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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

12
 13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 15

16 ALEJANDRO MADRID, BARRY ALLEN,)
 RONNIE DEWBERRY, CARLOS LUTZ,)
 17 MOSES JOHNSON, STEVEN VILLA)
 and BRUCE VORSE on behalf of)
 18 themselves and all others)
 similarly situated,)

Case No. C-90-3094 TEH
 AMENDED COMPLAINT
 CLASS ACTION COMPLAINT FOR
 VIOLATIONS UNDER § 1983 OF THE
 FIRST, SIXTH, EIGHTH AND
 FOURTEENTH AMENDMENTS OF THE
 UNITED STATES CONSTITUTION

19 Plaintiffs,)

20 vs.)

21 JAMES GOMEZ, Director,)
 22 California Department of)
 Corrections; CHARLES MARSHALL,)
 23 Warden, Pelican Bay State)
 Prison; TERRY PEETZ, Deputy)
 24 Warden, Pelican Bay State)
 Prison; A.M. ASTORGA, Chief)
 25 Medical Officer, Pelican Bay)
 State Prison)

26 Defendants.)

27 _____)

1 have been and continue to be deprived of their rights secured by
2 the United States Constitution under the First, Sixth, Eighth and
3 Fourteenth Amendments.

4 3. The jurisdiction of this Court is invoked pursuant to
5 28 U.S.C. §§ 1331 and 1343(a)(3).

6
7 VENUE

8
9 4. Venue is proper under 28 U.S.C. § 1391(b), in that one
10 or more of the defendants reside in the Northern District of
11 California, and plaintiff's claims for relief arose in this
12 district.

13
14 PARTIES

15
16 5. Plaintiffs are prisoners currently assigned to the
17 Pelican Bay State Prison in the State of California.

18 6. Alejandro Madrid is a prisoner currently assigned to
19 the Security Housing Unit ("SHU") of Pelican Bay State Prison. He
20 has been beaten and hog-tied on several occasions by guards in the
21 unit. He has been informed by Pelican Bay officials that, based
22 in part on the allegations of unidentified individuals, he is
23 believed to be affiliated with a prison gang and will only leave
24 the SHU if he agrees to "snitch," (i.e., inform against other
25 prisoners.) Pelican Bay officials have told Mr. Madrid that if he
26 does not inform, he will only leave SHU if he paroles or dies.

27 7. Plaintiff Steven Villa is a prisoner currently assigned
28 to the SHU at Pelican Bay. While incarcerated at Pelican Bay,

1 prison officials have inexcusably delayed providing Mr. Villa eye
2 glasses for which he had a prescription and interfered with his
3 own efforts to serve as a "jail house lawyer" for prison inmates
4 who have requested his counsel. Mr. Villa is presently serving a
5 determinate SHU sentence.

6 8. Plaintiff Carlos Lutz is a Pelican Bay inmate currently
7 housed in the Violence Control Unit (a 40-50 prison subsection of
8 SHU) ("VCU"). Mr. Lutz has been diagnosed by CDC doctors as
9 paranoid schizophrenic. He regularly receives psychotropic
10 medication and has suffered psychotic incidents at Pelican Bay and
11 been placed on suicide watch by prison officials. Other than his
12 medication, Mr. Lutz receives no treatment and/or therapy for his
13 illness.

14 9. Plaintiff Ronnie Dewberry is a Pelican Bay inmate who
15 is serving an indeterminate SHU sentence. Mr. Dewberry has
16 received inadequate medical attention for a chronic medical
17 condition.

18 10. Plaintiff Moses Johnson is a Pelican Bay prisoner
19 serving an indeterminate SHU term. Pelican Bay officials have
20 informed Mr. Johnson that he is suspected of gang status based on
21 allegations made by unnamed individuals.

22 11. Plaintiff Bruce Vorse was a Pelican Bay prisoner housed
23 in Level I housing. Mr. Vorse was a "jail house lawyer" for Level
24 I prisoners and repeatedly and unsuccessfully requested Pelican
25 Bay officials to establish a law library for Level I prisoners.

26 12. Plaintiff Barry Allen was a Pelican Bay prisoner housed
27 in Level IV General Population. Mr. Allen was a Mens Advisory
28

1 Committee Representative ("MAC"). While at Pelican Bay, Mr. Allen
2 was denied adequate medical care.

3 13. Defendants are agents, officials, or employees of the
4 State of California Department of Corrections.

5 14. Defendant James Gomez is the Director of the California
6 Department of Corrections ("CDC"). In the capacity of Director,
7 he is responsible for the administration and application of CDC
8 state-wide policies, and is ultimately responsible for the
9 operation of all the prison facilities, including decisions
10 concerning staff deployment and training that directly affect
11 plaintiffs' abilities to be safe from the unwarranted use of
12 excessive force, to be able to obtain adequate medical care,
13 access to the courts and counsel, to obtain due process with
14 respect to segregation and classification procedures, to be safe
15 from inmate violence and not to be subject to dehumanizing
16 conditions of isolation.

17 15. Warden Charles Marshall is responsible for the day-to-
18 day operation of the Pelican Bay State Prison. In the capacity of
19 warden he is responsible for the daily operation of the entire
20 prison, including the Security Housing Unit and the Violence
21 Control Unit.

22 16. Deputy Warden Terry Peetz is responsible for assisting
23 Warden Marshall in the day-to-day operation of the Pelican Bay
24 State Prison. In the capacity of deputy warden, he is responsible
25 for the operation of the entire prison, including the Security
26 Housing Unit and the Violence Control Unit.

27 17. Defendant Dr. A. M. Astorga is the Chief Medical
28 Officer of Pelican Bay State Prison. In this capacity he is

1 responsible for the delivery of medical care to all prisoners at
2 Pelican Bay.

3 18. Defendants are sued in their official capacities. At
4 all relevant times, defendants have acted under color of State
5 law.

6 19. Plaintiffs are informed and believe that each of the
7 kinds of conduct complained of herein are the subject of internal
8 prison complaints which are reviewed by the Warden and the CDC
9 staff in Sacramento. Additionally, this conduct has been the
10 subject of hundreds of individuals suits by the prisoners.
11 Defendants nevertheless have failed to correct these conditions,
12 and in fact condone them.

13
14 CLASS ACTIONS ALLEGATIONS
15

16 20. This action is brought as a class action pursuant to
17 Rule 23(b)(1) and Rule 23(b)(2) of the Federal Rules of Civil
18 Procedure.

19 21. Plaintiffs are representative parties of a class
20 composed of all adult men who are now or who in the future will be
21 in the custody of or under the supervision of the administrators
22 of the Pelican Bay State Prison.

23 22. The class is so numerous that joinder of all members of
24 the class is impractical. Current members of the class consist of
25 more than 2,800 prisoners, and the prisoner population in the
26 facility changes frequently.

27 23. Defendants' use of excessive force; deliberate
28 indifference to the inadequate provision of medical care; failure

1 to provide prisoners with meaningful access to the courts and
2 counsel; failure to protect prisoners from unnecessary risk of
3 injury and violence; failure to provide prisoners due process in
4 segregation assignments; and failure to provide SHU/VCU prisoners
5 a housing environment free from debilitating isolation raises
6 questions of law and fact common to the class members as a whole.

7 24. Claims made by the class representatives regarding the
8 denial of constitutional rights are generally applicable to the
9 class as a whole.

10 25. Plaintiffs are members of the class and their claims
11 are typical of all class members. Upon information and belief,
12 conditions described in this complaint are common to all prisoners
13 within the Pelican Bay State Prison, the class that plaintiffs
14 represent. Plaintiffs are represented by competent counsel who
15 will fairly and adequately represent the interests of the class as
16 a whole.

17 26. Since the class number is more than 2,800 prisoners,
18 separate actions by individuals would in all likelihood result in
19 inconsistent and varying decisions, which in turn would result in
20 conflicting and incompatible standards of conduct for the
21 defendants.

22 27. The defendants have acted or have refused to act on
23 grounds generally applicable to the class, thereby making final
24 injunctive and declaratory relief with respect to the class as a
25 whole appropriate.

26
27
28

1 list, even when the prisoner is visibly incapacitated by an acute
2 medical condition. If the MTA does not recognize the prisoner's
3 symptoms, or properly diagnose the illness, he may not be placed
4 on the list to see the doctor at all.

5 32. An example of the gatekeeper system in operation is
6 provided by the experience of Mr. Bernard Hughes, who was recently
7 transferred from Pelican Bay. While at Pelican Bay, Mr. Hughes
8 complained to several MTAs on different occasions of abdominal
9 pain. On the first occasion, after taking his temperature and
10 blood pressure, the MTA declined to recommend Mr. Hughes for a
11 doctor's visit or to provide further treatment. Several days
12 later, Mr. Hughes again requested medical treatment from the MTA.
13 On this occasion the MTA palpated Mr. Hughes' stomach. Mr. Hughes
14 reacted in great pain. The MTA informed Mr. Hughes that he had a
15 spastic colon. The MTA put Mr. Hughes on a list to see the
16 doctor, and provided no treatment.

17 33. When Mr. Hughes had not seen a doctor after several
18 days, he submitted a new request to see a physician, marked
19 "urgent," which described his pain as extreme. Mr. Hughes'
20 cellmate also informed the MTAs that Mr. Hughes was suffering from
21 fever and delirium, could not eat or sleep, and was in deep pain.
22 Mr. Hughes, however, was not permitted to see a doctor until he
23 induced vomiting and "faked" a seizure. The MTA who responded to
24 this incident took Mr. Hughes' temperature and called a doctor.
25 After examining Mr. Hughes, the doctor then directed that Mr.
26 Hughes be taken to Sutter Coast Hospital.

27 34. Physicians at Sutter Coast performed emergency surgery
28 and discovered that Mr. Hughes' appendix had burst several days

1 before and that he was suffering from gangrene resulting from the
2 burst appendix. The Sutter Coast physicians informed Mr. Hughes
3 that he was "lucky to be alive."

4 35. The incident described in ¶ 32-34, supra, and other
5 examples described, infra are merely examples of the suffering
6 endured by plaintiffs as a result of the failure of prison
7 authorities to establish a system of providing competent and
8 prompt medical diagnosis to Pelican Bay prisoners. The decision
9 by Pelican Bay officials to remedy the plight of any one of these
10 prisoners will not cure the deficiencies of the medical care
11 delivery system at Pelican Bay, and the suffering that their
12 deliberate indifference has created and continues to create.)

13
14 B. Even When Prisoners see Pelican Bay Doctors, They Do
15 Not Receive Adequate Medical Care.

16 36. The problems with Pelican Bay's health care delivery
17 system are aggravated by the quality of care prisoners receive
18 when they are finally examined by a doctor.

19 37. Pelican Bay doctors frequently decline to give physical
20 examinations to prisoners housed in the SHU and VCU. Instead, the
21 doctors observe the prisoner who has requested medical care
22 through the prisoner's cell door, which are difficult to see
23 through, and make their diagnoses based on this visual
24 observation. As a matter of standard medical practice, a visual
25 examination, through a cell door, is insufficient to diagnose
26 properly most acute medical conditions.

27 38. Pelican Bay medical staff rarely, if ever, give
28 prisoners complete physical exams. Despite the infrequent number

1 of examinations, Pelican Bay's medical staff frequently prescribe
2 medical procedures (e.g., x-rays) or medications that, as a matter
3 of standard medical care, should only be prescribed after a
4 complete physical examination.

5 39. Prisoners who have suffered injuries in "cell
6 extractions," violent assaults by guards described in ¶ 67-69,
7 infra, are routinely denied meaningful medical care for injuries
8 they suffer in the "cell extraction."

9 40. Pelican Bay does not have enough doctors on its staff
10 to respond adequately to the medical needs of the prisoner
11 population.

12
13 C. Pelican Bay State Prison Does Not Have Sufficient
14 Medical Resources to Adequately Provide Medical Care to
15 Prisoners.

16 41. Pelican Bay does not provide adequate dental care to
17 prisoners. Prisoners placed on the list to see a dentist are
18 often required to wait for months before they can see a dentist.
19 MTAs inform prisoners that unless they are suffering from swollen
20 or abscessed gums, they cannot see a dentist any sooner than the
21 list allows for dental requests. Concerning dental needs, MTAs
22 routinely decline to perform even the "gatekeeper" functions they
23 attempt for ordinary medical care.

24 42. Pelican Bay does not provide adequate eye care to
25 prisoners. Upon information and belief, there is no
26 ophthalmologist on the staff or under contract to the prison to
27 treat prisoners who suffer from severe eye conditions. Such
28

1 prisoners, therefore, they have not and do not receive adequate
2 medical care.

3 43. Mr. Cornelio Tristan, for example, has a chronic eye
4 condition which CDC doctors at Corcoran and Tehachapi have told
5 him requires surgery to correct. As a result of this condition,
6 Mr. Tristan has a visible growth on his right eye which looks like
7 a discolored lump on his cornea. In 1989, a CDC physician, R.
8 Peterson, described Mr. Tristan's symptoms as "an abnormal
9 triangular mass of mucous membrane growing over the human cornea
10 from the inner corner of the eye." The condition was diagnosed as
11 a "pterygium" which is a progressive growth. The condition causes
12 Mr. Tristan constant pain and impairs his vision. The Tehachapi
13 and Corcoran medical staff told Mr. Tristan that he will go blind
14 in his right eye if this condition is not corrected.

15 44. Pelican Bay medical staff have treated this condition
16 by giving Mr. Tristan eye drops which neither correct the
17 underlying medical problem, nor provide Mr. Tristan with relief
18 from the pain the eye condition causes. The Pelican Bay medical
19 staff, none of whom is an ophthalmologist, have told Mr. Tristan
20 that his condition has not sufficiently worsened to merit surgery.

21 45. Although Pelican Bay has a staff psychologist, the
22 prison does not offer adequate psychiatric care to prisoners
23 suffering from grave psychiatric conditions. Despite the absence
24 of staff or programs to adequately care for these patients,
25 Pelican Bay medical staff routinely prescribe psychotropic
26 medications for both chronic and acute psychiatric conditions to
27 patients. Such prescriptions are treatments for
28 psychiatric/medical diagnoses like paranoid schizophrenia.

1 Instead of providing proper psychiatric treatment and/or therapy
2 to these prisoners, Pelican Bay officials routinely house
3 prisoners suffering from these grave conditions in the VCU.

4 46. Prisoners housed in the SHU and VCU frequently engage
5 in behavior so extreme and disturbing that in and of itself it
6 should give notice to guards and Pelican Bay medical staff that
7 psychiatric treatment is required. Some prisoners, for example,
8 smear their fecal matter over their bodies. Others engage in
9 persistently violent and irrational behavior. Pelican Bay guards
10 and medical staff treat this behavior by chaining the inmates to
11 their toilets or to the showers or leaving the high intensity
12 lights on 24 hours a day in the prisoner's cell for several days
13 at a time.

14 47. Mr. Carlos Lutz, for example, is a diagnosed paranoid
15 schizophrenic who has been prescribed psychotropic medication,
16 from Pelican Bay medical staff. Mr. Lutz has experienced
17 psychotic episodes while housed in SHU at Pelican Bay during which
18 he refused food for several days, huddled on the floor of his cell
19 under his blanket, and tried to commit suicide. When the guards
20 intervened to prevent the suicide attempt, Mr. Lutz was removed to
21 the prison infirmary where he was placed on suicide watch.
22 Throughout this period, Mr. Lutz was extremely violent. Pelican
23 Bay medical staff ultimately altered his drug therapy. After he
24 left the infirmary, Mr. Lutz was then housed in the VCU. Mr. Lutz
25 was given a 115 disciplinary report to this incident. Pelican Bay
26 staff recommended that Mr. Lutz be moved to a CDC facility where
27 he could receive psychiatric treatment. That particular facility,
28 however, refused the transfer. Mr. Lutz has remained at Pelican

1 Bay and he has received no psychiatric treatment other than his
2 medication.

3 48. Pelican Bay officials have sometimes purported to
4 respond to patient medical needs that Pelican Bay cannot satisfy
5 by transferring the prisoner to another institution. As Pelican
6 Bay officials are aware, however, the receiving institution, may
7 be no more equipped to respond to prisoner needs than Pelican Bay.
8 In prisoner jargon, such transfers are called "bus therapy." Such
9 transfers also hinder, if not prevent, prisoners from obtaining
10 review of their complaints about insufficient medical care through
11 the 602 or litigation process.

12
13 D. Even When Chronic Medical Conditions are Properly
14 Diagnosed, Prisoners Do Not Promptly Receive Prescribed
15 Treatment.

16 49. Pelican Bay officials are deliberately indifferent to
17 the diagnosed medical needs of the Pelican Bay inmates. Michael
18 "Lofofora" Contreras, for example, is a Pelican Bay prisoner who
19 is hearing-impaired. Prior to arriving at Pelican Bay, Mr.
20 Contreras was prescribed a hearing aid. Mr. Contreras' hearing is
21 significantly improved by use of the hearing aid.

22 50. Mr. Contreras' hearing aid will not work without
23 batteries. The batteries which Mr. Contreras' hearing aid
24 requires are inexpensive, commonly available batteries.

25 51. Pelican Bay staff has given Mr. Contreras one battery
26 since his arrival at the prison in July 1991. Pelican Bay MTAs
27 and guards have responded to Mr. Contreras' requests to replace
28

1 the battery after it went dead by informing him that they did not
2 have any more batteries.

3 52. As a result of Pelican Bay's failure to provide Mr.
4 Contreras with hearing aid batteries, he is unable to hear orders
5 given by the guards. On two separate occasions, Pelican Bay
6 corrections officers have responded by Mr. Contreras' failure to
7 respond to their orders, due solely to his failure to hear them,
8 by attacking him. The cell extraction process is described more
9 fully in ¶ 67-69.

10 53. On each occasion during which Mr. Contreras was
11 attacked, Mr. Contreras was asleep. A Pelican Bay guard passing
12 his cell directed Mr. Contreras to "show skin." By this order,
13 the Pelican Bay guard requested Mr. Contreras to lower his
14 blanket, or place his arms outside the blanket. Because he could
15 not hear the order, Mr. Contreras was not able to comply with it.

16 54. Pelican Bay guards responded to Mr. Contreras' failure
17 to show skin by calling other guards, to use physical force
18 against Mr. Contreras to punish him for failing to comply with the
19 order to show skin. While he was sleeping, the guards entered Mr.
20 Contreras' cell en masse and attacked him with their weapons in
21 order to compel him to comply with the guard's original order to
22 "show skin."

23 55. On the second occasion, during the guard attack,
24 inmates in surrounding cells called to guards and explained that
25 Mr. Contreras was deaf and could not hear the order.
26 Nevertheless, the guards persisted in the attack on Mr. Contreras.

27 56. After this incident the guards who attacked Mr.
28 Contreras asked him why he did not wake up when the guard ordered

1 him to. One of the guards, however, already knew that Mr.
2 Contreras was deaf. Mr. Contreras informed the team of guards
3 that he was deaf. Nevertheless, the guards decided to further
4 punish Mr. Contreras' failure to obey or orders by routinely
5 leaving the light on in his cell all night.

6 57. Prisoners who suffer from other chronic conditions,
7 such as epilepsy are, like Mr. Contreras, subject to cruel and
8 violent assaults. Guards respond to an inmate's seizures as
9 though the inmate were "acting out" or violating disciplinary
10 orders and assault or "cell extract" (see ¶67 - 69, infra).

11 58. Another example of deliberate indifference to diagnosed
12 medical conditions is provided by Mr. Ronnie Cruz, a diabetic
13 inmate at Pelican Bay. Although Pelican Bay medical staff give
14 Mr. Cruz prescribed insulin, they refuse to monitor his condition,
15 as standard medical practice requires. Monitoring Mr. Cruz's
16 condition would require Pelican Bay medical staff to weigh Mr.
17 Cruz on a regular basis and to regularly test his blood.

18
19 EXCESSIVE FORCE
20

21 59. The policies, procedure and practices at Pelican Bay
22 State Prison with respect to the use of force encourage the
23 unconstitutional use of excessive force. The defendants are well
24 aware of these policies, procedures and practices and encourage
25 the correctional staff, through training and supervision, to
26 comply with them despite their unconstitutional nature.

27 60. Because of the improper training and supervision given
28 to correctional staff, and the failure of the defendants to

1 monitor, investigate and discipline misuse of force by
2 correctional staff, an atmosphere of terror and violence exists at
3 Pelican Bay State Prison. Violent incidents between staff and
4 inmates, resulting in the use of unnecessary and excessive force
5 upon prisoners, are commonplace. Guards routinely assault
6 prisoners using excessive force. These named defendants are aware
7 of and have approved of the use of excessive force by correctional
8 officers and to a significant degree are responsible for the
9 atmosphere of violence prevailing at Pelican Bay State Prison.

10 61. This excessive use of force includes the use of taser
11 guns, gas guns, baton sticks, H&K 9mm rifles and Ruger mini-14
12 guns. In addition, prisoners are frequently hog-tied for extended
13 periods of time. When an individual prisoner is hog-tied, he
14 cannot feed himself or use the toilet.

15 62. Conditions now existing present an immediate and
16 intolerable threat to the safety and security of the prisoners
17 confined within the Pelican Bay State Prison. As a result of the
18 atmosphere of violence within the prison, effective programs
19 cannot and do not occur; rehabilitation is inevitable.

20 63. The CDC staff at Pelican Bay improperly uses force, and
21 frequently uses excessive force, against the prisoners at Pelican
22 Bay State Prison. First, the prison routinely uses or threatens
23 to use "cell extraction" to discipline prisoners for alleged
24 infractions of prison rules which 1) did not occur; or 2) do not
25 warrant the level of violence inherent in a cell extraction as a
26 response. Second, the prison, as a policy, ostensibly has a
27 "shoot to wound" response to prisoner on prisoner conflict.
28 Prison officials tell prisoners that the policy is "shoot to kill"

1 and in at least one instance guards shot and killed a prisoner in
2 a yard fight.

3
4
5

A. Pelican Bay Officials Deliberately Use Excessive Force
As a Tactic To Control Prisoner Behavior.

6 64. Pelican Bay officials routinely use "cell extractions"
7 to punish inmates and to control prisoners.

8 65. When a prisoner is alleged to have declined a direct
9 order from a guard, Pelican Bay guards frequently summon a "cell
10 extraction" team to respond to the prisoner's alleged refusal to
11 obey the direct order.

12 66. Typically, a correctional sergeant or lieutenant fires
13 one or all of the following weapons at a prisoner in his cell:
14 electric tasers, gas guns and mace. Then, a team of four to five
15 correctional staff, dressed in riot gear with face visors, "rush"
16 the prisoner, entering his cell armed with a riot shield and a
17 mini-baton. Because of the riot gear, guard faces and name tags
18 are not visible to prisoners. The guards attack the prisoner
19 using these weapons, and kick and punch him as well. When the
20 prisoner is subdued, guards frequently "hog-tie" the prisoner.
21 The guards usually continue to assault, beat and/or kick the
22 prisoner after he is subdued and hog tied. Sometimes, after
23 guards have subdued a prisoner, they remove him from his cell to
24 an area of the prison where other prisoners cannot hear the
25 assault, and continue to attack him there.

26 67. For the guards the "cell extractions" have a sadistic
27 quality. One guard, for example, wears a visor with the slogan
28 "make my day" printed on the front. Sergeant Boyll, similarly,

1 taunts prisoners in her charge, indicating that she would welcome
2 the opportunity to "cell extract" a prisoner.

3 68. Pelican Bay officials use "cell extractions" to respond
4 to inmate behavior which simply does not warrant the level of
5 violence inherent in this tactic.

6 69. Pelican Bay officials, for example, "cell extracted"
7 Mr. Lofofora Contreras for his failure to "show skin" at the
8 direction of a guard during the middle of the night while Mr.
9 Contreras, who is deaf, was sleeping. Rather than "cell extract"
10 Mr. Contreras, Pelican Bay guards could have shined a flash light
11 in Mr. Contreras' eyes to wake him up and obtain a response to the
12 order. Pelican Bay guards, however, refused on two occasions to
13 adopt this significantly less violent response to Mr. Contreras'
14 failure to "show skin."

15 70. There are other examples where Pelican Bay officials
16 deliberately "cell extract" rather than mediate prisoner action
17 which is not violent and does not threaten the safety of prisoners
18 or guards. Prisoners, for example, occasionally refuse to return
19 their meal trays to guards. The purpose of these refusals is to
20 protest a guard action or to prompt the intervention of an
21 sergeant or lieutenant in a disagreement between prisoner and
22 guard. Pelican Bay guards routinely "cell extract" when prisoners
23 refuse to return their trays. One Pelican Bay sergeant, Sergeant
24 Boyle, informs prisoners in her charge that the automatic response
25 of guards under her command to a prisoner's refusal to return a
26 meal tray is a "cell extraction."

27 71. In January 1991, a guard on a late night shift harassed
28 Hispanic prisoners, swearing at them and making grossly racist

1 comments about them. In the morning, the prisoners refused to
2 return trays until they could speak to a lieutenant to protest
3 this behavior. The prison responded by "cell extracting," cell by
4 cell, approximately 20 prisoners. Even prisoners who were willing
5 to return trays were cell extracted. The guards left prisoners
6 hog-tied on the walkway outside their cells for approximately
7 eight hours during which time MTAs routinely refused prisoners'
8 requests for meaningful medical attention. The prisoners were
9 then moved to different cells which had no soap, toilet paper or
10 other basic amenities. The prisoners were dressed solely in their
11 underwear. The guards removed the prisoners who objected to the
12 lack of basic necessities to the VCU.

13 72. Prisoners who were attacked in this incident received
14 identical 115's (disciplinary rule violations), charging them each
15 with assaulting an unnamed guard. The district attorney for Del
16 Norte County declined to prosecute any of the prisoners for this
17 charge.

18
19 B. Pelican Bay's "Shoot to Kill"/"Shoot to Wound" Response
20 to Altercations between Prisoners and "Warning Shot"
21 Policy.

22 73. Prisoners are informed when they arrive at Pelican Bay
23 that the prison has a "shoot to kill" policy and a policy of not
24 shooting warning shots. Prison officials tell prisoners, "if you
25 fight on the yard, we shoot to kill; if you fight in the dining
26 area, we shoot to kill." Pelican Bay officials, publicly concede
27 that they have at least a "shoot to wound" policy and concede, at
28

1 least, that there is confusion with respect to whether it is
2 appropriate to fire warning shots.

3 74. In September, 1990, for example, inmate Rodger
4 Hernandez was killed by a guard as the result of the guard
5 shooting to break up an altercation between prisoners on the yard.
6 Mr. Hernandez was 22 years old, and due to be paroled within two
7 months.

8 75. According to prison officials, when a fight broke out
9 on the yard, a guard fired two warning shots from the watch tower.
10 When prisoners failed to break up the fight, several guards shot
11 five more rounds of live ammunition. Mr. Hernandez was killed and
12 the fight broke up.

13 76. This extreme use of violence by Pelican Bay guards was
14 clearly unwarranted. Other than the warning shots, no steps short
15 of firing live ammunition into the crowd to break up the fight
16 were taken by Pelican Bay guards. In other circumstances,
17 correctional staff have fired "for effect" first, without firing
18 any warning shots due to their belief that warning shots are
19 against prison policy.

20 77. Mr. Hernandez' death was the result of defendants'
21 deliberate policy to control general population inmates through
22 violence and terror. Guard presence and the use of other
23 monitoring devices on the yard is quite limited. Inmate upon
24 inmate assault is a commonplace event. Upon information and
25 belief, inmate stabbings on the yard occur as frequently as once a
26 month. Warning shots are heard daily.

27 78. It is Pelican Bay's policy, in other words, to
28 deliberately cultivate an environment of fear and violence.

1 Rather than control this environment by guard presence and
2 intervention, Pelican Bay officials rely on distant guards to
3 "shoot 'em up" if things get out of hand.

4
5 LEGAL ACCESS
6

7 79. Inmates are deprived of access to the courts through
8 defendants' policy or practice of refusing or delaying response to
9 prisoner 602s; encouraging prisoners to dismiss 602s in exchange
10 for the restoration of prisoner privileges they have pretextually
11 withdrawn; and assessing unwarranted 115s against prisoners who,
12 in the eyes of prison officials, file too many 602s and/or
13 lawsuits.

14 80. Inmates further are deprived of adequate access to the
15 courts because they are given inadequate access to a law library.
16 Defendants parcel out law library time to inmates haphazardly and
17 inconsistently. Defendants often wait weeks or else do not
18 respond at all to inmates' requests to attend the law library.
19 Inmates who are not on privileged legal user ("PLU") status often
20 wait several weeks (and potentially months) before being allowed
21 access to the law library.

22 81. Inmates, once they obtain access to the law library,
23 are not given adequate access to legal materials. Defendants
24 permit inmates merely 2 to 3 hours per visit at the law library.
25 Inmates spend much of this time requesting and then waiting for
26 their needed materials. The materials are pulled by prison
27 personnel or inmate workers, neither of whom have any formal legal
28 training. Inmates often receive materials that they did not

1 request and then must re-request the proper materials.

2 Occasionally, inmates request basic legal materials that
3 defendants do not maintain in their libraries. Inmates must wait
4 weeks or even months to have access to such materials.

5 82. The prison's PLU procedure does not allow inmates with
6 court deadlines sufficient time in the law library to provide
7 adequate legal access. For SHU and VCU inmates, it may take weeks
8 for an inmate to obtain PLU status. Defendants may deny an
9 inmate's request for PLU status if the inmate does not present
10 prison guards with a court ordered deadline. The imminence of a
11 statutory deadlines may be insufficient for an inmate to achieve
12 PLU status.

13 83. Pelican Bay's inadequate law library system is even
14 more glaring in that inmates without counsel are not provided with
15 any alternative forms of legal assistance. There is no procedure
16 for ensuring that inmates receive access to "jailhouse lawyers" or
17 specially trained legal assistants. In fact, in the law library
18 for SHU and VCU inmates, defendants prohibit any talking
19 whatsoever.

20 84. Defendants do not provide persons trained in the law or
21 attorneys to assist prisoners who are non-English speaking or
22 illiterate in pursuing legal actions.

23 85. The law library at the Level I facility contains
24 virtually no reference books. A Level I prisoner is required to
25 submit to the law library his requests for books or materials. If
26 the prisoner does not know in advance what materials he needs to
27 review, he cannot obtain any materials from the library. The
28 library responds within ten days to two weeks.

1 86. Inmates must give their legal materials to prison staff
2 to photocopy, thereby compromising confidentiality. Defendants
3 may take days to complete copy jobs, and may not copy certain
4 materials at all.

5 87. Prison policies governing SHU and VCU prisoner access
6 to the law library deliberately impede prisoner access and inhibit
7 prisoner use of the law library. SHU and VCU prisoners are
8 shackled and chained to other prisoners when escorted to and from
9 the library. SHU and VCU prisoners are put in cages in the law
10 library and must rely on legally untrained officers or other
11 prisoners to obtain their legal materials. SHU and VCU prisoners
12 are not allowed to keep copies of cases to review in their cells.

13 88. SHU and VCU prisoners frequently are subject to
14 arbitrary access to the law library. Two prisoners with identical
15 library privileges who have requested library access frequently
16 are granted library visits at greatly different times. Some
17 prisoners are routinely granted their requests with two weeks.
18 Other prisoners may find that they have to wait for months.

19
20 IMPROPER CLASSIFICATION

21 A. Pelican Bay Officials Improperly Place Level I
22 Prisoners in Level IV Facilities.

23 89. Pelican Bay officials routinely house prisoners whom
24 the CDC has classified as Level I (the lowest level of security)
25 in the Level IV (the highest level of security) yard upon arrival
26 at Pelican Bay.

27 90. Level I prisoners almost invariably are housed in Level
28 IV at least for 10 days, prior to their mandatory institutional

1 classification committee meeting. Frequently Level I prisoners
2 are housed in Level IV for periods as long as several weeks to
3 several months. Often Level I prisoner are released from Level IV
4 housing only after they have filed appeals to be released.

5 91. Level I prisoners are housed in Level IV in order to
6 intimidate prisoners. Pelican Bay officials frequently threaten
7 to "roll up" (i.e., increase the classification level) for Level I
8 prisoners who disagree with them or appeal their decisions. The
9 threat is credible and frightening to Level I prisoners and
10 inhibits their ability to voice legitimate grievances through the
11 prison appeals facility.

12 92. Pelican Bay officials' second motive in housing Level I
13 prisoners in Level IV housing is to use Level I prisoners in
14 prison jobs in Level IV housing. Prison officials prefer to use
15 these prisoners because the officials believe the Level I
16 prisoners are less likely to be disruptive or violent in prison
17 jobs.

18 93. Level IV prisoners who are deprived of the jobs taken
19 by Level I prisoners also are deprived of the opportunity to earn
20 work time credits which can reduce a prisoner's earliest possible
21 release date. Level IV prisoners resent the loss of these
22 opportunities and the tension that results increases the danger to
23 prisoners in the yard.

24
25 B. Cell Partner Assaults and Lack of Classification.

26
27 94. There are an unreasonably large number of assaults
28 between cell partners at Pelican Bay. In the approximately three

1 years the prison has been in operation, there have been more than
2 1,000 reported assaults between cell partners. These assaults
3 sometime involved weapons or resulted in serious physical injury.
4 Assaults between cell partners have resulted in brain injuries
5 causing coma and permanent disability, disfigurement such as the
6 loss of an eye, ear, or nose, broken bones including fractured
7 ribs, lacerations, hematomas, and contusions. Assaults between
8 cell partners always present the risk of serious physical injury
9 or death.

10 95. Defendants and their employees know well of the large
11 number of cell partner assaults. Prison staff respond to assaults
12 between cell partners when reported or discovered. The assaults
13 are documented in logbooks, rule violation reports, and sometimes
14 formal incident reports. These logs and reports are reviewed by
15 Pelican Bay managers and supervisors. Incident reports, after
16 review by defendant Marshall, are sent to defendant Gomez for
17 review by him or his delegatee.

18 96. The large number of assaults between cell partners, and
19 defendants' policies and practices regarding double-celling, as
20 described below, create an unreasonable risk to prisoners of being
21 assaulted when involuntarily double-celled. Although defendants
22 know of this unreasonable risk to prisoners, they have been and
23 are deliberately indifferent to that risk.

24 97. The entire general population of Pelican Bay is double-
25 celled, except that on occasion one or two prisoners may be
26 single-celled for medical reasons, and other prisoners may
27 temporarily single-celled when a cell partner leaves but before a
28 new partner is assigned. Double-celling also occurs in the 1,056

1 cells of the Security Housing Unit (SHU) facility, including the
2 administrative segregation cells presently located in that
3 facility. Double-celling in the SHU (an in administrative
4 segregation, when those cells were physically located outside of
5 the SHU) began shortly after the prison opened, and has occurred
6 at all times since, with the number of prisoners double-celled
7 increasing over time. In August, 1990, the SHU population first
8 reached 115 percent of capacity (capacity measured, as defendants
9 do, by using the total number of cells as the benchmark). In
10 February, 1991, the SHU population increased to 120 percent of
11 capacity, and stayed at that approximate level until April, 1992,
12 when it increased to approximately 130 percent of capacity. In
13 December, 1992, the SHU population reached 140 percent of capacity
14 and has since essentially stayed at that level. Thus, at present
15 most SHU prisoners -- about 950 of the approximately 1,500
16 confined in that facility -- are double-celled.

17 98. No general population prisoners are designated for
18 single-cell status, except for one or two who are so designated
19 for medical reasons. In the SHU, prison officials require only a
20 very small number of prisoners to be single-celled. Defendants
21 state that in January 1993, only about 1 percent of the SHU
22 prisoners -- 18 of more than 1,500 -- were required to be single
23 celled. Generally, these prisoners were designated for single
24 cells because of a doctor's recommendation based upon a physical
25 or mental health condition, or as a reward for or precaution after
26 the prisoner has debriefed.

27 99. The large number of assaults between cell partners
28 stems first from the fact that prisoners are double-celled. In

1 the SHU (including administrative segregation), double-celled
2 prisoners are confined to their cells approximately 22 and one-
3 half hours every day. The daily hour and a half exercise period
4 afforded each SHU prisoner is the only daily extended period a
5 double-celled SHU prisoner can be apart from his cell partner.
6 However, this occurs only if one prisoner forsakes his right to
7 exercise and remains in the cell, because defendants otherwise
8 require that SHU cell partners exercise together in the small,
9 barren, and enclosed area provided for that purpose. Otherwise,
10 SHU prisoners can be and are confined together almost around the
11 clock. Involuntarily confining two persons together for such
12 lengthy period day after day results in stress, tension,
13 disagreements, and more serious conflicts which lead to assaults.
14 This is especially true in SHU, where defendants confine hundreds
15 of prisoners based on serious assaultive behavior against other
16 prisoners and staff. Given these prisoners' history of assaultive
17 behavior, and the lengthy periods they are confined together,
18 defendants know that assaults between cell partners are especially
19 likely to occur, yet they continue to involuntarily double-cell.

20 100. The unreasonable risk of assault from cell partners
21 also results from defendants' inadequate classification of
22 prisoners. The decision regarding which prisoners will be
23 involuntarily celled together is made by custodial sergeants.
24 However, the post orders for these sergeants, which defendants
25 identify as setting forth the sergeants' responsibilities and
26 duties regarding cell assignment and partner decisions, are
27 completely silent with regard to the criteria to be used when
28 assigning prisoners as cell partners. There is no formally

1 promulgated classification criteria to be used by staff members
2 who assign cell partners.

3 101. In addition, any informal criteria that may exist at
4 Pelican Bay for making cell partner decisions do not include any
5 consideration of basic classification criteria that bear directly
6 on the risk of assault by a cell partner. For example, defendants
7 and their employees do not consider, when double-celling
8 prisoners, that a prisoner has assaulted, or has been assaulted
9 by, previous cell partners at Pelican Bay. As a result, prisoners
10 are housed together even though one or both of the prisoners has a
11 demonstrated recent history of involvement with in cell assaults.
12 For example, in early October, 1991, a prisoner with no history of
13 assaults against other prisoners was celled together in SHU with a
14 prisoner who had twice before assaulted cell partners at Pelican
15 Bay, including an assault against a SHU cell partner less than a
16 month earlier. Shortly after the two were celled together, the
17 cell partner with the assaultive history attacked the other
18 prisoner. The prisoner who was attacked suffered three fractured
19 ribs, lacerations to his face above the right eye and to the left
20 elbow requiring sutures, a split upper lip, and bruising and
21 swelling about his head, eyes, chest, shoulder, and back.
22 According to defendants, the prisoner who suffered these injuries
23 committed suicide two weeks after being attacked. In February,
24 1992, a prisoner who had previously assaulted a cell partner at
25 Pelican Bay, and who also had been involved in at least one other
26 assaultive incident at the prison, was celled with another
27 prisoner in administrative segregation. On the day the two were
28 celled together, an assault occurred, and the prisoner without an

1 in-prison assaultive history lost an eye and received head and
2 brain injuries such that he was comatose for several months and
3 remains severely disabled. In October, 1992, a prisoner who had
4 been involved in three previous assaults with cell partners was
5 nevertheless double-celled in the SHU; an assault occurred and the
6 prisoner suffered a five inch laceration. In November, 1992, a
7 prisoner was double-celled who had been involved in at least one
8 prior cell partner assault and at least one other assaultive
9 incident at Pelican Bay, and was also known to prison staff, based
10 on his prior behavior, as especially likely to again be involved
11 in an assault. Subsequently, an assault between the cell partners
12 occurred, and the prisoner suffered severe head and facial
13 injuries requiring intensive care treatment and more than three
14 weeks of hospitalization.

15 102. In more than 250 instances, an assault between cell
16 partners has occurred at Pelican Bay where one of the prisoners
17 had previously assaulted, or had been assaulted by, a cell partner
18 at the prison. In at least 90 instances, assaults occurred
19 between cell partners where one of the prisoners had assaulted or
20 had been assaulted by a cell partner twice before at the prison.
21 On at least 35 occasions, assaults between cell partners occurred
22 after a prisoner was double-celled even though he had assaulted,
23 or had been assaulted by, a cell partner on at least three
24 previous occasions. At least 20 times, an assault occurred after
25 the double-celling of a prisoner who had been previously involved
26 in a four cell partner assaults. In a half-dozen instances,
27 assaults occurred after double-celling where one of the prisoners
28 previously had been involved in five cell partner assaults at

1 Pelican Bay. In two cases, prisoners who had been involved in
2 eight previous assaults with cell partners at the prison were
3 nevertheless double-celled with other prisoners. In both of these
4 cases, the predictable occurred -- another assault between cell
5 partners. Thus, defendants continue to double-cell even when they
6 know that prisoners have a lengthy history at Pelican Bay of
7 predatory behavior against their cell partner, or a history of
8 being victimized by their cell partner. This deliberate
9 indifference creates an unreasonable risk of assault to prisoners
10 who are double-celled.

11
12 C. The Improper Assignment and Retention of Prisoners in
13 SHU and VCU.

14 103. CDC and Pelican Bay officials frequently investigate
15 (and assign to and retain on indeterminate SHU sentences)
16 prisoners based upon suspected prison gang affiliations. The
17 basis for the determination of gang affiliation is typically based
18 upon uncorroborated, unconfirmed and/or inherently suspect and
19 insufficient allegations, often by persons who are never
20 identified to the accused prisoners. Further, the policies,
21 procedures and practices utilized by the CDC officials (and the
22 PBSP gang investigators in particular) are constitutionally infirm
23 as they are inconsistently and incompletely applied to the
24 prisoners.

25 104. Prisoners serving an indeterminate SHU sentence do not
26 earn good time credits. SHU prisoners also receive far fewer
27 privileges than prisoners in the general population. Thus, the
28 decision by Pelican Bay officials to assign a prisoner to an

1 indeterminate SHU sentence effectively requires the prisoner to
2 serve his complete term (which in some instances is life), while
3 simultaneously eliminating the prisoner's opportunity to enter
4 programs or enjoy privileges in the prison.

5 105. Prison officials routinely tell prisoners accused of
6 gang affiliation that the only way out of the SHU is to "snitch,
7 parole or die." In order for prisoners to obtain removal of their
8 indeterminate SHU sentences, prison officials require the
9 prisoners to confess their alleged gang involvement and then
10 provide the officials with sufficient specific information about
11 other prisoners' alleged prison gang associations. If prisoners
12 do not "snitch," prison officials promise that they will only
13 leave SHU if they parole or die.

14 106. Prisoners who have been accused of gang affiliation
15 have essentially no meaningful opportunity to contest their
16 initial validation or the "snitch, parole or die" policy employed
17 to retain them indefinitely in SHU. Prison officials routinely
18 and systematically ignore prisoners' needs for meaningful
19 assistance in preparing for, and participating in, the
20 Institutional Classification Committee (ICC) meetings at which
21 indeterminate SHU terms are initially assigned and the ICC and
22 Unit Classification meetings at which such sentences are
23 ostensibly reviewed. These meetings typically last only a few
24 minutes and are devoid of procedural protections and meaningful
25 substantive content.

26 107. For prisoners serving a life sentence, an indeterminate
27 SHU sentence effectively prevents them from becoming eligible for
28 parole. The indeterminate SHU sentence thus converts a life with

1 parole sentence into a life without parole sentence. Many of
2 these prisoners have virtually discipline free prison records and
3 but for the gang affiliation allegations, would be eligible for
4 parole.

5 108. Mr. Moses Johnson, for example, is an inmate serving an
6 indeterminate SHU sentence at Pelican Bay. When Mr. Johnson
7 arrived at Pelican Bay and challenged his SHU sentence, he was
8 informed by members of his Institutional Classification Committee
9 that "you come from Corcoran SHU and we're going to keep you in
10 SHU because you are a BGF." BGF is an acronym for Black Guerilla
11 Family, a prison gang.

12 109. When Mr. Johnson appealed this decision to Pelican
13 Bay's Criminal Activities Coordinator, he was informed that CDC
14 suspicion of his gang status was based on allegations of gang
15 affiliation by unnamed individuals. He was also told that he fit
16 the "minimum SHU standard" and that if the standard were raised
17 "you would get off [SHU] tomorrow." The CAC, however, would not
18 tell Mr. Johnson what the minimum SHU standard was.

19 110. Prisoners who are wrongfully accused of gang
20 affiliation are thus forced to complete their full sentence in SHU
21 because they have no information which they can use to satisfy the
22 "Snitch, Parole or Die" policy nor a realistic alternative means
23 for overturning their gang validation. For prisoners who are not
24 eligible for parole, an indeterminate SHU sentence is a sentence
25 of unending terror, deprivation and isolation.

1 A SYSTEM OF TERROR, DEPRIVATION AND ISOLATION

2
3 111. Pelican Bay officials have deliberately designed a
4 correctional facility which subjects its inmates to isolation,
5 violence and terror. These conditions of confinement subject
6 Pelican Bay prisoners to violations of their Eighth Amendment
7 rights to be free from cruel and unusual punishment.

8
9 A. Cruel and Unusual Conditions of Confinement in SHU

10
11 112. SHU prisoners are frequently housed alone in single
12 cell housing. These prisoners are confined to their windowless
13 cell of 22.5 hours a day unless they are permitted a library,
14 attorney or medical visit that day. SHU cells are windowless so
15 that prisoners cannot see other prisoners or see outdoors. No
16 direct sunlight ever reaches these cells.

17 113. SHU prisoners are given access to an exercise yard for
18 a maximum of 90 minutes a day. If prisoners are single-celled,
19 they are required to use the yard alone.

20 114. The yards are little more than tiny, enclosed, and
21 barren lots. Prisoners are not permitted weights, handballs, or
22 any other athletic equipment. Pelican Bay receives funds to
23 provide for prisoner recreation, but such funds are never used to
24 obtain athletic equipment for SHU prisoners. Prison officials
25 also routinely reject prisoner offers to obtain such equipments
26 with their own funds, or even to make their own exercise balls.

27 115. These yards have no toilet facilities and no fresh
28 water. If a prisoner needs to use the washroom, he must do so in

1 the yard or request permission to return to the SHU. In order to
2 return to the SHU, prisoners are often forced to bang loudly on the
3 yard door. Guards then issue the prisoner a 115 for creating a
4 disturbance. If a guard answers the door, the prisoner must
5 submit to a strip search upon entering and leaving the SHU. This
6 process typically exhausts all the prisoner's yard time. Yard
7 conditions, as a consequence, are deplorable. Prisoners who need
8 to use the washroom during their yard time are effectively forced
9 to defecate and urinate in the yard.

10 116. The level of isolation and deprivation of human contact
11 imposed on SHU prisoners is degrading, dehumanizing, and results
12 in significant psychiatric disorders. Prison officials knew or
13 should have known of the psychiatric disturbances inmates would
14 suffer as a result of the reduced environmental stimulation (RES)
15 conditions in the SHU, but failed to take steps to prevent, or
16 even to diminish, the effects of RES.

17
18 B. Cruel and Unusual Conditions of Confinement in the VCU

19
20 117. As bleak as is the existence of a prisoner serving a
21 term in the SHU, VCU prisoners suffer even greater and crueler
22 treatment at the hands of Pelican Bay officials.

23 118. Many prisoners housed in the VCU are clearly in need of
24 psychiatric care, which Pelican Bay does not adequately provide.
25 These prisoners rub their feces into their body, cry or shout for
26 hours, or talk incessantly and nonsensically about electro-
27 magnetic radiation. Other prisoners subject themselves to acts of
28 self mutilation.

1 119. Other prisoners are housed in the VCU as a disciplinary
2 measure. Their housing with VCU prisoners suffering psychiatric
3 disorders is cruel and terrifying in and of itself. These
4 assignments to the VCU are made without adequate due process.

5 120. Pelican Bay disciplines VCU prisoners by denying them
6 basic necessities. Prison officials, for example, put VCU
7 prisoners on "sheet restriction," pursuant to which prisoners
8 receive no bedding, or "cup restriction," by which prisoners are
9 denied cups to drink from. Pelican Bay officials may also deny
10 VCU prisoners eating utensils; or leave prisoners handcuffed or
11 hogtied (i.e., with hands tied behind their backs), forcing them
12 to lap their food from their plates as best they can. Pelican Bay
13 officials also put VCU prisoners on "paper gown" status. On this
14 status the only clothing provided a prisoner is a paper hospital
15 gown. Over time the gown becomes shredded and may not be
16 replaced.

17 121. Guards also punish VCU prisoners by leaving high
18 intensity lights on 24 hours a day, for several days at a time.
19 Similarly, guards punish prisoners by leaving them shackled in the
20 shower or to a toilet in a squatting position for hours on end.

21 122. Prisoners in the VCU find it far more difficult than
22 other prisoners to obtain medical care. No prisoner can receive
23 dental care in the VCU. Prison doctors rarely if ever perform
24 physical examinations on VCU prisoners.

1 C. Common Conditions of Isolation

2
3 123. SHU and VCU cells are monitored by video cameras.
4 Prisoners cannot see outdoors. SHU and VCU prisoners eat their
5 meals alone in their cells. They are not permitted jobs. They
6 are not permitted programs. They are not permitted to participate
7 in any classes or even to take correspondence courses.

8 124. Guards have little direct contact with the prisoners.
9 Cell doors are designed to be opened by remote control. Prisoners
10 receive directions from over a loud-speaker from a guard in a
11 control booth.

12 125. General population yards are guarded by armed guards in
13 watch towers hundreds of feet from the yard. SHU exercise yards
14 are used by solitary prisoners, or at most, two SHU cellmates.
15 There is no exercise equipment on the yard. There are no toilets
16 or running water on the yard.

17 126. Prisoner and guards in SHU and the VCU have little face
18 to face contact, unless a guard is escorting a prisoner to the
19 showers or the library, or assaulting him.

20
21 CLAIM FOR RELIEF

22 (§ 1983)

23
24 127. The conduct described herein has been and continues to
25 be performed by defendants and their agents or employees in their
26 official capacities and is the proximate cause of plaintiffs'
27 ongoing deprivation of rights secured by the United States
28

1 Constitution under the First, Sixth, Eighth, and Fourteenth
2 Amendments.

3 128. The constitutional deprivations described herein are
4 the proximate result of the official policies, customs and
5 pervasive practices of the California Department of Corrections,
6 Pelican Bay State Prison, and the defendants. Defendants were and
7 are aware of all of the unconstitutional conduct complained of
8 herein, and have condoned or been deliberately indifferent to such
9 conduct.

10 129. Paragraphs 28 to 125, supra are incorporated by
11 reference herein:

12 130. The delivery of medical care at Pelican Bay is
13 constitutionally deficient in a number of respects, including
14 without limitation:

15 a. The prison does not provide for prompt and
16 competent initial diagnosis and treatment.

17 b. The prison does not provide enough flexibility in
18 acute and/or emergency medical situations.

19 c. The prison medical staff (MTAs and physicians) is
20 not adequately trained and does not provide competent medical care
21 consistent with recognized standards of medical practice.

22 d. The prison does not provide all specialties of
23 medical care typically required by the inmate population.

24 e. The prison does not ensure that prisoners receive
25 medical treatment, therapy and/or medication when prescribed.

26 f. The prison does not ensure that the correctional
27 officers are adequately informed of medical treatment or
28 conditions which will affect an inmate.

1 131. The use of force and conditions of violence at Pelican
2 Bay are constitutionally deficient in a number of respects,
3 including without limitation:

4 a. Guards use inherently violent disciplinary
5 techniques such as "cell extractions" in response to inmate
6 conduct which is not violent and which does not pose a threat to
7 officers, other prisoners, or the institution.

8 b. Guards subject prisoners to violent assaults and
9 attacks which are gratuitous, sadistic and unwarranted.

10 c. Pelican Bay officials have failed to adequately
11 train, supervise or discipline guards regarding the use of force
12 and/or violence on prisoners.

13 d. Pelican Bay officials have failed to adequately
14 monitor, investigate and discipline misuse of force by
15 correctional staff.

16 e. Pelican Bay officials have failed to devise any or
17 do not adequately enforce procedures for responding to alleged
18 inmate disciplinary violations which are non-violent in nature.

19 f. Guards deliberately subject prisoners to
20 unwarranted and humiliating searches of their persons.

21 132. The efforts by guards to monitor general population
22 yards and other common areas are constitutionally deficient in a
23 number of respects, including without limitation:

24 a. Pelican Bay officials deliberately do not assign
25 enough correctional officers to patrol and do not employ devices
26 to adequately monitor general population yards and other common
27 areas to ensure that prisoners are not subject to an unreasonable
28 risk of violence from other prisoners.

1 b. Pelican Bay officials' "shoot to kill, shoot to
2 wound" policy deliberately places prisoners at risk of unwarranted
3 and excessive violence by corrections officers.

4 133. Pelican Bay officials impermissibly violate prisoners'
5 constitutional right of access to the courts in the following
6 respects:

7 a. Prison officials assess unwarranted 115s against
8 prisoners who, in the eyes of prison officials, file too many 602s
9 and/or lawsuits.

10 b. Prison officials subvert the 602 process by
11 refusing or delaying response to prisoner appeals.

12 c. Prison officials subvert the 602 process by
13 regarding prisoners to dismiss 602s in exchange for the
14 restoration of prisoner privileges they have pretextually
15 withdrawn.

16 d. Level I prisoners do not have access to a law
17 library.

18 e. Prison procedures governing copying and access to
19 the library collection inhibit prisoner ability to adequately
20 research the law and breaches the confidentiality of the
21 prisoners' research.

22 f. Prison procedures governing SHU and VCU access to
23 the law library are enforced arbitrarily and capriciously and are
24 designed to inhibit prisoner requests for library access;

25 g. Prison procedures governing SHU and VCU prisoner
26 use of the library prohibit any meaningful communication with
27 other prisoners regarding legal issues.

28

1 h. Prison policies regarding written communications
2 between SHU and VCU prisoners on legal matters is designed to be
3 cumbersome, haphazard and ineffective, and to inhibit meaningful
4 access to the courts by prisoners.

5 i. Prison policies regarding library access for
6 illiterate or non-English speaking prisoners is designed to
7 inhibit meaningful access to the courts by such prisoners.

8 134. Pelican Bay's policy of housing Level I prisoners in
9 Level IV housing is constitutionally deficient in the following
10 respects:

11 a. Prisoners are housed in facilities primarily
12 housing prisoners whose security level far exceeds their own.

13 b. Prisoners are denied any meaningful opportunity to
14 protest their improper housing status for a period of at least 10
15 days.

16 c. Level I prisoners are frequently house in Level IV
17 housing for periods far in excess of ten days.

18 d. Pelican Bay officials house Level I prisoners in
19 Level IV yards in order to terrorize them and to obtain a source
20 of labor they find more trustworthy than Level IV prisoners.

21 e. Pelican Bay officials' policy of housing Level I
22 prisonexrs in Level IV housing deliberately and unnecessarily
23 exposes Level I prisoners to violence from other inmates and
24 guards.

25 135. Pelican Bay's policies and practices regarding double-
26 celling and the assigning prisoners as cell partners are
27 constitutionally deficient in that through deliberate indifference
28 they unnecessarily expose prisoners to an unreasonable risk of

1 violence and threats of violence in the form of assaults and
2 threats of assaults from their cell partners.

3 136. These policies violate prisoners' rights under the
4 Eighth and Fourteenth Amendments of the Unites States
5 Constitution.

6 137. The policies, practices and procedures of investigating
7 (and assigning to, and retaining on, indeterminate SHU sentences)
8 prisoners based on allegations of gang affiliation, is
9 constitutional deficient in the following respects:

10 a. Prisoners are not allowed sufficient opportunity
11 to challenge the uncorroborated, unconfirmed and/or inherently
12 suspect and insufficient allegations of gang affiliation due to,
13 without limitation: insufficient notice, insufficient availability
14 of meaningful assistance and access to information, and the
15 absence of meaningful initial hearings and subsequent periodic
16 reviews.

17 b. Prison officials "snitch, parole or die" policy,
18 in conjunction with the prison's refusal to permit inmates a
19 meaningful opportunity to challenge gang affiliation allegations
20 impermissibly result in the permanent placement of prisoners in
21 SHU who, in fact, have no or insufficient gang affiliation to
22 warrant such drastic punishment.

23 c. Prisoners who are disciplined by VCU housing
24 assignments do not receive adequate due process.

25 138. The isolation in the SHU and VCU units is a violation
26 of the Eighth Amendment based on the following:

27 (1) single-celled prisoners have virtually no contact
28 with any other human beings, including CDC staff.

1 (2) much of the contact prisoners do have involves
2 being a victim of or witnessing incidents of use of excessive
3 force by CDC staff.

4 (3) many prisoners serving indeterminate terms have no
5 means within their control to effectively challenge or overturn
6 their indeterminate terms in order to escape from these conditions
7 of confinement.

8 (4) the physical plant and design of SHU and VCU do
9 not adequately provide for basic human needs, including but not
10 limited to sanitation, clothing, and shelter.

11 (5) CDC staff impermissibly interfere with prisoners'
12 legal and non-legal mail.

13 (6) the reduced environmental stimulation (RES)
14 conditions induce psychiatric disorders.

15
16 PRAYER FOR RELIEF
17

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

26 WHEREFORE, plaintiffs, on behalf of themselves and the class
27 they represent, request that this Court grant them the following
28 relief:

1 (a) certify the class of all prisoners who are now or
2 in the future will be in custody at Pelican Bay State Prison;

3 (b) adjudge and declare that the acts, omissions,
4 policies, and practices of the defendants and their agents,
5 officials and employees, violate the First, Sixth, Eighth, and
6 Fourteenth Amendments, which grant constitutional protection to
7 plaintiffs and the class that plaintiffs represent;

8 (c) order defendants, their agents, officials,
9 employees, and all persons acting in concert with them under color
10 of state law or otherwise, to provide needed health care for
11 plaintiffs; to provide meaningful access to the courts; to cease
12 assigning prisoners to segregation without meaningful notice,
13 hearings or periodic review of indeterminate SHU sentences based
14 on uncorroborated, unconfirmed and/or inherently suspect
15 confidential information; to cease using unnecessary and excessive
16 force; to cease the policies and practices of double-celling
17 prisoners and assigning cell partners in circumstances in which
18 violence in the form of assaults between cell partners is likely
19 to occur;

20 (d) enjoin defendants, their agents, officials,
21 employees, and all persons acting in concert with them under color
22 or state law or otherwise, from continuing the unconstitutional
23 acts, conditions, and practices described in this Complaint, and
24 from failing to provide in the future constitutionally adequate
25 medical care, access to courts and counsel, freedom from being
26 subjected to the use of unnecessary and excessive force by
27 correctional staff; celling and classification policies and
28 procedures adequate to protect prisoners from an unreasonable risk

1 of assault from cell partners; and due process in segregation
2 assignments.

3 (e) to eliminate unreasonable risk of harm to
4 prisoners from other prisoners or guards;

5 (f) to remedy conditions that deprive prisoners of
6 basic human needs;

7 (g) retain jurisdiction in this case until the
8 unlawful and unconstitutional conditions and practices as alleged
9 herein no longer exist and the Court is satisfied that they will
10 no longer occur;

11 (h) grant plaintiffs the costs and expenses of
12 maintaining this action, including reasonable attorneys' fees
13 pursuant to 42 U.S.C. § 1988; and,

14 (i) grant any other relief that the Court deems just
15 and proper.

16
17 Dated: May 11, 1993

WILSON, SONSINI, GOODRICH & ROSATI

18
19 By Susan Abouchar Creighton
Susan Abouchar Creighton

20 Attorneys for Plaintiffs
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1 CERTIFICATE OF SERVICE

2 I, Lori Nelson, declare:

3 I am employed in the City of Palo Alto, County of Santa
4 Clara, State of California, in the office of a member of the bar
5 of this court, at whose direction the service was made; that I am
6 over the age of eighteen (18) years, and not a party to the within
7 action, that my business address is Two Palo Alto Square, Palo
8 Alto, California 94306; that on the date set forth below I served
9 a true and correct copy of the **AMENDED COMPLAINT** on each person
10 listed below by:

- 11 (xx) Placing such a copy enclosed in a sealed envelope
12 postage thereon fully prepaid, in a United States Post
Office mail box in Palo Alto, California.
- 13 () By consigning such copy to a messenger for guaranteed
14 hand delivery on
- 15 () By consigning such copy for facsimile transmission,
transmission guaranteed on
- 16 () By consigning such copy to an express mail service for
17 guaranteed delivery on _____.

18 Addressed as follows:

19
20 Peter J. Siggins
Susan Duncan Lee
21 California Attorney General's Office
455 Golden Gate Avenue, Room 6200
22 San Francisco, CA 94102

23 I am readily familiar with Wilson, Sonsini, Goodrich &
24 Rosati's practice for collection and processing of correspondence
25 for mailing with the United States Postal Service. In the ordi-
26 nary course of business, correspondence would be deposited with
27 the United States Postal Service on this day.

1 I declare under penalty of perjury that the foregoing is
2 true and correct. Executed this 11th day of May, 1993.

3
4 

5 _____
6 LORI NELSON
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