

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAY C. RUSSELL  
Supervising Deputy Attorney General  
3 ADRIANO HRVATIN  
Deputy Attorney General  
4 State Bar No. 220909  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1672  
6 Fax: (415) 703-5843  
E-mail: Adriano.Hrvatino@doj.ca.gov  
7 Attorneys for Defendants

JULES LOBEL (*pro hac vice*)  
ALEXIS AGATHOCLEOUS (*pro hac vice*)  
RACHEL MEEROPOL (*pro hac vice*)  
SAMUEL MILLER, State Bar No. 138942  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 Broadway, 7th Floor  
New York, NY 10012  
Telephone: 212.614.6432  
Facsimile: 212.614.6499  
E-mail: jll4@pitt.edu  
Attorneys for Plaintiffs

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

12 <b>TODD ASHKER, et al.,</b>	C 09-05796 CW
13	
14 Plaintiffs,	<b>SETTLEMENT AGREEMENT</b>
15	
16 <b>v.</b>	
17	
18 <b>GOVERNOR OF THE STATE OF CALIFORNIA, et al.,</b>	
19 Defendants.	

19 The parties enter into this Settlement Agreement (the Agreement) to address and settle  
20 Plaintiffs' claims for declaratory and injunctive relief regarding the policies and practices of the  
21 California Department of Corrections and Rehabilitation (CDCR) for placing, housing, managing,  
22 and retaining inmates validated as prison gang members and associates, as well as the conditions  
23 of confinement in the Security Housing Unit (SHU) at Pelican Bay State Prison and other CDCR  
24 SHU facilities.

25 **I. BACKGROUND AND PROCEDURAL POSTURE**

26 1. Plaintiffs in this matter are inmates Todd Ashker, Ronnie Dewberry, Luis Esquivel,  
27 George Franco, Jeffrey Franklin, Richard Johnson, Paul Redd, Gabriel Reyes, George Ruiz, and  
28 Danny Troxell (Plaintiffs).

1           2. Defendants are the Governor of the State of California, CDCR's Secretary, Pelican  
2 Bay's Warden, and the Chief of CDCR's Office of Correctional Safety, each of whom is sued in  
3 his official capacity (Defendants).

4           3. This action was originally filed on December 9, 2009, as an individual pro se civil-  
5 rights suit by Plaintiffs Todd Ashker and Danny Troxell. A First Amended Complaint was filed  
6 on May 21, 2010. On September 10, 2012, Plaintiffs, having retained counsel, filed a Second  
7 Amended Complaint, which added class allegations and eight additional Plaintiffs. The Second  
8 Amended Complaint alleges that CDCR's gang management regulations and practices violate the  
9 Due Process Clause of the Fourteenth Amendment and that the conditions of confinement in  
10 Pelican Bay's SHU constitute cruel and unusual punishment in violation of the Eighth  
11 Amendment. The Second Amended Complaint seeks declaratory and injunctive relief to address  
12 the alleged constitutional violations.

13           4. Defendants filed a motion to dismiss the Second Amended Complaint, which the  
14 Court denied on April 9, 2013. (ECF No. 191.) On April 30, 2013, Defendants answered the  
15 Second Amended Complaint. (ECF No. 194.)

16           5. Plaintiffs filed a motion for class certification, which the Court granted in part and  
17 denied in part on June 2, 2014. (ECF No. 317.) Some Plaintiffs were appointed to represent two  
18 classes of inmates certified under Rules 23(b)(1) and (b)(2) of the Federal Rules to include: (i) all  
19 inmates assigned to an indeterminate term at Pelican Bay's SHU on the basis of gang validation,  
20 under CDCR's policies and procedures, as of September 10, 2012; and (ii) all inmates who are  
21 now, or will be in the future, assigned to Pelican Bay's SHU for ten or more continuous years.  
22 (*See, e.g.*, ECF No. 317 at 11, 14, 21; ECF No. 387 at 13-17.)

23           6. On October 18, 2012, CDCR implemented its Security Threat Group (STG) program  
24 as a pilot program which modified the criteria for placement into the SHU and initiated a Step  
25 Down Program designed to afford validated inmates a way to transfer from the SHU to a general  
26 population setting within three or four years. On October 17, 2014, and upon expiration of the  
27 pilot, CDCR's STG regulations were approved and adopted in Title 15.

28

1           7.     Plaintiffs filed a motion for leave to file a Supplemental Complaint, which the Court  
2 granted on March 9, 2015. (ECF No. 387.) On March 11, 2015, Plaintiffs filed their  
3 Supplemental Complaint. (ECF No. 388.) The Supplemental Complaint alleges an additional  
4 Eighth Amendment claim on behalf of a putative class of gang-validated inmates transferred to  
5 another CDCR SHU facility under CDCR’s Step Down Program, after having been housed in  
6 Pelican Bay’s SHU for ten or more years. Plaintiffs Dewberry, Franklin, Ruiz, and Troxell are  
7 the putative class representatives of this supplemental Eighth Amendment claim. Plaintiffs  
8 transferred from Pelican Bay’s SHU also pursue relief on an individual basis. Plaintiffs contend  
9 that the alleged constitutional violation that inmates suffered because of their confinement in  
10 Pelican Bay’s SHU for ten or more continuous years does not end notwithstanding their transfer  
11 from Pelican Bay to another facility under the Step Down Program. The Court stayed the  
12 litigation of this additional Eighth Amendment claim until resolution of the Eighth Amendment  
13 claim alleged in Plaintiffs’ Second Amended Complaint. (ECF Nos. 387, 393.)

14           8.     Apart from a 45-day litigation stay in early 2014 to discuss settlement, the parties  
15 engaged in extensive discovery for over three years. Fact discovery closed on November 28,  
16 2014. The parties responded to hundreds of written discovery requests, produced hundreds of  
17 thousands of pages of documents, and completed approximately thirty depositions of current and  
18 former prison officials and inmates. Expert discovery closed on May 29, 2015. Plaintiffs  
19 disclosed ten experts, Defendants disclosed seven, and the parties collectively completed a dozen  
20 expert depositions. The parties produced over 45,000 pages of documents in response to  
21 subpoenas directed to their respective experts.

22           9.     The parties have conducted extensive negotiations over several months to resolve  
23 Plaintiffs’ demands that CDCR revise its gang management and SHU policies and practices.  
24 Those negotiations have been undertaken at arm’s length and in good faith between Plaintiffs’  
25 counsel and high-ranking state officials and their counsel. The parties have reached agreement on  
26 statewide policies and practices to settle Plaintiffs’ claims for declaratory and injunctive relief,  
27 and, for settlement purposes only, agree that this Agreement meets the requirements of 18 U.S.C.  
28 § 3626(a)(1).

1           10. The parties agree that the putative supplemental class asserted in Plaintiffs’  
2 Supplemental Complaint—namely, all prisoners who have now, or will have in the future, been  
3 imprisoned in Pelican Bay’s SHU for longer than 10 continuous years and then transferred from  
4 Pelican Bay’s SHU to another SHU in California in connection with CDCR’s Step Down  
5 Program—may be certified as a class for settlement purposes under Rule 23(b)(2) of the Federal  
6 Rules of Civil Procedure. The parties agree that, after notice and an opportunity to object is  
7 provided to members of the two classes previously certified by the Court as well as members of  
8 the supplemental settlement class, the Court may enter an order finding this Agreement to be fair  
9 and reasonable to all class members.

10           11. All parties and their counsel recognize that, in the absence of an approved settlement,  
11 they face lengthy and substantial litigation, including trial and potential appellate proceedings, all  
12 of which will consume time and resources and present the parties with ongoing litigation risks  
13 and uncertainties. The parties wish to avoid these risks, uncertainties, and consumption of time  
14 and resources through a settlement under the terms and conditions of this Agreement.

15           ACCORDINGLY, without any admission or concession by Defendants of any current and  
16 ongoing violations of a federal right, all claims for declaratory and injunctive relief asserted in the  
17 Second Amended Complaint and Supplemental Complaint shall be finally and fully settled and  
18 released, subject to the terms and conditions of this Agreement, which the parties enter into freely,  
19 voluntarily, knowingly, and with the advice of counsel.

## 20   **II. JURISDICTION AND VENUE**

21           12. The Court has jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1343. Venue is  
22 proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiffs’  
23 claims occurred in the Northern District of California.

## 24   **III. TERMS AND CONDITIONS**

### 25           **A. NEW CRITERIA FOR PLACEMENT IN SHU, ADMINISTRATIVE SEGREGATION, OR** 26           **THE STEP DOWN PROGRAM.**

27           13. CDCR shall not place inmates into a SHU, Administrative Segregation, or Step Down  
28 Program solely on the basis of their validation status.

1           14. CDCR shall amend the SHU Assessment Chart located in Title 15 of the California  
2 Code of Regulations, section 3341.5, subsection (c)(9). The SHU Assessment Chart shall be  
3 amended as set forth in Attachment B.

4           15. Under the revised Step Down Program policy, STG-I inmates, as defined in Title 15  
5 of the California Code of Regulations, section 3000, will be transferred into the Step Down  
6 Program if they have been found guilty in a disciplinary hearing of committing, with a proven  
7 nexus to an STG, a SHU-eligible offense, as listed in the SHU Assessment Chart.

8           16. STG-II inmates, as defined in Title 15 of the California Code of Regulations, section  
9 3000, will be transferred into the Step Down Program if they have been found guilty in a  
10 disciplinary hearing of committing, with a proven nexus to a STG, two SHU-eligible offenses  
11 within a four year period, as listed in the SHU Assessment Chart.

12           17. Any STG-I or STG-II inmate shall be transferred into the Step Down Program as  
13 described in Paragraphs 15 and 16, upon the completion of the determinate, disciplinary SHU  
14 term imposed by the Institution Classification Committee for that offense. All time spent in the  
15 SHU following completion of the determinate SHU term prior to actual transfer into the Step  
16 Down Program shall be credited as part of the inmate's Step Down Program time. The Institution  
17 Classification Committee shall continue to have the authority to impose, commute, or suspend  
18 any part of the determinate SHU term, as provided in regulations.

19           **B. MODIFICATIONS TO THE STEP DOWN PROGRAM.**

20           18. CDCR shall modify its Step Down Program so that it is based on the individual  
21 accountability of each inmate for proven STG behavior, and not solely on the inmate's validation  
22 status or level of STG affiliation.

23           19. The revised Step Down Program shall be 24 months in duration and consist of 4  
24 program steps that take place within a SHU. Except as provided in Paragraphs 22 and 23, each  
25 step will be 6 months in duration. Step 5 of the existing Step Down Program shall be eliminated.  
26 Upon successful completion of the Step Down Program, the inmate shall be transferred to a  
27 General Population prison commensurate with his specific case factors and in accordance with  
28 existing regulations.

1           20. Each Step within the Step Down Program shall provide incremental increases in  
2 privileges and freedom of movement commensurate with program placement as set forth in  
3 Attachment A.

4           21. The Step Down Program incorporates rehabilitative programming consisting of both  
5 required and elective components. Within 90 days of the Court's preliminary approval of this  
6 Agreement, CDCR will afford Plaintiffs' counsel and four inmate representatives identified by  
7 Plaintiffs an opportunity to meet with CDCR officials to discuss the nature, content and substance  
8 of the mandatory and elective programming. It is CDCR's intent to provide programming with  
9 clear requirements and outcomes to provide an alternative path away from STG behavior and  
10 promote critical life skills. CDCR shall convene a panel of experts, of CDCR's choosing, to  
11 evaluate the Step Down Program curriculum and to make recommendations in keeping with this  
12 intent. CDCR will provide Plaintiffs' counsel with a copy of the panel of experts'  
13 recommendations. Plaintiffs' counsel and the four inmate representatives will have the  
14 opportunity to meet with Defendants regarding recommended components; however, CDCR  
15 retains its discretion to implement the mandatory programming of its choosing for this population.

16           22. Participation in the Step Down Program is mandatory for any inmate placed into the  
17 program. An inmate's refusal to participate in or complete the required programming in the Step  
18 Down Program shall not result in regression or retention in the program, but shall be addressed as  
19 follows: At the 180-day review performed by the Institution Classification Committee at the end  
20 of Step 3, if the Committee determines that the inmate refused to participate in or has not  
21 completed all components of the Step Down Program, the Committee shall retain the non-  
22 participating inmate in Step 3 for an additional 6 months. If, at the end of that additional 6-month  
23 period, the inmate continues to refuse or does not complete all Step Down Program components,  
24 the Institution Classification Committee shall remove the inmate from the program and transfer  
25 him to a Restricted Custody General Population (RCGP) facility. That inmate shall be assigned  
26 to the Step 3 privilege group, however the Institution Classification Committee may later reassign  
27 the inmate to the Step 4 privilege group based on his progression through the commensurate Step  
28 Down Program components remaining to be completed. If the inmate elects to complete the Step

1 Down Program requirements, he shall do so within the RCGP and shall not be returned to the  
2 SHU to complete the program, unless he is found guilty in a disciplinary hearing of a new SHU-  
3 eligible offense. If the inmate completes the Step Down Program components and, while in the  
4 RCGP, is not found guilty of either one serious STG-related or two administrative STG-related  
5 rules violations as listed in the STG Disciplinary Matrix, during the 180-day review period, he  
6 will then be released to the General Population. (See Attachment C.) The Institution  
7 Classification Committee shall conduct reviews no less than every 180-days to determine whether  
8 the inmate has completed the Step Down Program and is eligible for release to the General  
9 Population. Non-participation or lack of completion that is due to the unavailability or  
10 inaccessibility of programming components necessary for Step Down Program compliance shall  
11 not impede an inmate's progress to the next step and shall not be considered as a factor in an  
12 inmate's regression or retention in any step. CDCR shall provide an opportunity for each inmate  
13 to complete Step Down Program programming for each step within 6 months. All time spent  
14 awaiting transfer to another step shall be credited to the completion of the next step.

15 23. The Step Down Program is intended to be a rehabilitative, gang behavior diversion  
16 program for STG affiliated inmates. As such, inmates within the program are expected to remain  
17 disciplinary-free. Misconduct shall be addressed in accordance with existing disciplinary rules  
18 and regulations. The commission of repeated STG violations while in the Step Down Program  
19 shall not result in regression or retention in the program, but shall be addressed as follows: If an  
20 inmate has committed either 3 serious STG rules violations or 5 administrative STG rules  
21 violations as listed in the STG Disciplinary Matrix while in the Step Down Program, he shall be  
22 transferred to the RCGP facility. The Institution Classification Committee shall review the  
23 inmate's disciplinary history and make this determination during the 180-day reviews performed  
24 at the end of Steps 3 and 4. If, during the Step 3 review, the inmate is guilty of committing 3  
25 serious STG rules violations or 5 administrative STG rules violations while in the Step Down  
26 Program, the Committee shall retain the inmate in Step 3 for an additional 6 months. At the end  
27 of that additional 6-month period, the Committee shall remove the inmate from the program and  
28 transfer him to the RCGP. An inmate transferred to the RCGP pursuant to this Paragraph shall be

1 assigned to the Step 3 privilege group. The inmate can appeal the decision to transfer him to the  
2 RCGP to the Departmental Review Board, which would review the inmate's disciplinary history  
3 and determine whether removal from the program and transfer to the RCGP is appropriate; a  
4 hearing before the Board is not required for a determination of such an appeal. Consistent with  
5 Paragraph 22, if the inmate completes the Step Down Program components and, while housed in  
6 the RCGP, is not found guilty of either one serious STG-related or two administrative STG-  
7 related rules violations as listed in the STG Disciplinary Matrix during the RCGP 180-day review  
8 period, he will then be released to the General Population. The Institution Classification  
9 Committee shall conduct reviews no less than every 180-days to determine whether the inmate  
10 has completed the Step Down Program and is eligible for release to the General Population.

11 24. If an inmate is found guilty of committing a SHU-eligible offense while assigned to  
12 the Step Down Program or RCGP, he shall complete the intervening determinate, disciplinary  
13 SHU term as imposed by the Institution Classification Committee for that offense before  
14 returning to the Step Down Program or RCGP. If such SHU-eligible offense has a proven nexus  
15 to an STG as described in Paragraphs 15 and 16, upon completion of the determinate term  
16 imposed by the Committee, the inmate shall be returned to the Step Down Program at Step 1 or  
17 another step as determined by the Committee.

18 **C. REVIEW OF STG-VALIDATED INMATES CURRENTLY IN SHU.**

19 25. Within twelve months of the Court's preliminary approval of this Agreement, CDCR  
20 shall review the cases of all validated inmates who are currently in the SHU as a result of either  
21 an indeterminate term that was previously assessed under prior regulations or who are currently  
22 assigned to Steps 1 through 4, or who were assigned to Step 5 but are retained within the SHU.  
23 These reviews shall be conducted by Institution Classification Committees and prioritized by the  
24 inmates' length of continuous housing within a SHU so that those of the longest duration are  
25 reviewed first. If an inmate has not been found guilty of a SHU-eligible rule violation with a  
26 proven STG nexus within the last 24 months, he shall be released from the SHU and transferred  
27 to a General Population level IV 180-design facility, or other general population institution  
28 consistent with his case factors. An inmate who has committed a SHU-eligible rule violation

1 with an STG nexus within the last 24 months shall be placed into the Step Down Program based  
2 on the date of the most recent STG-related rule violation, as follows: Step 1: violation occurred  
3 within the last 6 months; Step 2: violation occurred within the last 6-12 months; Step 3:  
4 violation occurred within the last 12-18 months; Step 4: violation occurred within the last 18-24  
5 months. Inmates currently assigned to Step 5 in the General Population shall remain in the  
6 General Population and shall no longer be considered current Step Down Program participants.

7 26. During the review described in Paragraph 25, any inmate housed in a SHU program  
8 for 10 or more continuous years who has committed a SHU-eligible offense with a nexus to an  
9 STG within the preceding 2 years, will be transferred into the RCGP for completion of Step  
10 Down Program requirements. Inmates subject to this provision who are currently serving a  
11 disciplinary SHU term will be allowed to complete the SHU term in the RCGP prior to beginning  
12 the Step Down Program, unless the Institution Classification Committee determines by a  
13 preponderance of the evidence that to do so would pose an unreasonable risk to individual or  
14 institutional safety and security. This function of the RCGP shall be implemented as a pilot  
15 program. If the inmate completes the Step Down program requirements, he will be transferred to  
16 a General Population prison setting in accordance with his case factors. One hundred twenty days  
17 after completion of the reviews described in Paragraph 25, CDCR will produce a report on the  
18 functioning of this pilot program and shall inform plaintiffs' counsel whether it intends to make  
19 permanent, modify, or terminate this RCGP function. Within 30 days of receiving the notice  
20 from CDCR, the parties shall meet and confer regarding any proposed changes to the RCGP pilot  
21 program. If CDCR decides to terminate the RCGP pilot program, inmates housed in the RCGP  
22 pursuant to this Paragraph will, in the absence of pending disciplinary charges of a new SHU-  
23 eligible offense requiring segregation, either remain in the RCGP until they transition into  
24 General Population or will be transferred to non-segregated housing.

25 27. For those STG inmates considered for release to the General Population either  
26 following Step Down Program completion or pursuant to the review described in Paragraph 25,  
27 and against whom there is a substantial threat to their personal safety should they be released to  
28 the General Population as determined by a preponderance of the evidence, the Departmental

1 Review Board retains the discretion, in accordance with existing authority, to house that inmate in  
2 alternate appropriate non SHU, non-Administrative segregation housing commensurate with his  
3 case factors, such as a Sensitive Needs Yard or RCGP, until such time that the inmate can safely  
4 be housed in a general population environment. The Departmental Review Board shall articulate  
5 the substantial justification for the need for alternative placement. If the Institution Classification  
6 Committee refers a case to the Departmental Review Board pursuant to this Paragraph, the  
7 Departmental Review Board shall prioritize these case reviews and expeditiously conduct the  
8 hearing and render its placement decision. Thereafter, during their regular 180-day reviews, the  
9 Institution Classification Committee shall verify whether there continues to be a demonstrated  
10 threat to the inmate's personal safety; and if such threat no longer exists the case shall be referred  
11 to the Departmental Review Board for review of housing placement as soon as practicable. For  
12 Departmental Review Board hearings held pursuant to this Paragraph, a staff assistant shall be  
13 provided to help inmates prepare and present their case due to the fact that the complexity of these  
14 types of cases makes assistance necessary. If Plaintiffs' counsel contends that CDCR has abused  
15 its discretion in making housing decisions under this Paragraph, that concern may be raised with  
16 Magistrate Judge Nandor J. Vadas in accordance with the dispute resolution and enforcement  
17 procedures set forth in Paragraphs 52 and 53 below to determine whether CDCR has articulated  
18 substantial justification by a preponderance of the evidence for alternative placement.

19 **D. THE RESTRICTIVE CUSTODY GENERAL POPULATION HOUSING UNIT.**

20 28. The RCGP is a Level IV 180-design facility commensurate with similarly designed  
21 high security general population facilities. Inmates shall be transferred to the RCGP if they have  
22 refused to complete Step Down Program components as described in Paragraph 22; if they have  
23 been found guilty of repeated STG violations while in the Step Down Program as described in  
24 Paragraph 23; if identified safety concerns prevent their release to General Population and the  
25 RCGP is deemed to be appropriate as described in Paragraph 27; or if they meet the eligibility for  
26 placement in the RCGP under the pilot program described in Paragraph 26. Programming for  
27 those inmates transferred to or retained in the RCGP will be designed to provide increased  
28 opportunities for positive social interaction with other prisoners and staff, including but not

1 limited to: Alternative Education Program and/or small group education opportunities; yard/out  
2 of cell time commensurate with Level IV GP in small group yards, in groups as determined by the  
3 Institution Classification Committee; access to religious services; support services job  
4 assignments for eligible inmates as they become available; and leisure time activity groups.  
5 Contact visiting shall be limited to immediate family and visitors who have been pre-approved in  
6 accordance with existing Title 15 visiting regulations, and shall occur on the schedule set forth in  
7 Attachment A. Other privileges provided in the RCGP are also set forth in Attachment A. CDCR  
8 policy is that inmate movement, programming, and contact visits within the RCGP shall not  
9 require the application of mechanical restraints; any application of restraints shall be in  
10 accordance with existing Title 15, section 3268.2. CDCR will provide Plaintiffs' counsel with the  
11 opportunity to tour the proposed RCGP facility and to meet and confer with Defendants regarding  
12 the functioning and conditions of the RCGP, prior to its implementation.

13 **E. ADMINISTRATIVE SHU STATUS.**

14 29. An inmate may be retained in the SHU and placed on Administrative SHU status after  
15 serving a determinate SHU sentence if it has been determined by the Departmental Review Board  
16 that the inmate's case factors are such that overwhelming evidence exists supporting an  
17 immediate threat to the security of the institution or the safety of others, and substantial  
18 justification has been articulated of the need for SHU placement. Inmates may also be placed on  
19 Administrative SHU status if they have a substantial disciplinary history consisting of no less  
20 than three SHU terms within the past five years and the Departmental Review Board articulates a  
21 substantial justification for the need for continued SHU placement due to the inmate's ongoing  
22 threat to safety and security of the institution and/or others, and that the inmate cannot be housed  
23 in a less restrictive environment. Inmates currently serving an Administrative SHU term may  
24 continue to be retained in the SHU based on the criteria set forth in this Paragraph. The  
25 Institution Classification Committee shall conduct classification reviews every 180 days in  
26 accordance with Title 15, section 3341.5. The Departmental Review Board shall annually assess  
27 the inmate's case factors and disciplinary behavior and shall articulate the basis for the need to  
28 continue to retain the inmate on Administrative SHU status. The inmate's privilege group shall

1 be set in a range similar to S-1 to S-5, which can be modified by the Institution Classification  
2 Committee during the inmate's classification review, if deemed appropriate. CDCR shall provide  
3 inmates placed on Administrative SHU status with enhanced out of cell recreation and  
4 programming of a combined total of 20 hours per week. It is CDCR's expectation that a small  
5 number of inmates will be retained in the SHU pursuant to this Paragraph. If Plaintiffs' counsel  
6 contends that CDCR has abused its discretion in making a housing decision under this Paragraph,  
7 that concern may be raised with Magistrate Judge Vadas in accordance with the dispute resolution  
8 and enforcement procedures set forth in Paragraphs 52 and 53 below to determine whether the  
9 Defendants' decision meets the evidentiary standards and criteria set forth in this Paragraph.

10 30. The initial decision to place an inmate on Administrative SHU status, as described in  
11 Paragraph 29, can only be made by the Departmental Review Board.

12 31. At each 180-day review, institutional staff shall identify all efforts made to work with  
13 each inmate on Administrative SHU status to move the inmate to a less restrictive environment as  
14 soon as case factors would allow.

15 **F. HOUSING ASSIGNMENT TO PELICAN BAY'S SHU.**

16 32. Notwithstanding Paragraph 29 above, CDCR shall not house any inmate within the  
17 SHU at Pelican Bay State Prison for more than 5 continuous years. Inmates housed in the Pelican  
18 Bay SHU requiring continued SHU placement beyond this limitation will be transferred from the  
19 Pelican Bay SHU to another SHU facility within CDCR, or to a 180-design facility at Pelican Bay.  
20 Inmates who have previously been housed in the Pelican Bay SHU for 5 continuous years can  
21 only be returned to the Pelican Bay SHU if that return has been specifically approved by the  
22 Departmental Review Board and at least 5 years have passed since the inmate was last transferred  
23 out of the Pelican Bay SHU.

24 33. Notwithstanding Paragraph 32 above, inmates may request in writing that they be  
25 housed in the Pelican Bay SHU in lieu of another SHU location, but such a request must be  
26 reviewed and approved by the Departmental Review Board. An inmate's request to remain  
27 housed in the Pelican Bay SHU shall be reviewed and documented by the Institution  
28 Classification Committee at each scheduled Committee hearing.

1           **G. CONFIDENTIAL INFORMATION.**

2           34. CDCR shall adhere to the standards for the consideration of and reliance on  
3 confidential information set forth in Title 15 of the California Code of Regulations, section 3321.  
4 To ensure that the confidential information used against inmates is accurate, CDCR shall develop  
5 and implement appropriate training for impacted staff members who make administrative  
6 determinations based on confidential information as part of their assigned duties, consistent with  
7 the general training provisions set forth in Paragraph 35. The training shall include procedures  
8 and requirements regarding the disclosure of information to inmates.

9           **H. TRAINING.**

10          35. CDCR shall adequately train all staff responsible for implementing and managing the  
11 policies and procedures set forth in this Agreement. Plaintiffs' counsel shall be provided an  
12 advanced copy of all such training materials with sufficient time to meet and confer with  
13 Defendants, prior to the implementation of the trainings. Plaintiffs are entitled to have an  
14 attorney attend training sessions on these modifications, no greater than 6 times per year.

15          **I. NEW REGULATIONS.**

16          36. CDCR shall promulgate regulations, policies and procedures governing the STG  
17 management and Step Down Program as set forth in this agreement. The pilot program described  
18 in Paragraph 26 will not be required to be promulgated in regulations, unless the pilot program is  
19 made permanent.

20          **J. DATA AND DOCUMENTS.**

21          37. For a period of twenty-four months following the Court's preliminary approval of this  
22 Agreement, CDCR will provide Plaintiffs' counsel data and documentation to be agreed upon,  
23 under the protective order in place in this matter, to monitor Defendants' compliance with the  
24 terms of this Agreement. No later than thirty days after the Court's preliminary approval of this  
25 Agreement, and again twelve months after the Court's preliminary approval, the parties shall  
26 meet and confer to determine the details of the data and documentation to be produced. That  
27 agreement and any disputes regarding data and document production, including modification of  
28 the agreement, shall be submitted to Magistrate Judge Vadas in accordance with the dispute

1 resolution and enforcement procedures set forth in Paragraphs 52 and 53 below. In addition,  
2 Magistrate Judge Vadas can request and order the production of any documentation or data he  
3 deems material to compliance with this Agreement or the resolution of any dispute contemplated  
4 by the terms of the Agreement. The parties agree, nevertheless, that data and documentation will  
5 include, but not be limited to, the following:

6 a. The number of validated STG I and STG II inmates as of the first of the month  
7 following preliminary approval. Subsequently, the number of all new STG I and STG II  
8 validations shall be provided on a quarterly basis for a period of nine months following the  
9 Court's preliminary approval of this Agreement, and shall be provided on a monthly basis  
10 thereafter until the termination of this case;

11 b. A list of the names of all inmates serving a SHU term for a SHU-eligible  
12 offense with a nexus to an STG as of the first of the month following preliminary approval.  
13 Subsequently, the names of all new inmates serving a SHU term for a SHU-eligible offense with  
14 a nexus to an STG shall be provided on a monthly basis;

15 c. A list of the names of all inmates reviewed pursuant to Paragraph 25 and the  
16 outcome of those placement reviews on a quarterly basis;

17 d. A list of the names of all inmates in each of the following programs: Step  
18 Down Program, RCGP, and placed on Administrative SHU status. This document shall be  
19 provided on a quarterly basis;

20 e. The total number of Rules Violation Reports issued to inmates in each of the  
21 following programs: RCGP, Step Down Program, and Administrative SHU status. This data  
22 shall be provided on a semi-annual basis;

23 f. The total number of Rules Violation Reports issued for assaults and batteries on  
24 staff and other inmates, riots, weapon possession, attempted murder, and murder committed by  
25 inmates in each of the following programs: RCGP, Step Down Program, and Administrative  
26 SHU status. This data shall be provided on a semi-annual basis;

27 g. A list of the names of inmates who have not been progressed to the next  
28 successive step in the Step Down Program during their 180-day Institution Classification

1 Committee review, and a list of the names of inmates who have been retained in the RCGP during  
2 their 180-day Institution Classification Committee review; these lists shall be provided on a semi-  
3 annual basis;

4 h. The following documents shall be produced on a quarterly basis regarding all  
5 inmates found guilty of a SHU-eligible offense with a nexus to an STG: (i) STG Unit  
6 Classification Committee validation determinations; and (ii) the decision of the hearing officer to  
7 find the inmate guilty of a SHU-eligible offense. Defendants also shall produce on a quarterly  
8 basis a randomly chosen representative sample of the documents relied upon for the validation  
9 determinations and RVR decisions for these inmates, including redacted confidential information.  
10 The number of representative samples shall be sufficient to demonstrate CDCR's practice and  
11 procedure, but shall be reasonable in amount such that compliance with this request is not overly  
12 burdensome;

13 i. Institution Classification Committee chronos documenting the decision to place  
14 an inmate into the RCGP, on a quarterly basis;

15 j. All Departmental Review Board classification chronos in which the decision is  
16 made to house an inmate in alternate placement, pursuant to Paragraph 27, due to a substantial  
17 threat to their personal safety. Should Plaintiffs' counsel dispute the determination made, or  
18 require more information to determine whether a dispute may exist, Plaintiffs may request and  
19 will receive a redacted copy of the documents relied upon by the Departmental Review Board;

20 k. All Departmental Review Board classification chronos in which an inmate is  
21 placed on Administrative SHU status, pursuant to Paragraph 29; all non-confidential documents  
22 relied upon for that placement determination; and, on a quarterly basis, a random representative  
23 sample of redacted confidential documents relied upon;

24 l. All Institution Classification Committee chronos reflecting the committee's  
25 decision to not progress an inmate to the next successive step in the Step Down Program, or to  
26 retain an inmate in the RCGP; this document shall be provided on a quarterly basis;

27  
28

1 m. For all inmates placed on Administrative SHU status, all 180-day Institution  
2 Classification Committee review chronos, and all annual Departmental Review Board review  
3 classification chronos;

4 n. A random, representative sample of Rules Violation Reports relied upon to  
5 deny an inmate progression through the Step Down Program, including redacted confidential  
6 sections, on a quarterly basis.

7 38. Any and all confidential information provided shall be produced in redacted form  
8 where necessary, be designated as “Attorneys’ Eyes Only” as defined in the protective order in  
9 this case, and shall be subject to the protective order. CDCR shall provide Magistrate Judge  
10 Vadas, upon request, unredacted copies for *in camera* review in order to resolve any disputes in  
11 accordance with Paragraphs 52 and 53, below.

12 39. Representative samples, as discussed in this Paragraph, shall be of sufficient size to  
13 allow a determination regarding CDCR’s pattern and practice, but shall be reasonable in amount  
14 such that compliance with the request is not overly burdensome. Any disputes regarding data and  
15 document production shall be submitted to Magistrate Judge Vadas in accordance with the  
16 dispute resolution and enforcement procedures set forth in Paragraphs 52 and 53 below.

17 **K. ATTORNEY-CLIENT COMMUNICATIONS.**

18 40. Plaintiffs’ counsel shall be entitled to meet and speak with all inmates covered by this  
19 agreement. Institutional staff shall facilitate Plaintiffs’ counsel’s requests for reasonable access to  
20 these individuals without undue delay, whether by telephone, mail, or personal visit. Defendants  
21 shall facilitate Plaintiffs’ counsel having telephone conference calls with Plaintiff class  
22 representatives as a group annually.

23 **IV. TERMINATION**

24 41. Plaintiffs shall have thirty days after the end of the twenty-four-month period to seek  
25 an extension, not to exceed twelve months, of this Agreement and the Court’s jurisdiction over  
26 this matter by presenting evidence that demonstrates by a preponderance of the evidence that  
27 current and ongoing systemic violations of the Eighth Amendment or the Due Process Clause of  
28 the Fourteenth Amendment of the United States Constitution exist as alleged in Plaintiffs’ Second

1 Amended Complaint or Supplemental Complaint or as a result of CDCR's reforms to its Step  
2 Down Program or the SHU policies contemplated by this Agreement. Defendants shall have an  
3 opportunity to respond to any such evidence presented to the Court and to present their own  
4 evidence. If Plaintiffs do not file a motion to extend court jurisdiction within the period noted  
5 above, or if the evidence presented fails to satisfy their burden of proof, this Agreement and the  
6 Court's jurisdiction over this matter shall automatically terminate, and the case shall be dismissed.

7 42. Brief or isolated constitutional violations shall not constitute an ongoing, systemic  
8 policy and practice that violate the Constitution, and shall not constitute grounds for continuing  
9 this Agreement or the Court's jurisdiction over this matter.

10 43. If the Court's jurisdiction and this Agreement are extended by Plaintiffs' motion, they  
11 shall both automatically terminate at the end of the extension period not to exceed 12 months and  
12 the case shall be dismissed unless Plaintiffs make the same showing described in Paragraph 41.  
13 Any successive extensions under this Paragraph shall not exceed twelve months in duration, and  
14 any extension shall automatically terminate if plaintiffs fail to make the requisite showing  
15 described in Paragraph 41.

16 44. To the extent that this Agreement and the Court's jurisdiction over this matter are  
17 extended beyond the initial twenty four-month period, CDCR's obligations and production of any  
18 agreed upon data and documentation to Plaintiffs' counsel will be extended for the same period.  
19 The role and duties of Magistrate Judge Vadas, as described in Paragraphs 48-50 and 52-53, shall  
20 be coextensive with that of the Agreement, and in no event shall those roles and duties extend  
21 beyond the termination of the Court's jurisdiction.

22 45. At any time after the initial twenty-four month period, Defendants and CDCR may  
23 seek termination of this case and the Court's jurisdiction under the Prison Litigation Reform Act,  
24 18 U.S.C. § 3626(b)(1)(A).

25 46. If there is a motion contesting Defendants' compliance with the terms of this  
26 Agreement pending at the time the case is otherwise to be terminated, the Court will retain limited  
27 jurisdiction to resolve the motion.  
28

1 **V. RELEASE**

2 47. It is the intention of the parties in signing this Agreement that upon completion of its  
3 terms it shall be effective as a full and final release from all claims for relief asserted in the  
4 Second Amended Complaint and the Supplemental Complaint. Nothing in this Agreement will  
5 affect the rights of Plaintiffs regarding legal claims that arise after the dismissal of this case.

6 **VI. DISPUTE RESOLUTION AND ENFORCEMENT**

7 **A. MAGISTRATE JUDGE NANDOR J.VADAS.**

8 48. To assist the parties in ensuring compliance with this Agreement, the parties agree  
9 that Magistrate Judge Vadas will assume the role and duties as set forth in Paragraphs 48-50 and  
10 52-53. These duties shall commence upon the Court's preliminary approval of this Agreement  
11 and shall continue in accordance with Paragraph 43.

12 49. Following the Court's preliminary approval of this Agreement, Plaintiffs' counsel,  
13 CDCR officials, Defendants' counsel, and Magistrate Judge Vadas shall meet on a monthly basis  
14 or at other mutually agreed-upon dates to discuss questions and concerns regarding CDCR's  
15 compliance with the Agreement. The parties and Magistrate Judge Vadas may determine that  
16 such meetings can occur on a less frequent basis, but no less than every three months. No later  
17 than one week prior to the meetings contemplated by this Paragraph, Plaintiffs' counsel shall  
18 circulate an agenda to Defendants and Magistrate Judge Vadas setting forth the items to be  
19 discussed. The meetings described in this Paragraph may be accomplished telephonically or by  
20 other means. Defendants shall meet with Plaintiffs' counsel and the four inmate representatives  
21 semiannually to discuss progress with implementation of this Agreement. No later than one week  
22 prior to these meetings, Defendants shall submit to Magistrate Judge Vadas and Plaintiffs'  
23 counsel a compliance report setting forth progress toward implementation.

24 50. Magistrate Judge Vadas may conduct institutional visits and meet with any inmate  
25 subject to or affected by the terms of this Agreement. Magistrate Judge Vadas may submit to the  
26 parties and the Court a written compliance and progress review assessing the matters under his  
27 purview according to this Agreement after 18 months, irrespective of any other motions or  
28 matters under Magistrate Judge Vadas's review. Among the matters addressed shall be a review

1 of the conditions and programming in the RCGP and whether they comport with the design and  
2 purpose of that unit as provided in this Agreement.

3 **B. COMPLIANCE.**

4 51. The parties shall agree on a mechanism by which CDCR shall promptly respond to  
5 concerns raised by Plaintiffs' counsel regarding individual class members.

6 52. If Plaintiffs contend that current and ongoing violations of the Eighth Amendment or  
7 the Due Process Clause of the Fourteenth Amendment of the United States Constitution exist on a  
8 systemic basis as alleged in the Second Amended Complaint or Supplemental Complaint or as a  
9 result of CDCR's reforms to its Step Down Program and SHU policies contemplated by this  
10 Agreement, Plaintiffs shall provide Defendants with a brief written description of the basis for  
11 that contention and may request that the parties meet and confer to resolve the issue. Defendants  
12 shall respond to Plaintiffs' contentions no later than 30 days after receipt of Plaintiffs' written  
13 description of the issue. If the parties are unable to resolve the issue informally, Plaintiffs may  
14 seek enforcement of the Agreement by seeking an order upon noticed motion before Magistrate  
15 Judge Vadas. Plaintiffs must demonstrate by a preponderance of the evidence that CDCR is in  
16 material breach of its obligations under this Agreement. Defendants shall have an opportunity to  
17 respond to any such evidence presented to Magistrate Judge Vadas and to present their own  
18 evidence in opposition to any enforcement motion. If Plaintiffs have demonstrated by a  
19 preponderance of the evidence a material noncompliance with these terms, then for the purposes  
20 of Plaintiffs' enforcement motion only, the parties agree that Plaintiffs will have also  
21 demonstrated a violation of a federal right and that Magistrate Judge Vadas may order  
22 enforcement consistent with the requirements of 18 U.S.C. § 3626(a)(1)(A). An order issued by  
23 Magistrate Judge Vadas under this Paragraph is subject to review under 28 U.S.C. § 636 (b)(1)(B).

24 53. If Plaintiffs contend that CDCR has not substantially complied with any other terms  
25 of this Agreement that do not amount to current, ongoing, systemic violations as alleged in the  
26 Second Amended Complaint or Supplemental Complaint of the Eighth Amendment or the Due  
27 Process Clause of the Fourteenth Amendment of the United States Constitution, they may seek  
28 enforcement by order of this Court. Plaintiffs shall provide Defendants with a brief written

1 description of the basis for that contention and may request that the parties meet and confer to  
2 resolve the issue. Defendants shall respond to Plaintiffs' contentions no later than 30 days after  
3 they receive Plaintiffs' written description of the issue. If the parties are unable to resolve the  
4 issue informally, Plaintiffs may seek enforcement of the Agreement by seeking an order upon  
5 noticed motion before Magistrate Judge Vadas. It shall be Plaintiffs' burden in making such a  
6 motion to demonstrate by a preponderance of the evidence that Defendants have not substantially  
7 complied with the terms of the Agreement. Defendants shall have an opportunity to respond to  
8 any such evidence presented to the Court and to present their own evidence in opposition to  
9 Plaintiffs' motion. If Plaintiffs satisfy their burden of proof by demonstrating substantial  
10 noncompliance with the Agreement's terms by a preponderance of the evidence, then Magistrate  
11 Judge Vadas may issue an order to achieve substantial compliance with the Agreement's terms.  
12 An order issued by Magistrate Judge Vadas under this Paragraph is subject to review under 28  
13 U.S.C. § 636(b)(1)(B).

14 **C. RETALIATION.**

15 54. Defendants shall not retaliate against any class representative, class member, or other  
16 prisoner due to their participation in any aspect of this litigation or the Agreement. Allegations of  
17 retaliation may be made to Magistrate Judge Vadas in accordance with the procedures set forth in  
18 Paragraph 53.

19 **VII. ATTORNEYS' FEES AND COSTS**

20 55. Defendants agree to pay Plaintiffs' counsel attorneys' fees and costs for work  
21 reasonably performed on this case, including monitoring CDCR's compliance with this  
22 Agreement and enforcing this Agreement, and for work to recover fees and costs, at the hourly  
23 rate set forth under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(d). Plaintiffs preserve  
24 all arguments for attorneys' fees and costs without limitation. The Prison Litigation Reform Act  
25 applies to all applications for attorneys' fees in this case. Plaintiffs shall have sixty days from the  
26 entry of a final order approving this Agreement to file their motion for attorneys' fees and costs  
27 for work reasonably performed before that date. Subject to the provisions under 42 U.S.C. §§  
28 1988 and 1997e, Plaintiffs' motion may request an award that includes their expert fees. On a

1 quarterly basis, Plaintiffs may file motions for reasonable attorneys' fees accrued in monitoring  
2 and enforcing CDCR's compliance with this Agreement.

3 56. The notice to the class members shall explain that Plaintiffs will file a motion for  
4 attorneys' fees following entry of a final order approving the Agreement.

5 **VIII. JOINT MOTION AND STAY OF PROCEEDINGS**

6 57. The parties will jointly request that the Court preliminarily approve this Agreement,  
7 conditionally certify a settlement class, require that notice of the proposed settlement be sent to  
8 the classes, provide for an objection period, and schedule a fairness hearing. Prior to or  
9 concurrent with the joint motion for preliminary approval, the parties will jointly request that the  
10 Court stay all other proceedings in this case pending resolution of the fairness hearing. Following  
11 the close of the objection period, the parties will jointly request that the Court enter a final order  
12 approving this Agreement, retaining jurisdiction to enforce it, and continuing the stay of the case  
13 pending the completion of the Agreement's terms.

14 58. If this Agreement is not approved by the Court, the parties shall be restored to their  
15 respective positions in the action as of the date on which this Agreement was executed by the  
16 parties, the terms and provisions of this Agreement shall have no force and effect, and shall not be  
17 used in this action or in any proceeding for any purpose, and the litigation of this action would  
18 resume as if there had been no settlement.

19 **IX. CONSTRUCTION OF AGREEMENT**

20 59. This Agreement reflects the entire agreement of the parties and supersedes any prior  
21 written or oral agreements between them. Any modification to the terms of this Agreement must  
22 be in writing and signed by a CDCR representative and attorneys for Plaintiffs and Defendants to  
23 be effective or enforceable.

24 60. This Agreement shall be governed and construed according to California law.

25 61. The parties waive any common-law or statutory rule of construction that ambiguity  
26 should be construed against the drafter of this Agreement, and agree that the language in all parts  
27 of this Agreement shall in all cases be construed as a whole, according to its fair meaning.  
28

