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10
 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 OAKLAND DIVISION

14
 15 **TODD ASHKER, et al.,**

16 Plaintiffs,

17 v.

18 **GOVERNOR OF THE STATE OF**
 19 **CALIFORNIA, et al.,**

20 Defendants.

C 09-05796 CW

**DECLARATION OF J. ZUBIATE IN
 SUPPORT OF DEFENDANTS'
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR CLASS CERTIFICATION**

21
 22 I, J. Zubiate, declare as follows:

23 1. I am a convicted felon and an ex-member of the Nuestra Familia prison gang. I am
 24 currently incarcerated in the Security Housing Unit (SHU) at Pelican Bay State Prison. I submit
 25 this declaration in support of Defendants' opposition to Plaintiffs' motion for class certification.
 26 If called to testify, I could competently and truthfully testify as to these matters. I submit this
 27 declaration freely and voluntarily. No one told me what to say in this declaration.
 28

1 2. I am from Santa Rosa, California. From the age of 15, I was arrested numerous
2 times. Although I came from a good family with loving parents, and did not grow up in poverty,
3 I was attracted to the gang lifestyle. The fast life was exciting to me, and I enjoyed the
4 camaraderie between me and the other members of my gang.

5 3. As a teenager, I was sent to California Youth Authority because of my criminal
6 activity. There, I was housed in the same cell as a young Northern Structure member, who had
7 been “made” (made a member) in county jail. Although I had heard vaguely about the Nuestra
8 Familia before, I learned everything about it from him.

9 4. In 1995, at the age of 21, I was arrested for murder. At that time, I was a Norteño,
10 which is a street gang loyal to the Nuestra Familia prison gang. My crime was in furtherance of
11 my gang activity: I got word that a certain person was to be cut off from the Norteño gang, so I
12 shot him in the head. Although the murder was street-gang related, law enforcement officials
13 were not aware of that. In fact, I took a plea deal to protect the gang because I didn’t want
14 anyone to know about the gang’s involvement in my crime. I pled guilty and was sentenced to
15 second-degree murder and second-degree robbery. I received a sentence of 19 years to life. That
16 conviction landed me in state prison, and I’ve been here ever since.

17 5. In 1995, I arrived at San Quentin State Prison’s Reception Center. It was my first
18 time in state prison. As soon as I arrived, I was confronted by a Northern Structure inmate who
19 asked for my papers and asked if I wanted to be in the Northern Structure prison gang, because of
20 my street-gang affiliation with the Norteños, and because I had done good work for them by
21 taking a plea to protect the gang. The Northern Structure, or “Structure,” is a sub-group of the
22 Nuestra Familia. The Structure does a lot of the dirty work for the Nuestra Familia, because they
23 are in the general population, doing assaults, committing murders and drug dealing, all for the
24 benefit of the Nuestra Familia. A lot of inmates join the Structure because they want to earn their
25 way into the Nuestra Familia. After I was asked to join the Structure, but before I was made a
26 member, I slashed the neck of an inmate on the mainline who was a Sureño, a gang affiliated with
27 the Mexican Mafia, the rival of the Nuestra Familia. I knew I’d be ordered to do a “hit” (an
28 assault or murder in furtherance of gang purposes) once I was made, so I went ahead and did it.

1 6. In April 1996, I was sent to the SHU unit at California State Prison, Corcoran. There,
2 I was validated as an associate of the Northern Structure, although in reality, I was already a
3 member. I spent one year there.

4 7. Four items were used to validate me: (a) a letter to a Nuestra Familia member that I
5 wrote sending my regards to other brothers and following up on gang business; (b) a drawing of a
6 “huelga bird” (a symbol of the Mexican Farm worker movement that has been co-opted by the
7 Norteño street gang and the Northern Structure); (c) a tattoo of a huelga bird on my chin; and
8 (d) a tattoo of the word “Ene” (Spanish for the letter “N,” for Nuestra Familia) behind my left ear.

9 8. As a street gang member and then as prison gang member, we used symbols to show
10 our alliance to the gang. For example, a tattoo identifies you as a gang member. If a street gang
11 member gets a huelga bird tattoo on the outside, when he gets to prison, he will be expected to
12 “earn” that tattoo. In other words, he will be expected to work for the gang, such as committing
13 assaults or selling drugs. The same applies in prison.

14 9. Even seemingly innocent symbols, such as a huelga bird in a drawing on a birthday
15 card, has significance within the Nuestra Familia. If someone gives you a card with a huelga
16 bird, it’s because he is a Nuestra Familia or Northern Structure member and he thinks you are
17 trustworthy. On the streets, you can show the card to other members, so that they trust you. Or
18 sometimes, Nuestra Familia members will give you a card when you’re made, to commemorate
19 the event and for you to show other members.

20 10. On May 2, 1997, I was sent to Pelican Bay. I remember the date because it is my
21 birthday, and it felt like a birthday present to go to Pelican Bay. I was excited. I thought, “If I’m
22 gonna bang, I’m gonna make it to the top.” To me, Pelican Bay was the top. I have lived in the
23 SHU at Pelican Bay for sixteen years.

24 **Gang Activity within the Pelican Bay SHU**

25 11. Shortly after I got to the SHU at Pelican Bay, a Nuestra Familia member nominated
26 me for membership. That inmate indoctrinated me and taught me about the Nuestra Familia. I
27 had to study the Nuestra Familia Constitution, and write essays about it, including the goals,
28 objectives, and methods of Nuestra Familia. During this time, my behavior was monitored and

1 my activity was reported up the gang's chain of command. I was made a member in 1998 and
2 was what we referred to as a Category I, or "CAT I," meaning a new member. It also means
3 students, members who don't have leadership potential, or members who haven't had the
4 opportunity to move up because they have not had the opportunity to receive training.

5 12. Soon, I was a Category II, or "CAT II," which means teacher. At that level, I
6 evaluated the manpower of CAT Is in terms of creativity and capacity for independent thinking
7 for the benefit of the gang. I prepared reports and presented them to my superiors. I was also a
8 Regiment Commander, or "RC." As such, I was in charge of street "regiments" of drug dealers in
9 the community. My area concentrated around Santa Rosa, but extended from the Richmond
10 Bridge to Crescent City, California. As an RC, I had the discretion to establish how drug dealers
11 communicated with me or sent me money from the outside. As such, I established alternative
12 channels of communication: I had people on the outside write to other Nuestra Familia members
13 in my unit. Dealers on the outside deposited money directly into my inmate trust account. When
14 things were going well, I earned about \$100-\$200 every couple of weeks, some of which was
15 deposited into my inmate trust account. I was cautious with my money, not wanting it to come to
16 the attention of prison officials, so I gave some of what I made to my homeboys on the streets and
17 some to my ex-wife.

18 13. Eventually, I moved up to become a Category III, or "CAT III," member in the
19 Nuestra Familia. (In fact, I decided to leave the Nuestra Familia on the same week I was
20 promoted to CAT III.) I was a member of the Inner Council, a group of ten CAT IIIs who work
21 closely with the highest ranked Nuestra Familia leaders. CAT IIIs only answer to the General
22 Council, a group of three "Generals" who each control either finances, street operations, or
23 Nuestra Familia institutional policy in all prisons. The highest ranking General, the street
24 regimen general, is Antonio "Chuco" Guillen, a member of the Short Corridor Collective and an
25 organizer of the 2011 and 2013 hunger strikes.

26 14. The Nuestra Familia has a payroll for its members. On a rotational basis, members
27 receive \$200 every few weeks until they have \$2,000 in their inmate trust account. Then other
28 members start receiving money.

1 15. When I first arrived at Pelican Bay's SHU, I was assigned to cell C-10 in F-Pod. But
2 I have been housed in almost every block in the C-facility, because I manipulated the system to
3 get to a pod to conduct Nuestra Familia business. In the late 1990s and early 2000s, it was easy
4 to switch cells; prison officials routinely approved requests to transfer to a new cell and cellmate.
5 I could get a new cellmate within two weeks. By transferring from pod to pod, or to different
6 cells within the same pod, I was able to train Nuestra Familia members and associates who were
7 about to be paroled; I was getting them ready to go out onto the streets and do things for me and
8 the gang.

9 16. Nuestra Familia frequently uses the law library to communicate regarding gang
10 matters. Each block has six SHU pods: A, B, C, D, E, and F. (The short corridor has four pods.)
11 We used to communicate from A to B pod, or from C to D pod, or from E to F, through the yard
12 doors, because the yards for each pod share a door. But we had difficulty transmitting messages
13 between pods A/B, C/D and E/F. The law library, however, was easy. For example, we would
14 ensure that someone from pods A/B was going to the law library at the same time as someone
15 from pods C or D, or E or F. Talking in the law library is a rule violation, so we would wait until
16 the correctional officers had walked away before we would start talking. But we inevitably got
17 caught. Because the punishment for talking in the law library is to revoke law library privileges
18 for ninety days, we were always one step ahead of the prison staff and made sure, for example,
19 that someone from pods A or B was on the same ninety-day schedule as someone from pods C or
20 D.

21 17. In our written and oral communications, we used a dialect of the Nahuatl language
22 from northern Mexico to evade detection by the IGIs. In 1997, the Generals of the Nuestra
23 Familia ordered all members to learn Nahuatl. We bought Nahuatl dictionaries and began
24 learning the language, giving ourselves grammar lessons and everything.

25 18. We also communicated by "ghost writing" in the SHU's regular (not law) library
26 books. Using an empty pen or a staple, we "wrote" coded messages in books by creating an
27 impression, but no pen or pencil mark, on the pages. I kept a "General Library Book List" in my
28 cell, which correctional officers saw many times during cell searches but never confiscated. This

1 was a numbered list of general library books, and Chuco Guillen had the same list. I would send
2 a coded message to Guillen to order a certain numbered book. He would take that book out from
3 the library and read my ghost written message. When we first arrived in the short corridor, we
4 immediately did a roll call. We found out who was in the short corridor, Units D1–D4, and where
5 they were housed. After that, we used ghost writing in library books to conduct street business. I
6 needed information regarding a couple of murders that had occurred on the streets, and I had to
7 transmit that information to a Nuestra Familia General. Before we were sent to the short corridor
8 pod of the SHU at Pelican Bay, we developed this plan as a back-up to talking in the law library,
9 because we knew we would be monitored closely in the short corridor.

10 19. I've used legal mail a few times to send messages to the outside. After the Generals
11 were indicted in 2001 after the FBI "Black Widow" investigation, I needed to communicate with
12 them regarding some money that had gone missing from my street regiment. I used attorney mail
13 to send the message to a woman on the outside, who got the message to the General. I put an
14 attorney's name on the envelope but her address underneath the attorney name. I only used
15 attorney mail a few times. Although I never got caught doing that, I heard that IGIs started
16 looking up attorney addresses to confirm the recipient of the mail; so, I stopped.

17 20. I have not been involved in violence of any kind since I've been in the SHU, but I am
18 aware of Nuestra Familia ordered hits on other inmates. If an inmate ends up on a bad list, for
19 example, for not following orders, stealing money, not reporting on his regiment or reporting late,
20 sleeping with another member's wife or girlfriend, or even simply getting into an argument with a
21 high-ranking member, then another Nuestra Familia inmate is supposed to try to kill him.
22 Generally, the Nuestra Familia does not condone violence towards prison staff because it would
23 result in more restrictive conditions, which would interfere with the gang's ability to make money
24 on the streets.

25 21. I have received several 115s (rules violations) since I've been in the SHU, including:
26 possession of weapons stock, disobeying direct orders, and promotion of gang activity. I was
27 charged with promotion of gang activity for having "paperwork," or copies of the Nuestra Familia
28 Constitution, good lists (Nuestra Familia affiliates in good standing with the gang), votes, and

1 “kites” (prison messages) related to Nuestra Familia business. Although I challenged the IGIs
2 decision to retain me in the SHU based on these items, I would not have had them if I wasn’t an
3 active member of the Nuestra Familia.

4 **The SHU’s Effectiveness in Curtailing Gang Activity**

5 22. In 2006, leaders of the Nuestra Familia like me and other prison gangs were moved to
6 a block in the SHU known as the short corridor. All gang leaders were moved to the same wing
7 of the SHU, D1–D4. The Nuestra Familia really took a hit when we were moved to the short
8 corridor. It was easier for the IGIs to monitor our mail, and our connections with other Nuestra
9 Familia affiliates in prison as well as affiliates on the street were hurt. Also, we had no cellmates
10 in the short corridor, and it was difficult to get cell moves. I could no longer easily move to
11 different cells and pods and train members going out into the streets.

12 **The SHU is not Torture**

13 23. I have been incarcerated at San Quentin, and in the SHUs at Corcoran and Tehachapi,
14 and I can honestly say that the portions of food that they serve Pelican Bay SHU inmates are
15 bigger here than anywhere else. The food is pretty good; we get a different meal every night of
16 the week. We get fresh fruits and vegetables, as well. I’ve never gotten rotten or spoiled food, or
17 seen or heard any other inmate get rotten or spoiled food.

18 24. There’s a temperature gauge on the wall across from inmates’ cells in each SHU pod.
19 I understand that Plaintiffs here allege that the temperature in the SHU is excessively hot or cold.
20 It’s not. I have never noticed any difference between the temperature here, and out on the streets.

21 25. I have never had any problems with being permitted visitors. Because I am a
22 Peruvian citizen, the consular officer visited me once, bringing my mother and daughter with her.
23 Before he passed away, my father visited me and I spent several hours with him. He had been
24 diagnosed with Alzheimer’s, and he came to say goodbye. I really cherish that memory, because
25 my father was my rock, my support. When my father died, my sister called Pelican Bay to tell
26 me. My counselor came to my cell and told me that my father died. The counselor called my
27 sister back and I spoke with her on the phone.

28

1 26. I have never been refused medical care in the SHU. In the past few years, I have
2 developed eye problems. It began with extreme burning and itch in my eye. It would get so bad
3 that I couldn't see. During every flare up, I would notify the floor officers who would take me to
4 the infirmary that day or the next day. I was never denied medical treatment. I was taken to
5 several different doctors who prescribed different ointments and drops, often on an emergency
6 basis. Finally, my file was sent to an outside specialist who suspected I had Thygeson's Disease,
7 a rare disease common to firefighters and welders. She prescribed certain drops and ointments,
8 and that I wear tinted glasses. I get my medication regularly and have tinted glasses. I
9 understand that this condition is very rare. I did not get this disease because of the SHU. Since
10 I've been in prison, I spent a lot of time in my cell burning ink for tattoos, staring at the flame and
11 surrounded by smoke. (I derived the flame from the electrical outlet in my television.) I've read
12 that repeated exposure to bright light, smoke, and fumes causes this condition.

13 27. In the SHU, I have never seen anyone who appeared to be suffering from problems
14 relating to other people. From the perspective of the Nuestra Familia, you cannot memorize our
15 key documents, such as the Constitution, if you have psychological problems. You cannot run a
16 regiment if you have psychological problems. I've been in the SHU for more than ten years, like
17 a lot of gang members and associates, and I haven't developed mental problems that prevent me
18 from functioning day-to-day. Being a member of the Nuestra Familia actually helped keep me
19 active, as we are required to study Nuestra Familia writings diligently every day.

20 28. SHU conditions are strict but we can still talk to other inmates in the SHU. Our cell
21 doors are not made of steel but they have these little holes and are perforated. Because our cells
22 are open in the front, we can speak to each other all day, and we do. We see and talk to other
23 inmates, correctional officers, prison officials, mental and medical staff every day. When we are
24 let out of our cells to shower, or go to yard or law library, the floor officers will give us a few
25 minutes to go to each others' cells and talk. Sometimes we'll strike up a conversation with the
26 floor officer.

Participation in the Petition to the United Nations

1
2 29. In 2012, I signed my name to a petition submitted to the United Nations to end the
3 use of the Security Housing Units in CDCR. I had received a mass mailing, I assume sent to
4 other SHU prisoners, regarding the petition, with a questionnaire. Generally, Nuestra Familia has
5 a no interview policy — we aren't allowed to talk to the press, or law enforcement. But I talked
6 about it with the Nuestra Familia leadership and we decided to put my name forward for the
7 petition. We thought we could twist up my eye condition to say that I was being misdiagnosed,
8 and refused proper treatment. Since I have debriefed, I have written the attorney representing me
9 for the purpose of the U.N. petition, Peter Schey, and asked him to remove my name from the
10 petition. Attached as Exhibit A is a true and correct copy of that letter.

Hunger Strikes

11
12 30. I participated in the hunger strikes in 2011 at Pelican Bay, but I was not an organizer.
13 Chuco Guillen, as a General in Nuestra Familia, had the authority to directly negotiate on behalf
14 of the gang. Plaintiff George Franco in this case was first reserve, meaning second-in-charge. I
15 was third reserve, as a hunger strike representative for the Nuestra Familia. To my
16 understanding, the Aryan Brotherhood and the Black Guerilla Family organized the hunger strike,
17 and Nuestra Familia was the last to sign off. A letter from Guillen was published in the Bay
18 View newspaper calling for participation; we took that as an order from the General, and word
19 spread among Nuestra Familia affiliates throughout the SHU. Within Nuestra Familia,
20 participation was highly encouraged. If you didn't participate, it would be remembered when the
21 time came for a promotion. Word came down that if we got sick, we should not refuse medical
22 treatment.

23 31. I participated for eight days in the first hunger strike before I got sick. I had the dry
24 heaves, so I started eating for one day. I went back on hunger strike for the remainder, I think
25 roughly ten days. While I was refusing food, I saw a doctor who took my blood pressure and
26 weighed me every day.

27 32. Although Guillen (along with other inmate hunger strike negotiators) called off the
28 strike, negotiations between the inmates and the prison officials broke down shortly afterward so

1 we went on hunger strike again later in 2011. When the hunger strikes started up again, I
2 participated for eight days before I got sick again. I did not rejoin the hunger strike until four
3 days before it ended. While we were refusing food, prison official provided us with Gatorade and
4 vitamins. We, as leaders of Nuestra Familia, discussed whether to refuse them, but decided to
5 take them.

6 33. Our only objective with the hunger strikes was to get out of the SHU. I felt it was
7 silly to negotiate for anything else. Honestly, we did not care about human rights. The objective
8 was to get into the general population, or mainline, and start running our street regiments again.
9 The short corridor has curbed our ability to run street regiments, but in the mainline, we would
10 have more access to the outside, via phone calls, contact visits, and Nuestra Familia associates on
11 the mainline. None of us expected to stay out there; we knew we would get caught running our
12 regiments and sent back to the SHU. We expected to stay out there for six months, maximum.
13 But even that was enough time and opportunity to talk with our affiliates on the general
14 population yard and move our business forward on the yards and the streets.

15 **Debriefing**

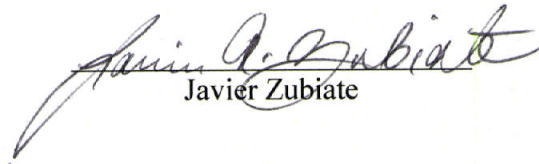
16 34. I am a Catholic, and I left Nuestra Familia because I could no longer reconcile my
17 actions with my Catholic beliefs. I had to make a choice and I chose God, that's the only reason I
18 left. I do not have a score to settle; I was not forced out. In fact, I was a ranking member of the
19 General Council (comprised of the three Generals and the Inner Council) in good standing. My
20 father passed away last year, right before I debriefed. I was very close to my father; he was my
21 rock. I was really affected by his death, and this motivated me to debrief as I found my way back
22 to my Catholic foundation.

23 35. During the debrief process, all the IGIs made me feel at ease. I think they understood
24 how difficult it was for me. I was told not to lie or speculate, and I only told them what I
25 personally know to be true.

26 36. I am aware that debriefing, and assisting law enforcement generally, poses a threat to
27 my personal safety by the Nuestra Familia. However, it is worth it to me to live a life free from
28 the gang lifestyle.

1 37. I am currently housed in a SHU pod for debriefers. I am awaiting approval of my
2 debrief package from the Office of Correctional Safety. Once it is approved, I will be transferred
3 to a Transitional Housing Unit.

4 I declare under penalty of perjury that the foregoing is true and correct to the best of my
5 knowledge. Executed in Crescent City, California, on July 11, 2013.

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8 Javier Zubiate

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