STATEMENT OF DR. TERRY KUPERS REGARDING NIGHT SAFETY CHECKS

October 25, 2015

1. I am a board-certified psychiatrist. I was retained as an expert witness by the plaintiffs in this matter to interview named plaintiffs and others and to conduct an investigation for the purpose of testifying at trial regarding conditions of confinement at the Pelican Bay Security Housing Unit (SHU), plaintiffs' mental health, and related issues. I am an Institute Professor in the Graduate School of Psychology at The Wright Institute, a Distinguished Life Fellow of the American Psychiatric Association and the recipient of the 2005 Exemplary Psychiatrist Award presented by the National Alliance on Mental Illness (NAMI). My expert qualifications are listed in the two Reports and the April, 2013 Declaration I submitted in this matter, and in my C.V. previously filed. Subsequent to settlement, I am asked to comment about the effects of the twice-per-hour safety checks on prisoners in S.H.U. at Pelican Bay State Prison.

2. In preparation for opinions expressed in this Declaration, I reviewed the August 3, 2015 Memorandum from the Department of Corrections and Rehabilitation, "Addendum to Operational Procedure 222, Security Housing Unit, Security/Welfare Checks Using the Guard One System." I also reviewed an August 31, 2015 Memo from Michael Bien to Elise Thorn et al., "Subject: Coleman – PBSSP SHU Guard One Implementation Problems: Urgent!," as well as the "Report on Prison Interviews About Guard One 30 Minute Cell Checks" prepared by plaintiffs' counsel. With regard to this report, I find the sections on (a) Impact on sleep, (b) Impact on ability to function, and (c) Impact on mental state, as well as the remainder of the report, to be entirely consistent with what I know as a psychiatrist about sleep, sleep deprivation and mental functioning.

3. It is my understanding that currently quite a few prisoners in the S.H.U. at PBSP are complaining to counsel and others that their sleep is very disrupted by the twice-per-hour Security/Welfare Checks using the Guard One system. The prisoners complain that there is much noise as the officers open and close pod doors, climb stairs in their pod, walk by with the hardware they carry on their belts clanging, and use their pipe sensor to register on the Guard One sensors on or near each cell door. Evidently the acoustics in the small pods at PBSP S.H.U. tend to make the noise louder than

in other prison living units, and many prisoners complain that they are waken by officers effecting the Security/Welfare Checks. Many are unable to get more than a half hour sleep at a time, a some have difficulty falling back to sleep after they are waked repeatedly, and there is a great amount of sleep deprivation. I am assuming these facts in offering the opinions that follow.

4. Sleep deprivation is a very important problem in psychiatry. Many mental disorders include sleep disturbances and insomnia. For example, individuals suffering from anxiety often have difficulty falling asleep. Individuals suffering from depression often wake early in the morning and cannot fall back to sleep. Individuals suffering from Bipolar Disorder, during a manic phase, are prone to stay up all night and disconnect from their natural diurnal cycle (night and day).

5. Individuals with known mental disorders are precluded from housing at the Pelican Bay S.H.U. per the *Madrid* decision, but even individuals who are not diagnosed with a serious mental illness per *Madrid* experience a certain amount of emotional symptoms. Anxiety, depression, mood instability and other emotional symptoms are widespread in the population of prisoners in the S.H.U. at PBSP (I enumerated many of those symptoms in the sample of prisoners I interviewed and examined in preparation for my Reports and Declaration in this matter). Prisoners may not "reach the bar" for a diagnosis of mental illness per *Madrid*, or may not seek mental health treatment for such a diagnosis to be made, but suffer nonetheless from these symptoms.

6. Sleep problems are not only symptomatic of emotional conditions and problems, but also sleep deprivation and troubled sleep exacerbate emotional problems. A depressed individual who loses sleep will experience worse depression; an anxious person who is sleep-deprived will experience heightened anxiety; and a person with mood lability and altered diurnal rhythms will experience worse problems in these areas the more sleep deprivation there is.

7. Suicide is a very big problem in prisoners consigned to solitary confinement. An important study found that approximately 60% of completed suicides in the CDCR involve prisoners in some form of isolated confinement.[1] Sleep deprivation and poor quality sleep are well known to play a

[1] *See* Patterson, R.F. & Hughes, K. (2008). Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999 to 2004, *Psychiatric Services,* 59(6), 676-682.

role in suicide, and mental health clinicians are concerned enough about this tendency to check carefully on the quality of sleep in patients who are prone to suicide and self-harm. While the twice-per-hour safety checks are designed to diminish the risk and prevalence of suicide in the S.H.U., paradoxically, to the extent that sleep disturbances and sleep deprivation are caused by the noise involved in accomplishing the twice-per-hour safety checks, the safety checks may well increase the risk of suicide. In other words, the sleep deprivation caused by noise generated during the safety checks may actually make prisoners more at risk of self-harm.

8. Insomnia and other sleep disorders are among the most frequently reported problems experienced by prisoners in solitary confinement. Thus, even prisoners who do not obviously suffer from serious mental illness (and are thus not disqualified from Pelican Bay S.H.U. housing) are prone to sleep disruptions, and the noise involved in the safety checks makes this problem significantly worse.

9. In terms of remedy, several come to mind. First, not all prisoners in S.H.U. are at heightened risk of suicide. Some are more at risk than others. For example, individuals who speak about hopelessness or who have made previous attempts to harm or kill themselves are at higher risk than those who have no such history. In other words, one size does not fit all, and custody staff and mental health staff might well identify prisoners at heightened risk and then limit the twice-per-hour checks to those at higher risk. Alternatively, if the checks are necessary at all (and the question of their necessity warrants serious consideration), there are a number of steps the CDCR can take to decrease the disturbance of sleep in the affected prisoners. These include training of officers to do the checks as quietly as possible; having the officers who perform the checks wear padded and muffling material over their boots so as not to make as much noise climbing stairs and walking in the pod; leaving the outer doors open so the noises associated with opening and closing the doors are eliminated; and making the Guard One mechanism completely silent. These are only a few ideas off the top of my head.

10. What is needed is a process to determine ways to diminish noise. Such a process should include meetings between custody and mental health staff, and the involvement of experts on noise levels and on sleep and sleep deprivation. There is also a need for rigorous training of officers on how damaging the noise can be and how to minimize noise at night as they perform their duties. Considering

how long this issue has been going on (close to three months) and how long it may take to determine and implement effective solutions, for the mental well-being of the SHU prisoners I recommend stopping or reducing the frequency of these 30 minute checks, particularly in the nighttime hours.

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