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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 LOUIS J. AGUIRRE,

11 Plaintiff,

12 vs.

13 CLARK E. DUCART, Warden, Pelican Bay
14 State Prison (PBSP), SCOTT KERNAN,
15 Secretary, California Department of
16 Corrections and Rehabilitation (CDCR),
17 JEFFREY A. BEARD, former Secretary,
18 CDCR, CONNIE GIPSON, former Warden,
19 CSP-COR and DOES 1-50, inclusive,

20 Defendants.

No.

COMPLAINT

1. Deprivation of Civil Rights, 42 U.S.C. § 1983 – Validation – Fourteenth Amendment Due Process
2. Deprivation of Civil Rights, 42 U.S.C. § 1983 – Challenging Validation – Fourteenth Amendment Due Process
3. Deprivation of Civil Rights, 42 U.S.C. § 1983 – Conditions of Confinement – Eighth Amendment and Fourteenth Amendment
4. Deprivation of Civil Rights, 42 U.S.C. § 1983 – Over Detention – Eighth Amendment and Fourteenth Amendment
5. Deprivation of Civil Rights, 42 U.S.C. § 1983 – Speech – First Amendment
6. Deprivation of Civil Rights, 42 U.S.C. § 1983, Art. 1, § 10 3. – Ex Post Facto

DEMAND FOR JURY TRIAL

Jurisdiction and Venue

1. This is an action for redress of deprivations of constitutional rights.

1 It is brought under 42 U.S.C. § 1983 *et seq.* and the jurisdiction of this court is
2 invoked pursuant to 28 U.S.C. §§ 1331 and 1343.

3 2. Venue is proper in the United States District Court of the Northern
4 District of California, pursuant to 28 U.S.C. § 1391(b), in that a substantial portion
5 of the allegations made here occurred at Pelican Bay State Prison in Crescent City,
6 Del Norte County, within this district.

7 Parties

8 3. Plaintiff Louis J. Aguirre was an inmate and prisoner in the custody of
9 the California Department of Corrections and Rehabilitation (CDCR) and
10 incarcerated in the Wasco State Prison (WSP), California State Prison, Sacramento
11 (SAC), Corcoran State Prison (CSP-COR) and Pelican Bay State Prison (PBSP) at
12 times mentioned herein; he was released (not on parole) from CDCR incarceration
13 on August 14, 2016.

14 4. Defendant Scott Kernan served as Secretary of CDCR from December
15 2015 through and including Plaintiff's release from CDCR on or about August 14,
16 2016, and exercised strategic supervision over prison facilities and provided
17 direction and guidance for the operation of California prisons including CSP-COR
18 and PBSP, and he caused, created, authorized, condoned, ratified, approved of, or
19 knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions,
20 actions, policies, customs and practices that prevail in CDCR facilities, as described
21 here and he has, therefore, caused the injuries and violations of rights set forth here;
22 Secretary Kernan also served as CDCR Undersecretary for Operations from March
23 to December 2015 and from 2008 to 2011, during which he provided direction and
24 guidance for the operation of California prisons including CSP-COR and PBSP.

25 5. Defendant Jeffrey A. Beard, Ph.D. served as Secretary of CDCR from
26 2012 through December 2015 and exercised strategic supervision over prison
27 facilities and provided direction and guidance for the operation of California prisons

1 including WSP, SAC, CSP-COR and PBSP, and he caused, created, authorized,
2 condoned, ratified, approved of, or knowingly acquiesced in the illegal,
3 unconstitutional, and inhumane conditions, actions, policies, customs and practices
4 that prevail in CDCR facilities, as described here and he has, therefore, caused the
5 injuries and violations of rights set forth here.

6 6. Defendant Clark E. Ducart served as Acting Warden and Warden of the
7 PBSP beginning in 2014 through the current date and exercised day-to-day
8 management of the prison and leadership of prison staff, and he caused, created,
9 authorized, condoned, ratified, approved of, or knowingly acquiesced in the illegal,
10 unconstitutional, and inhumane conditions, actions, policies, customs and practices
11 that prevail PBSP, as described here and he has, therefore, caused the injuries and
12 violations of rights set forth here.

13 7. Defendant Connie Gipson was Warden of CSP-COR from 2011 until
14 2014, and exercised day-to-day management of the prison and leadership of prison
15 staff, and she caused, created, authorized, condoned, ratified, approved of, or
16 knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions,
17 actions, policies, customs and practices that prevail at PBSP, as described here and
18 she has, therefore, caused the injuries and violations of rights set forth here.

19 8. The true names and identities of Defendants DOES 1-50, which include
20 non-supervisory defendants, are presently unknown to the Plaintiff. Plaintiff alleges
21 that each of these DOE defendants were responsible for and caused the acts and
22 injuries alleged herein. Plaintiff alleges on information and belief that each of the
23 Defendant DOES 1-50 were at all relevant times alleged herein employees or agents
24 of CDCR and were responsible for protecting the constitutional rights of Plaintiff
25 including due process and equal protection under the law, ensuring confinement
26 meets constitutional standards, and freedom of speech and violated Plaintiff's rights.
27 Plaintiff will seek to amend Complaint as soon as the true names and identities of
28

1 DOES 1-50 have been ascertained.

2 **Factual Averments**

3 9. Ignoring the actual behavior of a person, CDCR groups inmates into
4 artificial prison gang groups by “validating” inmates as prison gang affiliates,
5 associates and members through a process called prison gang validation, *see* CDCR
6 OPERATIONS MANUAL § 52070.21 (2009); validation does not require CDCR to
7 show that the prisoner has violated a prison rule, broken the law, or even acted on
8 behalf of a gang and many prisoners who have not engaged in any gang-related
9 misconduct or rule violations before, or after, validation, such as the plaintiff, are
10 placed in the SHU based merely on CDCR’s specious allegations that they have
11 associated with a gang.

12 10. In July 2009 plaintiff was sentenced by the Superior Court of the State
13 of California, pursuant to a plea agreement with the District Attorney for the County
14 of Ventura, to a determinate term of imprisonment of 9 years, with a guarantee that
15 he would serve no more than 80% of the 9 years if he attained good time/work time
16 credit pursuant to certain defined standards and procedures guaranteed by the due
17 process clause of the Constitution of the United States; there was no mention of
18 SHU placement, STGs, prison gang validation, or being unilaterally stripped of
19 good time/work time by CDCR, nor was there any mention of the two letters that
20 had been sent to Mr. Aguirre by his relative, Mr. Rivas, or of the two letters that Mr.
21 Aguirre sent, which CDCR later, without ever producing the evidence, used to
22 unilaterally resentence Mr. Aguirre to cruel and unusual punishment without any
23 possibility of receiving good time/work time that Mr. Aguirre had a protected liberty
24 interest in. As a result of the actions of the defendants, as proven in the *Ashker*
25 litigation, Mr. Aguirre was subjected to cruel and unusual punishment for the entire
26 time he was incarcerated, until August 14, 2016, pursuant to Ventura County Case
27 No. 2007016757FA, he was denied due process by the defendants, who

1 intentionally, knowingly or with deliberate indifference, and with reckless disregard
2 for plaintiff's rights implemented and repeatedly implemented codified, uncodified,
3 and unwritten rules and procedures that deprived plaintiff of a fair means of
4 challenging or disproving the SHU placement, STG designation and prison gang
5 associate grouping, and he was imprisoned by the defendants ultra vires and beyond
6 the dictates of the judgment of the Superior Court as the defendants intentionally,
7 knowingly or with deliberate indifference, and with reckless disregard for plaintiff's
8 rights, usurped the jurisdiction of the court and cancelled his protected good
9 time/work time credits so that his imprisonment under unconstitutional conditions
10 was lengthened by at least 16 months; the defendants never showed that plaintiff
11 was empirically or actually a threat to any institution, an associate of a prison gang
12 or threat group, or that any prison gang as defined by CDCR actually existed, and
13 used protected speech to group plaintiff into a vague and arbitrarily and capriciously
14 defined "security threat group."

15 11. Inside CDCR, once a prisoner was validated as a gang affiliate and sent
16 to the SHU for an indefinite term, he is entitled to periodic "reviews" of his
17 validation. Pursuant to California regulations, a classification committee was
18 required to review the prisoner's status every 180 days, allegedly so they can
19 consider releasing the prisoner to the general population. *Id.* at § 3341.5(c)(2)(A)(1).
20 In reality, classification reviews did not substantively review the prisoner's SHU
21 assignment, but rather involved three steps. First, the prisoner is urged to debrief
22 from the gang. Second, a mental health staff member asks two questions: (1) do you
23 have a history of mental illness; and (2) do you want to hurt yourself or others? This
24 mental health evaluation occurs in front of all members of the classification
25 committee, including the Warden, Facility Captain, Correctional Captain, the
26 Assignment Lieutenant, and other correctional staff. *See id.* at § 3376(c)(2). Third,
27 the classification committee "reviews" the paperwork in the prisoners' file, to make
28

1 sure that all required paperwork is accounted for.

2 12. No examination of continued gang activity or association occurred at
3 the 180-day review, nor was there any assessment of whether the prisoner's
4 behavior required continued SHU placement. For this reason, such reviews were
5 meaningless.

6 13. The only review at which the classification committee team even
7 purports to determine whether the prisoner should be released from the SHU occurs
8 once every six years. *See id.* at § 3378(e). Therefore, all gang validated prisoners in
9 the SHU must remain in solitary confinement for six years without even the
10 possibility of any review to obtain their release. This six-year interval was far longer
11 than any equivalent classification review at other supermax or high-security systems
12 in other states, the federal system, or other nations, and is far longer than the 120-
13 day period that the Ninth Circuit deemed constitutionally permissible for prisoners
14 housed in solitary confinement in *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir.
15 1990).

16 14. Logically, one who achieves "inactive" status is still a gang member or
17 associate, but not an "active" one, in that he does not engage in any gang activities.
18 Yet CDCR routinely and regularly denied inactive status to prisoners even where
19 there was no evidence of any gang activity; this longstanding pattern and practice is
20 not the result of failings by individual gang investigators, but is instead CDCR
21 policy which was been approved of and implemented by defendants.

22 15. CDCR informed prisoners, including plaintiff, that they can gain
23 release from the SHU as an "inactive" gang member if CDCR has no evidence that
24 they have been involved in "gang activity" for at least six years, but in practice it
25 denied prisoners inactive status even where there was no evidence of any "gang
26 activity" as that word is understood by the ordinary person; this denied meaningful
27 review.

1 16. The solitary confinement regime at Pelican Bay, which rendered
2 California an outlier in this country and in the civilized world, violates the United
3 States Constitution's requirement of due process and prohibition of cruel and
4 unusual punishment, as well as the most basic human rights prohibitions against
5 cruel, inhuman or degrading treatment; the prolonged conditions of brutal
6 confinement and isolation at Pelican Bay cross over from having any valid
7 penological purpose into a system rightly condemned as torture by the international
8 community.

9 17. California, alone among all 50 states and most other jurisdictions in the
10 world, imposed this type of extremely prolonged solitary confinement based merely
11 on a prisoner's alleged association with a prison gang and though defendants
12 purported to release "inactive" gang members after six years, their decisions (and
13 resulting indefinite SHU placement) were made without considering whether
14 plaintiff had ever undertaken an illegal act on behalf of a gang, or whether he was
15 ever actually involved in gang activity.

16 18. Researchers have demonstrated that prolonged solitary confinement
17 causes a persistent and heightened state of anxiety and nervousness, headaches,
18 insomnia, lethargy or chronic fatigue (including lack of energy and lack of initiative
19 to accomplish tasks), nightmares, heart palpitations, and fear of impending nervous
20 breakdowns. Other documented effects include obsessive ruminations, confused
21 thought processes, an oversensitivity to stimuli, irrational anger, social withdrawal,
22 hallucinations, violent fantasies, emotional flatness, mood swings, chronic
23 depression, feelings of overall deterioration, as well as suicidal ideation. Individuals
24 in prolonged solitary confinement frequently fear that they will lose control of their
25 anger, and thereby be punished further. *See, e.g.,* Mental Health Consequences
26 Following Release from Long-Term Solitary Confinement in California (2017), a
27 true and correct copy of which is attached, marked Exhibit 6.

1 19. On July 31, 2009, Plaintiff was sentenced to concurrent prison terms
2 totaling a determinate 9 years. Exhibit 1, Superior Court of the State of California,
3 County of Ventura, Minute Order, Case No. 2007016757 F A, dated July 31, 2009.

4 20. Upon sentencing, plaintiff understood, as provided in California Penal
5 Code 2933.6(a), in effect on July 31, 2009, that he would have the opportunity for
6 credit reduction of one day for every five days served.

7 21. Plaintiff's determinate sentence of nine years was adjusted by pre-
8 sentence time served credit to September 16, 2016.

9 22. With expected good time/work time credit of 1 day for every 5 days
10 served, Plaintiff's minimum adjusted sentence would expire on April 14, 2015; as a
11 result of the illegal, fraudulent, and oppressive actions of the defendants, done with
12 reckless disregard for plaintiff's rights, plaintiff was not released from CDCR
13 custody until August 14, 2016.

14 23. Plaintiff retained a liberty interest in good time/work time credit.

15 24. Plaintiff was in custody in Ventura County Jail in 2008 and 2009 prior
16 to his guilty plea and sentencing and until transfer to Wasco State Prison ("WSP")
17 and Reception Center.

18 25. Derral Adams was Warden of CSP-COR from 2009 until 2011, and
19 exercised day-to-day management of the prison and leadership of prison staff.

20 26. Craig Hennes was a Ventura County Sheriff's Deputy assigned on
21 January 16, 2009 as a Classification Deputy at the Todd Road Jail Facility in Santa
22 Paula, California and author of Ventura County Sheriff's Department Detention
23 Services Jail Incident Report #88655.

24 27. C. Rodriguez was a CDCR Correctional Officer at Wasco State Prison
25 – Reception Center and an Assistant Institutional Gang Investigator in 2009 who
26 authored the October 2, 2009, Information Gang Related, General Chrono, CDCR
27 128-B.

1 28. Matthew L. Cate served as Secretary of CDCR from 2009 through
2 2011 and exercised strategic supervision over prison facilities and provided
3 direction and guidance for the operation of California prisons including WSP, SAC,
4 CSP-COR and PBSP, and he caused, created, authorized, condoned, ratified,
5 approved of, or knowingly acquiesced in the illegal, unconstitutional, and inhumane
6 conditions, actions, policies, customs and practices that prevail in CDCR facilities,
7 as described here.

8 29. Greg Lewis served as Acting Warden and Warden of the PBSP from
9 2011 through 2013 and exercised day-to-day management of the prison and
10 leadership of prison staff, and he caused, created, authorized, condoned, ratified,
11 approved of, or knowingly acquiesced in the illegal, unconstitutional, and inhumane
12 conditions, actions, policies, customs and practices that prevail at PBSP, as
13 described here.

14 30. Ron Barnes served as Acting Warden of the PBSP from 2013 through
15 2014, and he caused, created, authorized, condoned, ratified, approved of, or
16 knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions,
17 actions, policies, customs and practices that prevail at PBSP, as described here.

18 31. Dave Davey was Warden of CSP-COR from 2014 until 2017, and
19 exercised day-to-day management of the prison and leadership of prison staff, and
20 he caused, created, authorized, condoned, ratified, approved of, or knowingly
21 acquiesced in the illegal, unconstitutional, and inhumane conditions, actions,
22 policies, customs and practices that prevail at CSP-COR, as described here.

23 32. Plaintiff was transferred to WSP on August 12, 2009.

24 33. Plaintiff was placed in administrative segregation (ADSEG) on October
25 1, 2009 at WSP. Exhibit 8, Administrative Segregation Unit Placement Notice 10-
26 02-09.

27 34. August 12, 2009, to October 1, 2009, is 50 days.

1 35. Plaintiff was released from CDCR on or about August 14, 2016.

2 36. On October 2, 2009, in an Information Gang Related General Chrono
3 CDCR 128-B (“WSP 10/2/2009 Chrono”), WSP C/O C. Rodriguez reported
4 Plaintiff’s alleged gang activity as documented in a Ventura County Jail Mail
5 Review Incident Report # 88655, dated January 12, 2009, authored by Deputy Craig
6 Hennes (“Ventura County Incident Report #88655) reporting on a letter dated
7 01/12/2009 sent by Plaintiff to Manuel Rivas, a relative of his, whose sister was
8 married to Plaintiff’s first cousin, once removed. Exhibit 13, CDCR 128-B
9 Information Gang Related General Chrono, signed by C. Rodriguez, dated 10-02-09.

10 37. On October 2, 2009, in a General Chrono CDCR 128-B (“WSP
11 10/2/2009 Chrono”), WSP C/O Rodriguez, reported Plaintiff’s alleged gang activity
12 as documented in a Ventura County Jail Mail Review Incident Report # 90258,
13 dated February 27, 2009, authored by Deputy Joseph Horswell (“Ventura County
14 Incident Report #90258) reporting on a letter dated 02/20/09 sent by Plaintiff to
15 Manuel Rivas, who was housed at WSP Ad Seg at the time the letter was authored.

16 38. On October 2, 2009, in a General Chrono CDCR 128-B (“WSP
17 10/2/2009 Chrono”), WSP C/O C. Rodriguez, reported Plaintiff’s alleged gang
18 activity as documented in CDCR 128-B, dated December 22, 2009, authored by
19 Officer J. E. Garcia (“CDCR 128-B dated 12-22-08”) reporting on a letter from
20 Inmate Manuel Rivas to plaintiff.

21 39. On October 2, 2009, in a General Chrono CDCR 128-B (“WSP
22 10/2/2009 Chrono”), WSP C/O Rodriguez, reported Plaintiff’s alleged gang activity
23 as documented in CDCR 128-B, dated December 23, 2009, (“CDCR 128-B dated
24 12-23-08”) reporting on Ventura County Jail Mail Review Incident Report #84962,
25 that reported on a letter from Jeffrey Hill, a CDCR inmate who at the time was not
26 validated as a Mexican Mafia associate, dated 10/21/2008.

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1 40. On October 2, 2009, C/O C. Rodriquez and Correctional Lieutenant J.
2 Simpson, disclosed the WSP 10/2/2009 Chrono to Plaintiff. Exhibit 3, CDCR 128-B
3 10-02-09 Gang Validation Evidence Disclosure and Interview Notification.

4 41. Prior to receiving a copy of the WSP Chrono, on 10/2/2009, Plaintiff
5 was unaware of the allegations of gang affiliation.

6 42. Plaintiff was not provided an opportunity to dispute the gang
7 allegations while he was in custody in the Ventura County Jail; these allegations
8 formed the basis for the WSP 10/2/2009 Chrono and the sole factual basis on which
9 the CDCR and the defendants continuously, repeatedly, chronically, flagrantly,
10 fraudulently, and oppressively depriving plaintiff of due process of law, subjecting
11 him to cruel and unusual punishment, and overdeting him in violation of the
12 constitution and laws of the United States of America.

13 43. Plaintiff requested access to copies of the letters referenced in the WSP
14 10/2/2009 Chrono in order to dispute the charges.

15 44. Plaintiff did not author or receive the letters documented in the CDCR
16 128-B dated 12-23-08 or CDCR 128-B dated 12-23-08.

17 45. Plaintiff did not request communication with Hill and never received
18 the letter described in Ventura County Jail Mail Review Incident Report #84962.

19 46. Defendants never produced the evidence that they relied on to
20 “validate” Plaintiff as a prison gang associate or STG member.

21 47. Ventura Incident Report #84962, which forms the basis for the CDCR
22 128-B dated 12-23-08 was authored on 10/21/2008, almost two months prior to
23 Todd Road Jail Facility Commander Brent Morris’ alleged approval of mail review
24 for all inmates.

25 48. Plaintiff was not made aware of Ventura Incident Report #84962 while
26 he was in Ventura County’s custody and was unable to defend himself against the
27 claim of his association with the prison gang based on incoming mail review.

1 49. On July 7, 2010, Plaintiff filed a Citizen Complaint Form with the
2 Ventura County Sheriff's Department, Professional Standards Bureau for
3 unauthorized review of his mail in 2008 and 2009 while he was in custody of the
4 Ventura County Sheriff's Department.

5 50. A letter dated September 29, 2010, from Captain Bruce Macedo,
6 Internal Affairs, Ventura County Sheriff's Department ("Macedo Letter") states that
7 the complaint was "Exonerated", meaning that the incident complained of occurred,
8 but that the employees involved were found to have acted lawfully or properly.

9 51. Plaintiff did not receive any support, documentation, or other evidence
10 for the finding of "Exonerated" reported in the Macedo Letter.

11 52. On November 18, 2009, CDCR categorized the plaintiff as a member
12 of a Security Threat Group ("STG") when it "validated" the plaintiff as an associate
13 of the Mexican Mafia prison gang based solely on the information contained in the
14 WSP 10/2/2009 Chrono.

15 53. On December 9, 2009, Todd Ashker and Danny Troxel initiated the
16 *Ashker v. Governor of the State of California et al.* action, which later was certified
17 as a class action, Case No. 4:09-CV-05796-CW and a true and correct copy of the
18 Second Amended Complaint in that action is attached as Exhibit 4.

19 54. Plaintiff incorporates the allegations (except the class action
20 allegations) of the Ashker Second Amended Complaint here and especially ¶¶ 86,
21 87, 94, 96-99, 101-102, 115, 117-119, 146 and 154.

22 55. The WSP 10/2/2009 Chrono reported the last day of Plaintiff's gang
23 activity to be on January 16, 2009 during Plaintiff's stay in Ventura County jail,
24 which was more than 6 months prior to Plaintiff's plea agreement and sentencing.

25 56. On December 8, 2009, Plaintiff appealed validation as an associate of
26 the Mexican Mafia prison gang, Appeal WSP-09-01627.

1 57. In his appeal, Plaintiff stated that he was not an associate of the
2 Mexican Mafia prison gang or any other gang.

3 58. On February 2, 2010, Plaintiff's second level appeal for WSP-09-01627
4 was denied.

5 59. On June 28, 2010, Plaintiff's Director Level appeal for WSP-09-01627
6 was denied.

7 60. Denial of Plaintiff's appeal was based on Plaintiff's gang associate
8 validation per CDC 128-B-2 dated 11/18/2009.

9 61. On December 10, 2009, the WSP classification committee imposed an
10 indeterminate term in a Security Housing Unit (SHU) solely on the basis of the
11 validation status reported in the November 18, 2009 128-B2, for activity occurring
12 prior to his sentencing.

13 62. Plaintiff is not, and never has been, a member, associate or affiliate of
14 any prison gang.

15 63. In January of 2010, Plaintiff was transferred to California State Prison
16 Sacramento ("SAC") SHU.

17 64. On June 2, 2010, Plaintiff appeared before the SAC's SHU Institutional
18 Classification Committee ("ICC") for his 180-day review and was informed his
19 indeterminate SHU term remained and suggested transfer to CSP-COR SHU.

20 65. The chairperson of Plaintiff's June 2, 2010, ICC review was J. Virga,
21 Warden.

22 66. The June 2, 2010 ICC review decision was based on the 11/18/2009
23 validation CDC 128-B-2.

24 67. The Classification Chrono CDC 128-G, dated June 2, 2010, correctly
25 recorded Plaintiff's early release date as April 14, 2015.

1 68. Plaintiff's early release date was calculated as April 14, 2015, in
2 January 2010. *See* Calculation Worksheet – Determinate, a true and correct copy of
3 which is attached, marked Exhibit 14.

4 69. On June 17, 2010, Plaintiff requested documentation showing that he is
5 a "currently active" gang associate and was informed he had no Rule Violation
6 Reports only jail reports per the WSP 10/2/2009 Chrono.

7 70. On July 22, 2010, Plaintiff was transferred to Corcoran State Prison
8 ("CSP-COR") SHU.

9 71. California Penal Code Section 2933.6(a) places restrictions on the
10 ability of certain prisoners in SHU confinement to earn sentence credit.

11 72. The 2009 version, in effect when Plaintiff was sentenced, reads
12 "Notwithstanding any other law, a person who is placed in a Security Housing Unit
13 or an Administrative Segregation Unit for misconduct described in subdivision (b) is
14 ineligible to earn work credits or good behavior credits during the time he or she is
15 in the Security Housing Unit or the Administrative Segregation Unit for that
16 misconduct."

17 73. CPC 2933.6(a) was revised, effective January 25, 2010, adding
18 ADSEG and SHU confinement upon validation as a prison gang member or
19 associate to the list of inmates ineligible to earn sentence credits.

20 74. CPC 2933.6(a) effective January 25, 2010, reads as follows:
21 "Notwithstanding any other law, a person who is placed in a Security Housing Unit,
22 Psychiatric Services Unit, Behavioral Management Unit, or an Administrative
23 Segregation Unit for misconduct described in subdivision (b) *or upon validation as*
24 *a prison gang member or associate* is ineligible to earn credits pursuant to Section
25 2933 or 2933.05 during the time he or she is in the Security Housing Unit,
26 Psychiatric Services Unit, Behavioral Management Unit, or the Administrative
27 Segregation Unit for that misconduct." (*emphasis added.*)

1 75. On August 26, 2010, plaintiff was notified that based upon gang
2 validation and as an inmate housed in an SHU, his credit earning ability changed
3 from 20 percent to zero based on a revision of PC § 2933.6 and that his minimum
4 release date had changed from April 15, 2015, to August 3, 2016. Exhibit 2, Legal
5 Status Summary, 08/16/2010 21:34, Inmate Copy.

6 76. On August 26, 2010, Plaintiff filed administrative appeal COR-10-
7 02713 appealing the change in his minimum release date.

8 77. On September 19, 2010, in an informal response to Plaintiff's
9 administrative appeal COR-10-02713, S. Cardoso, CCRA, provided Plaintiff with a
10 copy of the 128 G Chrono.

11 78. On September 25, 2010, Plaintiff requested formal review of COR-10-
12 02713 stating that he had not committed any rule violations or misconduct that
13 warrants detention in SHU.

14 79. On November 10, 2010, Plaintiff requested Director level review of
15 COR-10-02713.

16 80. The appeal COR-10-02713 was denied and exhausted on March 17,
17 2011.

18 81. The March 17, 2011 appeal denial was based on the 11/18/2009 gang
19 validation CDC 128-B-2.

20 82. On February 2, 2012, Plaintiff received a SHU Annual Review before
21 the CSP-COR ICC and was endorsed for transfer and placement in the PBSP SHU.

22 83. On March 1, 2012, Plaintiff appealed the Annual Review based on his
23 lack of misconduct during his time in CSP-COR and Plaintiff's contention that
24 information received from other agencies denied him process as he was not given an
25 opportunity to contest the information when it was created, Appeal COR-12-01091.

26 84. On August 9, 2012, the first level review of Appeal COR-12-01091
27 was denied.

1 85. On September 21, 2012, second level review of Appeal COR-12-01091
2 was denied.

3 86. Defendant Gipson was responsible for approving and did approve the
4 denial of the appeal at the second level review.

5 87. On December 14, 2012, third level review of Appeal COR-12-01091
6 was cancelled.

7 88. The August 9, 2012, and the September 21, 2012, appeal COR-12-
8 01091 denials were based on the 11/18/2009 gang validation CDC 128-B-2 and
9 other unverified claims referring to the same actions that formed the basis of the
10 11/18/2009 validation.

11 89. On July 1, 2011, the first hunger strike began.

12 90. On September 26, 2011, the hunger strike resumed.

13 91. On July 8, 2013, the third hunger strike began.

14 92. In or around August of 2014, Plaintiff was transferred to Pelican Bay
15 State Prison (PBSP) SHU.

16 93. On January 31, 2015, Plaintiff submitted appeal C-15-00280 appealing
17 the denial of good time credits for implementation of revised PC 2933.6. Exhibit 9,
18 CDCR 602 C-15-00280.

19 94. On February 6, 2015, appeal C-15-00280 was rejected at the first level
20 of review.

21 95. On February 10, 2015, appeal C-15-00280 was accepted at the second
22 level of review.

23 96. On March 16, 2015, appeal C-15-00280 was denied at the second level
24 of review by C.E. Ducart, Warden, PBSP, based on the 11/18/2009 gang validation
25 CDC 128-B-2. Exhibit 10, Pelican Bay State Prison Warden's Level Decision
26 Appeal Log No. PBSP-C-15-00280 dated March 16, 2015.

1 97. On October 6, 2015, appeal C-15-00280 was denied at the third level of
2 review.

3 98. On January 13, 2015, Plaintiff submitted a Request for Interview,
4 CDCR 22, to review a discrepancy in his 6-year active/inactive status review.

5 99. Plaintiff informed IGI Sgt. Pieren that his 6-year active/inactive review
6 date should be January 16, 2015, six years from the date of the last alleged gang
7 activity, not October 2, 2015, six years from the date of the documentation of the
8 activity.

9 100. On January 21, 2015, IGI Sgt. Pieren acknowledged the error and that
10 the correct review date should be January 16, 2015. Exhibit 11, CDCR 22 IGI Staff
11 Response 01/21/15.

12 101. On February 4, 2015, Plaintiff appeared before the PBSP SHU ICC
13 which retained his SHU status and noted the error and indicated that his inactive
14 review would be held prior to 10/2/2015. Exhibit 12, CDCR Classification
15 Committee Chrono dated 01/30/2015.

16 102. On February 18, 2015, Plaintiff submitted a Request for a corrected
17 128-B2.

18 103. Plaintiff was advised by CCI T. Cromwell on February 25, 2015, that
19 the Office of Correctional Safety (OCS) revisions “are not a fast process”, 40 days
20 after Plaintiff was rightfully due for his 6-year active/inactive review.

21 104. On February 27, 2015, Plaintiff requested a supervisory interview
22 seeking action on the record correction.

23 105. On March 3, 2015, CC II Supervisor D. Wells acknowledged that IGI
24 scheduled Plaintiff for an active/inactive review January 2015 but did not provide a
25 date certain.

26 106. On June 11, 2015, Plaintiff requested his records be corrected to show
27 that he is being held in error.

1 107. On June 18, 2015, Plaintiff filed appeal C-15-01519 to correct his
2 records.

3 108. On June 19, 2015, Plaintiff's appeal was rejected as concerning an
4 anticipated action or decision.

5 109. On June 22, 2015, CCII Supervisor D. Wells stated that a validation
6 package recommending active validation was sent to OCS on April 3, 2015.

7 110. On July 2, 2015, Plaintiff re-submitted administrative appeal C-15-
8 01519 requesting that the record be reviewed and corrected.

9 111. On July 3, 2015, the appeal was cancelled pending OCS review of his
10 status.

11 112. Plaintiff was denied a properly scheduled active/inactive review based
12 on erroneous record keeping.

13 113. Plaintiff was unable to appeal the CDCR failure to properly conduct his
14 active/inactive review without the record first being corrected.

15 114. Plaintiff attempted numerous times to correct the active/inactive review
16 date in his record, both through CDCR 22 requests for interview and CDCR 602
17 administrative appeals, exhausting administrative remedies in each attempt.

18 115. Plaintiff was harmed by delay of his rightful review, a delay caused by
19 failed application of procedure.

20 116. While a PBSP SHU resident until his release in 2016, Plaintiff lived in
21 almost total isolation, spending at least twenty-two and one-half hours per day in a
22 windowless, concrete cell with perforated steel doors.

23 117. While a PBSP SHU resident, he typically could leave the cell only to
24 shower or exercise alone in an enclosed pen.

25 118. While a PBSP SHU resident, although Plaintiff could sometimes speak
26 to other SHU inmates through the perforations in cell doors, he was unable to
27

1 communicate face-to-face and had no contact with inmates in Pelican Bay’s general
2 population.

3 119. While a PBSP SHU resident and prior to the third PBSP hunger strike
4 in 2013, Plaintiff was denied clothing other than boxers, socks, t-shirts, and slipper
5 shoes.

6 120. Long-term confinement inside the SHU violates the Eighth
7 Amendment’s prohibition on cruel and unusual punishment.

8 121. Plaintiff’s confinement in SHU caused him to suffer from cruel and
9 unusual punishment and mental and physical pain and injury.

10 122. On January 26, 2016, CDCR again designated plaintiff as a member of
11 a STG and “validated” him as an associate of the STG-1.

12 123. In a class action, several inmates serving sentences in PBSP brought
13 suit on Eighth and Fourteenth Amendment grounds, over the harsh conditions of the
14 SHU and the lack of due process afforded inmates in gang validation and
15 assignment to the SHU. *Todd Ashker, et.al. v. Governor of California, et.al.*, C 09-
16 05796 CW.

17 124. On August 31, 2015, *Ashker* was settled with terms that included
18 enhanced process in gang validation and “CDCR shall not place inmates into a
19 SHU, Administrative Segregation, or Step Down Program solely on the basis of
20 their validation status.”, a true and correct copy of which is attached as Exhibit 5,
21 *Ashker v. Governor of the State of California*, Settlement Agreement, ECF No 424-
22 2, C 09-05796 CW ¶ 13.

23 125. For prisoners held in SHU based on gang or Security Threat Group
24 (“STG”) validation, the Agreement created a process for release to general
25 population (GP) unless they had been found guilty of a SHU-eligible rule violation
26 with an STG-nexus within the prior two years. Exhibit 5 *Ashker v. Governor*
27 Settlement Agreement ¶ 25.

1 126. The Settlement Agreement was designed to ensure that in the future,
2 people in California prisons would not have to suffer prolonged periods of solitary
3 confinement, and thus it abolished indeterminate SHU sentences for gang affiliation,
4 allowing for SHU placement only when a prisoner is found guilty of a SHU-eligible
5 rule violation, and only for a determinate term as set forth in new regulations.

6 Exhibit 5 *Ashker v. Governor Settlement Agreement* ¶¶ 13, 14.

7 127. In March of 2016, ICC released Plaintiff from administrative SHU
8 based on STG-1 validation as Plaintiff had not been found guilty of a SHU eligible
9 rule violation with a proven STG nexus within the prior 24 months. Exhibit 7,
10 Auditor Action dated 03/16/2016.

11 128. Plaintiff had not been found guilty of any SHU eligible rule violation
12 with a proven STG nexus while in CDCR custody that began in August 2009 and
13 continued through and including his release from PBSP in August 2016.

14 129. Plaintiff should not have been placed in SHU at all.

15 130. Plaintiff spent approximately five and one-half years in ASU and SHU
16 confinement without any SHU eligible rule violation.

17 131. The record of Plaintiff's unlawful gang validation remains in the
18 CDCR records and could be used against him in the future.

19 132. Plaintiff was denied the good time credit that was recognized at the
20 time of his sentencing because of his unlawful gang validation without an eligible
21 rule violation.

22 133. As a result of the denial of good time credit, Plaintiff was over detained
23 by approximately 16 months.

24 134. The deprivation of state-created good time, as the court noted in *Wolff*,
25 has been recognized as "a sanction authorized for major misconduct, [and] the
26 prisoner's interest has real substance and is sufficiently embraced within Fourteenth
27 Amendment 'liberty' to entitle him to those minimum procedures appropriate under

1 the circumstances and required by the Due Process Clause to ensure that the state-
2 created right is not arbitrarily abrogated.” *Wolff v. McDonnell*, 418 U.S. 539, 539
3 (1974).

4 135. CDCR’s procedures for assigning Plaintiff to the SHU did not afford
5 him the minimum procedures appropriate under the circumstances and thus violated
6 the Fourteenth Amendment’s guarantee of procedural due process.

7 136. Plaintiff had no access to such process during his validation or his
8 assignment to the SHU as is guaranteed inmates as a result of the Ashker class
9 action.

10 137. CDCR’s procedures for reviewing and challenging STG designation
11 did not afford plaintiff a meaningful process for challenge or review of the
12 designation or for avoiding the punishment concomitant with such designation.

13 138. The aforementioned acts of the defendants, and each of them, support
14 the award of exemplary and punitive damages in an amount sufficient to punish and
15 make an example of the individual defendants; the acts of the individual defendants
16 and each of them were done knowingly, fraudulently, oppressively, willfully,
17 maliciously, with the intent to vex, annoy, harass and oppress plaintiff and to cause
18 his injury and loss of his rights and with reckless disregard for his constitutional
19 rights.

20 139. The contents of all exhibits are incorporated in this complaint by this
21 reference.

22 **Claim 1**

23 **Deprivation of Constitutional Rights – 42 U.S.C. § 1983 – Validation –Fourteenth**
24 **Amendment – Due Process Violation**

25 140. Plaintiff realleges and incorporates by reference the allegations
26 contained in the above paragraphs as though fully set forth herein.

1 141. At the time of the incident set forth in the averments above, the rights
2 of persons within the jurisdiction of the United States of America under both
3 Amendment V and XIV to the United States Constitution to due process of law and
4 the equal protection of the laws were in force and effect and the individual
5 defendants who engaged in conduct, as set forth above, who deprived plaintiff of his
6 constitutional right to due process and equal protection, violated those rights, and
7 violated the Fourteenth Amendment to the United States Constitution.

8 142. Defendants, acting under the color of state law, developed, adopted,
9 prescribed, enforced, or implemented policies and procedures that resulted in a gang
10 validation against the Plaintiff in violation of his rights by relying on information
11 Plaintiff was given no opportunity to view or dispute at the time it was documented,
12 by utilizing evidence of communication not solicited or initiated by Plaintiff, and by
13 relying on opinions formed without knowledge of necessary contextual
14 relationships, and depriving Plaintiff of a thorough, meaningful, and complete
15 hearing on the issues and opportunity for rebuttal in violation of constitutionally
16 required due process.

17 143. As a direct and proximate result of Defendants' unlawful conduct,
18 Plaintiff suffered by assignment to the cruel and unusual and unconstitutional
19 conditions of the Security Housing Unit (SHU) and loss of liberty.

20 144. Plaintiff incorporates here Document # 178, Case No. 4:09-CV-05796-
21 CW, plaintiff's Opposition to Motion to Dismiss Second Amended Complaint, a
22 true and correct copy of which is attached, marked Exhibit 15.

23 **Claim 2**

24 **Deprivation of Constitutional Rights – 42 U.S.C. § 1983 – Challenging Validation –**
25 **Fourteenth Amendment – Due Process Violation**

26 145. Plaintiff realleges and incorporates by reference the allegations
27 contained in the above paragraphs as though fully set forth herein.

1 146. At the time of the incident set forth in the averments above, the rights
2 of persons within the jurisdiction of the United States of America under both
3 Amendment V and XIV to the United States Constitution to due process of law and
4 the equal protection of the laws were in force and effect and the individual
5 defendants who engaged in conduct, as set forth above, who deprived plaintiff of his
6 constitutional right to due process and equal protection, violated those rights, and
7 violated the Fourteenth Amendment to the United States Constitution.

8 147. Defendants, acting under the color of state law, developed, adopted,
9 prescribed, enforced, or implemented policies and procedures that resulted in a gang
10 validation against the Plaintiff in violation of his rights and deprived Plaintiff of a
11 meaningful process for challenging validation by refusing to provide supporting
12 evidence used against Plaintiff, by refusing to recognize and correct errors in
13 records and using the resulting delay to prevent Plaintiff from challenging his status.

14 148. As a direct and proximate result of Defendants' unlawful conduct,
15 Plaintiff suffered by assignment to the cruel and unusual and unconstitutional
16 conditions of the Security Housing Unit (SHU) and loss of liberty.

17 **Claim 3**

18 **Deprivation of Constitutional Rights –Conditions Of Confinement –**
19 **Eighth/Fourteenth Amendments - 42 U.S.C. § 1983**

20 149. Plaintiff realleges and incorporates by reference the allegations
21 contained in the above paragraphs as though fully set forth herein.

22 150. At the time of the incident set forth in the averments above, the rights
23 of persons within the jurisdiction of the United States of America under both
24 Amendment VIII and XIV to the United States Constitution to due process of law
25 and the equal protection of the laws and under the Eighth Amendment to be free
26 from cruel and unusual punishment were in force and effect and the individual
27 defendants who engaged in conduct, as set forth above, who deprived plaintiff of his

1 right to due process and equal protection, and exposed plaintiff to cruel and unusual
2 punishment by detaining plaintiff beyond the period of time required by his
3 sentencing and by demonstrating deliberate indifference to the cruel and unusual,
4 inhumane and unconstitutional conditions of confinement in SHU that they
5 subjected plaintiff to, deprived plaintiff of his constitutional rights, violated those
6 rights, and violated Amendment XIV to the United States Constitution.

7 151. Plaintiff repeatedly informed the defendants and numerous other
8 CDCR agents and employees, between 2009 and 2016, of the unlawful and incorrect
9 gang validation and STG designation imposed upon him, which resulted in his being
10 subjected to unconstitutional conditions of confinement and overconfinement
11 beyond the sentenced imposed upon him by the Superior Court of the State of
12 California. At various periods during Plaintiff's confinement in SHU, he had to
13 endure such cruel conditions as days of 23 or more hours confined to his cell;
14 solitary confinement where the only contact with others was by yelling through
15 perforations in the walls without seeing other inmates; and lack of full clothing.

16 152. Defendants, acting under the color of state law, developed, adopted,
17 prescribed, enforced or implemented policies and procedures that continued the
18 cruel confinement conditions and placed his mental and emotional health at serious
19 risk.

20 153. As a direct and proximate result of Defendants' unlawful conduct,
21 Plaintiff suffered by assignment to the cruel and unusual and unconstitutional
22 conditions of the Security Housing Unit (SHU) and loss of liberty.

23 **Claim 4**

24 **Deprivation of Constitutional Rights –Overdetention –Eighth/Fourteenth**
25 **Amendments - 42 U.S.C. § 1983**

26 154. Plaintiff realleges and incorporates by reference the allegations
27 contained in the above paragraphs as though fully set forth herein.

1 155. At the time of the incident set forth in the averments above, the rights
2 of persons within the jurisdiction of the United States of America under both
3 Amendment VIII and XIV to the United States Constitution to due process of law
4 and the equal protection of the laws and under the Eighth Amendment to be free
5 from cruel and unusual punishment were in force and effect and the individual
6 defendants who engaged in conduct, as set forth above, who deprived plaintiff of his
7 right to due process and equal protection, and exposed plaintiff to cruel and unusual
8 punishment by detaining plaintiff beyond the period of time required by his
9 sentencing, deprived plaintiff of his constitutional rights, violated those rights, and
10 violated Amendment XIV to the United States Constitution.

11 156. Between 2009 and 2016 plaintiff repeatedly informed the defendants
12 and other CDCR agents and employees of the failings and inadequacy of the four
13 criteria used by CDCR to “validate” him as a gang associate, of the incorrect date
14 recorded for his alleged gang-related activity, and the inaccurate 6-year
15 active/inactive review date. The date of a document, October 2, 2009, was
16 substituted for the date of an event reported on the document, January 16, 2009,
17 causing a 9-month discrepancy. The defendants repeatedly and chronically
18 manifested their deliberate indifference to the law, to plaintiff’s pleas for rectifying
19 of the mistakes and deficiencies in the process, and for their own misconduct, by,
20 *inter alia*, stating that plaintiff must await action by a state office to make the
21 correction, resulting in, *inter alia*, the 6-year active/inactive review date passing
22 without the proper conduct of a required review.

23 157. Defendants caused plaintiff to be overdetailed beyond his actual
24 release date by, *inter alia*, intentionally, knowingly, or by means of deliberate
25 indifference, causing plaintiff to be deprived of his liberty, *inter alia*, by depriving
26 him of his good time/work time credit and illegally overdetailed him without due
27

1 process of law and in violation of the Judgment of the Superior Court of the State of
2 California by at least 16 months in cruel and unusual conditions.

3 158. Defendants, acting under the color of state law, developed, adopted,
4 prescribed, enforced or implemented policies and procedures that utilized erroneous
5 and inapplicable information in decision making and denied plaintiff his right to
6 timely correct or thoroughly and meaningfully challenge the use of the erroneous
7 information.

8 159. As a direct and proximate result of Defendants' unlawful conduct,
9 Plaintiff suffered over detention and loss of liberty.

10 **Claim 5**

11 **Deprivation of Constitutional Rights – Freedom of Speech – First Amendment – 42**

12 **U.S.C. § 1983**

13 160. Plaintiff realleges and incorporates by reference the allegations
14 contained in the above paragraphs as though fully set forth herein.

15 161. At the time of the incident set forth in the averments above, the rights
16 of persons within the jurisdiction of the United States of America under Amendment
17 I to the United States Constitution for freedom of speech were in force and effect
18 and the individual defendants who engaged in conduct, as set forth above, who
19 deprived plaintiff of his right to free speech, deprived plaintiff of his constitutional
20 rights, violated those rights, and violated Amendment XIV to the United States
21 Constitution.

22 162. The First Amendment protects an inmate's right to send and receive
23 mail and plaintiff's communications with his relatives is protected speech under the
24 First Amendment.

25 163. The defendants repeatedly and continuously used plaintiff's private
26 family communication to group plaintiff as an "associate" of a "prison gang", and to
27

1 deprive him of liberty without due process of the law and of the right to be free from
2 cruel and unusual punishment.

3 164. The actions of the defendants would chill a person of ordinary firmness
4 from continuing to engage in the protected activity.

5 165. The plaintiff's protected activity was a substantial or motivating factor
6 in the defendants' conduct.

7 166. Defendants, acting under the color of state law, developed, adopted,
8 prescribed, enforced or implemented policies and procedures that utilized erroneous
9 and inapplicable information in decision making and denied plaintiff his First
10 Amendment right to uncensored protected speech.

11 167. As a direct and proximate result of Defendants' unlawful conduct,
12 Plaintiff suffered a loss of his right to protected speech and the right to send and
13 receive mail that does not contain contraband without punishment.

14 168. Defendants, acting under the color of state law, developed, adopted,
15 prescribed, enforced or implemented policies and procedures that utilized erroneous
16 and inapplicable information in decision making and denied plaintiff his right to free
17 speech.

18 **Claim 6**

19 **Deprivation of Constitutional Rights – Ex Post Facto violation, Article II § 10 cl. 1**
20 **of the United States Constitution - 42 U.S.C. § 1983**

21 169. Plaintiff realleges and incorporates by reference the allegations
22 contained in the above paragraphs as though fully set forth herein.

23 170. California Penal Code § 2933.6, effective January 25, 2010, that
24 eliminated good conduct credit for inmates validated as a prison gang member or
25 associate, violates the Ex Post Facto Clause, as specifically applied to Plaintiff,
26 because it imposed additional punishment on plaintiff for an unlawful gang
27 validation and alleged crimes committed before it was enacted.

1 171. Defendants, acting under the color of state law, enforced and
2 implemented the challenged law against the Plaintiff in violation of his rights under
3 the Ex Post Facto clause.

4 172. As a direct and proximate result of Defendants' unlawful conduct,
5 Plaintiff's good conduct credit was eliminated and he was overdetailed and
6 deprived of his liberty for at least 16 months (the actual figure is more because the
7 defendants deprived Mr. Aguirre of receiving the benefit of provisions of the law
8 passed during his incarceration, which would have further reduced his term of
9 imprisonment) in conditions that were unconstitutional and violative of the 8th
10 Amendment and of the evolving standards of decency.

11 **Prayer**

12 Plaintiff seeks judgment as follows:

- 13 1. General, special and compensatory damages against each defendant,
14 jointly and severally, in accordance with proof;
- 15 2. An award of punitive and exemplary damages against each defendant
16 to be determined according to proof and in an amount sufficient to make an example
17 of those defendants and to deter future misconduct;
- 18 3. An award of attorney's fees and expenses of litigation pursuant to 42
19 U.S.C. § 1988;
- 20 4. Costs of suit;
- 21 5. Pre- and post-judgment interest as permitted by law; and
- 22 6. Such further relief as the Court deems just and proper.

23 DATED: December 3, 2017

Jeff Dominic Price

24 By /s/ Jeff Dominic Price
25 Jeff Dominic Price, Esq.
26 Attorney for Plaintiff

27 **DEMAND FOR JURY TRIAL**

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Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a jury trial as to all claims for relief.

DATED: December 3, 2017

Jeff Dominic Price

By /s/ Jeff Dominic Price
Jeff Dominic Price, Esq.
Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF VENTURA

MINUTE ORDER

Case Number 2007016757 F A

People Vs Aguirre, Louis Juares

Name: **Aguirre, Louis Juares** Court Room: 45 For: 07/31/09 09:00 AM
Case #: **2007016757 F A** Atty Name: **Moriya L Christie, ATTY**
Case Status: **Convicted** Mand. App: **Yes**
Release Status: **In custody California Department of Corrections (CDC)**
Charging Document: **Information** Bail Set Amt: **\$170,000.00** Last Date for Trial: **06/05/09**

<u>Docket Dt</u>	<u>Seq</u>	<u>Code</u>	<u>Text</u>
07/31/2009	1	HHELD	<u>Sentencing Heard in Courtroom 45 on Jul 31, 2009 at 09:00 AM.</u>
	2	OFJUD	Commissioner - Redmond, William R .
	3	OFJA	Judicial Assistant - Vance, C .
	4	OFREP	Court Reporter - Cabral, Stephanie R is present.
	5	PPW	The defendant is present with Attorney Christie, Moriyah .
	6	PPDA	Deputy District Attorney Malan, Derek for JoAnn Roth present.
	7	FCPR	Court has read and considered Probation Officer's Report.
	8	PLFB	Court finds there is a factual basis for defendant's plea.
	9	WVASN	Defendant waives his / her right to be arraigned at time of sentencing and indicates there is no legal cause why judgment should not be pronounced.
	10	FLP	The court orders the Probation report to be filed.
	11	TRARGU	Argument by the People .
	12	TRARGU	Argument by the Defense .
	13	SPPD	Defendant's application for probation is denied.
	14	SPSN	The defendant is sentenced to :
	15	SP2	Defendant waives his/her right to be arraigned at the time of sentencing and indicates there is no legal cause why judgment should not be pronounced. Defendant having Pled guilty to count 1-11378 HS , a felony, is sentenced to the Department of Corrections and Rehabilitation for the Middle term of 4 Year(s) which is doubled pursuant to 667(e)(1) of the Penal Code and 1170.12(b) and (c)(1) of the Penal Code.
	16	SPAC2	Defendant having also Pled guilty to the charge in count 2-11370.1(a) HS , a felony, is sentenced to the Middle term - 6 Year(s) , which is double the term pursuant to 667(d)(e)(1) PC and 1170.12(b) and (c)(1) PC. Sentence imposed is to be served Concurrent with count 1 .
	17	SPAC2	Defendant having also Pled guilty to the charge in count 3-12021(a)(1) PC , a felony, is sentenced to the Middle term - 4 Year(s) , which is double the term pursuant to 667(d)(e)(1) PC and 1170.12(b) and (c)(1) PC. Sentence imposed is to be served Concurrent with count 1 .
	18	SPA	The court finds the allegation pursuant to 1-12022(c) PC , as to count 1 , charged and found to be true. Court imposes 3 Year(s) . Sentence to be Consecutive to count 1 .
	19	SPP	The court finds prior 667.5(b) PC charged and found true. Court imposes 1 Year(s) to be served Consecutive to count 1 .
	20	SPP	The court finds prior 667.5(b) PC charged and found true. Court imposes 1 Year(s) to be served Consecutive to count 1 .

Pelican Bay State Prison

FEB 06 2015

Appeals Office

Report Date: 07/31/2009 10:10 AM

Louis Aguirre v. Ducart et al.**Exhibit 1 - 1**

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF VENTURA

MINUTE ORDER**Case Number 2007016757 F A****People Vs Aguirre, Louis Juares**

Name: Aguirre, Louis Juares **Court Room:** 45 **For:** 07/31/09 09:00 AM
Case #: 2007016757 F A **Atty Name:** Moriya L Christie, ATTY
Case Status: Convicted **Mand. App:** Yes
Release Status: In custody California Department of Corrections (CDC)
Charging Document: Information **Bail Set Amt:** \$170,000.00 **Last Date for Trial:** 06/05/09

<u>Docket Dt</u>	<u>Seq</u>	<u>Code</u>	<u>Text</u>
07/31/2009	21	SPTFT	Total fixed determinate term to be served in the Department of Corrections and Rehabilitation is 9 Year(s) 0 Month(s) .
	22	SPCTS	Credit of Actual - 455 days, 4019(b) PC - 227 days, State Institution- 0 days, for a total of 682 days.
	23	SPSTRK	Court exercises discretion and strikes the 667.5(b) PC as to count 1 .
	24	SPCII	You shall read and sign CII Notification Form and register Pursuant to 11590 of the Health and Safety Code .
	25	SPDRG	Pursuant to Section 1203.096 of the Penal code, the Court finds the defendant has a history of drug abuse, was convicted of a drug offense or was under the influence of alcohol or a controlled substance at the time of the commission of the offense and recommends that the defendant participate in a counseling or educational program.
	26	SPLAB	Pay a fee of \$165.00 for count(s) 1 pursuant to 11372.5 of the Health and Safety Code; Criminalistic Lab Fund.
	27	SPLAB	Pay a fee of \$495.00 for count(s) 1 pursuant to 11372.5 of the Health and Safety Code; Criminalistic Lab Fund.
	28	SPRT	Pay Restitution Fine of \$200.00 pursuant to Section 1202.4(b) of the Penal Code and pursuant to Section 2085.5 of the Penal Code. The Director of Corrections may deduct from the wages and trust account deposits of a prisoner unless prohibited by federal law.
	29	SPRT2	You are to pay a Restitution Fine in the amount of \$200.00 . Payment of the restitution amount is stayed pending successful completion of parole pursuant to Section 1202.45 of the Penal Code.
	30	FENA	The Court finds you have no ability to pay for the Prob. Investigation fee at this time. This order is subject to review and may be calendared in the future for consideration of a modification to this order.
	31	CODW	The Court declares the weapon to be a nuisance and orders the weapon to be destroyed.
	32	ADAPL	The defendant has been advised of his/her right to appeal.
	33	ADPRL	The defendant has been advised of his/her parole rights.
	34	DMR	The Court orders the remaining counts to be dismissed.
	35	SPTRANS	The defendant is remanded forthwith to the custody of the Sheriff. The Sheriff is ordered to transport the defendant to the California Department of Corrections and Rehabilitation in Wasco .

Pelican Bay State Prisor.

FEB 06 2015

Appeals Office

Report Date: 07/31/2009 10:10 AM

Louis Aguirre v. Ducart et al.**Exhibit 1 - 2**

③

CDC NUMBER V99888	NAME AGUIRRE, LUIS, JUAREZ	ETHNIC MEX	BIRTHDATE
ACA AGUIRRE, LOUIS, JUARES			
TERM STARTS 08/12/2009	MAX REL DATE 09/13/2016	MIN REL DATE 04/15/2015 8/3/2016	MAX ADJ REL DT 09/13/2016
BASE TERM 4/00 + ENHCMNTS 5/00 = TOT TERM 9/00			MIN ADJ REL DT 04/15/2015 8/3/2016 PAROLE PERIOD 3 YRS

PRE-PRISON + POST SENTENCE CREDITS
CASE P2900-5 P1203-3 P2900-1 CRC-CRED MH-CRED P4019 P2931 POST-SENT TOT
2007016757 455 227 11 693

REGISTRATION REQUIRED PER H11590
PC296 DNA COMPLETED

INMATE COPY

RECV DT/ CNT	COUNTY/ OFF-CODE	CASE DESCRIPTION	SENTENCE DATE	CREDIT CODE	OFFENSE DATE
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CONTROLLING PRINCIPAL & CONSECUTIVE (INCLUDES ENHANCEMENTS/OFFENSES):

--CONTROLLING CASE --
8/12/2009 VEN 2007016757 7/31/2009 NO STRIKES: 2
02 P667.5(B) PPT-NV *sentenced* 3
01 H11378
POSS CS FOR SALE 3 05/03/200
(H) WPN
P12022 (C) 02 ARMED FARM HS CODE 3

NON-CONTROLLING OFFENSES:
10/12/2005 VEN 200303603 10/06/2005 NO STRIKES: 2
02 P12021(A)1
POSS F/A EX-FEL 3 10/30/200
(H) WPN
8/12/2009 VEN 2007016757 7/31/2009 NO STRIKES: 2
02 H11370.1(A)
POSS CS W/POSS OF FIREARM 3 05/03/200
03 P12021(A)1
POSS F/A EX-FEL 3 05/03/200
(H) WPN

TRAN TYPE	DATE	END DATE	LOG NUMBER	RULE NUMBER	DAYS ASSESS LOST REST DEAD
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***** CONTINUED *****

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION
CDCR 128-B (05/08)

NAME AGUIRRE, Luis	CDC NUMBER V-99888	INSTITUTION/PRISON WSP-R/C	HOUSING FDB6
------------------------------	------------------------------	--------------------------------------	------------------------

On 10-02-09, an investigation was completed into your suspected membership and/or association with a prison gang and/or disruptive group recognized by the California Department of Corrections and Rehabilitation as defined in Section 3000 of the California Code of Regulations. The investigation revealed sufficient evidence to identify you as a:

MEMBER ASSOCIATE IN-ACTIVE OF THE PRISON GANG DISRUPTIVE GROUP:

MEXICAN MAFIA (EME)

An interview relative to this investigation and suspected gang affiliation shall be held not less than 24-hours from the date of this notification unless otherwise requested by you in writing. During this interview, you will be given an opportunity to be heard and have your opinion documented relative to the evidence considered in this validation. Written rebuttals may be submitted at the time of the interview.

DISCLOSURE OF EVIDENCE

The following source documents were considered in your identification as a member or associate of the aforementioned prison gang or disruptive group. All confidential documents shall be disclosed via CDC Form 1030, Confidential Information Disclosure Form. Each source document shall be identified by type (I.E. CDC 128-B, CDC 115, Confidential Report, etc.) and date of the report.

- SELF ADMISSION:
- TATTOOS AND SYMBOLS: CDCR 128B dated 10-02-09
- WRITTEN MATERIAL:
- PHOTOGRAPHS:
- STAFF INFORMATION:
- OTHER AGENCIES: Ventura County Sheriff Department Jail Incident Report #90258 dated 02-27-09
- ASSOCIATION:
- INFORMANTS:
- OFFENSES: (GANG RELATED):
- LEGAL DOCUMENTS:
- VISITORS:
- COMMUNICATIONS (MAIL/NOTES): CDCR 128B dated 12-22-08 and CDCR 128B dated 12-23-08
- DEBRIEFING REPORTS:

The Acknowledged ERROR

Copies of all documents and/or disclosures were provided to the inmate as required per CCR Section 3378 and Departmental Operations Manual (DOM) 52070.21.1 by:

NAME <i>C. Rodriguez</i> C. Rodriguez	CLASSIFICATION C/O	DATE 10-02-09	TIME 0910
--	------------------------------	-------------------------	---------------------

1) I waive my right to the 24 hour time period:

Signature is only required if there is a waiver in #1 or #2.

And / Or

SIGNED:	CDCR #	DATE
---------	--------	------

2) I waive my right to be interviewed:

Additional comments: (Use this space to record any comments made by the inmate at the time of disclosure)

GANG VALIDATION

DATE:10-02-09

EVIDENCE DISCLOSURE AND INTERVIEW NOTIFICATION
Louis Aguirre v. Ducart et al.

CDCR 128B
Exhibit 3

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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **OAKLAND DIVISION**

20 GEORGE RUIZ, JEFFREY FRANKLIN,)
21 TODD ASHKER, GEORGE FRANCO,)
22 GABRIEL REYES, RICHARD JOHNSON,)
23 DANNY TROXELL, PAUL REDD, LUIS) Case No.: 4:09-cv-05796-CW
24 ESQUIVEL, and RONNIE DEWBERRY, on)
25 their own behalf, and on behalf of a class of) **PLAINTIFFS' SECOND AMENDED**
26 similarly situated prisoners,) **COMPLAINT**
27)
28 Plaintiffs,) **CLASS ACTION**
29 v.)
30)
31 EDMUND G. BROWN, Jr., Governor of the)
32 State of California; MATTHEW CATE,)
33 Secretary, California Department of)
34 Corrections and Rehabilitation (CDCR);)
35 ANTHONY CHAUS, Chief, Office of)
36 Correctional Safety, CDCR; and G.D. LEWIS,)
37 Warden, Pelican Bay State Prison,)
38)
39 Defendants.)

40 PLAINTIFFS' SECOND AMENDED COMPLAINT
41 Case No.: 4-09-cv-05796-CW

I. INTRODUCTION

1
2 1. Plaintiffs George Ruiz, Jeffrey Franklin, Todd Ashker, George Franco, Gabriel
3 Reyes, Richard Johnson, Danny Troxell, Paul Redd, Luis Esquivel, and Ronnie Dewberry sue on
4 their own behalf and as representatives of a class of prisoners who have been incarcerated in
5 California's Pelican Bay State Prison's Security Housing Unit ("SHU") for an unconscionably
6 long period of time without meaningful review of their placement. Plaintiffs have been isolated
7 at the Pelican Bay SHU for between 11 and 22 years. Many were sent to Pelican Bay directly
8 from other SHUs, and thus have spent even longer – over 25 years – in solitary confinement.

10 2. California has subjected an extraordinary number of prisoners to more than a
11 decade of solitary confinement at the Pelican Bay SHU. According to 2011 California
12 Department of Corrections and Rehabilitation (CDCR) statistics, more than 500 prisoners (about
13 half the population at the Pelican Bay SHU) have been there for more than 10 years. Of those
14 people, 78 prisoners have been there for more than 20 years. As one federal judge in the
15 Northern District of California noted, retention of prisoners in the Pelican Bay SHU for 20 years
16 "is a shockingly long period of time." *See Griffin v. Gomez*, No. C-98-21038, slip op. at 10 (N.D.
17 Cal. June 28, 2006).

19 3. California's uniquely harsh regime of prolonged solitary confinement at Pelican
20 Bay is inhumane and debilitating. Plaintiffs and class members languish, typically alone, in a
21 cramped, concrete, windowless cell, for 22 and one-half to 24 hours a day. They are denied
22 telephone calls, contact visits, and vocational, recreational or educational programming.
23 Defendants persistently deny these men the normal human contact necessary for a person's
24 mental and physical well-being. These tormenting and prolonged conditions of confinement have
25 produced harmful and predictable psychological deterioration among Plaintiffs and class
26 members.
27
28

1 4. The solitary confinement regime at Pelican Bay, which renders California an
2 outlier in this country and in the civilized world, violates the United States Constitution's
3 requirement of due process and prohibition of cruel and unusual punishment, as well as the most
4 basic human rights prohibitions against cruel, inhuman or degrading treatment. Indeed, the
5 prolonged conditions of brutal confinement and isolation at Pelican Bay cross over from having
6 any valid penological purpose into a system rightly condemned as torture by the international
7 community.
8

9 5. The conditions at Pelican Bay have become so harsh and notorious that prisoners
10 at the Pelican Bay SHU, as well as thousands of others incarcerated in facilities across the
11 country, have engaged in two recent sustained hunger strikes.
12

13 6. California, alone among all 50 states and most other jurisdictions in the world,
14 imposes this type of extremely prolonged solitary confinement based merely on a prisoner's
15 alleged association with a prison gang. While defendants purport to release "inactive" gang
16 members after six years in the SHU, in reality their so-called gang validation and retention
17 decisions (and resulting indefinite SHU placement) are made without considering whether
18 plaintiffs and class members have ever undertaken an illegal act on behalf of a gang, or whether
19 they are – or ever were – actually involved in gang activity. As one example, defendants continue
20 to detain plaintiff George Ruiz in the Pelican Bay SHU after 22 years, based on nothing more
21 than his appearance on lists of alleged gang members discovered in some unnamed prisoners'
22 cells and his possession of allegedly gang-related drawings.
23

24 7. Plaintiffs' and class members' only way out of isolation is to "debrief" to prison
25 administrators (i.e., report on the gang activity of other prisoners); as such, defendants
26 unreasonably condition release from inhumane conditions on cooperation with prison officials in
27 a manner that places prisoners and their families in significant danger of retaliation. *See Griffin*,
28

1 No. C-98-21038 at 8. Accordingly, for those many prisoners who refuse or are unable to debrief,
2 defendants' policies result in "effectively permanent" solitary confinement. *Id.*

3 8. The conditions at the Pelican Bay SHU are extremely harsh when compared to the
4 experience of a typical California state prisoner, particularly given the extraordinary length of
5 SHU confinement at Pelican Bay. Yet plaintiffs and the class they represent are incarcerated for
6 years without any meaningful review of their SHU confinement or any notice of how they can
7 earn their way back to the general population without becoming informants.
8

9 9. A few years after Pelican Bay opened its doors in December 1989, a class of
10 Pelican Bay prisoners brought a constitutional challenge to the conditions, practices, and abuse at
11 the facility. After an extensive trial, the court found that, for a subclass of prisoners at high risk
12 for developing mental illness, the isolation and harsh conditions in the Pelican Bay SHU
13 constituted cruel and unusual punishment. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D.
14 Cal. 1995). Although the court rejected Eighth Amendment claims brought by prisoners outside
15 this high risk group, it emphasized that it had only considered isolation lasting up to three years.
16 The court could "not even begin to speculate on the impact on inmates confined in the SHU for
17 periods of 10 to 20 years or more[.]" *Id.* at 1267. This case presents the substantial question left
18 unanswered by *Madrid*.
19

20 10. Plaintiffs and the class seek a declaration that the ongoing practices of the
21 defendants – the Governor of California, the Secretary and the Chief of the Office of Correctional
22 Safety of the CDCR, and the Warden of Pelican Bay State prison – violate their constitutional
23 rights, and injunctive relief compelling defendants to provide prisoners at Pelican Bay with
24 meaningful review of their indeterminate SHU assignment and to cease holding prisoners in the
25 inhumane conditions of solitary confinement for extremely prolonged periods.
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II. JURISDICTION AND VENUE

11. Plaintiffs and the class bring claims pursuant to 42 U.S.C. § 1983 and the Eighth and Fourteenth Amendments to the United States Constitution.

12. This Court has jurisdiction for claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 1331 and 1343 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

13. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims brought by plaintiffs and the class have occurred in this District.

III. PARTIES

A. Plaintiffs

14. Plaintiff GEORGE RUIZ (B82089) is a 69-year-old prisoner who has spent 22 years at the Pelican Bay SHU, and the last 28 years in solitary confinement, due to his validation as a member of the Mexican Mafia (EME). He has had no significant rule violations since his incarceration began in 1980. Indeed, he has only had one disciplinary violation of any kind since 1986. He is serving a seven year to life sentence and has been eligible for parole since 1993, but multiple parole boards have indicated that he will never be paroled while he is housed in the SHU.

15. Plaintiff JEFFREY FRANKLIN (C08545) is a 52-year-old prisoner who has spent the last 22 years at the Pelican Bay SHU. In 2006, he was denied inactive Black Guerilla Family (BGF) status based solely on evidence that he associates with other gang members, shares a common ideology, and attempts to educate the community and other prisoners to his philosophy.

16. Plaintiff TODD ASHKER (C58191) is a 48-year-old prisoner who has spent over 25 years in solitary confinement, and 22 years at the Pelican Bay SHU. He was validated as an

1 Aryan Brotherhood member in 1988, and has been denied inactive status based on confidential
2 memoranda from informants and artwork found in his cell. Ashker has never been charged with
3 or disciplined for a proven gang-related act. As the Warden stated in response to one of Ashker's
4 administrative grievances, unless Ashker debriefs, by "formally renounc[ing] his membership" in
5 the Aryan Brotherhood and "divulg[ing] all of their secrets to the authorities," he will remain
6 incarcerated in the SHU for the rest of his life.

8 17. Plaintiff GEORGE FRANCO (D46556) is a 46-year-old prisoner who has spent 20
9 years in solitary confinement at the Pelican Bay SHU. In 2008, Franco was denied inactive
10 Nuestra Familia status based on confidential statements by informants regarding his role within
11 the gang, and the fact that his name appeared on gang rosters found in other prisoners' cells.
12 None of the source items relied on to retain Franco in the SHU for another six years alleged any
13 gang activity or criminal conduct.

15 18. Plaintiff GABRIEL REYES (C88996) is a 46-year-old prisoner who has spent
16 almost 16 years continuously in isolation in California, and has been kept in the Pelican Bay SHU
17 for 14 and one-half years. Reyes is serving a sentence of 25 years to life as a result of
18 California's "three strikes" law. At his last inactive review in 2008, he was denied inactive EME
19 associate status solely on possession of artwork allegedly containing gang symbols.

21 19. Plaintiff RICHARD JOHNSON (K53293) is a 61-year-old prisoner who has spent
22 almost 15 years in solitary confinement at the Pelican Bay SHU due to his validation as a BGF
23 member. Under California's "three strikes" law, Johnson is currently serving 33 years to life for
24 drug-related offenses. Johnson has never incurred a major disciplinary offense, yet continues to
25 languish in the Pelican Bay SHU.

26 20. Plaintiff DANNY TROXELL (B76578) is a 59-year-old prisoner who has spent
27 over 26 years in solitary confinement, and 22 years at the Pelican Bay SHU due to his validation
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1 as a member of the Aryan Brotherhood. Troxell's only act of violence in the last 30 years
2 involved a fist fight in 1997 in which nobody was significantly injured. He has been eligible for
3 parole since 1996, but pursuant to a practice of denying parole to all SHU prisoners, he has no
4 hope of being released from prison.

5
6 21. Plaintiff PAUL REDD (B72683) is a 55-year-old prisoner who has spent almost
7 33 of the past 35 years in solitary confinement in California and has spent the last 11 and one-half
8 years in Pelican Bay's SHU. Redd was first validated as a BGF gang member in 1980 based on
9 six confidential memoranda stating that he had communicated with other BGF prisoners and that
10 his name was on a coded roster found in a validated BGF member's possession. Over 30 years
11 later, he continues to be labeled a gang member based merely on association.

12
13 22. Plaintiff LUIS ESQUIVEL (E35207) is a 43-year-old prisoner who has spent the
14 last 13 years in solitary confinement in the Pelican Bay SHU. He has never incurred a serious
15 disciplinary violation. In 2007, after more than six years in the SHU, Esquivel was determined to
16 be an inactive gang associate, but was nonetheless retained in the SHU. He was revalidated as an
17 active EME associate a year later because he possessed allegedly gang-related Aztec artwork.

18
19 23. Plaintiff RONNIE DEWBERRY (C35671) is a 53-year-old prisoner who has spent
20 the last 27 years in solitary confinement. He has been repeatedly validated as a BGF member
21 based merely on his associations and his political, cultural, and historical writings. He has had no
22 major disciplinary infractions since 1995. Dewberry would be eligible for parole consideration
23 but for his retention in the SHU.

24
25 24. As detailed below, plaintiffs are suffering serious mental and physical harm due to
26 their prolonged confinement in isolation at the Pelican Bay SHU.

27 **B. Defendants**

28 25. Defendant EDMUND G. BROWN, Jr., is the Governor of the State of California.

1 As such, he has caused, created, authorized, condoned, ratified, approved or knowingly
2 acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs
3 and practices that prevail at Pelican Bay SHU, as described below. He has, therefore, directly and
4 proximately caused, and will continue to cause in the future, the injuries and violations of rights
5 set forth below. Defendant Brown is sued in his official capacity only.
6

7 26. Defendant MATTHEW CATE is the Secretary of the CDCR. As such, he has
8 caused, created, authorized, condoned, ratified, approved, or knowingly acquiesced in the illegal,
9 unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at
10 the Pelican Bay SHU, as described below. He has, therefore, directly and proximately caused,
11 and will continue to cause in the future, the injuries and violations of rights set forth below.
12 Defendant Cate is sued in his official capacity only.
13

14 27. Defendant ANTHONY CHAUS is the Chief of the Office of Correctional Safety
15 of the CDCR. The Office of Correctional Safety houses and supervises the Special Services Unit
16 (SSU), which is CDCR's primary departmental gang-management unit responsible for
17 investigating prisoners suspected of gang affiliation. As such, he has caused, created, authorized,
18 condoned, ratified, approved, or knowingly acquiesced in the illegal, unconstitutional, and
19 inhumane conditions, actions, policies, customs and practices that prevail at the Pelican Bay
20 SHU, including but not limited to issues of gang validation. He has, therefore, directly and
21 proximately caused, and will continue to cause in the future, the injuries and violations of rights
22 set forth below. Defendant Chaus is sued in his official capacity only.
23

24 28. Defendant G.D. LEWIS is the Warden of Pelican Bay State Prison. As such, he
25 has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the
26 illegal, unconstitutional, and inhumane conditions, actions, policies, customs, and practices that
27 prevail at the Pelican Bay SHU, as described below. He has, therefore, directly and proximately
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1 caused, and will continue to cause in the future, the injuries and violations of rights set forth
2 below. Defendant Lewis is sued in his official capacity only.

3 IV. FACTUAL ALLEGATIONS

4 A. Conditions at the Pelican Bay SHU

5 29. California opened Pelican Bay State Prison on December 1, 1989. It is the most
6 restrictive prison in California and one of the harshest super-maximum security facilities in the
7 country.
8

9 30. The prison is split between general population units for maximum security
10 prisoners and the Security Housing Unit (SHU). The SHU contains 1,056 cells explicitly
11 designed to keep the alleged “worst of the worst” in the state prison system under conditions of
12 extreme isolation, sensory deprivation, and restricted movement. Also characteristic of Pelican
13 Bay’s SHU are the extremely limited recreational and cultural opportunities afforded to prisoners,
14 a near total lack of contact with family and loved ones, an absolute denial of work opportunities,
15 limited access to personal property, and extraordinary levels of surveillance and control.
16

17 31. Pelican Bay was specifically designed to foster maximum isolation. Situated in
18 rural Del Norte County, on California’s northern border with Oregon, its lengthy distance from
19 most prisoners’ families was considered advantageous by the California correctional
20 administrators who developed the facility. The prison is a 355-mile drive from San Francisco and
21 a 728-mile drive from Los Angeles, where many of the prisoners’ families live.
22

23 32. The original planners did not contemplate that prisoners would spend decades at
24 Pelican Bay. Rather, they designed the prison under the assumption that prisoners would
25 generally spend up to 18 months in the SHU – a term consistent with practices in the rest of the
26 country.
27

28 33. According to CDCR, there were on average 1,106 people incarcerated in the

1 Pelican Bay SHU in 2011. About half (513) had been in the SHU for more than 10 years. Of
2 those people, 222 had been incarcerated in the SHU for 15 or more years, and 78 had been there
3 for more than 20 years. Of the remaining people, 544 had been in the SHU for five to 10 years,
4 and the rest, 54, were there for five years or less.

5 34. Many plaintiffs and class members, including Ruiz, Ashker, Troxell, Franklin, and
6 Dewberry, have been at Pelican Bay since the year it opened.

7 35. Some plaintiffs and class members have spent even longer in continuous isolation,
8 as they were transferred directly from other solitary units to the Pelican Bay SHU. For example,
9 Ruiz has been held in solitary confinement since 1984 – for approximately 28 years. Dewberry
10 has been in isolation for 27 years. Troxell has spent over 26 years in isolation, and Ashker has
11 spent over 25 years in isolation.
12

13 36. All plaintiffs have been held in the Pelican Bay SHU for over 10 years.

14 37. California’s prolonged isolation of thousands of men is without equal in the United
15 States. There is no other state in the country that consistently retains so many prisoners in
16 solitary confinement for such lengthy periods of time.
17

18 38. The cost of housing a prisoner at the Pelican Bay SHU is considerably higher than
19 the cost of incarcerating a prisoner in general population housing. CDCR reports that it cost the
20 State \$70,641 in 2010-2011 to house a single prisoner at the Pelican Bay SHU – tens of thousands
21 of dollars more per prisoner than in the general population.
22

23 39. Plaintiffs and the hundreds of other long-term SHU residents at Pelican Bay are
24 warehoused in cramped, windowless cells, are given almost no access to recreation or exercise,
25 and have no access to programming or vocational activities. Prisoners never leave the Pelican
26 Bay SHU except under rare circumstances for medical purposes or a court appearance.

27 40. Compounding the extremity of their situation, plaintiffs and class members must
28

1 face these conditions in a state of near total solitude. Pelican Bay prisoners have absolutely no
2 access to group recreation, group education, group prayer, or group meals. Most are housed in a
3 single-occupancy cell and cannot have a normal human conversation with another prisoner. Their
4 only avenue of communication is by speaking loudly enough for the prisoner in the next cell, or a
5 cell down the line, to hear. Guards, however, have discretion to issue warnings and punish any
6 loud communication as a rule violation, and do so. Moreover, any communication with another
7 validated gang member or associate, even just a greeting, may be and has been used by CDCR as
8 evidence of gang affiliation justifying the prisoners' retention in the SHU.
9

10 41. For example, CDCR cited as evidence of Franklin's continued gang affiliation the
11 fact that he was observed in 2006 "communicating by talking" between pods with another
12 prisoner who is a validated member of a different gang.
13

14 42. Similarly, in March 2011, Franco received a disciplinary violation simply for
15 speaking to a prisoner in the next pod as he passed by his cell on the way back from the shower.
16 Redd, too, was disciplined in 2007 for talking to another prisoner in passing.

17 43. While some plaintiffs and class members have had cellmates at Pelican Bay, being
18 locked up with a cellmate all day in an 80-square-foot cell does not compensate for the severe
19 isolation of the Pelican Bay SHU, as the *Madrid* Court found. *See Madrid*, 889 F.Supp. at 1229-
20 30. Instead, double-celling requires two strangers to live around-the-clock in intolerably cramped
21 conditions, in a cell barely large enough for a single human being to stand or sit.
22

23 44. Plaintiffs' and class members' communication with loved ones outside the facility
24 is also subject to severe restrictions.

25 45. Prisoners at the Pelican Bay SHU are prohibited from any access to social
26 telephone calls absent an emergency. A single telephone call may be granted to a prisoner in the
27 event of an emergency (such as a death in the family), but Pelican Bay staff retains complete
28

1 discretion to determine whether the circumstances allow for a call. Ashker, for example, was able
2 to speak to his mother only twice in 22 years: once in 1998, and once in 2000. She has since
3 died. Reyes was denied a telephone call home after his stepfather died, because he had been
4 allowed a telephone call several months earlier when his biological father died.

5
6 46. Neither plaintiffs nor the experts they have consulted are aware of any other
7 federal, local or state correctional system in the United States that forbids all non-emergency
8 telephone communication.

9 47. The remote location of Pelican Bay means that most SHU prisoners receive no
10 visits with family members or friends for years at a time. Many prisoners have thus been without
11 face-to-face contact with people other than prison staff for decades.

12 48. When they do occur, family visits are limited to two two-hour visits on weekends.
13 No physical contact whatsoever is allowed; visits occur behind plexiglass, over a telephone, in a
14 cramped cubicle. This means that prisoners may not even hug or hold hands with visiting family
15 members, children, or other loved ones. Despite the non-contact nature of the visits, prisoners are
16 strip-searched before and after.

17
18 49. The visits are monitored and recorded, and the tapes are later reviewed by gang
19 investigators seeking evidence of gang communication to use against the prisoner and his visitor.

20 50. When Ashker's disabled mother visited him, no accommodation was made for her
21 wheelchair, causing a shortened and difficult visit. She never visited again. Dewberry, whose
22 family lives in Oakland, has had less than one visit per year since his 1990 transfer to Pelican
23 Bay. He had no visits between 2008 and February 2012. Franklin's last social visit was in 2005.

24 51. Troxell's family has given up trying to visit him because of the distance and cost
25 of traveling to Pelican Bay and because non-contact visits are so upsetting. He has five
26 grandchildren and one great-grandchild, but has never met them.
27
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1 52. Esquivel sought a hardship transfer from Pelican Bay, due to his mother's
2 difficulty in visiting him from San Diego. The transfer was denied, and he was told to debrief
3 instead. As a result, Esquivel was unable to see or speak to his parents between 2000 and 2009,
4 when his mother died. After her death, he was allowed one phone call with his father and sister –
5 his only social call in nine years. As soon as he hung up the phone, Pelican Bay gang
6 investigators told him to think about taking advantage of the debriefing program.
7

8 53. The lack of telephone calls and functional lack of visitation imposes considerable
9 strain on family relationships; those relationships have frequently broken down entirely. Reyes
10 has not hugged his daughters in almost two decades, since they were in pre-school. They are now
11 adults. Reyes was only recently allowed to send his children a photograph of him – his first in 17
12 years. His aging mother is ill and cannot travel the considerable distance to Pelican Bay, and the
13 rules forbid him to speak with her by phone.
14

15 54. Esquivel has not shaken another person's hand in 13 years and fears that he has
16 forgotten the feel of human contact. He spends a lot of time wondering what it would feel like to
17 shake the hand of another person.

18 55. Prisoners at the Pelican Bay SHU may receive non-legal mail, but they may only
19 keep 10 pieces of social mail at a time; any other mail is confiscated. There are significant delays
20 in the delivery of both social and legal mail to prisoners.
21

22 56. These extreme restrictions on human contact are imposed on plaintiffs and class
23 members as a matter of official CDCR policy and have been approved or implemented by
24 defendants.

25 57. In addition to the near total isolation that prisoners at Pelican Bay face, the
26 physical conditions under which they live are stark.
27

28 58. The cells in the Pelican Bay SHU are completely concrete, measure approximately

1 80 square feet, and are eight feet high. They contain a bed made of concrete, a sink, and a toilet.
2 Concrete slabs projecting from the walls and floor serve as a desk and stool. The cells have no
3 window, so prisoners have no view of the outside world, nor any exposure to natural light. Until
4 the summer 2011 hunger strike described below, prisoners were not allowed to put up any
5 decorations, drawings, or photographs on their walls; now they are permitted one wall calendar.
6 The doors to the cells consist of solid steel, rather than bars, and are perforated with small holes
7 that allow for a partial view into a concrete hallway. The door has a food slot that an officer may
8 unlock to insert food or mail, and that is also used to handcuff the prisoner before the door is
9 opened. The cells do not contain an emergency call button, so prisoners must yell for help in the
10 event of an emergency, or rely on a staff member noticing that they are in distress.
11

12 59. The unit is loud – guards’ conversations echo down the tier all day. At night the
13 guards stamp mail loudly, open and close doors, and walk the tier with rattling keys and chains
14 for count. Prisoners who are not “showing skin” during these counts are awakened. As a result
15 of these conditions, and the impact of their long-term isolation, many prisoners have developed
16 sleep disorders, vision problems, and headaches.
17

18 60. Bedding consists of a hard, lumpy mattress, sheets, and two thin blankets.

19 61. The temperature in the cells can be excessively hot or cold. The ventilation
20 consists of recycled air, which is cold in the winter and hot in the summer.
21

22 62. Property is tightly restricted. Plaintiffs and the class are allowed a total of only 10
23 books or magazines, and up to six cubic feet of property. They may purchase a television set or
24 radio if they have the means, though available stations are limited. Prisoners at the Pelican Bay
25 SHU are given one quarter of the regular monthly canteen allowance and may receive one annual
26 package, not exceeding 30 pounds in weight, including packaging.
27

28 63. Plaintiffs and the class normally spend between 22 and one-half and 24 hours a

1 day in their cells. They are typically allowed to leave their cells only for “exercise” and to
2 shower.

3 64. “Exercise” occurs in a barren, solid concrete exercise pen, known as a “dog run.”
4 It is supposed to last for one and one-half hours, seven times weekly. However, prisoners often
5 do not receive even this minimal amount of exercise due to staff shortages and training days,
6 disruptions, inclement weather, or arbitrary staff decisions.

7 65. The exercise pen is small and cramped, with high walls. Half of the roof is
8 partially covered with painted plexiglass and a metal mesh grate that obstructs direct sunlight; the
9 other half allows the only exposure Pelican Bay SHU prisoners ever have to the sky. Pelican Bay
10 is situated in one of the wettest areas of California, with an average rainfall of 67 inches. Rain
11 falls directly into the exercise pens, causing water to pool on the floor. The walls of the exercise
12 pen have accumulated mildew or mold, aggravating respiratory problems among the prisoners.

13 66. Until the 2011 hunger strike, there was no equipment whatsoever in the exercise
14 pen. Since then, prisoners have been provided one handball. Prisoners exercise alone, unless they
15 share their cell, in which case they are permitted to exercise with their cellmate. If a prisoner
16 with a cellmate wants to exercise alone to get a brief period of privacy, then his cellmate must
17 forfeit his opportunity to exercise.

18 67. Plaintiffs and other Pelican Bay SHU prisoners have absolutely no access to
19 recreational or vocational programming. While those prisoners who can afford them are allowed
20 to take correspondence classes, there has been no consistent access to proctors for exams that
21 would allow prisoners to get credit for their coursework. Until the 2011 hunger strike, prisoners
22 at the facility were banned from purchasing art supplies or hobby or crafting materials. Prisoners
23 who are discipline free for one year are now permitted to purchase and retain a limited amount of
24 art supplies.

1 68. Prisoners at the Pelican Bay SHU are allowed one 15-minute shower in a single
2 shower cell three times weekly.

3 69. Prisoners are allowed access to the law library for two hours, once a month, unless
4 they have a court deadline within 30 days.

5 70. Whenever a prisoner is moved outside of the “pod” in which he is housed and in
6 which the shower and exercise pen is located, he is handcuffed, his hands are shackled to his
7 waist or behind his back, and he is escorted by two guards. The prisoner is also strip searched in
8 public, near the door to the pod.

9 71. While prisoners in the SHU are supposed to be served the same meals as other
10 prisoners in California, in practice it is common that the meals prisoners receive in the SHU are
11 substandard in that they contain smaller portions, fewer calories, and often are served cold, rotten,
12 or barely edible.

13 72. Conditions at Pelican Bay are so harsh, even compared to other California SHUs,
14 that in 2011 Franklin requested to be transferred out of the Pelican Bay SHU to any of the other
15 three SHUs in California so that he could have “minimal human contact” and not suffer the
16 “extreme sensory deprivation” at Pelican Bay. In his request, he explained that other SHUs have
17 windows in the cells, allow some time for prisoners to “see and talk with each other,” and permit
18 prisoners to “see grass, dirt, birds, people and other things.”

19 73. Defendants are directly responsible for these stark conditions at Pelican Bay, and
20 for the degree to which the conditions are compounded by other punitive measures, including a
21 pattern and practice of coercive denial of standard medical care.

22 74. Plaintiffs have serious medical conditions, some of which, upon information and
23 belief, have been caused or exacerbated by their confinement at the Pelican Bay SHU. Franklin,
24 for example, has chronic back and eye problems, and Dewberry suffers from melanin deficiency
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1 leading to severe pigmentation loss, vitamin D deficiency, chronic lower back problems and pain,
2 stomach problems, and swollen thyroid glands. Redd suffers from hypertension, diabetes, vision
3 problems, and a thyroid disorder for which he receives no medication.

4 75. Johnson has osteoporosis, arthritis, and cysts in both kidneys, and he has suffered
5 renal failure. He also had a heart attack in 2009 while in the SHU, and takes heart medication.
6 He was scheduled to be transferred to Folsom Prison because of his heart condition, but was later
7 refused transfer after his participation in the Pelican Bay hunger strike.

8 76. Reyes suffers from several chronic medical ailments, including Sjogren's Disease,
9 for which he was prescribed effective medications; those medications have been discontinued at
10 the Pelican Bay SHU, and other medical treatment has also been withdrawn without explanation.

11 77. Ruiz has glaucoma and had a corneal transplant on his left eye. He may need one
12 for his right. He has diabetes, which became aggravated after a change in his medication. He
13 recently developed pneumonia, kidney failure, and difficulty breathing, and experienced a delay
14 in being seen by a medical practitioner.

15 78. Despite these serious conditions, prisoners with medical concerns are routinely
16 told by prison officials that if they want better medical care for their conditions or illnesses, or
17 improved pain management, the way to obtain adequate care is to debrief.

18 79. Ashker, for example, who suffers from almost constant pain due in part to an old
19 gunshot wound, was told by Pelican Bay medical staff in 2006 that he "holds the keys" to getting
20 better medical care, presumably by debriefing and moving to the general population.

21 80. Ruiz and Johnson have also been told that the only path to better health care is
22 debriefing.

23 81. The denial of adequate medical care at Pelican Bay is not isolated to a few doctors
24 or correctional officials, but is rather a longstanding pattern and practice which, on information
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1 and belief, has been officially sanctioned by defendants for the purpose of coercing plaintiffs and
2 class members to debrief.

3 82. The serious mental-health impact of even a few years in solitary confinement is
4 well documented, yet mental health care at the Pelican Bay SHU is grossly inadequate. Every
5 two weeks, a psychologist walks past the prisoners' cells, calling out "good morning," or "you
6 okay?" The psychologist walks past eight cells in approximately 30 seconds during these
7 "rounds." It is incumbent on a prisoner to get the psychologist's attention to indicate that he
8 wants to talk. As a result, prisoners in neighboring cells are aware when someone calls out to the
9 psychologist for help. There is no opportunity during this brief encounter for a private
10 consultation with a mental-health practitioner.

11 83. Indeed, beyond a brief intake screening upon their arrival to the SHU, the only
12 mental health assessment that many SHU prisoners receive occurs at Institutional Classification
13 Committee meetings, at which a mental health staff member is present. Each prisoner is asked
14 two standard questions: (1) whether he has a history of mental illness; and (2) whether he wants
15 to hurt himself or others. These questions are asked in front of the Warden, Correctional Captain,
16 and numerous other correctional staff. No further mental health evaluation occurs.

17 84. For these reasons, plaintiffs and class members have received inadequate mental
18 health care or none at all. Though prisoners may request mental-health services by filling out a
19 form, some plaintiffs have declined to seek any mental health care while incarcerated because of
20 concerns over lack of confidentiality. Others do not talk to mental health staff because those staff
21 members seem uncaring, and because officers can overhear sessions or are told of prisoners'
22 personal problems.

23 85. When one plaintiff actually requested mental health care, he was referred to a
24 "self-help" library book.
25

1 86. SHU assignment also prolongs plaintiffs’ and class members’ time in prison.
2 Since legislative changes in 2010, prisoners cannot earn “good time” or “conduct” credit while in
3 the SHU for gang affiliation. Therefore, a prisoner with a determinate (fixed) sentence such as
4 Esquivel, who was convicted in 1997 of robbery and burglary and is serving a flat 34-year
5 sentence, will be released between four and five years later than he otherwise would have simply
6 because he is incarcerated in the SHU.
7

8 87. In addition, an unwritten policy prevents any prisoner held in the SHU from being
9 granted parole. Ruiz, Ashker, Troxell, Franklin, and Dewberry are all eligible for parole, but
10 have been informed by parole boards that they will never attain parole so long as they are housed
11 in the SHU.
12

13 88. Ruiz, for example, has been incarcerated in California since 1981, after he was
14 convicted of robbery and kidnapping and sentenced to seven years to life in prison. He was told
15 by the judge that he would likely serve 13 and one-half years, and has been eligible for parole
16 since 1993. However, multiple parole boards have indicated that he will never get parole as long
17 as he is housed in the SHU.
18

19 89. Franklin has been eligible for parole since 2000, and although the parole board has
20 characterized his disciplinary history at Pelican Bay as “minimal,” it has repeatedly denied him
21 parole, citing, among other things, his refusal to disassociate with the gang through debriefing. In
22 2001, he was explicitly told that he needed to get out of the SHU to gain parole.
23

24 90. So too, Dewberry and Ashker have been eligible for parole since 1996 and 2004
25 respectively, but have been informed that they will not receive parole unless they first get out of
26 the SHU.
27
28

1 **B. Assignment to and Retention in the Pelican Bay SHU**

2 **i. Initial Assignment to the SHU**

3 91. CDCR places prisoners who have been validated as gang affiliates into the above
4 conditions in SHU for an indefinite term, served in repeatedly renewed six-year increments. *See*
5 CAL. CODE REGS. tit. 15, § 3341.5(c)(2)(A)(2) (2012).

6 92. Ignoring prisoners' actual behavior, CDCR identifies prison gang affiliates
7 through a process called prison gang validation. *See* CDCR, OPERATIONS MANUAL § 52070.21
8 (2009). Validation does not require CDCR to show that the prisoner has violated a prison rule,
9 broken the law, or even acted on behalf of the gang. Indeed, many prisoners who have not
10 engaged in any gang-related misconduct or rule violations before validation are placed in the
11 SHU based merely on allegations that they have associated with a gang.

12 93. For example, Ruiz, Johnson, Redd, Esquivel and Dewberry were all validated as
13 gang members or associates without allegations of actual gang activity or gang-related rule
14 violations. Rather, the prison relied on confidential informants who claimed these plaintiffs were
15 gang members or associates, on possession of allegedly gang-related art, tattoos, or written
16 material, and/or on inclusion of their names on alleged lists of gang members and associates.

17 94. When validated, prisoners are classified as either gang members or gang
18 associates. A "member" is a prisoner who has been accepted into membership by a gang. CAL.
19 CODE REGS. tit. 15, § 3378(c)(3). An "associate" is a prisoner or any person who is involved
20 periodically or regularly with members or associates of a gang. *Id.* at § 3378(c)(4). Both
21 members and associates (referred to globally as "gang affiliates") are subject to indefinite SHU
22 confinement.

23 95. California's practice of placing people in long-term SHU confinement simply
24 because of gang association is unusual and does not comport with the general practice of other
25

1 states that maintain super-maximum security prisons.

2 **ii. Periodic Review**

3 96. Once a prisoner is validated as a gang affiliate and sent to the SHU for an
4 indefinite term, he is entitled to periodic “reviews” of his validation. Pursuant to California
5 regulations, a classification committee must review the prisoner’s status every 180 days, allegedly
6 so they can consider releasing the prisoner to the general population. *Id.* at
7 § 3341.5(c)(2)(A)(1). In reality, classification reviews do not substantively review the prisoner’s
8 SHU assignment, but rather involve three steps. First, the prisoner is urged to debrief from the
9 gang. Second, a mental health staff member asks two questions: (1) do you have a history of
10 mental illness; and (2) do you want to hurt yourself or others? This mental health evaluation
11 occurs in front of all members of the classification committee, including the Warden, Facility
12 Captain, Correctional Captain, the Assignment Lieutenant, and other correctional staff. *See id.* at
13 § 3376(c)(2). Third, the classification committee “reviews” the paperwork in the prisoners’ file,
14 to make sure that all required paperwork is accounted for.
15

17 97. Unless a prisoner is willing to debrief, the 180-day review allows absolutely no
18 possibility of release from the SHU.

19 98. No examination of continued gang activity or association occurs at the 180-day
20 review, nor is there any assessment of whether the prisoner’s behavior requires continued SHU
21 placement. For this reason, such reviews are meaningless, and few Pelican Bay SHU prisoners
22 attend them.
23

24 99. The only review at which the classification committee team even purports to
25 determine whether the prisoner should be released from the SHU occurs once every six years. *See*
26 *id.* at § 3378(e). Therefore, all gang validated prisoners in the SHU must remain in solitary
27 confinement for six years without even the possibility of any review to obtain their release. This
28

1 six-year interval is far longer than any equivalent classification review at other supermax or high-
2 security systems in other states, the federal system, or other nations, and is far longer than the
3 120-day period that the Ninth Circuit deemed constitutionally permissible for prisoners housed in
4 solitary confinement in *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir. 1990).

5
6 100. Yet even this six-year inactive review is meaningless for most prisoners housed in
7 the SHU.

8 101. In some cases, like that of plaintiffs Ashker and Troxell, defendants have made a
9 predetermined decision to deny inactive status and thus retain the prisoner in the SHU until he
10 either debriefs or dies. For example, in 2004, Pelican Bay Warden Joe McGrath wrote in
11 response to one of Ashker's grievances that Ashker had been identified as an active member of
12 the Aryan Brotherhood and that "such an inmate must formally renounce his membership in this
13 group and divulge all of their secrets to the authorities. The alternative is remaining where
14 extremely dangerous inmates belong: the SHU."

15
16 102. For many, the six-year review results in SHU retention even though the prison can
17 produce no evidence (or even allegations) of gang activity. The review is supposed to determine
18 whether the prisoner is "active" with the prison gang or has assumed "inactive" status. Under
19 California regulations, "when the inmate has not been identified as being involved in gang
20 activity for a minimum of six (6) years," he can achieve "inactive status" and may be released
21 from the SHU. CAL. CODE REGS. tit. 15, § 3378(e).

22
23 103. Logically, one who achieves "inactive" status is still a gang member or associate,
24 but not an "active" one, in that he does not engage in any gang activities. Yet CDCR routinely
25 and regularly denies inactive status to prisoners even where there is no evidence whatsoever of
26 any gang activity. This longstanding pattern and practice is not the result of failings by individual
27 gang investigators, but is instead CDCR policy which, upon information and belief, has been
28

1 approved and implemented by defendants. Plaintiffs' experiences demonstrate this pattern.

2 104. Ruiz, for example, was denied inactive gang status in 2007 based on: (a) two 2006
3 searches of unnamed prisoners' cells that uncovered Ruiz's name on a laundry list of purported
4 EME members and associates in "good standing"; and (b) possession of photocopied drawings in
5 his cell. Ruiz openly possessed this artwork, drawn by other prisoners, for at least eight years
6 without any complaint or objection from prison officials. Three days before his 2007 inactive
7 review, CDCR asserted that the drawings contained symbols associated with the EME. Neither
8 of these source items provides any evidence of active gang involvement.
9

10 105. Reyes too has been repeatedly denied inactive status based on association, without
11 evidence of any gang activity. At his first inactive review, for example, Reyes was denied
12 inactive status based on one source item: exercising with other validated prisoners in a group yard
13 while in administrative segregation. At his last inactive review, in 2008, Reyes was denied
14 inactive status based only on drawings found in his cell, including a drawing for a tattoo of his
15 name with alleged Mactlactlomei symbols and a drawing of a woman, man and Aztec warrior,
16 with a geometric pattern known as the G-shield. The G-shield also appears in a tattoo on Reyes'
17 left pectoral and was rejected as a gang-related source item in 1996, 2003 and 2005.
18

19 106. Franklin has had similar experiences. In 2006, he was denied inactive status
20 because he was listed as a board member of George Jackson University, claimed by CDCR to be
21 a gang front, and because his name appeared on gang rosters confiscated from other prisoners.
22 Shortly thereafter he was seen "communicat[ing] by talking" with a validated member of a
23 different gang. CDCR officials instructed that this should be considered during Franklin's next
24 inactive review.
25

26 107. Johnson's inactive reviews have also largely focused on association and shared
27 ideology. In 1997, for example, he was denied inactive status based on a Black Power tattoo,
28

1 possession of a book about George Jackson (Paul Liberatore's *The Road to Hell: the True Story*
2 *of George Jackson, Stephen Bingham, and the San Quentin Massacre*), and a photograph collage
3 of him and George Jackson. Staff confidential informants also alleged, without any supporting
4 facts attached, that Johnson was a high-ranking member of the BGF and that he communicated
5 with BGF members through third parties. Johnson was denied inactive status in 2006 based on
6 old source items and possession of a copy of "N-GOMA Pelican Bay Support Project, Black
7 August 2005," a newsletter which includes dedications to alleged BGF members who have died.
8 None of these source items provide any evidence of Johnson's active involvement in a prison
9 gang in the prior six years.

11 108. Redd was denied inactive status in 2011 based purely on association and not on
12 any gang-related actions. His SHU retention was based on possession of drawings, collages, and
13 booklets related to George Jackson and the Black Panthers, as well as a card from a former Black
14 Panther Party member and his appearance on a roster of purported gang affiliates found amid the
15 property of another prisoner. In addition, according to confidential informants, Redd is a
16 "captain" of BGF who has communicated with other BGF members. None of these source items
17 provide any evidence of Redd's actions on behalf of a prison gang in the prior six years.

19 109. Dewberry was recently denied inactive status in November 2011 based on his
20 name appearing on a coded roster in another prisoner's possession, as well as such materials as
21 his political and historical writings, his possession of a pamphlet in Swahili, which defendants'
22 inactive review materials state is "a banned language at PBSP," confidential memoranda stating
23 that he is an "enforcer," and his participation in George Jackson University, which according to
24 defendants' inactive review materials "is not a university at all," but rather a "concept," "to teach
25 the philosophies and ideologies of all 'Political Prisoners'" and "to enlist individuals who are not
26 in prison to help spread the ideologies of the BGF (Black Guerilla Family)." None of the
27
28

1 materials used to deny Dewberry inactive status and consign him to the SHU for at least six more
2 years contained any evidence whatsoever that Dewberry was involved in any violent or gang-
3 related activity.

4 110. The most recent review of Franco's validation was in 2008, when he was found
5 inactive in the Northern Structure but was revalidated as an active Nuestra Familia member. His
6 SHU retention was based on several confidential memoranda from informants regarding his status
7 within the Nuestra Familia along with inclusion of his name on several gang rosters found in the
8 cells of other validated gang members. None of the source items relied on to consign Franco to
9 another six years in the SHU alleged any actual gang activity or criminal conduct.

10 111. At the same time that they were repeatedly denied inactive status, many plaintiffs
11 have demonstrated their ability to follow prison rules by avoiding any significant prison
12 misconduct. Ruiz, for example, has been disciplined only once for violating a prison rule in over
13 25 years. Indeed, his only rule violations in the past 30 years have been for missing count in
14 1981, possession of wine in 1983, possession of unlabeled stimulants and sedatives in 1986, and a
15 2007 rule violation entitled "Mail Violation With No Security Threat." Despite this innocuous
16 prison record, he has spent over 25 years in harsh isolation, without access to normal human
17 contact.

18 112. Similarly, Reyes' only disciplinary offenses in the last 12 years involved the recent
19 hunger strike and unauthorized donation of artwork to a non-profit organization. Johnson has had
20 only one rule violation in close to 15 years in the Pelican Bay SHU: in 2000, he was disciplined
21 for a mail violation.

22 113. With the exception of violations in 2011 related to his involvement in the hunger
23 strikes and his possession of a Black History scrapbook including information on the BGF's
24 history, Dewberry has not been charged with violating any prison rule since 1995.

1 114. Redd’s disciplinary offenses since 2000 consist mainly of simply speaking with
2 other prisoners in passing, along with one mail violation.

3 115. When, in the rarest of cases, a long-term prisoner does achieve inactive status,
4 even this is no guarantee of escape from solitary confinement. In 2007, after more than six years
5 in the SHU with only minor disciplinary write-ups, including, for example, refusing handcuffs,
6 refusing to leave the yard, and yelling, Esquivel was determined to be an inactive EME associate.
7 Nevertheless, he was retained in the SHU for a 12-month observation period. In 2008, after one
8 year of SHU observation, Esquivel was revalidated as an active gang associate based on one
9 source item: a report that officers found three items of artwork with Aztec symbols in his cell.
10

11 116. CDCR informs prisoners that they can gain release from the SHU as an “inactive”
12 gang member if CDCR has no evidence that they have been involved in “gang activity” for at
13 least six years, but in practice it denies prisoners inactive status even where there is no evidence
14 of any “gang activity” as that word is understood by the ordinary person. This denies meaningful
15 review.
16

17 117. At the same time, plaintiffs and class members are not given information about an
18 actual path out of the SHU, besides debriefing.

19 118. The disconnect between CDCR’s stated policy and actual practice has been
20 compounded by the settlement in the case of *Castillo v. Almeida*, C-94-2847 (N.D. Cal. 1994),
21 agreed to on September 23, 2004. In that settlement, CDCR officials agreed that “laundry lists” –
22 that is, lists by confidential sources, including debriefers, of alleged associates or members
23 without reference to gang-related acts performed by the prisoner – would not be used as a source
24 item to either validate a prisoner as a gang affiliate or deny him inactive status. CDCR officials
25 also agreed that “the confidential source must identify specific gang activity or conduct
26 performed by the alleged associate or member before such information can be considered as a
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28

1 source item.” *Id.* at ¶ 21.

2 119. The *Castillo* settlement was memorialized in a public document filed with the
 3 court and widely publicized to the prisoners at Pelican Bay prison. Despite the *Castillo*
 4 settlement, defendants continue to rely on “laundry lists” and on informants who identify no
 5 specific gang activity or conduct by the prisoner to retain plaintiffs and class members at the
 6 Pelican Bay SHU at the six-year inactive review. Such review violates due process a) by denying
 7 Plaintiffs and class members’ fair notice of the evidence that can be used against them to deny
 8 inactive status, and b) by providing confusing and misleading notification of what they need to do
 9 to get out of the SHU.
 10

11 120. Thus, CDCR’s practice of denying prisoners release despite their record of
 12 inactivity operates as a cruel hoax. This bait-and-switch furthers the hopelessness and despair
 13 that plaintiffs and other prisoners experience in the SHU and leads them to reasonably believe
 14 that there is no way out of the SHU except to debrief or die.
 15

16 121. Defendants’ policy of retaining prisoners in the SHU who are not active gang
 17 affiliates, or against whom no reliable evidence exists that they present any threat of gang-related
 18 violence or misconduct, is unmoored from any legitimate penological purpose or security need.
 19

20 122. These are not isolated aberrations limited to plaintiffs. Rather, defendants engage
 21 in an unwritten but consistent pattern and practice of equating gang association or shared
 22 ideology with “current gang activity.” All prisoners in the Pelican Bay SHU are subject to this
 23 practice.

24 **C. Psychological Harms**

25 123. In addition to being deprived of the minimal civilized measure of life’s necessities
 26 as described above, plaintiffs and class members are also experiencing unrelenting and crushing
 27 mental anguish, pain, and suffering as a result of the many years they have spent without normal
 28

1 human interaction, in stark and restrictive conditions, without any hope of release or relief.

2 Prisoners describe this confinement as “a living nightmare that does not end and will not end.”

3 124. The devastating psychological and physical effects of prolonged solitary
4 confinement are well documented by social scientists: prolonged solitary confinement causes
5 prisoners significant mental harm and places them at grave risk of even more devastating future
6 psychological harm.
7

8 125. Researchers have demonstrated that prolonged solitary confinement causes a
9 persistent and heightened state of anxiety and nervousness, headaches, insomnia, lethargy or
10 chronic fatigue (including lack of energy and lack of initiative to accomplish tasks), nightmares,
11 heart palpitations, and fear of impending nervous breakdowns. Other documented effects include
12 obsessive ruminations, confused thought processes, an oversensitivity to stimuli, irrational anger,
13 social withdrawal, hallucinations, violent fantasies, emotional flatness, mood swings, chronic
14 depression, feelings of overall deterioration, as well as suicidal ideation. Individuals in prolonged
15 solitary confinement frequently fear that they will lose control of their anger, and thereby be
16 punished further.
17

18 126. Plaintiffs suffer from and exhibit these symptoms.

19 127. While these symptoms are reported by people who have suffered from being
20 placed in solitary confinement for days, months or a few years, they become more pronounced
21 and cause greater pain and suffering when, as with plaintiffs and the class, one is incarcerated in
22 these conditions for many years without any meaningful hope of release. As plaintiff Gabriel
23 Reyes wrote in 2011:
24

25 You don't really know what makes [the SHU psychological torture] unless you
26 live it and have lived it for 10, 15, 20 plus years 24/7. Only the long term SHU
27 prisoner knows the effect of being alone between four cold walls with no one to
28 confide in and only a pillow for comfort. How much more can any of us take?
Only tomorrow knows. Today I hold it all in hoping I don't explode.

1 128. As a result of their prolonged SHU placement, most plaintiffs suffer from extreme
2 and chronic insomnia. For Johnson, “I am so busy suppressing feelings and isolating myself all
3 day, and so much anger builds up in me from the conditions, that I can’t sleep at night because the
4 sound of a door opening or closing wakes me and I get anxious about someone coming in on me
5 and I can’t fall back to sleep.”
6

7 129. Similarly, Ashker only gets approximately one to three hours of sleep a night both
8 because his mattress is too short for him, causing him to sleep on bare concrete from his knees
9 down, and because noise from the doors constantly slamming open and shut in the SHU at night
10 wakes him and causes anger and anxiety. The startling loud noises cause flashbacks of the
11 incident in which he was set up and shot unlawfully by a guard which began with the opening and
12 slamming of his cell door.
13

14 130. Many of the plaintiffs also suffer from severe concentration and memory
15 problems. For example, reading newspapers and books used to be a large part of Ruiz’s daily
16 routine, but the severe concentration and memory problems that he developed in the SHU now
17 prohibit him from reading more than a few sentences at a time, and he forgets the paragraph he
18 just read. Therefore he has essentially given up reading. Similarly, Franklin and Franco have
19 trouble concentrating, and their attention span and memory are deteriorating because of the
20 effects of long-term isolation in the SHU.
21

22 131. Plaintiffs experience life in the SHU as a struggle to avoid becoming mentally ill.
23 They have done so thus far by developing responses that deaden feelings and emotions, suppress
24 anger, and develop a psychological and physical state which removes much of what makes
25 normal human beings human – namely, feelings, emotions, daily physical contact, regular social
26 communication, and being able to see another person or living thing.
27

28 132. Plaintiffs experience growing and persistent rage at the conditions under which

1 they are incarcerated in the SHU. They attempt to suppress that rage in order to avoid self-
2 destruction, irresponsible acts of violence, or a mental breakdown. Plaintiffs' attempts at
3 suppression, in combination with their isolation, have led them to increasingly withdraw into
4 themselves and become emotionally numb to the point of feeling "non-human."

5
6 133. Troxell, for example, does not initiate conversations, is not motivated to do
7 anything, and feels as if in a stupor much of the time. He often becomes "blank" or out of touch
8 with his feelings.

9 134. Ashker experiences great feelings of anger, which he tries to control and suppress,
10 but this just deadens his feelings. He feels that he is "silently screaming" 24 hours a day.

11 135. Reyes copes with his years of SHU confinement by suppressing his anger, but to
12 do so he has had to suppress all feelings to the point where he no longer knows what he is feeling.

13 136. Esquivel experiences a near-total loss of the capacity to feel. He states that he
14 does not feel anything and this makes him "feel dead." He reports that days go by without him
15 feeling anything, "as if I am walking dead." He watches some television but has no emotional
16 reaction to the dramas he watches.

17 137. So too, when Redd suppresses his anger, he starts to not feel anything at all and
18 becomes numb. He often "feels like a caged animal."

19 20 21 22 23 138. This mounting anger, and attempts to suppress it, is a recurring and predictable
24 human reaction to the extreme situation that is isolated confinement. It is not a propensity unique
25 to plaintiffs.

26 27 28 139. Plaintiffs also experience a range of other psychological symptoms stemming
29 from their confinement in the SHU, including hallucinations, anxiety disorder, hypersensitivity,
30 severe mood swings, violent nightmares and fantasies, and panic attacks. At least one plaintiff
31 hears voices when no one is talking to him. Redd experiences frequent nightmares about

1 violence, something that he never experienced before being in the SHU.

2 140. The harm to plaintiffs is compounded by their prolonged and indefinite lack of
3 contact with their families and others. For example, Ashker speaks of never having any face-to-
4 face communication with others; he just hears disembodied voices. Other plaintiffs describe the
5 pain of not being able to hug, share photos with, have phone calls with, or in some cases even see,
6 family members for what they expect will be the rest of their lives.

7 141. Plaintiffs are convinced that they will be kept in the SHU for the rest of their
8 sentences, or the rest of their lives. This causes them acute despair.

9 142. These psychological symptoms are precisely those reported in the literature about
10 individuals placed in prolonged solitary confinement. But the extreme duration of plaintiffs' and
11 class members' confinement has meant that the isolative and emotionally numbing effects of
12 solitary confinement have become even more pronounced. Plaintiffs' symptoms are almost
13 identical to those described in psychological literature about the long-term effects of severe
14 trauma and torture.

15 143. Upon information and belief, numerous prisoners confined in the SHU for long
16 periods of time have developed mental illness, and some have committed or attempted suicide
17 while in the SHU. All prisoners confined in the SHU for prolonged periods have a significant
18 risk of descending into mental illness due to prolonged exposure to the conditions in the SHU.

19 144. Most plaintiffs recently participated in two hunger strikes (described below),
20 which provide additional evidence of the severe psychological distress, desperation, and
21 hopelessness that they experience from languishing in the SHU for decades. Almost every
22 plaintiff participant reported viewing the possibility of death by starvation as a worthwhile risk in
23 light of their current situation.

24 145. Numerous plaintiffs also have serious physical ailments and illnesses caused or
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1 exacerbated by their prolonged incarceration under the harsh conditions in the SHU, including
2 eye and vision problems, headaches, diabetes, hypertension, and chronic back problems. These
3 health concerns add to their psychological distress, as they fear that as they age and their health
4 problems worsen, they will be left to die in the SHU without adequate medical care because they
5 have refused to debrief.

7 **D. International Standards Regarding Torture and Cruel, Inhuman or Degrading
8 Treatment**

9 146. In light of the well-documented harms described above, there is an international
10 consensus that the type of prolonged solitary confinement practiced in California at Pelican Bay
11 violates international human rights norms and civilized standards of humanity and human dignity.
12 International human rights organizations and bodies, including the United Nations, have
13 condemned indefinite or prolonged solitary confinement as a human rights abuse that can amount
14 to torture.

15 147. As just one example, in August 2011, the United Nations Special Rapporteur of
16 the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or
17 Punishment concluded that the use of solitary confinement is acceptable in only exceptional
18 circumstances, and that its duration must be as short as possible and for a definite term that is
19 properly announced and communicated.

21 148. Plaintiffs' and class members' prolonged detention meets none of these criteria.

22 149. The Special Rapporteur concluded that prolonged solitary confinement is
23 prohibited by the International Covenant on Civil and Political Rights (ICCPR) and the
24 Convention Against Torture (CAT), and that prolonged solitary confinement constitutes torture or
25 cruel, inhuman or degrading treatment or punishment. The Special Rapporteur has concluded that
26 even 15 days in solitary confinement constitutes a human rights violation.

28 150. Plaintiffs and class members have been held in solitary confinement for at least

1 250 times this duration.

2 151. The Special Rapporteur's view comports with standards laid out by the Istanbul
3 Statement on the Use and Effects of Solitary Confinement, the ICCPR Human Rights Committee,
4 and the United Nations Office of the High Commissioner for Human Rights.

5 152. The Convention Against Torture (CAT), ratified by the United States in 1994,
6 provides the following definition of torture:
7

8 For the purposes of this Convention, torture means any act by which severe pain or
9 suffering, whether physical or mental, is intentionally inflicted on a person for such
10 purposes as obtaining from him or a third person information or a confession, punishing
11 him for an act he or a third person has committed or is suspected of having committed, or
12 intimidating or coercing him or a third person, or for any reason based on discrimination
13 of any kind, when such pain or suffering is inflicted by or at the instigation of or with the
14 consent or acquiescence of a public official or other person acting in an official capacity.

15 CAT, art. 1, para. 1. By being forced to either debrief or endure the crushing and inhumane
16 policies and conditions at the Pelican Bay SHU described above, plaintiffs and class members are
17 being subjected to treatment consistent with CAT's definition of torture.

18 **E. Pelican Bay Hunger Strikes**

19 153. Coinciding with this international consensus against solitary confinement,
20 prisoners at Pelican Bay have repeatedly organized hunger strikes to draw public attention to the
21 conditions described above.

22 154. A hunger strike occurred at Pelican Bay in 2002 and lasted approximately one
23 week. The prisoners called off the strike after a California State Senator promised to look into the
24 strikers' complaints, primarily centered on the debriefing policy. No reforms, however, were
25 implemented.

26 155. In light of ongoing concerns, a 2007 report commissioned by CDCR examined
27 national standards about the handling of security threat group members and recommended a step-
28 down program through which prisoners in the SHU could be released to the general population

1 without having to debrief. *See* CDCR, SECURITY THREAT GROUP IDENTIFICATION AND
2 MANAGEMENT (2007). Instead, they would spend a minimum of four years in a program in which
3 their “acceptable custodial adjustment” resulted in stages of increased social contact and
4 privileges. *Id.* at 6. CDCR also failed to implement these recommendations.

5
6 156. On February 5, 2010, plaintiffs Ashker and Troxell sent a formal Human Rights
7 Complaint to then-Governor Arnold Schwarzenegger and Defendant Cate, titled “Complaint on
8 Human Rights Violations and Request for Action to End 20+ Years of State Sanctioned Torture
9 to Extract Information From (or Cause Mental Illness to) California Pelican Bay State Prison
10 Security Housing Unit (SHU) Inmates.” The complaint outlined the history of Pelican Bay State
11 Prison and set forth the prisoners’ factual and legal claims for relief.

12
13 157. In May 2011, the complaint was again sent to the Governor and Secretary. This
14 time, it was accompanied by a “Final Notice” that an indefinite hunger strike would begin on July
15 1, 2011, and it provided five broad demands that CDCR: (1) end group punishment; (2) abandon
16 the debriefing program and modify the active/inactive gang status criteria; (3) end long-term
17 solitary confinement and alleviate conditions in segregation, including providing regular and
18 meaningful social contact, adequate healthcare and access to sunlight; (4) provide adequate food;
19 and (5) expand programming and privileges.

20
21 158. In June 2011, the complaint and final notice were sent again to the Governor, the
22 Secretary, and the Warden.

23 159. On July 1, 2011, the hunger strike began. At its peak, over 6,600 prisoners at 13
24 California prisons participated. Ashker, Dewberry, Franco, Redd and Troxell were among the 11
25 principal representatives and negotiators for the prisoners at Pelican Bay State Prison. Most of
26 the other plaintiffs also participated, as did prisoners from every major ethnic, racial, and
27 geographic group. The hunger strike garnered national and international media attention and
28

1 support.

2 160. CDCR staff met with prisoner representatives, and on July 20, 2011, the hunger
3 strike was temporarily suspended after CDCR officials agreed to provide a few basic amenities
4 and to revise the regulations by which a prisoner is assigned to and kept in the SHU.

5 161. On August 23, 2011, an informational hearing on California's SHUs was held by
6 the California State Assembly Public Safety Committee. Hundreds of family members and
7 supporters attended, and many testified about the conditions their loved ones endure in the SHU
8 and in Administrative Segregation Units. See [http://solitarywatch.com/2011/08/24/historic-](http://solitarywatch.com/2011/08/24/historic-california-assembly-hearing-on-solitary-confinement)
9 [california-assembly-hearing-on-solitary-confinement.](http://solitarywatch.com/2011/08/24/historic-california-assembly-hearing-on-solitary-confinement)

10 162. On September 26, 2011, the hunger strike resumed because prisoners lost faith that
11 CDCR would implement a revision of the regulations as it had promised. This time nearly 12,000
12 prisoners participated. The hunger strike ended on October 12, 2011, after CDCR assured the
13 prisoner representatives that it was working on the new regulations and would continue
14 conversations about other improvements sought by the prisoners.

15 163. On March 9, 2012, CDCR publicly issued a "concept paper" describing its
16 proposed changes to gang validation regulations. That document has been condemned by
17 prisoners and prisoner-rights advocates as making virtually no meaningful changes and, instead,
18 expanding the net of who may be incarcerated in the SHU. No new regulations have been
19 implemented to date.

20 164. Since the hunger strike, CDCR has issued disciplinary rule violations against
21 participants in that peaceful protest, and particularly serious rule violations against those it
22 alleged were its leaders. Ashker, Dewberry, Franco, Redd, and Troxell received disciplinary
23 write-ups on this ground.

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25
26
27 **F. Class Allegations**

1 165. Plaintiffs bring this action on their own behalf and, pursuant to Rules 23(a),
2 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all prisoners serving
3 indeterminate SHU sentences at the Pelican Bay SHU on the basis of gang validation, none of
4 whom have been or will be afforded meaningful review of their confinement, in violation of the
5 Due Process Clause of the Fourteenth Amendment.
6

7 166. Plaintiffs also bring this action on behalf of a subclass of Pelican Bay prisoners
8 who are now, or will be in the future, imprisoned by defendants at the Pelican Bay SHU under the
9 conditions and pursuant to the policies described herein for longer than 10 continuous years.
10 Such imprisonment constitutes cruel and unusual punishment within the meaning of the Eighth
11 Amendment.
12

13 167. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ.
14 P. 23(a)(1). As of April 1, 2012, there were more than 1,000 prisoners imprisoned at the Pelican
15 Bay SHU. Upon information and belief, all of these prisoners have been denied meaningful
16 notice and review, and thus fit the class definition. Of those prisoners, over 500, or
17 approximately half, have been imprisoned for over 10 years in the Pelican Bay SHU, where they
18 have been subjected to cruel and unusual punishment. These 500 comprise the Eighth
19 Amendment subclass.
20

21 168. The class members are identifiable using records maintained in the ordinary course
22 of business by CDCR.

23 169. All members of the Eighth Amendment subclass are suffering the deprivation of at
24 least one basic human need due to their prolonged confinement in the SHU, including mental and
25 physical health, physical exercise, sleep, nutrition, normal human contact, meaningful activity,
26 and environmental stimulation. In addition, all class members are suffering significant mental
27 and physical harm. While the exact nature of those harms may differ in some respects for each
28

1 prisoner, the source of the harm complained of here is the same – namely, defendants’ policies
2 and practices in placing the class of prisoners for a lengthy period of time in conditions of
3 confinement shown to cause serious mental and physical harm.

4 170. In addition, all prisoners placed in the conditions at the Pelican Bay SHU face a
5 common risk of suffering even more serious mental harm caused by their retention in the SHU for
6 such a lengthy period of time.

7 171. There are questions of law and fact common to the members of the class. Those
8 questions include, but are not limited to:

- 9
- 10 a) Whether prolonged confinement in the SHU for over 10 years under the
11 conditions and policies maintained by the defendants objectively constitutes
12 cruel and unusual punishment prohibited by the Eighth Amendment.
 - 13 b) Whether defendants have been deliberately indifferent to the mental and
14 physical suffering incurred by the plaintiff class.
 - 15 c) Whether incarceration under the conditions and policies imposed by
16 defendants results in constitutionally cognizable harm, or presents a
17 constitutionally unacceptable risk of harm.
 - 18 d) Whether a legitimate penological reason exists for defendants to incarcerate
19 prisoners for decades in the conditions described herein simply because they
20 are members or associates of a gang, without demonstrating that they are
21 currently engaged or have been recently engaged in some illegal or wrongful
22 gang-related misconduct.
 - 23 e) Whether the conditions at the Pelican Bay SHU and the policies imposed by
24 defendants on all prisoners housed in the SHU constitute an atypical and
25 significant hardship compared to the ordinary incidents of prison life.
26
27
28

- 1 f) Whether SHU confinement extends the duration of incarceration because of a
2 de facto policy of denying parole to SHU prisoners.
- 3 g) Whether defendants deny prisoners incarcerated in the SHU meaningful,
4 periodic review of their confinement as required by the Due Process Clause of
5 the Fourteenth Amendment by: (1) failing to provide them with notice of what
6 they can do to get released from the SHU apart from risking their lives and
7 safety and that of their families by debriefing; (2) providing misleading notice
8 that they can become eligible to be released from the SHU by becoming an
9 “inactive” gang member or associate and refraining from any gang activity,
10 when in fact prisoners who are not involved in any current gang activity are
11 still routinely retained in the SHU; and 3) making a predetermination that
12 many prisoners will stay in the SHU until they either die or debrief, thus
13 rendering the periodic reviews meaningless.
- 14 h) Whether defendants fail to provide timely meaningful review of prisoners’
15 imprisonment in the SHU by engaging in 180-day reviews that do not
16 substantively review whether the prisoners should be retained in the SHU and
17 therefore are meaningless, and only affording the so-called “inactive” review
18 every six years.

19 172. Defendants are expected to raise common defenses to these claims, including
20 denying that their policies and practices violate the Constitution.

21 173. The claims of the plaintiffs are typical of those of the plaintiff class, as their claims
22 arise from the same policies, practices, courses of conduct, and conditions of confinement, and
23 their claims are based on the same legal theories as the class’ claims. The cause of the named
24 plaintiffs’ injuries is the same as the cause of the injuries suffered by the rest of the class, namely
25

1 defendants' policies and practices.

2 174. Plaintiffs are capable of fairly and adequately protecting the interests of the
3 plaintiff class because plaintiffs do not have any interests antagonistic to the class. Plaintiffs, as
4 well as class members, seek to enjoin the unlawful acts, policies, and practices of the defendants.
5 Indeed, some of the named plaintiffs have already served as de facto representatives of the class
6 by presenting the demands of thousands of Pelican Bay and other California hunger strikers to
7 defendants during the two hunger strikes in the summer and fall of 2011. Finally, plaintiffs are
8 represented by counsel experienced in civil rights litigation, prisoners' rights litigation, and
9 complex class litigation.
10

11 175. This action is maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(1)
12 because the number of class members is numerous and prosecution of separate actions by
13 individuals create a risk of inconsistent and varying adjudications, which in turn would establish
14 incompatible standards of conduct for defendants. Moreover, the prosecution of separate actions
15 by individual members is costly, inefficient, and could result in decisions with respect to
16 individual members of the class that, as a practical matter, would substantially impair the ability
17 of other members to protect their interests.
18

19 176. This action is also maintainable as a class action pursuant to Fed. R. Civ. P.
20 23(b)(2) because defendants' policies and practices that form the basis of this Complaint are
21 generally applicable to all the class members, thereby making class-wide declaratory and
22 injunctive relief appropriate. Common questions of law and fact clearly predominate within the
23 meaning of Rule 23(b)(2) as set forth above. Class treatment provides a fair and efficient method
24 for the adjudication of the controversy herein described, affecting a large number of persons,
25 joinder of whom is impracticable.
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V. CLAIMS FOR RELIEF

**First Cause of Action: Eighth & Fourteenth Amendments
(Cruel and Unusual Punishment)**

177. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

178. Plaintiffs advance this claim on their own behalf, and on behalf of the Eighth Amendment subclass, against all defendants.

179. By their policies and practices described herein, defendants have deprived and continue to deprive plaintiffs and the class of the minimal civilized measure of life’s necessities, and have violated their basic human dignity and their right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution for each of the reasons set forth below.

A. Deprivation of Basic Human Need

180. First, the cumulative effect of extremely prolonged confinement, along with denial of the opportunity of parole, the deprivation of earned credits, the deprivation of good medical care, and other crushing conditions of confinement at the Pelican Bay SHU, constitute a serious deprivation of at least one basic human need, including but not limited to normal human contact, environmental and sensory stimulation, mental and physical health, physical exercise, sleep, nutrition, and meaningful activity.

B. Imposition of Serious Psychological and Physical Injury, Pain and Suffering

181. Second, extremely prolonged exposure to these deprivations of basic human needs is currently imposing serious psychological pain and suffering and permanent psychological and physical injury on Plaintiffs and the class they represent.

182. In addition to plaintiffs’ current psychological and physical pain, the likelihood that plaintiffs and the class will remain in SHU for the foreseeable future subjects plaintiffs and

1 the class they represent to a significant risk of future debilitating and permanent mental illness
2 and physical harm.

3 **C. SHU Confinement Designed to Coerce Plaintiffs to Provide Information**

4 183. Third, Defendants' harsh policies are not legitimately related to security or other
5 penological needs of isolating alleged dangerous prisoners from others, but rather are designed to
6 coerce plaintiffs to debrief and become informants for the State. This policy of holding plaintiffs
7 and class members in prolonged solitary confinement for many years at the Pelican Bay SHU
8 until they debrief or die is, as one Court put it, "tantamount to indefinite administrative
9 segregation for silence – an intolerable practice in modern society." *Griffin*, No. C-98-21038 at
10 11. It is cruel and unusual punishment for defendants to coerce prisoners to provide information
11 on other prisoners – if indeed they have any such information – by maintaining them in stifling
12 and punitive conditions that constitute an atypical and significant hardship, unless they so inform.
13
14

15 184. Prisoners who debrief incur a substantial risk of serious harm and retaliation to
16 themselves and to their families. The combination of the crushing conditions in the SHU, the
17 policies designed to coerce prisoners to debrief, the lack of any effective means of obtaining
18 release from the SHU without debriefing, and the substantial risk of serious harm if one does
19 debrief, puts prisoners in an untenable position and constitutes an unconstitutional threat to the
20 safety of prisoners confined in the SHU in violation of the Eighth and Fourteenth Amendments to
21 the Constitution.
22

23 **D. Disproportionate Punishment**

24 185. Fourth, defendants' policy of indefinite and prolonged SHU placement imposes
25 disproportionate punishment on plaintiffs and class members. Defendants have no legitimate
26 penological interest in retaining prisoners indefinitely in the debilitating conditions of the SHU
27 simply because they are gang members or associates, without recent, serious disciplinary or gang-
28

1 related infractions. Nor is this policy and practice rationally related to legitimate security needs.
2 Defendants' decades-long infliction of significant psychological and physical harm and the risk
3 of future debilitating harm on these prisoners simply for allegedly being gang members or
4 associates offends civilized society's sense of decency, constitutes an intolerable practice in
5 modern society, and is a disproportionate punishment which violates the Eighth and Fourteenth
6 Amendments to the Constitution.
7

8 **E. Deprivation of Human Dignity in Violation of Contemporary Standards of Human**
9 **Decency**

10 186. Finally, Defendants' continuation of Plaintiffs' solitary confinement for many
11 years under the debilitating and extreme conditions existing at the Pelican Bay SHU strips human
12 beings of their basic dignity and humanity in violation of contemporary standards of human
13 decency and constitutes cruel and unusual treatment prohibited by the Eighth and Fourteenth
14 Amendments to the United States Constitution.

15 187. That California's policies and practices violate contemporary standards of human
16 dignity and decency is evidenced by the fact that those practices are unusual in comparison to
17 other states' practices with respect to segregated prisoner housing. Virtually no other state uses
18 mere gang association or membership to confine prisoners in the SHU. Other states do not
19 warehouse hundreds of prisoners in the SHU for decades at a time. Plaintiffs and class members
20 are subject to unusually harsh conditions of confinement even in comparison with other supermax
21 prisons, such as windowless cells and a lack of telephone calls to family members and friends.
22 And finally, California's SHU policies and practices are atypical in effectively prolonging
23 incarceration, in that prisoners in the SHU are deprived of good time credit and are rendered
24 functionally ineligible for parole.
25

26 188. That California's practices with respect to the plaintiff class violates contemporary
27 standards of human decency and dignity is also evidenced by the international community's
28

1 condemnation of the practice of prolonged and indefinite solitary confinement under very harsh
2 and stifling conditions such as exist at the Pelican Bay SHU. Such condemnation is reflected in
3 international treaties such as the Convention Against Torture, the International Covenant on Civil
4 and Political Rights, decisions and declarations of international bodies, customary international
5 law, and decisions of regional and national courts such as the European Court of Human Rights
6 and Canadian courts.
7

8 **F. Defendants' Deliberate Indifference to the Deprivations Suffered by Plaintiffs**

9 189. The policies and practices complained of herein have been and continue to be
10 implemented by defendants and their agents, officials, employees, and all persons acting in
11 concert with them under color of state law, in their official capacity.

12 190. Defendants have been and are aware of all of the deprivations complained of
13 herein, and have condoned or been deliberately indifferent to such conduct.

14 191. It should be obvious to defendants and to any reasonable person that the conditions
15 imposed on plaintiffs and class members for many years cause tremendous mental anguish,
16 suffering, and pain to such prisoners. Moreover defendants have repeatedly been made aware,
17 through administrative grievances, hunger strikes, and written complaints that plaintiffs and class
18 members are currently experiencing significant and lasting injury. Defendants have been
19 deliberately indifferent to the plaintiffs' pain and suffering.
20

21 192. Indeed, defendants have deliberately and knowingly caused such pain in an effort
22 to force plaintiffs and the class to debrief.
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**Second Cause of Action: Fourteenth Amendment
(Due Process)**

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2
3 193. Plaintiffs incorporate by reference each and every allegation contained in the
4 preceding paragraphs as if set forth fully herein.

5 194. Plaintiffs advance this claim on their own behalf, and on behalf of the class,
6 against all defendants.

7 195. Defendants have deprived plaintiffs and class members of a liberty interest without
8 due process of law by denying them meaningful and timely periodic review of their continued
9 long-term and indefinite detention at the Pelican Bay SHU and meaningful notice of what they
10 must do to earn release, in violation of the Fourteenth Amendment to the United States
11 Constitution.

12
13 196. The conditions and the duration of defendants’ confinement of plaintiffs and class
14 members at the Pelican Bay SHU constitute an atypical and significant hardship as compared
15 with the ordinary incidents of prison life for three basic reasons: (a) the exceedingly harsh and
16 isolated conditions in the SHU; (b) the lengthy duration of confinement in the SHU; and (c) the
17 effect on the possibility of parole being granted and the overall length of imprisonment that
18 results from such confinement.
19

20 **A. Conditions at the Pelican Bay SHU**

21 197. The conditions in the SHU are unduly harsh, and do not generally mirror those
22 conditions imposed upon prisoners in administrative segregation and protective custody in
23 California. These harsh conditions include but are not limited to: isolation in cells that are sealed
24 off from contact with other prisoners, the lack of windows in cells, a prohibition on all social
25 phone calls except in emergencies, no contact visits and very limited visiting hours, no or
26 minimal educational or general programming, exercise facilities that provide very little natural
27 sunlight and have virtually no recreational equipment, food which is inferior to that served to
28

1 other California prisoners, and denial of standard medical care to prisoners unless they debrief.

2 **B. Duration of Confinement at the Pelican Bay SHU**

3 198. Plaintiffs have been held in the crushing conditions described above for 11 to 22
4 years. Indeed, about half of the prisoners detained at the Pelican Bay SHU have been there for
5 over 10 years, more than 20 percent have been held there for more than 15 years, and almost 10
6 percent have been held there for over 20 years. Upon information and belief, this shockingly
7 lengthy confinement is atypical in comparison to the ordinary disciplinary and administrative
8 segregation imposed in California.
9

10 **C. Effect of SHU Confinement on Overall Length of Imprisonment**

11 199. An unwritten, but uniformly enforced policy imposed by CDCR precludes
12 plaintiffs and class members from being released on parole while they are at the Pelican Bay
13 SHU. In addition, under California law, prisoners housed in the SHU cannot earn good-time
14 credits no matter how impeccable their behavior. The effect of these policies and practices has
15 been that many prisoners, including some of the named plaintiffs, spend a longer time
16 incarcerated in prison than had they not been housed in the SHU.
17

18 **D. Lack of Meaningful Process**

19 200. Because indefinite placement in the Pelican Bay SHU constitutes a significant and
20 atypical hardship, plaintiffs and class members are entitled to meaningful notice of how they may
21 alter their behavior to rejoin general population, as well as meaningful and timely periodic
22 reviews to determine whether they still warrant detention in the SHU.
23

24 201. Defendants have denied and continue to deny any such notice or meaningful
25 review by: (1) failing to provide prisoners with notice of what they can do to get released from
26 the SHU apart from providing information that they do not have or risking their life and safety
27 and that of their families by debriefing; (2) providing misleading notice that they can become
28

1 eligible to be released from the SHU by becoming an “inactive” gang member or associate and
 2 refraining from engaging in any gang activities, when in fact prisoners who are not involved in
 3 any current gang activity are still routinely retained in the SHU; (3) making a predetermination
 4 that many prisoners will stay in the SHU until they either die or debrief, thus rendering the
 5 periodic reviews substantively and procedurally meaningless; and (4) making the length of time
 6 between reviews far too long to comport with the constitutional due-process standard.

8 202. Defendants are also violating plaintiffs’ due process rights by retaining plaintiffs
 9 and the class in conditions that amount to an atypical and significant hardship without legitimate
 10 penological interest, as this detention occurs without reliable evidence that plaintiffs and the class
 11 are committing any acts on behalf of a prison gang and are thus active gang members.

12 **PRAYER FOR RELIEF**

13
 14 Plaintiffs and the class they represent have no adequate remedy at law to redress the
 15 wrongs suffered as set forth in this Complaint. Plaintiffs have suffered and will continue to suffer
 16 irreparable injury as a result of the unlawful acts, omissions, policies, and practices of defendants,
 17 as alleged herein, unless plaintiffs and the class they represent are granted the relief they request.
 18 The need for relief is critical because the rights at issue are paramount under the United States
 19 Constitution.

20 WHEREFORE, the named plaintiffs and the class they represent request that this Court
 21 grant them the following relief:

- 22
- 23 a. Declare that this suit is maintainable as a class action pursuant to Federal Rules of Civil
 24 Procedure 23(a) and 23(b)(1) and (2);
 - 25 b. Declare that defendants’ policies and practices of confining prisoners in the Pelican Bay SHU
 26 violate the Eighth and Fourteenth Amendments to the United States Constitution;
- 27

- 1 c. Issue injunctive relief ordering defendants to present a plan to the Court within 30 days of the
2 issuance of the Court's order providing for:
- 3 i. the release from the SHU of those prisoners who have spent more than 10
4 years in the SHU;
- 5 ii. alleviation of the conditions of confinement of prisoners in the SHU so that
6 prisoners no longer are incarcerated under conditions of isolation, sensory
7 deprivation, lack of social and physical human contact, and environmental
8 deprivation;
- 9 iii. meaningful review of the continued need for confinement in a SHU of all
10 prisoners currently housed in the SHU within six months of the date of the
11 Court's order; and
- 12 iv. meaningful review of SHU confinement for prisoners housed in the SHU in the
13 future;
- 14 d. Award plaintiffs the costs of this suit and reasonable attorneys' fees and litigation expenses
15 pursuant to 42 U.S.C. § 1988, and other applicable law;
- 16 e. Retain jurisdiction of this case until defendants have fully complied with the orders of this
17 Court; and
- 18 f. Award such other and further relief as the Court deems just and proper.
19
20
21

22 Dated: May 15, 2012

Respectfully submitted,

24 /s/ Jules Lobel

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

12 **TODD ASHKER, et al.,**
13
14 Plaintiffs,
15
16 **v.**
17 **GOVERNOR OF THE STATE OF**
CALIFORNIA, et al.,
18 Defendants.

C 09-05796 CW
SETTLEMENT AGREEMENT

19 The parties enter into this Settlement Agreement (the Agreement) to address and settle
20 Plaintiffs' claims for declaratory and injunctive relief regarding the policies and practices of the
21 California Department of Corrections and Rehabilitation (CDCR) for placing, housing, managing,
22 and retaining inmates validated as prison gang members and associates, as well as the conditions
23 of confinement in the Security Housing Unit (SHU) at Pelican Bay State Prison and other CDCR
24 SHU facilities.

25 **I. BACKGROUND AND PROCEDURAL POSTURE**

26 1. Plaintiffs in this matter are inmates Todd Ashker, Ronnie Dewberry, Luis Esquivel,
27 George Franco, Jeffrey Franklin, Richard Johnson, Paul Redd, Gabriel Reyes, George Ruiz, and
28 Danny Troxell (Plaintiffs).

1 2. Defendants are the Governor of the State of California, CDCR's Secretary, Pelican
2 Bay's Warden, and the Chief of CDCR's Office of Correctional Safety, each of whom is sued in
3 his official capacity (Defendants).

4 3. This action was originally filed on December 9, 2009, as an individual pro se civil-
5 rights suit by Plaintiffs Todd Ashker and Danny Troxell. A First Amended Complaint was filed
6 on May 21, 2010. On September 10, 2012, Plaintiffs, having retained counsel, filed a Second
7 Amended Complaint, which added class allegations and eight additional Plaintiffs. The Second
8 Amended Complaint alleges that CDCR's gang management regulations and practices violate the
9 Due Process Clause of the Fourteenth Amendment and that the conditions of confinement in
10 Pelican Bay's SHU constitute cruel and unusual punishment in violation of the Eighth
11 Amendment. The Second Amended Complaint seeks declaratory and injunctive relief to address
12 the alleged constitutional violations.

13 4. Defendants filed a motion to dismiss the Second Amended Complaint, which the
14 Court denied on April 9, 2013. (ECF No. 191.) On April 30, 2013, Defendants answered the
15 Second Amended Complaint. (ECF No. 194.)

16 5. Plaintiffs filed a motion for class certification, which the Court granted in part and
17 denied in part on June 2, 2014. (ECF No. 317.) Some Plaintiffs were appointed to represent two
18 classes of inmates certified under Rules 23(b)(1) and (b)(2) of the Federal Rules to include: (i) all
19 inmates assigned to an indeterminate term at Pelican Bay's SHU on the basis of gang validation,
20 under CDCR's policies and procedures, as of September 10, 2012; and (ii) all inmates who are
21 now, or will be in the future, assigned to Pelican Bay's SHU for ten or more continuous years.
22 (*See, e.g.*, ECF No. 317 at 11, 14, 21; ECF No. 387 at 13-17.)

23 6. On October 18, 2012, CDCR implemented its Security Threat Group (STG) program
24 as a pilot program which modified the criteria for placement into the SHU and initiated a Step
25 Down Program designed to afford validated inmates a way to transfer from the SHU to a general
26 population setting within three or four years. On October 17, 2014, and upon expiration of the
27 pilot, CDCR's STG regulations were approved and adopted in Title 15.

28

1 7. Plaintiffs filed a motion for leave to file a Supplemental Complaint, which the Court
2 granted on March 9, 2015. (ECF No. 387.) On March 11, 2015, Plaintiffs filed their
3 Supplemental Complaint. (ECF No. 388.) The Supplemental Complaint alleges an additional
4 Eighth Amendment claim on behalf of a putative class of gang-validated inmates transferred to
5 another CDCR SHU facility under CDCR's Step Down Program, after having been housed in
6 Pelican Bay's SHU for ten or more years. Plaintiffs Dewberry, Franklin, Ruiz, and Troxell are
7 the putative class representatives of this supplemental Eighth Amendment claim. Plaintiffs
8 transferred from Pelican Bay's SHU also pursue relief on an individual basis. Plaintiffs contend
9 that the alleged constitutional violation that inmates suffered because of their confinement in
10 Pelican Bay's SHU for ten or more continuous years does not end notwithstanding their transfer
11 from Pelican Bay to another facility under the Step Down Program. The Court stayed the
12 litigation of this additional Eighth Amendment claim until resolution of the Eighth Amendment
13 claim alleged in Plaintiffs' Second Amended Complaint. (ECF Nos. 387, 393.)

14 8. Apart from a 45-day litigation stay in early 2014 to discuss settlement, the parties
15 engaged in extensive discovery for over three years. Fact discovery closed on November 28,
16 2014. The parties responded to hundreds of written discovery requests, produced hundreds of
17 thousands of pages of documents, and completed approximately thirty depositions of current and
18 former prison officials and inmates. Expert discovery closed on May 29, 2015. Plaintiffs
19 disclosed ten experts, Defendants disclosed seven, and the parties collectively completed a dozen
20 expert depositions. The parties produced over 45,000 pages of documents in response to
21 subpoenas directed to their respective experts.

22 9. The parties have conducted extensive negotiations over several months to resolve
23 Plaintiffs' demands that CDCR revise its gang management and SHU policies and practices.
24 Those negotiations have been undertaken at arm's length and in good faith between Plaintiffs'
25 counsel and high-ranking state officials and their counsel. The parties have reached agreement on
26 statewide policies and practices to settle Plaintiffs' claims for declaratory and injunctive relief,
27 and, for settlement purposes only, agree that this Agreement meets the requirements of 18 U.S.C.
28 § 3626(a)(1).

1 10. The parties agree that the putative supplemental class asserted in Plaintiffs’
2 Supplemental Complaint—namely, all prisoners who have now, or will have in the future, been
3 imprisoned in Pelican Bay’s SHU for longer than 10 continuous years and then transferred from
4 Pelican Bay’s SHU to another SHU in California in connection with CDCR’s Step Down
5 Program—may be certified as a class for settlement purposes under Rule 23(b)(2) of the Federal
6 Rules of Civil Procedure. The parties agree that, after notice and an opportunity to object is
7 provided to members of the two classes previously certified by the Court as well as members of
8 the supplemental settlement class, the Court may enter an order finding this Agreement to be fair
9 and reasonable to all class members.

10 11. All parties and their counsel recognize that, in the absence of an approved settlement,
11 they face lengthy and substantial litigation, including trial and potential appellate proceedings, all
12 of which will consume time and resources and present the parties with ongoing litigation risks
13 and uncertainties. The parties wish to avoid these risks, uncertainties, and consumption of time
14 and resources through a settlement under the terms and conditions of this Agreement.

15 ACCORDINGLY, without any admission or concession by Defendants of any current and
16 ongoing violations of a federal right, all claims for declaratory and injunctive relief asserted in the
17 Second Amended Complaint and Supplemental Complaint shall be finally and fully settled and
18 released, subject to the terms and conditions of this Agreement, which the parties enter into freely,
19 voluntarily, knowingly, and with the advice of counsel.

20 **II. JURISDICTION AND VENUE**

21 12. The Court has jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1343. Venue is
22 proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiffs’
23 claims occurred in the Northern District of California.

24 **III. TERMS AND CONDITIONS**

25 **A. NEW CRITERIA FOR PLACEMENT IN SHU, ADMINISTRATIVE SEGREGATION, OR** 26 **THE STEP DOWN PROGRAM.**

27 13. CDCR shall not place inmates into a SHU, Administrative Segregation, or Step Down
28 Program solely on the basis of their validation status.

1 14. CDCR shall amend the SHU Assessment Chart located in Title 15 of the California
2 Code of Regulations, section 3341.5, subsection (c)(9). The SHU Assessment Chart shall be
3 amended as set forth in Attachment B.

4 15. Under the revised Step Down Program policy, STG-I inmates, as defined in Title 15
5 of the California Code of Regulations, section 3000, will be transferred into the Step Down
6 Program if they have been found guilty in a disciplinary hearing of committing, with a proven
7 nexus to an STG, a SHU-eligible offense, as listed in the SHU Assessment Chart.

8 16. STG-II inmates, as defined in Title 15 of the California Code of Regulations, section
9 3000, will be transferred into the Step Down Program if they have been found guilty in a
10 disciplinary hearing of committing, with a proven nexus to a STG, two SHU-eligible offenses
11 within a four year period, as listed in the SHU Assessment Chart.

12 17. Any STG-I or STG-II inmate shall be transferred into the Step Down Program as
13 described in Paragraphs 15 and 16, upon the completion of the determinate, disciplinary SHU
14 term imposed by the Institution Classification Committee for that offense. All time spent in the
15 SHU following completion of the determinate SHU term prior to actual transfer into the Step
16 Down Program shall be credited as part of the inmate's Step Down Program time. The Institution
17 Classification Committee shall continue to have the authority to impose, commute, or suspend
18 any part of the determinate SHU term, as provided in regulations.

19 **B. MODIFICATIONS TO THE STEP DOWN PROGRAM.**

20 18. CDCR shall modify its Step Down Program so that it is based on the individual
21 accountability of each inmate for proven STG behavior, and not solely on the inmate's validation
22 status or level of STG affiliation.

23 19. The revised Step Down Program shall be 24 months in duration and consist of 4
24 program steps that take place within a SHU. Except as provided in Paragraphs 22 and 23, each
25 step will be 6 months in duration. Step 5 of the existing Step Down Program shall be eliminated.
26 Upon successful completion of the Step Down Program, the inmate shall be transferred to a
27 General Population prison commensurate with his specific case factors and in accordance with
28 existing regulations.

1 20. Each Step within the Step Down Program shall provide incremental increases in
2 privileges and freedom of movement commensurate with program placement as set forth in
3 Attachment A.

4 21. The Step Down Program incorporates rehabilitative programming consisting of both
5 required and elective components. Within 90 days of the Court's preliminary approval of this
6 Agreement, CDCR will afford Plaintiffs' counsel and four inmate representatives identified by
7 Plaintiffs an opportunity to meet with CDCR officials to discuss the nature, content and substance
8 of the mandatory and elective programming. It is CDCR's intent to provide programming with
9 clear requirements and outcomes to provide an alternative path away from STG behavior and
10 promote critical life skills. CDCR shall convene a panel of experts, of CDCR's choosing, to
11 evaluate the Step Down Program curriculum and to make recommendations in keeping with this
12 intent. CDCR will provide Plaintiffs' counsel with a copy of the panel of experts'
13 recommendations. Plaintiffs' counsel and the four inmate representatives will have the
14 opportunity to meet with Defendants regarding recommended components; however, CDCR
15 retains its discretion to implement the mandatory programming of its choosing for this population.

16 22. Participation in the Step Down Program is mandatory for any inmate placed into the
17 program. An inmate's refusal to participate in or complete the required programming in the Step
18 Down Program shall not result in regression or retention in the program, but shall be addressed as
19 follows: At the 180-day review performed by the Institution Classification Committee at the end
20 of Step 3, if the Committee determines that the inmate refused to participate in or has not
21 completed all components of the Step Down Program, the Committee shall retain the non-
22 participating inmate in Step 3 for an additional 6 months. If, at the end of that additional 6-month
23 period, the inmate continues to refuse or does not complete all Step Down Program components,
24 the Institution Classification Committee shall remove the inmate from the program and transfer
25 him to a Restricted Custody General Population (RCGP) facility. That inmate shall be assigned
26 to the Step 3 privilege group, however the Institution Classification Committee may later reassign
27 the inmate to the Step 4 privilege group based on his progression through the commensurate Step
28 Down Program components remaining to be completed. If the inmate elects to complete the Step

1 Down Program requirements, he shall do so within the RCGP and shall not be returned to the
2 SHU to complete the program, unless he is found guilty in a disciplinary hearing of a new SHU-
3 eligible offense. If the inmate completes the Step Down Program components and, while in the
4 RCGP, is not found guilty of either one serious STG-related or two administrative STG-related
5 rules violations as listed in the STG Disciplinary Matrix, during the 180-day review period, he
6 will then be released to the General Population. (See Attachment C.) The Institution
7 Classification Committee shall conduct reviews no less than every 180-days to determine whether
8 the inmate has completed the Step Down Program and is eligible for release to the General
9 Population. Non-participation or lack of completion that is due to the unavailability or
10 inaccessibility of programming components necessary for Step Down Program compliance shall
11 not impede an inmate's progress to the next step and shall not be considered as a factor in an
12 inmate's regression or retention in any step. CDCR shall provide an opportunity for each inmate
13 to complete Step Down Program programming for each step within 6 months. All time spent
14 awaiting transfer to another step shall be credited to the completion of the next step.

15 23. The Step Down Program is intended to be a rehabilitative, gang behavior diversion
16 program for STG affiliated inmates. As such, inmates within the program are expected to remain
17 disciplinary-free. Misconduct shall be addressed in accordance with existing disciplinary rules
18 and regulations. The commission of repeated STG violations while in the Step Down Program
19 shall not result in regression or retention in the program, but shall be addressed as follows: If an
20 inmate has committed either 3 serious STG rules violations or 5 administrative STG rules
21 violations as listed in the STG Disciplinary Matrix while in the Step Down Program, he shall be
22 transferred to the RCGP facility. The Institution Classification Committee shall review the
23 inmate's disciplinary history and make this determination during the 180-day reviews performed
24 at the end of Steps 3 and 4. If, during the Step 3 review, the inmate is guilty of committing 3
25 serious STG rules violations or 5 administrative STG rules violations while in the Step Down
26 Program, the Committee shall retain the inmate in Step 3 for an additional 6 months. At the end
27 of that additional 6-month period, the Committee shall remove the inmate from the program and
28 transfer him to the RCGP. An inmate transferred to the RCGP pursuant to this Paragraph shall be

1 assigned to the Step 3 privilege group. The inmate can appeal the decision to transfer him to the
2 RCGP to the Departmental Review Board, which would review the inmate's disciplinary history
3 and determine whether removal from the program and transfer to the RCGP is appropriate; a
4 hearing before the Board is not required for a determination of such an appeal. Consistent with
5 Paragraph 22, if the inmate completes the Step Down Program components and, while housed in
6 the RCGP, is not found guilty of either one serious STG-related or two administrative STG-
7 related rules violations as listed in the STG Disciplinary Matrix during the RCGP 180-day review
8 period, he will then be released to the General Population. The Institution Classification
9 Committee shall conduct reviews no less than every 180-days to determine whether the inmate
10 has completed the Step Down Program and is eligible for release to the General Population.

11 24. If an inmate is found guilty of committing a SHU-eligible offense while assigned to
12 the Step Down Program or RCGP, he shall complete the intervening determinate, disciplinary
13 SHU term as imposed by the Institution Classification Committee for that offense before
14 returning to the Step Down Program or RCGP. If such SHU-eligible offense has a proven nexus
15 to an STG as described in Paragraphs 15 and 16, upon completion of the determinate term
16 imposed by the Committee, the inmate shall be returned to the Step Down Program at Step 1 or
17 another step as determined by the Committee.

18 **C. REVIEW OF STG-VALIDATED INMATES CURRENTLY IN SHU.**

19 25. Within twelve months of the Court's preliminary approval of this Agreement, CDCR
20 shall review the cases of all validated inmates who are currently in the SHU as a result of either
21 an indeterminate term that was previously assessed under prior regulations or who are currently
22 assigned to Steps 1 through 4, or who were assigned to Step 5 but are retained within the SHU.
23 These reviews shall be conducted by Institution Classification Committees and prioritized by the
24 inmates' length of continuous housing within a SHU so that those of the longest duration are
25 reviewed first. If an inmate has not been found guilty of a SHU-eligible rule violation with a
26 proven STG nexus within the last 24 months, he shall be released from the SHU and transferred
27 to a General Population level IV 180-design facility, or other general population institution
28 consistent with his case factors. An inmate who has committed a SHU-eligible rule violation

1 with an STG nexus within the last 24 months shall be placed into the Step Down Program based
2 on the date of the most recent STG-related rule violation, as follows: Step 1: violation occurred
3 within the last 6 months; Step 2: violation occurred within the last 6-12 months; Step 3:
4 violation occurred within the last 12-18 months; Step 4: violation occurred within the last 18-24
5 months. Inmates currently assigned to Step 5 in the General Population shall remain in the
6 General Population and shall no longer be considered current Step Down Program participants.

7 26. During the review described in Paragraph 25, any inmate housed in a SHU program
8 for 10 or more continuous years who has committed a SHU-eligible offense with a nexus to an
9 STG within the preceding 2 years, will be transferred into the RCGP for completion of Step
10 Down Program requirements. Inmates subject to this provision who are currently serving a
11 disciplinary SHU term will be allowed to complete the SHU term in the RCGP prior to beginning
12 the Step Down Program, unless the Institution Classification Committee determines by a
13 preponderance of the evidence that to do so would pose an unreasonable risk to individual or
14 institutional safety and security. This function of the RCGP shall be implemented as a pilot
15 program. If the inmate completes the Step Down program requirements, he will be transferred to
16 a General Population prison setting in accordance with his case factors. One hundred twenty days
17 after completion of the reviews described in Paragraph 25, CDCR will produce a report on the
18 functioning of this pilot program and shall inform plaintiffs' counsel whether it intends to make
19 permanent, modify, or terminate this RCGP function. Within 30 days of receiving the notice
20 from CDCR, the parties shall meet and confer regarding any proposed changes to the RCGP pilot
21 program. If CDCR decides to terminate the RCGP pilot program, inmates housed in the RCGP
22 pursuant to this Paragraph will, in the absence of pending disciplinary charges of a new SHU-
23 eligible offense requiring segregation, either remain in the RCGP until they transition into
24 General Population or will be transferred to non-segregated housing.

25 27. For those STG inmates considered for release to the General Population either
26 following Step Down Program completion or pursuant to the review described in Paragraph 25,
27 and against whom there is a substantial threat to their personal safety should they be released to
28 the General Population as determined by a preponderance of the evidence, the Departmental

1 Review Board retains the discretion, in accordance with existing authority, to house that inmate in
2 alternate appropriate non SHU, non-Administrative segregation housing commensurate with his
3 case factors, such as a Sensitive Needs Yard or RCGP, until such time that the inmate can safely
4 be housed in a general population environment. The Departmental Review Board shall articulate
5 the substantial justification for the need for alternative placement. If the Institution Classification
6 Committee refers a case to the Departmental Review Board pursuant to this Paragraph, the
7 Departmental Review Board shall prioritize these case reviews and expeditiously conduct the
8 hearing and render its placement decision. Thereafter, during their regular 180-day reviews, the
9 Institution Classification Committee shall verify whether there continues to be a demonstrated
10 threat to the inmate's personal safety; and if such threat no longer exists the case shall be referred
11 to the Departmental Review Board for review of housing placement as soon as practicable. For
12 Departmental Review Board hearings held pursuant to this Paragraph, a staff assistant shall be
13 provided to help inmates prepare and present their case due to the fact that the complexity of these
14 types of cases makes assistance necessary. If Plaintiffs' counsel contends that CDCR has abused
15 its discretion in making housing decisions under this Paragraph, that concern may be raised with
16 Magistrate Judge Nandor J. Vadas in accordance with the dispute resolution and enforcement
17 procedures set forth in Paragraphs 52 and 53 below to determine whether CDCR has articulated
18 substantial justification by a preponderance of the evidence for alternative placement.

19 **D. THE RESTRICTIVE CUSTODY GENERAL POPULATION HOUSING UNIT.**

20 28. The RCGP is a Level IV 180-design facility commensurate with similarly designed
21 high security general population facilities. Inmates shall be transferred to the RCGP if they have
22 refused to complete Step Down Program components as described in Paragraph 22; if they have
23 been found guilty of repeated STG violations while in the Step Down Program as described in
24 Paragraph 23; if identified safety concerns prevent their release to General Population and the
25 RCGP is deemed to be appropriate as described in Paragraph 27; or if they meet the eligibility for
26 placement in the RCGP under the pilot program described in Paragraph 26. Programming for
27 those inmates transferred to or retained in the RCGP will be designed to provide increased
28 opportunities for positive social interaction with other prisoners and staff, including but not

1 limited to: Alternative Education Program and/or small group education opportunities; yard/out
2 of cell time commensurate with Level IV GP in small group yards, in groups as determined by the
3 Institution Classification Committee; access to religious services; support services job
4 assignments for eligible inmates as they become available; and leisure time activity groups.
5 Contact visiting shall be limited to immediate family and visitors who have been pre-approved in
6 accordance with existing Title 15 visiting regulations, and shall occur on the schedule set forth in
7 Attachment A. Other privileges provided in the RCGP are also set forth in Attachment A. CDCR
8 policy is that inmate movement, programming, and contact visits within the RCGP shall not
9 require the application of mechanical restraints; any application of restraints shall be in
10 accordance with existing Title 15, section 3268.2. CDCR will provide Plaintiffs' counsel with the
11 opportunity to tour the proposed RCGP facility and to meet and confer with Defendants regarding
12 the functioning and conditions of the RCGP, prior to its implementation.

13 **E. ADMINISTRATIVE SHU STATUS.**

14 29. An inmate may be retained in the SHU and placed on Administrative SHU status after
15 serving a determinate SHU sentence if it has been determined by the Departmental Review Board
16 that the inmate's case factors are such that overwhelming evidence exists supporting an
17 immediate threat to the security of the institution or the safety of others, and substantial
18 justification has been articulated of the need for SHU placement. Inmates may also be placed on
19 Administrative SHU status if they have a substantial disciplinary history consisting of no less
20 than three SHU terms within the past five years and the Departmental Review Board articulates a
21 substantial justification for the need for continued SHU placement due to the inmate's ongoing
22 threat to safety and security of the institution and/or others, and that the inmate cannot be housed
23 in a less restrictive environment. Inmates currently serving an Administrative SHU term may
24 continue to be retained in the SHU based on the criteria set forth in this Paragraph. The
25 Institution Classification Committee shall conduct classification reviews every 180 days in
26 accordance with Title 15, section 3341.5. The Departmental Review Board shall annually assess
27 the inmate's case factors and disciplinary behavior and shall articulate the basis for the need to
28 continue to retain the inmate on Administrative SHU status. The inmate's privilege group shall

1 be set in a range similar to S-1 to S-5, which can be modified by the Institution Classification
2 Committee during the inmate's classification review, if deemed appropriate. CDCR shall provide
3 inmates placed on Administrative SHU status with enhanced out of cell recreation and
4 programming of a combined total of 20 hours per week. It is CDCR's expectation that a small
5 number of inmates will be retained in the SHU pursuant to this Paragraph. If Plaintiffs' counsel
6 contends that CDCR has abused its discretion in making a housing decision under this Paragraph,
7 that concern may be raised with Magistrate Judge Vadas in accordance with the dispute resolution
8 and enforcement procedures set forth in Paragraphs 52 and 53 below to determine whether the
9 Defendants' decision meets the evidentiary standards and criteria set forth in this Paragraph.

10 30. The initial decision to place an inmate on Administrative SHU status, as described in
11 Paragraph 29, can only be made by the Departmental Review Board.

12 31. At each 180-day review, institutional staff shall identify all efforts made to work with
13 each inmate on Administrative SHU status to move the inmate to a less restrictive environment as
14 soon as case factors would allow.

15 **F. HOUSING ASSIGNMENT TO PELICAN BAY'S SHU.**

16 32. Notwithstanding Paragraph 29 above, CDCR shall not house any inmate within the
17 SHU at Pelican Bay State Prison for more than 5 continuous years. Inmates housed in the Pelican
18 Bay SHU requiring continued SHU placement beyond this limitation will be transferred from the
19 Pelican Bay SHU to another SHU facility within CDCR, or to a 180-design facility at Pelican Bay.
20 Inmates who have previously been housed in the Pelican Bay SHU for 5 continuous years can
21 only be returned to the Pelican Bay SHU if that return has been specifically approved by the
22 Departmental Review Board and at least 5 years have passed since the inmate was last transferred
23 out of the Pelican Bay SHU.

24 33. Notwithstanding Paragraph 32 above, inmates may request in writing that they be
25 housed in the Pelican Bay SHU in lieu of another SHU location, but such a request must be
26 reviewed and approved by the Departmental Review Board. An inmate's request to remain
27 housed in the Pelican Bay SHU shall be reviewed and documented by the Institution
28 Classification Committee at each scheduled Committee hearing.

1 **G. CONFIDENTIAL INFORMATION.**

2 34. CDCR shall adhere to the standards for the consideration of and reliance on
3 confidential information set forth in Title 15 of the California Code of Regulations, section 3321.
4 To ensure that the confidential information used against inmates is accurate, CDCR shall develop
5 and implement appropriate training for impacted staff members who make administrative
6 determinations based on confidential information as part of their assigned duties, consistent with
7 the general training provisions set forth in Paragraph 35. The training shall include procedures
8 and requirements regarding the disclosure of information to inmates.

9 **H. TRAINING.**

10 35. CDCR shall adequately train all staff responsible for implementing and managing the
11 policies and procedures set forth in this Agreement. Plaintiffs' counsel shall be provided an
12 advanced copy of all such training materials with sufficient time to meet and confer with
13 Defendants, prior to the implementation of the trainings. Plaintiffs are entitled to have an
14 attorney attend training sessions on these modifications, no greater than 6 times per year.

15 **I. NEW REGULATIONS.**

16 36. CDCR shall promulgate regulations, policies and procedures governing the STG
17 management and Step Down Program as set forth in this agreement. The pilot program described
18 in Paragraph 26 will not be required to be promulgated in regulations, unless the pilot program is
19 made permanent.

20 **J. DATA AND DOCUMENTS.**

21 37. For a period of twenty-four months following the Court's preliminary approval of this
22 Agreement, CDCR will provide Plaintiffs' counsel data and documentation to be agreed upon,
23 under the protective order in place in this matter, to monitor Defendants' compliance with the
24 terms of this Agreement. No later than thirty days after the Court's preliminary approval of this
25 Agreement, and again twelve months after the Court's preliminary approval, the parties shall
26 meet and confer to determine the details of the data and documentation to be produced. That
27 agreement and any disputes regarding data and document production, including modification of
28 the agreement, shall be submitted to Magistrate Judge Vadas in accordance with the dispute

1 resolution and enforcement procedures set forth in Paragraphs 52 and 53 below. In addition,
2 Magistrate Judge Vadas can request and order the production of any documentation or data he
3 deems material to compliance with this Agreement or the resolution of any dispute contemplated
4 by the terms of the Agreement. The parties agree, nevertheless, that data and documentation will
5 include, but not be limited to, the following:

6 a. The number of validated STG I and STG II inmates as of the first of the month
7 following preliminary approval. Subsequently, the number of all new STG I and STG II
8 validations shall be provided on a quarterly basis for a period of nine months following the
9 Court's preliminary approval of this Agreement, and shall be provided on a monthly basis
10 thereafter until the termination of this case;

11 b. A list of the names of all inmates serving a SHU term for a SHU-eligible
12 offense with a nexus to an STG as of the first of the month following preliminary approval.
13 Subsequently, the names of all new inmates serving a SHU term for a SHU-eligible offense with
14 a nexus to an STG shall be provided on a monthly basis;

15 c. A list of the names of all inmates reviewed pursuant to Paragraph 25 and the
16 outcome of those placement reviews on a quarterly basis;

17 d. A list of the names of all inmates in each of the following programs: Step
18 Down Program, RCGP, and placed on Administrative SHU status. This document shall be
19 provided on a quarterly basis;

20 e. The total number of Rules Violation Reports issued to inmates in each of the
21 following programs: RCGP, Step Down Program, and Administrative SHU status. This data
22 shall be provided on a semi-annual basis;

23 f. The total number of Rules Violation Reports issued for assaults and batteries on
24 staff and other inmates, riots, weapon possession, attempted murder, and murder committed by
25 inmates in each of the following programs: RCGP, Step Down Program, and Administrative
26 SHU status. This data shall be provided on a semi-annual basis;

27 g. A list of the names of inmates who have not been progressed to the next
28 successive step in the Step Down Program during their 180-day Institution Classification

1 Committee review, and a list of the names of inmates who have been retained in the RCGP during
2 their 180-day Institution Classification Committee review; these lists shall be provided on a semi-
3 annual basis;

4 h. The following documents shall be produced on a quarterly basis regarding all
5 inmates found guilty of a SHU-eligible offense with a nexus to an STG: (i) STG Unit
6 Classification Committee validation determinations; and (ii) the decision of the hearing officer to
7 find the inmate guilty of a SHU-eligible offense. Defendants also shall produce on a quarterly
8 basis a randomly chosen representative sample of the documents relied upon for the validation
9 determinations and RVR decisions for these inmates, including redacted confidential information.
10 The number of representative samples shall be sufficient to demonstrate CDCR's practice and
11 procedure, but shall be reasonable in amount such that compliance with this request is not overly
12 burdensome;

13 i. Institution Classification Committee chronos documenting the decision to place
14 an inmate into the RCGP, on a quarterly basis;

15 j. All Departmental Review Board classification chronos in which the decision is
16 made to house an inmate in alternate placement, pursuant to Paragraph 27, due to a substantial
17 threat to their personal safety. Should Plaintiffs' counsel dispute the determination made, or
18 require more information to determine whether a dispute may exist, Plaintiffs may request and
19 will receive a redacted copy of the documents relied upon by the Departmental Review Board;

20 k. All Departmental Review Board classification chronos in which an inmate is
21 placed on Administrative SHU status, pursuant to Paragraph 29; all non-confidential documents
22 relied upon for that placement determination; and, on a quarterly basis, a random representative
23 sample of redacted confidential documents relied upon;

24 l. All Institution Classification Committee chronos reflecting the committee's
25 decision to not progress an inmate to the next successive step in the Step Down Program, or to
26 retain an inmate in the RCGP; this document shall be provided on a quarterly basis;

27
28

1 m. For all inmates placed on Administrative SHU status, all 180-day Institution
2 Classification Committee review chronos, and all annual Departmental Review Board review
3 classification chronos;

4 n. A random, representative sample of Rules Violation Reports relied upon to
5 deny an inmate progression through the Step Down Program, including redacted confidential
6 sections, on a quarterly basis.

7 38. Any and all confidential information provided shall be produced in redacted form
8 where necessary, be designated as “Attorneys’ Eyes Only” as defined in the protective order in
9 this case, and shall be subject to the protective order. CDCR shall provide Magistrate Judge
10 Vadas, upon request, unredacted copies for *in camera* review in order to resolve any disputes in
11 accordance with Paragraphs 52 and 53, below.

12 39. Representative samples, as discussed in this Paragraph, shall be of sufficient size to
13 allow a determination regarding CDCR’s pattern and practice, but shall be reasonable in amount
14 such that compliance with the request is not overly burdensome. Any disputes regarding data and
15 document production shall be submitted to Magistrate Judge Vadas in accordance with the
16 dispute resolution and enforcement procedures set forth in Paragraphs 52 and 53 below.

17 **K. ATTORNEY-CLIENT COMMUNICATIONS.**

18 40. Plaintiffs’ counsel shall be entitled to meet and speak with all inmates covered by this
19 agreement. Institutional staff shall facilitate Plaintiffs’ counsel’s requests for reasonable access to
20 these individuals without undue delay, whether by telephone, mail, or personal visit. Defendants
21 shall facilitate Plaintiffs’ counsel having telephone conference calls with Plaintiff class
22 representatives as a group annually.

23 **IV. TERMINATION**

24 41. Plaintiffs shall have thirty days after the end of the twenty-four-month period to seek
25 an extension, not to exceed twelve months, of this Agreement and the Court’s jurisdiction over
26 this matter by presenting evidence that demonstrates by a preponderance of the evidence that
27 current and ongoing systemic violations of the Eighth Amendment or the Due Process Clause of
28 the Fourteenth Amendment of the United States Constitution exist as alleged in Plaintiffs’ Second

1 Amended Complaint or Supplemental Complaint or as a result of CDCR's reforms to its Step
2 Down Program or the SHU policies contemplated by this Agreement. Defendants shall have an
3 opportunity to respond to any such evidence presented to the Court and to present their own
4 evidence. If Plaintiffs do not file a motion to extend court jurisdiction within the period noted
5 above, or if the evidence presented fails to satisfy their burden of proof, this Agreement and the
6 Court's jurisdiction over this matter shall automatically terminate, and the case shall be dismissed.

7 42. Brief or isolated constitutional violations shall not constitute an ongoing, systemic
8 policy and practice that violate the Constitution, and shall not constitute grounds for continuing
9 this Agreement or the Court's jurisdiction over this matter.

10 43. If the Court's jurisdiction and this Agreement are extended by Plaintiffs' motion, they
11 shall both automatically terminate at the end of the extension period not to exceed 12 months and
12 the case shall be dismissed unless Plaintiffs make the same showing described in Paragraph 41.
13 Any successive extensions under this Paragraph shall not exceed twelve months in duration, and
14 any extension shall automatically terminate if plaintiffs fail to make the requisite showing
15 described in Paragraph 41.

16 44. To the extent that this Agreement and the Court's jurisdiction over this matter are
17 extended beyond the initial twenty four-month period, CDCR's obligations and production of any
18 agreed upon data and documentation to Plaintiffs' counsel will be extended for the same period.
19 The role and duties of Magistrate Judge Vadas, as described in Paragraphs 48-50 and 52-53, shall
20 be coextensive with that of the Agreement, and in no event shall those roles and duties extend
21 beyond the termination of the Court's jurisdiction.

22 45. At any time after the initial twenty-four month period, Defendants and CDCR may
23 seek termination of this case and the Court's jurisdiction under the Prison Litigation Reform Act,
24 18 U.S.C. § 3626(b)(1)(A).

25 46. If there is a motion contesting Defendants' compliance with the terms of this
26 Agreement pending at the time the case is otherwise to be terminated, the Court will retain limited
27 jurisdiction to resolve the motion.
28

1 **V. RELEASE**

2 47. It is the intention of the parties in signing this Agreement that upon completion of its
3 terms it shall be effective as a full and final release from all claims for relief asserted in the
4 Second Amended Complaint and the Supplemental Complaint. Nothing in this Agreement will
5 affect the rights of Plaintiffs regarding legal claims that arise after the dismissal of this case.

6 **VI. DISPUTE RESOLUTION AND ENFORCEMENT**

7 **A. MAGISTRATE JUDGE NANDOR J. VADAS.**

8 48. To assist the parties in ensuring compliance with this Agreement, the parties agree
9 that Magistrate Judge Vadas will assume the role and duties as set forth in Paragraphs 48-50 and
10 52-53. These duties shall commence upon the Court's preliminary approval of this Agreement
11 and shall continue in accordance with Paragraph 43.

12 49. Following the Court's preliminary approval of this Agreement, Plaintiffs' counsel,
13 CDCR officials, Defendants' counsel, and Magistrate Judge Vadas shall meet on a monthly basis
14 or at other mutually agreed-upon dates to discuss questions and concerns regarding CDCR's
15 compliance with the Agreement. The parties and Magistrate Judge Vadas may determine that
16 such meetings can occur on a less frequent basis, but no less than every three months. No later
17 than one week prior to the meetings contemplated by this Paragraph, Plaintiffs' counsel shall
18 circulate an agenda to Defendants and Magistrate Judge Vadas setting forth the items to be
19 discussed. The meetings described in this Paragraph may be accomplished telephonically or by
20 other means. Defendants shall meet with Plaintiffs' counsel and the four inmate representatives
21 semiannually to discuss progress with implementation of this Agreement. No later than one week
22 prior to these meetings, Defendants shall submit to Magistrate Judge Vadas and Plaintiffs'
23 counsel a compliance report setting forth progress toward implementation.

24 50. Magistrate Judge Vadas may conduct institutional visits and meet with any inmate
25 subject to or affected by the terms of this Agreement. Magistrate Judge Vadas may submit to the
26 parties and the Court a written compliance and progress review assessing the matters under his
27 purview according to this Agreement after 18 months, irrespective of any other motions or
28 matters under Magistrate Judge Vadas's review. Among the matters addressed shall be a review

1 of the conditions and programming in the RCGP and whether they comport with the design and
2 purpose of that unit as provided in this Agreement.

3 **B. COMPLIANCE.**

4 51. The parties shall agree on a mechanism by which CDCR shall promptly respond to
5 concerns raised by Plaintiffs' counsel regarding individual class members.

6 52. If Plaintiffs contend that current and ongoing violations of the Eighth Amendment or
7 the Due Process Clause of the Fourteenth Amendment of the United States Constitution exist on a
8 systemic basis as alleged in the Second Amended Complaint or Supplemental Complaint or as a
9 result of CDCR's reforms to its Step Down Program and SHU policies contemplated by this
10 Agreement, Plaintiffs shall provide Defendants with a brief written description of the basis for
11 that contention and may request that the parties meet and confer to resolve the issue. Defendants
12 shall respond to Plaintiffs' contentions no later than 30 days after receipt of Plaintiffs' written
13 description of the issue. If the parties are unable to resolve the issue informally, Plaintiffs may
14 seek enforcement of the Agreement by seeking an order upon noticed motion before Magistrate
15 Judge Vadas. Plaintiffs must demonstrate by a preponderance of the evidence that CDCR is in
16 material breach of its obligations under this Agreement. Defendants shall have an opportunity to
17 respond to any such evidence presented to Magistrate Judge Vadas and to present their own
18 evidence in opposition to any enforcement motion. If Plaintiffs have demonstrated by a
19 preponderance of the evidence a material noncompliance with these terms, then for the purposes
20 of Plaintiffs' enforcement motion only, the parties agree that Plaintiffs will have also
21 demonstrated a violation of a federal right and that Magistrate Judge Vadas may order
22 enforcement consistent with the requirements of 18 U.S.C. § 3626(a)(1)(A). An order issued by
23 Magistrate Judge Vadas under this Paragraph is subject to review under 28 U.S.C. § 636 (b)(1)(B).

24 53. If Plaintiffs contend that CDCR has not substantially complied with any other terms
25 of this Agreement that do not amount to current, ongoing, systemic violations as alleged in the
26 Second Amended Complaint or Supplemental Complaint of the Eighth Amendment or the Due
27 Process Clause of the Fourteenth Amendment of the United States Constitution, they may seek
28 enforcement by order of this Court. Plaintiffs shall provide Defendants with a brief written

1 description of the basis for that contention and may request that the parties meet and confer to
2 resolve the issue. Defendants shall respond to Plaintiffs' contentions no later than 30 days after
3 they receive Plaintiffs' written description of the issue. If the parties are unable to resolve the
4 issue informally, Plaintiffs may seek enforcement of the Agreement by seeking an order upon
5 noticed motion before Magistrate Judge Vadas. It shall be Plaintiffs' burden in making such a
6 motion to demonstrate by a preponderance of the evidence that Defendants have not substantially
7 complied with the terms of the Agreement. Defendants shall have an opportunity to respond to
8 any such evidence presented to the Court and to present their own evidence in opposition to
9 Plaintiffs' motion. If Plaintiffs satisfy their burden of proof by demonstrating substantial
10 noncompliance with the Agreement's terms by a preponderance of the evidence, then Magistrate
11 Judge Vadas may issue an order to achieve substantial compliance with the Agreement's terms.
12 An order issued by Magistrate Judge Vadas under this Paragraph is subject to review under 28
13 U.S.C. § 636(b)(1)(B).

14 **C. RETALIATION.**

15 54. Defendants shall not retaliate against any class representative, class member, or other
16 prisoner due to their participation in any aspect of this litigation or the Agreement. Allegations of
17 retaliation may be made to Magistrate Judge Vadas in accordance with the procedures set forth in
18 Paragraph 53.

19 **VII. ATTORNEYS' FEES AND COSTS**

20 55. Defendants agree to pay Plaintiffs' counsel attorneys' fees and costs for work
21 reasonably performed on this case, including monitoring CDCR's compliance with this
22 Agreement and enforcing this Agreement, and for work to recover fees and costs, at the hourly
23 rate set forth under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(d). Plaintiffs preserve
24 all arguments for attorneys' fees and costs without limitation. The Prison Litigation Reform Act
25 applies to all applications for attorneys' fees in this case. Plaintiffs shall have sixty days from the
26 entry of a final order approving this Agreement to file their motion for attorneys' fees and costs
27 for work reasonably performed before that date. Subject to the provisions under 42 U.S.C. §§
28 1988 and 1997e, Plaintiffs' motion may request an award that includes their expert fees. On a

1 quarterly basis, Plaintiffs may file motions for reasonable attorneys' fees accrued in monitoring
2 and enforcing CDCR's compliance with this Agreement.

3 56. The notice to the class members shall explain that Plaintiffs will file a motion for
4 attorneys' fees following entry of a final order approving the Agreement.

5 **VIII. JOINT MOTION AND STAY OF PROCEEDINGS**

6 57. The parties will jointly request that the Court preliminarily approve this Agreement,
7 conditionally certify a settlement class, require that notice of the proposed settlement be sent to
8 the classes, provide for an objection period, and schedule a fairness hearing. Prior to or
9 concurrent with the joint motion for preliminary approval, the parties will jointly request that the
10 Court stay all other proceedings in this case pending resolution of the fairness hearing. Following
11 the close of the objection period, the parties will jointly request that the Court enter a final order
12 approving this Agreement, retaining jurisdiction to enforce it, and continuing the stay of the case
13 pending the completion of the Agreement's terms.

14 58. If this Agreement is not approved by the Court, the parties shall be restored to their
15 respective positions in the action as of the date on which this Agreement was executed by the
16 parties, the terms and provisions of this Agreement shall have no force and effect, and shall not be
17 used in this action or in any proceeding for any purpose, and the litigation of this action would
18 resume as if there had been no settlement.

19 **IX. CONSTRUCTION OF AGREEMENT**

20 59. This Agreement reflects the entire agreement of the parties and supersedes any prior
21 written or oral agreements between them. Any modification to the terms of this Agreement must
22 be in writing and signed by a CDCR representative and attorneys for Plaintiffs and Defendants to
23 be effective or enforceable.

24 60. This Agreement shall be governed and construed according to California law.

25 61. The parties waive any common-law or statutory rule of construction that ambiguity
26 should be construed against the drafter of this Agreement, and agree that the language in all parts
27 of this Agreement shall in all cases be construed as a whole, according to its fair meaning.
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ATTACHMENT A

Inmate Privilege Groups

Step 1

- S-1 Privileges:
 - No family visit
 - Non-contact visiting
 - 25% maximum monthly canteen draw
 - Emergency telephone calls
 - One (1) phone call every 90 days if programming and no serious RVRs in that time period
 - Yard access in accordance with Title 15, section 3343(h), which shall be a minimum of 10 hours per week
 - One (1) personal package not to exceed 30 pounds, exclusive of special purchases
 - One (1) photograph
 - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU

Step 2

- S-2 Privileges:
 - No family visit
 - Non-contact visiting
 - 35% maximum monthly canteen draw
 - Emergency telephone calls
 - One (1) phone call every 60 days if programming and no serious RVRs in that time period
 - Yard access in accordance with Title 15, section 3343(h), which shall be a minimum of 10 hours per week
 - Receipt of (1) personal package not to exceed 30 pounds, exclusive of special purchases
 - Two (2) photographs if programming and no RVRs upon completion of Step 2
 - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU

Step 3

- S-3 Privileges:
 - No family visit
 - Non-contact visiting
 - 45% maximum monthly canteen draw
 - Emergency telephone calls
 - One (1) phone call every 45 days if programming and no serious RVRs in that time period
 - Yard access in accordance with Title 15, section 3343(h), which shall be a minimum of 10 hours per week
 - Receipt of (1) personal package not to exceed 30 pounds, exclusive of special purchases
 - Three (3) photographs if programming and no RVRs upon completion of Step 3
 - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU
 - Small Group Programs at least two hours per week
 - All inmates shall have access to GED, high school, and college level educational programs, with adequate academic support.

Step 4

- S-4 Privileges:
 - No family visit
 - Non-contact visiting
 - 50% maximum monthly canteen draw
 - Emergency telephone calls
 - One (1) phone call every 30 days if programming and no serious RVRs in that time period
 - Small group yard in groups as determined by ICC, which shall be a minimum of 10 hours per week
 - Receipt of (1) personal package not to exceed 30 pounds and one additional 15 pound food package, exclusive of special purchases
 - Four (4) photographs every 90 days if programming and no RVRs
 - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU
 - Small Group Programs at least four hours per week
 - All inmates shall have access to GED, high school, and college level educational programs, with adequate academic support.

- S-5 Privileges: (Inmates assigned Administrative SHU status)
 - No family visit
 - Visiting during non-working/training hours, limited by available space within facility non-contact visiting rooms
 - 75% maximum monthly canteen draw
 - Emergency telephone calls
 - One (1) phone call per month
 - Yard access in accordance with Title 15, section 3343(h)
 - Four (4) personal packages per year not to exceed 30 pounds each. May also receive special purchases, as provided in subsections 3190(j) and (k).
 - One (1) photograph upon completion of each 180 day ICC review
 - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU
 - The local Inter---Disciplinary Treatment Team may further restrict or allow additional authorized personal property, in accordance with the institution's Psychiatric Services Unit operation procedure, on a case by case basis above that allowed by the inmate's assigned privilege group.

Restricted Custody General Population (RCGP)

The RCGP is a Level IV 180-design facility commensurate with similarly designed high security general population facilities. Inmates may be transferred to the RCGP if:

- they have refused to participate in or refused to complete SDP Program components
- they have been found guilty of repeated STG violations while in the SDP
- identified safety concerns prevent their release to General Population and the RCGP is deemed to be appropriate
- they have been housed in a SHU for 10 or more continuous years and must complete the SDP because they have committed a SHU-eligible, STG-related violation within the preceding two years

- Available to all RCGP inmates:
 - Education – Alternative Education Program and/or small group education
 - Yard – commensurate with Level 4 GP, but with a minimum of 10 hours per week.
 - Access to religious services
 - Support services job assignments
 - Access to GED, high school, and college level educational programs, with adequate academic support.
 - Leisure Time Activity Groups
 - Small group yards as determined by ICC
 - Electrical appliances commensurate with the Authorized Personal Property Schedule for Level IV GP
 - Privileges:
 - Inmates transferred to RCGP due to refusal to participate in SDP and/or repeated STG RVRs: S-3 privilege group, unless modified by ICC based on program participation or continued STG RVRs
 - Inmates transferred into to the RCGP pilot program after 10+ continuous years in a SHU: commensurate with Level IV GP
 - Inmates transferred into to the RCGP for safety needs: commensurate with Level IV GP

- RCGP Visiting:
 - No Family Visits
 - Non-contact visits that are no less than those afforded to inmates in the Pelican Bay SHU
 - Contact visiting for all inmates in the RCGP shall be limited to immediate family and visitors pre-approved in accordance with existing Title 15 visiting regulations. Contact visits shall be of the same duration as allowed for General Population Level IV inmates, and occur on the following schedule:
 - Inmates transferred to RCGP due to refusal to participate in SDP and/or repeated STG RVRs
 - 1 contact visit every 120 days if programming and no repeated RVRs. ICC shall have the discretion to increase this schedule to 1 contact visit every 90 days, on a case by case basis.
 - Inmates transferred into to the RCGP pilot program after 10+ continuous years in a SHU:
 - 1 contact visit every 60 days unless the inmate incurs a disciplinary violation for which the loss of privileges imposed restricts visiting.
 - All other RCGP Inmates:
 - 1 contact visit every 60 days unless the inmate incurs a disciplinary violation for which the loss of privileges imposed restricts visiting

Small Group programming available in Steps 3, 4, and in the RCGP may include: anger management, parenting skills, understanding criminal thinking, drug & alcohol abuse counseling. These programs shall be provided based on the needs of the inmate.

ATTACHMENT B**SHU Term Assessment Chart**

OFFENSE	TYPICAL TERM (Mos)		
	Low	Expected	High
(1) Homicide:			
(A) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-inmate.	36	48	60
(B) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate.	24	36	48
(2) Violence Against Persons:			
(A) Battery on a non-inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury; or physical force causing serious injury.	18	30	42
(B) Assault on a non-inmate with a weapon, capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.	09	15	21
(C) Rape, sodomy, or oral copulation on a non-inmate, or any attempt.	18	30	42
(D) Battery on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury or physical force causing serious injury.	12	18	24
(E) Assault on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.	6	9	12
(F) Rape, sodomy, or oral copulation on an inmate accomplished against the inmate's will, or any Attempt.	12	18	24
(G) Battery on a non-inmate without serious injury.	6	12	18
(H) Assault on a non-inmate	3	6	9
(I) Battery on an inmate without serious injury. (2 or more offenses within a 12 month period or 1 with direct STG nexus).	2	4	6
(3) Threat to Kill or Assault Persons:			
(A) To take or use a non-inmate as a hostage.	18	30	42
(B) Threat of violence to non-inmate.	2	5	8
(4) Possession of a Weapon:			
(A) Possession of a firearm or possession or manufacturing of an explosive device.	18	30	42

(B) Possession or manufacture/manufacturing of a Weapon including materials altered from their original manufactured state or purpose and which can be made into a weapon—other than a firearm or explosive device and which has been manufactured or modified so as to have the obvious intent or capability of inflicting serious injury, and which is under the immediate or identifiable control of the inmate.	4	8	12
(5) Distribution of Controlled Substances as defined in section 3000.	6	12	18
(6) Escape:			
(A) With force or Attempted Escape with force against a person.	12	24	36
(B) Or attempted Escape from any departmental prison or institution other than a camp, MSF or reentry facility.	6	12	18
(7) Disturbance, Riot, or Strike:			
(A) Leading a disturbance, riot or strike.	6	12	18
(B) Active participation in a disturbance, riot or Strike (2 or more offenses within a 12 month period or 1 with direct STG nexus).	3	6	9
(C) Inciting conditions likely to threaten institution security	3	6	9
(8) Harassment: a willful course of conduct that terrorizes a specific person, group, or entity either directly or indirectly .			
(9) STG Disruptive Behavior:			
(A) Acting in a leadership role by directing or controlling STG behavior that is a behavior listed in this SHU Assessment Chart.	6	12	18
(B) Recruiting inmates to become an STG affiliate, or to take part in STG activities that is a behavior listed in this SHU Assessment Chart.	3	6	9
(C) Acting in a leadership role to generate, move, or facilitate assets or proceeds as a result of, or in support of, prohibited STG business dealings.	3	6	9
(10) Theft or destruction of State property by any means where the loss or potential loss exceeds \$10,000 or threatens the safety of others.	2	8	12
(11) Extortion or Bribery:			
(A) Extortion or bribery of a non-inmate.	4	8	12

(B) Extortion or bribery of an inmate.	2	3	4
(12) Sexual Misconduct:			
(A) Indecent Exposure.	3	6	9
(B) Sexual Disorderly Conduct (two or more offenses within a twelve month period).	3	6	9
(13) Except as otherwise specified in this section or identified as an assault, proven attempts to commit any of the above listed offenses shall receive one-half (1/2) of the term specified for that offense.			
(14) Any inmate who conspires to commit or solicits another person to commit any of the offenses above shall receive the term specified for that offense.			

ATTACHMENT C**STG DISCIPLINARY MATRIX**

STG DISCIPLINARY MATRIX		
<u>Behavior/Activity With Nexus to STG</u>	<u>Administrative or Serious</u>	<u>SDP Placement Options (Section 3378.4(b))</u>
<u>Section 1:</u> a) <u>Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-offender or offender;</u> b) <u>Assault or Battery capable of causing serious injury; Assault or battery with a deadly weapon or caustic substance capable of causing serious injury, solicitation for offense;</u> c) <u>Taking a hostage;</u> d) <u>Possession of a firearm, explosive device, or weapon which has been manufactured or modified so as to have the obvious intent or capability of inflicting traumatic injury, and which is under the immediate or identifiable control of the offender;</u> e) <u>Escape or attempted escape with force or violence</u> f) <u>Rape, sodomy, or oral copulation against the victim's will.</u>	<u>Serious</u>	<u>3378.4(b)(2)</u> <u>3378.4(b)(3)</u> <u>3378.4(b)(6)</u> <u>3378.4(b)(7)</u>
<u>Section 2:</u> a) <u>Introduction, Trafficking, or Distribution of any Controlled Substance (as defined in Section 3000);</u> b) <u>Arson involving damage to a structure or causing serious bodily injury.</u> c) <u>Possession of flammable, explosive, or combustible material with intent to burn any structure or property;</u> d) <u>Extortion or Threat by Means of Force or Violence, including requiring payment for protection/insurance or intimidating any person on behalf of the STG;</u> e) <u>Threatening to kill or cause serious bodily injury to a public official, their immediate family, their staff, or their staffs' immediate family;</u> f) <u>Any other felony involving violence or injury to a victim and not specifically identified on this chart.</u>	<u>Serious</u>	<u>3378.4(b)(2)</u> <u>3378.4(b)(3)</u> <u>3378.4(b)(5)</u> <u>3378.4(b)(6)</u> <u>3378.4(b)(7)</u>
<u>Section 3:</u> a) <u>Battery on a Peace Officer or non-offender not involving use of a weapon;</u> b) <u>Assault on a Peace Officer or non-offender by any means likely or not likely to cause great bodily injury;</u> c) <u>Assault or battery on a prisoner with no serious injury;</u> d) <u>Destruction of state property valued in excess of \$400 dollars during a riot or disturbance;</u>	<u>Serious</u>	<u>3378.4(b)(2)</u> <u>3378.4(b)(3)</u> <u>3378.4(b)(5)</u> <u>3378.4(b)(6)</u> <u>3378.4(b)(7)</u>

<p>e) <u>Theft, embezzlement, arson, destruction, or damage to another's personal property, state funds, or state property valued in excess of \$400;</u></p> <p>f) <u>Any felony not involving violence or the use of a weapon not listed in this schedule with a direct nexus to STG Behavior.</u></p>		
<p><u>Section 4:</u></p> <p>a) <u>Bribery of a non-offender;</u></p> <p>b) <u>Leading/Inciting a disturbance, riot, or strike;</u></p> <p>c) <u>Active participation in, or attempting to cause conditions likely to threaten institution security;</u></p> <p>d) <u>Willfully resisting, delaying, or obstructing any peace officer in the performance of duties;</u></p> <p>e) <u>Possession of Cell Phone or Components;</u></p> <p>f) <u>Acting in a Leadership Role displaying behavior to organize and control other offenders within the STG;</u></p>	<u>Serious</u>	<u>3378.4(b)(2)</u> <u>3378.4(b)(3)</u> <u>3378.4(b)(4)</u> <u>3378.4(b)(5)</u> <u>3378.4(b)(7)</u>
<p><u>Section 5:</u></p> <p>a) <u>Gambling;</u></p> <p>b) <u>Tagging, or otherwise defacing state property valued at less than \$950, with symbols or slogans intended to promote affiliation with a STG.</u></p>	<u>Serious</u>	<u>3378.4(b)(2)</u> <u>3378.4(b)(4)</u> <u>3378.4(b)(7)</u>
<p><u>Section 6:</u></p> <p>a) <u>STG Related Tattoos and/or Body Markings (new since most recent arrival in CDCR and not previously documented);</u></p> <p>b) <u>Recording/documentation of conversations, the content of which evidences active STG behavior;</u></p> <p>c) <u>Harassment of another person, group or entity either directly or indirectly through the use of the mail, telephone, or other means;</u></p> <p>d) <u>Communications between offenders/others, the content of which evidences active STG behavior;</u></p> <p>e) <u>Leading STG Roll Call;</u></p> <p>f) <u>Directing Cadence for STG Group Exercise;</u></p> <p>g) <u>In Personal Possession of STG related Written Material including Membership or Enemy List, Roll Call Lists, Constitution, Organizational Structures, Codes, Training Material, etc.;</u></p> <p>h) <u>In Personal Possession of mail, notes, greeting cards or other communication (electronic or non-electronic) which include coded or explicit messages evidencing active STG behavior;</u></p>	<u>Serious</u>	<u>3378.4(b)(2)</u> <u>3378.4(b)(4)</u> <u>3378.4(b)(7)</u>
<p><u>Section 7:</u> <u>Except as otherwise specified in this section, proven attempts to commit or an offender who conspires to commit any of the above listed offenses shall receive the term range specified for that offense.</u></p>	<u>Serious</u>	<u>Identified in Section 3378.4(b)</u>
<p><u>Section 8:</u></p> <p>a) <u>Active Participation in STG Roll Call;</u></p> <p>b) <u>Participating in STG Group Exercise;</u></p>	<u>Administrative</u>	<u>3378.4(b)(1)</u> <u>3378.4(b)(4)</u> <u>3378.4(b)(7)</u>

<ul style="list-style-type: none">c) <u>Using hand signs, gestures, handshakes, slogans, distinctive clothing, graffiti which specifically relate to an STG;</u>d) <u>Wearing, possessing, using, distributing, displaying, or selling any clothing, jewelry, emblems, badges, certified symbols, signs, or other STG items which promote affiliation in a STG;</u>e) <u>In Possession of artwork, mail, notes, greeting cards, letters or other STG items clearly depicting certified STG symbols;</u>f) <u>In Possession of photographs that depict STG association. Must include STG connotations such as insignia, certified symbols, or other validated STG affiliates.</u>g) <u>In possession of contact information (i.e., addresses, telephone numbers, etc.) for validated STG affiliates or individuals who have been confirmed to have assisted the STG in illicit behavior.</u>		
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Mental Health Consequences Following Release from Long-Term Solitary Confinement in California

Consultative Report Prepared for the
Center for Constitutional Rights

Human Rights in Trauma Mental Health Lab, Stanford University



Stanford
University

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Executive Summary

In Spring 2017, members of Stanford University's Human Rights in Trauma Mental Health Laboratory (the Stanford Lab) were invited to consult with attorneys from the Center for Constitutional Rights (CCR) representing class members in the federal class action lawsuit *Ashker v. The Governor of California (Ashker)*. The Stanford Lab was asked to gather narratives from *Ashker* class members in order to glean insight into what psychiatric sequelae directly related to prolonged, indefinite isolation in the Security Housing Units (SHU) at California prisons are present, and to determine whether that harm continues to impact prisoners following their release from SHU into the general prison population (GP).

As aggregated, the class member narratives indicated that most of the men experienced severe psychological disturbances with lasting detrimental consequences as a result of their experience in SHU. The Stanford Lab's interviews revealed a range of common impairments and adverse consequences associated with long-term, indefinite incarceration. The majority of class members endorsed mood symptoms consistent with the Diagnostic and Statistical Manual of Mental Disorders (DSM 5) diagnosis of Major Depressive Disorder, including depressed mood, hopelessness, anger, irritability, anhedonia, anger, fatigue, feelings of guilt, loss of appetite, and insomnia. Nearly all class members also endorsed anxiety symptoms characteristic of DSM 5 diagnoses of panic disorder, traumatic stress disorders, and/or obsessive-compulsive disorders, such as nervousness, worry, increased heart rate and respiration, sweating, muscle tension, hyperarousal, paranoia, nightmares, intrusive thoughts, and fear of losing control. Psychiatric symptoms and diminished capacity for socialization continue to cause psychological suffering and problems with social function for most of the men now in GP.

Class members cited emotional numbing and desensitization as the some of the most common responses to living in SHU. This sense of emotional suppression and dysregulation continues to be problematic for prisoners following the transition to the general population. Class members also reported significant alterations in cognition and perception. Problems with attention, concentration, and memory were common, and described as persistent and worsening. Some of the most pronounced and enduring effects of long-term isolation appeared to have resulted from relational estrangement and social isolation; interviewees frequently reported losing, over time, the motivation to seek social connection.

These psychiatric and social difficulties were reported to have persisted throughout the transition to GP. Class members commonly reported ongoing anxiety and posttraumatic stress symptoms. Specific difficulties endorsed by class members include pervasive hypervigilance, worry, and nervousness; they described experiences of being on constant alert and chronically feeling under threat or danger. Many class members endorsed sensory sensitivity following their transition to GP, noting experiences of distress, anxiety, paranoia, and irritability particularly in response to

the “chaotic” environment of GP with an influx of new activities, interactions, and sounds. Furthermore, class members report that periods of lockdown in GP are triggering and re-traumatizing, and that they invoke re-experiencing symptoms of posttraumatic stress disorder. These social and psychological responses to SHU are consistent with the majority of current literature on prolonged isolation.

In considering opportunities to improve post-SHU experience and functioning for prisoners, the Stanford Lab noted that class members generally felt overwhelmed by and underprepared for the post-SHU experience in GP. Class members described the experience of GP as totally foreign and overwhelming; these experiences appeared to stem from the drastic contrast between the physical, social, and sensory environments of SHU and GP, as well as the absence of an effective transition program. The loss of routine and stability in daily functioning, and the related lack of predictability and demand for flexibility, was jarring and distressing for many interviewees, resulting in feelings of anxiety, nervousness, irritability, and a sense of isolation and disconnection, exacerbated by the lack of any transition preparation.

The mental health professionals in the Stanford Lab are well versed in treatment modalities and useful interventions for persons with mental health disorders and/or symptoms. Based on the information summarized in this report, the Stanford Lab recommends reparative services in the form educational, occupational, and social programming opportunities to help address the lasting consequence of the long-term SHU experience. Emotional and psychological support services are also needed. For transition, it is clear that improved, earnest access to mental health treatment is necessary, and that such access should come from non-CDCR sources for a number of reasons elucidated in the full report. The Stanford Lab recommends that class members be offered mental health and psychological services in the form of independent psychiatric care and/or peer-led or peer-facilitated support groups. Moreover, interviews indicate that prisoners seem to derive a sense of fulfillment and self-worth from opportunities to mentor their peers; such programming could be helpful in combatting some of the detrimental effects of time in SHU, including by diminishing anxiety and depression.

Furthermore, class members’ requests for greater access to jobs and other out-of-cell activities, to programs, and to therapeutic groups are wise interventions for their symptom profiles and are likely to improve their transitions and the long-term prospects for functioning and contribution to society. The Stanford Lab found the men interviewed to be resilient, self-educated, intellectually curious individuals, many of whom have implemented therapeutic coping mechanisms on their own. The Stanford Lab recommends that CDCR and other prison authorities seek to offer adequate and enriched programming opportunities as a means of providing reparative services and personal, community, and societal healing following long-term isolation in SHU.

Introduction

In the spring of 2017, members of Stanford University's Human Rights in Trauma Mental Health Laboratory (the Stanford Lab) were invited to consult with attorneys from the Center for Constitutional Rights (CCR) representing class members in the federal class action lawsuit *Ashker v. The Governor of California (Ashker)*. The Stanford Lab is a multidisciplinary collaboration between Stanford University's School of Medicine, Law School, and the WSD Handa Center for Human Rights and International Justice, and is composed of faculty and students including academic clinicians, lawyers, and policy experts with special knowledge in the area of trauma mental health. Moreover, the team has practical experience in clinical psychiatry and mastery of the science of the effects of adverse conditions on human psychology, as well as significant experience performing interviews and qualitative research in adverse conditions. As indicated, the Stanford Lab was approached by attorneys from CCR to consult on the question of how psychological changes acquired in long-term situations of isolated incarceration affect transition into a general prison population. The Stanford Lab was asked to gather narratives from *Ashker* class members in order to glean insight into what lasting psychiatric sequelae are present and how the acquired psychological changes affect the transition from solitary confinement to the mainline, as well as to review the science of the consequences of isolation for human psychology. The focus of the endeavor was to investigate the extent of psychological harm directly related to prolonged, indefinite isolation in the Security Housing Units (SHU) at California prisons and to determine whether that harm continues to impact prisoners following their release from SHU. Of note, the experiences of class members in SHU were consistent with conceptualizations of solitary confinement, which is widely accepted as being held in isolation for 22 - 24 hours each day. Given the specific focus on class members in the *Ashker* settlement, the purpose of the current analysis and report was not to review all applications of solitary confinement (for example, the impact of isolation for periods of less than 10 years); however, the present considerations and outcomes have relevant implications for those held in the SHU or similar conditions for any duration of time.

Methodology

In early 2017, *Ashker* class members received a letter (drafted by the attorneys in consultation with the Stanford Lab) via U.S. Postal Service inquiring if they would be willing to participate in an interview with Stanford Lab members. *Ashker* class members were all formerly housed in the SHU at Pelican Bay State Prison and California State Prison, Corcoran for more than 10 years (with some also spending time in similar units at additional facilities, including San Quentin State Prison).

Forty-five *Ashker* class members now housed in California State Prison, Sacramento (SAC); Salinas Valley State Prison (SVSP); and Kern Valley State Prison (KVSP) were randomly selected by the Stanford team and invited for interviews. Thirty class members accepted the invitation

and all but one of them were subsequently interviewed using a semi-structured and focused interview format. The survey instrument was carefully designed by the Stanford Lab over a period of several weeks to gain subjective, qualitative responses in three general categories of information: mental health symptoms acquired in SHU; symptoms that persist and/or new symptoms that have surfaced during the post-SHU period, in most cases while being housed in the general prison population (GP); and insights into potentially beneficial resources for prisoners following long-term isolation. The Stanford Lab also asked class members to reflect on how their fellow SHU inmates fared. Each interview was conducted during prison visiting hours with the class member, an attorney from the Plaintiffs' monitoring team¹, and an interviewer from the Stanford Lab (interviewers included a licensed psychiatrist, licensed clinical psychologist, clinical psychology doctoral student, and a human rights investigator).

Stanford Lab members drafted individual reports summarizing each interview. The team then collectively reviewed the individual reports to identify common themes and notable aberrations with a focus on making informed suggestions to improve outcomes for class members' post-SHU experience. The noticeable trends, which are discussed below in further detail, reveal that the clients suffer a range of mental health consequences following their prolonged isolation, varied responses to the post-SHU experience in GP, and ongoing psychiatric, medical, social, and functional difficulties.

Acknowledgement of Limitations of the Consultation

By interviewing 29 prisoners, the Stanford Lab was able to investigate and capture a fair cross-section of the class members' experiences so as to make credible generalizations of themes, while allowing nuances to highlight the diversity of experience and opinion. Patterns were detected across the class members' narratives, and sound information could be gleaned about the mental health symptoms associated with SHU, and how these symptoms hindered — and continue to hinder — clients' psychology and social capacity since release from SHU.

That said, the Stanford Lab recognizes that relying upon the consent and ability of the class members to participate in interviews likely inserts some selection bias into the grouping, meaning the perspectives and experiences of individuals interviewed do not likely represent those prisoners who faced or face the most severe challenges from their time in isolation. This project only represents narratives from class members who were able to affirmatively respond to a letter sent by the *Ashker* attorney group; this excludes narratives from men yet to be released from SHU, men who did not survive SHU, men who were transferred to a mental health unit, and/or men who were either not able to answer the invitation or unwilling to consent. While this creates a potential bias, it likely selects for persons with higher cognitive abilities and better mental health

¹ Three interviews were conducted without a member of the legal team owing to an administrative complication.

states. Therefore, the current report presents a summary of the psychological impact of SHU among what are likely the most resilient and resourceful of the former SHU prisoners.

Another factor that may influence the quality and quantity of the information obtained is a general reluctance among prisoners to acknowledge mental and emotional distress. While all interviewees gave consent to participate and were willing to talk openly about their experience, their stories might not capture the entirety of what they went through in SHU and during the transition to GP, as prisoners may be hesitant to disclose the full extent of the psychological harm they have experienced for a number of reasons. Mental health stigma is a problem in the general community that appears to be exacerbated within the prison system.² Multiple class members explained that it is important to avoid appearing weak or vulnerable in front of other prisoners. They also stated that emotional expression is often considered to be a sign of weakness in prison culture. Some class members began the interviews by discussing their strengths and resilience, and only opened up about emotional difficulties after getting comfortable with the interviewer and being asked more specific questions.

Another potential challenge to using a voluntary interview format is emotional numbing and minimization of distress. Nearly all class members reported experiencing emotional numbing during their time in SHU. Many class members reported ongoing difficulties with experiencing emotions, which might affect their ability to recall their emotional state in SHU and during the transition. As noted by Stuart Grassian (2006), many prisoners view prolonged confinement as an attempt to break them down, mentally and physically. In this case, prisoners may view acknowledgement of psychological symptoms as evidence of being successfully “broken,” which could cause even greater distress and damage to their sense of self.³ Finally, some class members expressed a fear of being labeled as mentally ill and subsequently forced to receive psychiatric medication or intervention from the California Department of Corrections and Rehabilitation (CDCR).

² "Furthermore, many inmates cite an undesirable degree of social risk in identifying oneself as being in need of mental health intervention or taking psychotropic medication. They report that inmates and staff see such behaviors as evidence of a weak or broken status." (Cloyes et al., 2006, p. 762)

³ "Many inmates housed in such stringent conditions are extremely fearful of acknowledging the psychological harm or stress they are experiencing as a result of such confinement. This reluctance of inmates in solitary confinement is a response to the perception that such confinement is an overt attempt by authorities to 'break them down' psychologically, and in my experience, tends to be more severe when the inmate experiences the stringencies of his confinement as being the product of an arbitrary exercise of power, rather than the fair result of an inherently reasonable process." (Grassian, 2006, p. 333)

Mental Health Consequences of Long-term Isolation

As aggregated, the class member narratives indicated that most of the men experienced severe psychological disturbances with lasting detrimental sequelae as a result of their experience in SHU. The Stanford Lab's interviews revealed a range of common impairments and adverse consequences associated with long-term, indefinite incarceration in SHU. These include mood deterioration and depression, intense anxiety, emotional numbing and dysregulation, cognitive impairments, and modifications in perception of time. In addition, all the interviewees reported distressful relational estrangement with family and/or friends. Psychiatric symptoms and diminished capacity for socialization continue to cause psychological suffering and problems with social function for most of the men now within the GP.

"We are broken, but most of us are too proud to ask for help."

"The worst thing you can do to a person."

"There is a sense of impending doom ... [like a] tidal wave."

"I lost time as if I went to a deserted island and then came home."

"I was not even living in the world."

"I could hear them banging their heads against the walls and yelling. ... Men lose their minds, cover themselves in feces."

"I'm going to die here. I'm never going to leave this place.
I can wake up tomorrow dead. I'm leaving this place in a box."

"It's like being buried alive under cement and steel."

"Caged animal." " [A place to] learn impatience,
learn intolerance, and learn irritability."

"Environment designed to break people mentally and emotionally."

"Everyday is the same day. Time stands still."

"The cell is my life, while time
goes by somewhere else."

Inventory of Mental Health Impairments Acquired in SHU

Mood The majority of class members endorsed a number of negative mood symptoms such as irritability, intense anger, anhedonia (an inability to feel joy), hopelessness, and depression.⁴ Class members described their emotional experience in SHU as "desolate," "stale," and "like a robot."

⁴ A study of 34 inmates in Kentucky by Miller and Young (1997) indicated that inmates in disciplinary solitary confinement experience greater feelings of inferiority, withdrawal, and isolation than the general prison population, and greater feelings and actions of aggression than both the general prison population and inmates held in administrative segregation.

Nearly all class members reported sleep difficulties including severe insomnia and inability to fall asleep owing to intrusive thoughts.⁵ Class members also reported experiencing fatigue, loss of appetite, and feelings of guilt. A number of class members reported having thoughts of ending their life.⁶ Some class members also witnessed the suicide or self-harm of others. These symptoms are consistent with the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) diagnosis of Major Depressive Disorder (American Psychiatric Association, 2013).⁷ Also, while some class members were able to remain hopeful, many became despondent and believed that they would die in SHU. Class members recalled thinking that the only way they would get out of SHU prior to the *Ashker* settlement was to “debrief, parole, or die.”

“I have many daily rituals. If I can’t get them done, I get agitated.”

“Every little sound bothered me.”

“I cultivated anger and hatred.”

“I learned to watch everything, like any spider or bug that came into my cell”

“It’s easy to become a product of your anxiety.”

Anxiety Nearly all class members reported experiencing anxiety⁸ symptoms characteristic of DSM-5 diagnoses of Panic Disorder, traumatic stress disorders, and/or obsessive compulsive disorders (American Psychiatric Association, 2013). Symptoms included nervousness, worry, increased heart rate and respiration, sweating, muscle tension, hyperarousal, paranoia,

⁵ Andersen, et al. (2000) found, through repeated measurements over four months of Danish prisoners without prior mental illness, that SHU prisoners were significantly more likely than those in general population to develop psychiatric disorders, particularly related to anxiety, depression, irritability, worrying, insomnia, difficulty concentrating, and passivity.

⁶ Single-cell SHU housing has been found to be a significant suicide and self-harm risk factor in other studies (Kaba, et al., 2014; Kupers, 2008; Patterson & Hughes, 2008; Roma, et al., 2013; Reeves & Tamburello, 2014; Way et al., 2005).

⁷ A longitudinal study comparing Danish prisoners in solitary confinement and those not in solitary confinement by Andersen, et al. (2003), found that scores of psychopathology (including anxiety and depression) decreased for non-SHU inmates over the first 2-3 months of imprisonment, but remained the same for SHU inmates (improvement was likely due to being removed from drugs, alcohol and treatment of withdrawal). Once inmates were moved from SHU to non-SHU their psychopathology scores improved.

⁸ In his study of 100 Pelican Bay inmates in SHU, Haney (2003) found that 91% reported anxiety, 84% chronic lethargy, 84% difficulty sleeping, 70% impending nervous breakdown, 68% heart palpitations, 63% loss of appetite and 55% nightmares.

nightmares, intrusive thoughts,⁹ and fear of losing control. Multiple class members reported experiencing akathisia, or the feeling of “wanting to crawl out of one’s skin.” Class members reported feeling compelled to engage in repetitive behaviors in order to reduce their anxiety. These behaviors include obsessively organizing their belongings, keeping strict daily routines, and excessively cleaning their cells.¹⁰ Individuals who endorsed obsessive compulsive spectrum symptoms reported feeling highly distressed when their routine was interrupted or their belongings were disturbed. Additionally, some class members reported experiencing hyperarousal and paranoia. These individuals became increasingly suspicious of others and bothered by benign noises.

“You stop relating to anyone who isn’t in SHU.”

“I needed to disconnect and tune out emotions [to survive].
In SHU, you can’t show emotions, you go within yourself.”

“Anger was an escape from other emotions.”

“I wasn’t able to shed a single tear – it bothered me.
It bothers me to this day.”

“You can go through different emotions really quick. A
happy moment will turn into despair. Even thoughts
about your family can turn to despair.”

“Like a robot.”

“Emotions are up and down.
You struggle to stay positive so you can survive.”

“Retreated back into my shell.”

“My mind is just out.”

Emotional Numbing Class members cited emotional numbing and desensitization as the most common responses to SHU living. Many class members described becoming “emotionless,” numb, or detached during their time in SHU.¹¹ They expressed a need to intentionally suppress

⁹ Cloyes, et al. (2006) found that 69% of those surveyed show psychosocial impairment and/or meet criteria for serious mental illness. Authors highlight “thought disturbances,” which include “conceptual disorganization, hallucinatory behavior, unusual thought content,” and are the subscale equated with with “serious psychotic illness.”

¹⁰ Grassian (2006) found obsessive thoughts common and notes the prevalence of obsessive behaviors in prisoners of war held in solitary confinement and postoperative, bed-confined heart surgery patients; granted, the conditions of SHU inmates are very different.

¹¹ In their studies of social exclusion with nonincarcerated populations, subjects in Twenge, Catanese, & Baumeister (2003) displayed emotional numbness, reduced empathy, passivity, and lethargy.

their emotions in order to cope with their experience.¹² They reported feeling disconnected from emotional experiences (particularly for emotions involving a level of vulnerability, such as sadness or fear) and also reported an inability to control or regulate certain emotional responses, such as anger. Class members indicated that displays of emotion were considered a form of weakness in SHU culture. Additionally, many class members reported that the act of suppressing emotions was a necessary coping strategy in SHU. Many class members felt like they had to “shut everything out.” Oftentimes, the only emotion class members allowed themselves to feel was anger, which could erupt from seemingly benign encounters or interactions. This sense of emotional overcontrol and dysregulation continues to be problematic for prisoners following the transition to GP.

Cognition Cognitive deficits appear to be some of the most pronounced consequences of long-term isolation. Problems with attention, concentration, and memory were some of the most commonly reported responses to SHU. Most, if not all prisoners experienced changes in attention span and memory deficits during their time in SHU. Multiple class members cited a loss in ability to focus while reading and an inability to retain new learning. The class described cognitive difficulties as persistent and worsening.¹³

Class members reported changes in thought content throughout the duration of their stay in SHU.¹⁴ Some individuals had ruminative thoughts about the past, their feelings of guilt, or the injustice of their situation. A number of interviewees also reported experiencing invasive or unwanted thoughts. Moreover, they endorsed paranoid thought processes, and described feeling anxious around and distrustful of correctional officers or any CDCR staff. Some class members reported experiencing auditory hallucinations and delusions of a paranoid nature. Only one interviewee reported visual hallucinations.¹⁵

¹² This aligns with the findings of Haney (2001) that “emotional over-control, alienation, and psychological distancing” are psychological adaptations that many SHU prisoners employ, often creating a “prison mask” of emotional flatness. Emotional numbing, in combination with hyper-vigilance and suspicion, which are also common psychological adaptations, often leads to social withdrawal.

¹³ Extrapolating from beyond the prison environment, a study of 823 elder adults by Wilson et al. (2007) found that loneliness led to significant declines in global cognition, semantic memory, perceptual speed and visuospatial ability, as well as increased risk of Alzheimer’s disease.

¹⁴ In a study of 152 Danish SHU prisoners and 193 non-SHU prisoners, Sestoft, et al. (1998) found that risk of admission to the prison hospital for psychiatric problems was higher and increased in relation to amount of time spent in SHU.

¹⁵ Grassian (1983) found that five of the 15 SHU inmates he interviewed reported experiencing auditory hallucinations and three experienced visual hallucinations. Additionally, there exist several studies that indicate that sensory deprivation and isolation induce hallucinations (Goldberger & Holt, 1961; Heron, Doane & Scott, 1956; Lipowski, 1975), but the test subjects were mostly college students held in brief confinement.

Alterations in Perception One of the most common reported responses to long-term isolation relates to lasting changes in perception. Class members consistently reported a marked shift in their perception of time while in SHU, stating that in some cases days seemed longer, while in other instances “time became a blur.”¹⁶ Additionally, class members reported becoming highly sensitive to environmental stimuli, including loud noises and sudden movements.¹⁷ Moreover, they reported ongoing fear of crowded spaces.

“The things that used to have meaning
no longer have any meaning.”

“I don’t want to be close to anyone.”

“Mind would go negative without someone to talk to.”

“I don’t know if someone is going to shake my hand or attack me.”

“You can only trust yourself – your own mind and emotions.”

“I don’t want family and I don’t want friendship.

I have no desire to meet people. Family is meaningless to me.”

“[Being in SHU] ends trust with anyone who isn’t already trusted.”

“SHU made me lose all my ability to trust. You can’t imagine the hopelessness.
If you don’t find an outlet this place will make you go insane.”

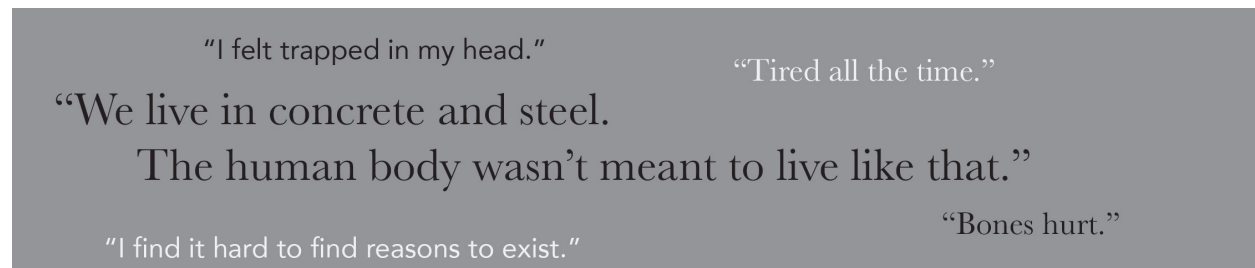
Relational Estrangement Nearly all class members reported losing relationships with family, friends, and significant others as a result of their isolation; several class members recalled that the deterioration of relationships with parents, partners, siblings, and children marked some of the most difficult experiences in SHU. According to most individuals interviewed, contact from their personal networks outside the prison system was often limited to notification that a family member had died. Class members reported being unable to properly grieve these losses, because they could not allow themselves to feel emotions associated with grief. One individual stated that he was unable to feel anything when his ex-wife, uncle, and nephew died within a short time period, because he “just had to keep going.”

¹⁶ Drawing upon general research, Twenge, Catanese, & Baumeister (2003) found that time distortion, an indicator of being in a “deconstructed state,” which is common in suicidal individuals, increased after experiencing social rejection within the experiment.

¹⁷ Solitary confinement prisoners in Maine State Prison also reported that the slightest noise, such as knocking on a cell door, resulted in feelings of uncontrollable anger. General prison population prisoners did not report such feelings (Benjamin & Lux, 1997).

Physical Health Several class members dealt with severe medical problems while in SHU; some were treated successfully, others less so. In some cases, these physiological problems appear to have developed as a result of the physical conditions of the SHU (for example, confinement to small spaces, lack of exercise). These include chronic pain, vitiligo, joint problems, and visual impairment, and many of these health consequences appear to continue well after transition out of SHU. There are a few environmental factors that increase the risk of health problems for people in long-term isolation. Lack of sunlight, for example, can lead to Vitamin D deficiency, which increases the risk of bone fractures (Williams, 2016). Lack of exercise also contributes to an increased risk of hypertension, arthritis, and heart disease (Williams, 2016).

Older prisoners may be particularly susceptible to chronic health problems and the health consequences of reduced quality of medical care; the average number of chronic medical conditions found in prisoners above the age of 55 is three (Williams et al., 2013). Research suggests that prisoners are more likely to be functionally impaired by health problems compared to non-prisoners. This means that prisoners have more trouble managing their illnesses and adapting to worsening health. Physical difficulties are likely to be compounded by untreated mental disorders and psychosocial impairment.



Social Impairments As previously noted, most class members lost contact with their personal networks while in SHU. Moreover, they frequently reported losing, over time, the motivation to seek social connection as well as a willingness to talk about their experience. Some became afraid to communicate with others because of how this might be perceived by correctional officers or Institutional Gang Investigators (IGI). Many class members expressed a belief that any personal connection could be misinterpreted as gang association, which would likely lead to longer terms in SHU. The majority of class members reported having highly negative relationships with correctional officers.

Class members who were able to maintain supportive relationships throughout their time in SHU appear to be outliers, though those who were successful in doing so seemed to show improved mental health overall. In other words, maintaining social connection appeared to be a protective factor against negative outcomes in SHU, meaning those with strong family ties demonstrated enhanced resilience to their SHU experience. Also, class members who reported having external social support or positive relationships with other prisoners, including cellmates, found themselves

better able to cope. Additionally, class members who affiliated themselves with others who shared the same political ideology, for example the New Afrikan Revolutionary Nationalism, or who created opportunities for mentorship, perhaps of younger prisoners, reported a greater sense of purpose and fulfillment.

Functional Deterioration It was the perception of most men interviewed that their overall functioning in multiple spheres was damaged by their time in SHU. They report the capacity for normal social interaction as the primary area of dysfunction after SHU. They also report lasting and ongoing dysfunction in mood, anxiety, and cognition.

The Experience of Others in SHU Class members reported that other prisoners in their SHU pods demonstrated evidence of mental disturbances, and that witnessing the suffering of others was distressing. Class members reported losing friends in SHU due to suicide, psychological deterioration, and death as a result of medical issues. Additionally, class members saw others engage in self-harm and violence at a level that was described as “heart-breaking.” Some class members reported that inmates in neighboring cells would talk to themselves, scream constantly, and speak in non-linear patterns. Some class members reported that neighbors attempted or completed suicide. Some neighbors were transferred to mental health units because they were “too crazy.”

A number of class members stated that the primary purpose of SHU “is to break you.” They reported feeling targeted by correctional officers, and being unable to communicate openly. Class members explained that it was important to “keep thoughts to yourself” in SHU. Conflict with correctional officers and IGI appeared to be a significant source of distress among class members. In a number of interviews, class members reported being treated unfairly by investigators who were seeking reasons to validate their status as members of prison gangs. For example, class members reported distress at having personal belongings, documents, and records confiscated; these items were often alleged to be evidence of gang affiliation, though class members stated that such claims were unsubstantiated and often interpreted such interactions as forms of harassment or provocation.

Interview Results Consistent with Existing Literature

The social and psychological responses to SHU described above are consistent with the majority of current literature on prolonged isolation. In one of the most notable publications, Grassian (2006) described a specific syndrome associated with social isolation and sensory deprivation. Similar patterns of psychological dysfunction have been documented in empirical literature on prolonged solitary confinement. A number of researchers have observed the behavioral patterns of individuals confined long-term and found consistent detrimental outcomes (Arrigo & Bullock, 2008; Cloyes et al., 2006; Grassian, 1983; Grassian & Friedman, 1986; Grassian, 2006; Haney,

1993; Haney, 2003; Haney, 2006; and Lovell, 2008). Individuals in SHU exhibit increased risk for a wide range of psychiatric symptoms and disorders including depression, impulse control disorders, self-mutilation, and suicidal behavior (Haney, 2006). Prisoners in SHU also experience disproportionately high rates of general anxiety, symptoms of panic disorder, and difficulty with concentration, memory, and attention (Grassian, 1983; Grassian & Friedman, 1986; Grassian, 2006). Increased rates of psychotic symptoms, including paranoia, hallucination, and delusions have also been correlated with long-term isolation (Cloyes et al., 2006; Lovell, 2008; Grassian, 1983, 2006).

Additional cited outcomes of long-term solitary confinement include insomnia, intense anger, ruminations and intrusive thoughts, and social withdrawal (Cloyes et al., 2006; Haney, 2003; Grassian & Friedman, 1986; Grassian, 2006). Psychiatric symptoms have been found to vary based on the degree of sensory deprivation and social isolation (Arrigo & Bullock, 2008). The writers of this report are familiar with Grassian's concept of "SHU syndrome," which is comprised of "massive free-floating anxiety, hyper-responsivity to external stimuli, perceptual disillusion, hallucinations, derealization experiences, difficulties with thinking, concentration, memory, acute confusional states, aggressive fantasies, and paranoia" (Grassian, 1983, pp. 1452-1453). While the information obtained from the interviews does appear to align with symptoms of SHU syndrome, making retrospective claims regarding the presence or absence of SHU syndrome in *Ashker* class members is beyond the scope of the current report.

There is some conflict within the field and it is necessary to acknowledge critiques of these studies, as well as assess the validity of conflicting literature. A report by Haney and Lynch in 1997 has been criticized as being overly reliant upon interviews and self-report as opposed to scientifically rigorous experimentation (Kurki & Morris, 2001), while the reports of Grassian (1983) and Grassian and Friedman (1986) have been challenged due to their reliance upon a study population of only 14 inmates. A number of researchers contend that solitary confinement is not conclusively detrimental (Bonta & Gendreau, 1990; O'Keefe et al., 2010; Suedfeld et al., 1982; Zinger et al., 2001), but there are valid criticisms of these countering studies as well. Primarily, the literature reviewed by Bonta and Gendreau (1990) relied heavily upon studies involving volunteer subjects, short-term solitary (up to 10 days), and healthy subjects without pre-existing conditions (Kurki & Morris, 2001). The authors emphatically make clear that they are not arguing in favor of solitary confinement, and raise important questions: individual response to the conditions of solitary confinement may be different, further research is necessary to understand if solitary confinement effectively deters harmful behavior, and humane alternatives must be explored (Bonta & Gendreau, 1990). O'Keefe, et al. (2010) presented controversial findings that while both prisoners in solitary confinement and prisoners with mental illness in the general population exhibited SHU symptoms, over time, 20% of SHU inmates improved. The authors acknowledge not only that the results should not be generalized given the unique conditions of Colorado SHU, but also that the research was limited due to the utilization of

group averages and collection of psychological well being and behavior measures by prison clinicians and correctional officers (Smith, 2011). The report by Suedfeld et al. (1982) was limited by insufficient breadth of psychological measures and an inability to include subjects with severe responses to SHU due to the fact that they could no longer be interviewed (Ogloff, 2008). They did find that increased time in solitary was linked to anxiety, depression, hostility, and other negative emotions, but that it was not “overwhelmingly adverse” (Suedfeld, et al., 1982). The study is focused primarily upon the idea that responses to solitary confinement are individual and not always deleterious, which is an important area of investigation. Lastly, Zinger, et al. (2001) found that segregated inmates exhibited more depressive symptoms and anxiety than non-segregated inmates, but did not find evidence that mental health had significantly deteriorated. These longitudinal accuracy of these findings is challenged due to the fact that the experiment lasted merely 60 days (Metzner & Dvoskin, 2006), and the attrition rate proved problematic given that only 15% of 83 subjects completed all three phases of the testing and that ratios of voluntary SHU subjects to involuntary were no longer accurate (Ogloff, 2008). Overall, the literature indicates that solitary confinement negatively impacts the psychological well-being of inmates (Pizarro & Stenius, 2004).

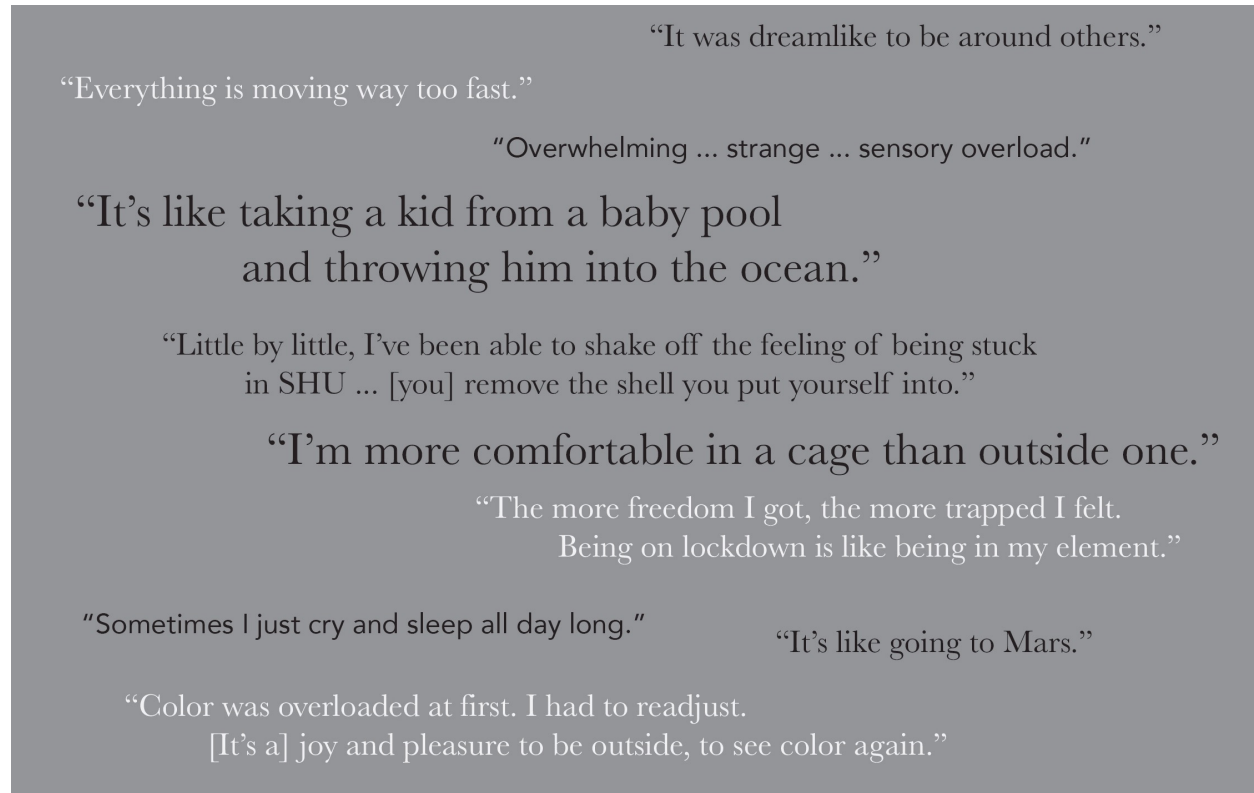
Experiences in the General Population Following Release from SHU

While the experiences and impact from time in SHU reported to Stanford Lab researchers are consistent with the previous body of evidence regarding outcomes of prolonged isolation and solitary confinement, the current analysis offers new important information regarding the lasting impact of indefinite, long-term isolation following release. Little previous research or analysis has been conducted with ex-SHU inmates following their release into GP or the general public at large.¹⁸ At the time of these interviews, the amount of time elapsed since class members had been released from SHU averaged approximately 14 months (ranging from 4 months to 2 years since release). While many class members reported shock during their initial transition to GP (described in greater detail below), this transition is not a finite process, and many class members continue to experience significant difficulties up to two years post-SHU; many individuals are likely to continue to struggle with the impact of the SHU experience into the foreseeable future.

General Responses to the Post-SHU Experience In general, class members felt overwhelmed by and underprepared for the post-SHU experience in GP. Class members described the experience of GP as totally foreign and overwhelming (e.g., “like going to Mars”). The class members reported no preparation or information offered by CDCR to explain the

¹⁸ "Presently, there are no published studies that answer such important questions as whether prisoners who spent time in restrictive housing develop PTSD as a result of the experience. Likewise, no studies address whether restrictive housing prisoners experience long-term changes in psychosocial functioning following release into the community (e.g., getting a job, reconnecting with friends and family, finding stable housing)." (Kapoor & Trestman, 2016)

transition; many thought this would have been helpful to set expectations. Class members' reactions and adjustments to living in long-term SHU largely proved maladaptive within the context of the general prison population.



Class members reported a wide variety of transition experiences. Nearly half of individuals reported participating in the “Step Down Program” (SDP), which is designed to change attitudes and lead prisoners out of gangs. This program involves four stages that must be completed in order to earn privileges and eventually be released from SHU.¹⁹ Prisoners who participated in the SDP reported few benefits, and many class members found aspects of the program to be unhelpful and disingenuous, particularly referencing the journals they were asked to keep. The majority of class members who commented on the benefits of SDP credited the improvements to increased social interaction and psychosocial education. A number of class members found learning skills such as “cognitive restructuring” and similar therapeutic tools to be useful during the transition. However, prisoners also reported problems with program implementation, including coercion and conflicts of interest with correctional officers facilitating group discussion. Prisoners did not report receiving any transitional support aimed at mitigating distress related to the overwhelming nature of the transition to GP from SHU. The great majority of class members denied any benefit of SDP in the absence of social interaction and mutual respect and understanding.

¹⁹ In CDCR, the SDP occurs entirely within the SHU, and is not a transitional housing placement.

Based on class member reports, experiences of feeling overwhelmed and underprepared appeared to stem from the drastic contrast between the physical, social, and sensory environments of SHU and GP, and the lack of an effective transition program. Class members reported being shocked and overwhelmed by the cacophony of the GP environment, and they reported hypersensitivity to the sounds and noises there. Many class members experienced distress as a result of being “overstimulated” in GP. Routines and expectations regarding periods of quiet and silence that had evolved over the many years in SHU were completely undermined in GP, resulting in discomfort and disturbance for many post-SHU prisoners. Expectations regarding cleanliness and organization were disrupted or unattainable in GP. Similarly, the highly structured and closely supervised daily procedures and transitions in SHU were found to be largely absent in GP. While many class members had developed rigid routines, daily schedules, and expectations as a means of adapting to their time in SHU, living in GP required them to re-develop greater flexibility in their daily functioning. The loss of routine and stability in daily functioning, and the related lack of predictability and demand for flexibility, was jarring and distressing for class members, resulting in feelings of anxiety, nervousness, irritability, and a sense of isolation and disconnection, exacerbated by the lack of any transition preparation. While class members overwhelmingly asserted that GP was an improvement over life in SHU, the difficulties experienced post-SHU are indicative of the impact of long-term isolation on normal functioning and the extent to which adaptations to the SHU environment prove maladaptive in other contexts, underscoring the need for programs and supports to assist in adapting to life post-SHU.

Class members also reported being unprepared for the increase in social and physical interaction in the GP environment. Many did not anticipate or realize the discomfort they would feel in having to interact with unfamiliar prisoners, and in experiencing violations in their expectation for personal space and physical contact. For example, multiple class members reported difficulty and distress in making eye contact and greeting other prisoners in GP. One class member reported feeling as though “bugs were crawling” under his skin, because he was so unfamiliar with being around people. Some found the communication styles they had developed in SHU to be problematic and maladaptive in the context of GP. Many class members also reported difficulty with a perceived change in prison culture during the time they were in SHU. In particular, they noted difficulty with the younger generation of prisoners, in which there is “no moral code.” Overall, class members described a general sense of being “out of place” and “unfamiliar” in GP, resulting in a failure to achieve a sense of belonging, security, or personal identity in their life outside of SHU.

Class members described experiences that frequently and continually created the perception that they were being targeted by prison officials, guards, and IGI, not to mention treated differently by fellow prisoners, because of their post-SHU status. Class members report that they are viewed as dangerous, treated with disrespect, watched closely and searched frequently, granted fewer privileges, and intentionally pushed to instigate an anger response (e.g., through disruption of

routines or living environment, or destruction of personal belongings). Class members reported the perception that prison officials wanted them to be back in SHU and were looking for reasons to put them there. Such themes of harassment and discrimination by prison officials were a focus of over half of the class member interviews. Class members report that their sense of being watched, scrutinized, and targeted because of their post-SHU status leads to increased anxiety, distress, anger, and paranoia.

In general, class member reports demonstrate that the post-SHU experience in itself had negative psychological consequences, contributing to experiences of irritability, hypervigilance, and anxiety (discussed in further detail below) particularly in the absence of appropriate transitional or support programs that might have mitigated these impacts. This distress experienced in GP compounded the already existing negative impact and functional impairment caused by the many years of being held in long-term isolation.

Nonetheless, class members reported some positive responses and beneficial aspects of the post-SHU experience, such as witnessing nature (seeing mountains and the moon, for example), increased social interaction, increased physical activity, and having increased contact with family. Clearly, living in GP provided an improvement in quality of life over SHU, despite class members living with the lasting psychological insult and functional impairment related to their many years in SHU. However, the lack of programming, significant restrictions, limited mobility, and repeated distress and disruptions experienced by ex-SHU prisoners in GP led some class members to describe their experience in GP as a “modified SHU.”

“We are broken, but most of us are too proud to ask for help.”

“That trepidation never leaves even when things are going well.”

“I don’t know how to write without handcuffs on.”

“I am scared about when I go out and if I will be able to work.”

Ongoing Psychiatric Problems Post-SHU Class members endorse lasting and ongoing psychological difficulties since being released from SHU. These include anxiety and post-traumatic stress, obsessive and compulsive behaviors in an effort to re-impose order, and continued mood dysregulation, emotional numbing, and cognitive impairment. Class members coming out of SHU also report the emergence of metacognitive reactions, which is to say they become aware of their own psychological impairments vis-à-vis others around them; this itself becomes a source of additional anxiety. Class members also report psychosomatic complaints as well as renewed substance abuse.

While some class members report that their psychiatric symptoms and psychological difficulties (including anxiety, mood instability, obsessions/compulsions, and cognitive impairment) have

gradually declined over time as they have adjusted to living in GP, others report sustained severity and frequency of such symptoms even after periods of over two years since release from SHU.

Anxiety, Post-Traumatic Stress, and Hypervigilance Class members commonly reported ongoing anxiety and posttraumatic stress symptoms in their post-SHU experiences. Nearly all class members reported experiences consistent with an ongoing anxiety or trauma-related psychiatric disorder (such as panic disorder, generalized anxiety disorder, and posttraumatic stress disorder (American Psychiatric Association, 2013)). Specific difficulties endorsed by class members include pervasive hypervigilance, worry, and nervousness; some described experiences of being on constant alert and chronically feeling under threat or danger. In the post-SHU experience in GP, class members report living in an perpetual state of fear, in which they feel their safety and well-being is under threat, and some report ongoing intrusive worries and re-experiencing symptoms (such as nightmares).

While such feelings may generally be expected for any inmate in GP, class members' experience of anxiety and hypervigilance appeared to be exacerbated by the SHU experience: following a prolonged period of incarceration in a highly structured and contained environment, exposure to the chaotic, disorganized, and unpredictable GP environment leads to a heightening of symptoms and distress. Class members described that, when in SHU, any time out of the cell and in common areas was associated with potential threat or danger (e.g., due to potential attack from other inmates). Therefore, the post-SHU experience involved increased exposure to contexts and environments associated with threat or danger, thereby exacerbating anxiety symptoms. Class members report particular anxiety in social situations and/or crowded settings: they report feeling uncomfortable, nervous, and jittery when around groups of people, and find themselves constantly scanning their surroundings. They avoid situations and settings in which they do not have a clear view of, or cannot closely monitor, their surroundings and the movements of others.

Many class members endorsed sensory sensitivity following their release into GP, noting experiences of distress, anxiety, paranoia, and irritability particularly in response to the noise and sounds of GP. In addition, class members report sensitivity to physical touch, which continues to elicit exaggerated startle and discomfort for many class members.

In addition, class members report that periods of lockdown in GP are triggering and re-traumatizing, and that they invoke re-experiencing symptoms of posttraumatic stress disorder (such as flashbacks in which one feels that he is reliving the traumatic experience, in this case, the experience of being held in SHU). Many class members report a pervasive and ongoing fear of returning to SHU, which is often exacerbated by their interactions with prison officials. In some cases, class members reported ongoing paranoia stemming from their anxieties and worries.

Obsessive-Compulsive Behaviors Class members report lasting obsessive-compulsive thoughts and behaviors, primarily related to continued desire for cleanliness, order, and organization in their living environment. The rigid routines, rituals, and compulsions that developed while in SHU were also present for many class members following their transition to GP; more than half of the class members interviewed endorsed ongoing difficulties in this area. For example, many class members endorse experiences of irritability, anxiety, frustration, and general distress when belongings are perceived to be out of order or unclean; they continue to spend significant amounts of time and effort engaged in obsessive perseveration and compulsive rituals. These obsessions, compulsions, and rigid routines sometimes result in interpersonal conflict with others (cellmates, peers, prison officials).

Mood Dysregulation Class members describe lasting mood difficulty, typically marked by anger, irritability, and emotional instability. Experiences of anger and aggression were often linked with feelings of heightened anxiety, nervousness, and threat that are common in the GP environment. Lasting mood impairments, which were endorsed by the majority of class members, also include symptoms consistent with depression, including negative mood, lack of motivation, anhedonia, and sense of isolation. Class members describe and exhibit continued flat affect and signs of emotional numbing that arose while in SHU. In many cases, experiences of anger, irritability, negative mood and affect, and other depressive symptoms carried over from the distress and frustration that onset while in SHU; current interviews therefore confirmed this form of distress related to the SHU experience to be lasting and pervasive following release. In addition, class members' heightened and ongoing experiences of anxiety and posttraumatic stress in GP contribute to their experience of agitation, irritable mood, despair and hopelessness.

Cognitive Impairments Lasting cognitive difficulties experienced post-SHU and endorsed by class members involve impairments with executive functioning, including attention, concentration, and memory. Approximately two out of every three class members report current, ongoing (at time of interview) difficulties with attention, concentration, and memory. Class members report lasting difficulty in sustaining attention (e.g., while reading or writing), comprehending information, remembering factual information and names, and the perception and estimation of time. Some class members note feeling "slow" and "disorganized" in their psychological and cognitive functioning. For some, these difficulties arose while in SHU, while others note the onset of cognitive impairment only following their release from SHU, which they attributed to the stress of being in GP and the overwhelming transition away from the highly structured SHU environment. Lasting and pervasive impairment in executive and cognitive functioning is common in response to chronic and traumatic stress exposure, due to the biochemical impact of the stress response on brain structure and function (Polak et al., 2012).

Metacognition Class members report varying meta-cognitive and meta-emotional reactions during their post-SHU experience.²⁰ While some class members report and demonstrate ongoing emotional numbing and limited insight regarding their cognitive and emotional experiences (which commonly onset while in SHU), others report increased awareness of their psychological distress and functional impairment as they integrated into GP. Class members' heightened awareness of their own psychological impairment proved for many to be an additional source of distress and despair, contributing to attributions that they are damaged and that their situation is hopeless.

For example, as one class member became more aware of the atypical nature and the severity of his obsessions with order and cleanliness, he became increasingly frustrated and distressed by his compulsions and behavioral tendencies. In other cases, class members report distress and concern in reflecting on their lack of emotional response to the death of close family members. In addition, many class members struggle with feelings of guilt and shame about the emotional and behavioral difficulties they experienced while in SHU. While difficulties with emotional and behavioral regulation (e.g., anger outbursts) are a common and expected reaction to living in SHU conditions, class members often internalized and personalized their difficulties. Class members' attributions of their difficulties often resulted in self-blame, rather than consideration of the context in which they were living. The meta-cognitive and meta-emotional processes described above and endorsed by class members are common core components of depression, anxiety, and posttraumatic stress disorders.

Somatic Complaints Class members report numerous ongoing psychosomatic complaints that are commonly associated with depression, anxiety, and posttraumatic stress. Such somatic symptoms include chronic pain, fatigue, difficulty sleeping, and nausea/digestive irritability; somatic difficulties were endorsed and discussed in nearly half of the interviews.

Substance Abuse Some class members report the onset or exacerbation of substance abuse and substance dependence problems following their transition to GP. Incidences of new substance abuse and addiction problems were attributed both to (1) the intensified anxiety and emotion dysregulation associated with the transition to GP, and (2) increased availability and access to alcohol and drugs in GP relative to SHU.

Other Health Problems and Difficulties Class members report other ongoing health difficulties during their post-SHU experience in GP. Many individuals report psychosomatic complaints including chronic pain, fatigue, insomnia, psychomotor retardation, and weakness. In addition to the psychological factors contributing to these health difficulties, the presence of such

²⁰ Meta-cognition and meta-emotion refer to one's own awareness of one's thoughts, feelings, and ability to function.

problems may also be attributed to the limited physical activity, the nature of the physical environment, and quality of care provided in SHU. For some class members, the quality of food and health care in SHU contributed to and exacerbated existing health conditions. For example, class members with poorly managed diabetes report worsening of neuropathy, which is permanent. In addition, many class members attribute significantly elevated blood pressure and cholesterol to their diet in SHU, though the chronic stress experienced in the SHU environment is also likely to be a contributing factor with lasting consequences. Many class members reported contracting Hepatitis C while in SHU.

Over half of all class members reported deterioration in their vision during their time in SHU, which appears to be lasting and permanent. Many class members were not aware of the deterioration in their vision until they were released from SHU. A majority of class members now wear corrective lenses, and some report ongoing sensitivity to light.

Ongoing Social Interaction Problems A primary lasting outcome of SHU and the transition experience experienced by class members is the impairment in social functioning. Over two-thirds of the class members interviewed endorsed ongoing anxiety and difficulty functioning in social situations. As described above, class members noted difficulty and distress in social interactions both while in SHU and while in GP post-SHU. Class members reported feeling nervous and uncomfortable in social interactions, leading to behavioral avoidance of social contact. They describe themselves as newly quiet, awkward, timid, and generally overwhelmed by social experiences. They are unable to engage new relationships, as many report lasting difficulty with basic greetings (e.g., making eye contact, shaking hands). In addition, class members experience lasting anxiety and hypervigilance around social interactions, citing a distrust for others, chronic perceptions of danger, and a pervasive fear of sharing information about themselves. These fears have clear impact on their social interactions and functioning, consistent with the negative impact of social anxiety disorders.

After getting accustomed to social isolation, and as a result of social difficulties experienced post-SHU, class members demonstrate a lasting reluctance to engage or “be close with” others, preferring the simplicity and familiarity of isolation. Class members feel disconnected from others, and many prefer and envision a future in which they remain isolated and independent. Many report a lasting loss of motivation, interest, or desire to connect or socialize with others. As an exception to this common phenomenon, class members endorse an increased level of comfort and interpersonal effectiveness with other ex-SHU prisoners, relative to other inmates and/or family members and others on the outside.

Class members reported lasting impairment and dysfunction in relationships with family members and individuals outside of the prison system. The “death” of family relationships that occurred while in SHU continues for many class members, as they have been unable to repair

damaged relationships caused by long-term separation. Class members report an inability to tolerate the affective responses inherently involved in family interactions, leading to further estrangement. Class members report complex and distressing difficulties in responding to contact visits with family members, and they describe themselves as being unable to receive affection. Commonly reported reactions included nervousness, joy, shock, dissociation, and numbing/flat affect. Class members reported experiencing “sensory overload” and derealization — a sense of one’s surroundings not being real — upon meeting with visitors. They reported not knowing how to react to physical touch or displays of kindness during contact visits, and often found themselves feeling uncomfortable and rejecting physical and social contact with family members, despite having a desire to improve their relationships. Many class members are keenly aware of their social impairments, leading them to be further distressed and upset by their inability to engage with family and their lack of emotional response to family interactions.

Class members reported difficulties forming relationships with other prisoners in GP for a number of reasons. As noted above, many prisoners experience heightened anxiety around crowds of people. In order to cope with the overwhelming anxiety, some individuals described standing with their backs against the wall, or in a place where they could view everyone around them at all times. Others used self-talk to convince themselves that people would not attack them. As noted earlier, some class members report that their behavioral rigidity, mood lability, and expectations regarding cleanliness and order serves as a point of conflict and source of distress in many of their interpersonal relationships (e.g., with new cellmates) in GP. Older class members also experienced significant interpersonal stress related to cohort differences. They report feeling “out of place” and “out of touch,” they have a limited sense of belonging, and their personal identity as SHU inmates does not fit within the context of GP. These class members reported feeling anxious about blending in and communicating with the younger generation. However, some individuals relished their ability to mentor and advise younger prisoners.

In summary, class member difficulty with interpersonal and social functioning is characterized by dysfunction and impairment due to: anxiety, irritability, and mood instability impacting interpersonal interactions; emotional numbing affecting engagement; social and familial withdrawal (isolation); poor communication and lack of conflict resolution skills; lack of connection to others influencing personal identity and worldview; reduced sense of security; limited support-seeking and social engagement; and low confidence and self-esteem. While some class members report gradual reductions in social anxiety, irritability, and impairment over the course of their adjustment to GP, many report sustained severity of symptoms and impairment with little perceived prospect or hope for future improvement.

Other Ongoing Impairment in Functioning Class members describe alterations in their personal identity following their release from SHU. Throughout the post-SHU experience, class members continue to struggle to see their place and value in society and in the world, as they

came to view themselves only as prisoners during their time in SHU. Many class members reported that, after living in isolation for so many years and being treated only as an inmate with no value or opportunity for contribution to society, they lost their sense of self and their motivation for industry and productivity. An individual's self-concept and personal identity play major roles in his decisions and actions towards education, employment, and other contributions to society; therefore, the impairment and alteration in class members' sense of self and sense of purpose is likely to impact their functioning in GP and in the outside community if unaddressed. Additionally, the pervasive and perpetual anxiety, nervousness, and sense of threat experienced following release from SHU contributes to a sense of hopelessness and despair regarding class members' well-being and prospects for the future.

Class members' ongoing difficulties with mood instability, anxiety, depression, behavioral rigidity, and cognitive functioning are likely to impair their functioning and performance in domains of learning/education, vocation/employment, and independent functioning/self-care. Given these difficulties, some class members reported concerns and anxieties about their ability to function (i.e., obtain and retain employment) in both GP and society at large. Clearly, lasting difficulties with social interactions will impact interpersonal functioning, including family relationships, social relationships, and peer interactions in professional settings.

The impairments described above, while consistent with various forms of psychopathology and psychiatric illness, are not thought to be generally rooted in an underlying psychopathology or illness. Rather, the psychological, physical, and behavioral responses of class members represent expected adaptations to the conditions of long-term solitary confinement. Any individual living in long-term confined isolation is likely to manifest the symptoms and functional impairments endorsed and demonstrated by class members. For example, undergoing a process of emotional numbing and dampening may very likely be the best way of coping with the intense emotions associated with long-term isolation, especially given the limited resources and outlets available to class members. Or, developing rigid, highly structured routines (which eventually evolve into obsessions and compulsions) around order and cleanliness likely served as the best possible means to both maintain a sense of productivity and to exert some level of control and self-efficacy in an otherwise helpless situation. Though these adaptations helped class members survive and cope while in SHU, they proved largely problematic and maladaptive in the context of GP, as reported and demonstrated by class members following their release from SHU. Clearly, class members' psychological and behavioral adaptations to SHU will also be maladaptive in the context of general society, and are likely to impair independent functioning, social functioning, and vocational functioning.

As demonstrated by class members who had spent one to two years in GP at the time of the interviews upon which this report is based, these impairments are pervasive and ongoing, and are expected to continue, especially given the length of time that these emotional, cognitive, and

behavioral response patterns became engrained (from 10 to over 20 years). While significant and lasting, the impairments and difficulties endorsed and demonstrated by class members are not irreversible in many cases, and may be amenable to intervention or support. There remain opportunities for healing, for new learning, and for successful functional re-adaptation to the contexts of GP and larger society. While some class members may experience a natural, gradual reduction in distress and impairment, for others, if difficulties are not addressed, their impairments are likely to continue and worsen over time.

The information provided by this report aligns with current literature on long-term isolation and the subjective experience of SHU. Moreover, the trends in psychosocial and mental health responses observed by the interviewers are consistent with those identified by SHU expert Terry Kupers. Kupers (2016) developed the term “SHU post-release syndrome” to describe the behavioral patterns of people who are re-introduced to social environments after experiencing social isolation and sensory deprivation. Elements of SHU post-release syndrome that are salient to the current report include anxiety in unfamiliar places, hyper-awareness of surroundings, heightened suspicion of others, concentration and memory problems, and a sense of one’s personality having changed. As noted above, these reactions were among the most commonly endorsed by *Ashker* class members.

Considerations for Improving Post-SHU Experiences and Functioning

Many class members reported experiencing multiple restrictions in their activities in GP due to their status as ex-SHU inmates. They reported limited opportunities for out-of-cell time, employment, education, and contact with families and outside supports. Such restrictions placed specifically on ex-SHU inmates are likely to be detrimental to their functioning and recovery, and may exacerbate existing psychological difficulties and related distress stemming from their experience in long-term isolation. Class members directly reported that with major restrictions and little time out of cell, symptoms similar to those experienced while in SHU remained and did not dissipate. Class members involved in out-of-cell activities and with less restriction reported a subjective sense that there was a higher possibility for psychological improvement.

Class members repeatedly emphasized the importance of having jobs and other programming opportunities in GP. Class members who are participating in jobs and educational programs reported greater satisfaction and better outcomes in GP than those who are not. Class members who are not working expressed frustration with their lack of program placement. Some individuals perceived that they were being purposefully excluded from programming opportunities due to their SHU history. Employment opportunities not only correspond with greater out-of-cell time for class members,²¹ but they also provide class members with a greater

²¹ S. Miller, personal communication, September 15, 2017.

sense of purpose, industry, and productivity. Involvement in occupational and educational activities was observed to be a protective factor against distress during the post-SHU experience, and appears to promote resilience in the face of the numerous adversities described above. Class members who are denied opportunities for employment or education can be expected to demonstrate greater levels of psychiatric distress, poorer general health, and poorer outcomes with regard to functioning and performance.

“It helps to know what’s going on in the outside world.”

“We don’t see the R in CDCR.”

“Interacting with someone who is not a guard, not someone who was locked up [was] really nice.”

“I want a chance to make amends with the community.”

“It feels good to relate your experience to others. You can help someone else by recognizing patterns in your own life and preventing that for them.”

“Hearing about others’ experiences helps me to know that I’m not crazy.”

“Stigma is a major barrier to men getting mental health services here.”

“The more out-of-cell time, the better.”

Class members, particularly those without jobs, stated that they would benefit from more out-of-cell time. Numerous class members suggested that education around their transition would be exceedingly helpful in improving outcomes and functioning. As mentioned above, some class members found the group aspect of the Step Down Program to be thought-provoking and helpful, while others found it to be coercive and threatening. Those who were unhappy with the program would have preferred for the groups to be peer-facilitated or run by independent professionals rather than correctional officers. Numerous class members emphasized the value of gaining an improved understanding of their psychological reactions to living in SHU and their difficulties in the post-SHU environment (including gaining knowledge that others experienced similar difficulties), which they achieved through both formal and informal interactions with other ex-SHU inmates.

It is understandable for class members to have reservations about participating in support groups run by correctional officers, or anyone affiliated with CDCR. An overwhelming majority of class members (over three out of every four interviewed) suggested and requested services and support from non-CDCR officials. Bringing in outside facilitators to host supportive groups for prisoners

transitioning from SHU to GP would allow for more genuine reflection and communication among prisoners. Peer facilitation would be similarly beneficial.

Many class members spent the majority of their time in SHU studying, reading, and pursuing an education. This appeared to be a source of resilience in the face of the adversity of the SHU environment, as those class members that found ways to use their time productively and to extract a sense of purpose from their time in SHU appeared to be better able to cope with the psychological impact of the SHU experience. Many of these class members expressed the desire to give back to the community by mentoring others. While many of these efforts were self-directed and self-initiated, there exist ample opportunities for CDCR to offer programming and facilitate opportunities; such efforts are likely to ameliorate the negative impact of long-term isolation in SHU.

Concepts for Improved Post-SHU Transition

The mental health professionals in the Human Rights in Trauma Mental Health Laboratory at Stanford University are well versed in treatment modalities and useful interventions for persons with mental health disorders and/or symptoms. Much of the mental health pathology discussed in the interviews with class members is amenable to intervention, but mental health interventions must be sensitive to the needs and wants of the individual in order to be effective.

First, occupational, educational, and social programs are needed to address the lasting consequence of the long-term SHU experience. Such services can be arranged and facilitated by CDCR. Second, emotional and psychological support services are needed. The literature on effective, evidence-based treatment for anxiety and depression is vast. Conventional medication and psychotherapeutic interventions are proven to treat symptoms and improve functioning. In addition, psychoeducation regarding psychiatric symptoms and expected reactions to adversity and trauma is an important (and sometimes the most effective) element of evidence-based intervention. Psychoeducation helps an individual to gain insight about his struggles, helps to normalize distress, and leads to empowerment in managing symptoms. The importance of psychoeducation is reflected in class member statements regarding the benefits of discussing their experiences with other post-SHU inmates.

However, the class members have expressed concerns over the administration of traditional mental health services through CDCR. Furthermore, many class members have made it clear that they would not seek services through CDCR because of the stigmatizing effects of identification with psychiatric illness. Some class members report that they would seek mental health services if they were offered through providers from outside CDCR in a way that was totally confidential. For transition, it is clear that improved, earnest access to mental health treatment is necessary, and that such access should come from non-CDCR sources. Therefore, we

recommend that class members be offered mental health and psychological services in the form of independent psychiatric care and/or peer-led or peer-facilitated support groups. As noted throughout the report, prisoners seem to derive a sense of fulfillment and self-worth from opportunities to mentor their peers; such programming could be helpful in combatting some of the detrimental effects of time in SHU, including by diminishing anxiety and depression.

Lastly, the feedback from the narratives offers greater understanding of what other interventions class members want to improve their transitions from SHU. Their requests (detailed above) for greater access to jobs and other out-of-cell activities, to programs, and to therapeutic groups are wise interventions for their symptom profiles and are likely to improve their transitions and the long-term prospects for functioning and contribution to society.

Conclusion

In interviewing *Ashker* class members undergoing the transition from long-term solitary into the general prison population, members of Stanford Lab identified a number of trends related to prisoners' mental health, psychosocial adjustment, and general well-being. Class members reported experiencing a number of psychological symptoms during their time in SHU, many of which have persisted or even worsened while in GP (after being released from SHU). The sterile environments common in GP, in which prisoners spend almost all of their day in their cell with little productive activity, have contributed to many class members' continuing psychological symptoms. The most commonly reported symptoms included hypersensitivity to stimuli, anger/irritability, anxiety, insomnia, paranoia, emotional numbing and/or dysregulation, obsessive-compulsive thoughts and behaviors, and problems with concentration, attention, and memory. In addition to these symptoms, class members reported difficulties adjusting to the social environment of GP. It is clear that placing ex-SHU prisoners in GP without additional supports or programming is insufficient to remedy the outcomes stemming from long-term isolation in SHU. In addition, the transitional programming that has been previously implemented for the current class was largely ineffective and insufficient.

The majority of class members expressed a need for mental health care due to the psychological harm they endured in solitary confinement. Class members reported high levels of continuing distress and discomfort associated with social isolation and sensory deprivation. However, the majority of class members also expressed a significant level of distrust for CDCR mental health services. Interviewees recognized a stigma associated with seeking mental health care within the prison system. They worried about being labeled as mentally ill and maintaining their confidentiality. Class members expressed concerns of appearing weak to other prisoners and of being medicated against their will. Among prisoners who did receive mental health services provided by CDCR, there were mixed reports. Some reported benefitting from psychiatric medication, but did not feel comfortable engaging in talk therapy. Others expressed

dissatisfaction with the infrequency of the psychiatric care received, which was reportedly every 90 days.

Based on the information summarized in this report, the Stanford Lab recommends reparative services in the form of externally based (non-CDCR) mental health care and psychological support; meanwhile, continued and enhanced occupational and other programming should be provided by CDCR.

The *Ashker* class members interviewed for this report are resilient, self-educated, intellectually curious individuals, many of whom have implemented therapeutic coping mechanisms on their own. Class members reported benefitting from mindfulness and meditation, as well as critical thinking and other limited group-based therapeutic experiences. Additionally, class members who were involved in jobs and other programming at the time of interview appeared to adjust to GP significantly better than those who lacked similar opportunities. During the course of interviews, it became apparent that when class members are offered opportunities for supportive programming, education, and vocational training that are deemed relevant and are offered by trusted sources, they capitalize on such opportunities towards the ends of personal development and societal contribution. The Stanford Lab therefore recommends that CDCR and other prison authorities seek to offer adequate and enriched programming opportunities (including vocational, educational, and socio-emotional supports) as a means of providing reparative services and personal, community, and societal healing following long-term isolation in SHU.

About the Human Rights in Trauma Mental Health Lab

The Human Rights in Trauma Mental Health Laboratory is committed to advancing and applying research on the physical and psychiatric impact of trauma on survivors of human rights abuses with an eye towards informing transitional justice and judicial processes. The Lab focuses on the science of the psychological changes and mental health pathology caused by trauma on individuals, their families, and their communities, over time and between generations. Lab affiliates and colleagues analyze and build upon the rich data available in the interdisciplinary scientific literature and developed in specific conflict situations to clearly identify the impact on human psychology of various forms of mass trauma, including genocide, mass killings, rape, and torture. This analysis is used to clarify the science and/or advocate for the survivors' human rights and mental health in a whole range of settings, including criminal trials, civil suits for money damages, and asylum proceedings. The Lab will participate in these transitional justice processes in a range of ways, including by providing expert testimony and reports and consulting with the legal teams prosecuting perpetrators or representing victims.

Learn more about the Stanford Lab at <http://med.stanford.edu/psychiatry/research/HumanRightsinTraumaMH.html>

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CALIFORNIA DEPARTMENT of
Corrections and Rehabilitation

AUDITOR ACTION

Inmate Name: AGUIRRE, LUIS J.	Date: 03/16/2016
CDC#: V99888	Security Level: Level 2 (26) Facility: PBSP-Facility C

Audit Type: STG Status Review; Transfer Endorsement (between Institutions) **Audit Result:** Endorsed

Transfer Endorsement

<input type="checkbox"/> Life Prisoner <input type="checkbox"/> BPH Hearing Date: _____ <input type="checkbox"/> Violent/Injured <input type="checkbox"/> LWOP <input checked="" type="checkbox"/> N/A	
Enemy Concerns	
<input checked="" type="checkbox"/> Offender Separation Noted <input type="checkbox"/> No Comment <input type="checkbox"/> Offender Separation Clear <input type="checkbox"/> Enemy at Receiving Institution	<input type="checkbox"/> Sex
"R" Suffix Issues	Other Case Factors
<input type="checkbox"/> "R" Suffix Noted <input checked="" type="checkbox"/> "R" Suffix Reqd <input type="checkbox"/> N/A	<input checked="" type="checkbox"/> VIO <input type="checkbox"/> ESC <input type="checkbox"/> Sex <input type="checkbox"/> Arson <input type="checkbox"/> Computer
Close Custody	"S" Suffix Issues
<input type="checkbox"/> Close A <input checked="" type="checkbox"/> Close B <input type="checkbox"/> N/A	<input checked="" type="checkbox"/> Suffix Noted <input type="checkbox"/> Single Cell Rx
<input type="checkbox"/> Endorsement is based on Dept. Need <input type="checkbox"/> Hardship <input type="checkbox"/> Re-direct Tx <input type="checkbox"/> Re-affirm Tx	<input type="checkbox"/> Prior CSP concerns have been addressed <input type="checkbox"/> Prior CSP action is recorded
MHSDS Issues	Clinical Category Issues
<input type="checkbox"/> CCCMS <input type="checkbox"/> Remove from MHSDS Date: 01/15/2016 <input type="checkbox"/> EOP <input checked="" type="checkbox"/> No MHSDS Needs	<input type="checkbox"/> I <input type="checkbox"/> II <input checked="" type="checkbox"/> N/A
<input type="checkbox"/> Madrid Clearance Date: _____	<input type="checkbox"/> Restricted - Core Area 1 <input type="checkbox"/> Restricted - Core Area 2 <input checked="" type="checkbox"/> N/A
DPP Issues	Transport Precaution Code

Louis Aguirre v. Ducart et al.

Exhibit 7 - 1

<input type="checkbox"/> DDP (Wheelchair)	<input type="checkbox"/> DPM (Medical)	<input type="checkbox"/> DDP (Other)	<input type="checkbox"/> DDP (Other)	<input type="checkbox"/>
<input type="checkbox"/> DDP (Other)	<input type="checkbox"/> DDP (Other)	<input type="checkbox"/> DDP (Other)	<input type="checkbox"/> DDP (Other)	<input type="checkbox"/>

DDP Issues	Detainers
<input checked="" type="checkbox"/> NLE <input type="checkbox"/> NOD <input type="checkbox"/> DDI <input type="checkbox"/> DAD <input type="checkbox"/> DDC <input type="checkbox"/> N/A Date: 03/14/2016	<input type="checkbox"/> ICE <input type="checkbox"/> Other Potential <input type="checkbox"/> ICE Active <input type="checkbox"/> Other Active <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor

Confidential Folder

Clear
 Information Noted
 No Comment

Miscellaneous Issues/Comments

<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>


Institution Approved: Oregon State Prison

Program: High Intensity Population

Override Reason: 17 - None

This transfer approval expires on 07/14/2016 and will require re-approval for re-authorization.

Comments: Comment: FOL-II endorsed. CDCR 128-B-2 of 01/26/2016 validating the inmate as an associate of the STG-1 known as the Mexican Mafia (EME) is noted. ICC of 03/09/16 released inmate from administrative SHU term based on STG-I validation as the inmate has not been found guilty of a SHU eligible RVR with a proven STG nexus within the last 24 months. Thus, in accordance with CDCR settlement agreement, ICC has approved the inmate for GP placement determining no documented safety concerns are currently evidenced within the file and none were claimed by the inmate during discussion or interview. "S" suffix is noted. Receiving institution is to review for appropriate cell status. Close B custody is noted. Staff is cautioned to closely monitor the inmates' housing, movement, behavior and interaction with staff and other inmates while housed within the general population. CDC-128C-3 of 05/07/2015 reflects no placement impacting case factors.

AUDITOR		
D. Hicinbothom		
Name:	Title: CSR	Date: 03/16/2016

CDCR SOMS ICCT164 - Auditor Action

ADMINISTRATIVE SEGREGATION UNIT PLACEMENT NOTICE
(Rev. 9/98)

DISPOSITION:
WHITE - CENTRAL FILE
BLUE - INMATE (2ND COPY)
GREEN - ASU
CANARY WARDEN
PINK - HEALTH CARE MGR.
GOLDENROD - INMATE (1ST COPY)

INMATE'S NAME AGUIRRE, LUIS	CDC NUMBER V99888
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REASON(S) FOR PLACEMENT (PART A)

- PRESENTS AN IMMEDIATE THREAT TO THE SAFETY OF SELF OR OTHERS
- JEOPARDIZES INTEGRITY OF AN INVESTIGATION OF ALLEGED SERIOUS MISCONDUCT OR CRIMINAL ACTIVITY
- ENDANGERS INSTITUTION SECURITY
- UPON RELEASE FROM SEGREGATION, NO BED AVAILABLE IN GENERAL POPULATION

DESCRIPTION OF CIRCUMSTANCES WHICH SUPPORT THE REASON(S) FOR PLACEMENT:

On Thursday, October 1, 2009, you, Inmate AGUIRRE V99888, are being placed in the Wasco State Prison-Reception Center (WSP-RC) Administrative Segregation Unit. On this date, you AGUIRRE are suspected of being an associate of the Mele Mafin (EME) prison gang. Documents will be submitted to the Office of Correctional Safety (OCS) for the purpose of validation as an associate of the EME prison gang. Based on this information your presence within the General Population WSP-RC would constitute a threat to the safety and security of this institution. Therefore, you will be retained in Administrative Segregation pending administrative review by the Institutional Classification Committee (ICC) for appropriate housing and program needs.

CONTINUED ON ATTACHED PAGE (CHECK IF ADDITIONAL) IF CONFIDENTIAL INFORMATION USED, DATE OF DISCLOSURE: / /

DATE OF ASU PLACEMENT 10/01/2009	SEGREGATION AUTHORITY'S PRINTED NAME J. SIMPSON	SIGNATURE <i>[Signature]</i>	TITLE LT.
DATE NOTICE SERVED 10/01/2009	TIME SERVED 1305	PRINTED NAME OF STAFF SERVING ASU PLACEMENT NOTICE C. RODRIGUEZ	SIGNATURE <i>[Signature]</i>
INMATE SIGNATURE		CDC NUMBER	

INMATE REFUSED TO SIGN

ADMINISTRATIVE REVIEW (PART B)

The following to be completed during the initial administrative review by Captain or higher by the first working day following placement

STAFF ASSISTANT (SA)		INVESTIGATIVE EMPLOYEE (IE)	
STAFF ASSISTANT'S NAME	TITLE	INVESTIGATIVE EMPLOYEE'S NAME	TITLE
IS THIS INMATE:		EVIDENCE COLLECTION BY IE UNNECESSARY	
LITERATE?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DECLINED ANY INVESTIGATIVE EMPLOYEE	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
FLUENT IN ENGLISH?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	ASU PLACEMENT IS FOR DISCIPLINARY REASONS.	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
ABLE TO COMPREHEND ISSUES?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DECLINED 1ST INVESTIGATIVE EMPLOYEE ASSIGNED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
FREE OF MENTAL HEALTH SERVICES DELIVERY SYSTEM NEEDS?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
DECLINING FIRST STAFF ASSISTANT ASSIGNED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
<input type="checkbox"/> NOT ASSIGNED		<input type="checkbox"/> NOT ASSIGNED	

INMATE WAIVERS

INMATE WAIVES OF DECLINES INTERVIEW WITH ADMINISTRATIVE REVIEWER INMATE WAIVES RIGHT TO 72 HOURS PREPARATION TIME

NO WITNESSES REQUESTED BY INMATE INMATE SIGNATURE: *[Signature]* DATE: **10-2-09**

WITNESSES REQUESTED FOR HEARING

WITNESS NAME	TITLE/CDC NUMBER	WITNESS NAME	TITLE/CDC NUMBER
WITNESS NAME	TITLE/CDC NUMBER	WITNESS NAME	TITLE/CDC NUMBER

DECISION: RELEASE TO UNIT/FACILITY RETAIN PENDING ICC REVIEW DOUBLE CELL SINGLE CELL PENDING ICC REVIEW

REASON FOR DECISION:
Retain pending ICC / Double cell with other inmates established.

ADMINISTRATIVE REVIEWER'S PRINTED NAME J. SIMPSON	TITLE LT.	DATE OF REVIEW 10-2-09	TIME 2:54	ADMINISTRATIVE REVIEWER'S SIGNATURE <i>[Signature]</i>
CORRECTIONAL ADMINISTRATOR'S PRINTED NAME (if necessary) Louis Aguirre v. Ducart et al.		CORRECTIONAL ADMINISTRATOR'S CO-SIGNATURE (if necessary)		

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL
CDCR 602 (REV. 03/12)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

PELICAN BAY STATE PRISON

Side 1

LAB USE ONLY	Institution/Parole/Region	Log#	Category
SECURITY	PELICAN BAY STATE PRISON	UNIT 6 C-15	00780
FOR STAFF USE ONLY			



You may appeal a Department of Corrections and Rehabilitation (CDCR) decision, action, condition, policy or regulation that has a material adverse effect upon your welfare and for which there is no other prescribed method of departmental review/remedy available. See California Code of Regulations (CCR), Title 15, Section 3084.1. You must send this appeal and any supporting documents to the Appeals Coordinator (AC) within 30 calendar days of the event that led to the filing of this appeal. If additional space is needed, only one CDCR Form 602-A will be accepted. Refer to CCR 3084 for further guidance with the appeal process. No reprisals will be taken for using the appeal process.

Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First): <u>Aguirre Louis</u>	CDC Number: <u>V-99888</u>	Unit/Cell Number: <u>C6E117</u>	Assignment: <u>Pelican Bay State Prison</u>
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State Briefly the subject of your appeal (Example: damaged TV, job removal, etc.):

A. Explain your issue (If you need more space, use Section A of the CDCR 602-A): My Initial Release date of April 14, 2015 is fast approaching and due to the newly implementation of penal code section 2933.6, my release date is now September 13, 2016 causing me to serve 9 years 5 months on a 9 year 80% plea agreement.

B. Action requested (If you need more space, use Section B of the CDCR 602-A):
#1) Honor my plea agreement & sentence and allow me early release since my retention in the S.H.U. is only an administrative action and "Not" a Disciplinary Action.

Supporting Documents: Refer to CCR 3084.3.
 Yes, I have attached supporting documents.
List supporting documents attached (e.g., CDC 1083, Inmate Property Inventory; CDC 128-G, Classification Chrono):
ence 22 Forms & Legal Status Summary
Committee Chrono

No, I have not attached any supporting documents. Reason: _____

Inmate/Parolee Signature: _____ Date Submitted: 1/31/2015
 By placing my initials in this box, I waive my right to receive an interview.

FEB 02 2015
Appeals Office
Pelican Bay State Prison
FEB 05 2015
Appeals Office
Pelican Bay State Prison
FEB 10 2015
Appeals Office
STAFF USE
C.C.C. Snts.
CJC

C. First Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached? Yes No

This appeal has been:
 Bypassed at the First Level of Review. Go to Section E.
 Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____
 Cancelled (See attached letter) Date: _____
 Accepted at the First Level of Review.
Assigned to: _____ Title: _____ Date Assigned: _____ Date Due: _____

First Level Responder: Complete a First Level response. Include interviewer's name, title, interview date, location, and complete the section below.
Date of Interview: _____ Interview Location: _____

Your appeal issue is: Granted Granted in Part Denied Other: _____
See attached letter. If dissatisfied with First Level response, complete Section D.

Interviewer: _____ Title: _____ Signature: _____ Date completed: _____
(Print Name)

Reviewer: _____ Title: _____ Signature: _____
(Print Name)

Date received by AC: _____

Louis Aguirre v. Ducart et al. **Exhibit 9 - 1.**

BYPASS

AC Use Only
Date mailed/delivered to appellant _____

STATE OF CALIFORNIA
 INMATE/PAROLEE APPEAL FORM ATTACHMENT
 CDCR 602-A (REV. 03/12)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

IAB USE ONLY Institution/Parole Region: PELICAN BAY STATE PRISON Log # Security Code: 4058100000 Unit: C-6 FOR STAFF USE ONLY	Category:
---	-----------

Attach this form to the CDCR 602, only if more space is needed. Only one CDCR 602-A may be used.
 Appeal is subject to rejection if one row of text per line is exceeded. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First): Aguirre Louis	CDC Number: V-99888	Unit/Cell Number: C6E117	Assignment: Pelican Bay State Prison
---	-------------------------------	------------------------------------	--

A. Continuation of CDCR 602, Section A only (Explain your issue): On July 31, 2009 on plea agreement I was sentence to 9 years with the Courts ASSURANCE that I would be allowed to EARN 20% off that sentence (61 days following) based on alleged information collected "Before" my Plea Agreement & sentence. On Oct 1, 2009 I was placed in Ad-seg as a suspected associate of a prison gang and have since been retained in the S.H.U. for housing purposes as a administrative action and "Not" a Disciplinary action. On Jan 25, 10 P.C. 2933.6 was implemented and I was served a 128-G that inmates Earning 1/3 credits will go to zero credit Earning. And since I WAS never a inmate Earning 1/3 credits that 128-G was "Not" Applicable to me. On Jan 6, 2015 I was issued a legal status Summary stating that my Release date is now 9-13-2016 due to P.C. 2933.6. Now not only does the implementation of P.C. 2933.6 violate my plea Agreement but also creates a Ex post facto law violation based on the grounds that the alleged information used to validate & house me in the S.H.U. is information obtained "Before" my plea Agreement & sentence and never disclosed to me "or" my Attorney at any time before "or" during sentencing. Furthermore "as of" Jan 21, 2015 Prison officials have acknowledged a error made in dating the alleged information used to validate & retain me in the S.H.U. and such date's clearly supports the fact that the information is from "Before" my sentence & plea Agreement causing a due process violation.

FEB 02 2015
 Appeals Office
 Pelican Bay State Prison
 FEB 06 2015
 Appeals Office
 Pelican Bay State Prison
 FEB 19 2015
 Appeals Office

Inmate/Parolee Signature: _____ Date Submitted: 1/31/2015

FEB 02 2015

B. Continuation of CDCR 602, Section B only (Action requested):

#1) Acknowledge the fact that the alleged information used to Implement Penal code 2933.6 ~~validate & retain~~ in the S.H.U. has been information obtained before my sentence & plea Agreement and using that information to deny me Early Release. Not only violates my plea Agreement & sentence, but also creates a Ex post facto law violation. Furthermore since that alleged information was never disclosed to me "or" my Attorney at any time before "or" at sentencing. is also a due process violation.

#2) If CDC obtains the power to enforce the implementation of penal code 2933.6 Therefore CDC also obtains the power to acknowledge a violation of ~~the~~ Ex post facto law. And due process xxx

is noted

FEB 02 2015

Louis Aguirre v. Ducart et al.

Inmate/Parolee Signature: _____ Date Submitted: 1/31/2015

Exhibit 9-3

D. Continuation of CDCR 602, Section D only (Dissatisfied with First Level response): _____

BYPASS

Inmate/Parolee Signature: _____ Date Submitted: _____

F. Continuation of CDCR 602, Section F only (Dissatisfied with Second Level response): The I.G.I (gang unit) Acknowledged that there is a discrepancy on the 128-B2 dated November 18, 2009 xxx and such Acknowledgment supports the legal argument that "All" the information used to implement P.C. 2933.6 is actually from January 16, "2009" to what was seven (7) months before my plea agreement & sentence and such information was never disclosed to me "or" my attorney at any time before "or" during sentencing

On February 4, "2015" I appeared before committee, whom acknowledged that I.G.I was acknowledging the ERROR x along with the fact that the alleged information in the 128-B2 is from January 16, "2009" seven (7) months before my sentence & plea agreement xxx and yet committee still elected to continue to implement P.C. 2933.6 based on the 128-B2 they had just acknowledged to be in ERROR xxx The only compensating action that committee did was refer me for a CSR review and such reviews are only held at the department's leisure that can take between (6) months to a year xxx During such time I am being held beyond my plea agreed release date xxx

Furthermore as of February 10, 2014 I am now allowed to earn 33% off my sentence to what already places me close to a year beyond my release date xxx. Therefore requiring a immediate and higher departmental action, because everything I've just stated is clearly documented in my central file that second level appeal stated they reviewed, but failed to address xxx (Attaching and supporting documentation from C-file)

Inmate/Parolee Signature: _____ Date Submitted: 4/6/2015



**PELICAN BAY STATE PRISON
SECOND LEVEL REVIEW**

Date: MAR 16 2015
Inmate AGUIRRE, V99888
Pelican Bay State Prison
C Facility
Unit 6, Cell 117

**RE: WARDEN'S LEVEL DECISION
APPEAL LOG NO. PBSP-C-15-00280**

**APPEAL: DENIED
ISSUE: CASE INFO/RECORDS**

This matter was reviewed by C. E. DUCART, Warden at Pelican Bay State Prison (PBSP). P. Badura, Correctional Case Records Manager (A) (CCRM), conducted the Appeal interview at the Second Level of Appeal Review on March 10, 2015.

P. Badura, CCRM (A), reviewed the Disability Effective Communication System. Inmate AGUIRRE has a current Test of Adult Basic Education score of 12.9 and no disabilities that would require any assistance understanding the issues in this matter. Therefore, there is no need for accommodations to ensure effective communication throughout the process of this appeal.

All submitted documentation and supporting arguments have been considered. Additionally, a thorough investigation has been conducted into the claim presented by the inmate and evaluated in accordance with PBSP's institutional procedures and departmental policies.

ISSUES

Release date is incorrect as his being placed on D2 status has caused him to be retained in custody beyond his release date for an administrative action and not a disciplinary action.

FINDINGS

I

The First Formal Level Review was waived and the appeal was heard at the Second Level of Appeal Review.

II

The issues and information set forth in this appeal have been reviewed together with related Case Records Instructional Memorandums, Senate Bill X 3-18 (SBX 3-18), California Code of Regulations, Title 15 and AGUIRRE's Central File. Inmate AGUIRRE was sentenced on July 31, 2009, Case No. 2007016757, Ventura County, for the offense of Possession of a Controlled Substance and Possession of a Controlled Substance while Armed with a Loaded Firearm for a total

SECOND LEVEL APPEAL RESPONSE

Appeal Log No. PBSP-C-15-00280

AGUIRRE, V99888

Page 2

term of 9 years. Inmate AGUIRRE was sentenced under the second strike law. He was received at PBSP on July 2, 2014.

On February 10, 2010, while housed at California State Prison, Sacramento, the Institutional Classification Committee deemed inmate AGUIRRE a validated gang member, based on a California Department of Corrections and Rehabilitation 128B-2, Gang Validation/Rejection Review General Chrono, dated November 18, 2009, changing his work group to D2 (zero earning credit). Effective January 25, 2010, in accordance with Senate Bill X318 regarding legislative changes to Penal Code(PC) 2933.6, which states in part, "inmates placed in a Security Housing Unit, Psychiatric Service Unit or an Administrative Segregation Unit for serious misconduct are ineligible to earn day for day while housed in these units. Inmates validated as a prison gang member or associates will change to zero credits earning status (D2) effect January 25, 2010." Inmate Aguirre has also accrued 181 days of credit losses along with 91 days of credit restoration. The Case Records Analysts calculate release dates from information received from committee actions, credit losses and credit restorations. This and the fact that inmate AGUIRRE is on D2 earning status has put him to his maximum release date of September 13, 2016. This date has been verified by both a manual calculation and the automatic calculation generated by the Strategic Offender Management System.

An Institutional Classification Committee action dated January 28, 2015, notes that he has been referred to the Classification Services Representative (CSR) for annual endorsement and the Institutional Gang Investigator (IGI) for inactive review. If any determination is made on inmate AGUIRRE's current status of D2, his date will be recalculated accordingly.

DOCUMENTS REVIEWED:

- Senate Bill X3 18
- Case Records Instructional Memorandums
- Central File

DETERMINATION OF ISSUE

Inmate AGUIRRE's release date has been investigated and it has been determined that his EPRD has been calculated correctly and the date of September 13, 2016, is accurate.

Based upon the above review, the inmate's appeal has been **DENIED**.


C. E. DUCART
Warden

PELICAN BAY STATE PRISON

STATE OF CALIFORNIA

INMATE/PAROLEE REQUEST FOR INTERVIEW, ITEM OR SERVICE
CDCR 22 (10/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION
SECURITY HOUSING UNIT
PELICAN BAY STATE PRISON

SECTION A: INMATE/PAROLEE REQUEST

NAME (FIRST) (LAST NAME) Aguirre Louis	(FIRST NAME) Louis	DOC NUMBER V-991888	SIGNATURE <i>[Signature]</i>
HOUSING/BED NUMBER C6E117	ASSIGNMENT S.H.U	HOURS FROM TO	TOPIC (E-MAIL, CONDITION OF CONFINEMENT/PAROLE, ETC.)

PLEASE CLEARLY STATE THE SERVICE OR ITEM REQUESTED OR REASON FOR INTERVIEW.

here is a discrepancy in my 6 year active/inactive review date. According to the Castillo settlement (1999) with CDCR, the 6 year active/inactive review is 6 years from the date of the activity and "not" from the date of discovery. If you notice the 128-B dated 10-2-09 is actually based on incident report 88655 date 1-16-09 and such discrepancy has caused my active/inactive review date to be incorrectly applied. I have submitted previous request to correct the discrepancy and yet to receive any response. The Counselor's instruct me to contact you to address the matter and to request the guideline/policy concerning the 6 year active/inactive.

METHOD OF DELIVERY (CHECK APPROPRIATE BOX) **NO RECEIPT WILL BE PROVIDED IF REQUEST IS MAILED**

SENT THROUGH MAIL: ADDRESSED TO _____ DATE MAILED _____

DELIVERED TO STAFF (STAFF TO COMPLETE BOX BELOW AND GIVE GOLDENROD COPY TO INMATE/PAROLEE)

RECEIVED BY: PRINT STAFF NAME <i>[Signature]</i>	DATE 1/13/15	SIGNATURE <i>[Signature]</i>	FORWARDED TO ANOTHER STAFF? (CIRCLE ONE) YES NO
---	------------------------	---------------------------------	--

IF FORWARDED - TO WHOM: IGI Sergeant	DATE DELIVERED/MAILED 1/13/15	METHOD OF DELIVERY: (CIRCLE ONE) IN PERSON BY US MAIL
--	---	--

SECTION B: STAFF RESPONSE

RESPONDING STAFF NAME Spieren Sgt	DATE 1-21-15	SIGNATURE <i>[Signature]</i>	DATE RETURNED: 1-21-15
---	------------------------	---------------------------------	----------------------------------

After reviewing your validation you are correct. The B2 shows last day of activity was 1/16/09. OCS will be contacted to make the corrections to the B2. You will be placed on the list to have an active/inactive review conducted.

Pelican Bay State Prison

FEB 02 2015

SECTION C: REQUEST FOR SUPERVISOR REVIEW

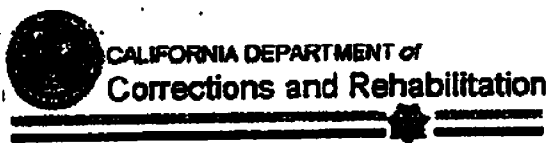
PROVIDE REASON WHY YOU DISAGREE WITH STAFF RESPONSE AND FORWARD TO RESPONDENT'S SUPERVISOR IN PERSON OR BY US MAIL. KEEP FINAL CANARY COPY.

Appeals Office

SIGNATURE:	DATE SUBMITTED:
------------	-----------------

SECTION D: SUPERVISOR'S REVIEW

RECEIVED BY SUPERVISOR (NAME):	DATE:	SIGNATURE:	DATE RETURNED:
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CLASSIFICATION COMMITTEE CHRONO

Inmate Name: AGUIRRE, LUIS J.	Date: 01/30/2015
CDC#: V99888	Date of Birth:

Hearing Date: 02/04/2015	Hearing Type: Annual
Committee Type: Institution Cls. Committee (ASU/SHU/THU/PSU-ICC)	Correctional Counselor: T. Cromwell

STATIC CASE FACTORS

CRITICAL CASE FACTORS

CLINICIAN COMMENTS
 PhD, P. Butler was present during this Committee action. When S was questioned regarding his current mental health status, S advised Committee he did not have Psych concerns at this time.

COMMITTEE ACTION SUMMARY
 Retain SHU on Administrative status; refer to CSR for ann-endorsement with rx for PBSP SHU based on his STG status; Refer to IGI for Inactive review; retain S suffix and continue present program.

COMMITTEE COMMENTS
 Inmate AGUIRRE (S) appeared before PBSP Facility C SHU ICC on this date for an Annual Review.
MEDICAL/MENTAL HEALTH REVIEW: Committee reviewed S' CDCR 128-C3, Medical Classification Chrono, dated 8/15/2014, and determined no Classification action is required at this time. Committee reviewed S' mental health documents noting S does not have an exclusionary condition that would prohibit PBSP-SHU placement.
DISCUSSION: Prior to Committee, S was issued an updated copy of his ASU Placement Notice dated 1/30/2015. Committee notes CDCR 128B2 dated 11/18/2009, citing 4 documents meeting Security Threat Group (STG) validation requirements. S is validated as an associate of the Mexican Mafia (EME) STG, which is known to be involved in criminal activities that threaten the safety of others and institutional security, and requires continued segregation from the GP. Last source document used in the validation process is dated 10/2/2009. Per S' CDCR 128B2 he will be eligible for an Inactive Review after 10/02/2015. IGI recently acknowledged a discrepancy with the Active/Inactive review date on CDCR 128B2 dated 11/18/2009, noting it does not correspond with the date of STG activity on 1/16/2009 within source item #1. PBSP IGI has placed S on their Inactive review list and will be conducting the review prior to 10/2/2015.
OTHER: The prior CSR action dated 4/23/2014, noted no concerns. S' current Placement Score (PS) is 30 Level II points.
CELL STATUS: S has no cellmate and Committee notes the 'S' custody suffix has previously been applied.
PARTICIPATION & APPEAL RIGHTS: S was advised of the Committees decision and his right to appeal pursuant to the California Code of Regulations, Title 15, and any appeal of this Committees action must be submitted within 30 calendar days of the date of chrono. Next scheduled Committee will be in 7/2015 for a 180 Day Review.

RECORDER

D. Wilcox	02/10/2015
	Date

CHAIRPERSON

C. Ducart	02/12/2015
-----------	------------

Louis Aguirre v. Ducart et al.

Exhibit 12 - 1

STATE OF CALIFORNIA
CDCR 128-B-2 (4/07)

CTIONS AND REHABILITATION

NAME: AGUIRRE, Luis Juarez

CDCR NUMBER: V99888

On October 8, 2009, a gang validation package regarding subject was received from Institution Gang Investigator J. Simpson at Wasco State Prison-Reception Center.

TOTAL NUMBER OF ITEMS SUBMITTED FOR REVIEW: (4)

The following items meet the validation requirements:

1. CDCR 128B dated 10-02-09 (Tattoos and Symbols)
2. Ventura County Sheriff Department Incident Report #90258 dated 02-27-09 (Other agencies)
3. CDCR 128B dated 12-23-08 (Communications, DIRECT LINK)
4. CDCR 128B dated 12-22-08 (Communications)

TOTAL NUMBER OF ITEMS WHICH MEET VALIDATION REQUIREMENTS: (4)

The following items do not meet the validation requirements and were/shall not be used as a basis for validation:

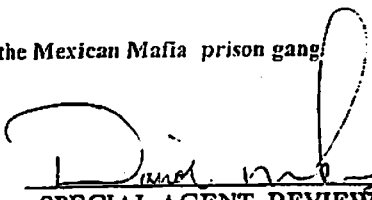
TOTAL NUMBER OF ITEMS WHICH DO NOT MEET VALIDATION REQUIREMENTS: (0)


ACTION OF REVIEWER

Pursuant to the validation requirements established in the CCR, Title 15, Section 3378, AGUIRRE is:

VALIDATED REJECTED

as an associate of the Mexican Mafia prison gang


 SPECIAL AGENT, REVIEWER
 DAVID PEREZ


 SPECIAL AGENT, REVIEWER
 RICHARD NADEAU

<p>DISTRIBUTION: Original - Central File Copy - Classification & Parole Representative/Parole Administrator I Copy - Institutional Gang Investigator/Region Gang Coordinator Copy - Office of Correctional Safety - Special Service Unit Copy - Inmate/Parolee date: _____ by: _____</p>	<p>ACTIVE/INACTIVE REVIEW 10-02-15 ELIGIBILITY DATE</p>
--	---

Date: 11-18-09

SSU GANG VALIDATION/REJECTION REVIEW

GENERAL CHRONO

NAME and NUMBER

On 10-01-09 I was reviewing Inmate AGUIRRE, LUIS V-99888 aka "Scooby" central file. During my review I discovered a Jail Incident Report #88655 dated 01/16/2009 authored by Deputy Craig Hennes. In the report Deputy Hennes reviewed a letter authored by CDCR inmate AGUIRRE. At the end of letter Deputy Hennes reports that AGUIRRE signs the letter "MAD LOVE AND RESPECTS, SCOOBY DOOBY DOO". Underneath his moniker AGUIRRE draws the "mactlactlomei" symbol, consisting of two line and three dots. The mactlactlomei symbolizes the number thirteen in the Mayan language, the thirteenth letter of the alphabet being "M", representative of EME or the MEXICAN MAFIA. AGUIRRE uses this symbol, accompanied with his moniker to show his allegiance to the MEXICAN MAFIA (EME) prison gang. This document should be recognized as one source item towards the association of the EME prison gang. AGUIRRE's behavior should continue to be closely monitored and documented whenever gang activity and/or association is present.

Noted/Approved
PEL [Signature] IGI
SECURITY HOUSING UNIT
10-1-09

This document meets the validation requirements established in CCP Title 15 Section 3378

[Signature]

C. Rodriguez, Correctional Officer
Assistant Institutional Gang Investigator
Wasco State Prison-Reception Center

Original: Central File
Copies: IGI
Inmate

DATE: 10-02-09

(symbols)
INFORMATION GANG RELATED

GENERAL CHRONO

STATE OF CALIFORNIA
 Calculation Worksheet - Determinate (DSL)
 ICR 1897-C (02-08) - Online Excel Version

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
 Worksheet No. _____ of _____
 (use multiple worksheets for mixed credit codes)

CALCULATION WORKSHEET - DETERMINATE (DSL)

POOR ORIGINAL

This form is used to calculate the earliest Possible Release Date (EPRD) for inmates sentenced to serve a determinate (DSL) term. DSL terms with offense dates prior to January 1, 1994 are entered into the Gender Based Information System (GBIS) as Credit Code 2 and earn one-third credit per Penal Code (PC) Section 2931. Non-violent DSL terms with offense date on or after January 1, 1994 are entered into GBIS as Credit Code 1 and earn up to day for day credit per Section 2933-two for one credit if assigned to a conservation camp per PC 2933.3; Second-strike DSL terms are entered in GBIS as Credit Code 3. Sections 2933.1(a) through 11 to 12, offense date on or after March 1, 1994 and earn 20% credit. DSL terms for violent offenses occurring on or after September 21, 1994 are limited to 15% credit per PC Section 2933.1 and are entered into GBIS as a Credit Code 4 (or 6 if second-strike violent offense) unless offenders do not receive credit per PC Section 2933.5 for when sentenced in conjunction with a murder occurring on or after June 3, 1998 per PC Section 2933.2. Zero credit DSL terms are entered into GBIS as Credit Code 5.

Case Number(s): 200*01675*

Section A - Original EPRD Calculation

1. This is the initial EPRD calculation that is done upon reception. Unless there is a change in work group or earning status and no credit losses occur, the EPRD remains the same for the term.

Start Date	8/12/2009
Plus Time Imposed	0 YRS 0 MO
Minus Pre-Advisement Credit	093
	0/18/2016
Minus Vested Credit	0
Plus dead time minus merit credit	0
Equals Maximum Date	0/13/2016
Minus Day Before Start Date (Line A1)	8/11/2009
Equals Days to Serve	2590
Minus Dead Time	0
Equals days where credit may be applied	2590
Equals CDCR Conduct Credit by dividing Line A10 by: Credit Code 1 - Divide by 2 (round down) Credit Code 2 - Divide by 3 (round up) (see Section F on reverse side) Credit Code 3 - Divide by 5 (round down) Credit Code 4 or 6 - Divide by 6 (round down)	518
Credit Code 3 Work Group	01
2. Maximum Date (Line A6)	0/13/2016
3. Minus CDCR Conduct Credit (Line A11)	518
4. Equals Original EPRD	4/14/2015

Section B - Recalculation of EPRD (change in credit earning status, credit loss/credit restoration, etc.)

STEP 1: Accumulation of CDCR conduct credit for days previously earned and projected future credit. Record fractional amounts of credit (2 decimal pts); singly whole amounts only:

B1. Maximum Date (Line A6)	0/13/2016
B2. Minus CDCR Conduct Credit Earned (See Reverse)	
B3. Plus Net Credit Lost (See Reverse) Leave 1 or 0 Blank if Credit Code 2	
B4. Equals Current Release Date (CRD)* Calculation works here if: - Credit Code 2 or 6 - Current Work Group up to Credit credit codes, or - Credit applied to the CRD Maximum Date Carry date down to Line B12	
B5. Minus Date Credit Applied Through	
B6. Equals days remaining to serve as of date credit applied.	
B7. Divide Line B6 as follows to project CDCR Conduct Credit (record fractions, 2 decimal pts): Credit Code 1 - Work Group WGT 01 divide by 2 WGT 02 0101 divide by 3 WGT 03 divide by 3 then multiply by 2 Credit Code 3 - Divide by 5 Credit Code 4 or 6 - Divide by 6.00 Equals Projected CDCR Credit	
B8. Total CDCR Conduct Credit - Accumulate Fractional Credit Line B2 (include fractions) - Line B7 (include fractions)	

STEP 2: Recalculate EPRD

B9. Maximum Date (Line B1/A6)	0/13/2016
B10. Minus Total CDCR Conduct Credit (Line B8, round down)	
B11. Plus Net Credit Lost (B3)	
B12. Equals Adjusted EPRD*	

* The CRD is an intermediate date and may exceed the maximum date, however the Adjusted EPRD cannot exceed the maximum release date.

Section C - Mixed Credit Codes (when the consecutive term is Credit Code 32 only): When the Adjusted EPRD is later than Maximum Date, CDCR credit earned must be calculated to the Maximum Date (record on Line 21). Subtract credit earned (Line B2) from Net Credit Lost (Line B3) which equals the excess lost to apply to Credit Code 32 term.

CDCR Credit Lost (Line B3) _____

Minus CDCR Credit Earned (Line B2) _____

Equals excess credit lost to apply to Credit Code 32 term (record in Section F on reverse)

CREATED BY (Name & Title) FERNANDEZ, CCR	DATE 1/20/2010
ATTN'S NAME QUIRRE, LUIS	ICR NUMBER 199988
	LOCATION CSI-SAC

1 GREGORY D. HULL (Bar No. 57367)
Email: greg.hull@weil.com
2 BAMBO OBARO (Bar No. 267683)
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8 RACHEL MEEROPOL (*pro hac vice*)
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666 Broadway, 7th Floor
10 New York, NY 10012
Tel: (212) 614-6478
11 Fax: (212) 614-6499

12 Attorneys for Plaintiffs
(Additional counsel listed on signature page)

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 GEORGE RUIZ, JEFFREY FRANKLIN, TODD
ASHKER, GEORGE FRANCO, GABRIEL
18 REYES, RICHARD JOHNSON, DANNY
TROXELL, PAUL REED, LUIS ESQUIVEL, and
19 RONNIE DEWBERRY, on their own behalf, and
on behalf of a class of similarly situated prisoners,

20 Plaintiffs,

21 v.

22 EDMUND G. BROWN, JR., Governor of the State
23 of California, MATTHEW CATE, Secretary,
California Department of Corrections and
24 Rehabilitation (CDCR); ANTHONY CHAUS,
Chief, Office of Correctional Safety, CDCR; and
25 G.D. LEWIS, Warden, Pelican Bay State Prison,

26 Defendants.
27

Case No. 4:09 CV 05796 CW

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS SECOND AMENDED
COMPLAINT**

Date: February 14, 2013
Time: 2:00 pm
Place: Courtroom 2, 4th Floor

Honorable Claudia Wilkin

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1 Plaintiffs have spent decades in crippling, unnecessarily harsh isolation, during which the
2 California Department of Corrections and Rehabilitation (CDCR) has promised, and failed to
3 deliver, on myriad efforts at reform. To this day Plaintiffs are confined alone in their cells,
4 without view of the outside world, human touch, face-to-face conversation, or even telephone
5 calls. Yet, Defendants frequently impose these conditions without evidence that the prisoner has
6 engaged in gang-related violence or other serious misconduct. Now Defendants claim that
7 Plaintiffs' due process challenge to these decades of deprivation is moot, or ought to be stayed,
8 because Defendants have again promised reform, this time by a temporary pilot program set by its
9 own terms to expire in two years.

10 Plaintiffs' claim is not moot, as the law is clear that only a *permanent* change can defeat
11 the existence of a live controversy. Moreover, a stay is inappropriate because Plaintiffs' Eighth
12 Amendment claim will proceed anyway, and the facts of the two claims are closely interrelated.
13 As explained in section III, below, the pilot program has not yet been fully implemented, but it
14 appears to be riddled with many of the same due process infirmities challenged herein. Discovery
15 on the impact of the pilot program, rather than dismissal or a stay, is therefore the most
16 appropriate resolution here.

17 Defendants' mootness and stay arguments are merely distractions from the central legal
18 question of this case: Does the Eighth Amendment differentiate between months, or even a few
19 years of solitary confinement, which is legally permissible in some circumstances, and *decades* of
20 the same? As Plaintiffs show below, precedent is clear that the duration of isolation must be
21 considered when determining its constitutionality. Indeed, both the Constitution and human
22 intuition recognize that the effects of intense deprivation cannot be evaluated without careful
23 consideration of duration. As a result, Plaintiffs' allegations that 10 to 22 years in the Pelican
24 Bay Special Housing Unit (PB-SHU) have deprived them of social interaction, environmental
25 stimulation, sleep, and physical and mental health, and have created a substantial risk to their
26 future mental health, state an Eighth Amendment claim.

27 Defendants assert that imposition of this decades-long isolation is "administrative" and
28 therefore Plaintiffs have little constitutional protection. But since 2010, placement in the PB-

1 SHU deprives Plaintiffs of good time credit, a punitive measure which the Supreme Court has
 2 determined entitles them to greater procedural protections. *See* section II.B *infra*. And even if
 3 administrative process is all Plaintiffs are due, their Due Process claim must still be allowed to
 4 proceed, as the reviews CDCR provides occur too infrequently, and without adequate notice. *See*
 5 section II.C *infra*. Plaintiffs are informed that they can earn release if they are “inactive” in a
 6 gang for six years; yet in practice they are routinely kept in the SHU based only on evidence of
 7 gang-related artwork and writings, or other gang association, rather than gang “activity.”

8 For all of these reasons, Defendants’ motion to dismiss should be denied in its entirety.

9 **I. PLAINTIFFS HAVE ADEQUATELY PLED AN EIGHTH AMENDMENT**
 10 **VIOLATION**

11 Defendants ask the Court to dismiss Plaintiffs’ Eighth Amendment claim without
 12 affording Plaintiffs the opportunity to develop evidence of the impact of prolonged isolation on
 13 their mental and physical health. According to Defendants, such dismissal is appropriate because:
 14 (1) *Madrid v. Gomez*, 889 F. Supp. 1146 (N. D. Cal. 1995) precludes any PB-SHU prisoner who
 15 is not diagnosed as mentally ill from arguing that the SHU’s restrictive conditions violate his
 16 Eighth Amendment rights, no matter what mental and physical harm he may allege or prove (*see*
 17 Defendants’ Motion to Dismiss “MTD” at 16-17); and (2) Defendants have complied with court-
 18 ordered mental health and medical procedures, thus they cannot be found “deliberately
 19 indifferent” to Plaintiffs’ mental or physical health. *Id.* at 18. Defendants are incorrect on both
 20 accounts: Madrid does not control this case, as Plaintiffs here challenge confinement decades
 21 longer than that examined in Madrid and allege concrete harms not evidenced in Madrid.
 22 Plaintiffs have adequately alleged Defendants’ deliberate indifference to these harms. Finally,
 23 Plaintiffs’ alternative Eighth Amendment theories also preclude dismissal.

24 **A. *Madrid v. Gomez* Does Not Preclude Plaintiffs’ Eighth Amendment Claim**

25 Defendants misstate the impact of *Madrid*: neither it, nor any other Eighth Amendment
 26 case require a prisoner to have a diagnosed mental illness in order to challenge prolonged solitary
 27 confinement in the PB-SHU. The *Madrid* court rejected the claim that conditions at Pelican Bay
 28 violate the Eighth Amendment “*vis-a-vis all inmates.*” *Madrid*, 889 F. Supp. at 1261 (emphasis

1 added). Plaintiffs do not make that claim. Rather, they allege that prisoners held in the PB-SHU
2 for very prolonged durations – between 10 and 22 years – are being incarcerated in conditions
3 that violate the Eighth Amendment. *See* Second Amended Complaint (SAC) at ¶ 166 (Eighth
4 Amendment subclass limited to prisoners held at Pelican Bay SHU for over ten years).

5 The *Madrid* court explicitly limited its holding to a class of prisoners that had spent less
6 than three years at the Pelican Bay SHU: “We emphasize, of course, that this determination is
7 based on the current record and data before us. We cannot begin to speculate on the impact that
8 Pelican Bay SHU conditions may have on inmates confined in the SHU for periods of 10 or 20
9 years or more; the inmates studied in connection with this action had generally been confined to
10 the SHU for three years or less.” *Madrid*, 889 F. Supp. at 1267. Defendants acknowledge this,
11 MTD at 16-17, and then completely fail to explain why it does not foreclose their argument.

12 Under Defendants’ argument, the duration of time spent in solitary confinement is of no
13 legal import. But judicial precedent and common sense are to the contrary. How long someone
14 spends in solitary confinement – whether a few days, weeks, years, or decades – is a pivotal part
15 of the Eighth Amendment analysis. *See, e.g., Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)
16 (noting that in solitary confinement context, “the length of confinement cannot be ignored”);
17 *Wilkerson v. Stadler*, 639 F. Supp. 2d. 654, 679 (M.D. La. 2007) (citing *Hutto* for proposition that
18 “certain conditions that would pass constitutional scrutiny if imposed for a short period of time
19 may be rendered unconstitutional if imposed for an extended period of time”); *Keenan v. Hall*,
20 83 F.3d 1083, 1089 (9th Cir. 1996) (citing *Hutto*), *Pepperling v. Crist*, 678 F.2d 787, 789 (9th
21 Cir. 1982) (permissible segregation may offend the Eighth Amendment if it lasts too long),
22 *Sweet v. South Carolina Dept. of Corr.*, 529 F.2d 854, 861 (4th Cir. 1975) (prolonged duration is
23 a factor when considering constitutionality of segregated confinement); *cf. Despain v. Uphoff*,
24 264 F. 3d 965, 974 (10th Cir. 2011) (“In general, the severity and duration of the deprivation
25 [needed to set forth an Eighth Amendment claim] are inversely proportional”).

26 Indeed, in *Wilkerson v. Stadler*, the Court rejected a similar *res judicata* defense in a
27 challenge to 30 years of solitary confinement, because the “decisions rendered in [plaintiffs’ two
28 prior segregation challenges] were both decided over twenty years ago, and involve different

1 facts. While the physical conditions of confinement may have been the same, or similar, in the
 2 present case, a key issue today is the now extraordinary duration of that confinement.” 639 F.
 3 Supp. 2d. at 685-86. As the *Wilkerson* Court pointed out, “[t]he emphasis on duration in all these
 4 cases is in direct response to the acknowledged severity of the deprivation With each
 5 passing day its effects are exponentially increased, just as surely as a single drop of water
 6 repeated endlessly will eventually bore through the hardest of stones.” *Id.* at 684.

7 Twenty years of solitary confinement “is a shockingly long period of time.” *Griffin v.*
 8 *Gomez*, No. C-98-21038, slip op. at 10 (N.D. Cal. June 28, 2006). Because Plaintiffs challenge
 9 isolation ten to twenty years longer than that examined in *Madrid* their claim is not precluded.¹

10 **B. Plaintiffs Have Alleged Objectively Serious Harm**

11 In contrast to the *Madrid* plaintiffs’ three years in the PB-SHU, Plaintiffs here allege that
 12 their 11 to 22 years in isolation have deprived them of the fundamental need for human contact,
 13 environmental and sensory stimulation, sleep, and physical and mental health. SAC ¶ 180. These
 14 allegations are sufficiently serious to meet the Eighth Amendment’s objective component.

15 Prison conditions violate the Eighth Amendment when they deprive prisoners of “basic
 16 human needs” or “the minimal civilized measure of life’s necessities.” *See Madrid*, 889 F. Supp.
 17 at 1260, *citing Helling v. McKinney*, 509 U.S. 25, 32 (1993) and *Wilson v. Seiter*, 501 U.S. 294,
 18 298 (1991). Basic human needs must be measured according to “evolving standards of decency
 19 that mark the progress of a maturing society.” *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981).

20 Social interaction and environmental stimulation are basic human needs. *Wilkerson*,
 21 639 F. Supp. 2d at 677-678; *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 914 (S.D. Tex. 1999), *rev’d on*

23 ¹ Defendants also argue that Plaintiffs’ Eighth Amendment claim is precluded by prior prisoner challenges
 24 to PB-SHU medical care and mental health care. *See MTD* at 19-25. But Plaintiffs do not advance Eighth
 25 Amendment claims for inadequate mental health care or medical care. SAC ¶¶ 177-92. Rather, Plaintiffs
 26 allege that (1) medical care is purposefully withheld at the PB-SHU to coerce prisoners to debrief, and this
 27 is one aspect of the cruelty of conditions which, taken together, violate Plaintiffs’ Eighth Amendment
 28 rights, *id.* ¶¶ 74-81, and (2) mental health care is lacking at the PB-SHU, evidencing Defendants’
 deliberate indifference to the risk to Plaintiffs’ mental health caused by prolonged solitary confinement, *id.*
 ¶¶ 82-85. Because SHU prisoners receive no meaningful mental health monitoring, Defendants can
 purposefully ignore the serious impact of long-term SHU confinement. These factual allegations support
 Plaintiffs’ Eighth Amendment conditions claim, but do not advance discrete medical care claims. Thus,
Coleman and *Plata* have no impact here.

1 *other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D.
 2 Tex. 2001). While prisoners may be denied both for some period of time without running afoul
 3 of the Eighth Amendment, their permanent or near-permanent deprivation is an entirely different
 4 question. *See Pepperling*, 678 F.2d at 789 (“deprivations associated with an institutional lock-up,
 5 including twenty-four hour confinement, and curtailment of all association, exercise and normal
 6 vocational and educational activity, may constitute ... a violation of the Eighth Amendment, if
 7 they persist too long”).

8 Here, Plaintiffs claim extreme isolation for decades – they never touch another human
 9 being, have virtually no face-to-face conversation and, in contrast with all other correctional
 10 systems of which Plaintiffs and counsel are aware, are denied *all* non-emergency telephone
 11 contact. SAC ¶¶ 45-46. Plaintiffs have no view of the outside; their life is limited to four bare
 12 walls and an occasional disembodied voice. Such substantial limitation of interaction over
 13 several decades is a deprivation of what it means to be human.² *Wilkerson*, 639 F. Supp. 2d at
 14 678. It is for this reason that prolonged solitary confinement has been decried as torture by
 15 several international bodies. SAC ¶¶ 146-52.

16 So too, sleep “undoubtedly counts as one of life’s basic needs.” *Harper v. Showers*,
 17 174 F.3d 716, 720 (5th Cir. 1999) (reversing district court’s dismissal of Eighth Amendment
 18 challenge to conditions that deprived prisoner plaintiff of sleep); *accord Chappell v. Mandeville*,
 19 No. 03-0653, 2009 U.S. Dist. LEXIS 26782, *27 (E.D. Cal. Mar. 31, 2009). As result of their
 20 prolonged PB-SHU placement, most Plaintiffs suffer from “extreme and chronic insomnia,” in
 21 some cases resulting in only one to three hours of sleep a night. SAC ¶¶ 128-29. Such long-term
 22 deprivation is seriously harmful to physical and mental health and may shorten one’s life.³

23
 24
 25 ² *See* Laura Matter, *Hey, I Think We’re Unconstitutionally Alone Now: The Eighth Amendment Protects*
 26 *Social Interaction as a Basic Human Need*, 14 J. GENDER RACE & JUST. 265, 290-91 (2010) (summarizing
 research on fundamental role of social interaction in facilitating human cognition).

27 ³ *See, e.g.*, Harvey R. Colton and Bruce M. Altevogt, *Sleep Disorders and Sleep Deprivation: An Unmet*
 28 *Public Health Problem*, Nat’l Academies Press Online, 2006, available at
<http://www.ncbi.nlm.nih.gov/books/NBK19960/pdf/TOC.pdf> (reporting that sleeping 5 hours or less a
 night increased mortality risk, from all causes, by roughly 15 percent).

1 Along with ensuring that prisons provide that which is minimally required to sustain life,
2 the Eighth Amendment also prohibits conditions that “inflict serious mental pain or injury ...
3 ‘[T]he touchstone is the health of the inmate. While the prison administration may punish, it may
4 not do so in a manner that threatens the physical *and mental health* of prisoners.” *Madrid*,
5 889 F. Supp. at 1260 (emphasis in original), *see also Ruiz*, 37 F. Supp. 2d at 914 (“the same
6 standards that protect against physical torture prohibit mental torture as well – including the
7 mental torture of excessive deprivation”).

8 Plaintiffs have alleged that their prolonged PB-SHU confinement has “caused ... or
9 exacerbated ...” a variety of other serious mental and physical injuries including “severe
10 concentration and memory problems,” “emotional numbness,” “nightmares,” “hallucinations,”
11 “hearing voices,” hypertension, eye and vision problems, headaches, diabetes and back problems.
12 SAC ¶¶ 74-77, 125-139. There is no question that the more serious of these symptoms (including
13 the physical ailments, hallucinations and hearing voices) are sufficient for Eighth Amendment
14 purposes under *Madrid* (*see* 889 F. Supp. at 1234), but even those closer to the line preclude
15 dismissal without further factual development.

16 For example, Plaintiffs allege “severe concentration and memory problems.” While the
17 *Madrid* plaintiffs also reported “problems with concentration,” there was no indication as to the
18 severity of those problems. 889 F. Supp. at 1232. Plaintiffs, in contrast, describe memory and
19 concentration issues so severe as to have completely deprived them of their ability to read or
20 think clearly. SAC ¶ 130. This significant impairment of basic functioning is far-removed from
21 the “loneliness, frustration, depression or extreme boredom ...” discounted by the *Madrid* Court.
22 *Madrid*, 889 F. Supp. at 1263.

23 Similarly, Plaintiffs allege not just “emotional flatness” like that noted by the *Madrid*
24 court, but that decades without normal human interaction have resulted in a complete
25 disassociation from human emotion. SAC ¶¶ 131-38, *compare Madrid*, 889 F. Supp. at 1234.
26 These symptoms, and others experienced by Plaintiffs and the putative class, are almost identical
27 to those described in the psychological literature about the long-term effects of severe trauma and
28 torture, SAC ¶ 142, and cannot be discounted as mere “psychological pain.”

1 Finally, the Plaintiffs also allege that even if they were not mentally ill when first confined
 2 there or at the time this lawsuit was commenced, all prisoners confined in the Pelican Bay SHU
 3 for decades face a significant risk of developing serious mental illness or suicidal symptoms.
 4 SAC ¶ 143. The *Madrid* court recognized the possibility that SHU confinement might pose some
 5 risk of serious mental illness, but that risk was not “of [a] sufficiently serious magnitude”
 6 according to the data available after three years of confinement. 889 F. Supp. at 1265. Plaintiffs
 7 must be allowed to develop and present the Court with evidence as to the elevated risks posed by
 8 decades of solitary confinement in the PB-SHU.

9 **C. Plaintiffs Have Adequately Alleged Deliberate Indifference**

10 Plaintiffs’ allegations also meet the Eighth Amendment’s subjective component, requiring
 11 that each defendant “knows of and disregards an excessive risk to inmate health and safety.”
 12 *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Here, Defendants had actual knowledge of the
 13 effect of prolonged SHU placement on Plaintiffs’ mental and physical health through multiple
 14 sources. Moreover, the risk was obvious.

15 Defendants do not deny that they were made aware of the risk to mental health posed by
 16 long-term isolation. Indeed, Plaintiffs told them so repeatedly:

- 17
- 18 • Plaintiffs staged hunger strikes designed to call attention to the severe restrictions in the
 PB-SHU and the resulting threat to their mental health. SAC ¶¶ 153-54, 159, 162, 191.
 - 19 • Plaintiffs Ashker and Troxell three times sent CDCR officials, including some
 Defendants, a “Complaint On Human Rights Violations And Request For Action To End
 20 Over 20 Years Of State Sanctioned Torture” at the PB-SHU. *Id.* ¶¶ 156-58, 191.
 - 21 • At a California State Assembly hearing convened by the Public Safety Committee and
 attended by CDCR officials, SHU expert Dr. Craig Haney opined that State officials
 should have known since the 1980’s that a prison like Pelican Bay exposes prisoners to
 22 “psychologically dangerous conditions of confinement.” *See id.* ¶ 161 (citing Sal
 Rodriguez, *Historic California Assembly Hearing on Solitary Confinement*, Aug. 24,
 23 2011, at solitarywatch.com).

24 Moreover, Defendants are on notice as to the likely psychological impact of prolonged
 25 SHU placement because that impact is obvious. SAC ¶ 191. Deliberate indifference does not
 26 mean that “prison officials [are] ... free to ignore obvious dangers.” *Farmer*, 511 U.S. at 842.
 27 Rather, “a fact finder may conclude that a prison official knew of a substantial risk from the very
 28 fact that the risk was obvious.” *Id.* at n.8. As the Court observed in *Wilkerson*, “any person in the

1 United States who reads or watches television should be aware that lack of adequate exercise,
 2 sleep, social isolation, and lack of environmental stimulation are seriously detrimental to a human
 3 being’s physical and mental health.” 639 F. Supp. 2d at 680 (adopting *McClary v. Kelly*, 4 F.
 4 Supp. 2d 195, 208 (W.D.N.Y. 1998) statement: “that prolonged isolation from social and
 5 environmental stimulation increases the risk of developing mental illness does not strike this
 6 Court as rocket science”), *see also Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988)
 7 (Posner, J.) (“[T]he record shows, what anyway seems pretty obvious, that isolating a human
 8 being from other human beings year after year or even month after month can cause substantial
 9 psychological damage, even if the isolation is not total.”)

10 Despite the obvious and lengthy deprivations described above, Defendants did not
 11 alleviate PB-SHU conditions, or otherwise ameliorate their impact. SAC ¶¶ 82-85. This is
 12 enough to allege deliberate indifference. Moreover, Plaintiffs also allege that Defendants
 13 *intended* this result. PB-SHU’s punishing isolation, inadequate mental and physical health care,
 14 and limited opportunity for release are all intended to coerce Plaintiffs into debriefing and
 15 implicating others. *Id.* ¶¶ 31, 73, 78-81, 120, 152, 192. The infliction of severe pain and
 16 suffering for purposes of obtaining information meets the international law definition of torture.
 17 *Id.* ¶ 152.

18 Defendants’ only response to these detailed allegations is to refer the Court to their
 19 compliance with the *Coleman* settlement. MTD at 18. But contrary to Defendants’ argument,
 20 even if they have taken steps to exclude the most seriously mentally ill prisoners from the PB-
 21 SHU, this does not give them a free pass to ignore documented, widespread, and serious harms
 22 visited upon the rest of the long-term PB-SHU population.

23 **D. Plaintiffs Have Also Stated a Claim under the Eighth Amendment Based on**
 24 **Undue Coercion and Disproportionate Punishment**

25 Defendants’ Motion to Dismiss ignores Plaintiffs’ alternative Eighth Amendment theories,
 26 including: (1) the gross disproportionality of decades in extremely harsh conditions based on
 27 Plaintiffs’ status as alleged gang members, *see* SAC ¶ 185; and (2) the coercive nature of PB-
 28

1 SHU confinement, *see id.* ¶¶ 183-184. Under either of these theories, Plaintiffs’ claims must be
2 allowed to proceed.

3 **1. Plaintiffs have Adequately Alleged an Eighth Amendment Violation**
4 **Based on the Gross Disproportion between their Conduct in Prison,**
5 **and Their Treatment by CDCR**

6 As the Supreme Court has often noted, “the concept of proportionality is central to the
7 Eighth Amendment. Embodied in the Constitution’s ban on cruel and unusual punishments is
8 ‘the precept of justice that punishment for crime should be graduated and proportionate to [the]
9 offense.’” *Graham v. Florida*, 130 S. Ct. 2011, 2021 (2010), *quoting Weems v. United States*,
10 217 U.S. 349, 367 (1910). Plaintiffs allege that their isolation violates the Eighth Amendment
11 because it is grossly disproportionate to the State’s interest in preventing gang violence by
12 prisoners who are alleged gang members, but do not engage in dangerous gang activity.

13 Duration or conditions of administrative segregation may violate the Eighth Amendment
14 if they are “disproportionate to the reasons purportedly justifying such placement.” *Toussaint v.*
15 *Rushen*, 553 F. Supp. 1365, 1382 (N.D. Cal. 1983)⁴; *see also, Allen v. Nelson*, 354 F. Supp. 505,
16 512-13 (N.D. Cal. 1973) (Eighth Amendment proportionality principles forbid prolonged
17 isolation based on “vague assertions” that a prisoner was “aggressive” and “assaultive”), *aff’d*,
18 484 F.2d 960 (9th Cir. 1973). To determine proportionality, the Court must consider whether a
19 given deprivation is reasonably related to a legitimate penological justification. *Adnan v. Santa*
20 *Clara County Dept. of Corrs.*, No. 02-C-3451, 2002 U.S. Dist. LEXIS 28368 (N.D. Cal. Aug. 15,
21 2002) (Wilken, J.), *accord, United States v. Basciano*, 369 F. Supp. 2d 344, 351 (E.D.N.Y. 2005).
22 This requirement is especially essential when solitary confinement is unusually prolonged.
23 *Morris v. Travisono*, 549 F. Supp. 291, 294 (D.R.I. 1982). And, as the Court explained in
24 *Madrid*, while certain conditions are so inherently harmful as to violate the Eighth Amendment
25 irrespective of penological justification, “a condition or other prison measure that has little or no

26
27 ⁴ While other aspects of the *Toussaint* Court’s Eighth Amendment analysis of SHU assignment were
28 called into question by the Ninth Circuit, *see, Toussaint v. Yockey*, 722 F.2d 1490, 1494 n.6 (9th Cir.
1984), this proposition remains good law.

1 penological value may offend constitutional values upon a lower showing of injury or harm”
 2 889 F. Supp. at 1262-63; *Adnan*, 2002 U.S. Dist. LEXIS 28368 at *10.

3 Prolonged administrative segregation in harsh conditions might thus be proportional for a
 4 “particularly violent offender,” for example, but “reasons such as refusal to answer questions, or
 5 labeling prisoners as agitators are not enough.” *Allen*, 354 F. Supp. at 512. Thus, in *Koch v.*
 6 *Lewis*, the court found a constitutional violation where a prisoner was held for five and a half
 7 years in Arizona’s restrictive solitary confinement unit based on gang affiliation, without
 8 evidence of overt misconduct. 216 F. Supp. 2d 994, 1007 (D. Az. 2001), *vacated as moot after*
 9 *prisoner’s release*, *Koch v. Schriro*, 399 F.3d 1099 (9th Cir. 2005). Similarly, in *United States v.*
 10 *Bout*, a court held that unsubstantiated allegations of terrorist affiliation, without evidence of
 11 recent terrorist acts, could not justify holding a criminal defendant in SHU for 15 months. 860 F.
 12 Supp. 2d 303, 308-310 (S.D.N.Y. 2012), *see also Hardiwick v. Ault*, 447 F. Supp. 116, 119, 125
 13 (M.D. Ga. 1978) (designation of “problem prisoners” to restrictive wing of prison
 14 disproportionately and capriciously inflicted pain in violation of Eighth Amendment).⁵

15 Plaintiffs’ decades in solitary confinement under extremely punitive conditions are not the
 16 result of violent criminal acts or serious rule violations. Plaintiffs Ruiz, Johnson, Redd, Esquivel,
 17 Reyes and Dewberry, for example, were validated as gang members or associates without
 18 allegations of gang-related activity or rule violations, but instead based on their possession of
 19 allegedly gang-related art, tattoos, written material, and/or inclusion of their names on alleged
 20 lists of gang members and associates. SAC ¶ 93. They have been denied inactive status every six
 21 years on similar evidence. *Id.* ¶¶ 104-110.

22 Ten to twenty years of extreme deprivation at Pelican Bay is not reasonably related to the
 23 legitimate security concerns raised by an individual who prison officials claim to be a gang

24 _____
 25 ⁵ Though the *Madrid* court opined in a footnote that proportionality analysis does not apply to
 26 administrative action (*see* 889 F. Supp. at 1275 n. 225), the Court’s analysis elsewhere in the opinion
 27 belies this bright line rule. *See id.* at 1262-63, *see also Toussaint*, 553 F. Supp. at 1382 (proportionality’s
 28 requirement that the conditions and duration of segregation bear reasonable relation to a legitimate penal
 justification is not limited to punitive measures, but also applies to allegedly “administrative action”),
accord, Allen, 354 F. Supp. at 511-12. Moreover, the distinction is of little import, given that the 2010
 statutory provision stripping Plaintiffs of their good time credits has rendered PB-SHU confinement
 punitive rather than administrative. *See* SAC ¶ 86; Point II.B *infra*.

1 member or associate but who has engaged in no violence or other serious gang-related
 2 misconduct. See *Koch*, 216 F. Supp. 2d at 1007, *cf.*, *Adnan*, 2002 U.S. Dist. LEXIS 28368 at *10
 3 (noting that the Madrid court denied prisoners’ Eighth Amendment claim only after assuming
 4 “that the prisoners had appropriately been placed in administrative segregation based on their
 5 disciplinary histories because they posed a significant security risk to the institution”); *see also*
 6 *Peoples v. Fischer*, No. 11-civ-2694, 2012 WL 2402593, *1 (S.D.N.Y. June 26, 2012) (two-year
 7 placement in SHU grossly disproportionate to non-violent prison rule-violations).

8 **2. Plaintiffs have Adequately Alleged an Eighth Amendment Violation**
 9 **Based on the Coercive Nature of the Pelican Bay SHU**

10 Plaintiffs allege that their decades of uniquely restrictive confinement in the PB-SHU is
 11 not motivated by any legitimate penological interest, but is actually designed to coerce Plaintiffs
 12 to debrief, and become informants for the State. SAC ¶¶ 31, 45-46, 52, 72, 78, 81, 183. This
 13 coercion violates the Eighth Amendment.

14 Because CDCR’s 180-day and 6-year reviews do not actually provide a way out of the
 15 SHU, even for a prisoner who has foresworn gang activity for decades, Plaintiffs’ only avenue out
 16 of the SHU is to debrief or die. *Id.* ¶¶ 96-97, 99-122. Yet, at the same time, were Plaintiffs able
 17 to debrief, i.e., were they in possession of factual information about other gang members, doing
 18 so would place them and their families at risk of death or grave physical harm. *Id.* ¶ 7. Thus
 19 Plaintiffs are put in an untenable situation: accept the crushing and seemingly permanent
 20 conditions of confinement at PB-SHU or debrief and expose themselves and their families to
 21 unspeakable brutality. The result is “tantamount to indefinite administrative segregation for
 22 silence – an intolerable practice in modern society.” *Griffin v. Gomez*, No. C-98-21038, slip op.
 23 at *8-9, 11 (N.D. Cal. June 28, 2006).

24 **II. PLAINTIFFS HAVE ADEQUATELY PLED A DUE PROCESS VIOLATION**

25 Defendants also urge the Court to dismiss Plaintiffs’ procedural due process claim. In
 26 doing so, however, they ignore both the punitive nature of PB-SHU confinement as it currently
 27 operates (and thus the amount of process Plaintiffs are due), as well as the constitutional
 28 inadequacy of the current review process. Plaintiffs’ well-pled claim must stand.

1 **A. Plaintiffs Have Plausibly Alleged a Liberty Interest**

2 Defendants do not challenge Plaintiffs’ allegation of a liberty interest in avoiding PB-SHU
3 designation. *See* MTD at 13. Nor could they under *Wilkinson v. Austin*, 545 U.S. 209, 223-24
4 (2005) (finding a liberty interest where, *inter alia*, prisoners were deprived of almost all human
5 contact, exercise was one hour per day, and duration of incarceration was prolonged by
6 placement); *see also Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir. 1996) (“a major difference
7 between the conditions for the general population and the segregated population triggers a right to
8 a hearing,” and relevant factors are “whether there is a likelihood that the transfer will affect the
9 duration of [the prisoner’s] sentence . . . and the duration of the transfer”).⁶

10 **B. Plaintiffs Are Entitled To Wolff Hearings**

11 Along with a liberty interest, Plaintiffs have also pled a denial of adequate process. *See*
12 SAC ¶¶ 91-122. Defendants argue that the policy of assigning “suspected” gang affiliates to the
13 SHU is not “disciplinary,” but an “administrative strategy” that requires “minimal” procedural
14 protections. MTD at 13. In so arguing, Defendants fail to grapple with the current consequences
15 of SHU assignment and thus misidentify the level of process Plaintiffs are due.

16 In *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court held that where a
17 prisoner faces punitive sanctions – namely, the loss of good time credit – he is entitled to a more
18 robust due process hearing that must include: 1) advance written notice of the claimed violation
19 and a written statement as to the evidence relied upon and the reasons for the action taken; and
20 2) an opportunity for the prisoner to call witnesses and present documentary evidence in his
21 defense. *Id.* at 557, 563, 566; *see also Wilkinson*, 545 U.S. at 288 (citing *Wolff* for the proposition
22 that revocation of good time credits for misbehavior calls for “more formal, adversary-type
23 procedures”). Since 2010, California prisoners who are in the SHU for gang affiliation are denied
24 their statutory right to earn good time credit. *See* CAL. PEN. CODE §§ 2933, 2933.05, 2933.6(a);
25 SAC ¶ 86. This deprivation of good time credits is not even arguably related to the
26 “administrative” rationale for segregating alleged gang members. Combined with the

27 _____
28 ⁶ Should the Court have further questions about this analysis, Plaintiffs respectfully request permission to
submit supplementary briefing.

1 extraordinary length of time Plaintiffs have been confined at the PB-SHU, and viewed in light of
 2 the harsh conditions there, the post-2010 withholding of good time credit has made clear that PB-
 3 SHU assignment is a punitive rather than administrative measure that “affects [Plaintiffs’] term of
 4 confinement,” and entitles them to *Wolff*’s heightened process. 418 U.S. at 547.

5 Tellingly, the cases on which Defendants rely to argue that Plaintiffs are entitled to only
 6 minimal administrative process predate these critical 2010 amendments. *See* MTD at 13 (citing
 7 *Bruce v. Ylst*, 351 F.3d 1283 (9th Cir. 2003), and *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir.
 8 1986)). Even if “the heightened standard of *Wolff*” did not apply when *Bruce* and *Toussaint* (and
 9 also *Madrid*) were decided, 351 F.3d at 1287, Plaintiffs are now entitled to *Wolff*’s protections.
 10 Indeed, since 2010, courts in this District have treated SHU confinement as a punitive measure
 11 imposed for gang membership or association (which is analyzed as in-prison misconduct) in
 12 rejecting *ex post facto* challenges to the new statutory bar on earned credits. *See, e.g., Soto v.*
 13 *Lewis*, No. C 11-4704, 2012 U.S. Dist. LEXIS 158455 at *18 (N.D. Cal. Nov. 5, 2012) (“[g]ang
 14 affiliation in California prisons is like any of the other many forms of misconduct in prison that
 15 can affect the ultimate length of time the prisoner spends in prison”); *Nevarez v. Lewis*, No. C 12-
 16 1912, 2012 U.S. Dist. LEXIS 119966 at *27 (N.D. Cal. Aug. 23, 2010) (“[g]ang affiliation is
 17 viewed as ongoing misconduct by prison officials and state courts”). CDCR cannot have it both
 18 ways: if SHU confinement is punishment triggered only by the date of in-prison gang
 19 membership or association for *ex post facto* purposes, *see id.*, it cannot also be considered
 20 “administrative” for due process purposes.

21 Thus, each time a prisoner is validated or revalidated as a gang associate (both of which
 22 result in six years in the PB-SHU), he is constitutionally entitled to a *Wolff*-type hearing. It is
 23 indisputable that Plaintiffs have received no such hearings, SAC ¶¶ 96-122, and CDCR does not
 24 and cannot argue to the contrary.⁷

25
 26
 27
 28 ⁷ Nor will such hearings occur under CDCR’s pilot program, *see infra*, section III.

1 **C. Even if SHU Assignment is Administrative, Plaintiffs Have Been Denied**
 2 **Notice and Periodic Review Under *Hewitt***

3 Even if Defendants are correct that Plaintiffs’ segregation is administrative in nature,
 4 Plaintiffs are still entitled to notice and an opportunity to present their views prior to that
 5 segregation. *Hewitt v. Helms*, 459 U.S. 460, 476 (1983). Moreover, “[a]dministrative
 6 segregation may not be used as a pretext for indefinite confinement of an inmate,” and periodic
 7 review is required. *Id.* at 477 n.9. Defendants fail to respond to Plaintiffs’ well-pleaded
 8 allegations that they have been deprived of both notice and adequate periodic review, instead
 9 asserting that Plaintiffs’ due process claim is based only on their lack of gang-related rules
 10 violations or illegal acts. *See* MTD at 13, 14. This crudely misrepresents Plaintiffs’ actual claim.

11 **1. Periodic Reviews of Plaintiffs’ SHU Confinement Are Too Infrequent**

12 Defendants do not dispute that Plaintiffs are entitled to timely reviews of their placement
 13 in the SHU under *Hewitt*, or that these reviews must be “meaningful.” *Williams v. Hobbs*,
 14 662 F.3d 994, 1009 (11th Cir. 2011). While precedent is not yet clear as to how frequently
 15 review must occur, annual review is too infrequent. *Toussaint v. McCarthy*, 801 F.2d 1080, 1101
 16 (9th Cir. 1986), *see also Alston v. Cahill*, No. 3:07-cv-473, 2012 U.S. Dist. LEXIS 112982 at *28
 17 (D. Conn. Aug. 10, 2012) (“annual reviews are likely too infrequent to satisfy the requirements of
 18 *Hewitt*”). Here, Plaintiffs allege that, unless they debrief, their only review that could possibly
 19 result in their release from the SHU is the so-called “inactive review” that occurs every *six*
 20 years – far longer than in other state or federal prison systems. SAC ¶ 99.

21 Nor does the classification committee that reviews the prisoner’s status every 180 days,
 22 *see* CAL. CODE REGS. tit. 15, § 3341.5(c)(2)(A)(1), cure this defect. Unless a prisoner is willing
 23 to debrief, these reviews offer no possibility of release from the SHU. SAC ¶¶ 96, 97. No
 24 examination of continued gang activity or association occurs, nor is there any assessment of
 25 whether the prisoner’s behavior requires continued SHU placement. *Id.* ¶ 98. Indeed, the *only*
 26 way a prisoner can participate in, or be released from the SHU pursuant to this purported review
 27 process, is by debriefing. *Id.* ¶¶ 97, 120. But as Plaintiffs have plausibly alleged, and as courts
 28 have recognized, debriefing is not only untenable for many prisoners, but it unreasonably

1 conditions release from inhumane conditions on cooperation that places prisoners and their
 2 families in significant danger of retaliation.⁸ *Id.* ¶ 7; *Griffin*, No. C-98-21038 (“[r]espondents’
 3 refusal to reconsider the classification of former gang members who are unwilling to risk
 4 retaliation, such as Petitioner, renders those inmates’ segregation not merely indeterminate, but
 5 effectively permanent”); *see also Wilkinson*, 545 U.S. at 227 (“Testifying against, or otherwise
 6 informing on, gang activities can invite one’s own death sentence”). Thus, the only reviews that
 7 pose even a theoretical possibility of release from the SHU are the inactive reviews, and those
 8 occur only every six years. SAC ¶ 99. This is constitutionally inadequate.

9 2. Inactive Reviews Fail To Provide Plaintiffs With Adequate Notice

10 According to CDCR, if a prisoner “has had no gang activity” for six years, he shall be
 11 considered “inactive,” and considered for release. CDCR, ADULT INSTITUTIONS, PROGRAMS, AND
 12 PAROLE OPERATIONS MANUAL, art. 22, § 52070.18.4 (2012); *see also* CAL. CODE REGS. tit. 15,
 13 § 3378(e). In order to provide Plaintiffs with meaningful notice, this inactive review “should
 14 provide a guide for future behavior (i.e., it should give the prisoner some idea of the requirements
 15 for, and his progress toward, more favorable placement).” *Toevs v. Reid*, 646 F.3d 752, 758 (10th
 16 Cir. 2011) (citing *Wilkinson*, 545 U.S. at 226 (noting approvingly that Ohio provided prisoners
 17 notice that “serves as a guide for future behavior”)); *see also Greenholtz v. Inmates of Neb. Penal*
 18 *and Corr. Complex*, 442 U.S. 1, 15 (1979) (noting that prisoners denied parole were given notice
 19 of the reason “as a guide to the inmate for his future behavior”).

20 The notice provided by the inactive reviews, however, is misleading and meaningless.
 21 Plaintiffs are told that they will be considered “inactive” if they engage in no gang “activity.”
 22 The plain meaning of these words suggests that in order to have engaged in gang “activity,” a
 23 prisoner must have taken some kind of action, or have performed a specific function or duty, on
 24 behalf of a gang. Similarly, a prisoner would logically become “inactive,” and therefore earn
 25 release from the SHU, if he has *not* performed any specific acts on behalf of a gang, and is merely

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 27 ⁸ The *Madrid* court noted that a “number of prison staff agree that inmates who debrief and gain release
 28 from the SHU are considered ‘snitches,’ and thus face serious risks of being attacked or even killed by
 other inmates,” but did not analyze the debriefing process in light of this threat of retaliation, perhaps
 because “no evidence of actual reprisals was introduced at trial.” 889 F. Supp. at 1241.

1 a member or associate without anything more. As the Supreme Court put it, “the distinction
 2 between ‘active’ and ‘nominal’ membership is well understood in common parlance.” *Scales v.*
 3 *United States*, 367 U.S. 203, 222-23, 225 (1961) (“active” member of the Communist Party must
 4 mean “more than the mere voluntary listing of a person’s name on Party rolls”).

5 Moreover, this common sense understanding of “activity” and “inactivity” was explicitly
 6 endorsed when CDCR officials publicly agreed in the 2004 *Castillo v. Almeida* settlement that
 7 “laundry lists” – that is, lists by confidential sources of alleged associates or members without
 8 reference to gang-related acts – would not be used to either validate a prisoner as a gang affiliate
 9 or deny him inactive status, and that “the confidential source must identify specific gang activity
 10 or conduct performed by the alleged associate or member before such information can be
 11 considered as a source item.” SAC ¶ 118-19; *Castillo*, C-94-2847 (N.D. Cal. 1994).

12 Despite the plain language of the regulations and the *Castillo* settlement, Plaintiffs who
 13 have engaged in no discernible gang activity have nonetheless been routinely denied inactive
 14 status.⁹ SAC ¶ 201. Defendants continue to deny prisoners inactive status based on laundry lists
 15 and on informants who identify no specific gang-related conduct. *Id.* ¶¶ 103-10 (source items
 16 include possession of laundry lists of purported gang members and associates, photocopied
 17 drawings, owning a book about George Jackson, and possessing a pamphlet in Swahili, “a banned
 18 language”). The terms “gang activity” and “inactive” as used by Defendants continue to be of
 19 indecipherable and apparently unbounded scope, meaning that prisoners who are not involved in
 20 any current gang activity are routinely retained in the SHU. As such, Plaintiffs have plausibly
 21 alleged that they are denied notice of what they can do to earn release from the SHU, and that
 22 they are given misleading notice that they can earn release from the SHU by refraining from
 23 engaging in gang activities.

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 28 ⁹ In some cases, like that of Plaintiffs Ashker and Troxell, Defendants have made a predetermined decision
 to deny inactive status until they either debrief or die. SAC ¶ 101.

1 **D. Plaintiffs Do Not Raise a Due Process Claim Arising from the Denial of**
 2 **Parole, Nor is Plaintiff Ashker’s Due Process Claim Precluded**

3 Defendants complain that Plaintiffs directly challenge their denial of parole, insisting that
 4 such a claim must be brought in a habeas corpus proceeding. MTD at 15-16. Defendants have
 5 already made this argument unsuccessfully, *see* Docket No. 132 at 6, and it is based on a clear
 6 misreading of the Second Amended Complaint. Plaintiffs raise allegations regarding parole as
 7 part of the liberty interest inquiry required under *Sandin v. Conner*, 515 U.S. 472, 484 (1995).
 8 *See also Wilkinson*, 545 U.S. at 215, 224 (utilizing an alleged “no parole” rule as part of the
 9 liberty interest analysis). Plaintiffs do *not* allege that the denial of parole constitutes an
 10 independent due process violation. SAC ¶¶ 193-202. Moreover, Plaintiffs seek no relief that
 11 would result in a grant of parole or release from prison; rather, they seek release from segregation
 12 in the SHU. SAC at p.46. As the Ninth Circuit has recognized, such relief is properly sought
 13 under § 1983. *See Toussaint*, 801 F.2d at 1103.

14 Finally, Defendants assert that Plaintiff Askher’s due process claim is precluded “to the
 15 extent he challenged CDCR’s gang validation procedures.” MTD at 15. Again, Defendants have
 16 already unsuccessfully made this argument. *See* Docket No. 132 at 5. The operative facts at
 17 issue in this case occurred after Mr. Askher’s prior due process case, and thus he was previously
 18 incapable of presenting the controversy pleaded in the current action. *See* Docket No. 133 at 5-6
 19 (citing RESTATEMENT (SECOND) OF JUDGMENTS § 24 cmt. a (1982), *Hiser v. Franklin*, 94 F.3d
 20 1287, 1288, 1292 (9th Cir. 1996), *cert. denied* 520 U.S. 1103 (1997)). Moreover, the claims at
 21 issue in the prior litigation are legally and substantively distinct from those alleged here. *Id.* at 7.
 22 His claims must therefore proceed.

23 **III. DEFENDANTS HAVE NOT ESTABLISHED THAT PLAINTIFFS’**
 24 **PROCEDURAL DUE PROCESS CLAIM IS MOOT OR THAT THE CASE**
 SHOULD BE STAYED

25 Along with dismissal for failure to state a claim, Defendants also urge the Court to dismiss
 26 Plaintiffs’ procedural due process claim as moot or, in the alternative, to stay the claim for some
 27 unspecified duration. Because Defendants have not met the heavy burden of proving mootness,
 28 and because the equities do not support a stay, the Court should deny this motion.

1 **A. Defendants Fail To Meet their Heavy Burden of Proving Mootness**

2 Defendants argue that Plaintiffs’ due process claim is mooted by CDCR’s voluntary
 3 implementation in October 2012 of a two-year pilot program that temporarily alters SHU review
 4 procedures. The burden of demonstrating mootness “is a heavy one,” and requires a showing that
 5 a live controversy no longer exists. *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953),
 6 *Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851, 853-54 (9th Cir. 1985). Defendants
 7 fail to meet this burden, as a mootness dismissal would sacrifice Plaintiffs’ well-pleaded
 8 challenge without any assurance of permanent or meaningful change to PB-SHU practices.

9 First, and most fundamentally, Defendants’ mootness argument is ill-conceived, as the
 10 pilot program is explicitly temporary; it expires by its own terms in October of 2014. *See* Docket
 11 No. 161-1 (STG Pilot Program Information Memorandum) at 6 (“The pilot program will remain
 12 in effect for a 24-month period from the date it is filed with the Secretary of State, at which time
 13 it will lapse by operation of law or will be promulgated through the Administrative Procedure
 14 Act.”). Moreover, not a single Plaintiff has yet experienced any change in his situation, or any
 15 review, as a result of the pilot program. To the contrary, the old system continues: in January of
 16 2013 Plaintiff Troxell received Defendants’ decision denying him inactive status under the old
 17 inactive review process, not the pilot program. *See*, Lobel Declaration ¶¶ 2-3. Defendants insist
 18 that each Plaintiff’s status will be reviewed under the pilot program, but they do not say *when*, nor
 19 is it clear that CDCR will be able to complete the necessary reviews before the pilot program
 20 sunsets.

21 Even if Defendants are correct that the program will “enhance[e] considerations of due
 22 process,” (MTD at 10), it cannot moot Plaintiffs’ claim, as “voluntary cessation of allegedly
 23 illegal conduct does not make a case moot.” *Lindquist*, 776 F.2d at 854. So long as a “defendant
 24 is free to return to its illegal action at any time,” the case is not moot. *FTC v. Affordable Media,*
 25 *LLC*, 179 F.3d 1228 (9th Cir. 1999) (internal quotation omitted). Rather, mootness requires a
 26 Defendant to show that ““subsequent events [have] made it absolutely clear that the allegedly
 27 wrongful behavior cannot reasonably be expected to recur.”” *Id.* (quoting *Norman-Bloodsaw v.*
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1 *Lawrence Berkeley Laboratory*, 135 F.3d 1260, 1274 (9th Cir. 1998)); *Friends of the Earth,*
 2 *Inc. v. Laidlaw Env'tl. Servs.*, 528 U.S. 167, 189 (2000).

3 Defendants cannot meet this exacting standard. First, it is indisputable that Plaintiffs'
 4 alleged due process violation has not yet been corrected, as Plaintiffs have not yet been reviewed
 5 under the pilot program. And the pilot program expires by its own terms two years from its
 6 effective date. *See* Docket No. 161-1 at 6. Absent affirmative action extending the program, in
 7 October of 2014 the law requires CDCR to return to the gang-validation policies described in
 8 Plaintiffs' complaint.

9 CDCR has not said how it will determine whether the program should be extended.
 10 Instead, Defendants provide a self-serving representation that "CDCR does not intend to return to
 11 its enforcement of the regulations challenged by Plaintiffs," MTD at 10, and an even more
 12 equivocal assertion by a CDCR annuitant that he "believe[s]" that CDCR will adopt the program,
 13 Docket No. 161 at ¶ 10. This simply does not establish mootness. *See, e.g., W.T. Grant,*
 14 *345 U.S. at 632 n.5, 633* (rejecting mootness claim where "defendants told the court that the
 15 [challenged] interlocks no longer existed and disclaimed any intention to revive them," because
 16 "[i]t is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of
 17 repentance and reform").¹⁰ Unless and until CDCR permanently implements a constitutionally
 18 sufficient program, Plaintiffs' due process challenge to the current procedures remains live.

19 Moreover, even if permanent implementation of the pilot program does occur, it certainly
 20 does not provide the *Wolff* hearings the law requires, and it is entirely unclear how it will affect
 21 Plaintiffs. Indeed, the pilot program looks surprisingly like the policies described in Plaintiffs'
 22 Second Amended Complaint. Under both, "confirmed STG behavior or intelligence" used to
 23 validate prison gang affiliates and subject them to indefinite SHU confinement may merely
 24 involve possession of artwork or a photograph. *Compare* Docket No. 161-1 at § 200.2 *and*
 25 Docket No. 161-2 at § 600.1 *with* SAC ¶¶ 104, 105, 107, 108 (plaintiffs denied inactive status
 26 based on possession of artwork). The pilot program still allows for gang validation in the absence

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 28 ¹⁰ Plaintiffs have every reason to be skeptical of CDCR's stated intentions with respect to extending the
 pilot program given CDCR's failure to implement the *Castillo* settlement. *See supra*, section II.C.

1 of proven gang-related misconduct or a proper hearing. *See* Docket No. 161-2 at § 600.3. And
2 while the pilot program does create a new committee to review validations, those “reviews” will
3 nevertheless be conducted by the same CDCR officials, applying the same criteria proven to be
4 merely a rubber stamp under the old framework. SAC ¶¶ 96, 116, 120 (alleging routine
5 revalidation without evidence of gang activity).

6 Indeed, courts in this District have denied nearly identical mootness arguments based on
7 prior revisions to CDCR’s gang-validation procedures. *See, e.g., Griffin*, No. 98-21038 at *4-5
8 (“a change in procedures does not moot a case when the underlying constitutional issue
9 remains Here, Petitioner maintains that . . . no amount of evidence of disassociation from a
10 gang will persuade [CDCR] to release an inmate from the SHU The mere existence of
11 procedures by which Respondents could release him without debriefing does not by itself negate
12 that argument”). Similarly, the mere existence of temporary policies that *could* be used to release
13 Plaintiffs into the general population after completing a four-year step-down program does not
14 eviscerate the live controversy presented by their due process claims. Plaintiffs have not alleged
15 that CDCR is incapable of releasing them from the SHU; as in *Griffin*, they allege that for
16 decades Defendants have denied them inactive status and they expect nothing to change.

17 The cases on which Defendants rely do not support their mootness argument. In *Green v.*
18 *Mansour*, 474 U.S. 64-67 (1985), mootness was only established because it was undisputed that
19 there was a permanent amendment to the statutory provisions at issue that explicitly addressed
20 and cured the challenged deficiencies. While CDCR’s pilot program also has “the force of law”
21 (MTD at 10), the very terms of the regulations make it temporary. And in *Burke v. Barnes*,
22 479 U.S. 361, 363 (1987), a challenge to the President’s effort to “pocket veto” a bill became
23 moot when the bill expired on its own terms while the case was on appeal. Here, by contrast, the
24 temporary pilot program neither appears to cure the challenged aspects of CDCR’s gang-
25 validation procedures, nor does it permanently replace the procedures of which Plaintiffs
26 complain.

1 **B. A Stay is Not Warranted**

2 Defendants argue in the alternative that Plaintiffs’ due process claims should be stayed
3 pending “full implementation of the STG pilot program.” MTD at 11. Defendants are silent as to
4 when that will occur.

5 A stay is inappropriate. As Defendants concede, key considerations in assessing the
6 propriety of a stay are preserving judicial economy and avoiding potential harm to the parties and
7 the public interest. *Id.*; *Dependable Highway Express v. Navigators Ins. Co.*, 498 F.3d 1059,
8 1066-67 (9th Cir. 2007). These interests are met by allowing this case to proceed.

9 First, the parties and the Court will expend resources resolving Plaintiffs’ Eighth
10 Amendment claims irrespective of whether the due process claims are stayed. Bifurcating the
11 case would result in inefficient, sequential discovery, as the facts relating to both claims must be
12 discovered from the same source. *See, e.g., Tokuyama v. Vision Dynamics*, No. 08-2781, slip op.
13 at 5 (N.D. Cal. Oct. 3, 2008) (denying motion for stay in part because of remaining counterclaim);
14 *IMAX Corp. v. In-Three, Inc.*, 385 F.Supp.2d 1030, 1032-33 (C.D. Cal. 2005) (same); *Enprotech*
15 *Corp. v. Autotech Corp.*, No. 88-4853, 1990 WL 37217, *1-2 (N.D. Ill. Mar. 16, 1990) (denying
16 motion for stay pending outcome of patent reexamination proceedings because proceedings
17 would not resolve claim for inequitable conduct).

18 Second, “‘if there is even a fair possibility that the stay . . . will work damage to someone
19 else,’ the stay may be inappropriate absent a showing by the moving party of ‘hardship or
20 inequity.’” *Dependable Highway Express*, 498 F.3d at 1066 (*quoting Landis v. North Am. Co.*,
21 299 U.S. 248, 255 (1936)). Here, Plaintiffs may continue to suffer abominable conditions in
22 solitary confinement while a stay is in effect. Defendants, on the other hand, can only point to the
23 expenditure of resources on the litigation if a stay is not granted. “[B]eing required to defend a
24 suit . . . does not constitute a ‘clear case of hardship or inequity’ within the meaning of *Landis*.”
25 *Id.* (*quoting Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005)).

26 In conclusion, it is not clear whether the pilot program will significantly alter the practices
27 complained of in Plaintiffs’ claim. Discovery, rather than a stay, is appropriate to discern this
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