

EXHIBIT 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 which would settle all claims for relief asserted in this case (*see* J. Lobel Decl. Ex. 1), and the parties have filed a Joint Motion for Preliminary Approval of Class Action Settlement Agreement. The parties have submitted a proposed notice of class action settlement. (*Id.* at Ex. 2.) The parties’ Joint Motion seeks an order providing that the Court: (1) conditionally certify under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure a supplemental settlement class defined to include inmates who have now, or will have in the future, been housed in Pelican Bay’s SHU for ten or more years and who then were transferred to another CDCR SHU facility in connection with CDCR’s Step Down Program; (2) preliminarily approve the Settlement Agreement; (3) approve the proposed notice to

1 be distributed to the classes under Rules 23(c)(2) and (e)(1); (4) schedule a fairness hearing for
2 final approval; and (5) stay all proceedings pending resolution of the fairness hearing.

3 The Court has presided over the proceedings in the above-captioned action and has
4 reviewed all the pleadings, records, and papers on file. The Court has reviewed the Joint Motion
5 for Preliminary Approval, along with the Settlement Agreement and supporting documents, and
6 has considered the parties' arguments concerning the proposed settlement of this class action.
7 The Court has determined that inquiry should be made as to the fairness and adequacy of the
8 proposed settlement.

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

10 1. A court should preliminarily approve a class action settlement if it "appears to be
11 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does
12 not improperly grant preferential treatment to class representatives or segments of the class, and
13 falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
14 1078, 1079 (N.D. Cal. 2007). The Court finds that this standard is met in this case, as the
15 proposed settlement is the product of arm's-length, serious, informed, and non-collusive
16 negotiations between experienced and knowledgeable counsel who have actively prosecuted and
17 defended this litigation. The Court finds that, for purposes of settlement only, the Settlement
18 Agreement meets the requirements of 18 U.S.C. § 3626(a)(1). The Settlement Agreement is
19 granted preliminary approval and incorporated by reference, subject to the right of class members
20 to challenge the fairness, reasonableness, or adequacy of the Agreement.

21 2. The Court certifies, for settlement purposes only, under Rules 23(a) and (b)(2) a
22 supplemental settlement class defined to include all prisoners who have now, or will have in the
23 future, been imprisoned in Pelican Bay's SHU for ten or more years and who then were
24 transferred from Pelican Bay's SHU to another SHU in connection with CDCR's Step Down
25 Program.

26 3. The Court finds, for settlement purposes only, that the proposed supplemental
27 settlement class meets Rule 23(a)'s requirements of numerosity, commonality and typicality to
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

justify certification, and that there is adequate and fair representation. The proposed supplemental settlement class meets the requirements of Rule 23(b)(2) because the issues resolved under the Settlement Agreement “apply generally to the class.” Fed. R. Civ. P. 23(b)(2). Finally, under Rule 23(g), the Court appoints the same counsel as certified to represent the previously certified classes for purposes of the Settlement.

4. Under Rule 23(e)(1), the Court approves the substance, form and manner of the Notice of Proposed Class Action Settlement (the “Notice”) filed by the parties on September 1, 2015, and finds that the proposed method of disseminating the Notice meets all due process and other legal requirements and is the best notice practicable under the circumstances.

5. Within three days of this Order, the parties are directed to prepare a final version of the Notice, incorporating the dates set forth in this Order.

6. Within thirty days of this Order, CDCR is directed to post the Notice in English and Spanish in each SHU housing unit in such a manner as to make the Notice visible to all prisoners. Within thirty days of this Order, CDCR is also directed to place a copy of this Order and the parties’ Settlement Agreement in each law library servicing a CDCR SHU facility. Defendants must file and serve on Plaintiffs’ counsel a declaration affirming that notice was published as required in this order.

7. A Final Fairness Hearing shall take place at ____ p.m. on _____, at the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, in Courtroom 2, to determine whether the proposed settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be finally approved by the Court, and whether this action should be dismissed under the settlement. The hearing may be continued from time to time without further notice to the classes. Any further briefing from the parties in advance of the hearing shall be filed no later than on _____.

8. Any member of the class may enter an appearance on his or her own behalf in this action through that class member’s own attorney (at their own expense), but need not do so.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Class members who do not enter an appearance through their own attorneys will be represented by Class counsel. Alternatively, any member of the class may write to the Court about whether the settlement is fair. The Court will consider written communications when deciding whether to approve the settlement. Comments regarding the fairness of the settlement MUST include at the top of the first page the case name, *Ashker, et al. v. Governor, et al.*, and the case number, Case No. 4:09-cv-05796-CW. A written comment must contain the author’s full name and CDCR number, must include all objections and the reasons for them, must include any and all supporting papers (including, without limitation, all briefs, written evidence, and declarations), and must be signed by the class member. A class member who desires to comment but who fails to comply with the above objection procedure and timeline shall be deemed to have not objected and the objection shall not be heard or considered at the hearing. Comments must be postmarked by _____, 2015 and must be sent to the following address:

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

IT IS SO ORDERED.

Dated: _____, 2015

The Honorable Claudia Wilken
United States District Court Judge