

Class and Settlement Notice

McKibben, et al., v. McMahon, et al. is
Case No.14-2171-JGB-SP

McKibben v. McMahon is a class action lawsuit filed in 2014. It challenged the treatment of gay, bisexual, and transgender inmates who were housed in the Alternative Lifestyle Tank (“ALT”) of the West Valley Detention Center (a San Bernardino County jail). A preliminary settlement has been reached. The settlement includes money compensation to class members and policy changes to address what Plaintiffs alleged was discriminatory treatment.

If you were housed in the ALT between October 22, 2012 and March 31, 2018 you may be entitled to receive money, but only if you take action and file a claim. The average will likely exceed \$1000 (but varies greatly depending on various factors, including time in custody).

In order to receive any money in this Settlement, **you must fill out and mail a Claim Form.**

Your Claim Form

must be **postmarked** or received by the Administrator
no later than July 19, 2019.

Esta Notificación de acción colectiva está disponible en español. Llame sin cargo al: 1-844-877-5925 o visite el siguiente sitio web: www.ALTSettlement.com.

ADDITIONAL INFORMATION

Below are questions and answers designed to explain this lawsuit, the settlement, your legal rights, and how to file a claim.

1. Why am I receiving this notice? Who is receiving this notice?

You are receiving this notice because San Bernardino jail records show that you were housed in the ALT between October 22, 2012 and March 31, 2018. Anyone housed in the ALT during this time period is a class member and is entitled to money compensation, provided they submit a timely claim. Whether you are a class member is determined **solely** from the records of the San Bernardino County Sheriff’s Department.

Only certain class members are receiving this notice. Notice went out to other class members previously, and the court approved the settlement, to which there were no objections or opt outs. However, it was later discovered that some class members had been mistakenly left off the list. You are one of those class members, and a new round of notice has gone out to you and other class members who were left off the previous list. (For those class members who were included in the first round of notice, the deadline has already passed to submit a claim).

2. What do I do to get money?

If you wish to receive money from the settlement, you must complete and submit the enclosed Claim Form.

All Claim Forms must be completed and postmarked no later than July 19, 2019. If you do not timely submit your Claim Form, you will not receive any money from the Settlement. **Mail your claim form as soon as possible.**

You can download copies of the claim form at www.ALTSettlement.com. If you have questions, you can also:

Call: (844) 877-5925

Email: info@ALTSettlement.com

or

Write to **ALT Settlement**, c/o JND Legal Administration, P.O. Box 91307, Seattle, WA 98111.

3. What is this lawsuit about?

This lawsuit challenged the treatment of gay, bisexual and transgender (“GBT”) inmates who were housed in the ALT. The lawsuit claimed that GBT inmates were discriminated against in various ways, including, among other things, that GBT inmates 1) were automatically placed in the ALT if they self-identified as GBT; 2) would have been at risk for their safety if admitted to the general population as openly GBT inmates because the San Bernardino County Sheriff’s Department did not have plans or programs to ensure their safety; 3) had no or inadequate PREA programs in place to protect GBT inmates or address particular vulnerabilities of GBT inmates placed in the general population; 4) were limited in their time-out-of-cell generally to an hour and a half per day, and often less, in contrast to similarly situated (by classification or sentencing status) general population inmates; 5) were denied the same work opportunities that were provided to similarly situated (by classification or sentencing status) general population inmates; 6) were denied the same programming opportunities¹ that were provided to similarly situated (by classification or sentencing status) general population inmates; and 7) were denied a comparable range of religious services to those available to the general population.

What court is in charge of this case? The Court in charge of the case is the United States District Court for the Central District of California, located in Riverside, California. The case is known as *McKibben, et al. v. McMahan, et al.*, Case No.14-2171-JGB-SP. The Judge is The Honorable Jesus Bernal.

¹ Programming opportunities include classes in anger management, thinking for change, living skills, parenting skills, substance abuse prevention, GED preparation, high school diploma, literacy, automobile mechanics, bakery occupations, culinary/reading enrichment, computer skills, HVAC training, fire camp vocational training, employment readiness, and re-entry services.

4. Why is there a settlement instead of a trial?

Early in this case, the parties agreed to explore settlement negotiations instead of continuing litigation. When settlement negotiations began, the primary objective was to improve the conditions of the ALT. After the parties reached an agreement on policy changes, they negotiated money compensation for individuals who had been housed in the ALT. The class representatives and their attorneys think that the proposed settlement is a fair, reasonable and adequate resolution of this case.

5. What Does The Settlement Provide?

The Settlement has three parts – injunctive relief (changes to how the ALT and the San Bernardino County jails operate in the treatment of GBT inmates); payment of compensation to the Class Representatives and the class members; and attorney’s fees. We briefly describe each below.

a. Injunctive Relief

The injunctive relief is extensive and difficult to summarize. The full agreement is posted on the settlement website www.ALTSettlement.com. It changes the name of the ALT to the GBTI (Gay Bisexual Transgender Intersex) Unit. It establishes a PREA (“Prison Rape Elimination Act”)-GBTI Committee that includes classification, programming and social work personnel that will make individualized determinations regarding housing, programming and work opportunities for GBTI inmates after conferring with them. It provides guidelines for housing, classification, work and programming options for GBTI inmates and for equal tier time for the GBTI Unit as for general population inmates. It establishes training guidelines for personnel on GBTI issues and for GBTI inmates regarding their rights. It addresses particular issues related to transgender inmates. It provides that Class Counsel will be consulted on the policies to be implemented and for reports and monitoring of the Agreement for three years.

b. Damages to the Class

The total damages to the class (which has 929 individuals in it) is \$950,000, which will be placed in a class fund overseen by a professional Class Administrator.

Plaintiffs’ counsel are proposing payment of special compensation to the 15 Class Representatives of a total of \$55,500 (in individual amounts between \$2000-\$5500) for their roles in bringing and advancing the case. After these payments, approximately \$894,500 will be divided among the class members who file timely claims, based on a formula approved by the Court.

Under the formula, class members will receive a certain number of points for each incarceration day based on the person’s status during that day (pre-sentenced or sentenced, work eligibility and classification) and the overall conditions in the ALT on that day. Each class member’s total points represent the sum of their daily points. The total points for each class member will then be added together, from which the class member’s share of the recovery will be determined. Because it is anticipated that not all class members will make Timely Claims, a claiming class member’s share will be based

on that class member's share of the total points for class members who made Timely Claims (and not on eligible class members). This has the effect of increasing the amount awarded to claiming class members.

No claiming individual class member will receive less than \$40 or more than \$10,000 regardless of the amount above or below those figures due them under the formula.

c. Attorney's Fees and Litigation Costs

The Court will be asked to award Plaintiffs' counsel \$1,100,000 in statutory attorney's fees plus litigation costs. This is separate from the \$950,000 class fund to be distributed to class members. This figure is a substantial discount from the fees that would otherwise have been claimed (separate from compensation to class members) because Plaintiffs' counsel considered the injunctive relief a model. These fees must ultimately be approved by the Court after satisfying itself they are reasonable and fair.

6. Are there lawyers representing me? How much will they be paid?

As a class member, you are represented by the ACLU of Southern California and the law firm, Kaye, McLane, Bednarski and Litt. These are the lawyers who have been handling the lawsuit for the past five years. They are referred to as "Class Counsel" and were appointed by the Court to represent the class.

You will not be asked to pay your own personal money for the services these attorneys have provided you. Instead, the lawyers will be paid separately by San Bernardino County, after approval by the Court. Class counsel will ask the court to award Class Counsel \$1,100,000. The Court can award less than that amount, but not more.

It is your right to hire your own lawyer to advise you about your rights, options or obligations as a Class Member in this lawsuit. If you want to be represented by your own lawyer, you may hire one at your own expense.

7. How do I tell the Court if I do not like the settlement or the attorneys' fees?

You can remain a class member and object to any part of the settlement. If you object, you must tell the court specifically what you think is unfair about the settlement or request for fees.

To do this, mail a written statement explaining the reason why you object. Include your name, address, telephone number. At the top of the page, write the case name and number (*McKibben v. McMahon*, Case No. 5:14-CV-02171-JGB-SP). Do not forget to sign the statement. (If you previously used a different name, include any names you have used.)

Your objections must be mailed and postmarked no later than July 19, 2019. Send your objection to all of the people in the chart below.

Clerk of the District Court United States District Court Central District of California 3470 Twelfth Street Courtroom 1 Riverside, CA 92501-3801	Barrett S. Litt Attn: Julia White Kaye McLane, Bednarski & Litt 975 E. Green St. Pasadena, CA 91106	Nathan A. Oyster Burke, Williams & Sorensen 444 S. Flower St. Suite 2400 Los Angeles, CA 90071
---	---	--

The Court will consider your objection and decide whether to overrule it or change the settlement agreement. Either way, you remain a member of the class and will be bound by the settlement agreement and will get your share of the settlement. (This means you’re giving up claims against the LASD for violations covered by this case.)

If you wish to appear at the hearing and argue your objection, tell the court you wish to do so.

8. Can I exclude myself from the settlement?

If you want to remove yourself from the lawsuit entirely, or if you want to be able to file your own lawsuit, or be part of a different lawsuit, then you must take steps to exclude yourself. This is sometimes is referred to as “opting out” of the class.

To do this, mail a written statement that you wish to exclude yourself or similar words. Include your name, address, and telephone number. You do not need to explain why you wish to be excluded. At the top of the page, write the case name and number (*McKibben v. McMahon*, Case No. 5:14-CV-02171-JGB-SP). Do not forget to sign the statement.

You must mail your Exclusion Request, postmarked no later than July 19, 2019, to:

McKibben v. McMahon Settlement Administrator
ALT Settlement
c/o JND Legal Administration
P.O. Box 91307
Seattle, WA 98111

9. What if I do nothing?

If you do not file a claim, you will receive no money from the settlement, **and** you will be giving up your rights against San Bernardino County. **Be sure to file a claim form unless you exclude yourself.**

10. Am I giving up any rights?

People who submit claims, object, or do nothing, give up their right to sue San Bernardino County (or its employees) for claims covered by this case. This means that you will not be able to sue San Bernardino County for conditions of confinement while you were housed in the ALT.

The released claims (claims you give up) include any claims that were or could have been asserted in the complaint based on the facts alleged, specifically for the conditions and treatment, including discriminatory treatment, in the ALT during the time covered by this settlement. Released claims do not include any other claim(s) that a plaintiff or class member may have against Defendants for conduct not covered by this Settlement (for example, a claim for an incident of use of force unrelated to this suit).

11. When will the Court decide whether to approve the settlement?

The Court has scheduled the Fairness Hearing for August 12, 2019, at 9:00 a.m. in Courtroom 1 in the United States District Courthouse for the Central District of California, 3470 Twelfth Street, Riverside, CA 92501-3801.

At this Hearing, Judge Bernal will consider whether the Settlement is fair, reasonable and adequate, and will determine the amount of attorneys' fees and costs to be awarded. If there are any objections, the Court will consider and rule on them.

You do not have to attend the hearing, but you may attend if you wish. You may only speak at the hearing if you submitted objections as provided in the question above entitled "How do I tell the Court if I do Not like the settlement or attorneys' fees?"

12. When will I receive money from the settlement?

No money will be paid until after the settlement funds are deposited with the settlement administrator, which will only occur after all possibilities of appeal are completed. After that it may take two months, and possibly more, to process the claims and send the money to the class members. The earliest money will be paid is September 2019.

If you file a claim and do not receive money within six months after **July 19, 2019**, check the website (ALTSettlement.com), or contact the Class Administrator (see below).

13. What if I still have questions?

For more information, go to www.ALTSettlement.com

If you have questions, call **1-844-877-5925**, email info@ALTSettlement.com, or write to:

ALT Settlement
c/o JND Legal Administration
P.O. Box 91307
Seattle, WA 98111