

1 PRISON LAW OFFICE
DONALD SPECTER (SBN 83925)
2 WARREN E. GEORGE (SBN 53588)
REBEKAH EVENSON (SBN 207825)
3 1917 Fifth Street
Berkeley, California 94710-1916
4 Telephone: 510.280.2621
Facsimile: 510.280.2704
5 dspecter@prisonlaw.com
wgeorge@prisonlaw.com
6 revenson@prisonlaw.com

7 BINGHAM MCCUTCHEN LLP
GEOFFREY HOLTZ (SBN 191370)
8 MANU PRADHAN (SBN 253026)
Three Embarcadero Center
9 San Francisco, CA 94111-4067
Telephone: 415.393.2000
10 Facsimile: 415.393.2286
geoffrey.holtz@bingham.com
11 manu.pradhan@bingham.com

12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15

16 ROBERT MITCHELL, *et al.*,
17 Plaintiffs,
18 v.
19 MATTHEW CATE, *et al.*,
20 Defendants.

No. 08-CV-1196 TLN EFB

**ELDON VAIL'S EXPERT REPORT AND
SUPPLEMENTAL DECLARATION IN SUPPORT
OF PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION**

Magistrate Judge: Hon. Edmund F. Brennan
Date: June 12, 20113
Time: 10:00 a.m.
Courtroom: 24
22 Action Filed: May 30, 2008
23
24
25
26
27
28

1 I, Eldon Vail, declare:

2 I have personal knowledge of the matters set forth herein and if called as a witness
3 I could competently so testify.

4 **I. Introduction**

5 1. I am the former Secretary of the Washington State Department of
6 Corrections, and I have worked in and run prisons for nearly thirty-five years.

7 2. I began my work in corrections in 1974. Between 1974 and 1987, I worked
8 first as a line officer, and then as a supervisor of officers in various adult and juvenile
9 prisons throughout the state of Washington.

10 3. I was then promoted to be a Superintendent (Warden). Between 1987 and
11 1994, I served as the Superintendent (Warden) of three prisons, including facilities with
12 maximum security inmates.

13 4. Between 1994 and 1999, I served as Assistant Director for prisons,
14 providing direct supervision for several facilities and as Assistant Deputy Secretary,
15 second in command for all prisons and community corrections programs in the State of
16 Washington.

17 5. After that, I served for seven years as the Deputy Secretary for the
18 Washington State Department of Corrections, responsible for the operation of prisons and
19 community corrections. I briefly retired, but was asked by the Governor of Washington
20 to come out of retirement to serve as the Secretary of the Department of Corrections in
21 the fall of 2007. I served as the Secretary for four years, until I retired in 2011.

22 6. Attached hereto as Exhibit 1 is a list of my qualifications and professional
23 experience, my expert witness experience during the last four years, and my expert
24 witness fees.

25 **II. Foundation for Expert Opinions**

26 7. Plaintiffs' counsel asked for my opinion about California's lockdown
27 policy and practice. In analyzing California's lockdowns, I draw upon my years as a
28

1 correctional administrator, during which I was called upon to manage many situations of
2 prison violence, including riots, stabbings, escapes and gang violence. As a prison
3 superintendent, I oversaw the prison's response to such incidents, and implemented
4 lockdowns as necessary. As Secretary and Deputy Secretary, I presided over the agency
5 response to such situations, and oversaw all prison lockdowns in the State of Washington.

6 8. In preparing for my testimony in this case, I reviewed CDCR's confidential
7 lockdown policy, the depositions of several high level prison officials describing their
8 lockdown policy and practice, hundreds of internal documents describing particular
9 prison lockdowns, data sheets summarizing the lockdowns, and various reports and
10 written internal communications by CDCR staff about their lockdown policy and
11 practice.¹ A complete list of the materials I reviewed in this matter is attached hereto as
12 Exhibit 2.

13 9. I also inspected four California prisons during lockdowns to get a better
14 sense of how lockdowns operate in practice. During those tours, I first reviewed all of the
15 prison's internal documents related to the lockdowns that were currently in effect. The
16 documents included public information describing what prisoners were subject to
17 lockdown, and what activities were restricted, as well as confidential information
18 describing the incidents that gave rise to the lockdowns, the investigations that prison
19

20 ¹ Title 15, Section 3000 of the California Code of Regulations (CCR's) provides the following
21 definitions of "lockdown" and "modified program:"

22 Lockdown means the restriction of all inmates to their cells/dormitory beds
23 encompassing no less than a Facility . . .

24 Modified Program means the suspension or restriction of inmate program
25 activities and/or movement that impacts less than all programs or less than all
26 inmates. . .

27 Although CDCR typically imposes what it calls "modified programs," the effects of a modified
28 program on the affected group usually amount to lockdown-like conditions; it is perhaps for this
reason that CDCR administrators and line staff regularly use the terms interchangeably and for
purposes of simplicity, I refer herein to both lockdowns and modified programs as lockdowns.

1 staff had conducted, and the current thinking of prison staff about the need for
 2 maintaining the lockdown. After reviewing the documents, I was escorted to the yards
 3 and housing units on lockdown, where I observed the operation of the lockdown. This
 4 included witnessing how staff and prisoners interacted on the yard and in the housing
 5 units. I also spoke with dozens of prisoners in each facility about the operation and
 6 effects of the lockdowns. I was also permitted to ask prison staff certain questions about
 7 the operation of lockdowns, with CDCR's counsel present. My schedule for the tours
 8 was as follows:

9	Salinas Valley State Prison (SVSP)	January 29, 2013
10	Kern Valley State Prison (KVSP)	January 30, 2013
11	California State Prison, Solano	February 5, 2013
12	High Desert State Prison (HDSP)	February 6, 2013

13 10. I also toured several prisons in connection with my work in the *Coleman*
 14 case. The focus of these tours was on the prison's policies and practices related to
 15 mentally ill inmates, specifically the use of force against inmates, the internal prisoner
 16 disciplinary process, and the intersection of custody and mental health staff relative to
 17 mental health treatment for mentally ill prisoners. During each of these inspections, I
 18 visited several yards and several living units, including reception center units, general
 19 population units and segregation units. I observed the interactions between prison staff
 20 and inmates. I spoke with dozens of inmates in each facility as well as correctional staff,
 21 prison administrators and staff from the CDCR headquarters office. I viewed
 22 approximately fifty videos of controlled use of force situations or interviews with inmates
 23 who alleged excessive use of force involving *Coleman* class members and hundreds of
 24 related documents. The schedule of these tours was as follows:

25	California State Prison, Corcoran	February 19, 2013
26	Kern Valley State Prison	February 20, 2013
27	California State Prison, Los Angeles	February 21, 2013

1 San Quentin State Prison

February 26, 2013

2
3 11. In March of 2011, I toured San Quentin State Prison and the California
4 State Prison at Solano with then CDCR Secretary Matt Cate. During those tours, I
5 observed the operation of these two prisons, including living units, yards and program
6 areas. I spoke with prison administrators, correctional staff and some prisoners. I also
7 had extensive conversations with Secretary Cate about the challenges facing the
8 California prison system.

9 12. During the course of my career, I regularly interacted with corrections
10 officials from many other states, including at conferences, training sessions and meetings
11 of correctional professionals, deputy directors and directors. During such meetings and
12 conferences, we regularly discussed correctional best practices in a number of areas,
13 including with respect to prison security. In connection with my work in this case, I
14 spoke with 16 current and former prison administrators with experience in 22
15 jurisdictions about their lockdown practices and California's lockdown practices.

16 **III. General Purpose of Prison Lockdowns**

17 13. Lockdowns are sometimes necessary as a first response to a serious threat
18 to prison security. In those circumstances, the purpose of the lockdown is to investigate
19 what has occurred, make certain the situation is resolved and return to normal operations
20 as soon as it is possible to do so safely.

21 14. Lockdowns interfere with the on-going operation of the institution and
22 make difficult, if not impossible, the delivery of basic maintenance, medical services and
23 programs. Lockdowns keep inmates from being able to participate in rehabilitation
24 programs –an important incentive to keep inmates motivated to stay out of trouble –
25 which in the long run is also bad for community safety as inmates do not get a chance to
26 finish their drug treatment or education resulting in a higher likelihood of recidivism
27 upon release.

1 15. Inmates understand that when necessary lockdowns need to occur in
2 prisons to help keep everyone safe. But they are also attuned to staff conduct during the
3 lockdown. Frequent, lengthy, and discriminatory lockdowns can lead to further violence
4 and erode the credibility of staff in the eyes of the inmates.

5 16. A similar cycle can be found in staff behavior. Lockdowns create the
6 illusion that staff is safer and the longer the lockdown, the more resistance is developed
7 to coming off lockdown. In fact, danger increases the longer a prison stays on lockdown,
8 as the inmates get more upset and tend to bind together against the staff. Ending a
9 lockdown does pose some risks, but it is actually a greater risk to let lockdowns go on for
10 too long.

11 17. Prolonged lockdowns that keep prisoners in their cells, and prevent them
12 from going outdoors, will also have negative impacts on inmates' health. It is well
13 recognized by correctional professionals that regular outdoor exercise is necessary to
14 preserve the psychological and physical well-being of inmates.

15 18. Because of their harmful effects, most prison systems impose only a
16 handful of lockdowns each year, that commonly last for a matter of hours or days.
17 During my tenure as the Secretary of the Washington Department of Corrections, there
18 were fewer than a half dozen lockdowns each year. In that time, there was only one
19 lockdown that lasted more than two weeks, following the murder of a correctional
20 officer. This is fairly typical of other states, including the twenty-two jurisdictions
21 covered by the correctional administrators that I interviewed in connection with my work
22 in this case. It is very rare that any prison lockdown outside of California lasts for longer
23 than two weeks.

24 **IV. California Imposes Excessive, Lengthy Race-Based Lockdowns**

25 19. CDCR maintains centralized control over lockdowns in California prisons.
26 CDCR has a single lockdown policy, which is set forth in Confidential Departmental
27 Operations Manual ("DOM") Section 55015. To ensure that the policy is followed,
28

1 CDCR headquarters staff review and approve each lockdown that is implemented,
2 including by reviewing which prisoners are subject to the lockdown, and what programs
3 are modified during the lockdown. CDCR headquarters staff also sign off on the
4 continuation of any lockdown lasting longer than two weeks, and keep in regular contact
5 with the wardens of prisons with lockdowns.

6 20. In the period between July 1, 2010 and March 13, 2013, California prisons
7 imposed more than 1,600 lockdowns pursuant to DOM 55015. More than 800 of the
8 lockdowns were imposed on a racial group. More than 250 of the lockdowns lasted for a
9 month or more. Some lasted for years. For example, at the Kern Valley State Prison,
10 Facilities A thorough D, Hispanic prisoners were on lockdown from March of 2009 until
11 October of 2012 for a total of 1,319 days, 582 of them without outdoor exercise for the
12 inmates.² Black inmates at Wasco State Prison Facility D, Building 3 were locked down
13 for 195 days during 2012.³

14 21. Lockdowns regularly overlap and run into one another within the CDCR.
15 The result is that some groups of inmates are subjected to an overlapping series of
16 lockdowns lasting for the better part of a year or more. Some examples include, at the
17 California Men's Colony inmates were subjected to 29 lockdowns in 2012, six (6) of
18 which affected inmates housed in Facility E, Dorms 1-10. The combined effect was that
19 Hispanics in CMC Facility E were on lockdown for 88 days during 2012.⁴ At Salinas
20 Valley, black inmates in Facility C, Buildings 7 and 8, were subjected to seven (7)
21 different lockdowns in 2012 lasting for 249 days.⁵

22
23
24 _____
25 ² Program Status Report KVSP-B-12-025.

26 ³ Program Status Report WSP-FDY-11-12-0581 and WSP-FDY-12-0111.

27 ⁴ Program Status Reports: CMC-FACE-12-02-0006; CMC-FACE-12-03-0009; CMC-FACE-12-
28 07-0019; CMC-FACE-12-07-0020; CMC-FACE-12-08-0022; CMC-FACE-12-11-0035.

⁵ Program Status Reports: SVSP-FC-12-002; SVSP-FC-12-010; SVSP-FC-12-012; SVSP-FC-
12-014; SVSP-CEN-12-023; SVSP-FC-12-028.

1 22. As I explain in more detail below, CDCR's lockdown policy and practice is
2 discriminatory and excessive, and it has an adverse effect on prisoners and on safe prison
3 operations.

4 23. There is no legitimate penological reason to impose a lockdown on a racial
5 or ethnic group. When it imposes race-based lockdowns, the CDCR is using race as a
6 proxy for gang membership. This discriminates against inmates on the basis of the color
7 of their skin and/or ethnic origin, which exacerbates racial tension and creates an
8 increased risk of violence among the inmate population. California does not need to
9 impose lockdowns on racial groups in order to maintain prison security; every prison
10 system in the country faces gang activity and violence, but I have never heard of any
11 other prison system that imposes race based lockdowns.

12 24. California maintains its prison lockdowns far longer than necessary to
13 maintain prison security. The frequency and length of lockdowns in California prisons
14 breeds an atypical tension between prison officials and prisoners.

15 25. California's lockdown policy and practice is dramatically out of step with
16 sound correctional practices followed in other jurisdictions. There are readily available
17 alternative means to keep order in prisons that the CDCR chooses not to use.

18 **A. Race-Based Lockdowns**

19 26. As shown by the statistics noted above, CDCR uses race and ethnicity as a
20 dominant mode of managing prison inmates, and California officials, including CDCR
21 Associate Director Kelly Harrington, readily concede that they impose lockdowns on
22 entire racial groups.

23 27. When, in preparation for my testimony in this matter, I explained to the 16
24 current or former prison administrators that I was calling about California's race-based
25 lockdown policy, their reaction was the same as mine when the plaintiff's attorneys first
26 contacted me—I thought they had misunderstood something or were misstating the facts.
27 Surely, in the 21st century, there was not a prison system using race and ethnicity to
28

1 determine who to lockdown in a prison when a problem occurred? I was wrong as were
2 my colleagues. My view was the same as my colleagues – that California’s practice of
3 race based lockdowns is “astounding” and “reprehensible,” and likely to have profound
4 adverse consequences.

5 28. California’s race-based lockdowns are rooted in the segregation of cell
6 assignments found throughout the prison system. During all my tours of California
7 prisons I found only one cell where the two inmates did not appear to be of the same race
8 or ethnic background. The process of segregation by cell assignment begins during the
9 reception of new inmates. When a new inmate comes into a male prison, he is asked with
10 whom he can live. As one prison official testified, if the inmate does not choose to live
11 with a person of his own racial or ethnic group, staff will “counsel” him to live with
12 someone of his own race.⁶ I found his admission stunning. In doing this, the CDCR
13 plants the seed for the racial separation, thus increasing racial cohesion which fuels the
14 gang behavior that they say they are trying to stop.

15 29. Prisons use “bed cards” to denote the race of the prisoner living in each
16 cell. Bed cards are color- coded signs that are on the doors of the cell, and/or kept in the
17 officers’ station, to announce the race or ethnicity of the prisoners living in each cell.
18 Typically, white cards are for white inmates, blue cards are for black inmates, pink cards
19 are for southern Hispanics, green cards are for northern Hispanics and yellow cards are
20 for all “others” such as Asians, Native Americans, or Pacific Islanders. One key purpose
21 of these bed cards is to help prison staff administer race-based lockdowns. With color-
22 coded signs on the door, prison staff can easily identify the race of the prisoners in each
23 cell, which will tell them which cell doors to open, and which to keep closed.

24 30. At Salinas Valley State Prison I witnessed the unlocking of those described
25 as “white” and “other.” The officers went from cell to cell, unlocking the cell doors

26 _____
27 ⁶ Kelly Harrington deposition, Volume 1, page 275.
28

1 where there were white or yellow cards on them, as these were the groups that were not
2 on lockdown and could continue with their normal program.

3 31. CDCR staff say that they need to keep doing race-based lockdowns,
4 because inmates are engaged in racial violence, and they think race-based lockdowns are
5 the only way to stem that violence. But many of the race-based lockdowns I reviewed
6 were entirely unnecessary.

7 32. For example, Plaintiff Mitchell is black, and he was subjected to a series of
8 lockdowns of black prisoners lasting for more than a year. The Attorney General's office
9 described one of those lockdowns this way:

10 On July 31, 2007, a black inmate housed on Facility C assaulted a
11 correctional counselor during his unit Classification Committee review. As
12 prison staff investigated the assault they discovered information that the
13 Facility C black inmates were upset with the Facility C captain concerning
14 lockdowns. This, along with the targeted nature of the assault, led prison
15 staff to fear that the black inmates on Facility C were planning attacks on
16 staff. In order to investigate this possibility, the black inmates on Facility
17 were placed on a modified program. On August 23, 2007, after prison staff
18 determined the assault was an isolated incident, the black inmates were
19 released to normal programming.⁷

20 33. In other words, prison staff locked down all black inmates for nearly a
21 month because they were worried that the black prisoners were upset about race-based
22 lockdowns.

23 34. Other race-based lockdowns are imposed in such a way as to ensure over
24 breadth. For example, Chuckawalla Valley State Prison imposed one lockdown on all
25 Hispanics and those "with Hispanic surnames."⁸ Locking down all persons with
26 Hispanic-sounding surnames would be inconceivable in any other jurisdiction; an
27 inmate's surname simply bears no rational relationship to his behavior.
28

⁷*In re Mitchell*, Case No. S156449 (Cal Supreme Ct), July 11, 2008, Informal Response by
Deputy Attorney General Heather M. Heckler.

⁸ Program Status Report CVP-DYD-10-0002.

1 35. At Kern Valley State Prison in the summer of 2011, two black prisoners
2 were placed in Administrative Segregation when they were accused planning a staff
3 assault. Then, all black inmates in the facility were placed on lockdown for three weeks
4 while staff conducted an investigation.⁹

5 36. At High Desert State Prison in March of 2012, a letter was received
6 indicating specifically named black inmates planned to assault a staff member.¹⁰ Those
7 inmates were immediately placed in Administrative Segregation, yet the lockdown of all
8 black inmates continued for six weeks.

9 37. Such overreactions on the part of the prison administrators, based solely on
10 race, would be inconceivable in other jurisdictions. In the above examples, just two of
11 many that I have reviewed for this case, inmates are being punished simply because of
12 the color of their skin, losing the opportunity to complete their education, have outdoor
13 recreation or visit with their families.

14 38. The unfairness of this practice is readily articulated by the inmates I
15 interviewed on my tours, and many expressed their frustration. They believe that the staff
16 know who caused the incident, yet all inmates of a given race remain locked down for
17 long periods of time for incidents in which they had absolutely no responsibility.

18 39. California prisons continue to impose race based lockdowns even though
19 they know that some prisoners do not engage in racial violence, and are not in gangs.
20 California officials acknowledge that the “unfortunate” result of race-based lockdowns is
21 that uninvolved inmates are punished for the actions of others who share their racial or
22 ethnic heritage, but they persist in doing it.¹¹

23 40. While prison gangs are a problem in California prisons, as they are in all
24 prisons, race serves as a proxy for gangs for CDCR officials. Those officials say they

25 _____
26 ⁹ Program Status Report KVP-B-11-015.

27 ¹⁰ Program Status Report HDP-C-12-004.

28 ¹¹ See the Director’s Level Review Decision to Tony Trujillo attached to Second Amended
Complaint.

1 must lock all members of a racial group down because of the power of the gang bosses
2 over all inmates, including those not identified as gang members.

3 41. Acceptance of this logic is pervasive within the CDCR and is used to
4 justify the lockdown of all members of a racial or ethnic group, not just those identified
5 as validated gang members when the incident leading to the lockdown has been driven by
6 gang behavior. At the base of this position is the assumption that all racial and ethnic
7 groups will behave in the same manner in all circumstances.

8 42. For example, one Associate Director of CDCR, when asked to justify this
9 practice, stated:

10 It's a culture that is—these individuals are born into, they grow up in, and they
11 know if they are walking, if they are programming on a general population yard,
12 that is the culture they are in, and they have to follow those directives. We don't
13 give them those directives. Those are their own self identified directives that they
14 get from either their—the gang leaders or the individuals that they are around.¹²

15 43. CDCR policy and practice is driven by these stereotypical assumptions
16 about inmates, and the assumption that prison staff are powerless to change the behavior.
17 Yet it is clear that many individuals in the system, including the named Plaintiffs in this
18 lawsuit, have no history as gang members and do not follow the “directives” of gang
19 leaders.

20 44. When prison administrators treat inmates unfairly it undermines the
21 perception of the legitimate authority by the inmates in the prison's administration which
22 is a critical component in achieving institution safety.

23 45. The impact of race-based lockdowns is unfair and discriminatory. For
24 some inmates, the policy of segregating prisoners in cell assignments and imposing racial
25 lockdowns fosters racial animosity and gang loyalty, laying the groundwork for the very
26 behavior that the lockdowns aim to prevent.

27 _____
28 ¹² Kelly Harrington Deposition, Volume 1, page 245.

1 **B. Frequent and Unnecessary Lockdowns**

2 46. CDCR imposes lockdowns with inordinate frequency; far more often than
3 the State of Washington or any other system that I know. Of the sixteen current and
4 former prison directors I spoke with in connection with my work in this case, none
5 reported a recent practice of lockdowns happening greater than 5 times per year for all
6 prisons within their entire system; many locked down less than that. CDCR, in contrast,
7 imposes several hundred lockdowns each year.

8 47. I reviewed numerous documents showing that CDCR imposes lockdowns
9 in situations that would not give rise to lockdowns in other states, and when a lockdown
10 is not a necessary response.

11 48. For example, prisons are locked down with some frequency because of
12 rumors and anonymous notes. One prison administrator admitted that his prison always
13 imposes lockdowns whenever they receive an anonymous note with a threat, even
14 though, in the last five years, one hundred percent of such notes turned out to be false.¹³

15 49. In my experience, anonymous notes are often unreliable. The multiple
16 false notes giving rise to lockdowns at the prison described above might well have been
17 written to try and restrict another racial or ethnic group behind a false story. In my
18 opinion, therefore, imposing a lockdown in response to every anonymous note is neither
19 necessary nor appropriate to ensure prison security.

20 50. Also, CDCR frequently locks down prisons for what would be identified as
21 a “fight” in another jurisdiction, but is called a “riot” in a CDCR prison. Regularly,
22 CDCR prisons label a fight between three or more inmates a “riot” and treat it as a group
23 incident requiring a lockdown.¹⁴ A more commonly accepted definition of “riot” is a
24 situation “when authorities lose control of a significant number of prisoners, in a

25 _____
26 ¹³ Chris Arthur deposition, January 8, 2013, page 84, line 19, page 121, line 16, page 124, line
27 23, page 176, line 4.

28 ¹⁴ Kelly Harrington deposition, page 80, line 8-11.

1 significant area of the prison, for a significant period of time.”¹⁵ True riots may
2 appropriately give rise to lockdowns. Fights, however, typically do not justify
3 lockdowns.

4 51. When the combatants are clearly known and identified as the fight is
5 broken up, the more appropriate approach would be to lock up those involved, initiate an
6 investigation and return the facility to normal operations. Even when the facts are known,
7 the default position of CDCR is to lock down the prison and keep it on lockdown for an
8 extended period of time.

9 52. At the California State Prison at Solano, one PSR describes a fight between
10 2 white and 4 black inmates, labeled a “riot” by CDCR officials.¹⁶ The incident gave rise
11 to a lockdown for all inmates in those racial groups at that facility. That PSR for blacks
12 was superseded by another a few weeks later when a pair of sunglasses owned by a black
13 prisoner was found near the area where a Mexican National was found to be a victim of
14 battery. In both cases these incidents were found to be isolated events but not before all
15 inmates of these racial groups experienced another lockdown.

16 53. At Kern Valley two northern Hispanics and two black inmates got into a
17 fight (called a riot by CDCR officials) in the dayroom.¹⁷ While the culprits were quickly
18 identified and held accountable, all black and northern Hispanics inmates were placed on
19 lockdowns where they remained for nearly two months.

20 54. Typically in a prison in another jurisdiction, events such as these would
21 very likely not result in any kind of lockdown, certainly not one lasting several weeks.

22 55. California prisons also imposed lengthy lockdowns for events that occurred
23 at other prisons; lengthy lockdowns because of a change in the prison’s security level;

24
25
26 ¹⁵ Useem, Bert and Kimball, Peter, 1991, *State of Siege, U.S. Prison Riots 1971- 1986*, Oxford
University Press, page 4.

27 ¹⁶ Program Status Report SOL-MAR-16-11-016.

28 ¹⁷ Program Status Report KVP-B-11-021.

1 lengthy lockdowns because a tool or a piece of metal has been misplaced; and lengthy
2 lockdowns to conduct staff training. The California State Prison at Solano reported a 24
3 day lockdown for staff training. With plenty of advanced notice to the inmates I have
4 locked a facility down for a day or a shift for training¹⁸ but locking a facility down for 24
5 days for that reason is not justifiable and is likely to create far more problems than it
6 solves by causing inmates to suffer the experience of the lockdown for no justifiable
7 reason. Imposing frequent lockdowns reveals a staff untrained and ill equipped to
8 actually manage the inmate population and keep small problems from becoming big ones.

9 **C. Excessively Lengthy Lockdowns**

10 56. In the last 3 years there were 250 lockdowns that were more than a month
11 long. The reason that the lockdowns last so long is that CDCR prisons take an
12 extraordinarily long time to come off of lockdowns.

13 57. In other jurisdictions, it typically takes several hours or days to do the
14 necessary investigation before returning a prison to normal programming. Searching
15 common areas and cells within the prison, no matter what the reason for the lockdown, is
16 an expected practice for prisons on lockdown. In my experience, such searches can
17 usually be accomplished in a day or two, a week to 10 days at the most in very rare and
18 truly extraordinary situations. Yet in CDCR, searches take considerably longer. For
19 example, three searches conducted recently at HDSP took 45 days, 34 days and 35 days
20 to complete.¹⁹ The purpose and intent of such searches is reasonable, but the actual
21 practice results in unnecessary extension of lockdowns.

22 58. When prison staff decide that it is time to begin to end a lockdown, they
23 “incrementally release” small numbers of prisoners as a step in the restoration of normal

24 _____
25 ¹⁸ In 2010, as part of an overall strategy to save money, I mandated facilities to lockdown one
26 day a month to save on staff training costs. My correctional officers, led by their Union, fought
27 against this proposal, understanding it would increase resentment in the population and make
28 them less safe. They convinced me that they were right and I lifted the mandate.

¹⁹ Program Status Reports, HDP-C-11-005, HDP-C-11-08 and HDP-C-11-013.

1 operations. Oftentimes, this release involves only two inmates from each racial group
2 each day, increasing it to four the next day, maybe eight inmates a few dates later and so
3 on.²⁰ This process, which can take a month or more,²¹ puts extraordinary pressure on the
4 inmates identified for incremental release by putting them in the spotlight and potentially
5 at risk, and it slows the release process unnecessarily.

6 59. The longer the lockdowns last, the more tensions rise for both staff and
7 inmates. Animosities build on both sides. Staff become fearful about what the inmates
8 will do when they come off of lockdown. Inmates are angry because of what they lost
9 while on lockdown. Unless lockdowns make sense to the inmates, prison administrators
10 lose credibility. If prison administrators lose credibility, the institution becomes less safe
11 for everybody.

12 **D. Conditions of Confinement During Lockdowns**

13 60. A typical lockdown in a CDCR prison means prisoners are confined to their
14 cells 24 hours a day, except for the occasional shower or escorts in chains to such things
15 as medical appointments.

16 61. Typically, inmates who are locked down have no out-of-cell time for
17 recreation, including outdoor exercise. The denial of recreation regularly lasts for weeks
18 and months at a time.

19 62. All long term prisoners require regular outdoor exercise as a basic human
20 need. Prolonged denial of outdoor exercise violates both domestic and international
21 correctional standards, and is harmful to inmates' physical and mental well-being.

22 63. The United Nations Standard Minimum Rules for the Treatment of
23 Prisoners requires, "Every prisoner who is not employed in outdoor work shall have at
24 least one hour of suitable exercise in the open air if the weather permits."²²

25 _____
26 ²⁰ Kelly Harrington deposition, Volume 2, pages 468 and 469.

27 ²¹ Kelly Harrington deposition, Volume 2, pages 353-355.

28 ²² *Standard Minimum Rules for the Treatment of Prisoners*, Adopted by the First United Nations

(Footnote Continued on Next Page.)

1 64. The U.S. State Department created a handbook to provide embassy officials
2 around the world with a basic understanding of international standards for correctional
3 systems. That handbook states, “The prisoners should have access to recreation for no
4 less than one hour a day.”²³

5 65. The American Correctional Association (ACA) has extensive standards on
6 inmate recreation in prisons. Those standards require, even for prisoners otherwise
7 confined to their cell, “that inmates receive a minimum of one hour of exercise per day
8 outside their cells, five days per week, unless safety or security considerations dictate
9 otherwise.”²⁴

10 66. CDCR exceeds this standard for inmates they house in segregation but not
11 for inmates on lockdown. The result is that inmates in segregation, who are presumably
12 being punished for culpable conduct, have better conditions of confinement than inmates
13 in general population who are locked down for incidents where they had absolutely no
14 responsibility. Inmates are not unaware of this irony. Several inmates pointed it out to
15 me, and told me they would be better off if they acted out and got into segregation where
16 at least they would get to spend some time out of doors.

17 67. During the first couple of days of a lockdown resulting from a serious
18 incident, it is reasonable for a prison to shut down all exercise. After that very short
19 initial period, however, the prison can and should make arrangements for all prisoners to
20 get outdoor exercise. This can be accomplished by rotating small groups of prisoners
21 onto the main prison yards. Alternatively, it can be accomplished using the small
22 concrete yards (“mini yards”) adjacent to many living units that are capable of

23 _____
24 (Footnote Continued from Previous Page.)

25 Congress on the Prevention of Crime and the Treatment of Offenders, Standard 21.

26 ²³ *A Practical Guide to Understanding and Evaluating Prison Systems*, United States
Department of State, page 23.

27 ²⁴ *Standards for Adult Correctional Institutions*, 4th edition, American Correctional Association,
28 standard 4-4270.

1 accommodating up to 15 to 20 inmates at a time. Although the mini yards I inspected
2 appeared secure, and were small enough to permit close supervision of a group of
3 inmates, CDCR officials told me, verified by Mr. Harrington's deposition,²⁵ that they had
4 not used the mini yards for years, even during lockdowns, because there was no prison
5 staff to supervise these yards.

6 68. Health care and mental health care during lockdowns is often delivered at
7 the cell front, other than for scheduled appointments (which are also often disrupted due
8 to lockdowns). These conditions do not allow inmates the necessary privacy to be open
9 and forthcoming about their health conditions. In the hyper masculine environment of the
10 prison, many inmates will not allow themselves to appear to be vulnerable by sharing
11 their medical or mental health concerns where other inmates, sometimes predatory
12 inmates, might overhear them speaking, ultimately creating additional challenges for
13 managing the facility. When lockdowns last for weeks or months at a time, which is
14 frequent in the CDCR, this lack of confidentiality creates a risk for the prisoner's
15 physical and mental health as well as adding an additional challenge to manage the
16 institution. It is well recognized that confinement to a cell for long periods of time, as
17 occurs during lockdowns, makes it difficult for prison officials to manage the facility.

18 69. The negative impacts of a lockdown, conditions oftentimes worse than
19 placement in Administrative Segregation, does even greater damage to the mentally ill
20 population. Yet according to the Monthly Health Care Quality Access Reports I have
21 reviewed, inmates sometimes find their health care and mental health care appointments
22 canceled as a result of lockdowns. This contributes to the difficulty delivering adequate
23 health care, and in managing the facility.

24 70. Education, vocational training and substance abuse treatment programs are
25 also disrupted during lockdowns. Since the State of California offers time off of

26
27 ²⁵ Kelly Harrington deposition, Volume 1, pages 115-118.

1 sentences for completion of some programs, denying access to programs keeps
2 individuals in prison for longer periods of time than if they had such access. In other
3 words, when the prisons impose race-based lockdowns, they are not only depriving
4 inmates of access to basic prison activities, they are in some cases keeping an entire racial
5 or ethnic group in prison for a longer period of time. This is fundamentally unfair, and
6 adds significantly to the inmates frustration and hostility toward prison staff.

7 Additionally, educational and rehabilitative programs, when properly administered,
8 reduce recidivism rates. This means that keeping inmates from program completion
9 increases the risk of harm to community safety when the inmate is released from prison.

10 71. Religious services also typically stop during lockdowns. The guidance
11 offered to prison administrators on CDCR form 3022-B for religious services are these
12 three options: “normal,” “no religious services” and “modified.” From my review of
13 program status reports, prison officials typically check the “modified” box, and then
14 pencil in the phrase “in cell worship.” There is very little difference between having “no”
15 religious services and having “in cell worship.” An occasional cell front visit by the
16 prison chaplain is not an adequate substitute, particularly for minority religions that do
17 not have a dedicated chaplain, or for any religion whose tenets require adherents to attend
18 congregational services. In my experience, some inmates need to regularly worship in
19 their chosen tradition to maintain their sanity and stability in the prison environment.

20 72. Visits, phone calls, and mail are often denied or disrupted during
21 lockdowns. Although inmates in segregated housing are allowed visits, inmates subject to
22 lockdown are typically denied visits as well as phone calls. Even though there is no
23 official prohibition on the mail, most of the inmates I spoke with during my inspections
24 complained that their mail had been disrupted during the lockdown. They reported that if
25 the mail came at all, it arrived weeks after it was sent from home. This perception,
26 coupled with the inability to call home to make sure things were OK, created great
27 anxiety in many inmates. They did not know what was happening with their families and
28

1 this led to increased tension and anxiety for many. Phone calls home are a known
2 protective factor against self-harm or inmate violence in general. Restricting prisoner
3 phone calls and mail is unnecessary to achieve institution safety and security. In fact,
4 because prison staff monitor calls and mail, permitting such correspondence both
5 improves prison officials' ability to gather information related to prison security, and
6 reduces tension among inmates.

7 73. Law library access is also extremely limited during lockdowns. If an inmate
8 has a clear court deadline there are some efforts to provide them access to the law library.
9 For those without such a deadline established, access is functionally lost for the duration
10 of the lockdown. This was a complaint from several inmates during my prison
11 inspections. The ability for inmates to work out their frustrations by learning about their
12 legal rights, and sometimes pursuing litigation, is an important safety valve for institution
13 security.

14 74. Inmates are also unable to maintain basic hygiene during lockdowns.
15 Inmates frequently complained to me that although they were confined to their cells
16 nearly constantly, the prison staff did not provide them with cleaning supplies on a
17 routine basis during lockdowns. When I asked inmates what they were doing to keep
18 their cells clean, several showed me that they had dipped their state-issued towels in toilet
19 water, and used them to scrub their cell floors and fixtures. These towels, which are also
20 the only towels the inmates have to use after showering, had been reduced to dirty rags.

21 75. These unsanitary living conditions can cause the spread of infectious
22 disease, and can put the physical health of inmates at great risk. It is also degrading.

23 76. Usually, after 3 days on lockdown, inmates are allowed showers every
24 other day or every third day for the duration of the lockdown. However, inmates are often
25 not able to get basic supplies needed to keep themselves clean. CDCR inmates typically
26 purchase basic hygiene items such as deodorant, soap and toothpaste (as opposed to the
27 prison-issue "tooth powder") through the prison canteen, or receive them as gifts from
28

1 family in the form of “packages” received from approved vendors. During lockdowns,
2 canteen and packages are typically denied or severely limited.

3 77. One key difference in the living units I inspected between those on
4 lockdown and those that were not was the striking difference in odor. In units that were
5 locked down, the stench of body odor was very powerful. As I spoke with inmates
6 through their cell doors many apologized to me for their breath as they had not had access
7 to toothpaste, many for a long time.

8 78. CDCR inmates also rely on access to the canteen and packages from
9 vendors for food supplies to supplement prison rations. Many inmates complained of the
10 unfairness of this, and reported to me that they lost weight when canteen was cut-off
11 during lockdowns.

12 79. In sum, the condition of confinement for inmates on lockdowns is often
13 more severe than that for inmates confined to administrative segregation. For the vast
14 majority of inmates on lockdown who were not engaged in the behavior that led to the
15 lockdown, lengthy imposition of such restrictions is unfair, and leads to extreme boredom
16 and stress as well as anger towards the staff for treating them unfairly. Such restrictions
17 would predictably result in more misbehavior and increased levels of violence, making
18 the institution a more dangerous place for staff and inmates alike.

19 **E. Lack of contact between inmates and staff**

20 80. During my inspections of prisons I observed a distinct lack of staff and
21 inmate contact, an observation shared with me by other corrections administrators who
22 have toured CDCR prisons.

23 81. In the yards, the staff position themselves together, away from the inmates,
24 not interacting with them, not role-modeling or demonstrating pro-social behavior. In the
25 living units the pattern is the same. In many of the Level IV, 180 units I observed, the
26 staff stated that they were not actually present in the day room when the inmates were
27 there. Instead, supervision is provided by an officer in an elevated booth who at all times
28

1 carries a large gun. Prevalent in most of the units (and in other parts of the institution)
2 are warning signs announcing “No Warning Shots.”

3 82. CDCR staff do not directly supervise the inmates in the manner one would
4 find in another correctional system. They are not engaged to know their inmate
5 population so that conflicts can be resolved at the lowest level. They have ceded their
6 legitimate authority to the gang bosses and the staff are relegated to manage and control
7 the inmates, literally, under the gun.

8 83. Increasing and improving communication between inmates and staff would
9 give prison staff a far better understanding of the needs – and dangers – posed by the
10 inmate population, and will enable prison administrators in many instances to head off
11 violence before it begins.

12 **V. California Can Safely Stop Imposing Lengthy Race Based Lockdowns.**

13 84. Every other prison system that I am aware of is able to maintain security
14 without imposing race-based lockdowns, and without maintaining lockdowns for the
15 extended periods of time that is common in California prisons. There is no reason
16 California cannot do the same. Based on my experience and the conversations I have had
17 with correctional professionals from around the country over the years, there is broad
18 consensus about the proper management of lockdowns in prisons.

19 85. If a lockdown is necessary, even in the case of a true race riot, the prison
20 administration should lock down all prisoners in the vicinity – irrespective of race. They
21 should quickly separate and remove all involved inmates, and rapidly conduct targeted
22 investigations and unit or area-wide searches. This should typically last no longer than a
23 few days, or two weeks for the most extreme incidents. Planning to return to normal
24 should begin immediately. Lockdowns bring out the worst in staff and inmates and
25 should be as short as possible. A quick return to normal operations is a better strategy to
26 control institution violence than lengthy lockdowns.

1 86. If the lockdown is imposed on the entire population of a unit, a yard or an
2 entire prison, rather than a racial subset, there will be more incentive for prison staff to
3 move rapidly and end the lockdown quickly. And, if the lockdowns end quickly, and
4 uninvolved inmates of all races are released from lockdown as soon as it is safe to do so,
5 prison staff will restore a sense of fairness to the process.

6 87. During lockdowns, California officials should communicate with the
7 inmate population about why the facility is on lockdown and how long the lockdown is
8 expected to last. Many inmates I spoke with could not accurately account for why they
9 were on lockdown or how long the lockdown might last. Many reported that they had
10 received their information from other inmates on the tier and had not seen the PSR. An
11 effective communication strategy is important during a lockdown as it has a calming
12 effect when inmates know what is happening and what to expect next.

13 88. If the CDCR believes it must use a risk assessment instrument to determine
14 which individuals to release from a lockdown, the prison should have risk information on
15 hand before an incident occurs, so that all that is required before releasing the low-risk
16 inmates is at most an interview, not a full file review. The risk information should be
17 based on a validated risk instrument, rather than the ad-hoc “threat assessment” form,
18 which has not been validated.

19 89. The CDCR should look at alternate strategies to control inmate violence
20 other than an over reliance on lockdowns. California prisons appear to have a significant
21 problem with contraband drugs and cell phones. Targeted strategies to stem the flow of
22 contraband will likely result in less violence in their prisons.

23 90. An equally effective way to combat violence is to address inmate idleness.
24 Keeping inmates busy and involved in productive activities such as work programs and
25 education is a proven and tested method among correctional administrators to control
26 violence in prisons. California has a remarkable level of inmate idleness and lack of true
27
28

1 incentives for inmates. When inmates have something to lose that is important to them,
2 they are less likely to act out in a way that will cause them to forfeit those incentives.

3 91. California officials make general claims about prisoners of racial groups
4 being bound to engage in racial violence. But they also acknowledge what every
5 correctional professional knows – that not every inmate is in a gang, and not every
6 prisoner engages in in-prison violence. California officials say that sweeping such
7 uninvolved inmates into the lockdowns is unfortunate but necessary for safety. I
8 disagree. Punishing the uninvolved prisoners is discriminatory, and unfair, and
9 undermines the legitimacy of the prison administration, leading to further tension and
10 violence.

11 92. California officials regularly say that “California is different,” and that
12 California inmates come into prison violent and dangerous. But the inmates that come to
13 the California prison system are not different than the inmates that come to other prison
14 systems. According to the CDCR website, the CDCR is populated by 70.1% of inmates
15 who have committed a violent offense.²⁶ The Washington Department Of Corrections
16 percentage for the same prison population is 70.2%.²⁷ The portion of inmates in CDCR
17 with a low risk for re-offense is 42%.²⁸ In Washington it is 17%.²⁹ At a minimum it can
18 be argued that the inmates in Washington (and other jurisdictions) are every bit as
19 dangerous as the inmates in the CDCR. The difference in behavior while they are in
20 prison is determined by how they are treated and managed.

21 93. In the 1970s, the State of Texas was ordered by the court to desegregate
22 their prison system. (*Lamont v. Coffield*). Like the CDCR, resistance to implementing
23

24 _____
25 ²⁶ Prison Census Data As Of December 31, 2012.

26 ²⁷ Washington State Department of Corrections Fact Card, December 31, 2012.

27 ²⁸ *Declaration of James Austin*, United States District Court, *Coleman v. Brown and Plata v.*
Brown, Civ S 90-0520 LKK-JFM P, January 7, 2013.

28 ²⁹ Washington State Department of Corrections Prison Snapshot Report, March 2013.

1 change in the Texas Department of Corrections was fierce with many, including both
2 staff and inmates, predicting violence would ensue if the court's direction was followed.

3 94. The Texas DOC developed a very careful plan to meet the court's mandate.
4 The results are illustrative for CDCR. According to criminal justice researchers Trulson
5 and Marquart, "as more inmates were desegregated over the decade of the 1990's, the
6 rate of interracial and interracial violence decreased."³⁰ Trulson and Marquart go on to
7 say:

8 This brief review of the studies... suggest that desegregation did not
9 result in the racial Armageddon predicted in the aftermath of prisoner
10 desegregation. In fact, the results revealed that racially motivated incidents
11 were very rare in the Texas prison system in the aftermath of prisoner
12 desegregation—and even less likely among desegregated cell partners as
13 compared with non-cell partners in the general population. This being the
14 only systematic empirical evidence on the aftermath of desegregation in
15 prisons is important because it suggests that in one of the largest
16 correctional systems in the nation, one most similar to California in terms
17 of diversity and presence of racial gangs, desegregation was accomplished
18 absent the extreme racial violence that was predicted by most earlier
19 accounts.³¹

16 95. The Texas example shows that California can successfully transition away
17 from its race-based management policies.

18 96. It has become apparent to me that California prisons continue to impose
19 lengthy race-based lockdowns because they've done it for so long that they can't
20 conceive of or see any other way to keep control. In a 2010 email, Terry McDonald, who
21 was until recently CDCR Undersecretary, wrote "I think our core problem is not
22 lockdowns, but street gang mgmt. and *a lack of vision on how we could do anything*
23 *differently.*"³² (emphasis added). I agree with Ms. McDonald to the extent that the CDCR
24 has demonstrated a breathtaking lack of vision about alternative ways to keep the prisons

25 _____
26 ³⁰ Trulson and Marquart, 2008, *Racial Desegregation in Prisons*, in *The Prison Journal*.

27 ³¹ *Ibid.*

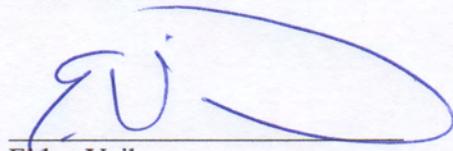
28 ³² CDCR email from Terri McDonald to Scott Kernan, re: Miki, September 14, 2010.

1 safe. California can safely adopt the practices already in use in other states, and stop
2 imposing lengthy race-based lockdowns.

3 I declare under penalty of perjury under the laws of the State of California and the
4 United States of America that the foregoing is true and correct.

5 Executed this 15th day of May, 2013 at Tacoma, Washington.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Eldon Vail

Exhibit 1

WORK HISTORY

▪ Secretary	Washington State Dept. of Corrections	2007-2011
▪ Deputy Secretary	WADOC	1999-2006
▪ Assistant Deputy Secretary	WADOC	1997-1999
▪ Assistant Director for Prisons	WADOC	1994-1997
▪ Superintendent	McNeil Island Corrections Center	1992-1994
▪ Superintendent	WA. Corrections Center for Women	1989-1992
▪ Correctional Program Manager	WA. Corrections Center	1988
▪ Superintendent	Cedar Creek Corrections Center	1987
▪ Correctional Program Manager	Cedar Creek Corrections Center	1984-1987
▪ Juvenile Parole Officer	Juvenile Rehabilitation	1984
▪ Correctional Unit Supervisor	Cedar Creek Corrections Center	1979-1983
▪ Juvenile Institution Counselor	Naselle Youth Camp	1974-1979

HIGHLIGHTS OF CAREER ACCOMPLISHMENTS

- Reduced violence in adult prisons by over 30% during my tenure as Secretary and Deputy Secretary for the Department.
- Dramatic reduction in escapes from minimum-security facilities during this same time period.
- Increased partnerships with non-profits, law enforcement and community members in support of agency goals and improved community safety.
- Implemented and administered an extensive array of evidence based and promising programs:
 - Education, drug and alcohol, sex offender and cognitive treatment programs.
 - Implemented risk based sentencing via legislation and policy, reducing the prison populations of non-violent, low risk offenders, including the Drug Offender Sentencing Alternative and the Family and Offender Sentencing Alternative. <http://www.doc.wa.gov/community/fosa/default.asp>
 - Pioneered extensive family based programs resulting in reductions in use of force incidents and infractions and improved reentry outcomes for program participants.
 - Established Intensive Treatment Program for mentally ill inmates with behavioral problems.
 - Established step down programs for long-term segregation inmates resulting in significant reduction in program graduate returns to segregation. <http://www.thenewstribune.com/2012/07/10/2210762/isolating-prisoners-less-common.html>
- Initiated the Sustainable Prison Project; <http://blogs.evergreen.edu/sustainableprisons/>
- Administered the only state agency that bent the curve on health care costs while improving outcomes.
- Focused the department on becoming a better asset to the community by expanding inmate and community supervision work programs.
- Improved efficiency in the agency by administrative consolidation, closing 3 high cost institutions and eliminating over 1,200 positions. Housed inmates at lowest possible custody levels, also resulting in reduced operating costs.
- Led the nation's corrections directors to support fundamental change in the Interstate Compact as a result of the shooting of 4 police officers in Lakewood, WA.

- Dramatically improved media relations by being aggressively open with journalists, challenging them to learn the difficult work performed by corrections professionals on a daily basis.
- Long term collaboration with the University of Washington focusing on the mentally ill in prison and management of prisoners in and through solitary confinement.

EDUCATION AND OTHER BACKGROUND INFORMATION

- Post graduate work in Public Administration - The Evergreen State College, Washington - 1980 and 1981
- Bachelor of Arts - The Evergreen State College, Washington – 1973
- Graduate of the first NIC Executive Excellence Class-1998. Keynote speaker for two subsequent graduating classes.
- National Institute of Corrections and Washington State Criminal Justice Training Commission - various training courses
- Member of the American Correctional Association
- Associate member, Association of State Correctional Administrators
- Commissioner, Washington State Criminal Justice Training Commission 2002-2006, 2008-2011
- Member, Washington State Sentencing Guidelines Commission 2007-2011
- Instructor for Correctional Leadership Development for the National Institute of Corrections (NIC)
- Advisory Panel Member, *Correctional Technology—A User's Guide*
- Author of *Going Beyond Administrative Efficiency—The Budget Crisis in the State of Washington*, published in Topics of Community Corrections by NIC
- Consultant for *Correctional Leadership Competencies for the 21st Century*, an NIC publication
- Consultant for Correctional Health Care Executive Curriculum Development, an NIC training program
- Co-chair with King County Prosecutor Dan Satterberg, *Examining the Tool Box: A Review of Supervision of Dangerous Mentally Ill Offenders*
<http://www.dbhds.virginia.gov/documents/Adm/080101-KingCountyReport.pdf>
- Guest lecturer on solitary confinement for ACLU at University of Montana Law School in 2012

EXPERT WITNESS FEE AND EXPERIENCE

My fee in this case is \$150 an hour, plus travel expenses. The only case in which I have testified as an expert witness is *Coleman et al. v. Brown, et al.*, No. 2:90-cv-0520 LKK JMP P United State District Court, Eastern District of California.

Exhibit 2

DOCUMENTS REVIEWED

1. Title 15, Section 3000, California Code of Regulations
2. Department of Operations Manual, Section 55015, July 2007, AGO-MITCHELL004314 – 004332
3. Department of Operations Manual, Section 55015, Oct. 2012, AGO-MITCHELL021205 – 021232
4. FAQ Restricted DOM Section 55015 EDD-MITCHELL050091
5. Depositions of Kelly Harrington, Vols I and II, Chris Arthur, Jeffrey Beard, Foston, Garza, Anti, Hill, and Shannon.
6. Program status reports and investigatory memoranda reflecting lockdowns in effect during inspections at SVSP, KVSP and HDSP.
7. Photographs inspection of HDSP
8. 12.11.15 CCHCS Memo Re: Monthly Healthcare Access Quality Report, KVSP, EDD-MITCHELL001166 – 001167
9. 12.11.15 CCHCS Memo Re: Monthly Healthcare Access Quality Report, LAC, EDD-MITCHELL003737 – 003738
10. 12.11.13 CCHCS Memo Re: Monthly Healthcare Access Quality Report, SVSP, EDD-MITCHELL003742 – 003743
11. 12.11.09 CCHCS Memo Re: Monthly Healthcare Access Quality Report, PBSP, EDD-MITCHELL006658 – 006659
12. 12.11.15 CCHCS Memo Re: Monthly Healthcare Access Quality Report, HDSP, EDD-MITCHELL006694 – 006695
13. Monthly Healthcare Access Quality Report, HDSP, Oct. 2012, EDD-MITCHELL006696 – 0066701
14. 12.07.12 CCHCS Memo Re: Monthly Healthcare Access Quality Report, KVSP, EDD-MITCHELL007285 – 007287
15. 13.03.11 Evenson Dec ISO Supp Brief IOT Defs' Mtn to Vacate Pop Reduction Order-Exhibit 1-Part A
16. 13.03.11 Evenson Dec ISO Supp Brief IOT Defs' Mtn to Vacate Pop Reduction Order-Exhibit 1-Part B
17. United States Department of State, “A Practical Guide to Understanding and Evaluating Prison Systems”
18. Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
19. California Department of Corrections and Rehabilitation, Expert Panel on Adult Offender and Recidivism Reduction Programming. Report to the California State Legislature (2007).
20. California Department of Corrections and Rehabilitation, Prison Capacity Planning Final Report (2011).
21. Program Status Reports attached as deposition exhibits, provided during prison inspections, and summarized in data sheets, as well as CVP-DYD-10-0002, HDP-

- C-12-004, CTF-Central-12-009, CTF-Central-12-001, COR-03A-12-02-009, SATF-0003-12-01-0016, SATF-0003-11-11-0473, KVP-B-12-016, KVP-B-12-004, KVP-B-11-021, KVP-B-11-015, KVP-A-12-015, SVSP-FD-12-018, SVSP-FD-12-009, SVSP-FD-11-017, SVSP-FB-12-013, SVSP-FB-12-009, SVSP-FB-12-016, SOL-September-11-11-034, SOL-APR-C-12-011, SQ-IV-11-014, SQ-IV-11-020, SQ-V-11-015, SQ-IV-12-006, NKSP-A-12-0013
22. 10.10.20 HDSP Email Re: inmates impacted by modified programs EDD-MITCHELL002038 – 002040
 23. 10.10.20 SOL Email Re: inmates impacted by modified programs EDD-MITCHELL002198 – 002199
 24. 10.10.19 CTF Email Re: inmates impacted by modified programs EDD-MITCHELL002034 – 002037
 25. 10.09.14 McDonald Email Re: work group to study impact of street gangs in prisons EDD-MITCHELL049395 – 049397
 26. 10.10.19 COR Email Re: inmates impacted by modified programs EDD-MITCHELL057946 – 057947
 27. *Declaration of James Austin*, United States District Court, Coleman v. Schwarzenegger and Plata v. Schwarzenegger, Civ S 90-0520 LKK-JFM P, January 7, 2013.
 28. CDCR email from Terri McDonald to Scott Kernan, re: Miki, September 14, 2010.
 29. *In re Mitchell*, Case No. S156449 (Cal Supreme Ct), July 11, 2008, Informal Response by Deputy Attorney General Heather M. Heckler
 30. Letter from Simone Renteria, CDCR Office of Legal Affairs, to Zoe Shonfeld, Prison Law Office, containing “a chronology of events that precipitated each of the following lockdowns: COR 09-008, SVSP FC 09-038, and HDP C 09-018.” And copies of PSRs describing each of those lockdowns.
 31. CDCR Prison Census Data As of December 31, 2012 (published February 2013 by CDCR)
 32. “Respondent’s Submission of Plans Required by December 10, 2002 Order” *In re Escalera*, Del Norte County Superior Court No. 00-5164 (June 9, 2004).
 33. “Respondent’s Second Submission re: Compliance with December 10, 2002 Order” *In re Escalera*, Del Norte County Superior Court No. 00-5164 (Oct 12, 2004).
 34. *Escalera v. Terhune*, Cal. Ct. of Appeal Case No. A101614, Feb. 10, 2004) 2004 WL 238763.
 35. *In re Morales*, 212 Cal. App. 4th 1410 (2013).
 36. Declaration and Supplemental Declaration of Devin McDonnell and spreadsheets describing prison lockdowns from July 2010 through March 2013.
 37. Declarations of Plaintiffs Mitchell, Quezada, Trujillo and Abdullah, and exhibits thereto.