

1 Brian D. Hershman (State Bar No. 168175)  
bherhshman@jonesday.com  
2 Jenny L. Riggs (State Bar No. 204417)  
jlriggs@jonesday.com  
3 JONES DAY  
555 South Flower Street  
4 Fiftieth Floor  
Los Angeles, CA 90071-2300  
5 Telephone: (213) 489-3939  
Facsimile: (213) 243-2539  
6

Attorneys for Plaintiff  
7 WILLIAM ROUSER

8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10 **SACRAMENTO DIVISION**

12 WILLIAM ROUSER

13 Plaintiff,

14 v.

15 THEO WHITE, et al.,

16 Defendants.  
17

**CASE NO. 2:93-CV-0767-LKK-GGH(PC)**

Assigned to: The Honorable  
Lawrence K. Karlton

**THIRD AMENDED COMPLAINT FOR  
CIVIL RIGHTS VIOLATIONS,  
PERMANENT INJUNCTION,  
DECLARATORY RELIEF, AND  
DAMAGES**

Trial Date: None

1 **PRELIMINARY STATEMENT**

2 1. This action arises out of the repeated and systematic denial of a man’s right to  
3 practice his religion freely. Although the Constitutions of the United States and the State of  
4 California set freedom of religion as one of the most important rights granted to citizens,  
5 defendants herein have supported other religions while denying Plaintiff the right to practice his  
6 religion, and have harassed Plaintiff based on his religion, all in violation of his civil rights.

7 2. This is a claim for damages and injunctive relief brought under 42 U.S.C. section  
8 1983 against prison officials for violations of Plaintiff’s rights as protected by the First and  
9 Fourteenth Amendments of the United States Constitution, and the Religious Land Use and  
10 Institutionalized Persons Act of 2000, 42 U.S.C. section 20000cc *et seq.* This claim also arises  
11 under section 4 and 7 of Article 1 of the California Constitution.

12 **JURISDICTION AND VENUE**

13 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. sections 1331  
14 and 1343; the Court also has supplemental jurisdiction over the state law claims pursuant to  
15 28 U.S.C. section 1367. Plaintiff brings this action pursuant to 42 U.S.C. section 1983.

16 4. Venue is proper in this Court pursuant to 28 U.S.C. section 1391(b)(2) in that a  
17 substantial portion of the events giving rise to the claims alleged in this complaint arose in  
18 Sacramento County, California.

19 **PARTIES**

20 5. Plaintiff William Rouser is a California resident currently incarcerated at Pleasant  
21 Valley State Prison. At all times relevant to this matter, Rouser was a prisoner within the  
22 California Department of Corrections and Rehabilitation (“CDCR”) prison system.

23 6. Defendant Theo White is or was at some time relevant to this complaint employed  
24 by the CDCR and was the Warden of the California State Prison—Sacramento (“CSP-Sac”).  
25 Plaintiff is informed and believes that defendant White was responsible for the policies and  
26 practices regarding the day-to-day operation of CSP-Sac and the supervision of all subordinate  
27 personnel at CSP-Sac.

1           7. Defendant James H. Gomez is or was at some time relevant to this complaint  
2 employed by the CDCR and was the Director of the CDCR. Plaintiff is informed and believes  
3 that defendant Gomez was responsible for the policies and practices regarding the operation and  
4 safety of all CDCR facilities, as well as CDCR's policies and practices regarding accommodation  
5 of prisoners' religious practices.

6           8. Defendant Matthew Cates is or was at some time relevant to this complaint  
7 employed by the CDCR and is or was at some time relevant to this complaint the Secretary of the  
8 CDCR. Plaintiff is informed and believes that defendant Cate is responsible for the policies and  
9 practices regarding the operation and safety of all CDCR facilities, as well as CDCR's policies  
10 and practices regarding accommodation of prisoners' religious practices.

11           9. Defendant James A. Yates is or was at some time relevant to this complaint  
12 employed by the CDCR and is or was at some time relevant to this complaint the Warden of  
13 Pleasant Valley State Prison ("PVSP"). Plaintiff is informed and believes that defendant Yates  
14 was responsible for the policies and practices regarding the day-to-day operation of PVSP and the  
15 supervision of all subordinate personnel at PVSP.

16           10. Plaintiff is informed and believes, and on that basis alleges, that at all times  
17 mentioned in this complaint, each individual defendant was acting under color of state law.

18           11. Plaintiff is informed and believes, and on that basis alleges, that at all times  
19 mentioned in this complaint, each individual defendant was acting in his or her official capacity  
20 and in the course and scope of his or her employment.

21           12. Each defendant, and all of them, is also sued in his or her individual capacities for  
22 the claims alleged in this complaint.

23           13. Plaintiff is informed and believes, and on that basis alleges, that each of Does 1  
24 through 15 is responsible in some manner for the injuries alleged in this complaint. The true  
25 names and capacities of Does 1 through 15 are presently unknown to Plaintiff, and Plaintiff  
26 therefore sues Does 1 through 15 by such fictitious names and will seek leave to amend this  
27 complaint to add their true names and capacities when such has been ascertained.

28

**STATEMENT OF FACTS**

1  
2 14. Plaintiff is an adherent of the Wiccan religious faith, a Pagan religion. Plaintiff  
3 began learning about Wicca in the early 1970s and has been a consistent and devout practitioner  
4 of that faith since at least the mid-1980s.

5 15. The use of articles is central to the practice of Plaintiff's Wiccan faith, including  
6 but not limited to the use of Tarot cards, religious texts (including but not limited to *A Witches'*  
7 *Bible Compleat* (the "Wiccan Bible"), incense, candles, wands and altars, and the practice of  
8 casting circles with the use of such articles.

9 16. The ability to conduct group worship under the guidance of a spiritual leader is  
10 also central to Plaintiff's understanding and practice of the Wiccan faith.

11 17. Plaintiff was transferred to CSP-Sac on or about December 7, 1990. From that  
12 time forward until the present, defendants, including defendants White and Gomez, have  
13 routinely violated Plaintiff's constitutionally and statutorily protected religious rights.  
14 Defendants' actions have included but have not been limited to harassing Plaintiff based upon his  
15 Wiccan faith, and removing and destroying articles central to Plaintiff's religious practice, as set  
16 forth herein above.

17 18. Despite repeated requests from Plaintiff, defendants have further denied Plaintiff  
18 and other Wiccans access to and use of the prison chapel for communal worship, as well as the  
19 guidance of a spiritual leader in accordance with their Wiccan faith.

20 19. In response to this harassment and deprivation of his constitutionally protected  
21 religious and equal protection rights, Plaintiff first filed an inmate administrative appeal on or  
22 about August 2, 1992.

23 20. Plaintiff's first-level appeal was denied on or about August 19, 1992, following an  
24 interview with Protestant Chaplain Edward W. Meads. Reverend Meads stated that Plaintiff's  
25 requests for access to religious articles, a Wiccan chaplain, and use of CSP-Sac's chapel were  
26 denied, purportedly on the grounds that Plaintiff's requests violated prison security and that  
27 Wicca is not a valid religion.

28 21. Defendant White affirmed the denial of Plaintiff's appeal on second-level appeal.

1           22.     On or about January 22, 1993, Jack R. Reagan, chief of inmate appeals, affirmed  
2 the denial of the appeal on third-level appeal, claiming that CSP-Sac had made every reasonable  
3 effort to provide necessary religious services for inmates pursuant to California Code of  
4 Regulations, Title 15, §§ 3190 and 3210.

5           23.     On or about March 6, 1993, Plaintiff was placed in Administrative Segregation  
6 (“Ad-Seg”). During his approximately eight-month-long confinement in Ad-Seg, defendants  
7 denied Plaintiff access to any religious articles, including his Wiccan Bible.

8           24.     On or about April 4, 1993, Plaintiff filed a second administrative appeal  
9 challenging defendants’ refusal to provide Plaintiff with his Wiccan Bible. In his appeal, Plaintiff  
10 reasoned that since Christian and Muslim inmates, as well as those of other faiths, are permitted  
11 to possess their religious texts while in Ad-Seg, Plaintiff also should be permitted access to his  
12 Wiccan Bible.

13           25.     On or about April 6, 1993, Plaintiff’s second administrative appeal was denied.  
14 Based on a meritless and patently false assertion that Plaintiff’s religious beliefs purportedly  
15 involved animal and human sacrifice, defendants contended that access to the Wiccan Bible  
16 would create a clear and present danger of violence and physical harm to persons pursuant to  
17 California Code of Regulations, Title 15, § 3136(a).

18           26.     Defendants continued to harass Plaintiff based upon his religious practices, and to  
19 deny Plaintiff access to articles central to his religious practice, to deny Plaintiff access to the  
20 prison chapel and thus the ability to engage in group worship, and to deny Plaintiff the guidance  
21 of a spiritual leader.

22           27.     Plaintiff filed this action on or about May 7, 1993, having exhausted his state  
23 administrative remedies.

24           28.     In November 1997, the parties reached a settlement agreement. Pursuant to the  
25 terms of that settlement agreement, defendants agreed:

- 26           a.     To permit Plaintiff access to the Wiccan Bible, even if housed in a Security  
27 Housing Unit or Administrative Segregation, subject to the same policies and  
28 procedures applicable to inmate access to religious literature.

- 1           b.       To permit Plaintiff access to a room for Wiccan services on a regular basis,
- 2           subject to the same policies and procedures regulating other inmate individual or
- 3           group religious worship;
- 4           c.       To include the time and location of Wiccan services in the Chapel
- 5           schedule, which is posted and available to inmates;
- 6           d.       To permit Plaintiff access to small candles, incense, oil, small wands, ritual
- 7           cups, small bells, cords, water and salt for use during services, consistent with
- 8           policies and procedures regulating inmate access to religious articles;
- 9           e.       To permit Plaintiff to have the Thoth edition of Tarot cards in his general
- 10          personal property, available for use in his cell, and available for use at the Wiccan
- 11          services, subject to the same policies and procedures applicable to other religious
- 12          articles;
- 13          f.       To assist Plaintiff in obtaining (although not paying for) the religious
- 14          articles referenced above via institutional mail, in a manner that is consistent with
- 15          policies and procedures applicable to a general population inmate's receipt of
- 16          religious articles from approved religious vendors; and
- 17          g.       To permit a volunteer Wiccan spiritual advisor to attend Wiccan services.

18           29.     Despite the settlement agreement, however, defendants continued to deny Plaintiff  
19     access to the religious articles of his faith, continued to deny him access to group worship, and  
20     continued to deny him access to a spiritual advisor.

21           30.     In June 2007, Plaintiff was transferred to Pleasant Valley State Prison and  
22     currently is incarcerated in that facility.

23           31.     From the time he was transferred to PVSP until the present, defendants, including  
24     defendants Cate and Yates, have routinely violated Plaintiff's constitutionally and statutorily  
25     protected religious rights. Defendants' actions have included but have not been limited to  
26     harassing Plaintiff based upon his Wiccan faith, and removing and destroying articles central to  
27     Plaintiff's religious practice, as set forth herein above.

28



1           32. Defendants also have prevented Plaintiff from obtaining and/or maintaining  
2 religious articles central to his faith. By way of example only and not limitation, defendants have  
3 agreed that Plaintiff can possess certain religious articles, but have either (a) rescinded their  
4 approval with respect to those articles and/or (b) refused to provide Plaintiff with the names of  
5 any approved third-party vendors from whom Plaintiff can purchase those articles. In addition,  
6 even as to those approved religious articles that defendants have permitted Plaintiff to purchase  
7 from approved third-party vendors, defendants have imposed unnecessary burdens on Plaintiff's  
8 ability to obtain those articles. For example, defendants have refused to deliver the religious  
9 articles to Plaintiff once received by the mail room, but have instead insisted that Plaintiff find a  
10 prison chaplain willing to collect the articles for him and, should Plaintiff be unable to find a  
11 chaplain who is willing to assist quickly enough, defendants have returned Plaintiff's religious  
12 articles to the vendor.

13           33. Defendants have not hired a Wiccan chaplain to assist Plaintiff with his religious  
14 practices and with obtaining necessary religious articles. In addition to providing spiritual  
15 guidance to those of their own faith, prison chaplains are charged with setting and enforcing  
16 prison chapel schedules to permit members of their own faiths to conduct religious services;  
17 assisting inmates with obtaining necessary religious articles to practice their faith; and with  
18 various other and sundry tasks that enable an inmate of the chaplain's faith to observe his  
19 religion. Because defendants have refused to hire a Wiccan chaplain to assist Plaintiff, Plaintiff  
20 has been denied the rights and services given to inmates of one of the religions sponsored by  
21 defendants.

22           34. Despite repeated requests from Plaintiff, defendants have further denied Plaintiff  
23 and other Wiccans access to and use of the prison chapel for communal worship, as well as the  
24 guidance of a spiritual leader in accordance with their Wiccan faith.

25           35. By way of example only and not limitation, during the month of October 2007,  
26 Plaintiff and other Wiccan inmates were told they would be permitted to have weekly services,  
27 every Monday from 9:30 a.m. to 11:30 a.m. under the supervision of the Muslim chaplain.  
28 Despite this promise, Plaintiff was utterly denied services on three Mondays, and was permitted

1 only about 40 minutes of services on another Monday. On Monday, October 1, 2007, Plaintiff  
2 was not permitted to have services between 9:30 a.m. and 11:30 a.m.; instead, Plaintiff was not  
3 released for services until 10:45 a.m. (and other Wiccan inmates were not released for services  
4 until 11:15 a.m.), and yet all Wiccan were required to leave the chapel at 11:30 a.m. On the  
5 following three Mondays – the 8th, the 15th, and the 22nd – defendants refused to permit services  
6 at all. This practice of denying Plaintiff his religious and equal protection rights has continued.

7 36. In addition to denying services outright, defendants also have given pretextual  
8 reasons for denial of services. By way of example only and not limitation, October 31, 2007 is  
9 the Samhain Sabbat, a Wiccan holiday. Paper work was submitted to defendants on or about  
10 September 6, 2007 requesting permission for Plaintiff and other Wiccan inmates to celebrate their  
11 holiday. Defendants approved the request, and Plaintiff and other Wiccan inmates were issued  
12 ducats to permit them to attend Samhain Sabbat at 8:30 a.m. Yet Plaintiffs and other Wiccan  
13 inmates were not released for their holiday. Later that day, PVSP was placed on lockdown, and  
14 defendants contended that Plaintiff had been denied his Samhain Sabbat due to the later-occurring  
15 lockdown.

16 37. When Plaintiff filed or attempted to file grievances related to the denial of his  
17 religious and equal protection rights, defendants have refused to process his grievances or have  
18 refused to return purportedly deficient grievances to him in a timely manner to permit him to  
19 refile those grievances.

20 38. If not enjoined by the Court, defendants will continue to restrict Plaintiff's ability  
21 to exercise his religion by denying Plaintiff access to clergy, religious services, and religious  
22 articles. This restriction will impose irreparable injury on Plaintiff.

23 39. If not enjoined by the Court, defendants will continue to treat Plaintiff disparately  
24 and deny Plaintiff equal protection under the law. This treatment will impose irreparable injury  
25 on Plaintiff, and Plaintiff will have no plain, speedy, or adequate remedy at law.

26 40. Injunctive relief including but not limited to an order enjoining defendants'  
27 policies, practices, actions and omissions such as are alleged herein, and requiring the reformation  
28 of defendants' policies, practices, actions and omissions so as to eliminate their discriminatory



1 effect, are therefore appropriate and necessary to avoid irreparable harm to Plaintiff and to  
2 effectuate the purposes of the United States and California Constitutions, the Religious Land Use  
3 and Institutionalized Persons Act, and the other statutes and laws referenced herein as the subject  
4 of Plaintiff's claims for relief.

5 **FIRST CLAIM FOR RELIEF**

6 **Religious Land Use And Institutionalized Persons Violation**  
7 **42 U.S.C. § 1983; (42 U.S.C. § 2000cc et seq.)**

8 **(Against Defendants Cate, Yates, and Does 1-15)**

9 41. Plaintiff refers to and incorporates herein by reference the allegations contained in  
10 Paragraphs 1 through 40 as though fully set forth in this claim for relief.

11 42. The Religious Land Use and Institutionalized Persons Act ("RLUIPA") prohibits  
12 any substantial burden on free exercise of religion unless it (1) furthers a compelling  
13 governmental interest and (2) is the least restrictive means of furthering that compelling interest.  
14 Restrictions that merely further a legitimate penological interest are invalidated by RLUIPA.

15 43. On information and belief, the CDCR receives financial assistance from the United  
16 States Government.

17 44. The policies, practices, and omissions alleged in this complaint substantially  
18 burden Plaintiff's exercise of religion in violation of 42 U.S.C. §§ 2000cc et seq. and threaten to  
19 continue burdening his exercise of religion.

20 45. The burdens on Plaintiff's religious practice are not the least restrictive means of  
21 furthering any compelling governmental interest.

22 46. Defendants, and each of them, undertook the policies, practices, actions and  
23 omissions alleged in this complaint intentionally and with willful disregard for Plaintiff's rights.

24 47. The policies, practices, actions and omissions of defendants alleged in this  
25 complaint are a direct and proximate cause of the emotional distress, humiliation, dignitary harms  
26 and other injuries that Plaintiff has suffered and continues to suffer.

27 48. Injunctive relief is warranted by the allegations set forth throughout this complaint  
28 and as specifically alleged above in Paragraphs 38 through 40.

**SECOND CLAIM FOR RELIEF**

**Violation of Right to Free Exercise of Religion  
(42 U.S.C. § 1983, First and Fourteenth Amendments To U.S. Constitution)**

**(Against All Defendants)**

1  
2  
3  
4  
5       49.     Plaintiff refers to and incorporates herein by reference the allegations contained in  
6 Paragraphs 1 through 48 as though fully set forth in this claim for relief.

7       50.     The First Amendment to the United State Constitution, as incorporated through the  
8 Fourteenth Amendment, prohibits defendants from enacting regulations and policies that result in  
9 “establishment of religion, or [that] prohibit[] the free exercise thereof.”

10       51.     Defendants have denied Plaintiff his federal right under the First Amendment to  
11 the United States Constitution by imposing a substantial governmental burden upon Plaintiff’s  
12 free exercise of a sincere religious belief.

13       52.     Defendants knowingly, willfully, and maliciously, or with reckless or callous  
14 disregard, substantially burdened Plaintiff’s religious practice by harassing Plaintiff based on his  
15 religious faith; by destroying, removing, and denying access to articles central to Plaintiff’s  
16 sincere religious beliefs; by denying Plaintiff the opportunity for group worship; and by denying  
17 Plaintiff the guidance of a spiritual leader. Defendants have no legitimate or compelling reason  
18 for placing a substantial burden on Plaintiff’s ability to practice his religion.

19       53.     That a substantial burden on an inmate’s free exercise of religion violates the First  
20 Amendment was clearly established law of which a reasonable person in defendants’ position  
21 would have known.

22       54.     As a direct and proximate result of defendants’ ongoing wrongful conduct, as  
23 herein alleged, Plaintiff suffered, and continues to suffer, severe emotional distress, humiliation,  
24 and dignitary harms, among other injuries.

25       55.     Injunctive relief is warranted by the allegations set forth throughout this complaint  
26 and as specifically alleged above in Paragraphs 38 through 40.

1 **THIRD CLAIM FOR RELIEF**

2 **Violation of Establishment Clause**  
3 **(42 U.S.C. § 1983, First and Fourteenth Amendments To U.S. Constitution)**

4 **(Against All Defendants)**

5 56. Plaintiff refers to and incorporates herein by reference the allegations contained in  
6 Paragraphs 1 through 55 as though fully set forth in this claim for relief.

7 57. The actions against Plaintiff complained of herein are brought pursuant to  
8 42 U.S.C. § 1983 because defendants' conduct constitutes a violation of the Establishment Clause  
9 of the First Amendment to the United States Constitution, as incorporated through the Fourteenth  
10 Amendment. Defendants have violated the prohibition on governmental acts or undertakings  
11 respecting an establishment of religion under the First Amendment by favoring particular  
12 religious denominations over Plaintiff's, as well as by disfavoring Plaintiff's religion.

13 58. Defendants' actions had the purpose of forwarding particular religions and  
14 suppressing Plaintiff's; had the effect of advancing and endorsing particular religions and  
15 inhibiting Plaintiff's; and caused excessive governmental entanglement with religion.

16 59. Defendants knowingly, willfully, maliciously, or with reckless or callous  
17 disregard, violated the First Amendment's prohibition on governmental actions or undertakings  
18 respecting an establishment of religion by harassing Plaintiff based on his religious faith while  
19 refraining from harassment of inmates of other faiths; by destroying, removing, and denying  
20 access to articles central to Plaintiff's sincere religious beliefs while allowing inmates of other  
21 faiths to possess and access religious items and texts; by denying Plaintiff the opportunity for  
22 group worship while granting such opportunities to inmates of other faiths; and by denying  
23 Plaintiff the guidance of a spiritual leader while allowing such guidance to inmates of other faiths.

24 60. As a direct and proximate result of defendants' ongoing wrongful conduct, as  
25 herein alleged, Plaintiff suffered, and continues to suffer, severe emotional distress, humiliation,  
26 and dignitary harms, among other injuries.

27 61. Injunctive relief is warranted by the allegations set forth throughout this complaint  
28 and as specifically alleged above in Paragraphs 38 through 40.

**FOURTH CLAIM FOR RELIEF**

**Denial of Equal Protection**  
**(42 U.S.C. § 1983, Fourteenth Amendment To U.S. Constitution)**

**(Against All Defendants)**

1  
2  
3  
4  
5       62. Plaintiff refers to and incorporates herein by reference the allegations contained in  
6 Paragraphs 1 through 61 as though fully set forth in this claim for relief.

7       63. The actions against Plaintiff complained of herein are brought pursuant to  
8 42 U.S.C. § 1983 because defendants' conduct constitutes a violation of the Equal Protection  
9 Clause of the Fourteenth Amendment to the United States Constitution. Defendants' policies,  
10 practices, acts and omissions deprive Plaintiff, either directly or indirectly, of equal access to  
11 privileges and benefits granted as a matter of course to inmate adherents of faiths other than  
12 Wicca, without any objective, content-neutral justification for such discrimination and without  
13 establishing that the actions of defendants further a legitimate penological goal.

14       64. Defendants knowingly, willfully, maliciously, or with reckless or callous  
15 disregard, denied Plaintiff his federal right to equal protection of the laws under the Fourteenth  
16 Amendment to the United States Constitution. Defendants have done so by refusing Plaintiff a  
17 reasonable opportunity to pursue his faith comparable to the opportunity accorded inmate  
18 adherents of faiths other than Wicca.

19       65. As a direct and proximate result of defendants' ongoing wrongful conduct, as  
20 herein alleged, Plaintiff suffered, and continues to suffer, severe emotional distress, humiliation,  
21 and dignitary harms, among other injuries.

22       66. Injunctive relief is warranted by the allegations set forth throughout this complaint  
23 and as specifically alleged above in Paragraphs 38 through 40.  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIFTH CLAIM FOR RELIEF**

**Violation of Right to Free Exercise of Religion  
(Article 1, Section 4 of California Constitution)**

**(Against All Defendants)**

67. Plaintiff refers to and incorporates herein by reference the allegations contained in Paragraphs 1 through 66 as though fully set forth in this claim for relief.

68. Defendants have denied Plaintiff his right under the Constitution of the State of California, Article 1, Section 4, to freedom from substantial governmental burdens upon, and governmental discrimination against, his religion by imposing a substantial governmental burden upon Plaintiff's free exercise of a sincere religious belief.

69. Defendants knowingly, willfully, and maliciously, or with reckless or callous disregard, substantially burdened Plaintiff's religious practice by harassing Plaintiff based on his religious faith; by destroying, removing, and denying access to articles central to Plaintiff's sincere religious beliefs; by denying Plaintiff the opportunity for group worship; and by denying Plaintiff the guidance of a spiritual leader. Defendants have no legitimate or compelling reason for placing a substantial burden on Plaintiff's ability to practice his religion.

70. As a direct and proximate result of defendants' ongoing wrongful conduct, as herein alleged, Plaintiff suffered, and continues to suffer, severe emotional distress, humiliation, and dignitary harms, among other injuries.

71. Injunctive relief is warranted by the allegations set forth throughout this complaint and as specifically alleged above in Paragraphs 38 through 40.

**SIXTH CLAIM FOR RELIEF**

**Violation of Establishment Clause  
(Article 1, Section 4 of California Constitution)**

**(Against All Defendants)**

72. Plaintiff refers to and incorporates herein by reference the allegations contained in Paragraphs 1 through 71 as though fully set forth in this claim for relief.

1           73. Article 1, Section 4 of the Constitution of the State of California provides, in  
2 pertinent part: “Free exercise and enjoyment of religion without discrimination or preference are  
3 guaranteed. . . . The Legislature shall make no law respecting an establishment of religion.”

4           74. Defendants have violated the prohibition pursuant to the California Constitution,  
5 Article 1, section 4, on governmental acts or undertakings respecting an establishment of religion  
6 by favoring particular religious denominations over Plaintiff’s, as well as by disfavoring  
7 Plaintiff’s religion.

8           75. Defendants’ actions had the purpose of forwarding particular religions and  
9 suppressing Plaintiff’s; had the effect of advancing and endorsing particular religions and  
10 inhibiting Plaintiff’s; and caused excessive governmental entanglement with religion.

11           76. Defendants knowingly, willfully, maliciously, or with reckless or callous  
12 disregard, violated the California Constitution’s prohibition on governmental actions or  
13 undertakings respecting an establishment of religion by harassing Plaintiff based on his religious  
14 faith while refraining from harassment of inmates of other faiths; by destroying, removing, and  
15 denying access to articles central to Plaintiff’s sincere religious beliefs while allowing inmates of  
16 other faiths to possess and access religious items and texts; by denying Plaintiff the opportunity  
17 for group worship while granting such opportunities to inmates of other faiths; and by denying  
18 Plaintiff the guidance of a spiritual leader while allowing such guidance to inmates of other faiths.

19           77. As a direct and proximate result of defendants’ ongoing wrongful conduct, as  
20 herein alleged, Plaintiff suffered, and continues to suffer, severe emotional distress, humiliation,  
21 and dignitary harms, among other injuries.

22           78. Injunctive relief is warranted by the allegations set forth throughout this complaint  
23 and as specifically alleged above in Paragraphs 38 through 40.

24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SEVENTH CLAIM FOR RELIEF**  
**Denial of Equal Protection**  
**(Article 1, Section 7 of California Constitution)**  
**(Against All Defendants)**

79. Plaintiff refers to and incorporates herein by reference the allegations contained in Paragraphs 1 through 78 as though fully set forth in this claim for relief.

80. Defendants knowingly, willfully, maliciously, or with reckless or callous disregard, denied Plaintiff his right to equal protection of the laws under Article 1, section 7 of the Constitution of the State of California. Defendants have done so by refusing Plaintiff a reasonable opportunity to pursue his faith comparable to the opportunity accorded inmate adherents of faiths other than Wicca.

81. As a direct and proximate result of defendants' ongoing wrongful conduct, as herein alleged, Plaintiff suffered, and continues to suffer, severe emotional distress, humiliation, and dignitary harms, among other injuries.

82. Injunctive relief is warranted by the allegations set forth throughout this complaint and as specifically alleged above in Paragraphs 38 through 40.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff William Rouser prays for the following relief:

1. Injunctive relief according to proof;
2. Retention of jurisdiction over defendants until such time that the Court is satisfied that defendants' unlawful policies, practices, acts and omissions no longer exist and will not recur;
3. Declaratory relief recognizing inmates' rights to free exercise of their religion in the general population and in administrative segregation;
4. Compensatory damages according to proof;
5. Punitive damages according to proof;
6. Reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;
7. Costs of suit; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8. Such other and further relief as the Court deems proper.

Dated: September 23, 2008

Respectfully submitted,

JONES DAY

By /s/ Jenny L. Riggs  
Jenny L. Riggs

Attorneys for Plaintiff  
WILLIAM ROUSER

**CERTIFICATE OF SERVICE**

I hereby certify that on September 23, 2008, I electronically filed the foregoing document(s):

**THIRD AMENDED COMPLAINT FOR CIVIL RIGHTS VIOLATIONS,  
PERMANENT INJUNCTION, DECLARATORY RELIEF, AND DAMAGES**

with the Clerk of the Court using CM/ECF system which will send notification of such filing to the following:

James Edmund Flynn  
Deputy Attorney General  
Attorney General of the State of California  
1300 I Street, Suite 125  
Post Office Box 944255  
Sacramento, California 94244-2550  
(916) 323-1976 – Telephone  
(916) 324-5205 – Facsimile  
[james.flynn@doj.ca.gov](mailto:james.flynn@doj.ca.gov)

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 23, 2008, at Los Angeles, California.

  
\_\_\_\_\_  
Diane Finegan