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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PAUL BETANCES, individually and on behalf of all
others similarly situated,

Plaintiffs,

– against –

BRIAN FISCHER, in his capacity as Commissioner
of the New York State Department of Correctional
Services (DOCS), and in his individual capacity;
ANTHONY J. ANNUCCI, in his capacity as Deputy
Commissioner and Counsel for DOCS, and in his
individual capacity; LUCIEN J. LECLAIRE, JR., former
Acting Commissioner of DOCS, in his individual capacity;
GLENN S. GOORD, former Commissioner of DOCS,
in his individual capacity; and JOHN/JANE DOES 1-25
(DOCS Supervisory, Training, and Policy Personnel),
ANDREA W. EVANS, in her capacity as Chair and Chief
Executive Officer of the New York State Division of
Parole (DOP), and in her individual capacity; MARK
MANTEI, in his capacity as Executive Director of DOP,
and in his individual capacity; TERENCE TRACY,
in his capacity as Chief Counsel for DOP, and in his
individual capacity; ROBERT J. DENNISON, former
Chair of DOP, in his individual capacity; ANTHONY G.
ELLIS II, former Executive Director of DOP, in his
individual capacity; GEORGE B. ALEXANDER,
former Chair and Chief Executive Officer of DOP, in
his individual capacity and JOHN/JANE DOES 26-50
(DOP Supervisory, Training, and Policy Personnel),

Defendants.
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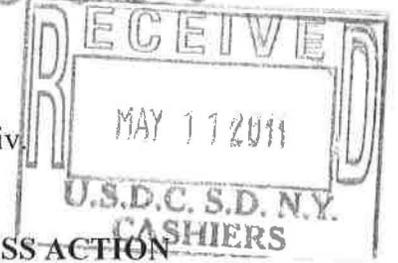
Plaintiff Paul Betances, on behalf of himself and others similarly situated, for his
Complaint, allege as follows:

INTRODUCTION

1. More than seventy years ago, a unanimous Supreme Court held that only the
judgment of a court establishes a defendant's sentence, and that imposition of an extra-judicial

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**CLASS ACTION
COMPLAINT AND
JURY DEMAND**



sentence violates a defendant's constitutional rights. *Hill v. United States ex rel. Wampler*, 298 U.S. 460 (1936) (Cardozo, J.).

2. Consistent with *Wampler*, the Court of Appeals for the Second Circuit has held that the imposition of an extra-judicial sentence of post-release supervision ("PRS") by the New York State Department of Correctional Services ("DOCS") and the New York State Division of Parole ("DOP") violated clearly established law. *Earley v. Murray*, 451 F.3d 71 (2d Cir. 2006).

3. Notwithstanding the unambiguous command of *Wampler* and *Earley*, defendants continued to administratively impose and enforce PRS on individuals such as plaintiff Betances, and thousands of others, whose sentences never included PRS (the "PRS Policy"). And, if imposing illegal and onerous supervision terms and collecting supervision fees were not enough, DOCS has also imprisoned individuals, such as plaintiff Betances, who are accused of violating PRS conditions.

4. Plaintiff Betances brings this action for injunctive and declaratory relief, and for compensatory and punitive damages, on behalf of himself and others similarly situated whose judicially imposed sentence(s) did not include a term of PRS, but whom nevertheless have been, subjected to PRS and/or incarcerated after the maximum expiration date of their determinate sentence(s).

JURISDICTION AND VENUE

5. This action arises under the Fourth and Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

6. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343(a) and 2201.

7. Venue is lodged in this Court pursuant to 28 U.S.C. 1391(b).

JURY DEMAND

8. Plaintiff demands trial by jury in this action

THE PARTIES

9. Plaintiff Paul Betances “plead guilty to Robbery in the First Degree and with a promised sentence of five years incarceration” on or about July 20, 2004. Consistent with that agreement, Mr. Betances was sentenced to “a determinate term of five years.” Mr. Betances was not sentenced to PRS. Although Mr. Betances was never sentenced to PRS, DOCS and DOP administratively imposed a five year term of prison for PRS on April 24, 2008, upon his release from prison after having served 6/7ths of his five year determinate sentence. Mr. Betances’s maximum determinate sentence expired on January 14, 2009. His unconstitutionally imposed PRS sentence was not scheduled to expire until April 24, 2013. Thereafter, starting on or about July 9, 2009, DOCS and DOP imprisoned Mr. Betances for violating the conditions of his PRS.

10. Defendant Brian Fischer is the Commissioner of DOCS. Since he was appointed to that position on January 1, 2007, he has been and continues to be responsible for the policy, practice, supervision, implementation, and conduct of all DOCS matters and responsible for the appointment, training, supervision, and conduct of all DOCS personnel. In addition, Commissioner Fischer has been and continues to be responsible for enforcing the rules of DOCS, and for ensuring that DOCS personnel obey the Constitution and laws of the United States. As Commissioner of DOCS, Fischer is a policy-maker with respect to DOCS’s decisions to administratively impose PRS. Commissioner Fischer is sued in his individual and official capacities.

11. Defendant Anthony J. Annucci is a Deputy Commissioner of, and Counsel to, DOCS. At all times relevant to this action, defendant Annucci has been, and continues to be, responsible for the policy, practice, supervision, implementation, and conduct of all DOCS matters and responsible for the appointment, training, supervision, and conduct of all DOCS personnel. In addition, Deputy Commissioner Annucci has been and continues to be responsible for enforcing the rules of DOCS, and for ensuring that DOCS personnel obey the Constitution and laws of the United States. As a Deputy Commissioner of, and Counsel to, DOCS, Annucci is a policy-maker with respect to DOCS's decisions to administratively impose PRS. Defendant Annucci is sued in his individual and official capacities.

12. Defendant Lucien J. LeClaire, Jr., was Acting Commissioner of DOCS from August 30 to December 31, 2006. Throughout that time, Acting Commissioner LeClaire was responsible for the policy, practice, supervision, implementation, and conduct of all DOCS matters and responsible for the appointment, training, supervision, and conduct of all DOCS personnel. In addition, Commissioner LeClaire was responsible for enforcing the rules of DOCS, and for ensuring that DOCS personnel obey the Constitution and laws of the United States. As Acting Commissioner of DOCS, LeClaire was a policy-maker with respect to DOCS's decisions to administratively impose PRS. Former Acting Commissioner LeClaire is sued in his individual capacity.

13. Defendant Glenn S. Goord was the Commissioner of DOCS from 1996 to August 30, 2006. Throughout that time, Commissioner Goord was responsible for the policy, practice, supervision, implementation, and conduct of all DOCS matters and responsible for the appointment, training, supervision, and conduct of all DOCS personnel. In addition, Commissioner Goord was responsible for enforcing the rules of DOCS, and for ensuring that

DOCS personnel obey the Constitution and laws of the United States. As a former Commissioner of DOCS, Goord was a policy-maker with respect to DOCS's decisions to administratively impose PRS. Former Commissioner Goord is sued in his individual capacity.

14. At all relevant times, defendants "Jane/John Does 1-25" were training, supervisory and policy making personnel within DOCS who implemented, enforced, perpetuated and/or allowed the unconscionable PRS Policy that is the subject of this action, acting in their capacity of agents, servants and employees of defendants Commissioners Fischer, Annucci, Leclaire and Goord and within the scope of their employment as such. Plaintiff is unable to determine the names of these DOCS supervisory defendants at this time and thus sue them under a fictitious designation. All are sued in their individual capacities.

15. Defendant Andrea W. Evans is the Chair and Chief Executive Officer of DOP. In that capacity, she has been and continues to be responsible for the policy, practice, supervision, implementation, and conduct of all DOP matters and responsible for the appointment, training, supervision, and conduct of all DOP personnel. In addition, Chair Evans has been and continues to be responsible for enforcing the rules of DOP, and for ensuring that DOP personnel obey the Constitution and laws of the United States. As Chair of DOP beginning on June 8, 2009, and prior thereto as a Director of DOP, Evans has been a policy-maker with respect to DOP's decisions to administratively impose and/or enforce PRS. Chair Evans is sued in her individual and official capacities.

16. Defendant Mark Mantei is Executive Director of DOP. In that capacity, he has been and continues to be responsible for the policy, practice, supervision, implementation, and conduct of all DOP matters and responsible for the appointment, training, supervision, and conduct of all DOP personnel. In addition, Director Mantei has been and continues to be

responsible for enforcing the rules of DOP, and for ensuring that DOP personnel obey the Constitution and laws of the United States. As Executive Director of DOP, Mantei has been a policy-maker with respect to DOP's decisions to administratively impose and/or enforce PRS. Director Mantei is sued in his individual and official capacities.

17. Defendant Terence Tracy, is Chief Counsel for DOP. At all times relevant to this action, defendant Tracy has been, and continues to be, responsible for the policy, practice, supervision, implementation, and conduct of all DOP matters and responsible for the appointment, training, supervision, and conduct of all DOP personnel. In addition, defendant Tracy, has been and continues to be responsible for enforcing the rules of DOP, and for ensuring that DOP personnel obey the Constitution and laws of the United States. As Chief Counsel to DOP, Tracy is a policy-maker with respect to DOP's decisions to administratively impose and/or enforce PRS. Defendant Tracy is sued in his individual and official capacities.

18. Defendant George B. Alexander was Acting Chair and Chief Executive Officer of DOP from May 2007 until June 2009. During his tenure, Acting Chair Alexander was responsible for the policy, practice, supervision, implementation, and conduct of all DOP matters and responsible for the appointment, training, supervision, and conduct of all DOP personnel. In addition, Acting Chair Alexander was responsible for enforcing the rules of DOP, and for ensuring that DOP personnel obey the Constitution and laws of the United States. As Acting Chair of DOP, Alexander was a policy-maker with respect to DOP's decisions to administratively impose and/or enforce PRS. Former Acting Chair Alexander is sued in his individual capacity.

19. Defendant Robert J. Dennison was Chair of DOP prior to defendant Alexander. During his tenure, Chair Dennison was responsible for the policy, practice,

supervision, implementation, and conduct of all DOP matters and responsible for the appointment, training, supervision, and conduct of all DOP personnel. In addition, Chair Dennison was responsible for enforcing the rules of DOP, and for ensuring that DOP personnel obey the Constitution and laws of the United States. As Chair of DOP, Dennison was a policy-maker with respect to DOP's decisions to administratively impose and/or enforce PRS. Former Chair Dennison is sued in his individual capacity.

20. Defendant Anthony G. Ellis II, was Executive Director of DOP prior to defendant Mantei. During his tenure, Director Ellis was responsible for the policy, practice, supervision, implementation, and conduct of all DOP matters and responsible for the appointment, training, supervision, and conduct of all DOP personnel. In addition, Director Ellis was responsible for enforcing the rules of DOP, and for ensuring that DOCS personnel obey the Constitution and laws of the United States. As a former Executive Director of DOP, Ellis was a policy-maker with respect to DOP's decisions to administratively impose and/or enforce PRS. Former Director Ellis is sued in his individual capacity.

21. At all relevant times, defendants "Jane/John Does 26-50" were training, supervisory and policy making personnel within DOP who implemented, enforced, perpetuated and/or allowed the unconscionable PRS Policy that is the subject of this action, acting in their capacity of agents, servants and employees of defendants defendants Evans, Mantei, Tracy, Alexander, Dennison and Ellis and within the scope of their employment as such. Plaintiff is unable to determine the names of these DOP supervisory defendants at this time and thus sues them under a fictitious designation. All are sued in their individual capacities.

22. During all times mentioned in this complaint, defendants, separately and in concert, engaged in acts and/or omissions which constituted deprivations of plaintiff's

constitutional rights, and the privileges and immunities of the plaintiff, and while these acts were carried out under color of law, they had no justification or excuse, and were instead gratuitous, illegal and improper.

CLASS ACTION ALLEGATIONS

23. Plaintiff Betances brings this case as a class action under Fed. R. Civ. P. 23(b)(2) and (b)(3) on behalf of all persons whose judicially imposed sentence(s) did not include a term of PRS, but whom nevertheless have been, or will be, subjected to PRS and/or incarcerated after the maximum expiration date of their determinate sentence(s).

24. This case is appropriate for treatment as an injunctive class under Rule 23(b)(2) because defendants have acted, or failed to act, on grounds generally applicable to the putative class, thereby making appropriate final injunctive relief with respect to the Rule (b)(2) Class as a whole.

25. This case is also appropriate for treatment as a damages class under Rule 23(b)(3) because common issues predominate over individual issues and a class action resolving the claims of this putative damages class is superior to any other method of fair and efficient adjudication.

26. On information and belief, the class includes hundreds of members. They are so numerous that joinder is impracticable.

27. On information and belief, joinder also is impracticable because many members of the class are low-income persons, may not speak English, and likely would have great difficulty in pursuing their rights individually.

28. The questions of law and fact presented by plaintiffs' claims are common to the absent class members they seek to represent. Among others, the questions of law and fact common to the Class are: (i) whether defendants enforced or failed to prevent the enforcement of the PRS Policy; (ii) the degree of acquiescence of supervisory personnel in DOCS and DOP to the known unlawful acts of subordinates, and the failure of supervisory defendants to train, supervise, and discipline DOCS and DOP subordinates; (iii) whether the PRS Policy violates due process; (iv) whether defendants actions were sufficiently wanton as to warrant the imposition of punitive damages; (v) whether defendants are immune from suit; and (vi) the nature of injunctive relief necessary to ameliorate the effects of the PRS Policy and protect the class from future harm.

29. Common issues of law and fact such as those set forth above (and many others) predominate over any individual issues.

30. The PRS Policy has resulted in the wrongful detention and confinement of, and the infliction of injuries upon, plaintiff and the Class. The claims alleged and the practices challenged in this complaint are common to all members of the class.

31. The violations suffered by plaintiff Betances are typical of those suffered by the class. The entire class will benefit from the remedial and monetary relief sought.

32. Plaintiff Betances has no conflict of interest with Class members, and will fairly and adequately protect the interests of the class. Counsel competent and experienced in federal class actions, federal civil rights litigation and criminal defense has been retained to represent the class. Emery Celli Brinckerhoff & Abady LLP is a law firm with offices in New York City with extensive experience in civil rights litigation and as class counsel in numerous lawsuits against state and local governments.

33. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because: (a) the prosecution of hundreds of separate actions would be inefficient and wasteful of legal resources; (b) the members of the class are scattered throughout New York State and are not likely to be able to vindicate and enforce their Constitutional and statutory rights unless this action is maintained as a class action; (c) the issues raised can be more fairly and efficiently resolved in the context of a single class action than piecemeal in many separate actions; (d) the resolution of litigation in a single forum will avoid the danger and resultant confusion of possible inconsistent determinations; (e) the prosecution of separate actions would create the risk of inconsistent or varying adjudications with respect to individuals pursuing claims against defendants which would establish incompatible standards of conduct for defendants; (f) defendants have acted and will act on grounds applicable to all class members, making final declaratory and injunctive relief on behalf of all members necessary and appropriate; and (g) questions of law and/or fact common to members of the class especially on issues of liability predominate over any question, such as that of individual damages, that affect individual members.

34. There will be no extraordinary difficulty in the management of the class action.

FACTS

35. The United States Constitution prohibits public officials, such as the Commissioner of the State DOCS and the Chair of DOP, or any of their subordinates, from administratively imposing and/or enforcing any term of detention on an individual beyond what a sentencing court has authorized.

36. Defendants know that they may not institute, enforce, or permit the imposition of PRS absent an express statement or judgment from a sentencing court to that effect.

37. Defendants' policy, practice, and custom mandating the imposition and enforcement of PRS on individuals not sentenced to PRS has been promulgated, effectuated, and/or enforced in bad faith and contrary to clearly established law.

38. In 1936, a unanimous Supreme Court held that the judgment of a court establishes a defendant's sentence, and that imposition of an additional sentence by an administrator violates a defendant's constitutional rights. *Hill v. United States ex rel. Wampler*, 298 U.S. 460 (1936) (Cardozo, J.). "The only sentence known to the law is the sentence or judgment entered upon the records of the court." *Id.* at 464. Any administratively added provision prolonging that sentence is void. *Id.* at 467.

39. In 2006, the Court of Appeals for the Second Circuit, relying on *Wampler*, held unconstitutional DOCS's administrative addition of a PRS term to the sentence of an individual whose sentence did not include PRS. *Earley v. Murray*, 451 F.3d 71 (2d Cir. 2006). Describing *Wampler* as "clearly established Supreme Court precedent," the Second Circuit declared: "The only cognizable sentence is the one imposed by the judge." 451 F.3d at 75. "Only the judgment of a court, as expressed through the sentence imposed by a judge, has the power to constrain a person's liberty." *Id.* Thus, "[t]he additional provision for post-release supervision added by DOCS is a nullity. The imposition of a sentence is a judicial act; only a judge can do it. The penalty [of PRS] administratively added by the Department of Corrections was, quite simply, never a part of the sentence." *Id.* at 76. DOCS's imposition of PRS violated the individual's due process rights. *Id.* at 76.

40. In flat defiance of the clear constitutional commands of *Wampler* and *Earley*, defendants have promulgated, implemented, enforced, and/or failed to rectify a policy, practice, and custom mandating the administrative imposition and enforcement of PRS on persons without authorization from a sentencing court.

41. On information and belief, hundreds (perhaps thousands) of individuals have been and continue to be subject to PRS pursuant to defendants' PRS Policy.

42. Each member of the class, including plaintiff Betances, was a victim of the PRS Policy.

43. As a direct result of the unlawful imposition and enforcement of PRS pursuant to the PRS Policy, each member of the Class has suffered or will suffer actual damages in forms involving, without limitation, mental anguish, pain and suffering.

Plaintiff Betances

44. Plaintiff Paul Betances's experience is representative of those of the putative class.

45. On or about July 20, 2004, Mr. Betances received a five year determinate sentence.

46. The Court did not impose a period of PRS as part of the sentence. Nor was PRS mentioned on the sentencing commitment sheet.

47. Due to credit for time served awaiting trial, Mr. Betances's maximum determinate sentence expiration date was January 14, 2009.

48. Due to a 1/7th reduction for good time, Mr. Betances was released from prison on April 24, 2008, and subjected to a five year term of PRS imposed by defendants.

49. In November 2008, Mr. Betances was arrested and charged thereafter was charged with violating the terms of his PRS.

50. On or about January 23, 2009, after the expiration of his maximum determinate sentence, Mr. Betances pleaded guilty to misdemeanor drug possession and was sentenced to a term that would expire on or about July 9, 2009.

51. On or about February 23, 2009, after the expiration of his maximum determinate sentence, the DOP sentenced Mr. Betances to 12 months based on his alleged violation of the terms of his PRS.

52. On or about early July 2009, when Mr. Betances's sentence for misdemeanor drug possession was fully served, defendants continued to detain and incarcerate Mr. Betances based on the alleged violation of the terms of PRS.

53. Mr. Betances was not released by defendants until after Justice Richard L. Price granted his petition for a writ of habeas corpus and directed his immediate release because "DOCS exceeded its authority by unilaterally imposing a five-year period of post release supervision" when "the sentencing minutes clearly reflect that no period of post release supervision was imposed" by the sentencing court.

54. As a direct and proximate result of defendants' unlawful imposition and enforcement of PRS on Mr. Betances, pursuant to the PRS Policy, and the unlawful period of imprisonment pursuant to the same Policy, Mr. Betances has suffered and continues to suffer loss of liberty, loss of wages, psychological pain, suffering, and mental anguish.

FIRST CAUSE OF ACTION

42 U.S.C. § 1983; Fourth and Fourteenth Amendment

55. Plaintiffs repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

56. By implementing, promulgating, and enforcing and/or effectuating a policy, practice and custom pursuant to which the named plaintiff and other members of the plaintiff class were or will be subject to PRS when imposition of PRS was never authorized by any sentencing court, defendants have deprived plaintiff and members of the plaintiff class of rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, and of rights guaranteed by the Fourth and Fourteenth Amendment of the United States Constitution. Defendants also conspired among themselves to do so (taking numerous overt steps in furtherance thereof), and/or failed to prevent one another from doing so.

57. Defendants acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment.

58. Defendants acted beyond the scope of their jurisdiction, without authority of law, and abused their powers.

59. Defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. § 1983, and by the Fourteenth Amendment to the United States Constitution.

60. As a direct and proximate result of the misconduct and abuse of authority detailed above, each and every plaintiff and members of the plaintiff class suffered and continues to suffer the damages hereinbefore alleged.

RELIEF REQUESTED

WHEREFORE, plaintiffs and members of the putative Class request the following relief:

1. A judgment declaring that defendants have committed the violations of law alleged in this action;

2. An order directing defendants Fischer, Annuci, Evans, Matei and Tracy to disgorge any money collected from plaintiff and members of the plaintiff class as a result of defendants' PRS policy.
3. Compensatory damages against all defendants in an amount to be proven at trial;
4. Punitive damages against all defendants in an amount to be proven at trial;
5. An order awarding disbursements, costs, and attorneys' fees; and
6. Such other and further relief that may be just and proper.

Dated: May 11, 2011
New York, New York

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By:


Matthew D. Brinckerhoff

75 Rockefeller Plaza, 20th Floor
New York, NY 10019
(212) 763-5000