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13 Attorneys for Plaintiffs

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15 UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

18 ROBERT HECKER, et al.,  
19 Plaintiffs,  
20 v.  
21 CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
22 et al.,  
23 Defendants.

Case No. 2:05-CV-02441 LKK-DAD  
**ORDER GRANTING JOINT MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**  
Judge: Hon. Lawrence K. Karlton

1 This Court has presided over the proceedings in the above-captioned action and has  
2 reviewed all of the pleadings, records, and papers on file.

3 The parties have entered into a Settlement Agreement, which was filed with the  
4 Court as Exhibit 1 to the Declaration of Michael W. Bien in Support of Joint Motion for  
5 Preliminary Approval of Class Action Settlement on August 5, 2014.

6 The Court has reviewed the Joint Motion for Preliminary Approval of Class Action  
7 Settlement, along with the Settlement Agreement and supporting documents, and has  
8 considered the parties' arguments concerning the proposed settlement of this action.

9 The Court has determined that inquiry should be made as to the fairness and  
10 adequacy of this proposed settlement.

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

12 1. A court should preliminarily approve a class action settlement if it "appears  
13 to be the product of serious, informed, non-collusive negotiations, has no obvious  
14 deficiencies, does not improperly grant preferential treatment to class representatives or  
15 segments of the class, and falls within the range of possible approval." *In re Tableware*  
16 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). The Court finds that this  
17 standard is met in this case, as the proposed settlement is the product of arm's-length,  
18 serious, informed and non-collusive negotiations between experienced and knowledgeable  
19 counsel who have actively prosecuted and defended this litigation, under the guidance of  
20 the Court's Special Master in *Coleman v. Brown*. The Settlement Agreement is granted  
21 preliminary approval and incorporated by reference, and has the full force and effect of an  
22 order of this Court, subject to the right of Class Members to challenge the fairness,  
23 reasonableness or adequacy of Settlement Agreement and to show cause, if any exists, why  
24 a final judgment dismissing this case should not be entered following a Final Fairness  
25 Hearing.

26 2. The Court certifies, for settlement purposes only, under Federal Rules of  
27 Civil Procedure 23(a) & (b)(2), an injunctive relief settlement class (together the  
28 "Settlement Class") defined as: all present and future CDCR inmates with psychiatric

1 conditions that are disabilities as defined by the ADA and the Rehabilitation Act and who  
2 are allegedly excluded and/or screened out from any prison program, service, or activity on  
3 the basis of their assignment to or participation in the MHSDS [Mental Health Service  
4 Delivery System] program, including the CCCMS [Correctional Clinical Case  
5 Management System] and EOP [Enhanced Outpatient Program].

6 3. The Court finds, for settlement purposes only, that the proposed class meets  
7 the requirements under Rule 23(a) of numerosity, commonality and typicality to justify  
8 certification, and that there is adequate and fair representation.

9 4. The proposed settlement class meets the requirements of Rule 23(b)(2)  
10 because the issues resolved under the Settlement Agreement “apply generally to the class.”  
11 Fed. R. Civ. P. 23(b)(2).

12 5. Under Rule 23(g) of the Federal Rules of Civil Procedure, the Court appoints  
13 Rosen Bien Galvan & Grunfeld LLP and the ACLU Foundation of Northern California as  
14 Class Counsel to represent the Settlement Class for purposes of the Settlement.

15 6. Under Federal Rule of Civil Procedure 23(e)(1), the Court approves the  
16 substance, form and manner of the Notice of Proposed Class Action Settlement (the  
17 “Notice”) filed by the parties on August 5, 2014, and finds that the proposed method of  
18 disseminating the Class Notice meets all due process and other legal requirements and is  
19 the best notice practicable under the circumstances.

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

22 8. Within thirty days of this Order, CDCR is directed to post the Notice in  
23 English and Spanish in all California prisons in such a manner as to make the notice visible  
24 to all prisoners. Within thirty days of this Order, CDCR is also directed to place a copy of  
25 this Order and the full Settlement Agreement in every CDCR library. Defendants must file  
26 and serve on Plaintiffs’ counsel a declaration affirming that notice was published as  
27 required in this order.

28 9. A Final Fairness Hearing shall take place at 10:00 a.m. on Friday, December

1 5, 2014 at the United States District Court for the Eastern District of California, United  
2 States Courthouse, 501 I St., Sacramento CA 95814, in Courtroom 3, to determine whether  
3 the proposed settlement of this action on the terms and conditions provided for in the  
4 Settlement Agreement is fair, reasonable, and adequate and should be finally approved by  
5 the Court, and whether this action should be dismissed under the settlement. The hearing  
6 may be continued from time to time without further notice. Any further briefing from the  
7 parties in advance of the hearing shall be filed no later than November 21, 2014.

8 10. Any member of the class may enter an appearance on his or her own behalf  
9 in this action through that class member's own attorney (at their own expense), but need  
10 not do so. Class members who do not enter an appearance through their own attorneys  
11 will be represented by Class counsel. Alternatively, any member of the class may write to  
12 the federal court about whether the settlement is fair. The federal court will consider  
13 written communications when deciding whether to approve the settlement. Comments  
14 regarding the fairness of the settlement MUST include at the top of the first page the case  
15 name (*Hecker v. CDCR*) and the case number (2:05-CV-02441 LKK-DAD). A written  
16 comment must contain the author's full name and CDCR number, must include all  
17 objections and the reasons for them, must include any and all supporting papers (including,  
18 without limitation, all briefs, written evidence, and declarations), and must be signed by  
19 the Class Member. A Class Member who desires to comment but who fails to comply  
20 with the above objection procedure and timeline shall be deemed to have not objected and  
21 the objection shall not be heard or considered at the hearing. Comments must be

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1 postmarked by November 7, 2014 and must be sent to the following address:


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Clerk of the Court  
United States District Court  
Eastern District of California  
501 "I" Street  
Sacramento, CA 95814

11. The status conference set for August 8, 2014 at 1:30 p.m. is dropped from  
calendar.

**IT IS SO ORDERED.**

DATED: August 7, 2014

  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT