

1 JULES LOBEL (*pro hac vice*)  
 ALEXIS AGATHOCLEOUS (*pro hac vice*)  
 2 RACHEL MEEROPOL (*pro hac vice*)  
 SAMUEL MILLER, State Bar No. 138942  
 3 CENTER FOR CONSTITUTIONAL RIGHTS  
 666 Broadway, 7th Floor  
 4 New York, NY 10012  
 Tel: (212) 614-6478  
 5 Fax: (212) 614-6499  
 Email: Email: jll4@pitt.edu  
 6 aagathocleous@ccrjustice.org  
 rachelm@ccrjustice.org

7 *Attorneys for Plaintiffs*

8  
 9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **OAKLAND DIVISION**

13 TODD ASHKER, et al.,  
 14 **Plaintiffs,**  
 15 v.  
 16 GOVERNOR OF THE STATE OF  
 CALIFORNIA, et. al.,  
 17 **Defendants.**

Case No.: 4:09-cv-05796-CW

**DECLARATION OF JULES LOBEL IN  
 SUPPORT OF JOINT MOTION FOR  
 PRELIMINARY APPROVAL OF  
 SETTLEMENT AGREEMENT**

CLASS ACTION

Judge: Honorable Claudia Wilken

1 I, Jules Lobel, declare as follows:

2 1. I am an attorney admitted to practice *pro hac vice* before this Court, and am an attorney  
3 of record for Plaintiffs in this matter. I am competent to testify to the matters set forth in this  
4 declaration, and if called on by the Court, would do so. I submit this declaration in support of the  
5 parties' Joint Motion for Preliminary Approval of the Settlement Agreement reached in this case.

6 2. This action was filed on December 9, 2009 by two individual plaintiffs. A First  
7 Amended Complaint was filed in May 2010. After the 2011 prison hunger strikes, Plaintiffs filed a  
8 Second Amended Complaint in September 2012, which narrowed the claims, dropped several  
9 defendants, and added eight additional plaintiffs and class action allegations. The Second Amended  
10 Complaint alleges that the conditions in the Pelican Bay State Prison Security Housing Unit  
11 (Pelican Bay SHU) violate the Eighth Amendment's prohibition against cruel and unusual  
12 punishment and that CDCR's gang validation policies violate the due process clause of the  
13 Fourteenth Amendment. In December 2012, Defendants moved to dismiss Plaintiffs' Second  
14 Amended Complaint, which the Court denied. (Dkt. Nos. 160 and 191.)

15 3. From 2013 to 2015, the parties conducted extensive discovery, including more than 42  
16 depositions of prison officials, prison leadership, prisoners, former prisoners and experts, and the  
17 production of tens of thousands of pages of documents. Discovery was stayed by a round of  
18 unsuccessful settlement negotiations. The parties served thirteen expert reports and eleven rebuttal  
19 reports, and took the depositions of twelve expert witnesses. Discovery is now closed.

20 4. On May 2, 2013, Plaintiffs filed a motion for class certification. (Dkt. No. 195.) The  
21 Court granted Plaintiffs' motion for class certification on June 2, 2014, and certified two classes. In  
22 March 2015, Plaintiffs filed a Supplemental Complaint, which added a putative supplemental  
23 Eighth Amendment class of all prisoners who have now, or will have in the future, been imprisoned  
24 by Defendants at the Pelican Bay SHU for longer than 10 continuous years and then transferred  
25 from Pelican Bay SHU to another SHU in California pursuant to Step Three or Step Four of the  
26 Step Down Program ("SDP"). (Dkt. No. 388.) Concurrently herewith, the parties jointly move to  
27 certify this supplemental class for the purposes of settlement.  
28

1           5.       In the spring and summer of 2015, the parties engaged in extensive settlement  
2 negotiations, supervised by Magistrate Judge Nandor J. Vadas. I have been the chief negotiator for  
3 Plaintiffs in these negotiations, and CDCR Secretary Jeffrey A. Beard, Ph.D., has been the chief  
4 negotiator for Defendants. I have been assisted by my co-counsel, and Secretary Beard has been  
5 joined by Scott Kernan, CDCR Undersecretary for Operations, Benjamin T. Rice, General Counsel  
6 of the CDCR Office of Legal Affairs, and counsel from the Attorney General's office. The  
7 negotiations have been face-to-face and by telephone. The negotiations have been at arms-length  
8 with no collusion whatsoever, have been informed by Plaintiffs' counsel's regular communication  
9 with Plaintiffs' representatives, and have been conducted at an advanced stage of the litigation  
10 where both sides are able to make an informed judgment as to the benefits and risks of proceeding  
11 to trial versus agreeing to the terms of the proposed settlement. The named Plaintiffs met several  
12 times as a group via a telephone conference call during the course of these negotiations to provide  
13 negotiating instructions to counsel, three Plaintiff representatives were on the telephone at one of  
14 the negotiation sessions supervised by Magistrate Judge Vadas, and the Plaintiffs approved the  
15 settlement agreement on a telephonic conference call.

16           6.       The settlement agreement contains terms that directly address the class claims in this  
17 case, including that CDCR will no longer place prisoners into the SHU, Administrative Segregation,  
18 or Step Down Program solely on the basis of their validation status, and that CDCR will review the  
19 cases of all validated prisoners who are currently in the SHU as a result of an indeterminate term  
20 that was previously assessed under prior regulations, or who are currently assigned to Steps 1  
21 through 4 of the Step Down Program, or who were assigned to Step 5 but are retained within the  
22 SHU. The key terms of the settlement agreement are summarized in the Motion and proposed  
23 Notice. Together, the terms of the settlement agreement mark a dramatic change in the way CDCR  
24 operates with respect to prisoners in SHU confinement, and therefore the parties believe it is fair,  
25 adequate, and reasonable.

26           7.       Plaintiffs have been zealously represented by class counsel throughout this litigation.  
27 The adequacy of class counsel under Rule 23(g) has been recognized by this Court in the Order  
28

1 Granting in Part Motion for Class Certification. (Dkt. No. 317 at 17.) Plaintiffs' representatives  
2 played an active role in determining the terms of the settlement through regular meetings and  
3 individual and conference calls with myself and other class counsel, and by giving their consent to  
4 the final terms of the agreement in conference calls in which I participated.

5 8. The outcome of the litigation and the extent of any relief that the class might be awarded  
6 if the case were to proceed to trial is uncertain. Proceeding through pre-trial motions, trial, and  
7 probable appeal would impose risks, costs, and a substantial delay in the implementation of any  
8 remedy in this matter.

9 9. The settlement agreement provides that Plaintiffs shall have sixty days from the entry of  
10 a final order approving this settlement agreement to file their motion for attorneys' fees and costs  
11 for work reasonably performed before that date. Plaintiffs will submit an informal fee demand to  
12 Defendants prior to filing the motion. If a settlement of the attorneys' fees and costs is reached, the  
13 parties will comply with Rule 23(h) requirements concerning notice to the class and Court approval.

14 10. A true copy of the parties' Settlement Agreement is attached to this Declaration as  
15 Exhibit 1.

16 11. A true copy of the proposed Notice to the Class is attached to this Declaration as Exhibit  
17 2.

18 12. A true copy of the proposed Order Granting Preliminary Approval, which requests that  
19 the Court preliminarily approve the parties' Agreement, conditionally certify the settlement class,  
20 direct that notice be provided to the classes, set a fairness hearing, and stay the litigation is attached  
21 to this Declaration as Exhibit 3.

22 I declare under penalty of perjury under the laws of the United States that the foregoing is  
23 true and correct to the best of my knowledge.

24 Executed in Pittsburgh, Pennsylvania on August 31, 2015.

25

26

27

28

/s/ Jules Lobel  
Jules Lobel, Esq. (*pro hac vice*)  
Attorney for Plaintiffs