

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

BRIAN MAST, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:05-cv-00037-JPH-DLP
	)	
COMMISSIONER, INDIANA	)	
DEPARTMENT OF CORRECTION,	)	
<i>et al.</i> ,	)	
	)	
Defendants.	)	

Report of Class Counsel

Plaintiffs, by class counsel Kenneth J. Falk, say that:

1. On March 18, 2019, counsel for the parties filed their Stipulation to Terminate Private Settlement Agreement Following Notice to the Class and Approval by the Court / Joint Motion to Approve Manner of Notice. (Dkt. 138).
2. On that date undersigned counsel also filed Plaintiffs' Motion to Approve Class Notice. (Dkt. 139).
3. On March 20, 2019, this Court issued its Order Approving Form and Manner of Notice, which approved the proposed class notice and ordered that it be given as set out in the parties' Stipulation and further ordered plaintiffs' counsel to report back to the Court as to the results of the notice no earlier than 30 days after the delivery or posting of the notice as required by the Stipulation. (Dkt. 142).

4. On April 2, 2019, this Court approved an amended notice in place of the notice earlier presented to the Court. (Dkt. 146).

5. Undersigned counsel was informed on June 4, 2019, by David Arthur, counsel for defendants, that the class notice had been posted for at least 30 days and provided as required by the parties' stipulation.

6. Undersigned counsel, as class counsel, therefore makes the following report concerning comments he has received about the proposed termination of the private settlement agreement in this case.

7. As indicated in the notice that was sent to prisoners, counsel agreed to summarize all comments that he received, although with the explicit consent of the prisoner counsel also agreed to also give the correspondence containing the prisoner's comments directly to the Court. The comments are summarized below. Where the prisoner has not consented to the release of his or her comments to the Court, the prisoner's name is not used and he or she is listed by a number. Although a number of prisoners gave their consent to disclose their correspondence to the Court, some of the correspondence discloses personal information concerning the prisoners' mental health conditions and counsel is uncomfortable disclosing the correspondence publicly. Therefore, counsel has filed these letters under seal and designated the prisoners by letter. A number of prisoners have filed comments directly with the Court. Those comments are summarized

below, but counsel has not included copies of the comments, but has noted the numbers given to them by this Court's electronic filing system.

8. As the Court knows, the proposed stipulation, if approved, would dismiss the private settlement agreement in this case that prohibits the housing of "seriously mentally ill" prisoners within what was formerly called the Secured Housing Unit ("SHU") now Secure Confinement Unit ("SCU"), at Wabash Valley Correctional Facility. In return, as noted in the proposed stipulation, the prohibition on placing seriously mentally ill prisoners in secure confinement, as set out in the private settlement agreement in *Indiana Protection and Advocacy Services Commission, et al. v. Commissioner, Indiana Department of Correction*, No. 1:08-cv-01317-TWP-MJD (S.D. Ind.) ("*IPAS*"), would remain in place for at least one year from the dismissal of the private settlement agreement in this case.

9. Many of the comments received do not specifically concern the issue set out in the above paragraph. Nevertheless, all comments are summarized below. Where the letters have been quoted counsel has not corrected spelling or grammar. In a number of letters that are summarized below prisoners asked for copies of either the private settlement agreement in this case or in the *IPAS* case. These requests will be honored.

10. Here are the comments received as of this date:

Prisoners who consented to disclosure of their letters to the Court and whose letters are attached:

1. Brandon Bates is currently in the IRT program at Pendleton Correctional Facility that was established by the *IPAS* agreement. He states that staff is not complying with the settlement and the program should be shut down.
2. Borislav Cuckovic states that the SCU, with windowless cells, is like a dungeon and mentally ill persons should not be put there, even if not seriously mentally ill. Terminating the settlement will not benefit anyone other than the DOC. "If you take away the Mast case agreement you'll fail many inmates, fail our communities, you'll only make the D.O.C. happier. Please I beg you DONT DON'T do it. PLEASE."
3. David Dimmett – "I urge the court that the IPAS is better, and dismissal of the Mast agreement is not only fair, reasonable, and adequate but necessary."
4. Donald Douglass asks for more information on the cases and does not take a position on the termination of the *Mast* agreement.
5. Thomas Hale cites an article in the *International Journal of Offender Therapy and Comparative Criminology* that discusses the adverse psychological effects of solitary confinement on prisoners in super-max units. He has no specific comments concerning the termination of the *Mast* agreement.
6. Charles Justise is against the termination as it appears that prisoners had more protections under *Mast* than under *IPAS*. He asks for further information on the agreements.
7. Phillip Grimsley indicates that the New Castle Annex is not following the settlement agreement. He says that offenders are allowed recreation for only 75 minutes a day, if they are allowed out of their cells at all: "some weeks were locked down for two to three days out of the week." Because offenders are not currently being protected, "now is not the time to withdrawl from the settlement agreement."
8. Phillip Littler states that he is seriously mentally ill. He filed a Petition for Leave to Intervene in this case (Dkt. 147). He objects to continued representation of the class by Kenneth Falk on several grounds, including Mr. Falk's collusion with the DOC, his clear financial motivation, and his lack of "standing to arbitrarily and unilaterally, practically hijack" the *Mast* case. Lawsuits filed by Mr. Falk make conditions in the DOC worse (including litigation concerning kosher

diets), in part because the DOC now skirts the requirements of the *IPAS* agreement by refusing to give people mental health classifications. The *IPAS* agreement itself ignores the needs of people with social anxiety who truly need to be confined in solitude. Mr. Littler describes himself as being such a person. The only way to attain such solitude is on a Restricted Housing Unit, which is more abusive than segregation. There is reason to believe—based on Mr. Littler’s interviews with prisoner who were on those units—that the mental health units are even more abusive than the regular segregation units. Before making any decision on the *Mast* settlement agreement, Mr. Littler says, the court should investigate the psychiatric unit at Wabash Valley and the Treatment Unit at New Castle. Given the horrors that prisoners suffered at Wabash Valley prior to *Mast*, “No actual member of this class wants to reopen the S.C.U. to house us arbitrarily and abusively for years on end. And the one year extension of the I.P.A.S agreement offered in exchange is absolutely meaningless to us.”

9. Joshua McDaniel offers no opinion on the settlement agreement but is extremely concerned about the suicidal offenders housed in his dorm, who must cope with harassment, difficult living conditions, and untrained staff. McDaniel explains: “These guy’s are paraded in here in front of all of us, people talk s**t and yell at them.” They are not permitted mattresses, nor any reading materials. They are provided with powdered juice, but no means to drink it. He believes “mentally ill people should be in a highly controled environment for sure, around highly educated and trained professionals.”

10. John Miller states that the DOC is breaking the private settlement agreement from *Mast*. If a seriously mentally ill prisoner is creating problems for staff, Miller states that “staff will have the mental health at Westville take there mental health code off of them so they can put them in for a transfer to Wabash Valley,” where they will be placed in long-term segregation. Miller also believes the DOC is violating the *IPAS* agreement, and rather than terminating the agreement, “more needs to be done about this because if not another lawsuit could be filed.”

11. Clinton Riley objects to the incarceration and warehousing of the mentally ill within the DOC. Based on the injustices of the SOMMs program, he opposes any new structure by which the DOC can oppress and control those over whom the DOC should not have custody in the first place.

12. Jerome Robertson has “been on Department-wide Administration Segregation” since April of last year. He is seriously mentally ill and is housed at the Westville Control Unit. He is not permitted 10 hours of weekly treatment. He objects to the fact that there are no windows on the Secured Confinement Unit and he believes that the proposed settlement will result in mentally ill prisoners being confined there, despite what the DOC has said. The proposed agreement in this case demonstrates that undersigned counsel is “in cahoots with the DOC to justify the inadequate mental health treatment” provided by the DOC.

13. J.L. Spivey submitted a letter to the court (Dkt. 148), as well as a letter to the ACLU. (This latter letter is attached). In the letter to the court, he states that he has been held in the SHU for more than 24 months as an act of retaliation for mailing letters that reveal the true character of the DOC. He opposes the dismissal of the agreement, which he believes would run counter to the “ultimate goal of being able to lower our almost 80 percent reoffense levels.” Segregation provokes mental illness. The use of segregation must be greatly reduced. Even though mental health professionals are constrained by the DOC in terms of what good they can do, the presence of mental health staff has greatly improved the prison environment. Until the DOC radically reduces or reconfigures the use of segregation, agreements like *Mast v. Donahue* are vital because they facilitate positive change. His letter to the ACLU is identical in large part.

14. Gregory A. Taylor submitted a declaration (Dkt. 150). He is in the Special Needs Unit (“SNU”) at Wabash Valley Correctional Facility and states that there “is no m/H Treatment going on here only playing cards and coloring.” Mentally ill offenders see a psychiatrist every 90 days for only three minutes. He has been told by a correctional officer “that once this case is dismissed, ‘The state will be Free to do whatever.’” He complains of contacting undersigned counsel but receiving no response. He also complains that the class notice was only posted for two weeks rather than 30 days.

15. Joel Valle does not comment on the settlement agreement, but he would like the Court to know that he suffers from serious seizures, which his medication does nothing to alleviate. While seizing, he often injures himself. He woke from a recent seizure covered in blood from an injury to his chin that required stitches. Staff not only fail to assist him, but also spray him with mace.

16. Quentin Phipps says he is seriously mentally ill and is in secure confinement for something that he had no control of. He has no comments on the settlement.

Prisoners who consented to disclosure of their letters to the Court and whose letters have been submitted under seal:

17. Prisoner A. He describes himself as seriously mentally ill and describes a suicide attempt and suicidal thoughts. He reports that the DOC is not properly treating his mental illness and people are kicked out of mental health programming without treatment. He notes that "if they follow the agreement then yes it will work but 'who' is enforcing the agreement."

18. Prisoner B. He states that he is severely disabled, both mentally and physically. He has no comments on the proposed termination of the private settlement agreement, but discusses his medical situation and his underlying criminal case.

19. Prisoner C. This prisoner writes an extremely lengthy letter. He is against the agreement being terminated. He believes that if the agreement is terminated prisoners with mental illness will be placed inside the SCU at Wabash Valley and this will injure them. He is concerned that the DOC will label these prisoners as not seriously mentally ill, but suffering from behavioral problems. He is concerned that if the *Mast* agreement is terminated he will be transferred to the SCU and be punished for having mental health issues. If he is transferred to the SCU "I have no doubt that I will end my life as a result." He thinks the definition of "seriously mentally ill" in the *Mast* case should be applied to the *IPAS* agreement.

20. Prisoner D. He opposes termination of the agreement. He is particularly concerned because he believes the DOC is already circumventing the *IPAS* agreement by simply discontinuing meds and changing the mental health code for any offender the DOC wishes to place in segregation. He himself is now being refused medication, despite his history of anxiety, depression, self-harming, attempted suicide, and hearing voices. He believes that this is so he can be placed in segregation. "To dismiss the agreement in *Mast v. Donahue*," he says, "will be a step in the wrong direction. I am currently attempting to prevent offenders from being housed on segregation for years under extremely harsh conditions which serve no penological interest other than to torture and torment us. Knowing that

segregation drives offenders mad it has to be limited.” “PLEASE DO NOT DISMISS MAST v. DONAHUE.”

21. Prisoner E. He notes concerns about the placement of mentally ill persons in segregation and believes that removing the *Mast* definition of seriously mentally ill “may be arbitrarily used to lower the level of the IDOC’s commitment to the settlement.” He is concerned that he was deemed to be seriously mentally ill in the past, was released, and came back to the DOC six months later on a suspected parole violation and was reclassified and told that he was no longer seriously mentally ill. He complains of conditions in the segregation unit at Indiana State Prison.

22. Prisoner F. He complains that he is seriously mentally ill but is confined to the Westville Control Unit, in administrative segregation. He has no specific comments concerning the termination of the *Mast* agreement but believes that he should be in a mental health unit or a “open housed facility.”

23. Prisoner G. He believes that isolation of prisoners is a problem. He speaks highly of the IRT program at Pendleton. He has no specific comments concerning the termination of the *Mast* agreement.

24. Prison H. He is 100% against the termination. He reports that he is a mentally ill prisoner who is awaiting transfer to the Westville Control Unit. Mentally ill prisoners should only be housed in a unit with windows as this helps to dissipate depression and suicidal feelings. “So please do not dismiss the agreement.”

25. Prisoner I does not reference the settlement agreement in *Mast*. He says he is a serious mentally ill person and asks the court to preserve the rule limiting the number of days that seriously mentally ill patients can be held in segregation. He has benefited from the rule that limits this period to 30 days.

26. Prisoner J disagrees with the idea of “dropping this lawsuit.” He was sent to the mental health unit at New Castle Correctional Facility. After attempting suicide there many times and “because of issue there” he was sent to the Westville Control Unit. He was stripped of his mental health codes and sent to Pendleton – a fate he says has befallen numerous offenders. He is concerned that terminating the agreement will result in the DOC “keep[ing] us on lock up for years.”

27. Prisoner K has authorized the disclosure of his information. However, he is a juvenile who is incarcerated in one of the DOC's juvenile facilities and therefore his name should not be publicly disclosed. He believes that segregating mentally ill prisoners is unfair and likely to cause them more damage. He states that "the Mast case should be dropped and dismissed."

28. Prisoner L opposes terminating the agreement in *Mast*. He is mentally ill and is not receiving adequate treatment, and he is only ever told that the prison cannot do any better because they are understaffed. "The bottom line," he says, is that the mental healthcare provided by the DOC "is very poor, so anything that's for bettering and helping mental health patients needs to stay in place."

Prisoners who did not consent to disclosure of their letters to the Court and whose comments are summarized:

29. Prisoner #1. This individual agrees that *Mast* can be terminated, "but only if the IPAS is continued definitely and permanently, not just one year."

30. Prisoner #2. This offender makes no comment on the settlement but describes his own situation in some detail. His diagnoses include depression, schizophrenia, hallucinations, seizures, and a history of self-harm going back to childhood. He is also indigent. He objects to being housed with the general population, which intensifies his paranoia and predisposes him toward violence. He also objects to being located deep in the range, where guards cannot see and do not check. When he has seizures, they neither see him nor come to assist him, even when other offenders call out for help. He cannot report suicidal ideation out of fear of being placed in a strip cell. Other offenders prey on his loneliness and his mental illness, talking him out of his small monthly allotment of commissary items by promising to be his friend.

31. Prisoner #3. This individual expresses no opinion about the settlement, instead explaining what needs to be provided to help mentally ill people in the DOC, including counseling, air conditioning, proper staffing levels, proper medication, and either a television or windows. He has been through the IRT program.

32. Prisoner #4. This person identifies himself as a "C code mental patient" and states that he is heavily medicated. He does not comment on the *Mast* settlement but does note that he is currently in segregation after receiving 90 days for a write

up. "Please! get me out of segragation!" He feels he is in danger. He requests help in his criminal case.

33. Prisoner #5. This individual has lost the paperwork identifying him as mentally ill. He is presently in protective custody but seeks help to be properly classified and transferred. He offers no opinion on the fate of the settlement agreement.

34. Prisoner #6. This individual has been in segregation since February 28. He has not had his final hearing before the disciplinary hearing board. He has no comment on the settlement agreement.

35. Prisoner #7. This individual states that he has been diagnosed with an Axis I psychosis and an Axis II behavioral disorder. After being physically attacked, he was placed in protective custody, and he believes that the conditions for mentally ill prisoners in protective custody must be taken into account before terminating the agreement in *Mast*. At present, to gain protection, offenders must sacrifice treatment, and vice versa. He himself attempted suicide because he cannot get the treatment he needs in protective custody. The mentally ill prisoners in protective custody also reside in windowless cells where they can be seen – and ridiculed – by offenders in the general population, and they have no access to programs. "These agreements are important," he says, "and we still need your concerns and the protection of the court."

36. Prisoner #8. This individual makes no comment on the settlement agreement in *Mast*. He has a lengthy history of mental health problems preceding his formal diagnosis of schizophrenia in 2016. He is currently in disciplinary segregation for a period of six months because he fled from a correctional officer while overcome by paranoia. He contends that, according to the "Agreed Entry," this violates his due process rights.

37. Prisoner #9. This individual is a graduate of the PLUS program who has served as a suicide watch companion in a mental health unit. In this capacity, he has observed delays in food, water, and other basic needs due to understaffing of the prison at large. Staff also provoke the people on suicide watch, mock them, and if they mouth off, may even beat them up. By way of commenting on the settlement agreement, he simply says, "I want you, to be aware of these things."

38. Prisoner #10. This individual states that he is blessed to be free from mental illness himself, but that after 20 years in the DOC's custody, he has observed how the mentally ill are treated in virtually every facility in the state. "I believe any and every agreement with the DOC and these private prisons should require independent oversight," he says. He asks that oversight be incorporated into any and all agreements as the DOC is not able to police itself.

39. Prisoner #11. This individual, who is incarcerated in a DOC facility, offers no specific opinion on the *Mast* settlement agreement but submits a paper written last year for a class. The paper, in turn, underscores the plight of mentally ill prisoners who are Black and LGBTQ, because they face racism, homophobia, and the stigma of mental illness, and they tend to fare the worst in the prison system.

40. Prisoner #12. This individual is held in a facility with a Secure Housing Unit, which this individual believes is like the one in the *Mast* agreement. Although mentally ill prisoners live in their own unit, they move freely within the general population as well, a situation that poses a danger to everyone. When a mentally ill person is upset, elderly inmates face particular danger, but anyone whom the mentally ill offender dislikes may also become a target. Allowing this situation to continue requires guards to be present 24/7.

41. Prisoner #13. This individual is a graduate of the PLUS program who has acquired more than 10 years of experience as a suicide companion, during which time, he witnessed firsthand the suffering of those placed in strip cells. "Medication," he says, "is not the solution," but the solution lies in an opportunity for talk therapy, meaningful treatment, recreation, education, and rehabilitation.

42. Prisoner #14. This individual objects to "segregation Housing for people with mental Health problem. That is like putting an animal in a cage that gets out for 1 hr." He recounts his own history of being segregated and sometimes "forgotten about" while in a county jail.

43. Prisoner #15. This person has a mild intellectual disability, bipolar disorder, and intermittent explosive disorder. He is in a mental health unit and states that he has "been lock down for 1 year straight." He makes no comment about the *Mast* agreement, only a request for help.

44.. Prisoner #16. This individual seeks a more basic explanation of the issues presented in the ACLU's memo to prisoners. "From what I gather," he states, "they want to put the mentally ill in general population." He disagrees with this idea and points out several problems likely to occur if this plan is implemented. He proposes his own idea, which is to train prisoners on their rights and on the proper use of the grievance process, so that offenders know when staff cross a line and what to do about it. He advocates for this as a non-violent approach to problem solving.

45. Prisoner #17. This individual spent five years in segregation, during which time, "I too as a sufferer of 'serious mental illness' found my symptoms greatly exacerbated by the thousands of hours and countless months in isolation." During this time, his family told him that letters home were becoming upsetting to read. He would like to become involved in a class action lawsuit regarding his time in solitary and the permanent damage it did to him. He makes no comment on the settlement agreement in *Mast*.

46. Prisoner #18. This individual has seemingly understood the memo to prisoners to indicate that mentally ill prisoners will receive damages from the *Mast v. Donahue* suit. He declines his share of the damages on the grounds that "I will collect Disability" and receive food stamps upon his release from prison. In a postscript, he adds, "[i]ts really Hard To tell the difference in being locked down for 21 hours a day at Walbash or more 23 Hours . . . in a controlled lockdown in a confined space."

47. Prisoner #19. This individual was a member of the original class in *Mast v. Donahue*. He feels used, as though his opinion on the fate of the settlement agreement does not actually matter. He is upset that he has asked for help from the ACLU since *Mast* and has been turned down. He is upset that people released after *Mast* had good time restored to them for write-ups that occurred on the unit, while he was never offered that chance. Meanwhile, he is still not receiving appropriate mental health care, and no one is holding staff accountable. The media sensationalizes violence against an inmate when it is committed by another inmate but ignores violence against inmates when the DOC is to blame.

He adds that requesting a dismissal of the settlement is a tactic to go back to doing what was done before. He thinks a judgment should issue in the *Mast* case, not a

settlement agreement as the DOC is not complying. No prisoner with a mental health code or taking mental health medications should be sent to or allowed in the SHU. If this is not done, the DOC will find a way to send prisoners with mental health codes to the SHU.

48. Prisoner #20. The individual requests copies of the private settlement agreements in both the *IPAS* and *Mast* cases.

49. Prisoner #21. This prisoner states that the *IPAS* agreement changed his life, transforming him from a felon into a person who is now hoping to start college. He supports ending the settlement agreement in *Mast* “[a]s long as it betters a position for all psych in Indiana prisons.”

11. As can be seen, opposition to the proposed dismissal of the *Mast* private settlement agreement focuses on two points: 1) if the agreement is dismissed, seriously mentally ill prisoners will again be sent to the Secure Confinement Unit (formerly the SHU) at Wabash Valley Correctional Facility and 2) secure confinement/segregation is inappropriate for all prisoners, regardless of their mental health, and the unit at Wabash Valley Correctional Facility, which does not have windows, is particularly problematic.

12. Counsel does not disagree with the second point noted above concerning the fact that long-term segregation of any prisoner, even one without a preexisting mental health diagnosis, is debilitating to the prisoner’s mental health. However, the *Mast* decree did not concern the segregation of non-mentally ill prisoners. Therefore, undersigned counsel does not believe that general objections to segregation are relevant in this case.

13. As to the first point, it is certainly true that the definitions of “seriously mentally ill” in the *Mast* and *IPAS* stipulations are different.

Mast definition:

10. The parties agree that for the purposes of this agreement, the term “seriously mentally ill” is defined as:

-prisoners who have a current diagnosis, or evidence, of any Diagnostic and Statistical Manual IV (DSM-IV) Axis I diagnosis or who are receiving treatment for such a diagnosis, or,

-prisoners who have been diagnosed with a mental disorder that is worsened by confinement in the SHU.

(Mast, Dkt. 75-1).

IPAS definition

18. The parties have agreed on the following definition of seriously mentally ill prisoners, which includes and expands upon the group of offenders covered by the Court’s definition:

a. Prisoners determined to have a current diagnosis or recent significant history of schizophrenia, delusional disorder, schizophreniform disorder, schizoaffective disorder, brief psychotic disorder, substance-induced psychotic disorder (excluding intoxication and withdrawal), undifferentiated psychotic disorder, bipolar I or II disorders;

b. Prisoners diagnosed with any other validated mental illness that is clinically severe, based on evidence-based standards, and that results in significant functional impairment; and

c. Prisoners diagnosed with an intellectual or developmental disability or other cognitive disorder that results in a significant functional impairment.

d. As used above:

(i) “Recent significant history” refers to a diagnosis made at any time in the last 12 months.

(ii) “Significant functional impairment” includes one of the following as determined by qualified mental health staff:

- Within the previous 6 months, the prisoner has either made a suicide attempt that mental health staff considers serious, inflicted self-injury that mental health staff considers serious, or both;
- The prisoner has demonstrated difficulty in his/her ability to engage in activities of daily living including:
 - Eating
 - Grooming and/or personal hygiene
 - Maintenance of housing area
 - Participation in recreation
 - Ambulation
- The prisoner has demonstrated a pervasive pattern of dysfunctional or disruptive social interactions, bizarre or disruptive behavior, *etc.*, as a result of mental illness.

(iii) A misdiagnosis does not qualify as a diagnosis or determination of mental illness for purposes of this settlement, once the error has been determined by a qualified mental health professional.

(IPAS, Dkt. 496).

14. The *Mast* definition refers to “any Diagnostic and Statistical Manual IV (DSM-IV) Axis I diagnosis.” This document can be viewed at <https://1.cdn.edl.io/XRT6WhAdm7L7xioV6lr2dVK1GoWWCeq614ySeGavmjPY2rV5.pdf> (last visited June 10, 2019). Relevant excerpts are attached to this document as Exhibit 27. It is true that the *IPAS* definition does not include every Axis I DMS-IV diagnosis. However, in formulating the definition used in the *IPAS* case, it was felt by the experts that plaintiffs’ counsel employed that the

definition was sufficiently broad to include the class of seriously mentally ill persons who should not be in restrictive housing/segregation.

15. The *IPAS* agreement generally prohibits housing seriously mentally ill prisoners in restrictive housing for more than thirty days. There are two exceptions to this. One is if the prisoner desires to stay in restrictive housing and the DOC determines that the harm from staying in restricted housing does not outweigh the harm from moving to a placement where the prisoner can receive appropriate mental health treatment. (*Mast* Dkt. 496 ¶33). The second is if the DOC determines that there are exceptional circumstances such that “removing a seriously mentally ill prisoner from segregation/restrictive housing would pose an unacceptable risk to the safety and security of one or more prisoners and/or the staff. (*Id.* ¶32). In March there were only 14 such prisoners in the entire DOC.

16. Subject to the exceptions noted in the *IPAS* agreement for prisoners who are too dangerous to remove from restrictive housing or those who wish to stay in such housing, no one who is deemed to be seriously mentally ill under the *IPAS* definition will be able to be placed in the SCU if the *Mast* agreement is dismissed. Further, the DOC has agreed that dismissing the *Mast* agreement will not result in prisoners being placed into the SCU who are not already in restrictive housing in the DOC. (Dkt. 138 ¶ 17). The only question, therefore, is whether there are prisoners who are currently in restrictive housing units other than the SCU, or who may be eligible for such placement in the future, who will, if

the *Mast* agreement is dismissed, now be allowed to go to the SCU even though they would not have been under the *Mast* agreement. Counsel is uncertain as to whether there are any such prisoners, other than the small number of prisoners who are excepted from the *IPAS* agreement as noted above. However, as also noted above, plaintiffs' experts in *IPAS* were satisfied with the definition of seriously mentally ill in that case. Counsel receives frequent correspondence from prisoners and will continue to monitor whether prisoners are improperly placed in restrictive housing, including the SCU.

17. Counsel certainly understands and appreciates the concerns expressed that prisoners will be rediagnosed as not being seriously mentally ill so they can be placed into restricted housing. This was a concern in the *IPAS* case and the private agreement there requires undersigned counsel to be notified within 30 days after: 1) a prisoner who was reclassified from seriously mentally ill to not seriously mentally ill is placed in restrictive/segregated housing within 6 months of the reclassification, or 2) a prisoner who is in restrictive/segregated housing is reclassified from seriously mentally ill to not seriously mentally ill and is retained in restrictive segregated housing. (*IPAS* Dkt. 496 ¶ 39). The *IPAS* agreement allows undersigned counsel to review the medical records of these persons. (*Id.* ¶ 40). This concern can be monitored, provided the *IPAS* agreement remains in effect.

18. Undersigned counsel believes that there is a real benefit to continuing the private settlement agreement in the *IPAS* case and it is necessary to allow for the dismissal of the *Mast* agreement to continue the *IPAS* agreement.

19. Undersigned counsel therefore continues to believe that the proposed dismissal of the private settlement agreement in this case is a fair, reasonable, and adequate resolution of this matter.

20. At the fairness hearing in this case undersigned counsel will address why he believes that the requirements of Rule 23(e)(2) are met in this case.

WHEREFORE, class counsel files his report to this Court.

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