

PAGES 1 - 17

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TODD ASHKER, ET AL.,)	
)	
PLAINTIFF,)	NO. C-09-5796 CW
)	
VS.)	TUESDAY, OCTOBER 6, 2015
)	
GOVERNOR OF THE STATE OF)	OAKLAND, CALIFORNIA
CALIFORNIA, ET AL.,)	
)	MOTION FOR SETTLEMENT
)	
DEFENDANTS.)	
_____)	

BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: CENTER FOR CONSTITUTIONAL RIGHTS
(TELEPHONICALLY) 666 BROADWAY, 7TH FLOOR

BY: JULES LOBEL, ESQUIRE
SAMUEL MILLER, ESQUIRE

LSPC
1540 MARKET STREET, SUITE 490
SAN FRANCISCO, CALIFORNIA 94102
BY: CAROL STRICKMAN, STAFF ATTORNEY

ANNE BUTTERFIELD WEILLS, ESQUIRE
499 14TH STREET, SUITE 220
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED)

REPORTED BY: DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

FOR DEFENDANTS:

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CALIFORNIA 94102

BY: ADRIANO HRVATIN,
JAY C. RUSSELL,
DEPUTY ATTORNEYS GENERAL

1 TUESDAY, OCTOBER 06, 2015

2:25 P.M.

2 P R O C E E D I N G S

3 **THE CLERK:** CALLING CIVIL ACTION 09-5796 ASHKER, ET
4 AL. VERSUS BROWN, ET AL.

5 COUNSEL, PLEASE STEP FORWARD AND STATE YOUR APPEARANCES.

6 **MR. LOBEL:** JULES LOBEL FOR THE PLAINTIFFS ON THE
7 PHONE.

8 **MS. WEILLS:** GOOD AFTERNOON, YOUR HONOR. ANNE
9 WEILLS --

10 **THE REPORTER:** EXCUSE ME. CAN YOU COME FORWARD,
11 PLEASE?

12 **MR. MILLER:** SAMUEL MILLER FOR THE PLAINTIFFS ALSO ON
13 THE PHONE, YOUR HONOR.

14 **MS. WEILLS:** ANNE WEILLS FOR THE PLAINTIFFS. GOOD
15 AFTERNOON, YOUR HONOR.

16 ALSO CAROL STRICKMAN FOR PLAINTIFFS.

17 **MR. HRVATIN:** GOOD AFTERNOON, YOUR HONOR. ADRIANO
18 HRVATIN FOR DEFENDANTS. JAY RUSSELL IS ALSO AT COUNSEL TABLE.

19 **THE COURT:** GOOD AFTERNOON.

20 SO THIS IS ON FOR A MOTION FOR PRELIMINARY APPROVAL OF THE
21 SETTLEMENT AGREEMENT. GENERALLY SPEAKING, I HEARTILY APPROVE
22 OF THE SETTLEMENT AGREEMENT. I THINK IT IS VERY THOUGHTFUL
23 AND EXCELLENT, AND PLAN TO APPROVE IT WITH A FEW QUESTIONS
24 THAT I DID HAVE, SO I DID WANT TO GO AHEAD AND HAVE THE
25 HEARING.

1 MY FIRST -- LET'S START WITH THE EASIER ONES FIRST.

2 DO YOU NEED A CAFA NOTICE FOR THIS? AND IF SO, HAVE YOU
3 DONE ONE?

4 **MR. HRVATIN:** WE DID, YOUR HONOR.

5 **THE COURT:** YOU DO NEED ONE AND YOU DID DO IT?

6 **MR. HRVATIN:** WE BELIEVE -- I THINK IT'S AN OPEN
7 QUESTION, BUT OUT OF AN ABUNDANCE OF CAUTION, WE PREPARED AND
8 SERVED THE CAFA NOTICE.

9 **THE COURT:** I GUESS IT'S ON THE RECORD NOW SINCE YOU
10 SAID SO, BUT IT MIGHT BE USEFUL TO FILE SOMETHING THAT SAYS
11 THAT.

12 **MR. HRVATIN:** WE WOULD BE HAPPY TO DO THAT, YOUR
13 HONOR.

14 **THE COURT:** OKAY.

15 I WAS GOING TO PROPOSE JANUARY 26TH FOR THE FINAL HEARING,
16 IF THAT'S AGREEABLE. YOU WANTED ABOUT 15 WEEKS. I THINK
17 THAT'S 16.

18 **MR. HRVATIN:** JANUARY 26 IS THE COURT'S FIRST
19 AVAILABLE DATE, AND CONSISTENT THE PROPOSED SCHEDULE THAT I
20 THINK WE HAVE OUTLINED IN OUR PAPERS, YOUR HONOR.

21 **THE COURT:** YOU WANTED A DEADLINE FOR ANY ADDITIONAL
22 BRIEFING TO BE FILED BEFORE THEN. I GUESS THE ADDITIONAL
23 BRIEFING MIGHT ONLY BE RESPONSES TO OBJECTIONS?

24 **MR. HRVATIN:** A FINAL APPROVAL-TYPE SUBMISSION, I
25 THINK, WOULD BE APPROPRIATE WHERE WE WOULD ABSOLUTELY ADDRESS

1 ANY TYPES OF COMMENTS OR OBJECTIONS THAT ARE FILED, AND
2 OTHERWISE SUBSTANTIATE WHY THE AGREEMENT SHOULD BE FINALLY
3 APPROVED BY THE COURT.

4 **THE COURT:** OKAY. SO WHAT, TWO WEEKS BEFORE THE
5 26TH?

6 **MR. HRVATIN:** I BELIEVE THAT'S WHAT WE HAVE
7 REQUESTED, YOUR HONOR. SO --

8 **THE COURT:** OKAY.

9 **MR. HRVATIN:** -- THAT WOULD BE -- I THINK THAT WOULD
10 PROVIDE US WITH SUFFICIENT TIME.

11 **THE COURT:** WHERE IS THIS RCGP GOING TO BE?

12 **MR. HRVATIN:** CURRENTLY, YOUR HONOR, THE UNIT IS
13 BEING SET UP AT PELICAN BAY.

14 **THE COURT:** AND WHEREABOUTS?

15 **MR. HRVATIN:** ON --

16 **THE COURT:** ONE OF THOSE REGULAR --

17 **MR. HRVATIN:** ON PRISON GROUNDS.

18 **THE COURT:** I CAN ONLY ASSUME SO.

19 **MR. HRVATIN:** WE ARE STILL IN PRISON.

20 **THE COURT:** BUT IT'S NOT IN THE SHU.

21 **MR. HRVATIN:** NO, IT'S NOT.

22 **THE COURT:** AND IT'S ONE OF THOSE OTHER SORT OF
23 FUNGIBLE PLACES?

24 **MR. HRVATIN:** CORRECT, YOUR HONOR.

25 **THE COURT:** THEY ARE NOT WARDS, BUT WHAT ARE THEY,

1 WINGS?

2 **MR. HRVATIN:** IT'S A NEW HOUSING. IT'S A HOUSING
3 UNIT THAT HAS BEEN RE-PURPOSED FOR PURPOSES OF ESTABLISHING
4 THE RCGP UNIT.

5 **THE COURT:** WHAT IS A 180 DESIGN?

6 **MR. HRVATIN:** THE 180 DESIGN IS, FROM A STRUCTURAL
7 PERSPECTIVE, DISTINGUISHABLE FROM LET'S SAY A 270-DEGREE
8 DESIGN JUST BY WAY OF HOUSE HOW THE CELLS ARE STRUCTURED AND
9 ORGANIZED, THAT THE CONTROL BOOTH LOOKS OUT AT THE CELLS THAT
10 ARE ESSENTIALLY ON TWO TIERS AGAINST A WALL. WHEREAS THE
11 270-DEGREE, FOR EXAMPLE, WOULD GO AROUND THE ROOM. IT IS JUST
12 BY WAY OF STRUCTURE HOW LARGE THE UNIT IS AND WHAT KINDS OF,
13 FOR PURPOSES OF MANAGEMENT AND CONTROL, THE CORRECTIONAL
14 OFFICERS HAVE BY WAY OF THEIR MANAGEMENT OF THE INMATES.

15 **THE COURT:** SO IT'S A HALF CIRCLE WITH THE CONTROL
16 BOOTH IN THE CENTER OF THE HALF, IS THAT IT?

17 **MR. HRVATIN:** YEAH, I THINK THAT --

18 **THE COURT:** IT REFERS TO THE DEGREES OF A CIRCLE.
19 270 WOULD BE CLOSER TO A FULL CIRCLE?

20 **MR. HRVATIN:** CORRECT.

21 **THE COURT:** AND THIS IS A HALF CIRCLE?

22 **MR. HRVATIN:** CORRECT.

23 **THE COURT:** OKAY.

24 THERE'S A COUPLE OF CITES TO THE CCR THAT YOU HAVE AS
25 CERTAIN CITES. AND WE LOOKED FOR THEM AND COULDN'T FIND THEM

1 UNDER THE CITES YOU GAVE US, AND WE FOUND THEM IN OTHER
2 PLACES. SO I'D JUST KIND OF LIKE TO HAVE THE CITES CORRECT.

3 YOU SAY THE SHU ASSESSMENT CHART IS AT 3341.5C9 IN THE
4 SETTLEMENT AGREEMENT. WE THINK IT'S AT 3341.9 UNLESS -- ON
5 MINE, ON WESTLAW, UNLESS WE ARE MISSING SOMETHING. COULD YOU
6 DOUBLE-CHECK THE CITES AND MAYBE E-FILE A PRINTOUT OR
7 SOMETHING FROM WESTLAW SHOWING -- WELL, IF YOU'VE GOT IT
8 WRONG, JUST FIX IT. IF YOU HAVE IT RIGHT AND WE CAN'T FIND
9 IT, THEN SEND ME LIKE A SCREEN SHOT OR SOMETHING SHOWING WHERE
10 IT IS.

11 **MR. HRVATIN:** WE CAN SUBMIT A COPY OF THE REGULATION.

12 **THE COURT:** OKAY. THEN THE OTHER ONE, YOU SAY IS --
13 THE CLASSIFICATION REVIEW YOU SAY IS AT 3341.5. AND WE
14 COULDN'T FIND IT THERE, BUT WE THINK IT'S AT 3341.8. SO,
15 AGAIN, IF YOU COULD CHECK THAT AND EITHER FIX IT OR SHOW ME
16 WHERE IT IS.

17 I'M A LITTLE WORRIED ABOUT THE CLASS NOTICE SAYING SORT OF
18 IN BIG LETTERS THAT IT'S ABOUT SEGREGATED HOUSING. ONLY
19 BECAUSE THERE WAS A CASE NOT TOO LONG AGO THAT WAS ABOUT
20 RACIALLY SEGREGATED HOUSING, AND THAT'S WHAT I THINK OF WHEN I
21 THINK OF SEGREGATED. MAYBE ALL THE PRISONERS KNOW WHAT THAT
22 MEANS, BUT I JUST HOPE PEOPLE DON'T THINK IT'S ABOUT RACIAL
23 SEGREGATION AND NOT REALIZE IT'S ABOUT AD SEG.

24 DO YOU THINK THAT'S A TERM OF ART THAT PEOPLE WILL
25 UNDERSTAND OR CAN YOU THINK OF A BETTER WAY TO PUT IT?

1 **MR. HRVATIN:** I THINK THE WAY TO REMEDY THAT, TO THE
2 EXTENT THE COURT HAS A CONCERN, WOULD BE TO BE MORE SPECIFIC
3 AND REFER TO IT AS ADMINISTRATIVE SEGREGATED HOUSING, IF
4 THERE'S ANY CONFUSION. I THINK THAT THE TERM IS GENERALLY
5 UNDERSTOOD TO CREATE THAT CONTRAST BETWEEN GENERAL POPULATION
6 HOUSING AND A SEGREGATED HOUSING ENVIRONMENT. BUT TO ADDRESS
7 THAT CONCERN, WE CAN WORK ON -- WE WOULD BE HAPPY TO CONFER
8 WITH PLAINTIFFS' COUNSEL TO FIND SOME LANGUAGE THAT IS
9 ACCEPTABLE.

10 **THE COURT:** I MEAN, I DON'T WANT TO MAKE IT A LOT
11 LONGER OR MORE WORDIER OR CONFUSING, BUT -- AND IF NONE OF YOU
12 THINK IT'S A PROBLEM, I GUESS IT'S OKAY. PERHAPS YOU CAN JUST
13 PUT IN ADMINISTRATIVELY SEGREGATED HOUSING, OR SOMETHING LIKE
14 THAT. MAYBE PAREN AD SEG OR SOMETHING.

15 **MR. HRVATIN:** WE WOULD BE HAPPY TO CONFER WITH
16 PLAINTIFFS' COUNSEL ABOUT THAT TERMINOLOGY, YOUR HONOR.

17 **THE COURT:** IS THAT ALL RIGHT?

18 **MS. WEILLS:** YES.

19 **MR. LOBEL:** WE AGREE, YES.

20 **THE COURT:** OKAY.

21 SO THEN I WAS WONDERING IN ADVANCE ABOUT SOME THE -- I
22 DON'T QUITE KNOW WHERE THESE WERE, BUT I GUESS WE HAVE THREE
23 OBJECTION LETTERS ALREADY SOMEWHERE. AND ONE OR TWO OF THEM
24 MAKE WHAT MAY BE A GOOD POINT THAT COULD PERHAPS BE FIXED NOW.

25 AND THAT IS, TO THE EXTENT THAT PEOPLE CAN BE PLACED IN

1 THE RCGP FOR THEIR OWN SAFETY, PEOPLE ARE SAYING WHY WOULD
2 MY -- WHY SHOULD I HAVE FEWER VISITS THAN OTHER PEOPLE IF I'M
3 NOT THERE FOR ANY KIND OF FAULT OF MY OWN, BUT ONLY BECAUSE OF
4 MY OWN SAFETY, SHOULDN'T I GET THE KIND OF VISITS THAT OTHER
5 PEOPLE WOULD GET.

6 THAT SEEMS LIKE A FAIR POINT, AND I WONDERED IF YOU HAVE
7 TALKED ABOUT THAT OR IF YOU CAN PERHAPS FIX THAT FOR PEOPLE
8 WHO ARE ONLY SEGREGATED BECAUSE OF THEIR OWN SAFETY.

9 **MR. HRVATIN:** I DID SEE THE -- THAT PARTICULAR
10 OBJECTION LETTER COME IN OR COMMENT FILED.

11 WE WOULD BE PREPARED, AS WE HAVE, TO NOW I THINK THERE
12 HAVE BEEN THREE OR FOUR LETTERS COME IN AND WE ARE
13 CATEGORIZING THOSE AS THEY RAISE THESE VARIOUS ISSUES AND
14 WORKING WITH OUR CLIENTS TO UNDERSTAND TO WHAT EXTENT THERE IS
15 A LEGITIMATE ISSUE THAT SHOULD BE ADDRESSED AND WE WOULD BE
16 HAPPY TO, AGAIN, CONFER WITH PLAINTIFFS' COUNSEL REGARDING
17 THAT PARTICULAR ISSUE THAT'S BEEN RAISED AND SEE WHETHER IT'S
18 SOMETHING THAT CAN BE ADDRESSED FOR PURPOSES OF THE
19 SETTLEMENT.

20 **THE COURT:** WHY DON'T YOU SEE IF YOU CAN DO THAT EVEN
21 BEFORE THE NOTICE GOES OUT BECAUSE THEN WE CAN PERHAPS
22 FORESTALL SOME OBJECTIONS.

23 **MR. LOBEL:** YOUR HONOR, I AGREE WITH THAT POINT. AND
24 WE WOULD BE HAPPY TO CONFER WITH MR. ADRIANO AND HIS CLIENTS
25 BEFORE THE NOTICE GOES OUT TO TRY AND FIX THAT PROBLEM.

1 **THE COURT:** I DON'T WANT TO DELAY THE NOTICE AND I
2 DON'T WANT TO MAKE IT MORE UNWIELDY, BUT IF THERE'S-- IF THE
3 DEFENDANTS WOULD AGREE TO FIXING IT AND YOU CAN ALL AGREE ON
4 HOW TO FIX IT RATHER QUICKLY, THAT, I THINK, MIGHT SAVE US ALL
5 TIME IN THE END.

6 **MR. HRVATIN:** VERY GOOD, YOUR HONOR. WE WILL TAKE
7 THAT UP WITH OUR CLIENTS IMMEDIATELY.

8 **THE COURT:** OKAY.

9 THEN MY LAST CONCERN IS ATTORNEYS' FEES. NOW THERE'S THIS
10 CASE IN THE NINTH CIRCUIT CALLED *MERCURY* SOMETHING WHICH SAYS,
11 ADMITTEDLY IN COMMON FUND CASES, THAT YOU NEED TO FILE YOUR
12 ATTORNEY FEE MOTION WITH ALL OF ITS AMOUNTS AND EVERYTHING 60
13 DAYS BEFORE THE OBJECTIONS ARE DUE SO THAT PEOPLE CAN OBJECT
14 TO THE ATTORNEYS' FEES. OF COURSE, THAT DOESN'T REALLY MATTER
15 HERE BECAUSE THIS ISN'T A COMMON FUND CASE AND THE CLASS
16 MEMBERS WOULD HAVE NO REASON THAT I CAN THINK OF TO OBJECT.

17 AS YOU POINT OUT, RULE 23(H) ALSO TALKS ABOUT MAKING
18 ATTORNEY FEE MOTION AND NOTICE OF THE MOTION MUST BE SERVED ON
19 ALL PARTIES DIRECTED TO CLASS MEMBERS IN A REASONABLE MANNER.
20 CLASS MEMBER MAY OBJECT TO THE MOTION.

21 AGAIN, I DON'T WANT TO HOLD THINGS UP, BUT I DON'T ALSO
22 WANT TO HAVE SOME IRREGULARITY HAPPENING HERE. SO I DON'T
23 KNOW HOW YOU THOUGHT RULE 23(H) --

24 **MR. LOBEL:** YOUR HONOR, WE DID HAVE THOUGHTS ON THIS,
25 WHICH IS THAT AS YOU SAY, THIS IS NOT A COMMON FUND CASE AND

1 THEREFORE IT DOESN'T -- IT'S NOT REALLY THAT RELEVANT IN TERMS
2 OF THE PLAINTIFFS BECAUSE IT'S NOT GOING TO AFFECT THEIR
3 RECOVERY AND THE RELIEF THEY ARE GOING TO GET. AND WE'VE
4 CLEARLY NOTIFIED THEM THAT WE ARE GOING TO SEEK ATTORNEYS'
5 FEES. THE ONLY QUESTION IS THE AMOUNT.

6 AND WE THOUGHT THIS PROCEDURE WOULD BE MOST LIKELY TO
7 RESULT IN A SETTLEMENT OF THE ATTORNEYS' FEES ISSUE AND NOT
8 HAVING TO LITIGATE IT BEFORE YOUR HONOR.

9 **THE COURT:** I AGREE, AND I WOULD CERTAINLY BE HAPPY
10 WITH THAT RESULT, BUT I ALSO DON'T WANT TO VIOLATE RULE 23(H)
11 AND HAVE SOMETHING COME BACK IN THE FUTURE.

12 WHAT IT SAYS IS CLAIM MUST BE MADE BY MOTION. NOTICE OF
13 THE MOTION MUST BE SERVED. I MEAN, I GUESS YOU COULD SERVE A
14 SEPARATE NOTICE OF THE MOTION FOR ATTORNEY FEES LATER ON? AND
15 THEN --

16 **MR. LOBEL:** CORRECT. THAT'S ONE WAY OF RECTIFYING
17 THE PROBLEM, WHICH IS, THAT WHENEVER WE AGREE, HOPEFULLY
18 DEGREE ON THE ATTORNEYS' FEE AMOUNT, WE CAN THEN SERVE THE
19 MOTION ON ALL THE CLASS MEMBERS SEPARATELY.

20 **THE COURT:** HOW --

21 **MR. LOBEL:** A MINOR BUREAUCRATIC PROBLEM GIVEN THE
22 ADVISABILITY OF TRYING TO SETTLE THE ATTORNEYS' FEES QUESTION.

23 **THE COURT:** RIGHT. BUT THE WAY YOU ARE SERVING THE
24 CLASS IS BY WHAT, HANDING THEM PIECES OF PAPER IN THEIR CELLS,
25 OR WHAT?

1 **MR. LOBEL:** COULDN'T WE JUST FILE A NOTICE OF MOTION
2 FOR ATTORNEY FEES IN THE SAME WAY THAT WE SERVE THE CLASS WITH
3 THE NOTICE OF MOTION -- WITH THE NOTICE HERE?

4 **THE COURT:** WITH THE CLASS NOTICE.

5 **MR. LOBEL:** WE USE THE SAME PROCEDURE.

6 **THE COURT:** WHAT IS THE PROCEDURE? THAT'S WHAT I AM
7 ASKING. ARE YOU PASSING OUT PIECES OF PAPER TO EVERYBODY IN
8 THEIR CELLS?

9 **MR. LOBEL:** NO. THE DEFENDANTS ARE USING THEIR
10 TYPICAL PROCEDURE, WHICH IS --

11 **THE COURT:** WHICH IS WHAT?

12 **MR. LOBEL:** -- POSTING IT IN EACH POD OR EACH BLOCK,
13 AND IN THE LAW LIBRARY.

14 WE ARE ALSO GOING TO INDEPENDENTLY MAIL THE NOTICE TO
15 EVERY CLASS MEMBER. AND WE WOULD BE PREPARED TO DO THAT ON
16 THE ATTORNEYS' FEES AWARD ALSO.

17 **THE COURT:** OH, YOU WOULD. OH, OKAY.

18 **MR. LOBEL:** IF THAT'S WHAT YOUR HONOR WOULD DESIRE,
19 WE WOULD BE PREPARED TO DO THAT.

20 **THE COURT:** IT'S NOT SO MUCH I DESIRE IT. IT'S JUST
21 THAT'S WHAT RULE 23(H) SAYS. YEAH. AND WE WOULD BE HAPPY TO
22 GO BEYOND WHAT THE DEFENDANTS ARE DOING IN TERMS OF NOTICE AND
23 DO WHAT WE ARE PREPARED TO DO, WHICH IS TO MAIL IT TO EVERY
24 CLASS MEMBER. AND WE WOULD DO THAT FOR THE ATTORNEYS' FEES
25 MOTION ALSO.

1 OKAY. IT COULD BE RATHER LARGE.

2 **MR. HRVATIN:** AND, YOUR HONOR, FROM THE GOVERNMENT'S
3 PERSPECTIVE, WE DON'T BELIEVE THAT'S REQUIRED FOR PURPOSES OF
4 PROVIDING ADEQUATE NOTICE.

5 **THE COURT:** WHAT DO YOU THINK? THEY CAN SEND THEM
6 THE NOTICE OF MOTION THAT INCLUDES, WHAT, THE HOURLY RATE AND
7 THE NUMBER OF HOURS, AND THE TOTAL, OR SOMETHING LIKE THAT AND
8 NOT ALL THE BACKUP DOCUMENTS?

9 **MR. HRVATIN:** THE CLASS NOTICE WE SUBMITTED, YOUR
10 HONOR, IS EXHIBIT 2 TO PROFESSOR LOBEL'S DECLARATION. I THINK
11 THAT THIS NOTICE COULD BE REVISED.

12 YOUR HONOR, YOU WILL SEE AT POINT 10 IN WHICH WE TRY TO
13 SUCCINCTLY SUMMARIZE THE TERMS OF THE SETTLEMENT AGREEMENT,
14 POINT 10 INDICATES THAT THE PLAINTIFFS WILL FILE A MOTION FOR
15 ATTORNEYS' FEES. I SUBMIT THAT WE CAN USE THIS TEMPLATE OF
16 NOTICE TO BE REVISED TO REFLECT THAT THE PLAINTIFFS HAVE FILED
17 THE MOTION OR THERE HAS BEEN SOME RESOLUTION TO THE ATTORNEYS'
18 FEE ISSUE TO PROVIDE NOTICE TO THE CLASS THAT WE WOULD THEN,
19 AGAIN, BY WAY OF OUR STANDARD -- BY THE DEPARTMENT'S STANDARD
20 PROTOCOL, POST IN THE HOUSING UNITS TO PROVIDE NOTICE TO THE
21 INMATES.

22 **THE COURT:** YOU ARE SAYING DO THAT SEPARATELY LATER
23 NOT --

24 **MR. HRVATIN:** IT WOULD HAVE TO BE.

25 **THE COURT:** NOT MODIFY THE CLASS NOTICE TO INCLUDE IT

1 NOW.

2 **MR. HRVATIN:** NO, BECAUSE IT'S AN EVENTUALITY.

3 SO AS OF NOW, I THINK THAT THE NOTICE IS ACCURATE IN THAT
4 IT REFLECTS THAT THE PLAINTIFFS WILL BE FILING THIS MOTION,
5 BUT WE HAVE TO WAIT FOR THAT EVENT TO TAKE PLACE AS THIS
6 PROCESS PLAYS ITSELF OUT.

7 **THE COURT:** SO YOU WOULD POST THEN A NOTICE OF
8 MOTION. YOU WOULDN'T BE POSTING THE ENTIRE THING. IT IS
9 LIKELY TO BE RATHER LONG.

10 **MR. HRVATIN:** CORRECT. ALSO, THOUGH, TO MAKE
11 AVAILABLE. THE LAW LIBRARY MAKE AVAILABLE THE FULL PACKET OF
12 MATERIALS SUBMITTED TO THE COURT FILE FOR THE COURT'S REVIEW.

13 SO THE NOTICE ITSELF, HOWEVER, AS WE SUBMIT IT HERE, IS
14 THREE PAGES. AND SO TO THE EXTENT IT ALSO DIRECTS THAT IF AN
15 INMATE WOULD LIKE TO REVIEW THE MORE COMPLETE FILING, THAT
16 THAT WOULD BE AVAILABLE IN THE LAW LIBRARY.

17 **THE COURT:** SO YOU ARE GOING TO NEED TO THEN POST THE
18 NOTICE OF MOTION FOR ATTORNEYS' FEES.

19 **MR. HRVATIN:** OR AT LEAST DRAFT A NOTICE THAT
20 REFLECTS -- I THINK THAT REFLECTS THAT THE PLAINTIFFS HAVE
21 EITHER FILED A MOTION, THERE HAS BEEN SOME RESOLUTION TO THE
22 ATTORNEYS' FEE ISSUE WITH THE AMOUNT THAT IS AT -- IS
23 CONTEMPLATED. I THINK THAT THAT WOULD BE -- THAT WOULD BE THE
24 FORM IN WHICH WE WOULD PROVIDE NOTICE TO THE CLASS OF THAT
25 ISSUE.

1 **THE COURT:** OKAY. I GUESS THAT'S ALL RIGHT AS LONG
2 AS YOU PUT IT IN THE LAW LIBRARY. IT DOES SAY IT MUST BE
3 DIRECTED TO CLASS MEMBERS IN A REASONABLE MANNER. SO I THINK
4 WE COULD SAY THAT THAT WOULD BE A REASONABLE MANNER.

5 THE OTHER REQUIREMENT IS THE CLASS MEMBER MAY OBJECT TO
6 THE MOTION. SO WHEN YOU PUT UP THE NOTICE THAT THE MOTION HAS
7 BEEN FILED, YOU HAVE TO SAY ON IT IF YOU WANT TO OBJECT,
8 HERE'S WHERE YOU SEND IT.

9 **MR. HRVATIN:** I THINK THAT'S RIGHT, YOUR HONOR. I
10 THINK THAT'S WHY THE NOTICE WE HAVE SUBMITTED HERE IS A GOOD
11 TEMPLATE FOR THAT. AS THIS NOTICE PROVIDES, IT DOES INDICATE
12 THAT THERE IS A DEADLINE FOR A CLASS MEMBER TO SUBMIT ANY KIND
13 OF OBJECTION.

14 AND I THINK THAT THIS WOULD -- THAT THIS TEMPLATE HERE,
15 THIS FORMAT WOULD ACCURATELY ALSO PROVIDE ADEQUATE NOTICE TO
16 THE CLASS MEMBERS THAT WITH RESPECT TO THAT ADDITIONAL ISSUE
17 ON THE ATTORNEYS' FEE POINT, THAT ANY FORM OF OBJECTIONS WOULD
18 HAVE TO BE SUBMITTED BY A CERTAIN TIME.

19 **THE COURT:** OKAY. SO CAN WE JUST SAY YOU'RE GOING TO
20 DO THAT OR DO YOU THINK I NEED TO ADD THAT INTO THE ORDER? I
21 PROBABLY SHOULD ADD IT INTO THE ORDER -- DO IT DIFFERENTLY,
22 YOU SHOULD PROBABLY ADD THAT INTO THE ORDER.

23 DO YOU THINK? IS MY VERBAL ORDER ENOUGH?

24 **MR. LOBEL:** WE CAN ADD IT TO THE ORDER.

25 **THE COURT:** YOU ARE GOING TO HAVE TO CHANGE IT ANYWAY

1 BECAUSE YOU HAVE TO PUT THE DATES IN. PUT IN HOW YOU ARE
2 GOING TO HANDLE THAT. IF YOU CAN RESOLVE OR CHANGE THE
3 BUSINESS ABOUT THE TITLE AND THE BUSINESS ABOUT THE VISITING
4 FOR THE SAFETY PEOPLE, YOU COULD DO THAT. AND -- BUT YOU NEED
5 TO GET IT TO ME FAIRLY QUICKLY BECAUSE YOU'VE COMMITTED TO
6 SENDING OUT THE NOTICE, I THINK, IN 30 DAYS.

7 **MR. HRVATIN:** RIGHT. THIRTY DAYS FROM PRELIMINARY
8 APPROVAL.

9 SO CERTAINLY IF THERE ARE ANY REVISIONS WE NEED TO MAKE TO
10 THE NOTICE AND GET THAT BEFORE YOUR HONOR, AND THEN HAVE THE
11 COURT WITH SUFFICIENT OPPORTUNITY TO REVIEW THAT MATERIAL TO
12 MAKE SURE THAT IT SATISFIES THE COURT'S CONCERNS, BUT WE
13 CAN -- WE WOULD BE HAPPY TO WORK WITH PLAINTIFFS' COUNSEL TO
14 GET THAT TO YOU AS QUICKLY AS POSSIBLE.

15 **THE COURT:** OKAY. LIKE MAYBE BY FRIDAY?

16 **MR. HRVATIN:** WE CAN -- YEAH, I THINK WE CAN WORK TO
17 GET THAT DONE.

18 **MR. LOBEL:** I AGREE.

19 **MR. HRVATIN:** WE WILL GET IT TO YOU BY CLOSE OF
20 BUSINESS ON FRIDAY.

21 **THE COURT:** OKAY.

22 WELL, WITH THOSE CONCERNS ALLEVIATED, I WOULD BE HAPPY TO
23 PRELIMINARILY APPROVE THE SETTLEMENT.

24 IS THERE ANYTHING ELSE THAT YOU NEED OR WANT?

25 **MR. HRVATIN:** NOT FROM DEFENDANTS.

1 **THE COURT:** OKAY. THANK YOU.

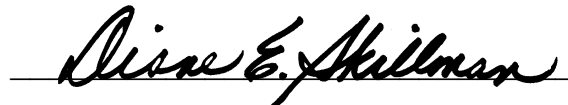
2 **MR. LOBEL:** NOT FROM PLAINTIFFS.

3 **THE COURT:** OKAY. THANK YOU.

4 (PROCEEDINGS CONCLUDED AT 2:43 P.M.)

5
6 **CERTIFICATE OF REPORTER**

7 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
8 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
9 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
10 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

11
12 

13 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

14 FRIDAY, DECEMBER 18, 2015
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