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15
16 IN THE UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18

19 KEVIN M. SCHILLING, on behalf of himself
and all those similarly situated,

20 Plaintiffs,

21 vs.

22 TRANSCOR AMERICA, LLC, SGT. JOHN
23 SMITH, OFFICER BLANDEN, and DOES
1 through 100,

24 Defendants.
25

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

26 PLAINTIFF COMES BEFORE THIS HONORABLE COURT AND ALLEGES:

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28 \ \ \

INTRODUCTION

1
2 1. This is an action for declaratory and injunctive relief, damages, and
3 punitive damages against TRANSCOR AMERICA, LLC, SGT. JOHN SMITH,
4 OFFICER BLANDEN and DOES 1 THROUGH 100 (persons sued herein by their
5 fictitious names) for violations of plaintiff's constitutional rights and those of other
6 similarly situated persons.

7 2. In this complaint, plaintiff alleges that TRANSCOR AMERICA, LLC's
8 official policy, practice, or custom of transporting pretrial detainees and prisoners in
9 conditions that amount to cruel and unusual punishment violated and violates the
10 rights of plaintiff, and each of those persons similarly situated, secured by the Fourth,
11 Eighth and Fourteenth Amendments to the U.S. Constitution and entitles plaintiff, and
12 each of those similarly situated, to recover damages and attorneys' fees under the
13 Federal Civil Rights Act (42 U.S.C. §§ 1983, 1988). TRANSCOR AMERICA, LLC's
14 policies, practices or customs include but are not limited to transporting pretrial
15 detainees and prisoners in small metal cages in which a person can neither stand up
16 nor lie down for more than 24 hours at a time while the person is handcuffed, chained,
17 and in shackles, and failing to provide pretrial detainees and prisoners with adequate
18 food, fluids, exercise, hygiene, and medical care.

19 3. Because TRANSCOR AMERICA, LLC's official policy, practice, or
20 custom is to transport pretrial detainees and prisoners in conditions that amount to
21 unlawful detention, excessive force, and cruel and unusual punishment, there is a
22 likelihood of future injuries to pretrial detainees and prisoners including members of the
23 plaintiff class. Accordingly, plaintiff seeks an order declaring unlawful TRANSCOR
24 AMERICA, LLC's policy, practice or custom of transporting pretrial detainees under the
25 conditions described above and enjoining TRANSCOR AMERICA, LLC from engaging
26 in this conduct in the future.

27 4. Plaintiff includes claims for damages and attorneys' fees under California
28 state law against TRANSCOR AMERICA, LLC for violation of the Unruh Civil Rights
Act (California Civil Code § 52.1(b)) pursuant to which plaintiff is, and each of those
persons similarly situated in the subclass of pretrial detainees and prisoners

1 transported by defendants in California is, entitled to recover a minimum of \$4,000 for
2 each violation of rights secured to them by the constitution or laws of the state of
3 California and the constitution or laws of the United States and attorneys' fees
4 (California Civil Code § 52.1(h)).

5 5. Plaintiff includes claims for damages and attorneys' fees under the
6 Federal Civil Rights Act (42 U.S.C. §§ 1983, 1988) against all defendants for their
7 violation of his Fourth and Fourteenth Amendment right to be free from the use of
8 excessive force, and the right to be provided with adequate medical care.

9 6. Finally, plaintiff includes a claim for damages and attorneys' fees under
10 the Federal Civil Rights Act (42 U.S.C. §§ 1983, 1988) against TRANSCOR
11 AMERICA, LLC and DOES 1-10 for its failure to adequately supervise SGT. SMITH,
12 OFFICER BLANDEN, and DOES 11 through 100.

13 JURISDICTION

14 6. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the
15 Fourth, Eighth and Fourteenth Amendments to the United States Constitution.
16 Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1341(3) and (4) and the
17 aforementioned statutory and constitutional provisions.

18 7. The court has supplemental jurisdiction over plaintiff's state claims under
19 28 U.S.C. § 1367(a).

20 8. The amount in controversy exceeds \$10,000, excluding interest and
21 costs.

22 PARTIES

23 9. Plaintiff KEVIN M. SCHILLING is a resident of Vallejo, California. Like all
24 those similarly situated, plaintiff is and at all material times herein was a citizen of the
25 United States who was arrested in one jurisdiction for an offense allegedly committed
26 in another jurisdiction and was transported from one detention facility to another
27 detention facility by defendants.

28 10. Defendant TRANSCOR AMERICA, LLC is and at all material times
referred to herein was a for-profit Tennessee corporation licensed to do business in

1 California whose business entails the transportation of pretrial detainees and prisoners
2 throughout the United States on behalf of federal, state, and local governments.

3 11. Defendant SGT. JOHN SMITH is an agent and/or employee of defendant
4 TRANSCOR AMERICA, LLC.

5 12. Defendant OFFICER BLANDEN is an agent and/or employee of
6 Defendant TRANSCOR AMERICA, LLC.

7 13. Plaintiff is informed and believes and thereon alleges that defendants
8 sued herein by their fictitious names, DOES 1 through 100, are agents and/or
9 employees of defendant TRANSCOR AMERICA, LLC. Plaintiff is not currently aware
10 of the true names and identities of those sued herein as DOES 1 through 100, but will
11 amend his complaint to include such persons' real names once said names are made
12 available to him.

13 14. At all material times mentioned herein, each of the defendants was
14 acting under the color of law, to wit, under color of statutes, ordinances, regulations,
15 policies, customs and usages of the United States and its States, including but not
16 limited to the State of California.

17 15. Class action plaintiffs are all those similarly situated pretrial detainees
18 and prisoners who were transported by TRANSCOR AMERICA, LLC, its agents and/or
19 employees, and forced to remain in the transport van for more than 24 hours, within
20 the two years preceding the filing of this Complaint and the date this matter is
21 resolved.

22 16. For purposes of the California Unruh Act Claim, class action plaintiffs are
23 all those similarly situated pretrial detainees and prisoners who were transported in the
24 State of California by TRANSCOR AMERICA, LLC, its agents and/or employees, and
25 forced to remain in the transport van for more than 24 hours, within the two years
26 preceding the filing of this Complaint and the date this matter is resolved.

27 FACTS

28 18. In or about early September, 2006, plaintiff KEVIN M. SCHILLING was
arrested at his home in Vallejo, California on a no-bail warrant issued by a court in Las
Vegas, Nevada. Plaintiff was booked into a detention facility in Fairfield, California,

1 where he remained for several days.

2 19. On or about September 22, 2006, plaintiff was picked up at the Fairfield
3 Detention facility by agents and/or employees of defend ant TRANSCOR AMERICA,
4 LLC. Before boarding the transport van, plai ntiff was strip searched. He was then
5 handcuffed, a restraint was applied that se cured his hands to his waist, and he was
6 shackled. After boarding the transport van, pl aintiff was seated on a metal bench in a
7 small, locked metal cage in which it was impossible for him to stand up or lie down.

8 20. For the next several days, plaint iff remained in the transport van,
9 restrained as described above, while t he van meandered around California -- from
10 Fairfield through counties within the Northern District of the United States District
11 Court, to Fresno and then back, once agai n through counties within the Northern
12 District of the United States District Cour t, to Fairfield – picking up and dropping off
pretrial detainees and/or prisoners.

13 21. During his time in the transport v an, plaintiff was provided with only two
14 meals a day, which consisted of a fast food sandwich or hambur ger and a cup of
15 water. Plaintiff was not permitted to lie dow n or stand up or shower or shave or brush
16 his teeth or change his clot hes. He was forced to use the on-board toilet at the
17 defendants' convenience. Eventually, it backed up and smelled bad. But for the steps
18 from his cage to the toilet and back, he was allowed no physical activity.

19 22. When, after approximately four da ys of traveling in these conditions,
20 plaintiff realized that the TRANSCOR AMERICA, LLC transport van was headed back
21 to Fairfield, he demanded to talk to the wa rden. In response, and while he was still
22 detained as described above, defendant s SGT. JOHN SMITH and OFFICER
23 BLANDEN grabbed him and sprayed pepper spray in his face. While plaintiff was still
24 unable to see, SGT. JOHN SMITH purposely walked him into poles and, along with an
25 unknown TRANSCOR AMERICA, LLC employ ee, proceeded to punch him. Although
26 this occurred at approximately 3:00 a.m. out side the Fresno County Jail, plaintiff was
27 not allowed to shower or change clothes or see a nurse or a doctor until approximately
28 two days later when, after making numerous stops along the way, the transport van
reached Imperial County Jail.

1 23. Plaintiff remained in the Imperial County Jail for approximately three
2 days, after which time he was transported to Las Vegas.

3 24. Defendants TRANSCOR AMERICA, LLC and SGT. SMITH and
4 OFFICER BLANDEN and DOES 1 through 100 are jointly and severally personally
5 responsible for the unlawful conduct of which plaintiff complains.

6 25. As a result of being subjected to the harsh transportation policies,
7 practices, or customs described herein, plaintiff, and all those similarly situated, have
8 suffered physical, mental, and emotional distress, invasion of privacy, and violation of
9 due process of law and federal and state statutory and constitutional rights, and are
10 entitled to recover damages according to proof, including exemplary damages.

11 CLASS CLAIMS

12 26. The unlawful detention and transportation, use of excessive force, and
13 cruel and unusual punishment to which plaintiff and all those similarly situated were
14 subjected was performed pursuant to policies, practices, or customs of TRANSCOR
15 AMERICA, LLC and DOES 1-10. The unlawful detention and transportation, use of
16 excessive force, and cruel and unusual punishment complained of herein was
17 engaged in without regard to the nature of the alleged offense for which plaintiff, and
18 each of those similarly situated, had been arrested, without regard to whether or not
19 plaintiff, and each of those similarly situated, had been convicted of any crime, and
20 without regard to whether plaintiff, and each of those similarly situated, had any history
21 of violence.

22 27. Plaintiff brings this action on his own behalf and on behalf of all persons
23 similarly situated pursuant to Rule 23, Federal Rules of Civil Procedure.

24 28. The class is defined to include all pretrial detainees and prisoners who
25 were transported by TRANSCOR AMERICA, LLC, its agents and/or employees, and
26 forced to remain in the transport van for more than 24 hours, from two years preceding
27 the filing of this Complaint to the date this matter is resolved.

28 29. The subclass for purposes of the Unruh Act claims is all pretrial
detainees and prisoners transported in California by TRANSCOR AMERICA, LLC, its
agents and/or employees, and forced to remain in the transport van for more than 24

1 hours, from two years preceding the filing of this Complaint to the date this matter is
2 resolved.

3 30. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the
4 members of the class are so numerous that joinder of all members is impractical.
5 Plaintiff does not know the exact number of class members. Plaintiff is informed and
6 believes, and thereupon alleges, that more than 30,000 persons per year are
7 transported by defendants, and that most of the trips last more than 24 hours. Plaintiff
8 is informed and believes, and therefore alleges, that there are thousands of persons in
9 the proposed class.

10 31. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiff
11 is informed and believes, and thereupon alleges, that there are many facts common to
12 the class including but not limited to: (a) whether defendants have a policy, practice,
13 or custom of transporting pretrial detainees and prisoners in small metal cages,
14 wearing handcuffs, shackles, and wrist restraints, for more than 24 hours at a time; (b)
15 whether defendants have a policy, practice or custom of providing pretrial detainees
16 and prisoners with inadequate food; (c) whether defendants have a policy, practice or
17 custom of providing pretrial detainees and prisoners with inadequate fluids; (d)
18 whether defendants have a policy, practice or custom of providing pretrial detainees
19 and prisoners with inadequate hygiene; (e) whether defendants have a policy, practice
20 or custom of providing pretrial detainees and prisoners with inadequate exercise; and
21 (f) whether defendants have a policy, practice or custom of providing pretrial
22 detainees and prisoners with inadequate medical care.

23 32. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiff
24 is informed and believes, and thereupon alleges, that there are many questions of law
25 common to the class including but are not limited to: (a) whether transporting pretrial
26 detainees and prisoners in metal cages, wearing handcuffs, shackles, and wrist
27 restraints, unable to lie down or stand up for more than 24 hours at a time, violates the
28 Fourth, Eighth, and Fourteenth Amendments; (b) whether defendants' policy, practice
or custom of providing pretrial detainees and prisoners with inadequate food violates
pretrial detainees' right to be free from unreasonable seizure and detention and

1 prisoners' right to be free from cruel and unusual punishment; (c) whether defendants'
2 policy, practice or custom of providing pretrial detainees and prisoners with inadequate
3 fluids violates pretrial detainees' right to be free from unreasonable seizure and
4 detention and prisoners' right to be free from cruel and unusual punishment; (d)
5 whether defendants' policy, practice or custom of providing pretrial detainees and
6 prisoners with inadequate hygiene violates pretrial detainees' right to be free from
7 unreasonable seizure and detention and prisoners' right to be free from cruel and
8 unusual punishment; (e) whether defendants' policy, practice or custom of providing
9 pretrial detainees with inadequate exercise violates pretrial detainees' right to be free
10 from unreasonable seizure and detention; and (f) whether defendants' policy, practice
11 or custom of providing pretrial detainees and prisoners with inadequate medical care
12 violates pretrial detainees' right to be free from unreasonable seizure and detention
and prisoners' right to be free from cruel and unusual punishment.

13 33. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the
14 claims of the representative plaintiff are typical of the class. Representative plaintiff
15 has the same interests and suffered the same type of injuries as all of the class
16 members. Plaintiff's claims arose because of defendants' official policy, practice, or
17 custom of subjecting detainees to unlawful transportation and detention, excessive
18 force, and cruel and unusual punishment. Plaintiff's claims are based upon the same
19 legal theories as the claims of the class members. Each class member suffered actual
20 damages as a result of being transported under the conditions imposed by
21 TRANSCOR AMERICA, LLC.

22 34. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the
23 representative plaintiff will fairly and adequately protect the class interests. Plaintiff's
24 interests are consistent with and not antagonistic to the interests of the class.

25 35. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(A),
26 prosecutions of separate actions by individual members of the class would create a
27 risk that inconsistent or varying adjudications with respect to individual members of the
28 class would establish incompatible standards of conduct for the parties opposing the
class.

1 36. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(B),
2 prosecutions of separate actions by individual members of the class would create a
3 risk of inconsistent adjudications with respect to individual members of the class which
4 would, as a practical matter, substantially impair or impede the interests of the other
5 members of the class to protect their interests.

6 37. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(2),
7 plaintiff is informed and believes, and thereupon alleges, that defendants have acted
8 on grounds generally applicable to the class, thereby making appropriate the final
9 injunctive or declaratory relief with respect to the class as a whole.

10 38. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), this
11 class action is superior to other available methods for the fair and equitable
12 adjudication of the controversy between the parties. Plaintiff is informed and believes,
13 and thereupon alleges, that the interests of members of the class in individually
14 controlling the prosecution of a separate action is low, in that most class members
15 would be unable individually to prosecute any action at all. Plaintiff is informed and
16 believes, and thereupon alleges, that the amounts at stake for individuals are so small
17 that separate suits would be impracticable. Plaintiff is informed and believes, and
18 thereupon alleges, that most members of the class will not be able to find counsel to
19 represent them. Plaintiff is informed and believes, and thereupon alleges, that it is
20 desirable to concentrate all litigation in one forum because it will promote judicial
21 efficiency to resolve the common questions of law and fact in one forum, rather than in
22 multiple courts.

23 39. Plaintiff does not know the identities of all of the class members. Plaintiff
24 is informed and believes, and thereupon alleges, that the identities of the class
25 members may be ascertained from records maintained by defendant TRANSCOR
26 AMERICA, LLC. Plaintiff is informed and believes, and thereupon alleges, that records
27 maintained by defendants reflect who was subjected to transportation, from where to
28 where, when, and for how long. Plaintiff is informed and believes, and thereupon
alleges, that all of the foregoing information is contained in defendants' records and
that the information necessary to identify the class members, by last known

1 addresses, and the dates, pick-up and drop -off points, and duration of their
2 transportation, is readily available from said records.

3 40. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), class
4 members must be furnished with the best notice practicable under the circumstances,
5 including individual notice to all members who can be identified through reasonable
6 effort. Plaintiff is informed and believes, and thereupon alleges, that defendants'
7 computer records contain a last known address for class members. Plaintiff
8 contemplates that individual notice will be given to class members at such last known
9 address by first class mail. Plaintiff contemplates that the notice will inform class
10 members of the following:

- 11 i. The pendency of the class action and the issues common to
12 the class;
- 13 ii. The nature of the action;
- 14 iii. Their right to "opt out" of the action within a given time, in
15 which event they will not be bound by a decision rendered in
16 the class action;
- 17 iv. Their right, if they do not "opt out," to be represented by their
18 own counsel and to enter an appearance in the case;
19 otherwise they will be represented by the named class
20 plaintiff(s) and their counsel; and
- 21 v. Their right, if they do not "opt out," to share in any recovery in
22 favor of the class, and conversely to be bound by any
23 judgment on the common issues adverse to the class.

24 FIRST CLAIM FOR RELIEF

25 (Violation Of Fourth, Eighth And Fourteenth Amendments To The U.S.
26 Constitution On Behalf Of Plaintiff And All Persons Similarly Situated
27 Against Defendants TRANSCOR AMERICA, LLC And DOES 1 through
28 100, And Each Of Them)

41. Plaintiff hereby incorporates herein the preceding paragraphs of this
complaint, to the extent relevant, as if fully set forth.

1 42. Defendants' policies, practices, or customs regarding the transportation
2 of pretrial detainees and prisoners violated the rights of plaintiff, and the rights of each
3 of those similarly situated, under the Fourth and Eighth Amendments to be free from
4 unlawful detention, the use of excessive force, and cruel and unusual punishment, and
5 violated the rights of plaintiff, and the rights of each of those similarly situated, under
6 the Fourteenth Amendment to due process and privacy, and directly and proximately
7 damaged plaintiff, and each of those similarly situated, as herein alleged, entitling
8 plaintiff, and each of those similarly situated, to recover damages for said
9 constitutional violations pursuant to 42 U.S.C. § 1983.

10 WHEREFORE, plaintiff, on behalf of himself and on behalf of all those
11 similarly situated, prays for relief as hereunder appears.

12 SECOND CLAIM FOR RELIEF

13 (Violation Of The California State Unruh Civil Rights Act, Civil Code
14 Section 52.1, On Behalf Of Plaintiff And All Persons Similarly Situated
And Against All Defendants, And Each Of Them)

15 43. Plaintiff hereby incorporates herein the preceding paragraphs of this
16 complaint, to the extent relevant, as if fully set forth.

17 44. By subjecting plaintiff, and all those similarly situated, to unlawful seizure
18 and detention, the use of excessive force, and cruel and unusual punishment,
19 defendants, and each of them, have interfered by threats, intimidation, or coercion with
20 plaintiff's rights, and the rights of all those similarly situated, secured by the
21 Constitution of the United States and the rights secured by the Constitution of
22 California.

23 45. Plaintiff, and each of the persons plaintiff seeks to represent, was
24 harmed by defendants' interference with their aforementioned constitutional and
25 statutory rights.

26 46. By using threats, intimidation and coercion to interfere with plaintiff's, and
27 each of the persons' plaintiff seeks to represent, aforementioned constitutional and
28 statutory rights, defendants, and each of them, have violated California Civil Code §

1 52.1.

2 47. Defendants' violations of California Civil Code § 52.1 makes them liable
3 to each plaintiff for damages up to a maximum of three times the amount of each
4 plaintiff's actual damages, but in no event less than four thousand dollars (\$4,000),
5 together with any attorney's fees and costs that may be determined by the court.

6 WHEREFORE, plaintiff, on behalf of himself and on behalf of all those
7 similarly situated, prays for relief as hereunder appears.

8 THIRD CLAIM FOR RELIEF

9 (Violation Of Fourth And Fourteenth Amendments To The U.S.
10 Constitution On Behalf Of Plaintiff Against All Defendants, And Each Of
11 Them)

12 48. Plaintiff hereby incorporates herein the preceding paragraphs of this
13 complaint, to the extent relevant, as if fully set forth.

14 49. Defendants TRANSCOR AMERICA, LLC, SGT. SMITH, OFFICER
15 BLANDEN, and DOES 1 through 100 acted under color of law in detaining and
16 transporting plaintiff in conditions that amounted to punishment, subjecting plaintiff to
17 excessive force, and depriving plaintiff of adequate food, fluids, hygiene, exercise and
18 medical care, thereby violating plaintiff's rights under the Fourth and Fourteenth
19 Amendments, and directly and proximately injuring plaintiff, as herein alleged, entitling
20 plaintiff to recover damages for said constitutional violations pursuant to 42 U.S.C. §
21 1983.

22 50. As a proximate result of the conduct of defendants, plaintiff suffered
23 physical pain and emotional distress and incurred general damages for the deprivation
24 of his constitutional rights.

25 51. Defendants acted in reckless and callous disregard for the constitutional
26 rights of plaintiff, and with willful oppression and malice. Plaintiff therefore seeks an
27 award of punitive damages against the individual Defendants.

28 WHEREFORE, plaintiff prays for relief as hereunder appears.

FOURTH CLAIM FOR RELIEF

1
2 (Violation Of Fourth And Fourteenth Amendments To The U.S.
3 Constitution On Behalf Of Plaintiff Against Defendants TRANSCOR
4 AMERICA, LLC And DOES 1 through 10, And Each Of Them, For
5 Failure To Supervise)

6 52. Plaintiff hereby incorporates herein the preceding paragraphs of this
7 complaint, to the extent relevant, as if fully set forth. Plaintiff is informed and believes
8 that defendants TRANSCOR AMERICA, LLC and DOES 1 through 10 participated in
9 the violation of plaintiff's rights by failing to provide adequate training, supervision,
10 discipline, and control of their agents and employees, including defendants SGT.
11 SMITH and OFFICER BLANDEN, with respect to the constitutional prohibition against
12 unreasonable searches and seizures and the appropriate use of force and by ratifying
13 the conduct of the Defendants described in this complaint, thereby acquiescing in the
14 deprivation of plaintiff's rights.

15 WHEREFORE, plaintiff prays for relief as hereunder appears.

16 PRAYER FOR RELIEF

17 WHEREFORE, plaintiff, on behalf of himself and on behalf of all those
18 similarly situated, seeks judgment as follows:

19 1. For declaratory and injunctive relief declaring illegal and enjoining,
20 preliminarily and permanently, defendants' policy, practice, or custom of transporting
21 pretrial detainees and prisoners under the conditions described herein;

22 2. Certification of the action as a class action;

23 3. For compensatory, general, and special damages for each
24 representative and for each member of the class of plaintiffs, as against all
25 defendants;

26 4. Exemplary damages as against each of the individual defendants
27 in an amount sufficient to deter and to make an example of those defendants;

28 5. Attorneys' fees and costs under 42 U.S.C. § 1988, and California
Civil Code §§ 52 et seq.; and,

6. The cost of this suit and such other relief as the court finds just

1 and proper.

2 DEMAND FOR A JURY TRIAL

3 1. Pursuant to F.R.Civ.P. 38(b), a jury trial is hereby demanded.

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5 DATED: February 14, 2008

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7 Respectfully submitted,

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9 Andrew C. Schwartz
10 CASPER, MEADOWS, SCHWARTZ & COOK
11 Attorneys for Plaintiff

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