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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SACRAMENTO

15

16 DAVID PORTER,

17 Plaintiff,

18 v.

19 VERNON SPEIRS, Chief Probation Officer of
Sacramento County, and DAVID GORDON,
20 Sacramento County Superintendent of Schools,

21 Defendants.

Case No. 06AS03654

**THIRD AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

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1 Plaintiff DAVID PORTER hereby brings this taxpayer action for injunctive and
2 declaratory relief pursuant to California Code of Civil Procedure sections 525, 526a and 1060,
3 directed to Defendants VERNON SPEIRS and DAVID GORDON, and by this complaint alleges
4 as follows:
5

6 **JURISDICTION**

7 1. This Court has jurisdiction to grant injunctive relief on behalf of Plaintiff pursuant
8 to Code of Civil Procedure sections 525 and 526.

9 2. This Court has jurisdiction to grant declaratory relief on behalf of Plaintiff
10 pursuant to Code of Civil Procedure section 1060.

11 **PARTIES**

12 **A. Plaintiff**

13 3. Plaintiff DAVID PORTER is a citizen of California and a resident of Sacramento
14 in Sacramento County. He has paid taxes to the State of California within one year of the
15 commencement of this action and has paid sales and property taxes to the County of Sacramento
16 within one year of the commencement of this action. As a taxpayer, and/or as a taxpayer
17 alleging systemic violations, Plaintiff David Porter has no administrative remedies to exhaust.
18 He brings this action as a taxpayer, pursuant to Code of Civil Procedure section 526a, against the
19 Chief Probation Officer of Sacramento County to enjoin the expenditure of funds to promulgate,
20 administer, and enforce illegal policies, practices and procedures in the Sacramento County
21 Juvenile Halls, and against the Superintendent of Schools of Sacramento County to enjoin the
22 expenditure of funds to promulgate, administer, and enforce illegal policies, practices and
23 procedures regarding education for minors in the Sacramento County Juvenile Halls.

24 **B. Defendants**

25 4. Vernon Speirs is the Chief Probation Officer of Sacramento County and is sued
26 herein in that capacity. Speirs is ultimately responsible for the administration and operation of
27 all Sacramento County Juvenile Hall staff and facilities, including decisions concerning the
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1 budget, staff deployment, programming, and staff training that directly affect the expenditure of
2 taxpayer funds.

3 5. This Complaint addresses conditions of confinement for youth held at both the
4 B.T. Collins Juvenile Center and the Warren E. Thornton Youth Center (referred to herein as the
5 Sacramento County Juvenile Halls or the Halls). The two facilities share administrative control
6 and supervision by Defendant Speirs, as well as common policies, procedures, and training.
7 Youth transfer regularly between the two facilities. Unless otherwise specified, all allegations in
8 this Complaint are directed towards both facilities.

9 6. Defendant Speirs uses public funds to further illegal actions.

10 7. David Gordon is the Sacramento County Superintendent of Schools and is sued
11 herein in that capacity. As the head of the Sacramento County Office of Education, Gordon is
12 directly responsible for education of youth in the Sacramento Juvenile Halls. Gordon is
13 ultimately responsible for the expenditure of over a billion dollars allocated to the Sacramento
14 County Office of Education and is charged with the duty to expend these funds for the purpose
15 of educating the youth of Sacramento, including by administering, operating, and providing
16 services at the El Centro Junior/Senior High School in the B.T. Collins Juvenile Center and the
17 Esperanza Junior/Senior High School in the Warren E. Thornton Youth Center. In the exercise
18 of this duty, Defendant Gordon is charged with making decisions concerning the budget, staff
19 deployment, programming, and staff training that directly affect the expenditure of taxpayer
20 funds.

21 8. Defendant Gordon uses public funds to further illegal actions. Gordon squanders
22 public funds and commits waste thereof by, including but not limited to, operating educational
23 facilities in the Sacramento County Juvenile Halls in a manner that does not meet the educational
24 requirements mandated by law, and by failing to direct funds appropriated for providing services
25 to the education needs of students held in Sacramento County Juvenile Halls. As an illustration,
26 state law mandates that students held in the Halls are provided a minimum of 240 minutes of
27 instruction and the Sacramento County Office of Education is allocated taxpayer funds to meet
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1 this minimum standard. When students in the Halls are not provided this minimum level of
2 education, Defendant Gordon wastes the taxpayer funds by failing to provide the service for
3 which the funds are allocated.

4 **FACTUAL ALLEGATIONS**

5 9. Each California county is required by law to provide and maintain, at the expense
6 of the county, a “juvenile hall” for “wards and dependent children of the juvenile court” and for
7 “persons alleged to come within the jurisdiction of the juvenile court.” Cal. Wel. & Inst. Code
8 §850. By statutory mandate, the juvenile hall is not to be “treated as a penal institution,” but
9 instead is required to be “a safe and supportive homelike environment.” Cal. Wel. & Inst. Code
10 §851. The county probation department is to operate the juvenile hall “under the management
11 and control of the probation officer.” Cal. Wel. & Inst. Code §852.

12 10. In violation of California laws and federal laws, the Sacramento County Juvenile
13 Halls are not being operated as safe and supportive homelike environments and are instead
14 treated in many respects as penal institutions. See Cal. Wel. & Inst. Code §850.

15 **Excessive Force**

16 11. Youth in the Sacramento County Juvenile Halls are subjected to the frequent use
17 of a practice known as “dipping,” in which staff twist a youth’s arm behind his or her back, flip
18 the youth face down on the floor or ground, and place a knee in his or her back or head.
19 Frequently, the minor’s face is rubbed into the ground, drawing blood from lips, chins, or noses.
20 Many youth have scars received from dipping. Youth are dipped for disciplinary and punitive
21 purposes, including talking back to staff, failing to maintain proper hand position (interlocked
22 fingers), standing up in a dorm room (as opposed to staying on the bed); looking up at staff or
23 failing to get down quickly enough during unit alarms; talking with other minors during line-up;
24 urinating on the floor after bathroom requests are denied; and talking during movies. Youth are
25 sometimes dipped when they are already lying face down on the ground: staff slam their faces
26 down for no valid reason.

1 12. One youth could not hear staff orders to lie down due to her serious hearing
2 impairment, which was well known to staff. Despite her attempts to explain, she was dipped and
3 pepper sprayed; her eye and hand were cut in the dipping process, and she sustained a dark
4 bruise over her eye from the impact of her head on the cement floor. A teenaged girl who was
5 housed in a dry room tried repeatedly to get staff's attention to take her to the toilet. When they
6 did not respond, she urinated on the floor in her cell. Staff responded by dipping her in her urine.

7 13. After being dipped, youth are often sent to the Receiving unit, or "the benches,"
8 where they are deprived of outer clothing and left in their underwear. The cells are often cold
9 and they are not provided with blankets or warm clothing.

10 14. Defendant Speirs has no adequate or appropriate means to regulate or control staff
11 use of force to prevent such abuses.

12 15. Minors are also subjected to the frequent use of pepper spray as a means of
13 behavior control or punishment. They are sprayed with chemical agents for fighting and also for
14 offenses such as talking back to staff, often without warning. One youth was lying face down on
15 the ground when a staff member lifted his head up by the hair and sprayed him in the face with
16 pepper spray. A girl was pepper sprayed because she was crying and could not hear staff
17 commands to stop crying. A pregnant girl has been pepper sprayed repeatedly and without
18 justification.

19 16. Defendant Speirs' staff commit other physical abuse as well. One minor has had
20 his genitalia grabbed and twisted by a staff member. Another youth was kicked in the head by
21 staff when lying face down on the ground after a fight was broken up.

22 17. One youth who entered the B.T. Collins Sacramento Juvenile Hall with a broken
23 jaw was in school when an alarm sounded. He was ordered to "get down" along with the other
24 youths but explained that he was unable to lie with his head on the floor because of his jaw
25 injury. He was ordered to put his head down anyway and when he could not comply, a staff
26 member shoved his head into the ground, causing severe pain and re-injuring his jaw.
27

1 **Verbal and Emotional Abuse**

2 18. Verbal harassment and abuse is an everyday occurrence in the Juvenile Halls.
3 Staff taunt minors cruelly (for example, calling them "retarded") and use sexual language to
4 disparage them (such as calling boys "bitch" or "punk").

5 19. Staff discipline youth inappropriately ("take points") for looking to one side or the
6 other when they are supposed to be watching television. The youth are instructed to look straight
7 ahead at the television set at all times. One probation officer recently chastised a youth for
8 walking alongside a row of attorney visiting rooms and simply glancing inside them as he moved
9 past (he had been instructed by his public defender to find her after he was done with his
10 interview with plaintiff's counsel). He was told by the staff member, "don't you look inside
11 those rooms," as if merely looking to one side were a rules violation.

12 **Denial of Basic Needs**

13 20. The Sacramento County Juvenile Halls have been operating under dangerously
14 overcrowded conditions for more than a decade in violation of state minimum standards. The
15 Halls are currently excessively and illegally crowded, resulting in denials of the basic needs of
16 the young people housed there.

17 21. Youth at the B.T. Collins Juvenile Center do not get enough to eat. Teenagers,
18 including pregnant girls, consistently describe being hungry while in Defendant Speirs' custody.
19 Youth are served dinner at 4 p.m. and then a small snack, such as an apple, at 7 p.m. They are
20 given nothing else to eat until breakfast the next morning. Thus, for approximately fourteen
21 hours, they only have an apple to eat. Moreover, the food is often difficult to eat because it is so
22 unappetizing, often cold and undercooked. Youth who do not eat all of their food are forbidden
23 to share their meals with other youth who are hungry.

24 22. The B.T. Collins Juvenile Center is filthy, especially the receiving rooms. Many
25 rooms are dirty and smelly and infested with insects. There are stains on the walls and toilets
26 from blood, spit, urine, feces, and unidentified substances.

1 32. Youth housed for many months in J unit deteriorate under the isolation and
2 punitive conditions. Instead of being rehabilitated in any way, they become listless and
3 despondent.

4 **Lack of Education and Programming on RC and ARC Status**

5 33. Youth in B.T. Collins Juvenile Hall are occasionally placed on Room
6 Confinement or Administrative Room Confinement (RC and ARC). RC lasts for three days;
7 ARC lasts 30 days or longer. Youth on RC and ARC are given no school at all. A teacher
8 occasionally delivers workbooks to some youths' cells but the youth are not allowed any writing
9 materials and are given no specific or individualized assignments, no feedback, and no actual
10 instruction. Some youth do not even receive workbooks. Many youth on RC are not visited by
11 teachers or provided with any educational materials.

12 34. Youth on RC and ARC are held under conditions of extreme isolation: they are
13 allowed out of their cells only to shower and occasionally for one hour of indoor recreation.
14 Sometimes they receive no showers and no recreation, and spend the entire day in their cells.
15 They are not allowed visits or telephone calls. They are fed in their cells.

16 **Medical Care**

17 35. Minors in the Halls are administered psychotropic medications and taken for
18 outside hospitalization and/or medical care without parental consent or notification.

19 36. Parents who call the Halls to ask about the medical treatment and conditions of
20 their children are refused information.

21 **Disability Discrimination**

22 37. Reasonable accommodations are not always available for youth with physical and
23 learning disabilities.

24 **FIRST CAUSE OF ACTION: ILLEGAL ENDANGERMENT OF**
25 **PHYSICAL SAFETY**

26 38. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 paragraphs 1-37, inclusive, as though they were fully here set forth.

1 39. Defendant Speirs uses public funds, in violation of Code of Civil Procedure
2 §526a, to confine juveniles in unlawful conditions that put their physical safety at unreasonable
3 risk of harm. Defendant's illegal actions, which result in the illegal conditions, include but are
4 not limited to the following:

5 (a) the illegal failure to provide juveniles a safe and supportive homelike
6 environment (see, for example, paragraphs 10-16 above), in violation of Cal. Wel. & Inst. Code
7 §851;

8 (b) the illegal use of excessive force against juveniles (see, for example, paragraphs
9 10-16 above), in violation of Cal. Code of Regs. tit. 15 §§1357 (restrictions on use of force in
10 juvenile halls) and 1390 (“[d]iscipline shall not include corporal punishment”); Cal. Const. art. I
11 §§1 (right to enjoy life, liberty and safety), 7 (right to due process), 17 (no cruel or unusual
12 punishment); and

13 (c) the illegal, punitive use of physical and/or chemical restraints against juveniles
14 (see, for example, paragraph 14 above), in violation of Cal. Code of Regs. tit. 15 §§1358(b) (use
15 of restraints allowed in juvenile halls only if less restrictive alternatives are ineffective), 1358(d)
16 (“[i]n no case shall restraints be used as punishment or discipline, or as a substitute for
17 treatment”), 1357 (restrictions on use of force in juvenile halls), 1390 (“[d]iscipline shall not
18 include corporate punishment”); Cal. Const. art. I §§1 (right to enjoy life, liberty and safety), 7
19 (right to due process), 17 (no cruel or unusual punishment).

20 **SECOND CAUSE OF ACTION: MENTAL AND EMOTIONAL ABUSE**

21 40. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 paragraphs 1-37, inclusive, as though they were full here set forth.

23 41. Defendant Speirs uses public funds, in violation of Code of Civil Procedure
24 §526a, to confine juveniles in unlawful living conditions. Defendant's illegal actions, which
25 result in the illegal conditions, include but are not limited to the following:

26 (a) the illegal failure to provide juveniles a safe and supportive homelike
27 environment (see, for example, paragraphs 17-18 above), in violation of Cal. Wel. & Inst. Code
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1 §851;

2 (b) the illegal use of verbal or emotional abuse against juveniles (see, for example,
3 paragraphs 17-18 above), in violation of Cal. Code of Regs. tit. 15 §1390 (“[d]iscipline shall not
4 include... psychological degradation”); Cal. Penal Code § 673 (“It shall be unlawful to use in the
5 reformatories, institutions, ... or any other... county... institution any cruel, corporal or unusual
6 punishment or to inflict any treatment or allow any lack of care whatever which would injure or
7 impair the health of the... person confined”); Cal. Const. art. I §§1 (right to enjoy life, liberty and
8 safety), 7 (right to due process), 17 (no cruel or unusual punishment).

9 **THIRD CAUSE OF ACTION: ILLEGAL LIVING CONDITIONS**

10 42. Plaintiff realleges and incorporates by reference all of the allegations contained in
11 paragraphs 1-37, inclusive, as though they were full here set forth.

12 43. Defendant Speirs uses public funds, in violation of Code of Civil Procedure
13 §526a, to confine juveniles in unlawful living conditions. Defendant’s illegal actions, which
14 result in the illegal conditions, include but are not limited to the following:

15 (a) the illegal failure to provide juveniles a safe and supportive homelike
16 environment (see, for example, paragraphs 19-25 above), in violation of Cal. Wel. & Inst. Code
17 §851;

18 (b) the illegal failure to provide adequate food to juveniles (see, for example,
19 paragraph 20 above), in violation of Cal. Code of Regs. tit 15 §§1460-67 (dietary and food
20 service requirements); Cal. Const. art. I §§1 (right to enjoy life, liberty and safety), 17 (no cruel
21 or unusual punishment);

22 (c) the illegal failure to comply with maximum-capacity restrictions on the Juvenile
23 Halls (see, for example, paragraph 19 above), in violation of Cal. Code of Regs. tit. 15 §1343
24 (maximum capacity restrictions for juvenile halls); Cal. Const. art. I §§1 (right to enjoy life,
25 liberty and safety) and 17 (no cruel or unusual punishment);

26 (d) the illegal denial of access to toilets (see, for example, paragraph 22 above), in
27 violation of Cal. Code of Regs. tit. 15 §1390(b) (discipline shall not include deprivation of access
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1 to "toilet" or "clean and sanitary living conditions"); Cal. Const. art. I §§1 (right to life, liberty
2 and safety), 17 (no cruel or unusual punishment);

3 (e) the illegal failure to provide clean and sanitary living conditions for juveniles
4 (see, for example, paragraph 21 above), in violation of Cal. Code of Regs. tit. 15 §§1510
5 (requirements for clean and sanitary living conditions in juvenile halls), 1390 ("[d]iscipline shall
6 not include...deprivation of...clean and sanitary conditions"); Cal. Const. art I. §§1 (right to
7 enjoy life, liberty and safety), 17 (no cruel or unusual punishment); and

8 (f) the illegal failure to provide juveniles with telephone access (see, for example,
9 paragraphs 25 and 33 above), in violation of Cal. Code of Regs. tit. 15 §1376.

10 **FOURTH CAUSE OF ACTION: ILLEGAL CONDITIONS IN**
11 **SEGREGATION UNITS**

12 44. Plaintiff realleges and incorporates by reference all of the allegations contained in
13 paragraphs 1-37, inclusive, as though they were fully here set forth..

14 45. Defendants Speirs and Gordon use public funds, in violation of Code of Civil
15 Procedure §526a, to confine juveniles in unlawful conditions of segregation. Defendants' illegal
16 actions, which result in the unlawful conditions, include but are not limited to the following:

17 (a) the illegal denial of education to juveniles housed in H and J Units (see, for
18 example, paragraphs 29-31 above) and juveniles in RC and ARC status (see, for example,
19 paragraphs 32-33 above), in violation of Cal. Code of Regs. tit. 15 §§1390(j) ("[d]iscipline shall
20 not include...deprivation of...education"), 1370(d)(1) ("[e]ducational instruction shall be
21 provided to minors restricted to high security or other special units"), 1370(b) ("[m]inors shall be
22 provided a quality educational program"), 1370(b)(3) ("[t]he minimum school day shall be
23 consistent with California Education Code Requirements for juvenile court schools"); Cal. Edu.
24 Code §§46141 (minimum school day is 240 minutes); Cal. Edu. Code §48645.3 ("minimum
25 school day shall be 240 minutes"); *Serrano v. Priest* (1977) 18 Cal. 3d 728 (right to education);
26 *see also* 20 U.S.C. §§1400 et seq., §1401(8), §1414(d)(1)(B); 34 C.F.R. §§300.4, 300.340,
27 300.344; *Board of Educ. v. Rowley* (1982) 458 U.S. 176, 180-82; and

28 (b) (Defendant Speirs only) the dangerous and illegal overuse of extreme isolation of

1 juveniles in H and J Units and RC and ARC status, including but not limited to wards with
2 mental illnesses (see, for example, paragraphs 29-33 above), in violation of Cal. Code of Regs.
3 tit. 15 §§1390 (discipline in juvenile halls “shall not include corporal punishment, physical or
4
5 psychological degradation”), 1356 (requirements for mental health services); Cal. Const. art. I
6 §§1 (right to enjoy life, liberty and safety), and 17 (no cruel or unusual punishment).

7
8 **FIFTH CAUSE OF ACTION: ILLEGAL FAILURE TO OBTAIN PARENTAL
CONSENT FOR MEDICAL PROCEDURES**

9 46. Plaintiff realleges and incorporates by reference all of the allegations contained in
10 paragraphs 1-37, inclusive, as though they were fully here set forth.

11 47. Defendant Speirs uses funds, in violation of Code of Civil Procedure §526a, to
12 provide medical services and medications for incarcerated juveniles without obtaining parental
13 consent. Defendant’s illegal actions, which result in the unlawful conditions, include but are not
14 limited to the following:

15 (a) the illegal failure to obtain parental consent for medical procedures and
16 medications (see, for example, paragraphs 34-35 above), in violation of Cal. Code of Regs. tit.
17 15 §1434(b).

18 **SIXTH CAUSE OF ACTION: ILLEGAL FAILURE TO FULFILL DUTIES OF
19 EDUCATION AND REHABILITATION**

20 48. Plaintiff realleges and incorporates by reference all of the allegations contained in
21 paragraphs 1-37, inclusive, as though they were fully here set forth.

22 49. Defendants Speirs and Gordon use funds, in violation of Code of Civil Procedure
23 §526a, to incarcerate juveniles without providing the required education and rehabilitation.
24 Defendants’ illegal actions, which result in the unlawful conditions, include but are not limited to
25 the following:

26 (a) the illegal failure to provide adequate education to juveniles (see, for example,
27 paragraphs 26-30, 32 above), in violation of Cal. Code of Regs. tit. 15 §§1370(d) (“[m]inors
28 shall be provided a quality educational program”), 1370(b)(3) (“[t]he minimum school day shall

1 be consistent with California Education Code Requirements for juvenile court schools”); Cal.
2 Edu. Code §46141 (minimum school day is 240 minutes); Cal. Edu. Code §48645.3 (“minimum
3 school day shall be 240 minutes”); *Serrano v. Priest* (1977) 18 Cal. 3d 728 (right to education).

4 **GENERAL ALLEGATIONS**

5 50. Plaintiff is without a plain, speedy and adequate remedy in the ordinary course of
6 law to compel Defendants to enforce and comply with the legal requirements described herein.

7 51. Plaintiff has suffered and will continue to suffer irreparable injury unless and until
8 this Court enjoins Defendants from continuing their illegal conduct.

9 52. Defendants’ illegal conduct is ongoing and threatens to be continued in the future.

10 53. An actual controversy has arisen between Plaintiff and Defendants in that Plaintiff
11 contends Defendant Speirs operates, establishes, manages, conducts or maintains Juvenile Hall
12 facilities in violation of law and Defendant Gordon operates, establishes, manages, conducts or
13 maintains Juvenile Hall school facilities in violation of law.

14 54. A judicial declaration is necessary so that the parties may ascertain their rights in
15 this controversy.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff requests that this Court grant the following relief:

18 (a) Adjudge and declare that the acts, omissions, policies and conditions described
19 above are unconstitutional and/or unlawful;

20 (b) Preliminarily and permanently enjoin Defendants from illegally expanding
21 taxpayer funds in such a manner that juveniles are subjected to unlawful and/or unconstitutional
22 acts, as described in the paragraphs above;

23 (c) Award Plaintiff the costs of this suit and reasonable attorneys' fees and litigation
24 expenses;

25 (d) Retain jurisdiction of this case until Defendants have fully complied with the
26 orders of this Court, and there is a reasonable assurance that Defendants will continue to comply
27 in the future absent continuing jurisdiction; and

1 (e) Award such other and further relief as the Court deems just and proper.
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3 DATED: September 21, 2007
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5 BINGHAM MCCUTCHEN

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7 By: 

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PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of San Francisco, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence for next business day delivery by FedEx, and correspondence is deposited with FedEx that same day in the ordinary course of business.

Today I served the attached:

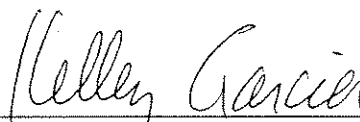
**THIRD AMENDED COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

by causing a true and correct copy of the above to be delivered by FedEx from San Francisco, California in sealed envelope(s) with all fees prepaid, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 21, 2007.



Kelley Garcia