to apply for bail
2 or OR, were permitted to immediately assert their statutory speedy trial rights, and were
3 able to immediately begin preparation of their cases for future critical stages of the
4 proceedings. Defendant therefore directly and proximately damaged Plaintiffs, and all
5 those similarly situated, as herein alleged, entitling Plaintiffs, and all class members, to
6 recover nominal damages for said constitutional violations pursuant to 42 U.S.C. § 1983
7 and *Carey v. Phipus*, 435 U.S. 247 (1978).
8
9

10 67. WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly
11 situated, as hereunder appears.

12 **FIFTH CAUSE OF ACTION**

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

16 68. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the
17 allegations contained in paragraphs 1 through 67, inclusive.

18
19 69. Defendant's policies, practices, and customs regarding failure to represent Plaintiffs at
20 their first court appearance, or within a reasonable time thereafter, complained herein
21 violated the rights of Plaintiffs, and all those similarly situated, by forcing Plaintiffs to
22 sacrifice their statutory speedy trial rights as a precondition to appointment of counsel,
23 and directly and proximately damaged Plaintiffs, and each of those similarly situated, as
24 herein alleged, entitling said Plaintiffs, and each of those they represent, to recover a
25 minimum of \$4000.00 each pursuant to California Civil Code § 52.1 and § 52.
26
27
28

1 70. WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly
2 situated, as hereunder appears.
3

4 **SIXTH CAUSE OF ACTION**

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

7 71. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the
8 allegations contained in paragraphs 1 through 70, inclusive.

9 72. Defendant's policies, practices and customs violate California Government Code § 27706,
10 which states that the public defender shall represent criminal defendants at all stages of
11 the proceedings. Plaintiffs are directly damaged as the result of said policies, practices
12 and customs, and request a writ of mandate, compelling the Public Defender to comply
13 with her statutory obligation to represent all indigent, in custody defendants by appearing
14 at the first appearance of all indigent, in-custody criminal defendants, or at a reasonable
15 time thereafter.
16

17
18 73. WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly
19 situated, as hereunder appears.
20

21 **PRAYER FOR RELIEF**

22 74. WHEREFORE, Plaintiffs, on behalf of themselves and all those similarly situated, seek
23 judgment as follows:

- 24
25 1. For declaratory and injunctive relief declaring illegal and enjoining, preliminarily and
26 permanently, defendant's policies, practices, and customs of unlawfully withholding
27 representation from indigent, in-custody defendants from 5 to 13 days after their initial
28 appearance.

- 1 2. Certification as a class action of Plaintiffs' complaints concerning defendants' policies,
2 practice, and customs of withholding representation from indigent, in-custody defendants
3 from 5 to 13 days after their initial appearance.
- 4 3. For nominal damages per *Carey v. Piphus*, 435 U.S. 247 (1978).
- 5 4. For at least \$4000 for each Plaintiff pursuant to California Civil Code § 52.1 and § 52, for
6 each violation thereof;
- 7 5. Attorneys' fees and costs under 42 U.S.C. § 1988, California Civil Code § 52(b)(3),
8 California Civil Code § 52.1(h), and California Code of Civil Procedure § 1021.5.
- 9 6. The cost of this suit and such other relief as the court finds just and proper.

10
11
12 A JURY TRIAL IS DEMANDED.

13
14
15 Dated:

Christopher Martin
Attorney at Law

16
17 Michael Dietrick
Attorney at Law

18
19
20 By: _____
Christopher Martin

21
22 Attorneys for Plaintiffs