



PC-CA-005-001

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9 continues on signature page]

10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 DERRICK CLARK, LARRY DIXON, JR., JACK)
VON GUNTEN, MARK MITCHELL MORINO, JAMES)
15 SIMMONS, ELBERT GANTER, JR., ESTELLA)
HOLLOWAY, YVETTE YARBROUGH, WILLIAM EARL)
16 FOWLER, TORIANO LOWE, individually and)
on behalf of all others similarly)
17 situated,)

No. C-96-1486 FMS

CIVIL RIGHTS
CLASS ACTION

18 Plaintiffs,)
19 vs.)

STATE OF CALIFORNIA, CALIFORNIA)
20 DEPARTMENT OF CORRECTIONS, PETE WILSON,)
Governor of the State of California,)
21 THOMAS MADDOCK, Secretary of Youth and)
Corrections Agency, C.A. TERHUNE,)
22 Director of the Department of)
Corrections, SUSAN STEINBERG, Deputy)
23 Director for Health Care Services, NADIM)
KHOURY, M.D., Assistant Deputy Director)
24 for Medical Services, MARJORIE)
TAVOULARIS, Chief, Psychiatric Services,)

SECOND AMENDED CLASS
ACTION COMPLAINT FOR
VIOLATIONS OF THE
REHABILITATION ACT, THE
AMERICANS WITH
DISABILITIES ACT, THE
INDIVIDUALS WITH
DISABILITIES EDUCATION
ACT AND UNDER § 1983
FOR VIOLATIONS OF THE
EIGHTH AND FOURTEENTH
AMENDMENTS OF THE
UNITED STATES
CONSTITUTION

25)
26 Defendants.)

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1 Plaintiffs, by their attorneys, bring this action
2 for injunctive and declaratory relief on behalf of them-
3 selves and all others similarly situated (collectively,
4 "plaintiffs"). Plaintiffs hereby complain of the defendants
5 and allege as follows:

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PRELIMINARY STATEMENT

8 1. This is a class action for injunctive and declara-
9 tory relief stating claims against all defendants under
10 section 504 of the Rehabilitation Act, codified at 29 U.S.C.
11 § 794, for discrimination based on plaintiffs' disabilities;
12 against defendants State of California, California
13 Department of Corrections, Wilson, Maddock and Terhune under
14 the Individuals with Disabilities Education Act, codified at
15 20 U.S.C. section 1400 et seq., amended by Pub. L. No. 105-
16 17 (1997), for discrimination based on plaintiffs'
17 disabilities; against defendants Wilson, Maddock, Terhune,
18 Steinberg, Khoury and Tavoularis under Title II of the
19 Americans with Disabilities Act, codified at 42 U.S.C.
20 §§ 12131-12133 for discrimination based on plaintiffs'
21 disabilities; and against defendants Wilson, Maddock,
22 Terhune, Steinberg, Khoury and Tavoularis under 42 U.S.C.
23 § 1983 for denial of plaintiffs' rights as secured by the
24 United States Constitution under the Eighth and Fourteenth
25 Amendments.

26 2. Plaintiffs and the class they represent are
27 developmentally disabled prisoners confined at various
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1 correctional facilities operated by the California Depart-
2 ment of Corrections.

3 3. Plaintiff Toriano Lowe and the subclass he
4 represents are developmentally disabled inmates under 22
5 years of age confined at various correctional facilities
6 operated by the California Department of Corrections.

7 4. Upon information and belief, more than 1,500
8 prisoners incarcerated in correctional facilities operated
9 by the State of California are developmentally disabled.

10 5. Plaintiffs bring this action because they cannot
11 obtain necessary and adequate accommodations, protection and
12 services necessitated by their disabilities as required by
13 federal law and are being denied rights secured by the
14 United States Constitution.

15 6. Plaintiffs ask the Court to compel defendants to
16 furnish them and other similarly situated prisoners with the
17 accommodations, protection and services required by federal
18 law and the rights secured by the United States Constitution
19 of which they have been deprived by defendants.

20 7. Developmentally disabled individuals are unable to
21 adapt to prison conditions without the accommodations,
22 protection and services required by federal law.

23 8. These prisoners are more likely than non-
24 developmentally disabled prisoners to be beaten or raped,
25 are more likely than non-developmentally disabled prisoners
26 to be manipulated by other prisoners, are less able to
27 comprehend and to comply with prison rules and procedures
28 than non-developmentally disabled prisoners, and do not have

1 access to the full range of services and privileges
2 available to non-developmentally disabled prisoners.

3 9. These plaintiffs, because of their developmental
4 disabilities, are deprived of their constitutionally
5 protected liberty interests because they are improperly
6 deprived of good time credits, with the result that they
7 serve longer sentences than they otherwise would.

8 10. This already deplorable situation will worsen in
9 the coming years as the prison population grows.

10 11. Defendants exercise responsibility for, and
11 complete control over, all aspects of plaintiffs' day-to-day
12 lives, including living conditions, access to prison
13 programs, discipline and enforcement of rules, medical and
14 mental health care, and plaintiffs' safety.

15 12. Although defendants have known for a number of
16 years that a significant number of inmates incarcerated in
17 California prisons suffer from developmental disabilities,
18 they have not yet effected, nor have they made adequate
19 plans for, the accommodation, protection, and provision of
20 services to these vulnerable prisoners.

21 13. Defendants lack policies and procedures to meet
22 the constitutional and statutory needs of developmentally
23 disabled prisoners. This failure, coupled with the inappro-
24 priateness and inadequacy of the policies defendants do
25 have, has caused plaintiffs and the class they represent to
26 endure discrimination that has resulted in unnecessary and
27 extreme physical and psychological pain.

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1 14. By their actions defendants not only endanger the
2 well-being of the developmentally disabled inmates, but the
3 well-being of all other inmates, who are required to
4 interact with developmentally disabled inmates.

5 15. Without the accommodations, protection and
6 services required by federal law and as a result of their
7 deprivation of constitutional rights, many of these inmates
8 are more likely to behave impulsively and violently while in
9 prison than they would have had their disabilities
10 reasonably been accommodated. The result is that they are
11 more likely than non-disabled inmates to be forced into
12 isolation or segregation, to be deprived of good-time
13 credits toward their release and to be deprived of other
14 services, benefits and privileges that are available at the
15 prisons.

16 16. Defendants exacerbate the difficulties plaintiffs
17 have adapting to life in prison by discriminating against
18 plaintiffs and refusing to make available the accommoda-
19 tions, protection and services needed by the developmentally
20 disabled to function in the prison setting as required by
21 federal law and secured by the prisoners' rights under the
22 United States Constitution.

23 17. Plaintiffs contend that defendants' deliberate
24 policy of confining prisoners with developmental disabili-
25 ties in state prisons without offering sufficient protection
26 from the general prison population constitutes cruel and
27 unusual punishment.

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1 18. Defendants are aware of the tremendous gap between
2 plaintiffs' needs and the existing level of accommodation,
3 protection and due process protection provided to plain-
4 tiffs, but, under color of state law, have repeatedly and
5 persistently denied plaintiffs the required accommodation,
6 protection and services, including due process protection,
7 thereby subjecting them to severe and unnecessary physical
8 and emotional pain and injury and the loss of those rights
9 that are secured by due process, including deprivation of
10 their liberty interest as a result of deprivation of good
11 time credits. This denial of due process imposes atypical
12 and significant hardship on plaintiffs in relation to the
13 ordinary incidents of prison life.

14 19. Accordingly, plaintiffs seek declaratory and
15 injunctive relief to remedy the unconstitutional and illegal
16 conditions to which they are perpetually subjected during
17 incarceration.

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JURISDICTION

20 20. This Court has jurisdiction over this action under
21 28 U.S.C §§ 1331 and 1343, and 20 U.S.C. § 1415(i)(3)(A).
22 Defendants State of California and California Department of
23 Corrections have no immunity to this Court's exercise of
24 jurisdiction for the claims brought against them, pursuant
25 to 42 U.S.C. § 2000d-7 and 20 U.S.C. § 1403.

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VENUE

21. Venue lies in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) in that four correctional facilities, including the facilities at which plaintiffs Jack Von Gunten (San Quentin) and William Earl Fowler (Pelican Bay State Prison) are confined, are located within the Northern District, and are locations where wrongful acts complained of herein occurred, making this a judicial district in which a substantial part of the events giving rise to the claim occurred.

INTRADISTRICT ASSIGNMENT

22. Actions giving rise to venue of this case in the Northern District of California occurred in Marin and Del Norte Counties. Accordingly, pursuant to Local Rule 3-2(c), this case arises in San Francisco Headquarters and Oakland Division.

PLAINTIFFS

23. Plaintiffs are citizens of the United States who are confined in prisons throughout California, including Pelican Bay State Prison, California Rehabilitation Center, Valley State Prison for Women, California Correctional Women's Facility, Mule Creek State Prison, Ironwood State Prison, California Men's Colony, Salinas Valley State Prison, San Quentin State Prison and Richard J. Donovan State Prison. These prisons are operated by and are under the control of the California Department of Corrections.

1 24. All plaintiffs are developmentally disabled and
2 each is therefore an "individual with a disability" as that
3 term is defined in 29 U.S.C § 706(8)(B) and a "qualified
4 individual with a disability" as that term is defined in
5 42 U.S.C. § 12131.

6 25. Plaintiff Toriano Lowe and the subclass he
7 represents are persons under the age of 22, are
8 developmentally disabled, and were diagnosed as being
9 developmentally disabled prior to their incarceration in the
10 California prison system. Each is therefore a "child with a
11 disability" as that term is defined in 20 U.S.C.
12 § 1401(3)(A).

13 26. Plaintiff Derrick Clark is a 32-year-old inmate
14 who is developmentally disabled and has an I.Q. less than
15 60. Mr. Clark is currently incarcerated at Mule Creek State
16 Prison in Amador County. Prior to being transferred to Mule
17 Creek, Mr. Clark was incarcerated at Pelican Bay State
18 Prison. Mr. Clark also has been previously incarcerated at
19 San Quentin State Prison in Marin County, California State
20 Prison, Solano; Correctional Training Facility (Soledad);
21 and Mule Creek State Prison. Mr. Clark attended special
22 education classes as a child and did not progress beyond the
23 fifth grade. Mr. Clark cannot read or write, without
24 assistance, other than to sign his name. Mr. Clark was
25 unable to read Title 15 containing prison rules and relies
26 on his cellmate to read written prison information for him.
27 Defendants have denied Mr. Clark access to meaningful
28 education. Mr. Clark has been housed continuously with

1 prisoners who are not developmentally disabled and has been
2 the subject of abuse by such prisoners. Mr. Clark was
3 previously referred by medical personnel at San Quentin for
4 an evaluation to determine whether he should be placed in
5 Category K, a designation for prisoners with mental retarda-
6 tion. The evaluation was performed and Mr. Clark was
7 recommended for inclusion in a Category K program. Despite
8 this recommendation, nothing was done and Mr. Clark
9 continued to be housed in the general prison population. As
10 a result of the failure of defendants to provide reasonable
11 accommodations for Mr. Clark's developmental disabilities,
12 Mr. Clark has been deprived of good time credits and the
13 ability to regain them, with the result that he is required
14 to serve a longer sentence.

15 27. Larry Dixon, Jr. is a 39-year-old inmate who is
16 developmentally disabled, with a low I.Q. and a Global
17 Assessment Function ("GAF") score of 45. Mr. Dixon attended
18 special education classes through the eighth grade. Mr.
19 Dixon is currently incarcerated at Salinas Valley State
20 Prison in Monterey County. He has previously been
21 incarcerated at California Medical Facility, California
22 Correctional Institute, in Kern County, Wasco State Prison,
23 in Kern County and Mule Creek State Prison in Amador County.
24 Because of his developmental disability, Mr. Dixon is
25 regarded as prey and is the victim of verbal torment, sexual
26 harassment and physical assault by other prisoners.
27 Defendants have not taken the reasonable steps necessary to
28 accommodate Mr. Dixon's developmental disabilities and to

1 allow him to participate safely in prison life. In June
2 1996, during the course of one violent assault, Mr. Dixon's
3 knee was injured by a guard breaking up the altercation.
4 Because of his developmental disabilities he was unable to
5 understand the seriousness of his injury, which was not
6 explained to him. As a result, treatment was delayed and
7 surgery eventually required. Both prison guards and
8 prisoners have seized upon Mr. Dixon's developmental
9 disabilities and have exploited him as an object of derision
10 and abuse. As a result of his developmental disabilities,
11 Mr. Dixon has been deprived of good time credits, with the
12 result that he is required to serve a longer sentence.

13 28. Jack Von Gunten is a 46-year-old inmate who is
14 developmentally disabled, diagnosed moderately mentally
15 retarded with an I.Q. of 48, and performs at a second grade
16 level. He attended special education classes as a child
17 before dropping out of school in the ninth grade. Before
18 his arrest in 1979, Mr. Von Gunten received disability
19 payments relating to his mental retardation. Mr. Von Gunten
20 has been serving a life term since 1979, with the
21 possibility of parole and the benefit of good time credits.
22 He was originally sent to San Quentin, but was transferred
23 to CMC, in San Luis Obispo County. Mr. Von Gunten was
24 classified Category K until the mid-1980's, when he was
25 reclassified to General Population. Mr. Von Gunten remained
26 at CMC until 1993, when he was transferred back to San
27 Quentin, where he is currently incarcerated. As a result of
28 his developmental disabilities, Mr. Von Gunten has been

1 denied access to vocational programs which he would be able
2 to participate in if defendants afforded him reasonable
3 accommodations. Mr. Von Gunten was told by prison officials
4 that because he did not qualify for particular vocational
5 training he could not remain at CMC and would be transferred
6 to San Quentin. At San Quentin, Mr. Von Gunten, because of
7 his developmental disabilities, is a target for other
8 prisoners who extort money and property from him. He is
9 frequently verbally and physically harassed and abused by
10 other prisoners. Defendants have not taken the reasonable
11 steps necessary to accommodate Mr. Von Gunten's
12 developmental disabilities and to allow him to participate
13 safely in prison life. Mr. Von Gunten has sought to obtain
14 psychiatric counseling at San Quentin, but has been told by
15 prison officials that such treatment is not available to
16 him. Because of his developmental disability, he is unable
17 to understand rules that are posted and he is punished for
18 rule infractions when he has been given no reasonable
19 opportunity to know or understand the rules. Mr. Von Gunten
20 also fails to keep appointments because the times are
21 written on ducats he is given by prison authorities and he
22 is unable to read these ducats. The defendants take no
23 reasonable steps to offer Mr. Von Gunten the reasonable
24 accommodations necessary to allow him to participate in
25 programs for which appointments are required. Because
26 defendants have not taken adequate measures to accommodate
27 Mr. Von Gunten's developmental disability, Mr. Von Gunten
28

1 has been deprived of good time credits, causing him to serve
2 a longer sentence.

3 29. Mark Mitchell Morino is a 28-year-old inmate who
4 is developmentally disabled, with an I.Q. that has been
5 measured at 54. Mr. Morino attended special education
6 classes throughout his childhood and adolescence. Before
7 his most recent conviction, Mr. Morino received social
8 security benefits relating to his developmental disability.
9 Mr. Morino is incarcerated at Mule Creek State Prison. Mr.
10 Morino was the object of verbal harassment and violent
11 assaults by other inmates, including an incident in March
12 1996 in which another inmate slashed Mr. Morino's throat
13 with a razor blade. As a result of his developmental
14 disabilities, prison officials dismissed attempts by Mr.
15 Morino to articulate concerns about his safety and exposed
16 him to a cellmate who preyed on his disabilities. Over the
17 course of a 2-week period, that cellmate repeatedly raped
18 and assaulted him. Defendants failed to provide Mr. Morino
19 with the reasonable accommodations for his developmental
20 disabilities necessary to allow him to participate safely in
21 prison life.

22 30. James Simmons is a 45-year-old inmate at the
23 California Men's Colony East. He is developmentally
24 disabled and illiterate, with an I.Q. of 49. CDC
25 psychologists have described Mr. Simmons as "gullible, easy
26 prey to more sophisticated criminals, . . . afflicted with a
27 profuse mental deficiency, dependent and childlike." As a
28 symptom of his developmental disability, Mr. Simmons moves

1 and talks slowly. Because of this, he is frequently
2 interrogated by correctional officers who claim to believe
3 incorrectly that Mr. Simmons is under the influence of drugs
4 or alcohol. These interrogations, often conducted by
5 correctional officers who have known Mr. Simmons for years,
6 involve strip searches and drug testing. Mr. Simmons is
7 also frequently harassed by fellow inmates because of his
8 developmental disability. In addition, Mr. Simmons'
9 developmental disability has adversely affected his attempts
10 to be released on parole. According to a psychiatric
11 evaluation for one of his five reviews by the Board of
12 Prison terms, Mr. Simmons did not appear to comprehend that
13 his Board appearance "ha[d] anything to do with whether or
14 not he [was] considered suitable for parole." Mr. Simmons'
15 psychiatric evaluations have also relied heavily upon his
16 developmental disability in support of their negative
17 evaluations. Yet, the Department of Corrections has done
18 little or nothing to help Mr. Simmons cope with his
19 developmental disability. The prison in which he is
20 incarcerated offers no education services designed to
21 accommodate the needs of developmentally disabled inmates,
22 no specialized vocational training, and no counseling geared
23 toward the needs of persons with mental retardation.

24 31. Elbert Ganter, Jr., is a 28-year-old inmate at
25 Ironwood State Prison. He has been diagnosed variously as
26 being mildly or moderately retarded, and his I.Q. has been
27 measured at 49. He attended special education classes in
28 school from kindergarten until he dropped out in the 11th

1 grade, and he received social security benefits as a result
2 of his developmental disability. Other inmates and
3 correctional officers ridicule Mr. Ganter because of his
4 developmental disability and attempt to trick him into
5 fights and other trouble. As a consequence, Mr. Ganter
6 spends almost all his time in his cell or at education or
7 work assignments. Mr. Ganter's academic ability has been
8 measured at the first grade level. He desires to learn to
9 read and was assigned to an Adult Basic Education class.
10 Although his teacher described him as possessing "an
11 excellent attitude in class," Mr. Ganter was eventually
12 removed from the class because he was unable to learn.
13 Educational services designed to accommodate inmates
14 possessing Mr. Ganter's cognitive abilities are not
15 available in the CDC system.

16 32. Estella Holloway is a 33-year-old inmate of Valley
17 State Prison for Women ("VSPW"). Ms. Holloway has been
18 diagnosed as moderately mentally retarded and has a GAF
19 score of 52. She attended school through the ninth grade,
20 where she was in special education classes. Prior to Ms.
21 Holloway's incarceration, she received Social Security
22 benefits for her developmental disability. While
23 incarcerated, Ms. Holloway has been attacked by other
24 inmates, removed from an education program, and ridiculed
25 because of her developmental disability. She cannot read or
26 write and does not understand rules or procedures at VSPW.
27 Ms. Holloway was recently transferred from her eight-person
28 dormitory living quarters after other inmates repeatedly

1 attacked and ridiculed her because of her developmental
2 disability. Other inmates have also taken her canteen and
3 threatened to cause her physical harm if she reported her
4 problems to correctional officers. Ms. Holloway has
5 received 115s and 128as (disciplinary notations which can
6 result in loss of good time credit) for failure to program
7 in education and at her work assignment. Defendants have
8 not provided Ms. Holloway reasonable accommodations for her
9 developmental disabilities to allow her to participate
10 safely in prison life. Defendants' failure to accommodate
11 Ms. Holloway's developmental disability has resulted in
12 abuse, both inside her housing unit and throughout VSPW, a
13 lack of educational and vocational programming, and a loss
14 of good time credit.

15 33. Yvette Yarbrough is a 34-year-old inmate at the
16 California Correctional Women's Facility who is
17 developmentally disabled. Ms. Yarbrough attended school
18 through the ninth grade, where she was in special education
19 classes. Prior to Ms. Yarbrough's incarceration, she
20 received Social Security for her developmental disability.
21 While incarcerated, Ms. Yarbrough has been diagnosed as
22 "slow," and tests administered by the Department of
23 Corrections reflect that she is a "Basic Non-Reader."
24 Defendants have not provided Ms. Yarbrough with reasonable
25 accommodations for her developmental disability, and this
26 has precluded her from participating successfully in prison
27 life. For example, Ms. Yarbrough's work supervisor cut Ms.
28 Yarbrough's pay because the work supervisor mistook Ms.

1 Yarbrough's limited cognitive abilities for laziness and
2 intentional unproductiveness. Prior to taking this action,
3 Ms. Yarbrough's work supervisor had inadequate information
4 regarding Ms. Yarbrough's developmental disability, received
5 inadequate training on how to recognize Ms. Yarbrough's
6 developmental disability, and had no effective screening
7 method to identify Ms. Yarbrough's disability.

8 34. William Earl Fowler is a 31-year-old inmate at
9 Pelican Bay State Prison. His prison medical records
10 describe him as "mildly retarded." Because of his
11 developmental disability, Mr. Fowler has difficulty reading
12 and writing. He consequently is unable to understand the
13 written rules and procedures that are distributed to inmates
14 upon arrival in prisons within the CDC system. Upon
15 informing the correctional officers distributing the rules
16 of his inability to read them, Mr. Fowler has been told to
17 pay his cellmate to read the rules to him. Because of his
18 inability to understand prison rules and procedures without
19 help, Mr. Fowler has, for example, missed meals because of
20 his ignorance of the institution rule at Pelican Bay
21 requiring inmates to turn on their cell lights to receive
22 breakfast. Mr. Fowler is routinely required to pay other
23 inmates to read his mail to him and write letters for him.
24 Mr. Fowler has been harassed and degraded by members of the
25 prison staff because of his developmental disability. For
26 example, one staff member has called Mr. Fowler a "fucking
27 retardo." Prison staff members have also accused Mr. Fowler
28 of feigning developmental disability. When he complained

1 that he could not understand the big words used in a 115
2 proceeding, Mr. Fowler was told by a member of the prison
3 staff to "stop playing games." In spite of his inability to
4 fully comprehend that proceeding, Mr. Fowler was not
5 provided a Staff Assistant to help him prepare his defense.

6 35. Hugh Romestan is a 29-year-old inmate at
7 California Rehabilitation Center in Riverside County who is
8 developmentally disabled. His prison records describe him
9 as mildly mentally retarded with a GAF score of 55. Mr.
10 Romestan has been previously incarcerated at California
11 Men's Colony, Mule Creek State Prison, Richard J. Donovan
12 State Prison and Soledad State Prison. Mr. Romestan
13 attended special education, and prior to his incarceration,
14 he collected Social Security because of his mental
15 retardation. Mr. Romestan does not understand prison rules
16 and procedures, and is unable to file grievances because of
17 his developmental disability. In addition, Mr. Romestan has
18 been unable to program successfully in education and has
19 been denied substance abuse treatment at R.J. Donovan State
20 Prison based, in part, on his academic level. Mr. Romestan
21 has also been harassed by other inmates because of his
22 developmental disability. Mr. Romestan has suffered these
23 harms because defendants do not adequately screen for
24 developmental disabilities and do not provide reasonable
25 accommodations for developmentally disabled prisoners.

26 36. Toriano Lowe is a 20-year-old inmate at Mule Creek
27 State Prison who was born on March 10, 1977. Mr. Lowe is
28 developmentally disabled, with an I.Q. that has been

1 measured at 61. Prior to his incarceration, Mr. Lowe
2 attended special education classes in school, received
3 services from a Regional Center for the Developmentally
4 Disabled, and participated in individualized educational
5 programs (IEPs) prior to his incarceration. Tests
6 administered by the California Department of Corrections
7 indicate that Mr. Lowe functions academically at the first
8 grade level. Since entering the prison system, Mr. Lowe has
9 received no special education services of any kind. Mr.
10 Lowe is unable to receive such services because no such
11 services are available to inmates in the California
12 Department of Corrections system. Instead, Mr. Lowe has
13 been placed in regular Adult Basic Education classes, in
14 which he is unable to learn because the materials are too
15 difficult for someone with his intellectual limitations.
16 Mr. Lowe has been victimized by other inmates who prey upon
17 his low level of intellectual ability by cajoling him into
18 giving them his canteen.

19 37. Plaintiffs' disabilities make them more vulnerable
20 to physical violence while in prison. For example, they are
21 likely to be preyed upon and physically and sexually abused
22 by other prisoners.

23 38. Plaintiffs' disabilities render them susceptible
24 to becoming unwitting pawns at the hands of other prisoners,
25 who use them to violate prison rules and regulations. This
26 exposes them to retaliation from both other prisoners and
27 correctional officers.

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1 39. When plaintiffs are involved in disciplinary,
2 grievance, parole or other administrative proceedings,
3 plaintiffs' disabilities are not accommodated to guarantee
4 them due process. As a result, they are deprived of good
5 time credit of which they would not be deprived if they were
6 not developmentally disabled. This denial of due process
7 imposes atypical and significant hardship on the inmates in
8 relation to the ordinary incidents of prison life in that
9 they are more harshly disciplined than non-developmentally
10 disabled prisoners, they must serve longer prison terms as a
11 result of the deprivation of good time credits and do not
12 have equal access to privileges and programs afforded non-
13 developmentally disabled prisoners.

14 40. Plaintiffs' disabilities result in low-level
15 skills, or no skills, in reading and comprehension. As a
16 result, plaintiffs are unable to read and comprehend prison
17 regulations, yet are punished for violations of the
18 regulations. This results in the deprivation of good time
19 credits of which plaintiff would not be deprived if
20 reasonable accommodations were made to allow them to
21 participate in prison life.

22 41. Defendants know of, but have taken no effective
23 steps to protect plaintiffs from, the discrimination,
24 violence and deprivation of due process rights they suffer
25 as a result of their disabilities, with the result that
26 plaintiffs suffer atypical and significant hardship in the
27 form of the deprivation of good time credits. Plaintiffs
28 also are deprived of the reasonable accommodations necessary

1 because of their developmental disabilities to allow them to
2 participate in programs that would result in the restoration
3 of lost good time credits.

4 DEFENDANTS

5 42. Defendant State of California owns and operates
6 the correctional facilities that are the subject of the
7 claims against it for violation of section 504 of the
8 Rehabilitation Act and the Individuals with Disabilities
9 Education Act. Defendant California has the responsibility
10 to take action to remedy the violations of the
11 Rehabilitation Act and the Individuals with Disabilities
12 Education Act set forth in this complaint, but has not done
13 so.

14 43. Defendant California Department of Corrections
15 operates the correctional facilities that are the subject of
16 the claims against it for violation of Section 504 of the
17 Rehabilitation Act and the Individuals with Disabilities
18 Education Act. Defendant California Department of
19 Corrections has the responsibility to take action to remedy
20 the violations of the Rehabilitation Act and the Individuals
21 with Disabilities Education Act set forth in this complaint,
22 but has not done so.

23 44. Defendant Pete Wilson is Governor of the State of
24 California and the Chief Executive of the state government.
25 He is sued in his official capacity. As Governor he is
26 obligated under state law to supervise the official conduct
27 of all executive and ministerial officers and to see that
28 all offices are filled and their duties lawfully performed.

1 Defendant Wilson has the authority to appoint and remove the
2 subordinate defendants named herein. Governor Wilson
3 retains the ultimate state authority over all the prison
4 conditions and procedures to which plaintiffs' causes of
5 action relate. Defendant Wilson has the authority and
6 responsibility to take action to remedy the violations of
7 law set forth in this complaint, but has not done so.

8 45. Defendant Thomas Maddock is Secretary of the Youth
9 and Corrections Agency of the State of California and is
10 sued in this capacity. The Youth and Corrections Agency
11 supervises the operation of the California Department of
12 Corrections. Defendant Maddock has the authority and
13 responsibility to take action to remedy the violations of
14 law set forth in this complaint, but has not done so.

15 46. Defendant C.A. Terhune is the Director of the
16 California Department of Corrections and is sued in that
17 capacity. The Department of Corrections is responsible for
18 the operation of the California state prison system,
19 including the provision of constitutionally adequate condi-
20 tions and procedures for plaintiffs. Defendant Terhune has
21 the authority and responsibility to take action to remedy
22 the violations of law set forth in this complaint, but has
23 not done so.

24 47. Defendant Susan Steinberg is the Deputy Director
25 for Health Care Services for the California Department of
26 Corrections and is sued in that capacity. As Deputy
27 Director, defendant Steinberg is responsible for supervising
28 the development and implementation of a system of individual

1 assessment of a prisoner's disabilities, including his or
2 her ability to perform daily living tasks. Defendant
3 Steinberg has the authority and responsibility to take
4 action to remedy the violations of law set forth in this
5 complaint, as to which she is a named defendant but has not
6 done so.

7 48. Defendant Nadim Khoury, M.D. is the Assistant
8 Deputy Director of Medical Services for the California
9 Department of Corrections and is sued in that capacity. As
10 Assistant Deputy Director, Dr. Khoury has responsibility for
11 supervising the provision of medical and health care for all
12 prisoners in the custody of the Department of Corrections.
13 Defendant Khoury has the authority and responsibility to
14 take action to remedy the violations of law set forth in
15 this complaint as to which he is a named defendant, but has
16 not done so.

17 49. Defendant Marjorie Tavoularis, M.D. is Chief of
18 Psychiatric Services. Dr. Tavoularis is responsible for
19 supervising the provision of psychiatric care for all
20 prisoners within the custody of the Department. Defendant
21 Tavoularis has the authority and responsibility to take
22 action to remedy the violations of law set forth in this
23 complaint, as to which she is a named defendant, but has not
24 done so.

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1 CLASS ACTION ALLEGATIONS

2 50. Plaintiffs bring this action on their own behalf
3 and, pursuant to Rule 23(b)(1) and Rule 23(b)(2) of the
4 Federal Rules of Civil Procedure, on behalf of all develop-
5 mentally disabled persons who are now, or will in the future
6 be, confined within the California Department of Corrections
7 and under the control of defendants.

8 (a) Upon information and belief, more than 1,500
9 prisoners incarcerated in correctional facilities operated
10 by the State of California are developmentally disabled.
11 Accordingly, the class is so numerous that joinder of all
12 its members is impracticable.

13 (b) The conditions, practices and omissions that form
14 the basis of this complaint are common to all members of the
15 class and the relief sought will apply to all of them.

16 (c) The claims of the plaintiffs are typical of the
17 claims of the entire class.

18 (d) The prosecution of separate actions by individual
19 members of the class would create a risk of inconsistent and
20 varying adjudications which would establish incompatible
21 standards of conduct for defendants.

22 (e) The prosecution of separate actions by individual
23 members of the class would create a risk of adjudications
24 with respect to individual members which would, as a
25 practical matter, substantially impair the ability of other
26 members to protect their interests.

27 (f) Defendants have acted or refused to act on grounds
28 generally applicable to the class, making appropriate

1 injunctive and declaratory relief with respect to the class
2 as a whole.

3 (g) There are questions of law and fact common to the
4 members of the class, including defendants' violations of
5 the United States Constitution, section 504 of the Rehabili-
6 tation Act, and sections 12131-12133 of the Americans with
7 Disabilities Act by failing to provide adequate accommoda-
8 tions, protection and services.

9 (h) The named plaintiffs are capable, through counsel,
10 of fairly and adequately representing the class and
11 protecting its interests because they are prisoners confined
12 within the California Department of Corrections who are
13 developmentally disabled but are not receiving adequate
14 accommodations, protection and services in violation of
15 42 U.S.C. § 1983, the United States Constitution,
16 section 504 of the Rehabilitation Act, and sections 12131-
17 12133 of the Americans with Disabilities Act.

18 51. Toriano Lowe and other similarly situated
19 plaintiffs meet the requirements for certification as a
20 subclass pursuant to Fed. R. Civ. P. Rule 23(c)(4).

21 (a) Upon information and belief, more than 100
22 developmentally disabled inmates are eligible for special
23 education services under the Individuals with Disabilities
24 Education Act. Accordingly, the class is so numerous that
25 joinder of all its members is impracticable.

26 (b) The conditions, practices and omissions that form
27 the basis of this complaint are common to all members of the
28 subclass and the relief sought will apply to all of them.

1 (c) The claims of Toriano Lowe are typical of the
2 claims of the entire subclass.

3 (d) The prosecution of separate actions by individual
4 members of the subclass would create a risk of inconsistent
5 and varying adjudications which would establish incompatible
6 standards of conduct for defendants.

7 (e) The prosecution of separate actions by individual
8 members of the subclass would create a risk of adjudications
9 with respect to individual members which would, as a
10 practical matter, substantially impair the ability of other
11 members to protect their interests.

12 (f) Defendants have acted or refused to act on grounds
13 generally applicable to the subclass, making appropriate
14 injunctive and declaratory relief with respect to the
15 subclass as a whole.

16 (g) There are questions of law and fact common to the
17 members of the subclass, including defendants' violations of
18 the Individuals with Disabilities Education Act by failing
19 to provide special education and related services to the
20 plaintiffs.

21 (h) Toriano Lowe is capable, through counsel, of
22 fairly and adequately representing the subclass and
23 protecting its interests because he is a prisoner confined
24 within the California Department of Corrections who is
25 developmentally disabled but is not receiving adequate
26 accommodations, protection and services in violation of the
27 Individuals with Disabilities Education Act.

28

GENERAL ALLEGATIONS

1
2 52. The policies of the State of California have led
3 to a direct and foreseeable increase in the number of
4 persons with developmental disabilities in prison. There
5 are now over 150,000 prisoners in California's prisons, more
6 than 1,500 of whom are developmentally disabled. The
7 increase in the absolute number of prisoners who are
8 developmentally disabled is concurrent with the growth of
9 the general prison population as a result of longer and
10 mandatory sentences and more frequent parole revocations.

11 53. The increase in the number of prisoners with
12 developmental disabilities under defendants' custody and
13 control is the result of other state policies as well.
14 California has delegated the prime responsibility for the
15 accommodation and habilitation of developmentally disabled
16 persons to its 58 counties, while at the same time sharply
17 reducing the funds available to counties for providing
18 necessary services. This fact, coupled with a trend toward
19 deinstitutionalization of developmentally disabled persons,
20 has led to a striking rise in the number of persons with
21 developmental disabilities who live on the streets and in
22 shelters. Because of their developmental disabilities,
23 these persons are more likely to be subject to arrest and
24 conviction when not properly treated or supervised. Tougher
25 and mandatory sentencing laws make it more difficult for
26 developmentally disabled offenders to avoid a state prison
27 sentence. The net result has been an increase in the number
28 of persons with developmental disabilities in state prison.

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21 developmental disabilities who live on the streets and in
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24 conviction when not properly treated or supervised. Tougher
25 and mandatory sentencing laws make it more difficult for
26 developmentally disabled offenders to avoid a state prison
27 sentence. The net result has been an increase in the number
28 of persons with developmental disabilities in state prison.

1 54. By increasing the population of offenders with
2 developmental disabilities through the policies described
3 above, defendants have greatly expanded the class of
4 prisoners requiring the accommodations, protection and
5 services provided for by federal law and the United States
6 Constitution.

7 55. Defendants have no plans, nor have they allocated
8 any funds, to provide the legally required accommodations,
9 protection and services to the rising population of develop-
10 mentally disabled prisoners under their control. At the
11 same time they have discriminated against this population by
12 failing to provide the accommodations required by law to
13 meet the critical needs of plaintiffs and to allow them the
14 same benefits and program participation opportunities
15 afforded to non-developmentally disabled prisoners.

16 56. Defendants' intentional and deliberate indiffer-
17 ence to the needs of developmentally disabled prisoners and
18 its institution of policies and practices that result in
19 great hardships for developmentally disabled prisoners have
20 deprived plaintiffs of accommodations, protection and ser-
21 vices essential to their continued well-being. Plaintiffs
22 also have been deprived, because of their developmental
23 disabilities, of good time credits. Plaintiffs and the
24 class they represent are now and will continue to be denied
25 necessary accommodation, protection and services in numerous
26 ways, including, but not limited to, the following:

27 a. Inadequate professional staffing and training and
28 a lack of proper procedures and protections prevent defen-

1 dants from properly identifying prisoners with developmental
2 disabilities.

3 b. Inadequate professional staffing and training and
4 a lack of proper procedural protections deprive plaintiffs
5 of reasonable accommodations that would allow them to
6 understand prison rules, regulations and disciplinary,
7 grievance, parole and administrative proceedings.

8 c. Inadequate professional staffing and training and
9 a lack of proper protections deprive plaintiffs of reason-
10 able safety from physical and mental abuse at the hands of
11 correctional staff and other prisoners.

12 d. Inadequate professional staffing and training and
13 a lack of proper protections deprive plaintiffs of the
14 minimal, constitutionally required assistance they need in
15 daily living skills to participate in prison life.

16 e. Inadequate professional staffing and training
17 deprive plaintiffs of the reasonable accommodations their
18 disabilities require to allow them to participate fully in
19 programs that are available to other inmates, including
20 work, education and health care programs.

21 f. All prisons, including those built within the last
22 five years, lack the space and physical facilities necessary
23 to provide accommodation, protection and services for
24 prisoners with developmental disabilities.

25 g. Additionally, the dearth of appropriate services
26 contributes to the unnecessary emotional and physical
27 suffering of the plaintiff class. Defendants' failure to
28 plan and budget for appropriate accommodations, protection

1 and services for prisoners with developmental disabilities
2 is inconsistent with proven, acceptable practice in the
3 community and in other prison systems.

4

5

FIRST CLAIM FOR RELIEF

6

Violations of Section 504 of the Rehabilitation Act

7

Against All Defendants

8

57. Plaintiffs reallege and incorporate herein by
9 reference paragraphs 1 through 55, as if fully set forth
10 below.

11

58. The actions of defendants, as set forth in this
12 Complaint, constitute a violation of plaintiffs' rights
13 under section 504 of the Rehabilitation Act, codified at
14 29 U.S.C. § 794.

15

59. Plaintiffs, because of their developmental
16 disabilities, qualify as individuals with disabilities as
17 that term is used in 29 U.S.C. § 794.

18

60. The State of California and California Department
19 of Corrections are the recipients of federal financial
20 assistance as that term is used in 29 U.S.C § 794.

21

61. All of the operations of the California Department
22 of Corrections constitute a program or activity as those
23 terms are used by 29 U.S.C. § 794.

24

62. Plaintiffs, solely by reason of their
25 disabilities, have been and continue to be excluded from
26 participation in, denied the benefits of, and subjected to
27 discrimination under the programs and activities of the

28

1 California Department of Corrections as controlled and
2 overseen by all defendants.

3 63. Plaintiffs are entitled to reasonable attorneys'
4 fees and expenses for maintaining this claim pursuant to
5 29 U.S.C. § 794a.

6

7

SECOND CLAIM FOR RELIEF

8 Violations of the Individuals With Disabilities Education
9 Act

10 Against Defendants State of California, California
11 Department of Corrections, Wilson, Maddock, and Terhune

12 64. Plaintiffs reallege and incorporate herein by
13 reference paragraphs 1 through 62, as if fully set forth
14 below.

15 65. Defendant State of California is a recipient of
16 federal funds under the IDEA, 20 U.S.C. § 1401 et seq.,
17 which are used to educate "children with disabilities" as
18 defined by 20 U.S.C. § 1412(3)(A). Defendant State of
19 California has designated the California Department of
20 Corrections as the agency with the responsibility of
21 ensuring that the requirements of the IDEA are met with
22 respect to children with disabilities who are convicted as
23 adults under State law and incarcerated in adult prisons.
24 The acceptance of such federal funds obligates defendants
25 State of California, California Department of Corrections,
26 Wilson, Maddock, and Terhune to comply with the conditions
27 imposed by the IDEA, including providing special education
28 services as part of a free appropriate public education to

1 qualifying inmates in correctional institutions as defined
2 20 U.S.C. § 1401 et seq. and Pub.L. 105-17 § 612(11)(C),
3 part of the 1997 Amendments to the IDEA.

4 66. The actions of defendants, as set forth in this
5 Complaint, constitute a violation of the rights of Toriano
6 Lowe and the subclass he represents to a free appropriate
7 public education under the Individuals With Disabilities
8 Education Act, codified at 20 U.S.C. § 1400 et seq., and as
9 amended, Pub. L. No. 105-17 (1997).

10 67. These subclass members, because of their
11 disabilities, qualify as children with disabilities as that
12 term is used in 20 U.S.C. § 1401(3)(A).

13 a. These subclass members are under 22 years of age.

14 b. These subclass members have a qualifying
15 disability as that term is used in 20 U.S.C. § 1401(3)(A).

16 c. These subclass members were identified as
17 "disabled" under 20 U.S.C. § 1401(3)(A) prior to their
18 incarceration.

19 d. These subclass members had individualized
20 education programs as required by 20 U.S.C. § 1401 et seq.
21 prior to their incarceration.

22 68. The State of California is a recipient of federal
23 financial assistance for special education and related
24 services pursuant to 20 U.S.C. § 1411.

25 69. The California Department of Corrections is a
26 public agency responsible for ensuring that the requirements
27 of the Individuals with Disabilities Education Act are met
28 as the term "public agency" is used in 20 U.S.C. § 1412(11).

1 75. The California Department of Corrections, as
2 operated and overseen by defendants Wilson, Maddock,
3 Terhune, Steinberg, Khoury and Tavoularis is a public entity
4 within the meaning of 42 U.S.C. § 12131 because it is a
5 department and instrumentality of the State of California.

6 76. Plaintiffs are entitled to reasonable attorneys'
7 fees, litigation expenses and costs for maintaining this
8 claim pursuant to 42 U.S.C. § 12133 and 29 U.S.C. § 794a.

9

10

FOURTH CLAIM FOR RELIEF

11

Violations of 42 U.S.C. § 1983

12

Against Defendants Wilson, Maddock, Terhune, Steinberg,

13

Khoury and Tavoularis

14

77. Plaintiffs reallege and incorporate herein by
15 reference paragraphs 1 through 74, as if fully set forth
16 below.

17

78. The conduct described herein has been and
18 continues to be performed by defendants and their agents or
19 employees in their official capacities and is the proximate
20 cause of plaintiffs' ongoing deprivation of rights secured
21 by the United States Constitution under the Eighth and
22 Fourteenth Amendments.

23

79. The constitutional deprivations described herein
24 are the proximate result of the official policies, customs
25 and pervasive practices of the California Department of
26 Corrections and defendants. Defendants are aware of all of
27 the unconstitutional conduct complained of herein and have
28 condoned or been deliberately indifferent to such conduct.

1 80. Defendants' provision of accommodations, services
2 and protection to plaintiffs is constitutionally deficient
3 in a number of respects, including without limitation:

4 a. Defendants subject plaintiffs to disciplinary,
5 grievance, parole and administrative proceedings which the
6 plaintiffs, whose I.Q.s are very low, lack the ability to
7 understand or to participate meaningfully in without
8 assistance;

9 b. Defendant subject plaintiffs to administrative
10 procedures by means of written documentation when plain-
11 tiffs, whose I.Q.s are very low, lack the ability to read
12 and write adequately enough to understand, or to respond to
13 the written documentation without assistance, which is not
14 provided;

15 c. Defendants subject plaintiffs to prison rules and
16 regulations by dissemination of written materials when plain-
17 tiffs, whose I.Q.s are very low, lack the ability adequately
18 to read, understand or comply with the prison rules and
19 regulations without assistance, which is not provided;

20 d. Defendants discriminate against plaintiffs by
21 excluding them, based on their disabilities, from prison
22 work, education and medical programs in numbers dispropor-
23 tionate to their population in the prison.

24 e. Defendants subject plaintiffs to cruel and unusual
25 punishment in the form of physical and emotional damage as a
26 result of their disabilities.

27 f. Defendants take no effective steps to protect
28 plaintiffs from physical and emotional exploitation and

1 abuse by other prisoners, despite defendants' knowledge that
2 because of their disabilities, plaintiffs are particularly
3 susceptible to such abuse.

4 g. Defendants discriminate against plaintiffs by
5 effectively excluding them from participation in certain
6 prison programs and administrative procedures and depriving
7 them of good time credit, with the result that developmen-
8 tally disabled prisoners must serve longer sentences and
9 therefore suffer atypical and significant hardship as a
10 result of their developmental disabilities. Such a result
11 constitutes cruel and unusual punishment and a denial of
12 equal protection and due process.

13 h. Defendants discriminate against plaintiffs by
14 effectively depriving them of habilitation services that are
15 essential to their ability to function in prison. Such
16 deprivation constitutes cruel and unusual punishment and a
17 denial of equal protection and due process.

18 81. Plaintiffs are entitled to reasonable attorneys'
19 fees, litigation expenses and costs for maintaining this
20 claim pursuant to 42 U.S.C. § 1988.

21

22

PRAYER FOR RELIEF

23 82. Plaintiffs and the class they represent have no
24 adequate remedy at law to redress the wrongs suffered as set
25 forth in this complaint. Plaintiffs have suffered and will
26 continue to suffer irreparable injury as a result of the
27 unlawful acts, omissions, policies and practices of the

28

1 defendants as alleged herein, unless plaintiffs are granted
2 the relief they request.

3 WHEREFORE, plaintiffs, on behalf of themselves and the
4 class they represent, request that this Court grant them the
5 following relief:

6 (a) certify the subclass of all prisoners who have
7 qualifying disabilities under the Individuals With
8 Disabilities Education Act, 20 U.S.C.A. § 1400 et seq., and
9 as amended, Pub. L. No. 105-17 (1997), who are now or in the
10 future will be in custody of any correctional facility
11 operated by the California Department of Corrections, other
12 than the California Medical Facility at Vacaville;

13 (b) adjudge and declare that the acts, omissions,
14 policies and practices of the defendants and their agents,
15 officials and employees violate plaintiffs' rights under the
16 Rehabilitation Act;

17 (c) adjudge and declare that the acts, omissions,
18 policies and practices of defendants State of California,
19 California Department of Corrections, Wilson, Maddock and
20 Terhune and their agents, officials and employees violate
21 plaintiffs' rights under the Individuals with Disabilities
22 Education Act.

23 (d) adjudge and declare that the acts, omissions,
24 policies and practices of defendants Wilson, Maddock,
25 Terhune, Steinberg, Khoury and Tavoularis and their agents,
26 officials and employees violate plaintiffs' rights under the
27 Americans With Disabilities Act;

28

1 (e) adjudge and declare that the acts, omissions,
2 policies and practices of defendants Wilson, Maddock,
3 Terhune, Steinberg, Khoury and Tavoularis and their agents,
4 officials and employees violate the Eighth and Fourteenth
5 Amendments, which grant constitutional protection to plain-
6 tiffs and the class that plaintiffs represent;

7 (f) order defendants, their agents, officials,
8 employees and all persons acting in concert with them under
9 color of state law or otherwise to provide the accommoda-
10 tions, services and protections to which plaintiffs are
11 entitled under federal law and the United States
12 Constitution;

13 (g) enjoin defendants, their agents, officials,
14 employees and all persons acting in concert with them under
15 color of state law or otherwise from continuing the unlawful
16 and unconstitutional acts, conditions and practices
17 described in this Complaint;

18 (h) eliminate unreasonable risk of harm to prisoners
19 who are developmentally disabled from other prisoners or
20 correctional facility personnel;

21 (i) remedy conditions that deprive prisoners of their
22 basic human needs;

23 (j) retain jurisdiction in this case until the
24 unlawful and unconstitutional conditions and practices as
25 alleged herein no longer exist and the Court is satisfied
26 that they will no longer occur;

27 (k) grant plaintiffs their reasonable attorneys' fees,
28 litigation expenses and costs for maintaining this action

1 pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12133, 29 U.S.C.
2 § 794a, and 20 U.S.C. § 1415(i)(3)(B).

3 (1) grant such further relief as the Court may deem
4 just and proper.

5 Dated: January __, 1998.

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