

1 Todd Ashker, C58191
2 Danny Troxell, B76578
3 P.O. Box #7500/DI-SHU
4 Crescent City, Ca. 95532
5 Plaintiffs, In pro-se #
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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND-DIVISION

CV 09

TODD ASHKER and DANNY TROXELL,
Plaintiffs,

vs,

ARNOLD SCHWARZENEGGER, MATHEW CATE,
RODERICK Q. HICKMAN, JEANNE WOODFORD,
JOE McGRATH, RICHARD KIRKLAND,
ROBERT HOREL, FRANCISCO JACQUEZ,
WILLIAM BARLOW, R. L. JOHNSON, D.W.
BRADBURY, J. MCKINNEY, ROBERT MARQUEZ,
R. RICE, JOHN HARRISON, B. THORNTON, G. H. WISE,
A. HERNANDEZ, ROBERT DOYLE, SUSAN
FISHER, ROBERT HARMON, HOLLIS
GILUNCHAM, D. SMITH, S. TUCKER, AND
DOES 1-20, inclusive,
Defendants.

CW
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FILED
DEC 9 2009
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CW
5796
CASE NO: (PR)

42 U.S.C. Section 1983
Civil Rights Complaint
And Demand For
Jury Trial

E-filing

CW-5796-CW

I.

JURISDICTION & VENUE

1. This action is brought pursuant to 42 U.S.C. Section 1983 to redress the deprivations, under color of state law, of rights secured by the Constitution of the United States. Jurisdiction is based upon 28 USC Sections 1331 and 1343. Plaintiffs seek damages, as well as declaratory relief [pursuant to 28 USC Sections 2201 and 2202].

2. Venue is proper under 28 USC Section 1391(b)(2) because the unlawful acts and omissions alleged occurred primarily within the Northern District of California, in the County of Del Norte. Plaintiffs respectfully request a jury trial on these allegations.

II.

PARTIES

3. Plaintiffs Todd Ashker and Danny Troxell are both serving life terms, with the possibility of parole, who have been confined at Pelican Bay State Prison (P BSP) and housed within the Security Housing Unit (SHU) during the events described in this Complaint.

4. The Defendants are state officials responsible for the policies, practices and procedures by which California operates the prison system, including inmate care and wellbeing, classification(s) and rehabilitative programming opportunities, as well as life parole policies, practices and proceedings. Defendant Arnold Schwarzenegger is Governor of the State of California and Chief Executive of The State Government. Mathew Cate is the Secretary of the California Dept.

1 of Corrections and Rehabilitation (CDCR). Defendants Rodenick Q. Hickman
 2 and Jeanne Woodford are former Secretary(s)/Directors of CDCR. Defendants
 3 Joe McGrath, Richard Kirkland, and Robert Horel are each former P.B.S.P. -
 4 Wardens/SHU Administrators. Defendant Francisco Jacquez is current acting
 5 PBSP-Warden. William Barlow is PBSP-Litigation Coordinator. Defendant R.L.
 6 Johnson is PBSP-D-SHU Captain. Defendant D.W. Bradbury is PBSP-D-SHU Assoc.
 7 Warden. Defendants J. McKinney, Robert Marquez, R. Rice, John Harrison, and
 8 B. Thornton, ^{G.H. Wise} are each current/former gang investigators for (CDCR-PBSP). Def.
 9 A. Hernandez is a corrections officer (C.O.), at PBSP-DI-SHU.
 10 Defendant Robert Doyle is current chairman of the Board of Parole Hearings
 11 [B.P.H.]. Defendants Susan Fisher, Robert Harmon, Hollis Gillingham, Dennis Smith,
 12 and Steven Tucker, are current/former [BPH] Commissioners.
 13 Defendants' Does 1-20, are each responsible in some manner for the U.S.
 14 Constitutional violations and damages to plaintiffs' alleged herein. Their true
 15 names and identities and capacities are presently unknown, and plaintiffs
 16 will seek leave to amend this complaint to add their true names once they are
 17 ascertained.

19 5.) Defendants Cate, Hickman, Woodford, McGrath, Kirkland, Horel, Jacquez,
 20 Barlow, Johnson, Bradbury, McKinney, Marquez, Rice, Harrison, Thornton, ^{Wise} and
 21 Hernandez, and Does 1-20, are each sued individually and in his or her
 22 official capacity [for damages and injunctive relief].

24 6.) Defendants Schwarzenegger, Doyle, Fisher, Harmon, Gillingham, Smith, and
 25 Tucker, are each sued in his or her official capacity [for declaratory and injunctive
 26 relief].

27 7.) Each and all of the Defendants have acted, and those still employed continue to
 28 act, under the color of authority and state law at all times relevant to this complaint.

III. PRELIMINARY STATEMENT & INTRODUCTION OF FACTS

8.> This is a 42 U.S.C. Section 1983 Civil Rights action filed by Todd Ashker and Danny Troxell, who are state prisoners serving "term to life" sentences in the California Department of Corrections and Rehab. [hereafter, the CDCR], at Pelican Bay State Prison's Security Housing Unit [hereafter, the PBSP-SHU]. Plaintiffs are challenging conditions of their confinement [seeking damages, injunctive, and declaratory relief], and policies and practices of the Board of Parole Hearings [hereafter, the BPH] [seeking injunctive and declaratory relief], alleging the Defendants have violated their rights under the First, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

9.> These claims were originally dismissed without prejudice for failure to fully exhaust all available administrative remedies in *Ashker, Troxell v. Schwarzenegger, et al.*, U.S.D.C. - N.D. Cal., No. 04-1967CW

10. Many of these claims were refiled on Aug. 11, 2005, based on the plaintiffs' belief that the claims had been fully exhausted per the law in effect at that time [e.g., *Ngo v. Woodford*, 403 F.3d 620, 626 (9th Cir. 2005)]; On June 14, 2007, the Court dismissed the claims without prejudice again, for failure to fully exhaust administrative remedies as to the Fifth, Eighth, and most of the Fourteenth Amendment claims [per *Woodford v. Ngo*, 548 U.S. 81, 88 (2006)]; and on March 25, 2009, the Court granted defendants summary judgement on remaining claims [re: Ashker's due process on his 2001, 2004 (SHU) retention, and 2003 parole hearing issues] [see: *Ashker, Troxell v. Schwarzenegger*, #05-3286CW]

11.> Plaintiffs have fully exhausted all of their available

1 administrative remedies, as to all claims presented herein, via use of
 2 the CDCR - 602 Appeals process; and fact that there are no available
 3 administrative remedies to challenge the (BPH) issues [per 2004-
 4 repeal], thus permitting this action to now proceed on the merits.

5 12.) This action arises from the defendants policies, practices, acts
 6 and omissions, which have caused plaintiffs to be wrongly retained
 7 in (SHU) indefinitely, for more than (23) years now, based on alleged
 8 prison gang activity and association; and the (BPH) related, unwritten
 9 "no parole policy, and issuance of multi-year deferrals", based on CCR-
 10 gang classification and related (SHU) status.

11 13.) This action includes claims arising from defendants policies,
 12 practices, acts and omissions, regarding First amendment access to the
 13 courts, and free speech issues [and denial of books], as follows:

14 (a) Legal Mail [Failure to process incoming and outgoing legal-
 15 mail; opening incoming legal mail outside of plaintiffs'
 16 presense; failure to mail and deliver plaintiffs incoming and
 17 outgoing legal-mail. All of which harmed plaintiffs civil action(s),
 18 and has inhibited, chilled, and interfered with their confidential
 19 communications with their attorneys]

20 (b) Legal-Mail from approved inmate witnesses [confiscating legal
 21 mail responses from authorized inmate witnesses in order to
 22 interfere with and harm plaintiffs civil-actions^{#05-3286 CW, and}
 23 which did cause harm, and has inhibited, chilled, and interfered
 24 with their communications with inmate witnesses; and refusal
 25 to permit more than one contact with inmate witnesses, or the
 26 return of said witnesses legal document exhibits, copy of declaration,
 27 <5>

or any other reason, while litigating the entire case [an inmate litigating an active case, pro-se, and authorized to conduct discovery, can request approval to contact an inmate witness on a "one time only" basis. After this he is not permitted to send the witness a copy of his declaration, nor can he return any of the witnesses exhibits. No follow ups are allowed], causing harm to cases, and inhibiting, chilling, and interfering with their litigation(s) and communications with inmate witnesses]

(C) Denial of Books re: written adulterotica [containing no pictures]

IV FACTS

Facts Pertaining to Plaintiffs' Placement and Indefinite Retention in the Security Housing Unit

(a) General History & Applicable Rules and Regulations

14.) As detailed below, plaintiffs have been continuously confined in (SHU) for more than (23-24) years.

15.) Ashker, has been classified as an A.B. member since 1988, based on unsubstantiated allegations from confidential inmate informants' claims to prison staff. He denies this gang affiliation.

16.) Ashker, has been subject to indefinite (SHU) confinement since January 1992, based on the CDER - GANG LABEL; he has never been found guilty of committing an illegal gang-related act.

17.) Troxell, has been classified as an A.B. member since 1985, based on unsubstantiated allegations from confidential inmate informants' claims to prison staff. He denies this gang affiliation.

18.) Troxell, has been subject to indefinite (SHU) confinement since October 1985, based on the CDCR-gang label; he has never been found guilty of committing an illegal gang-related act.

19.) Between October 1985 and June 1999, CDCR-did not have any legally promulgated rules and regulations pertaining to indefinite (SHU) confinement.

20.) Between Oct. 1985 and June 1999, inmates on indefinite (SHU) status, based on CDCR's gang-classification, only left (SHU) via parole, death, or debriefing.

21.) "Debriefing" out of (SHU) requires an inmate to provide prison staff with "sufficient verifiable information about other gang affiliates, so they will no longer accept him back" [per. Defendants' policy]; this amounts to the inmate being a known informant subject to serious danger [defendants use this as the reason for not formally disclosing the informant's identity, and actual allegations, as noted in Lira v. Cate, USDC-ND Cal #00-0905 SI, Findings of Fact, p 33, fn. 27, Order of Sept. 30, 2009; yet "successful debriefing" requires the inmate to become a known informant

22.) On June 25, 1999, a Sacramento Superior Court, held that the CDCR-gang validation, and related placement, retention, and manner of obtaining release from (SHU) [re: alleged gang affiliates], were underground rules, not legally promulgated per. Admin. Proc. Act [A.P.A.], and thereby unenforceable [illegal].

23.) In response, the CDCR enacted several rules into CCR-Title 15 [per. A.P.A. requirements, effective Aug. 19-30, 1999]; they are vague, arbitrary, and contradictory [esp. taken in context to applicable statutes, and related rules], examples being:

① CCR-Title 15 §§ 3000 [defining "Gang"], and 3023 [defining "Gang Activity"], when taken together in context, define "gang activity" as, ... when one ..., knowingly commits acts of misconduct classified "serious" per. CCR-Title 15 § 3315 [unlawful acts], on behalf of a gang. This is supported by the fact-these (2) Tit. 15 sections, are per. to Cal. Penal Code Section 186.22

[re: sanctionable gang activity, and which the Cal. Supreme Court has interpreted as requiring conviction for felonious gang-related act(s); not for innocuous association activity.

See, e.g., People v. Castaneda (2000) 23 Cal. 4th 743, 749]

And, in settling Castillo v. Alameida, USDC - N.D. Cal #94-2847, in 2003-2004, defendants Hickman and Woodford stipulated to this interpretation [based on information and belief]

③ CCR-Title 15 §§ 3312 (A)(3) and 3315 (A)(2) mandate that any serious misconduct constituting a violation of CDCR rules, or law, which is supported by credible evidence, ... "shall be reported on a CDC-115 Rule Violation Report [RVR]". This includes "conspiracy(s)".

④ CCR-Title 15 § 3023 "Gang Activity" definition incorporated subsection (b) "Gangs, as defined in section 3000, present a serious threat to the safety and security of California prisons," via legal promulgation [filed 8-12-99] This has been the pretext used to justify placement, and indefinite (SHU) retention, of a few hundred inmates classified as active prison gang members and associates [beginning in October 1985, with Troxell and a few others. While allowing others out of (SHU) to the Gen. Prison Population]

⑤ Initially, the selective segregation of certain inmates classified as gang affiliates was per. CCR Title 15 § 3335(a) [i.e., 'the inmates' presence in general population presents an immediate threat to safety and security']. Beginning the end of (1986) CDCR- claimed all inmates classified as prison gang affiliates constituted "a severe threat to

safety and security," mandating placement and retention in (SHU) until they paroled, debriefed, or died. However, this has always been applied selectively, and currently there are tens of thousands of active gang affiliates throughout the CCR-system, in general prison population [based on info, and belief eg., statements in the Madrid case; statements by CCR staff during legislative hearings and the media; and CCR TITLE 15 § 3378(d)]

⑤ CCR Title 15 § 3341.5 (c)(2)(1)(2) were legally promulgated on (8-12-99) and specify, "an inmate on indeterminate shu term shall be reviewed by a classification committee at least every 180 days for consideration of release to a general inmate population" [3341.5 (c)(2)(1)]; and, "Except as provided at section 3335(a), section 3378(d) and subsection (c)(5) [re: active gang affiliates in gen. population, and dropouts], a validated prison gang affiliate is deemed a threat to safety and security and will be placed in (SHU) for an indeterminate term" [3341.5 (c)(2)(2)] Again, this is vague and contradictory as shown by:

1. The 180 Committee reviews are a [SHAM] because they have NO AUTHORITY to release the inmate from (SHU) unless he has previously, successfully debriefed, or deemed inactive, after (6) years of zero documented gang-activity, and per. LEIU authorization [3341.5 (c)(4)-(5), 3378(e)] [as noted by Court in Lira, supra, findings of fact & conclusions of Law, p. 42, re: ICC reviews are not meaningful]

2. On Aug. 30, 1999, CCR legally promulgated another avenue for an inmate serving an indefinite (SHU) term to gain release to general prison population called "inactive status", and applied differently to inmates classified as active gang affiliates in Gen. Prison Pop., and those in (SHU). . . inmates in gen. population can meet "inactive status" going (2) years without any documented gang-activity;

whereas, (SHU) inmates are required to have (6) years of zero documented gang-activity [~~Compare~~ CCR Title 15 § 3378(d) and (e)]

Thus, there are thousands of inmates classified as active gang-affiliates who are not in (SHU) per. 3341.5(c)(2)(2), who are treated differently re: "inactive status" too [per. 3378(d); and based on info and belief. See above page # 8-9] Also, def's use innocuous activity among SHU inmates own race to claim active [yet cross race activity is not]

(F) CCR-Title 15 § 3341.5 (c)(3) specifies an inmate cannot be retained in (SHU) beyond (11) months, unless a classification committee determines retention beyond this time period is required for one of the following reasons "... (B) Release would severely endanger the lives of staff, inmates, or the security of the institution,..." This is the reason given at all of plaintiffs 180 day reviews - based on the "gang-label" - for the past (24) years. And it is applied arbitrarily, as summarized in (E) above; the criteria for being an active gang affiliate in general prison population is not stated in CCR Title 15, or anywhere else, that plaintiffs have heard of.

(G) As referenced above, on August 30, 1999, the CDCR legally promulgated an alternative avenue for inmates serving indefinite (SHU) terms for gang validation, called "inactive gang status". For a (SHU) inmate, this requires the inmate to have gone (6) years, without any documented gang-activity; and, the LEU's recommendation to the committee for (SHU) release [per. CCR-Title 15 §§ 3378(e)(f); and 3341.5(e)(5)(6)]

Defendants' definition of sanctionable "gang-activity" meriting denial of inactive status is ... unsubstantiated allegations re: illegal gang-related activity from confidential informants [supported by fact that such allegations result in zero CDC-115 RVRs [see above (B)]; and, innocuous activity [in spite of being violative of law, see above (A) for examples]

(H) The alternative to debriefing one's way out of (SHU), referred to as "inactive status", is also a SHAM; it is applied arbitrarily [as summarized in (E) above], and used and abused by the defendants in their efforts to coerce inmates to become informants [e.g., releasing a small number of long term SHU inmates to Gen. Population for a brief time, then telling them, "...your names come up again, you can debrief now, and thereby stay in G.P., or go back to SHU for at least (6) more years". Notably, this "alternative" is not available to plaintiffs. See Below paras #64 A-C]

(b) General Facts Re: CDCR-PBSP Use of Informants (Debriefing)

24.) Once an inmate is validated as a prison gang affiliate, it is virtually impossible to undo a wrongful validation. This is because subsequent institutional classification committee reviews (ICC), and the CDCR-602 Appeals process, are both perfunctory - procedural reviews [zero substantive review is done. e.g. Lira, supra, Order, at pp. 40-41, per. Def. McGrath's trial testimony]

25.) That Plaintiffs' validations are based on statements from confidential inmate informant-debriefers [and "innocuous activity," staff claim was gang activity] [innocent assoc. with their race is "gang-activity"; cross-race is not]

26.) Defendants claim they have to keep the identities, and specific details of the statements of confidential informant-debriefers secret, because regardless of how many years have passed, divulging this information will place the informant, and his family members at risk of retaliation [e.g. Lira, supra, Order, p. 33 Fn. 27]

27.) Not knowing one's accuser, or the specific allegations, make it virtually impossible to defend against.

28.) Defendants refuse to formally divulge "confidential inmate informants' identities [and statements] due to safety issues [Id. para #21, and #26]; however, they require the "debriefers" to provide information about the gang and affiliates, to the extent that it has an adverse impact on them, so they will not accept him back [per. policy - practice, admitted by Def. Marquez, and other CDCR-staff]

29.) Thus, Defendants require the "debriefers" to become a "known informant" against other gang affiliates [knowing this puts the inmate and his family in serious danger - potentially for life]; while at the same time, refusing to formally disclose the identity, and specific allegations, made [per. professed concern about safety] thus prejudicing plaintiffs' ability to defend themselves.

30.) Defendants are not able to protect inmate informants, or their families, after they have debriefed out of (SHU); and they don't bother to keep track of the number of "debriefers", and their families, who have been attacked and threatened in retaliation [and there have been many; based on info. and belief; e.g. incident reports, publicized accounts]

31.) In addition to the above problems with the "debriefing" requirement for (SHU) release [and use of debriefers' stories to continue to keep others in (SHU) indefinitely] has even more problems, examples being:

Ⓐ The Defendants are aware that the restrictive (SHU) conditions have been the cause for many inmates to become so desperate, that they will, and have, agreed to become informants [debriefers], willing to say anything, about anyone [and whose debriefings are "coached along" by gang staff; and whose stories are largely based on rumors, innuendo, imaginative elaborations - provided initially by CDCR-staff, other inmates, published legal cases, news and magazine

articles, and television programs [based on info., belief and common knowledge. e.g., Nov. 2002 News program, with plts. photos, & alleged conspiracies]

⑥ Inmate informants are notoriously unreliable, manipulators and opportunists [based on info. and belief, and common knowledge. e.g., published legal cases, numerous studies, and the demonstration by notorious Los Angeles Jail informant Leslie Vernon White, on television "60 Minutes" News program in 1988]

⑦ CDCR-PBSP Defendants, and their agents, assist debriefer-informants [with personal-knowledge/credibility problems, due to isolative nature of PBSP-situ], by strategic placement near inmate-targets [e.g. those up for inactive review] [i.e., in adjacent holding-cells at clinics, transport bus, visit room; or shifting them to different cell block cells], so the informant has the movement sheets, and housing records, to support a claim that... 'so and so told me this personally' [based on info., belief, and common knowledge, and witnessing such antics countless times over last (20) years]

⑧ CDCR-PBSP Defendants, and their agents, routinely claim that confidential inmate informant / debriefs, meet the criteria for reliability [per. CCR-Title 15 § 3321], when in fact their reliability with respect to claims about [a specific inmates activity] was not even tested [and this has occurred many times, with "sources" used against Plaintiffs, over the course of the past (25+) years, to keep them in (situ) indefinitely. Based on info., belief, and personal experience]

⑨ CDCR-PBSP Defendants, and their agents, give no credence to plaintiffs points, directly denying, and disputing, the scanty description of these informant allegations; nor do they substantively subject said informant claims to further, in depth investigation based on plaintiffs

specific points to evidence disputing the general-scanty disclosures.
 [Based on info., belief, and personal experience; and Det. McGrath's
 testimony in the Lira trial. See: Lira, supra, Order pp. 40-41 examples]

[C.] General Facts RE: Plaintiff Todd Ashker

32.) Plaintiff Ashker has been incarcerated in the CDCR prison system since January 1985, per. six year term imposed after pleading guilty to burglary.

33.) He has been housed in various (SHU) units since August 1986; this (SHU) placement was originally for determinate terms, after being found guilty of violating rules.

34.) Between 1985 and 1987, Ashker was not provided with any notice, of any kind, that "association" with prison gang affiliates would result in permanent, indefinite (SHU) status, until the inmate agreed to become an informant [via debriefing]

35.) On or about May 22, 1987, Ashker attended a committee hearing to review his (SHU) status. The committee noted that he had no gang-affiliations; and a good candidate for release to General Prison Population when his (SHU) term was up in July 1987.

36.) On May 25, 1987, C.S.P.-S.C. [AKA NEW FOLSOM] SHU- prison staff charged Ashker with the murder of inmate Murphy, occurring in (SHU) that day. In March 1988, he was arraigned on a first degree felony murder charge.

37.) In March 1990, trial commenced on the First degree felony murder with use of a knife. And (2) prior felony convictions [Facing 36 yr. to life]

38.) The prosecutor presented the case as ... "Ashker running into Murphy's cell and stabbing him to death, with a knife he'd gotten in there

1 somehow, ... with assistance from Murphy's cell-mate Tanner "[who
2 was not charged because, ... the prosecutors' office did not believe he
3 personally stabbed Murphy]; and this was done, ... For whatever
4 reason" [informing the court during the trial, that ... he "didn't know for
5 sure what the motive may have been."]

6 39.) Ashker maintains that Murphy's death was not intentional, and
7 occurred while he was defending himself from Murphy, ... who had
8 ambushed Ashker with the knife.

9
10 40.) In April 1990, the jury acquitted him of first degree murder, and
11 guilty of second degree murder, with use of a knife. The court found (1)
12 of the (2) prior felonies true, and imposed a total term of 21 yr. to life.

13 41.) On May 2, 1990, C.S.P.-S.C., transferred him to P.B.S.P.-SHU,
14 where he has remained ever since [except for a few temporary transfers
15 to C.S.P.-S.C., and San Quentin, for medical, and civil court proceedings].

17 Ashker's Initial Gang Validation

18
19 42.) Ashker was originally validated as a member of the Aryan-
20 Brotherhood prison gang on May 23, 1988. The basis for this validation
21 was the submission of (12) confidential memos, from Gang Investigator
22 Rosario at CSP-S.C., to Sacramento COCR-SSU. [on March 22, 1988]

23
24 43.) This original validation was done without giving Ashker any
25 notice of the allegations against him; nor was he interviewed, or given
26 any opportunity to dispute the allegations.

27 44.) Ashker was not even notified that he had been validated until
28 months later [possibly not until late 1988 early 1989], when he was given a
copy of a chrono, stating he was an A.B. member, without reference to

1 evidentiary basis [in 1989, he denied being an A.B. affiliate in 602 Appeal,
2 and throughout court proceedings on the Murphy case; denies it to this day].

3 45.) As stated above [para #33], on (5.22.87) CSP-SC Administrators noted
4 Ashker had no gang affiliations. His position is that the original validat-
5 ion was without procedural due process [and he has been denied subst-
6 antive due process ever since], and came about as follows.

7
8 ① On 5-25-87, Ashker was charged with the murder of inmate
9 Murphy, by CSP-SC prison staff. Murphy was classified by CCR as a
10 long time A.B. member, and rumors immediately circulated that
11 his death was an "A.B. hit,"

12
13 ② On August 6, 1987, CSP-SC, B-facility (SHU) opened the renovated
14 B1-A section [called Bedrock]; wherein all metal had been removed
15 from the (24) cells, the bunks replaced with cement slabs, Inmates
16 were only allowed a small amount of legal material and (1) book - no other
17 property or canteen was allowed. Ashker was placed there that day,
18 behind the Murphy incident. There were (15) other white inmates placed
19 there that day too, most behind A.B. classification.

20
21 ③ In March 1988, Ashker was arraigned in Sacramento Co. Muni. Ct.
22 on the Murphy case. He proceeded pro-per up to the point of the
23 March 1990 trial. It was during discovery that he learned [CCR-
24 theory] was that A.B. leader Norris, had ordered Ashker to kill Murphy,
25 based on his belief Murphy had turned informant. This theory was
26 bolstered by confidential inmate informant Steve Larson's, June 1987
27 storey, and confidential inmate informant Robert Rowland's Nov. 1987
28 storey [both of whom were seeking a way out of CSP-SC-SHU; and in Rowland's
 <16>

case, out of Bedrock and prison, via protective custody - which requires informant status]

⑤ The (2) informants claimed Ashker and Tanner killed Murphy per. order from Norris [an A.B. hit]. This was the only information given to Ashker [re: A.B. affiliation link, between 1987 - 1994 [45]].

⑥ The trial began in March 1990, the prosecutor declared that the only evidence to support [CDCR - A.B. hit theory] were inmate informants - who he was not using because he did not find them credible. And he never argued, or put on any affirmative evidence of an "A.B. hit" [informing the court, and jury, he didn't know what the motive was]. Norris testified to beginning the "debriefing" process in Jan. 1990, and passing a lie detector test - including questions re: Murphy case [i.e. he gave no order, and had no ill will against Murphy] and that he sent Murphy the knife, he requested to use on Ashker, over a personal dispute.

⑦ Ashker's (SHU) term for rule violations was set to expire in (1992), and in January 1992, PBSP - Committee, placed him on "indefinite (SHU) status", based on the A.B. Label [the basis of which was not disclosed] Ashker did a 602 Appeal, denying gang-affiliation, and requested release to a G.P. to be able to program. This was denied at all levels of review.

⑧ In response to Madrid, the gang-validations of all (PBSP - SHU) inmates were reviewed in 1995. In 1994 - 1995, Ashker received copies of the 1030 - confidential disclosure forms [re: 1988 validation], a few of which were specific enough to challenge via 602 Appeals, to no

(17)

avail [not surprising, considering such receive no "substantive" type of review, per Lira Order, supra] And the SSU's review resulted in rejection of (4) of the (12) 1988 documents [per Madrid Court directive i.e. cumulative] and "re-validated" Ashker, again, without opportunity to be heard.

46.) Ashker has rarely attended any of the 180 day committee reviews of his indefinite (SHU) status, because they have no authority to change his status to G.P., absent his successful debriefing [before hand]; per what administrators told him when he arrived at PBSP-SHU in 1990 [the only way you'll leave is to "parole, die, or debrief"] and the Title 15 § 3341.5; and comm. chronos [pre-printed forms, that all state the same thing]

47.) The committees, C.S.R.'s reviews, and 602 Appeals process, do not provide any substantive due process re: gang-validation challenges, per Lira Court trial testimonies of Defendant McGrath, and others, supra, and exemplified by the following:

Ⓐ In 1999 Ashker received a chrono by CSR Morton, upholding the (ICC) recommendation for continued indefinite (SHU) status, based on 1995 re-validation [per (8) documents from 1988], on the basis of... continuing association and participation in criminal conspiracies that threaten safety-security.

Ⓑ Ashker filed a detailed 602 Appeal, challenging this determination, and asking that evidence of his personal involvement in any criminal conspiracies be produced [pointing out he'd received no 115 RVR's for any conspiracies], and disputing the items used in 1988, wherein conf. inmate informants claimed he had committed an illegal act, of

which there were the following [with 602 Appeal response to each]

1. Claimed Ashker stabbed inmate in early 1986, on Folsom G.P. ["to make bones for A.B."]; informant made claim around April 1986 - yet, Ashker was on G.P. until August 1986, and has never been charged [this was not even disclosed to him until 1994 or '95] [Ashker's points ignored]
2. [Claims] Ashker killed Murphy for A.B.; Ashker submitted some of the trial transcripts, wherein the prosecutor stated he was not using them due to credibility problems [response: "CDCR criteria is different than prosecutors"]
3. Claimed Ashker assigned to hit inmate Estem; however, he never touched Estem [Ashker's points ignored]
4. Ashker requested each source to be investigated re: credibility issues) [this was denied]

each level denied this appeal, without any substantive review [per. Lira, supra; and responses denying Ashker's request for such review]

Ashker's Re-Validations & Denial of "Inactive Status"

48.) On August 30, 1999 the CDCR legally promulgated the alternate avenue for validated gang affiliates to gain their release from (SHU), referred to as "inactive status" [see above paras #23 [E-H] describing this change in policy, how it works, and allegations that it is applied arbitrarily, and is a sham]

49.) As of 1999, Ashker had well over the required (6) years in, without documented allegations of gang-activity [the last ones being the 1988-submissions referenced above]; however, he was not reviewed until 2001.

50.) Ashker first became aware of the "inactive status" policy in (2001), and when his counselor informed him he was scheduled for (ICE) committee review in July 2001, he submitted a written request to be put up for "inactive status" [while clarifying he was never "active" because he was never affiliated in the first place]

51.) An "investigation" into Ashker's alleged gang-status was conducted by Defendant G.H. Wise on Aug. 1, 2001.

52.) On Aug. 2, 2001, Wise issued a CDC-128B chrono, stating Ashker did not meet inactive criteria based on (4) confidential memorandum indicating "gang activity" in February and June 2001; and Ashker could request another review in June 2007.

53.) Ashker received Wise's [8-2-01] chrono on Aug. 24, 2001, at the same time, his counselor gave him copies of the CDC-1030 Confidential Disclosure Forms, referenced in Wise's chrono. This was the first time Ashker was aware of the (4) 2001 allegations.

54.) Ashker was not notified, nor given opportunity to respond to the (4) (2001) allegations prior to Wise's decision; nor did Wise conduct any sort of substantive investigation into the allegations [how could he, without giving Ashker a chance to respond]

55.) The confidential memos dated Feb. 22, 2001, and June 29, 2001, alleged that "an inmate proven reliable" had claimed "Ashker sent several coded messages to the mainline ... for non-validated associates of the A.B., to continue to kill blacks; and Ashker and other AB members in (SHU) were regularly referred to as leaders in the war with the Blacks" [2.22.01]. And, "Ashker and other AB affiliates were conspiring to setup a white inmate to be killed in Feb. 2000" [6.29.01]

56.) Based on information and belief, the above referenced inmate

informants' "murder conspiracy" claims, are merely unsupported-allegations by inmates seeking transfers out of (PBSP); if there was any reliable evidence to support these allegations, CCR Title 15 §§ 3312 & 3315, mandate issuance of CDC-115 Rule Violations, and referral to the District Attorney, neither of which occurred [notably, if there was reliable evidence supporting such allegations - the failure to issue the mandated (115 RVRs) is a due process violation too]

57.) On Sept. 3, 2001, Ashker submitted 602 Appeal (#001-02335, wherein he specifically addressed, and pointed out easy-to-verify facts to support his denial(s). He also pointed out the fact that he was never issued any CDC-115 R.V.R.s, charging him with anything - which is mandatory, if there was any reliable evidence to support such serious allegations.

58.) On Sept. 26, 2001, Def. McGrath, denied the Appeal at Warden's Level, merely rubber stamping Wise's (8-2-01) decision, without any sort of substantive investigation being conducted, based on Ashker's response, and points disputing the allegations [based on info. and belief, i.e., McGrath's testimony admitting that none of the 602 Appeals of validation issues receive substantive review - investigation(s), during Lira trial. per. Lira, supra, Order p 40-42]

59.) Ashker received the Warden's denial on or about Oct. 2, 2001, and sent it to Director Level on Oct. 14, 2001. Director Level denied the appeal on Feb. 21, 2002, without any substantive type review - investigation [Id. Lira, supra, Order]

60.) During litigation of Ashker, Troxell v. Schwarzenegger, et al (#005-3286 CW, Defendants submitted another CDC-128B Chrono, Authored by Wise, dated Dec. 31, 2001, claiming Wise conducted an investigation into Ashker's gang-status on Dec. 28, 2001, and located (6) conf. memos

1 dated June - August 2001, indicating continued gang activity.

2 61.) Defendant Wise (12-31-01) chrono does not state what prompted the
3 alleged (12-28-01) "investigation" after conducting the (8-1-01) review -
4 investigation [wherein Wise states, 'Ashker's next review would not be
5 until 2007']; Wise also claims 'Ashker refused to participate in an
6 interview' on 12-28-01.

7 62.) Ashker has no recollecting, and therefore denies, ever being asked
8 if he would go for a gang status interview on 12-28-01; he denies ever
9 receiving the (12-31-01) CDC-128B chrono [until receipt of def's 2008 MSJ]
10 And Ashker did not receive the 1030-Conf. Disclosures ref'd in Wise'
11 12-31-01 chrono until [3-21-02], At which point he challenged them
12 via 602 Appeal(s), which were denied without substantive review
13 [based on Lira, supra, order]

14 63.) On July 8, 2003, the CDCR - LEIU Defendants revalidated Ashker,
15 as an active AB member, based on the 1988, 1995, and 2001, reviews. This
16 was done without notice, or opportunity to be heard; and was not based
17 on any substantive investigative process [Id., based on Lira, supra; and
18 lack of opportunity to respond - no notice]

19 64.) Ashker believes the "inactive status" avenue for release from (SHU) is
20 a sham [as alleged in above para #23 H, and based on examples of what has
21 happened to PBSP-SHU inmates Paul Redd, Robert Tanner, and Brad Hart],
22 and that his only avenue for (SHU) release [and eventual parole] is via
23 informant status, as supported by:

24 ④ On Feb. 23, 2004, he submitted a Group Appeal, #C04-00566, on behalf
25 of himself and Troxell [per. CCR Tit 15 § 3084.2(F)], requesting program-
26 rehabilitation opportunities in (SHU), in order to comply with (BPH)
27 parole board recommendations.
28

⑧ On April 27, 2004, Def. McGrath denied the appeal at Warden's level, stating, "... you are considered a member of a terrorist organization, and until you fully cooperate with the authorities to help bring down the gang - you will remain in (SHU) without opportunities to program; and, should never be paroled either." [There was no mention of "inactive status" alternative]

© On July 22, 2004, Def. Woodford denied the appeal at Director's level, stating, "... the Warden's response, represents the CDCR-position." All of Ashker, Troxell's points of dispute were ignored.

65.) On Sept. 15, 2004, Ashker submitted 602 Appeal # C04-02600, wherein he challenged CDCR-Defendants' "inactive gang" status criteria; pointing out that the defendants were denying "inactive status" based on hearsay allegations from questionable sources and innocuous activity. And he had not been found guilty of ever committing an illegal gang-related act - and the CDCR CCR file 1555 3000 [Gang] and 3023 [Gang Activity] meant illegal activity - that mandates issuance of CDC-115 RVR [this 602 challenge was in response to ICC-committee SHAM review, and continued indefinite SHU-status, held 8-4-04, the chrono wasn't received by Ashker until 9-7-04]

66.) On Dec. 17, 2004, Def. Kirkland, denied the appeal at Warden's level, without addressing the issues, and without any substantive review; he just upheld Ashker's indefinite (SHU) status, based on CDC-128B of 7-8-03.

67.) On March 4, 2005, Def. Woodford rejected the appeal as untimely based on view the appeal challenged the (7-8-03) action. This was clear error, as the appeal challenged policies and practices - as applied by the ICC-Comm. on Aug 4, 2004.

68.) On June 6, 2005, Ashker submitted another 602 Appeal, *C05-01551, specifying that he was "challenging CDCR policy's of subjecting him to indefinite (SHU) status, for over (13) years [at the time], based on their gang label." He pointed out that "he had never received a CDC-115 rule violation for committing an illegal act on behalf of a gang, the gang label was based on hearsay from undisclosed inmate informants; and, the continued (SHU) status was used by the (BPH) to justify (5) year parole deferral in (2003), and his only avenue for (SHU) release is via debriefing, or inactive status."

69.) The above referenced appeal pointed out that the policies and practices at issue violated U.S. Constitutional 1st, 5th, 8th and 14th Amendments as follows:

" (A) Sanctions for mere association, without guilt for illegal activity, is a 1st Amendment violation [per. NAACP v. Claiborne Hardware Co. (1982) 485 US 866, 925; American Arab Anti-Discrimination v. Reno, 70 F3d 1045, 1063 (9th Cir 1995); Cal. Penal Code §§ 186.21-186.22 [e.g., People v. Castaneda, (2000) 23 Cal. 4th 743, 749]

(B) Requiring inmates to become informants to gain release from (SHU) - thereby putting the inmate, and family, in danger of retributive harm, is a 8th Amendment violation.

(C) Premising release from (SHU) upon the inmate becoming an informant via debriefing [implicating ones self and others in gang related acts], which can be used to prosecute the debriefer, and others (and to keep others in SHU), is a violation of 5th and 14th Amendments

① The (SHU) status has seriously had an adverse impact on his chance for parole, the status has been illegal and completely lacking in adequate due process, in violation of 14th Amendment.

② The policy(s) re: "inactive status" is a sham, and the (6) year review violate requirement that (SHU) confinement cannot be arbitrary, or a pretext for indefinite segregation and thus periodic - meaningful reviews are mandatory [per. *Toussaint v. McCarthy*, 801 F.2d 1080, 1101; *Madrid v. Gomez*, at 1277-78, citing *Hewitt v. Helms*, 459 U.S. 460, 477 n.9] and the ICC-Committee reviews deny meaningful review because they have no authority to release the (SHU) inmate unless he has debriefed, or deemed inactive during one of the (6) year reviews by LEU. "

70.) Defendant Kirkland, denied the appeal at Warden's Level (of review), on Aug. 22, 2005. He acknowledged Ashker's 8th Amendment issue re: debriefing places inmate in danger, then ignores it [demonstrating deliberate indifference]; and he acknowledges and admits Ashker has received no disciplinaries for participating in illegal gang activities. He ignores the other points.

71.) On Dec. 13, 2005, Defendant(s) [Hickman or Woodford] denied the appeal at the Director Level, merely rubber stamping the Warden's Level denial.

72.) On Aug. 7, 2005, Ashker sent Defendant Hickman a (5) page memo signed by Ashker and Troxell, pointing out that the over use of innocuous-activity, and allegations from confidential inmate informants, to keep them in (SHU) indefinitely unless they debrief, violated clearly established law. The response was, ... the issues presented could not be addressed because they were being litigated in court.

73.) On October 25, 2007, PBSP - Institutional Gang Investigations (IGI) Unit [Defendants Thornton and Rice] allegedly initiated an investigation regarding Ashker's current gang activity (per. CCR-T1159.3378(e), six year review re: inactive status.)

74.) This alleged "investigation" into Ashker's current gang activity, was a SHAM - it was not meaningful, because it lacked any semblance of substantive due process [no actual investigation took place] as shown by the following:

① On Nov. 26, 2007, Defendants Thornton and Rice signed a CDC-128B chrono, recommending that Ashker's gang status remain "active" based on their alleged "investigation" consisting of:

- 1) Review of Ashker's Central file [revealing current gang activity, via (5) Confidential memos]
- 2) Property Search [revealing (3) photocopies of artwork]
- 3) Nov. 26, 2007 "interview" of Ashker [consisting of Ashker giving Def. Thornton (2) pages, denying each item used against him]

② The (5) confidential memos, and Ashker's responsive denials, were as follows:

1) March 14, 2007, Chrono documenting a greeting card with numerous shamrocks. The shamrock is used by members of AB to show alliance / membership in gang. [Response: this is clearly a St. Patrick's Day card, dated '98. I kept it to use as a pattern for my own St. Pat's Day card creations & no "sources" ever claimed I've shown them "gang symbols"].

2) Memo dated Sept. 18, 2006, documenting an informant's claim that 'kites' were passed between validated Nazi Lowrider (NLR) members,

containing the housing assignment of Ashker as well as other AB members [the AB were recruiting the NLR for membership in AB at this time]... Also identified was the fact Ashker had ordered the murder of attorney Franck, who owed Ashker money [Response:

#1. I have no control over who passes my # call on lists or kites; nor do I have any knowledge about "recruitment," & it doesn't specify that I was recruiting anybody. #2. The claim re: putting "hit" on atty Franck is a lie! This atty. has helped me on legal issues for 17 yrs. - the money he owed has been paid for most part, & if source was reliable, a 115 RVR is mandatory & I've rec'd it! Last of all re: alleged "hit" there's zero demonstrating this is a "gang" issue. My relationship with atty is strictly professional & personal & you have no "evidence" proving otherwise

3) Memo dated July 7, 2006, staff claimed 'Ashker attempted to relay messages thru (NLR) member to AB associate Brown, to have his girlfriend sponsor Ashker's girlfriend for U.S. citizenship. Ashker's request shows good standing in gang [Resp. Brown is a personal friend since [1985]. My wife & his are friends & the subject has nothing to do with "gang" activity period]

4) Memo dated April 4, 2006, informant claimed Ashker is one of the top ranking AB members in PBSP [Resp. I deny membership/assoc. or involvement in any type of illegal gang activity]

5) Memo dated March 29, 2006, Debriefers claimed, 'Ashker one of the A.B. members who ordered murder of AB member Michael Hicks in 2003'. [Resp. Your alleged reliable debriefer is a liar! I do not know anyone by

1 this name - have never met or been around this person at all - period!
 2 And if there was evidence of my involvement - CDC rules mandate a
 3 115 RVR be issued - I've rec'd none for this - I don't know anything about
 4 this subject, or this person -]

5
 6 © The property search [re: three drawings] resulted in (2) Chronos, and
 7 Ashker's responses - denials were as follows:

8
 9 1) Oct. 30, 2007, Chrono documenting photocopied drawing with a
 10 shamrock in axe blade [Resp. The art is from (1995) and I know I'd
 11 inked over the shamrock 7-8 yrs ago when I heard staff were making
 12 issue out of art work! The symbol means "Irish Pride" to me ...]

13
 14 2) Oct. 29, 2007, Chrono documenting photocopied drawings by A.B.
 15 assoc. Evans and AB member Bretches. And by possession, shows Ashker's
 16 continued allegiance to gang and its members '[Resp. As for Evan's
 17 art copies - so what, there's no demonstrating anything illegal! And gang unit
 18 claims re: "indications" sounds juvenile & cartoonish.
 19 As for Bretches' art - I want that back! That was sent to me as part of an
 20 exhibit to declaration he did for me last year - per approved legal/corresp.
 21 & was reviewed by I.G.I. - as part of my civil case]

22
 23 75.) Defendants Thornton and Rice, received my above referenced
 24 responses, disputing all of the information alleging gang-activity, on
 25 Nov. 26, 2007. The fact that they did not investigate the possible validity of
 26 any of Ashker's points is supported by the fact that Nov. 26, 2007, is
 27 the same day they received Ashker's responses, and authored their 128B -
 28 Chrono, referring case to Office of Correctional Safety [OCS] with recommendation

1 Ashker's gang status remain unchanged; and he can request review again
2 in October 2013.

3 76.) On April 22, 2008, Ashker received Defendant Harrison's CDC-
4 128B-2 Chrono dated Jan. 16, 2008 - revalidating him as an active AB
5 gang member based on the (3) Confidential Memos submitted by Thornton
6 and Rice.

7 77.) Defendant Harrison did not independently investigate any of
8 the confidential memos at issue [and, in lieu of Ashker's responsive
9 denials,] He just rubber stamped Thornton and Rice's recommendations.
10 [Based on info. and belief, i.e., CDCR - testimony(s) in Lira trial, supra, Order,
11 admitting no substantive review, or independent investigations, are done]

12 78.) On April 24, 2008, Ashker submitted 602 Appeal (#D08-01173, wherein
13 he challenges "[CDCR] Rules & Regs [CDCR Tit. 15 §§ 3341.5 & 3378(e)], and the
14 policies - practices related thereto, on the basis that my [22] years of indefi-
15 nite [SHU] confinement [based on "status," i.e., a label], violates clearly estab-
16 lished state & federal law, as more fully - specifically detailed below."

17 79.) The appeal continues, "... I've been on continuous 'indefinite [SHU]'
18 status since [1992], based on [CDCR] classifying me an assoc/member of the
19 A.B. The basis for this classification is confidential inmate informant claims.
20 Yet, I've never been issued a R.V.R [CDC-115] claiming evidence established
21 my personal involvement in any illegal, gang-related activity."

22 80.) The appeal continues, "... In (2001) I was denied inactive status based
23 on alleged inmate informant & staff claims - yet, I was never charged, nor
24 issued any RVR [CDC-115]. Recently, on (11-19-07) I was given (3) 128-B's and
25 (4) 1030's, containing claims that such represents evidence that I remain
26 "active." On (11-26-07) I gave I.G.I. my written response to these 128B's/
27 1030's, wherein I dispute each of them [see attached copies...]."
28

81.) The appeal continues, "... On [4.22.08], I received my copy of the SSU-Review, finding me ineligible for "inactive" status; and notifying me my next 'review' will be [10.29.13] [see copy of CDC-128B-2 ...] This means, between now & [10.29.13] my only way out of [SHU] is to die, parole, or become an informant.... Such policy(s) & practices violate clearly established law, as briefly stated below [note: these issues will be pursued in Court]

1.) Punishment based on "status" [association-label], without ever being found guilty of a single gang related-illegal act, is a pretext for "indefinite [SHU] status," which violates the 1st and 14th Amendments of U.S. Const. & State Statutory Law [see: *Hewitt v. Helms* (1983) 459 U.S. 460, 477 n.9; *NAACP v. Claiborne Hardware Co.* (1982) 485 U.S. 866, 925; *Amer. Arab. Anti-Discrimination v. Rene*, 70 F.3d 1045, 1063 (9th Cir 1995); *Cal. Penal Code* § 186.21 & 186.22; *People v. Castaneda*, 23 Cal. 4th 743, 749 [co]]

2.) Providing "meaningful" review of indefinite (SHU) status, once every (6) yrs., violates the 14th Amend., U.S. Const. Procedural & Substantive Due Process [see: *Wilkinson v. Austin* (2005) 125 S.Ct. 2384; *Hewitt v. Helms*, *supra*; *McClary v. Coughlin*, 87 F. Supp. 2d 205 (W.D.N.Y. 2000)]

3.) Failure to follow terms of *Castillo v. Alameida* (USDC-ND Cal #C94-2847) re: "Gang-Activity" definition in CDC-Tit 15 § 3023 [which includes the caveat that such acts be, "unlawful or acts or misconduct classified as serious per. Tit 15 § 3315," which in turn, require a RVR, per. § 3312]; the CDCR/PBSP Reviews are a SHAM, merely rubber stamping inmate informant lies [such as I point out in my 11.19.07 response, disputing 1030's of 3.29.06 & 9.18.06]; & use of artwork that's undated &/or given to me as a legal exhibit; and informant claims of my "status" all violate

Castillo; & additional state & federal law. If there was real evidence supporting illegal acts, a R.V.R. is mandatory!

4.) Keeping me in (SHU) per. § 3378(c), while allowing thousands of active gang members/associates to remain on CIDER- Gen Population [per. 3378(d)], constitutes unequal treatment compared to those similarly situated, thus violating 14th Amend., U.S. Const.

5.) Keeping me on indefinite (SHU) status for over (16) yrs. & counting, without charges & Findings of guilt for personal involvement in any "illegal, gang-related" acts; and promising my opportunity for release from (SHU) upon my willingness to agree to become an informant, is a violation of the U.S. Consts. 1st, 5th, 8th & 14th Amendments, as briefly shown by:

Ⓐ I retain the right to remain silent, as well as right to be punishment free when choosing not to speak, per. 1st & 5th Amendments [See: U.S. v. Safirstein, 827 F.2d 1380, 1388 (9th Cir. 1988); Hydrick v. Hunter, 2006 DJDAR 13181, 13186 (9th Cir. 2006)].

Ⓑ Right not to be subject to "informant status," and thus subject myself and family to the danger associated with informants, per. 8th Amend. [See: Valendingham v. Bojorquez, 866 F.2d 1135, 1138 (9th Cir. 1989)]

Ⓒ Right to be free from conditions of confinement known to present serious danger to physical and/or mental health and safety, per. 8th & 14th Amendments. Prisoners don't have to wait & actually suffer harm to their physical-mental well being to obtain relief from unconstitutional conditions of confinement. It's well known that informants [and their families] face serious risk of danger to their physical welfare -

which CDCR is not capable of remedying - Thus, CDCR - Policy of
 premising (SHU) release upon one's agreement to become an
 informant is a violation [see: Valandingham, supra]; and, it's now
 recognized that the longer one is subject to (SHU) confinement
 conditions, the greater the risk of suffering serious mental-health
 damage - which is also a violation [see: Madrid v. Gomez; and U.S.
 v. Basciano, 369 F. Supp. 2d 344 [E.D.N.Y. 2005], for examples]
 A Federal Court has given CDCR notice that a combination of the
 above (2) factors [physical harm & mental health - risks]
combine - to create an 8th Amend. Violation per, criteria and
 principles in Helling v. McKinney / 1983) 509 U.S. 25; and Ordered
 CDCR to release the prisoner from PBSP - SHU [see: Griffin v.
 Gomez, USDC - ND Cal #98-21038 J.W., Order Granting Writ, filed:
 6-28-06, citing Wilson v. Seiter [1991] 501 U.S. 294, 304-305 RE;
combined conditions]

You are on notice, Failure to cease the practices/policies
 briefly described will be cause for litigation, on above grounds
 [but not limited to such grounds]

82.) Ashker requested relief, as follows: "Release from [SHU] to a G.P.
 [alternatively, creation of a modified - less restrictive program with
 G.P. type programs & privileges]; and to be fully compensated for my
 (16) plus, years of 'illegal - pretextual - indefinite (SHU) confinement,
 and CDCR - PBSP's compliance with state & federal law & CCR -
 Tit. 15, Rules & Regulations re: Gang Activity & RVR [115],"

83.) The appeal was denied by Defendant Horel, at the Warden's
 Level on June 2, 2008.

84.) Defendants Horel and Wise, denied the appeal, claiming they "conducted a thorough investigation into Ashker's claim" and, "Ashker did not raise any legitimate questions/evidence in his rebuttals to change outcome of active/inactive review!"

85.) Ashker's position is that Defendants Horel and Wise did not conduct a substantive, independent investig. into the substance of the confidential inmate informants' claims, in lieu of Ashker's rebuttal(s), and in fact merely rubber stamped the OCS' Chrono, [Based on info. and belief. i.e., Def. Wise claims he conducted and completed this "thorough review/investigation" in one day (5-28-08); and testimonies of Def. McGrath, and other I.G.I. staff, at the Lira, supra, trial, admitting no substantive investigations are done on appeals re: gang-status]

86.) Defendants Horel and Wise, ignore all of Ashker's other points re: 1st, 5th, 8th Amendment violations, in spite of reference to supporting case law. This is deliberate indifference [based on info and belief, these defendants were personally made aware of these Constitutional violations via numerous inmate appeals; the Gritin ruling of 2006, referenced above; and numerous inmates becoming mentally ill in [SHU] at P3SP] [And doing nothing to fix the problems]

87.) On Oct. 7, 2008, Defendant Cate, denied the appeal at the Director level, by rubber stamping the Warden's response, and ensuring the continuation of such Constitutional violations, in spite of being repeatedly put on notice [per. same manner as Def. Horel, as stated above.]

HARMFUL EFFECT FROM 23 YEARS OF SHU-CONFINEMENT

88.) Ashker has presently been subject to more than [23] years of continuous [SHU] confinement; the past [17+] years of which have been arbitrary and pretextual [based on defendant's allegation that his gang-classification-automatically make him a serious threat to safety/security, requiring [SHU] housing for administrative reasons - indefinitely [until he dies, or agrees to become an informant], ..., while allowing tens of thousands of gang-affiliates to be in gen.-population prisons], without being found guilty of ever committing an illegal, gang-related act.

89.) Defendants have punished him for refusing to become their informant, and exercising his first amendment right of choosing not to speak; and, prior to being classified as a gang-affiliate, he was never notified the label would be cause for indefinite [SHU], unless he agreed to become a known informant for the authorities [and thereby, face serious risk of reprisals, for informant status; such policy constituting an eighth amendment violation]

90.) Ashker has been isolated in [PBSP-SHU] since May 2, 1990, and has no information to provide; and, he's not willing to become an informant for Defendants, or anyone else, based on principle; and unwilling to place himself or family in the position of the serious danger informants face.

91.) This [23+] years of punitive [SHU] confinement has caused the ongoing harm, exemplified below:

④ PBSP-SHU conditions are intentionally punitive [more so, than the other [3] SHU-facilities across the state-based on info. and belief]; with the purpose of coercing inmates to become informants. Examples are: more restrictions on allowable types of magazines and books, appliances, packages, clothing; lengthy mail delays; non-contact visits; no phone calls, no education opportunities [that require proctored exams]

1 (B) Ashker has had no physical contact with family, no phone-calls,
 2 and no photographs of himself to send to family for 23 years; many of
 3 his nieces, nephews and other relatives have never seen him - in person
 4 or photo. This, together with years of lengthy mail delays, has caused
 5 estrangement from many family members. And, as of the past
 6 year Defendant Jacques and Cate have cut off (SHU) educational
 7 opportunities [while permitting (SHU) informants such education ops.,
 8 and, contact visits, phone calls, photo's, canteen in packaged wrappers, etc.]

10 (C) He has been eligible for parole since [2004]; however, the [BPH] has an
 11 unwritten policy of issuing all (SHU) lifers, multi-year denials. And they have
 12 applied this to Ashker in [2003] with a [5] year denial, and in [2008], with a
 13 [4] year denial [see details in below paras # 141 to 149]

15 (D) Ashker's mental health has been damaged as a direct result of his [23] plus
 16 years of [SHU] [based on info. and belief; e.g., experiences with insomnia,
 17 hypersensitivity, anxiety, aggression, rage, lethargy; difficulty with concent-
 18 ration, focus, and communication. And, sensory overload with related dis-
 19 comfort when leaving his cell/pod area]; and, there's a serious risk that he
 20 may suffer severe mental illness - the longer he's subject to SHU [per.
 21 many studies conducted between 1975 to present.] And his physical-
 22 health has suffered, as he has a chronic pain condition from a
 23 permanently disabled right arm [caused by an exploding bullet
 24 fired by a PBSP-SHU Guard Ashker v. CDC, 112 F3d 392 (9th Cir 1997)]
 25 and his care and treatment has been harmed by his (SHU) placement -
 26 and has resulted in numerous civil-suits before this court -

[D.] General Facts Re: Plaintiff Danny Troxell

92.) Plaintiff Troxell has been incarcerated in the CDCR prison system since July 1979, per 26 year-to-life sentence - imposed after his plea of guilty to First degree Felony murder [while robbing a market the manager ran up and grabbed the end of Troxell's shotgun, causing it to discharge - killing him instantly]

93.) Soon after his arrival in CDCR, he was accused of being involved in a melee, and ended up in San Quentin (SHU); wherein he received additional rule violations that extended his stay there until being transferred to Folsom Gen. Population in January 1984.

94.) Upon his arrival at Folsom, he attended committee for clearance to G.P., and it was at this committee hearing that he was told for the first time that CDCR had classified him as an A.B. associate [this had been done at San Quentin, in 1982, based on allegations by confidential inmate informant - perjurer, Mike Thompson] This happened without notice, or opportunity to be heard - and Troxell immediately denied this.

95.) The Folsom committee cleared him for the G.P., in spite of the gang - assoc. label; where he remained [programming via working in the kitchen and receiving positive work evaluations. And maintaining a good relationship with his fiancée and daughter via regular contact visits] until being placed back in (SHU) on Oct. 30, 1985, for unspecified reasons.

96.) Soon after this, he was transferred to an isolation strip cell in Chino - for unspecified "investigation" reasons. At Chino, he was lucky to get a visit once a month - behind glass; he was not charged with anything and believed he'd be back on G.P. within a year, because he hadn't done anything; and he married his fiancée in June 1986.

97.) In late (1986) he was transferred to newly built (SHU) at Tehachapi [CCI-IV]; wherein he was informed for the first time that he was on indeterminate (SHU) status because of his gang classification, and in order to get out he'd have to debrief [become an informant]. At the time, no one had ever heard of this before; and between 1979 to 1986, no one ever notified Troxell that a gang label was cause for indefinite (SHU), until becoming an informant.

98.) On January 4, 1988, his cell-mate assisted him with a 602 Appeal, challenging his indefinite (SHU) status [and release requiring informant status], on the basis that he had never been charged and found guilty of committing an illegal, gang-related act.

99.) This appeal was denied at the Director's level of review on April 11, 1988 [Direct or log #8801657], based on, "... your A.B. involvement and its threat to institutional security" [while at the same time, tens of thousands of gang-affiliates were in general population prisons, all over the state. Based on info. and belief]

Troxell's Initial Gang Validation

100.) On May 25, 1989, the SSU - at CDCR Headquarters, received a gang-validation package from CCI - Gang Investigator C. Ford; this package contained [5] Confidential Memorandums dated: 5-2-88; 7-26-88; 8-5-88; 8-10-88; and 1-9-89. [NOTE: These memos were created soon after his (602) was denied Id.]

101.) The [5] confidential memos referenced above were composed from conf. inmate informants [4 of whom claimed Troxell was an A.B. member, and (1) of whom claimed Troxell was running Folsom's 2 Bldg. for the A.B. in 1985]; the [1989] SSU-Review determined this was sufficient to validate Troxell as an A.B. member, all without notice or opportunity to be heard.

102.) On Dec. 27, 1989, Troxell was transferred to PBSP-SHU, where he has been housed ever since. Soon after arriving at PBSP-SHU, an administrator told him he would remain in PBSP-SHU until he died, paroled, or debriefed.

Troxell's Re-Validations & Denial of Inactive Status

103.) On Dec. 14, 1999, ICC referred Troxell's case to the Law Enforcement Liaison Unit (LELU) at CDCR-Headquarters [via PBSP-I.G.I.] for clarification of his current gang-status [to determine if he met inactive status]

104.) On April 12, 2000, another ICC-Committee noted, "... Committee reviewed subject for inactive gang status and the date of the most recent gang-activity, as noted in the C-file, could not be established. On Dec. 14, 1999, ICC referred this case to the (LELU) for gang status clarification. The (LELU) review is pending."

105.) On March 21, 2001, another ICC-Committee noted that "S was referred to [IGI] by ICC of Dec. 14, 1999, for inactive gang status, but due to administrative oversight, he was not reviewed. Committee acts to resubmit the referral to [IGI] for inactive gang status review."

106.) In June 2001, the LELU/SSU determined Troxell was an active A.B. member based on Defendant Wise' presentation of (2) Confidential Memos dated: 9-20-99; and 8-3-00 [notably, these conf. memos were absent from Troxell's file when ICC looked for this type of information in 1999, 2000, and March 2001]

107.) These (2) confidential memos were based on conf. inmate informants' claimed (1) Troxell was an A.B. member keeping a low profile; and (2) Troxell was a member of the A.B. council.

108) On June 23, 2001, the [LEU] issued a CDC-128B-2 Chrono, validating Troxell as active, based on the (2) Conf. Memos referenced above, and stated he could request a new inactive review after Aug 3, 2006.

109) Prior to this June 2001, (LEU) review, Troxell was not provided with any notice of the information used against him [i.e., the (2) conf. memos] nor was he given opportunity to respond. The first time he was aware of this was when his counselor gave him the (2) CDC-1030 Confidential disclosure forms... AFTER the June 23, 2001 (LEU) decision, Troxell maintains he is not affiliated with any gang.

110) On July 8, 2003, the LEU/SSU reviewed Troxell's status, and again deemed him to be an active gang-member based on the same conf. memos from [1989, and 2001]; again, this was done without notice or opportunity to be heard,

111) On July 25, 2003, Troxell celled up with Ashker; prior to this Troxell did not file additional 602 Appeals to challenge (SHU) issues, because he saw it as a futile effort to challenge the false claims against him, with the CDCR-PBSP staff just rubber stamping each others decisions.

112) On Feb. 23, 2004 Troxell was party to the Group Appeal submitted by Ashker, requesting program opportunities - recommended by the (BPH) to enhance parole suitability.

113) Defendant McGrath and Woodford denied the appeal at all levels by July 22, 2004, on the basis of, "... you're a member of a terrorist group, and until you fully cooperate with the authorities to bring down the A.B., you will remain in (SHU), and should never be paroled" [see above para's #64 (A-C, re: group appeal and Ashker's allegations that the "inactive-reviews" are a SHAM, Troxell agrees, and re-alleges the same. An example being his own review, started in [1999] and ending June 2001, after Def. Wise fabricated

the Sept. 20, 1999, and Aug. 3, 2000, Conf. Memos. See details in above paras #103-108]

114.) Between Nov. 8, 2004 and April 11, 2005, Troxell attempted to file (4) 602-Appeals, challenging Defendant's policies re: indefinite (SHU) status, the "informant status" requirement for release, and "inactive" criteria. Defendant Bradbury, refused to process all of these appeals on the pretext that they were "untimely" [CCR-title 15 states inmates have the right to challenge any policy(s) which have an adverse impact]

115.) Def. Bradbury, rejected the above appeals, at the same time the appeal exhaustion issue was pending in USDC-N.D. Cal. # C04-1967 CW [Dismissed without prejudice for failure to exhaust in early June 2005]

116.) On June 7, 2005, Troxell submitted another 602 Appeal, #C05-01550 [this appeal was the same as Ashker's appeal #C05-01551. See above paras #68-71].

117.) In this appeal he specified that, ... he was "challenging CCR policy(s) of subjecting him to indefinite [SHU] status, for over [20] years [at that time], based on their gang-label. He pointed out that he had never received a CDC-115 rule violation for committing an illegal act on behalf of a gang, the gang label was based on hearsay from undisclosed inmate informants; and, the continued [SHU] status was used by the [BPH] to justify (4) year parole deferral in [2001], and his only avenue for [SHU] release is via debriefing, or inactive status.

118.) The above referenced appeal pointed out that the policies and practices at issue violated U.S. Constitutional 1st, 5th, 8th, and 14th Amendments, as follows: [wherein, he listed the same points, and case law as Ashker's appeal. See above para. #69 [A-E] For details]

119.) Defendant Kirkland, denied the appeal at Warden's level of review, on Aug. 22, 2005 [the same day, for the same reasons as Ashker's. See above para. #70]

120.) On Dec. 12, 2005, Defendant(s) [Hickman or Woodford] denied the appeal at

the Director level, merely rubber stamping the Warden's level denial.

121.) On August 7, 2005, Troxell was party to the memo he and Ashker created, and sent to Defendant Hickman, pointing out that the over-use of innocuous activity, and allegations from confidential inmate informants, to keep them in (SHU) indefinitely, unless they debrief, violated clearly established law [with case cites incorporated], and requested Hickman remedy the problem. His response was "... the issues could not be addressed due to court litigation."

122.) On March 9, 2007, PBSP - I.G.I. - Unit (Defendants Thornton and McKinney) allegedly initiated an investigation regarding Troxell's current gang activity [per, CCR-Tit. 15 § 3378(e), six year review re: inactive status]

123.) This alleged "investigation" into Troxell's current gang activity, was a SHAM - it was not meaningful because it lacked any semblance of substantive due process [no actual "investigation" took place] as shown by the following:

① On March 19, 2007, Defendants Thornton and McKinney, signed a CDC-128B Chrono, recommending that Troxell's gang status remain "active" based on their alleged "investigation" consisting of:

- 1) Review of Troxell's Central File [revealing current gang-activity, via (8) confidential memos]
- 2) Property Search [with negative results]
- 3) March 19, 2007 "interview" of Troxell [consisting of Troxell giving Def. Thornton (3) pages, denying each item used against him]

② The (8) confidential memos, and Troxell's responsive denials, were as follows:

- 1) Conf. Memo of Sept. 18, 2006, Informant, claims Troxell's name was on a "kite"

informing other gang members of his location [Response: I have no control over what someone else does. Also, the mention of my name and where I'm housed doesn't meet criteria of "Gang Activity" per.

Tit. 15 §§ 3000, 30.23]

2) Memo of July 12, 2005, Written Material, during an investigation, info was discovered by staff indicating Troxell, and other AB members, were attempting to establish a line of communication with other ABs'

[Resp. This claim is a fabrication by C/O Sprouse and certain I.G.I. staff in order to prevent white PBSP-SHU prisoners from establishing positive support and programming opportunities...]

3) Memo of July 11, 2005 [same as above memo of 7-12-05, with addition of, "Troxell was also receiving funds from an AB members' family"]

[Resp. Same response as #2]

4) Memo of April 25, 2005, Staff Info., "... AB members were discussing locations of other members. Troxell was discussed as to current housing."

[Resp. My response is same as #1 above....]

5) Memo of April 2, 2005, Debrieter claimed, "... Troxell communicated housing info. to another member. Troxell was identified as an AB member, who also sponsored an inmate for membership" [Resp. your debrieter is a liar, and his statements - fabrications based on (A) his imagination (B) stuff he's made up based on things he's seen about me on T.V. [Like the Nov. 2002, KTVU Ch. 2 news story with my picture, name, and A.K.A. on it] (C) stuff he's read about in newspaper]

6) Conf. CDC-128B dated Aug. 26, 2004, Written Material. 'Staff confiscated an "AB roster" with Troxell's name and number on it' [Resp. Same as #1 & 4 above]

7) Memo of May 4, 2004, Debrieter claimed, "... Troxell is an active A.B member, who sponsored an inmate for membership, and gave orders to

assault certain inmates throughout the state' [Resp. Your informant's claims are false, and not based on first hand information that I personally ordered him to do anything. I've not been issued a CDCR-115 Rule Violation. And it's been well publicized for past (20) years how prisoners fabricate info, and how easy it is for them to make it appear reliable. Also, many staff - including gang unit staff as far back as 2003 have gone around spreading rumors of conflict between whites and south mexicans]

8) Memo of March 3, 2004, Informant claimed, '... Troxell one of the AB members that gave orders to assault Southern Hispanics throughout the state' [Resp. Same as #7 above. You have no real/reliable evidence I ever personally ever gave orders to anyone. If you did, Title 15 § 3312-3315 mandate issuance of a CDCR- Rule Violation Report period! Failing to follow Tit 15-3023 re: what constitutes "gang-activity,"

© Defendants Thornton and McKinney, received my points, which dispute each of the (8) items used [to the best of Troxell's ability, based on lack of specific details given], on March 19, 2007; they did not bother to conduct any substantive investigation into any of the (8) items used [either prior to, or after, Troxell's responses were received; based on info. and belief, i.e., Def's 128B-Chrono recommending (ccs) keep his gang status at "active" is dated the same day that he gave them his response (3-19-07) thus making it impossible to believe any "investigation" occurred; and Testimony in Lira case, supra - no substantive investigating is done.]

124) On Dec. 4, 2007, Troxell received Defendant Marquez' CDC-128B-2 Chrono dated Oct. 18, 2007 - ~~revalidating~~ revalidating him as an active AB gang-member

based on the [8] Confidential Memos, submitted by Thornton and McKinney. And stating his next Active/Inactive Review, eligibility date would be Sept. 1, 2012.

125.) Defendant Marquez, did not independently investigate any of the confidential memos at issue [and, in lieu of Troxell's responsive denials]. He just rubber stamped Thornton and McKinney's recommendations [Based on info. and belief, i.e., CDCR-Testimony(s) in Lira trial, supra, Order of 9-30-09, admitting no substantive review, or independent investigations, are done] [And, on 9-26-07, PBSP-SHU-ICC, had already rubber stamped Thornton, and McKinney's, March 19, 2007, decision to deny inactive status]

126.) On Dec. 12, 2007, Troxell submitted 602 Appeal #D07-C2824, wherein he challenges "[CDCR] Rules-Regs [CDCR-Title 15 §§ 3341.5 & 3378(e)], and policies-practices related thereto, on the basis that my [22 plus] years of indefinite (SHU) confinement on the basis of "status" violates state & federal law, as detailed below."

127.) The appeal continues, "... I've been classified by CDC as an associate/member of the A.B. since Jan. 1984, when I was released from S.Q., Max B, to Folsom G.P. The basis for this Label was confidential inmate informants. In Oct. 1985, I was placed in (SHU) based on this Label & have been in (SHU) ever since. I've never been issued a CDC-115 RVR for involvement in any illegal gang-activity.

128.) The appeal continues, "... In 2000/2001, I was denied inactive status on basis of conf. inmate informants claiming I was a gang member. I was told I can ask for another "inactive" review in 6 years; in the interim my sole means for release to G.P. is via informant status. In 2004, the Warden & Director stated on my group 602 Appeal #C04-00566, that I will never get out of SHU unless I, "fully cooperate with the authorities to bring down the A.B." On 3-15-07, I was issued [8] 1030's being used to deny me "inactive" status again. On 3-19-07, I gave IGI my

written response to these (8) 1030's, wherein I dispute each one [see attached copies]"

129) The appeal continues, "... On 12-4-07, I received my copy of the SSU-Review, deeming me ineligible for inactive status, and notifying me my next review will begin Sept. 1, 2012 [see copy of CDC-2288-2...]

Thus, between now and 9-1-12, my only way out of SHU is to become an informant. Such policies - practices violate clearly established law as supported below [Troxell then makes the same points, with ref. to the same case cites as Ashker's appeal See above para #81 [1-5A-C), and requested the same relief. See above para #82]

130) Defendant Horel, denied the appeal at Warden's level, on January 30, 2008, based on "... a thorough investigation" ... and determination that "there were no due process violations in relation to this validation." and, "This Reviewer has no authority to overturn a decision by OCS or SSU."

131) Troxell's position is that Defendant Horel's review, did not include a substantive, independent investigation into the substance of the confidential inmate informants claims /staff info., in lieu of Troxell's rebuttals, and merely rubber stamped the OCS' Chrono. [Based on info. & belief. i.e., Def. Horel's, agent claimed he conducted and completed this "thorough invest" in one day (1-28-08-1-29-08); and trial testimonies of Def. McGrath, Marquez, and other I.G.I/SSU staff during Feb. 2009 Lira, case, supra, admitting no substantive reviews - investigations are done on appeals re: gang-status, See above para #31(E)]

132) Defendant Horel, ignores all of Troxell's other points re: 1st, 5th, 8th Amendment violation claims, in spite of the reference to supporting case law. This is deliberate indifference [Based on info. and belief, each of

the CDCR-Defendants have repeatedly been made personally aware of these Constitutional violations via numerous inmate appeals; the Griffin ruling, referenced in above para[#] 81[5-C], and numerous inmates becoming mentally ill in (SHU) at P.B.S.P.; yet doing nothing to fix the problems].

133.> On May 15, 2008, Def. Cate, denied the appeal at the Director Level, by rubber stamping the Warden's response, and thereby ensuring the continuation of such Constitutional violations, in spite of being repeatedly put on notice [per same manner as Def. Horel, et al., as stated above].

HARMFUL EFFECT FROM 24 YEARS OF SHU-CONFINEMENT

134.> Troxell has presently been subject to more than [24] years of continued (SHU) confinement, on the basis of arbitrarily applied policy(s) and pretextual justification [based on defendants allegation that his CDCR-gang classification automatically make him a serious threat to safety/security, requiring (SHU) housing indefinitely - for administrative reasons [until he dies, or agrees to become an informant], ... while allowing tens of thousands of gang-affiliates to be in general population prisons], without ever being found guilty of committing an illegal, gang-related act.

135.> Defendants have punished him for refusing to become their informant, and exercising his first amendment right of choosing not to speak; and, prior to being classified as a gang-affiliate, he was never notified the label would be cause for indefinite (SHU), unless he agreed to become a known informant for the authorities [and thereby, face serious risk of reprisals, for informant status; such policy being an Eighth Amendment violation].

136.> Troxell has been isolated in [PBSP-SHU] since Dec. 27, 1989, and has no

information to provide; and, he's not willing to become an informant for Defendants, or anyone else, based on principle; and, unwillingness to place himself, or family, in the position of the serious danger informants face.

137) This (24+) years of punitive (SHU) confinement has caused the ongoing harm, as exemplified below:

Ⓐ PBSP-SHU conditions are intentionally punitive [more so than the other (3) SHU - Facilities across the state. Based on info. and belief]; with the purpose of coercing inmates to become informants. Examples are: more restrictions on allowable types of magazines and books, appliances, packages, clothing; lengthy mail-delays, non-contact visits, no phone-calls, no photographs to send home, no education opportunities [none that require proctored exams - per, Det. Jacquez and Cate] While allowing informants, T.H.U., and G.P. inmates all of the above.

Ⓑ Troxell has had no physical contact with family, no photographs of himself to send to family, no phone-calls, ... For over (24) years; many of his nieces, nephews, grand kids, and other relatives have never seen him in person - or photograph. This, together with years of lengthy mail delays, has caused estrangement from many family members.

Ⓒ He has been eligible for parole since [1996]; however, the [BPH] has an unwritten policy of issuing all (SHU) lifers, multi-year denials. And they have applied this to Troxell in [1995] with a (5) year denial; in [2001] with a (4) year denial; in [2006] with a (3) year denial; and [2009] with a (7) year denial. [See details in below paras # 141-143, 150-161]

① Troxell's mental health has been damaged as a direct result of his [24] plus years of [SHU] [Based on info. and belief; e.g., experiences of increased negativity, insomnia, anxiety, hypersensitivity, ruminations, aggression, rage, hopelessness and lethargy; and difficulty with ability to concentrate, focus, and communicate. And, sensory overload with related discomfort when leaving his cell/pod area], and there's a serious risk that he may suffer severe mental illness - the longer he is subject to SHU [per. many studies conducted between 1975 to the present]

*ADDITIONAL FACTS PERTAINING TO VIOLATION OF 1st, 5th, 8th, 14th
AMENDMENTS TO U.S. CONSTITUTION VIA INDEFINITE PUNITIVE
CONDITIONS [per. CDCR - INFORMANT PROCUREMENT AGENDA]*

138.) Defendants McGrath, Woodford, Jacquez, Horel, Cate, Johnson, Bradbury [and Does #1 to 5], have intentionally sought to make conditions in (PBSP-SHU) progressively more punitive than the states [4] other prisons [housing inmates indefinitely based on CDCR - gang classification], as well as more punitive than other states and Federal Prison System [B.O.P.] super-max prisons; for the sole purpose of coercing plaintiffs [and PBSP-SHU inmates similarly situated] into becoming CDCR - informants [Based on info. and belief, exemplified below]

139.) California state prison inmates civil rights are to be the same as a free person, any restrictions on such rights must be solely based on legitimate penological interests [per. Cal. Penal Code § 2600]

140.) California Code of Regulations [CCR], Title 15 § 3343, addresses

conditions of (SHU) housing, and specifies such conditions with respect to programming - privilege opportunities are to be the same as the general population inmates are afforded, ... subject to restriction - solely based on legitimate 'safety and security reasons' [the most used and abused excuse] used by defendants as a pretext to justify what in reality is done punitively, with the intent of coercing (SHU) inmates at PBSP into becoming informants ... their only real means for (SHU) release [other than insanity or death] as exemplified below:

Ⓐ Between Dec. 1981 and 2001, there were no educational opportunities - requiring proctored exams. In (2001) PBSP-SHU began allowing G.E.D. preparation via in cell study, and institutional T.V. channel instruction - and proctored exams [using the empty visiting cells]

Ⓑ In late 2003, early 2004, plaintiffs began requesting additional education - vocation - self-help opportunities. In February 2004, they submitted a group appeal requesting such opportunities - based on CCR Tit 15.5 3343(K), and such are required by the parole board for lifers to enhance parole eligibility. Def. McGrath and Woodford denied the appeal, claiming plaintiffs needed to become informants if they wanted these opportunities [see above para's #64 (A-C) re: 602 Appeal; also, several other inmates, of all races, did a similar group appeal, at the same time, which defendants denied - without reference to terrorism, or informant issues mentioned] Many family members and friends were also contacting defendants about this.

Ⓒ Although defendants denied the appeals referenced above, PBSP-SHU began offering some College courses in August 2004 [via cell-study, and

ability to purchase your own text-books; and, around Feb. 2005, they began including educational - instructional videos on the T.V., to go with the cell study) [Based on info. and belief Def. Kirkland is the one allowing it]

① In mid-2005, Troxell obtained his G.E.D., and requested the College info. from education and never received any reply. He looked at the material other inmates received and noted he could not afford the cost of books anyhow. He filed a 602 Appeal in 2006 asking to be able to offer his artwork on internet, for donations, to cover book costs. Def. Horel, and Cate denied the appeal. [602 Appeal # D06-02017] This is also a denial of free speech - free expression, and an equal protection violation [other prisons allow inmates to offer their art for donations]

② In 2007 - 2008, the College program was expanded, and had some openings for free books too. Troxell's requests to participate went unanswered. And, in early 2009, rumors were that (SHU) inmates were being excluded; thus, on March 8, 2009, he submitted a 602-Appeal. On May 15, 2009, Def. Jacquez, denied the appeal, and Def. Cate, denied it on Aug. 3, 2009. They claimed the College program was cut due to budget cuts and limited staff. However, the only ones not allowed to participate - are (SHU) inmates who refuse to debrief. The inmate informants, and general population inmates still get the College [G.E.D. has also recently stopped in SHU] [See: 602 Appeal # D09-00946] The message being, ... if you want educational ops, you need to debrief.

③ On [1-13-04] Def. McGrath, began a "photograph program" in (PBSP - SHU); wherein, debriefers and those meeting inactive status, can have photo-taken of themselves to send to family. Plaintiffs haven't been able to share a photo of themselves for over (20) years [yet, in 2002 def. McGrath provided a

news channel (KTVU-Ch. 2, in Oakland) with plaintiff's prison mugshots to air on T.V. in October-November 2002. The message being, if you want to send family a recent photo - you need to debrief. McGrath also banned hardcover books, and internet material in mail [both were struck down by this Court in 2002]

(6) On June 25, 2008, Plaintiffs submitted 602 Appeals [Ashker's, Log #D08-01791; Troxell's, Log #D08-01784], wherein they pointed out that their serving indefinite (SHU) terms, and in 2004, McGrath stated they will not leave (SHU) absent informant status - and the program opportunities in (SHU) were not sufficient, to meet parole board requirements and denying them such opportunities - while providing such to all other PBSP-inmates [including those in segregation for informant status (THU) and psych. problems (PSU)] violated Tit. 15 §§ 3040/3343, as well as 1st, 5th, 8th, and 14th Amendments [based on principles of equal-protection; and illegality of denying programming necessary to enhance a prisoner's parole chances as a means of coercing inmates to become informants]. On July 2008, Defs. Johnson and Bradbury denied the appeals; On August 15, 2008, Def. Horel denied the appeals; and On Dec. 5, 2008, Def. Cate denied the appeals at Third Level Review. Each of these defendants were put on notice [again] of the U.S. Constitutional issues [i.e., equal-protection; and punitive measures affecting parole chances, for purpose of coercing inmates to be informants]. Each defendant ignored the points raised, ensuring continued violations [and, in fact Defs. Jacquez and Cate, have subsequently taken away all educational opportunities from (SHU) See above para # 140 (E)]

(H) On July 2, 2008, Plaintiffs submitted 602 Appeals [Ashkers, Log #D08-01848; Troxell's, log# D08-01847. Notably, over (30) other similarly situated PBSP-SHU inmates filed related, group appeals, and Defendants used Troxell's Appeal Responses for all of them] In these appeals, the complaints were that denying (PBSP-SHU) inmates [serving indefinite SHU-terms, for administrative reasons] programming and privileges, that are available to all other PBSP-inmates [as well as, similarly situated (SHU) inmates in other states and Federal system - evidencing lack of validity to def's rote safety-security claims] was a pretext for coercing inmates to become informants, and thereby be put in serious danger, and violated Cal. Pen Code § 2600; Tit. 15 § 3343; and U.S. Const. 1st, 5th, 8th and 14th Amendments. Plaintiffs, et al., all requested [monthly phone calls; ability to have personal photo taken to send home; art paper, colored pencils, watercolors; state issue watch caps, to keep heads warm; Increase in canteen and packages; exercise pull-up/dip bars on yards; and T.V./Radio appliances. Defendants Johnson, Bradbury, Horel, and Cate denied these (602's) at each level of review between August to Dec. 2008 [note: they granted the T.V./Radio combo issue ... 'as soon as one's found to meet security.' See Below on this (I)] They each ignored the points raised - in spite of repeated notice re: U.S. Const. violations.

(I) A T.V./Radio combo meeting all security requirements for (SHU) [it's allowed in SHU at Corcoran, Tehachapi, and San Quentin A/C] but Def. Jacquez refuses to allow it in PBSP-SHU; and he also banned wall calendars [previously allowed since 1989]

(J) Defendants also have tried coercing (PBSP-SHU) inmates to become informants by: not allowing correspondence with incarcerated family; denying medical care and food, and books,

*FACTS PERTAINING TO BPH-NO PAROLE
POLICY FOR CDCR-SHU-LIFER INMATES*

141.) Plaintiffs are serving term-to-life sentences, and California's parole scheme gives rise to a protected liberty interest in release on parole. That's because the parole statute, Calif. Penal Code § 3041, mandates that "the Board shall set a date unless it determines further incarceration is necessary in the interest of public-safety." The California Supreme Court has repeatedly stressed that the Board must base its decision on the inmate's individual acts and omissions - both for and against parole. The decision cannot be arbitrary, or, predetermined - categorical reasons [This is per. U.S. Supreme Court precedent(s) as well]

142.) The Calif. Supreme Court has also clarified that "... a decision to deny parole comports with due process only if there is a rational, specifically articulated, nexus between the relevant statutory factors as found by the Board and the determination that the inmate would be a current danger to the public if released." ... "It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness - this is the key relevant consideration" ... "The Board's failure to specifically articulate the nexus ... linking the relation between factors cited with how they equate to evidence demonstrating current dangerousness is a denial of due process" In re Lawrence, 44 Cal. 4th 1181, 1205, 1212, 1219 [2008]

143.) Plaintiffs contend the Board [in tandem with CDCR] have subjected them to their unwritten predetermined [arbitrary - categorical] NO-PAROLE policy applied to all SHU-LIFERS [with Catch 22 of: Become an informant

For the authorities, and thereby gain release from SHU - to a gen. prison population [and be subject to serious danger per informant status]; or, die in SHU. "It's your choice." In violation of the U.S. Const 1st, 5th, 8th, and 14th Amendments, as detailed below:

- Ⓐ Between 1989 to present date, not one SHU-lifer has been found suitable for parole [based on info. and belief, i.e., plaintiff's review of many SHU-lifers parole hearing documents; and Governor's Yearly Executive Reports To Legislature On Parole Decisions, from Jan. 1, 1999 to present]
- Ⓑ Between 1989 to present date, the Board has found more than [2300] lifers suitable for parole - who were able to program on the general population. Between Jan. 1, 1999, and the present date, the Board has found more than (2000) lifers suitable [Id, Executive Rpts]
- Ⓒ Many of the (2000) lifers found suitable over past ten years had gang-related crimes, histories of gang activity in and out of prison, prior crime and drug histories. These inmates had all become CDER informants [or deemed "inactive"; but Def. Schwarzenegger, still expects inmates deemed "inactive" to become informants, prior to parole. Id, Executive Rpts]
- Ⓓ In (1992) the Board submitted a proposal to the Governor, to eliminate lifer parole hearings for (SHU) inmates. This was shot down because of recognition it would be illegal [Based on info. and belief, plaintiffs have the transcript of the proposal]

⑤ Between 1989 and the present, Board Commissioners [including named defendants Fisher, Harmon, and Gillingham] have told SHU-Lifers that they need to get out of SHU [via debriefing if necessary], to have a chance for parole, and issued multi-year denials - based solely on CDEK - Gang label and related indefinite (SHU) status. [Based on info. and belief, i.e., plaintiffs' personal experiences with the Board; and, review of several SHU-Lifer inmates parole hearing transcripts, notable is the fact that when asked directly if they have a no parole for (SHU) - debriefing requirement - they deny it, while applying it; this demonstrates intent to knowingly violate the law]. Also, only SHU-Lifers are denied parole; inmates in SHU [who have parole dates per determinate sentence] get time reduction, even in SHU - for being discipline free.

⑥ The Board [and Governor] expect SHU-Lifers to get out of SHU - via "debriefing" [becoming a known informant], if they want a chance to parole; in spite of knowing inmate informants, and their families, face retaliation for informant status [including serious injury, and death. Based on info. and belief, i.e., common knowledge, legislative hearings, Board members documented admissions in hearing transcripts, publicized incidents.] [NOTE: Robert Doyle, BPH-Chairman, is a named defendant for injunctive relief purposes]

<a> Facts Re: No Parole Policy Applied To Ashker

144> As stated above, Plaintiff Ashker was sentenced to a term of 21 years to life, subsequent to his conviction for second degree murder, with use of a knife, in April 1990 [per statute, he received 15 to life for second degree murder, (1) year for knife, and (5) year enhancement for prior felony conviction See above para's #32-41, for additional details]

145.) Ashker received the 21 to Life sentence on April 23, 1990, and was transferred to PBSP-SHU on May 2, 1990, where he was informed he would remain until he paroled, died, or debriefed [and where he has remained ever since]

146.) Ashker had obtained his G.E.D. in March 1981, and there were no opportunities for him to formally upgrade his education, vocation, or self-help ops, in (PBSP-SHU) between 1990 and 2004 (see above para 138-140)

147.) That the following facts are examples of parole board commissioners applying their unwritten, no parole for (SHU) life policy [with the Catch 22 of: Become a CDER informant so you can get out of (SHU) to a lower level institution where programs are available; or, remain and die in (SHU)... it's your choice]:

Ⓐ Ashker's first parole readiness documentation hearing was conducted by Commissioner Roos, on June 17, 1998, who recommends: Upgrade Education, Vocation, Self-Help, "... Get out of SHU-Debrief-Lower Points-Get To General Population."

Ⓑ Ashker's second parole readiness documentation hearing was conducted by Comm. Roos, on July 24, 2001, who recommends: Upgrade Educ., Vocation, and Self-Help groups, and notes, "... has greatly improved disciplinary record- However, is still in SHU."

Ⓒ Ashker's initial parole eligibility hearing was held Aug. 7, 2003 before Comm's Lawin and Lehman. Ashker declined to attend due to his pending appeal of conviction, and believed he'd receive a fair hearing regardless of attendance. Comm's Lawin and Lehman, denied Ashker due process, getting the facts of the life crime wrong - claiming it was an

"A.B. Gang-Hit" without reference to any supporting facts; and specific refer to his CDCR gang label and related (SHU) status, ... and "failure to follow prior recommendations to upgrade educ., vocation, self-help, and to get out of SHU", to deny parole with (5) year deferral.

① Ashker appealed the (2003) decision, and Comms. Risen and Moore, denied it on Jan. 13, 2004. Re: Ashker's claim board applied no parole policy [informant requirement, and dangers such entails] Risen and Moore, stated: The prisoner by his own actions has placed himself in the current custody situation where programs are not available. This is his choice and it is up to him to make the necessary changes in order to reduce his custody classification, so that he can participate in... programs."

148. > The above commissioners knew at the time that they made the above assertions that Ashker's (SHU) status was "administrative" rather than behavioral, and the "gang-label" was absent conviction(s) of any illegal "gang-activity; and that Ashker's only avenue out of (SHU) was via becoming a known informant for CDCR [Based on info and belief. i.e., comm's claimed they reviewed Ashker's records, and common knowledge, bolstered by his appeal points on the issues]

149. > The Board's reliance on (SHU) inmates "lack of programming" to justify multi-year deferrals is a pretextual excuse to cover their "no parole for (SHU)" policy, as exemplified below:

④ On August 14, 2008, Ashker attended his parole hearing before Defendant Comms. Gillingham and Smith. Between Jan. 2004, and the Aug. 14, 2008, Hearing Ashker accumulated over (31) certificates of completion, demonstrating upgrades in education-vocation [this

included an AA Degree in Paralegal Studies] and self-help courses, on his own initiative, at his own expense [re: AA Degree], in SHU [this was possible with proctored exam opportunity - no longer avail to SHU-inmates. See above paras # 138-140]

Ashker also produced undisputable evidence, proving his life-conviction was not gang-related [i.e., Trial Transcripts]

③ Comm's. Gillingham, and Smith, both commended Ashker for his positive achievements, and stated those were the basis for only giving him a (4) year deferral [rather than a (5) year deferral]; Gillingham stated such positive achievements were outweighed by negative factors; and recited these immutable factors: Life crime, Lack of remorse, prior crime history - unstable social history, gang validation and related (SHU) housing. These comm's, did not articulate the nexus linking such factors with how they equate to being evidence of current dangerousness.

④ Comm. Gillingham, also emphasized that so long as Ashker remains in (SHU) for gang-validation "... you're going to have a difficult time" [of ever being found suitable]. This statement was made in spite of Ashker presenting evidence that the gang-validation was based on confidential inmate informants stories, which have never resulted in any charges; and neither Gillingham, nor Smith, considered any of the conf. info. they had in front of them. Thus, categorically denying Ashker parole, based on "status" [i.e., gang label and related SHU-housing], rather than an individualized consideration based on all factors [and immutable factors - many of which are over (25) years old, and not true e.g., lack of remorse; or, demonstrate suitability e.g., prior crime history devoid of violence.] denying due process. [See below paras # 157-160 re: Troxell's 4.8.09, hearing before Comm. Gillingham]

① Prior to Defs Gillingham, and Smith's, Aug. 14, 2008 Decision, Ashker presented evidence to show his gang-validation and SHU-housing, was based on conf. inmate informants' claims, which he denied, and had never been found guilty of an "illegal" gang-related act; and his only avenue for (SHU) release was via known informant status- which he was not able, or willing to do [i.e., lack of info. to provide, and not willing to place self, or family in danger that informants face], to which Gillingham's response was, 'as long as you're validated and in SHU, you'll continue to have problems' [being found suitable], demonstrating deliberate indifference, and predicated parole on illegal principle [informant status] violating US Const. 1st, 5th, 8th, 14th Amendments [Ashker provided supporting case law to these Defs at the hearing]. With "nexus" linking label-SHU, to evidence of current danger- to the public [again, violating due process]

 <u>Facts Re: No Parole Policy Applied To Troxell</u>

150.> As stated above, Plaintiff Troxell was sentenced on July 16, 1979, to a term of 26 years to life, subsequent to his plea of guilty to First degree Felony murder, and robbery [per statute, he received 25 to life for first degree murder, (1) year for prior prison term; with concurrent (5) year sentence for robbery] [See above paras #92-99, for additional details]

151.> Troxell arrived in the (CDCR) on July 23, 1979 [with credit going back to his Jan. 1979, arrest]; he spent the first [5] years in San Quentin (SHU) for various rule violations. In Jan. 1984, he was transferred to Folsom Prison General Population [despite CDCR-1982, A.B. association classification. Id., above paras #93-95, for details]

152) Troxell was programming on Folsom Prison Gen. Population, earning positive work evaluations from the Kitchen supervisor, until being placed back in (SHU) Oct. 30, 1985, for undisclosed investigatory reasons. Subsequently, he was told he would remain in (SHU) indefinitely - until he agreed to debrief [based on confidential inmate informants, alleging he was an A.B. gang-member. All of Troxell's administrative appeals challenging this gang-label, and related SHU status-debriefing objections, have been denied. See above paras #94-137, for details]

153) Troxell has been in (SHU) since Oct. 30, 1985, and he has been housed in [PBSP-SHU] since Dec. 27, 1989, where there were no opportunities for him to formally upgrade his education, vocation, or self-help, until 2001, when G.E.D. study [with ability to get the required proctored exams] was offered. Troxell obtained his GED in (2005) - delay caused by vision-problems requiring surgery - his repeat requests to participate in College have been ignored and denied [See above paras #138-140, for details]

154) That the following facts are examples of parole board commissioners applying their unwritten, "no parole for (SHU) lifer policy [with Catch 22 of: Become a CDER informant, so you can get out of (SHU) to a lower level institution where programs are available; or, remain and die in (SHU),... it's your choice]:

④ Troxell's initial parole eligibility hearing was held on Sept. 19, 1995 before Comm's Guaderrama, et al., ; they denied parole, and issued a [5] year deferral to his next hearing based on their boiler-plate recital of immutable factors [i.e., life crime; prior criminality and related drug addiction; lack of sufficient programming, continued disciplinary and anti social behavior [his last rule violation, 1988 verbal threat to staff] validated gang-member and SHU-status] [NOTE: Troxell, has read other PBSP-SHU lifer's (BPH) Transcripts, wherein Guaderrama states - as long as they're in SHU - refusing to debrief - no parole] <60>

(B) Troxell's next parole hearing was not held until nearly [6] years later, on July 10, 2001, before Comm's. Welch; Granlund; and Stern.

At the time, Troxell was working on his G.E.D., and believed he was still being considered for "inactive gang-status" [having been up for it since Dec. 1999; he did not know the decision to deny this had been made June 23, 2001, based on Def. Wise' fabricated info] [See above - para's 103-108, 113]; the Comm's. commended him for his efforts to achieve the G.E.D., and "inactive status" [without careful review of his file, or they'd have seen this had been denied Id., para's 103-108, 113], and then denied parole for (4) years - based on their boiler-plate recital of immutable factors [i.e., life crime; prior crime history and related drug habit; unstable social history; programmed in a limited manner, and failed to upgrade vocationally and self-help, per. prior panels' recommendations; failed to demonstrate positive change and continued to display negative behavior [based on SHU-status, and a 1997 fist-fight], as a result he is in [SHU] where his ability to demonstrate parole readiness will remain hampered; lack of parole plans] [NOTE: Troxell has read other PPSD-SHU inmates (BPH) transcripts, wherein Comm. Welch says they need to debrief]

155. Troxell's next parole hearing was held (4 1/2) years later, on Jan. 10, 2006, before Defendants [Comm's. Fisher and Harmon]; Troxell presented evidence at this hearing to challenge the validity of the repeat use of immutable factors to justify the prior panel's decision to deny parole. He also presented several certificates of completion in education and self-help [G.E.D.; Math studies; Anger Mgt.; Victim Awareness; Life-skills, and others] and viable parole-plans. He also pointed out his only avenue out of (SHU) is via informant-status, and explained why he could not, would not do this.

156) Defendants Fisher, and Harmon, commended Troxell for his positive achievements, on his own initiative in (SHU), and noted he had viable parole plans; then, they denied parole for (3) years [per. application of the no parole for (SHU) policy] stating the following "reasons" without articulation of nexus re: how the factors cited, equate to evidence demonstrating a current danger to public safety:

④ Immutable Factors: Life crime; prior crime history, related to his drug-addiction, and institutional discipline history; until recently, had not been programming, in part, due to (SHU) placement; and ...
 "Part of the reason for the multiple year denial, Mr. Troxell, is I'm sure you know, is the fact that you continue to be validated as a member of a prison gang" [NOTE: TROXELL has read other P3SP-SHU Lifers (BPH) Transcripts wherein Comm. Harmon, repeatedly infers that they need to debrief out of SHU]

⑤ The above factors fail to constitute "evidence" of current danger to public-safety, as follows [as presented to Defs during the hearing]

- 1) Life crime was the unintended death of store mgr. during robber to obtain drug money; Troxell pled guilty, had served (27) years and no longer uses drugs.
- 2) Prior crime history - drug addiction; This was over (30) years old - history [notable for zero physical harm to anyone - which is a factor for suitability], and zero drug use for (20) years.
- 3) Institutional Discipline History; Between 1988 - 2006, had received (1) Rule Violation classified serious, for a (1997) fist-fight.
- 4) He had been studying, on his own initiative his entire (SHU) term.
- 5) His gang-validation is based on allegations from Confidential - Inmate Informants, claiming he's a gang-member. That's why he's been in (SHU) for over (24) years. He has never been found guilty of illegal gang-activity.

© Defendants Fisher, and Harmon, recommended Troxell, remain discipline free, reduce custody level [get out of SHU], and continue to upgrade education, vocation, and self-help areas;

157.) Troxell's next parole hearing was held more than [3] years later, on April 8, 2009, before Defendants Gillingham, and Tucker. Troxell's state appointed atty. present evidence - again, challenging the validity of repeat use of immutable factors to justify parole denials [as described in para #156]

158.) At the April 8, 2009 hearing, Troxell had over [30] years in on his sentence, and he presented evidence of his compliance with all of the (2006) panel's recommendations, except getting out of SHU [he produced several additional certificates of completion in self-help; demonstrated vocational skills per. history [and had obtained all the information for attending Truck driving school, upon release], and he has viable parole plans. He detailed the basis of the CDR-gang validation and related (SHU) status for (24) years; and pointed out his only way out of (SHU) was via known informant status [and reason(s) he can't, and won't, do this - with case law re: illegality of using "status" and refusal to become an informant against him].

159.) The Defendant Comms. commended Troxell, for his positive achievements since the (2006) hearing, and acknowledged his viable-parole plans. They stated that these factors are why they were denying him for only (7) years [rather than 10 or 15 years]; the basis of this (7) year denial was Troxell's CDR-gang label, and related continued (SHU) status [and refusal to debrief] is shown by:

① Defendants stated (7) year denial based on: life crime perpetrated to get money for drugs; prior crime history, related to drug-addiction;

unstable social history, and problematic relationships, consisting of A.B. membership. . . . "You are in [SHU], and you're a validated member of the A.B., and that's what we have to base our decisions on;" Lack of insight into life crime; prior prison discipline history'.

③ Defendants further stated, ". . . you're updated as a member of the A.B. . . . you're on indeterminate status. Now you'll be here as long as it takes, and you have a choice either to debrief or make it through your lawsuit". . . . "you're heading in the right direction. It's just a matter of disassociating yourself from this other A.B. stuff. That may take a long time." . . . "But, again, what's hampering you is your placement" [per April 8, 2009 (BPH) hearing transcript]

160.) Defendants admitted that they did not review any of the conf. information in Troxell's file [yet they used CDE- gang validation against him, which is based on conf. info], and they admitted there was nothing in his file showing he'd ever been guilty of committing an illegal, gang-related act [with Tucker, speculating on why that may be. *Id.*, transcript]

161.) Defendants failed to articulate a "nexus" between the factors cited to deny parole for (7) years, and how they demonstrate evidence of current danger, denying due process. And, they denied Troxell individualized consideration, issuing the [7-year] denial based on "status", without bothering to delve into basis for such "status", nor considering evidence of what specific gang-activity has he actually been guilty of - to thereby find he personally poses a current danger [this is a "categorical" denial of parole, which is a denial of due process]; and they punished him with the (7) year denial for exercising his right not to speak [refusing to become an informant -

violating U.S. Const, 1st, 5th, 8th, and 14th Amendments [procedural and substantive due-process; and EX POST FACTO principles]

FACTS PERTAINING TO PLAINTIFF'S CLAIMS
RE: ACCESS TO COURT and FREE SPEECH

(a) LEGAL MAIL

162) Between 2005, and the present date, CDCR-Defendants have violated the Plaintiffs' U.S. Const, 1st Amendment rights via policies and practices in their handling confidential legal mail, which has interfered with and harmed plaintiffs' access to the Courts; and, inhibited, chilled, and interfered with - and harmed their confidential communications with attorneys, implicating free-speech violations, as follows:

(a) Between 2004 and October 2006, plaintiffs were represented by Attorney Franck [in related cases, USDC-N.D. Cal. #04-1967 C.W., and #05-3286 C.W. See above paras #9-10]. During this time period, several items of confidential-legal mail [sent to, and coming from Attorney Franck, were never received. This caused a lot of conflict, and in Oct. 2006, Attorney Franck withdrew as counsel, and plaintiffs went pro-se, where upon their ability to obtain evidence supporting their claims - via discovery and contact with inmate witnesses was severely-harmed, as was their entire case via lack of attorney to argue for them in court; resulting in the dismissal of most of their meritorious claims [Based on Court rulings, stating the claims had merit, and record on file in #05-3286 C.W.]

(b) Between 2006 to the present CDCR-Defendants continued to

excessively delay confidential-legal mail [sent to, and coming from attorney Franck, and other attorneys], and confidential mail from the U.S.D.C. - N.D. Cal., was never received. Defendants opened legal mail outside of plaintiff's presense; and in May-June of 2008, they made (3) seperate phone-calls to assoc. Law Professor Rovner, asking if she was really an attorney, sending legal-mail to Ashker. All of which has chilled plaintiff's relationships with attorneys, making it difficult to communicate freely about confidential-legal issues, and next to impossible to obtain attorney assistance.

163.) On Feb. 4, 2008, Ashker submitted a 602 Appeal # D08-00399, to complain, and challenge the above legal-mail violations [including, attaching examples of his out-going confidential legal mail to attorneys being held by defendants for [7 to 11] days; and incoming confidential mail opened outside his presense. He pointed out such violated the first amendment [per. Thornburgh v. Abbott, 490 U.S. 401, at 413-414 [1989]; and Procunier v. Martinez, at 413-414], and requested a halt to such practices, and monetary compensation.

164.) Between Feb. 7, 2008, and Aug. 29, 2008 Defendants Horel, Cate, and Does 1-5, denied the appeal at each level of review. They were put on notice of the constitutional violation(s), and failed to correct the problem(s), thereby ensuring they continue unabated-indefinitely.

165.) On Sept. 3, 2006, Troxell, submitted a 602 Appeal # D06-02328, to complain about defendants opening legal-mail outside his presense, and not giving it to him for (2) weeks thereafter. On Nov. 17, 2006, Defendant Horel cancelled the appeal [while also addressing the issues raised, and claiming Troxell did not submit support evidence, when he did attach the envelopes) claiming he did not cooperate in interview - which is false, Def. Cate refused appeal on March 23, 2007.

(b) LEGAL MAIL FROM INMATE WITNESSES

166.) Calif. Code of Regulations [CCR] Title 15 § 3163, authorizes CDCR inmates to assist each other with the preparation of legal documents. This specifically includes the possession of other inmates...

'Legal papers, books, opinions and forms being used by one inmate to assist another with permission of owner.' and 'All papers must be returned to the respective owners when either inmate is transferred, or when other administrative action prevents direct communication.'

167.) CCR-Title 15 § 3164(c) applies to plaintiffs and states, "...Inmates who are in restricted housing units ... may possess and have access to any legal resource material available to the general population and may assist each other in their legal work to the extent compatible with institutional security."

168.) P.B.S.P. Operational Procedure [O.P.] 205, as relevant here, states: "When an inmate needs to correspond with another inmate for reasons, which may include litigation, legal issues, and family emergencies, a one-time correspondence approval may be approved by the respective Facility Captains."

169.) Ashker utilized the above provisions many times between 1990 to late (2007), in the following manner, exemplified below:

Ⓐ He would utilize Form CDC-1074 "Request For Correspondence Approval"; filling out information [e.g. case numbers and need to exchange correspondence with inmate so and so, as he is a potential witness I need a declaration and documents from]

Ⓑ This would be approved "One Time Only" [will be reviewed by I.G.I. [gang unit] and must only pertain to case listed].

Ⓒ Ashker would send the letter, sample declaration, relevant

documents, for the inmate witness' review and reply.

(D) The inmate witness usually responds with a letter, declaration, with document exhibits; and possibly other material he thinks may be helpful.

(E) Ashker would make a copy, and return a copy of the witness' declaration, with his original documents [without a letter]

(F) When he needed to follow up, and recontact the witness, he'd complete a new form (CDC-1074). And go through the process again.

170. Beginning around November 1, 2007, Defendants Barlow, Johnson, Bradbury [and a Doe defendant identified as "CDC-Attorney"] informed Ashker, that the correspondence approvals were "one time only" for the entire case [meaning no follow ups at all, for any reason]; shortly after this Ashker was informed by Defendant Hernandez [per. Barlow], that he was not allowed to return anything to the inmate witnesses [who sent him declarations and documents]

171.) Defendants did the same things, described above to Troxell, and other (SHU) inmates.

172.) Defendants' actions described in para # 170 [in context with paras # 166 to 169], has damaged plaintiff's litigation efforts, and chilled their ability to obtain supporting documentary evidence from inmates [this is because most inmates do not want to lose their originals, and getting copies made is expensive]

173.) Ashker has been challenging CDCR-prison conditions, via state and Federal Court processes, since [1988]; and often the main way to obtain

information and supporting evidence is via contact with similarly-situated inmates, many of whom are not knowledgeable re: drafting a declaration. Thus, prior to Nov. 2007, Ashker would often contact potential inmate witnesses with a letter asking a series of questions and whether, or not the inmate had relevant documents, and was he willing to sign a declaration. Depending on the response, Ashker would draft a declaration - incorporating any documents relevant - obtain a new approval to correspond, and send it all to the inmate for review, revision, and return.

174) Since Nov. 1, 2007, this has not been possible, and has damaged the plaintiff's litigation efforts, as summarized [above paras* 170-172]

175) Ashker has also found it necessary to make followup contact with certain inmate witnesses, as the case(s) proceed, due to new information and developments. This is no longer possible, and has caused damage to litigation efforts [see above paras* 170-172, and below]

176) An example of the harm caused to plaintiff's litigation efforts, due to defendant's interference described above, is as follows:

- (A) On (8-21-06) Ashker completed a onetime correspondence with PBSP-SHU inmate Bretches [re: USDC-N.D. Cal #205-3286 CW] wherein, Bretches signed a declaration supporting Ashker's "NO PAROLE POLICY" claims. And, he attached (3) color copies of his art as exhibits - re: examples of his situ.-programming efforts - on his own initiative.
- (B) Bretches (2006) declaration and exhibits were reviewed by PBSP-I.G.I. [gang-unit] prior to delivery to Ashker [per. policy]
- (C) On Oct. 29, 2007, Det. Thornton (I.G.I.) searched Ashker's cell re: (6) year inactive review; and he confiscated one of Bretches art copy-exhibits from (2006) [see above (A)], and on 11-19-07, Thornton notified Ashker

that Bretches art in his possession was to be used as an item of current gang-activity. Ashker submitted a written objection explaining the art was an exhibit to Bretches authorized legal declaration - reviewed by I.G.I. in (2006), and he wanted it returned. This was ignored, and on (4-22-08) Ashker received def. Harrison's notice that he was denied inactive [~~see above paras~~ #387 re: inactive issues, and 602]

① Ashker then submitted a (CDC-1074) requesting to correspond with Bretches (in late April 2008), in order to notify him about the above issues re: 2006 Declaration art exhibit, and obtain a declaration from him in support of his (Ashker's) gang-validation and magazine ban claims in [#CO5-3286 CW], to oppose def's M.S.J.; and on 5-16-08 Def. Johnson denied Ashker's request based on: "one time correspondence previously completed 8-21-06". Thereby denying Ashker access to relevant evidence - and the claims at issue were dismissed 3-25-09.

177. On May 26, 2008, Ashker submitted a detailed 602 Appeal #008-01455, challenging PBSP-Defendants' interpretation and application of (O.P. 205), using the 5-16-08 Bretches denial, as an example; and pointing out that due process guarantees prisoners access to the courts that is "adequate, effective, and meaningful" [per. *Casey v. Lewis*, 41 F.3d 1516 (9th Cir 1993), and "regulations that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid" [per. *Procunier v. Martinez*, 416 US 396, 419 (1974) [citing *Ex Parte Hall*, 312 US 546 (1941)], accord, *Bounds v. Smith*, 430 U.S. 817, 822 (1977)] And... "when prosecuting a lawsuit, a pro-se prisoner has the right to undertake the legal investigation and documentation of his claims in the manner that an attorney would, subject to limited-legitimate security... needs of the prison." [*Valandingham v. Bojorquez*, 866 F.2d 1135, 1141 (9th Cir 1989)]

178.) On June 18, 2008, Defendants Johnson, and Bradbury, denied the appeal at First Level, ignoring Ashker's points. As did Def. Horel, at Second Level, on July 16, 2008; and Def. Cate, at Third Level, on Nov. 12, 2008. Thus, each of these defendants, with the authority to take corrective action - were put on notice of the constitutional violation, yet failed to take corrective action, thus ensuring the violation(s) continue indefinitely.

179.) Plaintiff Troxell's problems with defendants' November 2007, re-interpretation of (O.P. 205) are similar, and related to Ashker's (they are co-plaintiffs in #05-3286 C.W.; plus, has (2) Petitions For Writ of Habeas Corpus - in state, and Federal Court, and at the state court level, the court denied a claim re: "no parole policy" due to lack of evidence - and the reason for this was, Defs only authorize the "one time correspondence", after a case has been filed, and discovery is permitted to proceed. And the court ruled summarily.)

180.) Troxell, attempted to obtain permission to follow up with inmate witness Pifer, in late April 2008 [re: #05-3286 CW, inactive gang-status, and no parole policy claims] and on May 16, 2008, Def. Johnson denied the request stating: "One Time Only Correspondence Previously Completed 9-18-06".

181.) On May 26, 2008, Troxell submitted a detailed 602 Appeal # D08-01456, challenging PBSP-Defendants' interpretation and application of (O.P. 205), using the 5-16-08 Pifer denial, as an example [making same points, with supporting case law as Ashker's appeal. See above paras # 177]

182.) On June 18, 2008, Defs' Johnson, and Bradbury, denied the appeal at First Level, ignoring Troxell's points. As did Def. Horel, at Second Level, on July 15, 2008; and Def. Cate, at Third Level, on Dec. 5, 2008. Thus, each of these defendants, with the authority to take corrective action - were put on notice of the constitutional violation, yet failed to take corrective action, thus ensuring the violation(s) continue indefinitely.

<C> INTERFERENCE, and CONFISCATION of INMATE WITNESS'LEGAL MATERIAL

183> Between Sept. 6, 2006, and the present, PBSP-Defendants have been interfering with, and confiscating, legal material sent to Ashker in response to his approved correspondence requests; these intentional actions were done without legitimate penological justification, and have caused damage to his litigation efforts, as well as, inhibiting, chilling their communications with inmate witnesses, in violation of 1st and 14th Amendments to the U.S. Constitution, as follows:

① In mid-2006, Ashker obtained approval to correspond with PBSP-inmate Olivares; and he asked Olivares if he had any info. re: inmate turned informant "Red", as such was relevant to his claims re: retaliation by PBSP-Def's in 2004 [under pretext of safety-security, based on 1995-1996 confidential informant claims. RE: USDE-N.D. Cal #05-3759 CW]. On Sept. 6, 2006, Olivares sent (3) pages about this informant [which Ashker had read before and proved personal animosity on informant's part [inmate Turner]. PBSP-I.G.I. % Buchanon confiscated the (3) pages, without any documentation about this. Ashker was deprived of this evidence - directed related to the main issue in that part of the case - which was dismissed.

② In Nov/Dec. 2006, PBSP-I.G.I. refused to give Ashker a letter from approved correspondent, PBSP-inmate witness Redd. Ashker had requested information from Redd [re: #05-3286 CW, inactive-gang status, and no parole-policy], this was done without any documentation by I.G.I. Ashker learned later that this was done

because Redd's letter included "a request for a copy of the civil-suit, if possible."

© In Mid-2008, Ashker gave Def. Hernandez, Legal Correspondence for PBSP-inmate witnesses Haddix and Cole. This legal-correspondence consisted of a brief letter, explaining Ashker was challenging gang-validation issues [re: #cos-3286CW] and he was seeking info. from them concerning allegations made by inmate informant Walley [per. transcript of Walley interview with Del Norte Prosecutor Fallman re: criminal case against Haddix, and implicating Cole, and Ashker in various conspiracies] this enquiry was directly related to at least (2) items used to deny Ashker inactive status in 2001 [see above paras #50 to 62, and memos rec'd therein]; he also enquired about another inmate informant [w/ino Bob from Stockton, whom he believed was one, fabricating "conspiracy to kill Blacks" story to get transferred out of PBSP] All of which is common knowledge.

Def's Hernandez [and poss IGI staff] reviewed, and delivered this correspondence to Haddix and Cole, when they gave Def. Hernandez, their replies, she consulted with Def. Barlow, who was working closely with defendants counsel in [#cos-3286CW] and they decided to confiscate Haddix and Cole's replies. And on July 10, 2008, Def. Hernandez, gave Ashker a copy of her CDC-128B chrono stating the correspondence was being confiscated due to Ashker's request re: informant Walley - based on an unspecified claim that this was "... a threat against institutional security." [a copy of this chrono was placed in the files of Haddix and Cole too]

184.) On July 10, 2008, Ashker challenged Defendants Hernandez, and Barlow's action, via 602 Appeal # D08-C1998, pointing out that the informant's name is Whalley, C#47594 - it's not speculation, as he (Ashker) has the transcript referenced in his letters to Haddix and Cole. "It's no secret Whalley is an informant, so there's no valid reason to keep Haddix and Cole's responses and 40 Hernandez does not articulate the alleged safety - security reason for keeping the approved legal-correspondence directly related to my civil-case."

185.) On [7-10-08] Def. Hernandez, denied the appeal at the informal-level, stating per her conversations with Def. Barlow, "the correspondence was deemed to be gang activity."

186.) On July 30, 31st, 2008, Defendants Johnson, and Bradbury, denied the appeal at First Level, on basis of 'safety - security, and promoting gang activity' without any specifics; and, ignoring Ashker's points.

187.) On Sept. 9, 2008, Def. Jacquez, denied the appeal at the Second Level, merely rubber stamping first level; and, on Dec. 18, 2008, Def. Cate, denied the appeal at Third Level, merely rubber stamping the lower level decisions.

188.) Defendants Johnson, Bradbury, Jacquez, and Cate, were each in a position to remedy the illegal acts of Hernandez, Barlow; they were each put on notice of the constitutional violation - and each of them intentionally chose not to, thus ensuring the violations continue indefinitely. This caused the following harm to plaintiffs.

④ The actions [confiscation, CDC-128 chrono, 602 Appeal respondents' allegations re: gang-activity] chilled plaintiffs from pursuing their investigative efforts [re: #C05-3286 CW, gang-activity allegations], because of defendants' actions - plaintiffs did not want to risk being accused of additional gang-activity; nor did plaintiffs want to be

responsible for having documentation [alleging gang-activity] to be placed in inmate witnesses files. All of which prevented Ashker from obtaining evidence to dispute the confidential information used to re-validate him in (2001), and was responsible for the claim being dismissed March 25, 2009 [*005-3286 CW]

- ③ The [BPH] used the 128B-Chrono, and gang-activity allegations, against Ashker at his August 14, 2008, parole-hearing; which also had a chilling effect on plaintiffs efforts to pursue investigation, and documentation of their claims - out of concerns about having defendants make "gang-activity" assertions that will then be used by the [BPH] against them [and their witnesses]

FACTS PERTAINING TO PLAINTIFFS CLAIMS

RE: DENIAL OF SEXUALLY EXPLICIT READING MATERIAL

- 189.) In Mid-2009, Ashker sought authorization to make a special-purchase of written - adult erotic material. The special purchase officer denied the request [per. CCR, Title 15, § 3006(c), (15)(4)(B)(C), (1), (2) re: Obscene Material is not allowed, absent Warden - or designee - approval]
- 190.) On June 7, 2009, Ashker sent a memo to Defendants Jacquez and Johnson, seeking clarification about the application of the above Title 15 Section, pointing that he was seeking authorization to purchase - books about adult-erotica [in short story form - no pictures].
- 191.) On June 23, 2009, Def. Johnson denied the request stating these types of books will not be approved at this institution [via memo response]
- 192.) On July 12th, 2009, Ashker submitted 602 Appeal #D09-02021, and

Troxell submitted 602 Appeal # D09-02028, challenging PBSP-Defendants refusal to permit written, adult erotic material [books - without any pictures]; and refusal to permit any exceptions to ban on nudity - for art books [per. Title 15 § 3006(c)(17)], pointing out such actions violate both Calif. Penal Code 26001; and U.S. Const. First Amendment [per. *Mauro v. Arpaio*, 183 F.3d 1054 [9th Cir. 1999], stating inmates have a 1st Amendment right to sexually explicit material - upholding the county jail ban on nudity; while citing *Amate (v. Reno)*, 156 F.3d 192, 202 [inmate can read what he pleases]

193) Between August and December 2009, Defendants Jacquez, and Cate, denied the appeals at Second and Third Levels [adopting Def. Johnson's 6-23-09 position. These defendants were put on notice of the constitutional violation(s), and had the authority to remedy the violation(s), yet they refused to do so, and actually approved of the violation(s), thus ensuring they continue indefinitely.

194) Also, the books at issue are allowed at other CDCR-institutions [i.e., such as San Quentin Adjustment Center, where Ashker read some erotic books - "Penthouse Letters" - and looked at nude art sketch books]; and the PBSP-Defendants' action denying these, is another example of going out of their way to be unnecessarily punitive [see above paras #138 to 140 (H-J), for examples]

V. LEGAL CLAIMS

FIRST CAUSE OF ACTION

<First Amendment-Right to Association>

P.76

195) Plaintiffs reallege and incorporate by reference, paragraphs # 1 to 194, of
<76>

this complaint,

196) Defendants have violated plaintiff's First Amendment rights by basing their (24) years of indefinite SHU-confinement, and denying parole [with multi-year deferrals], wholly or in part upon plaintiff's lawful association with other prisoners where such association did not consist of and were not in furtherance of any illegal prison gang activity whatsoever, and plaintiff's placement and retention in SHU-indefinitely, and denial of parole [with multi-year deferrals], on this basis is not reasonably related to any legitimate penological interest, nor constitute evidence of posing a current threat to public safety.

SECOND CAUSE OF ACTION

<First Amendment - Right to Association
And Speech

197) Plaintiff's reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

198) Defendants have violated plaintiff's First Amendment rights by basing their (24) years of indefinite SHU-confinement, and denying inactive gang-status, and denying parole [with multi-year deferrals], wholly or in part upon regulations, policies and practices which penalize inmates for innocuous associational activity, even where such association is not in furtherance of prison gang activity and not violative of any law or prison rule and/or regulation, and plaintiff's placement and retention in SHU-indefinitely, and denial of inactive status, and denial of parole [with multi-year deferrals], on this basis is not reasonably related to any legitimate penological interest, nor constitute evidence of posing a current threat to public safety.

THIRD CAUSE OF ACTION

<FIRST Amendment-Right Not to Speak>

199> Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

200> Defendants have violated plaintiffs First Amendment rights by basing their (24) years of indefinite SHU-Confinement [and subject therein to progressively more punitive conditions], and denial of parole [with multi-year deferrals], wholly or in part upon plaintiffs decision not to speak [i.e., refusal to become CDCR-informants via debriefing], is not reasonably related to any legitimate penological interest, nor constitute evidence of posing a current threat to public safety.

FOURTH CAUSE OF ACTION

<First Amendment and Equal Protection Clause Right To Associate with Members of One's Racial Group Free of Punishment>

201> Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

202> Defendants have violated plaintiffs First and Fourteenth Amendment right to associate with members of their own racial group by enforcing and implementing policies and practices that effectively penalize inmates for associating with other members of their own racial group. Said policies and practices penalize P83P-SHU inmates for innocent contact with alleged gang-affiliates, by using such to document that the inmates are engaged in gang-activity and thereby deny them inactive status, and parole. It is the established custom and policy of defendants to validate inmates for association with members of their own racial group only. <78>

FIFTH CAUSE OF ACTION

< First Amendment and Equal Protection Clause Right
To Associate and Be Treated Equal To Similarly Situated >

203> Plaintiffs reallege and incorporate by reference, paragraphs 1 to 194, of this complaint.

204> Defendants have violated plaintiffs First Amendment right to associate and Fourteenth Amendment, Equal Protection Clause right to be treated equally to similarly situated inmates [and, to not be punished for refusing to speak], by promulgating, enforcing and implementing over broad, contradictory rules and/or regulations, policies and practices that unjustifiably curtail and punish plaintiffs limited constitutional rights of free association and speech [which includes right to be free of punishment when choosing not to speak], by subjecting plaintiffs to (24) years of indefinite SHU-Confinement, and denying inactive status, and parole [with multi-year deferrals] under the pretext that such is warranted based on CDR-gang validation, when defendants:

- (a) Claim their validation alone mandates SHU-housing indefinitely until they successfully debrief [via known informant status]
- (b) Know their validation(s) are based on innocuous association, and unsupported allegations of illegal activity [by confidential inmate-informants; without issuance of the mandatory rule violations, if such claims were credible evidence of any violation of rules/laws]; and neither plaintiff has ever been found guilty of committing an illegal, gang-related act.
- (c) Punish them by progressive punitive measures, and deny parole [with

mult-year denials) for choosing not to speak (i.e. debrief)

(d) Review them for "inactive status", every (6) years [while making it clear "inactive status" does not apply to them]

(e) While allowing tens of thousands of gang-members, and associates to remain on CDCR-General Population Prisons [able to enjoy all of the programming and privileges there on]

(f) Review of the Gen. Population Gang Members/Associates for "inactive status" every (2) years.

Said rules, regulations, policies and practices are not reasonably related to any legitimate penological interest, nor constitute evidence of posing a current threat to public safety.

SIXTH CAUSE OF ACTION

<First Amendment and Equal Protection Clause
Right To Court Access and Free Speech>

205> Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

206> Defendants have violated plaintiffs First Amendment, and Fourteenth Amendment Equal Protect Clause, right to professional representation on their civil rights claims, and right to confidential communication with attorneys, through their policies and practices of interference with their confidential communications, to and from, attorneys and the courts, causing damage to the plaintiffs ability to obtain legal-assistance from attorneys, which was cause wholly, or in part, for most of their civil claims in USDC-N.D. Cal # C05-3286 CW., to be dismissed/denied.

207> Additionally, defendants policies and practices of interfering with the plaintiffs relationships with attorneys, via harassment, and unduly delaying the processing of their incoming and outgoing confidential legal-mail [and trashing such mail], and opening confidential legal-mail [outside of plaintiff's presence], has violated plaintiffs' First Amendment Free Speech rights, because defendants conduct has inhibited, chilled, and interfered with their communications with attorneys [i.e., Defs. pattern and practice of interference has inhibited and chilled Pths. from speaking, protesting, complaining, and discussing their legal strategies and personal confidential information, openly with attorneys]

SEVENTH CAUSE OF ACTION

< First Amendment and Equal Protect Clause
Right To Prepare-Prosecute Claims and Free Speech >

208> Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

209> Defendants have violated plaintiffs' First Amendment and Fourteenth Amendment Equal Protect Clause right to investigate, prepare and prosecute their legal claims, via their November 2007, interpretation of PBSP-O.P. 205 [i.e., no followup communication with inmate witnesses; not allowed to return witness documents], which in turn, has harmed plaintiffs' ability to obtain evidence supporting their valid legal claims [which was wholly, or partly, the cause for some claims to be denied/dismissed]; and, defendants policies and practices have

interfered; inhibited, and chilled plaintiffs limited free speech right to contact and obtain evidence from inmate witnesses, to the extent that many inmates no longer send documents to plaintiffs because they can't get them back. Such policies and practices are not reasonably related to any legitimate penological interest [or, is an exaggerated response]

EIGHTH CAUSE OF ACTION

< FIRST AMENDMENT and EQUAL PROTECTION CLAUSE RIGHT TO
Court Access, Prepare-Prosecute Claims and Free Speech >

210> Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

211.> Defendants have violated plaintiffs First Amendment and Fourteenth Amendment Equal Protection Clause right to investigate, prepare and prosecute their legal claims via their policies and practices of interfering, and confiscation of legal-material sent from authorized inmate witness correspondence; and falsely claiming the correspondence "posed a threat to safety-security, and promoted gang-activity" as a pretext for preventing plaintiffs from investigating and obtaining evidence relevant to their claims challenging their gang-validation. Such policies and practices caused harm because this interfered, inhibited and chilled their ability to obtain such evidence, which was wholly, or partly, responsible for their claims being denied / dismissed [#05-3286 CW; #05-3759 CW]; as well as used against Ashker at his [2008] parole hearing,

212> Such policies and practice also interfered, inhibited and chilled the

plaintiffs' limited free speech right to contact and obtain information [and evidence relevant and necessary to prosecute their legitimate legal claims] from inmate witnesses [they don't want to risk further documentation accusing them and their witnesses of promoting gang-activity]; and such policies and practices were without any penological justification [or, were exaggerated and pretextual]

NINTH CAUSE OF ACTION

< First Amendment and Equal Protection Clause Right
To Free Speech - Expression and Equal Treatment >

213> Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

214.> Defendants have violated plaintiff Troxell's First Amendment and Fourteenth Amendment Equal Protection Clause right to freedom of speech and expression, and equal treatment as that of other CDCR inmates, via their policy - practice of denying Troxell's reasonable request to be permitted to post his artwork on internet sites, seeking donations for such artwork in order to afford books, and postage, for community college courses; while other CDCR prisons permit inmates to sell their art, and such denial was responsible wholly, or in part, in Troxell not being able to participate in the college courses offered to PESP inmates who had funds for books [as well as preventing him from taking other college courses - on his own] and said denial was without any legitimate penological interest [or was an exaggerated response]

TENTH CAUSE OF ACTION

< First Amendment and Equal Protection Clause Right
To Sexually Explicit Material and Equal Treatment >

215.> Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

216.> Defendants have violated plaintiffs First Amendment and Fourteenth Amendment Equal Protection Clause right to purchase and possess sexually explicit material, and equal treatment as that of other CDCR-inmates, via their policy - practice of refusing to allow plaintiffs to purchase books containing written adult erotic material [without any nude pictures]; and their refusal to grant any exceptions to the ban on nude pictures - such as for How-to art books, while other CDCR prisons allow both [written adult erotic books; and, exceptions to the nudity ban for art books]; and such policy - practice(s) are without any penological interest [or, is an exaggerated response]

ELEVENTH CAUSE OF ACTION

< Fifth Amendment Right Against Coerced Incrimination
of Self and Others, Loss of Conditional Liberty >

217.> Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

218.> Defendants have violated plaintiffs Fifth Amendment right against coerced incrimination of ones self and others, and Fourteenth Amend. rights to conditional liberty are implicated by way of related procedural and substantive due process violation(s), by way of their policies and

practice of confining plaintiffs in SHU - indefinitely, for (24) years to date, subject to the progressively more punitive conditions therein [and denying parole, with multi-year deferrals], based on a CDR - GANG VALIDATION, that is absent of any finding of guilt of committing an illegal, gang-related act; and predicated their release from SHU [and thereby, relief from the punitive conditions therein, and a chance for parole ... both being coercive measures], upon plaintiffs' willingness to successfully "debrief" [per. defendant's policy - practice, "successful debriefing" requires the inmate to provide them with "sufficient verifiable information that has an adverse impact on the gang, gang members/associates, so that they will no longer accept the debriefer back." This amounts to a requirement of becoming a "known informant," whose statements are used to keep other inmates in SHU - indefinitely, and deny them parole; with the informant, and possibly his family, facing a serious danger of harm from retaliation for informant status. All of which has caused plaintiffs to suffer continued injury for exercising their rights to remain silent, via subjection to progressively punitive SHU - conditions and loss of conditional liberty and mental-emotional distress, which is compulsion, and procedural and substantive due process violations of US Const, Fifth and Fourteenth Amendment. All without any legitimate penological interest, nor does one's exercising his right to remain silent, constitute evidence that he is a current threat to public safety.

TWELTH CAUSE OF ACTION

<Cruel and Unusual Punishment - Deliberate Indifference>

219) Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

220.) By subjecting plaintiffs to the progressively punitive SHU-conditions for (24) years, and denying them parole [with multi-year deferrals] as part of defendants' coercive, informant procurement agenda, [imposed on long term SHU-inmates] defendants have violated the plaintiffs' Eighth and Fourteenth Amendment rights by exposing them and their families to a substantial risk of death or serious bodily injury from retaliation faced by informants, by forcing plaintiffs to become "known informants" against other gang members/associates to secure their release from SHU and have a chance to parole. Defendants are fully aware of this risk and are deliberately indifferent to the consequences such informant status would pose to plaintiffs and their families.

THIRTEENTH CAUSE OF ACTION

<Cruel and Unusual Punishment-Deliberate Indifference>

221.) Plaintiffs reallege and incorporate by reference, paragraphs *1 to 194, of this complaint.

222.) By subjecting plaintiffs to sensory deprivation of the progressively punitive SHU-conditions for (24) years, to date, and denying parole [with multi-year deferrals], as part of defendants' coercive, informant procurement agenda [imposed on long term SHU-inmates] defendants have violated the plaintiffs' Eighth and Fourteenth Amendment rights by exposing them to a substantial risk of developing serious mental illness, as a direct result of their long term exposure to sensory deprivation, and progressively punitive SHU-conditions. Defendants are fully aware of this risk and are deliberately indifferent to the effect such SHU-confinement poses to the plaintiffs' mental health.

FOURTEENTH CAUSE OF ACTION

<Cruel and Unusual Punishment - Deliberate Indifference>

223. > Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

224. > Defendants policies, practices, acts and omissions incorporated into above causes of action [twelve and thirteen] also combine together to constitute a violation of plaintiffs Eighth and Fourteenth Amendment rights to be free of cruel and unusual punishment, and entitlement to meaningful procedural and substantive due process when their liberty interests are at issue. By this cause of action, plaintiffs position is that, if either, or both, of the preceeding causes of action are held to not rise to the level of a constitutional violation standing alone, that when combining both together [defendants deliberate indifference to serious risk to both physical and mental wellbeing, posed by their acts and omissions], they do constitute Eighth and Fourteenth Amendment violations [per. Helling v. McKinney, 509 U.S. 25 [1993]; Wilson v. Seiter, 501 U.S. 294, 304-05 [1991]; See above compl., para. #81 [1-5 A-C]]

FIFTEENTH CAUSE OF ACTION

<State Created Liberty Interest>

225. > Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

226. > Defendants have deprived plaintiffs of his state created liberty interest rights protected by the Fourteenth Amendment to the U.S. Constitution, when defendants:

- a) Refused to release plaintiffs from SHU although they pose no immediate threat to safety of persons or security of institution [CCRTitle15 §§ 3335, 3339(a) and 3341.5(c)(3)];
- b) Failed to give plaintiffs a full fair hearing in order to present evidence and witnesses, and refute the gang validation(s) prior to the imposition of their indefinite SHU-terms. [Tit.15 § 3338(d)(e)(h) and (I)];
- c) Used unreliable information to retain plaintiffs in SHU. [Tit.15 § 3321(b)(1)];
- d) Failed to provide plaintiffs with mandated procedural protections when alleging that plaintiffs are involved in unlawful misconduct, including illegal gang activity [Tit.15 §§ 3312(a)(3), 3000 "Gang", 3023 "Gang Activity", and 3310 - 3320 "Inmate Discipline"];
- e) Failed to interpret and apply statutory law [Cal. Pen. Code §§ 186. 21, 186.22] as intended by the legislature, and interpreted by the Calif. Supreme Court, by sanctioning plaintiffs for innocuous associational activity - without being charged, and found guilty of an illegal gang-related act [Tit.15 §§ 3000 "Gang" and 3023 "Gang Activity" at "authority" each are based on]
- f) Failed to articulate a nexus linking the Factors cited to deny parole [and issue multi-year denials], with the determination that plaintiffs are a current danger to the public [Cal. Pen. Code § 340], as interpreted by the Cal. Supreme Court]
- g) Failed to provide a neutral, non-biased, parole consideration hearing process; and related failure to base parole decisions on plaintiffs individualized factors, per, consideration of all relevant reliable evidence [per, Cal. Pen. Code § 3041]

SIXTEENTH CAUSE OF ACTION

<Federal Due Process>

227.> Plaintiffs reallege and incorporate by reference, paragraphs #1 to 194, of this complaint.

228.> Plaintiffs indefinite SHU - confinement and related denial of parole, for alleged gang affiliation constitutes a significant and atypical hardship.

229.> Plaintiffs indefinite retention in SHU for more than (24) years, and related denial of parole [with multi-year deferrals], violates the Due Process and Ex Post Facto Clause of the Fourteenth Amendment to the U.S.

Constitution in that defendants:

a) Initially placed, and revalidated, plaintiffs indefinitely in the SHU on the basis of erroneous, unreliable and untrue information that did not constitute "some evidence" of gang-affiliation, nor that they posed individual, immediate and serious threats to inmates, staff, or institutional security.

b) Initially failed to give plaintiffs notice, and an opportunity to respond, dispute and present their views to the officials making the determinations that plaintiffs were gang-affiliates [re: initial review(s), classifications, and revalidations occurring between 1982 and 2006]

c) Failed to conduct any type of meaningful, substantive review, or investigation(s), of the alleged evidence used to initially validate [and subsequently re-validate] plaintiffs as active gang affiliates, in response to their 602 Appeals, and their written response to the gang-activity allegations used against them in their (2007) inactive reviews.

- d) Failed to provide meaningful classification reviews.
- e) Placed plaintiffs in the Catch 22 predicament that violates the Fundamental principles of due process of law, and ex post facto, by predicated their release from indefinite SHU-Confinement and release on parole, upon their agreement to become known informants [causing harm to other gang-affiliates, and subject to retaliatory acts for informant status]; or, remaining in SHU-until death, or insanity.
- f) Utilized a system of gang-validation and debriefing status, as a pretext to justify indefinite SHU-confinement without chance for parole.
- g) Predetermined the outcome of plaintiffs parole hearings, and issued multi-year deferrals, based on categorical - rather than individualized conduct, acts or omissions, that constitutes reliable evidence of current danger to the public.

230) Defendants have further violated plaintiffs' Fourteenth Amendment due process, equal protection, and ex post facto rights by their policies, practices, and promulgation and implementation of contradictory, arbitrary, vague rules and/or regulations that:

- a) Allow tens of thousands of active gang-affiliates to remain on CDCR-General Population Prisons; while indefinitely confining a few hundred inmates in (SHU), including plaintiffs, for gang-validation [e.g., compare Tit. 15 § 3378(d) with § 3378(e)]
- b) Reviewing SHU-inmates for "inactive" gang-status every (6) years; while reviewing G.P. inmates for "inactive" gang-status every (2) years [Id., Tit. 15 § 3378(d) and § 3378(e)]

- c) Failed to give plaintiffs prior adequate notice of what conduct was proscribed and what conduct is permitted.
- d) Lack clarity for their enforcement.
- e) Delegate unbridled discretion to defendants.
- f) Reach a broad range of innocent conduct.
- g) Lack sufficient minimal standards for substantively investigating plaintiffs disputes, denials, and rebuttal arguments in response to allegations of gang-affiliation and activity.
- h) Fail to establish any reasonable minimal standard; to guide defendants in fairly judging whether plaintiffs are truly an immediate threat to the safety of others and/or the security of the institution.
- i) Subject plaintiffs to progressively more punitive situ-conditions, than those experienced by similarly situated inmates [In long term segregation in Calif. CDCR; and other state and Federal supermax systems], with the purpose of coercing PBSP-indefinite situ-inmates to become known informants for the defendants.

SEVENTEENTH CAUSE OF ACTION

<Failure To Lawfully Administer, Train and Supervise>

231.) Plaintiffs reallege and incorporates by reference all previous paragraphs [#1 through 230], of this complaint.

232.) Supervisory defendants each have a duty to establish policies and procedures for the lawful administration of CDCR, PBSP, and BPH. Supervisory defendants have a duty to perform and execute their duties

in a manner consistent with state and federal law, Supervisory defendants have a duty to properly train and supervise subordinate employees.

233.> The system of CDCR underground regulations existing prior to Feb. 12, 1999, violated plaintiffs' rights as described in the preceeding causes of action.

234.> The system of recently promulgated regulations violates plaintiffs' rights as described in the preceeding causes of action.

235.> The system of [BPH] and Governor's underground regulations [re: categorical denial of parole, with multi-year denials, based on CDCR-gang-validation-related SHU-Housing; and debriefing requirement] violate plaintiffs' rights as described in the preceeding causes of action.

236.> Supervisory defendants were, and remain, deliberately indifferent to the violations of plaintiffs' rights described herein.

237.> Supervisory defendants breached their duties to legally administer the CDCR, PBSP, and BPH, and to train and supervise subordinates where plaintiffs' rights were violated as a result of the enforcement of these underground regulations and official customs, policies and practices.

238.> Supervisory defendants breached their duties to legally administer the CDCR, PBSP, and BPH, and to train and supervise subordinates where plaintiffs' rights were violated as a result of defendants acting in violation of the law, and defendants' policies and practices, to the extent supervisory defendants had actual and constructive knowledge of the violations and did nothing to prevent or correct them.

VI. CAUSATION

As a direct and proximate cause of the aforementioned acts and omissions on the part of defendants, plaintiffs have suffered and continue to suffer general and special damages in an amount to be proven at trial. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiffs have been and will continue to be irreparably injured by the conduct of defendants unless the court grants declaratory and injunctive relief sought by plaintiffs.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray for relief, as follows:

- 1) For declaratory judgment that defendants' acts, omissions, policies and practices described herein violate plaintiffs rights as herein stated; and any further relief deemed just, proper, and equitable.*
- 2) For injunctive relief deemed just, necessary, and equitable.*
- 3) Plaintiffs Todd Ashker and Danny Troxell each request compensatory damages from each and all of the CDCR-defendants according to proof in excess of the amount of one million dollars.*
- 4) For punitive and exemplary damages against each and all of the CDCR-defendants according to proof.*
- 5) For attorney's fees according to proof per. 42 USC §1988.*
- 6) For costs of the suit.*
- 7) For trial by jury on all issues triable.*

Dated: November 29, 2009

Respectfully Submitted: Todd Ashker and Danny Troxell
Todd Ashker Danny Troxell

- In pro-se -

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by Jury.

Dated: November 29, 2009

Respectfully Submitted,

Todd Ashker and *Danny Troxell*

Todd Ashker *Danny Troxell*

*Plaintiffs, In pro-se **

PROOF OF SERVICE BY MAIL

(C.C.P. Section 101(a) # 2015.5, 28 U.S.C. 1746)

I, Danny Troxell, B76578, am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. I am over eighteen (18) years of age and am a party to the below named action.

My Address is: P.O. Box 7500, Crescent City, CA 95531.

On the 3 day of December, in the year of 2009, I served the following documents: (set forth the exact title of documents served)

2pg letter to Court Clerk & new 42 USC § 1983 CIVIL RIGHTS COMPLAINT &
Demand For Jury Trial

on the party(s) listed below by placing a true copy(s) of said document, enclosed in a sealed envelope(s) with postage thereon fully paid, in the United States mail, in a deposit box so provided at Pelican Bay State Prison, Crescent City, CA 95531 and addressed as follows:

U.S. District Court
1301 Clay St., #400S.
Oakland, Cal. 94612-5212

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 3 day of December, 2009.

Signed:

Danny Troxell
(Declarant Signature)

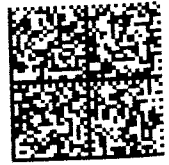
NAME: Danny Iroxe

DOC NO: B76578 HOUSING: D1-120

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SF. pro se

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