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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

K. JAMEL WALKER,

Plaintiff,

v.

JAMES GOMEZ, et al.,

Defendants.

96cv609 PCL

**ORDER DENYING PLAINTIFF'S
MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

I.

INTRODUCTION

K. Jamel Walker first sued Defendants for unlawful discrimination in violation of the Equal Protection clause of the U.S. Constitution in April 1996. (Doc. No. 1.) Now, more than twelve years later, after a favorable Ninth Circuit ruling in a published opinion, countless motions, dozens of conferences, an eventual settlement between the parties, a relocation to a different prison, and seemingly the opportunity to tranquilly serve his life-sentence, Plaintiff renews his original allegations. He claims that the California Department of Corrections and Rehabilitation, in violation of their settlement agreement with Walker, continues to discriminate based on race as a policy, has discriminated against him based on his race, and has retaliated against him for his success in the courtroom against Defendants.

1 After extensive briefing, an evidentiary hearing, oral arguments, and careful deliberation,
2 the Court determines Walker has not shown Defendants violated the terms of the Settlement
3 Agreement under applicable law. Although Walker has been subjected to prison lockdowns and
4 has had privileges restricted for a short period of time on three occasions, these actions do not
5 rise above the level required for a violation of the Settlement Agreement between the parties.
6 Moreover, Walker's claim of retaliation is unfounded. Therefore, the Court finds that relief with
7 respect to Plaintiff's Motion to Enforce Settlement Agreement and for Monetary Sanctions is
8 DENIED.

9 II.

10 BACKGROUND

11 K. Jamel Walker ("Plaintiff" or "Walker"), a black inmate serving a life sentence in
12 California, was imprisoned at Calipatria State Prison. In May of 1996, Walker brought suit
13 against the California Department of Corrections ("CDCR") and several named parties claiming
14 a denial of his right to equal protection because, during three prison lockdowns, he was not
15 allowed to resume his prison job until after similarly situated inmates of other races. Walker v.
16 Gomez, 370 F.3d 969, 970 (9th Cir. 2004).

17 Following a grant of summary judgment for Defendants and a subsequent favorable
18 Opinion from the Court of Appeals for the Ninth Circuit, on remand Plaintiff resumed litigation
19 and the parties reached a settlement which became effective July 4, 2006. (Doc. No. 307 Mot.
20 Ex. A.) As part of the Settlement Agreement ("Agreement"), Walker would be transferred from
21 Calipatria State Prison to Mule Creek State Prison and would be paid a sum of \$10,300. (Id. Ex.
22 A ¶ 1, 2.) Additionally, the agreement contains three provisions at issue in this proceeding.

23 4. The CDCR and all Defendants acknowledge that section 3084.1(d) of Title 15
24 of the California Code of Regulations states: No reprisal shall be taken against
25 an inmate or parolee for filing an appeal. The CDCR and all Defendants further
26 acknowledge that section 3084.1(d) of Title 15 is applicable to Walker and
27 agree he has a right to be free from any form of reprisal or retaliation for
exercising his rights in filing the inmate appeals in this matter, for filing and
prosecuting this lawsuit, or for procuring this Agreement. Thus, no retaliation
will be taken against Walker in connection with his activity in this lawsuit.

28 5. The Parties enter this Agreement, in part, because the CDCR, through its
current administration, is committed to moving and is moving towards a

1 behavior based system of accountability, where each inmate will be held
2 accountable for his own individual conduct. Each inmate is to be held
3 accountable for his own conduct, not that of other inmates of the same race.
The CDCR adopted a goal to help reach this end, attached as Exhibit A to this
Agreement and incorporated here by reference.

- 4 6. The CDCR and all Defendants also acknowledge that section 3004(c) of Title
5 15 of the California Code of Regulations mandates, in part, that inmates will not
6 be subjected to any form of discrimination because of race. The CDCR and all
7 Defendants further acknowledge that section 3004(c) is applicable to Walker
and agree he has a right not to be discriminated against on the basis of race.
Thus, the CDCR will not discriminate against Walker on the basis of race.

8 (Id. Ex. A ¶ 4, 5, 6.) The Agreement was made final following a Settlement Disposition Conference
9 held on August 30, 2006 and the parties filed a Joint Stipulation to Dismiss Action With Prejudice
10 on September 11, 2006. (Doc. Nos. 282, 283.)

11 Pursuant to the terms of the Agreement, Plaintiff was transferred to Mule Creek State Prison
12 on April 12, 2006. (Doc. 317 Evid. Hr’g Tr. 7:8.) Beginning October 2006, Plaintiff alleges he
13 began to experience discrimination on the basis of race during lockdown periods following violent
14 attacks between inmates. (Doc. 307 P. & A. 3.) More specifically, Plaintiff sets forth the following
15 allegations:

16 In October 2006, Mule Creek State Prison (“Mule Creek”) placed all Black inmates
17 on lockdown because one black inmate assaulted another Black inmate. [Footnote
18 omitted.] The assault occurred on October 9, and two days later, all non-Black
19 inmates were returned to normal program while the Black inmates, as well as all
non-Black inmates housed with Black inmates, remained on lockdown. As a result,
Mr. Walker was denied access to work for two days and part of a third day. [Citation
to record omitted.]

20 In February 21, 2007, all Facility A inmates (where Mr. Walker is housed) were
21 placed on lockdown because of a disturbance involving nine Black and Hispanic
22 inmates that was not racially motivated. [Citation to record omitted.] According to
the Program Status Report, all inmates were placed on lockdown but only “White
and Other[.]” critical workers were allowed to return to work. [Citation to record
omitted.]

23 On October 19, 2007, one Mule Creek inmate seriously injured another. [Citation
24 to record omitted.] Despite the limited scope of the incident, Black and Hispanic
25 critical workers were kept from returning to work. [Citation to record omitted.]
Blacks and Hispanics were not allowed normal visits. [Citation to record omitted.]

26
27 (Id.) Plaintiff also claims knowledge of various instances at Calipatria State Prison where
28 inmates’ privileges were restricted on the basis of race following lock-down procedures. (Id. at

1 2-3.)

2 Additionally, Plaintiff claims Defendants have not adhered to the terms of Paragraph five of
3 the Agreement because they have not yet implemented a “behavior based system of
4 accountability” where each inmate is held accountable for their personal actions and not
5 restricted in their privileges and activities on the basis of race. (Id. at 3.)

6 Lastly, Plaintiff alleges his counselor at prison, Ms. Michelle Hamilton, has retaliated
7 against him in direct violation of the terms of Paragraph four of the Agreement. (Id.) To
8 support this allegation, Plaintiff points to an instance where Ms. Hamilton asked Plaintiff if he
9 would volunteer for a transfer to High Desert State Prison. (Id.) Plaintiff also states Ms.
10 Hamilton has monitored confidential calls between Plaintiff and his attorney and asked questions
11 regarding the content of those calls. (Id.)

12 Plaintiff filed a Motion to Enforce Settlement Agreement and for Monetary Sanctions on
13 March 27, 2008. (Doc. No. 307.) Defendants filed an Opposition to the Motion on April 14,
14 2008 (Doc. No. 315) and Plaintiff replied on April 25, 2008. (Doc. No. 318.) On May 2, 2008,
15 the Court granted a Joint Stipulation to Stay Proceedings while the parties attempted to negotiate
16 a settlement or resolution to the Motion. (Doc. No. 320.) As no resolution resulted from these
17 extended negotiations, the Motion was submitted to the Court on May 23, 2008. (Id.)

18 III.

19 JURISDICTION

20 As part of the original Agreement signed on July 4, 2006, the parties stipulated that this
21 Court retain jurisdiction for the purpose of enforcing the Settlement Agreement. The preamble
22 to the Agreement states, in relevant part: “The Parties request and have stipulated that Magistrate
23 Judge Lewis retain jurisdiction for purposes of enforcing this settlement.” (Agreement ¶ 15.) In
24 addition, the parties signed a Consent to Jurisdiction by a United States Magistrate Judge form
25 whereby they agreed to have “all disputes arising out of the terms of the settlement agreement”
26 decided by Magistrate Judge Lewis. (Doc. No. 298 Ex. B.) This form also states: “[A]ny
27 decision by the Magistrate Judge regarding any such dispute[] shall be FINAL AND BINDING,
28 WITH NO APPEAL.” (Id.) (emphasis in original). As such the Motion is properly before the

1 undersigned pursuant to Local Rule 72.1(g) for determination on the merits.

2 **IV.**

3 **LEGAL STANDARD**

4 For the purposes of construction and enforcement, settlement agreements are “governed by
5 principles of local law which apply to interpretation of contracts generally.” United Commercial
6 Ins. Serv., Inc. v. Paymaster Corp., 962 F.2d 853, 856 (9th Cir. 1992) (quotations omitted).

7 Moreover, the parties have expressly agreed to the applicable law for the purposes of enforcing
8 the settlement agreement at issue:

9 16. This Agreement shall be construed and interpreted in accordance with the laws
10 of the State of California.

11 (Agreement ¶ 16.) Therefore, as California courts have previously held, because a settlement
12 agreement is a contract, “the legal principles which apply to contracts generally apply to
13 settlement contracts.” Weddington Productions, Inc. v. Flick, 60 Cal. App. 4th 793, 810 (1998).

14
15 California courts generally “interpret the intent and scope of the agreement by focusing on
16 the usual and ordinary meaning of the language used and the circumstances under which the
17 agreement was made.” Lloyd's Underwriters v. Craig & Rush, Inc., 26 Cal.App.4th 1194,
18 1197-1198 (1994). Settlement contracts “must receive such an interpretation as will make
19 [them] lawful, operative, definite, reasonable, and capable of being carried into effect, if it can
20 be done without violating the intention of the parties.” Cal. Civ. Code § 1643. Moreover,
21 “where one construction would make a contract unusual and extraordinary and another
22 construction, equally consistent with the language employed, would make it reasonable, fair, and
23 just, the latter construction must prevail.” Sayble v. Feinman, 76 Cal. App. 3d 509, 513 (1978).
24 “The court must avoid an interpretation which will make a contract extraordinary, harsh, unjust,
25 or inequitable.” Strong v. Theis, 187 Cal. App. 3d 913, 920 (1986). In cases of uncertainty not
26 removed by applicable rules, the language of a contract should be interpreted most strongly
27 against the party who caused the uncertainty to exist. See Cal. Civ. Code § 1654.

28 Additionally, the trial court is not authorized to create the material terms of a settlement

1 agreement. Weddington Productions, 60 Cal.App.4th at 810. A contract will be enforced if it is
2 sufficiently definite for the court to ascertain the parties' obligations and to determine whether
3 those obligations have been performed or breached. Ersa Grae Corp. v. Fluor Corp., 1
4 Cal.App.4th 613, 623 (1991). "There are occasions in which 'minor matters' in elaborate
5 contracts are left for future agreement. When this occurs, it does not necessarily mean that the
6 entire contract is unenforceable." Weddington Productions, 60 Cal.App.4th at 813. "Stated
7 otherwise, the contract will be enforced if it is possible to reach a fair and just result even if, in
8 the process, the court is required to fill in some gaps." Ersa Grae Corp., 1 Cal.App.4th at 623.

9 Moreover, under California law, courts seek to establish the parties' intent from the
10 contract's language: "[t]he paramount rule governing the interpretation of contracts is to give
11 effect to the mutual intention of the parties as it existed at the time of contracting, so far as it is
12 ascertainable and lawful. The intention of the parties must, in the first instance, be derived from
13 the language of the entire contract." Royal Thrift and Loan Co. v. County Escrow, Inc., 123 Cal.
14 App. 4th 24, 45 (2004) (quotations omitted).

15 V.

16 DISCUSSION

17 Plaintiff makes three arguments in support of his contention that Defendants have violated
18 the terms of the Settlement Agreement. First, he argues Defendants have discriminated against
19 him on the basis of his race or ethnicity by restricting his privileges for approximately ten days
20 during lockdowns at Mule Creek following violent altercations between inmates. (P. & A. 4.)
21 Second, he argues Defendants have not successfully implemented policies and procedures within
22 the prison system which hold inmates accountable for their own individual conduct rather than
23 institute prison-wide lockdowns based on race. (Id. at 5.) Third, he argues Defendants have
24 retaliated against him for his participation in the instant litigation by asking if he wished to
25 transfer to another prison that caters to his "sensitive needs" and by monitoring his private
26 telephone calls with counsel. (Id. at 9-12.) The Court examines each allegation in turn.

27 A. Discrimination on the Basis of Race

28 Plaintiff argues that discrimination against him on the basis of his race occurred when,

1 following three lockdowns, he was not allowed to return to work at the same time as other
2 inmates of different races. Plaintiff generally contends that when Black inmates are involved in
3 the violent acts that precipitate the lockdowns, Black inmates' activities are restricted for longer
4 periods of time and he is not allowed to return to work or resume normal programs during this
5 time. Defendants counter that such restrictions are necessary upon some or all inmates because
6 prison staff require a minimum amount of time to conduct investigations and cell searches to
7 eliminate possible danger to inmates of the same race as those involved. Defendants further
8 contend that no discrimination against Plaintiff occurred because all inmates are initially placed
9 on lockdown until the situation is contained. Following containment, inmates of certain races
10 are removed from the restrictive "list" as the investigation clears the possibility of danger to
11 them.

12 Under applicable law, the Court must interpret the intent and scope of the agreement by
13 focusing on the usual and ordinary meaning of the language used. Lloyd's Underwriters, 26
14 Cal.App.4th at 1197-1198. Here, the parties' Settlement Agreement contains the following
15 provision at Paragraph 6:

16 6. The CDCR and all Defendants also acknowledge that section 3004(c) of Title
17 15 of the California Code of Regulations mandates, in part, that inmates will not
18 be subjected to any form of discrimination because of race. The CDCR and all
19 Defendants further acknowledge that section 3004(c) is applicable to Walker
and agree he has a right not to be discriminated against on the basis of race.
Thus, the CDCR will not discriminate against Walker on the basis of his race
or ethnicity.^{1/}

20 Cal. Civ. Code § 1644 requires contract language to be given its ordinary meaning, unless it is
21 clear the parties intended a special meaning. The Agreement further states:

23 1. A literal reading of this provision of the Agreement renders Section 3004(c) of Title 15
24 of the California Code of Regulations incorporated by reference. Section 3004(c) states: "(c)
25 Inmates, parolees and employees will not subject other persons to any form of discrimination
26 because of race, religion, nationality, sex, political belief, age, or physical or mental handicap."
27 Subsection 3004(c) is part of the California Code of Regulations Title that regulates Crime
28 Prevention and Corrections. This particular subsection is found under Article 1 of this Title which
is specifically titled "Behavior" and is likely determined to set forth regulations applying to the
behavior of those involved within the prison system. Moreover, § 3004 is titled "Rights and Respect
of Others." However, it does not appear that § 3004(c) mandates any particular procedure or policy
within the prison, much less with respect to prison lockdowns following violent altercations between
inmates.

1 13. The language of this Agreement is the result of negotiations of the Parties to the
2 extent that no one party has drafted this Agreement, and no presumption shall
3 arise from the drafting of all or any part of the language in this Agreement.

4 With no presumption in existence as to the meaning of this provision, the Court looks to the
5 “ordinary meaning of the language used” to determine whether the Agreement covers the
6 behavior alleged by Walker. To determine the ordinary and popular meaning of a word, the
7 court will typically consult a dictionary. People ex rel Lockyer v. R.J. Reynolds Tobacco Co.,
8 116 Cal.App.4th 1253, 1263 (2004).

9 The definition of “discrimination” as given by Black’s Law Dictionary is:

- 10 1. The effect of a law or established practice that confers privileges on a certain
11 class or that denies privileges to a certain class because of race, age, sex,
12 nationality, religion, or handicap.
- 13 2. Differential treatment; esp., a failure to treat all persons equally when no
14 reasonable distinction can be found between those favored and those not favored.

15 Black’s Law Dictionary (8th ed. 2004) In taking the term “differential treatment” and applying it
16 to the instant situation, the Court cannot conclude that “no reasonable distinction can be found
17 between those favored and those not favored.” Plaintiff would place himself with those “not
18 favored” and those “favored” would be inmates who were allowed to return to work before him.
19 However, Plaintiff admits that during the lockdown proceedings, all inmates remained on
20 restricted programs initially until various groups were cleared while investigations concluded.
21 (P. & A. 3) (“In February 21, 2007, all Facility A inmates (where Walker is housed) were placed
22 on lockdown because of a disturbance involving nine Black and Hispanic inmates that was not
23 racially motivated.”)(See also Id. Ex. C.)(Program Status Report–Initial Lockdown, Inmates
24 Affected: All.) Therefore, it would appear that “those favored,” i.e. those inmates that were
25 removed from restricted lockdown before Walker, were those who had been cleared of any
26 involvement from the results of the ensuing investigations. Discrimination, under the ordinary
27 meaning of the term, requires that no reasonable distinction be found between two similarly
28 situated inmates. Here, a reasonable distinction exists between Plaintiff and those inmates that
 were allowed to return to work before him because those inmates had been cleared through the
 ensuing investigation whether it be on the basis of their housing unit, race or lack of personal
 involvement in the violent offense.

1 Moreover, Captain Machado testified at the Evidentiary Hearing that such investigations,
2 and the lockdown procedures required to conclude them, are prompted by the necessity to ensure
3 the security of the yard and prison facilities following violent actions by and against inmates.

4 Captain Machado stated:

5 A: A lot of times when we have our meetings with the warden, and based on
6 intelligence that we get, we can either start with our yard facilities or we
7 start with the housing units and do cell-by-cell searches for dangerous
8 contraband and weapon type stock.

9 Q: And do you need to have inmates confined to their cells while you're
10 doing that?

11 A: Oh, yes.

12 Q: And what's the reason for that?

13 A: It's based on security issues. We don't—we're trying to figure out what we
14 have. We want to try to—if there's a propensity for further violence, if
15 there's weapons, we want to make a concerted effort to make these
16 discoveries, so when I report to the warden I can report to him our findings
17 and we can safely open the yard up. So that's our whole goal right there,
18 to make sure the yard is safe to open up.

19 Q: Okay.

20 A: And the inmates can peacefully co-exist together.

21 Q: All right. And so that's based on information regarding risk that you get
22 from conducting interviews and searches and things like that; is that right?

23 A: Yes. Yes.

24 (Evid. Hr'g Tr. 113:17-114:14.) This bolsters Defendants' contention that Plaintiff is not
25 "denied privileges" solely on the basis of his race but rather on a general level along with other
26 similarly situated inmates as members of certain races are investigated for involvement in the
27 altercations. Plaintiff agrees that investigations follow violent episodes within the prison and
28 take place during lockdown periods. Plaintiff testified to the following at the Evidentiary
Hearing:

1 Q: Do you recall—well, yeah. Do you recall being asked questions by
2 correctional officers regarding whether or not you had any type of
3 information concerning if the incident was just one on one or if there was
4 going to be future violence, things of that nature?

5 A: When I say I can't recall, there's been several different lock-downs, and
6 there's been times when they called—they've done interviews, random
7 interviews, and there's been times they haven't done random interviews.
8 So I can't say that specific date that I was actually called.

9 Q: But you acknowledge that sometimes during the lockdowns, they do go
10 from cell to cell asking inmates if they have information about the incident
11 that just happened, right?

12 A: They actually pull us out and bring us in the office, but yes, they do that
13 from time to time.

14 Q: Okay. And do you also agree that from time to time during these types of
15 incidents, they do pull you out of a cell and conduct a search of every
16 inmate, right?

1 A: Yes.
2 (Evid. Hr'g Tr. 69:24-70:18.) This indicates that Defendants' purpose for placing Plaintiff under
3 restrictive lockdown and not releasing him to work as early as they may have released others
4 rests on the need to conduct an investigation or search and not on the basis of Plaintiff's race.
5 Prison security and discipline are the only purposes cited for the initial race-based lockdown
6 periods.

7 Additionally, Plaintiff acknowledges that inmates of other races not involved in the
8 altercations were kept on restrictive lockdown longer than other inmates if their cellmate was a
9 member of the race of inmates involved. Plaintiff testified to the following:

10 Q: What race is your roommate?

A: He's Asian.

11 Q: Why was he affected?

12 A: Because he's housed in a cell with me. And the way kind of it has worked
13 for quite some years is that if a particular race is on lock-down and an
14 inmate—let's say, for example, the blacks are on lock-down and you're in
a cell with a black, and you happen to be of another race. You will be on
lock-down as well because you actually live in the cell with a guy of the
particular race that's on lock-down.

15 (Evid. Hr'g Tr. 26:2-12.) Plaintiff's testimony further corroborates the fact that race of a
16 particular inmate is not the factor upon which inmates are kept on restrictive lockdown. This can
17 only mean that the basis for maintaining the restrictions in place as to certain inmates is location
18 and conclusion of interviews and searches, among other factors possibly including race. With
19 these facts, the Court cannot conclude that Defendants harbored discriminatory intent solely
20 against Plaintiff in an effort to keep him under restricted lockdown far longer than other inmates.

21 Lastly, even if a very literal interpretation of Paragraph Six of the Agreement supported
22 Plaintiff's argument regarding discrimination against him on the basis of race, the harm Plaintiff
23 incurred as a result of this "discrimination" is minimal. Plaintiff testified to the following with
24 regard to how many days he has been affected by restrictive lockdowns:

25 Q: Okay. How many days has it been? And tell me which days and how long,
please.

26 A: There's been quite a few lock-downs.

27 Q: Well, just—I'm sorry. I didn't mean to interrupt you. Just as to you, Mr.
Walker, that you've been affected by.

28 A: Maybe 10 days.

1 (Evid. Hr’g Tr. 64.) Considering the incidents at issue occurred over a period of approximately
2 one year, a period of ten days under lockdown following incidents of riots and attempted murder
3 is not a severe restriction on Plaintiff’s activities amounting to breach of the terms of the
4 Settlement Agreement. The Court interprets the intent and scope of the agreement by focusing
5 on the circumstances under which the agreement was made. Lloyd’s Underwriters, 26
6 Cal.App.4th at 1197-1198. In addition, “particular clauses of a contract are subordinate to its
7 general intent.” Cal. Civ. Code § 1650. Plaintiff admits that at Calipatria State Prison,
8 lockdowns continued for periods of “two weeks, sometimes a week, sometimes two months,
9 sometimes six months, sometimes eight months.” (Evid. Hr’g Tr. 64.) The Court determines
10 that the parties’ general intent when entering into the Agreement was to alleviate Plaintiff’s
11 situation at Calipatria State Prison, thereby relieving him from having to remain on restrictive
12 lockdown for months at a time. Taking into account the specific circumstances which prompted
13 Plaintiff’s initial litigation, ten days constitutes de minimis restriction at best.

14 Therefore, based on the record before it, the Court is not convinced that Defendants’
15 conduct with regards to placing Plaintiff in restrictive lockdown amounts to a breach of the
16 parties’ Settlement Agreement. Plaintiff’s Motion as to this Provision is DENIED.

17 **B. Noncompliance With Terms of Settlement Agreement Regarding Implementation**
18 **of Policy of Individual Accountability**

19 Plaintiff next argues that Paragraph 5 of the Agreement was violated by Defendants’ failure
20 to implement and adhere to a system-wide policy of individual accountability. Paragraph 5
21 states:

- 22 5. The Parties enter this Agreement, in part, because the CDCR, through its
23 current administration, is committed to moving and is moving towards a
24 behavior based system of accountability, where each inmate will be held
25 accountable for his own individual conduct. Each inmate is to be held
26 accountable for his own conduct, not that of other inmates of the same race.
27 The CDCR adopted a goal to help reach this end, attached as Exhibit A to this
28 Agreement and incorporated here by reference.

26 Exhibit A to the parties’ Agreement is a statement of goals and strategies seemingly aimed at
27 promoting crime prevention and safety within the correctional system. The document outlines
28 strategies and dates presumably by which the particular strategies will be implemented. Of

1 importance to this situation is Strategy 5.3 which states: “Continue to evaluate and improve
2 safety and security of facilities for both staff and offenders by January 2007.” (Mot. Ex. A-A.)
3 Plaintiff argues that, taken as a whole, this provision and the attendant Exhibit require
4 Defendants to have in place a “behavior-based” system of accountability such that restrictive
5 lockdowns are limited only to those whose behavior makes them accountable for the violent
6 altercation.

7 When a contract is written, the Court looks first to the words used by the parties. Powerline
8 Oil Co., Inc. v. Superior Court, 37 Cal.4th 377, 396 (2005) (“Where contractual language is clear
9 and explicit, it governs.”) Here, the provision specifically states: “The Parties enter this
10 Agreement, in part, because the CDCR, through its current administration, is committed to
11 moving and is moving towards a behavior based system of accountability[.]” It appears the
12 language of the provision at issue imposes no requirement upon Defendants to implement any
13 particular system. Rather, this appears to be a statement of intent as an explanation for why the
14 parties entered into this agreement as a whole. The incorporation by reference of Exhibit A to
15 the Settlement Agreement further solidifies that definition. Exhibit A is a statement of goals and
16 projected strategies by which to attain these goals within the Department of Corrections. Such
17 goals and strategies required for successful attainment would appear to be in accordance with
18 “moving towards a behavior based system of accountability.”

19 Moreover, Defendants submit that Section 55015.8 of the Department Operations Manual
20 (“DOM”) was updated to reflect implementation of such a policy of individual accountability in
21 compliance with the terms of the settlement agreement. By way of explanation, Section 55015
22 of the DOM provides institutional facilities with standardized procedures and guidelines to
23 ensure a safe and effective unlock implementation following a lockdown. (Confidential DOM
24 55015-2.) Section 55015.8 states:

25 Upon successful containment of an incident, disturbance or disaster, assessment of
26 the causes and determination of program activity status shall begin. Depending upon
27 the seriousness of the situation, it may be advisable to modify/restrict program
28 activities.

Such modifications/restrictions shall be considered after the identification of the
disruptive groups, sub groups, or individuals. The identification of said inmates
must be based on the behavior that caused the consideration for the program

1 modification/restriction, and upon substantiated belief that the negative or combative
2 behavior will continue. When attempting to identify involved inmates, the
3 determination cannot be based solely on ethnicity. When determining any inmate's
4 involvement and lockdown status the determination must be based on the
5 individual's documented case factors, their behavior, or upon an informed prediction
6 of their behavior.

7
8 In emergency situations, and on a short-term basis, inmates may be separated on the
9 basis of ethnicity for security purposes, so long as it is not done preferentially, or as
10 a punitive measure. A short-term basis is generally considered to be up to two
11 weeks, fourteen (14) calendar days, although this may vary depending on the specific
12 incident/disturbance or other emergency.

13 The options of the modified program, lockdown, or State of Emergency provides for
14 the safe control of inmate movement, restricts potentially volatile persons or groups.
15 and affords additional time to evaluate overall operations.

16 It is important that all groups are dealt with in a fair and consistent manner
17 commensurate with their involvement, and circumstances of events causing the
18 lockdown, in any incident. Appropriate controls should be applied to the affected
19 inmates and area(s), minimizing the reduction of operations and services in
20 unaffected area(s).

21 (Id.) By having such guidelines in place and adhering to them, Defendants are affirmatively
22 meeting the obligations imposed upon them by the relevant provision of the Agreement. To
23 further support Defendant's contentions, Captain Machado testified at the Evidentiary Hearing
24 that DOM Section 55015.8 is an updated policy (Evid. Hr'g Tr. 144:19-21) and that he intends to
25 comply with it in the future in his capacity as Facility Captain. (Id. at 126:21-23.) In light of
26 these facts, the Court cannot find a violation of this particular provision of the Agreement.

27 Plaintiff also argues that he "entered into the Agreement because the Defendants were
28 committed" toward implementing a behavior-based system of accountability. (P. & A. 6.) To
that end, Plaintiff testified that based upon his understanding of Escalera v. Terhune, 2004 WL
238763 (Cal.App.1 Dist.)(unpublished), he understood the Department of Corrections would
"come up with a behavior-based system of accountability, meaning that they would recognize
two different categories of inmates, those who [] wanted to follow the rules and those who didn't
[] and they would deal with them accordingly." (Evid. Hr'g Tr. 28:4-10.) While Plaintiff may
have entered into the agreement believing that a change in policy would occur in the prison
system within a specified time, the words of the contract provision at issue do not reflect that
intent. Contractual interpretation "turns on what was intended [by the parties] by what was

1 said—not what a party intended to say.” Falkowski v. Imation Corp., 132 Cal.App.4th 499, 506
2 (2005). Here, no projected date for implementation was written into the provision nor was there
3 any such duty to fully implement a policy. Rather, the parties intended for the Department of
4 Corrections to begin *moving towards* a policy of behavior-based accountability which they have
5 done by adopting goals stated in Exhibit A to the Settlement Agreement and updating DOM to
6 reflect this initiative.

7 Alternatively, if Plaintiff intended for Defendants to adhere to the principles of Escalera,
8 Defendants have done so. Escalera, as affirmed by the California Appellate Court, ordered
9 appellants to take the following steps following a riot in 2000:

- 10 (1) Refrain from affording preferential treatment to inmates on the basis of
11 ethnicity. *In their discretion, the [appellants] may lockdown the prison, and*
12 *may release inmates from lockdown based upon individual behavior, and upon*
13 *informed predictions of individual behavior; but not on the basis of ethnicity.*
14 On a short-term emergency basis, [appellants] may separate inmates on the
15 basis of ethnicity, if prison security requires it, so long as it is not done
16 preferentially. ... ;
- 17 (2) Allocate sufficient resources to promptly complete the evaluation of inmates
18 who remain on lockdown as a result of the February 23, 2000 riot, to determine,
19 on an individual basis, and without ethnic preference, which inmates may safely
20 be released from lockdown, and which should be placed in the Security
21 Housing Unit. ... ;
- 22 (3) Prepare a plan to improve race relations among inmates, and to overcome the
23 ‘culture of separation’ so as to reduce the likelihood of ethnic violence within
24 [Pelican Bay State Prison].”

25 Escalera v. Terhune, 2004 Cal. App. Unpub. LEXIS 1293, 9-10 (Cal. App. 1st Dist. 2004)
26 (emphasis added). The record before the Court shows that inmates at Mule Creek are not
27 afforded preferential treatment on the basis of ethnicity because the inmates that are removed
28 from restrictive lockdown first are the ones who have been cleared of personal involvement in or
knowledge of the violence that prompted the lockdown. Defendants appear to be completing
their investigations following the lockdowns in order to clear certain groups of prisoners because
no lockdown or denial of privileges has extended longer than 14 days. (Evid. Hr’g Tr. 126:14-
15.) Lastly, Exhibit A to the Settlement Agreement contains goals and strategies which
demonstrate Defendants’ movement towards crime prevention and safety of the correctional
institutions.

Although Defendants have shown they are moving towards a behavior-based system of

1 accountability, there are still times when race determines initial lockdown status within the
2 corrections system. However, this alone is not sufficient to be determined a violation of the
3 terms of the Agreement. Prison authorities have the right, “acting in good faith and in
4 particularized circumstances, to take into account racial tensions in maintaining security,
5 discipline, and good order in prisons and jails.” Lee v. Washington, 390 U.S. 333, 334 (1968).
6 This is precisely what the Department of Corrections is doing when attempting to protect
7 inmates and prison staff from violent individuals within the prison system. The Supreme Court
8 has stated: “Prisons are dangerous places, and the special circumstances they present may justify
9 racial classifications in some contexts.” Johnson v. California, 543 U.S. 499, 515 (2005).
10 Special circumstances are surely present immediately following riotous activity between inmates
11 and the CDCR is in a better position to determine the proper timeframe for implementation of an
12 innovative policy. This Court refuses to employ an interpretation of the terms of the Agreement
13 which would result in unjust and harsh conditions to other California prisoners who wish to
14 remain safe following violent inmate altercations. Accordingly, Plaintiff has not shown a
15 violation of the terms of Paragraph 5 of the Agreement and Plaintiff’s Motion as to this
16 provision is DENIED.

17 **C. Retaliation Against Plaintiff by Counselor Hamilton**

18 Plaintiff’s third argument centers around the actions of Counselor Hamilton, Plaintiff’s
19 Correctional Counselor at Mule Creek. Plaintiff alleges Ms. Hamilton has retaliated against him,
20 in direct violation of Paragraph 4 of the Agreement. More specifically, Plaintiff alleges two
21 actions that constitute retaliation: 1) on one occasion, Ms. Hamilton asked him if he would like
22 to volunteer to transfer to High Desert State Prison; and 2) Ms. Hamilton stayed in her office on
23 ten occasions while he spoke to his attorneys on the telephone.

24 The Court finds Plaintiff’s first claim of “retaliation” to be without merit. Plaintiff’s
25 account of the incident is as follows:

26 Q: And can you describe the circumstances under which she asked you? Like
27 did she ask you as part of a regular visit that you had with her or was it
under different circumstances?

28 A: Different circumstances. I was standing out in the morning waiting to go
to the law library. It was around almost 8:00 o’clock, I believe, and she
was just coming in to work. She was coming in to work. She had her—they

1 usually carry–push a cart with inmates’ files on their way to their office in
2 the housing unit. And she kind of looked up and saw me standing there
3 and said, hey, do you want to transfer to Mule Creek -- I mean to High
4 Desert? And I kind of looked at her like, why would you ask me that? So
5 I kind of walked up to her and asked her, you know -- she said, I wanted
6 to know if you wanted to go to Mule Creek -- I mean High Desert. I said,
7 well, no, I’m not interested. And she kept walking, and I walked back in
8 the other direction.

9 (Evid. Hr’g Tr. 45: 13 - 46:5.) Plaintiff then stated: “I went to her office the next day and asked
10 her, you know, were you serious? Because, you know, I couldn’t–and she said, yes, I was
11 serious. We need people to go.” (*Id.* at 47:10-13.) The exchange attested to by Plaintiff
12 corroborates Ms. Hamilton’s assertion that she merely asked Plaintiff if he would like to transfer
13 to High Desert because:

14 Inmate Walker is currently housed on a sensitive-needs Level 4 facility. High Desert
15 State Prison had just opened a Level 4 sensitive-needs facility which is comparable
16 to our facility that inmate Walker is assigned to at this point. We were told -- we,
17 as counselors, were told by our supervisors and by the classification services unit,
18 which is our headquarters in Sacramento, that we were to send an X amount of
19 inmates to High Desert to facilitate the opening of their Level 4 facility. We were to
20 go and ask inmates – take volunteers to High Desert initially before we started
21 involuntary transfers because the Department is under a strict time line to get this
22 population up in that particular prison.

23 (Evid. Hr’g Tr. 90:11-24.) Merely asking someone if they would like to “volunteer” for a
24 transfer is not a retaliatory act. A retaliation claim generally requires the prisoner to show that
25 the action does not further any legitimate penological goal. Barnett v. Centoni, 31 F.3d 813,
26 815-16 (9th Cir. 1994)(per curiam). Here, the act of asking Walker if he would like to volunteer
27 for a transfer was simply because a new facility was in place and inmates were needed to
28 successfully operate it. Moreover, Ms. Hamilton testified that she asked the same question of
other inmates and she posted a sign on her office window conveying the same inquiry she posed
to Walker. (Evid. Hr’g Tr. 90:25 - 91:6.) Most importantly, Plaintiff was never transferred to
High Desert State Prison and remains at Mule Creek today. The Court does not find that
Plaintiff’s first allegation amounts to retaliation.

Plaintiff’s second allegation is based on Ms. Hamilton’s presence while he completed
confidential telephone calls in her office. Plaintiff alleges Ms. Hamilton eavesdropped on his
conversations with his attorney because she stayed in the room with him and on one occasion,

1 she asked him a specific question about the content of his call. Ms. Hamilton counters that she
2 could not leave him alone in her office because it has a locking door and there is a possibility
3 that if left alone, Plaintiff could barricade himself in the room. (Evid. Hr’g Tr. 87:22-88:3.)
4 Further, Ms. Hamilton states that she has confidential files and materials pertaining to other
5 inmates both on paper and in the computer in her office. (Id. at 88:3 - 88:14.) Leaving Plaintiff
6 alone in the room is a potential breach of security because he would have access to those files.
7 (Id.) Ms. Hamilton also states she never asked about the confidential content of his call, but
8 rather whether he said “I love you” at the end of a conversation because she wanted to make sure
9 he was not speaking to any unauthorized individual. (Evid. Hr’g Tr. 105:18 - 106:6.)

10 The Court finds no retaliation with regards to this claim. Plaintiff’s only reason for taking
11 calls in Ms. Hamilton’s office was likely to circumvent the monitored telephones available to all
12 inmates for personal calls. By allowing Plaintiff the use of her office telephone, Ms. Hamilton
13 was doing Plaintiff a favor and allowing him to maintain the confidentiality of his legal
14 conversations. It appears reasonable that Ms. Hamilton could not leave Plaintiff alone in her
15 office with the presence of confidential information about other inmates which Plaintiff could
16 potentially use to his advantage on the prison yard. If Plaintiff wanted truly confidential
17 conversations with his attorney, an in-person meeting at Mule Creek would have served that
18 purpose. Plaintiff has failed to rebut Ms. Hamilton’s legitimate penological reason for staying in
19 the room while he made his calls. See Barnett, 31 F.3d at 815-16. Furthermore, the record
20 shows Plaintiff never made any concern with regard to this situation known either to Ms.
21 Hamilton or to prison authorities by filing a grievance form.

22 Plaintiff’s unsupported allegation that he was retaliated against for a successful lawsuit is
23 not a sufficient basis to find a violation of the parties’ agreement. Relief with respect to these
24 claims is DENIED.

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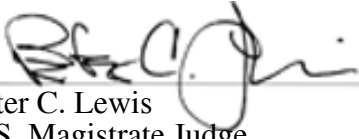
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VI.
CONCLUSION

The Court finds Plaintiff has made no showing that Defendants have engaged in actions that amount to a violation of the terms of the Settlement Agreement. Based on the foregoing, Plaintiff's Motion to Enforce Settlement Agreement and for Sanctions is DENIED.

DATE: March 11, 2009



Peter C. Lewis
U.S. Magistrate Judge
United States District Court