

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TODD ASHKER, et al.,  
Plaintiffs,

v.

EDMUND G. BROWN, et al.,  
Defendants.

No. 09-cv-05796-CW

ORDER ADOPTING OUT-OF-CELL  
TIME PLAN

Pursuant to the Court's Order on July 3, 2018 finding that Defendants were in violation of the Settlement Agreement, Docket No. 1028, the Court hereby ADOPTS the following remedial plan:

1. Substantive Relief. All class members who have been transferred to General Population prisons and remain there must be accorded an amount of time out of their cells that is meaningfully greater than when they were in the Security Housing Unit (SHU), consistent with California Department of Corrections and Rehabilitation's (CDCR) legitimate security needs. CDCR shall have discretion as to how to implement this general remedy. Plaintiffs' counsel and Plaintiffs' expert shall be allowed at least one year of monitoring and documentation.

2. Documentation. CDCR is ordered to produce the following information: (a) a list of all class members currently assigned to Level IV prisons, with date of placement and current location; (b) daily individualized logs, movement sheets, and other documentation of time and location/activity of all out-of-cell time for all class members in Level IV prisons, during the first two months of implementation, and thereafter monthly, but only for those prisoners designated by Plaintiffs' counsel; production

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1 shall occur on 15th of each month for previous month's data; (c)  
2 for each Level IV prison where class members are housed, monthly  
3 documentation of every day of lockdown or modified program and  
4 the reason(s) therefore, produced on the 15th of the following  
5 month; (d) for each Level IV prison where class members are  
6 housed, monthly documentation of each occurrence in which yard or  
7 day room time is eliminated or restricted and the reason(s)  
8 therefore, produced on the 15th of the following month; and (e)  
9 CDCR shall not interfere with Plaintiffs' counsel's prompt  
10 delivery to and collection from prisoners of logs or other  
11 documentation prepared by Plaintiffs' counsel to track out-of-  
12 cell time.

13 3. Monitoring. Monitoring shall consist of the following  
14 elements: (a) Defendants' and Plaintiffs' counsel shall meet and  
15 confer by conference call every three months during the time of  
16 the monitoring of this issue to discuss implementation; (b)  
17 Defendants' and Plaintiffs' counsel shall meet with Magistrate  
18 Judge Illman every six months, starting six months from the date  
19 of this Order, to assess progress; (c) CDCR shall facilitate  
20 quarterly conference calls between Plaintiffs' counsel and class  
21 representatives, and shall continue to abide by paragraph forty  
22 of the Settlement Agreement regarding attorney-client  
23 communications with respect to this remedial process, including  
24 facilitating attorney visits and phone calls with class members;  
25 and (d) monitoring shall continue for one year with Plaintiffs  
26 having the right to seek an extension, and subsequent extensions,  
27 each not to exceed twelve months, of this remedial order and the  
28 Court's jurisdiction over this matter by presenting evidence that

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1 demonstrates by a preponderance of the evidence that substantial  
2 compliance with the Settlement Agreement's terms has not yet been  
3 achieved.

4       4. Role of Expert. An expert shall be included as part of  
5 Plaintiffs' monitoring so that Plaintiffs can adequately evaluate  
6 Defendants' compliance with this Order.

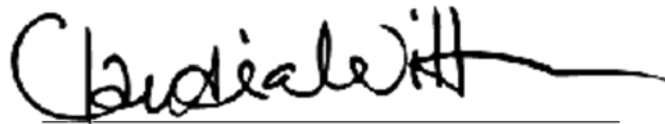
7       The expert may be hired by Plaintiffs' counsel to assist  
8 them in monitoring, subject to reimbursement from Defendants for  
9 all reasonable time and expenses. The expert is authorized to  
10 conduct visits upon reasonable notice, or without notice in  
11 exigent circumstances, to speak with staff and inmates, and to  
12 have access to all relevant data and documentation.

13       Institutional staff shall facilitate the expert's unencumbered  
14 access to class members without undue delay, whether by  
15 telephone, mail, or personal visit. The expert will not have  
16 decision-making authority.

17       5. Retaliation. Consistent with paragraph fifty-four of the  
18 Settlement Agreement, Defendants are prohibited from retaliating  
19 against any class representative, class member, or other prisoner  
20 due to their participation in any aspect of this remedial  
21 process.

22       IT IS SO ORDERED.

23       Dated: December 7, 2018



24       CLAUDIA WILKEN  
25       United States District Judge

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