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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 DAN MCKIBBEN, PEDRO GUZMAN,) Case No.14-2171-JGB-SP
19 NICK OU, SEAN LINT, ANTHONY OLIVER,)
20 TIMOTHY WALKER, ILICH VARGAS,) CLASS ACTION
WILLIAM KENNEDY, JONATHAN) SECOND AMENDED
21 ROBERTSON, STEVE aka LYNN) COMPLAINT FOR
PRICE, BRYAN BAGWELL, CHRISTOPHER) DAMAGESAND
22 CRAWFORD, FREDERICK CROCKAN,) INJUNCTIVE RELIEF
TAHEASH WHITE, MICHAEL aka MADISON) 1. 42 U.S.C. §1983 (Equal
23 HATFIELD, and KEVIN aka VERONICA) Protection)
PRATT, all individually and as class) 2. Ca. Civ. Code §52.1
24 representatives,)
25 Plaintiffs,) 3. Cal. Const. Art. I, §7 and
26 vs.) Cal. Govt. Code
27) §11135(a) (Injunctive
28) Relief Only)
(continued on next page)) DEMAND FOR JURY
TRIAL
)

1 SHERIFF JOHN MCMAHON, individually)
 and in his official capacity; GREG)
 2 GARLAND, individually and in his official)
 capacity; JEFF ROSE, individually and in his)
 3 official capacity; SARGEANT JAMES MAHAN,)
 4 individually and in his official capacity;)
 CORPORAL ARMANDO CASTILLO,)
 5 individually and in his official capacity;)
 COUNTY OF SAN BERNARDINO,)
 6 a governmental entity; SAN)
 7 BERNARDINO COUNTY SHERIFF’S)
 DEPARTMENT, a California public entity;)
 8 and DOES 1 through 10,)
 9 Defendants.)
 10 _____)

11
12 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

13 1. The San Bernardino County Jails (hereafter “Jail”) are run by the San
 14 Bernardino County Sheriff’s Department (hereafter “SBCSD”). The Jail maintains
 15 an “Alternative Lifestyle Tank” (hereafter “ALT”) at the West Valley Detention
 16 Center (hereafter “WVDC”) to which all inmates who self-identify as gay,
 17 bisexual, and/or transgender (hereinafter “GBT inmates”) are automatically
 18 transferred and isolated from the general population. References in this Complaint
 19 to “GBT” inmates refer to such inmates housed in the ALT. The WVDC is the
 20 only SBCSD jail facility that houses self-identified GBT inmates.

21 2. Plaintiffs, and the classes they seek to represent, bring this action to
 22 challenge the systematic discrimination and denial of equal treatment experienced
 23 by GBT inmates at the WVDC. GBT inmates are not given equal access to
 24 opportunities to work programs (and, if applicable, reduce their sentences as a
 25 result of work assignments), services, programs and facilities, and are often treated
 26 in an abusive and neglectful manner. In short, GBT inmates at WVDC endure
 27 substantially worse conditions of confinement simply because they are gay,
 28 bisexual or transgender. The conditions, restrictions, denials of access and

1 opportunities, and unequal treatment for GBT inmates are the same regardless of
2 whether one is gay, bisexual or transgender.

3 3. One of the major purposes of sentencing is rehabilitation. Yet, GBT
4 inmates have no access to drug treatment, education and work programs designed
5 to help inmates succeed in society when released. To the extent they may have
6 limited access on rare occasions, it is substantially less than that available to non-
7 GBT inmates and is wholly at the arbitrary whim of WVDC officials. Thus, not
8 only are GBT inmates denied equal opportunities for rehabilitation inside jail, they
9 suffer more on the outside since they are not provided the tools to increase their
10 odds of rehabilitation. Unlike the male, non-GBT general population, sentenced
11 GBT inmates at WVDC are generally not allowed to participate in the inmate work
12 program and, to the extent they may occasionally have limited access, it is
13 substantially less than that available to non-GBT inmates.

14 4. As a result, GBT inmates do not enjoy the rehabilitative benefits that
15 programming provides, and are deprived of the opportunities to learn skills and
16 trades that work and vocational programs provide. GBT inmates also do not get the
17 privileges that come with working, which include day-long access to the day room,
18 and a longer amount of time to spend with visitors. GBT inmates cannot be trustees
19 and, in the event they may be, are denied the full benefits afforded other trustees.
20 GBT also may not enjoy the additional sentence-reduction benefits that come with
21 participation in some programs.

22 5. Plaintiffs are informed and believe that GBT inmates may serve
23 longer sentences than non-GBT inmates because they may not enjoy the sentence-
24 reduction benefits that come with work credits. Plaintiffs are uncertain on this issue
25 and include it so that, if it develops that is the case, it has been clearly alleged.
26 Regardless of whether they do get such credits, they suffer the deprivations and
27 consequences of unequal treatment regarding work opportunities outlined above.
28 Regardless of whether GBT inmates lose work credits, denial of work

1 opportunities provides less work experience and, to the extent available, also
2 denies them the ability to earn compensation, and therefore disadvantages them
3 both directly while incarcerated and in terms of future job opportunities.

4 6. GBT inmates are allowed substantially less time outside their cells on
5 a daily basis, and are given substantially less access to recreational and other
6 activities than both non-GBT general population inmates and non-GBT inmates
7 placed in other forms of special housing. They are living in a locked-down status
8 without any security justification. GBT inmates who are housed in the ALT are
9 generally locked inside their cells for approximately 22 and one-half hours or more
10 a day, regardless of their security classification. Time out of cells for ALT inmates
11 during the two years prior to this lawsuit was, for a long period, only 45 minutes to
12 an hour a day. Recently, in response to Plaintiffs' notice of potential litigation,
13 Plaintiffs' investigation of Defendants' violations of Plaintiffs' rights, Plaintiffs'
14 counsel's letter to WVDC and Plaintiffs' 910 claims, there has been some increase.
15 It is still far less than time afforded non-GBT inmates, who generally are housed in
16 dorms where they are allowed out of their cells all day, or in cells where they are
17 allowed out of their cells for longer periods of time. There is no legitimate security
18 justification to deny GBT inmates equal time out of their cells, particularly given
19 that they have access to their own segregated day room which could protect their
20 security and allow them greater time out of their cells. Moreover, when a GBT
21 inmate in the ALT causes a disturbance, all ALT inmates get locked down in their
22 cells all day whereas in general population only the inmates involved in the
23 disturbance are locked down.

24 7. Unlike non-GBT general population inmates, GBT inmates are not
25 allowed to access religious services outside their unit, or religious services inside
26 the unit, including chaplains and bibles. To the extent they may occasionally have
27 limited access, it is substantially less than that available to non-GBT inmates and is
28 wholly at the arbitrary whim of WVDC officials.

1 8. Unlike non-GBT general population inmates, GBT inmates are not
2 allowed access to educational programming such as occupational classes,
3 vocational classes, and GED classes. GBT inmates are not allowed to participate in
4 educational programs provided to general population inmates. They are also not
5 provided with separate educational programs.

6 9. Unlike non-GBT general population inmates, GBT inmates do not
7 have access to drug rehabilitation programs. This is true even if GBT inmates are
8 sentenced to serve their time in a rehabilitation program. Plaintiffs are informed
9 and believe that inmates who participate in drug rehabilitation receive additional
10 time off of their sentences. If inmates do receive such credit, GBT inmates cannot
11 earn time off their sentences for participating in programs such as “Inroads” at
12 Glen Helen, as GBT inmates cannot be housed at Glen Helen. Thus, if inmates
13 receive such drug rehabilitation credits, GBT inmates serve longer sentences than
14 non-GBT inmates. Even if no such credits are earned, GBT inmates are deprived of
15 the benefits of drug rehabilitation such as time out of their cell, interacting with
16 drug counselors and other inmates, and being better prepared for society when
17 released.

18 10. Plaintiffs are informed and believe that, unlike the non-GBT
19 population inmates, due to unwarranted dislike by SBCSD employees and an
20 unwarranted fear of AIDS, deputies generally do not conduct the required safety
21 checks for GBT cells mandated by Title 15, which are required to ensure inmate
22 safety.

23 11. GBT inmates are regularly subjected to abusive conduct and
24 derogatory name calling by SBCSD deputies based on their sexual orientation and
25 gender identity.

26 12. Some GBT inmates have been retaliated against by SBCSD deputies
27 when they complained about conditions in the ALT, and the discriminatory
28 treatment of GBT inmates.

1 13. The foregoing conditions of confinement violate Plaintiffs’ rights to
2 equal protection of the laws under both Article I §7 of the California Constitution
3 and the Fourteenth Amendment to the United States Constitution, and related
4 statutes incorporating, *inter alia*, equal protection standards. Although jails have an
5 obligation to protect the safety of inmates who may be subject to victimization and
6 thus can, when appropriate, place such inmates in some form of protective custody,
7 such placements are not a permissible basis upon which to subject GBT inmates to
8 significantly worse conditions, deprive them of access to programs and privileges,
9 or subject to them to abuse based on their sexual orientation, their gender identity,
10 or gender.

11 14. This action is brought independently under the California Constitution
12 and California statutes incorporating those provisions directly or indirectly, as well
13 as under the United States Constitution through 42 U.S.C. §1983. Plaintiffs
14 emphasize the independent character of the California claims because the
15 California Supreme Court has expressly held that differential treatment of gay
16 people is subject to strict constitutional scrutiny, an issue not yet squarely
17 addressed by the United States Supreme Court. In addition, California claims are
18 not subject to the requirements, limitations and restrictions of the Prison Litigation
19 Reform Act (“PLRA”). Plaintiffs contend that the conduct alleged herein is
20 unconstitutional whatever level of scrutiny is employed – whether it is strict
21 scrutiny, heightened scrutiny or rational basis scrutiny, for there is no legitimate
22 penological reason to treat GBT inmates worse than non-GBT inmates just because
23 of their sexual orientation, gender identity, or gender.

24 15. Plaintiffs bring this action as a class action and seek injunctive relief
25 and damages under both state and federal law.

26 **II. JURISDICTION AND VENUE**

27 16. Plaintiffs present federal claims for relief under 42 U.S.C. §1983.
28 Accordingly, federal jurisdiction is conferred upon this Court by 28 U.S.C. §§1331

1 and 1343. Plaintiffs’ state law claims are so related to their federal law claims that
2 they form part of the same case or controversy. Accordingly, supplemental
3 jurisdiction over the state law claims is conferred upon this Court by 28 U.S.C.
4 §1367.

5 17. Plaintiffs’ claims arise out of acts of the San Bernardino County
6 Sheriff’s Department in the County of San Bernardino, State of California.
7 Accordingly, venue is proper within the Eastern Division of the Central District of
8 California.

9 **III. PARTIES**

10 A. *Plaintiffs*

11 18. **Class Representatives No Longer In Custody:** Plaintiffs Dan
12 McKibben, Peter Guzman, Nick Ruttana Ou, Sean Lint and Anthony Oliver were,
13 but are not presently, incarcerated at WVDC, held in the ALT, and subjected to
14 unequal treatment and access to services and programs, and other violations of law
15 as is elaborated further on in this Complaint. The unequal treatment and access and
16 other violations of law were based on Plaintiffs’ sexual orientation, gender identity
17 or gender, and their classification as GBT inmates. The five are not prisoners
18 within the meaning of the Prison Litigation Reform Act (“PLRA”) at the time of
19 the filing of this Complaint. They seek to act as class representatives for the federal
20 damages class – they are the only representatives of this class – and four of the
21 five, not including Oliver, are also state damages class representatives as they have
22 timely filed and been denied state administrative 910 claims. They are at times
23 referred to as the “Federal Damages Class Representatives.” Everyone but Oliver
24 are also among the California Damages Class Representatives.

25 19. **Class Representatives In Custody At WVDC:** Plaintiffs Timothy
26 Walker, Ilich Vargas, William Kennedy, Jonathan Robertson, Steve aka Lynn
27
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1 Price¹, and, Michael aka Madison Hatfield are currently incarcerated at WVDC.
2 They have been subjected, and will continue to be subjected, to unequal treatment
3 and access to services and programs, and other violations of law as is elaborated in
4 this Complaint. The unequal treatment, unequal access and other violations of law
5 elaborated in this Complaint were and are based on Plaintiffs’ sexual orientation,
6 gender identity or gender, and their classification as GBT inmates.

- 7 a. Plaintiffs Walker, Vargas, Kennedy, Robertson, Price and
8 Hatfield are the only class representatives for the state
9 injunctive relief classes and are at times referred to as the
10 “California Injunctive Relief Class Representatives.”
11 b. Plaintiffs Walker, Vargas, Kennedy, Robertson, Price and
12 Hatfield are also among the “California Class Damages
13 Representatives” because either they have filed an
14 administrative 910 claims on behalf of all GBT inmates at the
15 WVDC which have been rejected, or are covered by such
16 claims because all 910 claims were filed as class claims.
17 c. Walker and Vargas (but **not** Kennedy, Robertson, Price and
18 Hatfield) are also the only class representatives for the federal
19 injunctive relief class and are at times referred to as the
20 “Federal Injunctive Relief Class Representatives.”

21 **20. Class Representatives In Custody At Facilities Other Than**
22 **WVDC:** Plaintiffs Bryan Bagwell, Christopher Crawford, Fredrick Crockan,
23 Taheash White, and Kevin aka Veronica Pratt, are currently incarcerated in
24 different County or California Department of Corrections and Rehabilitation
25 facilities, and have filed and been denied state administrative 910 claims. They are

26 _____
27 ¹Steve Price, aka Lynn Price, Michael Hatfield, aka Madison Hatfield, and Kevin, aka
28 Veronica Pratt, are transgender persons who, out of respect and preference, will be
referred to as Lynn Price, Madison Hatfield and Veronica Pratt, and with use of the
pronoun “she” throughout this Complaint.

1 *solely* California damages class representatives. Every named class representative
2 filed an administrative 910 claim on behalf of all GBT inmates at the WVDC
3 which has been rejected, or are covered by such claims because all 910 claims
4 were filed as class claims. They are among the class representatives for the
5 California damages class. The “California Damages Class Representatives” are at
6 times collectively referred to by that name.

7 21. Different and overlapping Plaintiffs are acting as representatives for
8 different classes. The classes and class representatives identified in this Complaint
9 are: 1) Federal Damages Class (McKibben, Guzman, Ou, Lint, and Oliver); 2)
10 California Damages Class (McKibben, Guzman, Ou, Lint, Walker, Vargas,
11 Kennedy, Robertson, Price, Bagwell, Crawford, Crockan, White, Hatfield and
12 Pratt); 3) Federal Injunctive Relief Class (Walker, Vargas) and 4) California
13 Injunctive Relief Class (Walker, Vargas, Kennedy, Robertson, Price, and Hatfield).
14 While the various class representatives overlap in certain respects, they differ as
15 follows:

- 16 a. The Federal Damages Class representatives are individuals who
17 were, within the relevant time periods, GBT inmates housed in
18 the ALT, but are not currently in custody in any detention
19 facility, jail or prison and are not “prisoners” within the
20 meaning of the PLRA. The Federal Damages Class extends to
21 all former or present GBT inmates detained at WVDC within
22 two years prior to the filing of this lawsuit, and extending into
23 the future until such time as the unlawful conduct alleged herein
24 ceases or resolution of this case.
- 25 b. The California Damages Class representatives are individuals
26 who are or were, within the relevant time periods, GBT inmates
27 housed in the ALT. Unlike the Federal Damages Class
28 representatives, the California Damages Class representatives

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include individuals who are currently “prisoners” within the meaning of the PLRA, which statute does not apply to their claims under California law. All such class representatives were in custody at WVDC on or after October 9, 2013 (six months prior to the filing by Veronica Pratt of a Govt. Code § 910 claim on behalf of all similarly situated individuals on April 9, 2014, which makes the beginning of the California class damages period October 9, 2013). The California Damages Class extends to all former or present GBT inmates detained at WVDC beginning October 9, 2013, and extending into the future until such time as the unlawful conduct alleged herein ceases or resolution of this case.

c. The Federal Injunctive Relief Class representatives are individuals who are currently in custody at WVDC, confined in the ALT, who have exhausted or attempted to exhaust, or could not exhaust because they were prevented through the conduct of the SBCSD from exhausting their remedies within the SBCSD.

d. The California Injunctive Relief Class representatives are individuals who are currently in custody at WVDC, and confined in the ALT.

22. The following chart identifies each Named Plaintiff, what class or classes each seeks to represent, and their current inmate status.

NAME	CLASS	INMATE STATUS
Dan McKibben	Federal and California Damages Classes	Not Currently Incarcerated
Pedro Guzman	Federal and California Damages Class	Not Currently Incarcerated

NAME	CLASS	INMATE STATUS
Nick Ou	Federal and California Damages Class	Not Currently Incarcerated
Sean Lint	Federal and California Damages Class	Not Currently Incarcerated
Anthony Oliver	Federal Damages Class	Not Currently Incarcerated
Tim Walker	Federal and California Injunctive Relief Classes, California Damages Class	Inmate at WVDC
Ilich Vargas	Federal and California Injunctive Relief Classes, California Damages Class	Inmate at WVDC
William Kennedy	California Injunctive Relief Class, California Damages Class	Inmate at WVDC
Jonathan Robertson	California Injunctive Relief Class, California Damages Class	Inmate at WVDC
Steve Price, aka Lynn Price	California Injunctive Relief Class, California Damages Class	Inmate at WVDC
Christopher Crawford	California Damages Class	Inmate at Valley State Prison
Kevin Pratt, aka Veronica Pratt	California Damages Class	Inmate at Riverside County Jail
Bryan Bagwell	California Damages Class	Inmate at C.I.M., Chino
Fredrick Crockan	California Damages Class	Inmate in North Kern State Prison
Taheash White	California Damages Class	Inmate at C.I.M., Chino

NAME	CLASS	INMATE STATUS
Michael Hatfield, aka Madison Hatfield	California Injunctive Relief Class, California Damages Class	Inmate at WVDC

23. All Plaintiffs identified in the foregoing paragraphs have filed 910 Administrative Claims with the State and County both on an individual basis and as class representatives,² or as set forth above, are included in the 910 claims because all 910 claims were filed as class claims to include all GBT persons at the WVDC. All 910 claims have been rejected by both the County of San Bernardino and the State of California as of the date of filing of this Complaint.

B. Defendants

24. Defendant County of San Bernardino (hereafter “County”) is a public entity organized and existing under the laws of the State of California. Defendant San Bernardino County Sheriff’s Department is a public entity within the meaning of California law, and is a County agency. These Defendants are sued in their own right for a County and/or SBCSD policy, practice or custom that caused Plaintiffs’ injuries in violation of one or more federal constitutional guarantees under 42 U.S.C. §1983, and on Plaintiffs’ state law claims for injunctive relief based on violations of mandatory duties under California Government Code §815.6, the state constitutional provisions identified above and Civil Code §52.1.

25. All individual defendants are named based on their personal involvement and/or supervisory liability for their role in the constitutional deprivations alleged herein, including but not limited to their establishment, setting in motion, failing to terminate, ratification, implementation, institution, and/or execution of the discriminatory actions, policies, practices and customs against

² Anthony Oliver is not included in the state damages claim even though he filed a 910 claim that was rejected by the County of San Bernardino because the County claimed it was untimely.

1 GBT inmates in the San Bernardino County jails, and/or failure to adequately train
2 or supervise SBCSD personnel who engaged in the conduct alleged herein.

3 26. Defendant John McMahon (hereafter “McMahon”) is the Sheriff of
4 San Bernardino County, and is the policy maker for the SBCSD. He is sued in his
5 official and individual capacities for both injunctive relief and damages under both
6 California and Federal law.

7 27. Defendant Greg Garland (hereafter “Garland”) is the Deputy Chief in
8 charge of the Corrections Bureau which oversees all San Bernardino County jail
9 facilities, including the WVDC, Central, Glen Helen and Adelanto facilities.

10 Garland is sued in his individual capacity for damages only under both California
11 and Federal law.

12 28. Defendant Jeff Rose (hereafter “Rose”) is a deputy sheriff holding the
13 rank of captain. He is the commanding officer of WVDC. Rose is sued in his
14 individual capacity for damages only under both California and Federal law.

15 29. Defendant Sergeant James Mahan is a deputy sheriff holding the rank
16 of sergeant. He is involved in handling grievances by GBT persons in the ALT at
17 WVDC, and is responsible for determining programs to which GBT inmates are
18 eligible. Mahan is sued in his individual capacity for damages only under both
19 California and Federal law.

20 30. Defendant Armando Castillo is a deputy sheriff holding the rank of
21 corporal. He is in charge of classification and placement of GBT inmates in the
22 ALT, and is involved in reviewing grievances by inmates in the ALT. Armando
23 Castillo is sued in his individual capacity for damages only under both California
24 and Federal law.

25 31. All Defendants’ discriminatory conduct was intentional, and/or was
26 done with reckless disregard for, and/or deliberate indifference toward, Plaintiffs’
27 rights.

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1 32. Plaintiffs are ignorant of the true names and capacities of Defendants
2 sued herein as DOES 1 through 20, inclusive, and therefore sue these Defendants
3 by such fictitious names. Plaintiffs will give notice of this Complaint, and of one or
4 more DOES' true names and capacities, when ascertained.

5 33. Plaintiffs are informed and believe, and based thereon allege, that
6 Defendants DOES 1 through 5 are responsible in some manner for the damages
7 and injuries hereinafter complained of.

8 34. DOES 6 through 10 (hereinafter collectively referred to as "SBCSD
9 Supervisory Defendants") were and/or are now responsible for the SBCSD jails.
10 Among other duties, they are responsible for the training, supervision, control,
11 assignment and discipline of both sworn and civilian personnel of the SBCSD and
12 County who work in, operate, administer and manage the jails, and for the
13 formulation, promulgation, adoption, application, administration and enforcement
14 of the policies, rules, regulations and practices of the SBCSD jails.

15 35. Upon information and belief, Plaintiffs further allege that, at all times
16 relevant herein, Defendants participated in, approved, and/or ratified the
17 unconstitutional or illegal acts that occurred within SBCSD jails which are
18 complained of herein.

19 36. Plaintiffs are informed and believe, and thereupon allege that, at all
20 times relevant herein, the individual Defendants, and each of them, were the
21 agents, servants and employees of their respective employers (Defendants SBCSD
22 and the County) and were acting at all times within the scope of their agency and
23 employment with the knowledge and consent of their principals and employers. At
24 all times herein, Defendants, and each of them, were acting under the color of state
25 law.

26 **IV. COMMON FACTUAL ALLEGATIONS³**

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28 ³ The allegations regarding previously named plaintiffs are based on their situation at the time of the filing of the original complaint, and for newly added plaintiff Anthony Oliver, based on his current status and his time in the ALT.

1 37. Inmates in SBCSD custody who self-identify as GBT during the
2 booking process are automatically transferred to the ALT at WVDC. The ALT is
3 currently located in Unit 1F and consists of 16 cells, each of which house two
4 inmates, that are isolated from the general population dorms and cells at WVDC.
5 There are two tiers or levels – the upper tier and the lower tier – each of which has
6 8 cells. The ALT has its own day room. The ALT is closed off from other inmates.
7 GBT inmates are denied the opportunity to participate in programs that are offered
8 to non-GBT inmates as described below, are not allowed to participate in the same
9 rehabilitation programs as offered non-GBT inmates, are not allowed the same
10 opportunities to earn time off their sentences as non-GBT inmates, and are not
11 allowed equal time out of their cells as non-GBT inmates.

12 38. Placement in general population would afford Plaintiffs and GBT
13 inmates the benefits of equal treatment but would subject them to an increased risk
14 of violence due to their sexual and gender identities. On the other hand, Plaintiffs
15 can be physically safe in the ALT, but endure unequal, inferior and discriminatory
16 conditions of confinement as described herein. Thus, they are faced with the
17 coercive choice, separate and apart from their discrimination while in the ALT, of
18 1) entering the general population where they have equal access to programs and
19 opportunities denied them in the ALT but have greater risk to personal safety, or 2)
20 entering the ALT, where they have discriminatory (or no) access to programs and
21 opportunities but have greater personal safety.

22 39. For most of the past two years, GBT inmates housed in the ALT were
23 locked inside their cells for approximately 23 hours or more a day, regardless of
24 their level of custody. Prior to approximately March 2014, SBCSD allowed GBT
25 inmates to exit their cell for only 45 minutes to 1 hour per day. Inmates in general
26 population during this entire period either lived in dormitory style units, where
27 they are not confined to cells at all, or lived in cells in which they were generally
28 allowed out of their cells most non-sleeping hours. Non-GBT inmates placed in

1 special housing due to their status, e.g. informants and gang members, were
2 generally let out of their cells three hours or more daily. Thus, GBT inmates' cell
3 confinement was dramatically different and more limited than non-GBT inmates in
4 special housing during this period. After being notified on March 28, 2014 that
5 their housing of GBT inmates was being investigated, after the initial 910 class
6 claims were filed on April 9, 2014, and after being notified by Plaintiffs' counsel
7 that its GBT practices were discriminatory on May 2, 2014, SBCSD began to allow
8 GBT inmates living on the top tier of the ALT out of their cells for about an hour
9 to an hour and a half a day, and to continue to allow GBT inmates living on the
10 bottom tier approximately forty five minutes out of their cells.

11 40. Defendants do not provide GBT inmates time out of their cells equal
12 to general population inmates, who are generally housed in dorm settings, and
13 allowed outside cell access all day.

14 41. Unlike inmates in general population, ALT inmates get locked down
15 in their cells all day when any GBT inmates cause disturbances, whereas in general
16 population only the inmates involved in the disturbance are locked down.

17 42. The increased lock down for GBT inmates does not further any
18 legitimate penological purpose, and there is no reasonable necessity for the
19 differential treatment. Up to 32 GBT inmates can be housed in the ALT cells, and
20 there are 5 tables that can seat 32 inmates in the ALT day room. Thus, the GBT
21 inmates could be let out of their cells all day without compromising their safety.
22 They also could be housed dormitory style in a unit that would protect their safety,
23 or other SBCSD facilities that could safely afford them equal time out of their
24 cells, including Adelanto, Glen Helen and Central facilities.

25 43. On information and belief, SBCSD generally prohibits GBT inmates
26 who have been sentenced and are housed in the ALT from participating in the
27 inmate work program. Sentenced inmates can receive 1 day of work time credit for
28 each 4 days they do not refuse to satisfactorily perform labor as assigned by the

1 sheriff. Cal. Penal Code §4019. By depriving them of jobs, GBT inmates are
2 denied access to the day room all day like non-GBT inmates; they do not get
3 increased visiting time of 30 to 45 minutes like non-GBT inmates (but rather
4 receive only the regular 20 minutes); and they do not have the opportunity or
5 ability to go beyond their immediate area like non-GBT inmates who work.
6 Plaintiffs are informed and believe that GBT inmates may serve longer sentences
7 than non-GBT inmates because they may not enjoy the sentence-reduction benefits
8 that come with work credits. If they do get such credits, they still do not obtain the
9 rehabilitation benefits that will help them once released, and do not obtain benefits
10 while incarcerated such as time out of the cell while working, and other worker
11 privileges. Regardless of whether GBT inmates lose work credits, denial of work
12 opportunities provides less work experience and, to the extent available, also
13 denies them the ability to earn compensation, and therefore disadvantages them
14 both directly while incarcerated and in terms of future job opportunities.
15 Consequently, sentenced GBT inmates may serve longer sentences than non-GBT
16 inmates because SBCSD denies them access to work assignments. In contrast,
17 SBCSD permits sentenced, non-GBT inmates in general population to receive such
18 credit. Sentenced non-GBT inmates receive work time credits, whereas GBT
19 inmates may not. Separate GBT crews could be created and work together as a
20 separate crew (e.g., in the law library, work crews outside the jail, work in the
21 kitchen or laundry all in one shift, or as trustees in the ALT). They could also work
22 with non-GBT inmates when it is safe to do so, as there is no legitimate
23 penological reason categorically to forbid them from working together. There are
24 numerous occasions when GBT inmates are together with non-GBT inmates such
25 as in the medical unit, in holding tanks prior to being transported to court, and
26 when being transported back and forth to court.

27 44. On information and belief, and only in response to Plaintiffs'
28 Counsel's letters, Plaintiffs' investigation into the conditions of the ALT at the

1 WVDC, Plaintiffs' 910 claims and the threat of a separate lawsuit by Plaintiff
2 Guzman, SBCSD has just recently begun allowing a single GBT inmate at a time
3 to work. Plaintiff Guzman and, after his release, class member Robert Torres,
4 were permitted to work in the law library. They were and are, however, denied
5 additional privileges that other non-GBT workers receive, such as day-long access
6 to the day room, and getting a longer amount of time to spend with visitors. As a
7 result, even the single GBT inmate who is allowed to work is treated in a
8 discriminatory manner than his similarly situated non-GBT counterparts.
9 Plaintiffs are informed and believe that Plaintiff Guzman may not have received
10 work credits even though he worked.

11 45. On information and belief, SBCSD prohibits GBT inmates from being
12 trustees while non-GBT inmates are allowed to serve as trustees. Both pretrial and
13 sentenced inmates may act as trustees, including in the past inmates facing serious
14 charges such as homicide. Trustees are let out of their cells all day, have longer
15 visits, and get more time outside. GBT inmates cannot even be trustees in the ALT.
16 There is no legitimate penological purpose served by not allowing GBT inmates to
17 serve as trustees since they interact with non-GBT inmates, as set forth in
18 paragraph above. Even non-GBT inmates who are charged with violent crimes,
19 including murder, are allowed to be trustees for the ALT, including one inmate
20 charged with triple murder, two with double murder, and one with manslaughter.
21 Yet GBT inmates may not be so assigned.

22 46. On information and belief, SBCSD refuses to provide educational
23 programs or training to GBT inmates at WVDC. SBCSD prohibits GBT inmates
24 from participating in regional occupational classes, vocational educational classes,
25 and GED classes along with the general population. Non-GBT inmates have access
26 to such educational and other programming. SBCSD also does not provide
27 educational or other programs separately for GBT inmates.

28

1 47. On information and belief, SBCSD denies GBT inmates access to
2 religious services. SBCSD prohibits GBT inmates from attending congregational
3 prayer with other inmates or having group services inside the ALT, denies them
4 access to bibles, and prevents chaplains from visiting their cells. In contrast, non-
5 GBT inmates have access to religious services and materials.

6 48. On information and belief, SBCSD provides GBT inmates with
7 unequal access to drug rehabilitation programs. GBT inmates who request to
8 participate in the “INROADS” drug rehabilitation program at the Glen Helen
9 Rehabilitation Center are denied access because they cannot be housed there. In
10 contrast, SBCSD transfers non-GBT inmates to the “INROADS” drug treatment
11 program. GBT inmates who were sent to Glen Helen for drug treatment were sent
12 back to the WVDC once it was learned by sheriff’s officials at Glen Helen they
13 were GBT. On information and belief GBT inmates are sometimes given access
14 instead to a self-study, “journaling,” rehabilitation program. This program is
15 nothing like the full rehabilitation program at Glen Helen and, even if it were
16 comparable, GBT inmates in the self-study program do not earn time off their
17 sentences like inmates in the Glen Helen program.

18 49. On information and belief, SBCSD deputies regularly fail to perform
19 hourly safety checks or walk-throughs in the ALT as required by Title 15 Code of
20 Regulations. Plaintiffs are informed and believe that SBCSD deputies intentionally
21 avoid going near the cells in the ALT. In contrast, deputies conduct regular walk-
22 throughs of non-GBT inmates’ cells and the general population dorms.

23 50. GBT inmates at the WVDC are subjected to a pattern of harassing
24 behavior by SBCSD deputies, which includes derogatory name calling, neglect,
25 and humiliation. Deputies call GBT inmates “faggots,” “sissies,” “bitches,” and
26 “freak shows,” in addition to other derogatory and demeaning names, on a regular
27 basis.

28

1 51. On information and belief, GBT inmates housed in the ALT also
2 receive harsher punishments than non-GBT inmates in general population. SBCSD
3 deputies discipline inmates housed in the ALT with group punishment, but
4 discipline non-GBT inmates in general population on an individual basis. SBCSD
5 deputies use scare tactics as disciplinary measures by placing GBT inmates who
6 are at risk of physical or sexual assault in cells with intimidating non-GBT
7 inmates.

8 52. On information and belief, SBCSD deputies have retaliated against
9 GBT inmates who complained about the discriminatory treatment and refused to
10 then move to general population out of concern for their safety. On April 30,
11 2014, Defendant A. Castillo told class representatives Christopher Crawford,
12 Bryan Bagwell, Fredrick Crockan, Madison Hatfield, Timothy Walker and class
13 member Larry Meyer that they now had the option to live in general population.
14 Crawford, Walker and Crockan had already filed 910 claims, while Bagwell and
15 Meyer had already received correspondence from Plaintiffs' counsel and a
16 questionnaire concerning the treatment of GBT inmates at the WVDC. The above-
17 mentioned inmates refused to transfer to the general population out of concern for
18 their safety and well-being, and because they felt they would be forced to hide their
19 sexual orientation or gender identity. On information and belief, the jail's rationale
20 for housing GBT inmates in the ALT is inmate safety, and the offer to place them
21 in the general population as identified GBT inmates was a cynical attempt to
22 defend against the Plaintiffs' claims of discrimination and to force GBT inmates to
23 the Hobson's choice of exposure to extreme violence in the general population, or
24 acceptance of the discrimination against GBT inmates housed in the ALT. On
25 information and belief, SBCSD then retaliated against these six inmates by giving
26 them less time outside of their cells.

27 53. In addition to filing Govt. Code §910 claims, Plaintiffs have engaged
28 in pre-litigation settlement efforts. Specifically, Plaintiffs sent Defendants a letter

1 consisting of the aforementioned complaints, and asked that Defendants
2 immediately cease and desist their unlawful practices. Defendants declined to
3 attempt to resolve Plaintiffs' claims without the need for litigation, and have
4 denied Plaintiffs' administrative 910 claims that have been filed. To date, and to
5 Plaintiffs' knowledge, Defendants continue to engage in the unlawful practices
6 detailed in this complaint.

7 54. Defendants will continue their aforementioned policies and practices
8 unless enjoined and restrained by the Court. Without injunctive relief applicable to
9 the class as a whole, the class members will suffer irreparable harm for which there
10 is no adequate remedy at law in that their constitutional and statutory rights will be
11 systematically violated. Without the intervention of this Court, Defendants will
12 continue these unconstitutional practices.

13 55. Defendants have the resources and money to properly house and
14 provide programmatic access to GBT inmates in a constitutional manner that does
15 not violate their equal protection rights. On or about February 6, 2014, the SBCSD
16 opened the Adelanto Jail facility, a state-of-the-art facility that cost the County
17 \$145.4 million. Adelanto opened with over 200 available beds, yet Defendants
18 continue to house the GBT inmates in a dehumanizing and discriminatory manner.

19 56. The differential treatment outlined in this Complaint serves neither a
20 legitimate compelling interest, nor a substantial state interest, nor is it narrowly
21 tailored to serve any such interests.

22 57. In engaging in the conduct alleged in this Complaint, Defendants, and
23 each of them, acted with a discriminatory intent toward GBT inmates, and/or with
24 deliberate indifference to, or a reckless disregard for the rights of GBT inmates.

25 58. As a result of the discriminatory conduct alleged herein, Plaintiffs
26 have suffered damages, including emotional distress damages and pain and
27 suffering, in amounts to be determined at trial.

28

1 59. In engaging in the conduct alleged in this Complaint, Defendants, and
2 each of them, acted maliciously, fraudulently and oppressively, and otherwise in a
3 manner entitling Plaintiffs to an award of punitive damages.

4 **V. CLAIMS OF CLASS REPRESENTATIVES**

5 *I. TIMOTHY WALKER*

6 58. Timothy Walker was arrested by SBCSD on or around April 8, 2013.
7 Upon self-identifying as gay during the booking process, he was transferred to the
8 ALT at the WVDC. He is currently housed there, and will be housed there for the
9 foreseeable future.

10 59. From approximately April 8, 2013 to the present, Mr. Walker has
11 been housed in the ALT, first located in Unit 12A and currently in Unit 1F. During
12 that time, Mr. Walker was let out of his cell, on average, approximately 45 minutes
13 to an hour and one-half a day. Although some inmates on the top tier, including
14 Walker, have very recently been given up to three hours of time out of cell in
15 response to Plaintiffs' Counsel's letters and the threat of litigation, they are still
16 subject to discriminatory treatment compared to the time out of cell provided to
17 non-GBT inmates, as discussed above. He, along with the other ALT inmates, has
18 been required to eat meals in his cell, unlike non-GBT inmates.

19 60. Unlike other non-GBT inmates in the general population, as an inmate
20 in the ALT Walker was not permitted to work. Walker requested participation in
21 the work program by submitting official Inmate Request Slips on June 4, 2013,
22 July 1, 2013, and July 25, 2013. SBCSD denied each request by stamping his
23 requests slips "DENIED" or "NOTHING AVAILABLE AT THIS TIME". On
24 information and belief, positions were, in fact, available even when the denial
25 stated that nothing was available. Thus, Mr. Walker could not earn money and
26 perhaps work credit, and may have served a longer sentence than if he had been
27 able to work and receive early release credits. See Cal. Penal Code §4019.

28 61. Recently, in response to grievances he filed in early September 2014
and notice of this pending lawsuit, Walker was told he was eligible to obtain a job.

1 Plaintiffs are informed and believe that, to date, Mr. Walker has not been given a
2 job. Out of the hundreds of inmates housed in the ALT since Mr. Walker has been
3 there, only two others have had jobs. Pedro Guzman, who threatened legal action,
4 was allowed to work in the library, and Robert Torres, who replaced Mr. Guzman
5 when he was released. No others have been permitted to work.

6 62. Nor has Mr. Walker been permitted to be a trustee in the ALT.
7 Plaintiffs are informed and believe that the trustees who work in the ALT--
8 bringing food to the cells of inmates housed in the ALT-- are non-GBT pre-trial
9 inmates, and in the past have been awaiting trial on serious charges such as murder
10 and manslaughter. Yet, they have been allowed to work as trustees while the GBT
11 inmates have not.

12 63. Mr. Walker properly filed grievances on June 28, 2013 and May 15,
13 2014 regarding SBCSD's policy of not allowing GBT inmates to participate in the
14 inmate work program. SBCSD responded on June 26, 2013, concluding that
15 Walker's allegations were unfounded because he was involved in a mutual combat
16 fight, and thus ineligible for work assignment on that basis. On June 27, 2013, Mr.
17 Walker filed a grievance appeal disagreeing with these findings, stating that he was
18 disciplined for the fight prior to receiving his sentence and before he could even be
19 considered for work assignment, and thus should have been eligible for a work
20 assignment. SBCSD responded on July 3, 2013 concluding that, "regardless of
21 when Mr. Walker received his discipline, that discipline automatically excludes
22 him from becoming an inmate worker at any time while in Sheriff's custody per
23 Detention/Correction's policy." Plaintiffs are informed and believe that SBCSD's
24 policy prohibiting Mr. Walker from work assignment is pretextual because straight
25 inmates have participated in the work program even though they were disciplined
26 for fighting. Moreover, in a vague manner, he was recently told by Defendant
27 Mahan that he was eligible for a job, though he has not been given one. Because
28 he has not been permitted to work, Mr. Walker may serve a longer sentence than
non-GBT inmates who can earn work credits.

1 64. Mr. Walker is unable to participate in regional occupational classes,
2 vocational education classes, or GED classes along with the general population of
3 inmates at WVDC. Mr. Walker requested educational programs by submitting an
4 official Inmate Request Slip on July 1, 2013. SBCSD denied his request, stamping
5 “NOTHING AVAILABLE AT THIS TIME” on to his request slip. On information
6 and belief, however, educational programs were available to non-GBT inmates.

7 65. Mr. Walker is unable to participate in religious services inside the
8 ALT in person, and does not have access to religious services outside the ALT.

9 66. Unlike non-GBT general population inmates, Mr. Walker is unable to
10 participate in the “INROADS” drug rehabilitation program at Glen Helen
11 Rehabilitation Center. Since he filed his 910 claim, the jail has given him “IN
12 ROADS” in the form of a self-study program, but not at Glen Helen. He is not
13 receiving credit off his sentence like non-GBT inmates who participate in the
14 program. The self-study program itself is not proper or effective drug
15 rehabilitation programming.

16 67. Mr. Walker’s cell in the ALT at WVDC is not checked by deputies on
17 a routine basis as required by Title 15 for safety walk-throughs. On a regular basis,
18 deputies skip cell checks and sign the log sheet, even though they never check Mr.
19 Walker’s or other inmate’s cells.

20 68. Mr. Walker has been and remains subject to harassment, name calling,
21 neglect, and humiliation by employees of SBCSD at WVDC, including being
22 referred to as a “bitch” and “high school girl.”

23 69. Mr. Walker has been retaliated against for complaining about his
24 treatment. On April 30, 2014, Defendant A. Castillo asked Mr. Walker to sign a
25 paper agreeing to go to general population where he would be responsible for his
26 own safety. He declined as being housed in general population and identified as
27 GBT would subject him to violence. The SBCSD offered the same transfer to
28 Plaintiffs Crockan, Bagwell and Hatfield, and to class member Larry Meyer. They
all declined due to safety concerns. Jail personnel then retaliated by placing these

1 inmates on the bottom tier of the ALT, which meant less time out of their cells. All
2 of these inmates had previously filed 910 administrative claims against the county.

3 70. As a result of the treatment and isolation of GBT inmates at WVDC,
4 Mr. Walker has experienced severe emotional distress and depression.

5 71. During all times Mr. Walker has been in custody at WVDC, he has
6 been subjected to all the conditions of confinement explained in Section IV, *supra*.

7 **2. Dan MCKIBBEN**

8 72. Dan McKibben was arrested for a probation violation and booked into
9 SBCSD on or around March 21, 2014. Upon self-identifying as gay during the
10 booking process, he was automatically transferred to the ALT at WVDC. He was
11 released in or around June 2014, and is currently out of custody.

12 73. During all times Mr. McKibben was in custody at WVDC, he was
13 confined to his cell for approximately 23 hours a day. He was only allowed out of
14 his cell for 45 minutes to one hour per day, which time was used for the showers.
15 Meals were given inside the cell, not outside in the day room where there were
16 tables. Non-GBT inmates in general population either lived in dormitory style
17 units, where they are not confined to cells at all, or lived in cells in which they
18 were generally out of their cells most non-sleeping hours. Non-GBT inmates
19 placed in special housing due to their status, e.g. informants and gang members,
20 were and are generally let out of their cells three hours or more daily.

21 74. Unlike non-GBT inmates in the general population, as an inmate in
22 the ALT Mr. McKibben was not permitted to be a trustee or work at WVDC.
23 Because he was not permitted to work, he could not earn money, and might not
24 have been able to earn work credits. As a result, Mr. McKibben might have served
25 a longer sentence than he would have had he been able to work and receive early
26 release credits. See Cal. Penal Code §4019.

27 75. Mr. McKibben was unable to participate in regional occupational
28 classes, vocational education classes, or GED classes along with the general
population of inmates at WVDC.

1 76. Mr. McKibben was unable to participate in religious services inside
2 the ALT in person, and did not have access to religious services outside the ALT.

3 77. Mr. McKibben's cell in the ALT at WVDC was not checked by
4 deputies on a routine basis as required by Title 15 for safety walk-throughs. On a
5 regular basis, deputies skipped cell checks and signed the log sheet, even though
6 they never checked Mr. McKibben's cell. Mr. McKibben was subject to
7 harassment, name calling, neglect, and humiliation by employees of SBCSD at
8 WVDC. The deputies called the ALT the "fag bin" or "queer quarters".

9 78. As a result of the treatment and isolation of GBT inmates at WVDC,
10 Mr. McKibben has experienced severe emotional distress and depression.

11 79. Mr. McKibben did not file grievances about the conditions due to his
12 fear of retaliation. To avoid trouble with the guards that he knew others
13 experienced, he "kept his mouth shut."

14 80. During all times Mr. McKibben was in custody at WVDC, he was
15 subjected to all the conditions of confinement explained in Section IV, *supra*.

16 81. Mr. McKibben is not currently in custody and, thus, is not an inmate
17 within the meaning of the PLRA.

18 **3. PEDRO GUZMAN**

19 82. Pedro Guzman was housed by SBCSD beginning on approximately
20 January 21, 2014. Upon self-identifying as gay during the booking process, he was
21 automatically transferred to the ALT at WVDC. He was subsequently released in
22 or about late August, 2014, and is currently out of custody.

23 83. During all times Mr. Guzman was in custody at WVDC, he was
24 confined to his cell for approximately 22 and one-half hours a day. He was only
25 allowed out of his cell for one and one half hours a day, except when he got a job
26 (see the following paragraph) and was allowed out to work. Non-GBT inmates in
27 general population either lived, or continue to live in dormitory style units. They
28 were and are not confined to cells at all, or lived in cells in which they were
generally out of their cells during most non-sleeping hours. Non-GBT inmates

1 placed in special housing due to their status, e.g. informants and gang members,
2 were generally let out of their cells three hours or more daily.

3 84. On or about June 24, 2014, after threatening litigation, Mr. Guzman
4 was the first GBT person allowed to work. He was placed in the law library.
5 However, Mr. Guzman is informed and believes, based on statements made to him
6 by Sergeant Mahan, that he did not earn work credit, unlike non-GBT inmates. As
7 a result, Mr. Guzman might have served a longer sentence than he would have had
8 he been able to work and receive early release credits. See Cal. Penal Code §4019.
9 Further, unlike non-GBT inmates, Plaintiffs are informed and believe that Mr.
10 Guzman did not received the perks of being a worker. For example, he did not
11 receive access to the day room all day, his visits were limited to 15 minutes rather
12 than 30 to 45 minutes, and he did not have additional access to the outside, all in
13 contrast to non-GBT workers. Plaintiffs are informed and believe that Mr. Guzman
14 and Robert Torres, after Mr. Guzman was released, have been the only GBT
15 persons allowed to work at WVDC, and only in response to the threat of litigation.
16 Mr. Guzman was not allowed the opportunity to work as a trustee.

17 85. Mr. Guzman was unable to participate in regional occupational
18 classes, vocational education classes, or GED classes along with the general
19 population of inmates at WVDC.

20 86. Mr. Guzman was unable to participate in religious services inside the
21 ALT in person, and did not have access to religious services outside the ALT.

22 87. Mr. Guzman's cell in the ALT at WVDC was not checked by deputies
23 on a routine basis as required by Title 15 for safety walk-throughs. On a regular
24 basis, deputies skipped cell checks and signed the log sheet, even though they
25 never checked Mr. Guzman's cell. Mr. Guzman was subjected to harassment, name
26 calling, neglect, and humiliation by employees of SBCSD at WVDC, including
27 being called a "damn faggot", and having his face slammed against the bars by a
28 deputy for no reason other than being GBT.

1 88. As a result of the treatment and isolation of GBT inmates at WVDC,
2 Mr. Guzman has experienced severe emotional distress and depression.

3 89. During all times that Mr. Guzman was in custody at WVDC, he was
4 subjected to all the conditions of confinement explained in Section IV, *supra*. Mr.
5 Guzman is not currently in custody and, thus, is not an inmate within the meaning
6 of the PLRA.

7 **4. NICK OU**

8 90. Nick Ou was arrested by the Colton Police Department on or about
9 April 25, 2014, and was booked into the WVDC on that date. Upon self-
10 identifying as gay during the booking process, he was transferred to the ALT at
11 WVDC after a brief placement in the general population. He was subsequently
12 released in or about late August 2014, and is currently out of custody.

13 91. During all times Mr. Ou was in custody at WVDC, he was confined to
14 his cell for approximately 22 to 23 hours a day. He was only allowed out of his
15 cell, on average, for 1 to one and a half hours a day . He was required to eat in his
16 cell, like all GBT inmates, even though there was seating for 32 in the day room
17 that could accommodate all 32 inmates in the ALT. Non-GBT inmates in general
18 population either lived in dormitory style units, where they were not confined to
19 cells at all, or lived in cells in which they were generally out of their cells at least 3
20 hours a day. Non-GBT inmates placed in special housing due to their status, e.g.
21 informants and gang members, were generally let out of their cells three hours or
22 more daily.

23 92. Unlike non-GBT inmates in the general population, Mr. Ou was not
24 permitted to be a trustee, or work as an inmate in the ALT at WVDC. He attempted
25 to work and put in a work request slip, but was told he was ineligible due to his
26 “medical condition,” which SBCSD claimed would not allow him to climb stairs,
27 even though he was housed on the upper tier and had to climb stairs several times a
28 day. He filed a subsequent request and was told he was not medically cleared. He
then sought medical clearance from his doctor, which he received. He submitted

1 another request, which was denied. Defendants' rationale for denying him work
2 was discriminatory and pretextual. As a result of Defendants' discriminatory
3 conduct, Mr. Ou could not earn money, and might not have earned good time work
4 credits, and thereby might have served a longer sentence than he would have had
5 he been able to work and receive early release credits. See Cal. Penal Code §4019.

6 93. Mr. Ou was unable to participate in regional occupational classes,
7 vocational education classes, or GED classes along with the general population of
8 inmates at WVDC.

9 94. Mr. Ou was unable to participate in religious services inside the ALT
10 in person, a chaplain did not visit, and did not have access to religious services
11 outside the ALT.

12 95. Mr. Ou's cell in the ALT at WVDC was not checked by deputies on a
13 routine basis as required by Title 15 for safety walk-throughs. On a regular basis,
14 deputies skipped cell checks and signed the log sheet, even though they never
15 checked Mr. Ou's cell. Mr. Ou was subjected to harassment, name calling, neglect,
16 and humiliation by employees of SBCSD at WVDC.

17 96. As a result of the treatment and isolation of GBT inmates at WVDC,
18 Mr. Ou has experienced severe emotional distress and depression.

19 97. During all times when Mr. Ou was in custody at WVDC, he was
20 subjected to all the conditions of confinement explained in Section IV, *supra*. Mr.
21 Ou is not currently in custody and, thus, is not an inmate within the meaning of the
22 PLRA.

23 **5. SEAN LINT**

24 98. Sean Lint was arrested by the Barstow Police Department and booked
25 by the SBCSD into the WVDC in or around April or May, 2014. Upon self-
26 identifying as gay during the booking process, he was automatically transferred to
27 the ALT at WVDC. He was released in or around June or July 2014, and is
28 currently out of custody.

1 99. During all times Mr. Lint was in custody at WVDC, he was confined
2 to his cell for approximately 23 hours a day. He was only allowed out of his cell
3 for 45 minutes to one hour per day. Non-GBT inmates in general population either
4 lived and continue to live in dormitory style units. They were and are not confined
5 to cells at all, or lived in cells in which they were generally out of their cells most
6 non-sleeping hours. Non-GBT inmates placed in special housing due to their
7 status, e.g. informants and gang members, were generally let out of their cells three
8 hours or more daily.

9 100. Unlike non-GBT inmates in the general population, Mr. Lint was not
10 permitted to be a trustee or work as an inmate in the ALT at WVDC. Because he
11 was not permitted to work, he could not earn money, and might not have been able
12 to earn good time work credits. As a result, Mr. Lint might have served a longer
13 sentence than he would have had he been able to work and receive early release
14 credits. See Cal. Penal Code §4019.

15 101. Mr. Lint was unable to participate in regional occupational classes,
16 vocational education classes, or GED classes along with the general population of
17 inmates at WVDC.

18 102. Mr. Lint was unable to participate in religious services inside the ALT
19 in person, and did not have access to religious services outside the ALT.

20 103. Mr. Lint's cell in the ALT at WVDC was not checked by deputies on
21 a routine basis as required by Title 15 for safety walk-throughs. On a regular basis,
22 deputies skipped cell checks and signed the log sheet, even though they never
23 checked Mr. Lint's cell. He was subjected to harassment, name calling, neglect,
24 and humiliation by employees of SBCSD at WVDC, including being called a
25 "faggot."

26 104. As a result of the treatment and isolation of GBT inmates at WVDC,
27 Mr. Lint has experienced severe emotional distress and depression.
28

1 105. During all times Mr. Lint was in custody at WVDC, he was subjected
2 to all the conditions of confinement explained Section IV, *supra*. Mr. Lint is not
3 currently in custody and, thus is, not an inmate within the meaning of the PLRA.

4 **6. Anthony Oliver**

5 106. Anthony Oliver was arrested by SBCSD on or around October 7, 2012
6 for a probation violation. Upon self-identifying as gay during the booking process,
7 he was transferred to the ALT at the WVDC. He was released on November 28,
8 2013. He was rearrested on or about February 9, 2013, on a probation violation,
9 and was housed at WVDC in the ALT until April 24, 2013, when he was released
10 from custody. He was subsequently in the custody of the Los Angeles County
11 Men's Central Jail, on criminal charges, which were dismissed with prejudice on
12 or about April 6, 2015. He was released on or about that date, and is currently not
13 in custody.

14 107. During Mr. Oliver's confinement in the ALT, he was housed in his
15 cell approximately 23 hours a day. He was let out of his cell for approximately one
16 hour a day, if even an hour per day. Mr. Oliver is informed and believes that
17 general population straight males were housed in general population in dorms and
18 were not confined in cells. He, along with the other ALT inmates, was required to
19 eat meals in his cell, unlike non-GBT inmates.

20 108. As an inmate in the ALT, Oliver was not permitted to work. Thus, Mr.
21 Oliver could not earn money and perhaps work credit, and may have served a
22 longer sentence than if he had been able to work and receive early release credits.
23 See Cal. Penal Code §4019. Mr. Oliver was specifically informed by jail
24 personnel that he could not work because gay inmates "carry diseases." Inmates in
25 the general population do not normally experience such deprivations of access and
26 opportunity. Nor was Mr. Oliver permitted to be a trustee in the ALT.

27 109. Mr. Oliver filed a series of grievances against the jail alleging
28 discriminatory treatment against GBT inmates in the ALT, including himself, and
the jail denied his requests to remove the discriminatory conditions.

1 110. Mr. Oliver was unable to participate in regional occupational classes,
2 vocational education classes, or GED classes along with the general population of
3 inmates at WVDC.

4 111. Mr. Oliver was unable to participate in religious services inside the
5 ALT in person, and did not have access to religious services outside the ALT.

6 112. Unlike non-GBT general population inmates, Mr. Oliver was unable
7 to participate in the “INROADS” drug rehabilitation program at Glen Helen
8 Rehabilitation Center.

9 113. Mr. Oliver’s cell in the ALT at WVDC was not checked by deputies
10 on a routine basis as required by Title 15 for safety walk-throughs. On a regular
11 basis, deputies skipped cell checks and sign the log sheet, even though they never
12 check Mr. Oliver’s or other inmate’s cells. Deputies and jail personnel refused to
13 come onto the floor in the AKT, and just let jail trustees deal with GBT inmates.
14 Only during meal times or when a supervisor was present would jail personnel
15 come into the ALT. Mr. Oliver is informed and believes that jail personnel were
16 afraid to enter the ALT for fear of “catching diseases” from GBT inmates. One
17 deputy, for example, took a grievance from Mr. Oliver, tore it up, and stated, “I
18 don’t come in the dorm often, that’s how I don’t catch fag germs.”

19 114. Mr. Oliver was subjected to harassment, name calling, neglect, and
20 humiliation by employees of SBCSD at WVDC, including being referred to as
21 “Matt Gaymon,” “Mr. Lipstick,” “bitch”, “fag,” and “Mr. Vibrator;” one deputy
22 stated to him, “if I tased you, you might become straight.”

23 115. As a result of the treatment and isolation of GBT inmates at WVDC,
24 Mr. Oliver experienced severe emotional distress and depression.

25 116. During all times Mr. Oliver was in custody at WVDC, he has been
26 subjected to all the conditions of confinement explained in Section IV, *supra*.

27 117. Since Mr. Oliver is not in custody, he is not subject to the conditions
28 of the PLRA.

1 118. Mr. Oliver was in custody in the Los Angeles County Jail from March
2 27, 2014 to April 6, 2015, facing criminal charges, after which he was released and
3 all charges were dismissed He is entitled to equitable tolling for that time period.

4 **7. Lynn Price**

5 119. Lynn Price was arrested by SBCSD in late July of 2014. Upon self-
6 identifying as transgender during the booking process, she was transferred to the
7 ALT at the WVDC. She is currently housed there and will be housed there for the
8 foreseeable future. Ms. Price has also been housed in the ALT during past periods
9 of incarceration at WVDC as well, including in 2012 and February of 2014.

10 120. During all times Ms. Price has been in the ALT tank, she has been
11 confined to her cell anywhere from 22 to 23 hours a day, and only allowed out of
12 her cell for approximately one hour to two hours a day. That is only very recently
13 in response to Plaintiffs' counsel's letter and the threat of litigation. She is
14 informed and believes that non-GBT inmates in general population either live in
15 dormitory style units, where they are not confined to cells at all, or live in cells in
16 which they are generally out of their cells most non-sleeping hours. Non-GBT
17 inmates placed in special housing due to their status, e.g. informants and gang
18 members, are generally let out of their cells three hours or more daily.

19 121. Unlike non-GBT inmates in the general population, Ms. Price has not
20 been permitted to be a trustee, and could not work as an inmate in the ALT at
21 WVDC. Thus, she may not have been able to earn money or good time work
22 credits. As a result, Ms. Price may be serving a longer sentence than she would
23 have if she were allowed to work and receive early release credits. See Cal. Penal
24 Code §4019.

25 122. Ms. Price is unable to participate in regional occupational classes,
26 vocational education classes, or GED classes along with the general population of
27 inmates at WVDC. On or about September 13, 2014, Ms. Price requested a GED
28 program. On or about September 24, 2014, Ms. Price was verbally told that a GED
program had to be court ordered. Shortly thereafter, she filed a grievance on that

1 and other issues related to the discriminatory treatment of GBT inmates. The
2 grievance was returned to her by Deputy Allen, who informed her that she could
3 only file a grievance on a single issue, and if she wanted to work she would have to
4 go to general population.

5 123. Ms. Price is unable to participate in religious services inside the ALT
6 in person, and does not have access to religious services outside the ALT.

7 124. Unlike non-GBT general population inmates, Ms. Price is unable to
8 participate in the “INROADS” drug rehabilitation program at Glen Helen
9 Rehabilitation Center. In the 1980s, Ms. Price was housed at Glen Helen, at which
10 time they were aware of her gender identity. They did not then offer the
11 rehabilitation programs currently offered.

12 125. Ms. Price’s cell in the ALT at WVDC is not checked by deputies on a
13 routine basis as required by Title 15 for safety walk-throughs. On a regular basis,
14 deputies skip cell checks and sign the log sheet, even though they never check Ms.
15 Price’s cell.

16 126. Ms. Price is subjected to harassment, name calling, neglect, and
17 humiliation by employees of SBCSD at WVDC.

18 127. As a result of the treatment and isolation of GBT inmates at WVDC,
19 Ms. Price has experienced severe emotional distress and depression.

20 128. During all times Ms. Price has been in custody at WVDC, she has
21 been subjected to all the conditions of confinement explained in Section IV, *supra*.

22 **8. Ilich Vargas**

23 116. Ilich Vargas was housed by the SBCSD at the WVDC on or about
24 December 13, 2012 in the general population, as he did not disclose his bisexual
25 orientation. Upon self-identifying as bisexual in general population, he was
26 transferred to the WVDC ALT tank in October 2013. He is currently housed as a
27 pre-trial inmate in the ALT.

28 117. During all times Mr. Vargas has been in the ALT tank, he has been
confined to his cell anywhere from 22 to 23 hours a day, and only allowed out for

1 approximately one hour to two hours a day. That is only very recently in response
2 to Plaintiffs' counsel's letter and the threat of litigation. He is informed and
3 believes that non-GBT inmates in general population either live in dormitory style
4 units where they are not confined to cells at all, or live in cells in which they were
5 generally out of their cells during most non-sleeping hours. Non-GBT inmates
6 placed in special housing due to their status, e.g. informants and gang members,
7 are generally let out of their cells three hours or more daily.

8 118. Unlike non-GBT inmates in the general population, Mr. Vargas has
9 not been permitted to be a trustee in the ALT, and thereby be out of his cell all day.

10 119. Mr. Vargas is unable to participate in regional occupational classes,
11 vocational education classes, or GED classes along with the general population of
12 inmates at WVDC.

13 120. Mr. Vargas is unable to participate in religious services inside the
14 ALT in person, and does not have access to religious services outside the ALT.

15 121. Mr. Vargas' cell in the ALT at WVDC is not checked by deputies on
16 a routine basis as required by Title 15 for safety walk-throughs. On a regular basis,
17 deputies skip cell checks and sign the log sheet, even though they never checked
18 Mr. Vargas' cell.

19 122. Mr. Vargas is subjected to harassment, name calling, neglect, and
20 humiliation by employees of SBCSD at WVDC, including being called a "faggot"
21 by nursing staff.

22 123. As a result of the treatment and isolation of GBT inmates at WVDC,
23 Mr. Vargas has experienced severe emotional distress and depression.

24 124. During all times Mr. Vargas has been in custody at WVDC, he has
25 been subjected to all the conditions of confinement explained in Section IV, *supra*.

26 **9. WILLIAM KENNEDY**

27 125. William Kennedy was arrested by the Redlands Police Department,
28 and was booked into WVDC by the SBCSD on or around June 13, 2014. Upon
self-identifying as gay during the booking process, he was automatically

1 transferred to the ALT at WVDC. He has been at the WVDC since that time in the
2 ALT, and is currently still in custody.

3 126. During all times Mr. Kennedy has been in custody at WVDC, he has
4 been confined to his cell approximately 22 to 23 hours a day, during which time he
5 has to take a shower and make any necessary phone calls. Mr. Kennedy is
6 informed and believes that non-GBT inmates in general population either live in
7 dormitory style units, where they are not confined to cells at all, or live in cells in
8 which they were generally out of their cells for many hours a day. Non-GBT
9 inmates placed in special housing due to their status, e.g. informants and gang
10 members, are generally let out of their cells three hours or more daily.

11 127. Unlike non-GBT inmates in the general population, Mr. Kennedy has
12 not been permitted to be a trustee, and thus be allowed out of his cell all day.

13 128. Mr. Kennedy is unable to participate in regional occupational classes,
14 vocational education classes, or GED classes along with the general population of
15 inmates at WVDC.

16 129. Mr. Kennedy is unable to participate in religious services inside the
17 ALT in person, and does not have access to religious services outside the ALT. He
18 has asked for religious services and a chaplain, but has never received a response.

19 130. Kennedy is unable to participate in the "INROADS" mental health
20 program at Glen Helen Rehabilitation Center.

21 131. Mr. Kennedy's cell in the ALT at WVDC is not checked by deputies
22 on a routine basis as required by Title 15 for safety walk-throughs. On a regular
23 basis, deputies skip cell checks and sign the log sheet, even though they never
24 check Mr. Kennedy's or other inmate's cells.

25 132. Mr. Kennedy is subjected to harassment, name calling, neglect, and
26 humiliation by employees of SBCSD at WVDC. For example, the inmates are
27 called "girls" or are told "hot dogs are what you like" by deputies.

28 133. As a result of the treatment and isolation of GBT inmates at WVDC,
Mr. Kennedy has experienced severe emotional distress and depression.

1 134. During all times Mr. Kennedy has been in custody at WVDC, he has
2 been subjected to all the conditions of confinement explained in Section IV, *supra*.

3 **10. JONATHAN ROBERTSON**

4 135. Jonathan Robertson has been at the WVDC from August 22, 2012,
5 and upon self-identifying as gay on or about January 5, 2014, he was automatically
6 transferred to the ALT at WVDC. Since that time he has primarily been housed in
7 the ALT in pre-trial confinement, although he has been transferred to general
8 population for brief periods, on information and belief, as retaliation.

9 136. During all times Mr. Robertson has been in custody at WVDC, he has
10 been confined to his cell approximately 23 hours a day. Non-GBT inmates in
11 general population either live in dormitory style units, where they are not confined
12 to cells at all and are out all day, or live in cells in which they were generally out of
13 their cells at least 3 hours a day. Non-GBT inmates placed in special housing due
14 to their status, e.g. informants and gang members, were generally let out of their
15 cells three hours or more daily.

16 137. Unlike non-GBT inmates in the general population, Mr. Robertson is
17 not permitted to be a trustee and be allowed out of his cell during the day like other
18 trustees.

19 138. Mr. Robertson is unable to participate in regional occupational
20 classes, vocational education classes, or GED classes along with the general
21 population of inmates at WVDC.

22 139. Mr. Robertson is unable to participate in religious services inside the
23 ALT in person, and does not have access to religious services outside the ALT.

24 140. Mr. Robertson's cell in the ALT at WVDC is not checked by deputies
25 on a routine basis as required by Title 15 for safety walk-throughs. On a regular
26 basis, deputies skip cell checks and sign the log sheet, even though they never
27 check Mr. Kennedy's or other inmate's cells.

28 141. Mr. Robertson is subjected to harassment, name calling, neglect, and
humiliation by employees of SBCSD at WVDC. For example, Mr. Robertson and

1 other inmates in the WVDC are called “bitches”, “fags”, “girls”, “punks”,
2 “motherfucker”, and “disgusting” and told to “stop being a little bitch,” by the
3 deputies.

4 142. As a result of the treatment and isolation of GBT inmates at WVDC,
5 Mr. Robertson has experienced severe emotional distress and depression and has
6 made multiple suicide attempts without having been given a psychological
7 evaluation.

8 143. During all times Robertson has been in custody at WVDC, he has
9 been subjected to all the conditions of confinement explained in Section IV, *supra*.

10 ***II. CHRISTOPHER CRAWFORD***

11 144. Christopher Crawford was booked into the WVDC by the SBCSD on
12 multiple occasions including in February 2012, December 2013, and most recently,
13 on February 10, 2014. Each time, upon self-identifying as gay during the booking
14 process, he was automatically transferred to the ALT at WVDC.

15 145. Christopher Crawford was transferred to state custody on or around
16 April 12, 2014 and is no longer in SBCSD custody. He is currently a prisoner
17 within the meaning of the PLRA.

18 146. During all times Mr. Crawford was in custody at WVDC, he was
19 confined to his cell for approximately 23 hours a day. He was only allowed out of
20 his cell for 45 minutes to one hour per day. Non-GBT inmates in general
21 population either lived and continue to live in dormitory style units, where they are
22 not confined to cells at all, or lived and continue to live in cells in which they are
23 generally out of their cells most non-sleeping hours. Non-GBT inmates placed in
24 special housing due to their status, e.g. informants and gang members, were
25 generally let out of their cells three hours or more daily.

26 147. Unlike other non-GBT inmates in the general population, Mr.
27 Crawford was not permitted to be a trustee, or work as an inmate in the ALT at
28 WVDC. Because he was not permitted to work, he could not have earned money,
and might not have earned good time work credits. As a result, Crawford might be

1 serving a longer sentence than he would have had he been able to work and receive
2 early release credits. See Cal. Penal Code §4019.

3 148. Crawford was unable to participate in regional occupational classes,
4 vocational education classes, or GED classes along with the general population of
5 inmates at WVDC. He and other inmates in the ALT were not allowed access to
6 educational programming provided to general population inmates and were also
7 not given access to any separate educational programming.

8 149. Mr. Crawford was unable to participate in religious services inside the
9 ALT in person, and did not have access to religious services outside the ALT.

10 150. Mr. Crawford's cell in the ALT at WVDC was not checked by
11 deputies on a routine basis as required by Title 15 for safety walk-throughs. On a
12 regular basis, deputies skipped cell checks and signed the log sheet, even though
13 they never checked Mr. Crawford's or other inmate's cells.

14 151. Mr. Crawford was subjected to harassment, name calling, neglect, and
15 humiliation by employees of SBCSD at WVDC.

16 152. Mr. Crawford was subjected to disproportionate punishment
17 compared to non-GBT inmates in general population. On one occasion, SBCSD
18 deputies punished Mr. Crawford for participating in mutual combat with another
19 inmate by placing him in a cell with a high-power, straight inmate.

20 153. Unlike non-GBT general population inmates, Mr. Crawford and other
21 inmates in the "ALT" were subjected to group, rather than individual, punishment.
22 For example, after the incident where Mr. Crawford engaged in mutual combat, all
23 inmates in the ALT were punished as a group, and were permitted even less time
24 out of their cells than the scant amount of time they were normally allowed. When
25 two non-GBT inmates in general population get into mutual combat typically only
26 those two individuals are punished, not the entire dorm.

27 154. As a result of the treatment and isolation of GBT inmates at WVDC,
28 Mr. Crawford has experienced severe emotional distress and depression.

1 155. Mr. Crawford was unable to file any grievances at WVDC because,
2 when he attempted to do so, deputies told him his grievances were “ungrievable.”

3 156. During all times Mr. Crawford was in custody at WVDC, he was
4 subjected to all the conditions of confinement explained in Section IV, *supra*.

5 **12. VERONICA PRATT**

6 157. Veronica Pratt was arrested by SBCSD on or around August 4, 2013.
7 Upon self-identifying as transgender during the booking process, she was
8 automatically transferred to the ALT at WVDC. Pratt was subsequently released.

9 158. Ms. Pratt was booked into the WVDC by the SBCSD and once again,
10 Ms. Pratt was placed in the ALT. She was released a second time on or about
11 June 6, 2014 to the custody of the Riverside County Jail, and is currently in that
12 facility.

13 159. During all times Ms. Pratt was in custody at WVDC, she was confined
14 to her cell approximately 23 hours a day. She was only allowed out of her cell for
15 45 minutes to one hour per day. Non-GBT inmates in general population either
16 lived and continue to live in dormitory style units, where they are not confined to
17 cells at all, or lived and continue to live in cells in which they were generally out of
18 their cells most non-sleeping hours. Non-GBT inmates placed in special housing
19 due to their status, e.g. informants and gang members, were generally let out of
20 their cells three hours or more daily.

21 160. Unlike non-GBT inmates in the general population, Ms. Pratt was not
22 permitted to be a trustee, or work as an inmate in the ALT at WVDC. Because she
23 was not permitted to work, she could not earn money or might not have earned
24 good time work credits. As a result, Ms. Pratt might have served a longer sentence
25 than she would have had she had been able to work and receive early release
26 credits. See Cal. Penal Code §4019.

27 161. Ms. Pratt was unable to participate in regional occupational classes,
28 vocational education classes, or GED classes along with the general population of
inmates at WVDC. On November 27, 2013, Ms. Pratt filed a grievance requesting

1 access to vocational education classes. SBCSD responded on December 3, 2013,
2 stating that her grievance was unfounded because vocational programs and
3 INROADS are court ordered programs, and she was not sentenced to these
4 programs.

5 162. Ms. Pratt was unable to participate in religious services inside the
6 ALT in person, and did not have access to religious services outside the ALT.

7 163. Ms. Pratt was unable to participate in the “INROADS” mental health
8 program at Glen Helen Rehabilitation Center.

9 164. Ms. Pratt’s cell in the ALT at WVDC was not checked by deputies on
10 a routine basis as required by Title 15 for safety walk-throughs. On a regular basis,
11 deputies skip cell checks and sign the log sheet, even though they never checked
12 Ms. Pratt’s or other inmate’s cells.

13 165. Ms. Pratt was subject to harassment, name calling, neglect, and
14 humiliation by employees of SBCSD at WVDC.

15 166. As a result of the treatment and isolation of GBT inmates at WVDC,
16 Ms. Pratt has experienced severe emotional distress and depression.

17 167. During all times Pratt was in custody at WVDC, she was subjected to
18 all the conditions of confinement explained in Section IV, *supra*.

19 **13. BRYAN BAGWELL**

20 168. Bryan Bagwell was booked by SBCSD into the WVDC on or about
21 December 13, 2013. Upon self-identifying as gay during the booking process, he
22 was automatically transferred to the ALT at WVDC. As of June 4, 2014, he was
23 transferred to California Institute for Men of the California Department of
24 Corrections and Rehabilitation.

25 169. During all times Mr. Bagwell was in custody at WVDC, he was
26 confined to his cell for approximately 23 hours a day. He was only allowed to be
27 out for approximately one hour per day. Non-GBT inmates in general population
28 either live in dormitory style units, where they are not confined to cells at all, or
live in cells in which they were generally out of their cells during most non-

1 sleeping hours. Non-GBT inmates placed in special housing due to their status, e.g.
2 informants and gang members, were generally let out of their cells three hours or
3 more daily.

4 170. Unlike non-GBT inmates in the general population, Mr. Bagwell was
5 not permitted to be a trustee, or work as an inmate in the ALT at WVDC. Because
6 he was not permitted to work, he could not earn money or might not have earned
7 good time work credits. As a result, Mr. Bagwell might be serving a longer
8 sentence than he would have had he was able to work and receive early release
9 credits. See Cal. Penal Code §4019.

10 171. Unlike non-GBT inmates in the general population, Mr. Bagwell was
11 not permitted to work as a trustee.

12 172. Mr. Bagwell was unable to participate in regional occupational
13 classes, vocational education classes, or GED classes along with the general
14 population of inmates at WVDC.

15 173. Mr. Bagwell was unable to participate in religious services inside the
16 ALT in person, and did not have access to religious services outside the ALT.

17 174. Mr. Bagwell's cell in the ALT at WVDC was not checked by deputies
18 on a routine basis as required by Title 15 for safety walk-throughs. On a regular
19 basis, deputies skipped cell checks and signed the log sheet, even though they
20 never checked Mr. Bagwell's cell.

21 175. Mr. Bagwell was subjected to harassment, name calling, neglect, and
22 humiliation by employees of SBCSD at WVDC.

23 176. Mr. Bagwell has been retaliated against for complaining about his
24 treatment. On April 30, 2014, Defendant A. Castillo asked him to sign a paper to
25 go to general population where he would be responsible for his own safety. Mr.
26 Bagwell declined the offer as being housed in general population and identified as
27 GBT would subject him to violence. SBCSD offered the same transfer to Plaintiffs
28 Crockan, Hatfield and Walker, and to class member Larry Meyer. All said "no"
due to safety concerns. Jail personnel retaliated by placing these inmates on the

1 bottom tier of the ALT and giving them less time out of their cells. All of these
2 inmates had previously filed 910 administrative claims against the county.

3 177. As a result of the treatment and isolation of GBT inmates at WVDC,
4 Mr. Bagwell has experienced severe emotional distress and depression.

5 178. When trying to file a grievance, Mr. Bagwell was told that he would
6 not get one, and that he could “shut the f___ up!” When he tried to file a grievance
7 about guards routinely turning off the TV in the day room during the very short
8 period of time ALT inmates were allowed out of their cells, the guards would not
9 give him a form. Mr. Bagwell was able to file a grievance only after great effort.

10 179. During all times Mr. Bagwell was in custody at WVDC, he was
11 subjected to all the conditions of confinement explained in Section IV, *supra*.

12 **14. FREDRICK CROCKAN**

13 180. Fredrick Crockan was booked into the WVDC by the SBCSD on or
14 around October 13, 2013. Upon self-identifying as gay during the booking process,
15 he was automatically transferred to the ALT at WVDC. He is currently housed in
16 State prison.

17 181. During all times Mr. Crockan was in custody at WVDC, he was
18 confined to his cell for approximately 23 hours a day. He was only allowed out of
19 his cell for 45 minutes to one hour per day. Non-GBT inmates in general
20 population either live in dormitory style units, where they are not confined to cells
21 at all, or live in cells in which they were generally out of their cells during most
22 non-sleeping hours. Non-GBT inmates placed in special housing due to their
23 status, e.g. informants and gang members, are generally let out of their cells three
24 hours or more daily.

25 182. Unlike other non-GBT inmates in the general population, Mr.
26 Crockan was not permitted to be a trustee, or work as an inmate in the ALT at
27 WVDC. Because he was not permitted to work, he could not earn money or might
28 not have earned good time work credits. As a result, Mr. Crockan might be serving

1 a longer sentence than he would have if he was able to work and receive early
2 release credits. See Cal. Penal Code §4019.

3 183. Crockan was unable to participate in regional occupational classes,
4 vocational education classes, or GED classes along with the general population of
5 inmates at WVDC.

6 184. Crockan was unable to participate in religious services inside the ALT
7 in person, and does not have access to religious services outside the ALT.

8 185. Crockan was unable to participate in the “INROADS” mental health
9 program at Glen Helen Rehabilitation Center.

10 186. Mr. Crockan’s cell in the ALT at WVDC was not checked by deputies
11 on a routine basis as required by Title 15 for safety walk-throughs. On a regular
12 basis, deputies skipped cell checks and signed the log sheet, even though they
13 never checked Mr. Crockan’s cell.

14 187. Mr. Crockan was subjected to harassment, name calling, neglect, and
15 humiliation by employees of SBCSD at WVDC.

16 188. Mr. Crockan was retaliated against for complaining about his
17 treatment. On April 30, 2014, Defendant A. Castillo asked Crockan to sign a paper
18 to go to general population where he would be responsible for his own safety. Mr.
19 Crockan declined because being housed in general population would identify him
20 as being GBT and would subject him to violence. SBCSD offered the same
21 transfer to Plaintiffs Hatfield, Bagwell and Walker, and to class member Larry
22 Meyer. All declined the offer due to safety concerns. Jail personnel then retaliated
23 by placing Hatfield, Bagwell, Walker and Meyer on the bottom tier of the ALT and
24 gave them less time out of their cells. All of these inmates had previously filed 910
25 administrative claims against the county.

26 189. As a result of the treatment and isolation of GBT inmates at WVDC,
27 Mr. Crockan has experienced severe emotional distress and depression.

28 190. Mr. Crockan filed several grievances regarding the conditions of
confinement for GBT inmates at WVDC, but all of his requests have been denied.

1 191. During all times Mr. Crockan was in custody at WVDC, he was
2 subjected to all the conditions of confinement explained in Section IV, *supra*.

3 **15. TAHEASH WHITE**

4 192. Taheash White was arrested by SBCSD on or about February 24,
5 2014. Upon self-identifying as gay during the booking process, he was
6 automatically transferred to the ALT at WVDC. He subsequently was released and
7 is now in state custody.

8 193. During all times Mr. White was in custody at WVDC, he was
9 confined to his cell for approximately 23 hours a day. He was only allowed out of
10 his cell for approximately 45 minutes to one hour per day. He is informed and
11 believes that straight inmates in general population either lived and continue to live
12 in dormitory style units, where they are not confined to cells at all, or lived and
13 continue to live in cells in which they were generally out of their cells during most
14 non-sleeping hours. Non-GBT inmates placed in special housing due to their
15 status, e.g. informants and gang members, were generally let out of their cells three
16 hours or more daily.

17 194. Unlike non-GBT inmates in the general population, Mr. White was
18 not permitted to be a trustee, or work as an inmate in the ALT at WVDC. Because
19 he was not permitted to work, he could not earn money or might not earn good
20 time work credits. As a result, Mr. White might be serving a longer sentence than
21 he would have if he was able to work and receive early release credits. See Cal.
22 Penal Code §4019.

23 195. Mr. White was unable to participate in the Glen Helen “INROADS”
24 program that would have reduced his sentence and given him drug rehabilitation
25 treatment.

26 196. Mr. White was unable to participate in regional occupational classes,
27 vocational education classes, or GED classes along with the general population of
28 inmates at WVDC.

1 197. Mr. White was unable to participate in religious services inside the
2 ALT in person, and did not have access to religious services outside the ALT.

3 198. Mr. White's cell in the ALT at WVDC was not checked by deputies
4 on a routine basis as required by Title 15 for safety walk-throughs. On a regular
5 basis, deputies skipped cell checks and signed the log sheet, even though they
6 never checked Mr. White's cell.

7 199. Mr. White was subject to harassment, name calling, neglect, and
8 humiliation by employees of SBCSD at WVDC.

9 200. As a result of the treatment and isolation of GBT inmates at WVDC,
10 Mr. White has experienced severe emotional distress and depression.

11 201. Mr. White tried to file grievances about the conditions in the ALT but
12 the guards would not give him grievance forms since they say ALT inmates'
13 complaints about the conditions in the dorm are "not grievable."

14 202. During all times Mr. White was in custody at WVDC, he was
15 subjected to all the conditions of confinement explained in Section IV, *supra*.

16 **16. MADISON HATFIELD**

17 203. Madison Hatfield was arrested by the Fontana Police Department and
18 booked into custody by the SBCSD at the WVDC on or about April 1, 2014. Upon
19 self-identifying as transgender during the booking process, she was transferred to
20 the ALT at WVDC. She was subsequently released to a sober living facility, and in
21 October, 2014, was transferred back from the sober living facility to the ALT of
22 the WVDC.

23 204. During all times Ms. Hatfield was in custody at WVDC, she was
24 confined to her cell for approximately 23 hours a day. She was only allowed out of
25 her cell for approximately 45 minutes to one hour per day. She is informed and
26 believes that non-GBT inmates in general population either lived and continue to
27 live in dormitory style units, where they are not confined to cells at all, or lived and
28 continue to live in cells in which they were generally out of their cells most non-
sleeping hours. Non-GBT inmates placed in special housing due to their status, e.g.

1 informants, gang members, were generally let out of their cells three hours or more
2 daily.

3 205. Unlike other non-GBT inmates in the general population, Ms. Hatfield
4 was not permitted to be a trustee, or work as an inmate in the ALT at WVDC.
5 Because she was not permitted to work, she could not earn money or might not
6 earn good time work credits. As a result, Ms. Hatfield might be serving a longer
7 sentence than she would have if she was able to work and receive early release
8 credits. See Cal. Penal Code §4019.

9 206. Ms. Hatfield was unable to participate in regional occupational
10 classes, vocational education classes, or GED classes along with the general
11 population of inmates at WVDC.

12 207. Ms. Hatfield was unable to participate in religious services inside the
13 ALT in person, and did not have access to religious services outside the ALT.

14 208. Ms. Hatfield's cell in the ALT at WVDC was not checked by deputies
15 on a routine basis as required by Title 15 for safety walk-throughs. On a regular
16 basis, deputies skipped cell checks and signed the log sheet, even though they
17 never checked Ms. Hatfield's cell.

18 209. Ms. Hatfield was subjected to harassment, name calling, neglect, and
19 humiliation by employees of SBCSD at WVDC.

20 210. She was retaliated against for complaining about her treatment. On
21 April 30, 2014, Defendant Armando Castillo asked her to sign a paper to go to
22 general population where she would be responsible for her own safety, and she
23 said no as being housed in general population and identified as GBT would subject
24 her to violence. SBCSD offered the same transfer to Plaintiffs Crockan, Bagwell
25 and Walker, and to class member Larry Meyer. All declined the offer due to safety
26 concerns. Jail personnel then retaliated by placing these inmates on the bottom tier
27 of the ALT and gave them less time out of their cells. All of these inmates had
28 previously filed 910 administrative claims against the county.

1 211. As a result of the treatment and isolation of GBT inmates at WVDC,
2 Ms. Hatfield has experienced severe emotional distress and depression.

3 212. Ms. Hatfield filed grievances regarding the conditions of confinement
4 for GBT inmates at WVDC, but all of her requests were denied.

5 213. During all times Ms. Hatfield was in custody at WVDC, she was
6 subjected to all the conditions of confinement explained in Section IV, *supra*.

7 **VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 214. GBT inmates in the ALT, including Plaintiff class representatives,
9 repeatedly have faced serious obstacles when they tried to utilize the grievance
10 procedure to complain about their lack of access to work opportunities, programs,
11 drug rehabilitation and other issues related to conditions and treatment. Many
12 GBT inmates have either attempted to file grievances and exhaust but have been
13 prevented by the SBCSD from fully exhausting; been intimidated into not filing
14 grievances and thereby have been prevented from exhausting since the SBCSD has
15 made it clear through its actions that the inmates are not eligible for programs and
16 filing grievances will be futile; or, nonetheless, have overcome intimidation by the
17 SBCSD and have fully exhausted. Because there are only two federal injunctive
18 relief class representatives currently in custody in WVDC, Timothy Walker and
19 Ilich Vargas, we focus on them. There are no Federal Damages Class
20 Representatives, and thus the only Named Plaintiffs required to exhaust
21 administrative remedies before filing suit are Walker and Vargas.

22 215. In August 2014 Federal Injunctive Relief Class Representative
23 Timothy Walker attempted to file a grievance with T.W., a deputy, about how little
24 time GBT inmates got out of their cells, and their lack of access to work
25 opportunities, educational opportunities, drug rehabilitation programming, and
26 religious services; the lack of safety checks in the unit; and the harsher punishment
27 imposed on GBT inmates. He had filed grievances in the past that were rejected
28 without a legitimate basis, but wanted to file a grievance covering all GBT
members in the ALT and to list all of his complaints concerning lack of time out of

1 the cell, programing and rehabilitation, and work opportunities. One or two days
2 later, Sergeant Mahan approached Mr. Walker and told him that, if he processed
3 the grievance, Mr. Walker would get an additional twenty days added to his
4 sentence for allegedly “abusing” the grievance process. Because he did not want to
5 risk serving extra time, Mr. Walker told Sgt. Mahan not to process the grievance.

6 216. On the other hand, Ilich Vargas was able to exhaust, overcoming great
7 odds, and after multiple attempts to do so. On April 16, 2014, Vargas received a
8 response to a grievance concerning discriminatory treatment of GBT inmates in the
9 ALT. Among other things, the response stated that “portions of the complaint that
10 are a mass grievance will not be investigated since mass grievance complaints are
11 not investigated.” Vargas was also informed that “[f]urther grievances on this
12 matter may lead to disciplinary action.” Despite being told that further grievances
13 would lead to disciplinary action, Mr. Vargas filed a grievance over the denial of
14 equal opportunities for GBT inmates in the WVDC, including a grievance over
15 lack of time out of his cell, denial of programs, religious programs, and trustee
16 opportunities. On September 3, 2014, the SBCSD responded to his grievance by
17 telling him that he was abusing the grievance process, that he had fully exhausted
18 his complaints over the lack of opportunities and programming in the ALT of the
19 WVDC, and that his grievance constituted an abuse of the grievance process and
20 would subject him to discipline if he pursued it. Because he would be disciplined
21 for pursuing his grievance, he decided not to pursue it. Thus, even when a GBT
22 inmate exhausts, a clear message is sent to all the GBT inmates not to pursue
23 grievances over their discriminatory treatment in the WVDC.

24 217. SBCSD has repeatedly intimidated GBT inmates away from filing
25 grievances, mishandled grievances, provided misinformation about the grievance
26 process and particularly group grievances, and rejected grievances about
27 discriminatory conditions in the ALT. As a result, most GBT inmates in the ALT
28 stopped filing grievances because they felt threatened or intimidated, or were
unable to pursue their core claims of discrimination against those held in the ALT.

1 218. Through intimidation, creating obstacles in attempting to file
2 grievances, mishandling grievances, and by misinforming GBT inmates when or
3 over what topics they could file grievances; the SBCSD has created
4 insurmountable barriers in the grievance process. When GBT inmates have filed
5 grievances, or grievance denial appeals concerning conditions in the ALT, SBCSD
6 repeatedly has mishandled them or has given GBT inmates misinformation about
7 their access to the grievance procedure. Many GBT inmates have filed grievances
8 about matters that affect not only themselves, but all people in the ALT. SBCSD
9 repeatedly told GBT inmates that such grievances are “ungrievable,” and have
10 explicitly stated in grievance responses and grievance appeal responses that
11 inmates cannot submit group grievances, that “mass” grievance complaints are not
12 investigated, and that “mass” grievances cannot be appealed. This has occurred
13 despite the fact that “group” grievances are specifically allowed under the Title 15,
14 Section 3084.2(h), which WVDC purports to follow and, in fact, there is a special
15 form for group grievances. SBCSD does not make this form available to GBT
16 inmates in the ALT.

17 219. There are numerous instances where GBT inmates who are not
18 Federal Injunctive Relief class representatives have been blocked from filing or
19 pursuing grievances. For example, Larry Meyer, a GBT inmate who is a member
20 of the class, filed a grievance on March 27, 2014, alleging discrimination against
21 GBT inmates, including himself, by denying them opportunities to participate in
22 educational and self-help classes available to other inmates. The findings on his
23 grievance instructed him that the inmates shall not use the grievances on behalf of
24 a group of inmates and that his complaint was unfounded. The grievance response
25 stated that Department policy provides that “inmates shall NOT use this process to
26 submit grievances or grievance appeals to represent another inmate, or group of
27 inmates.” Further, the findings on his grievance by SBCSD were that gay inmates
28 are housed pursuant to departmental policy.

1 220. As explained above, Defendants systematically thwarted and
2 obstructed efforts to exhaust administrative remedies, or refused to allow the filing
3 of grievances addressing discrimination against GBT inmates. The Federal
4 Injunctive Relief Class Representatives and Class were not required to exhaust
5 administrative remedies because SBCSD’s administrative remedies were
6 ineffective, unobtainable, unduly prolonged, inadequate, and/or obviously futile,
7 thereby rendering the exhaustion mechanism for GBT inmates effectively
8 unavailable.

9 221. On May 2, 2014, 2014, attorneys for Plaintiffs sent a letter to SBCSD
10 and Captain Jeff Rose, who is in charge of the WVDC, regarding this policy of
11 refusing to hear grievances on behalf of a group of inmates. As of the filing of this
12 Complaint, SBCSD has not responded.

13 222. SBCSD has retaliated against a number of GBT inmates who have
14 filed grievances about conditions in the ALT. For example, very soon after filing
15 grievances about discriminatory conditions in the ALT, Named Plaintiffs, and
16 California State Damages Class Representatives Bagwell, Crockan and Hatfield, as
17 well as Federal Injunctive Relief Class Representative Walker and class member
18 Larry Meyer, were threatened with transfer to general population for filing
19 grievances, which would have risked their safety. They were then were reclassified
20 from top tier, the higher level of the ALT status with more privileges, to bottom
21 tier, the lower level of the ALT status, with less privileges. Further, Larry Meyer
22 was refused grievance forms on many occasions, and was punished and put into
23 administrative segregation for purportedly “abusing” the grievance process.

24 223. SBCSD has repeatedly denied grievances about conditions in the ALT
25 and treatment of GBT inmates by stating that GBT inmates are housed and treated
26 according to Department policy.

27 224. On May 2, 2014, counsel for Plaintiffs sent a letter to Janice
28 Rutherford, Chair of the Second District Board of Supervisors, Sheriff John
McMahon, and Captain Jeff Rose, identifying the systemic discrimination against

1 GBT inmates identified in this Complaint, identifying remedies they believed were
2 necessary, and inquiring whether the County was interested in attempting to
3 negotiate a resolution of the issues raised in the letter. The County, through
4 counsel, indicated that it disputed and denied Plaintiffs' claims, and was not
5 interested in a meeting to discuss or negotiate the claims. Thus, Plaintiffs' attempts
6 to resolve the issues through pre-litigation efforts were unsuccessful.

7 **VII. CLASS DEFINITIONS AND RULE 23 PREREQUISITES**

8 **A. CLASS DEFINITIONS**

9 225. Plaintiffs bring this action on their own behalf, and on behalf of
10 various classes of all other persons similarly situated, pursuant to Rule 23 of the
11 Federal Rules of Civil Procedure. There are four classes alleged in this Complaint
12 – two Federal and two California classes. They are defined as follows:

- 13 a. The California Damages Class is composed of individuals who
14 currently are, were in the past (within six months prior to the filing of
15 Veronica Pratt's Govt. Code §910 claim), or will be in future (until
16 such time as the unlawful policies and practices cease or judgment is
17 entered in this case), GBT inmates housed in the ALT. They bring
18 their claims against the various individual Defendants as explained
19 *infra* in the causes of action brought under California law. They seek
20 statutory damages of \$4000 per violation for each class member
21 pursuant to California Civil Code §§52.1(b) and 52.
- 22 b. The Federal Damages Class is composed of individuals who currently
23 are, were in the past (within two years of the filing of this complaint)
24 or will be in future (until such time as the unlawful policies and
25 practices cease or judgment is entered in this case), GBT inmates
26 housed in the ALT. They bring their claims against all Defendants
27 under 42 U.S.C. §1983.
- 28 c. The California Injunctive Relief Class is composed of individuals who
currently are, or in the future without the intervention of this Court

1 will be, GBT inmates housed in the ALT and subject to the unlawful
2 treatment set forth in this Complaint. They bring their claims against
3 Defendants County, SBCSD and the individual Defendants under
4 California law.

5 d. The Federal Injunctive Relief Class is composed of individuals who
6 currently are, or in the future without the intervention of this court
7 will be, GBT inmates housed in the ALT and subject to the unlawful
8 treatment set forth in this Complaint. They bring their claims against
9 all Defendants under 42 U.S.C. §1983.

10 ***B. NUMEROSITY***

11 226. In accordance with F.R.Civ. P. Rule 23(a), the members of each class
12 are so numerous that joinder of all members is impracticable. Plaintiffs do not
13 know the exact number of class members. There are 32 GBT inmates who live in
14 the ALT at any given time, and there is constant change and turnover in who is
15 housed there. Plaintiffs are informed and believe, and thereon allege, that the
16 number of persons in each of the proposed damages classes is at least in the
17 hundreds, and that the number of persons in the proposed injunctive relief classes
18 is higher given that it covers future GBT inmates housed in the ALT.

19 227. On information and belief, San Bernardino County jails (excluding
20 Adelanto) has a daily inmate population of approximately 5000-6000, of which the
21 majority are housed at WVDC
22 [http://en.wikipedia.org/wiki/San_Bernardino_County](http://en.wikipedia.org/wiki/San_Bernardino_County_Sheriff's_Department#Detentions_and_Corrections_Bureau)
23 [Sheriff's_Department#Detentions_and_Corrections_Bureau](http://en.wikipedia.org/wiki/San_Bernardino_County_Sheriff's_Department#Detentions_and_Corrections_Bureau)). In 2006, over
24 100,000 inmates were processed through the SBCSD jail system. Thus, the inmate
25 population turns over many times each year.

26 ***C. COMMON ISSUES OF FACT OR LAW***

27 228. In §IV of this Complaint, Plaintiffs set forth common factual
28 allegations for the treatment of GBT inmates in the ALT who comprise the
members of each class, which allegations are incorporated into this section of the

1 Complaint. In §V of this Complaint, Plaintiffs set forth factual allegations for the
2 Named Plaintiffs regarding their treatment as GBT inmates in the ALT, which are
3 also incorporated into this section of the complaint.⁴

4 229. In accordance with F.R. Civ. P. Rule 23(a), there are questions of fact
5 common to the class. The common questions of fact include, but are not limited to
6 the following:

- 7 a. Whether the SBCSD provides GBT inmates time outside of
8 their cells equivalent to the time comparable non-GBT inmates
9 housed in the general population receive outside of their cells;
- 10 b. Whether SBCSD allows GBT inmates to attend and participate
11 in religious services while they are outside of their cell
12 comparable to non-GBT inmates, and to receive religious
13 materials and services inside their cells comparable to non-GBT
14 inmates;
- 15 c. Whether SBCSD provides GBT inmates with educational
16 programming, including regional occupational classes,
17 vocational education classes, and GED classes comparable to
18 non-GBT inmates;
- 19 d. Whether SBCSD allows pretrial GBT inmates the opportunity
20 to work as trustees comparable to the opportunity provided non
21 GBT inmates;
- 22 e. Whether SBCSD allows sentenced GBT inmates to participate
23 in the inmate work program and receive good time work credits
24 comparable to non-GBT inmates;
- 25 f. Whether SBCSD provides GBT inmates with access to the in
26 person “INROADS” drug rehabilitation program, which is held

27 ⁴ In ¶1, the term GBT inmates as used in this Complaint is limited to GBT inmates
28 housed in the ALT. Accordingly, we do not repeat each time the reference to being
in the ALT.

- 1 at Glen Helen Rehabilitation Center, and allows them to receive
- 2 time off their sentences for completing the program comparable
- 3 to non-GBT inmates;
- 4 g. Whether SBCSD enforces hourly safety checks of GBT cells at
- 5 WVDC comparable to non-GBT inmates;
- 6 h. Whether SBCSD harasses, neglects, and humiliates GBT
- 7 inmates due to their sexual orientation, gender identity or
- 8 gender;
- 9 i. Whether GBT inmates face the coercive choice of entering the
- 10 general population and face less discrimination but greater
- 11 threat to personal safety, or entering the ALT and face
- 12 discrimination (i.e., denial of equal access to programs, work,
- 13 out of cell time, and other opportunities or privileges normally
- 14 available) but greater personal safety.

15 230. In accordance with F.R. Civ. P. Rule 23(a), there are questions of law
16 common to the class. Plaintiffs are informed and believe and, thereon allege, that
17 the common questions of law include but are not limited to the following:

- 18 a. Whether the SBCSD has violated the equal protection rights of
- 19 GBT inmates by allowing them less time out of their cell,
- 20 regardless of their custody level, than non-GBT inmates.
- 21 b. Whether the SBCSD has violated the equal protection rights of
- 22 GBT inmates in their exercise of religious freedom.
- 23 c. Whether the SBCSD has violated the equal protection rights of
- 24 GBT inmates by failing to provide GBT inmates with
- 25 educational programming, including regional occupational
- 26 classes, vocational education classes, and GED classes
- 27 comparable to non-GBT inmates.
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- d. Whether the SBCSD has violated the equal protection rights of GBT inmates by failing to allow pre-trial GBT inmates to work as trustees comparable to non-GBT inmates.
- e. Whether the SBCSD has violated the equal protection rights of GBT inmates by failing to allow sentenced GBT inmates to participate in the inmate work program and receive good time work credits comparable to non-GBT inmates.
- f. Whether the SBCSD has violated the equal protection rights of GBT inmates by failing to allow them access to the in person “INROADS” drug rehabilitation program, which is held at Glen Helen Rehabilitation Center, and to receive time off their sentences for completing the program comparable to non-GBT inmates.
- g. Whether the SBCSD has violated the equal protection rights of GBT inmates by failing to enforce hourly safety checks of the ALT comparable to those for non-GBT inmates.
- h. Whether SBCSD has violated the equal protection rights of GBT inmates by harassing, neglecting and humiliating GBT inmates due to their sexual orientation, gender identity, or gender unlike non-GBT inmates.
- i. Regardless of whether sub-paragraphs a-h, above, constitute violations of the equal protection of the law taken individually, whether the overall treatment of GBT inmates at WVDC violates their right to equal protection of the law under the totality of the circumstances.
- j. Whether the conduct described above constitutes a policy or custom of Defendants.

- 1 k. Whether any individual Defendant is entitled to qualified
- 2 immunity on the federal claims, or state law immunity on the
- 3 state law claims, for the practices complained of herein.
- 4 l. Whether the conduct described above violates the equal
- 5 protection rights of class members under the California
- 6 Constitution Article I, §1, 7 and/or the Fourteenth Amendment
- 7 to the United States Constitution.
- 8 m. Whether the conduct described above violates California Civil
- 9 Code §§52.1 or 815.6.
- 10 n. Whether the level of scrutiny under the applicable law is strict
- 11 scrutiny or heightened scrutiny or some other level of scrutiny;
- 12 o. Whether there is a lawful justification for any of the
- 13 discriminatory treatment sufficient under the applicable level(s)
- 14 of scrutiny.
- 15 p. Whether class wide statutory damages are available under
- 16 California Civil Code §§52.1 and 52(a).
- 17 q. Whether presumed or general class wide damages are available
- 18 under 42 U.S.C. §1983.

19 ***D. TYPICALITY***

20 231. In accordance with F.R. Civ. P. Rule 23(a), the claims of the
21 representative Plaintiffs are typical of each class. All Named Plaintiffs were in
22 SBCSD custody when they were subjected to unequal treatment in the ALT, which
23 unequal treatment applied and applies to all inmates who are housed in the ALT.
24 Named Plaintiffs were denied access to educational programming, religious
25 services, work programs and good time release credits, and trustee programs; were
26 treated differently from non-GBT inmates with respect to time outside of their cell,
27 hourly safety checks; were subjected to harassment, name calling, neglect, and
28 humiliation by SBCSD deputies based on their sexual orientation, gender identity

1 or gender; and were otherwise subjected to the discriminatory treatment alleged in
2 the Complaint.

3 232. Thus, Named Plaintiffs have the same interests, and have suffered the
4 same type of damages as the class members. Named Plaintiffs' claims are based
5 upon the same or similar legal theories as the claims of the class members. Each
6 class member suffered actual damages as a result of the Defendants' discriminatory
7 policies. The actual damages suffered by Plaintiffs are similar in type and amount
8 to the actual damages suffered by each class member.

9 233. In accordance with F.R. Civ. P. Rule 23(a), the Named Plaintiffs will
10 fairly and adequately protect the interests of the class. The interests of the Named
11 Plaintiffs are consistent with and not antagonistic to the interests of the class.

12 ***E. MAINTENANCE AND SUPERIORITY***

13 234. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(A), prosecutions of
14 separate actions by individual members of the class would create a risk that
15 inconsistent or varying adjudications with respect to individual members of the
16 class would establish incompatible standards of conduct for the parties opposing
17 the class.

18 235. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(B), prosecutions of
19 separate actions by individual members of the class would create a risk of
20 adjudications with respect to individual members of the class that would, as a
21 practical matter, substantially impair or impede the interests of the other members
22 of the class to protect their interests.

23 236. In accordance with Fed.R.Civ.P. Rule 23(b)(2), Plaintiffs are
24 informed and believe, and thereon allege that Defendants have acted on grounds
25 generally applicable to the class.

26 237. In accordance with Fed.R.Civ.P. Rule 23(b)(3), the questions of law
27 or fact common to the members of the class predominate over any questions
28 affecting only individual members, and this class action is superior to other
available methods for the fair and efficient adjudication of the controversy between

1 the parties. The interests of class members in individually controlling the
2 prosecution of a separate action is low in that most class members would be unable
3 to individually prosecute any action at all. The amounts at stake for individuals are
4 such that separate suits would be impracticable in that most members of the class
5 will not be able to find counsel to represent them. It is desirable to concentrate all
6 litigation in one forum because all of the claims arise in the same location, i.e., the
7 County of San Bernardino. It will promote judicial efficiency to resolve the
8 common questions of law and fact in one forum rather than in multiple courts.
9 Because the discrimination alleged herein is systemic, it is particularly well suited
10 to resolution on a class basis, as the critical questions in the case may be answered
11 on a class wide basis.

12 238. Plaintiffs do not know the identities of the class members. Plaintiffs
13 are informed and believe, and thereon allege, that the identities of the class
14 members are ascertainable from SBCSD records, in particular the SBCSD
15 computer systems used to track and identify SBCSD inmates. Plaintiffs are
16 informed and believe, and thereon allege, that the SBCSD computer records reflect
17 the identities, including addresses and telephone numbers, of the persons who have
18 been held in custody by SBCSD; when and on what charges inmates were arrested
19 and booked, taken to court, returned from court; when and why inmates were
20 released; what programs, work assignments and the like inmates participated in;
21 and where inmates were housed.

22 239. Plaintiffs know of no difficulty that will be encountered in the
23 management of this litigation that would preclude its maintenance as a class action.
24 The class action is superior to any other available means to resolve the issues
25 raised on behalf of the classes. The class action will be manageable because so
26 many different records systems exist from which to ascertain the members of the
27 class and to ascertain some of the proof relevant to Plaintiffs' claims. Liability can
28 be determined on a class-wide basis based on class wide evidence because the
Plaintiffs complain of systemic and widespread discriminatory policies and

1 practices. Named Plaintiffs and the class members are entitled to statutory damages
2 under state law, and to presumed damages under federal law; and, in any event,
3 individualization or variability in damages is not a bar to a liability certification
4 based on common liability issues.

5 240. In accordance with Fed.R.Civ.P. Rule 23(b)(3), class members must
6 be furnished with the best notice practicable under the circumstances, including
7 individual notice to all members who can be identified through reasonable effort.
8 Plaintiffs are informed and believe that SBCSD computer records contain a last
9 known address for class members. Plaintiffs contemplate that individual notice be
10 given to class members at such last known address by first class mail. Plaintiffs
11 contemplate that the notice inform class members of the following:

- 12 A. The pendency of the class action, and the issues common to the
13 class;
- 14 B. The nature of the action;
- 15 C. Their right to ‘opt out’ of the action within a given time, in
16 which event they will not be bound by a decision rendered in
17 the class action;
- 18 D. Their right, if they do not ‘opt out,’ to be represented by their
19 own counsel and enter an appearance in the case; otherwise,
20 they will be represented by the named Plaintiffs and their
21 counsel; and
- 22 E. Their right, if they do not ‘opt out,’ to share in any recovery in
23 favor of the class, and conversely to be bound by any judgment
24 on the common issues, adverse to the class.

25 241. Plaintiffs restate and incorporate by reference each of the foregoing
26 and ensuing paragraphs in each of the following causes of action as if each
27 paragraph was fully set forth therein.
28

1 **VIII. COUNT ONE – 42 U.S.C. §1983 [EQUAL PROTECTION] (ALL**
2 **DEFENDANTS)**⁵

3 242. Plaintiffs re-allege all the preceding and following paragraphs of, and
4 allegations in, this Complaint.

5 243. The unequal treatment of GBT inmates, based on sexual orientation,
6 gender identity and gender, as alleged herein, deprives them of the protections
7 afforded by the 14th Amendment’s Equal Protection guarantee. Therefore, the
8 Federal Damages Class Representatives and Class are entitled to damages, and the
9 Federal Injunctive Relief Class Representatives and Class are entitled to injunctive
10 relief, pursuant to 42 U.S.C. §1983.

11 244. The aforementioned acts of Defendants proximately caused Plaintiffs
12 to be deprived of their rights as stated above, thereby entitling the Federal
13 Damages Class Representatives and Class to damages in an amount to be proven at
14 trial, including punitive damages against the individual defendants.

15 245. The Federal Injunctive Relief Class Representatives and Class are
16 currently subject to, and will continue to be subject to, absent the intervention of
17 this Court, the unlawful treatment alleged herein and, therefore, seek injunctive
18 relief on behalf of themselves and the class of similarly situated individuals as
19 previously defined.

20 **IX. COUNT TWO - CAL. CIV. CODE §52.1 (ALL INDIVIDUAL**
21 **DEFENDANTS)**

22 246. Plaintiffs re-allege all the preceding and following paragraphs of, and
23 allegations in, this Complaint.

24 247. The Defendants interfered with the California Damages Class
25 Representatives’ and Class’, and the California Injunctive Relief Class

26 _____
27 ⁵ In the original and first amended complaints, plaintiffs alleged a cause of action based on
28 California Civil Code § 815.6. This claim is not included in the second amended complaint
because the Court dismissed the claim with prejudice. The failure to include it should not be
construed as a waiver and abandonment of the claim, The claims is preserved although not pled
in the instant complaint.

1 Representatives' and Class', rights to equal protection of the law under the
2 California Constitutions, as previously alleged, by threat, intimidation or coercion.

3 248. The aforementioned acts of Defendants proximately caused Plaintiffs
4 to be deprived of their rights as stated above, thereby entitling the California
5 Damages Class Representatives and Class to statutory damages as provided by
6 Civil Code §§52.1(b) and 52(a) and/or actual damages in an amount to be proven
7 at trial, and to punitive damages.

8 249. The California Injunctive Relief Class Representatives and Class are
9 currently subject to, and will continue to be subject to, absent the intervention of
10 this court, the unlawful treatment alleged herein, and therefore, seek injunctive
11 relief on behalf of themselves and the class of similarly situated individuals.

12 **X. COUNT FOUR – INJUNCTIVE RELIEF PURSUANT TO ARTICLE**
13 **1, §7 OF THE CALIFORNIA CONSTITUTION [EQUAL**
14 **PROTECTION] AND CAL. GOVT. CODE § 11135(A) (AGAINST**
15 **DEFENDANTS COUNTY, SBCSD AND MCMAHON)**

16 250. Plaintiffs re-allege all the preceding and following paragraphs of, and
17 allegations in, this Complaint.

18 251. The Defendants interfered with the California Federal Injunctive
19 Relief Class Representatives' and Class' rights to equal protection of the law under
20 Article 1 §7 of the California Constitution, as previously alleged.

21 252. California Government Code Section 11135(a) provides that no
22 person, on the basis of sexual orientation, gender identity or gender, shall be
23 unlawfully denied full and equal access to the benefits of, or be unlawfully
24 subjected to discrimination under any program or activity operated or funded
25 directly by the State.

26 253. Plaintiffs are informed and believe that the County of San Bernardino
27 and the San Bernardino County Jail receives financial assistance from the State of
28 California.

1 254. The aforementioned acts of Defendants proximately caused the
2 California Injunctive Relief Class Representatives and Class to be denied full and
3 equal access to the benefits of, or be unlawfully subjected to discrimination under,
4 programs or activities receiving financial assistance from the State of California.

5 255. The California Injunctive Relief Class Representatives and Class are
6 currently subject to, and will continue to be subject to, absent the intervention of
7 this court, the unlawful treatment alleged herein, and therefore, seek injunctive
8 relief under the foregoing Constitutional provisions and statutes on behalf of
9 themselves and the class of similarly situated individuals.

10 **XI. APPROPRIATENESS OF EQUITABLE RELIEF**

11 256. The Federal and California Injunctive Relief Class Representatives
12 and Classes are currently (or will in the future be) incarcerated at the WVDC and
13 will continue to be discriminated against into the foreseeable future, absent
14 intervention of this Court. Further, the SBCSD has informed Plaintiffs in response
15 to complaints about the discriminatory treatment that they treat GBT inmates
16 according to policy and deny any discriminatory treatment, thus they will not
17 change how they discriminate against GBT inmates.

18 257. SBCDC's continuing discrimination and unequal treatment of GBT
19 inmates violates the Federal and California Injunctive Relief Class
20 Representatives' and Classes' constitutional rights, and causes them continuing,
21 sweeping and irreparable harm.

22 258. Because no adequate remedy at law exists for the injuries alleged
23 herein, Plaintiffs seek injunctive relief under both federal and state law.

24 **XII. PRAYER**

25 WHEREFORE, Plaintiffs, on behalf of themselves and the class members
26 they represent, request damages against each defendant as follows:

- 27 1. General and special damages according to proof;

28

