

1 Senate Bill X3-18 amended California Penal Code § 2933.6(a) so that inmates who were
2 housed in a security housing unit and validated as a prison gang member could not accrue work
3 time credits and went into effect on January 25, 2010. 2009 Cal. Legis. Serv. 3rd Ex. Sess. Ch.
4 28 (S.B. 18) (West); see also Gomez v. Lewis, No. 12-cv-02338-JD, 2015 WL 5029165, at *1,
5 2015 U.S. Dist. LEXIS 112584, at *1-2 (N.D. Cal. Aug. 25, 2015) (summarizing changes made to
6 Cal. Penal Code § 2933.6(a) as a result of Senate Bill X3-18). Senate Bill X3-18 also led to the
7 amendment of 15 C.C.R. § 3044(b)(6) to allow inmates assigned to a security housing unit to
8 accrue one day of credit for each day served as opposed to the previous one day credit for two
9 days served. 2010 CA REG TEXT 214330 (Netscan) (Feb. 12, 2010). Evidence before the court
10 shows that up to the date of his validation on March 10, 2010, plaintiff was earning work time
11 credits at a rate of one day of credit for each day served. ECF No. 97 at 26-27.

12 The Ninth Circuit Court of Appeals recently held that the amended § 2933.6 violates the
13 Ex Post Facto Clause as applied to prisoners “who committed their underlying criminal conduct
14 before the amendment’s enactment.” Hinojosa v. Davey, -- F.3d --, 2015 WL 5655883, at *9,
15 2015 U.S. App. LEXIS 17002, at *28 (9th Cir. Sept. 25, 2015). The Ninth Circuit ordered the
16 district court to issue a writ of habeas corpus directing the state to release the petitioner “on the
17 date he would have been released under the version of § 2933.6 that was in place prior to January
18 25, 2010.” Id. at *9; 2015 U.S. App. LEXIS 17002, at *28-29.

19 Accordingly, IT IS HEREBY ORDERED that defendants must file a supplemental brief
20 within fourteen days of the filing of this order addressing what impact, if any, Hinojosa and the
21 amendment to 15 C.C.R. § 3044(b)(6) have on their argument that plaintiff’s claims are barred by
22 Heck v. Humphrey, 512 U.S. 477 (1994). Plaintiff is not required to respond to defendants’
23 supplemental brief. However, any response filed within seven days of defendants’ supplemental
24 brief will be considered.

25 DATED: October 6, 2015

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27 ALLISON CLAIRE
28 UNITED STATES MAGISTRATE JUDGE