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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION
17

18 TODD ASHKER, *et al.*,
19 Plaintiffs,

20 v.

21 GOVERNOR OF THE STATE OF
22 CALIFORNIA, *et al.*,
23 Defendants.
24

Case No. 4:09-cv-05796-CW

CLASS ACTION

**PLAINTIFFS' ADMINISTRATIVE MOTION
TO FILE UNDER SEAL**

Date: August 21, 2018

Time: 10:00 a.m.

Location: Courtroom D – 15th Floor

Honorable Robert M. Illman

1 Plaintiffs have reviewed and complied with the United States District Court for the Northern
2 District of California Standing Order Governing Administrative Motions to File Under Seal and
3 Declaration in Support of Sealing in filing this motion. Pursuant to Civil Local Rules 7-1, 79-5, and
4 General Order 62, Plaintiffs hereby bring this Administrative Motion to Seal portions of Plaintiffs’
5 Supplemental Brief In Support of Motion for Extension of Settlement Agreement Based on Systemic
6 Due Process Violations, portions of the Supplemental Declaration of Rachel Meeropol in Support of
7 Plaintiffs’ Supplemental Brief, as well as Exhibits 1 through 35 to said declaration (collectively, the
8 “Confidential Materials”).

9 The Confidential Materials contain or reflect information that was designated by Defendants as
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Protective Order issued in
11 this case (ECF No. 181).

12 DATED: July 3, 2018

Respectfully submitted,

13
14 By: /s/ Carmen E. Bremer

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 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION

18 TODD ASHKER, *et al.*,
 19 Plaintiffs,

20 v.

21 GOVERNOR OF THE STATE OF
 CALIFORNIA, *et al.*,
 22 Defendants.

Case No. 4:09-cv-05796-CW

CLASS ACTION

**DECLARATION OF CARMEN E. BREMER
 IN SUPPORT OF PLAINTIFFS’
 ADMINISTRATIVE MOTION TO FILE
 UNDER SEAL**

Date: August 21, 2018
 Time: 10:00 a.m.
 Location: Courtroom D – 15th Floor
 Honorable Robert M. Illman

1 I, Carmen E. Bremer, declare:

2 1. I am an attorney duly admitted to practice before this Court, a member of Bremer Law
3 Group PLLC, and counsel of record for Plaintiffs in the above-captioned matter. I submit this
4 declaration in support of Plaintiffs' Administrative Motion to File Documents Under Seal. I have
5 personal knowledge of the facts set forth herein and if called as a witness, I could and would
6 competently testify thereto.

7 2. Good cause under Fed. R. Civ. P. 26(c) is sufficient to seal discovery material attached
8 to non-dispositive motions. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir.
9 2006). Rule 26(c) gives the district court wide discretion to protect the interests of private parties and
10 to determine when good cause has been shown. *Id.*; *see also Dugan v. Lloyds TSB Bank, PLC*, No. 12-
11 cv-02549-WHA (NJV), 2013 U.S. Dist. LEXIS 51162, at *5 (N.D. Cal. Apr. 9, 2013) (finding that
12 good cause may exist to seal records "if disclosure of the information might harm a litigant's
13 competitive standing"). Plaintiffs seek to seal references to discovery documents in a declaration and
14 exhibits filed in support of a non-dispositive motion.¹ Good cause exists to seal references to these
15 documents because they contain or reflect confidential information that Defendants claim to affect
16 institutional safety and security. By designating the information "HIGHLY CONFIDENTIAL –
17 ATTORNEYS' EYES ONLY," Defendants have taken the position that disclosure would reveal
18 details related to housing decisions and the investigative process used by correctional officers to
19 investigate alleged criminal behavior within CDCR's institutions and could further compromise
20 ongoing investigations of alleged prison gang activity. Therefore, good cause exists to seal portions of
21 Plaintiffs' Supplemental Brief In Support of Motion To Extend the Settlement Agreement Based on
22 Systemic Due Process Violations, portions of the Supplemental Declaration of Rachel Meeropol in
23

24 ¹ Because Plaintiffs' Supplemental Brief In Support Of Motion To Extend the Settlement Agreement
25 Based on Systemic Due Process Violations, and this Court's jurisdiction is not expressly contemplated
26 by the Federal Rules of Civil Procedure, and Paragraph 41 of the Settlement Agreement giving rise to
27 Plaintiffs' right to file such a motion is silent on the issue, it is unclear whether the motion constitutes a
28 dispositive motion for purposes of *Kamakana's* holding. To the extent Plaintiffs' supplemental brief in
support of extension motion is a dispositive motion, Plaintiffs submit that there are "compelling
reasons" supporting the secrecy of information contained in the motion and its supporting materials, so
sealing is nevertheless appropriate. *Kamakana*, 447 F.3d at 1080.

1 Support of Plaintiffs' Reply, as well as Exhibits 1 through 35 to said declaration that constitute,
2 summarize, and discuss the information (collectively, the "Confidential Materials").

3 3. I have reviewed the Confidential Materials. The Confidential Materials reflect
4 confidential information that Defendants claim would harm institutional safety and security, and would
5 further compromise ongoing investigations of alleged prison gang activity if disclosed. Therefore,
6 pursuant to Civil Local Rule 79-5(a) and both the good cause and compelling reasons standards
7 described in *Kamakana*, 447 F.3d at 1180, good cause and compelling reasons exists to seal the
8 Confidential Materials.

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct.

11 Executed on July 3, 2018, at Seattle, Washington.

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13 /s/ Carmen E. Bremer
14 Carmen E. Bremer

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TODD ASHKER, *et al.*,

Plaintiffs,

v.

GOVERNOR OF THE STATE OF
CALIFORNIA, *et al.*,

Defendants.

Case No.: 4:09-cv-05796-CW

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS’ ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

Date: August 21, 2018
Time: 10:00 a.m.
Location: Courtroom D – 15th Floor
Honorable Robert M. Illman

The Court has received Plaintiffs’ Administrative Motion to File Under Seal, and the Declaration of Carmen E. Bremer in support of the same. Pursuant to Civil Local Rule 79-5(a), Plaintiffs have shown that the portions of the documents to be sealed are entitled to protection under the law because they contain confidential information that Defendants claim could harm CDCR institutional safety and security if disclosed. *See Dugan v. Lloyds TSB Bank, PLC*, No. 12-cv-02549-WHA (NJV), 2013 U.S. Dist. LEXIS 51162, at *5 (N.D. Cal. Apr. 9, 2013) (finding that good cause may exist to seal records “if disclosure of the information might harm a litigant’s competitive standing”). Plaintiffs have met the “good cause” standard for sealing portions of Plaintiff’s Supplemental Brief In Support of Motion to Extend the Settlement

1 Agreement Based on Systemic Due Process Violations, portions of the Supplemental
2 Declaration of Rachel Meeropol in Support of Plaintiffs’ Supplemental Brief, as well as
3 Exhibits 1 through 35 to said declaration, (collectively, the “Confidential Material”), because
4 Plaintiffs have shown that they contain confidential information that Defendants claim would
5 harm institutional safety and security, and would further compromise ongoing investigations of
6 alleged prison gang activity if disclosed. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d
7 1172, 1179 (9th Cir. 2006).¹

8 Having considered Plaintiffs’ Administrative Motion to File Under Seal and the
9 Declaration of Carmen E. Bremer in support of same, and good cause appearing therefor,
10 Plaintiffs’ Motion is hereby GRANTED.

11
12 IT IS SO ORDERED.

13
14 Dated: _____, 2018 By: _____
15 Honorable Robert M. Illman
16 United States Magistrate Judge
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27 ¹ To the extent Plaintiffs’ Supplemental Brief In Support of Motion to Extend the Settlement
28 Agreement Based on Systemic Due Process Violations is properly considered a dispositive motion
within the procedural context of this case, this Court further finds that there are “compelling
reasons” supporting the secrecy of the Confidential Materials. *Kamakana*, 447 F.3d at 1180.

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16 NORTHERN DISTRICT OF CALIFORNIA
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18 TODD ASHKER, et al.,

19 Plaintiffs,

20 v.

21 GOVERNOR OF THE STATE OF
22 CALIFORNIA, et. al.,

23 Defendants.

Case No.: 4:09-cv-05796-CW

CLASS ACTION

**PLAINTIFFS' SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION FOR
EXTENSION OF SETTLEMENT
AGREEMENT BASED ON SYSTEMIC
DUE PROCESS VIOLATIONS**

Date: August 21, 2018

Time: 10:00 a.m.

Location: Courtroom D – 15th Floor

Honorable Robert M. Illman

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27 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

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INTRODUCTION

1
2 On February 6, 2018, after Plaintiffs' motion for an extension of the *Ashker v.*
3 *Governor* Settlement Agreement had already been filed, the District Court ordered Defendants
4 to supplement their production of certain documents relevant to that motion. Order, ECF. No.
5 970. Specifically, the Agreement required regular production of rule violation reports
6 ("RVRs") pertaining to "all inmates found guilty of a SHU-eligible offense with a nexus to an
7 STG." However, during the monitoring period Defendants produced only documents
8 pertaining to *gang validated* prisoners found guilty of a SHU-eligible offense with an STG
9 nexus. *Id.* Approximately 40 such files were produced, and Plaintiffs' opening extension brief
10 identified due process concerns related to the use of confidential information in more than
11 half. *See* Plaintiffs' Motion for Extension of Settlement Agreement Based on Systemic Due
12 Process Violations ("Mot. for Extension"), Nov. 20, 2017 at 8-29.

13 Pursuant to the Court's order, CDCR has now produced hundreds more RVRs, many
14 of which utilized confidential information. Under a pre-existing agreement between the
15 parties, CDCR produced a random sample of that confidential material, amounting to
16 approximately 110 files. These files provide important new evidence in support of Plaintiffs'
17 motion to extend the monitoring period. First, unsurprisingly, the supplemental production
18 confirms the systemic nature of the due process violations uncovered in the original
19 production. Of the approximately 110 prisoners found guilty of SHU-eligible offenses with an
20 STG nexus based on confidential information whose complete files were produced by CDCR,
21 we show below how more than 45 of these RVRs were flawed because CDCR officials
22 fabricated, inadequately disclosed, or failed to independently assess the reliability of the
23 confidential information.¹

24 Second, the supplemental production demonstrates that CDCR's systemic due process
25 violations create a substantial risk of error of a prisoner being wrongfully sent to solitary for
26 years and/or losing good time credits, thus prolonging his prison term. As Plaintiffs argued in

27
28 ¹ The evidence provided herein is representative—not exhaustive—of the problems uncovered
in the supplemental production. An exhaustive presentation of all evidence of due process
violations in the supplemental production would require a much longer brief.

1 our reply brief, CDCR’s systemic misuse of confidential information violates due process
2 regardless of whether other, non-fabricated evidence is adequate to find a given prisoner
3 guilty. *See* Plaintiffs’ Reply in Support of Mot. for Extension, Apr. 27, 2018 at 5, *see also*
4 Mot. for Extension at 7-8. This is because systemic fabrications and failure to ensure
5 reliability create a significant *risk* of error in all instances. *See Matthews v. Eldrige*, 424 U.S.
6 319, 335 (1976) (establishing that the due process inquiry must focus on the risk of an
7 erroneous deprivation of liberty interest through procedures used). The unacceptably high risk
8 of error endemic to CDCR’s use of confidential information is demonstrated again and again
9 in the supplemental production. As shown below, two prisoners were found guilty of

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] Each of these and

18 many other examples are described in detail below.

19 Third, the supplemental production highlights new patterns of abuse not fully apparent
20 from the initial, smaller production. The documents show repeated reliance by the Senior
21 Hearing Officer (“SHO”) on an investigator’s indication that confidential material is
22 corroborated, [REDACTED]

23 [REDACTED] *See infra*, p. 13-14. The new documents also show repeated instances in which prisoners
24 attempted to challenge the reliability of confidential information used against them by asking
25 reasonable and relevant questions in their disciplinary hearing, but the questions were denied
26 as irrelevant. *See infra*, p. 14-15.

27 Together with the strong and largely unrefuted evidentiary showing in Plaintiffs’
28 opening brief, Plaintiffs’ supplemental evidence of CDCR’s systemic misuse of confidential

1 information to send prisoners to months or years in solitary confinement demands attention
2 and relief from this Court.

3 **I. THE SUPPLEMENTAL PRODUCTION PROVIDES FURTHER EVIDENCE**
4 **OF CDCR'S PATTERN OF FABRICATING AND INADEQUATELY**
5 **DISCLOSING CONFIDENTIAL INFORMATION**

6 Plaintiffs' opening brief set forth evidence that CDCR has repeatedly "disclosed"
7 fabricated evidence, has misstated confidential information to make it appear definitive when
8 it is not, has failed to disclose exculpatory evidence, and has provided disclosures so vague
9 and general as to prevent any defense. *See* Mot. for Extension at 8-18. The supplemental
10 production includes many more examples of the same.

11 **A. Supplemental Evidence of Defendants' Systemic Fabrication of**
12 **Confidential Information**

13 Plaintiffs have uncovered additional examples of the outright fabrication of
14 confidential information. For example, three prisoners were found guilty of attempted murder
15 with an STG nexus based, in large part, [REDACTED]

16 [REDACTED]
17 [REDACTED] *See generally*

18 Supplemental Declaration of Rachel Meeropol (hereafter "Meeropol Supp. Decl.") [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
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A second prisoner, [REDACTED]

[REDACTED]

[REDACTED]²

[REDACTED]

² Such an argument is well-supported. See e.g., Steven E. Clark, Ryan T. Howell, Sherrie L. Davey, *Regularities in Eyewitness Identification*, 32 Law & Hum. Behav. 187, 211 (2008) (“Nonidentifications . . . are straightforward. They are diagnostic of a suspect’s innocence. . . . [N]onidentifications are not merely ‘failures’ to identify the suspect, but rather carry important information whose value should not be overlooked.”) Memory does not improve with time, rather “[m]emory generally decays over time. Decay rates are exponential rather than linear, with the greatest proportion of memory loss occurring shortly after an initial observation.” *State v. Lawson*, 352 Or. 724, 746 (2012), see also Kenneth A. Deffenbacher et al., *Forgetting the Once-Seen Face: Estimating the Strength of an Eyewitness’s Memory Representation*, 14 J. Experimental Psychol.: Applied 139, 139, 143, 147-48 (2008). Thus a positive identification after an initial rejection is more likely an indication of contamination than an improved memory. See *Lawson*, 352 Or. at 743.

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[REDACTED]

[REDACTED] provides another example of fabrication. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³ [REDACTED] RVR resulting from this same incident was described in Plaintiffs' opening brief. *See* Mot. for Extension at 25-26. With CDCR's recent production of the relevant confidential memorandum in connection to [REDACTED], it is now clear that [REDACTED] too was provided fabricated information: [REDACTED] *Compare* Meeropol Decl. Submitted in Support of Motion for Extension, Ex. II ([REDACTED] RVR) at 25, with Meeropol Supp. Decl. Ex. 5 ([REDACTED] RVR), at 28-34.

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[REDACTED]

The supplemental production also provides evidence that CDCR frequently fabricates the existence of a corroborating source to confirm the initial confidential informant. [REDACTED]

[REDACTED]

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[REDACTED]

The production includes many more examples of fabrication of the existence of a corroborating source, including [REDACTED]

[REDACTED] The obvious explanation for this pattern is an attempt by charging officers to make informant statements appear more reliable and damning than they are.⁵

⁵ Along with outright fabrication, confidential information is frequently misstated or exaggerated, perhaps through mere negligence, to make it seem more definitive or reliable. See e.g. Meeropol Supp. Decl. Ex. 12

[REDACTED]

1 In yet another pattern of fabrication, the documents show various CDCR officials
2 masking their own investigatory conclusions as the statements of confidential informants. For
3 example, [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

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[REDACTED]

Investigator conclusions are presented as evidence from confidential sources and insulated from review in this same way in rule violation reports for prisoners [REDACTED]

[REDACTED]

The documents also evidence a pattern of failure to disclose exonerating information.

[REDACTED]

⁶ Along with presenting investigator conclusions as confidential information, the actual confidential information gathered against [REDACTED] was inaccurately disclosed. [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 Exculpatory confidential information was also withheld from [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 CDCR's flawed approach to confidential information is perhaps most apparent in the

16 case of more than a dozen prisoners [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED]

2 **B. Supplemental Evidence of Defendants’ Systemic Failure to Adequately**
3 **Summarize all Confidential Information that Can be Disclosed without**
4 **Jeopardizing Security**

5 As argued in Plaintiffs’ opening brief, CDCR also violates due process by disclosing
6 confidential information so vaguely or generally as to make it impossible for the prisoner to
7 mount a defense. *See* Mot. for Extension at 16-18. The supplemental production provides
8 more evidence of this systemic problem.

9 For example, [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] Without any factual
17 detail, [REDACTED] had no way to mount a defense or understand the guilty finding.⁷

18 Numerous other prisoners have received disclosure forms equally vague and devoid of
19 any meaningful information. *See* Ex. 11 [REDACTED]

20 ⁷ [REDACTED] This
21 violates CDCR’s own rules, requiring that an STG “nexus shall be clearly articulated in the
22 specific act, as well as clearly described within the narrative of the associated Rules Violations
23 Report, and Findings of the Senior Hearing Officer/Hearing Officer.” 15 CCR 3378.4. [REDACTED]

24 [REDACTED] *See* *Wilkinson v. Austin*, 545 U.S. 209, 226 (2005)
25 (notice of factual basis for a decision “among the most important procedural mechanisms” to
26 avoid erroneous deprivation; requirement that decisionmaker provide statement of reasons
27 “guards against arbitrary decisionmaking”). Plaintiffs’ counsel have learned that [REDACTED] guilty
28 finding resulted in loss of good time credits, interfering with his projected release from prison
in February 2018. According to [REDACTED], a June 2018 CDCR review overturned the STG nexus,
but not before [REDACTED] was relegated to an extra seven months in prison, and a year and half in
solitary. Counsel was unable to get documentation of this result in time for filing, but can
furnish the relevant evidence upon the Court’s request.

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[REDACTED]

[REDACTED] The production includes many more examples of identical confidential disclosures, devoid of any detail at all, which Plaintiffs can provide to the Court upon request.

II. THE SUPPLEMENTAL PRODUCTION PROVIDES FURTHER EVIDENCE OF CDCR’S PATTERN OF FAILING TO ENSURE CONFIDENTIAL INFORMATION IS RELIABLE

Plaintiffs’ opening brief demonstrated CDCR’s systemic failure to ensure that confidential information is reliable. *See Mot. for Extension* at 18-29. Unsurprisingly, the supplemental production provides more evidence to support this due process violation.

First, the production bolsters Plaintiffs’ evidentiary showing that CDCR officials routinely fail to undertake an independent evaluation of the reliability of confidential information. In 2017, multiple prisoners [REDACTED]

[REDACTED]

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[REDACTED]

This failure to undertake an independent review is *not* harmless. [REDACTED]

[REDACTED]

Further evidence of numerous SHOs' failure to independently assess whether CDCR officials have accurately found a confidential source reliable can be seen in relation to the fabrication of corroborating sources, described above. *See supra*, p. 6-7. [REDACTED]

[REDACTED]

Other frequently used indicators of reliable information also fail to ensure reliability. One frequently checked box is that "part of the information provided by the confidential source is corroborated through investigation or by information provided by non-confidential sources." This factor allows a critical, uncorroborated, assertion by a confidential informant to

1 be viewed as reliable if one minor and possibly irrelevant confidential assertion is
2 corroborated. For example, [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 Finally, Plaintiffs' opening brief presented a few instances where prisoners were
8 denied an opportunity to ask questions of witnesses relevant to the reliability of confidential
9 information being used against them. *See e.g.*, Mot. for Extension at 28 (describing [REDACTED]
10 questions about confidential source deemed irrelevant by SHO). That pattern continues in the
11 supplemental production. For example, [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 This same problem repeats again and again. Additional examples can be found in the

1 rule violation reports for [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 **CONCLUSION**

5 We have no doubt that the running of a fair prison disciplinary system is an unusually
6 difficult task, and that this difficulty is compounded by the fact that it may sometimes be
7 necessary to consider information from confidential in-custody sources to protect prisoners and
8 staff. But because the details of such information are kept from the prisoners and thus not
9 subject to the usual safeguards afforded by due process, it is vital for prison officials to
10 diligently, competently, and scrupulously deal with confidential sources. Yet as this
11 supplemental brief confirms, CDCR officials systemically sentence prisoners to prolonged
12 SHU terms based on confidential information that is fabricated, not adequately disclosed, or
13 treated in a cavalier, rote fashion by hearing officers whose institutional task and constitutional
14 duty is to determine whether the information is reliable.

15 CDCR's systemic failures can even be illustrated in this monitoring process: the Court
16 will recall that the supplemental production was meant to include RVRs for non-validated
17 prisoners only; all relevant RVRs for validated prisoners were supposed to have been produced
18 during the monitoring period. However, the supplemental production reveals that CDCR failed
19 to originally produce *at least 26 RVR packets for STG-validated prisoners*. Meeropol Supp.
20 Decl. at ¶ 2, 4. This is more than one-third of the required production. *Id.* at ¶ 3, 4. But for
21 Judge Wilken's decision requiring a supplemental production, these files would *never* have
22 been produced, even though Defendants were indisputably obligated to do so. This failure is
23 symptomatic of CDCR's utter lack of care in running its disciplinary system, and underscores
24 the need for independent monitoring to ensure that the Defendants do not continue to send
25 people to the SHU, deny them good time credit, and prolong their time in prison based on
26 systemically slipshod, unfair and unreliable procedures.

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DATED: July 3, 2018

Respectfully submitted,

By: /s/ Carmen E. Bremer

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12 *Attorneys for Plaintiffs*

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 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION
 17

18 TODD ASHKER, *et al.*,
 19 Plaintiffs,

20 v.

21 GOVERNOR OF THE STATE OF
 CALIFORNIA, *et al.*,
 22 Defendants.
 23

Case No. 4:09-cv-05796-CW

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
 RACHEL MEEROPOL IN SUPPORT OF
 PLAINTIFFS' SUPPLEMENTAL BRIEF IN
 SUPPORT OF MOTION TO EXTEND THE
 SETTLEMENT AGREEMENT**

Date: August 21, 2018
 Time: 10:00 a.m.
 Location: Courtroom D – 15th Floor
 Honorable Robert M. Illman

26 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

1 I, Rachel Meeropol, declare under penalty of perjury that:

2 1. I am an attorney duly admitted to practice before this Court, a senior staff attorney at
3 the Center for Constitutional Rights, and counsel of record for Plaintiffs in the above-captioned matter.
4 I submit this declaration in support of Plaintiffs' Supplemental Brief In Support of Motion to Extend
5 the Settlement Agreement. I have personal knowledge of the facts set forth herein and if called as a
6 witness, I could and would competently testify thereto.

7 2. When making its supplemental production, CDCR informed Plaintiffs' counsel that it
8 had uncovered some Rule Violation Reports (RVRs) belonging to validated prisoners, that were not
9 produced during the monitoring period. CDCR did not indicate how many of these RVRs it located,
10 nor did CDCR provide Plaintiffs' counsel with a list of these long-overdue files.

11 3. CDCR had produced approximately 40 RVR files during the monitoring period.

12 4. Through review of the supplemental production, I have identified 26 RVRs of validated
13 prisoners, which should have been produced during the monitoring period but were not, including the
14 RVRs for: [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 5. Due to the voluminous nature of the supplemental production, I was unable to review
20 every single document, rendering it possible that there are additional RVRs for validated prisoners in
21 the supplemental production.

22 6. Below I set forth the evidence relied on in Plaintiffs' Supplemental Brief. Given the
23 voluminous nature of the RVR packets, I have excluded incident reports, photographs, and other
24 irrelevant material found in the production. I have also added page numbers to the documents for ease
25 of reference.

26 7. Attached as Exhibit 1 is a true and correct copy of [REDACTED] rule violation
27 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

28

1 8. Attached as Exhibit 2 is a true and correct copy of [REDACTED] rule violation report,
2 hearing results and related documents, produced by CDCR under paragraph 37(h).

3 9. Attached as Exhibit 3 is a true and correct copy of [REDACTED] rule violation
4 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

5 10. Attached as Exhibit 4 is a true and correct copy of a confidential memorandum dated
6 [REDACTED] produced by CDCR under paragraph 37(h).

7 11. Attached as Exhibit 5 is a true and correct copy of [REDACTED] rule violation report,
8 hearing results and related documents, produced by CDCR under paragraph 37(h).

9 12. Attached as Exhibit 6 is a true and correct copy of [REDACTED] rule violation
10 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

11 13. Attached as Exhibit 7 is a true and correct copy of [REDACTED] rule violation
12 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

13 14. Attached as Exhibit 8 is a true and correct copy of [REDACTED] rule violation
14 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

15 15. Attached as Exhibit 9 is a true and correct copy of [REDACTED] rule violation report,
16 hearing results and related documents, produced by CDCR under paragraph 37(h).

17 16. Attached as Exhibit 10 is a true and correct copy of [REDACTED] rule violation report,
18 hearing results and related documents, produced by CDCR under paragraph 37(h).

19 17. Attached as Exhibit 11 is a true and correct copy of [REDACTED]
20 [REDACTED] rule violation reports, hearing results and related documents, produced by CDCR under
21 paragraph 37(h).

22 18. Attached as Exhibit 12 is a true and correct copy of [REDACTED] rule violation report,
23 hearing results and related documents, produced by CDCR under paragraph 37(h).

24 19. Attached as Exhibit 13 is a true and correct copy of [REDACTED] rule violation report,
25 hearing results and related documents, produced by CDCR under paragraph 37(h).

1 20. Attached as Exhibit 14 is a true and correct copy of [REDACTED]
2 [REDACTED] rule violation reports, hearing results and related documents, produced by CDCR under
3 paragraph 37(h).

4 21. Attached as Exhibit 15 is a true and correct copy of [REDACTED] rule violation
5 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

6 22. Attached as Exhibit 16 is a true and correct copy of [REDACTED] confidential
7 disclosure form and confidential memorandum, produced by CDCR under paragraph 37(h).

8 23. Attached as Exhibit 17 is a true and correct copy of [REDACTED]
9 [REDACTED] confidential disclosures, produced by CDCR under paragraph 37(h).

10 24. Attached as Exhibit 18 is a true and correct copy of [REDACTED] rule violation report,
11 hearing results and related documents, produced by CDCR under paragraph 37(h).

12 25. Attached as Exhibit 19 is a true and correct copy of [REDACTED] rule violation
13 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

14 26. Attached as Exhibit 20 is a true and correct copy of [REDACTED]
15 confidential disclosure forms and confidential memoranda, produced by CDCR under paragraph 37(h).

16 27. Attached as Exhibit 21 is a true and correct copy of [REDACTED]
17 [REDACTED] confidential disclosure forms and confidential memoranda, produced by CDCR
18 under paragraph 37(h).

19 28. Attached as Exhibit 22 is a true and correct copy of [REDACTED]
20 [REDACTED] confidential disclosure forms and confidential memoranda, produced
21 by CDCR under paragraph 37(h).

22 29. Attached as Exhibit 23 is a true and correct copy of [REDACTED] rule
23 violation report, hearing results and related documents, produced by CDCR under paragraph 37(h).

24 30. Attached as Exhibit 24 is a true and correct copy of [REDACTED] rule violation
25 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

26 31. Attached as Exhibit 25 is a true and correct copy of [REDACTED] rule violation report,
27 hearing results and related documents, produced by CDCR under paragraph 37(h).

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1 32. Attached as Exhibit 26 is a true and correct copy of [REDACTED] rule violation
2 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

3 33. Attached as Exhibit 27 is a true and correct copy of [REDACTED] rule violation report,
4 hearing results and related documents, produced by CDCR under paragraph 37(h).

5 34. Attached as Exhibit 28 is a true and correct copy of [REDACTED] confidential
6 disclosure, produced by CDCR under paragraph 37(h).

7 35. Attached as Exhibit 29 is a true and correct copy of [REDACTED] confidential
8 disclosure, produced by CDCR under paragraph 37(h).

9 36. Attached as Exhibit 30 is a true and correct copy of [REDACTED] confidential
10 disclosure, produced by CDCR under paragraph 37(h).

11 37. Attached as Exhibit 31 is a true and correct copy of excerpts from rule violation reports
12 for [REDACTED]
13 [REDACTED] produced by CDCR under paragraph 37(h).

14 38. Attached as Exhibit 32 is a true and correct copy of [REDACTED] rule violation
15 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

16 39. Attached as Exhibit 33 is a true and correct copy of [REDACTED] rule violation
17 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

18 40. Attached as Exhibit 34 is a true and correct copy of [REDACTED] rule violation
19 report, hearing results and related documents, produced by CDCR under paragraph 37(h).

20 41. Attached as Exhibit 35 is a true and correct copy of excerpts from rule violation reports
21 for [REDACTED] produced by CDCR under
22 paragraph 37(h).

23 I declare under penalty of perjury that the foregoing is true and correct based on my knowledge
24 and belief.

25 Executed on July 3, 2018 in New York, NY.

26 /s/ Rachel Meeropol
27 Rachel Meeropol

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ATTESTATION REGARDING SIGNATURES

I, Carmen E. Bremer, attest that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

DATED: July 3, 2018

By: /s/ Carmen E. Bremer
Carmen E. Bremer

EXHIBIT 1

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EXHIBIT 2

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