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

24 RUIZ, et al. ,
25 Plaintiffs,
26 v.
27 BROWN, et al.,
28 Defendants.

No. 4:09-cv-05796-CW

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

(FED. R. CIV. P. 26(f) and CIV. L. R. 16)

1 CLASS ACTION

2 Date: March 14, 2013

3 Time: 2:00 p.m.

4 Dept.: Courtroom 2

5
6 **JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

7 In accordance with Civil Local Rule 16-9, Plaintiffs and Defendants submit their Joint
8 Case Management Statement in this matter set for a case management conference on March 14,
9 2013, at 2:00 p.m. in Courtroom 2 before the Honorable Claudia Wilken in the Oakland Division
10 of this Court.
11

12 **1. Jurisdiction and Service:**

13 This action was originally filed in the United States District Court for the Northern
14 District of California, Oakland Division, on December 9, 2009, based on the federal questions
15 raised in Plaintiffs' causes of action against Defendants. After the Court granted leave,
16 Plaintiffs filed a Second Amended Complaint on September 10, 2012.
17

18 All Defendants have been served and timely appeared in this matter. Defendants contest
19 whether the Court has subject-matter jurisdiction over Plaintiffs' due process claim, which
20 Defendants have moved to dismiss as moot or, alternatively, to stay, under Rule 12(b)(1) of the
21 Federal Rules of Civil Procedure in light of new gang-management guidelines implemented and
22 enforced by the California Department of Corrections and Rehabilitation (CDCR).
23

24 **2. Facts:**

25 PLAINTIFFS

26 Plaintiffs Ruiz, Franklin, Ashker, Franco, Reyes, Johnson, Troxell, Redd, Esquivel, and
27 Dewberry—and the members of the proposed class—have been held in solitary confinement at
28

1 California's Pelican Bay Security Housing Unit and other California Prisons for an
2 extraordinarily long time. Some for more than two decades. During that time, they have
3 committed virtually no disciplinary infractions.

4 Their conditions of confinement are draconian and stark: they are confined alone to cells
5 measuring approximately 80 square feet, deprived of any normal human contact, deprived of any
6 meaningful exercise, of all telephone calls, contact visits, and vocational, recreational, and
7 educational programming. They must linger in their small, concrete cells for 22.5 hours each
8 day. Moreover, there is an unwritten, but strictly enforced CDCR practice prohibiting the grant
9 of parole to any prisoner incarcerated in the SHU. Nearly as bad, SHU prisoners cannot receive
10 the good-time credits that other California prisoners can earn. Their only way out of isolation is
11 to debrief by reporting on the gang activity of other prisoners, thus placing themselves and their
12 families in great danger.
13

14
15 California, alone out of any state in the country, and most other jurisdictions in the world,
16 holds Plaintiffs and hundreds of others in these tortuous conditions for decades, based merely on
17 their association with a prison gang. CDCR deems it irrelevant whether Plaintiffs have ever
18 undertaken an illegal act on behalf of a gang. California's practices are both cruel and unusual.
19

20 Plaintiffs' claims are common and typical to those of the proposed class.
21

22 DEFENDANTS

23 Each of the ten named Plaintiffs is a validated member or associate of rival prison gangs.
24 Some are acknowledged to be leaders, or "shot callers," of those gangs. Because of their gang
25 validations and re-validations, Plaintiffs are confined in the Security Housing Unit (SHU) at
26 Pelican Bay State Prison. Each has been confined in the SHU pursuant to an indeterminate term
27 under § 3341.5(c)(2)(A)(2) of title 15 in California's Code of Regulations. The decisions to
28 assign and retain Plaintiffs in the SHU were made in accordance with due process considerations

1 appropriate for administrative decisions such as gang validation, classification, and housing. In
2 that context, due process only requires that prison officials provide the inmate with some notice
3 of the charges against him, an opportunity to present his views, and that the validation decision
4 be supported by some evidence. That a recent change in California's Penal Code no longer
5 permits SHU inmates to earn good-time credits does not change the level of due process owed to
6 inmates subject to administrative decisions by prison officials. No court has so held; and, most
7 tellingly, Plaintiffs' second amended complaint does not so allege.

8 Notwithstanding the constitutionality of CDCR's validation and review guidelines,
9 CDCR has recently implemented significant changes to those guidelines through its Security
10 Threat Group (STG) pilot program. The pilot program reflects CDCR's efforts to address
11 evolving trends of gang activities in state prisons and to provide an alternate procedure for
12 inmates to "step down" or disassociate from gang activity and earn incremental privileges
13 without debriefing, consistent with the security, safety, and inmate management needs presently
14 affecting the administration of state prisons. In connection with the implementation of the STG
15 pilot program on October 18, 2012, CDCR has conducted approximately 150 case-by-case
16 reviews of validated inmates to determine their placement in an appropriate level of the STG's
17 Step-Down Program. Those case-by-case reviews are ongoing, and it is anticipated that each
18 Plaintiff will have the status of his validation reviewed in accordance with STG's new policies.
19 To the extent Plaintiffs and other validated SHU inmates seek an alternative to debriefing to exit
20 the SHU, the Step-Down Program gives them such an alternative.

21 Defendants dispute that the conditions of the SHU constitute a per se violation of the
22 Eighth Amendment's prohibition against cruel and unusual punishment. That exact claim was
23 previously litigated and rejected in *Madrid*, which held that SHU conditions give rise to a
24 violation of the Eighth Amendment only as to those inmates that are already mentally ill or are at
25 serious risk of developing mental illness. Not one Plaintiff alleges that his mental health has
26 deteriorated to such a state to rise to the sufficiently serious level of an Eighth Amendment
27 violation. Absent such allegations, Plaintiffs cannot show the deprivation of a sufficiently
28 serious need, and their deliberate-indifference claim fails.

1 However, even if Plaintiffs did allege such facts, they would not be in the SHU.
2 Defendants have implemented and comply with court-approved guidelines for the provision of
3 medical and mental health care that exist and are closely monitored as a result of extensive class
4 allegation litigation in *Madrid*, *Coleman*, and *Plata*. Inmates with mental illness are excluded
5 from the SHU. This refutes any contention that Defendants have acted toward Plaintiffs with the
6 required culpable state of mind. Defendants have not acted “wantonly” but instead, for example,
7 have made reasoned choices consistent with the *Coleman* court-ordered MHSDS Program Guide
8 provisions on SHU placement that strike a balance between the mental health needs of SHU
9 inmates and the challenges inherent in managing a segment of the prison population that presents
10 significant security and safety concerns. Those decisions are entitled to substantial deference,
11 and cannot support a claim of deliberate indifference.

3. Legal Issues:

PLAINTIFFS

17 With the adoption of the Second Amended Complaint, Plaintiffs now seek class-wide
18 declaratory and injunctive relief based on two central claims:

19 (1) CDCR’s extraordinarily long-term detention of Plaintiffs and the proposed class in
20 solitary confinement and in extremely harsh conditions deprives Plaintiffs and the proposed class
21 of basic human needs in violation of the Eighth and Fourteenth Amendments to the United States
22 Constitution. Defendants are deliberately indifferent to the deprivation of those human needs.

23 (2) CDCR’s continued and long-term confinement of Plaintiffs and the proposed class in
24 isolated, solitary conditions constitute an atypical and significant hardship, and Defendants have
25 failed to accord notice and meaningful review in violation of the Due Process Clause of the
26 Fourteenth Amendment.

27 Plaintiffs and those in the proposed class have been in the SHU for exceedingly lengthy
28 periods of time – a decade or more.

1 Few or none of the Plaintiffs evidenced gang activity (as opposed to mere association or
2 inactive membership in a gang) at their last 6-year inactive gang status review. Yet all were
3 denied status as an inactive gang member at that 6-year review and retained in the SHU for an
4 indeterminate and continuing period of time.

5 Plaintiffs and the proposed class will establish that they have been deprived of basic
6 human needs during their prolonged confinement in the SHU, that all are suffering serious
7 mental harm from their prolonged solitary confinement, and or that they have a significant risk of
8 exposure to future mental harm if they continue to be detained in the SHU.

9
10 DEFENDANTS

11 A. CDCR has implemented its STG pilot program with new validation and review
12 policies and has, in accordance with those new policies, continues to conduct case-by-case
13 reviews of validated inmates serving indeterminate terms in the SHU at Pelican Bay. Should
14 Plaintiffs' due process challenge to CDCR's former gang management regulations be dismissed
15 as moot under Rule 12(b)(1) of the Federal Rules?

16 B. A federal court has significant discretion to stay proceedings incident to its power
17 to control its own docket and focus its resources on cases that present actual and ripe
18 controversies. Should the Court stay litigation of Plaintiffs' due process claim to allow CDCR to
19 continue its implementation of the STG pilot program?

20 C. Minimal due process protections apply to administrative functions like gang
21 validation. Should the Court dismiss Plaintiffs' due process claim under Rule 12(b)(6) because
22 the challenged procedures provide Plaintiffs the requisite notice, an opportunity to be heard, and
23 require that there be some evidence to support Plaintiffs' status as active gang members or
24 associates?

25 D. Should the Court dismiss Plaintiffs' due process claim to the extent it is based on
26 the alleged denial of parole because: (i) such allegations concern the duration of confinement
27 and are barred by well-established precedent; and (ii) the Court already ordered that Plaintiffs
28 Ashker and Troxell could not proceed on such allegations? Similarly, should the Court dismiss

1 Plaintiff Ashker’s due process claim regarding gang validation because the Court already ordered
2 that he could not bring such a claim in an amended complaint?

3 E. Should the Court dismiss Plaintiffs’ Eighth Amendment claim for cruel and
4 unusual punishment on the ground that Plaintiffs fail to allege facts to establish: (i) a sufficiently
5 serious deprivation; and (ii) that each Defendant acted with the required “wanton” state of mind?

6 F. The doctrine of claim preclusion prevents the relitigation of claims that were
7 finally determined in prior litigation. Should the Court dismiss Plaintiffs’ Eighth Amendment
8 claim as precluded by the *Madrid*, *Coleman*, and *Plata* class actions, each of which concerned
9 the same claim raised by Plaintiffs here regarding the conditions of the SHU at Pelican Bay and
10 the alleged physical and mental health effects of SHU confinement?

11 G. Has each named Plaintiff exhausted his administrative remedies as to the
12 complaint’s claims under both the 8th and 14th Amendments?

13 H. Are any of the named Plaintiff’s claims barred by the statute of limitations?

14 I. Can Plaintiffs show that this action is maintainable as a class action under either
15 Rule 23(b)(1) or Rule 23(b)(2) of the Federal Rules of Civil Procedure?

16 J. The Prison Litigation Reform Act (PLRA) requires that injunctive relief be
17 “narrowly drawn, extends no further than necessary to correct the violation of the Federal right,
18 and is the least intrusive measure necessary to correct the violation of the Federal right.”
19 Assuming the violation of a federal right, does Plaintiffs’ request for injunctive relief, which
20 includes an across-the-board “release from the SHU of those prisoners who have spent more than
21 10 years in the SHU,” violate the PLRA?
22

23 **4. Motions:**

24 PLAINTIFFS

25 Plaintiffs currently have one motion pending: a motion for a preliminary injunction filed
26 on December 6, 2012. On December 20, Plaintiffs filed declarations supporting that motion
27
28

1 from counsel Jules Lobel and Plaintiffs Ashker and Troxell. Also on December 20, Defendants
2 filed their Response. A week later, on December 27, Plaintiffs filed their Reply.

3 4 DEFENDANTS

5 On December 17, 2012, Defendants filed a motion to dismiss Plaintiffs' second amended
6 complaint or, alternatively, to stay. The motion is fully briefed and currently set for hearing on
7 March 14, 2013. Moreover, depending on the Court's ruling on Defendants' motion to dismiss,
8 Defendants may file the following motions: (a) unenumerated motions to dismiss under Rule
9 12(b) of the Federal Rules for failure to exhaust administrative remedies; (b) motions to dismiss,
10 for judgment on the pleadings, or summary judgment on individual named Plaintiffs' claims; (c)
11 a motion for summary judgment on the merits of Plaintiffs' claims; (d) discovery-related motions
12 before Magistrate Vadas; and (e) a motion to proscribe extra-judicial statements, should
13 Plaintiffs' counsel make public statements regarding this case that create a substantial likelihood
14 of material prejudice to Defendants' right to a fair trial.
15

16 **5. Amendment of Pleadings:**

17 Plaintiffs moved for leave to file a Second Amended Complaint on May 31, 2012.
18 Defendants filed their Response on June 14, 2012, and Plaintiffs filed a Reply on June 21, 2012.
19 The Court granted Plaintiffs' motion on September 10, 2012, and Plaintiffs filed the Second
20 Amended Complaint the same day. Although Plaintiffs do not anticipate seeking leave to
21 further amend the complaint, Plaintiffs retain their right to seek the Court's leave.
22
23

24 Should the Court grant any part of Defendants' motion to dismiss but with leave to
25 amend, Defendants request that any further amendment be filed within thirty days of the Court's
26 dismissal order, and that Defendants have a minimum of thirty days to respond to any further
27 amended complaint. Moreover, Defendants sued in their official capacities may be substituted
28

1 when the individual leaves office and is replaced by another individual. Fed. R. Civ. P. 25(d).

2 This is applicable to Defendant Cate, who is no longer Secretary of the California Department of
3 Corrections and Rehabilitation. In December 2012, Dr. Jeffrey Beard was appointed as
4 Secretary, and is awaiting confirmation by the State Senate.

5
6 **6. Evidence Preservation:**

7 Both parties have fulfilled their duties to preserve electronically stored information as
8 well as with other methods of storage.

9 **7. Disclosures:**

10 The parties have not yet exchanged initial disclosures in accordance with Federal Rules
11 of Civil Procedure (FRCP) 26(a)(1). In accordance with FRCP 26(a)(C), and given the nature of
12 the case, the Court should decide whether initial disclosures are appropriate in this action, and if
13 so, what disclosures are to be made and the date for disclosure. Depending on the scope of the
14 Court's ruling on Defendants' motion to dismiss, and should the Court order the parties to
15 exchange initial disclosures, Defendants submit that the parties exchange initial disclosures
16 within thirty days of the Court's ruling on Defendants' motion to dismiss.
17
18

19 **8. Discovery:**

20 PLAINTIFFS

21 (1) Discovery requests, responses, and objections:

22 On October 31, 2012, Plaintiffs served their First Set of Common Document Requests
23 and their First Set of Common Interrogatories. On November 8, 2012, Plaintiffs served their
24 First Request for Entry onto Property for Inspection.
25

26 On December 3, 2012, Defendants served Responses to the first set of interrogatories and
27 requests for production of documents from Defendants Cate, Brown, and Lewis.
28

1 Defendants served their Response to Plaintiffs' First Request for Entry onto Property for
2 Inspection on December 11, 2012.

3 (2) Meet and Confer process:

4 For more than two months, Plaintiffs and Defendants have engaged in extensive, detailed
5 meet-and-confer discussions.

6 The parties engaged in extensive discussions on the phone on December 19, 2012;
7 January 7, 2013; February 4 and 11, 2013; and March 1, 2013.

8 The parties also exchanged letters and emails throughout the months of December 2012
9 and January and February 2013. Plaintiffs provided written responses to Defendants' objections
10 to the document requests and interrogatories.
11

12 The meet-and-confer process between the parties is ongoing.

13 (3) Protective Order:

14 The parties stipulated to a protective order that this Court approved on February 6, 2013.
15 (Doc. No. 182.)
16

17 (4) Motions to compel:

18 Because of ongoing, irresolvable discovery disputes regarding all three of Plaintiffs'
19 requests, Plaintiffs intend to file motions to compel before Magistrate Judge Vadas.
20

21 Further, Plaintiffs request clarification—ideally at the upcoming Case Management
22 Conference—from the Court regarding whether the parties may presently engage in expert
23 discovery. This Court's order dated November 15, 2012, (Doc. No. 155), set the Case
24 Management Conference for February 14, 2013, and then continued, "[u]ntil then, the parties
25 should continue to engage in fact discovery."
26
27
28

1 This last sentence has been a point of contention, with Defendants reading into it a
2 prohibition on engaging in any expert discovery. Plaintiffs request that the Court clarify whether
3 they may engage in expert discovery.
4

5 DEFENDANTS

6 Notwithstanding the case-dispositive nature of Defendants' pending motion to dismiss,
7 Defendants have responded to Plaintiffs' discovery requests to meet the Court's direction that the
8 "parties should continue to engage in fact discovery." (Order 2, Nov. 16, 2012, ECF No. 155.)
9 In that connection, Defendants have further engaged in good-faith meet-and-confer efforts to,
10 among other things, alleviate various burdens and other objections associated with Plaintiffs'
11 discovery requests, and so as to avoid unnecessary or premature discovery motion practice. This
12 is particularly the case with respect to Plaintiffs' pursuit of expert discovery at this still
13 preliminary stage of the case.

14 Specifically, Plaintiffs inspection demand requests that their experts be permitted to tour
15 Pelican Bay and conduct mental health interviews of sixty-plus SHU inmates, including the ten
16 named Plaintiffs. During meet-and-confer negotiations, Plaintiffs' counsel have conceded that
17 the information the experts expect to derive from this discovery will serve as the foundation of
18 their anticipated expert testimony in this action with respect to whether the inmates' confinement
19 in the SHU constitutes cruel and unusual punishment under the Eighth Amendment. Defendants
20 are entitled to a ruling on their challenge to the Eighth Amendment claim, before Plaintiffs
21 should be allowed to impose upon Defendants the burdens of expert discovery. Moreover, to the
22 extent Plaintiffs seek to conduct expert discovery to support their arguments on class
23 certification or on the merits, Defendants are similarly entitled to engage in expert discovery.
24 But, the Court has not yet established a schedule for such discovery to take place; instead, having
25 limited the discovery at this stage of the proceedings to "fact discovery" as the parties work to
26 settle the pleadings, which is reasonable. To have to engage in expert discovery before then is
27 burdensome, costly, and prejudicial to Defendants' right to defend against allegations they have
28 challenged fail to state a claim in the first instance.

1 In accordance with the Court's instruction that the parties engage in fact discovery, on
2 February 14, 2013, Defendants served a set of document requests on all Plaintiffs. Also on
3 February 14, Defendant Lewis served a set of interrogatories and a set of document requests on
4 each named Plaintiffs.

5 Defendants separately propose that the ten-deposition limit of Rule 30(a)(2)(A)(1) be
6 expanded to fifteen, given the number of parties and the complex nature of the parties' claims
7 and defenses, without prejudice to seeking a further expansion of the limit depending on the
8 Court's ruling on Defendants' motion to dismiss. Defendants further propose that the Court
9 bifurcate discovery so as to focus the parties' resources on the discovery necessary to adequately
10 brief Plaintiffs' anticipated motion for class certification. Finally, the scope of the Court's ruling
11 on Defendants' motion to dismiss or, alternatively, to stay litigation of, Plaintiffs' due process
12 claim will impact the scope of discovery (if any) as to that claim (e.g., whether discovery should
13 focus on CDCR's old validation and review guidelines, the guidelines set forth by the STG pilot
14 program, or both).

15
16
17 **9. Class Actions:**

18 Plaintiffs added class allegations in the Second Amended Complaint. (Doc. No. 136 at
19 34-38.) Plaintiffs anticipate moving for class certification by May 2, 2013. Defendants contest
20 Plaintiffs' ability to meet the class-certification requirements of Rule 23 of the Federal Rules of
21 Civil Procedure, and Defendants will oppose any motion for class certification. Defendants also
22 object to Plaintiffs' anticipated date for class certification, as discussed further below in
23 connection with scheduling.

24
25
26 **10. Related Cases:**

27 The parties are unaware of any pending related cases or proceedings at this time.
28

1
2 **11. Relief:**

3 Plaintiffs seek injunctive relief to require Defendants to conduct a meaningful review for
4 California's gang-validated inmates in the Pelican Bay SHU and end long-term, indefinite
5 detention in CDCR's Administrative and Security Housing Units.
6

7
8 **12. Settlement and ADR:**

9 PLAINTIFFS

10 The parties have not engaged in any settlement efforts to date. Nor have the parties
11 stipulated to ADR. Plaintiffs agree to mediation. Plaintiffs would consider entering into an early
12 mediation process in the next few months, consisting of approximately four hours, in order to see
13 if there was any basis for a more prolonged and serious mediation process.
14

15 DEFENDANTS

16 Although Defendants are willing to engage in meaningful settlement negotiations,
17 given the litigation's procedural posture and Defendants' pending motion to dismiss, Defendants
18 submit this case is unlikely to settle at this time and it is premature to consider whether key
19 discovery or motions would put the parties in a position to negotiate a resolution. Plaintiffs
20 indicate a willingness to engage in early mediation. Defendants are willing to engage in early
21 mediation but maintain that any mediation will be most meaningful if conducted following the
22 Court's ruling on Defendants' motion to dismiss.
23
24

25 **13. Consent to Magistrate Judge For All Purposes:**

26
27 The parties do not consent to a Magistrate Judge for all purposes.
28

1 **14. Other References:**

2 The case is not suitable for binding arbitration, a special master at this time, or the
3 Judicial Panel on Multidistrict Litigation.
4

5 **15. Narrowing of Issues:**

6 PLAINTIFFS

7 The Second Amended Complaint has significantly narrowed the issues in this case.
8

9 DEFENDANTS

10 Defendants have moved to dismiss Plaintiffs’ second amended complaint or,
11 alternatively, to stay, specifically with respect to Plaintiffs’ due process claim. The Court’s
12 ruling on Defendants’ motion could eliminate or further narrow the issues subject to litigation.
13

14 **16. Expedited Trial Procedure:**

15 The parties do not believe that this is the type of case appropriate for an expedited trial
16 procedure.
17

18 **17. Scheduling:**

19 PLAINTIFFS

20 Plaintiffs intend on moving to certify the class by May 2, 2013.
21

22 Plaintiffs believe a trial date sometime in mid-May 2014 (likely Monday the 12th or
23 19th) is appropriate and realistic with a commensurate calendaring of the operative deadlines for
24 a discovery cut-off, designation of experts, etc. Such dates presently depend on the parties’
25 agreeing on a May 2014 proposed trial date.
26
27
28

DEFENDANTS

1
2 During meet-and-confer discussions related to the preparation of this joint statement,
3 Plaintiffs' counsel indicated that the next phase of this case should involve class certification.
4 Plaintiffs further indicated that they intended to file a motion for class certification within one
5 month of the Court's ruling on Defendants' motion to dismiss. Plaintiffs have since changed
6 their position, stating that they will seek class certification by May 2, 2013 on the ground that
7 "[y]our motion for class cert to when Judge Wilken decides the motion to dismiss . . . is too
8 uncertain." Defendants agree that class certification should be taken up next; however,
9 Plaintiffs' intent to move to certify the class by May 2 is unreasonable and prejudicial to
10 Defendants. The scope of any class certification motion, and discovery related to that motion,
11 will turn directly on the Court's ruling on Defendants' motion to dismiss. The schedule
12 governing this case should provide the Court with sufficient opportunity to rule on Defendants'
13 motion to dismiss, and provide for both sides, depending on the Court's ruling, a full and fair
14 opportunity to litigate issues pertinent to any class certification proceeding.
15

16 Similarly, Plaintiffs' proposed trial date of "mid-May 2014," fails to contemplate the
17 currently unsettled nature of the pleadings as well as the complex nature of this case, presuming
18 Plaintiffs intend both of their claims, as currently plead, to go forward through class certification,
19 class, merits, and expert discovery, summary judgment, and trial. Although proposing a
20 schedule at this time is difficult, given the case's procedural posture, Defendants, as required by
21 this District's Civil Local Rule 16-9, set forth the below proposed schedule should the Court
22 deny Defendants' motion to dismiss and order the litigation to proceed as to both of Plaintiffs'
23 claims:

<u>Date</u>	<u>Event</u>
3/14/2013	Hearing on motion to dismiss and CMC
9/12/2013	Bifurcated class discovery cut-off
10/24/2013	Class certification deadline
12/19/2013	Opposition to class certification
1/16/2014	Reply on class certification
1/30/2014	Hearing on class certification

1	7/10/2014	Merits discovery cut-off
	8/7/2014	Disclose experts and reports
2	9/18/2014	Rebuttal expert reports
	10/30/2014	Expert discovery cut-off
3	12/11/2014	Summary judgment deadline
	1/22/2015	Opposition to summary judgment
4	2/12/2015	Reply on summary judgment
	3/5/2015	Hearing on summary judgment and further CMC
5	5/18/2015	Pretrial conference
6	6/1/2015	Trial

7 Defendants respectfully reserve the right to propose alternative scheduling proposals
8 depending on the nature of the Court's order on Defendants' motion to dismiss. Should the
9 Court prefer, Defendants are also willing to appear at a further case management conference
10 once the Court rules on Defendants' motion to dismiss and, following meet-and-confer efforts
11 with Plaintiffs' counsel, propose a schedule commensurate with the Court's ruling.

12
13 **18. Trial:**

14 PLAINTIFFS

15 Plaintiffs will withdraw their request for a jury trial. Plaintiffs cannot assess the length of
16 the trial until the issues are sorted out through discovery.

17
18 DEFENDANTS

19 Defendants requested a jury trial in this matter. Given the unsettled nature of the
20 pleadings, Defendants cannot at this time estimate the expected length of any trial. However,
21 depending on the nature of the claims to be tried, Defendants expect a trial could take anywhere
22 from ten to thirty court days.

23
24 **19. Disclosure of Non-party Interested Entities and Persons:**

25 PLAINTIFFS

1 Plaintiffs know of no other entities that may have a financial interest or any other interest
2 in the subject matter in controversy, or in a party to the proceeding, or an interest that could
3 substantially affect the outcome of the proceeding.

4 DEFENDANTS

5 Because Defendants work for a governmental entity, they are exempt from the disclosure
6 requirement of Rule 3-16(a) of this District's Civil Local Rules.
7

8
9 **20. Such other matters that may facilitate the just, speedy and inexpensive**
10 **disposition of this matter.**

11
12 PLAINTIFFS

13 Plaintiffs intend to move by May 2, 2013, for class certification for all those in the
14 Security Housing Unit (SHU) at Pelican Bay State Prison (PBSP).

15 Plaintiffs anticipate that there will be a need to go before Magistrate Judge Vadas
16 regarding issues of direct access to our clients at PBSP, including but not limited to access for
17 Plaintiffs' experts, both psychological and medical. Plaintiffs are seeking contact visits for these
18 expert medical and psychological examinations. There may also be a need for motions to
19 compel responses to discovery, regarding interrogatories and document requests.
20

21 Plaintiffs will likely seek to have one or more of the named plaintiffs attend future court
22 hearings via videoconference.
23

24
25 DEFENDANTS

26 Plaintiffs refer to various "anticipated" events or issues that they "will likely seek" the
27 intervention of either this Court or Magistrate Vadas. To avoid unnecessary, burdensome, or
28

1 premature motion practice, Defendants to date have been willing to discuss Plaintiffs' discovery
2 or informal requests, and negotiate, where appropriate, amenable resolutions. Defendants will
3 continue to do so, even as to a request that "one or more of the named plaintiffs attend future
4 court hearings via videoconference," an issue raised for the first time in this joint statement.

5
6 As a minor, administrative matter, on November 2, 2012, substitutions of counsel were
7 filed on behalf of Defendants Brown, Cate, and Lewis. Defendants respectfully request that the
8 Court approve and order those substitutions. Defendants otherwise are unaware at this time of
9 matters, other than those addressed above, that would facilitate the just, speedy, and inexpensive
10 disposition of this matter.

11
12
13 DATED: March 7, 2013

14 LAW OFFICE OF CHARLES CARBONE, ESQ.

15
16 By /s/ Charles Carbone, Esq.
17 CHARLES CARBONE, ESQ.

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