

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

TODD ASHKER, et al.,

Plaintiffs,

v.

GOVERNOR OF THE STATE OF  
CALIFORNIA, et al.,

Defendants.

C 09-05796 CW

**~~PROPOSED~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AGREEMENT**

This civil-rights class-action case concerns the California Department of Corrections and Rehabilitation's (CDCR) policies and practices related to gang validation and management and its use of segregated housing, including the Security Housing Unit (SHU) at Pelican Bay State Prison. Plaintiffs claim that CDCR's gang validation policies did not provide sufficient due process and that confinement in Pelican Bay's SHU for ten or more years violates the United States Constitution.

The parties have entered into a settlement agreement (the Settlement Agreement or Agreement) which would settle all claims for relief asserted in this case. (J. Lobel Decl. Ex. 1, ECF No. 424-1.) On September 1, 2015, the parties filed a joint motion for preliminary approval

1 of the Settlement Agreement. The parties submitted a proposed notice of class action settlement.  
2 (*Id.* at Ex. 2.) The Joint Motion seeks an order providing that the Court: (1) conditionally certify  
3 under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure a supplemental settlement  
4 class defined to include inmates who have now, or will have in the future, been housed in Pelican  
5 Bay's SHU for ten or more years and who then were transferred to another CDCR SHU facility in  
6 connection with CDCR's Step Down Program; (2) preliminarily approve the Settlement  
7 Agreement; (3) direct that notice be provided to the classes under Rules 23(c)(2) and (e)(1) of the  
8 Federal Rules; (4) schedule a fairness hearing for final approval; and (5) stay all proceedings  
9 pending resolution of the fairness hearing.

10 The Court has presided over the proceedings in the above-captioned action and has  
11 reviewed all the pleadings, records, and papers on file. The Court has reviewed the Joint Motion  
12 for Preliminary Approval, along with the Settlement Agreement and supporting documents, and  
13 has considered the parties' statements concerning the proposed settlement of this class action at a  
14 hearing held on October 6, 2015. Moreover, in response to issues raised by the Court at the  
15 October 6 hearing, the parties filed supplemental briefing and supporting documents in further  
16 support of their Joint Motion, which the Court has reviewed. This includes a revised proposed  
17 notice to be distributed to class members. (A. Hrvatin Decl. Ex. H.) The Court has determined  
18 that inquiry should be made as to the fairness, reasonableness, and adequacy of the proposed  
19 settlement.

20 Accordingly, good cause appearing, IT IS ORDERED AS FOLLOWS:

21 1. A court should preliminarily approve a class action settlement if it "appears to be  
22 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does  
23 not improperly grant preferential treatment to class representatives or segments of the class, and  
24 falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d  
25 1078, 1079 (N.D. Cal. 2007). The Court finds that this standard is met in this case, as the  
26 proposed settlement is the product of arm's-length, serious, informed, and non-collusive  
27 negotiations between experienced and knowledgeable counsel who have actively prosecuted and  
28 defended this litigation. The Court finds that, for purposes of settlement only, the Settlement

1 Agreement meets the requirements of 18 U.S.C. § 3626(a)(1). The Settlement Agreement is  
2 granted preliminary approval and incorporated by reference, subject to the right of class members  
3 to challenge the fairness, reasonableness, or adequacy of the Agreement.

4 2. The Court certifies, for settlement purposes only, under Rules 23(a) and (b)(2) of  
5 the Federal Rules a supplemental settlement class defined to include all prisoners who have now,  
6 or will have in the future, been imprisoned in Pelican Bay's SHU for ten or more years and who  
7 then were transferred from Pelican Bay's SHU to another SHU in connection with CDCR's Step  
8 Down Program. The Court finds, for settlement purposes only, that the proposed supplemental  
9 class meets Rule 23(a)'s requirements of numerosity, commonality and typicality to justify  
10 certification, and that there is adequate and fair representation. The proposed supplemental  
11 settlement class meets the requirements of Rule 23(b)(2) because the issues resolved under the  
12 Settlement Agreement "apply generally to the class." Fed. R. Civ. P. 23(b)(2). Finally, under  
13 Rule 23(g), the Court appoints the same counsel as certified to represent the previously-certified  
14 classes for purposes of the supplemental settlement class.

15 3. Under Rule 23(e)(1), the Court approves the substance, form, and manner of the  
16 Notice of Proposed Class Action Settlement (the "Notice") filed by the parties on October 9, and  
17 finds that the proposed method of disseminating the Notice meets all due process and other legal  
18 requirements and is the best notice practicable under the circumstances.

19 4. Within thirty days of this Order, CDCR is directed to post the Notice in English  
20 and Spanish in each SHU in such a manner as to make the Notice visible to all inmates. Within  
21 thirty days of this Order, CDCR is also directed to place a copy of this Order and the parties'  
22 Settlement Agreement in each law library servicing a CDCR SHU facility. Defendants must file  
23 and serve on Plaintiffs' counsel a declaration affirming that notice was published as required in  
24 this Order.

25 5. A Final Fairness Hearing shall take place at 2:30 p.m. on January 26, 2016, at the  
26 United States District Court for the Northern District of California, 1301 Clay Street, Oakland,  
27 CA 94612, in Courtroom 2, to determine whether the terms and conditions provided for in the  
28 Settlement Agreement are fair, reasonable, and adequate and should be finally approved by the

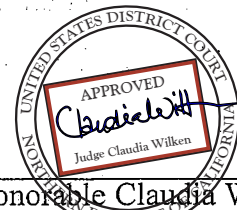
1 Court, and whether this action should be dismissed. The hearing may be continued from time to  
 2 time without further notice to the classes. The parties' motion for final approval of the settlement  
 3 agreement shall be filed no later than by January 12, 2016.

4 6. Any member of the class may enter an appearance on his or her own behalf in this  
 5 action through that class member's own attorney (at their own expense), but need not do so.  
 6 Class members who do not enter an appearance through their own attorneys will be represented  
 7 by Class counsel. Alternatively, any member of the class may write to the Court about whether  
 8 the settlement is fair. The Court will consider written communications when deciding whether to  
 9 approve the settlement. Comments regarding the fairness of the settlement MUST include at the  
 10 top of the first page the case name, *Ashker, et al. v. Governor, et al.*, and the case number, Case  
 11 No. 4:09-cv-05796-CW. A written comment must contain the author's full name and CDCR  
 12 number, must include all objections and the reasons for them, must include any and all supporting  
 13 papers (including, without limitation, all briefs, written evidence, and declarations), and must be  
 14 signed by the class member. A class member who desires to comment but who fails to comply  
 15 with the above objection procedure and timeline shall be deemed to have not objected, and the  
 16 objection shall not be heard or considered at the hearing. Comments must be postmarked by  
 17 December 22, 2015, and must be sent to the following address:

18 Clerk of the Court  
 19 United States District Court  
 20 Northern District of California  
 1301 Clay Street  
 21 Oakland, CA 94612

22 **IT IS SO ORDERED.**

23 Dated: October 14, 2015



24 The Honorable Claudia Wilken  
 25 United States District Court Judge

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