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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBIN LUCAS, VALERIE
MERCADEL, and RAQUEL DOUTHIT,
Plaintiffs,

vs.

O. IVAN WHITE, DR. PETER M.
CARLSON, LOY HAYES, UNITED
STATES OF AMERICA, KATHLEEN
HAWK, CONSTANCE REESE,
MARGARET L. HARDING, L.R.
GREER, DENNIS SMITH, DENNIS
GILLETTE, CHARLES GILLETTE,
SHEILA YARBOROUGH, WAYNE
ERNST, GARFIELD SAMUELS, and
DOES 1 through 15, inclusive,
Defendants.

) No. C 96-2905 TEH
)
) AMENDED COMPLAINT FOR DAMAGES
) AND INJUNCTIVE RELIEF
)

JURY TRIAL DEMANDED

[Civil Rights]

1 Plaintiffs ROBIN LUCAS, VALERIE MERCADEL and RAQUEL DOUTHIT
2 hereby allege as follows:

3 INTRODUCTION

4 1. Plaintiffs ROBIN LUCAS, VALERIE MERCADEL and RAQUEL
5 DOUTHIT seek damages for injuries causes while incarcerated in
6 the custody of the Federal Bureau of Prisons at Camp Parks
7 minimum security facility ("Camp Parks"), the Federal Detention
8 Center -- Pleasanton ("FDC-Pleasanton") and the Federal
9 Correction Institution -- Dublin ("FCI-Dublin") in or around the
10 time period between August and November 1995. During that time
11 Plaintiffs ROBIN LUCAS, VALERIE MERCADEL and RAQUEL DOUTHIT were
12 sexually assaulted, physically and verbally sexually abused and
13 harassed, subjected to repeated invasions of privacy and
14 subjected to threats, retaliation and harassment when they
15 complained about this wrongful treatment.

16 2. In their acts and omissions as alleged herein,
17 Defendants have violated Plaintiffs' rights under the federal
18 Constitution and federal law to be from cruel and unusual
19 punishment and have deprived Plaintiffs of their privacy, due
20 process, equal protection and free speech rights. As a result of
21 Defendants' wrongful conduct, Plaintiffs have suffered, and
22 continue to suffer, severe physical and emotional injury, and
23 hereby seek damages in an amount to be determined, and injunctive
24 relief.

JURISDICTION

1 3. This lawsuit is brought under the United States
2 Constitution for damages pursuant to Bivens v. Six Unknown Agents
3 of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), and for
4 injunctive relief. Jurisdiction is based on 28 U.S.C. §1331.
5 This lawsuit is also brought under, and this Court has
6 jurisdiction pursuant to, the Federal Tort Claims Act, 28 U.S.C.
7 §§1346(b), 2671 et seq. (This Court also has supplemental
8 jurisdiction over claims arising under state law, pursuant to 28
9 U.S.C. §1367.)

VENUE

11 4. The events or omissions giving rise to the claims
12 alleged in this Complaint arose in the Northern District of
13 California. Therefore, venue lies in the United States District
14 Court for the Northern District of California. 28 USC §§84(a);
15 1391(b)(2).

INTRA-DISTRICT ASSIGNMENT

18 5. All events giving rise to the causes of action
19 contained herein occurred in the County of Alameda and thus this
20 case should be assigned to the San Francisco Division or the
21 Oakland Division of the Northern District of California pursuant
22 to Rule 3-2(c) of the Local Rules of the Northern District.

PARTIES

25 6. Plaintiff ROBIN LUCAS is a citizen of the State of
26 California. At all times relevant herein, Plaintiff LUCAS was
27 incarcerated in the custody of the Federal Bureau of Prisons at
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1 the FDC-Pleasanton facility and/or at the FCI-Dublin facility
2 and/or at Camp Parks facility. Plaintiff LUCAS was released from
3 prison in or around July 1996. Plaintiff LUCAS is an African-
4 American woman.

5 7. Plaintiff VALERIE MERCADEL currently is incarcerated in
6 the custody of the Federal Bureau of Prisons. At all times
7 relevant herein, Plaintiff MERCADEL was incarcerated in the
8 custody of the Federal Bureau of Prisons at the FDC-Pleasanton
9 facility and/or at the FCI-Dublin facility. Plaintiff MERCADEL
10 is currently incarcerated in the custody of the Federal Bureau of
11 Prison at the FCI-Danbury facility. Plaintiff MERCADEL is an
12 African-American woman.

13 8. Plaintiff RAQUEL DOUTHIT currently is incarcerated in
14 the custody of the Federal Bureau of Prisons. At all times
15 relevant herein, Plaintiff DOUTHIT was incarcerated in the
16 custody of the Federal Bureau of Prisons at the FDC-Pleasanton
17 facility and/or at the FCI-Dublin facility. Plaintiff DOUTHIT is
18 currently incarcerated in the custody of the Federal Bureau of
19 Prisons at FCI-Tallahassee. Plaintiff DOUTHIT is an African-
20 American woman.

21 9. Defendant KATHLEEN M. HAWK, upon information and
22 belief, is, and was at all times relevant herein, the Director of
23 the Bureau of Prisons, acting under color of federal law. As
24 such, she was and is responsible for the security and safety of
25 all persons incarcerated in the custody of the Bureau of Prisons,
26 including all female inmates. Defendant HAWK also was and is
27 responsible for the supervision, training and administration of
28 all staff employed by, or who work as independent contractors
with, the Bureau of Prisons. As to all claims presented herein

against her, Defendant HAWK is being sued in her official capacity and only injunctive relief is sought.

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2 10. Defendant O. IVAN WHITE was the Western Regional
3 Director for the Federal Bureau of Prisons, acting under color of
4 federal law. As such, he was responsible for the security and
5 safety of persons incarcerated within the Western Region,
6 including Plaintiffs, and the supervision, training and
7 administration of the correctional staff in the Western Region.
8 As to all claims presented herein against him, Defendant WHITE is
9 being sued in his individual capacity.

10 11. Defendant DR. PETER M. CARLSON, upon information and
11 belief, is the current Western Regional Director for the Federal
12 Bureau of Prisons, acting under color of federal law. As such,
13 he is responsible for the security and safety of persons
14 incarcerated within the Western Region, and the supervision,
15 training and administration of the correctional staff in the
16 Western Region. As to all claims presented herein against him,
17 Defendant WHITE is being sued in his official capacity and only
18 injunctive relief is sought.

19 12. Defendant LOY HAYES was the Warden at the FCI-Dublin,
20 FDC-Pleasanton and Camp Parks facilities, acting under color of
21 federal law. As such, he was responsible for the security and
22 safety of persons incarcerated within these facilities, including
23 Plaintiffs, and the supervision, training, administration and
24 placement of the correctional staff at these facilities. He also
25 was directly responsible for making decisions as to which
26 facility would house particular inmates, including Plaintiffs,
27 and knew or should have known that Plaintiffs were housed at the
28 J-2 SHU. As to all claims presented herein against him,

Defendant HAYES is being sued in his individual capacity.

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13. Defendant CONSTANCE REESE, upon information and belief, is the current Warden at the FCI-Dublin, FDC-Pleasanton and Camp Parks facilities, acting under color of federal law. As such, she is responsible for the security and safety of persons incarcerated within these facilities, and the supervision, training, administration and placement of the correctional staff at these facilities. She is also directly responsible for making decisions as to which facility, including the J-2 SHU, will house particular inmates. As to all claims presented herein against her, Defendant REESE is being sued in her official capacity and only injunctive relief is sought.

14. Defendant MARGARET L. HARDING, upon information and belief, is the current Warden at the FCI-Danbury facility, acting under color of federal law. As such, she is responsible for the security and safety of persons incarcerated within this facility, and the supervision, training, administration and placement of the correctional staff at this facility. As to all claims presented herein against her, Defendant HARDING is being sued in her official capacity and only injunctive relief is sought.

15. Defendant L.R. GREER, upon information and belief, is the current Warden at the FCI Tallahassee facility, acting under color of federal law. As such, he is responsible for the security and safety of persons incarcerated within this facility, and the supervision, training, administration and placement of the correctional staff at this facility. He is also directly responsible for making decisions as to which units of the facility will house particular inmates. As to all claims presented herein against him, Defendant GREER is being sued in

his official capacity and only injunctive relief is sought.

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16. Defendant DENNIS SMITH was at all times relevant herein a Captain and high-ranking correctional officer at the FDC-Pleasanton, FCI-Dublin and Camp Parks facilities, acting under color of federal law. As such, he was responsible for the security and safety of persons incarcerated within these facilities, including Plaintiffs, and the supervision, training and administration of the correctional staff in these facilities. He is being sued in his individual capacity.

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17. Defendant DENNIS GILLETTE was at all times relevant herein a correctional officer at the J-2 SHU at the FDC-Pleasanton facility, acting under color of federal law. As such, he was responsible for the security and safety of persons incarcerated within FDC-Pleasanton, including Plaintiffs. He is being sued in his individual capacity.

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18. Defendant CHARLES GILLETTE is, and was at all times relevant herein, a Lieutenant and Special Investigative Section ("SIS") Officer at the FDC-Pleasanton, FCI-Dublin facilities, acting under color of federal law. As such, he was responsible for the investigation and prosecution of inappropriate or unlawful behavior of correctional officers within these facilities, and for the security and safety of persons incarcerated within these facilities, including Plaintiffs. He is being sued in his individual capacity.

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19. Defendant SHEILA YARBOROUGH is, and was at all times relevant herein, a Lieutenant and SIS officer at the FDC-Pleasanton, FCI-Dublin and Camp Parks facilities, acting under color of federal law. As such, she was responsible for the investigation and prosecution of inappropriate or unlawful

1 behavior of correctional officers within these facilities, and
2 for the security and safety of persons incarcerated within these
3 facilities, including Plaintiffs. She is being sued in her
4 individual capacity.

5 20. Defendant WAYNE L. ERNST is, and was at all times
6 relevant herein, a Lieutenant at the FCI-Dublin, FDC-Pleasanton
7 and Camp Parks facilities, acting under color of federal law. As
8 such, he was responsible for the security and safety of persons
9 incarcerated within these facilities, including Plaintiffs, and
10 the supervision, training and administration of the correctional
11 staff in these facilities. He is being sued in his individual
12 capacity.

13 21. Defendant GARFIELD SAMUELS was at all times relevant
14 herein, a corrections officer at the J2-SHU at the FDC-Pleasanton
15 facility, acting under color of federal law. As such, he was
16 responsible for the security and safety of persons incarcerated
17 within FDC-Pleasanton, including Plaintiffs. He is being sued in
18 his individual capacity.

19 22. Plaintiff is ignorant of the true names and capacities
20 of Defendants sued herein as Does 1 through 15, inclusive, and
21 therefore sues said Defendants by such fictitious names.
22 Plaintiff is informed and believes, and therefore alleges, that
23 each of Does 1 through 15 is responsible in some manner for the
24 injuries and damages alleged herein. Plaintiff therefore sues
25 Does 1 through 15, inclusive, by such fictitious names and will
26 seek leave to amend this Complaint to add their true names and
27 capacities when they have been ascertained.

28 23. Defendant UNITED STATES OF AMERICA is sued directly
under the Federal Tort Claims Act.

1 24. Plaintiffs are informed and believe, and on that basis
2 allege, that at all times relevant herein, Defendants, and each
3 of them, were employees and agents of the government of the
4 United States of America.

5 25. Plaintiffs allege that at all times relevant to this
6 action, Defendants, and each of them, acted in the course and
7 scope of their employment and under color of federal law.

8 26. While acting and failing to act as alleged herein,
9 Defendants, and each of them, had complete custody and total
10 control of Plaintiffs. Plaintiffs were dependent upon
11 Defendants, and each of them, for their personal security.

12 27. In performing the acts and/or omissions complained of
13 herein, Defendants, and each of them, acted under color of
14 federal law, and Plaintiffs are informed and believe each acted
15 maliciously, callously, intentionally, recklessly, with gross
16 negligence, and with deliberate indifference to the rights and
17 personal security of Plaintiffs. Each of them knew or should
18 have known that their conduct, attitudes, actions and/or
19 omissions were, and are, a threat to Plaintiffs and to their
20 Constitutionally-protected rights. Despite this knowledge,
21 Defendants, and each of them, failed to take steps to protect
22 Plaintiffs, and to ensure their Constitutional rights while they
23 were in Defendants' care and custody.
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FACTS

1 28. Plaintiffs ROBIN LUCAS, VALERIE MERCADEL and RAQUEL
2 DOUTHIT are, or were, female inmates incarcerated in the custody
3 of the Federal Bureau of Prisons and housed at the FDC-Pleasanton
4 facility and the FCI-Dublin facility, who were subjected to a
5 pattern and practice of sexual assaults, intimidation, physical,
6 sexual and verbal abuse, threats of violence, sexual harassment,
7 invasions of privacy, and other violations of law by Defendants,
8 and were retaliated against by Defendants for their complaints
9 regarding this unlawful conduct, as set forth herein.
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ROBIN LUCAS

11 29. On or about April 2, 1995, Plaintiff ROBIN LUCAS was
12 incarcerated at Camp Parks, in Dublin, California, a minimum
13 security facility for women.
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15 30. On or about August 14, 1995, after an alleged
16 altercation with another prisoner, Plaintiff LUCAS was moved to
17 the J-2 SHU (Special Housing Unit) at FDC-Pleasanton.
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19 31. Plaintiff LUCAS is informed and believes that FDC-
20 Pleasanton is a detention facility regularly used for the housing
21 of men only. The J-2 SHU is a 24-hour lockdown facility, in
22 which inmates are locked in their single cells at all times
23 (except for very limited activities, such as showers). At the
24 time Plaintiff LUCAS was placed in the J-2 SHU, she was one of
25 only a handful of women housed there among an otherwise all-male
26 prisoner population.

27 32. Plaintiff LUCAS is informed and believes and therefore
28 alleges that Defendant Warden HAYES directly approved her

1 placement at the J-2 SHU and/or immediately ratified her transfer
2 to the J-2 SHU, and was responsible for deciding whether she
3 would be moved from that unit. Plaintiff is further informed and
4 believes that Defendant WHITE approved the policy of housing
5 female inmates in the men's SHU unit, and approved Plaintiff
6 LUCAS' placement at the J-2 SHU.

7 33. Plaintiff LUCAS' placement at FDC-Pleasanton, and her
8 placement in the J-2 SHU in particular, exposed all aspects of
9 her private life, including changing of clothes, showering and
10 use of the cell toilet, to the supervision and observation of
11 male custody staff, as well as exposing her to a male inmate
12 environment pervaded by sexual attention and animus directed at
13 the few women in the facility. Few, if any, female officers were
14 assigned to the J-2 SHU during the time Plaintiff was placed
15 there. Moreover, because the facilities were designed for
16 single-sex use, the cell windows and showers were in plain view
17 of the male guards and inmates.

18 34. As a result of her placement on an all male tier, under
19 constant supervision of male prison staff and constant exposure
20 to the male inmate environment, Plaintiff LUCAS suffered severe
21 emotional and psychological distress and invasions of her
22 privacy.

23 35. Shortly after Plaintiff LUCAS' arrival at the J-2 SHU,
24 she became the victim of a pattern of serious sexual harassment
25 and unwelcome sexual advances orchestrated and facilitated by
26 prison officials including, but not limited to the following:

27 (a) Male prisoners were allowed by guards to roam the
28 J-2 SHU corridor and harass women prisoners, including Plaintiff
LUCAS, through the food port or other opening in the cell doors.

1 On several occasions, male prisoners propositioned Plaintiff
2 LUCAS with offers of alcohol, drugs, condoms and other contraband
3 in return for sexual favors.

4 (b) Male prisoners repeatedly taunted and threatened
5 to assault Plaintiff LUCAS.

6 (c) Male prisoners were provided access to Plaintiff
7 LUCAS' cell without her consent by one or more correctional
8 officers, who would open the locked cell door to admit them.
9 Plaintiff LUCAS is informed and believes some of the prisoners
10 who were admitted to her cell were from other parts of the
11 detention center.

12 (d) One male prisoner entered Plaintiff LUCAS' cell
13 and climbed into bed with her while she was asleep and without
14 her consent, for the purpose of having sexual contact with her.

15 36. Plaintiff LUCAS is informed and believes, and therefore
16 alleges, that Defendant SAMUELS (otherwise known as "Dude"), an
17 officer regularly on duty at the J-2 SHU between midnight and
18 8:00 a.m., unlocked Plaintiff LUCAS' cell door to permit male
19 prisoners to enter her cell at night without her consent, for the
20 purposes of perpetrating such assaults, abuse and harassment.

21 37. Plaintiff LUCAS is informed and believes, and on that
22 basis alleges, that other correctional officers, whose identities
23 are unknown to Plaintiff LUCAS, and who are sued herein as DOE
24 Defendants 4 through 15, also allowed male inmates to access
25 Plaintiff LUCAS' cell at the J-2 SHU for purposes of perpetrating
26 such assaults, abuse and harassment, or otherwise participated in
27 the assaults, abuse and harassment.

28 38. During this time period, Plaintiff LUCAS repeatedly
asked prison personnel, including Defendant SAMUELS to stop

1 letting male prisoners into her cell and asked other correctional
2 staff at the J-2 SHU to intervene to stop this harassment, to no
3 avail.

4 39. Throughout the time she was housed in the J-2 SHU, and
5 as a result of the unwelcome encounters with male prisoners and
6 correctional staff as herein alleged, Plaintiff LUCAS was
7 severely emotionally and psychologically distraught and in
8 constant fear of further attacks. This fear and emotional and
9 psychological distress was exacerbated by the fact that she could
10 not seek assistance from the correctional staff, as they were
11 involved in the wrongdoing.

12 40. In or around August 1995, after her requests for help
13 to the J-2 SHU staff went unanswered, and fearing for her
14 physical safety there, Plaintiff LUCAS contacted Defendant
15 CAPTAIN SMITH, and asked to be transferred to a SHU in a female
16 facility. Plaintiff LUCAS spoke with Defendant CAPTAIN SMITH
17 several times in late August 1995, and informed him about what
18 was taking place at the J-2 SHU, including the fact that
19 correctional officers were unlocking her cell door to allow
20 inmates to enter at night, and about Defendant Officer SAMUELS'
21 involvement. Despite the fact that Plaintiff LUCAS provided this
22 information, Defendant SMITH refused to remove her from the J-2
23 SHU. During one of her conversations with Defendant SMITH,
24 Plaintiff LUCAS identified some of the inmates who had been let
25 into her cell from a photographic line-up shown to her by
26 Defendant CAPTAIN SMITH. After this identification, Defendant
27 CAPTAIN SMITH requested that Plaintiff LUCAS provide an affidavit
28 to the authorities.

41. On or about September 5, 1995, pursuant to Defendant

1 SMITH'S request, Plaintiff LUCAS gave a verbal statement and a
2 written affidavit to SIS Investigators, Defendants LIEUTENANTS
3 YARBOROUGH and GILLETTE, including a detailed written statement
4 regarding her treatment at the J-2 SHU. Plaintiff LUCAS is
5 informed and believes that the SIS is the Internal Affairs Bureau
6 for all three facilities -- FDC-Pleasanton, FCI-Dublin and Camp
7 Parks. Plaintiff is informed and believes that Defendants
8 LIEUTENANTS YARBOROUGH and GILLETTE communicated the substance of
9 her detailed statement to Defendant CAPTAIN SMITH. Despite her
10 provision of this detailed statement, Defendant CAPTAIN SMITH
11 again refused to move Plaintiff from the J-2 SHU.

12 42. Plaintiff LUCAS is informed and believes, and therefore
13 alleges, that Defendants LIEUTENANTS YARBOROUGH and GILLETTE and
14 CAPTAIN SMITH leaked, or caused the release of, the substance of
15 her detailed statement to personnel and inmates at FCI-Dublin
16 and/or FDC-Pleasanton, knowing that the release of that
17 information to FCI-Dublin and/or FDC-Pleasanton personnel and
18 inmates would brand Plaintiff as a "snitch" and place her safety
19 and security at risk.

20 43. Within days after making her detailed statement, the
21 substance of Plaintiff LUCAS' detailed statement and the fact
22 that Plaintiff LUCAS had "snitched" were common knowledge among
23 the male prisoners and correctional personnel in the J-2 SHU.
24 During this time, Plaintiff LUCAS remained housed in the J-2 SHU
25 despite obvious and severe risk to her personal security, her
26 receipt of threats, and her repeated requests for transfer and
27 protection.

28 44. On or about September 22, between midnight and 5:00
a.m., while she was asleep, Plaintiff LUCAS' cell door was

1 opened. Three men, whose identities are unknown to Plaintiff and
2 who are sued here as DOES 1 through 3, entered her cell and
3 forcibly restrained her and handcuffed her from behind.

4 Plaintiff LUCAS was brutally beaten, her life was repeatedly
5 threatened, and she was savagely raped and sodomized. During
6 this attack, Defendants DOES 1 through 3 informed Plaintiff LUCAS
7 that the attack was in retaliation for her providing a statement
8 to the SIS investigators, including, but not limited to, calling
9 her a "snitch" and advising her to "keep her mouth shut".

10 Plaintiff is informed and believes and therefore alleges that one
11 or more of Defendant Does 1 through 3 are, or were, correctional
12 personnel.

13 45. This violent attack resulted in serious physical injury
14 to Plaintiff LUCAS, including injuries to her neck, back, ribs,
15 shoulder, arms, wrists, anus and private areas, as well as severe
16 emotional and psychological trauma.

17 46. Following the attack, Plaintiff LUCAS requested medical
18 attention from the prison staff. Despite her requests for such
19 attention, Plaintiff LUCAS was denied any medical attention until
20 several weeks after the attack.

21 47. During the time period following the attack, male
22 inmates continued to threaten to physically harm Plaintiff LUCAS,
23 including making statements to the effect that she would be found
24 hanging dead in her cell.

25 48. On or about, October 5, 1995, Plaintiff LUCAS was
26 transferred to the women's SHU facility at FCI-Dublin.

27 49. In or around late October or early November 1995,
28 Plaintiff LUCAS gave another statement to Defendant LIEUTENANT
ERNST, this time concerning the September 22nd attack.

1 50. Subsequent to her second statement to the authorities,
2 Defendant CAPTAIN SMITH attempted to intimidate Plaintiff LUCAS
3 into withdrawing her complaints, including by making statements
4 advising her to "drop the issue."

5 51. Plaintiff LUCAS has suffered, and continues to suffer,
6 in addition to physical injury, severe psychological and
7 emotional trauma, including extraordinary fear, anxiety, and
8 depression as a consequence of the harassment, abuse,
9 discrimination and retaliation Plaintiff LUCAS encountered at the
10 hands of male staff and prisoners at FDC-Pleasanton and FCI-
11 Dublin.

12 52. These actions and inactions by prison officials and
13 inmates, along with the complete failure of prison officials to
14 take any action to protect Plaintiff LUCAS, or to provide her
15 with requested and much needed medical attention, as herein
16 alleged, not only allowed her physical injuries to worsen, but
17 also intensified her severe emotional and psychological trauma.

18 53. Plaintiff LUCAS is informed and believes and therefore
19 alleges that, in or around the period of her incarceration at the
20 J-2 SHU, other women prisoners were also sexually harassed and
21 assaulted after correctional officers, including Defendant
22 SAMUELS, unlocked their cell doors to admit male inmates. Among
23 the other women prisoners who were subject to this harassment
24 were two other African-American women (Plaintiffs Valerie
25 MERCADEL and Raquel DOUTHIT), and three White women.

26 54. Plaintiff is informed and believes that other women
27 housed at the J-2 SHU also complained to prison officials about
28 sexual harassment and assault, including rape. Plaintiff is
further informed and believes that a complaint by one of the

1 White women resulted in the removal of the White women from the
2 J-2 SHU on or about September 25, 1995. (The three African-
3 American women, including Plaintiff LUCAS, were not removed until
4 on or about October 5, 1995.)

5 55. On or about November 17, 1995, after the intervention
6 of her attorneys, Plaintiff LUCAS was transferred to the Alameda
7 County Jail, Santa Rita.

8 56. Plaintiff LUCAS, on her own, and by and through her
9 attorneys, has submitted all grievances alleged herein, to
10 personnel at the Federal Bureau of Prisons, and has cooperated
11 fully in any and all formal internal investigations of the events
12 complained of herein, thereby fully exhausting all applicable
13 internal grievance mechanisms.

14 VALERIE MERCADEL

15 57. On or about June 8, 1995, Plaintiff VALERIE MERCADEL
16 was housed at FCI-Dublin, a federal correctional facility for
17 women.

18 58. On or about September 20, 1995, after an altercation
19 with another prisoner, Defendant Captain SMITH and other
20 correctional personnel moved Plaintiff MERCADEL and Plaintiff
21 Raquel DOUTHIT, another female prisoner, to the J-2 SHU (Special
22 Housing Unit) at FDC-Pleasanton.

23 59. Plaintiff MERCADEL is informed and believes that FDC-
24 Pleasanton is a detention facility regularly used for the housing
25 of men only. The J-2 SHU is a 24-hour lockdown facility, in
26 which inmates are locked in their single cells at all times
27 (except for very limited activities, such as showers). At the
28 time Plaintiff MERCADEL was placed in the J-2 SHU, she was one of

only a handful of women housed there among an otherwise all-male prisoner population.

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2 60. Plaintiff MERCADEL is informed and believes and
3 therefore alleges that Defendant Warden HAYES directly approved
4 her placement at the J-2 SHU and/or immediately ratified her
5 transfer to the J-2 SHU, and was responsible for deciding whether
6 she would be moved from that unit. Plaintiff is further informed
7 and believes that Defendant WHITE approved the policy of housing
8 female inmates in the men's SHU unit, and approved Plaintiff
9 MERCADEL's placement at the J-2 SHU.

10 61. Plaintiff MERCADEL's placement at FDC-Pleasanton, and
11 her placement in the J-2 SHU in particular, exposed all aspects
12 of her private life, including changing of clothes, showering and
13 use of the cell toilet, to the supervision and observation of
14 male custody staff. She was further exposed to a male inmate
15 environment pervaded by sexual attention and animus directed at
16 the few women in the facility. Few, if any, female officers were
17 assigned to the J-2 SHU during the time Plaintiff was placed
18 there. In addition, because the facilities were designed for
19 single-sex use, the cell windows and showers were in plain view
20 of the male guards and inmates. Moreover, as Plaintiff was
21 supplied only one set of clothing upon transfer to the J-2 SHU,
22 she was forced to sleep in her undergarments.

23 62. As a result of her placement on an all male tier, under
24 the constant supervision of male prison staff and constant
25 exposure to the male inmate environment, Plaintiff MERCADEL
26 suffered severe emotional and psychological distress and
27 invasions of her privacy.

28 63. Shortly after Plaintiff MERCADEL's arrival at the J-2

1 SHU, she became the victim of a pattern of serious sexual
2 harassment and unwelcome sexual advances orchestrated and
3 facilitated by prison officials including, but not limited to the
4 following:

5 (a) Male prisoners were allowed by guards to roam the
6 J-2 SHU corridor and harass women prisoners, including Plaintiff
7 MERCADEL, through the food port or other opening in the cell
8 doors.

9 (b) On at least one occasion, a male inmate grabbed
10 Plaintiff MERCADEL through her cell door and made statements to
11 the effect that he had paid for her services and would "collect"
12 whether she consented or not. He then proceeded to physically
13 assault her by striking a strong blow to her head.

14 (c) Male prisoners repeatedly propositioned Plaintiff
15 MERCADEL for sex, both in writing and while standing outside her
16 cell.

17 (d) Male prisoners were provided access to Plaintiff
18 MERCADEL's cell without her consent by one or more correctional
19 officers, who would open the locked door to admit them. On these
20 occasions, Plaintiff was locked in her cell with the male inmates
21 until such time as the correctional officer(s) returned to unlock
22 the cell. Plaintiff MERCADEL is informed and believes some of the
23 prisoners who were admitted to her cell were from other parts of
24 the detention center.

25 (e) At least one male inmate who was provided access to
26 Plaintiff MERCADEL's cell without her consent forcibly molested
27 and abused her, fondling her breasts and attempting to orally
28 copulate her.

64. Plaintiff MERCADEL is informed and believes, and

1 therefore alleges, that Defendant SAMUELS (otherwise known as
2 "Dude"), an officer regularly on duty at the J-2 SHU between
3 midnight and 8:00 a.m., unlocked Plaintiff MERCADEL's cell door
4 to permit male prisoners to enter her cell at night without her
5 consent, for the purposes of perpetrating such assaults, abuse
6 and harassment.

7 65. Plaintiff MERCADEL is informed and believes, and on
8 that basis alleges, that other correctional officers, whose
9 identities are unknown to Plaintiff MERCADEL, and who are sued
10 herein as DOE Defendants 4 through 15, also allowed male inmates
11 to access Plaintiff MERCADEL's cell at the J-2 SHU for purposes
12 of perpetrating such assaults, abuse and harassment, or otherwise
13 participated in the assaults, abuse and harassment.

14 66. During this time period, Plaintiff MERCADEL asked
15 prison personnel, including Defendant SAMUELS to stop letting
16 male prisoners into her cell. Defendant SAMUELS acknowledged his
17 participation in the unwelcome sexual advances.

18 67. During the time Plaintiff MERCADEL was housed at the J-
19 2 SHU, Defendant Officer GILLETTE sexually harassed and assaulted
20 Plaintiff MERCADEL, including, without limitation, by making
21 sexual remarks and comments to her, by demanding that Plaintiff
22 MERCADEL show him her breasts or genitals in order to receive a
23 prison issued t-shirt, and by attempting to grab Plaintiff
24 MERCADEL's buttocks while she was on her way to the shower.
25 Plaintiff MERCADEL refused to comply with Defendant Officer
26 GILLETTE's demands to show her breasts and/or genitals and did
27 not receive a t-shirt from him.

28 68. Throughout the time she was housed in the J-2 SHU, and
as a result of the unwelcome encounters with male prisoners and

1 correctional staff as herein alleged, Plaintiff MERCADEL was
2 severely emotionally and psychologically distraught and in
3 constant fear of further attacks. This fear and emotional and
4 psychological distress was exacerbated by the fact that she could
5 not seek assistance from the correctional staff, as they were
6 involved in the wrongdoing. Moreover, as a result of her
7 constant fear of further attacks, and in an effort to protect
8 herself from these attacks, Plaintiff MERCADEL moved her mattress
9 to block the cell door and attempted to stay awake during the
10 night.

11 69. On or about October 5, 1995, correctional staff moved
12 Plaintiff MERCADEL and two other African-American female
13 prisoners, Plaintiffs Robin LUCAS and Raquel DOUTHIT, to the SHU
14 at the nearby FCI-Dublin.

15 70. Plaintiffs MERCADEL and Raquel DOUTHIT were placed in a
16 cell together at FCI-Dublin.

17 71. On or about October 11, 1995, Plaintiff MERCADEL
18 appeared before E. Porter, a Disciplinary Hearing Officer, for a
19 disciplinary hearing pertaining to her initial SHU placement.
20 Plaintiff MERCADEL complained to Officer Porter about the
21 problems she had encountered. Officer Porter refused to listen
22 to her complaints, cautioned her that her allegations were
23 "dangerous," and informed her that she had to write to his
24 superior, Defendant O. Ivan WHITE, the Western Regional Director
25 of the Bureau of Prisons, in order to initiate a complaint.

26 72. On or about October 15, 1995, Plaintiff MERCADEL wrote
27 a letter to Defendant WHITE, which she and Plaintiff DOUTHIT both
28 signed. In the letter they informed Defendant WHITE that their
personal safety and security had been violated by correctional

1 officers at the J-2 SHU at FDC-Pleasanton, and requested that an
2 official from outside FCI-Dublin be sent to investigate these
3 problems. Defendant WHITE failed to respond appropriately to
4 this letter; instead, he sent a copy of the letter to officials
5 at FDC-Pleasanton and/or FCI-Dublin, some of whom were the
6 officials accused of misconduct. Plaintiff MERCADEL is informed
7 and believes that Defendant Lieutenant ERNST at FCI-Dublin was
8 assigned to investigate their complaints.

9 73. On or about October 16, 1995, Defendant Lieutenant
10 ERNST spoke with Plaintiffs MERCADEL and DOUTHIT separately about
11 the problems they had encountered at FDC-Pleasanton, promising to
12 treat their interviews as confidential.

13 74. Plaintiff MERCADEL is informed and believes, and
14 therefore alleges, that Defendant LIEUTENANT ERNST and/or
15 Defendant WHITE leaked, or caused the release of, the substance
16 of her complaints to personnel and inmates at FCI-Dublin and/or
17 FDC-Pleasanton, knowing that such release would brand Plaintiff
18 MERCADEL as a "snitch" and place her safety and security at risk.

19 75. Within days after making these complaints, the
20 substance of Plaintiff MERCADEL'S complaint and the fact that
21 Plaintiff MERCADEL had "snitched" were common knowledge among the
22 correctional staff. During this time, Plaintiff MERCADEL
23 remained housed at FCI-Dublin.

24 76. Following the meeting with Defendant Lieutenant ERNST,
25 Plaintiff MERCADEL was threatened and harassed by the
26 correctional staff at FCI-Dublin, including without limitation
27 the following:

28 (a) On or about October 19, 1995, Defendant Captain
SMITH approached Plaintiffs MERCADEL and DOUTHIT at their cell,

1 and threatened to close the investigation regarding their
2 complaints of treatment at the J-2 SHU in order to intimidate
3 them.

4 (b) Subsequent to his threats to close the
5 investigation altogether, Defendant CAPTAIN SMITH threatened
6 Plaintiff MERCADEL's physical safety and security, including, but
7 not limited to, threats to tell the other prisoners that
8 Plaintiff MERCADEL was a "snitch", which Defendant SMITH knew
9 would endanger Plaintiff MERCADEL's physical safety and security.

10 (c) Defendant Officer GILLETTE also came to Plaintiffs
11 MERCADEL and DOUTHIT's cell at FCI-Dublin and attempted to
12 intimidate them into dropping their complaint.

13 77. Plaintiff MERCADEL is informed and believes that the
14 conduct as alleged herein was part of an effort by Defendants
15 WHITE, ERNST, SMITH and Officer GILLETTE to retaliate against her
16 for her complaints about her treatment in the J-2 SHU, and at
17 FCI-Dublin, and to intimidate her into withdrawing said
18 complaints, or to suppress evidence, obstruct justice, and/or
19 intimidate witnesses with regard to said complaints.

20 78. On or about November 1, 1995, Plaintiff MERCADEL filled
21 out a request to speak with Defendant Warden HAYES concerning
22 what had happened to her, and wrote a second letter to Defendant
23 WHITE informing him of the continuing threat to her safety and
24 requesting investigation by someone from outside FCI-Dublin.
25 Plaintiff MERCADEL was not moved or provided protection pursuant
26 to these requests.

27 79. Plaintiff MERCADEL has suffered, and continues to
28 suffer, in addition to physical injury, severe psychological and
emotional trauma, including extraordinary fear, anxiety, and

1 depression as a consequence of the harassment, abuse,
2 discrimination and retaliation Plaintiff MERCADEL encountered at
3 the hands of male staff and prisoners at FDC-Pleasanton and FCI-
4 Dublin.

5 80. These actions and inactions by prison officials and
6 inmates, along with the complete failure of prison officials to
7 take any action to protect Plaintiff MERCADEL intensified her
8 severe emotional and psychological trauma.

9 81. Plaintiff MERCADEL is informed and believes and
10 therefore alleges that, in or around the period of her
11 incarceration at the J-2 SHU, other women prisoners were also
12 sexually harassed and assaulted after correctional officers,
13 including Defendant SAMUELS, unlocked their cell doors to admit
14 male inmates. Among the other women prisoners who were subject
15 to this harassment were two other African-American women
16 (Plaintiffs Robin LUCAS and Raquel DOUTHIT), and three White
17 women.

18 82. Plaintiff MERCADEL is informed and believes that other
19 women housed at the J-2 SHU also complained to prison officials
20 about sexual harassment and assault, including rape. Plaintiff
21 MERCADEL is further informed and believes that a complaint by one
22 of the White women resulted in the removal of the White women
23 from the J-2 SHU on or about September 25, 1995. (The three
24 African-American women, including Plaintiff MERCADEL, were not
25 removed until on or about October 5, 1995.)

26 83. On or about November 16, 1995, after the intervention
27 of her attorneys, Plaintiff MERCADEL was transferred to the
28 Alameda County Jail, Santa Rita.

84. Plaintiff since was moved to the Alameda County Jail,

North County. She currently is housed at the Federal Correctional Institute in Danbury, Connecticut.

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85. Plaintiff MERCADEL, on her own, and by and through her attorneys, has submitted all grievances alleged herein, to personnel at the Federal Bureau of Prisons, and has cooperated fully in any and all formal internal investigations of the events complained of herein, thereby fully exhausting all applicable internal grievance mechanisms.

RAQUEL DOUTHIT

86. On or about June 2, 1995, Plaintiff RAQUEL DOUTHIT was housed at FCI-Dublin, a federal correctional facility for women.

87. On or about September 20, 1995, after an altercation with another prisoner, Defendant Captain SMITH and other correctional personnel moved Plaintiff DOUTHIT and Plaintiff Valerie MERCADEL, another female prisoner, to the J-2 SHU (Special Housing Unit) at FDC-Pleasanton.

88. Plaintiff DOUTHIT is informed and believes that FDC-Pleasanton is a detention facility regularly used for the housing of men only. The J-2 SHU is a 24-hour lockdown facility, in which inmates are locked in their single cells at all times (except for showers). At the time Plaintiff DOUTHIT was placed in the J-2 SHU, she was one of only a handful of women housed there among an otherwise all-male prisoner population.

89. Plaintiff DOUTHIT is informed and believes and therefore alleges that Defendant Warden HAYES directly approved her placement at the J-2 SHU and/or immediately ratified her transfer to the J-2 SHU, and was responsible for deciding whether she would be moved from that unit. Plaintiff is further informed

1 and believes that Defendant WHITE approved the policy of housing
2 female inmates in the men's SHU unit, and approved Plaintiff
3 DOUTHIT's placement at the J-2 SHU.

4 90. Plaintiff DOUTHIT's placement at FDC-Pleasanton, and
5 her placement in the J-2 SHU in particular, exposed all aspects
6 of her private life, including changing of clothes, showering and
7 use of the cell toilet, to the supervision and observation of
8 male custody staff. She was further exposed to a male inmate
9 environment pervaded by sexual attention and animus directed at
10 the few women in the facility. Few, if any, female officers were
11 assigned to the J-2 SHU during the time Plaintiff was placed
12 there. In addition, because the facilities were designed for
13 single-sex use, the cell windows and showers were in plain view
14 of the male guards and inmates. Moreover, as Plaintiff DOUTHIT
15 was supplied only one set of clothing upon transfer to the J-2
16 SHU, she was forced to sleep in her undergarments.

17 91. As a result of her placement on an all male tier, under
18 constant supervision of male prison staff and constant exposure
19 to the male inmate environment, Plaintiff DOUTHIT suffered severe
20 emotional and psychological distress and invasions of her
21 privacy.

22 92. Shortly after Plaintiff DOUTHIT's arrival at the J-2
23 SHU, she became the victim of a pattern of serious sexual
24 harassment and unwelcome sexual advances orchestrated and
25 facilitated by prison officials including, but not limited to the
26 following:

27 (a) Male prisoners were allowed by guards to roam the
28 J-2 SHU corridor and harass women prisoners, including Plaintiff
DOUTHIT, through the food port or other opening in the cell

1 doors. On several occasions, male prisoners propositioned
2 Plaintiff MERCADEL with offers of alcohol, and other contraband
3 in return for sexual favors.

4 (b) Male prisoners repeatedly propositioned Plaintiff
5 DOUTHIT for sex, both in highly offensive letters and while
6 standing outside her cell.

7 (c) Male prisoners were provided access to Plaintiff
8 DOUTHIT's cell without her consent by one or more correctional
9 officers, who would open the locked cell door to admit them. On
10 these occasions, Plaintiff DOUTHIT was locked in her cell with
11 the male inmates until such time as the correctional officer(s)
12 returned to unlock the cell. Plaintiff DOUTHIT is informed and
13 believes some of the prisoners who were admitted to her cell were
14 from other parts of the detention center.

15 (d) On several occasions, male prisoners entered
16 Plaintiff DOUTHIT's cell without her consent, where they sexually
17 harassed and sexually and verbally abused her.

18 (e) On one occasion, a male inmate who was given access
19 to her cell without her consent, held Plaintiff DOUTHIT down
20 while he forcibly molested, orally copulated, and abused
21 Plaintiff DOUTHIT. On a separate occasion, this male inmate
22 entered Plaintiff DOUTHIT's cell and, when Plaintiff DOUTHIT
23 refused to have sex with him, he sat directly in front of her and
24 masturbated.

25 93. Plaintiff DOUTHIT is informed and believes, and
26 therefore alleges, that Defendant SAMUELS (otherwise known as
27 "Dude"), a officer regularly on duty at the J-2 SHU between
28 midnight and 8:00 a.m., unlocked Plaintiff DOUTHIT'S cell door to
permit male prisoners to enter her cell at night without her

consent, for the purposes of perpetrating such assaults, abuse and harassment.

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2 94. Plaintiff DOUTHIT is informed and believes, and on that
3 basis alleges, that other correctional officers, whose identities
4 are unknown to Plaintiff DOUTHIT, and who are sued herein as DOE
5 Defendants 4 through 15, also allowed male inmates to access
6 Plaintiff DOUTHIT'S cell at the J-2 SHU for purposes of
7 perpetrating such assaults, abuse and harassment, or otherwise
8 participated in the assaults, abuse and harassment.

9 95. Throughout her stay on the J-2 SHU, Plaintiff
10 continually feared for her personal safety, and suffered extreme
11 emotional and psychological distress. This fear and emotional
12 and psychological distress was exacerbated by the fact that she
13 could not seek assistance from the correctional staff as they
14 were involved with the wrongdoing.

15 96. On or about October 5, 1995, correctional staff moved
16 Plaintiff DOUTHIT and two other African-American female
17 prisoners, Plaintiffs Robin LUCAS and Valerie MERCADEL, to the
18 SHU at the nearby FCI-Dublin.

19 97. Plaintiffs DOUTHIT and Valerie MERCADEL were placed in
20 a cell together at FCI-Dublin.

21 98. On or about October 11, 1995, Plaintiff DOUTHIT
22 appeared before E. Porter, a Disciplinary Hearing Officer, for a
23 disciplinary hearing pertaining to her initial SHU placement.
24 Plaintiff DOUTHIT complained to Officer Porter about the problems
25 she had encountered. Officer Porter refused to listen to her
26 complaints, cautioned her that her allegations were "dangerous,"
27 and informed her that she had to write to his superior, Defendant
28 O. Ivan WHITE, the Western Regional Director of the Bureau of

Prisons, in order to initiate a complaint.

1 99. On October 15, 1995, Plaintiff MERCADEL wrote a letter
2 to Defendant WHITE, which she and Plaintiff DOUTHIT both signed.

3 In the letter they informed Defendant WHITE that their personal
4 safety and security had been violated by correctional officers at
5 the J-2 SHU at FDC-Pleasanton, and requested that an official
6 from outside FCI-Dublin be sent to investigate these problems.
7 Defendant WHITE failed to respond appropriately to this letter;
8 instead, he sent a copy of the letter to officials at FDC-
9 Pleasanton and/or FCI-Dublin, some of whom were the officials
10 accused of misconduct. Plaintiff DOUTHIT is informed and
11 believes that Defendant Lieutenant ERNST at FCI-Dublin was
12 assigned to investigate their complaints.

13 100. On or about October 16, 1995, Defendant Lieutenant
14 ERNST spoke with Plaintiff DOUTHIT and MERCADEL separately about
15 the problems they had encountered at FDC-Pleasanton, promising to
16 treat their interviews as confidential.

17 101. Plaintiff DOUTHIT is informed and believes, and
18 therefore alleges, that Defendant LIEUTENANT ERNST and/or
19 Defendant WHITE leaked, or caused the release of, the substance
20 of her statement to personnel and inmates at FCI-Dublin and/or
21 FDC-Pleasanton, knowing that such release would brand Plaintiff
22 as a "snitch" and place her safety and security at risk.

23 102. Within days after making these complaints, the
24 substance of Plaintiff DOUTHIT'S statement and the fact that
25 Plaintiff DOUTHIT had "snitched" were common knowledge among the
26 correctional staff. During this time, Plaintiff DOUTHIT remained
27 housed at FCI-Dublin.

28 103. Following the meeting with Defendant Lieutenant ERNST,

1 Plaintiff DOUTHIT was threatened and harassed by the correctional
2 staff at FCI-Dublin, including without limitation the following:

3 (a) On or about October 19, 1995, Defendant Captain
4 SMITH approached Plaintiffs DOUTHIT and MERCADEL at their cell,
5 and threatened to close the investigation regarding their
6 complaints of treatment at the J-2 SHU in order to intimidate
7 them.

8 (b) Subsequent to his threats to close the
9 investigation altogether, Defendant CAPTAIN SMITH threatened
10 Plaintiff DOUTHIT's physical safety and security, including, but
11 not limited to, threats to tell the other prisoners that
12 Plaintiff DOUTHIT was a "snitch", which Defendant SMITH knew
13 would endanger Plaintiff DOUTHIT's physical safety and security.

14 (c) Defendant Officer GILLETTE also came to Plaintiffs
15 DOUTHIT's and MERCADEL's cell at FCI-Dublin and attempted to
16 intimidate them into dropping their complaint.

17 104. Plaintiff is informed and believes that the conduct as
18 alleged herein was part of an effort by Defendants WHITE, ERNST,
19 SMITH and Officer GILLETTE to retaliate against her for her
20 complaints about her treatment in the J-2 SHU, and to intimidate
21 her into withdrawing said complaints, or to suppress evidence,
22 obstruct justice, and/or intimidate witnesses with regard to said
23 complaints.

24 105. Plaintiff DOUTHIT has suffered, and continues to
25 suffer, in addition to physical injury, severe psychological and
26 emotional trauma, including extraordinary fear, anxiety, and
27 depression as a consequence of the harassment, abuse,
28 discrimination, and retaliation Plaintiff DOUTHIT encountered at
the hands of male staff and prisoners at FDC-Pleasanton and FCI-

Dublin.

1 106. These actions and inactions by prison officials and
2 inmates, along with the complete failure of prison officials to
3 take any action to protect Plaintiff DOUTHIT intensified her
4 severe emotional and psychological trauma.

5 107. Plaintiff DOUTHIT is informed and believes and
6 therefore alleges that, in or around the period of her
7 incarceration at the J-2 SHU, other women prisoners were also
8 sexually harassed and assaulted after correctional officers,
9 including Defendant SAMUELS, unlocked their cell doors to admit
10 male inmates. Among the other women prisoners who were subject
11 to this harassment were two other African-American women
12 (Plaintiffs Robin LUCAS and Valerie MERCADEL), and three White
13 women.

14 108. Plaintiff DOUTHIT is informed and believes that other
15 women housed at the J-2 SHU also complained to prison officials
16 about sexual harassment and assault, including rape. Plaintiff
17 DOUTHIT is further informed and believes that a complaint by one
18 of the White women resulted in the removal of the White women
19 from the J-2 SHU on or about September 25, 1995. (The three
20 African-American women, including Plaintiff DOUTHIT, were not
21 removed until on or about October 5, 1995.)

22 109. On or about November 16, 1995, after the intervention
23 of her attorneys, Plaintiff DOUTHIT was transferred to the
24 Alameda County Jail, Santa Rita.

25 110. Plaintiff since was moved to the Alameda County Jail,
26 North County. She currently is housed at the Federal
27 Correctional Institute in Tallahassee, Florida.

28 111. Plaintiff DOUTHIT, on her own, and by and through her

1 attorneys, has submitted all grievances alleged herein, to
2 personnel at the Federal Bureau of Prisons, and has cooperated
3 fully in any and all formal internal investigations of the events
4 complained of herein, thereby fully exhausting all applicable
5 internal grievance mechanisms.

6 COMMON FACTUAL ALLEGATIONS

7 112. Plaintiffs are informed and believe that, in addition
8 to the complaints they brought themselves, during the period they
9 were housed on the J-2 SHU, and during the period when the acts
10 complained of herein took place, certain of Plaintiffs' family
11 and friends made requests to visit Plaintiffs, and/or attempted
12 to lodge complaints with prison personnel on Plaintiffs' behalf,
13 to no avail. Moreover, certain of these family members and/or
14 friends were incorrectly informed by correctional personnel that
15 women prisoners were not housed at the men's J-2 SHU facility.

16 113. Defendants, and each of them, subjected Plaintiffs, as
17 well as other female inmates within their custody and control, to
18 the constant supervision and observation of male custody staff,
19 as alleged herein, by placing Plaintiffs, or directing or
20 approving placement of Plaintiffs, on the J-2 SHU at FDC-
21 Pleasanton, an all-male tier, by failing to remove Plaintiffs
22 from the J-2 SHU after complaints were made by other prisoners,
23 and by failing to remove Plaintiffs from the J-2 SHU after
24 complaints were made by Plaintiffs.

25 114. Defendants, and each of them, subjected Plaintiffs, as
26 well as other female inmates within their custody and control, to
27 sexual assaults, abuse and harassment, as herein alleged, by
28 placing Plaintiffs, or directing or approving placement of
Plaintiffs, on the J-2 SHU at FDC-Pleasanton, an all-male tier,

1 by failing to remove Plaintiffs from the J-2 SHU after complaints
2 were made by other prisoners, and by failing to remove Plaintiffs
3 from the J-2 SHU after complaints were made by Plaintiffs.

4 115. Defendants, and each of them, subjected Plaintiffs, as
5 well as other female prisoners within their custody and control,
6 to sexual assaults, abuse and harassment by failing to enact,
7 maintain and properly implement and enforce appropriate policies
8 and procedures concerning security for female prisoners and the
9 prevention and handling of sexual assaults, abuse and harassment
10 of female prisoners confined within the Bureau of Prisons, and
11 especially the Western Region, including Camp Parks, FCI-Dublin
12 and FDC-Pleasanton.

13 116. Plaintiffs are informed and believe, and therefore
14 allege, that Defendant SAMUELS, and DOE defendants 1 through 15,
15 subjected Plaintiffs to sexual assaults, abuse and harassment by
16 directly encouraging, facilitating and cooperating with male
17 prisoners by unlocking their cell doors to permit male prisoners
18 to enter their cells at night without their consent, for the
19 purposes of perpetrating such assaults, abuse and harassment.

20 117. Plaintiffs are informed and believe and therefore
21 allege that certain correctional personnel, including but not
22 limited to, some or all of the Defendants in this action,
23 received money and/or other favors or benefits from male inmates,
24 and/or other correctional personnel, in return for providing
25 access to Plaintiffs' cells, and/or the cells of other female
26 inmates.

27 118. Defendants, and each of them, retaliated against
28 Plaintiffs, through intimidation, threats, sexual and other
physical assaults, abuse and harassment, as herein alleged, after

Plaintiffs' complained about their treatment on the J-2 SHU.

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119. Defendants, and each of them, once they received actual notice of sexual assaults, abuse and harassment against Plaintiffs, as herein alleged, failed to adequately investigate and take reasonable measures to protect Plaintiffs, including, but not limited to their failure to keep obviously sensitive information confidential, and to remove Plaintiffs from the men's unit and/or to remove them from the facilities controlled by the correctional personnel implicated in their complaints.

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120. Plaintiffs are informed and believe and thereupon allege that Defendants, and each of them, failed to properly evaluate, train, discipline and supervise subordinate correctional personnel. Defendants' failure to supervise, train, discipline and evaluate subordinate correctional personnel resulted in the acts complained of herein.

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121. Plaintiffs are informed and believe that weeks or months prior to the events complained of herein, female inmates were housed at the J-2 unit and subjected to harassment similar to that alleged herein. Plaintiffs are further informed and believe that Defendants, and each of them, knew, or should have known of these prior instances of harassment. Notwithstanding the foregoing knowledge, Defendants failed to take action to prevent similar harm to Plaintiffs. By permitting such activities to continue unabated, Defendants, and each of them, adopted a de facto policy of deliberate indifference to the wrongful acts complained of herein and adopted, authorized, ratified and approved a policy and practice of permitting illegal sexual activity, sexual assault, sexual harassment, sexual battery, molestation and retaliation against female inmates.

122. Plaintiffs are informed and believe that Defendants, and each of them, failed to investigate the complaints received from the White women housed on J-2 SHU concerning Defendant SAMUELS, and/or other complaints regarding the J-2 SHU, as herein alleged, and failed to take other action to protect Plaintiffs, despite the fact that the information they received regarding Defendant SAMUELS clearly indicated that he was unfit for his position and that he was a threat to the safety and rights of female inmates. Had Defendants investigated the information they received about Defendant SAMUELS, Defendants could have prevented the conduct alleged herein.

123. Plaintiffs are further informed and believe and thereupon allege that Defendants WHITE, HAYES, SMITH, Officer GILLETTE, Lieutenant GILLETTE, YARBOROUGH, ERNST and DOES 1 through 15, knew or should have known that Defendant SAMUELS was unfit for the position of correctional officer and that Defendant SAMUELS was a threat to the safety and rights of female inmates.

Notwithstanding the foregoing knowledge, Defendants failed to take action to prevent Defendant SAMUELS from committing the illegal acts complained of by the Plaintiffs herein. By permitting such activity to continue unabated, Defendants, and each of them, adopted a de facto policy of deliberate indifference to the wrongful acts complained of herein and adopted, authorized, ratified and approved a policy and practice of permitting illegal sexual activity, sexual assault, sexual harassment, sexual battery, molestation and retaliation against female inmates.

124. The actions, conduct and inactions of Defendants, and each of them, demonstrates a practice, custom, or policy of

reckless and deliberate indifference to instances of known or suspected sexual assaults, intimidation, abuse, threats of violence, sexual harassment, retaliation and other violations of law violating Plaintiffs' Constitutional rights.

125. An actual controversy exists between Plaintiffs and Defendants concerning their rights, privileges and obligations.

126. No adequate remedy at law exists which will completely safeguard the Plaintiffs' legal rights and make the Plaintiffs whole; the Plaintiffs, other female prisoners and the general public will continue to be harmed and suffer irreparable loss and injury, unless the Court orders appropriate injunctive relief.

FIRST CLAIM FOR RELIEF

(Bivens -- Eighth Amendment Cruel and Unusual Punishment -- Deliberate Indifference to Prisoners' Personal Security Interests; All Defendants)

127. Plaintiffs reallege and incorporate by reference each allegation of paragraphs 1 through 126 above.

128. In acting and failing to act as alleged above, Defendants, and each of them, through their pattern and practice of permitting, facilitating and/or perpetrating sexual assaults, intimidation, physical, sexual and verbal abuse, threats of violence, sexual harassment, retaliation, and other violations of law against Plaintiffs, and failing to properly investigate such violations, as set forth herein, subjected Plaintiffs to unnecessary and wanton infliction of pain and physical injury, thereby violating the Plaintiffs' right to be free from cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

129. As a proximate, direct and foreseeable result of the

1 Defendants' failure to ensure freedom from sexual assaults,
2 intimidation, physical, sexual and verbal abuse, threats of
3 violence, sexual harassment, retaliation and other violations of
4 law against Plaintiffs, and in failing to properly investigate
5 such violations, as set forth herein, Plaintiffs have suffered,
6 are suffering, and will continue to suffer irreparable harm and
7 damages in the form of pain and suffering, shame, humiliation,
8 degradation, emotional distress, embarrassment, mental distress
9 and other damages.

10 130. Defendants' acts and/or omissions were knowing,
11 willful, intentional, malicious, unnecessary, wanton, and
12 despicable, with reckless, callous or conscious disregard of the
13 rights of the Plaintiffs, entitling the Plaintiffs to an award of
14 exemplary damages.

15 SECOND CLAIM FOR RELIEF

16 (Bivens -- Eighth Amendment Failure to Train and
17 Supervise-- Deliberate Indifference to Prisoners'
18 Personal Security Interests; All Defendants)

19 131. Plaintiffs reallege and incorporate by reference each
20 allegation of paragraphs 1 through 126 above.

21 132. In acting and failing to act as alleged above,
22 Defendants, and each of them, through their failure to properly
23 evaluate, train, discipline and supervise subordinate custodial
24 personnel to prevent physical harm to, and/or sexual harassment
25 of, inmates, to investigate allegations of physical harm to
26 and/or sexual harassment of inmates, and to prevent retaliation
27 against inmates for complaints of such abuse, subjected
28 Plaintiffs to unnecessary and wanton infliction of pain and

physical and emotional injury, thereby violating their rights under the Eight Amendment to the Constitution.

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2 133. As a proximate, direct and foreseeable result of the
3 Defendants' failure to properly evaluate, train, discipline and
4 supervise subordinate custodial personnel as set forth herein,
5 Plaintiffs have suffered, are suffering, and will continue to
6 suffer irreparable harm and damages in the form of pain and
7 suffering, shame, humiliation, degradation, emotional distress,
8 embarrassment, mental distress and other damages.

9 134. Defendants' acts and/or omissions were knowing,
10 willful, intentional, malicious, unnecessary, wanton, and
11 despicable, with reckless, callous or conscious disregard of the
12 rights of the Plaintiffs, entitling the Plaintiffs to an award of
13 exemplary damages.

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15 THIRD CLAIM FOR RELIEF

16 (Bivens -- Fifth Amendment Substantive Due Process --
17 Deliberate Indifference to Prisoners' Personal Security
18 Interests; All Defendants)

19 135. Plaintiffs reallege and incorporate by reference each
20 allegation of paragraphs 1 through 126 above.

21 136. In acting and failing to act as alleged above,
22 Defendants, and each of them, violated the Plaintiffs' right to
23 personal security, subjecting Plaintiffs to unnecessary and
24 wanton infliction of serious pain and physical and extraordinary
25 emotional and psychological injury in violation of their
26 substantive due process rights under the Fifth Amendment of the
27 United States Constitution.

28 137. As a proximate, direct and foreseeable result of the

1 Defendants' failure to ensure Plaintiffs' due process rights,
2 Plaintiffs have suffered, are suffering, and will continue to
3 suffer irreparable harm and damages in the form of pain and
4 suffering, shame, humiliation, degradation, emotional distress,
5 embarrassment, mental distress and other damages.

6 138. Defendants' acts were knowing, willful, intentional,
7 malicious, unnecessary, wanton, and despicable, with reckless,
8 callous or conscious disregard of the rights of the Plaintiffs,
9 entitling the Plaintiffs to an award of exemplary damages.

10 FOURTH CLAIM FOR RELIEF

11 (Bivens -- Fifth Amendment Equal Protection -- Gender
12 Discrimination; All Defendants)

13 139. Plaintiffs reallege and incorporate by reference each
14 allegation of paragraphs 1 through 126 above.

15 140. Defendants, and each of them, subjected Plaintiffs to
16 sexual assaults, abuse and harassment by placing Plaintiffs,
17 directing or approving placement of Plaintiffs, or failing to
18 remove Plaintiffs from placement on the J-2 SHU at FDC-
19 Pleasanton, an all-male tier under the constant supervision of
20 male custody staff, by subjecting Plaintiffs to sexual assaults,
21 abuse and harassment, and by failing to properly investigate
22 Plaintiffs' complaints, as set forth herein.

23 141. Plaintiff are informed and believe and therefore allege
24 that male prisoners within the custody and control of Defendants
25 were not similarly subjected to constant supervision and
26 observation by custody staff of the opposite gender, nor to the
27 sexual assaults, abuse and harassment experienced by plaintiffs
28 as alleged herein.

142. Defendants, and each of them, in acting or failing to act as alleged above, did so intentionally. Their actions and inactions did not serve important governmental objectives, nor were the means they employed substantially related to the achievement of important governmental objectives.

143. Defendants, and each of them, thereby subjected Plaintiffs to sexual assaults, abuse and harassment, causing Plaintiffs unnecessary and wanton infliction of serious physical injury and pain and extraordinary emotional and psychological injury, on account of their gender, in violation of their rights under the Equal Protection component of the Fifth Amendment of the United States Constitution.

144. As a proximate, direct and foreseeable result of the Defendants' failure to ensure Plaintiffs' right to equal protection, the Plaintiffs have suffered, are suffering, and will continue to suffer irreparable harm and damages in the form of pain and suffering, shame, humiliation, degradation, emotional distress, embarrassment, mental distress and other damages.

145. Defendants' acts were knowing, willful, intentional, malicious, unnecessary, wanton, and despicable, with reckless, callous or conscious disregard of the rights of the Plaintiffs, entitling the Plaintiffs to an award of exemplary damages.

FIFTH CLAIM FOR RELIEF

(Bivens -- Fifth Amendment Equal Protection -- Race Discrimination; All Defendants)

146. Plaintiffs reallege and incorporate by reference each allegation of paragraphs 1 through 126 above.

147. Defendants, and each of them, subjected Plaintiffs to

1 ongoing sexual abuse and harassment by failing to immediately
2 remove Plaintiffs from the J-2 SHU or otherwise take measures to
3 protect them or properly investigate after receiving actual
4 notice of sexual assaults, abuse and harassment against female
5 prisoners on the J-2 SHU.

6 148. Plaintiffs, who are African American, are informed and
7 believe that they were left confined at the J-2 SHU, and
8 subjected to further, unnecessary risk of sexual assaults, abuse
9 and harassment, for several days after White, female prisoners
10 confined at the J-2 SHU were moved out of that tier and housed in
11 a prison or tier designated for female prisoners because of known
12 sexual assaults, abuse and harassment.

13 149. Defendants, and each of them, in acting or failing to
14 act as alleged above, did so intentionally. Their actions and
15 inactions did not serve compelling governmental objectives, nor
16 were the means they employed narrowly tailored to achieve such
17 governmental objectives.

18 150. Defendants, and each of them, thereby subjected
19 Plaintiffs to additional sexual assaults, abuse and harassment,
20 causing Plaintiffs unnecessary and wanton infliction of serious
21 physical injury and pain and extraordinary emotional and
22 psychological injury, on account of their race, in violation of
23 their rights under the Equal Protection component of the Fifth
24 Amendment of the United States Constitution.

25 151. As a proximate, direct and foreseeable result of the
26 defendants' failure to ensure Plaintiffs' right to equal
27 protection, the Plaintiffs have suffered, are suffering, and will
28 continue to suffer irreparable harm and damages in the form of
pain and suffering, shame, humiliation, degradation, emotional

distress, embarrassment, mental distress and other damages.

152. Defendants' acts were knowing, willful, intentional, malicious, unnecessary, wanton, and despicable, with reckless, callous or conscious disregard of the rights of the Plaintiffs, entitling the Plaintiffs to an award of exemplary damages.

SIXTH CLAIM FOR RELIEF

(Bivens -- Retaliation For Exercise of First Amendment Rights; All Defendants)

153. Plaintiffs reallege and incorporate by reference each allegation of paragraphs 1 through 126 above.

154. Defendants, and each of them, subjected Plaintiffs to sexual assaults, abuse and harassment, and/or failed to adequately investigate and take reasonable measures to protect Plaintiffs, as described herein, in retaliation for Plaintiffs' complaints to prison authorities regarding such unlawful conduct.

155. In acting and failing to act as alleged above, Defendants, and each of them, acted or failed to act intentionally. They thereby subjected Plaintiffs to sexual assaults, abuse and harassment which caused Plaintiffs unnecessary and wanton infliction of serious physical injury and pain and extraordinary emotional and psychological injury in violation of their rights under the First Amendment of the United States Constitution.

156. As a proximate, direct and foreseeable result of the defendants' failure to ensure Plaintiffs' First Amendment rights, the Plaintiffs have suffered, are suffering, and will continue to suffer irreparable harm and damages in the form of pain and suffering, shame, humiliation, degradation, emotional distress,

embarrassment, mental distress and other damages.

1 157. Defendants' acts were knowing, willful, intentional,
2 malicious, unnecessary, wanton, and despicable, with reckless,
3 callous or conscious disregard of the rights of the Plaintiffs,
4 entitling the Plaintiffs to an award of exemplary damages.

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6 SEVENTH CLAIM FOR RELIEF

7 (Bivens -- Fourth Amendment Privacy; All Defendants)

8 158. The allegations contained in paragraphs 1 through 126
9 of the Complaint are hereby realleged and incorporated by
10 reference.

11 159. Through their pattern and practice of sexual assaults,
12 intimidation, abuse, threats of violence, sexual harassment, and
13 other violations of law against Plaintiffs, and failure to
14 properly investigate Plaintiffs' claims, as alleged herein,
15 Defendants, and each of them, have violated the right of privacy,
16 right to bodily integrity and right to bodily privacy guaranteed
17 to the Plaintiffs by the Fourth Amendment of the United States
18 Constitution.

19 160. As a proximate, direct and foreseeable result of the
20 Defendants' failure to ensure the privacy rights, right to bodily
21 integrity and right to bodily privacy of Plaintiffs, they have
22 suffered, are suffering, and will continue to suffer irreparable
23 harm and damages in the form of pain and suffering, shame,
24 humiliation, degradation, emotional distress, embarrassment,
25 mental distress and other damages.

26 161. Defendants' acts were willful, intentional, malicious,
27 wanton, and despicable in conscious disregard of the rights of
28 the Plaintiffs, entitling the Plaintiffs to an award of exemplary

damages.

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EIGHTH CLAIM FOR RELIEF

(Bivens -- Fifth Amendment Privacy; All Defendants)

162. The allegations contained in paragraphs 1 through 126 of the Complaint are hereby realleged and incorporated by reference.

163. Through their pattern and practice of sexual assaults, intimidation, abuse, threats of violence, sexual harassment, and other violations of law against Plaintiffs, and failure to properly investigate Plaintiffs' claims, as alleged herein, Defendants, and each of them, have violated the right of privacy guaranteed to the Plaintiffs by the Fifth Amendment of the United States Constitution.

164. As a proximate, direct and foreseeable result of Defendants' failure to ensure the privacy rights of Plaintiffs, they have suffered, are suffering, and will continue to suffer irreparable harm and damages in the form of pain and suffering, shame, humiliation, degradation, emotional distress, embarrassment, mental distress and other damages.

165. Defendants' acts were willful, intentional, malicious, wanton, and despicable in conscious disregard of the rights of the Plaintiffs, entitling the Plaintiffs to an award of exemplary damages.

NINTH CLAIM FOR RELIEF

(Federal Tort Claims Act; Defendant United States of America)

166. Plaintiffs reallege and incorporate by reference each allegation of paragraphs 1 through 126 above.

167. All Defendants are or were at all pertinent times

employees of the United States of America employed within the United States Bureau of Prisons.

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168. By way of the actions and inactions of Defendants within the scope of their employment, as alleged above, the United States of America tortiously subjected Plaintiffs to physical injury, and emotional and psychological injury resulting from the physical injury, under circumstances where the United States of America, if a private person, would be liable to Plaintiffs in accordance with the law of the State of California.

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169. The United States of America, by way of Defendants owed Plaintiffs a duty of care including, but not limited to, the duty arising from Plaintiffs' involuntary status as prisoners in the custody of the Bureau of Prisons, as set forth in 18 U.S.C. § 4042.

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170. The United States of America, by way of the actions and inactions of the Defendants, negligently breached the duty of care owed to Plaintiffs in the following respects, among others:
by placing Plaintiffs in the J-2 SHU, a male unit, in the FDC Pleasanton, a male institution; by failing to promptly remove Plaintiffs from the J-2 SHU and FDC Pleasanton once they were housed there; by failing, despite knowledge or reason to know of prior sexual assaults and harassment against female inmates housed on the J-2 SHU or at FDC Pleasanton, to take measures to protect Plaintiffs or promptly remove them once they were housed there; by participating in, facilitating, or allowing sexual assaults, harassment and threats against Plaintiffs, including conduct perpetrated by male prisoners; by failing to investigate or adequately investigate Plaintiffs' complaints that they had

1 been sexually assaulted, harassed, and threatened while housed on
2 the J-2 SHU at FDC Pleasanton; by failing to immediately move
3 Plaintiffs or take measures to protect Plaintiffs in response to
4 Plaintiffs' complaints that they had been sexually assaulted,
5 harassed and threatened while housed on the J-2 SHU at FDC
6 Pleasanton; by failing to promptly provide plaintiffs with
7 adequate medical and mental health care once they learned
8 Plaintiffs had been sexually assaulted, harassed, and threatened;
9 by failing to adequately train supervisory and subordinate
10 employees regarding the prevention of, intervention in, and
11 response to sexual assaults and harassment against female
12 inmates; by failing to adequately supervise subordinate employees
13 regarding the prevention of, intervention in, and response to
14 sexual assaults and harassment against female inmates; by
15 failing, in the hiring of new employees for positions involving
16 regular interaction with female inmates, to adequately screen
17 prospective employees; by retaining employees in, or failing to
18 reassign employees from, positions involving regular interaction
19 with female inmates, despite knowledge or reason to know that
20 such employees had engaged in or facilitated or condoned sexual
21 misconduct against female inmates; by sexually assaulting and
22 battering Plaintiff LUCAS and by facilitating and/or
23 participating in assault and battery, including sexual assault
24 and battery, against all Plaintiffs; by harassing and sexually
25 harassing all Plaintiffs by failing to protect Plaintiffs from
26 sexual and physical assaults; by failing to provide appropriate
27 medical and mental health care to all Plaintiffs.

28 171. As a proximate, direct and foreseeable result of the
actions and inactions of the United States of America by way of

1 its employees, Defendants and DOES 1-15, as set forth above,
2 Plaintiffs have suffered, are suffering, and will continue to
3 suffer irreparable harm and damages in the form of physical
4 injuries, and emotional and psychological injuries resulting from
5 the physical injuries.

6 172. Each Plaintiff presented her claims to the United
7 States Bureau of Prisons, in compliance with the requirements of
8 28 U.S.C. § 2675, on or about August 13, 1996, by serving upon
9 the United States Bureau of Prisons a completed and properly
10 documented administrative claim form.

11 173. The United States Bureau of Prisons denied each
12 Plaintiff's administrative claims by way of letters dated July
13 25, 1997.

14 174. Plaintiffs have exhausted all administrative claim
15 requirements of the Federal Tort Claims Act, 42 U.S.C. §§ 1346(b)
16 and 2671, et seq., and may institute this timely action against
17 the United States of America for the actions and inactions of its
18 employees, Defendants and DOES 1-15, as alleged above.

19 DEMAND FOR JURY TRIAL

20 175. Plaintiffs hereby demand a jury trial as provided by
21 Rule 38 of the Federal Rules of Civil Procedure.

22 PRAYER FOR RELIEF

23 WHEREFORE, Plaintiffs pray for judgment against
24 Defendants, and each of them, as follows:

- 25 1. Compensatory damages for each Plaintiff according to
26 proof;
27 2. Punitive damages for each Plaintiff according to proof;
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1 3. As against Defendants HAWK, CARLSON, REESE, HARDING and
2 GREER in their official capacities, appropriate injunctive relief
3 for Plaintiffs MERCADEL and DOUTHIT, and on behalf of all female
4 inmates in the custody of the Bureau of Prisons.

5 4. For costs and attorneys' fees; and

6 5. For such additional relief as may be just and proper.

7 Dated: October __, 1997

ROSEN, BIEN & ASARO

8
9 By _____

Michael W. Bien
Attorneys for Plaintiffs

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11 **LAW OFFICES OF GERI L. GREEN**

12
13 By _____

14 Geri L. Green
15 Attorneys for Plaintiffs
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