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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
6 IN AND FOR THE COUNTY OF THURSTON

7 GEORGE AUGUSTINE, KIMONTI CARTER,
8 JASON ROBERTS, FELIX SITTHIVONG and
9 CORY ZAHARKO,

10 Plaintiffs,

11 v.

12 WASHINGTON DEPARTMENT OF
13 CORRECTIONS, STEPHEN SINCLAIR,
14 Secretary, Department of Corrections, in his
15 official capacity, ROBERT HERZOG,
16 Assistant Secretary of the Prisons Division,
17 Department of Corrections, in his official
18 capacity, JERI BOE, Superintendent of
19 Clallam Bay Correctional Center, and
20 DONALD HOLBROOK, Superintendent of
21 Washington State Penitentiary,

22 Defendants.

No.

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

23
I. INTRODUCTION

1. This action is brought by Plaintiffs who were inmates at Clallam Bay Corrections Center (CBCC) and are now being illegally held in solitary confinement in the Intensive Management Unit (IMU) at the Washington State Penitentiary (WSP) in Walla Walla, Washington.

1 2. Men at CBCC are regularly subjected to unhealthy food, slave wages, shoddy yet
2 expensive products and services, and group punishment without any opportunity to confront their
3 accusers, see or challenge the evidence against them, or even explain their side of the story.

4 3. DOC administrators have refused to change their practices or address these
5 serious problems after repeated requests by men at CBCC that they do so.

6 4. These terrible conditions led the vast majority of the men at CBCC to refuse to
7 attend breakfast or other activities on the morning of October 7, 2019.

8 5. Within a few hours of men refusing to attend breakfast or other activities, CBCC
9 administrators locked the entire prison down and prohibited anyone from attending meals at the
10 cafeterias or engaging in other activities. The prison remained on lockdown through Tuesday,
11 October 8, 2019.

12 6. At or around 3:00 a.m. on October 9, 2019, CBCC staff, dressed in riot gear and
13 armed with tactical weapons, woke up a number of men, including each of the Plaintiffs,
14 shackled them, and loaded them on a bus with only a single bottle of water each. The men were
15 then taken on a 16-hour trip across Washington to the Washington State Penitentiary (WSP) in
16 Walla Walla. They did not receive a meal until 7:00 p.m. that evening.

17 7. At least 15 of the men, including all of the Plaintiffs, were immediately thrown
18 into solitary confinement in what is euphemistically called the “Intensive Management Unit”
19 (IMU). Since that time, the men have been held alone in single cells and allowed out for at most
20 an hour a day (five hours total per week). Even during that hour out of their cells, they are alone.
21 The men have no television, radio or other items to pass the time while held in solitary
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1 confinement. They are shackled and led around by a leash by at least two prison guards anytime
2 they are out of their cells. They are permitted to shower only three times per week.

3 8. Though the Plaintiffs have been held in solitary confinement for three weeks, the
4 Defendants have yet to justify their actions. Defendants have refused to provide any of the
5 Plaintiffs with any evidence that justifies their placement in solitary confinement.

6 9. Defendants have not explained in any detail why any of the Plaintiffs remain in
7 solitary confinement.

8 10. Defendants have provided none of the Plaintiffs with an opportunity to challenge
9 the basis for their placement and detention in solitary confinement.

10 11. None of the Plaintiffs have done anything to justify their placement or on-going
11 detention in solitary confinement.

12 12. Defendants have no reasonable justification for the length of time the Plaintiffs
13 and other men have been held in solitary confinement, and the Defendants continue to hold the
14 Plaintiffs in solitary confinement without sufficient basis.

15 13. Defendants arbitrarily, without sufficient justification and without sufficient
16 evidence, singled out the Plaintiffs and a few other men, shipped them across the state, threw
17 them in solitary confinement and left them there, although hundreds of men acted non-violently
18 on the morning of October 7, 2019.

19 14. None of the Plaintiffs or other men held in solitary confinement engaged in any
20 act of violence, threatened any act of violence, encouraged anyone else to engage in any act of
21 violence, or witnessed any act or threat of violence. On the contrary, men actively and openly
22 cautioned each other against violence.
23

1 15. In fact, many prisoners at CBCC ate breakfast and attended activities that
2 morning without incident and without suffering any reprisal from other prisoners.

3 16. After repeated demands that Plaintiffs and others be released from solitary
4 confinement, Defendants continue to hold them in solitary confinement without sufficient
5 justification.

6 17. Defendants' actions are illegal and inhumane and violate Washington's
7 Constitution. Therefore, Plaintiffs ask the Court to order Defendants to immediately release them
8 from IMU, return all of their personal property seized by Defendants, return Plaintiffs at a
9 minimum to the classification level they held when they were taken from CBCC, prohibit the
10 Defendants from taking any similar actions again in the future, and order the Defendants to take
11 all necessary actions to ensure Plaintiffs suffer no additional negative impacts from Defendants'
12 illegal actions.

13 18. Plaintiffs bring this action because the Defendants have violated many rights
14 guaranteed the Plaintiffs by Washington's Constitution.

15 **II. JURISDICTION AND VENUE**

16 19. The Court has jurisdiction over this action pursuant to Article IV, Section 14 of
17 the Washington State Constitution and RCW 2.08.010 in that this is a case in equity and for
18 which the demand in controversy amounts to greater than three hundred dollars.

19 20. The Court has jurisdiction over this action pursuant to Article IV, Section 14 of
20 the Washington State Constitution and RCW 2.08.010 in that exclusive jurisdiction over this
21 matter has not been vested in some other court.

21. Venue is proper in this Court pursuant to RCW 4.12.025 because at least one of the Defendants resides in Thurston County and pursuant to RCW 4.92.010(5) as an action against the State.

III. PARTIES

PLAINTIFFS

22. Plaintiffs were each incarcerated at CBCC in Clallam Bay, Washington, until October 9, 2019. They have each been held in solitary confinement at the Intensive Management Unit (IMU) at WSP in Walla Walla, Washington, since October 9, 2019.

23. Plaintiff George Augustine was incarcerated at CBCC in Clallam Bay, Washington, until October 9, 2019. He has been held in solitary confinement at the IMU at WSP in Walla Walla, Washington, since October 9, 2019.

24. Plaintiff Kimonti Carter was incarcerated at CBCC in Clallam Bay, Washington, until October 9, 2019. He has been held in solitary confinement at the IMU at WSP in Walla Walla, Washington, since October 9, 2019.

25. Plaintiff Jason Roberts was incarcerated at CBCC in Clallam Bay, Washington, until October 9, 2019. He has been held in solitary confinement at the IMU at WSP in Walla Walla, Washington, since October 9, 2019.

26. Plaintiff Felix Sitthivong was incarcerated at CBCC in Clallam Bay, Washington, until October 9, 2019. He has been held in solitary confinement at the IMU at WSP in Walla Walla, Washington, since October 9, 2019.

1 27. Plaintiff Cory Zaharko was incarcerated at CBCC in Clallam Bay, Washington,
2 until October 9, 2019. He has been held in solitary confinement at the IMU at WSP in Walla
3 Walla, Washington, since October 9, 2019.

4 **DEFENDANTS**

5 28. Defendant State of Washington Department of Corrections (DOC) is a public
6 entity which owns and manages all DOC facilities, including CBCC and WSP.

7 29. Defendant Stephen Sinclair is the Secretary of the DOC. In that capacity, Mr.
8 Sinclair is required to exercise all powers and perform all duties prescribed by law with respect
9 to the administration of Washington prison facilities, including CBCC and WSP. On information
10 and belief, Mr. Sinclair has the authority to direct the activities of subordinate officers and other
11 employees of Washington prisons, as well as appoint and remove subordinate officers and other
12 employees of Washington prisons. On information and belief, he also has control over fiscal
13 concerns of Washington prisons, including the power to direct and monitor the disbursement of
14 DOC funds, create and implement policies and practices and direct and manage the day-to-day
15 DOC affairs across all DOC facilities. On information and belief, Mr. Sinclair was involved in
16 making decisions and taking actions that caused or contributed to some or all of Plaintiffs'
17 injuries described herein. Mr. Sinclair is sued in his official capacity.

18 30. Defendant Robert Herzog is the Assistant Secretary of the Prisons Division of
19 DOC. In that capacity, Mr. Herzog is required to exercise all powers and perform all duties
20 prescribed by law with respect to the administration of Washington prison facilities, including
21 CBCC and WSP. On information and belief, Mr. Herzog has the authority to direct the activities
22 of subordinate officers and other employees of Washington prisons, as well as appoint and
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1 remove subordinate officers and other employees of Washington prisons. On information and
2 belief, he also has control over fiscal concerns of Washington prisons, including the power to
3 direct and monitor the disbursement of DOC funds, create and implement policies and practices
4 and direct and manage the day-to-day DOC affairs across all DOC facilities. On information and
5 belief, Mr. Herzog was involved in making decisions and taking actions that caused or
6 contributed to some or all of Plaintiffs' injuries described herein. Mr. Herzog is sued in his
7 official capacity.

8 31. Defendant Jeri Boe is the Superintendent of CBCC. In that capacity Ms. Boe is
9 required to exercise all powers and perform all duties prescribed by law with respect to the
10 administration of CBCC. On information and belief, Ms. Boe has the authority to direct the
11 activities of subordinate officers and other employees working at CBCC, as well as appoint and
12 remove subordinate officers and other employees of CBCC. On information and belief, she also
13 has control over fiscal concerns of CBCC, including the power to direct and monitor the
14 disbursement of DOC funds related to CBCC, create and implement policies and practices and
15 direct and manage the day-to-day affairs at CBCC. On information and belief, Ms. Boe was
16 involved in making decisions and taking actions that caused or contributed to some or all of
17 Plaintiffs' injuries described herein. Ms. Boe is sued in her official capacity.

18 32. Defendant Donald Holbrook is the Superintendent of WSP. In that capacity Mr.
19 Holbrook is required to exercise all powers and perform all duties prescribed by law with respect
20 to the administration of WSP. On information and belief, Mr. Holbrook has the authority to
21 direct the activities of subordinate officers and other employees working at WSP, as well as
22 appoint and remove subordinate officers and other employees of WSP. On information and
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1 belief, he also has control over fiscal concerns of WSP, including the power to direct and
2 monitor the disbursement of DOC funds related to WSP, create and implement policies and
3 practices and direct and manage the day-to-day affairs at WSP. On information and belief, Mr.
4 Holbrook was involved in making decisions and taking actions that caused or contributed to
5 some or all the of Plaintiffs' injuries described herein. Mr. Holbrook is sued in his official
6 capacity.

7 33. All of the Defendants' actions and other actions taken by other DOC officials,
8 employees or contractors related to the events described herein constitute state action for all
9 purposes and each are jointly and severally liable and legally responsible for all such actions.

10 IV. FACTS

11 *Conditions at Clallam Bay Correctional Center*

12 34. Clallam Bay Correctional Center (CBCC) is a prison that the Department of
13 Corrections (DOC) owns and operates in Clallam Bay, Washington.

14 35. Defendants Sinclair, Herzog and Boe are responsible for the policies and
15 procedures followed at CBCC and the management and day-to-day operations of CBCC.

16 36. CBCC is designed to incarcerate over 850 men and currently has a census of over
17 800 men each day.

18 37. For many years, men at CBCC have suffered from a series of poor conditions and
19 unfair treatment by DOC staff.

20 38. Men held in close custody units have been denied outdoor recreation for long
21 stretches of time and have been denied access to dayroom and other important privileges without
22 justification or cause.

1 39. A few years ago, DOC discontinued making all meals at CBCC within the CBCC
2 kitchens to save money.

3 40. Instead, DOC began to outsource this responsibility to facilities far from CBCC
4 and truck in meals that are unhealthy and of very poor quality.

5 41. As a consequence of DOC's cost savings effort, the men at CBCC are now forced
6 to eat unpleasant and unhealthy meals.

7 42. DOC has also instituted arbitrary group punishments when only a single
8 individual may be responsible for an inappropriate act.

9 43. Under its "Group Violence Reduction Strategy" (GVRS) policies and practices,
10 when a prisoner engages in certain types of misbehaviors, DOC rounds up a large number of
11 men who have no responsibility for the behavior of the individual prisoner and punishes them all.

12 44. As part of the GVRS group punishment, the men's personal property is seized,
13 they lose the opportunity to speak with families and friends on the telephone, they are denied
14 outdoor recreation time, and they are confined to their cells for many days at a time.

15 45. Men caught up in DOC's GVRS group punishments are denied any opportunity to
16 be heard regarding the reason or nature of their punishments or to challenge any alleged
17 "evidence" that led to the group punishments.

18 46. DOC imposes these group punishments without sufficient evidence to justify
19 them and without providing the men with essential due process protections.

20 47. DOC also outsources various vital responsibilities to for-profit corporations and
21 vendors who take advantage of incarcerated people and their families by charging exorbitant
22 amounts and providing shoddy products and services.

1 48. Any time an incarcerated person makes a phone call to a loved one, he or she
2 must pay an excessive cost for telephone services.

3 49. DOC contracts with a national for-profit corporation, JPay, a subsidiary of
4 Securus Technologies, to provide certain types of communications to people who are
5 incarcerated in Washington's prisons.

6 50. The services JPay provides are notorious for being incredibly expensive and
7 unreliable.

8 51. DOC pays nothing for JPay to operate inside Washington's prisons. Instead,
9 incarcerated people and their families spend significant amounts of money navigating the
10 monopolistic JPay system that DOC has allowed to operate in Washington's prisons.

11 52. People who are incarcerated and their families are forced to use expensive
12 communication systems even though many free communications systems are readily available.

13 53. DOC also utilizes other private, for-profit vendors that take advantage of people
14 who are incarcerated and their families.

15 54. Union Supply Direct, another for-profit company, is the only approved source of
16 certain types of property that incarcerated people in Washington may purchase and own.

17 55. Union Supply Direct is notorious for poor service and shoddy products.

18 56. People who are incarcerated often received damaged or malfunctioning items,
19 including televisions and other expensive electronics. Replacing or repairing the items takes
20 months if they occur at all.

21 57. The outrageous costs of the products and services that for-profit private vendors
22 charge incarcerated people and their families are particularly egregious because of the extremely
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1 limited wages that men earn for engaging in work activities inside CBCC and other DOC
2 facilities.

3 58. While the costs associated with being incarcerated continue to skyrocket, DOC
4 continues to pay incarcerated people only cents on the dollar for their labor.

5 59. As a result, people who are incarcerated must pay excessive costs for telephone
6 calls, correspondence, foodstuffs, hygiene products and other essentials while being unable to
7 earn wages that allow them to meet these increased costs.

8 ***CBCC Inmates' Attempt to Negotiate and DOC's Response***

9 60. Frustrated by numerous and on-going prison condition issues, men at CBCC and
10 other facilities in Washington have brought these issues to the attention of DOC and the other
11 Defendants.

12 61. Men at CBCC complained to CBCC administrators and other DOC officials on
13 many occasions about these problems, without significant response.

14 62. Later, DOC administrators, aware that the men of CBCC were frustrated with the
15 lack of adequate response to their legitimate concerns, invited a number of CBCC men to a
16 meeting.

17 63. Plaintiffs George Augustine, Kimonti Carter, and Felix Sithivong attended this
18 meeting.

19 64. At this meeting, DOC administrators again refused to discuss a number of the
20 men's legitimate concerns.

1 ***Events of the Morning of October 7, 2019.***

2 65. Because DOC continued to refuse to even discuss many of their legitimate
3 concerns, many hundreds of men at CBCC did not attend the cafeteria for breakfast or engage in
4 other activities on the morning of October 7, 2019.

5 66. CBCC administrators ordered the prison “locked down” at around noon on
6 October 7 and ordered all men into their cells where they remained through the rest of October 7
7 and all day on October 8.

8 67. The vast majority of men at CBCC did not attend the cafeteria for breakfast or
9 other activities, but there were many men who *did* eat breakfast that morning and engage in
10 activities.

11 68. None of the men who ate breakfast or engaged in activities on the morning of
12 October 7 suffered any reprisals.

13 69. In fact, Plaintiff George Augustine went to his education class that morning
14 without suffering any threat or other reprisal from any other inmate.

15 70. Defendants have alleged in the media, without providing any evidence, that men
16 were threatened with violence if they ate breakfast or attended activities on October 7.

17 71. However, on October 7, all men confined at CBCC acted non-violently and
18 encouraged other men to act non-violently.

19 72. When requested by Plaintiffs’ representatives, Defendants refused to provide any
20 evidence demonstrating that any person was threatened in any way for anything related to the
21 morning of October 7.

1 73. Each Plaintiff denies that he threatened anyone, encouraged anyone to threaten
2 anyone, or witnessed anyone be threatened.

3 ***Unjust Transfer and Plaintiffs' Illegal Placement and Detention in Solitary***
4 ***Confinement***

5 74. At around 3:00 a.m. on Wednesday, October 9, each plaintiff was awoken in his
6 cell by a large group of correctional officers bearing tactical weaponry.

7 75. Whereupon they were each shackled, hauled out to a waiting bus, with other men
8 and transported across the State to WSP.

9 76. Plaintiffs were given only a single bottle of water each during the entire trip and
10 no food until the evening.

11 77. Rather than address the legitimate concerns raised by the vast majority of men at
12 CBCC, DOC woke Plaintiffs and a number of other men in the middle of the night, surrounded
13 them with correctional officers bearing tactical weaponry, shackled them, loaded them onto a bus
14 and transported them 16 hours across the state with nothing more than a single bottle of water
15 each.

16 78. Upon arriving at WSP, Plaintiffs and other men were immediately placed in
17 solitary confinement in the IMU at WSP.

18 79. Plaintiffs have all been held in solitary confinement in the IMU at the WSP since
19 that time.

20 80. DOC has not informed Plaintiffs when they will be released from IMU.

21 81. Plaintiffs have received no explanation as to why they were transferred from
22 CBCC to WSP and why they were then placed and held in solitary confinement at IMU.
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1 82. Plaintiffs have had no opportunity to contest whatever the justification may be for
2 their transfer and placement and retention in IMU and do not know why they remain there.

3 83. Though requested on a number of occasions, Defendants have refused to provide
4 Plaintiffs with any evidence suggesting that Plaintiffs have done anything to justify their transfer
5 from CBCC or their ongoing placement in solitary confinement.

6 84. Defendants have not subjected any of the Plaintiffs to formal discipline or issued
7 them an infraction for anything related to the events at CBCC described herein.

8 85. On information and belief, Defendants have not subjected any person to discipline
9 or infringed anyone for anything related to any event at CBCC on October 7 described herein.

10 86. Plaintiffs have all been held longer in solitary confinement than they would have
11 had Defendants subjected Plaintiffs to solitary confinement pursuant to its disciplinary
12 segregation policies.

13 87. Had Defendants sought to utilize their disciplinary policies against Plaintiffs,
14 Plaintiffs would have had an opportunity to understand the reasons why they were subject to
15 solitary confinement and would have been provided a hearing overseen by a neutral
16 decisionmaker who was not involved in any of the decisions at issue. Such a hearing would have
17 included presentation of evidence and witness testimony and would have allowed Plaintiffs the
18 opportunity to present evidence and testimony of their own in order to demonstrate why they
19 should not be placed in solitary confinement and they could have appealed any adverse
20 disciplinary decision.

21 88. Plaintiffs did not engage in any behavior that would justify their transfer from
22 CBCC, or their placement and retention in solitary confinement.

1 89. DOC officials have acknowledged to Plaintiffs that they do not know why
2 Plaintiffs have been placed in solitary confinement or continue to be held in solitary
3 confinement.

4 90. Plaintiffs, like other men subject to solitary confinement in the WSP IMU, are
5 locked alone in a small concrete cell, with little natural light, for at least 23 out of every 24 hours
6 per day. Plaintiffs do not have access to televisions, radios, or other devices that might mitigate
7 the intense isolation and maddening boredom that comes with solitary confinement. They are
8 permitted only five hours solitary time outside their cell per week and allowed to shower only
9 three times per week.

10 91. When they are allowed out of their cells for their “hour outs,” Plaintiffs are alone
11 in a dayroom or recreational yard.

12 92. By DOC policy, Plaintiffs may regularly be denied even an hour out per day.

13 93. Plaintiffs are shackled and handcuffed anytime they are moved from their cell by
14 at least two prison guards.

15 94. The guards hold onto Plaintiffs via a short leash attached to the shackles.

16 95. The use of these shackles and leash is humiliating and degrading and unnecessary,
17 as none of the Plaintiffs pose any sort of threat to any staff member or other person.

18 96. At no point during the entire period described herein have any of the Plaintiffs
19 acted violently or posed a threat to any other person.

20 97. Defendants have not issued infraction notices to any of the Plaintiffs.

21 98. Defendants have not provided any evidence that Plaintiffs engaged in behavior
22 that was inconsistent with their status as prisoners.

1 99. Though many hundreds of men refused to attend breakfast or other activities on
2 the morning of October 7, the Defendants singled out only a few men, including the Plaintiffs,
3 for transfer and isolation.

4 100. Plaintiffs have done nothing to justify the Defendants' unfair and illegal actions.

5 101. Defendants directed, authorized, or condoned the placement of each Plaintiff in
6 solitary confinement without sufficient evidence to support that decision or action.

7 102. Defendants directed, authorized, or condoned the placement of each Plaintiff in
8 solitary confinement without sufficient justification to support that decision or action.

9 103. Defendants directed, authorized, or condoned the continued use of solitary
10 confinement against each Plaintiff beyond any reasonable time.

11 104. Defendants directed, authorized, or condoned the continued use of solitary
12 confinement against each Plaintiff without substantial evidence to justify that action.

13 105. Defendants directed, authorized, or condoned the continued use of solitary
14 confinement against each plaintiff without providing them with adequate notice or an adequate
15 opportunity to be heard either before or during their solitary confinement.

16 106. Defendants acted arbitrarily and capriciously when they directed, authorized or
17 condoned the placement and on-going detention of each plaintiff in solitary confinement.

18 107. Solitary confinement is the most severe punishment that DOC may currently
19 inflict upon people incarcerated in Washington.

20 108. It is almost universally recognized that solitary confinement causes psychological,
21 emotional and mental injuries to people subjected to it.

1 109. The longer someone is isolated, the more severe the injuries, but even a relatively
2 short stay in solitary confinement can cause serious and irreparable injuries. These injuries may
3 not present themselves until well after the solitary confinement has ended.

4 110. Plaintiffs have suffered anxiety, depression, frustration, and mental and physical
5 anguish as a result of their ongoing punishment in solitary confinement and the arbitrary and
6 capricious way Defendants have treated them.

7 111. Defendants' ongoing use of solitary confinement against Plaintiffs under the facts
8 described herein constitutes cruel punishment in that it is unwarranted, unnecessary,
9 unreasonable and not based on enough evidence or justification.

10 ***DOC's Seizure and Retention of Plaintiffs' Personal Property***

11 112. Defendants seized and have failed to return all of Plaintiffs' personal property.

12 113. This property includes personal effects, such as pictures, letters, emails and other
13 correspondence with family and friends, gifts from family and friends, foodstuffs, personal
14 hygiene products, electronics and other appliances, legal papers and correspondence, books and
15 other documents, and other authorized property.

16 114. Often in the past, DOC has seized authorized property and then failed to return it
17 or returned it damaged to the owner.

18 115. This seizure of and loss or damage to property has happened to some or all of the
19 Plaintiffs in the past.

20 116. The men who lose property as a result of DOC's actions often receive no
21 compensation for the lost or damaged property.

1 117. Certain property that DOC loses, destroys or damages has intrinsic value for
2 which no compensation will suffice, such as personal photographs, letters or other personal and
3 intimate keepsakes.

4 118. Based upon prior experience, the Plaintiffs have a legitimate, justified and
5 reasonable fear that they will not receive all of their personal property and that, if returned, it will
6 be returned in a damaged condition.

7 119. Defendants acted arbitrarily and capriciously when they directed, authorized or
8 condoned the seizure and retention of each plaintiff's property.

9 120. Defendants directed, authorized, or condoned the continued seizure of each
10 plaintiff's property beyond any reasonable time, without sufficient evidence to do so, and
11 without sufficient justification.

12 121. Defendants directed, authorized, or condoned the seizure and retention of each
13 plaintiff's property without providing them with adequate notice or an adequate opportunity to
14 be heard either before or after the seizure and retention of their property.

15 ***Actions of Individual Defendants***

16 122. Defendant Robert Herzog approved the transfers of Plaintiffs and other men from
17 CBCC to WSP.

18 123. DOC seized and retained some or all of each plaintiff's personal property as a
19 result of that approval.

20 124. Defendant Jeri Boe approved the transfers of Plaintiffs and other men from CBCC
21 to WSP.

1 125. DOC seized and retained some or all of each plaintiff's personal property as a
2 result of that approval.

3 126. Defendant Robert Herzog approved the placement of Plaintiffs and other men into
4 solitary confinement at the IMU at WSP. He has also approved of continuing to hold Plaintiffs in
5 solitary confinement at WSP IMU.

6 127. Defendant Donald Holbrook approved the placement of Plaintiffs and other men
7 in solitary confinement at the IMU at WSP. He has also approved of continuing to hold Plaintiffs
8 in solitary confinement at WSP IMU.

9 128. Defendant Stephen Sinclair has approved of continuing to hold Plaintiffs in
10 solitary confinement at the IMU at WSP.

11 129. Defendants owe a positive duty to Plaintiffs arising out of the special relationship
12 Defendants have to Plaintiffs as their custodians while the Plaintiffs are incarcerated in
13 Washington's prisons.

14 ***Ongoing Irreparable Injuries Defendants Have Caused.***

15 130. Defendants' actions in holding the Plaintiffs in solitary confinement and seizing
16 their personal property constitute on-going, irreparable harms that the Court must enjoin.

17 131. Defendants' actions, even if enjoined, will have ongoing negative impacts if any
18 record or other documentation is retained that indicates in any manner that any of the Plaintiffs
19 have done anything to justify placement in solitary confinement.

20 132. Prospects for early release through clemency, commutation or parole (if
21 authorized by law in the future) can be negatively impacted by information maintained in DOC
22 records.

1 133. Additionally, information related to these events may also negatively impact
2 Plaintiffs' classification status now or in the future unless DOC is barred from considering any
3 such information during any future classification review process.

4 134. Plaintiffs will therefore suffer ongoing, irreparable harm unless all negative
5 information regarding the matters described herein is removed from any DOC file or record that
6 might be utilized in any future court or administrative proceeding or in any classification review
7 by DOC relating to any of the Plaintiffs.

8 135. Defendants may release Plaintiffs from solitary confinement and return their
9 property during the pendency of this action, but Plaintiffs are still at significant risk that
10 Defendants will injure them in the same or a similar manner as described herein in the future
11 absent court intervention to prohibit such likely, future illegal actions.

12 136. The claims asserted herein present issues of continuing and substantial public
13 interest in that they are public in nature, an authoritative determination is necessary to guide the
14 future actions of DOC and its public officers, and it is likely that DOC and its public officers will
15 engage in the same or similar illegal conduct in the future without court intervention.

16 137. The actions by Defendants giving rise to the claims asserted herein are capable of
17 repetition, yet evading review.

18 **V. CLAIMS FOR RELIEF**

19 **FIRST CLAIM FOR RELIEF**

20 **Violation of Wash. Const. Art. I, § 3 – Due Process (Liberty)**

21 138. By transferring and isolating Plaintiffs in IMUs in the manner and under the facts
22 described herein, Defendants have acted under color of state law and have violated and continue
23

1 to violate Plaintiffs' substantive and procedural due process rights under the Article I, § 3 of the
2 Washington State Constitution.

3 **SECOND CLAIM FOR RELIEF**

4 **Violation of Wash. Const. Art. I, § 3 – Due Process (Property)**

5 139. By seizing and refusing to return the plaintiff's property in the manner and under
6 the facts as described herein, Defendants have acted under color of state law and have violated
7 and continue to violate Plaintiffs' procedural due process rights under Article I, § 3 of the
8 Washington State Constitution.

9 **THIRD CLAIM FOR RELIEF**

10 **Violation of Wash. Const. Art. I, § 12 —Privileges and Immunities**

11 140. By transferring and isolating plaintiffs in IMUs in the manner and under the facts
12 described herein, Defendants have acted under color of state law and have violated and continue
13 to violate plaintiffs' rights to equal protection of the laws guaranteed by Article I, §12 of the
14 Washington State Constitution.

15 **FOURTH CLAIM FOR RELIEF**

16 **Violation of Wash. Const. Art. I, § 14 – Cruel Punishment**

17 141. By transferring and isolating Plaintiffs in IMUs in the manner and under the facts
18 described herein, Defendants have acted under color of state law and have violated and continue
19 to violate Plaintiffs' rights to be free of cruel punishment granted them by Article I, § 14 of the
20 Washington State Constitution.

1 **FIFTH CLAIM FOR RELIEF**

2 **Violation of the Duty to Protect and Maintain Health, Safety and Welfare**

3 142. By transferring and isolating Plaintiffs in IMUs in the manner and under the facts
4 described herein, Defendants have violated and continue to violate their duty to protect and
5 maintain the health, safety and welfare of Plaintiffs.

6 **V. RELIEF REQUESTED**

7 Wherefore, Plaintiffs pray for relief as follows:

8 A. For a declaration that defendants are violating the rights of Plaintiffs under the
9 state constitution and other applicable laws.

10 B. For the issuance of a preliminary and permanent injunction requiring the
11 Defendants to:

- 12 i. Immediately release Plaintiffs from IMUs and transfer them to less
13 restrictive confinement;
- 14 ii. Provide the Plaintiffs with appropriate and adequate notice and
15 opportunity to be heard before taking any actions similar to those
16 described herein;
- 17 iii. Place and hold Plaintiffs in solitary confinement or punish them in any
18 other way only upon sufficient evidence and with sufficient justification;
- 19 iv. Return all of the Plaintiffs' personal property in the same condition that it
20 all was in when Plaintiffs were transferred from CBCC;
- 21 v. Return all men, at a minimum, to the classification level that they held
22 prior to their transfer from CBCC and ensure that each man is properly
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classified on his routine schedule without reference to any of the
information, facts, or events described herein;

vi. Redact any negative information regarding any of the facts or events
described herein from any DOC document or record related to any of the
Plaintiffs;

vii. Not use any information regarding any of the facts or events in any
classification, disciplinary, or other administrative process related to any
of the Plaintiffs;

C. For equitable restitution for any injury or loss plaintiff's suffer caused by
defendants' actions;

D. For an award of Plaintiffs' attorneys' fees and costs as provided by law;

E. For such other relief as the Court deems just and equitable.

DATED this 29th day of October, 2019.

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