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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

THIRD 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, the county public defender,
5 Defendant herein, arbitrarily withheld legal representation to indigent, in-custody,
6 criminal defendants for a period of 5 to 13 days after their initial Court appearance, and
7 sometimes longer, as a matter of written Policy.
- 8
- 9 2. County Clips, the Contra Costa County newsletter for employees of Contra Costa County,
10 2010, states this, “In keeping with the constitutional guarantees to persons charged with
11 crimes, PD Lipetzky’s goal in 2010 is to have her attorneys appear with clients at their
12 first court appearance on misdemeanor cases. Currently, in Contra Costa County,
13 defendants charged with misdemeanors are arraigned before a judge without benefit of
14 counsel. For those defendants who want an attorney but cannot afford one, the judge
15 refers them to the Public Defender Office. The defendants then must come back to court
16 on another date. At the first court appearance, many defendants waive their rights to a
17 lawyer and proceed without benefit of counsel.”
- 18
- 19
- 20 3. Thus, the public defender’s Policy directly assists the prosecution by imposing the cost of
21 a 5 to 13 day jail stay upon the right to counsel, causing many to plead guilty, and get out
22 of jail, when they may be factually innocent or have viable legal defenses.
- 23
- 24 4. Pursuant to Defendant’s Policy, an in-custody, indigent criminal defendant’s request for
25 court-appointed counsel triggers a “referral to the Public Defender” and an automatic
26 continuance for “further arraignment.” This written Policy is partially memorialized,
27 currently, on Defendant’s website, under the FAQ section, where it states: “At the
28

1 arraignment or first appearance, persons out of custody will be referred to our office and
2 given a date to return to court with an attorney from our office. Persons in custody will be
3 given a court date and will be visited at the jail by staff from the department before the
4 next court date. During the initial client interview, a paralegal, law clerk or attorney will: •
5 determine financial eligibility • discuss confidentially the client's background • explain the
6 overall procedure • discuss the specifics of the client's case. The interviewing attorney and
7 the attorney at the arraignment will rarely be the attorney who is assigned to the case for
8 logistical reasons, as well as because of the need to bring to bear specialized knowledge of
9 various areas of law.”

- 10
- 11
- 12 5. The automatic continuance is forced upon Plaintiffs regardless of whether a juvenile is
13 charged as an adult, whether it is a misdemeanor or felony complaint, whether the
14 criminal defendant suffers from a developmental disability or other infirmity, whether
15 evidence of misidentification requires immediate investigation before memories dim,
16 witnesses disappear, and video images are destroyed, or whether other exigent
17 circumstances exist.
- 18
- 19
- 20 6. California criminal defendants have an absolute right to enter a not-guilty plea at their first
21 appearance in a California Court.
- 22
- 23 7. Although Plaintiffs’ first court appearance under this Policy is dubbed “arraignment,” the
24 judges presiding over first appearances prevented all Plaintiffs from entering a plea by
25 automatically continuing their cases the moment they asked for counsel, and having them
26 ushered out of the courtroom.
- 27
- 28 8. Plaintiffs maintain that the delay in appointing counsel under the Policy violated their

1 Sixth Amendment right to counsel because Defendant did not appoint counsel within a
2 “reasonable time” after their first appearance in Court as required by *Rothgery v. Gillespie*
3 *County Texas*, 554 U.S. 191 (2008), resulting in a constitutional tort.

4
5 9. Plaintiffs further assert that this knowing, systematic Policy of inaction amounted to a
6 failure to protect constitutional rights as described in *Oviatt by and through Waugh v.*
7 *Pearce*, 954 F.2d 1470 (9th Cir. 1992).

8
9 10. Under California law there is no remedy, in the criminal context, for Defendant’s Policy
10 of systematically denying counsel because the absence of counsel at arraignment is
11 harmless error. California Civil Code section 52.1, however, provides Plaintiffs with a
12 remedy for the Public Defender’s forcible interference with their Constitutional rights.

13
14 11. Plaintiffs in this action are all clients of the Contra Costa County Public Defender, the
15 Contra Costa County Alternative Public Defender’s Office, and private conflicts-counsel,
16 who are, have, or will languish in jail without representation due to the Public Defender’s
17 Policy of deliberate indifference.

18
19 12. Plaintiffs seek nominal and statutory damages for the criminal defendants affected by the
20 Public Defender’s Policy of deliberate indifference to the constitutional and statutory
21 rights of the vary people she is obligated to defend.

22
23 13. Plaintiffs also seek injunctive relief, requiring the Public Defender to appear at
24 arraignment, in compliance with *Rothgery v. Gillespie County Texas*, 554 U.S. 191 (2008)
25 and California Government Code section 27706, which states that the Public Defender
26 “shall” represent defendants at “all stages of the proceedings.”

27
28 14. Plaintiffs further seek declaratory relief, declaring the Public Defender’s Policy of non-

1 representation illegal.

2 **JURISDICTION AND VENUE**

3 15. 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 16. 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 17. 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).

13 18. Plaintiffs seek a temporary restraining order compelling the Public Defender, or a
14 designee, to appear in court and represent all current and future clients from the time of
15 their first appearance in court or a reasonable time thereafter. Plaintiffs further seek
16 preliminary and permanent injunctive relief compelling the Public Defender, or a
17 designee, to appear in court and represent all current and future clients from the time of
18 their first appearance in court or a reasonable time thereafter. Plaintiffs further seek
19 declaratory relief declaring the Public Defender in violation of her constitutional duties,
20 and her legislative mandate pursuant to California Government Code section 27706.

21
22 19. This case arises under the Sixth and Fourteenth Amendments to the United States
23 Constitution, 42 U.S.C. section 1983, Article I, sections 12 and 13 of the California
24 Constitution, California Code of Civil Procedure sections 1085 and 1086, California
25 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 20. 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 21. 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 enter a not-guilty plea at the first appearance; none were advised of their
17 statutory speedy trial rights; and none waived their statutory speedy trial rights; all had
18 bail set without consideration of favorable information concerning bail that only counsel
19 could provide; all remained in custody without counsel for 5 to 13 days, or longer, after
20 their first Court appearance; all were forced to elect between their right to counsel and
21 their speedy trial rights; all were referred to the county probation department for bail
22 studies and reports, which were conducted between their first and second Court
23 appearances – reports which referenced all facts favorable to the prosecution, and which
24 omitted all favorable information concerning Plaintiffs’ ties to the community, etc.,
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1 because such information could not be obtained without counsel; and, all were prejudiced
2 by the deprivation of their rights under the United States Constitution, the California
3 Constitution, and the laws of the state of California, enabling them to state a cause of
4 action under 42 U.S.C. 1983 for nominal damages and injunctive relief as described in
5 *Carey v. Phipus*, 435 U.S. 247 (1978).
6

7 **STATEMENT OF FACTS**

- 8
9 22. This action satisfies all of the requirements of Rule 23(a), (b)(1) and (2) of the Federal
10 Rules of Civil Procedure.
- 11 23. Within six (6) months John Farrow, Plaintiff, filed a group Government Tort Claim for
12 himself and for all persons similarly situated. Plaintiffs' 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 24. 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 25. Mr. Farrow was arrested on August 30, 2011.
- 23 26. Mr. Farrow appeared alone in Court for his arraignment on September 2, 2011.
- 24
25 27. The Court asked him if he could afford counsel, and he replied that he could not. The
26 Court then asked if he wanted the court to appoint counsel, and Mr. Farrow said that he
27 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 enter a plea of not guilty. Mr. Farrow languished in jail, without meaningful
3 examination of bail or the protection of statutory speedy trial rights or legal
4 representation, for the next 13 days.
5

6 28. At his “arraignment” on September 2, 2011 the Court also referred the matter to the
7 probation department for a bail study, which was conducted during the time between Mr.
8 Farrow’s first and second Court appearances. This highly influential report contained no
9 favorable information concerning Mr. Farrow’s circumstances because there was no
10 means for the probation department to determine Mr. Farrow’s ties to the community, job
11 status, etc. in the absence of counsel who could supply such information. The report,
12 however, did include the police report and every negative fact on record related to him.
13

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

18 30. Mr. Farrow immediately asserted his right to a speedy preliminary hearing, and his
19 preliminary hearing was held on September 27, 2011.
20

21 31. The complaining witness in Mr. Farrow’s case, a domestic partner and attorney, said that
22 she asked neighbors who were outside of her residence to call the police after Mr. Farrow
23 allegedly assaulted her; but no one called the police. Mr. Farrow’s investigator tried to
24 locate these witnesses to establish that the complaining witness lied to the police and lied
25 under oath at the preliminary hearing. They could not be found, but might have been
26 found had Mr. Farrow been appointed counsel within a reasonable time, which would
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1 have enabled him to conduct prompt investigation. Establishing that the complaining
2 witness lied to the police and under oath would have had an enormous impact on plea
3 negotiations and may have resulted in acquittal had the matter gone to trial.
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5 32. Mr. Wade, who was 17 years old, was arrested at his high school on November 8, 2011.

6 33. Mr. Wade appeared in Court alone for his arraignment on November 14, 2011.

7 34. Mr. Wade was held illegally for four days due to the fact that he was not arraigned in any
8 fashion until the 6th day after his arrest, in blatant violation of California Penal Code
9 section 825 and *Gerstein v. Pugh*, 425 U.S. 103 (1975). Mr. Wade did not know that this
10 was a violation of his rights, and the police reports did not reference the error. His second
11 arraignment also had been adjusted to fall within the window created by Defendant's
12 Policy, as opposed to beyond it, which effectively masked the error because there was no
13 way of discovering the violation without examining the minute orders in the case.
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16 35. The county prosecutor appeared at Mr. Wade's first Court appearance on November 14,
17 2011, making this an adversarial encounter.

18 36. At his arraignment on November 14, 2011, the Court set bail, and asked Mr. Wade if he
19 could afford counsel, and he replied that he could not. The Court then asked if he wanted
20 the court to appoint counsel, and Mr. Wade said that he did. The court then "referred the
21 matter to the Public Defender," and continued the matter to November 21 for "further
22 arraignment," without advising Mr. Wade of his right to enter a plea, his right to bail, his
23 right to a prompt arraignment or his right to a speedy preliminary hearing and trial. Mr.
24 Wade languished in jail, without examination of bail or the protection of statutory speedy
25 trial rights or legal representation, for the next 7 days.
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1 37. At his “arraignment” on November 14, 2011 the Court also referred the matter to the
2 probation department for a bail study. This highly influential report contained no
3 favorable information concerning Mr. Wade’s circumstances because there was no means
4 for the probation department to determine Mr. Wade’s ties to the community, school
5 status, etc. in the absence of counsel who could furnish such information.
6

7 38. The original complaint, which was filed on November 10, 2011, four days before Mr.
8 Wade’s first appearance in Court, contained 10 counts and enhancements in an 11-page
9 document.
10

11 39. Police investigation was ongoing through the period between Mr. Wade’s first and second
12 Court appearance, and the district attorney was also hard at work on the case during this
13 period.
14

15 40. On November 18, 2011, during the period between Mr. Wade’s first and second
16 appearance in Court, the district attorney filed an amended complaint adding 15 new
17 charges and enhancements in a 53 page document, thereby increasing Mr. Wade’s
18 exposure several fold. The district attorney was able to do this, as a matter of right,
19 without leave of the Court, pursuant to the express terms of Penal Code section 1009, only
20 due to the fact that no plea had been entered at Mr. Wade’s first appearance as the result
21 of Defendant’s Policy.
22

23 41. At the “further arraignment,” on November 21, 2011, 13 days after his arrest, and 7 days
24 after his first appearance in Court, as a juvenile charged as an adult, counsel was
25 appointed.
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1 42. Mr. Wade’s investigator interviewed his high school principal who was present when Mr.
2 Wade was interrogated in her office. The high school principal had a hazy recollection of
3 the interrogation and could not recall when Mr. Wade was *Mirandized* or what he was
4 wearing when he was interrogated. If the officer had obtained a confession in advance of
5 *Miranda*, Mr. Wade’s confession (which was the chief evidence against him) might have
6 been suppressed, resulting in dismissal of the charges.
7

8 43. The police officer that interrogated Mr. Wade said that Mr. Wade was wearing a
9 sweatshirt that was worn by one of the perpetrators in a convenience store robbery. In
10 fact, however, the sweatshirt was in Mr. Wade’s backpack, which the officer illegally
11 searched. Had Mr. Wade been able to conduct prompt investigation, it is likely that the
12 principal would have been able to remember this fact, and Mr. Wade might have been
13 able to suppress this evidence.
14

15 44. The District Court previously granted two defense motions pursuant to Rule 12(b)(6).
16 Plaintiffs stood on the pleadings after the second dismissal, and appealed to the Ninth
17 Circuit Court of Appeals. The Court of Appeals reversed the District Court on Plaintiffs’
18 6th Amendment Claims, stating: “We therefore remand for the district court to consider
19 whether appointing counsel five to thirteen days and “sometimes longer” after the right
20 attaches complies with the “reasonable time” requirement articulated in *Rothgery*.”
21 Defendant’s subsequent petition for rehearing en banc and petition for a writ of certiorari
22 were denied.
23

24 45. This is a facial challenge to the constitutionality of Defendant’s written Policy of arbitrarily
25 withholding counsel for an unreasonable period of time, in strict adherence to the plain
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1 language of the Ninth Circuit’s mandate. Plaintiffs believe that this is a mixed question of law
2 and fact that must be decided by a jury.

3
4 CLASS CLAIMS

5 46. The deprivation of counsel that Plaintiffs were subjected to, along with all those similarly
6 situated, were performed pursuant to policies, practices, and customs of defendant Contra
7 Costa County Public Defender, Robin Lipetzky, acting under color of law.

8 47. Plaintiffs bring this action on their own behalf, and on behalf of all persons similarly
9 situated, pursuant to Rule 23, Federal Rules of Civil Procedure.

10 48. The class is defined to include all persons who, in the period from and including two (2)
11 years prior to the filing of the original Complaint on December 21, 2012, and continuing
12 until this matter is adjudicated and the practices complained herein cease, were subjected
13 to the deprivation of counsel at their first court appearance and were forced to continue
14 their cases for 5 days or more for appointment of counsel, pursuant to the Public
15 Defender's written Policy.
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18 49. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members of the class
19 are so numerous that joinder of all members is impractical. Plaintiffs do not know the
20 exact number of class members but Plaintiffs are informed and believe, and thereupon
21 allege, that the number of individually named Plaintiffs together with CLASS MEMBERS
22 exceeds 5000.
23

24 50. In accordance with Federal Rules of Civil Procedure, Rule 23(a), Plaintiffs are informed
25 and believe, and thereupon allege, that there are many questions of fact common to the
26 class including, but not limited to whether:
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- 1 (1) “Appointing counsel five to thirteen days and “sometimes longer” after the
2 right attached complies with the “reasonable time” requirement articulated
3 in *Rothgery*.” (*Farrow v. Lipetzky*, 637 Fed.Appx. 986, 989 (2016).)
- 4 (2) All Plaintiffs were indigent, in-custody criminal defendants in Contra Costa
5 County;
- 6 (3) All Plaintiffs asked for appointment of the Public Defender;
- 7 (4) All Plaintiffs suffered an automatic continuance of between 5 and 13 days,
8 or more, as a direct consequence of asserting their right to appointed
9 counsel;
- 10 (5) None were permitted to exercise their right to enter a plea of not guilty at
11 the first appearance.
- 12 (6) All Plaintiffs were deprived of counsel for a period of between 5 and 13
13 days, or longer, after their initial arraignment;
- 14 (7) All Plaintiffs were deprived of said rights due to the Policy of the Public
15 Defender.
- 16 (8) The Public Defender maintains records concerning the relevant facts with
17 regard to each Plaintiff.

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22 51. The Public Defender knew that the actions alleged herein violated state and federal
23 law when she committed said actions.

24
25 52. In accordance with Federal Rules of Civil Procedure, Rule 23(a), Plaintiffs are
26 informed and believe, and thereupon allege, that there are many questions of law common
27 to the class including whether:
28

1 (1) “[A]ppointing counsel five to thirteen days and “sometimes longer” after the right
2 attaches complies with the “reasonable time” requirement articulated in *Rothgery*.”
3 (Farrow v. Lipetzky, 637 Fed.Appx. 986, 989 (2016).)

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

8 (3) Whether California Government Code section 27706, which states that the
9 Public Defender shall represent indigent defendants at all stages of the
10 proceedings, contemplates representation at arraignment.

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

19
20
21 54. Plaintiffs do not know the identities of all the class members. Plaintiffs are informed and
22 believe, and thereupon allege, that the identities of the class members may be ascertained
23 from records maintained by the Contra Costa County Public Defender. Plaintiffs are
24 informed and believe, and thereupon allege, that defendant's records reflect the identities,
25 including addresses and telephone numbers, of the defendants whose rights have been
26 transgressed as the result of the Public Defender's Policy of deliberate indifference.
27 Plaintiffs are informed and believe, and thereupon allege, that the Contra Costa County
28

1 Public Defender maintains records of when each defendant initially appeared in Court and
2 the duration of his incarceration without counsel. Plaintiffs are informed and believe, and
3 thereupon allege, that all of the foregoing information is contained in defendant's
4 computer system and that the information necessary to identify the class members, by last
5 known addresses, and the dates of their respective initial appearance and appointment of
6 counsel is readily available from said computer system.
7

8
9 55. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), class members must
10 be furnished with the best notice practicable under the circumstances, including individual
11 notice to all members who can be identified through reasonable effort. Plaintiffs are
12 informed and believe, and thereupon allege, that defendant's computer records contain a
13 last known address for class members. Plaintiffs contemplate that individual notice will be
14 given to class members at such last known address by first class mail. Plaintiffs
15 contemplate that notice will inform class members of the following:
16

- 17 i. The pendency of the class action and the issues common to the class;
- 18 ii. The nature of the class action;
- 19 iii. The right to "opt out" of the action within a given time, in which event they
20 will not be bound by a decision rendered in the class action;
- 21 iv. Their right, if they do "opt out," to be represented by their own counsel and
22 to enter an appearance in the case; otherwise they will be represented by the
23 named class Plaintiff(s) and the named class Plaintiff(s)'s counsel; and
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1 v. Their right, if they do not “opt out,” to share in any recovery in favor of the
2 class, and conversely to be bound by any judgment on the common issues
3 adverse to the class.
4

5 **FIRST CAUSE OF ACTION**

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

7 56. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the
8 allegations contained in paragraphs 1 through 55, inclusive.
9

10 57. Defendant’s policies, practices, and customs regarding the failure to represent Plaintiffs at
11 their first appearance, or a reasonable time thereafter, violated the rights of Plaintiffs, and
12 all those similarly situated, under color of law, pursuant the Sixth Amendment right to the
13 assistance of court-appointed counsel, and directly and proximately damaged Plaintiffs,
14 and all those similarly situated, as herein alleged, entitling Plaintiffs, and all class
15 members, to recover nominal damages for said constitutional violations pursuant to 42
16 U.S.C. § 1983 and *Carey v. Piphus*, 435 U.S. 247 (1978).
17

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

21 **SECOND CAUSE OF ACTION**

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

25 59. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the
26 allegations contained in paragraphs 1 through 58, inclusive.
27
28

1 59. Defendant's policies, practices, and customs regarding failure to represent Plaintiffs at
2 their first court appearance, or within a reasonable time thereafter, complained herein
3 violated the rights of Plaintiffs, and all those similarly situated, by forcing Plaintiffs to
4 sacrifice their statutory speedy trial rights as a precondition to appointment of counsel,
5 and directly and proximately damaged Plaintiffs, and each of those similarly situated, as
6 herein alleged, entitling said Plaintiffs, and each of those they represent, to recover a
7 minimum of \$4000.00 each pursuant to California Civil Code § 52.1 and § 52.
8

9
10 60. WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly
11 situated, as hereunder appears.
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13 **THIRD CAUSE OF ACTION**

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

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

18 62. Defendant's policies, practices and customs violate California Government Code § 27706,
19 which states that the public defender shall represent criminal defendants at all stages of
20 the proceedings. Plaintiffs are directly damaged as the result of said policies, practices
21 and customs, and request a writ of mandate, compelling the Public Defender to comply
22 with her statutory obligation to represent all indigent, in custody defendants by appearing
23 at the first appearance of all indigent, in-custody criminal defendants, or at a reasonable
24 time thereafter.
25

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

PRAYER

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

A JURY TRIAL IS DEMANDED.

Dated:

Christopher Martin
Attorney at Law

Michael Dietrick
Attorney at Law

By: _____
Christopher Martin

Attorneys for Plaintiffs