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

19 KEVIN M. SCHILLING, JOHN PINEDO,
20 WILLIAM TELLEZ, on behalf of themselves
and all those similarly situated,

21 Pl aintiffs,

22 vs.

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

25 Defendants.

Case No. 3:08-cv-00941-SI

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

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1 PLAINTIFFS COME BEFORE THIS HONORABLE COURT AND ALLEGE:

2 **INTRODUCTION**

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

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

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

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

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

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

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

12 JURISDICTION

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

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

19 9. The amount in controversy exceeds \$10,000, excluding interest and costs.

20 PARTIES

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

26 11. Plaintiff JOHN PINEDO is a resident of Delano, California. Like all those
27 similarly situated, plaintiff is and at all material times herein was a citizen of the United States
28

1 who was a sentenced prisoner serving time in one jurisdiction when he was picked up by
2 defendant TRANSCOR AMERICA, LLC and transported to another jurisdiction for a court
3 appearance.

4 12. Plaintiff WILLIAM TELLEZ is a citizen of the United States who was serving a
5 sentence in the Federal Penitentiary in Atwater, California, when he was picked up and
6 transported to and from Clark County Detention Center in Nevada by defendant TRANSCOR
7 AMERICA, LLC.

8 13. Defendant TRANSCOR AMERICA, LLC is and at all material times referred to
9 herein was a for-profit Tennessee corporation licensed to do business in California whose
10 business entails the transportation of pretrial detainees and prisoners throughout the United
11 States on behalf of federal, state, and local governments.

12 14. Defendant SGT. JOHN SMITH is an agent and/or employee of defendant
13 TRANSCOR AMERICA, LLC.

14 15. Defendant OFFICER BLANDEN is an agent and/or employee of Defendant
15 TRANSCOR AMERICA, LLC.

16 16. Plaintiffs are informed and believe and thereon allege that defendants sued
17 herein by their fictitious names, DOES 1 through 100, are agents and/or employees of
18 defendant TRANSCOR AMERICA, LLC. Plaintiffs are not currently aware of the true names
19 and identities of those sued herein as DOES 1 through 100, but will amend their complaint to
20 include such persons' real names once said names are made available to them.

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

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

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

6 **FACTS**

7 20. In or about early September, 2006, plaintiff KEVIN M. SCHILLING was
 8 arrested at his home in Vallejo, California on a no-bail warrant issued by a court in Las Vegas,
 9 Nevada. Plaintiff was booked into a detention facility in Fairfield, California, where he
 10 remained for several days.

11 21. On or about September 22, 2006, plaintiff was picked up at the Fairfield
 12 Detention facility by agents and/or employees of defendant TRANSCOR AMERICA, LLC.
 13 Before boarding the transport van, plaintiff was strip searched. He was then handcuffed, a
 14 restraint was applied that secured his hands to his waist, and he was shackled. After boarding
 15 the transport van, plaintiff was seated on a metal bench in a small, locked metal cage in which
 16 it was impossible for him to stand up or lie down.

17 22. For the next several days, plaintiff remained in the transport van, restrained as
 18 described above, while the van meandered around California -- from Fairfield through counties
 19 within the Northern District of the United States District Court, to Fresno and then back, once
 20 again through counties within the Northern District of the United States District Court, to
 21 Fairfield – picking up and dropping off pretrial detainees and/or prisoners.

22 23. During his time in the transport van, plaintiff was provided with only two meals
 23 a day, which consisted of a fast food sandwich or hamburger and a cup of water. Plaintiff was
 24 not permitted to lie down or stand up or shower or shave or brush his teeth or change his
 25 clothes. He was forced to use the on-board toilet at the defendants’ convenience. Eventually,
 26 it backed up and smelled bad. But for the steps from his cage to the toilet and back, he was
 27 allowed no physical activity.

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1 24. When, after approximately four days of traveling in these conditions, plaintiff
2 realized that the TRANSCOR AMERICA, LLC transport van was headed back to Fairfield, he
3 demanded to talk to the warden. In response, and while he was still detained as described
4 above, defendants SGT. JOHN SMITH and OFFICER BLANDEN grabbed him and sprayed
5 pepper spray in his face. While plaintiff was still unable to see, SGT. JOHN SMITH purposely
6 walked him into poles and, along with an unknown TRANSCOR AMERICA, LLC employee,
7 and proceeded to punch him. Although this occurred at approximately 3:00 a.m. outside the
8 Fresno County Jail, plaintiff was not allowed to shower or change clothes or see a nurse or a
9 doctor until approximately two days later when, after making numerous stops along the way,
10 the transport van reached Imperial County Jail.

11 25. Plaintiff remained in the Imperial County Jail for approximately three days, after
12 which time he was transported to Las Vegas.

13 26. On or about June 29, 2006, at approximately 9:00 a.m., plaintiff JOHN PINEDO
14 was picked up by defendant TRANSCOR AMERICA, LLC, at Kern Valley State Prison in
15 Delano, California where he was serving a sentence for possession and sale of marijuana, and
16 transported to Santa Barbara County Jail where he arrived on June 30, 2005, more than 27
17 hours later for a child custody hearing.

18 27. The entire time plaintiff PINEDO was on defendant TRANSCOR's transport
19 vehicle, he was handcuffed, shackled, and restrained with a belly chain and chained to other
20 inmates in a metal cage, unable to lie down, or to sleep during the entire time of his transport.

21 28. During his time in the transport van, plaintiff PINEDO was permitted only two
22 opportunities to urinate but could not sit to use the toilet to defecate because the TRANSCOR
23 personnel would not remove any of the restraints.

24 29. During the entire time of his transport, plaintiff PINEDO was fed only three
25 "fast food" meals, not permitted to wash, to shower, or to change his clothes, before being
26 delivered to Santa Barbara County Jail.

27 30. In or about August 2005, plaintiff TELLEZ was serving a sentence at the
28 Federal Penitentiary in Atwater, California, when he was first picked up for transport to Clark

1 County Detention Center. The trip on the TRANSCOR transport van took six (6) days, during
2 which time several stops were made to pick up and discharge prisoners along the way.

3 31. Plaintiff TELLEZ was manacled, shackled and handcuffed during the entire
4 time of his transport. He had limited access to toilet facilities, was not permitted to shower at
5 any time during the six (6) day transport, and had only a restricted diet of “fast food” during the
6 entire time on the transport van.

7 32. Transported in a cage, manacled, shackled, and waist chained, he was unable to
8 lie down and deprived of sleep during the entire time of the transport.

9 33. Transported by TRANSCOR back to Atwater in late February 2006, plaintiff
10 TELLEZ was again subjected to the same abominable conditions he experienced on the initial
11 trip from Atwater: six (6) day transport while handcuffed, shackled and waist chained the
12 entire time in a small metal cage in which he was unable to lie down and deprived of sleep.

13 34. Again, he was fed only a restricted diet of “fast food”, denied bathroom breaks,
14 and never unshackled in order to use the toilet to defecate.

15 35. Defendants TRANSCOR AMERICA, LLC and SGT. SMITH and OFFICER
16 BLANDEN and DOES 1 through 100 are jointly and severally personally responsible for the
17 unlawful conduct of which plaintiffs complain.

18 36. As a result of being subjected to the harsh transportation policies, practices, or
19 customs described herein, plaintiffs, and all those similarly situated, have suffered physical,
20 mental, and emotional distress, invasion of privacy, and violation of due process of law and
21 federal and state statutory and constitutional rights, and are entitled to recover damages
22 according to proof, including exemplary damages.

23 CLASS CLAIMS

24 37. The unlawful detention and transportation, use of excessive force, and cruel and
25 unusual punishment to which plaintiffs and all those similarly situated were subjected was
26 performed pursuant to policies, practices, or customs of TRANSCOR AMERICA, LLC and
27 DOES 1-10. The unlawful detention and transportation, use of excessive force, and cruel and
28 unusual punishment complained of herein was engaged in without regard to the nature of the

1 alleged offense for which plaintiffs, and each of those similarly situated, had been arrested,
2 without regard to whether or not plaintiffs, and each of those similarly situated, had been
3 convicted of any crime, and without regard to whether plaintiffs, and each of those similarly
4 situated, had any history of violence.

5 38. Plaintiffs bring this action on their own behalf and on behalf of all persons
6 similarly situated pursuant to Rule 23, Federal Rules of Civil Procedure.

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

11 40. The subclass for purposes of the Bane Act claims is all pretrial detainees and
12 prisoners transported in California by TRANSCOR AMERICA, LLC, its agents and/or
13 employees, and forced to remain in the transport van for more than 24 hours, from two years
14 preceding the filing of this Complaint to the date this matter is resolved.

15 41. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members
16 of the class are so numerous that joinder of all members is impractical. Plaintiffs do not know
17 the exact number of class members. Plaintiffs are informed and believe, and thereupon allege,
18 that more than 30,000 persons per year are transported by defendants, and that most of the trips
19 last more than 24 hours. Plaintiffs are informed and believe, and therefore allege, that there are
20 thousands of persons in the proposed class.

21 42. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are
22 informed and believe, and thereupon allege, that there are many facts common to the class
23 including but not limited to: (a) whether defendants have a policy, practice, or custom of
24 transporting pretrial detainees and prisoners in small metal cages, wearing handcuffs, shackles,
25 and wrist restraints, for more than 24 hours at a time; (b) whether defendants have a policy,
26 practice or custom of providing pretrial detainees and prisoners with inadequate food; (c)
27 whether defendants have a policy, practice or custom of providing pretrial detainees and
28 prisoners with inadequate fluids; (d) whether defendants have a policy, practice or custom of

1 providing pretrial detainees and prisoners with inadequate hygiene; (e) whether defendants
2 have a policy, practice or custom of providing pretrial detainees and prisoners with inadequate
3 exercise; and (f) whether defendants have a policy, practice or custom of providing pretrial
4 detainees and prisoners with inadequate medical care.

5 43. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are
6 informed and believe, and thereupon allege, that there are many questions of law common to
7 the class including but are not limited to: (a) whether transporting pretrial detainees and
8 prisoners in metal cages, wearing handcuffs, shackles, and wrist restraints, unable to lie down
9 or stand up for more than 24 hours at a time, violates the Fourth, Eighth, and Fourteenth
10 Amendments; (b) whether defendants' policy, practice or custom of providing pretrial
11 detainees and prisoners with inadequate food violates pretrial detainees' right to be free from
12 unreasonable seizure and detention and prisoners' right to be free from cruel and unusual
13 punishment; (c) whether defendants' policy, practice or custom of providing pretrial detainees
14 and prisoners with inadequate fluids violates pretrial detainees' right to be free from
15 unreasonable seizure and detention and prisoners' right to be free from cruel and unusual
16 punishment; (d) whether defendants' policy, practice or custom of providing pretrial detainees
17 and prisoners with inadequate hygiene violates pretrial detainees' right to be free from
18 unreasonable seizure and detention and prisoners' right to be free from cruel and unusual
19 punishment; (e) whether defendants' policy, practice or custom of providing pretrial detainees
20 with inadequate exercise violates pretrial detainees' right to be free from unreasonable seizure
21 and detention; and (f) whether defendants' policy, practice or custom of providing pretrial
22 detainees and prisoners with inadequate medical care violates pretrial detainees' right to be free
23 from unreasonable seizure and detention and prisoners' right to be free from cruel and unusual
24 punishment.

25 44. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the claims of
26 the representative plaintiffs are typical of the class. Representative plaintiffs have the same
27 interests and suffered the same type of injuries as all of the class members. Plaintiffs' claims
28 arose because of defendants' official policy, practice, or custom of subjecting detainees to

1 unlawful transportation and detention, excessive force, and cruel and unusual punishment.
2 Plaintiffs' claims are based upon the same legal theories as the claims of the class members.
3 Each class member suffered actual damages as a result of being transported under the
4 conditions imposed by TRANSCOR AMERICA, LLC.

5 45. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the
6 representative plaintiffs will fairly and adequately protect the class interests. Plaintiffs'
7 interests are consistent with and not antagonistic to the interests of the class.

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

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

17 48. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(2), plaintiffs
18 are informed and believe, and thereupon allege, that defendants have acted on grounds
19 generally applicable to the class, thereby making appropriate the final injunctive or declaratory
20 relief with respect to the class as a whole.

21 49. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), this class
22 action is superior to other available methods for the fair and equitable adjudication of the
23 controversy between the parties. Plaintiffs are informed and believe, and thereupon allege, that
24 the interests of members of the class in individually controlling the prosecution of a separate
25 action is low, in that most class members would be unable individually to prosecute any action
26 at all. Plaintiffs are informed and believe, and thereupon allege, that the amounts at stake for
27 individuals are so small that separate suits would be impracticable. Plaintiffs are informed and
28 believe, and thereupon allege, that most members of the class will not be able to find counsel to

1 represent them. Plaintiffs are informed and believe, and thereupon allege, that it is desirable to
2 concentrate all litigation in one forum because it will promote judicial efficiency to resolve the
3 common questions of law and fact in one forum, rather than in multiple courts.

4 50. Plaintiffs do not know the identities of all of the class members. Plaintiffs are
5 informed and believe, and thereupon allege, that the identities of the class members may be
6 ascertained from records maintained by defendant TRANSCOR AMERICA, LLC. Plaintiffs
7 are informed and believe, and thereupon allege, that records maintained by defendants reflect
8 who was subjected to transportation, from where to where, when, and for how long. Plaintiffs
9 are informed and believe, and thereupon allege, that all of the foregoing information is
10 contained in defendants' records and that the information necessary to identify the class
11 members, by last known addresses, and the dates, pick-up and drop-off points, and duration of
12 their transportation, is readily available from said records.

13 51. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), class
14 members must be furnished with the best notice practicable under the circumstances, including
15 individual notice to all members who can be identified through reasonable effort. Plaintiffs are
16 informed and believe, and thereupon allege, that defendants' computer records contain a last
17 known address for class members. Plaintiffs contemplate that individual notice will be given to
18 class members at such last known address by first class mail. Plaintiffs contemplate that the
19 notice will inform class members of the following:

- 20 i. The pendency of the class action and the issues common to the
21 class;
- 22 ii. The nature of the action;
- 23 iii. Their right to "opt out" of the action within a given time, in which
24 event they will not be bound by a decision rendered in the class
25 action;
- 26 iv. Their right, if they do not "opt out," to be represented by their own
27 counsel and to enter an appearance in the case; otherwise they will
28 be represented by the named class plaintiffs and their counsel; and

1 v. Their right, if they do not “opt out ,” to share in any recovery in
2 favor of the class, and conversely to be bound by any judgment on
3 the common issues adverse to the class.

4 **FIRST CLAIM FOR RELIEF**

5 (Violation Of Fourth, Eighth And Fourteenth Amendments To The U.S.
6 Constitution On Behalf Of Plaintiffs And All Persons Similarly Situated Against
7 Defendants TRANSCOR AMERICA, LLC And DOES 1 through 100, And
8 Each Of Them)

9 52. Plaintiffs hereby incorporate herein the preceding paragraphs of this complaint,
10 to the extent relevant, as if fully set forth.

11 53. Defendants’ policies, practices, or customs regarding the transportation of
12 pretrial detainees and prisoners violated the rights of plaintiffs, and the rights of each of those
13 similarly situated, under the Fourth and Eighth Amendments to be free from unlawful
14 detention, the use of excessive force, and cruel and unusual punishment, and violated the rights
15 of plaintiffs, and the rights of each of those similarly situated, under the Fourteenth
16 Amendment to due process and privacy, and directly and proximately damaged plaintiffs, and
17 each of those similarly situated, as herein alleged, entitling plaintiffs, and each of those
18 similarly situated, to recover damages for said constitutional violations pursuant to 42 U.S.C. §
19 1983.

20 WHEREFORE, plaintiffs, on behalf of themselves and on behalf of all those similarly
21 situated, prays for relief as hereunder appears.

22 **SECOND CLAIM FOR RELIEF**

23 (Violation Of The California State Bane Civil Rights Act, Civil Code Section
24 52.1, On Behalf Of Plaintiffs And All Persons Similarly Situated And Against
25 All Defendants, And Each Of Them)

26 54. Plaintiffs hereby incorporate herein the preceding paragraphs of this complaint,
27 to the extent relevant, as if fully set forth.

28 55. By subjecting plaintiffs, and all those similarly situated, to unlawful seizure and
detention, the use of excessive force, and cruel and unusual punishment, defendants, and each

1 of them, have interfered by threats, intimidation, or coercion with plaintiff's rights, and the
2 rights of all those similarly situated, secured by the Constitution of the United States and the
3 rights secured by the Constitution of California.

4 56. Plaintiffs, and each of the persons plaintiffs seek to represent, was harmed by
5 defendants' interference with their aforementioned constitutional and statutory rights.

6 57. By using threats, intimidation and coercion to interfere with plaintiffs', and each
7 of the persons' plaintiffs seek to represent, aforementioned constitutional and statutory rights,
8 defendants, and each of them, have violated California Civil Code § 52.1.

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

13 WHEREFORE, plaintiffs, on behalf of themselves and on behalf of all those similarly
14 situated, pray for relief as hereunder appears.

15 **THIRD CLAIM FOR RELIEF**

16 (Violation Of Fourth And Fourteenth Amendments To The U.S. Constitution On
17 Behalf Of Plaintiffs Against All Defendants, And Each Of Them)

18 59. Plaintiffs hereby incorporate herein the preceding paragraphs of this complaint,
19 to the extent relevant, as if fully set forth.

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

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