**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| ETHEL WILLIAMS, *et al.*, | ) | |
| | ) | |
| Plaintiffs, | ) | No. 05 C 4673 |
| | ) | |
| vs. | ) | Judge Hart |
| | ) | Magistrate Judge Denlow |
| PAT QUINN, *et al.*, | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFFS' REPLY IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CONSENT DECREE AND APPROVAL OF NOTICE PLAN**

After nearly five years of litigation, Plaintiffs and Defendants have reached an agreement that, if approved by this Court, will address Illinois' long-standing discrimination against thousands of people with mental illness and enhance the choices available to *all* Class Members,[1] including Danny McLean and David Twomey ("Objectors"). While the Proposed Consent Decree ("Decree") will guarantee all Class Members the opportunity to move to an appropriate Community-Based Setting, nothing in the Decree requires anyone to move against his or her wishes. Objectors' unfounded fears that expanding options for all will compromise Objectors' ability to remain institutionalized provides no legal basis to deny relief to the Class Members who desire—and have a legal right—to move to the community.

To justify final approval, a class-action settlement must be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(1). To ensure that standard is met, the district court judge must conduct a fairness hearing and "exercise the highest degree of vigilance in scrutinizing [the] proposed settlement[] . . . ." *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (citation omitted). Preliminary approval, in contrast, requires only that the

[1] Capitalized terms are used as defined in the Decree.

proposed settlement fall "within the range of possible approval." *Kaufman v. Am. Express Travel Related Servs. Co., Inc.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009) (citation omitted); *see also Carnegie v. Household Int'l, Inc.*, 371 F. Supp. 2d 954 (N.D. Ill. 2005). Accordingly, at the preliminary approval stage, the court need only perform a "more summary version" of the final-approval analysis. *Kessler v. Am. Resorts Int'l Holiday Network, Ltd.*, Nos. 05 C 5944, 07 C 2439, 2007 WL 4105204, *5 (N.D. Ill. 2007).

Objectors have provided no argument that would justify withholding preliminary approval of the Decree. Contrary to their assertions, the Decree provides a far more detailed description of its requirements than an injunctive order would likely provide if Plaintiffs prevailed at trial. Further, the Decree requires those evaluating Class Members for placement in the community to consult with the Class Member's psychiatrist and other mental health professionals where appropriate, and to consider the Class Member's medical condition. Finally, the proposed award of attorneys' fees is reasonable and appropriate and represents only a fraction of the value of the fees actually incurred by Plaintiffs' counsel in prosecuting this case.

The centerpiece of Objectors' argument is their assumption that IMDs are the only available "bridge" between "two extremes" – a "locked psychiatric ward" or "complete independence in an apartment," apparently without any services or supervision. (Resp. at 3) But the Decree mandates a system that is the opposite of the one Objectors fear. The Decree makes clear that the needs of all Class Members who choose to leave an IMD will be carefully evaluated and that those Class Members will receive all of the appropriate services they need. (*See* Decree ¶¶ 6–7) Contrary to Objectors' speculation, there is every reason to believe that former IMD residents will receive much better services and supports outside of the IMDs than they receive now. (E. Jones Report at 10; D. Jones report at 9, 15)

## BACKGROUND

The named plaintiffs filed this action on August 15, 2005, and this Court certified the case as a class action on November 13, 2006. Plaintiffs contend that Defendants are violating the integration mandates of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), which require states to administer services, programs and activities in the most integrated setting appropriate to the needs of individuals with disabilities. As the Supreme Court affirmed in *Olmstead v. L.C.*, "unjustified institutional isolation of persons with disabilities is a form of discrimination." 527 U.S. 581, 600 (1999). Plaintiffs allege that Illinois maintains a segregated, outmoded system for serving individuals with mental illness that needlessly forces thousands of people to live in IMDs.

Plaintiffs have conducted extensive discovery and worked with five experts who submitted three reports describing the systemic problems caused by Illinois' heavy reliance on IMDs. Plaintiffs' expert Elizabeth Jones, who visited all 26 IMDs, detailed the dehumanizing practices that persist in the IMDs and the general lack of choice, privacy, and social interactions the residents endure. (E. Jones Report at 3–6) Plaintiffs' clinical experts, two psychologists and a psychiatrist from Yale University, concluded that the overwhelming majority of IMD residents are capable of living in much more integrated settings with the level of supports and services that are available in typical community-based programs. (Yale Report at 21–23, 28) The Yale experts and Elizabeth Jones agreed that most IMD residents would choose to leave the IMD if given the opportunity. (E. Jones Report at 6–9; Yale Report at 18–20) The experts also found that a substantial majority of class members could live in their own apartments as part of the State's "supportive housing" programs. (Yale Report at 7; *see* D. Jones Report at 15) Dennis Jones, a former mental health commissioner in two states who served as Plaintiffs' expert on mental health systems and costs, reported that it is less expensive for Illinois to serve people in

the community than in IMDs, that the State would realize significant cost savings by affording IMD residents the opportunity to live in community settings, and that the State has many community service providers with the capability and willingness to serve IMD residents. (D. Jones Report at 5, 15–16, 21–23)

After the close of discovery, the parties entered into settlement negotiations at the Court's urging and ultimately came to an agreement. The agreement, memorialized in the proposed Decree, offers fair, reasonable, and adequate relief to all Class Members. Under the Decree, Class Members will receive independent Evaluations to determine the supports and services they need to live in a Community-Based Setting. Following the Evaluation, those who do not choose to remain in an IMD will receive an individualized Service Plan and will be offered the opportunity to move into the community over a five-year period. Those who choose to remain in an institution can later change their minds and move into the community.

The issues in this case are not novel. The district court for the Eastern District of New York recently ordered the state of New York to provide thousands of residents of large private institutions for individuals with mental illness ("Adult Homes") with the opportunity to live in community-based settings. *Disability Advocates, Inc. v. Paterson ("DAI")*, No. 03-CV-3209 (NGG), slip op. (S.D.N.Y. March 1, 2010) (Exhibit 1). The Adult Homes at issue in *DAI* are very similar to IMDs. After presiding over a five-week bench trial, the court ruled that New York was in violation of the Americans with Disabilities Act and the Rehabilitation Act by failing to provide Adult Home residents "the opportunity to receive services in the most integrated setting appropriate to their needs." *DAI*, 653 F. Supp. 2d 184, 187–88 (E.D.N.Y. 2009). Plaintiffs believe that they would achieve a similar result if this case went to trial.

## ARGUMENT

### I. The Decree Is Sufficiently Detailed

Objectors contend that the Decree is not sufficiently detailed, suggesting that the Implementation Plan "should come now, not later." (Resp. at 5) This argument ignores the fact that the Decree provides as much, and likely more, detail than a court order would contain if Plaintiffs prevailed at trial. [2] Due to principles of federalism and comity, the usual course in institutional reform cases such as this one is to permit state government defendants to submit a proposed plan providing details about how they would remedy their unlawful conduct. The court in *DAI* adopted this approach, 653 F. Supp. 2d at 313, reasoning that "the court must give appropriate consideration to principles of federalism, as 'remedies that intrude unnecessarily on a state's governance of its own affairs should be avoided.' Unnecessarily detailed remedial orders may inject federal courts into the business of 'regulating a state's administration of its own facilities,'" *id.* at 312 (citations omitted). Other cases are in agreement. *See, e.g.*, *Lewis v. Casey*, 518 U.S. 343, 362 (1996) ("[T]he strong considerations of comity that require giving a state court system that has convicted a defendant the first opportunity to correct its own errors . . . also require giving the States the first opportunity to correct the errors made in the internal administration of their prisons."); *Memisovski v. Maram*, No. 92-CV-1982, slip op. (N.D. Ill. Sept. 14, 2004) (ordering defendants to submit proposed remedial plan following finding that state violated federal law) (Exhibit 2). As a practical matter, Defendants are in the best position to hammer out the details of implementation without unnecessary court micromanagement at this juncture, as "courts are ill-equipped 'for formulation and day-to-day administration of detailed plans' to assure compliance with the law." *DAI*, 653 F. Supp. 2d at 312 (citation omitted).

[2] To the extent that the Decree does not make clear that the Parties will file the Implementation Plan with the Court, the Plaintiffs are willing to amend the language of the Decree to specify that the Implementation Plan will be filed with the Court regardless of whether or not any disputes arise between the Parties.

Notably, the order granting injunctive relief in *DAI* covers roughly the same categories that the Decree covers, but it does so in just eleven pages with much less detail. *Compare* Decree *with DAI*, No. 03-CV-3209 (NGG), slip op. (S.D.N.Y. March 1, 2010). For example, the Decree devotes six subparagraphs to Service Plans, describing what they must contain, who will develop them, their focus and timing, (Decree ¶ 7), while the *DAI* order simply provides that the state must arrange for providers of community-based services to identify "the services each eligible individual needs to successfully transition to and live in supported housing and arrange for the individual to timely receive those services," *DAI,* No. 03-CV-3209 (NGG)*, slip op.* ¶ 6(g) (S.D.N.Y. March 1, 2010).[3]

The Decree requires Defendants, with input from the court-appointed Monitor and Plaintiffs, to develop an Implementation Plan that describes in detail the specific tasks, services, supports, timetables, protocols and other actions necessary to achieve compliance with the Decree. (Decree ¶¶ 11, 12) The Court retains the authority to resolve any disputes about the content of the Implementation Plan after the parties and the Monitor have had an opportunity to review and discuss it. (*Id.* ¶ 12) To require the parties to negotiate and the Court to evaluate and approve each of these details at this stage would be inappropriate and unworkable.

## II. The Decree Provides For Input by Appropriate Professionals in Transition-Planning

Ignoring what the Decree actually says, Objectors argue that placement of Class Members should be a medical decision and that the Decree "removes the medical component" from the placement decision. (Resp. at 6) This argument mischaracterizes the Decree and is in

[3] The level of detail Objectors seek is far more than would even been appropriate for the Implementation Plan, much less a consent decree. Questions such as how residents will get their medications and who will check in on them (Resp. at 5) will be answered on an individual basis in each Class Member's Service Plan (the general contents of which the Decree clearly spells out). Similarly, how rent will be handled, (*id.*), will depend on the type of setting the Class Member is transitioned to, which will be determined on a case-by-case basis. Other questions regarding who will conduct the Evaluations and draft the Service Plans, (*id.* at 6), are answered in the Decree, (*see* Decree ¶¶ 6(b), 7(c)).

conflict with the view of mental health experts.

The Decree specifically requires that Class Members' medical condition be taken into account during the Evaluation process: "Each Evaluation shall include . . . *an assessment of the Class Member's medical condition* as it bears on his or her appropriateness for placement in a Community-Based Setting . . . ." (Decree ¶ 4(viii) (emphasis added)) Evaluations must also include "consultation with *the Class Member's psychiatrist and/or other professional staff* where appropriate." (*Id.* (emphasis added)) These Evaluations, for each Class Member choosing to participate, will form the basis of the Class Member's Service Plan, which will describe the type of Community-Based Setting and Community-Based Services appropriate for the Class Member. (*See id.* ¶¶ 7(a), (b)) The evaluations will be supervised by Qualified Professionals employed by the same Pre-Admission Screening agencies that currently determine eligibility for admission to IMDs. (Decree ¶¶ 4(viii), (xvii)) Objectors' assertion that the Decree does not take into account Class Members' medical condition in the placement process is simply inaccurate.

Further, mandating that Evaluators consult with the IMD's psychiatrist in every case would not be appropriate because many Class Members do not have meaningful contacts with a psychiatrist. The Yale experts found, for example, that records for the majority of class members did not reflect any input from the resident in treatment planning and that 98% of class members' records did not show evidence of appropriate efforts at discharge planning and community integration. (Yale Report at 26–27) Public reports paint an even bleaker picture of the work of IMD psychiatrists.[4] Thus, the Decree requires consultation with a psychiatrist only where

[4] For example, Dr. Michael Reinstein, a psychiatrist who works at several IMDs in Illinois, faces repeated allegations of inappropriately medicating his patients. Christina Jewett, *Doctor Gives Risky Drugs at High Rate*, Chicago Tribune, Nov. 10, 2009, *available at* http://www.chicagotribune.com/health/chi-drugs-doctor-reinsteinnov10,0,4609781.story. Dr. Reinstein reportedly sees "an improbably large number of patients," and he has admitted that he sees 60 patients each day. *Id.* Consultation with Dr. Reinstein or other psychiatrists who have almost no familiarity with their patients would add little to the discussion about what needs and services their patients would require in Community-Based Settings.

appropriate. (Decree ¶ 4(viii)) The Decree also provides for consultation with other professional staff where appropriate, along with "other appropriate people of the Class Member's choosing." (*Id.*) Where a Class Member has a legal representative, the representative must be consulted in developing the Class Member's Service Plan. (*Id.* ¶ 7(c)) These provisions provide ample protection to Class Members.

Objectors mistakenly emphasize the importance of the residents' medical conditions to the exclusion of other issues. The Yale experts found that 99% of residents have no medical reason to remain in IMDs. (Yale Report at 24–25) In addition, the notion that psychiatrists affiliated with the IMDs should exert substantial control over decisions about placement in the community is at odds with the consensus of mental health experts that institutions are rarely appropriate for treatment of persons with mental illness. Governor Pat Quinn's Nursing Home Safety Task Force ("NHSTF"), which recently concluded a four-month investigation into the State's nursing home system at the Governor's behest, reported that "[m]ental health experts unanimously advised the task force that nursing homes are inappropriate places to help individuals recover from mental illness." (NHSTF Final Report at 4 (Exhibit 3)) The NHSTF further noted that "[i]n the majority of cases, the most appropriate setting will be supported housing in the community." (*Id.* at 1) This conclusion is consistent with the findings of Plaintiffs' clinical experts. (*See* Yale Report at 23) Even Defendants' expert Dr. Jeffrey Geller acknowledged that all of the residents he interviewed could safely transition out of IMDs. (*See* Geller Report at 9)

Objectors' assumption that IMDs are part of a "continuum of care," and that the only more integrated alternative to IMDs is "complete independence" without adequate services (Resp. at 3), ignores the consensus of experts that appropriate services for the vast majority of

people with mental illness can be brought to them wherever they live. (*See* Yale Report at 6–7; D. Jones Report at 15–16; *see also DAI*, 653 F. Supp. 2d at 251–53) Class Members' mental health and medical needs are indistinguishable from those of people who live successfully in integrated, community-based settings all over the country. (D. Jones Report at 14–16; Yale Report at 6) Illinois officials themselves have acknowledged that thousands of people in IMDs could live safely and receive the services they need in its permanent supportive housing programs. (*See* D. Jones Report at 10) Further, the court in *DAI* found that to the extent a "continuum of care" model (involving moving people from more restrictive to less restrictive settings over time) exists in New York, the Adult Homes would be not part of such a model because institutional settings do not prepare people for community-living. 653 F. Supp. 2d at 253. In any event, the Decree requires Evaluators to assess Class Members' medical condition in order to account for any Class Members with severe medical problems that would warrant a skilled-nursing-facility level of care.[5] And Class Members' choices to decline an Evaluation and ultimately to remain in an IMD will be respected. (Decree ¶¶ 6(a), 7(b))

## III. Implementation of the Decree Will Save the State of Illinois Money Without Forcing Class Members to Move to the Community

Objectors also argue that the Decree lacks detail on how the settlement will be funded. (Resp. at 6) While the Decree does not and need not dictate how Defendants will fund its implementation,[6] it is clear that the Decree will save the State money. Plaintiffs' expert Dennis Jones concluded that Community-Based Settings are "significantly less costly to the State than

[5] According to Dennis Jones, individuals with "severe medical conditions that warrant continuous nursing care" are "largely precluded by admission standards from living in IMDs in Illinois." (D. Jones Report at 15)

[6] Consent decrees mandating that state officials comply with federal laws do not ordinarily intrude on the state's taxing and spending authority by specifying how the state will choose to fund its efforts at compliance. That constraint, however, does not limit a federal court's authority to enforce the terms of a consent decree. *See Frew v. Hawkins,* 540 U.S. 431, 440 (2004) ("Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, a consent decree may be enforced."); *Wis. Hospital Ass'n. v. Reivitz*, 820 F. 2d 863, 868 (7th Cir. 1987) ("Against a state that violates a valid court decree the court has the power to issue any order necessary to enforce the decree, including an order to pay.").

serving individuals in IMDs." (D. Jones Report at 17-18) When considering costs for ancillary services (e.g., "costs for physicians, pharmacy services, inpatient hospitalization, transportation"), the savings are even greater. (*Id.* at 18–19) These savings are due, in part, to the fact that the State is not eligible for a federal Medicaid match for the money it spends on most IMD residents, while federal matching funds are available when individuals are served in the community. (*See id.* at 17–18) Although Defendants' financial expert reached a different conclusion, Defendants' counsel has acknowledged that their expert double-counted certain costs, making the expert's conclusions unreliable. (4/15/10 Hr'g Tr. at 4:18–5:1)

These conclusions are bolstered by the findings of the NHSTF and the court in *DAI*. The NHSTF reported that affording individuals the opportunity to move from institutions to the community will save the State money: "The federal government reimburses the state, currently at 62 percent, for services provided to people with serious mental illness who qualify for Medicaid and live in the community. There is no reimbursement for individuals 19–64 who reside in mental institutions. The state can realize significant savings when those residents transition to community settings." (NHSTF Final Report at 16) The court in *DAI* similarly found that it is less expensive for New York to serve people in the community than in institutional settings. 653 F. Supp. 2d at 285.

Objectors assert that Defendants' motivation in settling this case is to save the State money and that the settlement threatens Objectors' ability to remain in institutions. While bringing the State into compliance with federal law will save the State money, the Decree supports the right of Class Members to live in the setting of their choice. Consequently, under the Decree, no one will be forced to move to a Community-Based Setting against his or her will, and all Class Members will be able to choose between an institutional and a Community-Based

Setting for which they are qualified. (Decree ¶ 7(b), 8) The Decree expands options for all Class Members and ensures that they have enough information to make informed choices that reflect their personal needs and preferences.

Objector's suggestion that the Decree must provide a "funding guarantee" for those who choose to stay in an IMD is meritless. The Decree does not diminish Objectors' rights to institutional care in any way and, because compliance with the Decree will save the State money, there will be more funds available to serve Objectors and other people with mental illness if the State chooses to do so. Objectors cannot reasonably expect more than that. They do not point to any legal entitlement to being served in an IMD, and whatever rights they might have to live in that setting are not altered by the Decree. Objectors' speculation that other Class Members' choices to move to the community will diminish their opportunity to remain in institutions is no grounds to deny preliminary approval. Class members who are satisfied with discriminatory conduct cannot stop others who are not satisfied from remedying systemic discrimination. *See, e.g.*, *Imasuen v. Moyer*, No. 91-C-5425, 1992 WL 26705, at *2 (N.D. Ill. Feb. 7, 1992) ("[T]he fact that some class members may be satisfied with an unconstitutional system and would prefer to leave violations of their rights unremedied" is not a reason to deny class certification); *Rolland v. Patrick*, No. 98-30208, 2008 WL 4104488, at *8 (D. Mass. Aug. 19, 2008) (stating that decertifying class after approval of settlement would deprive disabled class members confined in institutions of the opportunity to move into the community); *Wyatt v. Poundstone*, 169 F.R.D. 155, 161 (M.D. Ala. 1995) (stating that denying class certification because some institutional residents opposed community placement "would, in effect, preclude the use of the class action device in many of the very cases where it could be most advantageous").

Although they did not mention it in their Response, at the last status hearing Objectors'

counsel referred to Judge Holderman's decision decertifying a class in *Ligas v. Maram*, No. 05 C 4311 as a reason to deny or at least delay preliminary approval. In that case the named plaintiffs sought to represent a class of people with developmental disabilities who were housed in Intermediate Care Facilities or who were living at home but were at risk of institutionalization. Several years after the Court certified the case as a class action, the parties negotiated a proposed settlement. More than 2,000 objections were filed by legal representatives of class members who said they were satisfied with living in the facilities. Because of the concerns raised in those objections, Judge Holderman decertified the class after the fairness hearing, finding that "the settlement negotiated by the plaintiffs and the defendants is considerably broader than was necessary to address the needs of the class contemplated by the plaintiffs' lawsuit." *Ligas v. Maram*, No. 05 C 4331, slip op. (July 7, 2009) (Exhibit 4). The parties and former objectors are now attempting, at the Court's request, to negotiate a settlement that would satisfy all of their interests.

*Ligas* involved very different circumstances than this case, for several reasons. First, the proposed Decree in this case does not include the provisions that most troubled Judge Holderman in *Ligas*. The proposed Decree does not, for example, require class members to participate in evaluations if they do not want them; nor does it mandate a broad restructuring of the way Illinois receives applications and assesses eligibility for services. *Compare id. with* Decree ¶ 6(a). Second, thousands of class members objected to the proposed settlement in *Ligas*, many of them voicing their concerns before the Court granted preliminary approval of the proposed settlement, whereas only two class members have filed objections to the proposed Decree in this case. There is no reason to expect that situation will change significantly prior to the fairness hearing in light of the fact that a substantial majority of class members surveyed by Plaintiffs'

experts have expressed the desire to move out of the IMDs. (E. Jones Report at 6–9; Yale Report at 18–20) Third, people with mental illness need different services that are delivered by a completely different system than people with developmental disabilities in Intermediate Care Facilities. The federal Medicaid system does not match the State's payments to IMDs, for example, and there is no federal entitlement to IMD services, whereas the federal government does pay a substantial portion of the costs of Intermediate Care Facilities for people with developmental disabilities. (*See* D. Jones Report at 6–7, 16–19) Although Plaintiffs' counsel believes that the decision to decertify the class in *Ligas* was wrong, that case was very different than this one.

**IV. The Fee Payment Provisions are Reasonable and Appropriate**

Finally, Objectors suggest that the fees and costs are "large amounts" that require "some support and explanation," "especially in the context of a *pro bono* case." (Resp. at 7) This argument has no basis in the facts or the law and is not grounds to deny preliminary approval.

The amount of fees and costs is both reasonable and appropriate, particularly where the $1,990,000 award represents an agreed-upon compromise that is less than 50% of the value of the fees actually incurred. These fees represent a great deal of legal work performed over nearly five years of contested litigation. Counsel undertook substantial discovery, including analyzing hundreds of thousands of pages of documents, propounding and responding to a multitude of written discovery, conducting more than 30 depositions, and conducting extensive third-party discovery. Moreover, Plaintiffs' counsel worked extensively with five experts who submitted detailed reports, defended the depositions of several of those experts, and deposed Defendants' experts. Given the time and effort involved, the attorney's fees award is more than reasonable, and it is comparable to fees awarded in similar cases. *See, e.g.*, *K.L. v. Edgar*, No. 92 C 5722, 2000 WL 1499445 (N.D. Ill. Oct. 6, 2000) (awarding the Roger Baldwin Foundation of ACLU

and its pro bono counsel $1.9 million in attorneys' fees in a class action on behalf of people with mental illness residing in state-operating institutions); *Gaskin v. Pennsylvania*, 389 F. Supp. 2d 628, 643 (E.D. Pa. 2005) (finding a $1.825 million fee award in consent decree was fair and reasonable where plaintiffs had actually expended over $2.6 million); *Memisovski v. Maram,* No. 92-C-1982, slip op. (N.D. Ill. Feb. 21, 2006) (awarding public interest organizations and their *pro bono* counsel $4.4 million in fees and expenses in a class action Medicaid case involving access to medical care for children) (Exhibit 5).

The payment of attorney's fees and costs to the prevailing party in civil rights litigation such as this is firmly grounded in the law. The Americans with Disabilities Act and the Rehabilitation Act, along with other federal laws, provide for the payment of reasonable attorney's fees and costs to the prevailing party. *See* 42 U.S.C. § 12205 ("any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs"); 29 U.S.C. § 794a (b) (similar); 42 U.S.C. § 1988 (similar); Fed. R. Civ. P. 54(d). These provisions are not limited to judgments on the merits; "settlement agreements enforced through a consent decree" like the one proposed here "may serve as the basis for an award of attorney's fees." *See Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Res.*, 532 U.S. 598, 604 (2001) (citation omitted). Such relief is particularly appropriate here, where counsel have obtained meaningful, systemic relief for thousands of individuals with mental disabilities.

That Plaintiffs are represented by attorneys from four non-profit legal organizations and a private law firm does not preclude Plaintiffs from seeking fees and costs under the relevant fee-shifting statutes. Courts consistently have rejected arguments that attorneys who work on a *pro*

*bono* basis—whether as part of a nonprofit legal organization or as private counsel that agrees to work *pro bono*—should be denied the opportunity to seek fees, even though they did not expect payment from the client. For example, in a civil rights case challenging the State of Illinois' operation of nine institutions for people with mental illness, the Court rejected an argument that plaintiffs should not recover for the time invested in the case by private law firms when those firms had agreed to donate their fees. *K.L.*, 2000 WL 1499445, at *9. The court held that it is entirely appropriate for nonprofit legal organizations and private law firms that agree to work *pro bono* to recover attorney's fees under Section 1988. *Id.* ("There is no question that nonprofit legal organizations are entitled to seek fees under Section 1988, even if they charge none to their clients. We see no distinction between nonprofit legal organizations and private counsel that agrees to work *pro bono*." (citations omitted)); *see also, e.g.*, *Blum v. Stenson*, 465 U.S. 886, 893–95 (1984) (upholding use of prevailing market rate to award fees to Legal Aid Society in civil rights action).

Furthermore, no law firm or individual attorney will receive any portion of these attorney's fees and costs. The entire amount will be paid to non-profit organizations to defray the expense of future civil rights litigation, advocacy, and other activities in the public interest.[7]

**CONCLUSION**

For these reasons and those stated in their joint Motion, Plaintiffs respectfully request that the Court enter an order granting preliminary approval of the Decree.

Dated: April 29, 2010

Respectfully submitted,

By: s/ Angela D. Marston

[7] Lawyers from the private law firm Kirkland & Ellis LLP have agreed to donate any fee award (net out-of-pocket expenses) to the Roger Baldwin Foundation of ACLU, a non-profit organization that, among other things, advocates for the rights of people with disabilities in Illinois.

THE ROGER BALDWIN FOUNDATION OF
THE AMERICAN CIVIL LIBERTIES UNION OF
ILLINOIS
Benjamin S. Wolf
Lori N. Turner
180 North Michigan Avenue, Suite 2300
Chicago, Illinois 60601
Telephone: (312) 201-9740
Facsimile: (312) 201-9760

EQUIP FOR EQUALITY
Amy F. Peterson
Laura Miller
John Whitcomb
20 N. Michigan, #300
Chicago, IL 60602
Telephone: (312) 341-0022
Facsimile: (312) 341-0295

ACCESS LIVING OF METROPOLITAN
CHICAGO
Edward Mullen
115 West Chicago Avenue
Chicago, IL 60610
Telephone: (312) 640-2100
Facsimile: (312) 640-2139
TTY (312) 640-2102

THE BAZELON CENTER FOR MENTAL
HEALTH LAW
Ira Burnim
Jennifer Mathis
Karen Bower
1101 15th Street, NW, Suite 1212
Washington, DC 20005
Telephone: 202-467-5730
Facsimile: 202-223-0409

KIRKLAND & ELLIS LLP
Donna M. Welch, P.C.
Joseph M. Russell
Elizabeth J. Kappakas
Angela D. Marston
300 North LaSalle
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

ATTORNEYS FOR PLAINTIFFS