



PC-CO-002-001

FILED  
U.S. DISTRICT COURT  
DISTRICT OF COLORADO

'95 NOV 17 P4:46

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

JAMES R. MANSPEAKER CLERK

Civil Action No. 95-K-1878

BY \_\_\_\_\_ DEP. CLK.

JEFFREY KNAPP, CHARLES BALDWIN, LEE BURKE, DELBERT LEGGIONS,  
JAY MONTAGUE, RAY SHAFFER, MANUAL TORRES, JACOB VALDEZ, and  
RICHARD WESTLEY,

Plaintiffs,

vs.

ROY S. ROMER, GOVERNOR OF THE STATE OF COLORADO; ARISTEDES  
ZAVARAS, EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF  
CORRECTIONS; BOWIE COUNTY, TEXAS; MARY CHOATE, SHERIFF OF  
BOWIE COUNTY, TEXAS; ANTHONY RICHARDSON, WARDEN OF THE  
BOWIE COUNTY CORRECTIONAL FACILITY, all in their official capacities,

Defendants.

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**FIRST AMENDED COMPLAINT**

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Plaintiffs, on their own behalf, and on behalf of all other persons similarly situated, by and through their attorneys, James E. Hartley and Steven W. Black of Holland & Hart and David H. Miller of the American Civil Liberties Union, assert this complaint against defendants.

**I. Preliminary Statement**

1. Plaintiffs are inmates of the Colorado Department of Corrections. On or after June 10, 1995, the Colorado Department of Corrections transported Plaintiffs to the Bowie County Correctional Facility (BCCF) in Texas. Plaintiffs bring this action to

challenge and obtain relief from a combination of hostile conditions and policies that are inflicting cruel and unusual punishment upon them in violation of their constitutional rights.

2. Plaintiffs assert that the totality of conditions at BCCF falls below contemporary standards of human decency. In addition, conditions in certain core areas have deprived Plaintiffs of essential human needs, inflict needless suffering, create an environment which threatens the physical and mental well being of members of the Plaintiff class, and contribute to the unnecessary physical and emotional deterioration of prisoners confined at BCCF. Generally speaking, the deficient core areas are: (a) an abusive, overcrowded, unsanitary and unhealthful physical environment; (b) forced idleness; (c) fire danger; (d) violation of the Establishment Clause; and (e) systematically deficient medical, dental and mental health care.

3. Through this action, Plaintiffs seek (a) a declaratory judgment that their constitutional rights are being violated and (b) a comprehensive injunctive and remedial order to abate permanently the unconstitutional conditions causing the violations.

## **II. Jurisdiction**

4. This action is brought pursuant to 42 U.S.C. §1983. Plaintiffs seek redress of injuries suffered by them and the class they represent as a result of defendants' conduct under color of state law that violates plaintiffs' rights under the First, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. This Court has Jurisdiction under 28 U.S.C. §§1331, 1343.

5. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b). Defendants Roy S. Romer and Aristedes Zavaras reside in the District of Colorado. The plaintiffs are inmates and residents of the State of Colorado, present only temporarily and involuntarily in Bowie County, Texas. The ultimate responsibility for plaintiffs' injuries rests with Defendants Romer and Zavaras, who reside in this District.

### **III. The Parties**

#### **A. Plaintiffs**

6. The named Plaintiffs are adult inmates in BCCF.

7. With the exception of several juvenile inmates incarcerated in BCCF, the class represented by the named Plaintiffs is composed of adult inmates in BCCF.

#### **B. Defendants**

8. Roy S. Romer is the Governor of the State of Colorado. As Governor, he exercises ultimate authority over the operations of the Colorado Department of Corrections. He has been personally aware of and has approved the transfer of the plaintiff class to Bowie County, Texas.

9. Aristedes Zavaras is the Executive Director of the Colorado Department of Corrections. He is the department's chief executive officer and supervises the operation of the Colorado state prison system. Defendant Zavaras is responsible for the transfer of the plaintiff class to BCCF, and for the maintenance of prison standards wherever Colorado prisoners are incarcerated, including BCCF. Defendant Zavaras has personally

inspected BCCF and has subsequently approved the continued incarceration of the plaintiff class in BCCF.

10. Bowie County, Texas, is a political subdivision of the State of Texas. It has contracted with the Department of Corrections of the State of Colorado to incarcerate the members of the plaintiff class within its borders at the BCCF. Pursuant to that contract, the plaintiff class was transferred to BCCF where they are still imprisoned by Defendant Bowie County, which is responsible for the conditions of their incarceration.

11. Mary Choate is the duly elected sheriff of Bowie County, Texas. As such she is responsible for the conditions of incarceration of those inmates housed within the BCCF. She is knowledgeable as to the conditions of confinement of the plaintiff class.

12. Anthony Richardson is the Warden of BCCF. In this capacity he is directly responsible for the maintenance of prison conditions at BCCF that conform with contemporary standards of decency and the provisions of the First, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. Additionally, Defendant Richardson is knowledgeable about the conditions of incarceration of the BCCF.

#### **IV. Class Action Allegations**

13. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of the class of all Colorado prisoners who now are or in the future will be confined at BCCF.

14. The class consists of approximately 500 prisoners and joinder of all members is impractical.

15. This lawsuit challenges various conditions of confinement at BCCF and there are questions of law and fact common to the class, including whether defendants have violated the First, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

16. The Plaintiffs' claims are typical of the claims of the class, and Plaintiffs and their counsel will thoroughly and adequately represent the interests of the class. Counsel for the plaintiff class has been counsel in numerous prior federal lawsuits involving similar issues.

17. The Defendants have acted and refused to act on grounds generally applicable to the class. Final injunctive and declaratory relief is appropriate on a class-wide basis.

#### **V. Factual Allegations**

18. As shown below, the totality of conditions over which Defendants preside are incompatible with contemporary standards of decency and result in the unnecessary and wanton infliction of pain. By depriving Plaintiffs of such basic human needs as adequate shelter and sanitation, personal and fire safety, and medical, dental and mental health care, Defendants are violating Plaintiffs' right to be free from cruel and unusual punishment as prescribed by the Eighth Amendment of the United States Constitution.

19. The conditions described below at BCCF are well known to Defendants who have not taken adequate steps to correct them.

**A. Introduction**

20. In November of 1979, the Honorable John L. Kane, Jr. bluntly summarized Defendants' constitutional obligations in the operation of the Colorado prison system:

If the State of Colorado wants of confine persons convicted of crime, they are going to have to pay to staff (prisons) adequately and they're going to have to pay to provide essential programs; and if they don't, whether (a prison) is a new facility or an old one, it will be closed.

21. This summary of Defendants' constitutional obligations applies both to prisons in Colorado, and prisons outside of Colorado where Colorado prisoners are incarcerated. Defendants Romer and Zavaras cannot escape their constitutional obligations by transferring the prisoners for whom they are responsible out of state. All Defendants, singly and jointly, with respect to the allegations contained herein, are Colorado State actors, within the meaning of 42 U.S.C. § 1983.

22. As described within, defective administrative management, arbitrary policies and regulations, security crises, untrained, corrupt and violent staff, forced idleness, collective punishment by prison officials, deliberate harassment by prison staff, and inappropriate and inadequate facilities not only exacerbate, but in fact, are frequently the root cause for the many deficient conditions at BCCF. These conditions and policies overtax virtually every constitutionally required support system and service, and create a harmful and intolerable environment. These conditions increase stress, tension, and violence among inmates, and create increased health risks, such as the likelihood of the spread of communicable disease, assaults and suicide. This results in

an adverse impact on the physical and mental well being of the prisoners, causing unnecessary and unacceptable pain.

**B. Personal Safety**

23. BCCF has hired staff with inadequate experience and has provided them with insufficient training. One manifestation of this lack of training is a series of racially-based threats to inmates by BCCF staff. In addition, there is inadequate supervision of prison staff. This has resulted in the abusive macing and punishment of inmates. These two problems combined represent a serious threat to the safety of inmates at BCCF.

24. The BCCF staff's lack of control within the facility is exacerbated by the ineffectiveness of outside government agencies required to inspect the facility. These agencies include the Texas State Health Inspectors, the Texas Commission on Jail Standards and the Colorado Department of Corrections.

25. The assignment of officers who are not experienced, adequately trained, or supervised, combined with the lack of a classification system, creates a situation where violent prone officers are abusive with inmates without consequences and inmates may obtain weapons for protection from other inmates and abusive officers.

26. BCCF staff has consistently espoused a policy of collective punishment. BCCF staff indiscriminately use chemical spray as a means of control, which, due to the dormitory structure of the BCCF facility, results in the serious punishment of many inmates who have done nothing wrong.

27. As alleged below, the staff has used excessive force on many occasions, which has from time to time resulted in serious injuries to and the hospitalization of inmates. The BCCF management is aware of these incidents and has failed to investigate or punish offenders appropriately.

28. BCCF staff have used pepper spray and tear gas on numerous occasions to punish entire pods for the actions of a few inmates. On one occasion, BCCF staff sprayed Mr. Vernon Gibson along with an entire pod, and, while the inmates were still disabled by the gas, without justification began beating inmates and using racist language.

29. Jessie Cluff was sprayed in the face with mace, apparently for no reason, and locked in a holding cell for over three days without a disciplinary hearing. He was not permitted to shower, and was deprived of other personal hygiene items. Numerous other inmates reported similar treatment upon their arrival at Bowie County jail, including Robert Lane, James Adams, and Tex Harrington.

30. Cruz Gonzales witnessed an incident where five BCCF officers kicked and beat several inmates when those inmates were already down on the floor, and one was unconscious.

31. On or about June 10, 1995, Glenn Pierce was physically and verbally assaulted by Officers Moses and Woods, in full view of and with the apparent assent of Lieutenant Henson. Officers Moses and Woods picked Mr. Pierce up from behind and thrust him into a wall, cutting his face above his eyebrow. They then pushed him into a corner, making sure his face hit the wall. A few moments later, Mr. Pierce was kneeling

down on a bench when, without warning, one of the guards grabbed his leg irons and pulled his knees out from under him so that he hit the floor. The guards told him to stay there and not to move. Approximately one hour later, the same guards took Mr. Pierce to an administrative segregation cell where he was kept for three days. He was not permitted to shower and was forced to sleep on the floor with a mattress. Mr. Pierce suffered injuries to his back as a result of this assault, which cause him constant pain. He received no medical attention following this incident.

32. On or about June 10, 1995, Mr. Jeffrey Knapp was maced, dragged out of his cell, and taken to a holding cell where he was kept in restraints for approximately one hour. He was told that he "was asking too many questions and filing too many grievances." On the following day, he was again maced, thrown into an elevator, beaten up, thrown into a holding cell, maced again, and left restrained for about three hours, apparently because he had "cussed at the phone." The following day, on June 12, 1995, at approximately 10:30 p.m., Mr. Knapp was again dragged out of his pod, down the hall, into a holding cell, maced, beaten by two Texas Department of Corrections S.O.R.T. team members, and left for almost six hours in restraints. On that occasion, one of his teeth was knocked loose. He was then put in administrative segregation for 16 days, where his privileges were taken away. He was not served with a disciplinary report or given a disciplinary hearing.

33. On or about June 11, 1995, Ted Coca was removed from his pod, handcuffed, and placed into a holding cell for no apparent reason. The handcuffs were

so tight that they restricted the blood circulation to his hands. He was handcuffed behind his back, and his shoulder and hands caused him great pain. He requested help several times, using the cell intercom, but his pleas for help were ignored. Finally, an officer responded and said he would send a nurse. Officer Morgan came into the cell and removed the metal handcuffs, but replaced them with plastic handcuffs which he fastened even tighter. When Mr. Coca attempted to use the intercom again, Officer Morgan came into his cell with two other officers. Officer Morgan grabbed Mr. Coca by the hair, while another officer choked him and a third punched him in the abdomen. Officer Morgan threatened to mace Coca if he looked at him. After the officers beat Mr. Coca, they threw him into a holding cell and, because he was still handcuffed behind his back, he could not protect himself from the fall. The officers then kicked him several times. The pain was so great that Mr. Coca thought his shoulder was broken. After about 15 minutes his hands were numb. He tried to get to the intercom again, but Officer Morgan saw him and again grabbed him by the hair while the other officers placed him against the wall and beat him. Officer Morgan held Coca's hair while macing him several times in the face and striking his head with the mace can. When Coca could not breathe, he began to scream out in fear for his life. The officers removed him from the cell until he was able to breathe again, but then they put him back into the same holding cell with his hands still handcuffed behind his back. The officers threatened to mace Mr. Coca further if he reported the incident.

34. On or about June 29, 1995, without sufficient justification several guards sprayed an entire pod of approximately 24 inmates with pepper spray. The inmates were sprayed with pepper spray from all directions, including by guards on top of the barred ceiling of the pod, until the inmates were not capable of defending themselves. Guards wearing gas masks then entered the pod and severely beat the inmates.

35. On or about July 16, 1995, Officer Moses entered cell pod B-11 and without sufficient justification started to beat an inmate, Mr. McPhearson. He handcuffed him and continued to beat him. Officer Moses then dragged Mr. McPhearson down the hall to an isolation cell.

36. On or about July 21, 1995, several officers verbally and physically assaulted numerous inmates. They used several large cans of mace and more than a dozen small cans of mace indiscriminately on all of the inmates in a single pod. The officers who could be identified include Sergeant Anthony and officers Hancock, McDowell, Olive, Giles, Armstrong, Golden, and Hurbert. These officers also used numerous racial slurs and epithets, and threatened to kill "all niggers and spicks" before they leave Texas.

37. On or about July 21, 1995, Sidney Vigil witnessed guards armed with riot shields, cans of mace, and inmates bloodied and handcuffed.

38. On or about July 21, 1995, inmate Jacob Valdez was placed in segregation and charged with involvement in a riot. At a subsequent disciplinary hearing he was found "not guilty" due in part to lack of evidence. The hearing officer was instructed to retry him even though the charges were dismissed, and at that hearing he was not

allowed an inmate representative although he requested one, nor was he allowed to present evidence. He was then found "guilty," even though the same evidence was presented against him, this time to a new hearing officer, Lt. Campbell. He was placed in segregation under punitive conditions thereafter. He is still unjustifiably in segregation. Mr. Valdez was beaten and injured by BCCF correctional staff even though he was not involved in what was later described as a riot.

39. On or about July 21, 1995, members of the inmate plaintiff class were gassed, even though they had not engaged in any wrongdoing. One inmate named Manuel Torres was injured by officers employing excessive force even though Mr. Torres had no part in the disturbance. The injury to Mr. Torres was investigated, and it was determined that there had been wrongdoing on the part of the correctional officers involved. This report was made available to Defendant Choate who did not adequately respond to prevent officer abuse.

40. On or about July 25, 1995, four officers beat an inmate in one of the pods apparently because he asked for a tube of toothpaste. According the offending officers, Kidd, Godfrey, and Whitney, the inmate was "being a pest."

41. On or about July 27, 1995, Kevin McClearen, after filing numerous grievances to which he received no response, refused to return to his pod until he received an explanation for the \$48 which was missing from his commissary account. He was immediately handcuffed, and placed into a one-man isolation cell with another inmate where he was forced to sleep on the floor. Mr. McClearen was kept in the

isolation cell for six nights, without receiving notice of a disciplinary violation or a hearing. He was then moved to an administrative segregation pod where his privileges were revoked.

42. In another incident, on or about August 8, 1995, Tony Holloway was standing near a fence in the recreation yard talking to other inmates. Suddenly, one of the guards ordered the inmates "off the fence." At first, the inmates did not understand the command, but eventually they walked away from the fence. Mr. Holloway sat down on a bench near the fence. The guard then raised his shotgun, which he then aimed down the fence toward Mr. Holloway and the other inmates. The guard then yelled "come here," but it was not apparent to whom he was speaking. Several guards then entered the recreation yard and approached Mr. Holloway with their mace cans drawn. The guards grabbed Mr. Holloway and took him outside the yard. Before the guards re-entered the jail, they pushed Mr. Holloway up against a fence, pulled his arms behind his back and handcuffed him. They then shoved Mr. Holloway to the ground where he hit his face. While he was still stunned, the guards lifted Mr. Holloway up by his arms, stretching them backward up above his shoulders, and dragged him through the gate by his arms. Once inside the jail, Mr. Holloway was beaten, kned in his groin, kidneys, and back, and his head was repeatedly struck against the wall. Mr. Holloway was handcuffed during the entire assault and was not presenting a threat to the officers.

**C. Medical/Dental/Mental Health Care**

43. The medical services at BCCF do not adequately meet the plaintiff class's routine or emergency medical needs. The BCCF officials have demonstrated their deliberate indifference to inmates' medical needs by refusing to respond to requests for medical care, and by failing to procure inmates' medical records from the Colorado Department of Corrections. In addition, inmates who cannot pay to purchase certain medical items have had them withheld, and inmates with serious medical problems are housed in cells with poor ventilation and no natural light.

44. While BCCF supplies social workers who provide substance abuse and anger management assistance, there is no opportunity at BCCF for inmates in need of other psychological or social welfare counseling in order to avoid mental deterioration.

45. Roy Walters has also been denied access to a psychiatrist and his condition has therefore worsened. Mr. Walters has also been denied his medication for psychiatric problems. Mr. Walters was not allowed to see a dentist for his four abscessed teeth.

46. Proper dental services are unavailable. Dental services at BCCF are limited to teeth pulling and the insertion of temporary fillings when serious dental problems require further services.

47. On September 30, 1995, Mr. Westley slipped in water leaking from the shower, fell down the stairs and broke his leg. BCCF's Nurse told Mr. Westley that his injury did not warrant medical attention and sent him back to his cell. When, later, the BCCF staff finally acknowledged that Mr. Westley was in serious need of medical

attention, the injury required surgery. Following surgery, Mr. Westley was placed in solitary confinement for over two weeks in a room normally used for punishment, with no bed, no shower and no hot water.

48. The defendants regularly use the excuse that the inmates' medical or dental records have not been forwarded to Bowie County as a reason for refusing medical and dental care for serious health problems.

49. On another occasion, an inmate suffered what appeared to be an epileptic or asthmatic seizure. He seized for several minutes while guards outside simply stood and watched. Several minutes later, the seizure stopped and the inmate appeared unconscious. Still, the guards did nothing except watch from outside the cell. After the inmate was on the ground for approximately 10 minutes, the guards entered the cell, but without a nurse or other medically trained officer. The guards apparently were not trained in CPR, because they did not check for a pulse or attempt to resuscitate the inmate. A nurse finally arrived 10 minutes later, but she too did nothing. Finally, after the inmate had been unconscious for approximately 30 minutes, emergency medical technicians arrived and placed the still unconscious inmate on a stretcher and took him away.

50. On another occasion, an inmate slipped and fell in the standing water near the showers. He injured his arm and his back, but he was told that if he wanted to go to the hospital and have his arm and back x-rayed, he would have to pay for the x-rays himself. On information and belief, he has still not received proper medical attention.

51. Ray Shaffer was processed through the admissions unit in the Colorado Department of Corrections in or around May 1995. At that time he informed medical personnel that he required treatment for skin cancer, and that that treatment was already two months overdue. He was told that he should wait until he reached his facility placement where he would be soon treated. His medical records were requested at that time. Approximately one month later, on or about June 12, 1995, Mr. Shaffer was transferred to Texarkana. Upon arrival he reported to the medical personnel that he had skin cancer and was now three months overdue for treatment. He was told that the doctor would look at his records as soon as they were received from the Colorado Department of Corrections. Mr. Shaffer filed repeated written requests for health care, noting his deteriorating condition and the fact that his skin cancer lesions were bleeding. His requests for treatment were ignored until August 23, 1995, when he was taken to a dermatologist in Texarkana, who reported that he had gone too long without treatment and would therefore have to have surgery. Mr. Shaffer was required to wait for over two more months before his bleeding lesions were excised.

52. Inmate Jay Montague arrived at BCCF subsequent to June, 1995, in possession of a partial dental plate. Staff at BCCF were responsible for losing the plate, and yet when he requested a replacement, he was told that he could not receive one because the Colorado Department of Corrections had not approved a replacement. Thereafter he was ordered to go on a soft diet, which he does not always receive. He therefore nourishes himself by ordering soup mixes off of the commissary list at a highly

inflated price. He is indigent and not able to afford the continuing and excessive cost of feeding himself from the commissary list.

53. At or about the beginning of July 1995, Mr. Montague slipped on standing water while exiting the shower and struck his elbow on an adjacent wall. He immediately asked for medical care but was told that there was no doctor on the weekend. The following day he was taken to a local hospital, where he was x-rayed, and a nurse put a cast on him without allowing him to be seen by a doctor. Approximately seven days later he was taken back to the hospital where he saw a doctor who informed him that his bone had been fractured. He was then placed in a segregation unit, usually used for punishment, for approximately 15 days, even though he had done nothing wrong. Thereafter, he was told that he would have to leave that cell because it was needed for other reasons. During his time in segregation he was allowed at most only one hour per week for recreation time out of his cell. He was charged approximately \$355 for medical care to his arm. Mr. Montague is indigent, and while he sought to participate in programs and jobs, he was refused such activity until recently when he was given a \$1 per work day job.

**D. Living Conditions**

54. The BCCF facility is infested by vermin, has defective plumbing, and is consequently unclean.

55. The BCCF facility was designed to function as a jail, providing temporary shelter, and not a prison providing long-term shelter for inmates with varying

classifications/security risks. The BCCF facility has inadequate living space for the inmates housed there.

56. The inmates are held in "pods" of 23-25 inmates each, measuring approximately 900 square feet of unencumbered space. There is inadequate space for inmates to eat at tables. This means that the inmates must eat their meals on their beds or on the floor in close proximity to the toilets.

57. The lack of space per inmate, the deficient classification system, the poor food and food preparation conditions, the inadequate medical care, and the deteriorating physical plant result in conditions that threaten the mental and physical well being of inmates.

58. Because of the overcrowding problem, several inmates have been forced to sleep on the floor. BCCF has an uncontrollable insect problem. The floor where Mr. Collins is required to sleep is infested with insects and spiders, some poisonous; Mr. Collins received a bite that required surgery.

59. BCCF was not designed to house the number of inmates now incarcerated there. The additional stress on the BCCF facility from this large number of inmates has created serious sanitation problems, which threaten the plaintiff class's health and well being. The BCCF staff has deliberately exacerbated the sanitation problems by refusing to supply adequate amounts of toilet paper and cleaning supplies, and by charging exorbitant prices for personal hygiene products such as soap.

60. Soap and other personal hygiene products are only available at inflated prices from the BCCF commissary. For example, a bar of soap that cost sixty cents in Colorado prisons costs one dollar twenty-nine cents at BCCF.

61. The cells are filthy. The BCCF staff has considered cleaning supplies a privilege; they are only made available if the inmates behave well. Thus, the inmates have been unable to keep their living areas clean.

62. The toilets often overflow or leak, causing foul-smelling liquid to permeate the cells.

63. Defendants regularly take money from the plaintiff class members' inmate accounts without proper accounting or justification.

64. Overcrowding of the living units has resulted in inmate assaults resulting in injuries to plaintiff class members.

65. There is no fire safety plan at BCCF. There are no sprinklers to be used in the event of fire, and correctional staff is insufficiently trained in fire management techniques. In addition, some cell doors can only be opened manually with a key, because the automatic locks are broken. These conditions create an immediate hazard to the life and safety of the plaintiff class.

66. Some cells at BCCF are inundated with diesel fumes. This presents a health hazard. The presence of these fumes is evidence of BCCF's inadequate ventilation system. This inadequacy is detrimental to the Plaintiff class's health and welfare.

67. BCCF is constructed within a few feet of an active railroad. During 24 hours of the day and night railroad engines and cars, sometimes carrying hazardous materials, shake the building. The Plaintiffs are not provided with adequate clean bedding. They are made to sleep on metal bunks with inadequately padded mattresses and only a thin blanket approximately three by five feet. When all of the above factors are combined with the Defendants' practice of keeping the lights on at night, it is impossible for the Plaintiffs to obtain adequate sleep.

**E. Food and Water**

68. The food at BCCF is prepared and served under conditions which present an immediate danger to the health and well being of the inmates who consume it. In addition, Defendants have made no effort to accommodate special diets required for religious reasons.

69. For example, food is served on dirty trays and is frequently cold. Food is sometimes not available for an entire day.

70. The food residue on trays and the proximity of the pod eating areas to the toilets create conditions that promote serious food borne illnesses.

71. Kevin C. Titus has difficulty getting the diet he needs for his medical condition. Likewise, Vernon Gibson has been unable to get the diet he requires for religious purposes.

72. Swarms of insects regularly infest the BCCF kitchen. William Carter found an insect in his food on September 27, 1995. Mr. Carter attempted to file a grievance

form to inform BCCF management of this problem. When he asked a correctional officer to sign the grievance form, the officer refused to do so unless so instructed by his supervisor. This incident demonstrates the deliberate indifference of BCCF staff to the inmates' inhumane treatment there.

73. The water at BCCF is unfit for human consumption. Numerous inmates have complained that the tap water at BCCF is very warm, tastes dirty and is unpotable. Defendants are aware of this, but have made no effort to remedy the situation by providing potable drinking water.

**F. Classification**

74. The physical structure of BCCF provides for housing in dormitory-style "pods." The lack of an effective classification system at BCCF prevents correctional officers from separating potentially violent inmates and special management inmates from the general population. This has resulted in inmates being assaulted.

75. The group of Colorado inmates transferred by defendants to BCCF include special management inmates. These special management inmates include protective custody inmates, medical isolation inmates and mentally ill inmates. These inmates are sometimes housed in temporary holding cells with no bunks or showers because there is no proper place to house them at BCCF. The failure to separate these inmates from the general population creates an unsafe and hazardous condition for all inmates.

76. Mr. Jeffrey Knapp was a juvenile (17 years old), when he was transferred to BCCF. He is housed in a 24-man jail pod together with prisoners serving life sentences. He faces constant physical threats.

**G. Activities**

77. BCCF offers only a limited number of activities. Further, the space available in these activity programs is extremely limited. There are not enough activities or facilities for inmates in the plaintiff class. This increases inmates' idle time. The only program which an appreciable number of inmates in the plaintiff class have been able to access is the Bible Study class, and inmates must choose between staying in their cells or attending this class.

78. This lack of activities increases the inmates' idle time and time locked in their cells. The unsanitary and overcrowded conditions in the pods makes activity time more important.

79. Very few inmates are allowed to work, even on a volunteer basis. At the same time, despite the limited opportunities for work, those who attend Bible Study are paid to do so.

80. While there is generally little recreation time, when recreation is allowed BCCF staff require inmates to participate in exercise regardless of whether the inmate's health or the weather conditions would make it injurious to do so.

81. BCCF has a recreation schedule, but it is often not met. Because of this, inmates have on occasion been allowed recreation only in the middle of the night.

82. There is no contact visiting allowed. This, combined with the inadequate activities described above, means that inmates are forced to remain idle in their cells for an unnecessary length of time.

83. Stephen J. Espinoza was forced to go to the recreation yard, even though he was sick. When he was forced to do so, Mr. Espinoza re-injured his back. An inmate who was unwilling for health reasons to go outside onto an asphalt covered yard in temperatures well in excess of 100° was shackled to a cart and rolled outside with his hands and feet bound.

84. Mr. Myron Johnson arrived at BCCF on approximately July 29, 1995. While at times correctional staff had informed him he had to walk with his hands in front of him, the first day he was there he was told by different correctional staff to walk with his hands in back of him. When he did not immediately respond he was taken to an administered segregation cell where he was kept overnight. During that time his glasses, which he needs for proper vision, were taken from him. The next day when he was released and tried to obtain his glasses, he was told that since they were not on his property list they would be kept from him. In fact, the only reason his glasses were not on his property list was because he had been wearing them at the time of admission into the facility. He explained that fact to staff, but was ignored. Mr. Johnson immediately started submitting written requests for his glasses and for treatment for arthritis in his feet. He suffers from constant extreme headaches due to the lack of glasses and therefore requires Tylenol, which he is not able to afford at BCCF's inflated canteen

price. Mr. Johnson is indigent and has requested on numerous occasions that he be given employment, but the only "job" he has been offered is to attend Bible class. For religious reasons, Mr. Johnson does not wish to be forced to study the Bible, even though he would be offered limited pay for the class.

#### **H. Access to Courts**

85. BCCF has a law library that houses a CD-ROM system, but no or only a few books for legal research. There is no one on the BCCF staff who can adequately instruct inmates in the use of the CD-ROM, and so the system is largely unusable.

86. Additionally, inmates have been refused access to the law library. For example, Lee Burke and Jeffrey Knapp have been refused access to the law library, and this has affected his ability to pursue his legal research and hampered his access to the courts in matters involving his constitutional rights.

#### **I. Establishment Clause Violations**

87. The Plaintiffs offer what they call a Bible Study class to inmates for pay. Approximately 100 inmates are allowed to participate. Because there are comparatively few other paid jobs or programs as Plaintiffs are intentionally providing an incentive for inmates to attend Bible Study. In fact, the class is a daily four hour church service filled with evangelical hymn singing, sermons and religious practice. Inmates are encouraged to witness their faith back to the rest of the inmates. There is little if any Bible Study.

88. The Bible Study program sponsored by the Plaintiffs is sectarian. Its effect is to promote the Christian religion; and the Plaintiffs are not merely entangled with the practice, but are directly supporting it.

89. The Plaintiffs' Bible Study course violates the First Amendment rights of the Plaintiffs to be free from the Plaintiffs' establishment of religion.

#### **VI. Claim for Relief**

90. The totality of policies and conditions over which the Defendants preside are incompatible with contemporary standards of decency and result in unnecessary and wanton infliction of pain. Additionally, Plaintiffs have been deprived of basic human needs in core areas such as adequate shelter, sanitation, personal safety, and medical, dental and mental health care. As a result, Defendants are violating Plaintiffs' rights to be free of cruel and unusual punishment and due process as prescribed by the Eighth and Fourteenth Amendments to the United States Constitution.

91. By operating a prison health care system that is systematically and deliberately indifferent to the serious medical, dental, and psychiatric needs of inmates, the Defendants are violating Plaintiffs' right to be free of cruel and unusual punishment as prescribed by the Eighth Amendment to the United States Constitution.

92. The denial of access to an adequate law library deprives Plaintiffs of their right of meaningful access to the courts as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

93. Conditions and policies at BCCF cause unnecessary wanton infliction of pain as well as genuine deprivation and are not reasonably related to any legitimate governmental objectives. Inmates are being denied due process, liberty interest in their personal security, and are subjected to cruel and unusual punishment in violation of the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

#### **VII. Inadequate Remedy at Law**

94. As a proximate result of the Defendants' policies, practices, acts and omissions, Plaintiffs have suffered, do suffer and will continue to suffer immediate and irreparable injury, including physical, psychological and emotional injury. Plaintiffs' physical and psychological well being continue to deteriorate during the course of their confinement under the policies and conditions described in this complaint.

95. Plaintiffs have no plain, adequate or complete remedy at law to address the wrongs described herein. Plaintiffs will continue to be irreparably injured by the policies, practices, procedures, acts and omissions of the Defendants unless this Court grants the injunctive relief that Plaintiffs seek.

#### **VIII. Prayer for Relief**

THEREFORE, Plaintiffs pray that this Court:

- A. Order that this action be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
- B. Declare that the policies, practices, procedures, and conditions described above violate the constitutional right of the Plaintiffs and the class they represent to be free

from cruel and unusual punishment and to be free from arbitrary and capricious policies by prison officials;

C. Declare that Defendants have denied Plaintiffs and the class they represent procedural due process and their constitutional right to meaningful access to the courts;

D. Enjoin the Defendants, their successors, assigns, agents, employees and all other persons in active concert and participation with them, from subjecting the Plaintiffs and the class they represent to the unconstitutional conditions and practices described above;

E. Enjoin the Plaintiffs from violating the Defendants' First Amendment rights under the Establishment Clause.

F. Enjoin Defendants from housing Plaintiffs and the class they represent at the BCCF;

G. Award Plaintiffs their reasonable costs, attorneys' fees and expert witnesses fees pursuant to 42 U.S.C. §1988; and

H. Grant such other further relief as may be just and equitable.

Dated November 17, 1995.

Respectfully submitted,

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BY   
Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **FIRST AMENDED COMPLAINT** upon all parties herein by depositing copies of the same in the U.S. mail, postage prepaid, at Denver, Colorado this 17th day of November, 1995 addressed as follows:

David R. Broughman, Esq.  
Hall & Evans, L.L.C.  
1200 17th Street, Suite 1700  
Denver, CO 80202

John Lizza, Esq.  
Attorney General's Office  
First Assistant Attorney General  
1525 Sherman Street, 5th Floor  
Denver, CO 80202

A handwritten signature in cursive script, reading "Andy Fletcher", is written over a horizontal line.