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9

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

12 BARRY A. HAZLE, JR. )

13 Plaintiff, )

14 v. )

15 MITCH CROFOOT, Individually and as Parole )  
Officer of the California Department of )  
16 Corrections; BRENDA WILDING, Individually )  
and as Unit Supervisor of the California )  
17 Department of Corrections; MATTHEW )  
CATE, Individually and as Secretary of the )  
18 California Department of Corrections and )  
Rehabilitation; SCOTT KERNAN, Individually )  
19 and as Chief Deputy Secretary of Adult )  
Operations of the California Department of )  
20 Corrections and Rehabilitation; TIM )  
HOFFMAN, Individually and as Director of the )  
21 Division of Adult Parole Operations in )  
California; MARION SMITH, Individually and )  
22 in his official capacity; Deputy Commissioner )  
JALLINGS, Individually and as Deputy )  
23 Commissioner of the Board of Prison Hearings; )  
WESTCARE, a Nevada Non-Profit )  
24 Corporation; MENTAL HEALTH SYSTEMS, )  
INC., a California Corporation, )

25 Defendants. )  
26 \_\_\_\_\_ )

No.

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

INTRODUCTION

1  
2 1. As a condition of parole following incarceration on drug possession charges,  
3 Barry Hazle was required to participate in a “12-step” religious drug treatment program. Hazle  
4 protested that the teachings and activities of this program offended his beliefs, and he sought to  
5 be transferred to a secular treatment program. He was informed that no such alternative existed.  
6 Hazle’s parole officer concluded that Hazle’s resistance to the religious treatment program  
7 constituted a violation of the terms of parole. Hazle’s parole was revoked, and Hazle was  
8 returned to jail for roughly 125 days, spending the bulk of that time in an overcrowded and  
9 dangerous state prison in Norco, California.

10 2. Hazle’s rights under the Establishment Clause of the First Amendment of the  
11 United States Constitution were violated by this conduct. The choice to which Hazle was put –  
12 “to be imprisoned or renounce his own religious beliefs” – is one that, according to the Ninth  
13 Circuit Court of Appeals, “offends the core of Establishment Clause jurisprudence.” *Inouye v.*  
14 *Kemna*, 504 F.3d 705, 714 (9th Cir. 2007).

15 3. In this lawsuit, Hazle seeks relief for this violation under the federal civil rights  
16 laws. He also seeks an order from this Court prohibiting the illegal expenditure of public money  
17 to fund the unconstitutional policies and procedures to which he was subjected.

JURISDICTION AND VENUE

18  
19 4. This is a civil action seeking damages against defendants for the commission of  
20 acts, under color of state law, that deprived Barry Hazle of rights secured under the Constitution  
21 and laws of the United States. The Court has jurisdiction of the federal claims as to all  
22 defendants pursuant to 28 U.S.C. sections 1343 (a)(3) and 1343(a)(4), 28 U.S.C. section 1331(a),  
23 and 42 U.S.C. section 1983. Jurisdiction for plaintiff’s state law claims is based upon the  
24 Court’s supplemental jurisdiction under 28 U.S.C. section 1367.

1 5. Venue is proper in this court under and pursuant to 28 U.S.C. section 1391(b) for  
2 the reason that the acts and omissions complained of occurred in the City of Redding, Shasta  
3 County, California.

4 THE PARTIES

5 6. Plaintiff Barry A. Hazle, Jr., is a resident of the County of Shasta, California.  
6 Within one year of the commencement of this action, Hazle has paid state income taxes.

7 7. Defendant Mitch Crofoot was employed as a parole officer by the Department of  
8 Corrections and Rehabilitation, and was Hazle's assigned parole officer in 2007. On information  
9 and belief, Crofoot recommended that Hazle's parole be revoked, and participated in that  
10 decision. He is sued in his individual and official capacities.

11 8. Defendant Brenda Wilding was at all relevant times Crofoot's Unit Supervisor,  
12 and participated in, approved and ratified Crofoot's decisions to revoke Hazle's parole status.  
13 She is sued in her individual and official capacities.

14 9. Defendant Commissioner Jallings is, on information and belief, a Deputy  
15 Commissioner of the Board of Prison Hearings, located at the California Rehabilitation Center in  
16 Norco, California. On information and belief, Jallings approved and ratified the order revoking  
17 Hazle's parole and directing that he be returned to state prison. He is sued in his individual and  
18 official capacities. His full name is not presently known.

19 10. Defendant Matthew Cate is the Secretary of the California Department of  
20 Corrections and Rehabilitation, and has ultimate authority for all policies, directives and  
21 decisions pertaining to parole, conditions of parole, and revocation of parole that apply to  
22 persons released from California State prisons. He is sued in his official and individual  
23 capacities.

24 11. Defendant Scott Kernan is Chief Deputy Secretary of Adult Operations of the  
25 California Department of Corrections and Rehabilitation. He has direct oversight and  
26 supervisory responsibility for the Division of Adult Parole Operations (DAPO), and thus has

1 authority for developing and implementing policies pertaining to parole, conditions of parole,  
2 and revocation of parole for parolees from California state prisons. He is sued in his official and  
3 individual capacities.

4 12. Defendant Tom Hoffman is the Director of the Division of Adult Parole  
5 Operations (DAPO), and has authority for developing, implementing, supervising and ratifying  
6 policies pertaining to parole, conditions of parole, and revocation of parole for parolees from  
7 California State prisons. He is sued in his official and individual capacities.

8 13. Defendant Westcare is a non-profit corporation headquartered in Las Vegas,  
9 Nevada, that contracts with the State of California and/or Department of Corrections and  
10 Rehabilitation to provide public and governmental services, and serves as the Substance Abuse  
11 Services Coordination Agency (SASCA) in Parole Region I of California, which includes and  
12 encompasses Shasta County and adjacent counties. Among other responsibilities as the SASCA  
13 for Region I, Westcare creates a network of treatment facilities for parolees with drug-related  
14 convictions, and contracts and coordinates with the State of California to place parolees in these  
15 treatment programs.

16 14. Defendant Marion Smith is an employee of Mental Health Systems, Inc., and  
17 made the decision and/or recommendation to assign Hazle to the Empire Recovery Center, a  
18 residential drug treatment facility. He is sued in his individual and official capacities.

19 15. Defendant Mental Health Systems, Inc. is, on information and belief, a California  
20 corporation headquartered in San Diego which contracts with the State of California and/or  
21 Department of Corrections and Rehabilitation to, among other things, provide public and  
22 governmental services relating to the placement of parolees in residential drug treatment  
23 facilities.

24  
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26



1 contained religious components. This request was made to Marion Smith, an employee of  
2 Mental Health Systems and the official responsible for placing Hazle in a residential treatment  
3 facility.

4 22. Hazle objected on several occasions to the compelled participation in a religious  
5 program, both to representatives of Empire, and to his parole officer Crofoot. Hazle also  
6 requested that he be allowed to satisfy the residential treatment requirement of his parole by  
7 participating in a secular recovery program.

8 23. This request was denied. Crofoot told Hazle that, as confirmed by SASCA, “all  
9 of the programs in Northern California are 12-step programs.”

10 24. Hazle set forth his opposition to this coerced participation in a religious program  
11 in a formal Inmate/Parolee Appeal known as a 602 form (the “602 Appeal”). In his 602 Appeal,  
12 which was presented to Crofoot on April 3, 2007, Hazle cited to legal authorities confirming the  
13 unconstitutionality of the parole conditions that were being imposed upon him.

14 25. On April 6, 2007, Hazle was called out of a class at Empire and placed under  
15 arrest by Crofoot. Crofoot told Hazle that he had violated the terms of his parole by refusing to  
16 participate in residential treatment.

17 26. The decision to arrest Hazle for this supposed violation of the terms of his parole  
18 was conducted at the recommendation of Crofoot, and with the concurrence and approval of  
19 Crofoot’s Unit Supervisor, Brenda Wilding. An oral order of return to prison on this basis was  
20 authorized by Commissioner Jallings.

21 27. Hazle was incarcerated at the Shasta County Jail, then transported to the High  
22 Desert State Prison, and ultimately sent to the CRC state prison in Norco, California, a facility  
23 recognized by California’s governor to be “overcrowded” and “very dangerous for . . . the  
24 inmates.” Hazle was incarcerated a total of roughly 125 days as a result of the revocation of his  
25 parole.  
26

FIRST CLAIM FOR RELIEF

(For Violation of Civil Rights under 42 U.S.C. section 1983; Against All Defendants)

28. Plaintiff realleges and incorporates by this reference each and every allegation of paragraphs 1 through 27 as if fully set forth in this claim for relief.

29. Defendants violated Hazle's rights under the Establishment Clause of the First Amendment of the United States Constitution by, among other things:

- (a) requiring him, as a condition of parole, to participate in a "12-step" program that contains substantial religious components;
- (b) rejecting his requests to fulfill the treatment condition of his parole through a secular and non-religious program; and
- (c) revoking his parole, and incarcerating him, because he resisted this coerced participation in a program that contains substantial religious components.

30. At the time that defendants took this action, the law was clearly established. Any reasonable official or person would have known that the conditions imposed on Hazle, and the actions taken against him, constituted an impermissible violation of Hazle's First Amendment rights.

31. As a result of this constitutional violation, Hazle was wrongly incarcerated for approximately 125 days in an overcrowded and dangerous state prison.

32. Hazle thus suffered an extended period of deprivation of liberty, the indignity of incarceration, and financial loss, stress, humiliation and emotional distress.

33. In committing these acts, defendants carried out, implemented and conformed to official or de facto policies, customs, practices and/or directives which had been issued, approved or condoned by other defendants. These policies, customs, practices and/or directives include, but are not limited to, the following: (1) requiring that persons released from state prison on drug-related charges participate in religious treatment programs, notwithstanding that such compulsory participation violates the Establishment Clause of the United States Constitution; (2)

1 failing to provide such persons with secular or non-religious alternatives for post-release  
2 treatment; (3) failing to implement procedures or protocols to accommodate parolees who object  
3 to the substantial religious components of the treatment facilities to which they are assigned; (4)  
4 revoking parole and incarcerating parolees who protest, object to, or refuse to participate in  
5 religious treatment programs.

6 34. These official policies, customs, practices and/or directives are causally and  
7 affirmatively linked to the deprivation of Hazle's constitutional rights.

8 35. Defendants have the final decision-making authority in selecting and  
9 implementing the policies, customs, practices and/or directives that caused the deprivation of  
10 Hazle's constitutional rights.

11 36. As a direct and proximate result of the actions and omissions of defendants, Hazle  
12 suffered loss of liberty, financial loss, and emotional distress, in an amount to be proved at trial.

13 37. In carrying out these unconstitutional acts, and in implementing these policies,  
14 customs, practices and/or directives, defendants acted intentionally, recklessly, oppressively,  
15 unjustifiably, and with gross and deliberate indifference to Hazle's constitutional right, justifying  
16 an award of punitive damages.

17 SECOND CLAIM FOR RELIEF

18 (Taxpayer's Injunction Pursuant to CCP § 526a; Against All Defendants)

19 38. Plaintiff realleges and incorporates by this reference each and every allegation of  
20 paragraphs 1 through 37, as if fully set forth in this claim for relief.

21 39. Defendants, individually and collectively, have established, instituted and ratified  
22 policies and procedures that permit and encourage the Constitutional violations to which Hazle  
23 was subjected, whereby (a) persons convicted of drug-related offenses are required to participate  
24 in religious treatment programs in order to be eligible for parole, (b) such persons are not  
25 provided secular and non-religious post-release treatment alternatives, and/or (c) those persons  
26



1 who protest or resist coerced participation in religious activities are subject to parole revocation  
2 and imprisonment.

3 40. These policies and procedures violate the Establishment Clause of the United  
4 States Constitution, and constitute an illegal expenditure of state resources and funds. Under  
5 California Code of Civil Procedure section 526a, Hazle seeks an order restraining and preventing  
6 this illegal expenditure.

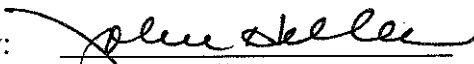
7 WHEREFORE, plaintiff respectfully prays for judgment against each and all of the  
8 defendants as follows:

- 9 a. For special, general and other compensatory damages according to proof;
- 10 b. For an injunction prohibiting the illegal expenditure of state money to fund
- 11 unconstitutional parole practices;
- 12 c. For punitive damages according to proof;
- 13 d. For attorneys' fees;
- 14 e. For costs of suit; and
- 15 f. For such other and further relief as the Court may deem appropriate.

16 Dated: September 29, 2008

CHAPMAN, POPIK & WHITE LLP

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18 By:   
19 John H. Heller  
Attorneys for Plaintiffs Barry A. Hazle, Jr.

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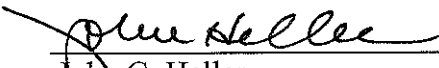
**JURY TRIAL DEMAND**

22 Plaintiff demands a trial by jury of all claims and issues so triable in this action.

23 Dated: September 29, 2008

CHAPMAN, POPIK & WHITE LLP

24

25 By:   
26 John G. Heller  
Attorneys for Plaintiff Barry A. Hazle, Jr.

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