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

19 ROBERT HECKER, CHRISTOPHER) Case No. 2:05-cv-02441-LKK-JFM
20 LEE JENKINS, PETER TAYLOR, YING)
21 WATT, ASKIA ASHANTI, RONALD)
22 AULD, JOHN MUELLER, DANIEL) SECOND AMENDED CLASS ACTION
23 HUNLEY, JOSEPH COX, EDDIE) COMPLAINT FOR DECLARATORY AND
24 THOMAS, BRIAN K. STAFFORD,) INJUNCTIVE RELIEF
25 MICHAEL LOVELACE, BOBBY)
26 DANIELS, QUINTON GRAY, JOHN)
27 WESLEY WILLIAMS, SAMUEL) [Civil Rights – Disability
28 D’ANGELO, JR., and JON SCHOOLEY,) Discrimination]

Plaintiffs, on behalf of themselves
and all others similarly situated,

v.

CALIFORNIA DEPARTMENT OF)
CORRECTIONS AND)
REHABILITATION, ARNOLD)
SCHWARZENEGGER, Governor of the)
State of California, in his official capacity,)
JAMES E. TILTON, Secretary (Acting) of)
the California Department of Corrections)
and Rehabilitation, in his official capacity,)
JEANNE S. WOODFORD, Undersecretary)
of the California Department of Corrections)
and Rehabilitation, in her official capacity,)
JOHN DOVEY, Director, Division of)
Adult Institutions, in his official capacity,)
DR. PETER FARBER-SZEKRENYI,)
Director, Division of Correctional Health)
Care Services, in his official capacity,)

1 MARTIN VEAL, Warden (Acting) of the)
 California Medical Facility, in his official)
 2 capacity, BENJAMIN CURRY, Warden)
 (Acting) of the Correctional Training)
 3 Facility, in his official capacity, ROBERT)
 J. HERNANDEZ, Warden of the Richard J.)
 4 Donovan Correctional Facility, in his)
 official capacity, R.K. WONG, Warden of)
 the California State Prison – Los Angeles)
 5 County, in his official capacity, MICHAEL)
 E. POULOS, Warden of the California)
 6 Institution for Men, in his official capacity,)
 JOHN MARSHALL, Warden of the)
 7 California Men’s Colony, in his official)
 capacity, ANTHONY MALFI, Warden of)
 8 the California State Prison – Sacramento, in)
 his official capacity, and KATHY)
 9 MENDOZA-POWERS, Warden of the)
 Avenal State Prison, in her official)
 10 capacity,)
 11 Defendants.)

12
 13 Plaintiffs ROBERT HECKER, CHRISTOPHER LEE JENKINS, PETER
 14 TAYLOR, YING WATT, ASKIA ASHANTI, RONALD AULD, JOHN MUELLER,
 15 DANIEL HUNLEY, JOSEPH COX, EDDIE THOMAS, BRIAN K. STAFFORD,
 16 MICHAEL LOVELACE, BOBBY DANIELS, QUINTON GRAY, JOHN WESLEY
 17 WILLIAMS, SAMUEL D’ANGELO, JR., and JON SCHOOLEY allege as follows:

18 **INTRODUCTION**

19 1. This is an action for relief from Defendants’ violation of Plaintiffs’ civil rights
 20 under the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and
 21 California Government Code section 11135.

22 2. Plaintiff ROBERT HECKER (“HECKER”) is an individual with a psychiatric
 23 disability, and an inmate incarcerated at the California Medical Facility (“CMF”).

24 3. Plaintiff CHRISTOPHER LEE JENKINS (“JENKINS”) is an individual with a
 25 psychiatric disability, and an inmate incarcerated at the Correctional Training Facility
 26 (“CTF”). Plaintiff JENKINS was formerly incarcerated at CMF and at the California
 27 Men’s Colony (“CMC”).

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1 4. Plaintiff PETER TAYLOR (“TAYLOR”) is an individual with a psychiatric
2 disability, and an inmate incarcerated at CMF.

3 5. Plaintiff YING WATT (“WATT”) is an individual with a psychiatric disability,
4 and an inmate incarcerated at CMF.

5 6. Plaintiff ASKIA ASHANTI (“ASHANTI”), a/k/a Lorenzo Cunningham, is an
6 individual with a psychiatric disability, and an inmate incarcerated at CMF.

7 7. Plaintiff RONALD AULD (“AULD”) is an individual with a psychiatric
8 disability, and an inmate incarcerated at CMF.

9 8. Plaintiff JOHN MUELLER (“MUELLER”) is an individual with a psychiatric
10 disability, and an inmate incarcerated at the Richard J. Donovan Correctional Facility
11 (“RJD”).

12 9. Plaintiff DANIEL HUNLEY (“HUNLEY”) is an individual with a psychiatric
13 disability, and an inmate incarcerated at the California State Prison – Los Angeles
14 County (“LAC”).

15 10. Plaintiff JOSEPH COX (“COX”) is an individual with a psychiatric disability,
16 and an inmate incarcerated at the California Institute for Men (“CIM”). Plaintiff COX
17 was formerly incarcerated at the Sierra Conservation Center (“SCC”).

18 11. Plaintiff EDDIE THOMAS (“THOMAS”) is an individual with a psychiatric
19 disability, and an inmate incarcerated at RJD.

20 12. Plaintiff BRIAN K. STAFFORD (“STAFFORD”) is an individual with a
21 psychiatric disability, and an inmate incarcerated at RJD.

22 13. Plaintiff MICHAEL LOVELACE (“LOVELACE”) is an individual with a
23 psychiatric disability, and an inmate incarcerated at LAC.

24 14. Plaintiff BOBBY DANIELS (“DANIELS”) is an individual with a psychiatric
25 disability, and an inmate incarcerated at LAC.

26 15. Plaintiff QUINTON GRAY (“GRAY”) is an individual with a psychiatric
27 disability, and an inmate incarcerated at CMC.

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1 16. Plaintiff JOHN WESLEY WILLIAMS (“WILLIAMS”) is an individual with a
2 psychiatric disability, and an inmate incarcerated at the California State Prison –
3 Sacramento (“SAC”).

4 17. Plaintiff SAMUEL D’ANGELO, JR. (“D’ANGELO”) is an individual with a
5 psychiatric disability. Plaintiff D’ANGELO was formerly incarcerated at CMC and at
6 RJD.

7 18. Plaintiff JON SCHOOLEY (“SCHOOLEY”) is an individual with a psychiatric
8 disability, and an inmate incarcerated at the Avenal State Prison (“ASP”). Plaintiff
9 SCHOOLEY was formerly incarcerated at CMF and at CMC.

10 19. The Defendants CALIFORNIA DEPARTMENT OF CORRECTIONS AND
11 REHABILITATION (“CDCR”), GOVERNOR ARNOLD SCHWARZENEGGER
12 (“SCHWARZENEGGER”), RODERICK Q. HICKMAN (“HICKMAN”), JEANNE S.
13 WOODFORD (“WOODFORD”), JOHN DOVEY (“DOVEY”), PETER FARBER-
14 SZEKRENYI (“FARBER-SZEKRENYI”), MARTIN VEAL (“VEAL”), BENJAMIN
15 CURRY (“CURRY”), ROBERT J. HERNANDEZ (“HERNANDEZ”), R.K. WONG
16 (“WONG”), MICHAEL E. POULOS (“POULOS”), JOHN MARSHALL
17 (“MARSHALL”), ANTHONY MALFI (“MALFI”), and KATHY MENDOZA-
18 POWERS (“MENDOZA-POWERS”), and each of them, have denied Plaintiffs access to
19 basic CDCR programs, services, and activities on the basis of their disabilities.

20 20. Plaintiffs seek declaratory and injunctive relief, and reasonable attorneys’ fees
21 and costs, for defendants’ violations of their rights.

22 **JURISDICTION AND VENUE**

23 21. This Court has jurisdiction over the subject matter and the parties pursuant to 28
24 U.S.C. §§ 1331, 2201, and 2202. Plaintiffs bring this suit under Title II of the
25 Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12132, and Section 504
26 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), 29 U.S.C. § 794.

27 22. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. §
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1 1391(b), because events giving rise to Plaintiffs' claims occurred in this District.

2 **PARTIES**

3 23. Plaintiff HECKER is a person with a disability within the meaning of all
4 applicable statutes, and is a qualified person with a disability within the meaning of Title
5 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff HECKER is a
6 resident of California, and an inmate incarcerated at CMF.

7 24. Plaintiff JENKINS is a person with a disability within the meaning of all
8 applicable statutes, and is a qualified person with a disability within the meaning of Title
9 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff JENKINS is a
10 resident of California, and an inmate incarcerated at CTF. Plaintiff JENKINS was
11 formerly incarcerated at CMF and CMC.

12 25. Plaintiff TAYLOR is a person with a disability within the meaning of all
13 applicable statutes, and is a qualified person with a disability within the meaning of Title
14 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff TAYLOR is a
15 resident of California, and an inmate incarcerated at CMF.

16 26. Plaintiff WATT is a person with a disability within the meaning of all applicable
17 statutes, and is a qualified person with a disability within the meaning of Title II of the
18 ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff WATT is a resident of
19 California, and an inmate incarcerated at CMF.

20 27. Plaintiff ASHANTI is a person with a disability within the meaning of all
21 applicable statutes, and is a qualified person with a disability within the meaning of Title
22 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff ASHANTI is
23 a resident of California, and an inmate incarcerated at CMF.

24 28. Plaintiff AULD is a person with a disability within the meaning of all applicable
25 statutes, and is a qualified person with a disability within the meaning of Title II of the
26 ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff AULD is a resident of
27 California, and an inmate incarcerated at CMF.

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1 29. Plaintiff MUELLER is a person with a disability within the meaning of all
2 applicable statutes, and is a qualified person with a disability within the meaning of Title
3 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff MUELLER is
4 a resident of California, and an inmate incarcerated at RJD.

5 30. Plaintiff HUNLEY is a person with a disability within the meaning of all
6 applicable statutes, and is a qualified person with a disability within the meaning of Title
7 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff HUNLEY is a
8 resident of California, and an inmate incarcerated at LAC.

9 31. Plaintiff COX is a person with a disability within the meaning of all applicable
10 statutes, and is a qualified person with a disability within the meaning of Title II of the
11 ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff COX is a resident of
12 California, and an inmate incarcerated at CIM. Plaintiff COX was formerly incarcerated
13 at SCC.

14 32. Plaintiff THOMAS is a person with a disability within the meaning of all
15 applicable statutes, and is a qualified person with a disability within the meaning of Title
16 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff THOMAS is
17 a resident of California, and an inmate incarcerated at RJD.

18 33. Plaintiff STAFFORD is a person with a disability within the meaning of all
19 applicable statutes, and is a qualified person with a disability within the meaning of Title
20 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff STAFFORD
21 is a resident of California, and an inmate incarcerated at RJD.

22 34. Plaintiff LOVELACE is a person with a disability within the meaning of all
23 applicable statutes, and is a qualified person with a disability within the meaning of Title
24 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff LOVELACE
25 is a resident of California, and an inmate incarcerated at LAC.

26 35. Plaintiff DANIELS is a person with a disability within the meaning of all
27 applicable statutes, and is a qualified person with a disability within the meaning of Title
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1 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff DANIELS is
2 a resident of California, and an inmate incarcerated at LAC.

3 36. Plaintiff GRAY is a person with a disability within the meaning of all applicable
4 statutes, and is a qualified person with a disability within the meaning of Title II of the
5 ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff GRAY is a resident of
6 California, and an inmate incarcerated at CMC.

7 37. Plaintiff WILLIAMS is a person with a disability within the meaning of all
8 applicable statutes, and is a qualified person with a disability within the meaning of Title
9 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff WILLIAMS
10 is a resident of California, and an inmate incarcerated at SAC.

11 38. Plaintiff D'ANGELO is a person with a disability within the meaning of all
12 applicable statutes, and is a qualified person with a disability within the meaning of Title
13 II of the ADA and Section 504 of the Rehabilitation Act of 1973, Plaintiff D'ANGELO
14 is a resident of California. Plaintiff D'ANGELO was formerly incarcerated at CMC and
15 at RJD.

16 39. Plaintiff SCHOOLEY is a person with a disability within the meaning of all
17 applicable statutes, and is a qualified person with a disability within the meaning of Title
18 II of the ADA and Section 504 of the Rehabilitation Act of 1973. Plaintiff SCHOOLEY
19 is a resident of California, and an inmate incarcerated at ASP. Plaintiff SCHOOLEY was
20 formerly incarcerated at CMF and at CMC.

21 40. Defendant CDCR administers and operates the California prison system,
22 including the facilities identified above, and is legally responsible for ensuring
23 compliance with state and federal disability nondiscrimination laws at all California
24 correctional facilities. Defendant CDCR is a public entity within the meaning of Title II
25 of the ADA. Defendant CDCR receives federal financial assistance and is covered by the
26 Rehabilitation Act.

27 41. Defendant SCHWARZENEGGER is the Governor of the State of California,
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1 and oversees all state agencies, including the CDCR. Defendant SCHWARZENEGGER
2 is legally responsible for ensuring compliance with state and federal disability
3 nondiscrimination laws at all state facilities, including state correctional facilities.
4 Defendant SCHWARZENEGGER is legally responsible for the unlawful policies,
5 practices, and procedures challenged herein, and has the authority and legal obligation to
6 eliminate disability discrimination by abolishing these policies, practices, and procedures.
7 Defendant SCHWARZENEGGER is sued in his official capacity.

8 42. Defendant TILTON is the Secretary (Acting) of the CDCR, and is legally
9 responsible for ensuring compliance with state and federal disability nondiscrimination
10 laws at all correctional facilities, including the facilities identified above. Defendant
11 TILTON is legally responsible for the unlawful policies, practices, and procedures
12 challenged herein, and has the authority and legal obligation to eliminate disability
13 discrimination by abolishing these policies, practices, and procedures. Defendant
14 TILTON is sued in his official capacity.

15 43. Defendant WOODFORD is the Undersecretary of the CDCR, and is legally
16 responsible for ensuring compliance with state and federal disability nondiscrimination
17 laws at all correctional facilities, including the facilities identified above. Defendant
18 WOODFORD is responsible for the unlawful policies, practices, and procedures
19 challenged herein, and has the authority and legal obligation to eliminate disability
20 discrimination by abolishing these policies, practices, and procedures. Defendant
21 WOODFORD is sued in her official capacity.

22 44. Defendant DOVEY is the Director of the Division of Adult Institutions, and is
23 legally responsible for ensuring compliance with state and federal disability
24 nondiscrimination laws at all adult correctional facilities, including the facilities
25 identified above. Defendant DOVEY is responsible for the unlawful policies, practices,
26 and procedures challenged herein, and has the authority and legal obligation to eliminate
27 disability discrimination by abolishing these policies, practices, and procedures.
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1 Defendant DOVEY is sued in his official capacity.

2 45. Defendant FARBER-SZEKRENYI is the Director of the Division of Correctional
3 Health Care Services, and is legally responsible for ensuring compliance with state and
4 federal disability nondiscrimination laws at all adult correctional facilities, including the
5 facilities identified above. Defendant FARBER-SZEKRENYI is responsible for the
6 unlawful policies, practices, and procedures challenged herein, and has the authority and
7 legal obligation to eliminate disability discrimination by abolishing these policies,
8 practices, and procedures. Defendant FARBER-SZEKRENYI is sued in his official
9 capacity.

10 46. Defendant VEAL is the Warden (Acting) of CMF. He is responsible for the
11 administration of programs, services, and activities offered to inmates at the CMF, and is
12 in charge of supervision and discipline of all correctional officials and employees at
13 CMF. Defendant VEAL is sued in his official capacity.

14 47. Defendant CURRY is the Warden (Acting) of CTF. He is responsible for the
15 administration of programs, services, and activities offered to inmates at the CTF, and is
16 in charge of supervision and discipline of all correctional officials and employees at CTF.
17 Defendant CURRY is sued in his official capacity.

18 48. Defendant HERNANDEZ is the Warden of RJD. He is responsible for the
19 administration of programs, services, and activities offered to inmates at the RJD, and is
20 in charge of supervision and discipline of all correctional officials and employees at RJD.
21 Defendant HERNANDEZ is sued in his official capacity.

22 49. Defendant WONG is the Warden of LAC. He is responsible for the
23 administration of programs, services, and activities offered to inmates at the LAC, and is
24 in charge of supervision and discipline of all correctional officials and employees at
25 LAC. Defendant WONG is sued in his official capacity.

26 50. Defendant POULOS is the Warden of CIM. He is responsible for the
27 administration of programs, services, and activities offered to inmates at the CIM, and is
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1 in charge of supervision and discipline of all correctional officials and employees at CIM.
2 Defendant POULOS is sued in his official capacity.

3 51. Defendant MARSHALL is the Warden of CMC. He is responsible for the
4 administration of programs, services, and activities offered to inmates at the CMC, and is
5 in charge of supervision and discipline of all correctional officials and employees at
6 CMC. Defendant MARSHALL is sued in his official capacity.

7 52. Defendant MALFI is the Warden of SAC. He is responsible for the
8 administration of programs, services, and activities offered to inmates at the SAC, and is
9 in charge of supervision and discipline of all correctional officials and employees at
10 SAC. Defendant MALFI is sued in his official capacity.

11 53. Defendant MENDOZA-POWERS is the Warden of ASP. She is responsible for
12 the administration of programs, services, and activities offered to inmates at the ASP, and
13 is in charge of supervision and discipline of all correctional officials and employees at
14 ASP. Defendant MENDOZA-POWERS is sued in her official capacity.

15 **STATEMENT OF FACTS**

16 54. Plaintiff HECKER is an inmate incarcerated at the CMF. He is assigned to a
17 program for inmates with psychiatric disabilities called the Enhanced Outpatient Program
18 (“EOP”), which is a part of the CDCR’s Mental Health Service Delivery System
19 (“MHSDS”). Plaintiff HECKER has experienced, and continues to experience, the
20 unlawful actions and inactions alleged herein.

21 55. Plaintiff JENKINS is an inmate incarcerated at the CTF. He was formerly
22 incarcerated at the CMF and the CMC. While he was at the CMF and the CMC, he was
23 assigned to the EOP. He is currently assigned to a program for inmates with psychiatric
24 disabilities called the Correctional Clinical Case Management System (“CCCMS”),
25 which is also part of the MHSDS. Plaintiff JENKINS has experienced, and continues to
26 experience, the unlawful actions and inactions alleged herein.

27 56. Plaintiff TAYLOR is an inmate incarcerated at the CMF. He is assigned to the
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1 EOP. Plaintiff TAYLOR has experienced, and continues to experience, the unlawful
2 actions and inactions alleged herein.

3 57. Plaintiff WATT is an inmate incarcerated at the CMF. He is assigned to the
4 EOP. Plaintiff WATT has experienced, and continues to experience, the unlawful
5 actions and inactions alleged herein.

6 58. Plaintiff ASHANTI is an inmate incarcerated at the CMF. He is assigned to the
7 EOP. Plaintiff ASHANTI has experienced, and continues to experience, the unlawful
8 actions and inactions alleged herein.

9 59. Plaintiff AULD is an inmate incarcerated at the CMF. He is assigned to the EOP.
10 Plaintiff AULD has experienced, and continues to experience, the unlawful actions and
11 inactions alleged herein.

12 60. Plaintiff MUELLER is an inmate incarcerated at the RJD. He is currently
13 assigned to the EOP. He has also been assigned to the CCCMS. Plaintiff MUELLER
14 has experienced, and continues to experience, the unlawful actions and inactions alleged
15 herein.

16 61. Plaintiff HUNLEY is an inmate incarcerated at the LAC. He is assigned to the
17 CCCMS. Plaintiff HUNLEY has experienced, and continues to experience, the unlawful
18 actions and inactions alleged herein.

19 62. Plaintiff COX is an inmate incarcerated at the CIM. He was formerly
20 incarcerated at the SCC. He is assigned to the CCCMS. Plaintiff COX has experienced,
21 and continues to experience, the unlawful actions and inactions alleged herein.

22 63. Plaintiff THOMAS is an inmate incarcerated at the RJD. He is assigned to the
23 EOP. He has also been assigned to the CCCMS. Plaintiff THOMAS has experienced,
24 and continues to experience, the unlawful actions and inactions alleged herein.

25 64. Plaintiff STAFFORD is an inmate incarcerated at the RJD. He is assigned to the
26 EOP. Plaintiff STAFFORD has experienced, and continues to experience, the unlawful
27 actions and inactions alleged herein.

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1 65. Plaintiff LOVELACE is an inmate incarcerated at the LAC. He is assigned to the
2 CCCMS. Plaintiff LOVELACE has experienced, and continues to experience, the
3 unlawful actions and inactions alleged herein.

4 66. Plaintiff DANIELS is an inmate incarcerated at the LAC. He is assigned to the
5 EOP. Plaintiff DANIELS has experienced, and continues to experience, the unlawful
6 actions and inactions alleged herein.

7 67. Plaintiff GRAY is an inmate incarcerated at the CMC. He is assigned to the
8 EOP. Plaintiff GRAY has experienced, and continues to experience, the unlawful actions
9 and inactions alleged herein.

10 68. Plaintiff WILLIAMS is an inmate incarcerated at the SAC. He is assigned to the
11 EOP. Plaintiff WILLIAMS has experienced, and continues to experience, the unlawful
12 actions and inactions alleged herein.

13 69. Plaintiff D'ANGELO was formerly incarcerated at the CMC and at RJD, where
14 he was assigned to the EOP. Plaintiff D'ANGELO has experienced the unlawful actions
15 and inactions alleged herein.

16 70. Plaintiff SCHOOLEY is an inmate incarcerated at the CMC. He was formerly
17 incarcerated at the CMF and at the CMC. He is currently assigned to the CCCMS. He
18 has also been assigned to the EOP. Plaintiff SCHOOLEY has experienced, and
19 continues to experience, the unlawful actions and inactions alleged herein.

20 71. The Defendants CDCR, SCHWARZENEGGER, HICKMAN, WOODFORD,
21 DOVEY, FARBER-SZEKRENYI, VEAL, CURRY, HERNANDEZ, WONG, POULOS,
22 MARSHALL, MALFI, MENDOZA-POWERS, and each of them, have adopted,
23 implemented, ratified, and/or failed to abolish numerous unnecessary and discriminatory
24 policies, practices, and procedures affecting the inmates participating in the MHSDS,
25 including the EOP and the CCCMS. These systemwide, statewide policies, practices,
26 and procedures bar and function to bar Plaintiffs and other similarly situated MHSDS
27 participants from basic educational, vocational, employment, and recreational programs
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1 that are provided to other, nondisabled inmates. For example:

2 (a) While inmates assigned to the EOP at CMF are required to participate
3 in ten hours of mental health programming such as support groups, the remaining hours
4 of their weeks – 30 to 40 hours each week – are unscheduled and available for
5 participation in the broad range of educational, vocational, employment, and recreational
6 programs available to the non-disabled, non-EOP population. Nevertheless, by express
7 policy and without lawful basis, inmates in the EOP are deemed to be “booked” from
8 8:00 a.m. to 4:00 p.m. Monday through Friday, and are entirely precluded from
9 participating in any non-EOP prison programs, including vocational, employment, and
10 educational programs, during those times. *See, e.g.*, December 30, 2002 Memorandum
11 from L.H. Dizmang, M.D., Chief Psychiatrist, California Medical Facility.

12 (b) Further, it is the express policy of the CTF that “[i]nmates in the Mental
13 Health Services Delivery System (MHSDS) at any level of care” are ineligible for
14 placement to CTF – South, and that “participants in the MHSDS at the levels of EOP or
15 CCCMS or on psychotropic medications” are ineligible for placement to CTF – East
16 Dorm. As a result, persons with psychiatric disabilities are excluded from the parole
17 programming and work crew opportunities available at CTF – South, and from the Prison
18 Industry Authority (PIA) jobs available at CTF – East Dorm. *See* Correctional Training
19 Facility Operation Procedure #20 (Feb. 28, 2005).

20 (c) Further, it is the express policy of the CDCR that current or recent
21 participants in the MHSDS are ineligible for placement in the highly regarded Fire Camp
22 Program. *See, e.g.*, December 23, 2003 Memorandum from Rosanne Campbell, Deputy
23 Director, Health Care Services Division. As a result, persons with psychiatric disabilities
24 are unable to earn the additional “good time” work credits that inmates participating in
25 Fire Camp may earn, and cannot gain the valuable work experience others receive
26 through Fire Camp participation.

27 (d) Further, it is the express policy of the CDCR that *all* inmates with a
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1 “diagnosis of mental illness” entering the CDCR system at one of its “reception centers”
2 are automatically given an additional four points as part of their classification score,
3 which determines security level and thus the environment in which they live while in the
4 system. *See* C.C.R. Tit. 15, § 3375.3(a)(5); CDC 839 (Rev. 12/02). As a result, inmates
5 with psychiatric disabilities are often isolated and segregated in high security level units,
6 with significantly reduced opportunities for learning, working, or interacting with others.

7 (e) Further, it is the express policy of the CDCR that “heat alert” inmates,
8 who take medications, including psychiatric medications, that make them more
9 susceptible to heat-related illnesses, are required to return to their cells when the
10 temperature reaches or exceeds 90 degrees. *See* CDCR Departmental Operations Manual
11 (“DOM”), supplement 54060.4.3. These inmates are denied access to appropriate
12 recreational or other programming during heat alerts, unlike inmates who do not use such
13 medications, and as such are unnecessarily segregated from other inmates.

14 (f) Further, it is the express policy of the CDCR that current participants in
15 the MHSDS are excluded from transfer to an out-of-state facility as part of a California
16 Out-of-State Correctional Facility (COCF) placement, regardless of whether they may be
17 able to transfer safely to another state’s facility and receive appropriate treatment there.
18 *See* October 12, 2006 letter from Bruce M. Slavin, General Counsel, Office of Legal
19 Affairs, CDCR, to J. Michael Keating, Special Master, *Coleman v. Schwarzenegger*, No.
20 Civ. S-90-0520 LKK JFM (E.D. Cal.).

21 (g) Additional systemwide, statewide policies, practices, and procedures
22 similarly function to discriminate against inmates with severe psychiatric disabilities;
23 exclude them from programs, services, and activities; retaliate against them; and
24 segregate them unnecessarily.

25 72. As a result of the unnecessary and discriminatory systemwide and statewide
26 policies, practices, and procedures challenged herein, and on the basis of disability,
27 Plaintiffs and others similarly situated have been denied equal access to a broad range of
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1 prison programs, services, and activities for which they are qualified, and have been
2 subjected to unlawful segregation. These denials include, but are not limited to, the
3 following:

- 4 (a) disability-based denial of access to educational opportunities, including the
5 electronics program, computer classes, the Art in Corrections program,
6 classes offered as part of the Disabled Placement Program (“DPP”), and
7 other educational programs;
- 8 (b) disability-based denial of access to employment and vocational
9 opportunities, including facility yard crews, PIA jobs, and Fire Camp;
- 10 (c) disability-based denial of access to recreational programs and facilities;
- 11 (d) disability-based denial of access to religious programs, including church
12 services and bible study; and
- 13 (e) disability-based denial of access to other programs, services, and activities,
14 including the law library, COCF placements, and the Substance Abuse
15 Program (“SAP”) and other drug treatment programs.

16 73. These systemwide denials and exclusions are unnecessary, discriminatory, and
17 unlawful. The exclusion of MHSDS inmates from programs and services cause them to
18 lose benefits attendant to work, education, vocational, and recreational activities,
19 including but not limited to time credits, privileges, and wages. Further, the inmates in
20 the MHSDS are excluded and segregated despite the fact that participation in
21 educational, vocational, employment, and recreational programs is therapeutic for
22 persons with serious psychiatric disabilities, and promotes mental health and wellness.
23 By contrast, exclusion and segregation, particularly from educational, vocational, and
24 employment opportunities, undermines mental health, wellness, and rehabilitation. The
25 Defendants’ actions and inactions function to aggravate and worsen the mental health
26 status of Plaintiffs and the other, similarly situated MHSDS inmates. These inmates
27 often forego mental health care so that they may participate in beneficial educational,
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1 vocational, and other programs.

2 **ADMINISTRATIVE EXHAUSTION**

3 **Plaintiff HECKER**

4 74. Plaintiff HECKER has satisfied all exhaustion requirements for issues raised in
5 this lawsuit. However, his appeals have been repeatedly screened out by the CMF
6 Appeals Office, in violation of the CDC policies and procedures as set forth in California
7 Code of Regulations, Title 15.

8 75. On December 28, 2004, Plaintiff HECKER filed a timely 1824 appeal
9 challenging the policies, practices, and procedures complained of herein, and requesting
10 that “the Electronics program be made available to me” and seeking “modifications to
11 CDC policies, practices, and procedures to avoid discrimination on the basis of
12 disability[.]” Plaintiff HECKER noted that he was “being forced to choose between an
13 EOP level of care that I require to maintain mental health, and a vocation that would
14 further and enhance improvements in my mental health[.]”

15 76. On December 29, 2004, Plaintiff HECKER’s appeal was screened out,
16 purportedly because the “[a]ppel cannot be understood” and because the “wording is too
17 small.”

18 77. On January 3, 2005, Plaintiff HECKER resubmitted a timely 1824 appeal; this
19 time typed so that it could not be rejected as “too small.” Plaintiff HECKER sought
20 “access to the Electronics Program” and “[m]odification to CDC policies, practices or
21 procedures to avoid discrimination by denial of access to Electronics Program on the
22 basis of my disability[.]”

23 78. On January 5, 2005, Plaintiff HECKER’s appeal was again summarily screened
24 out, purportedly because his appeal was a “duplicate issue.” By “duplicate issue,” the
25 appeals coordinator was referencing a group appeal filed by Plaintiff JENKINS, on
26 January 29, 2003. The issues complained of by Plaintiff HECKER were ongoing and
27 had not been resolved by Plaintiff JENKINS’ appeal. Further, under governing
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1 procedures, only Plaintiff JENKINS could appeal the January 2003 group appeal.

2 79. On August 5, 2005, Plaintiff HECKER filed a timely 1824 appeal challenging the
3 policies, practices and procedures complained of herein, and seeking “[m]eaningful and
4 nondiscriminatory access to all prison programs[,]” “including the Electronics Program,
5 the Arts in Corrections Program, computer classes, and bible study.” In his August 5,
6 2005 appeal, Plaintiff HECKER explicitly noted that he was challenging “an ongoing
7 problem and . . . an ongoing need for the reasonable accommodation and modification
8 requested herein,” and that his appeal should not be barred as a “duplicate issue.”

9 80. On August 8, 2005, Plaintiff HECKER’s appeal was summarily screened out,
10 purportedly as a “duplicate issue.”

11 81. On August 15, 2005, Plaintiff HECKER sought Second Level review of the
12 screened-out appeal.

13 82. On August 19, 2005, Plaintiff HECKER’s request for Second Level review was
14 denied.

15 83. On August 23, 2005, Plaintiff HECKER sought Director’s Level review of the
16 screened-out appeal from the Inmate Appeals Branch.

17 84. On October 22, 2005, the Inmate Appeals Branch returned Plaintiff HECKER’s
18 documents to him, purportedly because the appeal was “rejected, withdrawn or
19 cancelled.”

20 85. Because Defendants have repeatedly screened out and/or denied Plaintiff
21 HECKER’s administrative appeals, the grievance procedure has effectively been
22 rendered unavailable to him. In fact, Plaintiff HECKER has been repeatedly and
23 “reliably informed by an administrator that no remedies are available” to him. *See Brown*
24 *v. Valoff*, 422 F.3d 926, 935 (9th Cir. 2005); *Hemphill v. New York*, 380 F.3d 680, 686,
25 688 (2d Cir. 2004).

26 86. Further, it is the policy of the CDCR not to accept appeals that have been
27 screened out as a “duplicate issue.” Accordingly, Plaintiff HECKER’s efforts to appeal
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1 his “screened out” 1824 to the Second Level and to the Third Level (Director’s Level)
2 have been unavailing. At no time has the CDCR or its agents attempted to consider,
3 much less resolve, Plaintiff HECKER’s complaints. It would be futile for Plaintiff
4 HECKER to attempt to further avail himself of the internal CDCR appeals process.

5 **Plaintiff JENKINS**

6 87. Plaintiff JENKINS has satisfied all exhaustion requirements, including Director’s
7 Level appeals, for issues raised in this lawsuit. His appeals regarding the exclusion of
8 inmates with psychiatric disabilities from work and education programs have been
9 repeatedly denied and/or screened out by CDCR officials.

10 88. On January 29, 2003, while at CMF, Plaintiff JENKINS filed a timely 1824
11 appeal challenging the policies, practices, and procedures complained of herein, stating
12 that “EOP inmates at CMF are being denied equal access to work and educational
13 opportunities available to other inmates at CMF. This denial has taken place solely as a
14 consequence of the fact that these inmates are disabled.” The appeal seeks to have “full
15 and equal access to work and educational programs at CMF restored to EOP inmates.”

16 89. On March 6, 2003, Plaintiff JENKINS’ appeal was denied at the First Level of
17 review.

18 90. On March 19, 2003, Plaintiff JENKINS appealed his issues to the Second Level
19 of review, expressly protesting the CDCR’s exclusion of CMF EOP inmates from
20 programs and services including religious services, Arts and Corrections, library,
21 telephone, and work and education programs between the hours of 8:00 a.m. to 4:00 p.m.
22 Monday-Friday.

23 91. On April 10, 2003, Plaintiff JENKINS’ appeal was denied at the Second Level of
24 review.

25 92. On April 27, 2003, Plaintiff JENKINS sought a Director’s Level review of his
26 1824 appeal, and provided a copy of the Director’s Level appeal to the CDCR. Plaintiff
27 JENKINS mailed the original Director’s Level appeal form to the CDCR on May 25,
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1 2003. On June 3, 2003, the CDCR returned the copy of the appeal to Plaintiff JENKINS,
2 purportedly because “[o]nly the original appeal form is accepted at the Director’s Level
3 of Review.”

4 93. On June 16, 2003, the CDCR returned the original form to Plaintiff because “[a]n
5 appellant must submit the appeal within 15 working days of the event or decision being
6 appealed, or of receiving a lower level decision.”

7 94. On October 6, 2004, while at CMC, Plaintiff JENKINS filed a timely 602 appeal
8 regarding the discriminatory denial of access to a work assignment in a clerical position
9 for which he was qualified because of his participation to the EOP program. According
10 to prison officials, “[b]ased on [Plaintiff] JENKINS’ assessment as an EOP inmate, he is
11 incapable of performing the tasks assigned to him in this assignment.” *See* “General
12 Chrono: Request for Unassignment” (Aug. 16, 2004).

13 95. On November 26, 2004, Plaintiff JENKINS’ appeal was partially granted at the
14 First Level of review, because he was given copies of the paperwork relevant to the
15 denial, but he was not considered for the clerk’s position he was seeking.

16 96. On December 30, 2004, Plaintiff JENKINS requested Second Level review of his
17 appeal. His appeal was partially granted on February 2, 2005, but he was still not
18 considered for the clerk’s position he was seeking. Instead of being considered for the
19 paid clerical position he sought, he had been assigned to a non-paid position as a yard
20 crew worker.

21 97. On February 16, 2005, Plaintiff JENKINS requested Director’s Level review of
22 his appeal.

23 98. On May 18, 2005, Plaintiff JENKINS’ appeal was denied at the Director’s Level.
24 Although the CDCR acknowledged that “the basis for the appellant’s removal was
25 inappropriate in that his Mental Health issue should not have been the factor in the
26 removal of the appellant from his clerical position,” Plaintiff JENKINS was still not
27 considered for the clerical position in question, nor awarded any pay he could have
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1 received had he been permitted to work.

2 99. Now at CTF, Plaintiff JENKINS is continuing to experience exclusion from core
3 vocational and other programs on the basis of his psychiatric disability. For example, he
4 has been excluded from the parole programming and work crew opportunities available
5 at CTF – South because he is CCCMS.

6 100. On January 19, 2006, Plaintiff JENKINS filed a timely 1824 appeal (Log No.
7 06-00379) challenging the systemwide policies, practices, and procedures addressed
8 herein, and specifically the CDCR’s denial of access to “outside work crews, fire camp,
9 substance abuse program (SATF), etc. . . . because I am CCCMS[.]”

10 101. Plaintiff JENKINS received a response to this appeal on February 17, 2006.
11 The response indicates that Plaintiff JENKINS’ appeal was “partially granted” because
12 his “annual review” would consider whether to transfer him to another facility.

13 102. Plaintiff JENKINS sought Second Level review of this response in March 2006.
14 In his appeal, Plaintiff JENKINS indicated that “[t]he only reason to accommodate [my]
15 transfer was to place me into an outside work crew as a CCCMS inmate and ‘if’ this
16 cannot be allowed as an CCCMS inmate I would ask not to be transferred.”

17 103. On April 11, 2006 Plaintiff JENKINS was notified that he had been endorsed
18 for transfer to the California Correctional Institution (“CCI”) in Tehachapi, California, as
19 a Level II inmate. He then filed an emergency 602 appeal dated April 12, 2006 (Log No.
20 06-01164), in which he asked that he not be transferred to CCI Level II because as a
21 Level II he would not be given access to fire camp or outside work crews. His April 12
22 appeal was rejected as an emergency appeal on April 14, 2006, but was assigned for
23 Second Level review.

24 104. On April 28, 2006, Plaintiff JENKINS’ January 19 appeal was denied at the
25 Second Level because he was endorsed to CCI Level II after his “Annual Review.”

26 105. On May 11, 2006, Plaintiff JENKINS’ April 12 appeal was denied at the
27 Second Level because his “history of CCCMS treatment within the last two years is one
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1 of the factors that preclude placement in a camp facility.”

2 106. Plaintiff JENKINS sought Director’s Level review of his January 19 appeal on
3 May 2006, stating that “[t]he denial of this appeal is denying access to . . . programming
4 to inmates who are CCCMS just because they are CCCMS or mental health disordered
5 inmates.” His appeal to the Director’s Level was denied on June 13, 2006; the reviewer
6 noted that Plaintiff JENKINS “receives the CCCMS level of care” and “does not qualify
7 for camp placement.”

8 107. In view of the multiple institutional transfers he has experienced, in addition to
9 transfers from the EOP to the CCCMS to general population (GP) and back, as well as
10 the ongoing discrimination currently being experienced at CTF, Plaintiff JENKINS’
11 claims regarding the systemic exclusion of EOP and CCCMS inmates from work and
12 education programs present a live controversy “capable of repetition, yet evading
13 review.” *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 594 n.6 (1999) (citing *Vitek v.*
14 *Jones*, 445 U.S. 480, 486-87 (1980)). Indeed, there is a significant probability that
15 Plaintiff JENKINS will be transferred again, and will continue to experience
16 discrimination on the basis of his psychiatric disability in the EOP or in the CCCMS –
17 either at CMF, CMC, or another CDCR institution.

18 **Plaintiff TAYLOR**

19 108. Plaintiff TAYLOR has satisfied all exhaustion requirements for issues raised in
20 this lawsuit. His appeals regarding the exclusion of inmates with psychiatric disabilities
21 from work and education programs have been repeatedly denied and/or inappropriately
22 screened out by CDCR officials.

23 109. On December 17, 2002, Plaintiff TAYLOR filed a timely 602 group appeal
24 requesting that EOP inmates “not be discriminated against because of EOP mental health
25 disabilities” and seeking to “reverse the [extreme] bias and discrimination toward all
26 EOP inmates with mental illness . . . by not allowing . . . off wing authorized access during
27 the hours of 8:00 a.m. – 4:00 p.m.” This appeal bypassed lower levels and went directly
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1 to Second Level review, where it was denied on February 25, 2003.

2 110. Plaintiff TAYLOR sought Director's Level review of this response. His
3 Director's Level appeal was denied on May 15, 2003.

4 111. On March 22, 2005, Plaintiff TAYLOR filed an 1824 appeal challenging his
5 exclusion from the DPP because of his participation in the EOP. He withdrew this appeal
6 after he was threatened with expulsion from the EOP for not "focusing on [his] mental
7 health."

8 112. As with Plaintiff JENKINS' appeals, Plaintiff TAYLOR's claims regarding the
9 systemic exclusion of EOP and CCCMS inmates from work and education programs
10 present a live controversy "capable of repetition, yet evading review." There is a
11 significant probability that Plaintiff TAYLOR and other similarly situated inmates will
12 continue to experience discrimination on the basis of his psychiatric disability in the
13 EOP. Additionally, the defendant officials' own actions inhibiting Plaintiff TAYLOR's
14 exhaustion of his appeals estop them from arguing his failure to exhaust as a defense.
15 *See Hemphill, supra*, 380 F.3d at 688.

16 **Plaintiff WATT**

17 113. Plaintiff WATT has satisfied all exhaustion requirements, including Director's
18 Level appeals, for issues raised in this lawsuit. His appeal regarding the exclusion of
19 inmates with psychiatric disabilities from work and education programs has been denied
20 by CDCR officials.

21 114. On December 27, 2005, Plaintiff WATT filed a timely 602 appeal challenging
22 the systemwide policies, practices, and procedures addressed herein, and specifically the
23 CDCR's denial of access to "educational, vocational, employment and recreation
24 opportunities . . . to EOP inmates due to discrimination against their mental health
25 disability." The appeals requests that EOP inmates be provided equal access to these
26 opportunities, noting that they were provided to EOP inmates at CMF prior to 2002.

27 115. Plaintiff WATT's appeal bypassed lower levels of review and went directly to
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1 Second Level review, where it was denied on February 9, 2006. After receiving this
2 decision on February 16, 2006, Plaintiff WATT appealed the denial on March 1, 2006,
3 stating that “[t]he response failed to address my request for equal access to mainline
4 programs and services for [EOP] inmates I continue to be denied access to programs
5 and services based on my mental health disability and EOP participation.”

6 116. Plaintiff WATT’s appeal was denied at the Director’s Level on May 30, 2006.

7 **Plaintiff ASHANTI**

8 117. Plaintiff ASHANTI, a/k/a Lorenzo Cunningham, has satisfied all exhaustion
9 requirements, including Director’s Level appeals, for issues raised in this lawsuit. His
10 appeal regarding the exclusion of inmates with psychiatric disabilities from education,
11 work, and vocational programs has been denied by CDCR officials.

12 118. On April 8, 2006, Plaintiff ASHANTI, then a participant in the EOP at CMF,
13 filed a timely 1824 appeal challenging the CDCR’s denial of access to “education, work,
14 and vocational programs . . . due to [his] mental health disability.” Plaintiff ASHANTI
15 asked that he be granted “the opportunity to participate in education, work, and
16 vocational programs that are available to non-EOP inmates.”

17 119. Plaintiff ASHANTI’s 1824 appeal was denied on May 1, 2006. He filed his
18 Second Level appeal on May 9, 2006, asking that the CMF administration “grant (EOP)
19 access to school/work/trade programs per the ADA/Americans With Disability Act
20 law(s).” The Second Level appeal was denied on May 26, 2006, and was returned to
21 Plaintiff ASHANTI on June 2, 2006.

22 120. Plaintiff ASHANTI filed his Director’s Level appeal seeking access to
23 “school/work/trade programs” on June 7, 2006. This appeal was denied on July 18,
24 2006. The appeal decision states that, “[a]t this point the EOP program will not be
25 changed.”

26 **Plaintiff AULD**

27 121. Plaintiff AULD has satisfied all exhaustion requirements, including Director’s
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1 Level appeals, for issues raised in this lawsuit. His appeal regarding the exclusion of
2 inmates with psychiatric disabilities from education and other programs has been denied
3 by CDCR officials.

4 122. On December 30, 2005, Plaintiff AULD filed a timely 1824 appeal requesting
5 access to education programs and/or access to the Disabled Placement Program, but had
6 been informed that “he cannot go to school because he is in EOP.”

7 123. Plaintiff AULD’s 1824 appeal was screened out on January 4, 2006, and he was
8 told to file a 602 appeal regarding his issues. On January 5, 2006, Plaintiff AULD filed a
9 602 appeal challenging “CDCR regulations, policies and procedures barring access to
10 educational opportunities for inmates with mental disabilities covered under the
11 Americans with Disabilities Act receiving treatment at the Enhanced Outpatient Program,
12 in violation of state and federal nondiscrimination laws at state facilities.”

13 124. Plaintiff AULD received notice of the First Level denial of his appeal on
14 February 28, 2006. He filed his Second Level appeal on March 12, 2006; in his appeal,
15 he notes that EOP inmates at CMF have 30 hours available during weekdays to
16 participate in education programs offered to the non-disabled, non-EOP inmate
17 population, but instead are left to “stagnat[e] in cells most of each day Monday through
18 Friday,” and are “barred from access to education programs.”

19 125. Plaintiff AULD’s Second Level appeal was denied on April 6, 2006. On April
20 15, 2006, Plaintiff AULD filed a Director’s Level appeal contending that “prison officials
21 have violated his rights under Title II of the ADA by denying him equal access to
22 education programs offered to other, non-EOP inmates at CMF.”

23 126. Plaintiff AULD’s Director’s Level appeal was denied on June 20, 2006.

24 **Plaintiff MUELLER**

25 127. Plaintiff MUELLER has satisfied all exhaustion requirements, including
26 Director’s Level appeals, for issues raised in this lawsuit. His appeal regarding the
27 exclusion of inmates with psychiatric disabilities from work and education programs
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1 have been denied by CDCR officials. His appeal regarding the automatic addition of
2 four points to his classification score because of his “diagnosis of mental illness” is
3 ongoing and will be completed shortly.

4 128. Plaintiff MUELLER was assigned to the EOP program on November 16, 2005.
5 On November 23, 2005, he was removed from his position as a Library Clerk in the
6 Central Library at RJD because of his participation in the EOP. Plaintiff MUELLER
7 filed an 1824 appeal challenging this decision on December 5, 2005.

8 129. Plaintiff MUELLER’s appeal of his removal from his Library Clerk position
9 was denied at the First Level on March 17, 2006. Plaintiff MUELLER then appealed this
10 response, but his appeal was also denied at the Second Level on April 25, 2006. The
11 reviewer explained that Plaintiff MUELLER’s “current EOP level of care does not allow
12 his placement in the Central Library The inmate will be eligible to apply for his old
13 position in the Central Library once his level of care is downgraded to CCCMS.”

14 130. On May 5, 2006 Plaintiff MUELLER appealed the Second Level decision,
15 asking that he be returned to his job in the Central Library and that “all programs be
16 unsegregated . . . as God does not reconize [sic] the difference between EOP, & CCCMS,
17 & G.P.’s.” His appeal was denied at the Director’s Level on June 13, 2006 because
18 Plaintiff MUELLER “requires the EOP level of care and is not eligible to work in the
19 Central Library while in the EOP.”

20 131. In April 2006, Plaintiff MUELLER also appealed the automatic addition of four
21 extra points to his classification score because of his “diagnosis of mental illness.” He
22 has yet to receive a response to this appeal.

23 **Plaintiff HUNLEY**

24 132. Plaintiff HUNLEY has satisfied all exhaustion requirements, including
25 Director’s Level appeals, for issues raised in this lawsuit. His appeals regarding the
26 exclusion of inmates with psychiatric disabilities using heat-sensitive medications, who
27 are required to remain in their cells during “heat alerts,” from recreational and other
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1 programs have been repeatedly denied and/or inappropriately screened out by CDCR
2 officials.

3 133. On May 23, 2004, Plaintiff HUNLEY filed a timely 1824 appeal regarding the
4 discriminatory denial of access to recreational programs to inmates who use heat-
5 sensitive medications during “heat alerts.” Plaintiff HUNLEY’s appeal states that having
6 “no established alternative program for heat alert inmates . . . is a blatant form of
7 discrimination based on disability,” because other inmates are allowed access to
8 recreational programs during heat alerts.

9 134. Plaintiff HUNLEY’s 1824 appeal was denied at the First Level of review on
10 June 15, 2004 because the reviewer determined that he was “not an ADA member,” and
11 his 1824 was “not an ADA issue.” The reviewer advised Plaintiff HUNLEY to submit a
12 602 appeal regarding this issue.

13 135. Plaintiff HUNLEY filed a 602 appeal regarding his segregation and exclusion
14 from recreational programs during heat alerts. This appeal was denied at the Second
15 Level on August 5, 2004.

16 136. Plaintiff HUNLEY requested Director’s Level review of the Second Level
17 decision. On March 2, 2005, his appeal of the Second Level decision was denied at the
18 Director’s Level, where the reviewer stated that “heat alert policies do not fall under the
19 requirements of the ADA or [the *Armstrong v. Davis* Court Ordered Remedial Plan].”

20 **Plaintiff COX**

21 137. Plaintiff COX has satisfied all exhaustion requirements, including Director’s
22 Level appeals, for issues raised in this lawsuit. His appeals regarding the exclusion of
23 inmates with psychiatric disabilities from work and education programs have been
24 repeatedly denied and/or inappropriately screened out by CDCR officials.

25 138. During 2004 and 2005, Plaintiff COX was assigned to the SCC, which functions
26 as “the [CDCR’s] center for training staff and inmates in firefighting techniques” and for
27 work in CDCR Fire Camps. *See* CDCR, Sierra Conservation Center, *at*

1 http://www.cdcr.ca.gov/Visitors/fac_prison_SCC.html (visited July 25, 2006). He was
2 transferred to CIM on December 1, 2005.

3 139. On December 26, 2005 Plaintiff COX filed a timely 1824 appeal challenging his
4 exclusion from fire camp “due to [his] medical problem[s],” including having a
5 psychiatric disability and receiving mental health care through the CCCMS program.

6 140. Plaintiff COX’s appeal was denied at the First Level on January 20, 2006.
7 Plaintiff COX appealed this decision on January 25, 2006, but his appeal was denied at
8 the Second Level on February 6, 2006. The Second Level Reviewer expressly indicated
9 that Plaintiff COX did not meet “camp criteria due to his . . . on-going mental health
10 monitoring and treatment needs,” including his use of psychotropic medications.

11 141. Plaintiff COX sought Director’s Level review of this decision on February 14,
12 2006. His appeal was denied at the Director’s Level on March 21, 2006; the reviewer
13 noted that Plaintiff COX “receives the CCCMS level of care” and that “such type of care
14 is not available in fire camps.”

15 **Plaintiff THOMAS**

16 142. Plaintiff THOMAS has satisfied all exhaustion requirements for issues raised in
17 this lawsuit. His appeal regarding the exclusion of inmates with psychiatric disabilities
18 from work and education programs has thus far been denied by CDCR officials.

19 143. On April 6, 2006 Plaintiff THOMAS filed a timely 1824 appeal stating that he
20 has a mental health disability, that he receives treatment at the “EOP/CCCMS” level of
21 care, and that he has been “excluded from participation in programs and services which
22 are available to non-EOP/CCCMS inmates,” including employment and PIA
23 opportunities. He also challenged as discrimination his “being forced to receive a
24 shortened recreational period and access to Law Library than non-EOP/CCCMS
25 inmates.”

26 144. On May 1, 2006, Plaintiff THOMAS’ appeal was denied at the First Level of
27 Review, because “at the EOP level of care, you will not be assigned to a work
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1 assignment.” Plaintiff THOMAS was deemed ineligible for work assignments such as
2 Library Clerk, “until such time your level of care is reduced to CCCMS.” The reviewer
3 also noted that the procedure at RJD’s Facility One is for EOP inmates to access the law
4 library is to notify their Housing Unit Officer who in turn calls the law library for
5 permission to “ducat” the inmate for the library during their yard hours.

6 145. Plaintiff THOMAS appealed this adverse decision to the Second Level. In his
7 appeal, Plaintiff THOMAS noted that EOP inmates at RJD get far less recreational
8 time—as little as 90 minutes a week—and far less law library time—approximately one-
9 third as much—than do inmates in the general population, who are not required to use
10 their yard time for visits to the law library.

11 146. Plaintiff THOMAS is still awaiting a response from CDCR officials to his
12 Second Level appeal. Plaintiff THOMAS will complete his appeal of these issues
13 through the Director’s Level, if necessary, as soon as he receives his response to the
14 Second Level appeal.

15 **Plaintiff STAFFORD**

16 147. Plaintiff STAFFORD has satisfied all exhaustion requirements, including
17 Director’s Level appeals, for issues raised in this lawsuit. His appeals regarding the
18 exclusion of inmates with psychiatric disabilities from educational, recreational, and
19 religious programs have been repeatedly denied by CDCR officials.

20 148. On June 14, 2006, Plaintiff STAFFORD, who is an EOP inmate, filed a timely
21 1824 appeal challenging his exclusion from programs available to non-EOP inmates,
22 including the law library, yard, dayroom, and religious services, “due solely to my
23 psychiatric disability.” He requested that access to these programs be provided “to the
24 same extent that these programs are available to non-EOP inmates.”

25 149. Plaintiff STAFFORD’s 1824 appeal was deemed “partially granted” and
26 returned to him on August 10, 2006. Plaintiff STAFFORD appealed this decision to the
27 Second Level on August 14, 2006.

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1 150. Plaintiff STAFFORD's Second Level appeal was deemed "partially granted" on
2 August 18, 2006. The appeal decision noted that "EOP inmates currently are not
3 assigned to work/education assignments." Plaintiff STAFFORD appealed to the
4 Director's Level on August 27, 2006. This appeal was denied on September 28, 2006.

5 **Plaintiff LOVELACE**

6 151. Plaintiff LOVELACE has satisfied all exhaustion requirements for issues raised
7 in this lawsuit. His appeals regarding the exclusion of inmates with psychiatric
8 disabilities from work and other programs have been repeatedly denied and/or screened
9 out by CDCR officials.

10 152. On April 6, 2006 Plaintiff LOVELACE filed a timely 1824 appeal stating that
11 "[s]ince I have been on heat meds, I am excluded from . . . programs available to inmates
12 not on heat meds." Plaintiff LOVELACE, who identified his level of mental health care
13 as CCCMS, sought "access to work, education, work furlough, PIA, and vocational
14 programs."

15 153. On May 18, 2006 Plaintiff LOVELACE's appeal was "partially granted" at the
16 First Level of review; although the reviewer noted that "Inmates listed as CCCMS/EOP
17 are not assigned in the PIA, Central Kitchen, Facility Culinary, or the Facility Yard
18 Crew," the appeal was "partially granted" because Plaintiff LOVELACE was placed on
19 the Support Service Waiting List ("SSWL") and "will receive a job when one becomes
20 available."

21 154. Plaintiff LOVELACE received the First Level decision on his 1824 appeal on
22 May 29, 2006. He sought Second Level review of this decision on June 14, 2006.

23 155. Plaintiff LOVELACE is still awaiting a response from CDCR officials to his
24 Second Level appeal. Plaintiff LOVELACE will complete his appeal of these issues
25 through the Director's Level, if necessary, as soon as he receives his response to the
26 Second Level appeal.

27 **Plaintiff DANIELS**

1 156. Plaintiff DANIELS has satisfied all exhaustion requirements, including
2 Director's Level appeals, for issues raised in this lawsuit. His appeal regarding the
3 exclusion of inmates with psychiatric disabilities from work and recreational programs
4 have been repeatedly denied by CDCR officials.

5 157. On January 8, 2006, Plaintiff DANIELS filed a timely 1824 appeal stating that
6 he has a psychiatric disability covered under the ADA, as indicated by his participation in
7 the EOP, and requesting that jobs outside the EOP program unit at LAC be made
8 available to him.

9 158. Plaintiff DANIELS' 1824 appeal was denied at the First Level on January 18,
10 2006. The First Level reviewer's response states that "inmates housed in EOP are not
11 assigned work positions outside of the program." Plaintiff DANIELS was notified of the
12 First Level denial on January 22, 2006.

13 159. Plaintiff DANIELS appealed to the Second Level on February 1, 2006. His
14 Second Level appeal was denied on March 24, 2006.

15 160. Plaintiff DANIELS appealed to the Director's Level on March 29, 2006. In his
16 appeal he reiterates that he is "being barred because of [his] disability."

17 161. Plaintiff DANIELS' Director's Level appeal was denied on July 11, 2006.

18 **Plaintiff GRAY**

19 162. Plaintiff GRAY has satisfied all exhaustion requirements, including Director's
20 Level appeals, for issues raised in this lawsuit. His appeal regarding the exclusion of
21 inmates with psychiatric disabilities from rehabilitation and other programs has been
22 repeatedly denied and/or screened out by CDCR officials.

23 163. On May 15, 2006, Plaintiff GRAY filed a timely 1824 appeal challenging his
24 exclusion from programs and services available to non-EOP inmates, including the
25 Substance Abuse Program (SAP). Stating that "EOP inmates are barred from SAP
26 placement," and citing California Code of Regulations, tit. 5, § 3040.1(c)(6), CDCR
27 officials denied Plaintiff GRAY's appeal at the First Level of Review on June 5, 2006
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1 164. Plaintiff GRAY filed his Second Level appeal on June 6, 2006, contending that
2 he “should be able to have access to rehabilitation groups” to “address [his] issues of
3 drugs and mental illness.” On June 19, 2006, Plaintiff GRAY’s appeal was “partially
4 granted.” The Second Level reviewer noted that GRAY was “not eligible for Minimum
5 Support Facility (MSF)/Camp/Community Correctional Facility (CCF)/California
6 Community Re-Entry Center (CCRC)/Restitution Center (RC)/ or SAP due to [his] PSY
7 (EOP) status.” Nevertheless, GRAY’s appeal was “partially granted” in that “[y]ou will
8 have access to programs and services available to non-EOP inmates, as long as you can
9 meet the essential functions of the job You will not be allowed to participate in the
10 SAP.”

11 165. Plaintiff GRAY filed a Director’s Level appeal challenging his continuing
12 exclusion from the SAP on June 28, 2006. This appeal was denied on August 2, 2006.

13 **Plaintiff WILLIAMS**

14 166. Plaintiff WILLIAMS has satisfied all exhaustion requirements, including
15 Director’s Level appeals, for issues raised in this lawsuit. His appeal regarding the
16 failure of CDCR officials to provide him with accommodations during the appeal process
17 has been repeatedly denied and/or screened out by CDCR officials, and demonstrates that
18 the appeal process itself is a CDCR program or activity that is inaccessible to inmates
19 with psychiatric disabilities. He has also been retaliated against for attempting to use the
20 appeals process to vindicate his rights.

21 167. On September 21, 2005, Plaintiff WILLIAMS filed a timely 1824 appeal stating
22 that he did not understand the process for filing appeals, because his “perception of the
23 prisons [sic] rules for filing inmate appeals is incompetent, & this is due to my disability,
24 which the appeals coordinator has discriminated against[.]” He asked for assistance from
25 CDCR officials “authorized and trained in the area of inmate appeals” so that his appeals
26 could be made compliant with CDCR policies.

27 168. Plaintiff WILLIAMS’ appeal was “partially granted” at the First Level on
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1 March 29, 2006. Plaintiff WILLIAMS submitted his Second Level appeal on April 3,
2 2006; the Second Level appeal was denied on May 25, 2006.

3 169. Plaintiff WILLIAMS filed his Director's Level appeal regarding the CDCR's
4 failure to ensure that the appeals process was accessible on May 27, 2006. This appeal
5 was denied on August 22, 2006.

6 170. On October 12, 2005, Plaintiff WILLIAMS filed a timely 602 appeal alleging
7 that SAC officials had decided to reassign him from the EOP to the CCCMS because he
8 "process[es] a lot of paperwork." He alleged that the basis for the reassignment was not
9 related to his mental health treatment, but was instead "retaliation due to [his] being
10 functional enough to relie [sic] & depend on" the CDCR's administrative complaint
11 procedures. He requested that he be free from any reprisals or retaliation based upon his
12 use of the complaint procedure.

13 171. Plaintiff WILLIAMS' appeal was designated as "partially granted," and he
14 received notification of this decision on November 9, 2005. Plaintiff WILLIAMS filed a
15 Second Level appeal of his issue, which was also "partially granted," on January 9, 2006.

16 172. On January 19, 2006, Plaintiff WILLIAMS filed a Director's Level appeal in
17 which he stated that CDCR officials had informed him that his "massive paperwork" was
18 the basis for his reassignment from EOP to CCCMS. His Director's Level appeal was
19 denied on March 27, 2006.

20 173. Plaintiff WILLIAMS also filed a group 602 appeal, dated October 24, 2005, on
21 behalf of approximately 56 other EOP inmates alleging that they faced retaliation,
22 including inappropriate dismissal from the EOP, for making complaints related to mental
23 health care or discrimination. This appeal was deemed "partially granted" at the First
24 Level of review. Plaintiff WILLIAMS appealed this decision to the Second Level; this
25 appeal was denied on February 28, 2006.

26 174. Plaintiff WILLIAMS, who received four additional classification points at entry
27 to the CDCR for having a "diagnosis of mental illness," has also filed a timely 1824
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1 appeal challenging this practice, but has yet to receive a response from CDCR officials.

2
3 **Plaintiff D'ANGELO**

4 175. Plaintiff D'ANGELO has satisfied all exhaustion requirements, including
5 Director's Level appeals, for issues raised in this lawsuit. His appeals regarding the
6 exclusion of inmates with psychiatric disabilities from education and rehabilitation
7 programs have been repeatedly denied and/or screened out by CDCR officials.

8 176. Plaintiff D'ANGELO was placed in the EOP at CMC on October 4, 2005. After
9 his assignment to the EOP, he was not permitted to participate in substance abuse
10 rehabilitation programming through the SAP. On October 18, 2005, he was approved for
11 transfer to an EOP unit at either RJD or CMF.

12 177. On October 20, 2005 Plaintiff D'ANGELO filed a timely 1824 appeal
13 challenging his exclusion from the SAP and asking that he not be "discriminated
14 [against] because of his diagnosis" of a psychiatric disability.

15 178. Plaintiff D'ANGELO's 1824 appeal was denied on October 28, 2005. The
16 reviewer stated that Plaintiff D'ANGELO's complaint was "not an ADA issue, rather, a
17 regular CDCR-602 appeal," and explained that under Title 15 of the California Code of
18 Regulations, EOP inmates were not allowed to participate in a SAP. The appeal was
19 characterized as "partially granted" because Plaintiff D'ANGELO would receive
20 consideration for SAP "should his Level of Care be elevated from EOP in the future."

21 179. Plaintiff D'ANGELO sought Second Level review of this decision on
22 November 9, 2005, stating that "the EOP process was used to deny me SAP
23 participation." This appeal was "partially granted" on November 22, 2005 because,
24 although Plaintiff D'ANGELO "[did] not currently meet the criteria to be placed in a
25 SAP due to your current MHSDS Level of Care (LOC) as an EOP" he would be
26 evaluated for SAP placement "if in the future, your LOC should decrease from EOP."

27 180. Plaintiff D'ANGELO appealed to the Director's Level in December 2005.
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1 alleging that he was “being moved around as punishment . . . to destroy my SAP
2 eligibility.” This appeal was denied on January 30, 2006. Afterward, Plaintiff
3 D’ANGELO was transferred to RJD.

4 181. Plaintiff D’ANGELO’s repeated requests for assistance with appeals—including
5 sending messages to CDCR officials as attachments to appeals pleading for help with the
6 appeals filing process—clearly indicate that the CDCR appeals process is inaccessible to
7 him. *All* of the CDCR’s policies, including its inmate appeals policies, must “address the
8 needs of prisoners . . . who have problems understanding complex information or
9 communicating through the spoken or written word.” *Armstrong v. Davis*, 275 F.3d 849,
10 862 (9th Cir. 2001). Because the CDCR’s appeals policies do not address Plaintiff
11 D’ANGELO’s communication and comprehension needs, or those of similarly situated
12 inmates with psychiatric disabilities, they violate the ADA and the Rehabilitation Act.

13 182. Additionally, although he is currently on parole, Plaintiff D’ANGELO’s claims
14 regarding the systemic exclusion of EOP and CCCMS inmates from rehabilitation and
15 other programs present a live controversy “capable of repetition, yet evading review.”
16 *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 594 n.6 (1999) (citing *Vitek v. Jones*, 445
17 U.S. 480, 486-87 (1980)). Indeed, there is a significant likelihood that Plaintiff
18 D’ANGELO will return to the CDCR system, and will continue to experience
19 discrimination on the basis of his psychiatric disability in the EOP or in the CCCMS –
20 either at CMC, RJD, or another CDCR institution.

21 **Plaintiff SCHOOLEY**

22 183. Plaintiff SCHOOLEY has satisfied all exhaustion requirements for issues raised
23 in this lawsuit. His attempts to appeal the automatic addition of four points to his
24 classification score because of his “diagnosis of mental illness” have been thwarted by
25 the actions of CDCR officials in placing Plaintiff SCHOOLEY in an “administrative
26 segregation” unit, involving extremely limited contact with prison officials and other
27 inmates, for extended periods of time, and because of his frequent transfers between
28

1 different CDCR facilities.

2 184. Plaintiff SCHOOLEY filed a timely 1824 appeal on March 9, 2006 while at
3 CMC. His appeal challenged the CDCR's ongoing policy of automatically adding four
4 points to his classification score "simply because I have a psychiatric disability." After
5 he filed his appeal, he was placed in administrative segregation because he protested a
6 housing assignment to an upper bunk, which was in conflict with the opinion of CDCR
7 medical officials restricting him to a lower bunk because of his physical disability.
8 Although his assignment to administrative segregation was reversed "in the interest of
9 justice" on April 30, 2006, Plaintiff SCHOOLEY was required to remain in
10 administrative segregation pending review of his housing assignment by his
11 "classification committee" in June 2006. In the meantime, on March 27, 2006 CMF
12 officials screened out Plaintiff SCHOOLEY's 1824 appeal on the ground that there was
13 "too great a time lapse" between the addition of four points to his classification score and
14 his March 9 appeal. Plaintiff SCHOOLEY was notified that his appeal had been
15 screened out only after the deadline for him to appeal the decision to the Second Level of
16 review.

17 185. Plaintiff SCHOOLEY was transferred to ASP in June 2006. On June 12, 2006,
18 he filed another timely 602 appeal regarding the ongoing harm he suffers due to the
19 automatic addition of four points to his classification score. He filed an 1824 appeal on
20 the same issue on July 5, 2006. On July 10, 2006, his appeals were returned to him after
21 being "screened out," again because there was "too great a time lapse" between his
22 appeal and the addition of the extra points to his classification score.

23 186. Plaintiff SCHOOLEY continues to suffer ongoing discrimination because of the
24 CDCR's illegal policy of automatically adding four points to the classification score of
25 inmates with a "diagnosis of mental illness," which subjects him to higher security levels
26 and fewer opportunities for work, educational, and other programming. Plaintiff
27 SCHOOLEY's "four-point" claim regarding presents a live controversy "capable of
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1 repetition, yet evading review,” whether he is assigned to CMF, CMC, ASP, or another
2 CDCR institution. Additionally, the defendant officials’ own actions inhibiting Plaintiff
3 SCHOOLEY’s exhaustion of his appeals estop them from arguing his failure to exhaust
4 as a defense. *See Hemphill, supra*, 380 F.3d at 688.

5 **Additional Allegations Regarding Administrative Exhaustion**

6 187. Plaintiffs’ appeals have placed the defendant prison officials on notice of the
7 issues raised in this lawsuit, *see Massie v. Early*, No. 1:00CV5248OWW LJO P, 2005
8 WL 2105304, at *3 (E.D. Cal. Aug. 31, 2005), “‘afford[ing them] time and opportunity
9 to address [Plaintiffs’] complaints internally.’” *Woodford v. Ngo*, 126 S. Ct. 2378, 2387
10 (2006) (quoting *Porter v. Nussle*, 534 U.S. 516, 525 (2002)). Prior efforts by other
11 inmates to challenge the MHSDS and EOP policies at issue herein using the internal
12 grievance procedures have similarly placed the defendant prison officials on notice, and
13 have been similarly fruitless. For example, inmate David W. Wilson, Inmate No. K-
14 66474, has filed 602 appeals in 2004 and 2005 regarding the policies that exclude EOP
15 inmates from prison programs available to non-EOP inmates. These 602 appeals were
16 repeatedly screened out. In fact, on March 15, 2005, inmate Wilson received from the
17 appeals office all of his documentation with the notation “REJECTED – DO NOT
18 RESUBMIT.”

19 188. At least two in pro per lawsuits have been filed challenging the policies of the
20 CDCR which exclude EOP inmates from education, vocational, and other programs and
21 activities available to non-EOP inmates. *See Wilson v. Woodford*, Case No. CIVS-05-
22 0876-LKK-JFM (E.D. Cal.), and *Ashanti v. California Medical Facility State Prison*,
23 Case No. 2:06-cv-01304-DFL-DAD (E.D. Cal.).

24 189. Further, as Plaintiffs’ experiences illustrate, the CDCR’s system for processing
25 601 and 1824 appeals works an extreme hardship on inmates with psychiatric disabilities,
26 many of whom require assistance with navigating the myriad procedural rules imposed
27 by the CDCR. Plaintiffs and other similarly situated inmates with psychiatric disabilities
28

1 are left to comply with these filing rules and deadlines without any assistance, regardless
2 of whether their disabilities affect their ability to process information and comply with
3 deadlines. At other times, they face retaliation for attempting to use the administrative
4 appeals process to vindicate their rights. As such, the CDCR's administration of its
5 appeals process renders it inaccessible to inmates with psychiatric disabilities, including
6 Plaintiffs.

7 190. Also, as Plaintiffs' experiences demonstrate, CDCR officials at various
8 institutions across the state regularly "screen out" the 1824 appeals of inmates with
9 psychiatric disabilities as "not an ADA issue." Plaintiffs and similarly situated inmates
10 with psychiatric disabilities are thus denied access to the relatively streamlined procedure
11 for processing 1824 appeals afforded to inmates with other disabilities.

12 191. The CDCR and its agents have had repeated and ample notice of the issues
13 raised by this lawsuit, and have had many opportunities over several years to consider
14 these issues through the administrative process. There can be no dispute that further
15 administrative efforts would be futile, and that judicial consideration is appropriate.

16 **CLASS ACTION ALLEGATIONS**

17 192. Plaintiffs bring this action on behalf of themselves and on behalf of a class of all
18 those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil
19 Procedure.

20 193. Plaintiffs seek to represent a class of all present and future California inmates of
21 the CDCR with psychiatric conditions that are disabilities as defined by the ADA and the
22 Rehabilitation Act who are excluded and/or screened out from any prison program,
23 service, or activity on the basis of their assignment to or participation in the MHSDS
24 program, including the EOP and the CCCMS.

25 194. The class is so numerous that joinder of all members is impractical. There are
26 thousands of present and future inmates assigned to MHSDS programs throughout
27 California who are subject to the systemwide, statewide policies, practices, and
28

1 procedures complained of herein. Moreover, putative class members are not capable of
2 being identified at this time, as the proposed class includes future inmates assigned to the
3 MHSDS, the EOP, and the CCCMS. The class is constantly in flux, with inmates being
4 paroled and new inmates being incarcerated.

5 195. Common questions of law and fact predominate, and include whether inmates
6 assigned to the MHSDS are being excluded and/or screened out from any prison
7 program, service, or activity on the basis of disability.

8 196. The claims of Plaintiffs are typical of the claims of the other putative class
9 members. Plaintiffs have been unnecessarily excluded from core CDCR educational,
10 vocational, and employment activities and programs on the basis of their assignment to
11 the MHSDS and the EOP or the CCCMS. This is the same injury that members of the
12 proposed class have suffered, are suffering and, unless this Court grants relief, will
13 continue to suffer. Plaintiffs are members of the proposed class in that they are current
14 CDCR inmates assigned to the MHSDS who have been subjected to disability-based
15 discrimination.

16 197. Plaintiffs will fairly and adequately represent and protect the interests of the
17 class. Plaintiffs intend to prosecute this action rigorously in order to secure remedies for
18 the entire class. Counsel of record for Plaintiffs are experienced in state and federal civil
19 rights litigation and class actions, including systemic litigation challenging prison
20 conditions and disability discrimination.

21 198. Defendants have acted or refused to act on grounds generally applicable to the
22 class, thereby making appropriate final declaratory and injunctive relief with respect to
23 the class as a whole under Federal Rule of Civil Procedure 23(b)(2).

24 **FIRST CAUSE OF ACTION**
25 Disability-Based Discrimination in Violation of
26 Title II of the Americans with Disabilities Act of 1990
27 Against All Defendants

28 199. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1
through 198 of this Complaint.

1 200. Title II of the ADA provides that “no qualified individual with a disability shall,
2 by reason of such disability, be excluded from participation in or be denied the benefits
3 of the services, programs, or activities of a public entity, or be subjected to discrimination
4 by any such entity.” 42 U.S.C. § 12132. By no later than July 26, 1992, public entities
5 were required to complete an evaluation of its services, policies, and practices, and the
6 effects thereof on persons with disabilities, and to make any modifications necessary to
7 ensure that the requirements of Title II are met. 28 C.F.R. § 35.105.

8 201. In providing any aid, benefit or service, a public entity “may not . . . [d]eny a
9 qualified individual with a disability the opportunity to participate in or benefit from the
10 aid, benefit or service,” “[a]fford a qualified individual with a disability an opportunity to
11 participate in or benefit from the aid, benefit, or service that is not equal to that afforded
12 others,” “[p]rovide a qualified individual with a disability with an aid, benefit, or service
13 that is not as effective in affording equal opportunity . . . as those provided to others,” or
14 “[o]therwise limit a qualified individual with a disability in the enjoyment of any right,
15 privilege, advantage, or opportunity enjoyed by others[.]” 28 C.F.R. § 35.130(b)(1)(i),
16 (ii), (iii), (vi). A public entity may not “[d]eny a qualified individual with a disability the
17 opportunity to participate as a member of planning or advisory boards.” 28 C.F.R. §
18 35.130(b)(1)(vi).

19 202. Further, “[a] public entity may not . . . utilize criteria or methods of
20 administration . . . [t]hat have the effect of subjecting qualified individuals with
21 disabilities to discrimination on the basis of disability[.]” 28 C.F.R.
22 § 35.130(b)(3)(i). Nor may a public entity “impose or apply eligibility criteria that screen
23 out or tend to screen out an individual with a disability or any class of individuals with
24 disabilities from fully and equally enjoying any service, program, or activity, unless such
25 criteria can be shown to be necessary[.]” 28 C.F.R.

26 § 35.130(b)(8). A public entity must “make reasonable modifications in policies,
27 practices, or procedures when the modifications are necessary to avoid discrimination on
28

1 the basis of disability, unless the public entity can demonstrate that making the
2 modifications would fundamentally alter the nature of the service, program, or activity.”
3 28 C.F.R. § 35.130(b)(7). Finally, “[a] public entity shall administer services, programs,
4 and activities in the most integrated setting appropriate to the needs of qualified
5 individuals with disabilities.” 28 C.F.R. § 35.130(d).

6 203. Defendants have violated the ADA and its regulations by, *inter alia*: (a)
7 denying Plaintiffs and other inmates similarly situated the opportunities and benefits of
8 the programs, services, and activities offered by the Defendants to other, nondisabled
9 inmates; (b) denying Plaintiffs and other inmates similarly situated equal and/or equally
10 effective access to vocational, educational, employment, recreational, and other
11 opportunities on the basis of disability; (c) utilizing systemwide policies and practices
12 that have a disparate impact on, and which screen out or tend to screen out, inmates with
13 psychiatric disabilities, including Plaintiffs; (d) utilizing methods of administration that
14 have the effect of discriminating against inmates with psychiatric disabilities, including
15 Plaintiffs; (e) failing to make reasonable modifications in policies, practices, or
16 procedures when the modifications are necessary to avoid discriminating against inmates
17 with psychiatric disabilities, including Plaintiffs; (f) failing to complete and implement an
18 adequate self-evaluation plan with respect to inmates with psychiatric disabilities; (g)
19 failing to take prompt and equitable steps to remedy their discriminatory conduct; and (h)
20 by otherwise segregating, excluding, and discriminating against inmates with psychiatric
21 disabilities, including Plaintiffs.

22 204. Defendants’ unlawful actions were and continue to be intentional, willful,
23 malicious, and/or done with reckless disregard to the right of Plaintiffs and other inmates
24 similarly situated to be free from discrimination based on disability.

25 205. Plaintiffs are entitled to declaratory relief, injunctive relief, and attorneys’ fees
26 and costs.

27 **SECOND CAUSE OF ACTION**
28 Disability-Based Discrimination in Violation of

Section 504 of the Rehabilitation Act of 1973
Against All Defendants

1
2 206. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1
3 through 205 of this Complaint.

4 207. Section 504 of the Rehabilitation Act states that “[n]o otherwise qualified
5 individual with a disability . . . shall, solely by reason of her or his disability, be excluded
6 from the participation in, be denied the benefits of, or be subjected to discrimination
7 under any program or activity receiving Federal financial assistance.” 29 U.S.C. §
8 794(a). Nearly 30 years ago, recipients of federal financial assistance were required to
9 complete a self-evaluation of their programs and activities, and make necessary changes
10 to ensure that such programs and activities were accessible to and usable by persons with
11 disabilities. *See, e.g.*, 28 C.F.R. § 42.521; 45 C.F.R. § 84.22.

12 208. As detailed herein, the Defendants have violated Section 504 and its regulations
13 by unnecessarily segregating and discriminating against inmates with psychiatric
14 disabilities, including Plaintiffs, and by systemically excluding such inmates from a
15 broad range of basic vocational, educational, employment, recreational, and other
16 programs. The Defendants have also failed to complete and implement an adequate self-
17 evaluation plan with respect to inmates with psychiatric disabilities.

18 209. Defendants’ unlawful actions were and continue to be intentional, willful,
19 malicious, and/or done with reckless disregard to the right of Plaintiffs and other inmates
20 similarly situated to be free from discrimination based on disability.

21 210. Plaintiffs are entitled to declaratory relief, injunctive relief, and attorneys’ fees
22 and costs.

23 **DECLARATORY RELIEF ALLEGATIONS**

24 211. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 210,
25 as though fully set forth herein.

26 212. A present and actual controversy exists between Plaintiffs and Defendants
27 concerning their rights and respective duties. Plaintiffs contend that the Defendants have
28

