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14 Attorneys for Plaintiffs

15  
16 IN THE UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18

19 KEVIN M. SCHILLING, JOHN PINEDO,  
WILLIAM TELLEZ, on behalf of themselves  
20 and all those similarly situated,

21 Plaintiffs,

22 vs.

23 TRANSCOR AMERICA, LLC, SGT. JOHN  
SMITH, OFFICER JEFF BRUMMETT, and  
24 DOES 1 through 100,

25 Defendants.

Case No. 3:08-cv-00941-SI

**SECOND AMENDED CLASS ACTION  
COMPLAINT**

DEMAND FOR JURY TRIAL

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1 PLAINTIFFS COME BEFORE THIS HONORABLE COURT AND ALLEGE:

2 **INTRODUCTION**

3 1. This is an action for declaratory and injunctive relief, damages, and punitive  
4 damages against TRANSCOR AMERICA, LLC, SGT. JOHN SMITH, OFFICER JEFF  
5 BRUMMETT and DOES 1 THROUGH 100 (persons sued herein by their fictitious names) for  
6 violations of plaintiffs' constitutional rights and those of other similarly situated persons.

7 2. In this complaint, plaintiffs allege that TRANSCOR AMERICA, LLC's official  
8 policy, practice, or custom of transporting pretrial detainees and prisoners in conditions that  
9 amount to cruel and unusual punishment violated and violates the rights of plaintiffs, and each  
10 of those persons similarly situated, secured by the Fourth, Eighth and Fourteenth Amendments  
11 to the U.S. Constitution and entitles plaintiffs, and each of those similarly situated, to recover  
12 damages and attorneys' fees under the Federal Civil Rights Act (42 U.S.C. §§ 1983, 1988).  
13 TRANSCOR AMERICA, LLC's policies, practices or customs include but are not limited to  
14 transporting pretrial detainees and prisoners in small metal cages in which a person can neither  
15 stand up nor lie down for more than 24 hours at a time while the person is handcuffed, chained,  
16 and in shackles, and failing to provide pretrial detainees and prisoners with adequate food,  
17 fluids, exercise, hygiene, and medical care.

18 3. Because TRANSCOR AMERICA, LLC's official policy, practice, or custom is  
19 to transport pretrial detainees and prisoners in conditions that amount to unlawful detention,  
20 excessive force, and cruel and unusual punishment, there is a likelihood of future injuries to  
21 pretrial detainees and prisoners including members of the plaintiff class. Accordingly,  
22 plaintiffs seek an order declaring unlawful TRANSCOR AMERICA, LLC's policy, practice or  
23 custom of transporting pretrial detainees under the conditions described above and enjoining  
24 TRANSCOR AMERICA, LLC from engaging in this conduct in the future.

25 4. Plaintiffs include claims for damages and attorneys' fees under California state  
26 law against TRANSCOR AMERICA, LLC for violation of the Bane Civil Rights Act  
27 (California Civil Code § 52.1(b)) pursuant to which plaintiffs are, and each of those persons  
28 similarly situated in the subclass of pretrial detainees and prisoners transported by defendants

1 in California is, entitled to recover a minimum of \$4,000 for each violation of rights secured to  
2 them by the constitution or laws of the state of California and the constitution or laws of the  
3 United States and attorneys' fees (California Civil Code § 52.1(h)).

4 5. Plaintiffs include claims for damages and attorneys' fees under the Federal Civil  
5 Rights Act (42 U.S.C. §§ 1983, 1988) against all defendants for their violation of plaintiffs'  
6 Fourth and Fourteenth Amendment right to be free from the use of excessive force, and the  
7 right to be provided with adequate medical care.

8 6. Finally, plaintiffs include a claim for damages and attorneys' fees under the  
9 Federal Civil Rights Act (42 U.S.C. §§ 1983, 1988) against TRANSCOR AMERICA, LLC and  
10 DOES 1-10 for its failure to adequately supervise SGT. SMITH, OFFICER JEFF  
11 BRUMMETT, and DOES 11 through 100.

#### 12 JURISDICTION

13 7. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth,  
14 Eighth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded  
15 upon 28 U.S.C. §§ 1331 and 1341(3) and (4) and the aforementioned statutory and  
16 constitutional provisions.

17 8. The court has supplemental jurisdiction over plaintiffs' state claims under 28  
18 U.S.C. § 1367(a).

19 9. The amount in controversy exceeds \$10,000, excluding interest and costs.

#### 20 PARTIES

21 10. Plaintiff KEVIN M. SCHILLING is a resident of Pleasant Hill, California. Like  
22 all those similarly situated, plaintiff is and at all material times herein was a citizen of the  
23 United States who was arrested in one jurisdiction for an offense allegedly committed in  
24 another jurisdiction and was transported from one detention facility to another detention facility  
25 by defendants.

26 11. Plaintiff JOHN PINEDO is a resident of Delano, California. Like all those  
27 similarly situated, plaintiff is and at all material times herein was a citizen of the United States  
28

1 who was a sentenced prisoner serving time in one jurisdiction when he was picked up by  
2 defendant TRANSCOR AMERICA, LLC and transported to another jurisdiction for a court  
3 appearance.

4 12. Plaintiff WILLIAM TELLEZ is a citizen of the United States who was serving  
5 the sentence of a criminal court for a term less than for life in the Federal Penitentiary in  
6 Atwater, California, when he was picked up and transported to and from Clark County  
7 Detention Center in Nevada by defendant TRANSCOR AMERICA, LLC. Plaintiff TELLEZ  
8 remained in prison from the time he was returned to the Federal Penitentiary in Atwater,  
9 California to the date of the filing of this complaint.

10 13. Defendant TRANSCOR AMERICA, LLC is and at all material times referred to  
11 herein was a for-profit Tennessee corporation licensed to do business in California whose  
12 business entails the transportation of pretrial detainees and prisoners throughout the United  
13 States on behalf of federal, state, and local governments.

14 14. Defendant SGT. JOHN SMITH is an agent and/or employee of defendant  
15 TRANSCOR AMERICA, LLC.

16 15. Defendant OFFICER JEFF BRUMMETT is an agent and/or employee of  
17 Defendant TRANSCOR AMERICA, LLC.

18 16. Plaintiffs are informed and believe and thereon allege that defendants sued  
19 herein by their fictitious names, DOES 1 through 100, are agents and/or employees of  
20 defendant TRANSCOR AMERICA, LLC. Plaintiffs are not currently aware of the true names  
21 and identities of those sued herein as DOES 1 through 100, but will amend their complaint to  
22 include such persons' real names once said names are made available to them.

23 17. At all material times mentioned herein, each of the defendants was acting under  
24 the color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and  
25 usages of the United States and its States, including but not limited to the State of California.

26 18. Class action plaintiffs are all those similarly situated pretrial detainees and  
27 prisoners who were transported by TRANSCOR AMERICA, LLC, its agents and/or  
28 employees, and forced to remain in the transport van for more than 24 hours, whose claims are

1 timely under California law, including the tolling provisions of California Code of Civil  
2 Procedure sections 352 and 352.1.

3 19. For purposes of the California Bane Act Claim, class action plaintiffs are all  
4 those similarly situated pretrial detainees and prisoners who were transported in the State of  
5 California by TRANSCOR AMERICA, LLC, its agents and/or employees, and forced to  
6 remain in the transport van for more than 24 hours, whose claims are timely under California  
7 law, including the tolling provisions of California Code of Civil Procedure sections 352 and  
8 352.1.

9 **FACTS**

10 20. In or about early September, 2006, plaintiff KEVIN M. SCHILLING was  
11 arrested at his home in Vallejo, California on a no-bail warrant issued by a court in Las Vegas,  
12 Nevada. Plaintiff was booked into a detention facility in Fairfield, California, where he  
13 remained for several days.

14 21. On or about September 25, 2006, plaintiff was picked up at the Fairfield  
15 Detention facility by agents and/or employees of defendant TRANSCOR AMERICA, LLC.  
16 Before boarding the transport van, plaintiff was strip searched. He was then handcuffed, a  
17 restraint was applied that secured his hands to his waist, and he was shackled. After boarding  
18 the transport van, plaintiff was seated in a small, locked metal cage.

19 22. For the next several days, plaintiff remained in the transport van, restrained as  
20 described above, while the van meandered around California -- from Fairfield through counties  
21 within the Northern District of the United States District Court, to Fresno and then back, once  
22 again, through counties within the Northern District of the United States District Court, to  
23 Fairfield – picking up and dropping off pretrial detainees and/or prisoners.

24 23. During his time in the transport van, plaintiff was provided with only two meals  
25 a day which consisted of a fast food sandwich or hamburger and a cup of water. Plaintiff was  
26 not permitted to lie down or stand up or shower or shave or brush his teeth or change his  
27 clothes. He was forced to use the on-board toilet at the defendants' convenience. Eventually,  
28 it backed up and smelled bad. But for the steps from his cage to the toilet and back, he was

1 allowed no physical activity.

2 24. When, after approximately four days of traveling in these conditions, plaintiff  
3 realized that the TRANSCOR AMERICA, LLC transport van was headed back to Fairfield, he  
4 demanded to talk to the warden. In response, and while he was still detained as described  
5 above, defendants SGT. JOHN SMITH and OFFICER JEFF BRUMMETT grabbed him and  
6 sprayed pepper spray in his face. While plaintiff was still unable to see, SGT. JOHN SMITH  
7 purposely walked him into poles and, along with an unknown TRANSCOR AMERICA, LLC  
8 employee, proceeded to punch him. Although this occurred at approximately 3:00 a.m. outside  
9 the Fresno County Jail, plaintiff was not allowed to shower or change clothes or see a nurse or  
10 a doctor until approximately two days later when, after making numerous stops along the way,  
11 the transport van reached Imperial County Jail.

12 25. Plaintiff remained in the Imperial County Jail for approximately three days, after  
13 which time he was transported to Las Vegas.

14 26. On or about June 29, 2006, at approximately 9:00 a.m., plaintiff JOHN PINEDO  
15 was picked up by defendant TRANSCOR AMERICA, LLC, at Kern Valley State Prison in  
16 Delano, California where he was serving a sentence for possession and sale of marijuana, and  
17 transported to Santa Barbara County Jail where he arrived on June 30, 2006, more than 27  
18 hours later for a child custody hearing.

19 27. The entire time plaintiff PINEDO was on defendant TRANSCOR's transport  
20 vehicle, he was handcuffed, shackled, and restrained with a belly chain and chained to other  
21 inmates in a metal cage, unable to lie down, or to sleep during the entire time of his transport.

22 28. During his time in the transport van, plaintiff PINEDO was permitted only two  
23 opportunities to urinate but could not sit to use the toilet to defecate because the TRANSCOR  
24 personnel would not remove any of the restraints.

25 29. During the entire time of his transport, plaintiff PINEDO was fed only three  
26 "fast food" meals, not permitted to wash, to shower, or to change his clothes, before being  
27 delivered to Santa Barbara County Jail.

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1 DOES 1-10. The unlawful detention and transportation, use of excessive force, and cruel and  
2 unusual punishment complained of herein was engaged in without regard to the nature of the  
3 alleged offense for which plaintiffs, and each of those similarly situated, had been arrested,  
4 without regard to whether or not plaintiffs, and each of those similarly situated, had been  
5 convicted of any crime, and without regard to whether plaintiffs, and each of those similarly  
6 situated, had any history of violence.

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

9 39. The class is defined to include all pretrial detainees and prisoners who were  
10 transported by TRANSCOR AMERICA, LLC, its agents and/or employees, and forced to  
11 remain in the transport van for more than 24 hours, whose claims are timely under California  
12 law, including the tolling provisions of California Code of Civil Procedure sections 352 and  
13 352.1.

14 40. The subclass for purposes of the Bane Act claims is all pretrial detainees and  
15 prisoners transported in California by TRANSCOR AMERICA, LLC, its agents and/or  
16 employees, and forced to remain in the transport van for more than 24 hours, whose claims are  
17 timely under California law, including the tolling provisions of California Code of Civil  
18 Procedure sections 352 and 352.1.

19 41. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members  
20 of the class are so numerous that joinder of all members is impractical. Plaintiffs do not know  
21 the exact number of class members. Plaintiffs are informed and believe, and thereupon allege,  
22 that more than 30,000 persons per year are transported by defendants, and that most of the trips  
23 last more than 24 hours. Plaintiffs are informed and believe, and therefore allege, that there are  
24 thousands of persons in the proposed class.

25 42. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are  
26 informed and believe, and thereupon allege, that there are many facts common to the class  
27 including but not limited to: (a) whether defendants have a policy, practice, or custom of  
28 transporting pretrial detainees and prisoners in small metal cages, wearing handcuffs, shackles,

1 and wrist restraints, for more than 24 hours at a time; (b) whether defendants have a policy,  
2 practice or custom of providing pretrial detainees and prisoners with inadequate food; (c)  
3 whether defendants have a policy, practice or custom of providing pretrial detainees and  
4 prisoners with inadequate fluids; (d) whether defendants have a policy, practice or custom of  
5 providing pretrial detainees and prisoners with inadequate hygiene; (e) whether defendants  
6 have a policy, practice or custom of providing pretrial detainees and prisoners with inadequate  
7 exercise; and (f) whether defendants have a policy, practice or custom of providing pretrial  
8 detainees and prisoners with inadequate medical care.

9 43. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are  
10 informed and believe, and thereupon allege, that there are many questions of law common to  
11 the class including but are not limited to: (a) whether transporting pretrial detainees and  
12 prisoners in metal cages, wearing handcuffs, shackles, and wrist restraints, unable to lie down  
13 or stand up for more than 24 hours at a time, violates the Fourth, Eighth, and Fourteenth  
14 Amendments; (b) whether defendants' policy, practice or custom of providing pretrial  
15 detainees and prisoners with inadequate food violates pretrial detainees' right to be free from  
16 unreasonable seizure and detention and prisoners' right to be free from cruel and unusual  
17 punishment; (c) whether defendants' policy, practice or custom of providing pretrial detainees  
18 and prisoners with inadequate fluids violates pretrial detainees' right to be free from  
19 unreasonable seizure and detention and prisoners' right to be free from cruel and unusual  
20 punishment; (d) whether defendants' policy, practice or custom of providing pretrial detainees  
21 and prisoners with inadequate hygiene violates pretrial detainees' right to be free from  
22 unreasonable seizure and detention and prisoners' right to be free from cruel and unusual  
23 punishment; (e) whether defendants' policy, practice or custom of providing pretrial detainees  
24 with inadequate exercise violates pretrial detainees' right to be free from unreasonable seizure  
25 and detention; and (f) whether defendants' policy, practice or custom of providing pretrial  
26 detainees and prisoners with inadequate medical care violates pretrial detainees' right to be free  
27 from unreasonable seizure and detention and prisoners' right to be free from cruel and unusual  
28 punishment.

1           44. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the claims of  
2 the representative plaintiffs are typical of the class. Representative plaintiffs have the same  
3 interests and suffered the same type of injuries as all of the class members. Plaintiffs' claims  
4 arose because of defendants' official policy, practice, or custom of subjecting detainees to  
5 unlawful transportation and detention, excessive force, and cruel and unusual punishment.  
6 Plaintiffs' claims are based upon the same legal theories as the claims of the class members.  
7 Each class member suffered actual damages as a result of being transported under the  
8 conditions imposed by TRANSCOR AMERICA, LLC.

9           45. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the  
10 representative plaintiffs will fairly and adequately protect the class interests. Plaintiffs'  
11 interests are consistent with and not antagonistic to the interests of the class.

12           46. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(A),  
13 prosecutions of separate actions by individual members of the class would create a risk that  
14 inconsistent or varying adjudications with respect to individual members of the class would  
15 establish incompatible standards of conduct for the parties opposing the class.

16           47. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(B),  
17 prosecutions of separate actions by individual members of the class would create a risk of  
18 inconsistent adjudications with respect to individual members of the class which would, as a  
19 practical matter, substantially impair or impede the interests of the other members of the class  
20 to protect their interests.

21           48. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(2), plaintiffs  
22 are informed and believe, and thereupon allege, that defendants have acted on grounds  
23 generally applicable to the class, thereby making appropriate the final injunctive or declaratory  
24 relief with respect to the class as a whole.

25           49. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), this class  
26 action is superior to other available methods for the fair and equitable adjudication of the  
27 controversy between the parties. Plaintiffs are informed and believe, and thereupon allege, that  
28 the interests of members of the class in individually controlling the prosecution of a separate

1 action is low, in that most class members would be unable individually to prosecute any action  
2 at all. Plaintiffs are informed and believe, and thereupon allege, that the amounts at stake for  
3 individuals are so small that separate suits would be impracticable. Plaintiffs are informed and  
4 believe, and thereupon allege, that most members of the class will not be able to find counsel to  
5 represent them. Plaintiffs are informed and believe, and thereupon allege, that it is desirable to  
6 concentrate all litigation in one forum because it will promote judicial efficiency to resolve the  
7 common questions of law and fact in one forum, rather than in multiple courts.

8 50. Plaintiffs do not know the identities of all of the class members. Plaintiffs are  
9 informed and believe, and thereupon allege, that the identities of the class members may be  
10 ascertained from records maintained by defendant TRANSCOR AMERICA, LLC. Plaintiffs  
11 are informed and believe, and thereupon allege, that records maintained by defendants reflect  
12 who was subjected to transportation, from where to where, when, and for how long. Plaintiffs  
13 are informed and believe, and thereupon allege, that all of the foregoing information is  
14 contained in defendants' records and that the information necessary to identify the class  
15 members, by last known addresses, and the dates, pick-up and drop-off points, and duration of  
16 their transportation, is readily available from said records.

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

- 24 i. The pendency of the class action and the issues common to the  
25 class;
- 26 ii. The nature of the action;
- 27 iii. Their right to "opt out" of the action within a given time, in which  
28 event they will not be bound by a decision rendered in the class

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action;

- iv. Their right, if they do not “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 plaintiffs and their 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 CLAIM FOR RELIEF**

(Violation Of Fourth, Eighth And Fourteenth Amendments To The U.S. Constitution On Behalf Of Plaintiffs And All Persons Similarly Situated Against Defendants TRANSCOR AMERICA, LLC And DOES 1 through 100, And Each Of Them)

52. Plaintiffs hereby incorporate herein the preceding paragraphs of this complaint, to the extent relevant, as if fully set forth.

53. Defendants’ policies, practices, or customs regarding the transportation of pretrial detainees and prisoners violated the rights of plaintiffs, and the rights of each of those similarly situated, under the Fourth and Eighth Amendments to be free from unlawful detention, the use of excessive force, and cruel and unusual punishment, and violated the rights of plaintiffs, and the rights of each of those similarly situated, under the Fourteenth Amendment to due process and privacy, and directly and proximately damaged plaintiffs, and each of those similarly situated, as herein alleged, entitling plaintiffs, and each of those similarly situated, to recover damages for said constitutional violations pursuant to 42 U.S.C. § 1983.

WHEREFORE, plaintiffs, on behalf of themselves and on behalf of all those similarly situated, pray for relief as hereunder appears.

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**SECOND CLAIM FOR RELIEF**

(Violation Of The California State Bane Civil Rights Act, Civil Code Section 52.1, On Behalf Of Plaintiffs And All Persons Similarly Situated And Against All Defendants, And Each Of Them)

54. Plaintiffs hereby incorporate herein the preceding paragraphs of this complaint, to the extent relevant, as if fully set forth.

55. By subjecting plaintiffs, and all those similarly situated, to unlawful seizure and detention, the use of excessive force, and cruel and unusual punishment, defendants, and each of them, have interfered by threats, intimidation, or coercion with plaintiff's rights, and the rights of all those similarly situated, secured by the Constitution of the United States and the rights secured by the Constitution of California.

56. Plaintiffs, and each of the persons plaintiffs seek to represent, were harmed by defendants' interference with their aforementioned constitutional and statutory rights.

57. By using threats, intimidation and coercion to interfere with plaintiffs', and each of the persons' plaintiffs seek to represent, aforementioned constitutional and statutory rights, defendants, and each of them, have violated California Civil Code § 52.1.

58. Defendants' violations of California Civil Code § 52.1 make them liable to each plaintiff for damages up to a maximum of three times the amount of each plaintiff's actual damages, but in no event less than four thousand dollars (\$4,000), together with any attorney's fees and costs that may be determined by the court.

WHEREFORE, plaintiffs, on behalf of themselves and on behalf of all those similarly situated, pray for relief as hereunder appears.

**THIRD CLAIM FOR RELIEF**

(Violation Of Fourth And Fourteenth Amendments To The U.S. Constitution On Behalf Of Plaintiffs Against All Defendants, And Each Of Them)

59. Plaintiffs hereby incorporate herein the preceding paragraphs of this complaint, to the extent relevant, as if fully set forth.

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