

1 Claudia Center, State Bar No. 158255
2 Lewis Bossing, State Bar No. 227492
3 THE LEGAL AID SOCIETY-EMPLOYMENT LAW CENTER
4 600 Harrison St., Suite 120
5 San Francisco, CA 94107
6 Telephone: (415) 864-8848
7 Facsimile: (415) 864-8199

8 Michael W. Bien, State Bar No. 96891
9 Thomas B. Nolan, State Bar No. 169692
10 Meghan Lang, State Bar No. 221156
11 ROSEN BIEN & ASARO, LLP
12 155 Montgomery Street, 8th Floor
13 San Francisco, CA 94104
14 Telephone: (415) 433-6830
15 Facsimile: (415) 433-7104

16 Attorneys for Plaintiffs

17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE EASTERN DISTRICT OF CALIFORNIA

19 ROBERT HECKER and
20 CHRISTOPHER LEE JENKINS,

21 Plaintiffs, on behalf of themselves
22 and all others similarly situated,

23 v.

24 CALIFORNIA DEPARTMENT OF
25 CORRECTIONS AND
26 REHABILITATION, ARNOLD
27 SCHWARZENEGGER, Governor of
28 the State of California, in his official
capacity, RODERICK Q. HICKMAN,
Secretary of the California Department
of Corrections and Rehabilitation, in his
official capacity, JEANNE S.
WOODFORD, Undersecretary of the
California Department of Corrections
and Rehabilitation, in her official
capacity, JOHN DOVEY, Director,
Division of Adult Institutions, in his
official capacity, MARTIN VEAL,
Warden of the California Medical
Facility, in his official capacity, and
ANTHONY KANE, Warden of the
Correctional Training Facility, in his
official capacity,

Defendants.

) Case No. 2:05-cv-02441-LKK-GGH

) FIRST AMENDED CLASS ACTION
) COMPLAINT FOR DECLARATORY AND
) INJUNCTIVE RELIEF

) [Civil Rights – Disability
) Discrimination]

1
2 Plaintiffs ROBERT HECKER and CHRISTOPHER LEE JENKINS allege
3 as follows:

4 INTRODUCTION

5 1. This is an action for relief from Defendants' violation of Plaintiffs' civil
6 rights under the Rehabilitation Act of 1973, the Americans with Disabilities Act of
7 1990, and California Government Code section 11135.

8 2. Plaintiff ROBERT HECKER ("HECKER") is an individual with a
9 psychiatric disability, and an inmate incarcerated at the California Medical Facility
10 ("CMF").

11 3. Plaintiff CHRISTOPHER LEE JENKINS ("JENKINS") is an individual
12 with a psychiatric disability, and an inmate incarcerated at the Correctional
13 Training Facility ("CTF"). Plaintiff JENKINS was formerly incarcerated at CMF
14 and at the California Men's Colony (CMC).

15 4. The Defendants CALIFORNIA DEPARTMENT OF CORRECTIONS
16 AND REHABILITATION ("CDCR"), GOVERNOR ARNOLD
17 SCHWARZENEGGER ("SCHWARZENEGGER"), RODERICK Q. HICKMAN
18 ("HICKMAN"), JEANNE S. WOODFORD ("WOODFORD"), JOHN DOVEY
19 ("DOVEY"), MARTIN VEAL ("VEAL"), and ANTHONY KANE ("KANE"),
20 and each of them, have denied Plaintiffs HECKER and JENKINS access to basic
21 CDCR programs, services, and activities on the basis of their disabilities.

22 5. Plaintiffs seek declaratory and injunctive relief, and reasonable attorneys'
23 fees and costs, for defendants' violations of their rights.

24 JURISDICTION AND VENUE

25 6. This Court has jurisdiction over the subject matter and the parties pursuant
26 to 28 U.S.C. §§ 1331, 2201, and 2202. Plaintiffs bring this suit under Title II of
27 the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12132, and
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1 Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), 29 U.S.C. §
2 794.

3 7. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. §
4 1391(b), because events giving rise to Plaintiffs’ claims occurred in this District.

5 **PARTIES**

6 8. Plaintiff HECKER is a person with a disability within the meaning of all
7 applicable statutes, and is a qualified person with a disability within the meaning of
8 Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff
9 HECKER is a resident of California, and an inmate incarcerated at CMF.

10 9. Plaintiff JENKINS is a person with a disability within the meaning of all
11 applicable statutes, and is a qualified person with a disability within the meaning of
12 Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff
13 JENKINS is a resident of California, and an inmate incarcerated at CTF. Plaintiff
14 JENKINS was formerly incarcerated at CMF and CMC.

15 10. Defendant CDCR administers and operates the California prison system,
16 including CMF and CTF, and is legally responsible for ensuring compliance with
17 state and federal disability nondiscrimination laws at all California correctional
18 facilities, including CMF and CTF. Defendant CDCR is a public entity within the
19 meaning of Title II of the ADA. Defendant CDCR receives federal financial
20 assistance and is covered by the Rehabilitation Act.

21 11. Defendant SCHWARZENEGGER is the Governor of the State of
22 California, and oversees all state agencies, including the CDCR. Defendant
23 SCHWARZENEGGER is legally responsible for ensuring compliance with state
24 and federal disability nondiscrimination laws at all state facilities, including state
25 correctional facilities. Defendant SCHWARZENEGGER is legally responsible for
26 the unlawful policies, practices, and procedures challenged herein, and has the
27 authority and legal obligation to eliminate disability discrimination by abolishing
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1 these policies, practices, and procedures. Defendant SCHWARZENEGGER is
2 sued in his official capacity.

3 12. Defendant HICKMAN is the Secretary of the CDCR, and is legally
4 responsible for ensuring compliance with state and federal disability
5 nondiscrimination laws at all correctional facilities, including CMF and CTF.
6 Defendant HICKMAN is legally responsible for the unlawful policies, practices,
7 and procedures challenged herein, and has the authority and legal obligation to
8 eliminate disability discrimination by abolishing these policies, practices, and
9 procedures. Defendant HICKMAN is sued in his official capacity.

10 13. Defendant WOODFORD is the Undersecretary of the CDCR, and is
11 legally responsible for ensuring compliance with state and federal disability
12 nondiscrimination laws at all correctional facilities, including CMF and CTF.
13 Defendant WOODFORD is responsible for the unlawful policies, practices, and
14 procedures challenged herein, and has the authority and legal obligation to
15 eliminate disability discrimination by abolishing these policies, practices, and
16 procedures. Defendant WOODFORD is sued in her official capacity.

17 14. Defendant DOVEY is the Director of the Division of Adult Institutions,
18 and is legally responsible for ensuring compliance with state and federal disability
19 nondiscrimination laws at all adult correctional facilities, including CMF and CTF.
20 Defendant DOVEY is responsible for the unlawful policies, practices, and
21 procedures challenged herein, and has the authority and legal obligation to
22 eliminate disability discrimination by abolishing these policies, practices, and
23 procedures. Defendant DOVEY is sued in his official capacity.

24 15. Defendant VEAL is the Warden of CMF. He is responsible for the
25 administration of programs, services, and activities offered to inmates at the CMF,
26 and is in charge of supervision and discipline of all correctional officials and
27 employees at CMF. Defendant VEAL is sued in his official capacity.
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1 16. Defendant KANE is the Warden of CTF. He is responsible for the
2 administration of programs, services, and activities offered to inmates at the CTF,
3 and is in charge of supervision and discipline of all correctional officials and
4 employees at CTF. Defendant KANE is sued in his official capacity.

5 STATEMENT OF FACTS

6 17. Plaintiff HECKER is an inmate incarcerated at the CMF. He is assigned to
7 a program for inmates with psychiatric disabilities called the Enhanced Outpatient
8 Program (“EOP”), which is a part of the CDCR’s Mental Health Service Delivery
9 System (“MHSDS”). Plaintiff HECKER has experienced, and continues to
10 experience, the unlawful actions and inactions alleged herein.

11 18. Plaintiff JENKINS is an inmate incarcerated at the CTF. He was formerly
12 incarcerated at the CMF and the CMC. While he was at the CMF and the CMC, he
13 was assigned to the EOP. He is currently assigned to a program for inmates with
14 psychiatric disabilities called the Correctional Clinical Case Management System
15 (“CCCMS”), which is also part of the MHSDS. Plaintiff JENKINS has
16 experienced, and continues to experience, the unlawful actions and inactions
17 alleged herein.

18 19. The Defendants CDCR, SCHWARZENEGGER, HICKMAN,
19 WOODFORD, DOVEY, VEAL, and KANE, and each of them, have adopted,
20 implemented, ratified, and/or failed to abolish numerous unnecessary and
21 discriminatory policies, practices, and procedures affecting the inmates
22 participating in the MHSDS. These systemic policies, practices and procedures bar
23 and function to bar Plaintiffs HECKER and JENKINS and other similarly situated
24 MHSDS participants from basic educational, vocational, employment, and
25 recreational programs that are provided to other, nondisabled inmates. For
26 example:

27 (a) While inmates assigned to the EOP at CMF are required to
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1 participate in ten hours of mental health programming such as support groups, the
2 remaining hours of their weeks – 30 to 40 hours each week – are unscheduled and
3 available for participation in the broad range of educational, vocational,
4 employment, and recreational programs available to the non-disabled, non-EOP
5 population. Nevertheless, by express policy and without basis, inmates in the EOP
6 are deemed to be “booked” from 8:00 a.m. to 4:00 p.m. Monday through Friday,
7 and are entirely precluded from participating in any non-EOP prison programs,
8 including vocational, employment, and educational programs, during those times.
9 *See, e.g.*, December 30, 2002 Memorandum from L.H. Dizmang, M.D., Chief
10 Psychiatrist, California Medical Facility.

11 (b) Further, it is the express policy of the CTF that “[i]nmates in the
12 Mental Health Services Delivery System (MHSDS) at any level of care” are
13 ineligible for placement to CTF – South, and that “participants in the MHSDS at
14 the levels of EOP or CCCMS or on psychotropic medications” are ineligible for
15 placement to CTF – East Dorm. As a result, persons with psychiatric disabilities
16 are excluded from the parole programming and work crew opportunities available
17 at CTF – South, and from the Prison Industry Authority (PIA) jobs available at
18 CTF – East Dorm. *See* Correctional Training Facility Operation Procedure #20
19 (Feb. 28, 2005).

20 (c) Additional systemwide policies, practices, and procedures
21 similarly function to discriminate against inmates with severe psychiatric
22 disabilities, exclude them from programs, services, and activities, and segregate
23 them unnecessarily.

24 20. As a result of the unnecessary and discriminatory systemic policies,
25 practices, and procedures challenged herein, and on the basis of disability,
26 Plaintiffs HECKER and JENKINS and others similarly situated have been denied
27 equal access to a broad range of prison programs, services, and activities for which
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1 they are qualified, and have been subjected to unlawful segregation. These denials
2 include, but are not limited to, the following:

- 3 (a) disability-based denial of access to educational opportunities,
4 including the electronics program, computer classes, the Art in
5 Corrections program, and other school programs;
- 6 (b) disability-based denial of access to employment and vocational
7 opportunities, including PIA jobs;
- 8 (c) disability-based denial of access to recreational programs and
9 facilities;
- 10 (d) disability-based denial of access to religious programs, including
11 church services and bible study; and
- 12 (e) disability-based denial of access to other programs, services, and
13 activities.

14 21. These systemic denials and exclusions are unnecessary, discriminatory, and
15 unlawful. The exclusion of MHSDS inmates from programs and services cause
16 them to lose benefits attendant to work, education, and vocational activities.
17 Further, the inmates in the MHSDS are excluded and segregated despite the fact
18 that participation in educational, vocational, employment, and recreational
19 programs is therapeutic for persons with serious psychiatric disabilities, and
20 promotes mental health and wellness. By contrast, exclusion and segregation,
21 particularly from educational, vocational, and employment opportunities,
22 undermines mental health, wellness, and rehabilitation. The Defendants' actions
23 and inactions function to aggravate and worsen the mental health status of
24 Plaintiffs HECKER and JENKINS and the other, similarly situated MHSDS
25 inmates.

1 **ADMINISTRATIVE EXHAUSTION**

2 **Plaintiff HECKER**

3 22. Plaintiff HECKER has repeatedly attempted to appeal the issues raised in
4 this lawsuit. However, his appeals have been repeatedly screened out by the CMF
5 Appeals Office, in violation of the CDC policies and procedures as set forth in
6 California Code of Regulations, Title 15.

7 23. On December 28, 2004, Plaintiff HECKER filed a timely 1824 appeal
8 challenging the policies, practices, and procedures complained of herein, and
9 requesting that “the Electronics program be made available to me” and seeking
10 “modifications to CDC policies, practices, and procedures to avoid discrimination
11 on the basis of disability[.]” Plaintiff HECKER noted that he was “being forced to
12 choose between an EOP level of care that I require to maintain mental health, and a
13 vocation that would further and enhance improvements in my mental health[.]”

14 24. On December 29, 2004, Plaintiff HECKER’s appeal was screened out,
15 purportedly because the “[a]ppel cannot be understood” and because the “wording
16 is too small.”

17 25. On January 3, 2005, Plaintiff HECKER resubmitted a timely 1824 appeal;
18 this time typed so that it could not be rejected as “too small.” Plaintiff HECKER
19 sought “access to the Electronics Program” and “[m]odification to CDC policies,
20 practices or procedures to avoid discrimination by denial of access to Electronics
21 Program on the basis of my disability[.]”

22 26. On January 5, 2005, Plaintiff HECKER’s appeal was again summarily
23 screened out, purportedly because his appeal was a “duplicate issue.” By
24 “duplicate issue,” the appeals coordinator was referencing a group appeal filed by
25 plaintiff JENKINS, on January 29, 2003. The issues complained of by Plaintiff
26 HECKER were ongoing and had not been resolved by Plaintiff JENKINS’ appeal.
27 Further, under governing procedures, only Plaintiff JENKINS could appeal the
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1 January 2003 group appeal.

2 27. On August 5, 2005, Plaintiff HECKER filed a timely 1824 appeal
3 challenging the policies, practices and procedures complained of herein, and
4 seeking “[m]eaningful and nondiscriminatory access to all prison programs[,]”
5 “including the Electronics Program, the Arts in Corrections Program, computer
6 classes, and bible study.” In his August 5, 2005 appeal, Plaintiff HECKER
7 explicitly noted that he was challenging “an ongoing problem and . . . an ongoing
8 need for the reasonable accommodation and modification requested herein,” and
9 that his appeal should not be barred as a “duplicate issue.”

10 28. On August 8, 2005, Plaintiff HECKER’s appeal was summarily screened
11 out, purportedly as a “duplicate issue.”

12 29. On August 15, 2005, Plaintiff HECKER sought Second Level review of the
13 screened-out appeal.

14 30. On August 19, 2005, Plaintiff HECKER’s request for Second Level review
15 was denied.

16 31. On August 23, 2005, Plaintiff HECKER sought Director’s Level review of
17 the screened-out appeal from the Inmate Appeals Branch.

18 32. On October 22, 2005, the Inmate Appeals Branch returned Plaintiff
19 HECKER’s documents to him, purportedly because the appeal was “rejected,
20 withdrawn or cancelled.”

21 33. Because Defendants have repeatedly screened out Plaintiff HECKER’s
22 administrative appeals, the grievance procedure has been rendered unavailable to
23 him, and the defendants cannot now claim that Plaintiff HECKER has failed to
24 exhaust his administrative remedies. *See Hall v. Alameida*, No. S-03-1595 DFL
25 KJM P, 2005 WL 2030728, at *3 (E.D. Cal. Aug. 23, 2005). Plaintiff HECKER
26 has been repeatedly and “reliably informed by an administrator that no remedies
27 are available” to him. *See Brown v. Valoff*, 422 F.3d 926, 935 (9th Cir. 2005).

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1 34. It is the policy of the CDCR not to accept appeals that have been screened
2 out as a “duplicate issue.” Accordingly, Plaintiff HECKER’s efforts to appeal his
3 “screened out” 1824 to the Second Level and to the Third Level (Director’s Level)
4 have been unavailing. At no time has the CDCR or its agents attempted to
5 consider, much less resolve, Plaintiff HECKER’s complaints. It would be futile
6 for Plaintiff HECKER to attempt to further avail himself of the internal CDCR
7 appeals process.

8 **Plaintiff JENKINS**

9 35. Plaintiff JENKINS has also repeatedly attempted to appeal the issues raised
10 in this lawsuit. His appeals regarding the exclusion of inmates with psychiatric
11 disabilities from work and education programs have been repeatedly denied and/or
12 screened out by CDCR officials.

13 36. On January 29, 2003, while at CMF, Plaintiff JENKINS filed a timely 1824
14 appeal challenging the policies, practices, and procedures complained of herein,
15 stating that “EOP inmates at CMF are being denied equal access to work and
16 educational opportunities available to other inmates at CMF. This denial has taken
17 place solely as a consequence of the fact that these inmates are disabled.” The
18 appeal seeks to have “full and equal access to work and educational programs at
19 CMF restored to EOP inmates.”

20 37. On March 6, 2003, Plaintiff JENKINS’ appeal was denied at the first level
21 of review.

22 38. On March 19, 2003, Plaintiff JENKINS appealed his issues to the second
23 level of review, expressly protesting the CDCR’s exclusion of CMF EOP inmates
24 from programs and services including religious services, Arts and Corrections,
25 library, telephone, and work and education programs between the hours of 8:00
26 a.m. to 4:00 p.m. Monday-Friday.

27 39. On April 10, 2003, Plaintiff JENKINS’ appeal was denied at the second
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1 level of review.

2 40. On April 27, 2003, Plaintiff JENKINS sought a Director's Level review of
3 his 1824 appeal, and provided a copy of the Director's Level appeal to the CDCR.
4 Plaintiff JENKINS mailed the original Director's Level appeal form to the CDCR
5 on May 25, 2003. On June 3, 2003, the CDCR returned the copy of the appeal to
6 Plaintiff JENKINS, purportedly because "[o]nly the original appeal form is
7 accepted at the Director's Level of Review."

8 41. On June 16, 2003, the CDCR returned the original form to Plaintiff because
9 "[a]n appellant must submit the appeal within 15 working days of the event or
10 decision being appealed, or of receiving a lower level decision." By these actions,
11 the CDCR screened out Plaintiff JENKINS' administrative appeal, rendering the
12 grievance procedure unavailable to him. *See Hall v. Alameida, supra.*

13 42. On October 6, 2004, while at CMC, Plaintiff JENKINS filed a 602 appeal
14 regarding the discriminatory denial of access to a work assignment in a clerical
15 position for which he was qualified because of his participation to the EOP
16 program. According to prison officials, "[b]ased on [Plaintiff] JENKINS'
17 assessment as an EOP inmate, he is incapable of performing the tasks assigned to
18 him in this assignment." *See "General Chrono: Request for Unassignment"* (Aug.
19 16, 2004).

20 43. On November 26, 2004, Plaintiff JENKINS' appeal was partially granted at
21 the First Level of review, because he was given copies of the paperwork relevant to
22 the denial, but he was not considered for the clerk's position he was seeking.

23 44. On December 30, 2004, Plaintiff JENKINS requested Second Level review
24 of his appeal. His appeal was partially granted on February 2, 2005, but he was
25 still not considered for the clerk's position he was seeking. Instead of being
26 considered for the paid clerical position he sought, he had been assigned to a non-
27 paid position as a yard crew worker.

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1 45. On February 16, 2005, Plaintiff JENKINS requested Director's Level
2 review of his appeal.

3 46. On May 18, 2005, Plaintiff JENKINS' appeal was denied at the Director's
4 Level. Although the CDCR acknowledged that "the basis for the appellant's
5 removal was inappropriate in that his Mental Health issue should not have been the
6 factor in the removal of the appellant from his clerical position," Plaintiff was still
7 not considered for the clerical position in question, nor awarded any pay he could
8 have received had he been permitted to work.

9 47. Now at CTF, Plaintiff JENKINS is continuing to experience exclusion
10 from core vocational and other programs on the basis of his psychiatric disability.
11 For example, he has been excluded from the parole programming and work crew
12 opportunities available at CTF – South because he is CCCMS.

13 48. On January 19, 2006, Plaintiff JENKINS filed an 1824 appeal challenging
14 the systemwide policies, practices, and procedures addressed herein, and
15 specifically the CDCR's denial of access to "outside work crews, fire camp,
16 substance abuse program (SATF), etc. . . . because I am CCCMS[.]" Plaintiff
17 JENKINS will complete his appeal of these issues through the Director's Level
18 within the next few weeks.

19 49. In view of the multiple institutional transfers he has experienced, in
20 addition to transfers from the EOP to the CCCMS to general population (GP) and
21 back, as well as the ongoing discrimination currently being experienced at CTF,
22 Plaintiff JENKINS' claims regarding the systemic exclusion of EOP and CCCMS
23 inmates from work and education programs present a live controversy "capable of
24 repetition, yet evading review." *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581,
25 594 n.6 (1999) (citing *Vitek v. Jones*, 445 U.S. 480, 486-87 (1980)). Indeed, there
26 is a significant probability that Plaintiff JENKINS will be transferred again, and
27 will continue to experience discrimination on the basis of his psychiatric disability
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1 in the EOP or in the CCCMS – either at CMF, CMC, or another CDCR institution.

2 **Additional Allegations Regarding Administrative Exhaustion**

3 50. By providing prison officials with timely grievances describing the
4 problems alleged herein, Plaintiffs HECKER and JENKINS have satisfied the
5 exhaustion requirement. *See Holcomb v. High Desert State Prison*, No.
6 CIVS022417LKK KJM P, 2005 WL 2089849, at *2 (E.D. Cal. Aug. 30, 2005)
7 (citing *Ngo v. Woodford*, 403 F.3d 620, 631 (9th Cir. 2005)). Plaintiffs
8 HECKER's and JENKINS' appeals placed the defendant prison officials on notice
9 of the issues raised in this lawsuit. *See Massie v. Early*, No. 1:00CV5248OWW
10 LJO P, 2005 WL 2105304, at *3 (E.D. Cal. Aug. 31, 2005).

11 51. Prior efforts by other inmates to challenge the MHSDS and EOP policies at
12 issue herein using the internal grievance procedures have similarly placed the
13 defendant prison officials on notice, and have been similarly fruitless:

14 (a) Inmate Peter Taylor, Inmate No. T-19666, filed a 602 appeal on
15 December 17, 2002, requesting that EOP inmates “not be
16 discriminated against because of EOP mental health disabilities” and
17 seeking to “reverse the [extreme] bias and discrimination toward all
18 EOP inmates with mental illness ... by not allowing ... off wing
19 authorized access during the hours of 8:00 a.m. – 4:00 p.m.” This
20 appeal was denied at the First and Second Levels in February 2003,
21 and at the Director's Level on May 15, 2003.

22 (b) Inmate David W. Wilson, Inmate No. K-66474, has filed 602 appeals
23 in 2004 and 2005 regarding the policies that exclude EOP inmates
24 from prison programs available to non-EOP inmates. These 602
25 appeals were repeatedly screened out. In fact, on March 15, 2005,
26 inmate Wilson received from the appeals office all of his
27 documentation with the notation “REJECTED – DO NOT
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1 RESUBMIT.”

2 52. The CDCR and its agents have had repeated and ample notice of the issues
3 raised by this lawsuit, and have had many opportunities over several years to
4 consider these issues through the administrative process. There can be no dispute
5 that further administrative efforts would be futile, and that judicial consideration is
6 appropriate.

7 **CLASS ACTION ALLEGATIONS**

8 53. Plaintiffs HECKER and JENKINS brings this action on behalf of
9 themselves and on behalf of a class of all those similarly situated pursuant to Rule
10 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

11 54. Plaintiffs HECKER and JENKINS seek to represent a class of all present
12 and future California inmates of the CDCR with psychiatric conditions that are
13 disabilities as defined by the ADA and the Rehabilitation Act who are excluded
14 and/or screened out from any prison program, service, or activity on the basis of
15 their assignment to or participation in the MHSDS program, including the EOP and
16 the CCCMS.

17 55. The class is so numerous that joinder of all members is impractical. There
18 are thousands of present and future inmates assigned to MHSDS programs
19 throughout California who are subject to the systemic policies, practices, and
20 procedures complained of herein. Moreover, putative class members are not
21 capable of being identified at this time, as the proposed class includes future
22 inmates assigned to the MHSDS, the EOP, and the CCCMS. The class is
23 constantly in flux, with inmates being paroled and new inmates being incarcerated.

24 56. Common questions of law and fact predominate, and include whether
25 inmates assigned to the MHSDS are being excluded and/or screened out from any
26 prison program, service, or activity on the basis of disability.

27 57. The claims of Plaintiffs HECKER and JENKINS are typical of the claims
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1 of the other putative class members. Plaintiffs HECKER and JENKINS have been
2 unnecessarily excluded from core CDCR educational, vocational, and employment
3 activities and programs on the basis of their assignment to the MHSDS and the
4 EOP or the CCCMS. This is the same injury that members of the proposed class
5 have suffered, are suffering and, unless this Court grants relief, will continue to
6 suffer. Plaintiffs HECKER and JENKINS are members of the proposed class in
7 that they are current CDCR inmates assigned to the MHSDS who have been
8 subjected to disability-based discrimination.

9 58. Plaintiffs HECKER and JENKINS will fairly and adequately represent and
10 protect the interests of the class. Plaintiffs HECKER and JENKINS intend to
11 prosecute this action rigorously in order to secure remedies for the entire class.
12 Counsel of record for Plaintiffs HECKER and JENKINS are experienced in state
13 and federal civil rights litigation and class actions, including systemic litigation
14 challenging prison conditions and disability discrimination.

15 59. Defendants have acted or refused to act on grounds generally applicable to
16 the class, thereby making appropriate final declaratory and injunctive relief with
17 respect to the class as a whole under Federal Rule of Civil Procedure 23(b)(2).

18 **FIRST CAUSE OF ACTION**
19 Disability-Based Discrimination in Violation of
20 Title II of the Americans with Disabilities Act of 1990
21 Against All Defendants

22 60. Plaintiffs HECKER and JENKINS incorporate by reference as though fully
23 set forth herein paragraphs 1 through 59 of this Complaint.

24 61. Title II of the ADA provides that “no qualified individual with a disability
25 shall, by reason of such disability, be excluded from participation in or be denied
26 the benefits of the services, programs, or activities of a public entity, or be
27 subjected to discrimination by any such entity.” 42 U.S.C. § 12132. By no later
28 than July 26, 1992, public entities were required to complete an evaluation of its
services, policies, and practices, and the effects thereof on persons with disabilities,

1 and to make any modifications necessary to ensure that the requirements of Title II
2 are met. 28 C.F.R. § 35.105.

3 62. In providing any aid, benefit or service, a public entity “may not . . . [d]eny
4 a qualified individual with a disability the opportunity to participate in or benefit
5 from the aid, benefit or service,” “[a]fford a qualified individual with a disability
6 an opportunity to participate in or benefit from the aid, benefit, or service that is
7 not equal to that afforded others,” “[p]rovide a qualified individual with a
8 disability with an aid, benefit, or service that is not as effective in affording equal
9 opportunity . . . as those provided to others,” or “[o]therwise limit a qualified
10 individual with a disability in the enjoyment of any right, privilege, advantage, or
11 opportunity enjoyed by others[.]” 28 C.F.R. § 35.130(b)(1)(i), (ii), (iii), (vi). A
12 public entity may not “[d]eny a qualified individual with a disability the
13 opportunity to participate as a member of planning or advisory boards.” 28 C.F.R.
14 § 35.130(b)(1)(vi).

15 63. Further, “[a] public entity may not . . . utilize criteria or methods of
16 administration . . . [t]hat have the effect of subjecting qualified individuals with
17 disabilities to discrimination on the basis of disability[.]” 28 C.F.R.
18 § 35.130(b)(3)(i). Nor may a public entity “impose or apply eligibility criteria that
19 screen out or tend to screen out an individual with a disability or any class of
20 individuals with disabilities from fully and equally enjoying any service, program,
21 or activity, unless such criteria can be shown to be necessary[.]” 28 C.F.R.
22 § 35.130(b)(8). Finally, “[a] public entity shall administer services, programs, and
23 activities in the most integrated setting appropriate to the needs of qualified
24 individuals with disabilities.” 28 C.F.R. § 35.130(d).

25 64. Defendants have violated the ADA and its regulations by, *inter alia*: (a)
26 denying Plaintiffs HECKER and JENKINS and other inmates similarly situated the
27 opportunities and benefits of the programs, services, and activities offered by the
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1 Defendants to other, nondisabled inmates; (b) denying Plaintiffs HECKER and
2 JENKINS and other inmates similarly situated equal and/or equally effective
3 access to vocational, educational, employment, recreational, and other
4 opportunities on the basis of disability; (c) utilizing systemic policies and practices
5 that have a disparate impact on, and which screen out or tend to screen out, inmates
6 with psychiatric disabilities, including Plaintiffs HECKER and JENKINS; (d)
7 utilizing methods of administration that have the effect of discriminating against
8 inmates with psychiatric disabilities, including Plaintiffs HECKER and JENKINS;
9 (f) failing to complete and implement an adequate self-evaluation plan with respect
10 to inmates with psychiatric disabilities; (g) failing to take prompt and equitable
11 steps to remedy their discriminatory conduct; and (h) by otherwise segregating,
12 excluding, and discriminating against inmates with psychiatric disabilities,
13 including Plaintiffs HECKER and JENKINS.

14 65. Defendants' unlawful actions were and continue to be intentional, willful,
15 malicious, and/or done with reckless disregard to the right of Plaintiffs HECKER
16 and JENKINS and other inmates similarly situated to be free from discrimination
17 based on disability.

18 66. Plaintiffs HECKER and JENKINS are entitled to declaratory relief,
19 injunctive relief, and attorneys' fees and costs.

20 **SECOND CAUSE OF ACTION**
21 Disability-Based Discrimination in Violation of
22 Section 504 of the Rehabilitation Act of 1973
Against All Defendants

23 67. Plaintiffs HECKER and JENKINS incorporate by reference as though fully
24 set forth herein paragraphs 1 through 66 of this Complaint.

25 68. Section 504 of the Rehabilitation Act states that "[n]o otherwise qualified
26 individual with a disability . . . shall, solely by reason of her or his disability, be
27 excluded from the participation in, be denied the benefits of, or be subjected to
28 discrimination under any program or activity receiving Federal financial

1 assistance.” 29 U.S.C. § 794(a). Nearly 30 years ago, recipients of federal
2 financial assistance were required to complete a self-evaluation of their programs
3 and activities, and make necessary changes to ensure that such programs and
4 activities were accessible to and usable by persons with disabilities. *See, e.g.*, 28
5 C.F.R. § 42.521; 45 C.F.R. § 84.22.

6 69. As detailed herein, the Defendants have violated Section 504 and its
7 regulations by unnecessarily segregating and discriminating against inmates with
8 psychiatric disabilities, including Plaintiffs HECKER and JENKINS, and by
9 systemically excluding such inmates from a broad range of basic vocational,
10 educational, employment, recreational, and other programs. The Defendants have
11 failed to complete and implement an adequate self-evaluation plan with respect to
12 inmates with psychiatric disabilities.

13 70. Defendants’ unlawful actions were and continue to be intentional, willful,
14 malicious, and/or done with reckless disregard to the right of Plaintiffs HECKER
15 and JENKINS and other inmates similarly situated to be free from discrimination
16 based on disability.

17 71. Plaintiffs HECKER and JENKINS are entitled to declaratory relief,
18 injunctive relief, and attorneys’ fees and costs.

19 **DECLARATORY RELIEF ALLEGATIONS**

20 72. Plaintiffs HECKER and JENKINS incorporate by reference the allegations
21 in paragraphs 1 through 71, as though fully set forth herein.

22 73. A present and actual controversy exists between Plaintiffs HECKER and
23 JENKINS and Defendants concerning their rights and respective duties. Plaintiffs
24 HECKER and JENKINS contend that the Defendants have violated and continue
25 to violate their rights, and the rights of other inmates similarly situated, under the
26 ADA, Section 504, and Section 11135 of the California Government Code.
27 Plaintiffs are informed and believe, and thereon allege, that the Defendants deny
28

1 these allegations. Declaratory relief is therefore necessary and appropriate.

2 74. Plaintiffs HECKER and JENKINS seeks a judicial declaration of the rights
3 and duties of the respective parties.

4 **INJUNCTIVE RELIEF ALLEGATIONS**

5 75. Plaintiffs HECKER and JENKINS incorporate by reference the allegations
6 in paragraphs 1 through 74, as though fully set forth herein.

7 76. No plain adequate, or complete remedy at law is available to Plaintiffs
8 HECKER and JENKINS to redress the wrongs alleged herein.

9 77. If the court does not grant the injunctive relief sought herein, Plaintiffs
10 HECKER and JENKINS will be irreparably harmed.

11 **PRAYER FOR RELIEF**

12 1. For an order enjoining the Defendants from engaging in the unlawful
13 discrimination complained of herein;

14 2. For an order granting such other injunctive relief as may be appropriate;

15 3. For declaratory relief;

16 4. For reasonable attorneys' fees and costs of suit, including expert fees,
17 pursuant to 42 U.S.C. § 12205, 29 U.S.C § 2617(a)(3), Cal. Civ. Code §§ 52(a),
18 54.3(a), 55, Cal. Civ. Proc. Code § 1021.5, and other laws; and

19 5. For such other and further relief as the Court deems just and proper.

20 Dated: February 23, 2006

21
22
23 By: /s/Claudia Center
24 CLAUDIA CENTER