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16 UNITED STATES DISTRICT COURT  
17 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION  
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19 ROBERT HECKER, et al.,  
20 Plaintiffs,  
21 v.  
22 CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
23 et al.,  
24 Defendants.

Case No. 2:05-CV-02441 LKK-DAD  
**JOINT MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENT  
AGREEMENT**  
Judge: Hon. Lawrence K. Karlton  
Trial Date: Not Set

1 In July 2014, the parties in this case reached an agreement to certify a settlement  
2 class and settle the instant action. Through this joint motion, the parties request  
3 certification of the settlement class, preliminary approval of the settlement agreement,  
4 approval of notice to the class, and the scheduling of a final fairness hearing. The full  
5 Settlement Agreement is filed herewith as Exhibit 1 to the Declaration of Michael W. Bien  
6 in Support of the Joint Motion for Preliminary Approval of Class Action Settlement.  
7 Memorandum of Points and Authorities in Support of the Joint Motion, provides further  
8 detail in support of the proposed order.

9 A court should preliminarily approve a class action settlement if it “appears to be  
10 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies,  
11 does not improperly grant preferential treatment to class representatives or segments of the  
12 class, and falls within the range of possible approval.” *In re Tableware Antitrust Litig.*,  
13 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). This standard is met in this case, as the  
14 proposed settlement is the product of arm’s-length, serious, informed and non-collusive  
15 negotiations between experienced and knowledgeable counsel who have actively  
16 prosecuted and defended this litigation, under the guidance of the Court’s Special Master  
17 in *Coleman v. Brown*.

18 Federal Rule of Civil Procedure 23(a) permits a case to be maintained as a class  
19 action if:

20 (1) the class is so numerous that joinder of all members is impracticable, (2) there  
21 are questions of law or fact common to the class, (3) the claims or defenses of the  
22 representative parties are typical of the claims or defenses of the class, and (4) the  
representative parties will fairly and adequately protect the interests of the class.

23 The settlement class here meets the requirements under Rule 23(a) of numerosity,  
24 commonality and typicality to justify certification, and the requirement that there is  
25 adequate and fair representation. Here, the proposed settlement class – all present and  
26 future CDCR inmates with psychiatric conditions that are disabilities as defined by the  
27 ADA and the Rehabilitation Act and who are allegedly excluded and/or screened out from  
28 any prison program, service, or activity on the basis of their assignment to or participation

1 in the MHSDS program, may number in the thousands of prisoners, and joinder is  
2 therefore impossible. The commonality and typicality requirements are met here because  
3 the class shares common questions of law or fact, as the action challenges system-wide  
4 policies or practices affecting MHSDS inmates, and the named class representatives who  
5 remain incarcerated have claims typical of the class, as they are EOP or CCCMS inmates  
6 who are subject or who have been subject to the challenged policies or procedures. The  
7 requirement of adequate representation will be met here because class counsel will fairly  
8 and adequately represent the interests of the class, as they have done in the *Coleman*  
9 matter.

10 The proposed settlement class also meets the requirements of Rule 23(b)(2) because  
11 the issues resolved via the parties' settlement "apply generally to the class." Fed. R. Civ.  
12 P. 23(b)(2). As noted above, this action challenges system-wide policies or practices  
13 affecting MHSDS inmates, and the policy changes that are a part of the settlement will  
14 apply generally to the class.

15 As described in the Stipulated Proposed Order, the parties' plan for notice to class  
16 members meets the requirement of Federal Rule of Civil Procedure 23(e)(1) that "(1) the  
17 court must direct notice in a reasonable manner to all class members who would be bound  
18 by the proposal." The proposed order requires that notice be posted in English and  
19 Spanish in all CDCR prisons in locations accessible to all prisoners, and that full copies of  
20 the Settlement Agreement be made available in all CDCR libraries. The proposed order  
21 provides that prisoners will have 60 days to provide comments to the Court, and that the  
22 Court will then conduct a final fairness hearing to determine whether the proposed  
23 settlement of this action on the terms and conditions provided for in the Settlement  
24 Agreement is fair, reasonable, and adequate and should be finally approved by the Court,  
25 and whether this action should be dismissed pursuant to the settlement.

26 The parties therefore request that the Court enter the stipulated proposed order filed  
27 herewith to order as follows:

- 28 1. To conditionally certify under Fed. R. Civ. P. 23(a) & (b)(2) an injunctive

1 relief settlement class defined as: all present and future CDCR inmates with psychiatric  
2 conditions that are disabilities as defined by the ADA and the Rehabilitation Act and who  
3 are allegedly excluded and/or screened out from any prison program, service, or activity on  
4 the basis of their assignment to or participation in the Mental Health Services Delivery  
5 System;

6 2. To preliminarily approve the Settlement Agreement between Plaintiffs, on  
7 behalf of themselves and those similarly situated, and Defendants California Department  
8 of Corrections and Rehabilitation, *et al.*;

9 3. To approve the proposed Notice to be distributed to class members under  
10 Fed. R. Civ. P. 23(c)(2) & (e)(1); and

11 4. To schedule a fairness and final approval hearing.

12  
13 DATED: August 5, 2014

ROSEN BIEN GALVAN & GRUNFELD LLP

14  
15 By: /s/ Michael W. Bien  
16 Michael W. Bien

17 Counsel for Plaintiffs

18 DATED: August 5, 2014

KAMALA D. HARRIS  
ATTORNEY GENERAL OF CALIFORNIA

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21 By: /s/ Jay C. Russell  
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23 Supervising Deputy Attorney General

24 Counsel for Defendants  
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