

Plaintiff's Name Kenneth Oliver
Inmate No. K-54606
Address P.O. Box 3481, 484R-54
Corcoran, CA 93212

FILED

JUL 12 2013

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Kenneth Oliver
(Name of Plaintiff)

2:13CV1395 DAD (PC)
(Case Number)

vs.

COMPLAINT

Jeffery Beard, et al
(see attached)

Civil Rights Act, 42 U.S.C. § 1983

(Names of all Defendants)

I. Previous Lawsuits (list all other previous or pending lawsuits on back of this form):

A. Have you brought any other lawsuits while a prisoner? Yes ___ No ☒

B. If your answer to A is yes, how many? _____
Describe previous or pending lawsuits in the space below.
(If more than one, use back of paper to continue outlining all lawsuits.)

1. Parties to this previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if Federal Court, give name of District; if State Court, give name of County) _____

3. Docket Number _____ 4. Assigned Judge _____

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____

6. Filing date (approx.) _____ 7. Disposition date (approx.) _____

II. Exhaustion of Administrative Remedies

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes ☒ No ☐

B. Have you filed an appeal or grievance concerning **ALL** of the facts contained in this complaint?

Yes ☒ No ☐

If your answer is no, explain why not _____

C. Is the process completed?

Yes ☒ If your answer is yes, briefly explain what happened at each level.

All appeals WERE DENIED OR partially granted
at each level

No ☐

If your answer is no, explain why not.

NOTICE: Pursuant to the Prison Litigation Reform Act of 1995, "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). If there is an inmate appeal or administrative remedy process available at your institution, you may not file an action under Section 1983, or any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002). **Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit.** Booth, 532 U.S. at 734.

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

A. Defendant See Attached is employed as _____
at _____

B. Additional defendants Please see attached

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

PLEASE SEE ATTACHED

V. Relief.

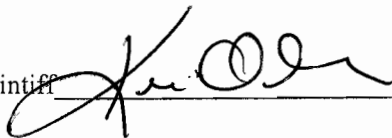
(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

PLEASE SEE ATTACHED

I declare under penalty of perjury that the foregoing is true and correct.

Date July 5, 2013

Signature of Plaintiff



Kenneth G. Oliver, k-54606
P.O. Box 3481 484R-54
Corcoran, CA 93212

IN Pro Se

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

KENNETH G. OLIVER,
Plaintiff,

v.

JEFFREY A. BEARD, Secretary
California Department of
Corrections and Rehabilitation
(CDCR); et al.
Defendants.

Case No:

COMPLAINT UNDER THE
CIVIL RIGHTS ACT
42 U.S.C. §1983

JURY TRIAL DEMANDED

INTRODUCTION

This action arises from the defendants' unconstitutional practices, acts, omissions, and policies which have caused plaintiff to be erroneously labeled as an Associate of a prison gang and wrongly placed and retained

in the indeterminate SHU. Defendants have erroneously labeled plaintiff an Associate of a prison gang and wrongly placed and retained him in the indeterminate SHU:

- (a) Without due process of law;
- (b) When plaintiff is not a prison gang Associate;
- (c) On the basis of plaintiff's innocent exercise of his First Amendment right to read political material;
- (d) On the basis of plaintiff's race;
- (e) In retaliation for plaintiff's legitimate speech;
- (f) Without providing plaintiff notice of the criteria or "source items" they would use to label plaintiff a prison gang Associate;
- (g) Without reliable evidence;
- (h) When plaintiff has not been charged or found guilty of violating Title 15, California Code of Regulations (CCR) §3023 (the prison regulation defining and prohibiting gang activity) or any other regulation;
- (i) For extended periods of time in conditions that impose an atypical hardship to the ordinary incidents of prison life and adversely impact plaintiff's mental and physical well being;

(j) Where defendants have housed and confined plaintiff with alleged prison gang affiliates without plaintiff's knowledge or consent;

(k) Pursuant to defendants' customs, official and unofficial policies and their conspiracy to deprive plaintiff of his constitutional rights; and,

(l) When plaintiff suffered from serious mental illness prior to being placed in the indeterminate SHU.

II. JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1985 and 1986 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. Plaintiff seeks declaratory, injunctive, and monetary relief under 28 U.S.C. §§ 1331, 1343, 1367, 2201, 2202; and, 42 U.S.C. §§ 1981, 1983, 1985, and 1986.

2. VENUE is proper in the Eastern District of California, Sacramento Division, under 28 U.S.C. § 1391 (b) because a significant number of the Defendants reside within this judicial district.

III. PARTIES

3. Plaintiff Kenneth G. Oliver was at all times mentioned herein a prisoner of the State of California, in the custody of the California Department of Corrections and Rehabilitation (CDCR). From 2007 to 2009 plaintiff was housed in the California Men's Colony - East

(CMC). From February 2009 to the present Plaintiff has been housed in the Security Housing Unit (SHU) at California State Prison, Corcoran (Corcoran). Plaintiff remains housed in the SHU.

4. Defendant Jeffrey A. Beard is the Secretary of CDCR, and is responsible for the operation of the California prison system. As Secretary, Defendant Beard is personally responsible for the operation of all the states prison facilities, including its Gang Management, Classification, and SHU policies. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Beard is being sued in his individual and official capacity.

5. Defendant Matthew Cate was the former Secretary of CDCR from 2008-2012, when Plaintiff Oliver was subjected to the machinations of CDCR's Gang Management and Classification policies and placed in the indeterminate SHU. As Secretary, Defendant Cate was personally responsible for the operation of all the states prison facilities, including its aforementioned

policies. He was, therefore, the direct and proximate cause of the injuries and violations set forth below. Defendant Cote is sued in his individual capacity.

6. Defendant George Giurbino is the Director of the CDCR Division of Adult Institutions. As Director, Defendant Giurbino is responsible for the operation of all adult prison facilities, including its Gang Management, Classification, and SHU policies. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Giurbino is being sued in his individual and official capacity.

7. Defendant Martin Hoshino is the Undersecretary of CDCR Operations. As Undersecretary, Defendant Hoshino is responsible for the operation of all adult prison facilities, including its Gang Management, Classification, and SHU policies. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Hoshino is being sued in his individual and official capacity.

8. Defendant Scott KERNAN was the Undersecretary of CDCR Operations between 2008-2012, when Plaintiff Oliver was subjected to the machinations of CDCR's Gang Management and Classification policies and indeterminate SHU placement. As Undersecretary, Defendant KERNAN was responsible for the operation of all adult prison facilities including its aforementioned policies. He was, therefore, the direct and proximate cause of the injuries and violations set forth below. Defendant KERNAN is being sued in his individual capacity.

9. Defendant Terri McDonald is the Chief Deputy Secretary of Adult Operations for CDCR. As Deputy Secretary, Defendant McDonald is responsible for the operation of all adult prison facilities, including its Gang Management, Classification, and SHU policies. She has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant McDonald is being sued in her individual and official capacity.

10. Defendant Anthony Chaus is the Chief

of the Office of Correctional Safety, CDCR. The OCS houses and supervises the Special Services Unit (SSU), which is CDCR's primary departmental gang management unit responsible for the training and supervision of Institutional Gang Investigators (IGI) and their investigation of prisoners suspected of gang affiliation. As Chief of OCS, Defendant Chaus is responsible for the Gang Management Policy and the direct supervision and training relative to its implementation. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Chaus is being sued in his individual and official capacity.

II. Defendant G. Williams is a Correctional Officer for the CDCR, assigned to OCS as a Special Agent. Defendant Williams is responsible for the investigation, identification, validation, verification, monitoring, and tracking of gang affiliates. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Williams

is being sued in his individual and official capacity.

12. Defendant R. Burt is a Correctional Officer for the CDCR, assigned to OCS as a Special Agent. Defendant Burt is responsible for the investigation, identification, validation, verification, monitoring, and tracking of gang affiliates. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Burt is being sued in his individual and official capacities.

13. Defendant S. Kissel is a Correctional Officer for the CDCR, assigned to OCS as a Special Agent. Defendant Kissel is responsible for the investigation, identification, validation, verification, monitoring, and tracking of gang affiliates. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Kissel is being sued in his individual and official capacities.

14. Defendant T.L. Rosenkrans is a Correctional Officer for the CDCR, assigned to OCS as a Special Agent. Defendant Rosenkrans is responsible for the investigation, identification, validation, verification, monitoring, and tracking of gang affiliates. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Rosenkrans is being sued in his individual and official capacities.

15. Defendant John Marshall was the Warden of the California Men's Colony (CMC) during the period of time relevant to this action. As Warden, Defendant Marshall was responsible for the direct supervision and management of the IGI at CMC. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Marshall is being sued in his individual and official capacities.

16. Defendant D. Gonzalez was the Chief Deputy Warden of CMC during the period of time relevant to this action. As Chief Deputy Warden, Defendant Gonzalez was responsible

for the day to day operations at CMC, including its gang management and administrative appeal policies. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Gonzalez is being sued in his individual and official capacities.

17. Defendant S. Kephart was the Chief Deputy Warden of CMC during the period of time relevant to this action. Defendant Kephart was responsible for the day to day operations at CMC, including its classification policies. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Kephart is being sued in his individual and official capacities.

18. Defendant S.S. Martinez was a Correctional Captain at CMC during the period of time relevant to this action. Prior to being Captain, Defendant Martinez was the IGI at CMC. As IGI, Defendant Martinez was responsible for the collection of information in regard to prisoner gang affiliations and gang-related criminal activities and the transmission of such information to the Warden, OCS and others.

This responsibility included the submission of validation packages to the OCS to validate PRISONERS as prison gang affiliates. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Martinez is being sued in his individual and official capacities.

19. Defendant C. ROMERO was a Correctional Lieutenant and was the IGI at CMC. Defendant ROMERO was responsible for collecting information regarding PRISONER gang affiliations and gang-related criminal activities, and the transmission of such information to the WARDEN, OCS, and others. This responsibility included the submission of validation packages to the OCS to validate PRISONERS as prison gang affiliates. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant ROMERO is being sued in his individual and official capacities.

20. Defendant M. REYNOSO is a Correctional Officer at CMC and was assigned as an Assistant to the IGI during the period of time relevant to this action. Defendant REYNOSO

was responsible for assisting the IGI with the collection of evidence and information regarding PRISONER gang affiliations and gang-related criminal activities. This responsibility included the preparation of validation packages that the IGI would submit to OCS to validate PRISONERS as prison gang affiliates. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant REYNOSO is being sued in his individual and official capacities.

21. Defendant C. BAKER was the Lieutenant of the Investigative SERVICES Unit (I.S.U.) at CMC during the period of time relevant to this action. Defendant BAKER was responsible for investigating criminal activity committed by PRISONERS and prison gangs. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant BAKER is being sued in his individual and official capacities

22. Defendant T. King was the Case and Parole RECORDS (C & PR) Representative at CMC. Defendant King was responsible for classification

decisions made at the Institutional Classification Committee (I.C.C.) level, including the assessment of indeterminate SHU terms. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant King is being sued in his individual and official capacities.

23. Defendant J. Schmidt was the acting Associate Warden at CMC during the period of time relevant to this action. As Associate Warden, Defendant Schmidt for the supervision and management of day to day operations at CMC, including administrative appeal review. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Schmidt is being sued in his individual and official capacities.

24. Defendant A.W. Dunn was a Correctional Officer at CMC during the period of time relevant to this action. As a Correctional Officer, Defendant Dunn was directly responsible for the placement of plaintiff in Segregation. He has, therefore, directly and proximately caused the injuries and violations of rights set forth

below. Defendant DUNN is being sued in his individual and official capacities.

25 Defendant D. ENGLER was a Correctional Counselor II, assigned to the CMC Appeals Office as an Appeals Coordinator. As Appeals Coordinator, Defendant Engler was directly responsible for the administration and processing of prisoner appeals. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Engler is being sued in his individual and official capacity.

26. Defendant M. Vella was a Correctional Counselor II, assigned to the CMC Appeals Office as an Appeals Coordinator. As Appeals Coordinator, Defendant Engler was directly responsible for the administration and processing of prisoner appeals. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Vella is being sued in her individual and official capacities

27. Defendant J. Javaux was a Correctional

Counselor II, assigned to the CMC Appeals Office as an Appeals Coordinator. As Appeals Coordinator, Defendant Javaux was directly responsible for the administration and processing of prisoner appeals. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Javaux is being sued in her individual and official capacities.

28. Defendant C. Hall was a Correctional Captain, assigned to the Inmate Appeals Branch in Sacramento as an Appeals Examiner. As Appeals Examiner, Defendant Hall was responsible for reviewing and responding to prisoner appeals on behalf of the Secretary of CDCR. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Hall is being sued in his individual and official capacities.

29. Defendant M. Jensen was a Correctional Captain, assigned to the Inmate Appeals Branch in Sacramento as an Appeals Examiner. As Appeals Examiner, Defendant Jensen was responsible for reviewing and responding to prisoner appeals on behalf of the Secretary of CDCR. He has,

therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant JENSEN is being sued in his individual and official capacities.

30. Defendant N. Grannis was the Chief of the Inmate Appeals Branch for CDCR in Sacramento during a period of time relevant to this action. As Chief of Inmate Appeals, Defendant was responsible for quality control review of PRISONER appeals at the DIRECTORS LEVEL of REVIEW, including the supervision and training of all Appeals EXAMINERS within CDCR. Defendant Grannis was also responsible for the establishment and implementation of CDCR policy related to PRISONER appeals. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Grannis is being sued in his official and individual capacities.

31. Defendant D. Foston was the Chief of the Inmate Appeals Branch for CDCR in Sacramento during a period of time relevant to this action. As Chief of Inmate Appeals, Defendant Foston was responsible for quality control review of PRISONER appeals at the DIRECTORS LEVEL of

REVIEW, including the supervision and training of all Appeals Examiner within CDCR. Defendant Foston was also responsible for the establishment and implementation of CDCR policy related to PRISONER appeals. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Foston is being sued in his individual capacity.

32. Defendant R. Chavez was a Correctional Counselor II (CCII) at Corcoran during the period of time relevant to this action. Defendant Chavez was a Supervising Counselor, a member of the classification process, and was responsible for responding to PRISONER appeals related to the SHU and classification. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Chavez is being sued in his individual capacity.

33. Defendant K. Santoro was an Associate Warden at Corcoran during the period of time relevant to this action. Defendant Santoro was responsible for the supervision and management of the day to day operations of the Corcoran SHU, including the classification of PRISONERS

housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Santoro is being sued in his individual capacity.

34. Defendant R. Davis was the Chief Deputy Warden at Corcoran during relevant times set forth in this action. Defendant Davis was responsible for the day to day operations at Corcoran, including its SHU and the classification of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Davis is being sued in his individual capacity.

35. Defendant D. Adams was the Warden at Corcoran during the period of time relevant to this action. Defendant Adams was responsible for the supervision and management of all operations at Corcoran, including the SHU, classification, and IGI. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Adams is being sued in his individual and official capacities.

36. Defendant T. Garrett was a Licensed Clinical Social Worker (LCSW) at Corcoran during the period of time relevant to this action. Defendant Garrett was responsible for the treatment and care of prisoners under mental health care at Corcoran, including the SHU. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Garrett is being sued in her individual and official capacity.

37. Defendant S. Marsh was a Correctional Sergeant at Corcoran during the period of time relevant to this action. Defendant Marsh was responsible for the supervision of day to day facility operations, including the classification of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Marsh is being sued in his individual and official capacities.

38. Defendant D. White was a Correctional Counselor I (CCI) at Corcoran during the period of time relevant to this action. Defendant White

was responsible for the collection and evaluation of social, behavioral and adjustment data on PRISONERS in the SHU, including classification. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant White is being sued in his individual capacity.

39. Defendant K. Kostecky was a Correctional Captain, assigned to the Inmate Appeals Branch in Sacramento as an Appeals Examiner. As Appeals Examiner, Defendant Kostecky was responsible for reviewing and responding to PRISONER appeals on behalf of the Secretary of CDCR. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Kostecky is being sued in his individual capacity.

40. Defendant C. Rodriguez was a Correctional Lieutenant, assigned as the IGI at CORCORAN. Defendant Rodriguez was responsible for collecting information regarding PRISONER gang affiliations and gang related criminal activities, and the transmission of such information to the Warden, OCS, and other

CDCR officials. This responsibility included the tracking and monitoring of prison gang affiliates and gang activity in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Rodriguez is being sued in his individual and official capacities.

41. Defendant M. Jennings was an Associate Warden at Corcoran during the period of time relevant to this action. Defendant Jennings was responsible for the supervision and management of the day to day operations of the SHU, including its gang management policies. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Jennings is being sued in his individual and official capacities.

42. Defendant K.J. Allen was a Correctional Captain, assigned to the Inmate Appeals Branch in Sacramento as an Appeals Examiner. As Appeals Examiner, Defendant Allen was responsible for reviewing and responding to prisoner appeals on behalf of the Secretary of CDCR. He has,

therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant ALLEN is BEING SUED in his individual and official capacities.

43. Defendant A.B. GOMEZ was a Correctional SERGEANT, assigned as an assistant to the IGI at Corcoran, during the period of time relevant to this action. Defendant Gomez was responsible for assisting the IGI with the collection of evidence and information regarding prisoner gang affiliations and gang-related criminal activities. This responsibility included the tracking and monitoring of prison gang affiliates and gang activity in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendants GOMEZ is BEING SUED in his individual and official capacities.

44. Defendants R. FLORES was a Correctional Captain, assigned to the Investigative Services Unit (ISU) at Corcoran, during the period of time relevant to this action. Defendant FLORES was responsible for the supervision and management for investigations into criminal

activity committed by prison gangs and other CDCR prisoners. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Flores is being sued in his individual and official capacities.

45. Defendant BEER was a Correctional Sergeant at Corcoran during the period of time relevant to this action. Defendant BEER was responsible for the supervision of day to day facility operations, including the classification of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant BEER is being sued in individual and official capacities.

46. Defendant L. Billiou was a Correctional Counselor I (CCI) at Corcoran during the period of time relevant to this action. Defendant was responsible for the collection and evaluation of social, behavioral and adjustment data on prisoners in the SHU, including classification. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below.

Defendant Billiou is being sued in his individual capacity.

47. Defendant T. Norton was an acting Associate Warden at Corcoran during the period of time relevant to this action. Defendant Norton was responsible for the supervision and management of day to day operations of the SHU, including its gang management policies. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Norton is being sued in his individual capacity.

48. Defendant C. Holstrom was a Correctional Captain, assigned to the Inmate Appeals Branch in Sacramento as an Appeals Examiner. Defendant Holstrom was responsible for reviewing and responding to prisoner appeals on behalf of the Secretary of CDCR. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Holstrom is being sued in his individual and official capacities

49. Defendant Vella was the Chief Deputy Warden at Corcoran during time periods relevant to this action. Defendant Vella was responsible for the day to day operations at Corcoran, including its SHU and the classification of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Vella is being sued in his individual capacity.

50. Defendant A. Altamirano was a Correctional Captain, assigned to the Inmate Appeals Branch in Sacramento as an Appeals Examiner. Defendant Altamirano was responsible for reviewing and responding to prisoner appeals on behalf of the Secretary of CDCR. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Altamirano is being sued in his individual capacity.

51. Defendant D. Maxwell was a CCII at Corcoran during the time period relevant to this action. Defendant Maxwell was responsible for the supervision of the CCIs,

the management of PRISONER CASE file information, and was a member of the PRISONER classification process. Defendant Maxwell was also responsible for providing responses to PRISONER appeals. He has, therefore, directly and proximately caused the INJURIES and violations of rights set forth below. Defendant Maxwell is being sued in his or her individual capacity.

52. Defendant R.S. Lambert was an Associate Warden at Corcoran during time periods relevant to this action. Defendant Lambert was responsible for the supervision and management of day to day operations in the SHU, including its classification and gang management policies. He has, therefore, directly and proximately caused the INJURIES and violations of rights set forth below. Defendant Lambert is being sued in his individual and official capacities.

53. Defendant C. Gipson was the Chief Deputy Warden and Warden at Corcoran during the time period relevant to this action. Defendant Gipson was responsible for the policy decisions and management of the day

to day operations at Corcoran, including its SHU, gang management, and the classification of prisoners. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Gipson is being sued in both her individual and official capacities.

54. Defendant V. Garcia was a Classification Services Representative (CSR) during the time period relevant to this action. Defendant Garcia was responsible for carrying out CDCR's classification policies and procedures, including the review, approval, modification or disapproval of inmate special housing programs and treatment category designations recommended by institution staff. He or she has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Garcia is being sued in his or her individual and official capacities.

55. Defendant J. Jones was a Correctional Counselor II, assigned to the Corcoran Appeals Office as an Appeals Coordinator. Defendant Jones was responsible for the administration

and processing of PRISONER appeals. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant JONES is BEING SUED in her official and individual capacities

56. Defendant T. Cano was a Correctional Counselor II, assigned to the Corcoran Appeals Office as an Appeals Coordinator. Defendant Cano was responsible for the administration and processing of PRISONER appeals. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Cano is BEING SUED in her official and individual capacities.

57. Defendant S. Rousseau was a Correctional Lieutenant at Corcoran during the time periods relevant to this action. Defendant Rousseau for the supervision of day to day facility operations, including the classification and administration of PRISONERS housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Rousseau is BEING SUED in his official and individual capacities.

58. Defendant J. GERMOND was a Correctional Captain at Corcoran during the period of time relevant to this action. Defendant GERMOND was responsible for the management and supervision of day to day facility operations, including the classification and administration of prisoners housed in the SHU. He or she has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant GERMOND is being sued in his official and individual capacities.

59. Defendant A. Deutinger was a Psychologist at Corcoran during the period of time relevant to this action. Defendant Deutinger was responsible for the treatment and care of prisoners under mental health care at Corcoran, including those prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Deutinger is being sued in his individual and official capacities.

60. Defendant J.C. Smith was a Correctional Captain, assigned to the Investigative Services Unit (I.S.U.) at Corcoran during the period

of time relevant to this action. Defendant Smith was responsible for the supervision and management for investigations into criminal activity committed by prison gangs and other CDCR prisoners. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Smith is being sued in his individual and official capacities.

61. Defendant R. Davis was a Correctional Captain assigned to the Inmate Appeals Branch in Sacramento as an Appeals Examiner. Defendant Davis was responsible for reviewing and responding to prisoner appeals on behalf of the Secretary of CDCR. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Davis is being sued in his individual and official capacities.

62. Defendant S. Wright was a Correctional Captain assigned to the Inmate Appeals Branch in Sacramento as an Appeals Examiner. Defendant Wright was responsible for reviewing and responding to prisoner appeals on behalf of the Secretary of CDCR. He has, therefore,

directly and proximately caused the injuries and violations of rights set forth below. Defendant Wright is being sued in his individual and official capacities.

63. Defendant P. Johnson was an acting CCTI during the period of time relevant to this action. Defendant Johnson was a Supervising Counselor, a member of the classification process, and responsible for the review and response to prisoner appeals related to the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Johnson is being sued in his individual and official capacities.

64. Defendant T. Kraay was a Correctional Sergeant at Corcoran during the period of time relevant to this action. Defendant Kraay was responsible for the supervision of day to day facility operations, including the classification of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Kraay is being sued in his individual and official capacities.

65. Defendant J. Mahoney was a Psychologist at Corcoran during the period of time relevant to this action. Defendant Mahoney was responsible for the treatment and care of prisoners under mental health care at Corcoran, including those prisoners housed in the SHU. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Mahoney is being sued in her individual and official capacities.

66. Defendant R. Morales was a Correctional Counselor II (CCTI) at Corcoran during the period of time relevant to this action. Defendant Morales was a Supervising Counselor, a member of the classification process, and responsible for the review and response to prisoner appeals related to the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Morales is being sued in his individual and official capacities.

67. Defendant E. Soliman was a Psychologist at Corcoran during the period of time relevant to this action. Defendant Soliman was responsible for the treatment and care of prisoners under mental health care at Corcoran, including those prisoners housed in the SHU. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Soliman is being sued in his individual and official capacities.

68. Defendant Ruiz was a Correctional Lieutenant and the designated IGI at Corcoran, during the period of time relevant to this action. Defendant Ruiz was responsible for collecting information regarding prisoner gang affiliations and gang related criminal activities, and the transmission of such informations to the Warden, OCS, and other CDCR officials. This responsibility included the tracking and monitoring of prison gang affiliates and gang activity in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Ruiz is being sued in his individual and official capacities.

69. Defendant R.M. DIAZ was the Chief Deputy WARDEN at CORCORAN during the period of time relevant to this action. Defendant DIAZ was responsible for the day to day operations at Corcoran, including the management of its SHU and classification of PRISONERS housed in the SHU. He has, therefore, directly and proximately caused the INJURIES and violations of rights set forth below. Defendant DIAZ is BEING SUED in his individual and official capacities.

70. Defendants C. MORENO was a CCTI at Corcoran during the period of time relevant to this action. Defendant MORENO was a Supervising COUNSELOR, a member of the classification process, and responsible for the review and response to PRISONER appeals related to the SHU. He has, therefore, directly and proximately caused the INJURIES and violations of rights set forth below. Defendant MORENO is BEING SUED in his individual and official capacities.

71. Defendants C. Buckley was a CSR for CDCR during the period of time relevant

to this action. Defendant Buckley was responsible for carrying out CDCR's classification policies and procedures, including the review, approval, modification or disapproval of inmate special housing programs and treatment category designations recommended by institution staff. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Buckley is being sued in his or her individual and official capacities.

72. Defendant S. Johnson was the Chief Deputy Warden at Corcoran during the period of time relevant to this action. Defendant Johnson was responsible for the day to day operations of Corcoran, including the management of its SHU and classification of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Johnson is being sued in his individual and official capacities.

73. Defendant D. Leon was an acting Chief Deputy Warden at Corcoran during the period of time relevant to this action. Defendant Leon was responsible for the day to

day operations of Corcoran, including the management of its SHU and classification of PRISONERS housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant LEON is being sued in his individual and official capacities.

74. Defendant McLaughlin was a Correctional SERGEANT at Corcoran during the period of time relevant to this action. Defendant McLaughlin was responsible for the supervision of day to day facility operations, including the classification of PRISONERS housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant McLaughlin is being sued in his individual and official capacities.

75. Defendant J.D. Lozano was the Chief of the Inmate Appeals Branch in Sacramento during the period of time relevant to this action. Defendant Lozano was responsible for the quality control review of prisoner appeals at the DIRECTOR LEVEL of REVIEW, including the supervision and training of all CDCR Appeals EXAMINERS. Defendant Lozano was also

responsible for the establishment and implementation of CDCR policy related to PRISONER appeals. HE has, THEREFORE, directly and PROXIMATELY CAUSED the INJURIES and VIOLATIONS of RIGHTS set forth below. Defendant LOZANO is BEING SUED in his individual and official capacities.

76. Defendant R. Phillips was a Correctional Captain assigned to the Inmate Appeals Branch in Sacramento as an Appeals Examiner. Defendant Phillips was responsible for REVIEWING and responding to PRISONER appeals on behalf of the SECRETARY of CDCR. HE has, THEREFORE, directly and PROXIMATELY CAUSED the INJURIES and VIOLATIONS of RIGHTS set forth below. Defendant Phillips is BEING SUED in his individual and official capacities.

77. Defendant PRUNEDA was a Correctional Officer at Corcoran during the PERIOD of time relevant to this action. Defendant PRUNEDA was responsible for the day to day oversight of the PRISONERS housed in the SHU, including being assigned as a Staff Assistant during the classification process. HE has, THEREFORE, directly and PROXIMATELY CAUSED the INJURIES and VIOLATIONS

of rights set forth below. Defendant PRUNEDA is BEING SUED in his individual and official capacities.

78. Defendant P. MUNOZ was an acting Correctional Captain at Corcoran during the period of time relevant to this action. Defendant MUNOZ was responsible for the management and supervision of day to day facility operations, including the classification and administration of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant MUNOZ is being sued in his individual and official capacities.

79. Defendant J. Cash was a Correctional Captain and an acting Associate WARDEN at Corcoran during the period of time relevant to this action. Defendant Cash was responsible for the management and supervision of day to day facility operations, including the classification and administration of prisoners housed in the SHU. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Cash is BEING SUED

in her individual and official capacities.

80. Defendant S. Pina was a Correctional Captain and the designated IGI at Corcoran during the period of time relevant to this action. Defendant Pina was responsible for the collection of information related to prison gang affiliates and gang related criminal activity, and the transmission of such information to the Warden, OCS, and other CDCR officials. This responsibility included the tracking and monitoring of prison gang affiliates and gang activity in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Pina is being sued in both his individual and official capacity.

81. Defendant Gomez was a Correctional Sergeant at Corcoran during the period of time relevant to this action. Defendant Gomez was responsible for the supervision of day to day facility operations, including the classification process of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Gomez is being sued in

both his individual and official capacities.

82. Defendant K. Matta was an acting CCII at Corcoran during the period of time relevant to this action. Defendant Matta was a Supervising Counselor, a member of the classification process, and was responsible for the review and response to prisoner appeals related to the SHU. He or she has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Matta is being sued in his or her individual and official capacities.

83. Defendant J. Cavazos was the Chief Deputy Warden at Corcoran during the period of time relevant to this action. Defendant Cavazos was responsible for the management of the day to day operations at Corcoran, including the SHU and the classification process of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Cavazos is being sued in his individual and official capacities.

84. Defendant J. Castro was a Correctional Captain at Corcoran during the period of time relevant to this action. Defendant Castro was responsible for the management and supervision of day to day facility operations, including the classification and administration of prisoners housed in the SHU. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Castro is being sued in her individual and official capacities.

85. Defendant G. Sandor was the Chief Deputy Warden at Corcoran during the period of time relevant to this action. Defendant Sandor was responsible for the management of the day to day operations at Corcoran, including the SHU and the classification process of prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Sandor is sued in both his personal and official capacities.

86. Defendant A. Perez was a Correctional Sergeant at Corcoran during the period of time

relevant to this action. Defendant PEREZ was responsible for the supervision of day to day facility operations, including the classification process for PRISONERS housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant PEREZ is being sued in both his individual and official capacities.

87. Defendant A. Pacillas was an acting CCI at Corcoran during the period of time relevant to this action. Defendant Pacillas was a supervising counselor, a member of the classification process, and was responsible for the review and response to PRISONER appeals related to the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Pacillas is being sued in both his individual and official capacities.

88. Defendant T. Campbell was an acting Correctional Captain at Corcoran during the period of time relevant to this action. Defendant Campbell was responsible for the management

and supervision of day to day facility operations, including the classification and administration of PRISONERS housed in the SHU. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Campbell is being sued in both his individual and official capacities.

89. Defendant A. Graves was a Correctional Counselor I at Corcoran during the period of time relevant to this action. Defendant Graves was responsible for the collection and evaluation of social, behavioral and adjustment data on PRISONERS in the SHU, including classification. She has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Graves is being sued in her individual capacity.

90. Defendant P. Sanchez was a Correctional Counselor I at Corcoran during the period of time relevant to this action. Defendant Sanchez was responsible for the collection and evaluation of social, behavioral and adjustment data on prisoners in the SHU, including classification. He has, therefore, directly and proximately

caused the injuries and violations of rights set forth below. Defendant Sanchez is being sued in his individual capacity.

91. Defendant J. Taber was a Correctional Sergeant at Corcoran during the period of time relevant to this action. Defendant Taber was responsible for the supervision of day to day facility operations, including the classification process for prisoners housed in the SHU. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant Taber is being sued in his individual and official capacity.

92. Defendant M. Do Canto was a Correctional Officer at Corcoran during the period of time relevant to this action. Defendant DoCanto was responsible for the day to day oversight of prisoners housed in the SHU, including acting as a staff assistant during the classification process. He has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant DoCanto is being sued in his individual and official capacity.

93. Defendant B. Lee was a CSR for CDCR in Sacramento during the period of time relevant to this action. Defendant LEE was responsible for carrying out CDCR's classification policies and procedures, including the review, approval, modification, or disapproval of inmate special housing programs and treatment category designations recommended by institution staff. HE OR SHE has, therefore, directly and proximately caused the injuries and violations of rights set forth below. Defendant LEE IS BEING SUED in his or her individual and official capacities.

94. Defendants DOES 1-50, ARE each responsible in some manner for the injuries and constitutional violations to plaintiff alleged herein. The true names and capacities of defendants DOES 1-50 are presently unknown to plaintiff. Many of the DOES were supervisors involved in policy-making decisions and ARE BEING sued in their individual and official capacities. Plaintiff is informed and believes and therefore alleges on information and belief, that each of them is responsible in some

manner for the injuries and constitutional violations to plaintiff set forth below. Plaintiff therefore SUES DOES 1-50 by such fictitious names and will seek leave to amend this complaint to add their true names when the same have been ascertained.

95. Each Defendant, at all times mentioned herein, acted under the color of California law.

Facts Pertaining to Plaintiffs Validation as a Prison Gang Affiliate

96. In 2008 Plaintiff was housed at the California Men's Colony (CMC), a medium security prison facility located in San Luis Obispo, CA.

97. Plaintiff was a mental health patient in CDCR's Mental Health Services Delivery System (MHSDS) and had been diagnosed with bipolar disorder, acute depression and anxiety.

98. On July 29, 2008 CMC staff conducted a random search of plaintiff's assigned cell. During the search, staff found numerous political and history books and written material. The books and written material were authorized items of personal property allowed to be possessed by prisoners under statute and CDCR rules and regulations.

99. On July 30, 2008 defendant Dunn ordered Plaintiff to be locked up in the Administrative Segregation Unit (ASU). Dunn's

stated reasons for ordering plaintiffs placement in ASU WERE: plaintiffs "possession of numerous political and unauthorized written materials"; that plaintiff "admitted to having an active interest in Black politics and history"; and, that plaintiffs possession of said materials made his "presence in the general prison population to constitute a threat to the safety of others and the security of the institution."

100. Plaintiff was not given notice of any rule or regulation that he had violated by possessing the aforementioned reading materials, nor was he issued a CDCR 115 Rules Violation Report for violating any published rule or regulation. (Title 15, California Code of Regulations (CCR) § 3312.)

101. On August 11, 2008 Defendant Reynoso initiated an investigation into plaintiff to determine whether plaintiff was a prison gang member or associate. Reynoso searched plaintiffs personal property and determined that three (3) items discovered in plaintiffs property established that plaintiff was an Associate of the Black Guerilla Family (BGF) prison gang.

Defendant Reynoso documented and memorialized these items as follows:

- (a) ITEM 1 - CDCR 128B Chronology (Chrono) dated 8/14/08 (Association/Direct Link), describing the name and CDCR number of another PRISONER alleged to be a validated member of the BGF written on the inside of a religious book.
- (b) ITEM 2 - CDCR 128B Chronology dated 8/14/08 (Symbols), describing a picture of former California PRISONER GEORGE JACKSON and a second of a dragon clutching an officer in front of a watchtower contained in a news article downloaded from the internet.
- (c) ITEM 3 - CDCR 128B Chrono dated 8/14/08 (Written Material), describing the commercially published book 'Blood In My Eye' written by former California PRISONER GEORGE JACKSON.

102. On August 18, 2008 Defendants Reynoso and Martinez completed their

investigation and concluded there existed sufficient evidence to identify plaintiff as an Associate of the BGF prison gang.

103. Defendants Reynoso and Martinez did not meet with or interview plaintiff prior to completing their investigation and reaching their conclusion to label plaintiff an Associate of the BGF.

104. On August 19, 2008 defendant Reynoso and Romero provided Plaintiff with notice of the decision that a validation package would be submitted to OCS seeking to validate plaintiff as an Associate of the BGF. The notice consisted of Reynoso and Romero providing plaintiff with a copy of a CDCR 128 B Chrono dated 8/19/08 (GANG VALIDATION INTERVIEW NOTIFICATION AND EVIDENCE DISCLOSURE), and copies of the three (3) CDCR 128 B Chronos dated 8/14/08, described above.

105. Defendants Reynoso and Romero informed plaintiff that he would be provided with an opportunity to submit a written rebuttal to the prison gang associate allegations and

that any rebuttal plaintiff submitted would be placed in the validation package being sent to OCS.

106. Defendants REYNOSO, ROMERO, and MARTINEZ did not advise plaintiff of any rights he may have had related to staff assistance or any other rights associated with being able to defend against the PRISON gang allegations, prior to reaching the conclusion that plaintiff was a PRISON gang associate and to submit a validation package to OCS.

107. Defendants REYNOSO, ROMERO, and MARTINEZ did not provide Plaintiff with notice of any rule or regulation he had violated by possessing the items being used to allege that he was an Associate of the BGF PRISON gang, nor did they issue plaintiff a CDCR 115 Rules Violations Report (RVR) for violating any PRISON rule or regulation.

108. On August 25, 2008 Defendant REYNOSO approached plaintiff's cell in ASU and asked plaintiff whether he had prepared a written response to the PRISON gang allegations to be included in the validation package being

submitted to CCS.

109. Plaintiff provided REYNOSO with fourteen (14) hand written pages that vehemently denied the gang allegations, including each of the three (3) items of evidence used by defendants to allege plaintiff was an Associate of the BGF. Plaintiff's written rebuttal also included a request to be administered a polygraph examination to substantiate the veracity of his assertions. (Title 15, CCR § 3293)

110. Plaintiff also verbally informed REYNOSO that he didn't know anyone affiliated with the BGF and had never associated with anyone in the BGF. Plaintiff told REYNOSO that REYNOSO knew that plaintiff was not affiliated with the BGF and asked REYNOSO why he was attempting to validate plaintiff as an Associate of the BGF.

111. Defendant REYNOSO's response to plaintiff was that the matter was out of his (REYNOSO's) hands and that he had been ordered by "higher ups" to validate him.

112. Plaintiff asked REYNOSO who, specifically, the "higher ups" were and why plaintiff was being targeted for validation.

113. REYNOSO refused to tell plaintiff who the alleged "higher ups" were. REYNOSO stated "Had you just been hanging out on the yard with the homies - drinking (referring to prison made wine) and smoking weed - instead of having all that political shit in your cell, this wouldn't be happening."

114. Defendant REYNOSO then smiled at plaintiff and stated "There is a way I could make all of this go away and get you back to normal program."

115. When plaintiff asked "How?", REYNOSO stated "you gotta be my man, you gotta give it up" (indicating that plaintiff would have to become an informant and debrief).

116. Plaintiff attempted to explain to REYNOSO that he had no information to "give up" because he was not affiliated

with the BGF and thus didn't know anything about the prison gang.

117. Reynoso responded that "There is nothing I can do for you then, it's out of my hands."

118. Plaintiff continued the dialogue with Reynoso by asking him whether or not plaintiff would be targeted for validation if he were white or Latino and possessed the same exact political literature plaintiff was being labeled and punished for possessing.

119. Defendant Reynoso stated "No."

120. Plaintiff then asked Reynoso how it was possible that plaintiff could be labeled a prison gang associate based merely on the political and cultural books he reads.

121. Reynoso told Plaintiff "Basically, if I'm pointed in the right direction I can validate anybody."

122. Finally, Plaintiff asked Reynoso

whether there existed any chance that OCS would elect not to validate plaintiff as a BGF Associate.

123. Defendant REYNOSO told plaintiff that plaintiffs "Association/Direct Link is kinda weak but I've NEVER submitted a validation package to OCS that was rejected."

124. On August 25, 2008 Defendants REYNOSO and MARTINEZ submitted a validation package to OCS to validate plaintiff as an Associate of the BGF.

125. Defendants MARTINEZ and ROMERO did not interview plaintiff or otherwise provide him with any type of formal or informal hearing that would allow plaintiff to express his views and contest the gang allegations, prior to their decision to label plaintiff a prison gang associate and submit a validation package to OCS.

126. In fact, Defendant MARTINEZ NEVER met with or spoke to Plaintiff at all prior to his decision to label plaintiff a prison gang

Associate and submit a validation package to CCS.

127. Defendants REYNOSO, ROMERO, and MARTINEZ did not provide plaintiff with a written record or finding that indicated a reliable determination had been made that plaintiff was a "current active", i.e., had engaged in gang activity pursuant to Title 15, CCR § 3023, PRIOR to their decision to submit a validation package to CCS to validate plaintiff as a "current active" Associate of the BGF.

128. Plaintiff is informed and believes that defendants did not make a "current active determination," viz., a written record and finding that plaintiff had violated Title 15, CCR § 3023 'Gang Activity' and § 3000 'Gang' within the previous six (6) years by "knowingly promot[ing], further[ing] or assist[ing] any gang in ... planning, organizing, threatening, financing, solicit[ing] or committing unlawful acts or acts of misconduct classified as serious pursuant to CCR § 3315.

129. Plaintiff is informed and believes

that had defendants fulfilled their duty to make a "current active determination" they would have been unable to produce any reliable evidence that would support a finding that Plaintiff was a current active Associate of the BGF who had engaged in gang activity within the previous six (6) years.

130. On September 24, 2008 Plaintiff submitted a CDCR 'Inmate Request for Interview' to Defendant Reynoso requesting to be provided a copy of any current active determination defendants made in regard to whether Plaintiff was a current active or inactive prison gang Associate prior to their submission of plaintiff's validation package to OCS. Plaintiff also requested that, if a current active determination had not been made previously, that one be made and for Plaintiff to be provided a copy of its written record and finding.

131. On October 1, 2008 Defendant Reynoso denied Plaintiff's request for a "current active determination".

132. On October 9, 2008 plaintiff submitted a CDCR 602 'INMATE/PAROLEE APPEAL FORM' (Inmate Appeal) in regard to defendants refusal to provide Plaintiff with a "current active determination." Defendant Romero denied Plaintiffs Inmate Appeal at the Informal Level.

133. On October 15, 2008 Plaintiff submitted an Inmate Appeal in regard to defendants allegation that the three (3) items used to allege and identify plaintiff as an Associate of the BGF did not constitute 'Gang Activity' pursuant to Title 15, CCR §§ 3023 and 3000 'Gang'. Defendants denied Plaintiffs appeal.

134. On October 26, 2008 plaintiff submitted an Inmate Appeal in regard to the defendants allegation that the three (3) items used to allege and identify plaintiff as an Associate of the BGF did not indicate that Plaintiff had associated with "VALIDATED gang members and/or associates" on three (3) independent occasions, OR ON ANY OCCASION. Defendants DENIED Plaintiffs appeal.

135. On December 7, 2008 Defendants

Williams, Burt, and Rosenkrans validated plaintiff as a MEMBER of the BGF prison gang.

136. On January 20, 2009 Defendant REYNOSO provided Plaintiff with a CDCR 128B-2 Chrono dated DECEMBER 7, 2008 issued by OCS. This chrono consisted of a short statement that the three (3) items defendants submitted as evidence to allege that plaintiff was an Associate of the BGF met the validation requirements established in Title 15, CCR §3378. The chrono did not contain a written record and finding that a "CURRENT active determination" had been made verifying that plaintiff was a CURRENT active Associate of the BGF.

137. On or about January 26, 2009 Plaintiff saw Defendant ROMERO in ASU and asked him why plaintiff had been validated as a 'MEMBER' of the BGF when Defendants had alleged that Plaintiff was only an 'Associate' of the BGF.

138. Defendant Romero informed Plaintiff that he did not know why plaintiff had been validated as a BGF 'MEMBER', rather than an 'Associate'. Romero told plaintiff that he would make a phone call and find out.

139. Plaintiff then showed Romero three (3) books that plaintiff had obtained from the ASU library cart. Handwritten on the inside cover of each book was the name and CDCR number of a prisoner alleged to be a validated member of the Mexican Mafia prison gang. In addition, were graffiti and symbols alleged to be associated with the Mexican Mafia. Plaintiff asked Romero whether Romero would be writing Plaintiff CDCR 128 B chrono's alleging that Plaintiff was a member or associate of the Mexican Mafia, was engaging in "gang activity" by possessing the books, and was associating and had a direct link to the prisoner whose name and CDCR number was handwritten on the inside of the books.

140. Defendant Romero said "No."

141. Plaintiff asked Romero what the difference was between the three (3) books he was possessing then and the book plaintiff possessed on August 14, 2008, both having names and CDCR numbers of alleged prison gang affiliates written on the inside.

142. Defendant ROMERO responded to Plaintiff by stating "you're not MEXICAN".

143. Plaintiff then asked ROMERO "So this is all because I'm Black?"

144. ROMERO stated "Come on Oliver, you know the game" and walked away.

145. On February 1, 2009 Defendants KISSEL, Burt and Williams vacated the December 7, 2008 validation of plaintiff as a 'Member' of the BGF and re-validated him as an 'Associate' of the BGF.

Facts Pertaining to Plaintiffs Placement and Retention in the Security Housing Unit

146. On January 21, 2009 CMC Correctional Officer (C/O) CaPanna attempted to issue Plaintiff a CDCR 114-D 'Administrative Segregation Unit Placement Notice' (CDCR 114-D). IN PERTINENT part, the notice stated that on January 20, 2009 OCS notified CMC IGI that plaintiffs validation package met the requirements for validation as a Member of the BGF, and that based on such Plaintiffs presence in the General Population represented an immediate threat to the safety and security of the institution. As a result, Defendant Romero ordered Plaintiff's retention in ASU pending I.C.C. review for appropriate housing and programming needs.

147. Prior to issuing the CDCR 114-D to Plaintiff, C/O CaPanna told Plaintiff to sign his name in the space provided on the CDCR 114-D for inmates to WAIVE the due process rights associated with the Institutional Classification Committee hearing (I.C.C.) on the CDCR 114-D. These rights included the right to call witnesses, the

right to 72 hrs preparation time, the right to staff assistance, and the right to submit documentary evidence at the classification hearing. (Title 15, CCR §§ 3336(b), 3337(a), (b).)

148. Plaintiff refused to sign the waiver of his due process rights. Plaintiff verbally informed c/o Capanna that he wished to exercise his right to 72 hrs preparation time, to have staff assistance help him collect and gather evidence and to interview staff witnesses, and to have staff witnesses present at the I.C.C. hearing.

149. After Plaintiff refused to sign away his procedural rights c/o Capanna refused to issue Plaintiff the CDCR 114-D and left.

150. Approximately one hour later, c/o Tomiloso approached Plaintiff's cell with the same CDCR 114-D mentioned above. c/o Tomiloso told Plaintiff that he needed to sign the 'Inmate Waivers' box on the CDCR 114-D and that if Plaintiff continued to refuse then there would be no I.C.C. hearing until he did.

151. Plaintiff agreed to sign the

form. However, based on Plaintiff's awareness of Defendant's practice of duping prisoners into signing blank 'Inmate Waiver' boxes and then later checking the corresponding boxes with X's to indicate the prisoner waived a particular right - outside of the prisoner's presence - Plaintiff manually wrote his request for 72 hours preparation time, staff assistance, and for the presence of staff witnesses at the I.C.C. hearing, on the CDCR 114-D.

152. On January 22, 2009 defendant Martinez approached Plaintiff's cell with ASU Correctional Sergeant Haskell and C/O Augusto-Ramos to conduct an Administrative Review of the CDCR 114-D dated January 21, 2009.

153. During the review Plaintiff presented Defendant Martinez with a six (6) page handwritten document titled 'CDC 114-D Supplement'. This document clearly set forth in writing Plaintiff's request for staff assistance, the reasons for requesting staff assistance, the disclosure of documentary evidence, and staff witnesses, including Defendant Martinez. The document

also articulated a written defense of the allegations contained in the CDCR 114-D.

154. On January 26, 2009, three days prior to Plaintiff's scheduled I.C.C. hearing on the CDCR 114-D Order, Plaintiff asked Correctional Sergeant (Sgt.) Haskell to call Defendant Martinez to inquire why a staff assistant had not come to assist Plaintiff in preparation for the scheduled January 29, 2009 I.C.C. hearing.

155. Sgt. Haskell informed Plaintiff that he had spoken with Defendant Martinez and Martinez stated that he had given Plaintiff's CDC 114-D Supplement to Defendant Romero.

156. Later that day, Plaintiff saw Defendant Romero in ASU and asked Romero where Plaintiff's CDC 114-D Supplement was at that he had given to Defendant Martinez on January 22, 2009.

157. Defendant Romero stated that the CDCR 114-D Administrative Review was the "reviewer's responsibility" (Defendant Martinez) and that while Martinez had attempted to "dump" Plaintiff's CDC 114-D Supplement on

(b)(6)

Romero "wasn't going to deal with it." Romero stated that he had given Plaintiffs CDC 114-D Supplement to "committee."

158. Plaintiff asked Defendant Romero who he was referring to, specifically, when he said he gave Plaintiffs CDCR 114-D Supplement to "committee."

159. Defendant Romero refused to tell Plaintiff who he was referring to when he said he gave Plaintiffs CDC 114-D Supplement to "committee."

160. On January 26, 2009 Plaintiff submitted an 'INMATE REQUEST FOR INTERVIEW' to Defendant King summarizing the events related to Defendant Martinez's January 22, 2009 CDCR 114-D Administrative Review and Plaintiffs CDC 114-D Supplement. In addition, Plaintiff reiterated his request for staff assistance to help Plaintiff gather and present documentary evidence, and to call staff witnesses to the I.C.C. hearing on the CDCR 114-D Segregation Order. Moreover, informed Defendant King that if Plaintiffs request could not be accomplished prior to the January 29, 2009 scheduled I.C.C. hearing that Plaintiff was formally requesting for the I.C.C. hearing to

be postponed pursuant to CCC§3339(b)(2).

161. On January 27, 2009 Plaintiff asked Defendant Urmey to phone Defendant King to see if Defendant Romero had, in fact, given King Plaintiffs CDC 114-D Supplement.

162. Defendant Urmey informed Plaintiff that he spoke to Defendant King and that King stated that he had received Plaintiffs CDC 114-D Supplement from Defendant Romero. Defendant Urmey also stated that King said he had forwarded Plaintiffs CDC 114-D Supplement to Defendant Martinez and that King expected all of these due process issues to be handled by Defendant Martinez prior to Plaintiffs scheduled appearance at I.C.C. on January 29, 2009.

163. On January 28, 2009 Plaintiff again asked Defendant Urmey to contact Defendant King and to inform him that Plaintiff had still not received any staff assistance or other relief requested in Plaintiffs CDC 114-D Supplement.

164. Defendant Urmey informed Plaintiff that he had spoken to Defendant King again

and that King said he had received Plaintiffs 'Inmate Request for Interview' dated January 27, 2012. and that King had told Urmey to act as Plaintiffs Staff Assistant.

165. Plaintiff asked Defendant Urmey whether he was prepared to question Plaintiffs requested staff witnesses, to collect documentary evidence, and to assist Plaintiff in preparation for his defense of the anticipated action at the January 29, 2009 I.C.C. hearing.

166. Defendant Urmey informed Plaintiff that he could not do any of the things Plaintiff requested because "they" wouldn't let him, and that all he could do as Plaintiffs staff assistant was appear at Plaintiffs I.C.C. hearing to make SURE Plaintiff understood what was going to happen at I.C.C..

167. On the morning of January 29, 2009 Defendant Urmey approached Plaintiff's cell and told Plaintiff that he had just spoken with Defendant King who told Urmey to let Plaintiff know "We are going to give him an indeterminate SHU today and put him up for transfer."

168. Plaintiff again asked Urmy whether he was going to be afforded any due process for the I.C.C. hearing.

169. Defendant Urmy told Plaintiff that it wasn't up to him and from the looks of what Defendant King has said, apparently not.

170. Plaintiff informed Urmy that if the I.C.C. defendants were not going to provide Plaintiff with staff assistance and the opportunity to present a defense to the CDCR 114-D and the proposed I.C.C. action, in protest he was not going to attend.

171. Defendant Urmy asked Plaintiff whether he had anything he wanted Urmy to tell I.C.C. on Plaintiff's behalf. Plaintiff stated "yes", and provided Urmy with a handwritten note to give I.C.C. The note reiterated Plaintiff's desire to call three (3) staff witnesses, to be provided staff assistance to gather documentary evidence and help Plaintiff prepare a defense to the allegations set forth in the CDCR 114-D Segregation Order and the anticipated I.C.C. action.

172. On January 29, 2009 Defendants King, Kephart and John Doe defendants convened an I.C.C. hearing on Plaintiff's January 21, 2009 CDCR 114-D Segregation Order. Defendants imposed an indeterminate SHU upon Plaintiff and placed him up for transfer to one of CDCR's SHUs. Plaintiff is informed and believes that the I.C.C. defendants did not make any type of "current active determination" - or any other type of determination that would show Plaintiff had engaged in gang activity, as defined by CDCR rules and regulations - that Plaintiff was a currently active Associate of the BGF, prior to placing Plaintiff in the indeterminate SHU.

173. On February 10, 2009 Defendant Carriedo endorsed I.C.C.'s placement of Plaintiff in the indeterminate SHU. Plaintiff is informed and believes that Carriedo did not make a "current active determination" that Plaintiff was a currently active Associate of the BGF prior to endorsing Plaintiff's placement in the indeterminate SHU.

174. On February 26, 2009 Plaintiff was transferred to the indeterminate SHU at California

State Prison at Corcoran. (CORCORAN)

175. On March 5, 2009 Defendant White informed Plaintiff that he was scheduled to appear in front of I.C.C. for his initial indeterminate SHU review. Plaintiff requested 72 hr notice so that he could prepare a written statement in defense of the proposed I.C.C. action. As a result, Defendant White re-scheduled Plaintiff's I.C.C. hearing until March 12, 2009.

176. On March 12, 2009 Defendant White again informed Plaintiff that he was scheduled to appear in front of I.C.C. While White was at Plaintiff's cell, Plaintiff presented White with a five (5) page hand-written document titled CDC 128 G Supplement. Plaintiff informed White that he was requesting that the document be submitted to the I.C.C. and that the document be placed into the I.C.C. record and in his Central Prison File (Prison file).

177. Plaintiff's CDC 128 G Supplement articulated the following:

(a) that Plaintiff was not, and never had been an Associate of any prison gang;

(b) that Plaintiff had never engaged in gang activity on behalf of any gang;

(c) that Plaintiff had never been designated "current active" by any prison official;

(d) that Plaintiff could not be housed with any prison gang member or associate without his health, safety, and life being in jeopardy since he was not a prison gang Associate;

(e) that Plaintiff was requesting staff assistance to assist him with interviewing staff witnesses, gathering documentary evidence, and preparing a defense to the allegations and proposed I.C.C. action; and,

(f) that Plaintiff requested a "current active determination" to demonstrate that he had never engaged in "gang activity".

178. At the I.C.C. hearing Defendant White gave Defendant Davis Plaintiff's CDC 128 G Supplement.

179. Defendant Davis glanced at the document for approximately five (5) seconds and stated there was nothing I.C.C. could do in regards to Plaintiff's prison gang validation and indeterminate SHU term. The I.C.C.

hearing was performed in a rote and perfunctory manner, lasted only 2-3 minutes, and merely consisted of the I.C.C. confirming that the requisite paperwork was present in Plaintiff's file to retain him in the indeterminate SHU.

The only question asked of Plaintiff was whether he felt like killing himself or harming anyone. Defendants did not provide Plaintiff with any type of meaningful hearing wherein he could dispute the gang allegations or basis for indeterminate SHU confinement.

Defendant Davis stated that he would make Plaintiff's CDC 128G Supplement part of the I.C.C. record and place it in Plaintiff's prison file.

180. On April 12, 2009 Plaintiff appealed the March 12, 2009 I.C.C. action. Plaintiff's appeal was denied.

181. On May 11, 2009 Plaintiff submitted an 'Inmate Request for Interview' to Defendant Billiou. The request sought a copy of the 'CDC 128G Supplement' Plaintiff had submitted to I.C.C. on March 12, 2009. Defendant Billiou informed Plaintiff that there existed no such

document in Plaintiff's prison file.

182. On July 1, 2009 Defendants BEER, Billiou, Chavez, Davis, Gomez and Ruff convened an I.C.C. to conduct a 180 day review of Plaintiff's indeterminate SHU term. During this I.C.C. hearing, Plaintiff attempted to submit a four (4) page handwritten document titled 'CDC 128-G Supplement (I.C.C. 180 day review July 1, 2010)'. The CDC 128G Supplement articulated the following:

(a) that Plaintiff had never engaged in any form of gang activity;

(b) that Plaintiff had never received a "CURRENT active determination" prior to being placed in the indeterminate SHU;

(c) that Plaintiff was not an Associate of any prison gang and that he could not house with any prison gang member or associate without his health, safety, and life being in jeopardy;

(d) that Plaintiff was requesting basic due process protections so that he could provide I.C.C. with critical information that he had NEVER engaged in any gang activity and therefore did not present a threat to others or the

safety and security of the institution;

(e) that Plaintiff was requesting staff assistance to facilitate the gathering of documentary evidence and interview staff witnesses;

(f) that Plaintiff was not making an attempt to litigate OCS's identification of him as an Associate of the BGF at ICC, but rather was seeking the opportunity to demonstrate to I.C.C. that he had not engaged in any "gang activity" on behalf of any gang and thus was being retained in the indeterminate SHU unjustly;

(g) that Plaintiff was requesting that I.C.C. provide him with a written record and finding that substantiated that Plaintiff had been designated "current active" and any other facts that would indicate Plaintiff represented a severe threat to others and the safety and security of the institution; and

(h) that ICC refer Plaintiff's case back to IGI and/or OCS for a "current active determination" to be made.

183. The I.C.C. Defendants, each of them, refused to read or accept Plaintiff's COC 1286 Supplement, and refused to allow Plaintiff to read the document aloud so that it could

become part of the record of the I.C.C. action.

184. The July 1, 2009 I.C.C. hearing only lasted approximately 2-3 minutes and was conducted in a rote and perfunctory manner and was the functional equivalent of a sham review. The only question asked of Plaintiff was whether he felt like killing himself or harming anyone. Plaintiff was deprived of a meaningful hearing conducted at a meaningful time and place in a meaningful manner. I.C.C. Defendants retained Plaintiff in the indeterminate SHU.

185. On July 25, 2009 Plaintiff appealed the I.C.C. decision. Plaintiff's appeal was denied.

186. On December 3, 2009, in anticipation of Plaintiff's scheduled SHU Annual Review in February 2010, Plaintiff submitted letters to Defendants Chavez and Adams. These letters informed Defendants of Plaintiff's upcoming SHU Annual Review and that Plaintiff was requesting in writing the opportunity to be assigned staff assistance, to call staff witnesses, to present documentary evidence. Plaintiff

also set forth the specific reasons for his requests, in that it would allow him to present substantive facts that would show why he does not present a severe threat to the safety of others or any institution, as well as to show that he had NEVER engaged in gang activity on behalf of any gang. Lastly, Plaintiff expressed to Defendants that being provided these minimal safeguards would allow him to have a meaningful I.C.C. review prior to making any decision or determination.

187. Defendants Chavez and Adams did not respond to Plaintiff's letters.

188. On December 21, 2009 Plaintiff wrote a letter to Defendant Billiou in regard to Plaintiff's upcoming I.C.C. SHU Annual Review. The letter made the same substantive requests as the ones Plaintiff had made in his December 3, 2009 letters to Defendants Chavez and Adams, in that Plaintiff was requesting to receive due process prior to and during the I.C.C. hearing.

189. On February 22, 2010 Defendant

Billiou provided Plaintiff a response to his December 21, 2009 letter. Billious response stated, inter alia, that Plaintiff could present to I.C.C. any reason why Plaintiff believes staff assistance is required and that I.C.C. would assign any staff assistance if needed.

190. That same day, Defendant Billiou issued Plaintiff a 'CDC 114-D Administrative Segregation Unit Placement Notice.' The notice stated:

'You are currently serving an indeterminate SHU term due to your validation as a member of the BGF per CDCR 128 B-2 dated 12/7/2008. You are scheduled to appear before I.C.C. for a SHU Annual Review. I.C.C. will review your case factors to determine your continued placement. You will have the opportunity to participate in this hearing and should be prepared to discuss your case factors. Based on your validation it will be recommended you be retained Indeterminate [sic.] SHU. Your involvement in gang activity may pose a threat to the institution if released to the G.P. at this time.'

191. Plaintiff again informed Defendant Billiou verbally that he was requesting staff assistance, staff witnesses, and 72 hours preparation time prior to any I.C.C. hearing. Plaintiff also handwrote these requests on the CDCR 114.D Segregation Order issued to him by Billiou. Defendant Billiou denied Plaintiff's requests.

192. On February 22, 2010 Plaintiff wrote Defendant Vella. Plaintiff's letter set forth his request for the opportunity to receive due process, in substantively the same form as he had in his letters to Defendants Billiou, Chavez and Adams. In addition, Plaintiff notified Defendant Vella of the previous letters he had written to the above named Defendants in regard to the upcoming I.C.C. hearing. Defendant Vella did not respond to Plaintiff's letter.

193. On February 25, 2010 Plaintiff appeared before I.C.C. for his SHU Annual Review. At the review, Plaintiff submitted a four (4) page 'CDC 128-G Supplement' requesting minimal due process the same as he had in the letters he had previously written to

other defendants and at previous I.C.C. hearings. Plaintiff reiterated that he could not safely be housed with any prison gang members or associates because he was not a prison gang affiliate and that Defendants WERE jeopardizing his life by forcing him to be housed with prison gang members and associates. I.C.C. Defendants denied Plaintiff's requests.

194. THE February 25, 2010 I.C.C. SHU Annual Review lasted approximately 2-3 minutes and was conducted in the same rote and perfunctory manner as previous I.C.C. hearings. The hearing merely consisted of I.C.C. defendants confirming that the requisite paperwork was present in plaintiff's file to retain him in the indeterminate SHU and asking Plaintiff whether he felt like killing himself or harming others. Defendants did not provide Plaintiff with a meaningful hearing or a meaningful opportunity to be heard.

195. Plaintiff submitted an appeal of the February 25, 2010 I.C.C. SHU Annual Review. Defendants denied the appeal.

196. On March 29, 2010 defendant Garcia endorsed Plaintiff's indeterminate SHU confinement.

197. Plaintiff has received several I.C.C. reviews regarding his confinement in the indeterminate SHU. At each of these reviews the decision had already been made to retain Plaintiff in the indeterminate SHU because, in fact, the I.C.C. had no power or authority to release Plaintiff from the SHU. The I.C.C.'s lack of authority to be able to meaningfully consider releasing Plaintiff from the SHU rendered these hearings meaningless and essentially sham reviews. At each review, Plaintiff attempted to submit written statements and requests for minimal due process. Plaintiff constantly reiterated the fact that he was not an Associate of the BGF, and that he had not engaged in gang activity on behalf of any prison gang. At each of these reviews Defendants denied Plaintiff's request to prove that he wasn't a prison gang Associate. Each I.C.C. was conducted in a rote and perfunctory manner in so much as the I.C.C. Defendants did not make any individualized findings in regard

to whether or not Plaintiff was a prison gang Associate or whether he was a "current active" prison gang Associate or whether he posed any real threat to the safety of others or institution security. The I.C.C. reviews ordering Plaintiffs continued confinement in the indeterminate SHU without proper evidentiary basis and without affording him a meaningful hearing or any meaningful opportunity to present a defense to the gang allegations and the basis for indeterminate SHU placement included the following:

- July 1, 2010 - 180 Day SHU Review before I.C.C. Defendants Lambert, Kraay, Mahoney, Billiou, Garcia, and Morales
- January 20, 2011 - Annual SHU Review before I.C.C. Defendants Gipson, Kraay, Soliman, Billiou, Ruiz, and Rodriguez
- August 4, 2011 - 180 Day SHU Review before I.C.C. Defendants Leon, McLaughlin, Soliman, Billiou, and Smith
- January 26, 2012 - Annual SHU Review before I.C.C. Defendants Lambert, Gomez, Mahoney, Billiou, Pina, and Moreno
- July 12, 2012 - 180 Day SHU Review before I.C.C. Defendants Gipson, Perez, Mahoney

Billiou, Pina, and Castro

- February 7, 2013 - Annual SHU Review before I.C.C. Defendants DeCanto, Taber, Garcia, Mahoney, Johnson, Graves, Smith, Sanchez, Campbell

198. Several endorsements of Plaintiffs SHU retention have been made by the CSR defendants. Each endorsement was conducted in a rote and perfunctory manner in so much as the endorsements did not contain any individualized finding in regard to whether or not Plaintiff was a gang associate, a "current active" gang associate, or posed any real threat to the safety of others and institution security.

199. Plaintiff is informed and believes that during Plaintiffs confinement in the indeterminate SHU, Defendants have not conducted any gang status reviews to determine whether plaintiff was a current active Associate of the BGF or whether Plaintiff posed a severe threat to the safety and lives of others or the security of the institution.

200. Plaintiff is not a prison gang member or associate or does not pose any threat to the safety of others or institution security.

201. None of the defendants acted to designate plaintiff as a current active gang associate or make any type of factual finding that plaintiff ever engaged in any gang activity on behalf of any gang pursuant to Title 15, CCR § 3023 prior to placing plaintiff in the SHU for an indeterminate term.

202. Former Secretary Cate and Undersecretary KERNAN and Wardens Marshall, Adams and Gipson supported plaintiffs alleged gang status and indeterminate SHU term imposed on plaintiff by employees, officers, agents and officials.

203. All supervisory defendants participated in the formulation and enforcement of the validation, classification and SHU policies.

204. Title 15 CCR § 3312 (a)(3) mandates that misconduct be reported on a CDC Form 115, Rules Violation Report. None of the defendants have formally charged plaintiff with violating

Title 15 CCR §3000 "Gang" or §3023 "Gang Activity".

205. Plaintiff has not violated 15 CCR §3000's "Gang" or §3023 "Gang Activity" on behalf of any gang.

206. The August 25, 2008 validation package does not contain "three reliable independent sources of factual information, with one "direct link" to a validated gang member or associate, showing that plaintiffs alleged current active behavior on any given occasion, was to "knowingly" promote, further or assist the alleged prison gang in some unlawful act or acts of misconduct classified as serious as required by the defendants' written and unwritten rules and regulations in existence at the time of plaintiffs' prison gang validation.

207. The actions taken by the defendants constitute racial discrimination and retaliation for plaintiffs' race and political expression.

208. Plaintiff was not given notice of what source items defendants would use to label him an Associate of the BGF so that he could

avoid having possession of any of these items. All the while, defendants refuse to reveal or provide notice of what items, specifically, it considers to be gang indicia or alleged gang activity, leaving plaintiff defenseless and having to guess at what conduct will get him validated as an Associate of a prison gang and placed in the indeterminate SHU.

209. At all relevant times mentioned herein, defendants have required plaintiff to remain in the indeterminate SHU until he serves a de facto six (6) year term or is designated an "inactive" gang associate, i.e., has not engaged in gang activity for six (6) years.

Facts Pertaining to Defendants Intent

210. Defendants have intentionally discriminated against and retaliated against plaintiff based on his race and political expression.

211. Defendants have no legitimate penological interest in prohibiting plaintiffs legitimate political and educational pursuits based on his race and where such educational and political pursuits

do not involve any other PRISONERS and were not for the purpose of engaging in or furthering any illegal prison gang activity.

212. Direct evidence of defendants' retaliatory and discriminatory intent is provided by defendants statements to plaintiff that he wouldn't be in the situation of being validated if he wouldn't have had "all that political shit" in his cell. Further evidence of defendants intent is provided by defendants statements on the July 30, 2008 CDCR 114-D Segregation Order that plaintiff was being placed in segregation based on his "possession of numerous political and unauthorized written materials" and the fact that plaintiff "admitted to having an active interest in Black politics and history".

213. Circumstantial evidence of defendants retaliatory and discriminatory intent is provided by the fact that the three (3) source items relied on as evidence to validate plaintiff as an Associate of the BGF do not indicate that plaintiff was engaged in any activities in furtherance of any illegal prison gang activity. Further evidence of defendants intent is provided by the fact that defendants allow other races to possess and read the

exact same material plaintiff possessed and read without sanction, classification or consequence and when plaintiff was subject to such penalties solely because he is of the African-American race.

214. Further circumstantial evidence of defendants retaliatory and discriminatory intent and of the lack of legitimate penological interest is provided by the fact that defendants have no justification to rely on and use plaintiff's race and political expression as a proxy to label plaintiff an Associate of a prison gang and to place him in the indeterminate SHU.

215. Defendants have maliciously and sadistically labeled plaintiff as an Associate of a prison gang and placed him in the indeterminate SHU in order to retaliate against him for his legitimate First Amendment activities and his African-American race.

Facts Pertaining to Defendants' Vague and Overbroad Regulations

216. Plaintiff has been validated as an

Associate. According to CDCR Department Operations Manual ("DOM") §52070.19.3 the definition of Associate is:

"Associate" designates non gang members who are involved periodically or regularly with members or associates of a gang. This identification requires at least three (3) original, independent source items of documentation indicative of association with VALIDATED gang members and/or associates (emphasis in original). At least one (1) of the sources shall be a direct link to a validated member/associate, such as a validated member/associate or former member/associate (dropout). The source items shall meet the requirements established in CCR Section 3378."

217. According to CDCR D.O.M. §55070.19.3 a direct link is:

"a validated member or former member identifying the inmate/parolee as an associate; correspondence with a validated member; photographed with a validated member; staff or

informant observations of being in company with a validated member; identified as an associate by a validated associate who has documented direct link; etc." D.O.M. §55070.19.3

218. Title 15, CCR § 3378(c)(1) provides that a "CDC Form 812-A or B shall be completed if an inmate/parolee has been verified as a currently active member/associate, inactive member/associate or dropout of a gang (prison gang or disruptive group as defined in section 3000. Current activity is defined as any documented gang activity within the past six(6) years consistent with section 3341.5(c)(5). (All subsequent regulations are referred to by section number only; all are contained in Title 15 of the California Code of Regulations).

219. Section 3023 defines "Gang Activity" as "Inmates and parolees shall not knowingly promote, further or assist any gang as defined in section 3000."

220. Section 3378(c)(8) provides that "The determination of a gang identification shall reference each independent source item in the

inmate/parolee's central file. The sources shall be based on the following criteria:

- (a) Self admission.
- (b) Tattoos and symbols. Body markings, hand signs, distinctive clothing, graffiti, etc., which have been identified by gang coordinators/investigators as being used by and distinctive to specific gangs.
- (c) Written material. Any material or documents evidencing gang affiliation such as the membership or enemy lists, constitutions, organizational structures, codes, training material, etc., of specific gangs.
- (d) Photographs. Individual or group photographs with gang connotations such as those, which include insignia, symbols, or validated gang affiliates.
- (e) Staff information. Documentation of staff's visual or audible observations which reasonably indicate gang activity.
- (f) Other agencies. Information evidencing gang affiliation provided by other agencies.
- (g) Association. Information related to the inmate/parolee's association with validated gang affiliates.

(h) Informants. Documentation of information evidencing gang affiliation from an informant shall indicate the date of the information, whether the information is confidential or nonconfidential, and an evaluation of the informant's reliability. Confidential material shall also meet the requirements established in §3321.

(i) Offenses. Where the circumstances of an offense evidence gang affiliation such as where the offense is between rival gangs, the victim is a verified gang affiliate, or the inmate/parolee's crime partner is a verified gang affiliate.

(j) Legal documents. Probation officer's report or court transcript evidencing gang affiliation.

(k) Visitors. Visits from persons who are documented as gang "runners" or community affiliates, or members of an organization which associates with a gang.

(l) Communication. Documentation of telephone conversations, mail, notes, or other communication, including coded messages evidencing gang affiliation.

(m) Debriefing reports. Documentation resulting from the debriefing required by (c)(2), above (§3378).

221. SECTION 3341.5 (c)(2)(A) PROVIDES THAT, "EXCEPT AS PROVIDED AT SECTION 3335 (a), SECTION 3378 (d) AND SUBSECTION (c)(5), A VALIDATED PRISON GANG MEMBER OR ASSOCIATE IS DEEMED TO BE A SEVERE THREAT TO THE SAFETY OF OTHERS OR THE SECURITY OF THE INSTITUTION AND WILL BE PLACED IN A SHU FOR AN INDETERMINATE TERM." Thus the regulatory scheme deems that any inmate who speaks to a validated inmate is a severe threat to the safety of the prison and subject to an indeterminate term; and that a validated prisoner is prohibited from speaking to anyone without either placing himself or the prisoner he's speaking to in jeopardy.

222. SECTION 3023 (a) PROVIDES THAT "INMATES AND PAROLEES SHALL NOT KNOWINGLY, PROMOTE, FURTHER OR ASSIST ANY GANG AS DEFINED IN SECTION 3000." HOWEVER, THE REGULATIONS DEFINING GANG ASSOCIATION AND EVIDENCE OF GANG ASSOCIATION, WRITTEN MATERIAL, AND TATTOOS AND SYMBOLS, CONTAIN NO REQUIREMENT THAT THE INMATE PROMOTE, FURTHER OR ASSIST THE GANG NOR DO THEY REQUIRE THAT THE INMATE HAVE KNOWLEDGE THAT HE IS ASSOCIATING WITH A GANG MEMBER OR ASSOCIATE, OR POSSESSING WRITTEN MATERIAL THAT DEFENDANTS MAY CONSIDER TO BE

associated with a gang, or what symbols defendants may consider to be associated with a particular gang.

223. Section 3341.5 (c)(5) and 3378(e) authorize, in relevant part, SHU release of prison gang members or associates when those inmates have "not been identified in gang activity for a minimum six years." (Emphasis added.) Section 3378(d) authorizes inactive status for prison gang members and associates housed in the general population who have "not been identified as having been involved in gang activity for a minimum of two (2) years. However, because the regulatory scheme is inconsistent, it is impossible to determine what constitutes "gang activity" or "currently active" versus "inactive" gang status, and which type of gang members or associates, specifically, represent a severe threat to security of the institution and the safety of others.

224. CDCR's Gang Management Policy and its corresponding rules and regulations are inconsistent with governing law and injunctions and do not give prisoners notice of what conduct is proscribed and what conduct is permitted

because PRISONERS ARE NEVER advised which prisoners have been validated (who must therefore be completely shunned, or what items of pop culture defendants will consider to be gang related (like commercially published books that defendants allow PRISONERS to purchase and receive into the institution).

225. Plaintiff's gang validation and indeterminate SHU placement pursuant to defendants vague, arbitrary, overbroad and punitive policy, practices, rules and regulations constitutes an atypical and significant hardship.

226. Defendants OR MORE than ONE of them have a long history of a consistent pattern of deliberate, willful indifference to the constitutional rights of prisoners.

227. Defendants have a custom and policy of maintaining a Code of Silence, an unwritten but widely understood code designed to encourage prison employees to remain silent regarding the improper behavior of their fellow employees. As a result of their failure to train subordinates

and their active opposition to investigations of wrongdoing by officers, supervisory defendants have ratified and perpetuated this practice and policy.

Facts Related to Defendants
Thwarting of Plaintiffs Attempt
To Utilize the Grievance Process
To Access the Courts

228. ON October 9, 2008, as mentioned above, Plaintiff submitted an administrative appeal to Defendant ROMERO in regard to receiving an an "inactive" gang review or a "current active determination". Defendant ROMERO denied the appeal at the informal level. Plaintiff resubmitted the appeal for formal level to the CMC Appeals Office on October 30, 2008.

229. ON November 3, 2008 Defendant Vela refused to process Plaintiffs properly submitted appeal, stating that Plaintiffs appeal was an "request for information" with instructions to Submit a Request for Interview to the IGI.

230. Plaintiff re-submitted the appeal to the CMC Appeals Office with a letter attached explaining that Plaintiffs appeal was not an 'Inmate Request for Interview', that plaintiff had already submitted an Inmate Request to Defendant Reynoso, which had been answered and that Plaintiff appealed Reynoso's response, which was in turn answered by Defendant Romero at the informal level of the appeals process and that now Plaintiff was seeking the formal level of review on Romero's decision.

231. On November 17, 2008 Defendant Vela again refused to process plaintiffs properly submitted appeal.

232. Plaintiff attempted to re-submit his appeal on two(2) additional occasions and both times, on January 12, 2009 and February 24, 2009 Defendants Vela and Engler refused to process plaintiffs properly filed appeal and thwarted his opportunity to seek redress for his grievance to the government and access the courts.

B. SECOND INTERFERENCE

233. ON February 5, 2009 CMC staff delivered Plaintiff fully opened legal mail. Plaintiff submitted an Inmate Appeal to the Officer who delivered the opened and clearly marked Legal Mail to Plaintiff.

234. ON February 9, 2009 the Officer who delivered Plaintiff's legal mail opened responded to the appeal at the informal level and stated that Plaintiff's legal mail was already opened when he received it.

235. ON February 9, 2009 Plaintiff resubmitted the appeal for formal level review, along with the clearly marked envelopes (four in all) that the legal mail came in - as attachments, to the CMC Appeals Office.

236. ON February 25, 2009 Plaintiff submitted an 'Inmate Request for Interview' to the CMC Appeals Office in regard to the status of the legal mail appeal he had submitted on February 9, 2009. Plaintiff received no response.

237. On March 2, 2009 Plaintiff submitted a second letter to the CMC Appeals Office seeking a status of the legal mail appeal he had submitted on February 9, 2009.

238. On March 20, 2009 the CMC Appeals Office forwarded Plaintiff a listing of all of his pending appeals. Plaintiff's legal mail appeal submitted on February 9, 2009 was not on the list.

239. On March 23, 2009 Plaintiff wrote a letter to Defendant Engler referencing the fact that his February 9, 2009 legal mail appeal was not on the pending appeal lists Engler had sent Plaintiff and, as a result, Plaintiff was attaching a duplicate of the original appeal.

240. On April 2, 2009 Defendant Javaux refused to process Plaintiff's re-submitted legal mail appeal citing that it wasn't deemed to warrant a staff complaint.

241. On April 24, 2009 Plaintiff re-submitted the legal mail appeal again and attached a letter explaining that Plaintiff's appeal was not being submitted as a staff complaint but rather as

a grievance in regard to the opening of his legal correspondence from his attorney.

242. On May 6, 2009 Defendant Javaux again refused to process Plaintiff's legal mail appeal. Defendant Javaux again stated that Plaintiff's appeal did not warrant staff complaint processing, but for Plaintiff to resubmit the appeal to the CMC Appeals Office with the opened legal mail envelopes (the ones Plaintiff had informed CMC Appeals Office Defendants multiple times had been attached to the original February 9, 2009 appeal that Defendants claim they NEVER received).

243. On June 16, 2009 Plaintiff attempted to send the legal mail appeal and all of the CMC Appeals Office Defendants rejection notices to the Chief, Inmate Appeals in Sacramento. Defendant Grannis returned Plaintiff's legal mail appeal unprocessed and told Plaintiff that he had to follow the instructions from the CMC Appeals Office.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

244. Plaintiff has exhausted all administrative remedies available to him in regard to each and all of the issues raised in this appeal, including those claims brought under state law. Plaintiff has filed several claims with the State Government Claims Board, which all were denied.

LEGAL CLAIMS

FIRST CAUSE OF ACTION

(Fifth and Fourteenth Amendment - Government Defamation without Due Process of Law/"Stigma Plus")

245. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

246. Defendants have violated Plaintiffs Due Process Rights guaranteed by the Fifth and Fourteenth Amendment to the U.S. Constitution in that the state uttered a statement about him, that he was an Associate of a prison gang (BGF), that is viciously derogatory and

defamatory and injures Plaintiff's name, standing, and reputation, and that is false and is capable of being proven false, and as a result has caused Plaintiff to suffer an atypical hardship by being confined in the indeterminate SHU, and placed in law enforcement agency data-bases as a prison gang affiliate.

SECOND CAUSE OF ACTION

(Fourteenth Amendment - Lack of Reliable Evidence on Source Items Used to Allege Plaintiff is an Associate of BGF)

247. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

248. Defendants have violated plaintiff's Fourteenth Amendment rights by labeling Plaintiff an Associate of the BGF and placing him in the indeterminate SHU based on independent items that didn't meet the some evidence requirement that contained an indicia of reliability.

249. Plaintiff's indeterminate SHU term and Associate of the BGF label constitutes a significant

and atypical hardship.

THIRD CAUSE OF ACTION

(FOURTEENTH AMENDMENT - LACK OF
RELIABLE EVIDENCE THAT PLAINTIFF ENGAGED
IN GANG ACTIVITY OR WAS CURRENT ACTIVE)

250. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

251. Defendants have violated plaintiffs Fourteenth Amendment rights by falsely accusing or assuming that Plaintiff had engaged in gang activity, i.e., was "current active" Associate of a prison gang and placing him in the indeterminate SHU as a result. THERE WAS NO EVIDENCE THAT HAD THE REQUISITE RELIABILITY THAT PLAINTIFF EVER VIOLATED CCR § 3023. Plaintiff had a liberty interest in not being placed in the indeterminate SHU UNLESS THE REQUISITE FINDING HAD BEEN MADE THAT HE WAS "CURRENT ACTIVE" AND HAD ENGAGED IN GANG ACTIVITY WITHIN THE PREVIOUS SIX (6) YEARS.

252. Plaintiff's indeterminate SHU term and Associate of the BGF label constitutes a significant and atypical hardship.

FOURTH CAUSE OF ACTION
(FOURTEENTH AMENDMENT - Lack of
IMPARTIAL DECISIONMAKER)

253. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

254. Defendants have violated plaintiff's Fourteenth Amendment rights by (a) accusing him of being an Associate of a prison gang (b) limiting his opportunity to express his views and rebut the accusation to that of doing so to the same state actor that made the accusation and who had decided the disposition of the issue before plaintiff had the opportunity to express his views, and had prejudged the evidence.

255. Plaintiff's validation as an Associate of a prison gang and subsequent indeterminate SHU placement constitutes a significant and atypical hardship.

FIFTH CAUSE OF ACTION

(FOURTEENTH AMENDMENT - DENIAL OF
OPPORTUNITY TO EXPRESS VIEWS TO
DECISIONMAKER REGARDING VALIDATION)

256. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

257. Defendants have violated plaintiff's Fourteenth Amendment rights by denying him the opportunity to express his views to the person charged with making the decision to validate plaintiff as an Associate of the BGF. Only the IGI (Defendant Martinez and Defendant Romero) had the authority and decision-making power to request that OCS validate plaintiff as a BGF Associate. Only OCS (Defendants Burt, Kissel, Rosenkrans, and Williams) had the authority and decision-making power to validate plaintiff as an Associate of the BGF. Plaintiff was denied the opportunity to meet with or express his views to any of these actual decision-makers.

258. Plaintiff's validation as an Associate of the BGF and subsequent placement in the indeterminate SHU constitutes a significant and

atypical hardship.

SIXTH CAUSE OF ACTION

(5th and 14th Amendment - Notice,
Vagueness and Overbreadth related
To Source Items Used to Validate
Plaintiff As An Associate of BGF)

259. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

260. Defendants have violated plaintiffs Fourteenth Amendment right to Notice by failing to provide plaintiff with a reasonable opportunity to know what is prohibited and what items, specifically, defendants deem to be gang indicia, and by failing to provide explicit standards for defendants to apply it, i.e., by impermissibly delegating gang policy matters to individual defendants to resolve on a subjective, arbitrary and ad hoc basis, as to what specific items indicate gang indicia.

261. Plaintiffs validation as an Associate of the BGF and subsequent placement in the indeterminate SHU constitutes an atypical and significant hardship.

SEVENTH CAUSE OF ACTION

(5th and 14th Amendment -
Notice, Vagueness and Overbreadth
Related To "Gang Activity"
and/or "Current Active" Terms
Used To Validate Plaintiff and
Place Him In The Indeterminate SHU)

262. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

263. Defendants have violated plaintiff's Fourteenth Amendment rights to Notice by failing to provide plaintiff with a reasonable opportunity to know what "gang activity" is as described in Title 15, CCR §3023, and concomitantly what "current(ly) active" is, and what specific conduct these terms cover, and by failing to provide explicit standards for defendants to apply them, i.e., by impermissibly delegating gang policy matters to individual defendants to resolve on a subjective, arbitrary and ad hoc basis as to what specifically constitutes "gang activity" and the concomitant "current[ly] active".

264. Plaintiff's validation as an Associate of the BGF and subsequent placement in the indeterminate SHU

constitutes an atypical and significant hardship.

EIGHTH CAUSE OF ACTION
(FIRST AMENDMENT - Retaliation,
POLITICAL EXPRESSION)

265. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

266 Defendants have violated plaintiff's First Amendment rights in that his validation as an Associate of the BGF and subsequent confinement in the indeterminate SHU constitutes retaliatory action taken against plaintiff for the exercise of his constitutionally protected right to read political material in furtherance of his own intellectual stimulation and educational development, where such political expression was not for the purpose of engaging in or furthering any illegal prison gang activity whatsoever. This retaliatory action did not advance legitimate penological goals and was not tailored narrowly enough to achieve such goals.

NINTH CAUSE OF ACTION
(First Amendment - Right to
Political Expression)

267. Plaintiff realleges and incorporates by reference all previous allegations of this complaint.

268. Defendants have violated plaintiff's First Amendment rights by basing his validation as an Associate of a prison gang and confining him in the indeterminate SHU wholly or in part upon underground and unwritten regulations and policies which effectively classify as impermissible certain classes of political and historical reading material specific to plaintiff's race, history and socio-political dynamic, even when the reading of said material is not in furtherance of any illegal prison gang activity, and where said unwritten regulations and policies are not reasonably related to any legitimate penological interest.

TENTH CAUSE OF ACTION

(Fourteenth Amendment - Equal Protection)

269. Plaintiff realleges and incorporates by reference all previous allegations of this complaint.

270. Defendants have violated plaintiffs Fourteenth Amendment rights by denying him Equal Protection under the U.S. Constitution. Specifically, Defendants have designed, implemented, and administered a policy and practice that uses race as a proxy to determine whether or not to use a source item to allege gang membership or association, and this policy and practice is not narrowly tailored to serve a compelling state interest.

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

ELEVENTH CAUSE OF ACTION
(8th Amendment - Deliberate
Indifference to Serious Risk of Harm)

272. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

273. Defendants have violated plaintiff's Eighth Amendment rights by their deliberate indifference to plaintiff's serious risk of harm by being erroneously and falsely labeled an Associate of a prison gang, when he has constantly and vehemently denied that he is not a prison gang Associate.

274. Defendants have been and are aware of the serious risk of harm complained of herein, and have condoned and been deliberately indifferent to such danger and risk of harm.

TWELFTH CAUSE OF ACTION
(8th Amendment - Excessive
Punishment)

275. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

276. Defendants have violated Plaintiffs Rights under the Eighth Amendment to the U.S. Constitution. Specifically, Defendants have designed, implemented, and administered a policy and practice that causes plaintiff to be confined in the indeterminate SHU for a minimum of six (6) years, under an atypical and significant hardship, when plaintiff has violated no published rule and when plaintiffs only infraction was the possession and reading of political books and material defendants find distasteful

277. Defendants have been and are aware of its excessive policies and regulations and have condoned and been deliberately indifferent to such excessive punishment.

THIRTEENTH CAUSE OF ACTION
(FOURTEENTH AMENDMENT - Lack
of MEANINGFUL HEARING / SHAM
PERIODIC REVIEWS)

278. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

279. Defendants have violated Plaintiffs Fourteenth Amendment rights by denying him meaningful and timely periodic review when the only review of a prisoners "gang status" occurs every six (6) years and when the 180 day and SHU Annual Reviews that occur inbetween are strictly rote, perfunctory sham reviews that offer no hope or opportunity for plaintiff to be released from the SHU because defendants have promulgated regulations and policies that have stripped all power from I.C.C. to release a validated gang member or associate from the indeterminate SHU.

280. Plaintiffs indeterminate SHU placement constitutes an atypical and significant hardship.

FOURTEENTH CAUSE OF ACTION

(State Created Liberty Interest)

281 Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

282. Defendants have deprived plaintiff of his state created liberty interest rights protected by the Fourteenth Amendment to the U.S. Constitution, when defendants:

(a) Failed to provide plaintiff with meaningful staff assistance as he requested (Title 15, CCR § 3341);

(b) Failed to give plaintiff a full and fair hearing to present evidence and staff witnesses, and refute the gang validation prior to the imposition of the indeterminate SHU term. (Title 15, CCR §§ 3338(d), (e), (h) and (i));

(c) Refused to release plaintiff from the SHU although he poses no threat to safety of persons or the security of the institution. (Title 15, CCR §§ 3335, 3339(a) and 3341.5(c)(3));

(d) Used no or unreliable evidence to retain plaintiff in the SHU. (Title 15, CCR § 3321(b)(1));

(e) Placed and retained plaintiff in the SHU without first determining if plaintiff was a current active prison gang associate. (Title 15, CCR §§ 3341.5 (c), 3378 (d), 3378 (e) (1)); and,

(f) Failed to provide plaintiff with procedural protections when alleging that plaintiff is involved in misconduct, including "gang activity" (Title 15, CCR § 3312 (a) (3), § 3000 "Gang", § 3023 "Gang Activity," and §§ 3310-3320 "Inmate Discipline").

FIFTEENTH CAUSE OF ACTION

(Failure to Lawfully Administer, Train
and Supervise - 14th Amendment)

283. Plaintiff realleges and incorporates by reference all previous paragraphs of this complaint.

284. Supervisory defendants have a duty to establish policies and procedures for the CDCR Gang Management Policy and the implementation and administration thereof. Supervisory defendants have a duty to train and supervise subordinate employees on governing law and injunctions.

285. The application of the Gang Management Policy and related underground regulations, as applied to Plaintiff, violated plaintiffs rights as described herein.

286. Supervisory defendants were deliberately indifferent to the violations of plaintiffs rights described herein.

287. Supervisory defendants breached their duties to legally administer the Gang Management Policy, and to train and supervise subordinates

where plaintiffs rights were violated as a result of the enforcement of the Gang Management Policy and related unwritten, underground regulations and official customs and policies.

288. Supervisory defendants breached their duties to legally administer the Gang Management Policy, and to train and supervise Institutional Gang Investigator (IGI) subordinates whose tenure is extremely abbreviated causing ill-trained and poorly equipped persons to staff such positions. Moreover, the limited training, when provided, to IGI's is deficient as it does not adequately inform IGI's on the application or enforcement of the regulations concerning prison gangs.

289. Supervisory defendants breached their duties to legally administer the prison, and to train and supervise subordinates who preside over Institutional Classification Committee which reviews the validity of a prison gang validation by the OCS, and who have had little or no training whatsoever related to prison gangs.

290. Supervisory defendants breached their duties to legally administer the prisons, the

Gang Management Policy, and to train and supervise subordinates where plaintiffs rights were violated as a result of defendants acting in violation of defendants policies and practices, to the extent supervisory defendants had actual and constructive knowledge of these violations and did nothing to prevent them or to correct them.

291. The foregoing conduct constitutes deliberate indifference to prisoners' constitutional rights. See *Canton v. Harris*, 489 U.S. 378 (1988); *Slakan v. Porter*, 737 F.2d 368 (4th Cir. 1984).

CAUSATION

292. As a direct and proximate result of the aforementioned acts and omissions on the part of defendants, plaintiff continues to be unlawfully validated as a prison gang associate and unlawfully detained in the indeterminate SHU. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of defendants unless the court grants the relief which plaintiff seeks.

PRAYER FOR RELIEF

293. WHEREFORE, plaintiff respectfully prays for the following relief:

A. A declaratory judgment that the defendants' acts and practices described herein violate plaintiffs' rights as herein stated.

B. A preliminary and permanent injunction which prohibits and requires that defendants, their agents, employees, and successors:

(1) cease harassment, retaliation and discrimination for plaintiffs political expression and race;

(2) cease the practice of validating plaintiff as a prison gang member or associate without giving plaintiff the opportunity to have a full and impartial hearing wherein he is provided the appropriate due process protections;

(3) cease the practice of imposing indeterminate SHU terms without first determining whether plaintiff is a "current active" prison gang associate;

(4) cease the practice of validating plaintiff as a prison gang associate and imposing an indeterminate SHU term without first providing plaintiff with the procedural due process under Title 15 CCR § 3000 "Gang," §§ 3023, 3312(a)(3)

and 3310-3320 and §§ 3335 - 3341.5;

(5) cease the scheme of using undisclosed and unreliable source items in imposing gang validation and indeterminate SHU terms;

(6) Implement a clear and fair prison gang management policy that:

(a) provides prisoners adequate notice of what conduct is proscribed and what conduct is permitted;

(b) Defines key terms, i.e., gang activity, threat, currently active prison gang affiliate, inactive prison gang affiliate, associate, association, involvement in gang activity, conduct, behavior;

(c) Provides clarity for enforcement and does not reach a broad range of conduct or innocent conduct or provided unbridled discretion to defendants;

(d) Provide reasonable minimal standards to guide defendants when judging whether or not an inmate is a prison gang member or associate or threat to the safety of others or institution security;

(e) cease the practice of conducting meaningless reviews at classification committees;

(f) cease the enforcement of CDC Notice of Change to Director's Rules No. 99-08 issued August 19, 1999 in so much as it is in violation of governing law and injunctions; and,

(g) cease the practice of housing prisoners in long term or extended SHU confinement.

(h) Release plaintiff from the SHU and expunge from his file any reference to gang association based on information not reliable to support validation.

(i) Award Compensatory, Nominal and Punitive Damages for plaintiffs injuries.

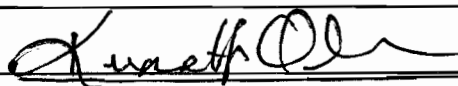
(j) Plaintiffs cost of suit

(k) For costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1983 and any other grounds authorized by law.

(l) For further relief that the court deems just.

Dated: July 5, 2013

Respectfully Submitted,



KENNETH G. OLIVER