

1 KAMALA D. HARRIS, State Bar No. 146672  
Attorney General of California  
2 DAMON G. MCCLAIN, State Bar No. 209508  
Supervising Deputy Attorney General  
3 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
4 Telephone: (415) 703-5750  
Fax: (415) 703-5843  
5 E-mail: Damon.Mcclain@doj.ca.gov  
*Attorneys for Defendants M. Cate, S. Kernan, T.  
6 McDonald, G. Giurbino, J. Tilton, T. Felker, M.  
Wright, F. Foulk, D. Vanderville, J. Owen, and  
7 D. Hellwig*

8 PRISON LAW OFFICE  
DONALD SPECTER (SBN 83925)  
9 REBEKAH EVENSON (SBN 207825)  
10 1917 Fifth Street  
Berkeley, California 94710-1916  
11 Telephone: (510) 280-2621  
Facsimile: (510) 280-2704  
12 dspecter@prisonlaw.com  
revenson@prisonlaw.com  
13 *Attorneys for Plaintiff Robert Mitchell, Alvaro  
14 Quezada and the Plaintiff Class*

15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE EASTERN DISTRICT OF CALIFORNIA  
17 SACRAMENTO DIVISION

19 **ROBERT MITCHELL, et al.,**  
20  
21 Plaintiffs,  
22  
23 **MATTHEW CATE, et al.,**  
24 Defendants.

2:08-CV-01196-TLN-EFB

**STIPULATED SETTLEMENT**

Courtroom: 2  
Judge: Hon. Troy L. Nunley  
Action Filed: May 30, 2008

## INTRODUCTION

1  
2       1.     The parties enter into this Stipulation to address Plaintiffs' claims for injunctive relief  
3 regarding modified programs and lockdowns implemented in prisons operated by the California  
4 Department of Corrections and Rehabilitation (CDCR) and to settle this case.

5       2.     The Plaintiffs are inmates Robert Mitchell, Alvaro Quezada, and a certified class  
6 consisting of all male prisoners who are now, or will in the future be, subjected to CDCR's  
7 modified program and lockdown policy. The Defendants include CDCR's Secretary,  
8 Undersecretary of Operations, Chief Deputy Secretary for Adult Operations, and Director of  
9 Adult Institutions, who are sued in their official capacities as state officials responsible for the  
10 operation of CDCR's prisons.

11       3.     Plaintiff Mitchell also sued a number of Defendants in their individual capacities for  
12 damages. The individual-capacity Defendants are James Tilton, Tom Felker, M. Wright, F. Foulk,  
13 D. Vanderville, J. Owen, and D. Hellwig. This Stipulation does not settle Plaintiff Mitchell's  
14 damages claims. If the parties cannot agree on a reasonable settlement of Plaintiff Mitchell's  
15 damages claims, they will be severed from the injunctive-relief claims, and settlement of the  
16 injunctive-relief claims will not preclude trial on Plaintiff Mitchell's damages claims.

17       4.     This action was filed on May 30, 2008. A First Amended Complaint was filed in  
18 June 2010, and Plaintiffs filed a Second Amended Complaint in April 2011, which added class  
19 allegations, additional Plaintiffs, and additional Defendants. The Second Amended Complaint  
20 alleges that CDCR has a statewide policy and practice of implementing excessively long modified  
21 programs and lockdowns that violate the Eighth Amendment and the Equal Protection Clause.  
22 The Second Amended Complaint seeks declaratory and system-wide injunctive relief to address  
23 the alleged constitutional violations.

24       5.     The parties have conducted extensive discovery, which included conducting more  
25 than two dozen depositions of prison officials, prison leadership, prisoners and experts, and  
26 disclosing tens of thousands of pages of documents.

1           6. Defendants filed a motion to dismiss the complaint, which the court granted in part  
2 and denied in part. The court dismissed Mr. Mitchell’s damages claims for certain specified  
3 periods of time, but left intact the injunctive relief claims. (ECF Nos. 107, 114)

4           7. Defendants also filed a motion for summary judgment, which the court granted in part  
5 and denied in part. The Court dismissed the claims of two plaintiffs (Mr. Trujillo and Mr.  
6 Abdullah) as moot, but denied the motion to dismiss the claims of Plaintiffs Mitchell and  
7 Quezada. (ECF No. 46). The Court also denied the motion to dismiss Mr. Mitchell’s claim for  
8 damages under State law and the Fourteenth Amendment, but granted the motion to dismiss Mr.  
9 Mitchell’s Eighth Amendment damages claim.

10          8. Plaintiffs filed a motion for preliminary injunction, which the Court denied on June  
11 25, 2014. ECF No. 328.

12          9. Plaintiffs also filed a motion for class certification, which the Court granted on July  
13 23, 2014. ECF No. 329.

14          10. The parties have conducted extensive negotiations over several months to resolve  
15 Plaintiffs’ demands that CDCR change its statewide policies and practices concerning modified  
16 programs and lockdowns. Those negotiations have been undertaken at arm’s length and in good  
17 faith between Plaintiffs’ counsel and high-ranking state officials and their counsel. The parties  
18 have reached agreement on statewide policies and practices that CDCR has already begun to  
19 implement to settle Plaintiffs’ claims for declaratory and injunctive relief. The parties freely,  
20 voluntarily, and knowingly, with the advice of counsel, enter into this Stipulation for that purpose.

21          11. All parties and their counsel recognize that, in the absence of an approved settlement,  
22 they face lengthy and substantial litigation, including trial and potential appellate proceedings, all  
23 of which will consume time and resources and present the parties with ongoing litigation risks  
24 and uncertainties. The parties wish to avoid these risks, uncertainties, and consumption of time  
25 and resources through a settlement under the terms and conditions of this Stipulation.

26                 ACCORDINGLY, without any admission or concession by Defendants of any current  
27 and ongoing violations of a federal right, all claims for injunctive relief in the Second Amended  
28 Complaint shall be finally and fully compromised, settled, and released, subject to the terms and

1 conditions of this Stipulation, which the parties enter into freely, voluntarily, knowingly, and with  
2 the advice of counsel.

3  
4 **A. JURISDICTION AND VENUE**

5 12. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1343.

6 13. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events  
7 giving rise to Plaintiffs' claims occurred in the Eastern District of California.

8  
9 **B. CLASS CERTIFICATION**

10 14. On July 23, 2014, the Court certified a class consisting of all male prisoners who are  
11 now, or will in the future be, subjected to CDCR's modified program and lockdown policy.

12  
13 **C. TERMS AND CONDITIONS**

14 15. CDCR will not implement race-based modified programs or lockdowns. Lockdowns  
15 or modified programs may be (1) imposed on all inmates, and lifted from all inmates in the  
16 affected area, or (2) imposed and lifted from inmates in the affected area based on individualized  
17 threat assessments, but (3) may not be imposed or lifted based on race or ethnicity.

18 16. CDCR will use individualized threat-assessment forms to determine who will be  
19 retained on a modified program or lockdown. The threat-assessment forms will assign points  
20 based on individualized factors, and CDCR may determine who should be retained on a modified  
21 program or lockdown based on the total number of points assigned to each inmate. The threat-  
22 assessment forms may also include an individualized assessment of an inmate's security-threat-  
23 group status, and CDCR may implement modified programs that impact inmates whose threat-  
24 assessment forms indicate an affirmative security-threat-group status. But the threat-assessment  
25 forms will not assign points based on an affirmative security-threat-group status.

26 17. CDCR will only place an inmate on a modified program that impacts a security-  
27 threat group if an individualized review of that inmate's central file indicates an affiliation, based  
28

1 on sufficiently reliable and current information, with the security-threat group impacted by the  
2 modified program.

3 18. If a modified program or lockdown lasts longer than fourteen days, the Warden must  
4 initiate a plan to provide outdoor activity to the affected inmates. On May 6, 2014, CDCR began  
5 implementing a policy in section 55015 of the Restricted Department Operations Manual  
6 consistent with this term of the Stipulation.

7 19. Modified programs lasting longer than fourteen days shall require periodic conference  
8 calls with the Associate Director until a normal program is achieved. On May 6, 2014, CDCR  
9 began implementing a policy in section 55015 of the Restricted Department Operations Manual  
10 consistent with this term of the Stipulation.

11 20. To address the issues raised by Plaintiffs' suit, CDCR has revised its policies  
12 concerning modified programs and lockdowns, which are found in title 15, section 3000, of the  
13 California Code of Regulations, and in section 55015 of the Restricted Department Operations  
14 Manual dated May 6, 2014. CDCR will further revise title 15, section 3000, and section 55015 of  
15 the Restricted Department Operations Manual by modifying the definition of "modified program"  
16 to be:

17 Modified Program means the suspension or restriction of less than all inmate  
18 program activities and/or movement. A Modified Program may either occur  
19 independently in response to an incident or unusual occurrence or may occur  
20 as a facility transitions from a lockdown to regular programming. Imposed  
21 restrictions may fluctuate as circumstances dictate with the goal of resuming  
22 regular programming as soon as it is practical. Modified programming will  
23 last no longer than necessary to restore institutional safety and security or to  
24 investigate the triggering event, and shall not target a specific racial or ethnic  
25 group. For those inmates whose movement has been restricted, movement  
26 may be authorized on a case-by-case basis for essential or emergency  
27 services, such as medical, dental, mental health, or law library visits. The  
28 routine and/or temporary restrictions on inmate movement or yard activities,  
which do not last longer than 24 hours, are not considered a program  
modification.

25 21. CDCR will train its staff who are responsible for implementing and managing  
26 modified programs and lockdowns regarding the revised policies and procedures concerning  
27 modified programs and lockdowns. This training shall include written instructions describing  
28

1 how to complete the threat-assessment form and the Form 812, and how to evaluate whether the  
2 Form 812 and the documents on which it is based are sufficiently reliable and current to warrant  
3 an affirmative notation on the threat-assessment form regarding security-threat-group status. The  
4 parties will work together to develop agreed-upon training materials.

5 22. Jose Morales (P-63392) and his attorneys, the Prison Law Office, will jointly move to:  
6 (1) discharge the Order to Show Cause re Contempt with prejudice in the habeas proceeding *In re*  
7 *Jose Morales*, Case No. HCPB 10-5015, pending in the Superior Court of California, Del Norte  
8 County; and (2) modify the terms of the July 8, 2011 order in that case to conform to the terms set  
9 forth herein.

10 23. For a period of eighteen months after the Court grants preliminary approval of this  
11 Stipulation, or through the 120-day period after the Court grants final approval of the Stipulation,  
12 whichever is later, CDCR will provide Plaintiffs' counsel, under the protective order in place in  
13 this matter, with all sections of all program-status reports generated at CDCR's prisons in  
14 California that house adult male inmates. On or before the fifteenth of each month after the Court  
15 grants preliminary approval of this Stipulation, CDCR will provide the program-status reports  
16 covering the prior month.

17 24. During the eighteen-month period after the Court grants preliminary approval of this  
18 Stipulation, or through the 120-day period after the Court grants final approval of the Stipulation,  
19 whichever is later, Plaintiffs' counsel shall be entitled to meet with CDCR officials and  
20 Defendants' counsel on a quarterly basis on mutually agreeable dates to discuss questions and  
21 concerns regarding modified programs and lockdowns and CDCR's compliance with this  
22 Stipulation.

23  
24 **D. TERMINATION**

25 25. Plaintiffs shall have thirty days after the end of the eighteen-month period, or after the  
26 end of the 120-day period following the date on which the Court grants final approval of the  
27 Stipulation, whichever is later, to seek an extension, not to exceed twelve months, of this  
28 Stipulation and the Court's jurisdiction over this matter by presenting evidence that demonstrates

1 by a preponderance of the evidence that current and ongoing violations of the Equal Protection  
2 Clause or Eighth Amendment of the United States Constitution exist on a system-wide basis as a  
3 result of CDCR's modified-program and lockdown policies. Defendants shall have an  
4 opportunity to respond to any such evidence presented to the Court and to present their own  
5 evidence. If Plaintiffs do not file a motion to extend court jurisdiction within the periods noted  
6 above, or if the evidence presented fails to satisfy their burden of proof, this Stipulation and the  
7 Court's jurisdiction over this matter shall automatically terminate, and the injunctive relief claims  
8 in this case shall be dismissed with prejudice.

9 26. Brief and isolated constitutional violations shall not constitute evidence of an ongoing,  
10 system-wide policy and practice of implementing modified programs and lockdowns that violate  
11 the Constitution, and shall not constitute grounds for continuing this Stipulation or the Court's  
12 jurisdiction over this matter.

13 27. If the Court's jurisdiction and this Stipulation are extended by Plaintiffs' motion, they  
14 shall both automatically terminate at the end of the extension period and the case shall be  
15 dismissed unless Plaintiffs make the same showing described in Paragraph 25, in which case the  
16 Court's jurisdiction and this Stipulation shall be extended for another limited term, not to exceed  
17 twelve months, before automatically terminating.

18 28. To the extent that this Stipulation and the Court's jurisdiction over this matter are  
19 extended under this agreement beyond the initial eighteen-month period, CDCR's production of  
20 program-status reports to Plaintiffs' counsel will be extended for the same period.

21 29. Notwithstanding any provision in this Stipulation, at any time after the initial  
22 eighteen-month period, or after the end of the 120-day period following the date on which the  
23 Court grants final approval of the Stipulation, whichever is later, Defendants and CDCR may  
24 seek termination of this case and the Court's jurisdiction under the Prison Litigation Reform Act,  
25 18 U.S.C. §3626(b)(1)(A).

26 30. It is the intention of the parties in signing this Stipulation that upon completion of its  
27 terms it shall be effective as a full and final release from all claims for injunctive relief asserted in  
28

1 the Second Amended Complaint. Nothing in this Stipulation will affect the rights of Plaintiffs  
2 regarding legal claims that arise after the dismissal of this case.

3  
4 **E. MODIFICATION OF POLICIES**

5 31. CDCR may modify the revised policies concerning lockdowns and modified  
6 programs at any time, provided that the modified policies comply with the terms of this  
7 Stipulation and the Constitution of the United States, and contain the elements described in  
8 paragraphs 15 through 21 above. If CDCR decides to modify the revised policies before this case  
9 is terminated, it will provide Plaintiffs' attorneys with a draft of the modified policies at least  
10 thirty days before implementation, and offer an opportunity for Plaintiffs to meet and confer with  
11 CDCR about the policies.

12  
13 **F. JOINT MOTION AND STAY OF PROCEEDINGS**

14 32. The parties will jointly request that the Court preliminarily approve this Stipulation,  
15 require that notice of the proposed settlement be sent to the class, and schedule a fairness hearing.  
16 The parties will also file a proposed order granting preliminary approval of the Stipulation, in the  
17 form attached hereto as Exhibit A. With this motion the Parties will also jointly request that the  
18 Court stay all other proceedings in this case pending resolution of the fairness hearing. Following  
19 the close of the objection period, the Parties will jointly request that the Court enter a final order  
20 containing all of the elements included in the proposed order attached hereto as Exhibit B,  
21 approving this Stipulation, retaining jurisdiction to enforce it, and continuing the stay of the case  
22 pending the completion of the Stipulation's terms.

23  
24 **G. DISPUTE RESOLUTION AND ENFORCEMENT**

25 33. If Plaintiffs contend that CDCR is violating the terms of this Stipulation by  
26 implementing race-based modified programs or lockdowns, Plaintiffs shall provide Defendants  
27 with a brief written description of the basis for that contention and may request that the parties  
28 meet and confer to resolve the issue. Defendants shall respond to Plaintiffs' concerns no later



1 than 30 days after receipt of Plaintiffs' written description of the issue. If the parties are unable to  
2 resolve the issue informally, Plaintiffs may seek enforcement of the Stipulation by order of this  
3 Court. Plaintiffs must demonstrate by a preponderance of the evidence that CDCR is in material  
4 breach of its obligation to prohibit the implementation of race-based modified programs and  
5 lockdowns. Defendants shall have an opportunity to respond to any such evidence presented to  
6 the Court and to present their own evidence in opposition to any enforcement motion. If  
7 Plaintiffs have demonstrated by a preponderance of the evidence a material noncompliance with  
8 these terms, then for the purposes of Plaintiffs' enforcement motion only, the parties agree that  
9 Plaintiffs will have also demonstrated a violation of a federal right and that the Court may order  
10 enforcement consistent with the requirements of 18 U.S.C. § 3626(a)(1)(A).

11 34. The parties agree that the other terms of this Stipulation shall also be enforceable by  
12 order of this Court. If Plaintiffs contend that CDCR has not substantially complied with any other  
13 terms of this agreement, Plaintiffs shall provide Defendants with a brief written description of the  
14 basis for that contention and may request that the parties meet and confer to resolve the issue.  
15 Defendants shall respond to Plaintiffs' concerns no later than 30 days after they receive Plaintiffs'  
16 written description of the issue. If the parties are unable to resolve the issue informally, Plaintiffs  
17 may seek enforcement of the Stipulation by order of this Court. It shall be Plaintiffs' burden in  
18 making such a motion to demonstrate by a preponderance of the evidence that Defendants have  
19 not substantially complied with the terms of the Stipulation. Defendants shall have an  
20 opportunity to respond to any such evidence presented to the Court and to present their own  
21 evidence in opposition to Plaintiffs' motion. If Plaintiffs satisfy their burden of proof by  
22 demonstrating substantial noncompliance with the Stipulation's terms by a preponderance of the  
23 evidence, then the Court may issue an order to achieve substantial compliance with the  
24 Stipulation's terms.

#### 25 26 **H. ATTORNEYS' FEES AND COSTS**

27 35. Defendants agree to pay Plaintiffs' counsel attorneys' fees and costs for work  
28 reasonably performed on this case, including monitoring CDCR's compliance with this

1 Stipulation and enforcing this Stipulation, at the hourly rate set forth under the Prison Litigation  
2 Reform Act, 42 U.S.C. § 1997e(d). The Prison Litigation Reform Act applies to all applications  
3 for attorneys' fees in this case. Plaintiffs shall have sixty days from the entry of a final order  
4 approving this Stipulation to file their motion for attorneys' fees and costs for work reasonably  
5 performed before that date. Subject to the provisions under 42 U.S.C. §§ 1988 and 1997e,  
6 Plaintiffs' motion may request an award that includes their expert fees. On a quarterly basis,  
7 Plaintiffs may file motions for reasonable attorneys' fees accrued in monitoring and enforcing  
8 CDCR's compliance with this Stipulation.

9 36. The notice to the class members shall explain that Plaintiffs will file a motion for  
10 attorneys' fees following entry of a final order approving the Stipulation.

#### 11 12 **I. CONSTRUCTION OF STIPULATION**

13 37. This Stipulation reflects the entire agreement of the parties and supersedes any prior  
14 written or oral agreements between them. No extrinsic evidence whatsoever may be introduced  
15 in any judicial proceeding to provide the meaning or construction of this Stipulation. Any  
16 modification to the terms of this Stipulation must be in writing and signed by a CDCR  
17 representative and attorneys for Plaintiffs and Defendants to be effective or enforceable.

18 38. This Stipulation shall be governed and construed according to California law. The  
19 parties waive any common-law or statutory rule of construction that ambiguity should be  
20 construed against the drafter of this Stipulation, and agree that the language in all parts of this  
21 Stipulation shall in all cases be construed as a whole, according to its fair meaning.

22 39. This Stipulation shall be valid and binding on, and faithfully kept, observed,  
23 performed, and be enforceable by and against the parties, their successors and assigns.

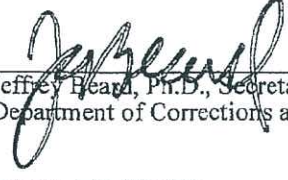
24 40. The obligations governed by this Stipulation are severable. If for any reason a part of  
25 this Stipulation is determined to be invalid or unenforceable, such a determination shall not affect  
26 the remainder.

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


41. The waiver by one party of any provision or breach of this Stipulation shall not be deemed a waiver of any other provision or breach of this Stipulation.

**IT IS SO STIPULATED**

Dated: 10/20/14


  
Jeffrey Beard, Ph.D., Secretary, California  
Department of Corrections and Rehabilitation  
  
KAMALA D. HARRIS  
Attorney General of California

Dated: 10-20-14

  
Damon McClain  
Supervising Deputy Attorney General  
*Attorneys for Defendants M. Cate, S. Kernan, T. McDonald, G. Giurbino, J. Tilton, T. Felker, M. Wright, F. Foulk, D. Vanderville, J. Owen, and D. Hellwig*

Prison Law Office

Dated: 10/21/14

  
Rebekah Evenson  
*Attorneys for Plaintiffs Robert Mitchell, Alvaro Quezada, and the Plaintiff Class*

Bingham McCutchen LLP

Dated: 10/22/14

  
Geoffrey Holtz  
*Attorneys for Plaintiffs Robert Mitchell, Alvaro Quezada, and the Plaintiff Class*

SA2011300596

# **EXHIBIT A**

1 KAMALA D. HARRIS, State Bar No. 146672  
Attorney General of California  
2 DAMON G. McCLAIN, State Bar No. 209508  
Supervising Deputy Attorney General  
3 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
4 Telephone: (415) 703-5750  
Fax: (415) 703-5843  
5 E-mail: Damon.Mcclain@doj.ca.gov  
*Attorneys for Defendants M. Cate, S. Kernan, T.*  
6 *McDonald, G. Giurbino, J. Tilton, T. Felker, M.*  
*Wright, F. Foulk, D. Vanderville, J. Owen, and*  
7 *D. Hellwig*

8 PRISON LAW OFFICE  
DONALD SPECTER (SBN 83925)  
9 REBEKAH EVENSON (SBN 207825)  
1917 Fifth Street  
10 Berkeley, California 94710-1916  
11 Telephone: (510) 280-2621  
Facsimile: (510) 280-2704  
12 dspecter@prisonlaw.com  
revenson@prisonlaw.com  
13 *Attorneys for Plaintiff Robert Mitchell, Alvaro*  
14 *Quezada, and the Plaintiff class*

15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE EASTERN DISTRICT OF CALIFORNIA  
17 SACRAMENTO DIVISION

19 **ROBERT MITCHELL, et al.,**

20 Plaintiffs,

21 v.

23 **MATTHEW CATE, et al.,**

24 Defendants.

2:08-CV-01196-TLN-EFB

22 **[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Courtroom: 2  
Judge: Hon. Troy L. Nunley  
Action Filed: May 30, 2008

1 Plaintiffs in this action, Robert Mitchell, Alvaro Quezada, and a class consisting of all male  
2 prisoners who are now, or will in the future be, subjected to CDCR's modified program and  
3 lockdown policy, allege that CDCR has a policy and practice of implementing modified programs  
4 and lockdowns that violate the Eighth Amendment and the Equal Protection Clause of the United  
5 States Constitution. Plaintiffs claim that they are entitled to statewide injunctive relief to address  
6 their claims.

7 The parties have entered into a Stipulated Settlement that was filed with their Joint Motion  
8 for Preliminary Approval of Class Action Settlement, which would settle all claims for injunctive  
9 relief in this case. The parties have submitted a proposed Notice to the Class, as well as a  
10 proposed order regarding the distribution of the order to the plaintiff class.

11 This Court has presided over the proceedings in the above-captioned action and has  
12 reviewed all of the pleadings, records, and papers on file. The Court has reviewed the Joint  
13 Motion for Preliminary Approval of Class Action Settlement, along with the Stipulated  
14 Settlement and supporting documents, and has considered the parties' arguments concerning the  
15 proposed settlement of this class action.

16 The Court has determined that inquiry should be made regarding the fairness and adequacy  
17 of this proposed settlement.

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

19 1. A court should preliminarily approve a class action settlement if it "appears to be  
20 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does  
21 not improperly grant preferential treatment to class representatives or segments of the class, and  
22 falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d  
23 1078, 1079 (N.D. Cal. 2007). The Court finds that this standard is met in this case, as the  
24 proposed settlement is the product of arm's-length, serious, informed, and non-collusive  
25 negotiations between experienced and knowledgeable counsel who have actively prosecuted and  
26 defended this litigation. The Court further finds that, for purposes of settlement only, the  
27 Stipulated Settlement meets the requirements of 18 U.S.C. § 3626(a)(1). The Stipulated  
28 Settlement attached hereto is granted preliminary approval and incorporated by reference herein,

1 subject to the right of class members to challenge the fairness, reasonableness, or adequacy of the  
2 Stipulated Settlement.

3 2. Under Federal Rule of Civil Procedure 23(e)(1), the Court approves the substance,  
4 form and manner of the Notice of Proposed Class Action Settlement (the “Notice”) filed by the  
5 parties on \_\_\_\_\_, and finds that the proposed method of disseminating the Class Notice  
6 meets all due process and other legal requirements and is the best notice practicable under the  
7 circumstances.

8 3. Within three days of this Order, the parties are directed to prepare a final version  
9 of the Notice, incorporating the dates set forth in this Order.

10 4. Within thirty days of this Order, CDCR is directed to post the Notice in English  
11 and Spanish in all housing units of all prisons housing prisoners subject to CDCR’s modified  
12 program and lockdown policy in such a manner as to make the notice visible to all prisoners.  
13 Within thirty days of this Order, CDCR is also directed to place a copy of this Order and the full  
14 Stipulated Settlement in every CDCR library. Defendants must file and serve on Plaintiffs’  
15 counsel a declaration affirming that notice was published as required in this order.

16 5. A Final Fairness Hearing shall take place at \_\_\_\_ a.m. on \_\_\_\_\_ at the  
17 United States District Court for the Eastern District of California, United States Courthouse, 501 I  
18 St., Sacramento CA 95814, in Courtroom 2, to determine whether the proposed settlement of this  
19 action on the terms and conditions provided for in the Stipulated Settlement is fair, reasonable,  
20 and adequate and should be finally approved by the Court, and whether this action should be  
21 dismissed under the settlement. The hearing may be continued from time to time without further  
22 notice to the class. Any further briefing from the parties in advance of the hearing shall be filed  
23 no later than \_\_\_\_\_.

24 6. Any member of the class may enter an appearance on his or her own behalf in this  
25 action through that class member’s own attorney (at their own expense), but need not do so.  
26 Class members who do not enter an appearance through their own attorneys will be represented  
27 by Class counsel. Alternatively, any member of the class may write to the federal court about  
28 whether the settlement is fair. The federal court will consider written communications when

1 deciding whether to approve the settlement. Comments regarding the fairness of the settlement  
2 MUST include at the top of the first page the case name (*Mitchell v. Cate et al.*) and the case  
3 number 2:08-CV-01196-TLN-EFB. A written comment must contain the author's full name  
4 and CDCR number, must include all objections and the reasons for them, must include any and  
5 all supporting papers (including, without limitation, all briefs, written evidence, and declarations),  
6 and must be signed by the Class Member. A Class Member who desires to comment but who  
7 fails to comply with the above objection procedure and timeline shall be deemed to have not  
8 objected and the objection shall not be heard or considered at the hearing. Comments must be  
9 postmarked by \_\_\_\_\_ and must be sent to the following address:

10  
11 Clerk of the Court  
12 United States District Court  
13 Eastern District of California  
14 501 "I" Street  
15 Sacramento, CA 95814

16 IT IS SO ORDERED.

17 DATED: \_\_\_\_\_, 2014

18 Troy L. Nunley  
19 Judge of the United States District Court

20 SA2011300596  
21  
22  
23  
24  
25  
26  
27  
28



# **EXHIBIT B**

1 KAMALA D. HARRIS, State Bar No. 146672  
Attorney General of California  
2 DAMON G. MCCLAIN, State Bar No. 209508  
Supervising Deputy Attorney General  
3 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
4 Telephone: (415) 703-5750  
Fax: (415) 703-5843  
5 E-mail: Damon.Mcclain@doj.ca.gov  
*Attorneys for Defendants M. Cate, S. Kernan, T.  
6 McDonald, G. Giurbino, J. Tilton, T. Felker, M.  
Wright, F. Foulk, D. Vanderville, J. Owen, and  
7 D. Hellwig*

8 PRISON LAW OFFICE  
DONALD SPECTER (SBN 83925)  
9 REBEKAH EVENSON (SBN 207825)  
10 1917 Fifth Street  
Berkeley, California 94710-1916  
11 Telephone: (510) 280-2621  
Facsimile: (510) 280-2704  
12 dspecter@prisonlaw.com  
revenson@prisonlaw.com  
13 *Attorneys for Plaintiff Robert Mitchell*

14  
15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE EASTERN DISTRICT OF CALIFORNIA  
17 SACRAMENTO DIVISION  
18

19  
20 **ROBERT MITCHELL, et al.,**  
21 Plaintiffs,  
22 v.  
23 **MATTHEW CATE, et al.,**  
24 Defendants.  
25

2:08-CV-01196-TLN-EFB

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT**

Courtroom: 2  
Judge: Hon. Troy L. Nunley  
Action Filed: May 30, 2008

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

**INTRODUCTION**

This matter comes before the Court upon consideration of the parties’ motion to approve the proposed agreement to settle this matter. Having considered the parties’ memoranda in support of the motion, responses from class members, relevant legal authority, and the record in this case, the Court finds good cause to GRANT the motion and finally approve the settlement agreement.

**BACKGROUND**

**ANALYSIS**

**I. LEGAL STANDARDS**

Federal Rule of Civil Procedure 23(e) provides:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given in all members of the class in a manner as the court directs.

This rule also requires a court “to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable,” and a court must consider the settlement in its entirety rather than considering only its component parts. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). Thus, “[t]he settlement must stand or fall in its entirety.” *Officers for Justice*, 688 F.2d at 630.

In order to determine whether a proposed settlement is fair, adequate, and reasonable, a court must balance various factors, including:

the strength of the plaintiffs’ case; the risk expense, complexity, and likely duration of further litigation; the risk of maintaining class action

1 status throughout the trial; the amount offered in settlement; the extent of  
2 discovery completed and the stage of the proceedings; the experience and  
3 views of counsel; the presence of a governmental participant; and the  
reaction of the class members to the proposed settlement.

4 *Torrise v. Tuscon Elec. Power Co.*, 8 F.2d 1370, 1375 (9th Cir. 1993) (quoting *Officers for Justice*,  
5 688 F.2d at 625). Ultimately, “the decision to approve or reject a settlement is committed to the  
6 sound discretion of the trial judge.” *Id.*

7  
8 **II. THE PARTIES HAVE MET THEIR BURDEN TO ESTABLISH THAT THE SETTLEMENT IS  
9 FAIR, REASONABLE, AND ACCURATE.**

10 The Court has independently reviewed and considered the comments received from class  
11 members. \_\_\_\_\_ members of the class submitted comments to the Court before the  
12 deadline set by the Order Granting Preliminary Approval of Class Action Settlement. The Court  
13 addresses these comments as follows: \_\_\_\_\_.

14 After considering the terms of the Stipulated Settlement, the *Torrise* factors, and the  
15 comments and objections received from class members, the Court finds that the settlement is fair,  
16 reasonable, and adequate, as it is the product of arm’s-length, serious, informed, and non-  
17 collusive negotiations between experienced and knowledgeable counsel who have actively  
18 prosecuted and defended this litigation. The Court further finds that, for purposes of settlement  
19 only, the Stipulated Settlement meets the requirements of 18 U.S.C. § 3626(a)(1).

20 Good cause appearing, IT IS ORDERED AS FOLLOWS:

- 21 1) The Stipulated Settlement attached hereto is incorporated herein by reference.  
22 2) The Court grants final approval of the Stipulated Settlement.  
23 3) The Court retains jurisdiction over this matter to enforce the terms of the Stipulated  
24 Settlement.  
25 4) All other unrelated matters pending in this case are stayed pending completion of the  
26 Stipulated Settlement’s terms.

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

5) The parties are directed to meet and confer regarding the contents of a notice to the Plaintiff class regarding final approval of the settlement, and the timing and manner by which such notice will be provided.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
Troy L. Nunley  
Judge of the United States District Court

SA2011300596