

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

3
4 TODD ASHKER, et al.,
5 Plaintiffs,

6 v.

7 GOVERNOR OF THE STATE OF
8 CALIFORNIA, et al.,
9 Defendants.

Case No. 09-cv-05796-CW

ORDER GRANTING PLAINTIFFS'
MOTION REGARDING VIOLATION OF
SETTLEMENT AGREEMENT
PROVISION REQUIRING RELEASE
OF CLASS MEMBERS TO GENERAL
POPULATION

(Dkt. No. 993)

10
11 Plaintiffs filed a motion for de novo review of the
12 magistrate judge's order regarding violation of the Settlement
13 Agreement provision requiring release of class members to the
14 General Population. Having considered the papers, the Court
15 GRANTS Plaintiffs' motion to the extent that Plaintiffs must
16 receive more out-of-cell time than they received in the Pelican
17 Bay SHU. They should receive out-of-cell time consistent with
18 the CDCR's regulations and practices with respect to Level IV
19 general population inmates, as well as its constitutional
20 obligations.

21 Pursuant to the Settlement Agreement, the parties agreed
22 that, if an inmate was not "found guilty of a SHU-eligible rule
23 violation with a proven STG nexus" within 24 months, then he
24 should be "released from the SHU and transferred to a General
25 Population level IV 180-design facility, or other general
26 population institution consistent with his case factors."
27 Settlement Agreement ¶ 25. The Settlement Agreement was intended
28 to remove Plaintiffs from detention in the SHU, where they were

1 isolated in a cell for twenty-two and a half to twenty-four hours
2 a day. Second Amended Complaint ¶¶ 3, 63. Plaintiffs may seek
3 to enforce the Settlement Agreement under either paragraphs 52 or
4 53, which require Plaintiffs to show "current and ongoing
5 violations" of the Eighth Amendment or the Fourteenth Amendment
6 on a systemic basis, or other substantial noncompliance with the
7 terms of the Agreement. Settlement Agreement ¶¶ 52, 53.
8 Plaintiffs have shown that many Plaintiffs spend an average of
9 less than an hour of out-of-cell time each day, which is similar
10 to the conditions they endured in the SHU. See Declaration of
11 Samuel Miller (Miller Decl.), Ex. 2; Reply Declaration of Samuel
12 Miller (Miller Reply Decl.) ¶¶ 2-3. This is substantially less
13 than the amount of time a general population inmate spends out-
14 of-cell, which Defendants represented was a minimum of ten hours
15 a week. Miller Reply Decl., Ex. B (July 20, 2016 Court
16 Transcript) at 53:24. This demonstrates a violation of the
17 Settlement Agreement.

18 Defendants are hereby ordered to meet and confer with
19 Plaintiffs' representatives and their counsel with the goal of
20 presenting a proposed remedial plan for Court approval. The
21 matter is referred to Magistrate Judge Illman to mediate the meet
22 and confer. Absent agreement, the parties shall present their
23 own respective proposed remedial plans. The joint or separate
24 plans are to be submitted within seven days after the meet and
25 confer session, which shall be scheduled as quickly as feasible.

26 IT IS SO ORDERED.

27 Dated: July 3, 2018

28 
CLAUDIA WILKEN
United States District Judge