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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**

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

Case No.: 4:09-cv-05796-CW
CLASS ACTION
**PLAINTIFFS' NOTICE OF
MOTION; MOTION FOR LEAVE
TO FILE A SUPPLEMENTAL
COMPLAINT; and MEMORANDUM
OF POINTS AND AUTHORITIES**
Judge: Honorable Claudia Wilken

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19 ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that, on February 12, 2015 at 10:00 a.m., or as soon thereafter as
21 the matter may be heard before the Honorable Claudia Wilken, Plaintiffs will and hereby do move
22 this Court for leave to file a Supplemental Complaint. This motion is brought pursuant to Rule
23 15(d) of the Federal Rules of Civil Procedure, and Local Rule 7-2, and is supported by this Notice
24 of Motion and Motion, the Memorandum of Points and Authorities below, the proposed
25 Supplemental Complaint attached hereto as Exhibit A, the papers and pleadings on file in this
26 action, and such other oral and documentary evidence as may come before the Court upon the
27 hearing of this matter. In accordance with Local Rule 6-1, the parties are also filing a stipulation
28

1 requesting an enlarged briefing period, under which Defendants would oppose the motion on
2 January 15, 2015, and Plaintiffs would reply on January 29, 2015. As required by Local Rule 7-11,
3 Plaintiffs have met and conferred with opposing counsel, and they oppose this motion.

4 Dated: December 11, 2014

5 Respectfully submitted,

6
7 /s/ Rachel Meeropol
8 RACHEL MEEROPOL (*pro hac vice*)
9 Attorney for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Plaintiffs seek leave to supplement their complaint under Federal Rule of Civil Procedure
5 15(d), adding allegations of illegal actions by Defendants which postdate the Second Amended
6 Complaint. *See* Dkt. No. 136 (Second Amended Complaint). The proposed supplemental
7 complaint is attached hereto as Exhibit A. New allegations appear in blue print, for the Court's
8 convenience, and can be found at paragraphs 177-226, 253-66, and in the Prayer for Relief. These
9 proposed supplemental allegations are necessary to ensure the complete adjudication of the
10 conflict between the parties, serve Rule 15(d)'s interest in judicial economy and efficiency, and
11 raise no issues of prejudice, undue delay, futility, or bad faith.

12 **II.**

13 **PROCEDURAL HISTORY & PROPOSED SUPPLEMENTAL ALLEGATIONS**

14 This litigation was commenced on December 9, 2009 by *pro se* litigants challenging, *inter*
15 *alia*, the absence of any meaningful review of their placement in solitary confinement, and the
16 inhumane conditions of confinement to which they were subjected for more than ten years at
17 Pelican Bay's SHU. *See* Dkt. No. 1. Plaintiffs filed their first amended complaint on May 21,
18 2010. *See* Dkt. No. 10. After retaining counsel, Plaintiffs were granted leave to file a second
19 amended complaint substantially narrowing their claims and the number of defendants. *See* Dkt.
20 No. 136. In April 2013, Defendants' motion to dismiss was denied. *See* Dkt. No. 191. Plaintiffs
21 were granted class certification on June 2, 2014. Dkt. No. 317.

22 Discovery has been underway since 2013, with the exception of a ninety-day stay while the
23 parties engaged in settlement negotiations. *See* Dkt. No. 309 (Stipulation Staying Discovery).
24 The discovery stay was lifted on June 4, 2014 after settlement negotiations proved unsuccessful.
25 *See* Dkt. No. 318 (Case Management Order). At that point, the Court set a fact discovery cut-off
26 of November 28, 2014, with expert discovery to close on May 1, 2015, and dispositive motions to
27 be fully briefed by August 27, 2015. *Id.* A trial date was set for December 7, 2015. *Id.* On
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1 November 20, 2014, the Court granted Plaintiffs a short extension of some discovery deadlines,
2 resulting in a new fact deposition cut-off of December 29, 2014, and a new expert discovery
3 deadline of May 15, 2015. *See* Dkt. No. 339 (Order Granting in Part Plaintiffs' Motion to Amend
4 the Schedule and Denying Plaintiffs' Motion for Leave to File a Motion for Partial Summary
5 Judgment). The Court did not alter the dates for dispositive motions or trial. *Id.*

6 Shortly after the filing of the Second Amended Complaint in September of 2012,
7 Defendants established a pilot "Step Down Program," which altered many aspects of California's
8 gang validation process. *See* Dkt. No. 191 (Order Denying Mot. to Dismiss ("MTD Order")) at 5-
9 6. The pilot program was made permanent on October 17, 2014, when Defendants published final
10 regulations amending Title 15.¹ The new regulations change the process and criteria for validating
11 California prisoners as "Security Threat Group" affiliates, and placing such individuals in the
12 Pelican Bay SHU. *Id.* They also codify a five step program through which a validated prisoner
13 may eventually earn release from solitary confinement. *See* CAL. CODE REGS. tit. 15, § 3000
14 (2014) (defining "Step Down Program"). While the new regulations implement many changes,
15 many things remain the same: most importantly, the Step Down Program continues California's
16 unique commitment to prolonged solitary confinement for gang affiliates who have committed no
17 violent acts, nor other serious misconduct while in prison. Indeed, Steps One through Four all
18 require SHU confinement. *Id.* (defining "Step Down Program, Step 1 and 2" and "Step Down
19 Program, Step 3 and 4.")

20 Starting in 2012, Defendants began convening Departmental Review Board (DRB)
21 hearings to individually review every gang-validated prisoner housed in the Pelican Bay SHU (and
22 every other California SHU) to determine where to place them in the Step Down Program. *See*
23 Proposed Supplemental Complaint ("SC") ¶ 193. Nine of ten named Plaintiffs received a DRB
24 between March 2014 and October 2014, and were subsequently placed in one of the five possible

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26
27 ¹ The new regulations are available at http://www.cdcr.ca.gov/Regulations/AdultOperations/docs/NCDR/2014NCR/14-02/Final_Text_of_Adopted_Regulations_STG.pdf (State of California
28 Office of Administrative Law, Notice of Approval of Regulatory Action: CAL. CODE REGS. tit. 15 (2014)).

1 Steps. *Id.* ¶ 195-99. The tenth Plaintiff, Luis Equivel, has not yet received a DRB hearing. *Id.* ¶
2 195.

3 As a result of their DRBs, Plaintiffs Franco and Ashker were placed in Steps One and
4 Two, respectively, and thus remain detained in the Pelican Bay SHU under substantially the same
5 conditions as are described in the Second Amended Complaint. SC ¶¶ 183, 196. Four named
6 Plaintiffs were placed in Steps Three or Four and transferred to the California Correctional
7 Institute at Tehachapi (“Tehachapi”) SHU, where they remain in solitary confinement under
8 substantially similar conditions to those at the Pelican Bay SHU. *Id.* ¶ 197, 198, 202, 203. At the
9 Tehachapi SHU, Plaintiffs Dewberry, Ruiz, Troxell, and Franklin (“Supplemental Plaintiffs”) are
10 confined to their cells for an average of 22 to 23 hours a day, with virtually no opportunity for
11 normal social interaction, no regular telephone contact, no contact visits, and no congregate
12 recreation. *Id.* ¶¶ 186-89, 202-13. For these four individuals and dozens of other similarly situated
13 California prisoners, the cruel and unusual treatment they experienced in over ten years of
14 isolation, and its debilitating effects, have not abated, but instead continue under a different name
15 in a different prison. Indeed, some conditions at the Tehachapi SHU are even harsher than those
16 at the Pelican Bay SHU. *Id.* ¶ 203, 205.

17 Under the Court’s June 2, 2014 Order granting class certification, three of these
18 Supplemental Plaintiffs are not class representatives, or even class members, because they were
19 transferred from Pelican Bay prior to class certification, and the Second Amended Complaint
20 focuses only on conditions at Pelican Bay SHU.² Dkt. No. 317 at 13. Supplemental Plaintiffs thus
21 seek to supplement the complaint with allegations of the continuing serious injury caused by their
22 isolation at a new, similar SHU, after more than ten years of isolation at Pelican Bay. They also
23 seek to represent a class of similarly situated individuals.

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26 _____
27 ² Plaintiff Dewberry was transferred from Pelican Bay after this Court’s ruling on class
28 certification, and thus remains a class representative for the Second Amended Complaint despite
his subsequent transfer.

1 As explained at length below, allowing Plaintiffs to amend the complaint to add a
2 supplemental class is appropriate because the claim they seek to propound is tightly bound to the
3 current Eighth Amendment claim, and thus supplementing the complaint will serve Rule 15(d)'s
4 goal of judicial economy. Fed. R. Civ. P. 15(d); *Keith v. Volpe*, 858 F.2d 467, 471, 473 (9th Cir.
5 1988). Supplemental Plaintiffs will argue that isolation in a Step Three or Four SHU *combined*
6 with over ten years of isolation in the Pelican Bay SHU amounts to cruel and unusual punishment.
7 *See e.g.*, Dkt. No. 191 (MTD Order) at 9 (considering the length of Plaintiffs' exposure to
8 punishing conditions). Supplemental Plaintiffs *do not* seek to challenge conditions at Tehachapi
9 SHU *on their own*, nor do these Plaintiffs seek to assert a procedural due process challenge to
10 California's new gang validation regulations; instead, they seek to prevent Defendants from
11 diminishing their Eighth Amendment challenge simply by changing the location of class
12 members' abuse. Without leave to supplement, Defendants will evade Court review of a major
13 aspect of California's ongoing and inhumane practice of prolonged solitary confinement, even
14 while the abuse of Plaintiffs and the Supplemental class that began at Pelican Bay continues
15 elsewhere under Defendants' direction.³

16 Separate from the Supplemental Plaintiffs and class, Plaintiffs Johnson, Redd and Reyes,
17 who are now housed in Step Five, seek to supplement the complaint to apprise the Court of
18 relevant facts regarding their continuing individual claims. SC ¶¶ 215-17. While these individuals
19 continue to be held in harsh conditions (*see id.*), they do not seek to supplement the complaint for
20 the purpose of challenging those conditions, or certifying a class of other Step Five prisoners;
21 rather, they seek only to clarify their right to continue in this litigation as *individual plaintiffs*.
22 Despite the Court's ruling that Redd and Ruiz⁴ cannot serve as class representatives, their

23 _____
24 ³ Of course, Supplemental Plaintiffs could bring a separate suit challenging conditions of
25 confinement at Tehachapi SHU under the Eighth Amendment, but such a case would need to
26 replicate – before a new judge – much that is currently before this Court, resulting in exactly the
27 lack of judicial economy that Rule 15(d) is designed to avoid.

28 ⁴ Like Dewberry, *see supra*, note 2, Johnson remains a class representative regardless, as he was
detained at Pelican Bay SHU at the time the Court certified the class and the class representatives.
See Dkt. 317 at 21.

1 individual claims for injunctive relief remain live given the very real risk that they will be returned
 2 to the Pelican Bay SHU due to their failure to meet unwritten and unclear Step Down “program
 3 requirements,” and because their transfer to less onerous, but still harsh, conditions has not
 4 completely eradicated the effects of their prolonged Pelican Bay isolation. *Id.* ¶¶ 190-92, 216-17,
 5 *see also Demery v. Arpaio*, 378 F.3d 1020, 1026 (9th Cir. 2004) (injunctive relief does not become
 6 moot by defendants’ voluntary cessation of allegedly wrongful behavior unless it is “absolutely
 7 clear that the allegedly wrongful behavior cannot reasonably be expected to recur” and interim
 8 events have eradicated the effects of the alleged violation) (internal citations omitted).⁵

9 As discussed at length below, leave to supplement a complaint shall be freely granted “as
 10 of course, unless some particular reason for disallowing [it] appears.” *Keith v. Volpe*, 858 F.2d
 11 467, 473 (9th Cir. 1988). Because the current motion serves Rule 15(d)’s interest in judicial
 12 economy, and does not raise issues of prejudice, undue delay, futility or bad faith, Plaintiffs’
 13 motion for leave to file a supplemental complaint should be granted.

14 III.

15 ARGUMENT

16 A. Granting Plaintiffs’ Motion for Leave to File a Supplemental Complaint Will 17 Promote Judicial Efficiency.

18 Pursuant to Federal Rule of Civil Procedure 15(d), a party may seek leave to supplement a
 19 complaint where the supplemental pleadings: (1) set forth “transactions, occurrences or events that

20 _____
 21 ⁵ In his Nov. 21, 2014 discovery order, Magistrate Judge Vadas denied the part of Plaintiffs’
 22 motion to compel which sought Defendants’ responses to Plaintiff Franklin’s interrogatories. *See*
 23 Dkt. No. 340 (Order Granting in Part Plaintiffs’ Motion to Compel). Defendants had refused to
 24 answer the interrogatories on the ground that Franklin was no longer a *party* to the action, because
 25 this Court held that he could not serve as a class representative (nor a class member) given his
 26 transfer from Pelican Bay prison. *See* Dkt. No. 325 (Joint Letter re: Plaintiffs’ Motion to Compel
 27 Written Discovery Responses) at p 5. Whether or not this discovery ruling was correct, there has
 28 been no court order dismissing the transferred Plaintiffs from the case. It is Plaintiffs’ position
 that these individuals remain plaintiffs with live claims even under the allegations of the Second
 Amended Complaint unless and until Defendants move to dismiss them from the case, at which
 point they would be entitled to a judicial determination of whether their claims have been mooted
 by Defendants’ voluntary cessation of the illegal actions against them. Should the Court grant this
 motion, the supplemental individual allegations are intended to aid that analysis.

1 have happened since the complaint to be supplemented” and (2) where judicial economy and
2 efficiency is served by such pleadings. Fed. R. Civ. P. 15(d); *Keith v. Volpe*, 858 F.2d 467, 471,
3 473 (9th Cir. 1988).

4 Courts have broad discretion to allow plaintiffs to expand the scope of their existing
5 litigation and update their complaints. *See id.* Indeed, there is a strong public policy in favor of
6 allowing supplemental pleadings because they promote judicial economy and efficiency and allow
7 a more complete adjudication of the case or controversy. *See* Fed. R. Civ. P. 15, Notes of
8 Advisory Committee on Rules, 1963 Amendment; *Keith*, 858 F.2d at 473-74 (“so useful
9 [supplemental pleadings] are and of such service in the efficient administration of justice that they
10 ought to be allowed as of course, unless some particular reason for disallowing them appears...”);
11 *LaSalvia v. United Dairymen of Ariz.*, 804 F.2d 1113, 1119 (9th Cir. 1986) (quoting C.A. Wright
12 & A.R. Miller, *Federal Practice and Procedure* § 1504, at 536 (1971)), *McColm v. San Francisco*
13 *Housing Authority, et al.*, No. C 06-07378 CW, 2008 U.S. Dist. LEXIS 98348, at *1, *5 (N.D.
14 Cal. Nov. 24, 2008) (Wilken, J.).

15 To determine whether the supplemental pleadings would promote judicial economy and
16 efficiency, the Court should look to “whether the entire controversy between the parties could be
17 settled in one action.” *Planned Parenthood of Ariz. v. Neely*, 130 F.3d 400, 402 (9th Cir. 1997).
18 The scope of transactions, occurrences or events that can be alleged in a supplemental complaint is
19 not limitless, and plaintiffs cannot put forth separate, distinct claims from those alleged in the
20 complaint to be supplemented. *Ctr. for Food Safety v. Vilsack*, No. C 10-04038 JSW, 2011 U.S.
21 Dist. LEXIS 21275, at *1, *15 (N.D. Cal. Feb. 18, 2011); *see also Bittel Tech., Inc. v. Bittel USA,*
22 *Inc.*, No. C10-00719 HRL, 2011 U.S. Dist. LEXIS 33146, at *1, *11-12 (N.D. Cal. Feb. 18, 2011).
23 Although newly alleged matters “need not arise out of the same transaction or occurrence as the
24 allegations contained in the original complaint,” they must bear “some relationship” to the subject
25 matter of the complaint to be supplemented. *Keith*, 858 F.2d at 474. This is a “minimal test.”
26 *Pratt v. Rowland*, 769 F. Supp. 1128, 1130-31 (N.D. Cal. 1991), *overruled on other grounds by* 65
27 F.3d 802 (9th Cir. 1995).

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1 The leading case in this area is *Griffin v. Cnty. School Bd. Of Prince Edward*, 377 U.S.
2 218, 221 (1964), in which black school children challenged Virginia's school segregation laws.
3 Defendants were ordered to integrate their schools. *Id.* at 223. Instead of doing so, one county
4 closed down their public schools altogether, giving tax credits and other subsidies to white county
5 residents so that their children could attend segregated private schools. *Id.* Ten years after the
6 initial case was filed, the Supreme Court allowed plaintiffs to supplement their complaint to
7 address this continuing school segregation, because defendants' new conduct gave rise to "the
8 same old cause of action arising out of the continued desire of colored students in Prince Edward
9 County to have the same opportunity for state-supported education afforded to white people." *Id.*
10 at 226-27. Such amendments are "well within the basic aim of [Rule 15(d)]." *Id.* at 222, 224-27;
11 *see also Raduga U.S.A. Corp. v. United States Dept. of State*, 440 F. Supp. 2d 1140, 1151 (S.D.
12 Cal. 2006) (allowing plaintiffs to supplement a complaint challenging the State Department's
13 failure to act on a visa application with claims that the subsequent visa denial was retaliatory).

14 Just as in *Griffin*, Defendants' transfer of a class of prisoners from solitary confinement in
15 the Pelican Bay SHU to solitary confinement in the Tehachapi SHU gives rise to "the same old
16 cause of action" stemming from the prisoners' continued desire to be released from solitary
17 confinement. 377 U.S. at 226-27. Plaintiffs do not seek to bring a distinct, new claim focused
18 solely on conditions at Step Three and Four SHUs. Rather, their claim is that ten years in solitary
19 confinement at Pelican Bay *followed by* transfer to substantially similar solitary confinement at
20 another California SHU violates the Eighth Amendment. This claim is closely related to
21 Plaintiffs' initial Eighth Amendment claim, and thus supplementation of the pleadings is
22 appropriate. *See Pratt*, 769 F. Supp. 1128 at 1130-31 (granting plaintiff leave to supplement
23 complaint regarding retaliation and mistreatment at Folsom prison with allegations of continuing
24 and similar mistreatment after transfer to Tehachapi State Prison).

25 Supplementing the complaint is also efficient, as it will avoid the need to file new case, or
26 a new class action, on behalf of individuals transferred from Pelican Bay solitary confinement to
27 solitary confinement in Step Three or Four of the Step Down Program. *See PNY Tech., Inc. v.*
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1 *SanDisk Corp.*, Case No. 11-cv-04689-WHO, 2014 U.S. Dist. LEXIS 9858, at *10 (N.D. Cal. Jan.
 2 27, 2014) (leave to supplement serves judicial efficiency where new claims are “related” to old,
 3 and denying leave to supplement would likely result in plaintiff filing a new case, “thereby
 4 burdening another judge with new claims related to ones already before the Court.”). The judicial
 5 resources that would be expended by the filing of separate individual actions militate in favor of
 6 granting leave to file the supplemental complaint.

7 **B. Public Policy Favors Supplemental Pleadings, and Absent a Reason Not to,
 8 Supplemental Pleadings Should be Freely Granted.**

9 Leave to supplement the complaint should be freely given ‘as of course, unless some
 10 particular reason for disallowing [it] appears.’ *Keith*, 858 F.2d at 473 (quoting *New Amsterdam*
 11 *Casualty Co. v. Waller*, 323 F.2d 20, 28-29 (4th Cir. 1963)); *Pratt*, 769 F. Supp. at 1131.
 12 Plaintiffs’ motion does not raise issues of (1) prejudice, (2) undue delay, (3) futility or (4) bad
 13 faith. *See Verinata Health, Inc. v. Sequenom, Inc.*, No. C 12-00865 SI, 2014 U.S. Dist. LEXIS
 14 67221 1, at *5 (N.D. Cal. May 14, 2014); *Candler v. Santa Rita Cnty. Jail Watch Commander, et*
 15 *al.*, Case No. C 11-1992 CW (PR), 2013 U.S. Dist. LEXIS 141846 (N.D. Cal. Sept. 30, 2013)
 16 (Wilken, J.); *Riley v. Corr. Officers S. Roach and E. Morris*, No. C 10-02088 CW (PR), 2012 U.S.
 17 Dist. LEXIS 46543, at *1, *7-8 (N.D. Cal. Mar. 31, 2012) (Wilken, J.); *Bittel Tech.*, 2011 U.S.
 18 Dist. LEXIS 33146, at *12. Leave to supplement should therefore be granted.

19 **1. Plaintiffs’ proposed supplemental complaint will not prejudice
 20 Defendants.**

21 Defendants have the burden of showing that a proposed supplement would cause prejudice.
 22 *PNY Tech.*, 2014 U.S. Dist. LEXIS 9858, at *1, *15-16 (quoting *DCD Programs, Ltd. v. Leighton*,
 23 833 F.2d 183, 187 (9th Cir. 1987)). Here, the only possible prejudice to Defendants stems from
 24 the existence of an additional claim, which will admittedly require some limited additional
 25 discovery and related delay. These issues do not support denial of leave to supplement. *See*
 26 *Keith*, 858 F.2d at 475-76 (holding that new claims are permitted under Rule 15(d)); *PNY Tech.*,
 27 2014 U.S. Dist. LEXIS 9858, at *15-16; *Verinata Health*, 2014 U.S. Dist. LEXIS 67221, at *8
 28 (holding that the potential for the proposed supplemental complaint to effect the pre-trial schedule

1 is “not a valid reason for denying plaintiffs’ motion” to supplement the complaint); *Ally Bank, et*
2 *al. v. Castle, et al.*, Case No. 11-CV-896 YGR, 2012 U.S. Dist. LEXIS 118449, *1, *7 (N.D. Cal.
3 Aug. 20, 2012) (holding that the “addition of new parties and claims, while expanding the scope of
4 the litigation, would not interfere with Defendants’ ability to mount a defense.”); *Genentech, Inc.*
5 *v. Abbott Labs.*, 127 F.R.D. 529, 531 (N.D. Cal. 1989) (“Defendant [] argues that additional
6 discovery will postpone the trial date. Such delays do not constitute undue prejudice to the
7 defendant.”).

8 While discovery in this case had been ongoing for quite some time, trial is still over a year
9 away. Supplementing the complaint would undoubtedly result in some delay, and possibly a new
10 trial date, but such delay is not undue or prejudicial, given that Plaintiffs have moved as promptly
11 as possible (see section 2, below). Moreover, Plaintiffs would welcome a tight supplemental
12 schedule, limiting any delay to a matter of months, and would be open to other creative solutions
13 to minimize disruption of the current schedule. When balanced against the inefficiencies that
14 would result from two separate trials regarding overlapping classes and facts, such minimal delay
15 does not support denial of Plaintiffs’ motion for leave.

16 **2. Plaintiffs did not unduly delay in seeking to supplement the complaint.**

17 The issue of undue delay turns on “whether the moving party knew or should have known
18 the facts and theories raised by the amendment in the original pleading” before they sought leave
19 to amend the complaint. *Jackson v. Bank of Haw.*, 902 F.2d 1385, 1388 (9th Cir. 1990), *see also*
20 *PNY Tech.*, 2014 U.S. Dist. LEXIS 9858, at *11-14 (holding that plaintiffs did not unduly delay in
21 seeking to supplement the complaint, where plaintiffs were not aware of “full extent” of
22 underlying facts when original pleading filed).

23 California’s Step Down Program was first implemented in pilot form in October 2012.
24 Proposed amendments were published twice in 2014. An altered program was finally codified into
25 law on October 17, 2014. *See* SC ¶ 177. Because the pilot program post-dated the Second
26 Amended Complaint (filed in September of 2012), Plaintiffs were unable to include it in that prior
27 pleading. And judicial efficiency would not have been served by subsequently supplementing the
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1 complaint to include allegations of a new *proposed* regulation, which, by virtue of its pilot nature,
2 would almost certainly change in subsequent months, thus requiring further supplementations. *Id.*
3 Upon publication of the final regulations governing Plaintiffs' current location and conditions of
4 confinement, Plaintiffs moved promptly, *within two months*, for leave to supplement.

5 Moreover, even if Plaintiffs could have moved to supplement the complaint prior to the
6 publication of the final regulations, it would have been difficult or impossible to do so prior to
7 learning the outcome of Plaintiffs' DRBs, which resulted in their placement on various steps, in
8 various conditions of confinement. The first Plaintiffs received DRBs in March 2014, but
9 Plaintiffs' DRBs continued in May, August, September and October of 2014. SC ¶ 195. Indeed,
10 one Plaintiff has not yet received a DRB to this day.⁶ Plaintiffs could not move to supplement the
11 complaint prior to gathering the facts necessary to allege that adequate class representatives and a
12 suitably numerous class of individuals was being subjected by Defendants to a continuing Eighth
13 Amendment violation at a new location. Plaintiffs moved to supplement promptly once these facts
14 became available.

15 3. Plaintiffs' proposed supplemental complaint is not futile.

16 A supplemental complaint is futile "where no set of facts can be proved which would state
17 a valid claim, or where the claim would be subject to dismissal." *George v. Jones*, No. C 06-2800
18 CW (PR), 2008 U.S. Dist. LEXIS 25506, at *1, *41-42 (N.D. Cal. Mar. 28, 2008) (Wilken, J.)
19 (citing *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988)) (denying leave to file
20 supplemental complaint finding that the plaintiff's claims were futile because he made conclusory
21 allegations, which were "insufficient to state a claim under § 1983"); *see also Riley*, 2012 U.S.
22 Dist. LEXIS 46543, at *1, *7-8 (denying leave to supplement complaint finding that plaintiff's
23 new allegations in a § 1983 lawsuit for retaliatory treatment were futile, where plaintiff conceded
24 that defendant's new conduct was not retaliatory).

25 Plaintiffs' supplemental Eighth Amendment claim is not futile. The proposed
26 supplemental complaint sufficiently pleads violations of Plaintiffs' and putative class members'

27
28 ⁶ Plaintiff Esquivel has not yet received a DRB. SC ¶ 195.

1 rights under the Eighth Amendment. *See* SC ¶¶ 180-89, 202-13. Plaintiffs allege that the
2 “prolonged social isolation and lack of environmental stimuli” they suffered for over ten years at
3 Pelican Bay SHU (Dkt. No. 191 (MTD Order) at 9) continues at the Tehachapi SHU, causing
4 “serious psychological pain and suffering and permanent psychological and physical injury.” *Id.*;
5 SC ¶¶ 202-13, 257. The Court has already found these same allegations, limited to the Pelican
6 Bay SHU, plausible and sufficient to state a claim. Dkt. No. 191 (MTD Order) at 9. And, as the
7 Court has also already noted, Plaintiffs’ allegation that “CDCR officials knew of the risks of long-
8 term solitary confinement but ignored them for years,” is “sufficient to satisfy the deliberate
9 indifference requirement at the pleading stage.” *Id.*

10 Nor are individual Plaintiffs’ supplemental allegations futile, as injunctive claims do not
11 become moot by defendants’ voluntary cessation of allegedly wrongful behavior unless it is
12 “absolutely clear that the allegedly wrongful behavior cannot reasonably be expected to recur” and
13 interim events have eradicated the effects of the alleged violation. *See Demery*, 378 F.3d at 1026
14 (internal citations omitted). According to CDCR regulations, progression from step-to-step
15 requires “participation in program activities” including “completion of all required components /
16 curriculum.” SC ¶ 190. Yet the various programs, components and curriculums required for
17 successful completion of the Step Down Program are not enumerated in the regulations nor listed
18 in any public CDCR policy statements, and many do not yet exist. *Id.* ¶ 191. Prisoners who are
19 found guilty of an STG related Rules Violation Report (including such disciplinary offenses as
20 possessing photographs or contact information of other STG affiliates), who fail to successfully
21 participate in and complete the as-of-yet un-enumerated SDP program requirements, or who “fail
22 to maintain acceptable behavior” may be returned to a previous step. *Id.* ¶ 192. Plaintiffs thus face
23 a very real possibility of being returned to Pelican Bay or some other SHU. *See* 378 F.3d at 1027.
24 Moreover, while these individual Plaintiffs have been transferred to somewhat less onerous
25 conditions, their confinement is still harsh and they have not received the transitional
26 programming necessary to eradicate the effects of their prolonged Pelican Bay isolation. *Id.*

27
28

1 **4. Plaintiffs' proposed supplemental complaint is not sought in bad faith.**

2 Bad faith exists where litigants have a "wrongful motive," in seeking to supplement the
3 complaint, namely, to prolong the litigation by making baseless and repetitious amendments. *See*
4 *Jones v. Bates*, 127 F.3d 839, 847 n.9 (9th Cir. 1997). The record here allows no suggestion of
5 bad faith by Plaintiffs; they are simply prisoners who have been terribly abused for over a decade,
6 who seek judicial assistance despite a recent change in the location of their continuing abuse.

7 **IV.**

8 **CONCLUSION**

9 For the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion
10 for leave to file a Supplemental Complaint.

11 Dated: December 11, 2014

Respectfully submitted,

12 /s/ Rachel Meeropol

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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

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

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I. INTRODUCTION

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

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

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

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*,

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.
7

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.
14

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.
20

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

27 20. Plaintiff DANNY TROXELL (B76578) is a 59-year-old prisoner who has spent
28 over 26 years in solitary confinement, and 22 years at the Pelican Bay SHU due to his validation

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
28

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

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

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

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

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

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

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

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

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

27
28 51. Troxell's family has given up trying to visit him because of the distance and cost
of traveling to Pelican Bay and because non-contact visits are so upsetting. He has five
grandchildren and one great-grandchild, but has never met them.

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

8 65. The exercise pen is small and cramped, with high walls. Half of the roof is
9 partially covered with painted plexiglass and a metal mesh grate that obstructs direct sunlight; the
10 other half allows the only exposure Pelican Bay SHU prisoners ever have to the sky. Pelican Bay
11 is situated in one of the wettest areas of California, with an average rainfall of 67 inches. Rain
12 falls directly into the exercise pens, causing water to pool on the floor. The walls of the exercise
13 pen have accumulated mildew or mold, aggravating respiratory problems among the prisoners.
14

15 66. Until the 2011 hunger strike, there was no equipment whatsoever in the exercise
16 pen. Since then, prisoners have been provided one handball. Prisoners exercise alone, unless they
17 share their cell, in which case they are permitted to exercise with their cellmate. If a prisoner
18 with a cellmate wants to exercise alone to get a brief period of privacy, then his cellmate must
19 forfeit his opportunity to exercise.
20

21 67. Plaintiffs and other Pelican Bay SHU prisoners have absolutely no access to
22 recreational or vocational programming. While those prisoners who can afford them are allowed
23 to take correspondence classes, there has been no consistent access to proctors for exams that
24 would allow prisoners to get credit for their coursework. Until the 2011 hunger strike, prisoners
25 at the facility were banned from purchasing art supplies or hobby or crafting materials. Prisoners
26 who are discipline free for one year are now permitted to purchase and retain a limited amount of
27 art supplies.
28

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
25
26
27
28

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

9 76. Reyes suffers from several chronic medical ailments, including Sjogren's Disease,
10 for which he was prescribed effective medications; those medications have been discontinued at
11 the Pelican Bay SHU, and other medical treatment has also been withdrawn without explanation.
12

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

17 78. Despite these serious conditions, prisoners with medical concerns are routinely
18 told by prison officials that if they want better medical care for their conditions or illnesses, or
19 improved pain management, the way to obtain adequate care is to debrief.
20

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

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

26 81. The denial of adequate medical care at Pelican Bay is not isolated to a few doctors
27 or correctional officials, but is rather a longstanding pattern and practice which, on information
28

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

12 83. Indeed, beyond a brief intake screening upon their arrival to the SHU, the only
13 mental health assessment that many SHU prisoners receive occurs at Institutional Classification
14 Committee meetings, at which a mental health staff member is present. Each prisoner is asked
15 two standard questions: (1) whether he has a history of mental illness; and (2) whether he wants
16 to hurt himself or others. These questions are asked in front of the Warden, Correctional Captain,
17 and numerous other correctional staff. No further mental health evaluation occurs.
18

19 84. For these reasons, plaintiffs and class members have received inadequate mental
20 health care or none at all. Though prisoners may request mental-health services by filling out a
21 form, some plaintiffs have declined to seek any mental health care while incarcerated because of
22 concerns over lack of confidentiality. Others do not talk to mental health staff because those staff
23 members seem uncaring, and because officers can overhear sessions or are told of prisoners'
24 personal problems.
25

26 85. When one plaintiff actually requested mental health care, he was referred to a
27 "self-help" library book.
28

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

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

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

26
27 95. California's practice of placing people in long-term SHU confinement simply
28 because of gang association is unusual and does not comport with the general practice of other

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

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

21 99. The only review at which the classification committee team even purports to
22 determine whether the prisoner should be released from the SHU occurs once every six years. *See*
23 *id.* at § 3378(e). Therefore, all gang validated prisoners in the SHU must remain in solitary
24 confinement for six years without even the possibility of any review to obtain their release. This
25
26
27
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
27
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
10 134. Ashker experiences great feelings of anger, which he tries to control and suppress,
11 but this just deadens his feelings. He feels that he is "silently screaming" 24 hours a day.

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

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

20
21 137. So too, when Redd suppresses his anger, he starts to not feel anything at all and
22 becomes numb. He often "feels like a caged animal."

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

27
28 139. Plaintiffs also experience a range of other psychological symptoms stemming
from their confinement in the SHU, including hallucinations, anxiety disorder, hypersensitivity,
severe mood swings, violent nightmares and fantasies, and panic attacks. At least one plaintiff
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

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

10 142. These psychological symptoms are precisely those reported in the literature about
11 individuals placed in prolonged solitary confinement. But the extreme duration of plaintiffs' and
12 class members' confinement has meant that the isolative and emotionally numbing effects of
13 solitary confinement have become even more pronounced. Plaintiffs' symptoms are almost
14 identical to those described in psychological literature about the long-term effects of severe
15 trauma and torture.
16

17 143. Upon information and belief, numerous prisoners confined in the SHU for long
18 periods of time have developed mental illness, and some have committed or attempted suicide
19 while in the SHU. All prisoners confined in the SHU for prolonged periods have a significant
20 risk of descending into mental illness due to prolonged exposure to the conditions in the SHU.
21

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

27 145. Numerous plaintiffs also have serious physical ailments and illnesses caused or
28

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.

6
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.

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

21 149. The Special Rapporteur concluded that prolonged solitary confinement is
22 prohibited by the International Covenant on Civil and Political Rights (ICCPR) and the
23 Convention Against Torture (CAT), and that prolonged solitary confinement constitutes torture or
24 cruel, inhuman or degrading treatment or punishment. The Special Rapporteur has concluded that
25 even 15 days in solitary confinement constitutes a human rights violation.
26
27

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
of any kind, when such pain or suffering is inflicted by or at the instigation of or with the
consent or acquiescence of a public official or other person acting in an official capacity.

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

16 **E. Pelican Bay Hunger Strikes**

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

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

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

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

11 162. On September 26, 2011, the hunger strike resumed because prisoners lost faith that
12 CDCR would implement a revision of the regulations as it had promised. This time nearly 12,000
13 prisoners participated. The hunger strike ended on October 12, 2011, after CDCR assured the
14 prisoner representatives that it was working on the new regulations and would continue
15 conversations about other improvements sought by the prisoners.
16

17 163. On March 9, 2012, CDCR publicly issued a "concept paper" describing its
18 proposed changes to gang validation regulations. That document has been condemned by
19 prisoners and prisoner-rights advocates as making virtually no meaningful changes and, instead,
20 expanding the net of who may be incarcerated in the SHU. No new regulations have been
21 implemented to date.
22

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

27 **F. Class Allegations**
28

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.

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

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

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

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

27 **G. Supplemental Allegations**

1 177. In October 2012, Defendants established a pilot “Step Down Program” to replace
2 the inactive reviews described in paragraphs 99-110 herein. Two sets of proposed amendments to
3 the program were published in 2014. After more alterations, a revised version of the program
4 was made permanent on October 17, 2014, when Defendants published final regulations
5 amending Title 15.

6 178. The new regulations are available at
7 [http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2014NCR/14-](http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2014NCR/14-02/Final_Text_of_Adopted_Regulations_STG.pdf)
8 [02/Final_Text_of_Adopted_Regulations_STG.pdf](http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2014NCR/14-02/Final_Text_of_Adopted_Regulations_STG.pdf), and are incorporated by reference herein.

9 179. The new regulations alter the process and criteria for validating California
10 prisoners as “Security Threat Group” affiliates, and placing such individuals in the Pelican Bay
11 SHU. *Id.* They also codify a five step program through which a validated prisoner may
12 eventually earn release from solitary confinement. *See* CAL. CODE REGS. tit. 15, § 3000 (2014)
13 (defining “Step Down Program”).

14 180. The Step Down Program continues California’s attachment to prolonged solitary
15 confinement. Indeed, Steps One through Four all require SHU confinement. *Id.* (defining “Step
16 Down Program, Step 1 and 2” and “Step Down Program, Step 3 and 4.”

17 181. Each step is designed to be completed in 12 months, although it may be possible to
18 complete Steps One and Two in six months each. *Id.* at § 3378.3(b)(1) – (b)(3).

19 182. Upon successfully completing each step, the prisoner proceeds to Step Five, which
20 involves a minimum of 12-months observation in a general population unit. *Id.* at § 3378.3(b)(5).
21 The “general population” units used for Step Five prisoners are also highly restrictive.

22 183. Class members placed in Steps One and Two receive few privileges differentiating
23 their situation from that which existed prior to implementation of the new program. They remain
24 at Pelican Bay SHU, under all the punishing conditions described above, with no normal social
25

1 interaction, no access to contact visitation, and no regular telephone communication. *Id.* at §
2 3044(i)(2)(A)-(D).

3 184. However, prisoners do become eligible for *one* telephone call after six months in
4 Step One if they have met “program expectations” and stayed discipline free. Prisoners receive
5 one additional telephone call if they progress to Step Two. *Id.*

6 185. As has been the case for Pelican Bay SHU prisoners since the 2011 hunger strike,
7 Prisoners in Step One and Two receive one photograph of themselves to send to their families
8 after one year free of serious disciplinary behavior. *Id.*

9 186. Step Three involves only incremental differences in conditions. Rather than one
10 telephone call a year (as is allowed in Steps One and Two), a prisoner in Step Three may receive
11 two telephone calls over the year, six months apart. *Id.* Rather than one inmate package (as is
12 available at Steps One and Two), a prisoner in Step Three may receive two inmate packages. *Id.*
13 Rather than one photograph (as is available at Steps One and Two), a prisoner at Step Three may
14 receive two photographs, six months apart. *Id.*

15 187. Like prisoners in Pelican Bay SHU, prisoners in Step Three SHUs are isolated in
16 their cells an average of 22 to 23 hours a day, without any access to recreation or programming
17 outside a cage, or congregate meals.

18 188. Step Four, as well, involves only incremental differences in conditions. Rather
19 than two telephone calls a year, dependent on program progress, prisoners at Step Four may
20 receive four fifteen minute calls a year – one every 90 days. *Id.*

21 189. Like prisoners in the Pelican Bay SHU, prisoners in Step Four SHUs are isolated
22 in their cells for an average of 22 to 23 hours a day. *Id.* For the first six months at Step Four, they
23 have no access to congregate recreation or meals. *Id.* After six months of programming, Step Four
24 prisoners may be allowed yard access that “include[s] interaction with inmates of diverse
25
26
27
28

1 affiliations.” *Id.* Neither the regulations nor CDCR practices guarantees prisoners in Step Four
2 any minimum amount of time out of their cell, or in group activities.

3 190. According to CDCR regulations, progression from step to step requires
4 “participation in program activities” including “completion of all required components /
5 curriculum.” *Id.* at § 3378.3(a)(1)-(5), 3378.3 (b)(1)-(3).

6 191. The various programs, components and curriculums required for successful
7 completion of the Step Down Program are not enumerated in the regulations nor listed in any
8 public CDCR policy statements, and many do not yet exist.

9 192. Prisoners who are found guilty of an STG related Rules Violation Report,
10 (including such disciplinary offenses as possessing photographs or contact information of other
11 STG affiliates), fail to successfully participate in and complete the as-of-yet un-enumerated Step
12 Down Program requirements, or who “fail to maintain acceptable behavior” may be returned to a
13 previous step. *Id.*

14 193. Starting in 2012, defendants began convening Departmental Review Board
15 (DRB) hearings to individually review every gang-validated prisoner housed in the Pelican Bay
16 SHU and determine where to place them in the Step Down Program.

17 194. Thus far, approximately one third of gang-validated Pelican Bay SHU prisoners
18 have received a DRB hearing. Around 850 to 900 Pelican Bay SHU prisoners have yet to receive
19 a hearing. Of the 281 DRB hearings convened for Pelican Bay prisoners between 2012 and
20 October 2014, (a) 219 prisoners were placed in Step Five of CDCR’s Step Down Program; (b) 13
21 prisoners were placed in Step Four; (c) 11 prisoners were placed in Step Three; (d) 19 prisoners
22 were placed in Step Two; and (e) 18 prisoners were placed in Step One.

23 195. Every plaintiff, with the exception of Luis Esquivel, received DRBs between
24 March 2014 and October 2014.

1 196. As a result of their DRBs, plaintiffs Franco and Ashker have been retained in the
2 Pelican Bay SHU in Steps One and Two, respectively. There they continue to languish in extreme
3 isolation, with no hope of earning release into a general population unit in fewer than three or
4 four years, respectively.

5 197. Three plaintiffs – Dewberry, Ruiz, and Troxell – have been placed in Step Three
6 and transferred to the SHU at the California Correctional Institute at Tehachapi (“Tehachapi”).
7

8 198. One plaintiff, Franklin, was placed in Step Four and also transferred to the
9 Tehachapi SHU.

10 199. Three plaintiffs – Johnson, Redd, and Reyes – were placed in Step Five. Johnson
11 and Reyes have been moved to CSP Sacramento, and Redd has been transferred to SATF-CSP
12 Corcoran.

13 200. Among other methods of prioritization, defendants are currently prioritizing DRBs
14 for prisoners held in Pelican Bay SHU continuously for over ten years.
15

16 201. Given this prioritization, and the DRB results set forth in paragraph 194, upon
17 information and belief, it is likely that there are 20 to 25 former Pelican Bay SHU prisoners who
18 had been incarcerated for ten or more years at the Pelican Bay SHU who have, like Dewberry,
19 Ruiz, Troxell and Franklin, been transferred to Step Three or Four at a CDCR SHU. Many more
20 will be so transferred in the coming months.
21

22 202. At Step Three and Step Four, plaintiffs and the supplemental class of prisoners
23 they seek to represent (“Supplemental Class”) face isolation that is substantially similar to what
24 they endured at the Pelican Bay SHU for a decade or more.

25 203. There are a few differences between Pelican Bay SHU and Tehachapi SHU. For
26 example, Tehachapi SHU cells have windows and a solid steel door, as compared to no windows
27 but a perforated metal mesh door at the Pelican Bay SHU. But there is no change in the crushing
28

1 continuation of prolonged isolation. Indeed, prisoners at Tehachapi SHU have considerably less
2 access to family visits than at Pelican Bay. Prisoners in Step Three and Four continue to languish
3 alone in their cell, with virtually no normal human contact, and extremely limited opportunity for
4 social interaction.

5
6 204. The limited out-of-cell programming and social interaction these plaintiffs and
7 class members receive on Steps Three and Four is wholly inadequate to repair the extreme
8 injuries caused by their prolonged solitary confinement at the Pelican Bay SHU.

9
10 205. As at Pelican Bay SHU, Troxell, Dewberry and Ruiz and other similarly situated
11 Step Three prisoners are confined to their cells for an average of 22 to 23 hours a day, without
12 any normal human interaction. Unlike at Pelican Bay, most days of the week Step Three prisoners
13 are confined to their cell for the entire 24 hours.

14
15 206. As at Pelican Bay SHU, Troxell, Dewberry and Ruiz and other Step Three
16 prisoners are prohibited from any physical contact with their families or friends and regular
17 telephone access.

18
19 207. As at Pelican Bay, they are denied all congregate recreation and meals. While
20 Troxell, Dewberry, and Ruiz are currently receiving one to two hours a week of a 13 week group
21 therapy program in adjoining cages, this limited interaction is not enough to dispel the injuries
22 they have suffered and continue to suffer from their prolonged solitary confinement.

23
24 208. Plaintiffs and other Step Three prisoners have not received programming adequate
25 to aid in their eventual transition to general population.

26
27 209. The same harsh solitary confinement they endured at Pelican Bay SHU continues
28 in a different prison.

29
30 210. Plaintiff Franklin is at Step Four at Tehachapi SHU, where he continues to be held
31 in solitary confinement for an average of 22 to 23 hours a day.

1 211. In the second half of Step Four Franklin and some other Step Four prisoners have
2 some, albeit limited, access to congregate programming and recreation. According to CDCR
3 regulations, Step Four prisoners may have some access to congregate meals in the future.
4 However, this interaction is so minimal as to fail to overcome the crushing isolation Franklin and
5 other Step Four prisoners experienced at Pelican Bay SHU for over a decade, and continue to
6 experience in a Step Four SHU.
7

8 212. Franklin and other Step Four prisoners have received only very limited transitional
9 programming or assistance. This programming has not eased their transition after so many years
10 in near total isolation.

11 213. Plaintiffs and the Supplemental Class, who languished ten or more years in solitary
12 confinement in the Pelican Bay SHU, and were then transferred to solitary confinement at a Step
13 Three or Step Four SHU, continue to experience the psychological harm alleged in paragraphs
14 123 – 145, and continue to be deprived of one or more fundamental human needs. The Eighth
15 Amendment violations they alleged in the Second Amended Complaint have not been remedied;
16 they continue unabated in a new location.
17

18 214. Plaintiffs Dewberry, Ruiz, Troxell and Franklin therefore continue this action on
19 their own behalf, and pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil
20 Procedure, on behalf of a supplemental class of all prisoners who have now, or will have in the
21 future, been imprisoned by defendants at the Pelican Bay SHU for longer than ten continuous
22 years and subsequently transferred from Pelican Bay SHU to another SHU in California to be
23 held in solitary confinement pursuant to Step Three or Step Four of the Step Down Program.
24

25 215. Plaintiffs Johnson and Reyes are in Step Five at CSP Sacramento. Redd is in Step
26 Five at SATF-CSP Corcoran. All three plaintiffs are in a “general population” unit, yet Johnson
27 and Reyes are locked down in their cells 22 to 24 hours per day. Some days they have up to two
28

1 hours of congregate recreation, other days they have none. They have no congregate meals. Redd
2 has more out of cell time. None of the three has received adequate transitional programming.

3 216. Despite increased privileges in Step Five, Johnson, Reyes, and Redd continue to
4 suffer the effects of their prolonged solitary confinement in the PB SHU, and face the very real
5 possibility of return to Pelican Bay SHU under the Step Down Program regulations, if they are
6 found to have engaged in any STG behavior (like having a photograph of a friend who is an STG
7 affiliate), or if they fail to complete any of the un-written and ill-defined Step Down
8 requirements.
9

10 217. Plaintiffs' prolonged isolation has not yet been remedied. The effects of their
11 prolonged solitary confinement have not been fully eradicated and they face a realistic threat of
12 return to the PB SHU. Thus, plaintiffs Johnson, Reyes, and Redd continue this action on their
13 own behalf, as individual plaintiffs.
14

15 **H. Supplemental Class Allegations**

16 218. Plaintiffs Dewberry, Ruiz, Troxell and Franklin seek to represent a supplemental
17 Eighth Amendment class of all prisoners who have now, or will have in the future, been
18 imprisoned by defendants at the Pelican Bay SHU for longer than 10 continuous years and then
19 transferred from Pelican Bay SHU to another SHU in California to be held in solitary
20 confinement pursuant to Step Three or Step Four of the Step Down Program.
21

22 219. The Supplemental Class is so numerous that joinder of all members is
23 impracticable.

24 220. All members of the Supplemental Class are suffering the deprivation of at least
25 one basic human need due to their prolonged confinement in the Pelican Bay SHU and another
26 SHU and face a common risk of suffering even more serious mental harm caused by their
27 retention in a CDCR SHU for such a lengthy period of time.
28

1 221. There are questions of law and fact common to the members of the Supplemental
2 Class. Those questions include, but are not limited to

- 3 a) Whether the prolonged confinement at the Pelican Bay SHU for over ten years and
4 continued isolation at another SHU constitutes cruel and unusual punishment
5 prohibited by the Eighth Amendment.
6 b) Whether defendants have been deliberately indifferent to the mental and physical
7 suffering of the supplemental class members due to their confinement at the Pelican
8 Bay SHU and the continuation of that confinement at another CDCR SHU.
9 c) Whether the conditions and restrictions imposed upon supplemental class members at
10 Step Three and Step Four of the Step Down Program reflect legitimate penological
11 concerns.
12

13 222. Defendants are expected to raise common defenses to these claims, including
14 denying that their policies and practices violate the Constitution
15

16 223. The claims of plaintiffs Dewberry, Ruiz, Troxell and Franklin are typical of those
17 of the Supplemental Class, as their claims arise from the same policies, practices, courses of
18 conduct, and conditions of confinement, and their claims are based on the same legal theories as
19 the class' claims. The cause of the named plaintiffs' injuries is the same as the cause of the
20 injuries suffered by the rest of the class, namely defendants' policies and practices.
21

22 224. Plaintiffs Dewberry, Ruiz, Troxell and Franklin are capable of fairly and
23 adequately protecting the interests of the Supplemental Class because plaintiffs do not have any
24 interests antagonistic to the class. Plaintiffs, as well as class members, seek to enjoin the
25 unlawful acts, policies, and practices of the defendants. Finally, plaintiffs are represented by
26 counsel experienced in civil rights litigation, prisoners' rights litigation, and complex class
27 litigation.
28

1 each of the reasons set forth below.

2 **A. Deprivation of Basic Human Need**

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

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

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

15 232. In addition to plaintiffs' current psychological and physical pain, the likelihood
16 that plaintiffs and the class will remain in SHU for the foreseeable future subjects plaintiffs and
17 the class they represent to a significant risk of future debilitating and permanent mental illness
18 and physical harm.

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

20 233. Third, Defendants' harsh policies are not legitimately related to security or other
21 penological needs of isolating alleged dangerous prisoners from others, but rather are designed to
22 coerce plaintiffs to debrief and become informants for the State. This policy of holding plaintiffs
23 and class members in prolonged solitary confinement for many years at the Pelican Bay SHU
24 until they debrief or die is, as one Court put it, "tantamount to indefinite administrative
25 segregation for silence – an intolerable practice in modern society." *Griffin*, No. C-98-21038 at
26

27 11. It is cruel and unusual punishment for defendants to coerce prisoners to provide information
28

1 on other prisoners – if indeed they have any such information – by maintaining them in stifling
2 and punitive conditions that constitute an atypical and significant hardship, unless they so inform.

3 234. Prisoners who debrief incur a substantial risk of serious harm and retaliation to
4 themselves and to their families. The combination of the crushing conditions in the SHU, the
5 policies designed to coerce prisoners to debrief, the lack of any effective means of obtaining
6 release from the SHU without debriefing, and the substantial risk of serious harm if one does
7 debrief, puts prisoners in an untenable position and constitutes an unconstitutional threat to the
8 safety of prisoners confined in the SHU in violation of the Eighth and Fourteenth Amendments to
9 the Constitution.
10

11 **D. Disproportionate Punishment**

12 235. Fourth, defendants' policy of indefinite and prolonged SHU placement imposes
13 disproportionate punishment on plaintiffs and class members. Defendants have no legitimate
14 penological interest in retaining prisoners indefinitely in the debilitating conditions of the SHU
15 simply because they are gang members or associates, without recent, serious disciplinary or gang-
16 related infractions. Nor is this policy and practice rationally related to legitimate security needs.
17 Defendants' decades-long infliction of significant psychological and physical harm and the risk
18 of future debilitating harm on these prisoners simply for allegedly being gang members or
19 associates offends civilized society's sense of decency, constitutes an intolerable practice in
20 modern society, and is a disproportionate punishment which violates the Eighth and Fourteenth
21 Amendments to the Constitution.
22

24 **E. Deprivation of Human Dignity in Violation of Contemporary Standards of Human 25 Decency**

26 236. Finally, Defendants' continuation of Plaintiffs' solitary confinement for many
27 years under the debilitating and extreme conditions existing at the Pelican Bay SHU strips human
28 beings of their basic dignity and humanity in violation of contemporary standards of human

1 decency and constitutes cruel and unusual treatment prohibited by the Eighth and Fourteenth
2 Amendments to the United States Constitution.

3 237. That California's policies and practices violate contemporary standards of human
4 dignity and decency is evidenced by the fact that those practices are unusual in comparison to
5 other states' practices with respect to segregated prisoner housing. Virtually no other state uses
6 mere gang association or membership to confine prisoners in the SHU. Other states do not
7 warehouse hundreds of prisoners in the SHU for decades at a time. Plaintiffs and class members
8 are subject to unusually harsh conditions of confinement even in comparison with other supermax
9 prisons, such as windowless cells and a lack of telephone calls to family members and friends.
10 And finally, California's SHU policies and practices are atypical in effectively prolonging
11 incarceration, in that prisoners in the SHU are deprived of good time credit and are rendered
12 functionally ineligible for parole.
13

14 238. That California's practices with respect to the plaintiff class violates contemporary
15 standards of human decency and dignity is also evidenced by the international community's
16 condemnation of the practice of prolonged and indefinite solitary confinement under very harsh
17 and stifling conditions such as exist at the Pelican Bay SHU. Such condemnation is reflected in
18 international treaties such as the Convention Against Torture, the International Covenant on Civil
19 and Political Rights, decisions and declarations of international bodies, customary international
20 law, and decisions of regional and national courts such as the European Court of Human Rights
21 and Canadian courts.
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23
24 **F. Defendants' Deliberate Indifference to the Deprivations Suffered by Plaintiffs**

25 239. The policies and practices complained of herein have been and continue to be
26 implemented by defendants and their agents, officials, employees, and all persons acting in
27 concert with them under color of state law, in their official capacity.
28

1 isolated conditions in the SHU; (b) the lengthy duration of confinement in the SHU; and (c) the
2 effect on the possibility of parole being granted and the overall length of imprisonment that
3 results from such confinement.

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

5 247. The conditions in the SHU are unduly harsh, and do not generally mirror those
6 conditions imposed upon prisoners in administrative segregation and protective custody in
7 California. These harsh conditions include but are not limited to: isolation in cells that are sealed
8 off from contact with other prisoners, the lack of windows in cells, a prohibition on all social
9 phone calls except in emergencies, no contact visits and very limited visiting hours, no or
10 minimal educational or general programming, exercise facilities that provide very little natural
11 sunlight and have virtually no recreational equipment, food which is inferior to that served to
12 other California prisoners, and denial of standard medical care to prisoners unless they debrief.

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

14 248. Plaintiffs have been held in the crushing conditions described above for 11 to 22
15 years. Indeed, about half of the prisoners detained at the Pelican Bay SHU have been there for
16 over 10 years, more than 20 percent have been held there for more than 15 years, and almost 10
17 percent have been held there for over 20 years. Upon information and belief, this shockingly
18 lengthy confinement is atypical in comparison to the ordinary disciplinary and administrative
19 segregation imposed in California.

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

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

3 **D. Lack of Meaningful Process**

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

8 251. Defendants have denied and continue to deny any such notice or meaningful
9 review by: (1) failing to provide prisoners with notice of what they can do to get released from
10 the SHU apart from providing information that they do not have or risking their life and safety
11 and that of their families by debriefing; (2) providing misleading notice that they can become
12 eligible to be released from the SHU by becoming an “inactive” gang member or associate and
13 refraining from engaging in any gang activities, when in fact prisoners who are not involved in
14 any current gang activity are still routinely retained in the SHU; (3) making a predetermination
15 that many prisoners will stay in the SHU until they either die or debrief, thus rendering the
16 periodic reviews substantively and procedurally meaningless; and (4) making the length of time
17 between reviews far too long to comport with the constitutional due-process standard.

18 252. Defendants are also violating plaintiffs’ due process rights by retaining plaintiffs
19 and the class in conditions that amount to an atypical and significant hardship without legitimate
20 penological interest, as this detention occurs without reliable evidence that plaintiffs and the class
21 are committing any acts on behalf of a prison gang and are thus active gang members.
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**Third (Supplemental) Cause of Action: Eighth & Fourteenth Amendments
(Cruel and Unusual Punishment)**

253. Plaintiffs Dewberry, Ruiz, Troxell, and Franklin incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

254. Plaintiffs Dewberry, Ruiz, Troxell, and Franklin advance this claim on their own behalf, and on behalf of the Supplemental Class, against all defendants.

255. By their policies and practices described herein, defendants have deprived and continue to deprive plaintiffs and the Supplemental 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.

G. Deprivation of Basic Human Need

256. 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, continued at another CDCR 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.

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

257. 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.

258. 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 the class they represent to a significant risk of future debilitating and permanent mental illness

1 and physical harm.

2 **I. Disproportionate Punishment**

3 259. Third, defendants’ policy of indefinite and prolonged SHU placement imposes
4 disproportionate punishment on plaintiffs and class members. Defendants have no legitimate
5 penological interest in retaining prisoners indefinitely in the debilitating conditions of the SHU
6 without serious disciplinary infractions. Nor is this policy and practice rationally related to
7 legitimate security needs. Defendants’ decades-long infliction of significant psychological and
8 physical harm and the risk of future debilitating harm on these prisoners simply for allegedly
9 being gang members or associates and/or for minor, non-violent disciplinary infractions, offends
10 civilized society’s sense of decency, constitutes an intolerable practice in modern society, and is a
11 disproportionate punishment which violates the Eighth and Fourteenth Amendments to the
12 Constitution.
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14

15 **J. Deprivation of Human Dignity in Violation of Contemporary Standards of Human
16 Decency**

17 260. Finally, defendants’ continuation of plaintiffs’ solitary confinement for many years
18 under the debilitating and extreme conditions existing at the Pelican Bay SHU and other CDCR
19 SHUs strips human beings of their basic dignity and humanity in violation of contemporary
20 standards of human decency and constitutes cruel and unusual treatment prohibited by the Eighth
21 and Fourteenth Amendments to the United States Constitution.
22

23 261. That California’s policies and practices violate contemporary standards of human
24 dignity and decency is evidenced by the fact that those practices are unusual in comparison to
25 other states’ practices with respect to segregated prisoner housing. Virtually no other state uses
26 mere gang association or membership or minor disciplinary infractions to confine prisoners in the
27 SHU. Other states do not warehouse hundreds of prisoners in the SHU for decades at a time.

28 And finally, California’s SHU policies and practices are atypical in effectively prolonging

1 incarceration, in that prisoners in the SHU are deprived of good time credit and are rendered
2 functionally ineligible for parole.

3 262. That California's practices with respect to the plaintiff class violates contemporary
4 standards of human decency and dignity is also evidenced by the international community's
5 condemnation of the practice of prolonged and indefinite solitary confinement under very harsh
6 and stifling conditions such as exist at the Pelican Bay SHU and other CDCR SHUs. Such
7 condemnation is reflected in international treaties such as the Convention Against Torture, the
8 International Covenant on Civil and Political Rights, decisions and declarations of international
9 bodies, customary international law, and decisions of regional and national courts such as the
10 European Court of Human Rights and Canadian courts.

11
12 **K. Defendants' Deliberate Indifference to the Deprivations Suffered by Plaintiffs**

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

16 264. Defendants have been and are aware of all of the deprivations complained of
17 herein, and have condoned or been deliberately indifferent to such conduct.

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

24 266. Indeed, defendants have deliberately and knowingly caused such pain in an effort
25 to force plaintiffs and the class to debrief.
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PRAYER FOR RELIEF

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

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

- a. Declare that this suit is maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1) and (2);
- b. Declare that defendants’ policies and practices of confining prisoners in the Pelican Bay SHU violate the Eighth and Fourteenth Amendments to the United States Constitution;
- c. Issue injunctive relief ordering defendants to present a plan to the Court within 30 days of the issuance of the Court’s order providing for:
 - i. the release from the SHU of those prisoners who have spent more than 10 years in the SHU, and placement of these prisoners in either a) a general population unit, or b) in a modified general population unit, in which the prisoners are segregated from the general prison population in a high security setting but have similar privileges as do prisoners in general population such as access to small group congregate recreation, contact visits, phone calls, programming, and significant out of cell time, until such time as prisoners can safely transition into a non-segregated general population unit.

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- ii. alleviation of the conditions of confinement of prisoners in the SHU so that prisoners no longer are incarcerated under conditions of isolation, sensory deprivation, lack of social and physical human contact, and environmental deprivation;
- iii. meaningful review of the continued need for confinement in a SHU of all prisoners currently housed in the SHU within six months of the date of the Court’s order; and
- iv. meaningful review of SHU confinement for prisoners housed in the SHU in the future;

- d. Award plaintiffs the costs of this suit and reasonable attorneys’ fees and litigation expenses pursuant to 42 U.S.C. § 1988, and other applicable law;
- e. Retain jurisdiction of this case until defendants have fully complied with the orders of this Court; and
- f. Award such other and further relief as the Court deems just and proper.

Dated: December 11, 2014

Respectfully submitted,

/s/ Jules Lobel

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