

1 CLAUDIA CENTER – 158255
2 AMERICAN CIVIL LIBERTIES UNION
3 FOUNDATION
4 DISABILITY RIGHTS PROGRAM
5 39 Drumm Street
6 San Francisco, California 94111
7 Telephone: (415) 343-0770
8 Facsimile: (415) 395-0950
9 Email: ccenter@aclu.org

6 MICHAEL W. BIEN – 096891
7 ERNEST GALVAN – 196065
8 BLAKE THOMPSON – 255600
9 ROSEN BIEN
10 GALVAN & GRUNFELD LLP
11 315 Montgomery Street, Tenth Floor
12 San Francisco, California 94104-1823
13 Telephone: (415) 433-6830
14 Facsimile: (415) 433-7104
15 Email: mbien@rbgg.com
16 egalvan@rbgg.com
17 bthompson@rbgg.com

Attorneys for Plaintiffs

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

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

Case No. 2:05-CV-02441 LKK-DAD

**DECLARATION OF MICHAEL W.
BIEN IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Judge: Hon. Lawrence K. Karlton

Trial Date: Not Set

1 I, Michael W. Bien, declare:

2 1. I am an attorney admitted to practice law in California, a member of the bar
3 of this Court, and a partner in the law firm of Rosen Bien Galvan & Grunfeld LLP, counsel
4 of record for Plaintiffs. I have personal knowledge of the matters set forth herein, and if
5 called as a witness I could competently so testify. I make this declaration in support of the
6 Joint Motion for Preliminary Approval of the Settlement Agreement. I am also counsel of
7 record for the Plaintiffs in *Coleman v. Brown*, in which the Plaintiff class of prisoners with
8 mental illness have pursued claims against CDCR officials under the Eighth Amendment.

9 **I. INTRODUCTION TO THE PROPOSED SETTLEMENT AND RELIEF**
10 **SOUGHT BY THIS MOTION**

11 2. The Joint Motion seeks preliminary approval of the settlement of this class
12 action—a settlement that has come seven years after the case was stayed, and after
13 approximately 22 months of the most recent round of negotiations with Defendants and the
14 *Coleman* Special Master. As a result of these negotiations, a settlement agreement was
15 reached, pursuant to which the parties agreed, as described below, to merge the issues
16 remaining in *Hecker* into the *Coleman* Remedial process. Attached hereto as **Exhibit 1** is
17 a true and correct copy of the Settlement Agreement signed by counsel on August 4, 2014.
18 As described below, I believe that this Settlement Agreement confers a significant benefit
19 on the class of prisoners with psychiatric disabilities, achieving important changes in
20 prison policies and procedures, while avoiding costly, prolonged litigation.

21 3. Pursuant to the terms of the Settlement Agreement, the parties now move for
22 entry of the proposed “Order Granting Joint Motion for Preliminary Approval of Class
23 Action Settlement,” filed herewith, which accomplishes the following:

- 24 a. grants preliminary approval of the proposed Settlement;
25 b. schedules a date for the fairness hearing to consider final approval of
26 the Settlement;
27 c. approves the form and content of the notice to the class

28

1 4. In the paragraphs that follow, I describe the factual background and
2 procedural history of this lawsuit and summarize the terms of the proposed Settlement. I
3 also provide information about why this settlement is fair and reasonable. Accompanying
4 this Declaration is the Memorandum of Points and Authorities in Support of Joint Motion
5 for Preliminary Approval of Class Action Settlement and Injunctive Relief, which
6 demonstrates why, under governing decisional law, this Court should preliminarily
7 approve the proposed Settlement and grant the relief requested in the Motion.

8 **II. PLAINTIFFS' SUIT AND THE LITIGATION HISTORY**

9 **A. History of Litigation**

10 5. On December 5, 2005, Plaintiffs filed their complaint, alleging violations of
11 the Americans with Disabilities Act and the Rehabilitation Act of 1973. Plaintiffs filed
12 amended complaints on February 23, 2006 and October 20, 2006.

13 6. On November 17, 2006, the defendants filed a Rule 12(b) and (f) motion to
14 dismiss the case; all briefing on the motion was completed on January 4, 2007.

15 7. The action was stayed by order filed March 15, 2007. The stay was issued to
16 obtain and consider “a report and recommendation as to whether the claims raised [in
17 *Hecker*] can be resolved within the remedial phase of [*Coleman*].” Following the Court’s
18 referral, the *Coleman* special master and the deputy special master conferred with the
19 parties in *Hecker* by meeting jointly and separately, by telephone and in person. The
20 parties submitted their positions to the special master, and provided additional information
21 and documents. On June 12, 2007, the special master and the deputy special master
22 tendered their report and recommendation. The report concluded that the parties’ were not
23 able to “negotiate[e] an agreement to consolidation or merger of the *Hecker* claims into the
24 *Coleman* case at this time.”

25 8. On December 14, 2007, Plaintiffs filed a motion to lift the stay. The Court
26 did not rule on the motion. In the meantime, the parties and the Court proceeded through a
27 period of intense litigation in *Coleman* regarding overcrowding and bed planning in CDCR
28 prisons. In November 2006, Plaintiffs in *Coleman* filed a motion for appointment of a

1 three-judge panel to address overcrowding. That motion was re-briefed in May and June
2 of 2007, and the three judge panel was convened in July 2007. The parties conducted
3 discovery and trial preparation from July 2007 through October 2008. The three judge
4 court held trial proceedings in November and December 2008, and issued a tentative ruling
5 in February 2009 and an opinion and order in August 2009. Additional briefing regarding
6 the remedy was conducted in the fall of 2009, and the Court entered a further remedial
7 order in January 2010. The decision of the three judge court was appealed to the United
8 States Supreme Court, and the Supreme Court affirmed the decision on May 3, 2011.
9 After the overcrowding trial ended, the parties in *Coleman* also embarked on a massive
10 bed planning process leading to the Court's July 13, 2012 order on the "sustainable
11 process" for addressing inpatient mental health care. *See Coleman* Docket No. 4214.

12 9. Plaintiffs filed a renewed motion to lift the stay on September 19, 2012. On
13 October 19, 2012, the Court denied Plaintiffs' motion without prejudice to its renewal, as
14 appropriate, not later than March 1, 2013, and the parties were directed to meet and confer
15 with the *Coleman* Special Master to determine whether any *Hecker* issues could be
16 resolved in the *Coleman* remedial process.

17 10. The parties met and conferred with the *Coleman* Special Master, but in the
18 midst of that meet and confer process in January 2013 the *Coleman* Defendants moved to
19 terminate the *Coleman* case. As such, the parties were not able to agree to resolve *Hecker*
20 issues within the *Coleman* remedial process.

21 11. On March 1, 2013, Plaintiffs filed a renewed motion to lift the stay. On
22 April 12, 2013, the Court denied Plaintiffs' motion "without prejudice to its renewal, as
23 appropriate, not later than September 5, 2013." The Court ordered the parties to continue
24 to meet and confer with the *Coleman* Special Master. The Court ordered that any renewed
25 Plaintiffs' motion to lift the stay be "accompanied by a joint report by the parties and
26 approved by the *Coleman* special master."

27 12. The parties met and conferred, and memorialized their meet and confer in a
28 Joint Status Report that was approved and reviewed by Special Master Matthew Lopes and

1 filed with the Court on September 5, 2013. In that report, the parties noted that they were
2 making progress with the assistance of the *Coleman* Special Master on certain disputed
3 issues in this case and stipulated that the deadline for Plaintiffs' motion to lift the stay be
4 extended to December 31, 2013. The parties continued to make progress in negotiations
5 and later agreed to extend that deadline to lift the stay until June 6, 2014. On July 10,
6 2014, the Court held a status conference, in which the parties informed the Court that they
7 had reached an agreement in principle to resolve the *Hecker* matter, which formed the
8 basis of this motion.

9 **B. History of Negotiations and Policy Changes Prior to 2012**

10 13. The issues raised in this case have been discussed by the parties in *Coleman*
11 dating back to even before the *Hecker* complaint was filed. For example, in the latter part
12 of 2005, the *Coleman* parties were heavily involved in negotiations over various aspects of
13 the *Coleman* Program Guide that addressed the discrimination problems that became part
14 of the *Hecker* case. On February 3, 2006, the *Coleman* Special Master issued a report, but
15 noted that at that time the legal determination as to the resolution of the discrimination
16 issues was beyond the jurisdiction of the special master.

17 14. During the period the case was stayed, the parties continued to address
18 discriminatory practices within *Coleman*, particularly where those practices undermined
19 access to constitutionally required mental health care.

20 15. For example, on March 30, 2007, CDCR issued two memoranda addressing
21 access to programming for prisoners with psychiatric disabilities. One memorandum,
22 entitled "CCCMS Housing and Program Accessibility," stated that prisoners at the
23 CCCMS level of care should be assessed for eligibility for programs on an individualized
24 basis, and that no inmate should be excluded from programming because of his or her
25 status in the Mental Health Services Delivery System. The other memorandum, entitled
26 "EOP Accessibility to General Population Prison Programs," stated that prisoners at the
27 EOP level of care are eligible for all prison programs and activities if the prisoner's
28

1 Interdisciplinary Treatment Team determines that the programming is consistent with the
2 prisoner's treatment.

3 16. Similarly, on September 5, 2008, CDCR issued a memorandum directing
4 that CDCR discontinue the assessment of four points to the classification score of
5 prisoners participating in the Mental Health Services Delivery System.

6 17. While the case was stayed, the parties also made progress on the problem of
7 CDCR housing some prisoners in higher security levels solely because of their psychiatric
8 disability. One cause of this problem was that, until recently, CDCR had no Level I or
9 Level II housing for prisoners at the EOP level of care. EOP prisoners therefore could
10 only be housed in Level III and Level IV housing units. Through the bed-planning process
11 in *Coleman*, however, the parties negotiated to open a Level II EOP program at the
12 Substance Abuse Treatment Facility ("SATF") in Corcoran and eventually another Level
13 II program at Valley State Prison in Chowchilla. As part of the Level II program in SATF,
14 EOP prisoners there also now have access to a substance abuse program for individuals
15 with co-occurring disorders (substance abuse and mental illness).

16 18. Another issue of discrimination that has been addressed in part in *Coleman* is
17 the disproportionate number of prisoners with psychiatric disabilities in administrative
18 segregation and the SHU. One of the causes of this problem is that prisoners with
19 psychiatric disabilities are continually punished for behavior caused by their disability.
20 Plaintiffs in *Coleman* have objected to the way prisoners with mental illness are
21 disciplined, and CDCR issued a new policy in November 2011. This policy, however, did
22 not resolve the disproportionate incidence of discipline against prisoners with psychiatric
23 disabilities. As a result, CDCR's discipline policies and practices were a subject of a
24 motion brought by the *Coleman* Plaintiffs on May 9, 2013. On April 10, 2014 the
25 *Coleman* Court issued an Order requiring, among other things, Defendants to develop a
26 plan to limit the placement of prisoners with mental illness in segregations for non-
27 disciplinary reasons, and that Defendants are prohibited from placing prisoners in the SHU
28 unless a clinician certifies that the behavior leading to the SHU placement was not the

1 product of mental illness. In the April 10, 2014 Order, the Court also ordered that CDCR
2 revise its use of force policies, in response to Plaintiffs' May 29, 2013 motion showing the
3 disproportionate use of force against mentally ill prisoners.

4 19. During this period, we also continued to be in regular communication with
5 *Coleman* class members about the issues raised in the *Hecker* case. This communication
6 included contacts with individual class members who were reporting that they were not
7 receiving reasonable accommodations for their disabilities, or who were being
8 discriminated against because of their mental illness. We also conducted a large scale
9 survey of hundreds of *Coleman* class members to determine what issues raised in the
10 complaint were still most problematic.

11 **C. Recent Negotiations with CDCR and *Coleman* Special Master**
12 **Starting in October 2012**

13 20. As noted above, in October 2012, the Court again ordered the parties to meet
14 and confer with the *Coleman* special master to determine if the issues raised in *Hecker*
15 could be addressed through the *Coleman* remedial process. The parties met and exchanged
16 information in November and December 2012, but that process was interrupted in early
17 2013 by the filing of a termination motion in *Coleman*. After the termination motion in
18 *Coleman* was denied on April 5, 2013, the parties resumed meeting and conferring soon
19 thereafter. In May and June 2013, the *Coleman* Special Master's team also visited a
20 number of CDCR institutions and gathered information regarding the implementation of
21 CDCR policies and procedures that were at issue in the *Hecker* case.

22 21. Since the Court's October 19, 2012 Order, the parties have made significant
23 progress in resolving the issues raised in the *Hecker* case. During these negotiations,
24 Defendants have been generally very receptive and willing to investigate the causes of the
25 problems we have identified, and to propose policy solutions for many of these problems.
26 Examples of specific issues where progress has been made are discussed below.

27 22. *Four Points Added to Classification Scores* - As noted above, CDCR had
28 issued a memorandum on September 5, 2008 stating that prisoners should not have four

1 points added to their classification score on account of their mental illness, and that all
2 prisoners for whom the four points have been added should have them removed. As of
3 April 2013, however, CDCR reported that there were still approximately 1,300 prisoners
4 who had initially received four points added on account of their mental illness that had not
5 been removed. Through these negotiations in 2013 and 2014, CDCR provided updates as
6 to their efforts to remove these points from the remaining prisoners. As of January 2014,
7 CDCR reported that there were no remaining prisoners who still had the additional four
8 points on their classification scores.

9 23. *Exclusion from Jobs, Education and Vocational Programs* – As noted above,
10 CDCR had issued memoranda in March 2007 regarding the eligibility of prisoners with
11 mental illness for participation in various CDCR programs. These memoranda, however,
12 were so vague that they did not eliminate the discriminatory practices that were preventing
13 prisoners with psychiatric disabilities from accessing prison employment, educational,
14 vocational, and other programs. As part of the meet and confer process with the *Coleman*
15 Special Master, in 2013 and 2014, however, CDCR gathered data about the job and
16 program assignments of prisoners with psychiatric disabilities. This data identified some
17 CDCR prisons where prisoners with psychiatric disabilities were not being assigned to jobs
18 and educational and vocational programs. Then, on March 3, 2014, CDCR issued another
19 memorandum setting out the process by which prisoners in the Enhanced Outpatient
20 Program (“EOP) must be evaluated for participation in jobs and programs. CDCR
21 reported to us that training regarding this procedure was scheduled to be conducted in June
22 2014.

23 24. *Accommodations for Prisoners Taking Heat Sensitive Medications* – Under
24 the “heat plan” set out in *Coleman*, prisoners who are taking heat-sensitive medications
25 (which includes many psychiatric medications) must be moved to a cooler environment
26 when the temperature outside reaches above ninety degrees. Plaintiffs, however, have
27 objected that instead of providing these prisoners with reasonably equivalent out-of-cell
28 time during “heat alerts,” prisoners on heat-sensitive medications have instead been simply

1 locked up in their cells. As a result of our discussions with CDCR in 2013 and 2014,
2 CDCR amended their heat plan policies in the spring of 2014 to provide that prisoners
3 taking heat-sensitive medications must be provided with reasonable accommodations
4 during heat alerts.

5 25. *Milestones Credits* – Milestone credits are sentence credits issued to CDCR
6 prisoners who complete approved rehabilitative programs. Prisoners can earn one to six
7 weeks of credits during each 12 month period. Plaintiffs had objected that prisoners in the
8 Enhanced Outpatient Program did not have access to these credits. As a result of our
9 negotiations with Defendants in 2013 and 2014, in May 2014 CDCR amended its
10 regulations to provide that prisoners who complete EOP programs will be eligible for
11 milestones credits.

12 26. *Requests for Accommodations and Grievances* – As part of *Armstrong v.*
13 *Brown*, an ADA lawsuit brought on behalf of prisoners with various physical disabilities,
14 CDCR created a “Request for Accommodation” CDC 1824 form, which allowed prisoners
15 to request disability accommodations, appeal denials of accommodations, and address
16 issues of disability discrimination. If prisoners with psychiatric disabilities requested
17 accommodation, however, those appeals and requests were “screened out” out of the ADA
18 grievance process. In 2014, however, CDCR agreed to revamp its ADA appeals process,
19 and to include requests from prisoners with psychiatric disabilities in that request for
20 accommodation process.

21 **III. TERMS OF THE SETTLEMENT AGREEMENT**

22 27. As part of the meet and confer process, in addition to the substantive changes
23 outlined above, the parties also reached an agreement that the issues raised in *Hecker* could
24 be addressed through the *Coleman* Remedial Process. The key terms of the settlement,
25 which is set out in full in Exhibit A, are as follows:

- 26 • The parties agreed that the *Coleman* Program Guide shall be amended so that
27 certain policies, practices, and procedures (such as those discussed in
28

1 paragraphs 22 -26 above) are modified to ensure that the rights of prisoners
2 with psychiatric disabilities are not violated.

- 3 • As to certain other disputed issues, the parties agreed to continue to negotiate
4 with the *Coleman* Special Master to attempt to resolve their differences.
- 5
6 • As part of the monthly production of data in *Coleman*, Defendants will
7 produce data regarding the number of prisoners in the Mental Health
8 Services Delivery System assigned to jobs and programs at each institution,
9 the number of MHSDS prisoners receiving milestones credits, and the
10 number of MHSDS prisoners housed at a higher security level than their
11 classification score would require.
- 12
13 • If the parties have a dispute about the implementation of CDCR policies or
14 practices that Plaintiffs claim violate the ADA or Rehabilitation Act, the
15 parties agree that the *Coleman* Court should address whether the policies or
16 practices violate the ADA or Rehabilitation Act, and if so, what prospective
17 relief is appropriate.
- 18
19 • As to the exclusion of prisoners with psychiatric disabilities from CDCR's
20 fire/conservation camps, the parties determined that they could not reach an
21 agreement, and that those claims would be dismissed without prejudice.
- 22
23 • The parties agreed that a Notice of Settlement of the *Hecker* Action would be
24 submitted for approval by the Court, and subject to such approval, to be
25 posted in all CDCR institutions. The parties agreed to request a fairness
26 hearing on the *Hecker* settlement to be set at a reasonable time after the
27 posting of notice, to allow for the receipt and consideration of class member
28 objections. Following that hearing, if the settlement was approved, the
Hecker case would be dismissed.

- 1 • Plaintiffs' counsel's claim for reasonable attorney's fees incurred in the
2 *Hecker* matter would be addressed through the quarterly fees process already
3 established in *Coleman*.

4 **IV. THE SETTLEMENT CLASS MEETS ALL REQUIREMENTS FOR**
5 **CONDITIONAL CERTIFICATION OF A RULE 23(b)(2) CLASS FOR**
6 **SETTLEMENT PURPOSES**

7 28. Accompanying this Declaration is Plaintiffs' Memorandum of Points and
8 Authorities in Support of Joint Motion for Preliminary Approval of Class Action
9 Settlement and Injunctive Relief that demonstrates why, under governing law, this Court
10 should preliminarily approve the proposed Settlement and grant the relief requested in the
11 instant motion.

12 29. This settlement agreement, which was reached after a meet and confer
13 process with the *Coleman* Special Master that lasted almost two years, was the result of
14 extended arms-length negotiations to find a way to address Plaintiffs' claims of disability
15 discrimination, consistent with the Court's suggestions that these claims be addressed
16 within the *Coleman* Remedial Process.

17 30. I believe that this settlement is fair, reasonable, and very beneficial to the
18 class of prisoners with mental illness. This settlement agreement allows the parties to
19 implement appropriate remedies to protect the Plaintiff class, without requiring additional,
20 costly litigation with results that would be uncertain. As outlined above, as part of this
21 settlement process, Defendants have made significant and positive efforts to put in place
22 policies to solve the problems that were identified in the *Hecker* complaint that was first
23 filed in 2005. This settlement requires major changes to the *Coleman* Program Guide to
24 make sure these policies are implemented on a permanent basis, and a process to resolve
25 several remaining disputed issues. CDCR will now produce data on a monthly basis to
26 evaluate whether these modified policies are having the intended effect of increasing
27 access for prisoners with psychiatric disabilities and eliminating discrimination against
28 prisoners with mental illness. The implementation of these changes will also now also be

1 monitored by the *Coleman* Special Master's team. This settlement also provides a
2 mechanism to resolve disputes if future problems persist, in that Plaintiffs can bring the
3 matter before the *Coleman* court for resolution. This agreement effectively amends
4 *Coleman* to cover the issues raised in *Hecker*, providing class members with an
5 opportunity to obtain relief from the Court if violations of the ADA and Rehabilitation Act
6 continue. If such litigation is required, the monitoring by the Special Master's team and
7 data collected by CDCR will allow the parties to litigate any disputed matters in an
8 efficient and effective manner.

9 31. In the absence of an approved settlement, Plaintiffs would face lengthy and
10 substantial litigation, with no guarantee that any relief would be obtained. This case has
11 already been stayed for more than seven years, without any court-ordered relief for CDCR
12 prisoners with psychiatric disabilities. There are a number of risks to continuing to litigate.
13 For example, Defendants have a pending motion to dismiss the case. If that motion were
14 to be denied, Plaintiffs would have to file a successful motion for class certification, and
15 then navigate motions for summary judgment and trial. Such litigation hurdles always
16 create risks and uncertainty, and this settlement allows for immediate relief to the class.

17 32. This settlement is not contingent on obtaining attorneys' fees for Plaintiffs'
18 counsel. The agreement provides that Plaintiffs' counsel's request for reasonable
19 attorneys' fees will be addressed through the *Coleman* quarterly fees process. The
20 agreement also provides that Plaintiffs' counsel have agreed to seek only those rates
21 allowed under the Prison Litigation Reform Act. If this case would have been litigated to
22 verdict, Plaintiffs' counsel would have been entitled to their regular hourly rates, not
23 limited to the rates under the PLRA. *See Armstrong v. Davis*, 318 F.3d 965, 973-74 (9th
24 Cir. 2003).

25 33. In evaluating the fairness of the proposed settlement, Plaintiffs' Counsel
26 have also communicated with class members, including the named class representatives
27 who are still in prison. All of the named Plaintiffs who are currently incarcerated signed
28

1 the Settlement Agreement and voiced support for the changes in policy and procedure
2 identified in the Settlement Agreement.

3 34. Plaintiffs' Counsel have extensive experience in class action litigation on
4 behalf of prisoners (as well as many other types of class action lawsuits). We have served
5 as lead or lead co-counsel in major cases representing prisoners or classes of prisoners in
6 actions resulting in systemic injunctive relief and the development of policies and
7 procedures to implement such relief. One example specifically relevant to this case,
8 concerning the rights of prisoners under the ADA and Rehabilitation Act, is *Armstrong v.*
9 *Schwarzenegger*, N.D. Cal. Case No. C94-2307 CW. Plaintiffs' Counsel also have
10 considerable expertise in monitoring and enforcing complex post-judgment remedial
11 policies and procedures concerning the rights of large classes of prisoners and parolees.
12 Based on the experience of Plaintiffs' Counsel, their contacts with class members, experts
13 and other professionals in the field, and the legal uncertainties, delay, and risks associated
14 with pursuing the class claims through trial and/or appeal, Plaintiffs' Counsel believe the
15 proposed settlement is fair, adequate and reasonable, is in the best interest of the class, and
16 confers significant advantages to the class.

17 I declare under penalty of perjury under the laws of the United States and the State
18 of California that the foregoing is true and correct, and that this declaration is executed at
19 San Francisco, California this 5th day of August, 2014.

20
21
22
23
24
25
26
27
28

/s/ Michael W. Bien
Michael W. Bien

Exhibit A

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 EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

**ROBERT HECKER, et al., on behalf of
themselves and others similarly situated,**

Plaintiffs,

v.

**CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,**

Defendants.

SETTLEMENT AGREEMENT

Judge:
The Honorable Lawrence K. Karlton

Action Filed: December 1, 2005

2:05-cv-2441 LKK DAD (PC)

2:90-cv-0520 LKK DAD

RALPH COLEMAN, et al.,,

Plaintiffs,

v.

EDMUND G. BROWN, JR., et al.,

Defendants.

1 **I. RECITALS**

2 1. This action was filed on December 1, 2005. In the presently operative
3 pleading, the Second Amended Complaint, Plaintiffs Robert Hecker, Christopher Lee
4 Jenkins, Peter Taylor, Ying Watt, Askia Ashanti, Ronald Auld, John Mueller, Daniel
5 Hunley, Joseph Cox, Eddie Thomas, Brian K. Stafford, Michael Lovelace, Bobby Daniels,
6 Quinton Gray, John Wesley Williams, Samuel D'Angelo and Jon Schooley, alleged that
7 their rights were being violated under the Americans with Disabilities Act and section 504
8 of the Rehabilitation Act. Plaintiffs alleged, among other things, that Defendants:

9
10 have adopted, implemented, ratified, and/or failed to abolish numerous
11 unnecessary and discriminatory policies, practices and procedures affecting
12 the inmates participating in the MHSDS [Mental Health Services Delivery
13 System] including the EOP [Enhanced Outpatient Program] and the
14 CCCMS [Correctional Clinical Case Management System].

15 (Second Amended Complaint, Docket No. 35, at 12.) Plaintiffs alleged “systemwide,
16 statewide policies, practices, and procedures [that] function to discriminate against
17 inmates with severe psychiatric disabilities; exclude them from programs, services, and
18 activities; retaliate against them; and segregate them unnecessarily.” Plaintiffs further
19 sought to represent “a class of all present and future California inmates of the CDCR with
20 psychiatric conditions that are disabilities as defined by the ADA and the Rehabilitation
21 Act who are excluded and/or screened out from any prison program, service, or activity on
22 the basis of their assignment to or participation in the MHSDS program, including the
23 EOP and CCCMS.” (*Id.* at 14.)

24 2. Before the *Hecker* action was filed, the parties in *Coleman v. Brown*, E.D.
25 Cal. No. cv 90-0520 LLK, had attempted to negotiate provisions of the *Coleman* Program
26 Guide (which describes policies and procedures for provision of mental health care for
27 California prison inmates) regarding program access and disability discrimination for
28 prison inmates with psychiatric disabilities. The parties did not reach a resolution.

1 3. On February 3, 2006, the *Coleman* Special Master issued his report and
2 recommendation concerning the Program Guide, concluding that the parties' disputes
3 concerning alleged disability discrimination could not be resolved by the Special Master
4 at that time.

5 4. On November 27, 2006, Defendants filed a motion to dismiss the *Hecker*
6 action.

7 5. On March 15, 2007, the Court issued an order staying the *Hecker* litigation,
8 and referred the matter to the *Coleman* Special Master to determine whether the claims
9 raised in the present litigation could be resolved within the remedial phase of *Coleman*.
10 The *Coleman* Special Master filed a report on June 12, 2007 stating that the parties were
11 not able to resolve the dispute at that time.

12 6. The *Hecker* Plaintiffs filed motions to lift the stay on December 14, 2007,
13 and again on September 9, 2012 and March 1, 2013. On October 19, 2012, the Court
14 ordered that the parties meet and confer under the guidance of the *Coleman* Special
15 Master to determine again whether the issues in the *Hecker* action could be resolved
16 through the *Coleman* remedial process.

17 7. Since that date, the parties have engaged in settlement negotiations with the
18 assistance of the *Coleman* Special Master. On May 5, 2014, the Court entered an order
19 extending the stay to June 6, 2014.

20 8. While the case has been stayed, the parties have resolved issues concerning
21 some of the specific policies, practices, and procedures that may have excluded some EOP
22 and CCCMS participants from some of the benefits of the services, programs, and
23 activities operated by CDCR, and may have discriminated against individuals with
24 psychiatric disabilities. These specific issues are listed below at Paragraph 21. To
25 facilitate resolution of these issues, the parties agree that the *Coleman* Program Guide
26 shall be amended to reflect these changed policies, practices, and procedures. The parties
27
28

1 further agree that implementation of the modified replacement policies, practices and
2 procedures may be enforced by the Court as part of the *Coleman* class action litigation.

3 9. During the period of the *Hecker* stay, the parties also identified specific
4 policies, practices, and procedures as to which there is no agreement regarding any past or
5 present effect of exclusion or discrimination. Therefore, as to these issues, which are
6 identified in Paragraph 22 below, the parties have reached no agreement that a remedy is
7 required. The parties, however, have agreed that these issues are appropriate for
8 resolution within the *Coleman* remedial process.

9 10. During the period of the *Hecker* stay, the parties also identified specific
10 policies, practices and procedures that Defendants maintain are legally justified, do not
11 unlawfully have the effect of excluding or discriminating against EOP and CCCMS
12 prisoners, and therefore cannot be addressed in the *Coleman* remedial process. These
13 specific issues are listed at Paragraph 23 below. The parties agree that as to these specific
14 issues, there is no remedy in *Coleman*, and any claims as to them will be dismissed in
15 *Hecker* without prejudice.

16 11. The parties agree that solely for purposes of settlement and judicial approval
17 of this Agreement, they stipulate that the putative class in *Hecker*—specifically, all
18 present and future CDCR inmates with psychiatric conditions that are disabilities as
19 defined by the ADA and the Rehabilitation Act and who are allegedly excluded and/or
20 screened out from any prison program, service, or activity on the basis of their assignment
21 to or participation in the MHSDS program, including the CCCMS and EOP—may be
22 certified as a class for settlement purposes under Federal Rule of Civil Procedure 23(b)(1),
23 and that an order may be entered, after notice to the class and an opportunity to object,
24 finding the settlement to be fair and reasonable as to this settlement class.

25 12. All parties and their counsel recognize that, in the absence of an approved
26 settlement, they face lengthy and substantial litigation, including motions to dismiss,
27 motions for class certification, formal discovery, motions for summary judgment, and trial
28

1 and potential appellate proceedings, all of which will consume time and resources and
2 present the parties with ongoing litigation risks and uncertainties. The parties wish to
3 avoid these risks, uncertainties, and consumption of time and resources through a
4 settlement under the terms and conditions of this Agreement.

5 ACCORDINGLY, without any admission or concession by Defendants of any
6 liability or wrongdoing with respect to the allegations in the complaint, and without any
7 admission or concession by Defendants of any systemic violation of the ADA or the
8 Rehabilitation Act, the complaint, and all claims made in it, shall be finally and fully
9 compromised, settled, and released, and the action dismissed with prejudice upon and
10 subject to the terms and conditions of this Agreement, which the parties enter into freely,
11 voluntarily, knowingly, and with the advice of counsel.

12 **II. PARTIES**

13 13. Plaintiffs Robert Hecker, Christopher Lee Jenkins, Peter Taylor, Ying Watt,
14 Askia Ashanti, Ronald Auld, John Mueller, Daniel Hunley, Joseph Cox, Eddie Thomas,
15 Brian K. Stafford, Michael Lovelace, Bobby Daniels, Quinton Gray, John Wesley
16 Williams, Samuel D'Angelo, and Jon Schooley have been at relevant periods inmates of
17 the California Department of Corrections and Rehabilitation and participates in the Mental
18 Health Services Delivery System (MHSDS) at both the Enhanced Outpatient Program
19 (EOP) and Clinical Correctional Case Management System (CCCMS) levels of care as
20 defined by the *Coleman* Program Guide. Plaintiffs allege that they are persons with
21 disabilities within the meaning of all applicable statutes, and are qualified persons with
22 disabilities within the meaning of Title II of the ADA and Section 504 of the
23 Rehabilitation Act of 1973. Plaintiffs allegedly represent a class of all present and future
24 CDCR inmates with psychiatric conditions that are disabilities as defined by the ADA and
25 the Rehabilitation Act who are excluded and/or screened out from any prison program,
26 service, or activity on the basis of their assignment to or participation in the MHSDS
27 program, including the EOP and CCCMS.
28

1 14. Defendants are CDCR, the Governor of the State of California, CDCR's
2 secretary, CDCR's undersecretary, CDCR's Director of Adult Institutions, and the
3 Warden of the California Medical Facility. Each Defendant is a state official sued in his
4 or her official capacity.

5 **III. JURISDICTION**

6 15. This Court has jurisdiction under 28 U.S.C §§ 1331, 2201, and 2202.

7 **IV. VENUE**

8 16. Venue is proper under 28 U.S.C. § 1391(b), because a substantial part of the
9 events alleged by Plaintiff occurred within the Eastern District of California.

10 **V. CERTIFICATION OF A SETTLEMENT CLASS, NOTICE, OBJECTIONS,
11 FAIRNESS HEARING**

12 17. The parties shall jointly request certification of a settlement class to be
13 defined as all present and future CDCR inmates with psychiatric conditions that are
14 disabilities as defined by the ADA and the Rehabilitation Act and who are allegedly
15 excluded and/or screened out from any prison program, service, or activity on the basis of
16 their assignment to or participation in the MHSDS program, including the CCCMS and
17 EOP (the *Hecker* class.)

18 18. The parties shall lodge their joint request for certification of the *Hecker*
19 class along with a Notice of Settlement of the *Hecker* Action to be submitted for approval
20 by the Court, and subject to such approval, to be posted in all CDCR institutions.

21 19. The parties shall jointly request a fairness hearing on the *Hecker* settlement
22 to be set at a reasonable time after the posting of notice to allow for the receipt and
23 consideration of class member objections.

24 20. If this Agreement is not approved by the Court, the parties shall be restored
25 to their respective positions in the action as of the date on which the Agreement was
26 entered, the terms and provisions of this Agreement shall have no force and effect, and
27 shall not be used in this action or in any proceeding for any purpose, and the litigation of
28 this action would resume as if there had been no settlement, with no stipulated class.

1 **VI. TERMS AND CONDITIONS**

2 21. The parties agree that the *Coleman* Program Guide shall be amended, where
3 necessary, so that the following polices, practices, and procedures have been or will be
4 modified:

5 a. Prior Policy, Practice, or Procedure: Automatic Addition of Four
6 Points to Custody Score of Persons in the MHSDS.

7 Modified Policy, Practice, or Procedure: Defendants no longer add
8 four points to the classification scores of inmates for participation in the Mental Health
9 Services Delivery System, and they have removed the four points previously added to
10 inmate classification scores on that basis.

11 b. Prior Policy, Practice, or Procedure: Lack Of Reasonable
12 Accommodations During Heat Alerts.

13 Modified Policy, Practice, or Procedure: Defendants have agreed to
14 revise their policies to provide that inmates subject to the heat plan promulgated in
15 *Coleman* shall receive meaningful access to equivalent programming—including out-of-
16 cell time—during heat alert days.

17 c. Prior Policy, Practice, or Procedure: Lack of Access to Programming
18 and Jobs.

19 Modified Policy, Practice, or Procedure: Defendants have agreed to
20 revise the Interdisciplinary Treatment Team (IDTT) process to ensure that the IDTT team
21 evaluates and, if appropriate, clears Enhanced Outpatient Program (EOP) inmates for
22 participation in prison programs and services, including jobs and education. Defendants
23 agree that, as part of the *Coleman* monthly data production, or through an equivalent
24 means, Defendants shall produce data regarding the number of inmates in the EOP and
25 Correctional Clinical Case Management System (CCCMS) programs, as defined by the
26 *Coleman* Program Guide —assigned to jobs, vocational, education, and substance abuse
27

1 programs at each institution, as compared to inmates not in the Mental Health Services
2 Delivery System.

3 d. Prior Policy, Practice, or Procedure: Systematically Housing Inmates
4 Out of Security Level Due to Psychiatric Disabilities.

5 Modified Policy, Practice, or Procedure: Defendants have opened a
6 Level II program at the Substance Abuse Treatment Facility (SATF), and a Level II male
7 EOP program at Valley State Prison to provide greater opportunities for inmates
8 participating in the Mental Health Services Delivery System to be housed consistent with
9 their security levels. Defendants agree that, as part of the *Coleman* monthly data
10 production, or through an equivalent means, Defendants shall produce data regarding the
11 number of *Coleman* class members housed at a higher security level than their points
12 would require, as compared to inmates not in the Mental Health Services Delivery
13 System.

14 e. Prior Policy, Practice, or Procedure: Restricting Eligibility for
15 Milestone Credits In Manners That Tend to Exclude Persons With Psychiatric Disabilities.

16 Modified Policy, Practice, or Procedure: Defendants have agreed to
17 make available to inmates with psychiatric disabilities milestone credit earning by
18 granting credits for existing Mental Health Services Delivery System groups, such as
19 anger management and criminal thinking groups. Defendants are also working on new
20 curriculum for additional programs that will earn them milestone credits. Defendants
21 agree that, as part of the *Coleman* monthly data production, or through an equivalent
22 means, Defendants shall produce data on the percentage of CCCMS and EOP inmates
23 who are earning milestone credits, as compared to inmates not in the Mental Health
24 Services Delivery System.

25 f. Prior Policy, Practice, or Procedure: Excluding Allegations of
26 Discrimination on Account of Psychiatric Disability from the ADA Grievance Process.

27 Modified Policy, Practice, or Procedure: Defendants are
28

1 implementing a revised ADA grievance process through which inmates with psychiatric
2 disabilities may request reasonable modifications to services, programs, and activities and
3 make requests for reasonable accommodations. These inmates will also be permitted to
4 grieve any decision rendered under this process via an inmate appeal.

5 g. Prior Policy, Practice, or Procedure: Restricting eligibility for
6 periodic classification score reductions for EOP inmates for successful programming.

7 Modified Policy, Practice, or Procedure: EOP inmates are now entitled
8 to earn up to four point reductions annually from their classification score for successful
9 programming.

10
11 22. The parties have not agreed that the following specific policies, practices,
12 and procedures have had the effect of discriminating against or excluding EOP and
13 CCCMS participants from the benefits of the services, programs, and activities operated
14 by CDCR, and therefore that any remedy is required regarding them. The parties
15 nevertheless agree that allegations of discrimination related to the following specific
16 policies, practices, and procedures are appropriate for resolution within the *Coleman*
17 remedial process.

18 a. Privileges for inmates with psychiatric disabilities with extended
19 stays in reception centers (i.e. beyond ninety days) due solely to a psychiatric disability;

20 b. Access to substance abuse programs by inmates with psychiatric
21 disabilities;

22 c. Access to minimum security facilities and community-based
23 programs by inmates with psychiatric disabilities;

24 d. Access to reentry hub programs by inmates with psychiatric
25 disabilities;

26 e. Effective communication and discrimination in the Rules Violation
27 Report (RVR) process for inmates with psychiatric disabilities; and
28

1 f. Discrimination in use of restraints, including treatment modules, for
2 prisoners with psychiatric disabilities.

3 23. Resolution of issues identified in Paragraphs 21 and 22 through the
4 *Coleman* remedial process shall include a reasonable continued period of negotiations
5 facilitated by the Special Master. Any issues resolved in such negotiations may result in
6 further amendments to policies, practices, and procedures to be implemented as part of the
7 *Coleman* remedy. Issues that are not resolved after a reasonable period of negotiations
8 may be presented by Plaintiffs to the *Coleman* court for resolution. The parties agree that
9 for purposes of resolving issues of discrimination or exclusion against prison inmates with
10 psychiatric disabilities, the *Coleman* Court should address whether the specific systemic
11 policies, practices and procedures identified in this paragraph violate the ADA and
12 Rehabilitation Act, and if so what prospective relief is appropriate. Plaintiffs shall have
13 the burden of proving that the specific systemic policies, practices and procedures
14 identified in Paragraphs 21 and 22 violate the ADA and Rehabilitation Act. Defendants
15 shall have an opportunity to respond to any such evidence presented to the Court and to
16 present their own evidence. Brief or isolated instances of alleged disability discrimination
17 shall not constitute an ongoing, system-wide policy or practice in violation of the ADA or
18 Rehabilitation Act.

19 24. The parties agree that the following issues are not appropriate for resolution
20 in the *Coleman* remedial process, and that upon dismissal of the *Hecker* action, these
21 issues will not become part of the *Coleman* remedy, and that as to these issues the
22 dismissal of *Hecker* will be without prejudice to resolution of these issues in subsequent
23 litigation:

24 a. Exclusion of CCCMS inmates from participation in the program,
25 service, or activity of assignment to conservation/fire camp.
26
27
28

1 Defendants agree that any of the individual *Hecker* plaintiffs may pursue ADA or
2 Rehabilitation Act claims concerning fire camp/ conservation camp against Defendants in
3 a separate lawsuit.

4
5 **VII. DISMISSAL**

6 25. The parties shall jointly request that the *Hecker* Court, after the
7 fairness hearing described in Paragraph 19 above, shall dismiss the *Hecker* action in a
8 form of order jointly proposed by the parties that specifies that the *Hecker* certified class
9 action is dismissed in return for the relief that the *Hecker* class will have received under
10 the terms of this Agreement by virtue of the implementation of specific policy, practice
11 and procedure changes as part of the *Coleman* remedial process. The form of order shall
12 specify that the dismissal is with prejudice except as to claims regarding assignment of
13 MHSDS inmates to fire/conservation camps.

14 26. It is the intention of the parties in signing this Agreement that upon approval
15 by the Court it shall be effective as a full and final accord and satisfaction and release
16 from all claims asserted in the Second Amended Complaint except for claims concerning
17 conservation/fire camp, which will be dismissed without prejudice as described above.
18 By signing this Agreement, Plaintiffs release CDCR, Defendants, and any other past or
19 current State officials and employees from all claims, past, present and future, known or
20 unknown, that arise or could arise from the facts alleged in the complaint. Nothing in this
21 Agreement will affect the rights of any named *Hecker* Plaintiffs regarding any legal claim
22 that arises after the date that the settlement is executed or regarding claims of *Hecker*
23 Plaintiffs other than those asserted in the Second Amended Complaint under the ADA
24 and the Rehabilitation Act for injunctive and declaratory relief.

25 27. In furtherance of this intention, the parties acknowledge that they are
26 familiar with, and expressly waive, the provisions of California Civil Code section 1542,
27 which states:
28

1 A general release does not extend to claims which the creditor
2 does not know or suspect to exist in his or her favor at the time
3 of executing the release, which if known by him or her must
4 have materially affected his or her settlement with the debtor.

5 28. This Agreement is the compromise of various disputed claims and shall not
6 be treated as an admission of liability by any of the parties for any purpose. The signature
7 of or on behalf of the respective parties does not indicate or acknowledge the validity or
8 merits of any claim or demand of the other party. The parties further agree that the
9 *Coleman* class does not include persons on parole and that nothing in this agreement
10 limits the ability of Plaintiffs to pursue any claims on behalf of persons on parole.

11 29. The parties agree that this Agreement regarding specific policies, practices,
12 and procedures that have allegedly had the effect of excluding some EOP and CCCMS
13 participants from some of the benefits of the services, programs and activities operated by
14 CDCR shall not affect or otherwise impact Defendants' ability to seek termination of
15 prospective relief entered in *Coleman*. Termination of the *Coleman* litigation will
16 terminate the issues that have been or are being resolved under this Agreement. By this
17 agreement, Defendants do not waive any defenses already asserted in this litigation.

18 **VIII. ATTORNEY'S FEES AND COSTS**

19 30. The parties agree that all claims for reasonable fees and costs for work
20 previously done in this litigation, and any future work done by Plaintiffs' counsel in
21 *Coleman* regarding Plaintiffs' alleged violations of the ADA and Rehabilitation Act by
22 Defendants, may be resolved through the periodic fees process in *Coleman*. The parties
23 agree that Plaintiffs' counsel's billing rates for such work will be subject to the maximum
24 billing rate under the Prison Litigation Reform Act. Defendants waive any objection that
25 such work is not compensable in *Coleman* because it involves allegations of violations of
26 the ADA and Rehabilitation Act. Work performed by Plaintiff's counsel before execution
27
28

1 of this Settlement Agreement may be addressed in the *Coleman* quarterly fees negotiation
2 immediately following the execution of the Settlement Agreement.

3 **IX. SUCCESSORS AND ASSIGNS**

4
5 31. This Agreement shall be binding on the parties and their respective officers,
6 agents, administrators, successors, assignees, heirs, executors, trustees, attorneys,
7 consultants, and any committee or arrangement of creditors organized with respect to the
8 affairs of any such party.

9 32. Plaintiffs represent that they own the interests, rights, and claims that are the
10 subject matter of this Agreement. Plaintiffs and their principals, agents, attorneys,
11 successors, assigns, heirs, descendants, executors, representatives, partners, and associates
12 fully release and discharge the other parties and their principals, agents, attorneys,
13 successors, assigns, heirs, descendants, executors, representatives, partners, and associates
14 from all rights, claims, and actions that Plaintiffs and their successors now may have or at
15 any time in the future may have against the other parties and their successors except for
16 claims concerning conservation/fire camp dismissed without prejudice.

17 **X. REPRESENTATIONS AND WARRANTIES**

18 33. The consideration recited in this Agreement is the only consideration for
19 this Agreement, and no representations, promises, or inducements have been made to the
20 parties, or any of their representatives, other than those set forth in this Agreement.

21 34. This Agreement may be executed simultaneously in one or more
22 counterparts, each of which shall be deemed an original, but all of which together shall
23 constitute one and the same instrument.

24 35. Each party to this Agreement shall execute or cause to be executed such
25 further and other documents as are needed to carry out the expressed intent and purpose of
26 this Agreement.
27
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

36. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

37. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

38. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

39. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: August 1, 2014 By: Robert A. Hecker

Dated: _____ By: _____

Approved as to form:


Dated: _____ By: _____
Jay C. Russell, Supervising Deputy Attorney
General
Counsel for Defendants

Approved as to form:

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

The undersigned agree to the above:

Dated: 8/4/14

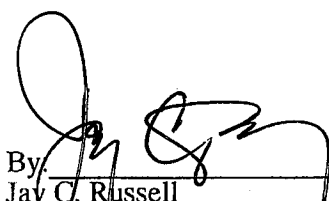
By: 
Dr. Jeffrey A. Beard
Secretary, California Department of Corrections and
Rehabilitation

Dated: _____

By: _____

Approved as to form:

Dated: August 5, 2014

By: 
Jay C. Russell
Supervising Deputy Attorney General
Counsel for Defendants

Approved as to form:

Dated: _____

By: _____
Michael W. Bien
Rosen Bien Galvan & Grunfeld LLP
Counsel for the *Coleman* and *Hecker* Plaintiffs

41033326.doc

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

36. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

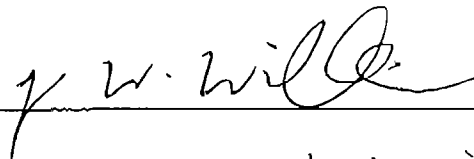
37. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

38. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

39. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: 7/29/14

By: 

Dated: 7/29/14

By: JOHN WESLEY WILLIAMS

Approved as to form:

Dated: _____

By: _____
Jay C. Russell, Supervising Deputy Attorney
General
Counsel for Defendants

Approved as to form:

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

36. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

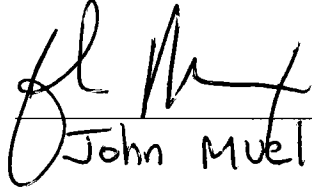
37. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

38. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

39. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: 7/29/2014

By: 
John Mueller

Dated: _____

By: _____

Approved as to form:

Dated: _____

By: _____
Jay C. Russell, Supervising Deputy Attorney
General
Counsel for Defendants

Approved as to form:

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

36. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

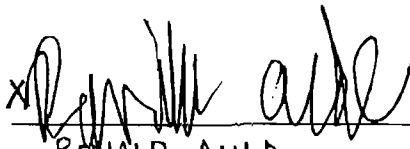
37. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

38. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

39. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: 7-30-14

By: 
RONALD AULD

Dated: _____

By: _____

Approved as to form:

Dated: _____

By: _____
Jay C. Russell, Supervising Deputy Attorney
General
Counsel for Defendants

Approved as to form:

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

36. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

37. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

38. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

39. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: July 30th, 2014

By: Brian Keith Stafford
BRIAN STAFFORD

Dated: _____

By: _____

Approved as to form:

Dated: _____

By: _____
Jay C. Russell, Supervising Deputy Attorney
General
Counsel for Defendants

Approved as to form:

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

36. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

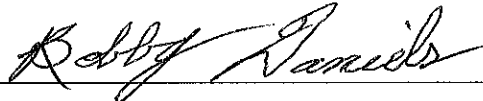
37. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

38. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

39. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: 7-30-2014

By: 

Dated: _____

By: _____

Approved as to form:

Dated: _____

By: _____
Jay C. Russell, Supervising Deputy Attorney
General
Counsel for Defendants

Approved as to form:

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

36. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

37. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

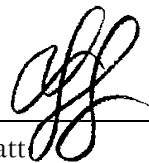
38. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

39. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: July 29, 2014 _____

By: _____


Ying Watt

Dated: _____

By: _____

Approved as to form:

Dated: _____

By: _____

Jay C. Russell, Supervising Deputy Attorney
General
Counsel for Defendants

Approved as to form:

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

36. This Agreement constitutes a single, integrated agreement expressing the entire agreement of the parties, and there are no other agreements, written or oral, express or implied, between the parties, except as set forth in this Agreement.

37. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

38. Unless expressly stated otherwise in this Agreement, the terms, conditions, and provisions of this Agreement are governed by and interpreted under California state law.

39. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

The undersigned agree to the above:

Dated: 8-1-2014 By: *Aska S. Asanti*

Dated: 8-1-2014 By: *Aska S. Asanti*

Approved as to form:

Dated: _____ By: _____
Jay C. Russell, Supervising Deputy Attorney
General
Counsel for Defendants

Approved as to form:

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

Dated: _____

By: _____

Michael W. Bien
Rosen Bien Galvan & Grunfeld LLP
Counsel for the *Coleman and Hecker* Plaintiffs

SF2006200078

Dated: July 28, 2014 By: ~~Quinton Gray~~
Quinton Gray

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

Dated: 8/4/14

By: 

Michael W. Bien
Rosen Bien Galvan & Grunfeld LLP
Counsel for the *Coleman* and *Hecker* Plaintiffs

SF2006200078