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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE**

BLC 1700076

ALAN R. DOHNER,)
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Petitioner,)
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vs.)
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SCOTT KERNAN, Secretary,)
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California Department of)
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)
Corrections and Rehabilitation,)
)
)
CHARLES W. CALLAHAN, Warden)
)
)
Chuckawalla Valley State Prison,)
)
)
Blythe, California,)
)
)
Respondents.)

CASE NO.: _____
**PETITION FOR WRIT OF
MANDATE AND DECLARA-
TORY RELIEF; [CCP, § 1084,
et seq.]; IN THE ALTERNATIVE
PETITION FOR WRIT OF
HABEAS CORPUS [PENAL
CODE § 1473, et seq.];
MEMORANDUM OF POINTS
AND AUTHORITIES IN
IN SUPPORT THEREOF; AND
EXHIBITS**

Hearing Date: 7-7-17
Time: 10:30 AM
Dept: 260

**TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF RIVERSIDE, HONORABLE GLORIA C. TRASK, PRESIDING
JUDGE:**

Petitioner, Alan R. Dohner, by and through his counsel of record, hereby petitions
this honorable court for a writ of mandate, or in the alternative, a petition for writ of
habeas corpus directed to Respondents, SCOTT KERNAN, Secretary,

ORIGINAL

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7 ATTORNEY FOR PETITIONER ALAN R. DOHNER

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF RIVERSIDE**

10 **ALAN R. DOHNER,**)

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25 **JUDGE:**

26 Petitioner, Alan R. Dohner, by and through his counsel of record, hereby petitions
27 this honorable court for a writ of mandate, or in the alternative, a petition for writ of
28 habeas corpus directed to Respondents, SCOTT KERNAN, Secretary,

1 California Department of Corrections and Rehabilitation, and CHARLES W.
2 CALLAHAN, Warden, Chuckawalla Valley State Prison, and by this verified petition
3 represents that:

4 I
5 INTRODUCTION

6 1. The fundamental issue before this Court, as brought by this verified Petition
7 for Writ of Mandate, is that while the Respondents and California Department of
8 Corrections and Rehabilitation [hereinafter "CDCR"] operate over thirty-two state prison
9 complexes, only one state prison in California does not allow inmates personal television
10 ownership, access and use—namely, Chuckawalla Valley State Prison. [hereinafter
11 "CVSP"] This state of affairs is unfair to CVSP inmates in that Respondents and the
12 CDCR require these same inmates, in every aspect of their lives and duties, to abide by
13 the rules and regulations of the department with the expectation that they will earn vested
14 privileges to television possession. Further, the denial of television possession is made
15 more egregious and counterproductive by the Respondents' broadcasting over the
16 CVSP's local institution cable television network daily CDCR, CDC [Center for Disease
17 Control], California and County Public Health notices, information videos, and often
18 federal and state mandated informational videos on Medical Health (HIV, HEP-C, TB,
19 Flu prevention, vaccines and inoculations, condom use, noro virus health alerts and
20 prison facility quarantines, chronic care requirements, annual physical examinations,
21 etc.), Mental Health programs (CCCMS, EOP [Enhanced Out-Patient Program], Suicide
22 Prevention, etc.), Dental Hygiene, CDCR mandate form use and instruction (CDCR Form
23 602 [Inmate Appeals], CDCR Form 22's [Requests to Staff], etc.), Visiting and Family
24 Visiting procedures and visitors applications instructions, Inmate Orientation videos,
25 Parole Services (Community Release Programs, Halfway House Programs, Parole
26 Supervision criteria and application procedures), CDCR Rules and Regulations,
27 Education Programs (ABE [Adult Basic Education], GED, ESL [English as Second
28 Language], College Preparation Programs, etc.), College Classes [Palos Verde

1 Community College, Chapman Colleges, etc.], Rehabilitation Programs (AVP [Alternate
2 to Violence Program], NA/AA Programs, Toast Masters, Celebrate Recovery Program,
3 Self Confrontation, etc.), Lifer Programs critical to Board of Parole Hearings
4 consideration, Court Notices (Plata, Armstrong, Wilson, Propositions, 36, 47, 57, etc.),
5 Spanish Language Programs , new CDCR Rules and Regulations [CDCR Notice of Rule
6 Changes], Local Institution created videos (Inmate Plays, Prison Special Events, Holiday
7 Activities, and Current Prison Events, etc.), Recreation Programs and Upcoming Events,
8 CDCR mandated procedures for deposits into inmate accounts by family and friends,
9 Cultural Events and Religious Programming. (hereinafter "Essential and Mandated
10 Inmate Television Programming.") These programs are simply and emphatically not
11 reasonably available to the prisoners who are prohibited from television possession in
12 violation of the Authorized Personal Property Schedule [hereinafter "APPS"; C.C.R., tit.
13 15, § 3190] they are effectively denied reasonable access to said programming with one
14 day room television for 195 to 220 inmates. Inmates have no means of privately viewing
15 sensitive videos and are without any reasonable alternative to acquire the information.

16 2. Respondents and the CDCR deny CVSP inmates their vested and earned
17 privilege of television possession and essential and mandated inmate television
18 programming based solely on costs.

19 "The only exemption that is requested to remain effective for CVSP is the
20 televisions as there is no television reception *via* open airwaves due to the remote
21 location and physical plant limitations/lack of cable outlets in the dormitory
22 cubicles." (Exhibit A, p. 1-2, Acting CVSP Warden Charles W. Callahan,
23 Respondent herein, dated November 12, 2014.)

24 The Department further contends that the 1988-built CVSP prison does not have
25 television coaxial cabling in the housing units. (Exhibit B, p. 4, CDCR Office of Legal
26 Affairs, Public Records Request January 20, 2015, Response.)

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1 3. A formal request was made by Counsel for Petitioner on November 2,
2 2016, to former Warden Kimberly A. Seibel, requesting that she lift the television
3 exemptions at the prison. (Exhibit C, pp. 5-11, Request for Resolution of Unique
4 Television CVSP Prohibition.) Warden Seibel did not respond.

5 4. A formal CDCR 602 Group Inmate Appeal has been fully exhausted before
6 the Respondent Secretary on the television exemptions and prohibition at CVSP. (Exhibit
7 D-1, pp. 12-65, Formal Group Inmate Appeal, CDCR Form 602.) Hundreds of Inmate
8 Appellants joined in on the egregious deprivations described herein in the appeal.
9 (Exhibit D-2, p. 19-40, Group Inmate Appeal Signatures) The appeal was joined by the
10 elected leaders of the inmate population known and recognized as the Men's Advisory
11 Council. (Exhibit D-10, p. 65) [See C. C. R., tit. 15, Article 3, Sections 3230, et seq., on
12 Inmate Advisory Councils; see also, Departments Operations Manual, Sections 53120, *et*
13 *seq.*] Dozens of additional appeals have been filed over the last three decades, all to no
14 avail, representing the interests of tens of thousands of inmates formerly and presently
15 confined at CVSP. (See, e.g., Exhibit E, pp. 66-131; Facility D Group Inmate Appeal, D-
16 1, pp. 67-107, with hundreds of inmate signatories at pp. 74 - 107; Facility B Group
17 Inmate Appeal, D-2, pp. 108-123.) A simple discovery demand to Respondents and the
18 CVSP Appeals Coordinator will more than substantiate the overwhelming futility of
19 additional appeals and Respondents' cold-hearted denial of this egregious deprivation.

20 5. In 2016, approximately twenty individual Inmate Appeals [CDCR Form
21 602's] were sent via institutional mail to the CVSP Appeals Coordinator and all were
22 undermined, denied receipt, lost in the mail, excessively screened out and denied
23 processing. (Exhibit D-3, pp. 124-128; See Declaration of Former "A" Facility MAC
24 Chairman Foster, at pp. 125-126.)

25 6. Since 1988, when CVSP was built and first operated, inmates have
26 repeatedly filed inmate appeals, pleas through their elected inmate leaders [hereinafter
27 "Men's Advisory Council"] and made every effort to prevail upon Respondents to install
28 a simple \$5,000 antenna to obtain "over-the-air" local stations, to expand CVSP's existing

1 television cable network already connected to each housing unit and only requiring
2 cabling to each bunk area [\$2,000.00 to \$5,000.00 for each of the 13 housing units], less
3 than \$10,000 for amplifiers and network equipment with a monthly satellite service
4 provider at a few hundred dollars a month. [Estimated total cost of less than \$80,000.00]
5 The principle basis for Respondents' denial of the Essential and Mandated Inmate
6 Television Programming Network and individual inmate possession has been cost. (See
7 Exhibits A, p. 2, D-3, p. 43, and D-4, p. 45, E-2, p. 115.) However, CVSP is a low Level
8 I and II minimum and medium security institution with an exemplary inmate population
9 and extremely low disciplinary infraction rates. Every applicable regulation of the
10 Department requires equality, increased privileges for low custody inmates and mandates
11 individual television possession--the denial of which violates constitutional, statutory and
12 regulatory law. (See Exhibits L, pp. 308-313, C.C.R., tit. 15, Section 3044 on Inmate
13 Privileges; pp. 314-316, Section 3190, on Inmate Property based upon Security Level and
14 Privileges; Exhibit M, pp. 329-334, CDCR Notice of Change of Regulations No. 14-01,
15 filed January 8, 2014, expressly declaring that "[t]hese regulations will prevent
16 discrimination, promote fairness and social equity, promote continued rehabilitation and
17 positive programming, and contribute toward a safe environment for inmates, staff and
18 the public." [at p. 333].)

19 7. Exacerbating the situation is that the remote location and concrete
20 construction of the prison housing units and buildings actually prevent any radio
21 reception whatsoever in the housing units. Inmates are forced to stand outside on
22 the yard next to eighty-foot light poles to listen to national news, sporting events and
23 music during the extreme heat of the summer months to obtain even basic radio reception
24 from half a dozen radio stations. Respondents know this and yet fail and refuse to install
25 the essential housing unit cables plus a few hundred dollars of radio reception units
26 linked to a quality antenna and transmitted on the upper channels of the television cables
27 system so that a dozen stations can be broadcast to the inmate population to their housing
28 units and assigned bunks.

1 16. The only structures, dwellings or complex within fifteen miles of the prison
2 complexes [Ironwood State Prison is within a few hundred yards of CVSP] is the Naval
3 Gunnery Range known as Chocolate Mountains Impact area south of the prison.

4 17. There are fourteen housing units at CVSP comprised of eleven 195-220+
5 man prison dorms, on four yards identified as Facilities A, B, C, and D, with 'A' Facility
6 housing 100 cells in the Administrative Segregation Unit [hereinafter "ASU"] which had
7 television connectors and televisions installed in 2015 to prevent inmate suicides. During
8 the installation process, CDCR Plant Operations staff responsible for the installation
9 found coaxial cabling in the conduits to each individual cell. There is also, outside the
10 prison fence, a Minimum Support Facility with two hundred inmates on 'M' Facility in
11 two housing units designated M-1 and M-2 under the jurisdiction of the Respondent
12 Warden and CVSP. This action includes 'M' Facility inmates as well, as they are not
13 allowed personal televisions in violation of departmental policy. Each housing unit is
14 identified by their facility designator and building number. [A-1, A-2, ASU on Facility A;
15 B-3, B-4, B-5 on Facility B; C-6, C-7, C-8 on Facility C; and D-9, D-10, D-11 on Facility
16 D; M-1, M-2 on Facility M] At any given time the prison complex holds approximately
17 2,600 prisoners.

18 18. Each housing unit is comprised of two floors, with twelve "pods"
19 [dormitories] on each floor holding from five to twelve prisoners with central ground
20 floor court area where two general televisions are displayed [42 inch flat screens] with
21 bench seating directly in front of the televisions. There is also one education television
22 limited to essential and mandated inmate television programming on a 32-inch television,
23 a guard station, showers and restrooms. The twenty-four "pods" each have six dual plug
24 electrical outlets [12 receptacles] but no known cabling for television or radio reception
25 and usage by the inmates.

26 19. The remote location limits television reception to the prison and requires a
27 satellite service provider of which CVSP makes limited use. (Exhibits D-3, pp. 42-43, E-
28 2, pp. 115 & 117) Approximately, eight television stations are provided: Channel 2

1 [Telemundo-Spanish], Channel 4 [KMEX Univision-Spanish], Channel 5 [TNT],
2 Channel 6 [TBS – WTBS], Channel 7 [KABC], Channel 8 [Fox KTTV], Channel 9 [CBS
3 – KCBS], and Channel 10, a local Yuma NBC affiliate [KYMA]. There are substantially
4 more stations available from the existing satellite service provider but they are limited by
5 Respondents partially to prevent inmate disputes, altercations and fights over
6 programming. No Public Broadcasting stations are available nor any cable educational or
7 cultural channels are provided such as Discovery, Science, National Geographic, BET, or
8 Disney. (Exhibit F-10, pp. 219-226. See CDCR Policy on all "Over-the-air" television
9 reception being allowed but only limited satellite stations.) Inmates at the Maximum
10 Security Ironwood State Prison are provided over twenty television stations in their cells.
11 The Men's Advisory Council has consistently, responsibly and intelligently sought every
12 possible avenue to bring televisions to CVSP and to work with the administration to use
13 the limited resources provided in spite of the deprivation (see, e.g., Exhibit F, pp. 132-
14 226, MAC Proposals and Efforts to Obtain Termination of Exemption) but all to no avail.

15 20. Absolutely no radio reception is available inside the housing units by
16 existing radios available for purchase by inmates from the half a dozen approved package
17 and special purchase vendors. This is due primarily to remote location of the prison, the
18 concrete building construction and the fluorescent interior lighting that interferes with
19 radio signals. There is no institutional system for providing radio signals in the buildings,
20 which exists at other prisons, including but not limited to, Maximum Security prisons at
21 Folsom State Prison, Deuel Vocational Institution (Tracy), Correctional Training Facility
22 (Soledad), Pleasant Valley State Prison and San Quentin Prison. Most noticeably,
23 Ironwood State Prison, a Level III and IV Maximum Security Prison, adjacent to CVSP,
24 provides radio stations over their existing television cabling network. These prisons use
25 their existing television coaxial cabling on the upper television channels [broadcast
26 Channels 1 through 122], to provide radio signals into the housing units broadcasting
27 from each prison's Media Center where a CDCR staff "Operations Manager I" runs the
28 system.

1 21. There are frequent and continuing arguments, disturbances and altercations
2 due to television viewing, disputes over the programs, bench seating, seat taking and
3 other related incidences due to the existing system limited to three televisions and eight
4 television stations, two of which are Spanish television stations and no radio reception.
5 These disturbances and the possibility of rules violation reports causes petitioner to limit
6 his television viewing as petitioner is a life prisoner who cannot sustain a "write up" and
7 expect eventual parole.

8 22. Due to the extreme and sustained heat of May through October, over six
9 months in the summer, Petitioner and most inmates refrain from 100 degree plus yard
10 activity and access to limited outside radio reception and stay indoors. This overwhelms
11 the limited television bench seating areas, causing additional friction in the housing units,
12 causing inmates to sit on the floor on blanket and self-made cushions, thereby
13 jeopardizing the safety and security of the institution and Petitioner, especially during the
14 hot summer months and sporting events.

15 23. Petitioner has been repeatedly told by CVSP Correctional Officers,
16 Building Officers and administrators at CVSP that they would welcome television and
17 radio reception and individual television ownership in the twenty-four dormitories or
18 "pods" in each building as it would dramatically reduce traffic, quiet the day rooms,
19 reduce disturbances and make for a quieter and safer environment.

20 24. The Respondents, SCOTT KERNAN, Secretary of the California
21 Department of Corrections and Rehabilitation, and CHARLES W. CALLAHAN, Warden
22 at Chuckawalla Valley State Prison have taken the position that the cost of complying
23 with the regulation and and mandated statewide 2014 Article 43- "Inmate Property
24 Matrix" and "Authorized Personal Property Schedule," which specifically and repeatedly
25 grants Level I and II inmates the right, as vested and earned privilege, to television
26 ownership and reasonable reception at CVSP, outweighs any due process, equal
27 protection, constitutional, statutory or regulatory rights of the Petitioner and inmates
28 similarly situated.

1 25. To Petitioner's knowledge, and after considerable research, and the
2 expressed admission of the prison administration, no other California State Prison, nor
3 specifically any Level II institution within California, is exempt from these constitutional,
4 statutory and regulatory rights to television possession, usage and the essential mandated
5 inmate television programming other than inmates at Chuckawalla Valley State Prison.

6 26. Ironwood State Prison adjacent to CVSP, and every other known state
7 prison in California broadcasts on a separate channel provided by the institutions, an
8 educational channel devoted solely to education programming that is available in every
9 inmate's cell and dormitory bunk for self study. CVSP does maintain an educational
10 channel but it is as a practical matter unavailable to the inmate population. The education
11 channel is played on, and limited to, one televisions in each of the thirteen housing units.
12 A separate channel is used for the essential and mandated inmate television programs.
13 Again, limited to the same single television.

14 27. Respondents and CVSP do provide a single 32-inch flat screen television
15 for viewing of Education and the essential mandated inmate television programs, but due
16 to normal peer pressure and First Amendment privacy concerns the inmates are reluctant
17 to view essential medical broadcasts on HIV, condom use, sexually transmitted diseases
18 and other personal matters in an open day room. This sensitive information would be
19 available to the individual inmates in their assigned bunk areas for private viewing if
20 individual televisions were allowed.

21 28. The California Administrative Procedures Act (hereinafter "APA";
22 [Government Code, Section 11340, *et seq.*]), requires Respondents and the Department to
23 adopt in compliance with strict procedures and codify all rules and regulations of the
24 Department. The Respondents and the Department have violated the APA by placing the
25 critical Authorized Personal Property Schedule [hereinafter "APPS"] as an unattached
26 Appendix to the California Code of Regulations, Title 15, Division Three, with limited
27 distribution and access to the inmate prison populations in California. (Exhibits L, pp.
28 314-316, Ca. Code of Regs., tit. 15, §3190, Inmate Property; Exhibit M, pp. 330-334,

1 CDCR Notice of Change to Regulations No. 14-01, Authorized Personal Property
2 Schedule; Exhibit O, pp . 342-352.) Petitioner, as MAC Officer at Corcoran State Prison,
3 received a disciplinary rules violation report for photocopying the APPS for posting on
4 the facility inmate bulletin boards and was removed from his position as Respondents
5 have intentionally limited distribution of the APPS. Inmates are required by Department
6 policy, to receive a full and complete copy of the rules and regulations of the Department
7 [California Code of Regulation, tit. 15, Division Three] which does not contain a copy of
8 the Authorized Personal Property Schedule. (See, e.g., Exhibit P., p. 357, Department's
9 Operations Manual, Section 54030.1, Policy on Inmate Property) Pursuant to
10 Government Code, Sections 11340, *et seq.*, this makes the APPS an underground
11 regulation in violation of the Administrative Procedures Act. Respondents' and the
12 Department's exemption list and matrix -- is not included in Title 15 but is designated as
13 an appendix to C.C.R., tit. 15, Section 3190 -- of individual inmate television access is
14 unlawful, without a valid basis, is unconstitutional and in violation of statutory and
15 regulatory law. (California Government Code, Section 11340. 5)

16 29. In enacting the Authorized Personal Property Schedule in their Notice of
17 Change of Regulations, No. 14-01, Respondents and Department stated; "This is a more
18 efficient way to organize the APPS because it ensures that similarly situated inmates,
19 those who are the same security level and privilege group but housed at different
20 institutions, do not have a large variance of restrictions on otherwise authorized personal
21 property items." (Exhibit M, p. 332) Respondents and Department further found that the
22 "anticipated benefits of the proposed regulation" were that "[t]hese regulations will
23 prevent discrimination, promote fairness and social equity, promote continued
24 rehabilitation and positive programming, and contribute toward a safe environment for
25 inmates, staff and the public." (Exhibit M, p. 333) The single most important personal
26 property possession to Petitioner and a CDCR inmate is their television. Maximum
27 security inmates, Behavioral Management Unit inmates, Security Housing Unit inmates,
28 Administrative Segregation inmates all have daily access in their living units to

1 televisions. Petitioner and those inmates similarly situated at CVSP who are minimum
2 and medium security, Level I and II inmates are denied such earned and vested privileges
3 based upon a failure to build the prison in 1988 with television cabling in the walls and
4 Respondents' objection to their projected installation costs.

5 30. Respondents and the Department have seized, disposed of, or required all
6 arriving inmates to CVSP to dispose of their televisions based upon California Code of
7 Regulations, tit. 15, Sections 3190 and 3191, and Respondent Warden's CVSP Operations
8 Supplement 54030.1, subdivision (L). This unlawful exemption to the APPS is without
9 notice to new arrivals to CVSP nor is a reasonable opportunity to appeal available except
10 by futile and pre-determined appeal processes described herein and is without legal basis.
11 Therefore, each inmate presently at CVSP should be reimbursed the full cost of their
12 televisions and accessories seized pursuant to California Code of Regulations, tit. 15,
13 Section 3193 and DOM Section 54030.6. (Exhibit L, p. 317, and, Exhibit P, p. 357,
14 respectively) It should be noted paradoxically that withholding and seizing of inmate
15 televisions and entertainment appliances is an approved CDCR disciplinary punishment
16 for rule infractions. (C. C. R., tit. 15, Sections 3044, 3314, 3315.) This is an enormous
17 unconstitutional deprivation, as most inmates cannot afford to replace the television and
18 accessories.

19 31. Petitioner and other inmates similarly situated have fully exhausted their
20 appeal rights before the Respondent, Secretary of the California Department of
21 Corrections and Rehabilitation which constitutes exhaustion pursuant to C.C.R., tit. 15,
22 Section 3084. 7. A copy of that Group Inmate Appeal [CDCR Form 602] is filed in
23 conjunction with this petition as Exhibit D, pp. 12-65.

24 32. In the twenty-nine years since CVSP was built and first operated in 1988,
25 Respondents have received dozens if not hundreds of requests, inmate appeals, group
26 appeals and requests from the Men's Advisory Council to lift the television exemptions at
27 CVSP pursuant to C.C.R. , tit. 15, § 3190. (See Exhibits D, E, F, on Extensive Efforts by
28

1 inmates to secure Respondents' and CDCR's compliance with their well-stated policies by
2 Inmates and Inmate Leadership at CVSP.)

3 33. Petitioner is an elected leader of the inmate population and a member of
4 the Men's Advisory Council. This Petition is pursued solely in his individual capacity so
5 as to not create a conflict exploitable by Respondents.

6 34. Petitioner has no other plain, adequate and speedy means of forcing
7 Respondents, the California Department of Corrections and Rehabilitation and
8 Chuckawalla Valley State Prison to comply with their constitutional, statutory and
9 regulatory duties as outlined herein except by this Petition for writ of mandate, and in the
10 alternative, Petition for writ of habeas corpus.

11 IV

12 FIRST CAUSE OF ACTION

13 WRIT OF HABEAS CORPUS

14 35. Petitioner is being denied his constitutional, statutory and regulatory rights
15 to basic health care information, notice and advisement of his basic legal and procedural
16 rights while under the supervision of Respondents, including the essential and mandated
17 inmate television programming outlined herein, all of which is only presented or
18 primarily presented on the institutional television channels to which Petitioner has only
19 limited access due to the failure of the Respondents to comply with their own rules and
20 regulations of the Department.

21 36. Notwithstanding such duties and abilities, Respondents have failed and
22 refused and continue to fail and refuse to perform their duties as required by law.

23 37. Petitioner is suffering irreparable injury and has no plain, speedy and
24 adequate remedy in the ordinary course of the law to compel Respondents to comply with
25 the above-mentioned requirements, rules and regulations of the Department, thereby
26 rendering this Court's peremptory writ of habeas corpus appropriate in that:

27 a. Petitioner will continue to suffer irreparable injury as long as Respondents
28 fail to comply with the requirements of the Administrative Procedures Act [California

1 Government Code, Sections 11340, *et seq.*], California Penal Code, Sections 5054 and
2 5058, Title 15 of the California Code of Regulations and the Department's Operations
3 Manual;

4 b. Respondents have consistently failed and refused to comply with the rules
5 and regulations of the Department, have singled out Petitioner, and other inmates
6 similarly situated, for an intentional denial of equal privileges and rights codified by the
7 Department and have no reasonable penological purpose for doing so;

8 c. Money damages will not adequately compensate the harm caused to
9 Petitioner and those similarly situated.

10 **V**

11 **SECOND CAUSE OF ACTION**

12 **WRIT OF MANDATE**

13 38. Respondents have a clear, present and ministerial duty to comply with the
14 requirements of the Administrative Procedures Act, the California Penal Code, Title 15 of
15 the California Code of Regulations and the Department's Operations Manual, and at all
16 times relevant herein, Respondents have had, and continue to have, the duty and ability to
17 do so.

18 39. Notwithstanding such duties and abilities, Respondents have failed and
19 refused and continue to fail and refuse to perform their duties as required by law.

20 40. Petitioner, and those similarly situated, are suffering irreparable injury and
21 have no plain, speedy and adequate remedy in the ordinary course of the law to compel
22 Respondents to comply with the above-mentioned requirements, thereby rendering this
23 Court's peremptory writ of mandate appropriate in that:

24 a. Petitioner and those similarly situated will continue to suffer as long as
25 Respondents fail to comply with the requirements of the Administrative Procedures Act,
26 California Penal Code, Title 15 of the California Code of Regulations and the
27 Department's Operations Manual;

1 deny same and contend they cannot comply with their rules and regulations and statutory
2 and regulatory law due to costs.

3 42. Petitioner seeks a declaration that Respondents' November 12, 2014
4 [Exhibit A], basis for the Exemption Request at CVSP prohibiting personal television
5 access in the living quarters is unconstitutional and a violation of statutory and regulatory
6 law, and an order compelling Respondents to comply with the rules and regulations of the
7 California Department of Corrections and Rehabilitation, the Administrative Procedures
8 Act, their own Authorized Personal Property Schedule, California Code of Regulations,
9 tit. 15, and Section 3190 thereto.

10 VII

11 PRAYER FOR RELIEF

12 Petitioner is without a plain, speedy or adequate remedy at law, WHEREFORE,
13 Petitioner prays:

14 1. That this Court declare that Respondents' failure to comply with the
15 Authorized Personal Property Schedule and the rules and regulations of the Department
16 as to Petitioner and inmates similarly situated is in violation of the requirements of Penal
17 Code Section 5058, denies petitioner his Constitutional rights to equal protection, due
18 process and fundamental rights as to the essential and mandated inmate television
19 programming detailed herein, in that the Department provides such critical, technical and
20 informational services to prisoners over the institutional television channels, throughout
21 all CDCR prisons, to which Petitioner and all other inmates at CVSP, are being denied
22 reasonable access;

23 2. That this Court declare that Respondents have no valid penological purpose
24 under *Turner v. Safley* (1987) 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64, for denying
25 Petitioner, and those similarly situated, from individual television possession, use in their
26 housing areas, and appropriate and adequate cable network access, thereby denying
27 critical access to essential and mandated inmate television programming and safe and
28

1 secure private access in their individually assigned housing areas implicating their
2 privacy interests;

3 3. That Petitioner and all inmates currently at CVSP who have been forced by
4 these unlawful policies to dispose of their television and accessories upon their arrival at
5 CVSP be fully compensated for the cost of these unlawful seizures pursuant to the
6 Administrative Procedures Act [California Government Code, Sections 11340 and
7 11340.5], Ca. Code of Regs., tit. 15, Section 3193 and the Department's Operations
8 Manual, Section 54030.6;

9 4. That this Court find and declare that the Authorized Personal Property
10 Schedule, as an unpublished Appendix to the California Code of Regulations, tit. 15,
11 Section 3190, has limited distribution to Petitioner and all state prisoners and is not
12 contained in the actual CDCR mandatory distribution of the "Title 15 Inmate Handbook"
13 and is therefore an underground regulation in violation of the Administrative Procedures
14 Act and California Government Code, Section 11340. 5 and is unlawful; and that this
15 Court find and declare that Respondents are in violation of the Administrative Procedures
16 Act [California Government Code, Sections 11340, *et seq.*] and Order forthwith that the
17 Department codify the Authorized Personal Property Schedule within Title 15 and not as
18 a limited access appendix document pursuant to the Administrative Procedures Act;

19 5. That this Court issue its alternative writ of mandate commanding
20 Respondents forthwith to implement and install normal satellite television access to all
21 individually assigned housing units and bunk areas at CVSP, to install an adequate
22 antenna tower for over-the-air reception and to provide television and radio reception to
23 the individual housing units and bunk areas, to install coaxial cabling and connections to
24 all thirteen housing units at CVSP and to each individual bunk area, allow for the
25 purchase of personal televisions, accessories and digital antennas, to make available
26 through CDCR approved catalogue vendors the right to purchase of the same by
27 Petitioner and all inmates similarly situated at CVSP, or to show cause before this Court
28 at a specified time and place why Respondents have not done so;

1 6. That on the hearing of this application and Respondent's return thereto, if
2 any, this Court issue its peremptory writ of mandate and/or habeas corpus commanding
3 Respondents forthwith to install satellite service, an antenna and cable systems to each
4 housing unit and bunk area and to allow inmates at Chuckawalla Valley State Prison to
5 purchase televisions, their accessories and digital antennas in compliance with the
6 Department's historical policies as to inmate ownership of televisions and the Authorized
7 Personal Property Schedule as codified in the California Code of Regulations, tit. 15,
8 Section 3190;

9 7. That this Court grant Petitioner his reasonable attorney's fees and costs;

10 8. That this Court grant such further relief as it deems just and proper.

11
12
13 Dated: 3/9/17

Respectfully submitted,

Robert E. Young

ROBERT E. YOUNG, Esq.,
Attorney for Petitioner,
ALAN R. DOHNER

VERIFICATION

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE) SS

[C.C.P., §§ 446, 2015.5; Title 28, U. S. C. § 1746]

I, ALAN R. DOHNER, do hereby declare:

I am the petitioner in the above-entitled action.

I have read the foregoing documents and know the contents thereof and the same are true of my own knowledge, except as to those matters stated up on information and belief, and as to those matters, I believe them to be true.

I further declare that the exhibits attached hereto are true and accurate copies of the documents they allege to be representing.

I declare under penalty of perjury that the above and foregoing is true and correct except as to those matters stated upon my information and belief, and that I believe them to be true.

Executed in the County of Riverside, California on

3-9-17

Alan R. Dohner
ALAN R. DOHNER - PETITIONER

VERIFICATION

STATE OF CALIFORNIA)
) SS
COUNTY OF RIVERSIDE)

[C.C.P., §§ 446, 2015.5; Title 28, U. S. C. § 1746]

I, ROBERT E. YOUNG, ESQ., do hereby declare:

I am counsel for petitioner in the above –entitled action and as such I have detailed knowledge of the facts as stated herein and if called as a witness in this action I would be competent to testify as herein.

I have read the foregoing documents and know the contents thereof and the same are true of my own knowledge, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

I further declare that the exhibits attached hereto are true and accurate copies of the documents they allege to be representing.

I declare under penalty of perjury that the above and foregoing is true and correct except as to those matters stated upon my information and belief, and that I believe them to be true.

Executed in the County of Los Angeles, California on

3/9/17

Robert E Young
ROBERT E. YOUNG, ESQ.
ATTORNEY FOR PETITIONER
ALAN R. DOHNER

SERVICE LIST

ALAN R. DOHNER V. SCOTT KERNAN, SECRETARY CDCR, et al.
Riverside Superior Court No.:

CALIFORNIA ATTORNEY GENERAL
1300 I STREET, SUITE 125
POST OFFICE BOX 944255
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SCOTT KERNAN, SECRETARY
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
CORRECTIONS AND REHABILITATION
POST OFFICE BOX 942883
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WARDEN CHARLES W. CALLAHAN
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
CHUCKAWALLA VALLEY STATE PRISON
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POST OFFICE BOX 2289
BLYTHE, CALIFORNIA 92226-2289

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert E Young (E 513N) 54863 PO Box 5642 Oakland CA 94616 TELEPHONE NO.: FAX NO.:		FOR COURT USE ONLY	
ATTORNEY FOR (Name): Alan R Dohner			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 4100 Main St. Riverside MAILING ADDRESS: 4100 Main St CITY AND ZIP CODE: Riverside, 92501 BRANCH NAME: Hall of Justice			
CASE NAME: Alan R Dohner v Scott Kernan, Charles Callahan			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input checked="" type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify):

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **3/9/17**
 (TYPE OR PRINT NAME) **Robert E. Young**

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY) **Robert E Young**

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition