

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARLOS CASTRO,
Plaintiff,

v.

CAL TERHUNE, Director, CALIFORNIA
DEPARTMENT OF CORRECTIONS,
G. BONNIE GARIBAY, J. BATCHELOR, S.
C. WOLHWEND, A. SCRIBNER,
J. STOKES, M. YARBOROUGH, L. HOOD,
C. CAMPBELL, A. M. GONZALEZ,
M. AYALA, E. DERUSHA, c/o ROBERT
L. L. AYERS, Warden, and J. MARTINEZ,

No. C 98-04877 WHA

No. C 09-04902 WHA

Defendants.

**ORDER DENYING REQUEST TO
STAY AND DECLINING TO
CONSOLIDATE ACTIONS**

CARLOS CASTRO,
Plaintiff,

v.

ROBERT A. HOREL, D. MOUNT, J.,
BEESON, S. MCKINNEY, N. GRANNIS,
EVERETT W. FISCHER, D. L. SPEEN, M.
DUFF, DOES 1-100,

Defendants.

Phase II of *Castro v. Terhune*, Case No. 3:98-cv-04877-WHA, is scheduled for a bench trial beginning on September 20, 2010. It will address plaintiff’s “revalidation” as a prison gang associate in August 2009. *Terhune* was recently related to *Castro v. Horel*, Case No. 3:09-cv-04902-WHA, which will address plaintiff’s “active/inactive” review as a prison gang associate in 2006. Plaintiff requests that *Terhune* and *Horel* be consolidated for trial.

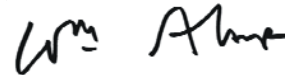
1 Defendants oppose consolidation and have requested that *Horel* be stayed until after the Phase
2 II trial in *Terhune* is complete.

3 The request to consolidate the two matters is **DENIED**. Although there are some
4 common questions of law and fact to both matters, they nevertheless involve different
5 defendants, prison staff and gang evidence. Consolidation would necessitate delay of the
6 pretrial schedule in *Terhune* and would not promote increased efficiency or convenience in the
7 resolution of either matter.

8 The request to stay *Horel* is also **DENIED**. Defendants argue that resolution of Phase II
9 of *Terhune* will likely moot *Horel* but they presuppose that Castro's 2009 revalidation satisfied
10 his procedural due process rights, the very issue still to be decided in the Phase II trial.
11 Accordingly, no stay of *Horel* is warranted and both *Horel* and *Terhune* shall continue to
12 proceed towards trial on separate tracks.

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14 **IT IS SO ORDERED.**

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16 Dated: February 19, 2010.



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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE