IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*,	*	
Plaintiffs,	*	
v.	*	Civil Action No. ELH-94-2541
LAWRENCE HOGAN, *et al.*,	*	
Defendants.	*	
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MEMORANDUM IN SUPPORT OF PLAINTIFFS' CONSENT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT AND PROPOSED NOTICE TO THE CLASS

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I. PROCEDURAL BACKGROUND

This class action involves conditions of confinement at the Baltimore City Detention Center ("BCDC"), which is operated by the State of Maryland. The current Consent Decree was approved by the Court on July 9, 1993. Following the enactment of the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(b), Defendants filed a motion on October 9, 1997, to terminate the injunctive relief provided by the Consent Decree, pursuant to the Act's provisions. Subsequently, by consent, the Court administratively closed the case, subject to reopening upon request of a party. Thereafter, on August 23, 2002, the parties entered into a Consent Order acknowledging that the remedy specified in the Consent Order regarding protection of plaintiffs at the Women's Detention Center ("WDC") from excessive risk of heat injury was required to end a violation of federal law and therefore met the requirements for court-ordered relief established in PLRA.

On December 18, 2003, Plaintiffs filed a motion to reopen the portion of the case involving the medical and physical plant sections of the Consent Decree. Defendants thereafter filed a renewed motion pursuant to PLRA to terminate the injunctive relief provided in the Consent Decree. On August 31, 2004, the Court granted Plaintiffs' motion to reopen the case in part and denied Defendants' motion to terminate injunctive relief without prejudice to Defendants' right to renew that motion following completion of discovery. Defendants filed a Notice of Appeal from these orders on September 13, 2004. On November 29, 2005, following briefing, the parties filed a stipulation to dismiss the appeal, and the order and mandate dismissing the appeal were issued on December 5, 2005.

While the appeal was pending the parties began informal settlement negotiations. Ultimately, with the assistance of the Hon. Paul W. Grimm, the parties were able to negotiate the Partial Settlement Agreement ("PSA"). This agreement was not court-enforceable and was therefore consistent with the requirements of PLRA, but at the time it resolved almost all the issues regarding Plaintiffs' motion to reopen. The PSA provided Plaintiffs with Defendants' promises to remedy the constitutional failings of Defendants, as well as giving Plaintiffs multiple sources of information on the status of those efforts, including access to medical records of class members, periodic reports from Defendants on the status of their compliance, and the right to on-site inspections of BCDC.

As a result, the parties filed the proposed agreement with the Court on August 18, 2009. Following the Court's preliminary approval of the proposed agreement and approval of notice to the class, the Court granted final approval pursuant to Rule 23 on April 6, 2010. Dkt. No. 394. Subsequently, the parties agreed to various amendments to the PSA that resolved those issues not

resolved by the original agreement[1] and extended its expiration date multiple times.

Ultimately, however, Plaintiffs were persuaded that the PSA had not succeeded in curing many of the serious problems at BCDC, and on June 2, 2015, Plaintiffs filed a motion requesting reopening of the case as well as the provision of preliminary relief. The Court granted the reopening and set a date for hearing Plaintiffs' request for a preliminary injunction. At the same time, the Court ordered that the parties attempt mediation before the Hon. Timothy J. Sullivan. The parties are pleased to report that, with the help of Judge Sullivan, they were successful in resolving the issues before the Court. As a result, the parties now request that the Court grant preliminary approval to the parties' proposed new Settlement Agreement, approve a procedure for notice to the class and the content of that notice, and set a time for consideration of final approval of this court-enforceable Settlement Agreement, including the provisions for payment of attorney fees and costs.[2]

II. PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT IS NOW APPROPRIATE.

Under Fed. R. Civ. P. 23(e), a class action may not be dismissed or compromised without the approval of the court, and a court considering dismissal or compromise of a class action "must direct notice in a reasonable manner" to members of the class who would be bound by the proposed settlement. Fed. R. Civ. P. 23(e)(1). The parties ultimately seek the Court's

[1] At this point the title "Partial Settlement Agreement" became a misnomer, as the PSA had been amended to resolve the issues that had remained outstanding in the original PSA, but the title of the amended document was not changed to reflect that it was then a complete settlement agreement as of that time.

[2] The Defendants have advised that they consent to the relief sought in this motion in the form of an order providing preliminary approval of the settlement agreement, approval of notice to the class, and establishment of a time for consideration of final approval of the settlement agreement, including of the provisions for payment of attorney's fees and costs. The Defendants do not adopt, join, or necessarily agree with the other statements herein.

determination that, under the standards set forth in Fed. R. Civ. P. 23(e)(2), the proposed Settlement Agreement is "fair, reasonable, and adequate." *See* Attach. 1 (Settlement Agreement).

As steps in that process, the parties now seek preliminary approval of the proposed agreement and approval of a form and method of notice to the class regarding the agreement. Although Fed. R. Civ. P. 23(e) does not specifically require that a court give preliminary approval to a proposed compromise or dismissal before providing for notice to the class, courts generally do so at the time that they order that notice be given to the class. *See* Federal Judicial Center, *Manual for Complex Litigation (Fourth)* §§ 21.632-21-633 (2004); *DeJulius v. New England Health Care Employees Pension Fund,* 429 F.3d 935, 939 (10th Cir. 2005).

As in other jurisdictions, preliminary consideration and, where appropriate, preliminary approval of proposed settlement agreements has been widely used within the Fourth Circuit. *See, e.g., In re Mid-Atlantic Toyota Antitrust Litig.,* 564 F. Supp. 1379, 1381 (D. Md. 1983). In that case, the court preliminarily approved a settlement agreement, creating a temporary settlement agreement, while stressing "the preliminary and conditional nature" of its ruling. *Id.* Indeed, this Court approved a preliminary settlement at earlier stages of this litigation regarding the PSA and the first amendment to it.

A. The Agreement Appropriately Redresses the Medical and Mental Health Claims of the Class.

The critical factor in considering the fairness and adequacy of a proposed compromise of a claim of a certified class is the extent to which the settlement addresses the legal claims asserted by the class. As set forth below, the Settlement Agreement provides comprehensive relief to the class of detainees at BCDC.

1. *Medication Provisions*

Plaintiffs' June 2015 Brief in support of their motion to reopen ("Plaintiffs' Brief") (Dkt. No. 511) recounts evidence of dangerous failures to continue necessary medications, both at the time that detainees enter BCDC initially, and at the time that prescriptions expire. *See* Pl.'s Br. at 8-16. The Settlement Agreement addresses these issues by committing Defendants to provide screening by a registered nurse within four hours of arrival at Baltimore City Booking and Intake Center ("BCBIC") and to provide a physical assessment and medications reported by the detainee within 24 hours if their interruption would pose a risk to the detainee, in the absence of a determination by appropriate medical staff that continuation of the medication is not medically appropriate, or the Division of Pretrial Detention and Services is unable to timely obtain the medication despite reasonable efforts. The detainee's medical record must reflect the actions taken by staff related to these requirements. *See* Settlement Agreement ¶ 17. The Settlement Agreement also requires that medications, once prescribed for other than short-term use, must be continued without interruption in the absence of a clinical judgment to change the prescription, and requires documentation of medication administration. *Id.* at ¶ 19.a. Similarly, the Settlement Agreement addresses the lack of appropriate documentation of medication administration. *Id.* at ¶ 19.b, discussed in Pls.' Br. at 17-18.

2. *Development, Updating, and Execution of a Plan of Care and Related Issues*

Defendants in their last monitoring report before the expiration of the PSA took the position that they complied with its requirement of development of a plan of care to guide the medical treatment provided in the individual notes in the medical record reflecting medical encounters with a patient – essentially an admission that there was no plan of care. As Plaintiffs' Brief documented, the lack of a functioning plan of care for detainees has been a major source of

medical errors and failures. *See* Pls.' Br. at 18-19, 29-30. The Settlement Agreement addresses these failures by defining the contents of a plan of care, setting up timing requirements for the development of the plan of care, providing for its prompt updating, mandating its execution in practice, and providing that the plan of care shall be available to all medical staff in a standardized part of the medical record. *See* Settlement Agreement, ¶ 18; *see also id.*, ¶ 25.f (containing similar requirements for the mental health plan of care).

Moreover, the plan of care requirements, by requiring actual execution of necessary treatment, and by specifically requiring that ordered testing be carried out and executed within appropriate timeframes (*see* Settlement Agreement, ¶¶ 18.d & 19.f), and that medical staff take action in appropriate timeframes in response to test results (*see id.*, ¶ 19.e) comprehensively address the issues regarding failures of follow-through on orders for laboratory testing. *See* Pls.' Br. at 34-36, 39-42, 51-52. Similarly, the plan of care provisions in the Settlement Agreement mandate that patients with chronic medical needs have timely access to specialist care. *See* Pls.' Br. at 36-39, 42-44; *compare to* Settlement Agreement, ¶ 18.a. The plan of care provisions are reinforced by a separate provision of the Settlement Agreement, ¶ 22.b (addressing the requirement for specialty care, including a requirement that members of the class are referred to specialists as medically necessary and setting time limits on the process for review of specialist referrals). *See also id.*, ¶¶ 22.a, 22.c, 22.d. Moreover, the Settlement Agreement ensures timeliness by requiring that the plan of care is initially developed within no more than seven days of the detainee's admission into BCBIC. *Compare id.*, ¶ 18.c *to* Pls.' Br. at 55-56 (discussing failure of medical staff to prepare plans of care within seven days).

3. *Treatment of Disabilities*

The concerns about housing and other accommodations for persons with disabilities, including temporary disabilities, set forth in the Plaintiffs' Brief at 44-49, are fully addressed in the Settlement Agreement in ¶ 20.b (providing for coordination between custody and medical staff for the provision of accommodations) and ¶ 21 (comprehensively addressing issues regarding persons with disabilities). The issues regarding medical supplies discussed in Plaintiffs' Brief at 49 are addressed in ¶ 21.a, by mandating the timely delivery of medical supplies. The related issues of proper treatment for open sores, including proper surveillance for Methicillin-resistant *Staphylococcus aureus* ("MRSA") infections, *see* Pls.' Br. at 49-51, are addressed in the requirement in Settlement Agreement ¶ 19.f that testing for MRSA and other diagnostic concerns be conducted in appropriate timeframes; and the provisions in ¶ 18 for development, revision and implementation of the plan of care for each detainee with such needs.

4. *Availability of the Medical Record*

The problem with the availability of the medical records during sick call encounters, *see* Pls.' Br. at 52-54, is addressed in the Settlement Agreement in ¶ 24, and this provision requires the availability of both the electronic medical record as well as any non-electronic portion of the record.

5. *Initial Medical Screening*

The problems identified in Plaintiffs' Brief at 54-55 regarding initial screening are comprehensively addressed in ¶ 17 of the Settlement Agreement. These requirements include specification that a decision to accept or reject a detainee for admission to BCBIC must occur any time that a detainee is held there for four continuous hours and that any detainee accepted for admission who reports a prescription medication or an urgent medical need must be evaluated by

a physician or mid-level provider (a nurse practitioner or physician assistant) within 24 hours. Similarly, detainees reporting psychotropic medications or otherwise demonstrating an urgent mental health need will receive a mental health evaluation within 24 hours; and detainees accepted for admission who report prescribed medication that if interrupted would affect their health must be provided with that medication within no more than 24 hours of reporting that medication to a staff member, unless medical staff determine that continuation is not medically appropriate or Defendants are unable to obtain a particular medication within that timeframe despite reasonable efforts. All of these activities are to be documented in the medical record. *See* Settlement Agreement ¶ 17. This time limit for initial assessment is backstopped by the requirement that the plan of care – another critical component of a necessary jail health program – be prepared on a seven day timeline measured from admission. *See* Settlement Agreement ¶¶ 18, 25.f.

The Settlement Agreement provision covering medical testing does not have specific deadlines, but instead requires that orders for laboratory testing be executed "within timeframes consistent with the urgency of the test." The provisions of ¶ 22 of the Settlement Agreement address timely review of requests for specialist appointments, while ¶ 23 requires sets timelines for sick call responses. The timeliness of core mental health services is governed by ¶ 25. In addition, the provisions for medical and custody interaction in ¶ 20 of the Settlement Agreement address many of the underlying causes of past canceled appointments by requiring custody cooperation with medical staff in transport to appointments, on-site and off-site; execution of medical orders for accommodations; relocation of detainees; and sick call appointments. *Id.*, ¶ 20.

6. *Timeliness of Response to Sick Call Requests*

Plaintiffs' Brief recounted examples of serious harm to class members related to delayed responses to sick call requests. *See* Pls.' Br. at 56-59. Again, this problem is comprehensively addressed by provisions in the Settlement Agreement requiring daily opportunity to request health care (Settlement Agreement, ¶ 23.a); registered nurse triage of requests with 24 hours of receipt (*id.*, ¶ 23.b); and medical encounters with an appropriate medical staff member within 48 hours, or 72 hours on a weekend. *Id.*, ¶ 23.c. These requirements also assist in addressing the issues raised in the Plaintiffs' Brief at 59-60 regarding the failures of nurses to practice within their scope of licensure and failures of nurses to make internal referrals to medical staff with additional training. *See* Pls.' Br. at 60-61. By specifically providing for the responsibility of custody staff to cooperate with medical staff in executing medical orders, the Settlement Agreement provides a mechanism to address failures to supply enough custody staff, should they continue to occur during the life of the agreement. *Compare* Pls.' Br. at 62-64 *to* Settlement Agreement ¶ 20. Similarly, the issues raised in the Plaintiffs' Brief regarding sufficient numbers of medical and mental health professionals (*see* Pls.' Br. at 64-65) are addressed by remedies directly requiring specific outcomes, including timely services, as discussed above.

7. *Missed Medical Appointments*

Plaintiffs' Brief notes a major problem with missed medical and mental health appointments. *See id.* at 61-62. While the Settlement Agreement does not address this issue comprehensively, its separate provisions cabin the problem. For example, its provisions governing intake set time limits for the initial nurse screening, initial clinical assessment by medical staff, initial mental health assessment, and provision of reported medications. *See* Settlement Agreement, ¶ 17. Similarly, the responsibility of Defendants to implement

coordination policies between custody and medical staff regarding emergency transport addresses the problem in emergency transport discussed in Plaintiffs' Brief. *Compare* Pls.' Br. at 68 *to* Settlement Agreement ¶ 20.a.

8. *Implementation of Appropriate Policies*

Plaintiffs' Brief identified various medical policies that placed detainees at risk, including policies related to registered nurses acting beyond their training and licensure. *See* Pls.' Br. at 65-68. Problems of the type described in the brief, such as a death in which a nurse failed to alert a physician of ominous changes in a patient's condition, and another death in which a nurse failed to alert a physician of a patient with a dangerously elevated temperature, are addressed in the Settlement Agreement in ¶¶ 19.c and 19.g. In addition, problems with the mental health bridge order policies (*see* Pls.' Br. at 67-68, 70) are addressed in ¶ 25.b of the Settlement Agreement, which requires that all new detainees denied bridge orders must be evaluated by mental health staff within 24 hours, and that persons approved for such a bridge order must be seen within fourteen days.

9. *Timely and Appropriate Psychiatric Evaluations*

Plaintiffs' evidence, based on Defendants' own monitoring reports, has shown serious problems with the timeliness and appropriateness of the response to urgent psychiatric referrals and requests for reviews of medication needs. *See* Pls.' Br. at 68-72. This problem is addressed in the Settlement Agreement by the greatly reduced times for follow-up for mental health appointments when a bridge order is denied (Settlement Agreement ¶ 25.b); the requirements for routine mental health appointments no less frequently than every ninety days for those diagnosed with a chronic mental health problem (*id.*, ¶ 25.d); and the requirement that urgent psychiatric evaluations take place within 24 hours (*id.*, ¶ 25.c). In addition, sick call request responses are

required within specific appropriate timeframes, for mental health problems as well as medical problems, pursuant to Settlement Agreement ¶ 23. The procedures established in the Settlement Agreement also ensure that persons given referrals in the bridge process will not be denied medications for more than 24 hours in the absence of an in-person evaluation by a psychiatrist or psychiatric nurse practitioner. *See* ¶ 25.b. Similarly, those who are prescribed psychotropic medications must be seen face-to-face by a psychiatrist or psychiatric nurse practitioner at least every ninety days. *See* ¶ 25.d. In short, the provisions of ¶ 25 of the Settlement Agreement, when read in conjunction with its other provisions, mandate timely, adequate and appropriate mental health evaluation and treatment for detainees with serious mental health needs.

B. The Agreement Appropriately Addresses the Physical Plant Claims of the Class.

While the PSA had a number of provisions addressing the physical plant failures in BCDC, these provisions in fact reflect certain overarching themes, including problems with exposing detainees to an unreasonable risk of heat injury *(compare* PSA §§ 67-72 *to* Settlement Agreement ¶ 20.e.,f., & g.); failure to provide accessible living and personal hygiene areas for persons with disabilities (*compare* PSA §§ 27-29 *to* Settlement Agreement, ¶ 21.a); failures of vermin control (*compare* PSA § 95 *to* Settlement Agreement, ¶ 26.b); failures to maintain the structure and fixtures (*compare* PSA §§ 68-69, 71-92, 104 *to* Settlement Agreement, ¶ 26.c); and failures of basic housekeeping and sanitation (*compare* PSA §§ 93-101 *to* Settlement Agreement, ¶ 26). The Settlement Agreement takes a global approach to addressing these issues, with the assistance of a monitor with expertise in ensuring a meaningful program of physical plant maintenance. Plaintiffs demonstrate below that the great majority of Plaintiffs' concerns regarding physical plant issues are in fact remedied by the provisions of the Settlement Agreement.

1. *Protection from Heat Injury*

Plaintiffs' Brief presented evidence of extremely serious risks presented by Defendants' failures to execute their responsibilities with regard to protection from heat injury. These included evidence of failures to maintain the rooftop ventilation fans or the fans within the housing units, and failures to keep the air exhaust systems clean and working, resulting in extremely high humidity in the facilities. Pls.' Br. at 72-74, 81. Moreover, the physical plant issues are inseparable from medical issues, as degree of risk of heat injury is also strongly affected by the medical condition of a particular detainee, and the medications that he or she is prescribed. This problem requires that custody, maintenance, medical and mental health staff work together to ensure that high-risk detainees are appropriately housed.

Unfortunately, Defendants' own audits showed that this protection did not reliably occur. Of 43 incidents related to heat in the summer of 2014 (the most recent period for which Plaintiffs' counsel had data), 39 occurred among detainees who had been classified as at high risk for heat injury (H1). Four of these incidents occurred among detainees who were housed in sections of BCDC that were classified for use as H1 housing but which in fact did not consistently maintain temperatures that qualified for recognition as H1 housing. In the 35 remaining incidents, although the detainee was classified as H1, the detainee was not housed in an H1 housing unit. Pls.' Br. at 74-76. Moreover, the audit of incidents of heat problems was quite incomplete because it covered only the Men's Detention Center, even though the top floor of WDC is notorious for the inability of its central cooling system to maintain a safe temperature and humidity.

Evidence from earlier summers further demonstrated the risks within BCDC, and the inability of various housing units classified as H1 to actually maintain temperatures and humidity

within safe ranges. Indeed, one of the supposed H1 housing units (JI 600) experienced a heat index of 95 degrees, indicating elevated risk of heat injury. In cases such as these, when supposed H1 units are subject to higher temperatures than other housing units within BCDC, the very act of being classified as H1 has the bizarre effect of *increasing* the level of risk to which the detainee is exposed. *Id*. at 76-78, 80-81. Nor were the temperature and humidity gauges used in the housing units correctly calibrated, as determined by Plaintiffs' sanitation expert. Finally, on this point, Defendants' reports on temperature and humidity within the housing units tended to significantly minimize the actual levels of temperatures and humidity to which detainees were exposed because the readings were recorded at a time that did not ordinarily correspond with the high reading for the day. *Id*. at 79.

The Settlement Agreement addresses all of these problems. First, it requires that Defendants ensure that detainees classified as H1 are actually housed in housing units intended for H1 use. Settlement Agreement, ¶ 20.e. It further requires that, to the extent possible, only housing units that actually maintain compliant temperatures be used for housing H1 detainees. *Id*., ¶¶ 20. e, f & g. Custody staff are specifically required to ensure that detainees classified H1 are transferred to H1 housing. *Id.*, ¶ 20.b. Finally, the requirement for the maintenance and repair of equipment and fixtures necessary to maintain sanitation and safety requires the maintenance of the ventilation system and fans. *See* Settlement Agreement, ¶ 26.c.

2. *Provision of Accessible Living Areas and Facilities for Personal Hygiene*

As discussed above, the Settlement Agreement also ensures that persons with disabilities, including temporary disabilities, are provided with housing, showers, and toileting facilities that accommodate those disabilities. *See* Settlement Agreement, ¶ 21.a. Such accommodations are critical to allow persons with disabilities to function safely and in a manner consistent with basic

human dignity, yet it has been obvious that such accommodations have not been provided. *See* Pls.' Br. at 44-49.

3. *Maintenance of Equipment and Fixtures*

Plaintiffs found overwhelming evidence that Defendants have not been maintaining equipment and fixtures necessary for sanitation and safety. Among the areas in which Plaintiffs found deficiencies in maintenance were plumbing repair and prevention of flooding (*id.* at 82-83, 87); maintenance of shower walls and floors (*id.* at 83-84); provision of safe and sanitary laundry services (*id*. at 84-85); repair and replacement of broken lighting (*id*. at 85); and implementation of an effective maintenance program addressing systems including heating, plumbing, ventilation, the electrical system and the elevators; and providing emergency, routine and preventive maintenance (*id.* at 86-88). The Settlement Agreement ¶26(c) addresses the problems of maintenance and repair of plumbing and flooding prevention; replacement of non-functional lighting; maintenance of shower walls and floors; provision of safe and sanitary laundry services; and maintenance of other critical systems including the electrical system, ventilation, and elevators by requiring implementation of a system that provides maintenance and repair sufficient to ensure sanitation and the functioning of necessary equipment and fixtures. Moreover, because physical plant issues particularly require a high level of day-to-day vigilance to maintain safety and sanitation, the provision of a monitor, who will be on-site at intervals throughout the monitoring period, will allow a new culture to take root at BCDC so that custody staff will see that maintenance of safe conditions of confinement is a core job responsibility, not a matter of lip service.

4. *Implementation of Effective Sanitation and Housekeeping Practices*

Plaintiffs' Brief presented evidence that Defendants had failed to implement necessary sanitation and housekeeping measures, including serious problems with mold and pervasive sanitation failures produced by failures to follow what Plaintiffs' sanitation expert called "basic cleaning and sanitation standards." Pls.' Br. at 88-91. These problems are addressed by the requirement in ¶ 26.a that Defendants implement an effective housekeeping program "that includes training and supervision of cleaning within the housing units." *Id.*

5. *Prevention of Vermin Infestation and the Spread of Disease-Causing Organisms*

The final necessary component of an effective remedy for the deterioration of the BCDC is vermin elimination. As noted in Plaintiffs' Brief, not only is the presence of vermin a sign of improper sanitation practices, as expert sanitarians have consistently found at BCDC, but rodent and insect pests spread human disease, including E. coli and Salmonella. *See* Pls.' Br. at 89-90. As noted above, the Settlement Agreement specifically commits Defendants, at long last, to control of the vermin problem. *See* Settlement Agreement, ¶ 26.b.

C. The Settlement Agreement Establishes Effective and Efficient Mechanisms to Implement Reform.

The parties spent substantial time developing effective mechanisms to produce the changes that both parties desire. First, perhaps the most critical characteristic of the Settlement Agreement is that, if adopted by the Court, it will be a fully-enforceable court order, because it is compliant with the requirements of the PLRA set forth in 18 U.S.C. § 3626(a)(1)(A). This ensures that the parties have the appropriate incentives and tools to achieve compliance in the minimum amount of time, and it is this feature that permits the Settlement Agreement to

contemplate the dismissal of the entire *Duvall* litigation, after many decades, within four years or less.

Court-enforceability, by itself, is of course not enough to produce this result. In addition, the Settlement Agreement establishes an innovative structure that guides the litigation toward termination by establishing mechanisms to assist Defendants in achieving compliance with the agreement. One of the most important of these mechanisms is the designation of Monitors with professional training and experience in evaluation and supervision of correctional programs in the areas covered by the agreement.

All three of the Monitors designated under this Settlement Agreement have outstanding credentials. Michael Puisis, D.O., is designated as the medical Monitor under the Settlement Agreement. Dr. Puisis is board-certified in internal medicine and has significant experience in providing medical care in a number of correctional facilities, including the Cook County Jail, one of the largest jails in the country. He has particular expertise in quality assurance and is the editor of a standard textbook on correctional medicine. He has evaluated over a dozen correctional facilities, including BCDC, as a consultant for the United States Department of Justice. Dr. Puisis was also a member of the National Commission on Correctional Health Care Task Force on the revision of its standards for accrediting correctional health care programs, as well as the committee of the American Public Health Association that revised the organization's standards for correctional health care. Moreover, Dr. Puisis served as a medical expert in the successful state-wide challenge to medical and mental health care within the California Department of Corrections that led to *Brown v. Plata*, 563 U.S. 493 (2011) (upholding lower court order requiring substantial reduction in crowding in order to address state-wide failures in medical and mental health care).

Raymond F. Patterson, M.D., has similarly outstanding credentials. He is board-certified in forensic psychiatry and holds the rank of Associate Professor in the Department of Psychiatry at Howard University. Dr. Patterson has also taught at Georgetown University and the University of Maryland, and has served as the chief psychiatrist within the Maryland Department of Public Safety and Correctional Services as well as at the Central Detention Facility of the District of Columbia; among his positions were Superintendent of the Clifton T. Perkins Hospital Center and Associate Superintendent of St. Elizabeths Hospital in the District. Like Dr. Puisis, Dr. Patterson was involved in *Brown v. Plata*; in the case of Dr. Patterson, his role was as an expert assisting the Special Master. In addition to that case, Dr. Patterson has served as an expert for multiple other correctional facilities and mental hospitals, as well as for lawyers representing plaintiffs and the Department of Justice. He is the co-author of the Task Force Report of the National Commission on Correctional Health Care on guidelines for the treatment of schizophrenia in a correctional setting, as well as a number of other significant publications.

Mehdi Azimi, Ph.D., earned his doctorate in public health/environmental health. He has also served as a special consultant to the U.S. Department of Justice and the National Institute of Corrections, as well as to the United Nations and the World Health Organization. He has conducted numerous audits related to risk management and environmental and occupational safety, sanitation, and food services safety. Dr. Azimi has also served as a consultant for correctional facilities in a number of states and has served on committees of the American Correctional Association and the National Association of Counties. One of the facilities with which Dr. Azimi has experience is BCDC, where some time ago he made substantial improvements in physical plant maintenance and sanitation during the period that he served as a consultant there.

The Settlement Agreement provides that the Monitors will conduct on-site inspections no less frequently than every six months during the first two years of the Settlement Agreement. The Settlement Agreement also provides that, in order for termination of a provision to occur, substantial compliance with that provision must be maintained for at least six months.

Moreover, the Settlement Agreement also structures the parties' review of efforts to achieve the goals of the agreement by providing for semi-annual compliance reports from Defendants, as well as the maintenance of relevant records by Defendants. These compliance reports and records will assist the Monitors and the parties in evaluating compliance. The Plaintiffs will also have access to the medical records of members of the class, including persons who die while in the custody of BCDC, without the necessity of medical releases. Moreover, the agreement provides discovery rights to Plaintiffs' counsel. Significantly, the Settlement Agreement is structured not simply to produce evidence related to compliance but to resolve any disputes about compliance promptly, because it provides the Monitors with deadlines for their evaluation of claims of the parties and reports on their findings regarding compliance, including assertions by Defendants in their semi-annual reports that they have achieved compliance with specific requirements of the Settlement Agreement. Finally, the agreement makes findings of substantial compliance and maintenance of substantial compliance reviewable by the Court.

Thus, the structure of the Settlement Agreement promotes the goal of both parties of ending this litigation as quickly as possible while achieving constitutional conditions of confinement at BCDC. Given the decades during which the *Duvall* litigation has previously failed to achieve that goal, ending this litigation in four years or less, as contemplated under the agreement, will represent a substantial accomplishment.

In short, the proposed Settlement Agreement promises to comprehensively remedy the

many violations of the rights of the class regarding conditions of confinement within BCDC, and to do so as quickly and efficiently as possible, while providing Defendants with expertise to assist in these tasks, and ensuring expert assistance to the Court in evaluating the parties' claims of compliance and non-compliance. As such, it is a model of a "fair, reasonable, and adequate" settlement of the claims of the class.

D. Other Relevant Factors Support Approval of the Settlement Agreement.

In addition to considering the relief afforded the class in comparison to their legal claims, courts consider factors related to the circumstances of the parties' negotiations in evaluating whether a class settlement should be approved. In particular, courts examine whether there is any probability that the settlement is collusive. 7B Charles Alan Wright *et al., Federal Practice and Procedure* § 1797.1 (2005). A court may take into account class counsel's recommendation regarding the proposed settlement, although the court must be vigilant to assure that class counsel is truly acting in the interest of the class. *Id.* Thus, a court will examine the adequacy of the representation of the class and similar matters that, aside from the merits of the proposed settlement, shed light on the probability that the settlement is actually in the interest of the class.

This analysis includes how well informed class counsel were when they negotiated the settlement and whether counsel engaged in arm's-length negotiations. *See In Re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991), affirming a district court's approval of a settlement agreement after considering factors related to assessing whether the settlement was reached as a result of good-faith bargaining without collusion and with a full exploration of the merits of the claim by Plaintiffs' counsel who possessed sufficient experience to evaluate the claim accurately, as well as an objective assessment of additional factors that bear on the determination that the settlement is in the interest of the class. As that court noted:

> In examining the proposed JLI settlement for fairness and adequacy under Rule 23(e), the district court properly followed the fairness factors listed in Maryland federal district cases which have interpreted the Rule 23(e) standard for settlement approval. The court determined that the settlement was reached as a result of good faith bargaining at arm's length without collusion, on the basis of (1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the [relevant] area of class action litigation.
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> The district court's assessment of the adequacy of the settlement was likewise based on factors enumerated in [*In re Montgomery County Real Estate Antitrust Litigation*, 83 F.R.D. 305 (D. Md. (1979)]: (1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.

Id. (internal citation omitted).

As to the first factor regarding the posture of the case at the time of settlement, this agreement was negotiated only after Plaintiffs' counsel had engaged in an extensive investigation of conditions at BCDC, reflected in the substantial evidence of constitutional violations submitted to the Court in connection with the motion to reopen submitted on June 2, 2015. The formal mediation sessions lasted almost forty hours, and there were many additional hours of negotiations directly between the counsel for the parties between mediation sessions. Both sides produced multiple drafts of the settlement agreement and edits, as well as various position statements responding to inquiries from Magistrate Judge Sullivan. At times, it was unclear whether, even with Judge Sullivan's help, the parties could find a path forward to agreement.

As to the second factor, the extent of discovery prior to settlement, Plaintiffs had received substantial informal discovery from Defendants, including access to medical records of class members and former class members who had died while in BCDC custody. Plaintiffs' counsel also were provided with periodic reports from Defendants that provided documentary evidence including audits regarding their state of compliance, as well as physical access to BCDC pursuant to the PSA, and counsel utilized that access to conduct expert inspections. Accordingly, these factors support preliminary approval.

The circumstances surrounding the negotiations, which constitute the third fairness factor, also strongly support preliminary approval. This settlement resulted from hard-fought negotiations pursued by counsel with undivided loyalty to the class. In order to separate fees considerations in every way possible from negotiations of the substantive provisions of the Settlement Agreement, Plaintiffs' counsel refused to negotiate fees until after reaching agreement on the merits. Plaintiffs' counsel consulted with independent experts in the course of negotiating the settlement, so that counsel's negotiations were consistently pursued with a full understanding of the range of litigation options available to the class. In addition to counsel's use of experts, moreover, Plaintiffs' counsel interviewed significant numbers of class members to ensure that they also had a voice in determining the priorities of Plaintiffs' counsel in negotiating a settlement.

Moreover, a review of the provisions for partial payment of the attorneys' fees and expenses of Plaintiffs' counsel demonstrates that the circumstances do not suggest self-dealing by Plaintiffs' counsel. The one area in which Plaintiffs' counsel were forced to make significant compromises with Defendants was in the provisions for attorneys' fees, in which Plaintiffs' counsel settled for a sum far below their actual claim. *See* § III, *infra.*

The fourth factor is the experience of counsel in the particular type of class action litigation at issue. Counsel for Plaintiffs are all experienced in civil rights litigation. Moreover, class counsel have substantial experience in prison and jail litigation, as well as other federal civil rights class action litigation. Two of Plaintiffs' counsel have served as Directors of the National Prison Project of the American Civil Liberties Union Foundation, the only organization in the country that specializes in conditions of confinement litigation challenging prison, jail and juvenile facilities on a nation-wide basis; a third counsel serves as Legal Director to a major civil rights organization in Baltimore. *See* Decl. of Elizabeth Alexander; Decl. of David C. Fathi; and Decl. of Debra Gardner. Accordingly, all four fairness factors support approval.

The record also supports a conclusion that the settlement is appropriate in light of the five factors set forth above that are quoted from *In re Montgomery County Real Estate Antitrust Litigation.* *See* 83 F.R.D. at 305. As demonstrated in the previous subsections of this brief, the relief obtained on each substantive issue is essentially co-extensive with the relief that could have been obtained after litigation, so that litigation would not have gained a mandate for more extensive relief. Thus, the first factor – the fact that Plaintiffs have a relatively strong case on the merits – does not support disapproval of the Settlement Agreement.

The second factor regarding the adequacy of the settlement is also not a barrier to approval of the settlement. While the strongest barrier to settlement – the restrictions that the PLRA places on court enforcement of settlement agreements – might have justified under other circumstances some compromises on the content of relief, in this case those restrictions became irrelevant because Plaintiffs' counsel succeeded in negotiating an agreement in which Defendants agreed that the stringent criteria of PLRA did not bar enforceable relief, so no compromise on this issue was necessary with Defendants. Thus, the second factor, which takes

into account any difficulties of proof or strong defenses that Plaintiffs would be likely to encounter if the case went to trial, does not affect the analysis of the adequacy of the Settlement Agreement.

The third adequacy factor, involving the anticipated duration and expense of additional litigation, strongly weighs in favor of approval of the Settlement Agreement. Plaintiffs' evidence submitted in the June 2015 filing supports a finding of multiple violations of the Eighth and Fourteenth Amendments. The Court had set aside a total of seven trial days in December 2015 just for considering Plaintiffs' original motion for a preliminary injunction; any trial of all the claims that are resolved in the Settlement Agreement would involve a number of weeks of trial, as well as the cost of litigation that would include testimony by a number of experts on each side, as well as the eventual attorneys' fees that such a trial would be likely to entail.

The fourth adequacy factor, the solvency of defendants and likelihood of recovery on a litigated judgment, has little relevance here, since this is a suit for injunctive relief rather than damages. To the extent that financial considerations are relevant, it is noteworthy that, prior to the Maryland Board of Public Works' approval of the parties' Settlement Agreement, the Board had already signed off on all of the contracts that Defendants indicated would be necessary to execute their responsibilities under the Settlement Agreement. Moreover, the Defendants' laudable decision, announced less than two months after the filing of the Plaintiffs' motion to reopen, to close the Men's Detention Center has allowed for the redirection of substantial resources toward timely achievement of constitutional standards as to the remainder of BCDC. Accordingly, there is no evidence that Defendants themselves have reason to think that the financial resources to accomplish the reforms contemplated in the Settlement Agreement will be unavailable.

While it is obviously too early to assess the fifth factor – whether class members will express opposition to the proposed agreement after they receive notice -- this factor is simply not relevant to a court's consideration of whether preliminary approval of a proposed settlement should be granted. It nonetheless may be a bit reassuring that the PSA and its first amendment, both submitted to the class for approval, did not provoke any objections, and the current Settlement Agreement's enforceable relief provides substantially broader and more certain relief to the class.

III. THE PARTIES' FEES AGREEMENT IS REASONABLE.

Pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), Plaintiffs request that the Court approve the award of attorneys' fees related to the Settlement Agreement negotiated by the parties as a result of court-ordered mediation. The requested award is authorized by Rule 23(h), which provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement."[3]

The proposed settlement awards Plaintiffs' counsel $450,000 in full satisfaction of their claim for attorney fees and costs for work that led to the Settlement Agreement. In addition, the Settlement Agreement provides for a maximum of $100,000 in attorneys' fees over a four-year period, aside from possible other attorneys' fees that might be awarded by the Court as a result of

[3] "It is well-established that plaintiffs who are entitled to recover attorneys' fees are also entitled to recover reasonable litigation-related expenses as part of their overall award. The Fourth Circuit has stated that such costs may include those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services. Examples of costs that have been charged include necessary travel, depositions and transcripts, computer research, postage, court costs, and photocopying."

Boyd v. Coventry Health Care Inc., 299 F.R.D. 451, 468 (D. Md. 2014) (internal quotation marks, citations omitted).

motions for enforcement of the Settlement Agreement relief. *See* Settlement Agreement, ¶47.

The Settlement Agreement's provision regarding fees is eminently reasonable and should be approved. In a class action, "[t]here are two methods commonly used for calculating an attorney's fee award: the lodestar method and the 'percentage of recovery' method." *Decohen v. Abbasi*, LLC, 299 F.R.D. 469, 481 (D. Md. 2014) (footnote omitted). The lodestar method determines the appropriate fee award by multiplying the reasonable hourly rate by the number of hours reasonably expended. *Grissom v. The Mills Corp.*, 549 F.3d 313, 320 (4th Cir. 2008). There is "a strong presumption that the lodestar number represents a reasonable attorney's fee." *McAfee v. Boczar*, 738 F.3d 81, 88-89 (4th Cir. 2013), *as amended* (Jan. 23, 2014) (internal quotation marks omitted).

A. The hourly rate for attorney fees, as limited by the PLRA, is $213 per hour.

For the reasons set forth below, the fees provision applicable to § 1983 challenges to prison and jail conditions of confinement currently caps rates for lawyers at $213 per hour. The PLRA states that the hourly rate must be limited to 150 percent of the rate established pursuant to 18 U.S.C. § 3006A. *See* 42 U.S.C. § 1997e(d). This statutory provision, known as the Criminal Justice Act, establishes the mechanism for setting rates for court-appointed counsel in criminal cases in the federal courts.

To determine what rate § 3006A "establishes," one must look, of course, to the actual language of this section. In *Hadix v. Johnson*, 398 F.3d 863 (6th Cir. 2003), the court performed that careful examination of the actual language of § 3006A(d)(1), which provides in relevant part that, at the time that the Criminal Justice Act was initially passed, the maximum rate for lawyers appointed under the Act was $60 for time in court and $40 for all other time, except that the Judicial Conference could determine that a maximum rate of $75 was necessary in particular

circuits or districts. This section also assigned the Judicial Conference broad-ranging powers to establish future rates under the Act:

> Not less than 3 years after the effective date of the Criminal Justice Act Revision of 1986, the Judicial Conference is authorized to raise the maximum hourly rates specified in this paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay under the General Schedule made pursuant to section 5305 of title 5 on or after such effective date. After the rates are raised under the preceding sentence, such maximum hourly rates may be raised at intervals of not less than 1 year each, up to the aggregate of the overall average percentages of such adjustments made since the last raise was made under this paragraph.

18 U.S.C. § 3006A(d)(1).

In short, the essential purpose of Section 3006A is to establish the guidelines under which the Judicial Conference is to set an authorized maximum rate for attorneys' fees. Based on this language, the court in *Hadix* held that the maximum rates for attorneys' fees awarded in cases subject to PLRA were set at 150 percent of the rates authorized by the Judicial Conference, not the rates actually funded by Congress, because the argument that the rate was capped by reference to the rate funded by Congress is "at odds with the plain meaning of both § 1997e(d) [of the PLRA] and the statute it cross-references, § 3006A." 398 F.3d at 867. The court added that '[i]f Congress had wanted attorney fees under the PLRA to be based on the amount of money budgeted for payment of court-appointed counsel, it could have easily used such language rather than cross-referencing § 3006A." *Id.*

The Ninth Circuit came to the same conclusion regarding the application of the statutory maximum attorneys' fee rate in *Webb v. Ada County*, 285 F.3d 829, 838-39 (9th Cir. 2002). *See also Laube v. Allen*, 506 F. Supp. 2d 969, 987 (M.D. Ala. 2007) ("Where the PLRA refers to the hourly rate 'established' by § 3006A, that section's unambiguous delegation of authority to the

Judicial Conference to raise that rate, without any reservation by Congress of the obligation to approve it, means that the Judicial Conference's rate is controlling in PLRA cases."); *Hudson v. Dennehy*, 568 F. Supp. 2d 125, 133 (D. Mass. 2008) (adopting the reasoning from *Hadix*). Indeed, Plaintiffs have located no cases actually analyzing the specific language of § 3006A(d)(1) and concluding that the authorized rate is the rate funded by Congress. Finally on this issue, the declarations of Plaintiffs' counsel establish beyond cavil that all counsel possess qualifications justifying the highest rate available under PLRA.

Because the rate authorized by the Judicial Conference for the payment of court-appointed counsel is $142.00 per hour, the authorized for attorneys' fees under the PLRA is 150 percent of that rate, resulting in a rate cap of $213.00 per hour. *See Perez v. Cate*, 632 F.3d 553, 558 (9th Cir. 2011).

The PLRA establishes no separate cap on rates for paralegal time. *Perez*, 632 F.3d at 557-58. Thus the Public Justice Center has used its standard hourly rate of $150, and the NPP has used an hourly rate of $160 for paralegals and law clerks**.** These rates are consistent with this Court's presumptively reasonable rates for paralegal time set forth in *Rules and Guidelines for Determining Lodestar Attorneys' Fees in Certain Cases* (Appendix B to the Local Rules of the U.S. District Court for the District of Maryland) (D. Md. 2014, Dec. 2015 Suppl.).[4]

[4] Available at http://www.mdd.uscourts.gov/publications/forms/LocalRules.pdf at 122 (last visited Dec. 18, 2015).

The NPP's rate of $160 per hour for law clerks and paralegals is slightly higher than the rate set forth in the Local Rules of this Court. However, it is consistent with prevailing market rates in the District of Columbia. Fathi dec., ¶ 6. And in light of the fact that Plaintiffs seek only a small fraction of the lodestar amount, this small difference is immaterial.

B. The lodestar yields a fair and reasonable attorney fee.

Employing these hourly rates yields the following lodestar for plaintiffs' counsel:[5]

Law Offices of Elizabeth Alexander

Fees	$406,553.10
Costs	$2,811.92
Total	$409,365.02

Public Justice Center

Fees	$613,940.64
Costs	$16,221.92
Total	$630,162.56

ACLU National Prison Project

Fees	$493,789.50
Costs	$16,650.96
Total	$510,440.46
Total Fees:	**$1,514,283.20**
Total Costs:	**$35,684.80**

As this Court has recognized:

> The lodestar is assessed according to the twelve factors of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir.1974), which have been endorsed by the Supreme Court in *Hensley* and the Fourth Circuit in *Daly v. Hill*, 790 F.2d 1071, 1078 (4th Cir.1986). These factors are:

[5] The declarations of Elizabeth Alexander, Debra Gardner, and David C. Fathi contain the breakdown of fees into the categories required by the Local Rules. These declarations also explain that counsel have exercised billing judgment and no-charged hundreds of hours of compensable time. Counsel are not submitting the voluminous underlying contemporaneous records of their litigation activities in connection with this case, but will of course do so if the Court directs.

> (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill requisite to perform legal services properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee or rates; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount in controversy and results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) nature and length of the professional relationship with the client; and (12) awards in similar cases.

McDaniels v. Westlake Services LLC, No. CIV.A. ELH-11-1837, 2014 WL 556288, at *14 (D. Md. Feb. 7, 2014) (citation omitted). The *Johnson* factors support a fully compensatory fee in this case.

1. Time and labor required. As outlined *supra*, representing a fluid class of thousands of detainees in a case involving medical care, mental health care, and environmental health and safety has required thousands of hours of time and labor over the course of more than a dozen years.

2. Novelty and difficulty of the issues. While most of the issues in this case are not particularly novel, representing detainees presents a number of difficult issues, particularly in light of the many restrictions imposed by the Prison Litigation Reform Act (PLRA).

3. Skill requisite to perform legal services properly. Both class actions and prison and jail conditions litigation are recognized as complex and specialized areas of the law in which counsel must have considerable skill in order to competently represent their clients.

4. Preclusion of employment. Undertaking a massive class action like the case at bar necessarily imposes significant limitations on the other cases an attorney is able to take on.

5. Customary fee or rates. As discussed *supra*, the PLRA caps hourly rates at a level far below the market rates for plaintiffs' counsel in this case.

6. Whether the fee is fixed or contingent. The fee in this case is entirely contingent; if

plaintiffs' counsel had not succeeded in achieving significant relief for the class, they would have recovered nothing.

7. Time limitations imposed by the client or circumstances. This factor has little application to the case at bar, except the urgency associated with addressing extreme and deteriorating conditions in BCDC.

8. Amount in controversy and results obtained. At stake in this case are the health, safety, and human dignity of the many thousands of persons who are incarcerated in BCDC every year. As discussed in detail *supra*, counsel have obtained excellent results for the plaintiff class.

9. Experience, reputation, and ability of attorneys. As set forth supra and in the declarations of Elizabeth Alexander, Debra Gardner, and David C. Fathi, plaintiffs' counsel are highly experienced in class action and prison conditions litigation.

10. Undesirability of the case. Representation of prisoners and jail detainees is considered by many attorneys to be highly undesirable because of the unpopularity and impecuniousness of the clients, the contingent nature of payment, and the many restrictions imposed by the PLRA.

11. Nature and length of the professional relationship with the client. Plaintiffs' counsel have represented the class in this case for more than twelve years.

12. Awards in similar cases. As set forth in the declaration of David C. Fathi, counsel's lodestar amount is in line with or far lower than fee awards and settlements in similar cases. *See* id. at ¶¶ 9-10 (citing fee awards of $1.46 million and $4.8 million in jail conditions cases).

For all of these reasons, plaintiffs would be entitled to recover the full lodestar amount of $1,514,283.20. However, plaintiffs have agreed to settle their fee claim for $450,000, or approximately 30% of the lodestar amount.

C. The Court's prior attorney fee ruling is no bar to a fully compensatory fee.

Although Plaintiffs previously sought a determination of eligibility for fees for many of these activities at an earlier point in this litigation, Plaintiffs' lack of success in that motion does not preclude them from seeking fees now for these same activities that did directly and reasonably contribute to their success in negotiating the current Settlement Agreement. By reason of the Settlement Agreement, the facts have changed fundamentally and Plaintiffs, if the Court approves the parties' proposal, have unquestionably established their prevailing party status in this litigation. In denying eligibility for fees previously, the Court held that Plaintiffs were not the prevailing party in post-2003 litigation because they had failed to establish a connection between the prevailing party status created by the earlier litigated judgment and Revised Consolidated Decree of July 9, 1993, and counsel's activities after 2003. *See* Op., Apr.7, 2014 at 23 (Dkt. No. 499).

Plaintiffs' argument for fees here is completely consistent with the Court's previous decision: Plaintiffs now base their prevailing party status, not on the success of previous counsel in obtaining judgments against Defendants, but on their own success in obtaining the new enforceable Settlement Agreement. Under these circumstances, Plaintiffs' previous fees motion was simply premature, and no principle of issue preclusion supports denying Plaintiffs prevailing party status now given the fundamental change in the relevant facts. *See, e.g., In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322 (4th Cir. 2004):

> The doctrine of "collateral estoppel" or "issue preclusion," which the district court applied in this case, is a subset of the *res judicata* genre. Applying collateral estoppel "forecloses the relitigation of issues of fact or law that are identical to issues which have been actually determined and necessarily decided in prior litigation in which the party against whom [collateral estoppel] is asserted had a

full and fair opportunity to litigate."

Id. at 326 (*quoting Sedlack v. Braswell Servs. Group, Inc.,* 134 F.3d 219, 224 (4th Cir.1998)).

First, litigation is ongoing in this case, so there is no final judgment on the issue of attorneys' fees to which issue preclusion could apply. Second, as noted above, the factual issues in the prior motion for attorneys' fees differed fundamentally from the current ones, because Plaintiffs now rely on an entirely different set of facts to establish that they are a prevailing party from those Plaintiffs proffered as their basis for demonstrating prevailing party status in the previous fees motion. Given this fundamental change in circumstances, the Court's prior ruling poses no bar to a fully compensatory fee award at this time.

D. Conclusion

The Court's decision whether the fees provision is fair and reasonable should be informed by a number of factors that support deferring to the parties' agreement here. First, it is "well settled that district courts have considerable discretion in awarding attorneys' fees[.]" *Colonial Williamsburg Foundation v. Kittinger Co.*, 38 F.3d 133, 138 (4th Cir. 1994) (citing *Hensley v. Eckerhart*, 461 U.S.424, 437 (1983)). Because the attorney fee agreement does not reduce any recovery by the class and because there is no evidence of collusion between Plaintiffs' counsel and Defendants, the parties' agreement as to attorneys' fees "is accorded great weight." *Cox v. Clarus Mktg. Grp., LLC*, 291 F.R.D. 473, 482 (S.D. Cal. 2013). The Court's task in such a situation is "simply to determine whether the negotiated fee is facially fair and reasonable." *Hernandez v. Kovacevich "5" Farms*, No. 1:04-cv-5515, 2005 WL 2435906, at *8 (E.D. Cal. Sept. 30, 2005). In addition, the potential award of a much larger attorneys' fee; the comprehensive relief afforded by the proposed settlement agreement; the experience of Plaintiffs' counsel; and the years of hard-fought litigation prior to the settlement all point to the

reasonableness of the negotiated fee.

IV. THE COURT SHOULD PROVIDE THE CLASS WITH NOTICE

Fed. R. Civ. P. 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Since the class members include all persons within the BCDC, Plaintiffs believe that notice should be given to all persons currently confined in the BCDC. Plaintiffs accordingly attach to their motion a proposed notice to current detainees in the BCDC, in English and Spanish, that explains to detainees the basic nature of the Settlement Agreement, including the attorneys' fees, how to obtain a copy of the agreement, how to contact Plaintiffs' counsel, and how to comment in support of, or in opposition to, approval of the agreement. Proposed Notice to the Class, Attach. 2. Plaintiffs propose that this notice be posted in each dormitory in a location accessible to detainees as well as other areas where detainees have access to notices, and that individual copies of the notice be distributed to detainees in segregated confinement who lack routine access to a location where institutional notices can be posted.

Plaintiffs also propose that detainees who arrive after posting has occurred be given individual copies of the notice, because absent such individual notice, those detainees who end up in segregated confinement may never have access to the notice. Finally, Plaintiffs request that the Court approve a requirement that Defendants post this notice at the earliest possible time; that class members have 30 days to postmark responses to the notice after proper posting begins; and that the Court in fact consider objections and other comments that are received after the cut-off date. Such an approach will maximize the ability of class members to respond while minimizing the potential delay in approving a settlement agreement that Plaintiffs' counsel believe offers great benefits to the class.

To support the ability of class members to consider the merits of the proposed settlement, Plaintiffs request that Defendants be required to maintain sufficient copies of the entire Settlement Agreement, as well as Plaintiffs' motion and memorandum seeking approval of the Settlement Agreement and attorneys' fees, including supporting declarations, in the institutional law library, so that detainees who so request can have access to a copy of these documents in sufficient time to allow them to object to, or register approval of, the agreement.[6] Plaintiffs also request that Defendants be required to make available a copy of these documents to detainees who lack physical access to the library so that the detainee can determine whether to submit comments to the Court, as set forth in the attached proposed notice. Finally, Plaintiffs request that the Court make copies of the class responses available to the parties in sufficient time that counsel, to the extent they wish to do so, can respond to any comments prior to the hearing on final approval of the Settlement Agreement.

Plaintiffs' proposed method for providing notice is consistent with the letter and spirit of Rule 23:

> [T]here is no single way in which the notice must be transmitted. Of course, notice by mail to all of the identified class members informing them of the proposed action and indicating that they have a right to participate and voice their objections will suffice. But other approaches including the use of television, radio, the internet, and various print publications also may be utilized. In some cases, such as in prisoner litigation, when the class members are all in one location, posting or other publication may be deemed sufficient.

7B Charles Alan Wright, et al., *Federal Practice and Procedure,* § 1797.6 (2005).

[6] Rule 23(h) requires that class members have the opportunity to examine counsel's fee motion. *See* Advisory Committee Note, Rule 23(h)(2) ("In setting the date objections are due, the court should provide sufficient time after the full fee motion is on file to enable potential objectors to examine the motion").

The notice mechanisms that Plaintiffs propose here are essentially the same as those approved in *Cody v. Hillard,* 88 F.Supp.2d 1049, 1051-52 (D.S.D. 2000), involving a settlement at the South Dakota State Penitentiary, with adaptations to the realities of providing notice to the population of a large jail rather than a state prison. Thus, like the mechanism for notice adopted in *Cody*, the proposed mechanism here provides for posted notice for those detainees who have routine access to places where they can read such notices, with individual notice to detainees who have no such access. Also like the notice in *Cody*, this proposed notice provides a mechanism for detainees to gain access to full copies of the proposed settlement through the library at the facility.

Unlike *Cody,* however, Plaintiffs do not propose a requirement that staff identify illiterate detainees and read the notice to them. Such steps are reasonable in a state prison, where the population tends to be relatively stable and intake procedures typically allow the identification of prisoners who are illiterate. Given the rapid turnover of detainees at the BCDC, however, Plaintiffs do not request these measures for those who do not read English here, particularly in light of the proposed availability to detainees of a notice in Spanish. The notice suggested here is reasonable in light of the circumstances, and consistent with what has been approved in other cases. *See, e.g. Ruiz v. McKaskle,* 724 F.2d 1149, 1152-53 (5th Cir. 1984) (publishing notice and summary of settlement in prison newspaper and posting notices in prison housing units of the availability of the settlement was sufficient to give notice in 23(b)(2) case); *Ahrens v. Thomas,* 570 F.2d 286, 288 (8th Cir. 1978) (posted notice in jail sufficient in 23(b)(2) case); *Gaddis v. Campbell,* 301 F. Supp. 2d 1310, 1312 (M.D. Ala. 2004) (approving notice to prison class placed on community bulletin boards and other places to which prisoners had access, with individual notice to prisoners in segregation). The mechanism proposed here also tracks the requirements

of the notice approved by the Court in the approval process for both the PSA and the first amendment to the PSA, with the addition of a notice translated into Spanish. The notice proposed by Plaintiffs here is sufficient and well-designed to provide actual notice to the class at a minimum of cost.

CONCLUSION

For the above reasons, Plaintiffs request that the Court grant preliminary approval to the Settlement Agreement, including the parties' agreement as to fees and costs, and order notice to the class in the form and manner requested herein.

/s/

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Dated: December 23, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*,	*	
Plaintiffs,	*	
v.	*	Civil Case No. 1:94-CV-02541-ELH
LAWRENCE J. HOGAN, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * *

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

2. No person or entity is intended to be a third-party beneficiary of the provisions of this Settlement Agreement for purposes of any civil, criminal, or administrative action and, accordingly, no person or entity other than the parties may assert any claim or right as a beneficiary or protected class under this Settlement Agreement. This Settlement Agreement is not intended to impair or expand the right of any person or organization, other than the parties to this Settlement Agreement with respect to the relief expressly provided herein, to seek relief against Defendants, the Division of Pretrial Detention and Services ("DPDS"), or its officials, employees, or agents for their conduct. This Settlement Agreement does not alter legal standards, including those standards established by Maryland and federal law, governing claims of any persons or entities, although the standards established by this Settlement Agreement are applicable to the parties for the duration of this Settlement Agreement, as set forth herein.

II. DEFINITIONS

3. "BCDC" shall mean the Baltimore City Detention Center and shall include the Women's Detention Center ("WDC"), the Jail Industries Building ("JI"), the Wyatt Building ("Wyatt"), and the Annex.

4. "Clinician" shall mean a person licensed by the State of Maryland as a physician, physician assistant, or certified registered nurse practitioner who provides

ATTACHMENT 1

medical services within the scope of his or her licensure. This term does not include any persons providing mental health services as his or her primary job assignment.

5. "Defendants" shall mean the Governor of the State of Maryland, in his or her official capacity, the Secretary of Public Safety and Correctional Services, in his or her official capacity, and the Commissioner of Pretrial Detention and Services, acting in his or her official capacity through DPDS ("Commissioner").

6. "Effective Date" shall mean the date the Court enters this Settlement Agreement as an order of the Court.

7. "EMR" shall mean the electronic medical or mental health record or the portion of a plaintiff's medical or mental health record that is maintained in electronic form by DPDS.

8. "H1" shall mean a plaintiff who has been classified by a Clinician, psychiatrist, or psychiatric registered nurse practitioner as particularly susceptible to heat-related illness or injury because of a medical or mental health condition or use of specified prescription medication.

9. "Include" or "including" shall mean "include, but not limited to," or "including, but not limited to."

10. "Medical Professional" shall mean a Clinician, a registered nurse ("RN"), and/or a licensed practical nurse ("LPN") who provides medical services within the scope of his or her licensure.

11. "Medical record" shall mean the combined paper and electronic health record information for a plaintiff.

12. "Mental Health Practitioner" shall mean a person licensed by the State of Maryland as a psychiatrist, psychiatric registered nurse practitioner, psychologist, licensed clinical professional counselor, or licensed certified social worker-clinical, who provides mental health services within the scope of his or her licensure.

13. "Mental Health Professional" shall mean a Mental Health Practitioner, and/or an RN who provides mental health services within the scope of his or her licensure.

14. "Plaintiffs" shall mean persons, whether men or women, adults or juveniles, pretrial detainees or sentenced prisoners, who are now or will in the future be confined at BCDC.

15. "Promulgate and implement policy and procedure" shall mean to develop or to maintain, as appropriate, relevant policies and procedures, and to take reasonable steps to ensure that relevant staff follow such policy and procedure in practice.

III. SUBSTANTIVE PROVISIONS

A. Medical and Mental Health Care

16. Unless otherwise stated, the provisions of this Section III apply to BCDC and to: (a) those portions of other facilities managed by DPDS that provide medical or mental health services to plaintiffs confined at BCDC, or to plaintiffs who would be confined at BCDC but for their need for those medical or mental health services, but only to the extent that such other facilities provide such medical or mental health services to those plaintiffs; and (b) solely for the purpose of temperature monitoring from May through September, those portions of other facilities managed by DPDS in which plaintiffs designated H1 are housed, if those plaintiffs would be housed at BCDC but for the H1 designation. At the time this Settlement Agreement is entered, the portions of such other facilities covered are: (i) the Inmate Mental Health Unit at Baltimore Central Booking and Intake Center ("BCBIC"); (ii) housing for persons with disabilities at BCBIC; (iii) medical and mental health intake screening at BCBIC; (iv) the infirmary at the Metropolitan Transition Center; (v) solely for the purpose of temperature monitoring from May 1 through September 30, areas of BCBIC housing plaintiffs designated H1; and (vi) the Special Needs Unit at BCBIC.

17. **Intake and initiation of medication.**

a. The Commissioner shall promulgate and implement policy and procedure to provide adequate medical and mental health intake screening to all plaintiffs accepted for admission at BCBIC. Such policy shall provide that initial medical and mental health screening, including rejection or acceptance for admission of the plaintiff, is performed by a RN within four hours of arrival at BCBIC, provided the plaintiff is present for all four of those hours. If the plaintiff is rejected for admission and later returns to BCBIC, a new four-hour period within which the initial medical and mental health screening must be performed shall commence.

b. The Commissioner shall ensure that any plaintiff who reports during intake screening that he or she is currently prescribed medication for a medical condition, or who presents with an urgent medical need, shall receive a physical assessment by a Clinician within 24 hours of the intake screening, or sooner if clinically indicated.

c. The Commissioner shall ensure that any plaintiff who is identified during intake screening as currently prescribed psychotropic medication (unless he or she receives a bridge order as provided in paragraph 25.b.) or as having an urgent mental health need, including a suicide risk, shall receive a mental health evaluation by a Mental

Health Practitioner within 24 hours of the intake screening, or sooner if clinically indicated.

d. To address the needs of plaintiffs who, prior to being taken into custody, were prescribed medication that, if interrupted, would pose a risk of adversely affecting health, the Commissioner shall promulgate and implement policy and procedure to ensure that such plaintiffs receive such medications within 24 hours of the intake screening or subsequent encounter at which the plaintiff first reports such medications to a Medical Professional or Mental Health Professional, or sooner if clinically indicated, unless: (i) a Clinician determines that such continuation is not medically appropriate, including without limitation a determination that continuation is not medically appropriate pending verification of the reported prescription, provided that appropriate verification efforts shall be promptly undertaken; or (ii) despite reasonable efforts consistent with the gravity of the need for the medication, DPDS is unable to timely obtain the medication. The Commissioner shall promulgate and implement policy and procedure requiring reasonable efforts, consistent with the gravity of the need for the medication, to ensure that such plaintiffs are timely provided with the medication or a pharmaceutical equivalent.

e. The intake screening, any physical or mental health assessment, and any decision regarding the continuation or non-continuation of reported prescription medication shall be documented in the plaintiff's medical record. If a medication is not continued, the clinical justification for that decision shall be documented in the plaintiff's medical record.

18. **Medical Plan of Care**

a. For purposes of this Settlement Agreement, a "Plan of Care" is a combined summary, evidenced by Clinician documentation in the medical record that includes: (a) a summary listing of major medical problems; and (b) a plan for treatment of such identified major medical problems, including, as applicable, medications, testing, records of past periodic chronic care appointments and access to orders for future periodic chronic care appointments, and access to orders for specialist referral. The Plan of Care shall be documented in the EMR. In the EMR existing as of the Effective Date, the Plan of Care shall be documented utilizing the Chart Summary template. See paragraph III.25.f. regarding the Mental Health Plan of Care.

b. For purposes of this Settlement Agreement, an "Ongoing Condition" is a condition that requires ongoing care and that: (i) will not be resolved within a 30-day period; or (ii) constitutes a serious acute injury or illness that will require repeated follow-up (aside from routine medication administration) or has lasting significance for the plaintiff's future health care treatment. For those plaintiffs with one or more Ongoing Conditions, a Plan of Care shall be developed by one or more Clinicians, as appropriate, based on physical examination and the documented medical history of the plaintiff, as provided herein.

c. The Commissioner shall promulgate and implement policy and procedure to ensure that initial diagnosis and identification of Ongoing Conditions, along with any elements of a Plan of Care that do not require development at chronic care clinics or through specialist referral, shall be conducted and entered into the EMR within seven days of the plaintiff's admission, or sooner if clinically indicated.

d. During this initial diagnosis and identification process, a Clinician shall order that the plaintiff be enrolled in any chronic care clinics that are clinically indicated and recommend any specialty care that is clinically indicated. Any elements of the Plan of Care developed as a result of enrollment in chronic care clinics or specialty care shall be entered promptly in the EMR.

e. If an Ongoing Condition is diagnosed and identified after the initial diagnosis and identification, the Plan of Care shall be promptly updated or created, as appropriate, to reflect such new diagnosis and identification.

f. The Plan of Care shall be accessible to any Medical Professional or Mental Health Professional who is providing treatment, including diagnostic services, to a plaintiff, unless the need for emergency treatment precludes access at the plaintiff's location.

19. **Medication Management and Testing**

a. The Commissioner shall promulgate and implement policy and procedure to ensure that, unless clinically contra-indicated, medications not intended only for short-term use shall be renewed without interruption. Such policy shall ensure that a plaintiff prescribed such medication is seen by a Clinician in sufficient time before renewal would be required for the Clinician to determine

whether such medication should be renewed. Nothing in this Settlement Agreement is intended to, or shall, interfere with the exercise of appropriate clinical judgment by a Clinician to prescribe, or not prescribe, any medication.

b. Medication Administration Records ("MARS") shall be completed by RNs or LPNs. If medication is not administered to the intended plaintiff on a particular occasion, the MARS shall allow a determination whether the medication was refused by the plaintiff or whether some other specified cause prevented administration. Any Medical Professional who makes entries in MARS shall document his or her entries as required by policy, including legibly signing entries, and noting the applicable professional licensure.

c. The Commissioner shall promulgate and implement policy and procedure to ensure that, when a Clinician orders that vital signs or blood sugar results be documented, the documentation occurs as ordered and that these records are reviewed by a Clinician according to appropriate policy.

d. The Commissioner may require plaintiffs who are prescribed medication that they are permitted to keep on their persons to initiate the process for refill of a prescription medication without having to first see a Medical Professional; provided, however, that DPDS shall have a process for expedited refills of keep-on-person medications that are prescribed for potentially urgent needs, such as rescue inhalers.

e. The Commissioner shall promulgate and implement policy and procedure requiring a Clinician to respond to and document in a plaintiff's medical record the results of any ordered tests. Such policy and procedure shall require that a Clinician:

   i. document review of critical or other serious abnormal values, and any actions taken as a result of that review, within 24 hours of the testing results becoming available, or sooner if clinically indicated, provided that review may be documented by a RN based on telephonic consultation with a Clinician;

   ii. document review of all other ordered testing results within a reasonable timeframe.

f. The Commissioner shall promulgate and implement policy and procedure to ensure that orders for laboratory testing, including but

not limited to cultures of potential Methicillin-Resistant Staphylococcus aureus ("MRSA") infections, are executed within timeframes consistent with the urgency of the test and the capacity of appropriately functioning laboratories to conduct such tests.

g. The Commissioner shall promulgate and implement policy and procedure that defines those blood sugar and vital sign readings that are sufficiently abnormal to require notification of the plaintiff's Clinician; ensure that such policy and procedure for notification is implemented in practice; and further ensure that Medical Professionals notified of such readings take appropriate medical measures in response.

20. **Interaction Between Medical and Custody**

a. The Commissioner shall promulgate and implement policy and procedure for coordination between custody and medical staff to ensure that custody staff transport plaintiffs to emergency and scheduled internal and off-site appointments with Medical Professionals and Mental Health Professionals, for other specialty appointments, and for medical tests. Such policy and procedures shall also be promulgated and implemented ensuring timely rescheduling of missed appointments.

b. The Commissioner shall promulgate and implement policy and procedure to ensure that when Medical Professionals or Mental Health Professionals direct medical accommodations (such as bottom bunk placement, access to a cane or crutches, specialized housing for medical or mental health purposes, or for purposes of protection from exposure to excessive heat), custody staff follow such directives. In the event that custody staff have concerns about the security implications of a particular medical accommodation, a mechanism shall exist to resolve such concerns promptly in a manner that does not threaten the health or safety of the plaintiff whose accommodation is at issue.

c. The Commissioner shall ensure that Medical Professionals and Mental Health Professionals have access to current plaintiff location information for all plaintiffs on at least a daily basis.

d. The Commissioner shall promulgate and implement policy and procedure to ensure coordination between custody staff and Medical Professionals when scheduling sick call and medication administration.

e. The Commissioner shall promulgate and implement policy and procedure to ensure that plaintiffs classified as H1 are housed in temperature-controlled housing, to the extent sufficient temperature-controlled housing is available, from May 1 through September 30. Temperature-controlled housing includes those housing units of BCBIC, WDC, JI Dorms 600 and 700, and such other facilities as the parties agree constitute temperature-controlled housing because such units reliably control temperature to less than 88° Fahrenheit.

f. In the event that the temperature control system of a housing unit used for H1 plaintiffs fails to maintain the temperature below 88° Fahrenheit, the Commissioner shall, to the extent possible and safe, transfer such H1 plaintiffs to other H1 housing. If insufficient H1 housing is available, appropriate Clinicians shall determine which HI plaintiffs are priorities for transfer to the available H1 housing. Respite in air-conditioned areas shall be provided for such plaintiffs, as well as other plaintiffs as required pursuant to Maryland Division of Pretrial Services, Directive 185.008 (2009).

g. In the event that any housing unit designated as temperature-controlled fails to reliably control temperature to less than 88° Fahrenheit while plaintiffs designated as H1 are housed there, such housing unit shall no longer be considered temperature-controlled housing for purposes of this Settlement Agreement until the Commissioner provides evidence that such housing can now be expected to reliably control temperature to less than 88° Fahrenheit under comparable conditions in the future.

21. **Accommodations for plaintiffs with disabilities**

a. The Commissioner shall promulgate and implement policy and procedure ensuring the timely delivery of necessary medical supplies to plaintiffs with disabilities. The Commissioner shall promulgate and implement policy and procedure to ensure that plaintiffs with disabilities that require special accommodations are housed in locations that provide those accommodations, including, as applicable, toilets that can be used without staff assistance, accessible showers, and areas providing appropriate privacy and sanitation for bowel disimpaction.

b. A staff member with appropriate training shall be designated to address concerns of plaintiffs with disabilities regarding accommodations for their disabilities and to assist in the resolution of

any security issues that may threaten provision of necessary accommodations.

c. Plaintiffs with disabilities shall be provided with access to specialized medical services, such as dentists, mental health treatment, and off-site medical specialist treatment, on the same basis as plaintiffs without disabilities.

d. The Commissioner shall promulgate and implement policy and procedure to use a vehicle with adaptations to make it suitable for the safe transportation of persons with mobility-related disabilities to transport plaintiffs with such disabilities, unless such vehicle is not available in an emergency situation.

22. **Specialty Care/Consultation**

a. The Commissioner shall promulgate and implement policy and procedure to ensure timely review of requests for routine, urgent and emergency specialty care.

b. Such policy and procedure shall provide that plaintiffs are referred to specialists as medically necessary and that the process for review and approval of specialty consultations does not take more than 48 hours for urgent care and five business days for routine care.

c. The Commissioner shall promulgate and implement policy and procedure to maintain a log documenting the date a Clinician requests approval of a specialist referral; the date utilization management takes action on the request; the outcome of the request; and whether the referral is to a specialist for the purpose of treatment or for the purpose of evaluation only. Clinicians shall be given training regarding the documentation necessary to support a specialty request.

d. The Commissioner shall promulgate and implement policy and procedure to ensure that, if applicable, each plaintiff's medical record contains documentation of requests for outside specialty care, including the date of the request, the date and nature of the response, the date any consultation is scheduled, the date of any consultation, and appropriate information, if any, regarding follow-up care.

e. For the purpose of this Settlement Agreement, referrals for mental health services that are provided onsite at BCDC or BCBIC do not constitute specialist referrals.

23. **Sick Call**

a. Plaintiffs shall daily have the opportunity to request health care. Nursing staff shall make daily rounds to collect sick call requests from plaintiffs who have no access to a sick call box.

b. Requests for health care shall be triaged by RNs within 24 hours of receipt, with receipt measured from the time that the requests arrive at the site of triage following daily collection of sick call slips.

c. Plaintiffs whose requests include reports of clinical symptoms shall have a face-to-face (in person or via video conference, if clinically appropriate) encounter with a Medical Professional (not including an LPN) or Mental Health Professional within 48 hours (72 hours on weekends) of the receipt of the request by nursing staff at the site of triage, or sooner if clinically indicated.

d. Care at sick call and at subsequent follow-up appointments shall be as determined by appropriate Medical Professionals and/or Mental Health Professionals, in the exercise of appropriate clinical judgment, to meet the plaintiffs' medical and mental health needs.

24. **Medical Records**

a. The Commissioner shall promulgate and implement policy and procedure to ensure that the medical records of plaintiffs are available at sick call and other encounters with Medical Professionals and Mental Health Professionals. An on-site Medical Professional or Mental Health Professional who is providing treatment, including diagnostic services, to a plaintiff shall have access to both the EMR and any non-electronic portion of the medical record, unless the need for emergency treatment precludes access at the plaintiff's location.

25. **Mental Health Care**

a. The Commissioner shall promulgate and implement policy and procedure to ensure that appropriate Mental Health Professionals are provided to ensure timely and appropriate evaluations for medications and suicide risks.

b. When a request for a bridge order for psychotropic medications is made for a plaintiff, and the bridge order is approved, the plaintiff shall be seen within 14 days, or sooner if clinically indicated, for an in-person evaluation by a licensed psychiatrist or psychiatric registered nurse practitioner. In the event that a bridge order is denied,

the plaintiff shall be seen for an in-person evaluation by a licensed psychiatrist or psychiatric registered nurse practitioner within 24 hours of denial of medication.

c. The Commissioner shall promulgate and implement policy and procedure to ensure that plaintiffs are evaluated by an appropriate Mental Health Practitioner within 24 hours of an urgent referral.

d. Plaintiffs who are prescribed psychotropic medications shall be seen face-to-face by a licensed psychiatrist or psychiatric registered nurse practitioner at least every 90 days, or more frequently if clinically indicated.

e. Plaintiffs who are suicidal, self-injurious, or otherwise in need of close monitoring or treatment shall be seen by appropriate Mental Health Practitioners as often as clinically indicated, for evaluation and recommendations for the management of such behavior. Nothing in this Settlement Agreement is intended to restrict the ability of RNs, consistent with the scope of their training and licensure, to participate in and assist with the treatment, evaluation, and management of such behavior.

f. Mental Health Plan of Care

i. For purposes of this Settlement Agreement, a "Mental Health Plan of Care" is a combined summary, evidenced by psychiatrist, psychologist, or psychiatric registered nurse practitioner documentation in the medical record that includes: (a) a summary listing of major mental health problems; and (b) a plan for treatment of such identified major mental health problems, including, as applicable, medications, testing, and records of past periodic chronic care appointments and access to orders for future periodic chronic care appointments. The Mental Health Plan of Care shall be documented in the EMR. In the EMR existing as of the Effective Date, the Mental Health Plan of Care shall be documented utilizing the Chart Summary template. See paragraph III.18.a. regarding the Medical Plan of Care.

ii. The Commissioner shall promulgate and implement policy and procedure to ensure that all plaintiffs who are currently diagnosed in the BCDC medical record with mental health problems are enrolled in chronic care clinics. If clinically indicated, treatment plans shall be documented in the EMR

within 14 days of the plaintiff's admission. If a mental health condition requiring treatment is identified after intake, treatment plans shall be documented in the EMR within 14 days of the identification of the condition.

iii. The Mental Health Plan of Care for a plaintiff with a major mental health problem, or who is prescribed medication for a mental illness, shall include scheduled follow-up with an appropriate Mental Health Practitioner as clinically indicated but no less frequently than every 90 days and shall be updated at each clinical encounter.

iv. The Mental Health Plan of Care shall be accessible to any Medical Professional or Mental Health Professional who is providing treatment, including diagnostic services, to a plaintiff, unless the need for emergency treatment precludes access at the plaintiff's location.

g. In those cases in which a plaintiff under treatment for mental health problems is returning to BCDC after having been confined in an outside institution and has been absent from BCDC for two weeks or more, the plaintiff will receive a new medical/mental health screening by a RN, and a new suicide risk assessment from a Mental Health Practitioner.

h. Nothing in this Settlement Agreement is intended to restrict the ability of any Mental Health Professional to place a plaintiff on suicide restrictions pending review of that status by an appropriate Mental Health Practitioner.

B. Physical Plant

26. The Commissioner shall promulgate and implement policy and procedure for:

a. an effective housekeeping program that includes training and supervision of cleaning within the housing units;

b. prevention of vermin infestation and the spread of disease-causing organisms (*e.g.*, salmonella and E. coli); and

c. a system for maintenance and repair appropriate to maintain sanitation and safety and the functioning of necessary equipment and fixtures.

IV. GENERAL PROVISIONS

27. The Commissioner shall appoint a compliance coordinator to oversee compliance with this Settlement Agreement and to serve as a point of contact regarding compliance activities.

28. The Commissioner shall implement any reforms necessary to effectuate this Settlement Agreement. The implementation of this Settlement Agreement will begin on the Effective Date; however, the parties recognize that some of the substantive provisions of this Settlement Agreement will reasonably require time to implement, and the parties agree that this Settlement Agreement shall be construed accordingly.

29. The Commissioner's compliance with the provisions of Section III of this Settlement Agreement shall be determined by three monitors (one for medical provisions, one for mental health provisions, and one for physical plant provisions) ("Monitors").

30. Both parties shall have the right to provide information to the Monitors on a confidential *ex parte* basis.

31. The parties agree that assessing compliance with this Settlement Agreement shall not be more burdensome than necessary, and that costs of assessing compliance should be minimized so as to make additional funds available for compliance. The parties agree that the Monitors shall have primary responsibility for assessing the compliance of the Commissioner with the substantive provisions of this Settlement Agreement, consistent with the responsibility of the parties' counsel to conduct necessary monitoring of compliance.

32. The parties agree to the appointment of Michael Puisis, DO, for medical provisions, Raymond F. Patterson, M.D., D.F.A.P.A., for mental health provisions, and Mehdi Azimi, Ph.D., for physical plant provisions, as Monitors for reviewing compliance with the terms of this Settlement Agreement. If any of the Monitors ceases to function as Monitor before the termination of this Settlement Agreement, the parties shall confer in an attempt to agree upon a successor monitor. For purposes of this Settlement Agreement, a successor monitor's qualifications are to be considered based on: (a) experience in the relevant discipline in a corrections setting; (b) professional qualifications (including licensing and certification); (c) potential biases that would affect his or her independence; and (d) reasonableness of fees and proposed monitoring plan. These factors shall be considered in combination.

33. In the event that a Monitor is no longer able or willing to perform his or her assigned duties and the parties are unable to agree on a successor monitor, Defendants shall identify names of at least two qualified successor monitor candidates. Plaintiffs may select one of the candidates. If Plaintiffs believe that neither of Defendants' proposed candidates sufficiently possesses the necessary qualities of neutrality and skill in assisting in

implementation of this Settlement Agreement, Plaintiffs may identify names of at least two qualified successor monitor candidates. Defendants may select one of the candidates, or submit the dispute to the Court. The Court shall select the substitute monitor from the list of candidates proposed by the parties. If, however, the Court finds none of the proposed candidates qualified, the Court shall make whatever further orders it deems necessary to identify an appropriate successor monitor.

34. The Commissioner shall submit semi-annual compliance reports to the Monitors, with a copy to Plaintiffs' counsel. Reports shall be submitted by August 31 of each year, covering the first half of that calendar year, and by February 28 of each year, covering the second half of the prior calendar year. Each compliance report shall describe the status of compliance, including changes in that status, during the reporting period, and further steps anticipated during the next reporting period, to implement the terms of this Settlement Agreement. The first semi-annual compliance reports shall be due by August 31, 2016 covering the period from the Effective Date through June 30, 2016.

35. The Commissioner shall maintain sufficient records to document that the requirements of this Settlement Agreement are being properly implemented and that Defendants have taken such actions as described in their compliance reports. Upon reasonable request, the Commissioner shall provide such records to the Monitors and Plaintiffs' counsel, or make such records available to the Monitors and Plaintiffs' counsel (as provided in paragraph 36) at reasonable times for inspection on site. Consistent with the provisions of paragraph 31, if the Monitors or Plaintiffs' counsel reasonably determine that such records are insufficient to carry out their respective responsibilities under this Settlement Agreement, they may make reasonable requests that the Commissioner provide or make available additional records, and the Commissioner shall provide or make available such additional records.

36. Subject to paragraph 31:

a. Records or other documents provided to the Monitors shall also be provided to Plaintiffs; records or other documents made available to the Monitors shall, upon reasonable request, also be made available at reasonable times for inspection by Plaintiffs;

b. During the pendency of this Settlement Agreement, Plaintiffs' counsel shall have the right to conduct reasonable discovery, including physical access to BCDC and to those parts of other facilities covered by this Settlement Agreement, as stated in paragraph 16, by counsel and their agents, related to the Commissioner's compliance with the provisions of this Settlement Agreement;

c. Plaintiffs' counsel shall have the right to receive copies of or view medical and mental health records of class members in response to

requests that are reasonable in volume and in timing, and are relevant to provisions of this Settlement Agreement that are currently in force, without the necessity of individual medical releases. The Commissioner shall notify Plaintiffs' counsel when a plaintiff dies at BCDC, or at BCBIC following acceptance in the screening process, including plaintiffs who die following transfer to a treatment facility, and the Commissioner shall provide the medical and mental health records of such plaintiffs without the necessity of Plaintiffs' counsel requesting the records.

37. If any disputes with respect to the reasonableness of requests for records under this Settlement Agreement cannot be resolved after reasonable efforts, such disputes shall be presented to, and decided by, the Court.

38. The responsibilities of the Monitors shall be to:

a. Conduct on-site inspections of BCDC as necessary in their professional judgment to monitor the implementation of this Settlement Agreement, but no less frequently than once every six months for the first two years from the Effective Date.

b. Review evidence relating to compliance and assess the Commissioner's progress in meeting the requirements of this Settlement Agreement, including assessing any allegations of Plaintiffs regarding lack of compliance;

c. Provide technical assistance to the Commissioner to achieve compliance with the terms of this Settlement Agreement by informing the Commissioner what the Monitors consider necessary to achieve compliance, and how the Monitors believe such compliance might be achieved;

d. Issue reports as follows:

i. Within two months of the submission of a semi-annual compliance report by the Commissioner in which the Commissioner claims to have achieved substantial compliance with one or more substantive provisions of this Settlement Agreement, the appropriate Monitor shall issue a report stating whether the Commissioner has achieved substantial compliance with each applicable substantive provision of this Settlement Agreement at issue. If a Monitor reasonably requires additional time to issue such a report, he or she may extend that period of time by up to two additional months by providing notice to the parties and explaining the need for additional time;

ii. Plaintiffs may, by February 28 and by August 31 of each year, make written allegations to a Monitor that the Commissioner has violated his or her obligations under one or more substantive provisions of this Settlement Agreement, and shall provide a copy of such allegations to the Commissioner. The appropriate Monitor shall, in his or her report issued under paragraph 38.d.i., state whether the Commissioner is in substantial compliance with the applicable substantive provision(s) of this Settlement Agreement;

iii. Any report submitted pursuant to this paragraph shall be provided to the parties in draft form at least 15 days before being issued in final form. If the Commissioner or Plaintiffs provide evidence or information in response to such draft before it is finalized, the Monitor may take such evidence or information into account in finalizing the report;

iv. Final reports of the Monitors issued pursuant to this paragraph shall be provided to the parties. Either party may file such a report with the Court;

v. Reports of the Monitors shall identify all documents and other sources of information relied upon in their preparation.

39. For purposes of this Settlement Agreement, "substantial compliance" means that the Commissioner has achieved: (a) full compliance with the components of the relevant substantive provision of this Settlement Agreement; or (b) sufficient compliance with the components of the relevant substantive provision of this Settlement Agreement such as to remove significant threat of constitutional injury to the plaintiff class posed by any lack of compliance with the components of that substantive provision. For purposes of this Settlement Agreement, a "substantive provision" means the requirements set forth in a single numbered paragraph in Section III of this Settlement Agreement.

40. If and when the Commissioner achieves substantial compliance with a substantive provision of this Settlement Agreement, and maintains substantial compliance with such substantive provision for at least six months, such substantive provision of this Settlement Agreement shall be deemed satisfied. Following resolution of any disputes regarding whether substantial compliance has been achieved and maintained, including any applicable court review contemplated under this Settlement Agreement, such substantive provision shall no longer be subject to the terms of this Settlement Agreement, including monitoring; provided, however, that for purposes of paragraph 20.e., f., and g., such provision shall be deemed satisfied only if the Commissioner maintains substantial compliance for at least twelve calendar months.

41. A finding of a Monitor that the Commissioner has achieved or has not yet achieved substantial compliance with a substantive provision of this Settlement Agreement may be challenged only according to the provisions in this paragraph.

a. With respect to an initial finding of a Monitor that the Commissioner has achieved substantial compliance with a substantive provision of this Settlement Agreement, Plaintiffs must provide notice to Defendants and the Monitor of their disagreement with the Monitor's finding within 45 days of the issuance of the applicable report. Any such notice must identify the bases for the challenge with supporting evidence;

b. With respect to a finding of a Monitor that the Commissioner has not achieved substantial compliance with a substantive provision of this Settlement Agreement, Defendants must provide notice to Plaintiffs and the Monitor of their disagreement with the Monitor's finding within 45 days of the issuance of the applicable report. Any such notice must identify the bases for the challenge with supporting evidence;

c. With respect to a finding of a Monitor that the Commissioner has maintained substantial compliance with a substantive provision of this Settlement Agreement for at least six months, any challenge shall comply with subparagraph 41.e. Any such challenge may address the finding of substantial compliance during the most recent reporting period and/or, only if preserved by providing the notice required in subparagraph 41.a., any challenge to the initial finding of substantial compliance relating to the same substantive provision;

d. With respect to a finding of a Monitor regarding substantial compliance with a substantive provision of this Settlement Agreement that Defendants contend should have been a finding of maintenance of substantial compliance for at least six months, any challenge shall comply with subparagraph 41.e. Any such challenge may address the finding regarding substantial compliance during the most recent reporting period and/or, only if preserved by providing the notice required in subparagraph 41.b., any challenge to an adverse finding regarding substantial compliance during the immediately prior reporting period, if applicable, relating to the same substantive provision;

e. Unless the parties agree to extend the time, any challenge brought pursuant to subparagraphs 41.c. or 41.d. is waived if not made within 45 days of issuance of the applicable Monitor's report. Any such challenge shall be in a filing with the Court that shall: (1) attach a copy of the Monitor's report; (2) identify the bases for the challenge with supporting evidence; and (3) state the relief sought. Unless the parties agree to

extend the time, the other party shall file a response within 45 days. In any such proceedings, the challenging party shall bear the burden of proof to demonstrate that the Monitor's findings are incorrect;

f. Upon request, the Commissioner shall provide to Plaintiffs within seven days any documents identified pursuant to paragraph 38.d.v. in a Monitor's report that have not previously been provided to Plaintiffs, unless such documents were not originally provided to the Monitor by the Commissioner, in which case the Monitor shall provide such documents to both parties within seven days.

42. This Settlement Agreement shall terminate upon the earlier of:

a. The Commissioner's achievement of substantial compliance with all substantive provisions of this Settlement Agreement in accord with paragraph 40; or

b. Four years from the Effective Date unless Plaintiffs have previously obtained an order from the Court that is fully compliant with the requirements of 18 U.S.C. § 3626(a)(1) and that finds that the extension of one or more substantive provisions of this Settlement Agreement is necessary to correct an identified, ongoing constitutional violation, extends no further than necessary to correct that ongoing violation, and is the least intrusive means necessary to correct that ongoing violation. Notwithstanding the foregoing, if, as of four years from the Effective Date, Plaintiffs have a pending motion seeking an order extending one or more of the remaining substantive provisions of this Settlement Agreement, then termination shall not occur until the earlier of: (i) the denial of that motion; or (ii) four years and six months from the Effective Date.

43. Upon termination, this action shall be promptly dismissed with prejudice.

44. To allow time for the remedial measures set forth in this Settlement Agreement to be fully implemented, the parties shall not move to modify or terminate this Settlement Agreement for a period of four years from the Effective Date, except that this Settlement Agreement may be modified by agreement pursuant to paragraph 53.

45. Failure by either party to enforce this entire Settlement Agreement or any provision thereof shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Settlement Agreement.

46. This Settlement Agreement shall be applicable to, and binding upon, all parties, their officers, agents, employees, assigns, and their successors in office.

47. Attorney's Fees and Costs.

a. Defendants shall pay Plaintiffs $450,000 in full and final satisfaction of all claims of Plaintiffs for attorney's fees and costs in connection with this action prior to the Effective Date.

b. Plaintiffs and their counsel shall not be entitled to recover any attorney's fees or costs in connection with or as a result of this Settlement Agreement, its implementation, or any dispute concerning compliance with its provisions, except as expressly set forth in this paragraph 47.

c. Plaintiffs shall be entitled to reasonable fees and costs for monitoring compliance with the substantive provisions of this Settlement Agreement in an amount not to exceed $30,000 per year in the first and fourth years following the Effective Date and $20,000 per year in the second and third years following the Effective Date.

d. Except as set forth in subparagraphs a. and c., Plaintiffs shall not seek, or be entitled to recover, attorney's fees or costs for any monitoring or other activities related to this Settlement Agreement: (i) unless they prevail in obtaining an order to enforce one or more substantive provision(s) of this Settlement Agreement; and (ii) in that case, any award shall be in accord with the Prison Litigation Reform Act.

e. Defendants shall pay the reasonable fees and expenses of the Monitors.

48. Nothing in this Settlement Agreement affects in any way any individual claim brought by a member of the plaintiff class against Defendants or any other officer or agency of the State of Maryland. Specifically, nothing in this Settlement Agreement: (a) bars or limits a member of the plaintiff class from bringing an individualized suit seeking damages or prospective relief under state and/or federal law; (b) bars or limits in any way Defendants or any other officer or agency in responding to any such suit; or (c) alters the requirements of the Prison Litigation Reform Act, including the exhaustion requirement, or other applicable law with respect to any such suit. Only class counsel may seek to enforce the terms of this Settlement Agreement. In the absence of a Court order, no reports, notes, or other work product of the Monitors may be used as evidence in any other proceeding or litigation, nor may the Monitors be called as witnesses in any other proceeding or litigation.

49. The parties consent to the reservation and exercise of jurisdiction by the Court over all disputes between and among the parties arising out of this Settlement Agreement, subject to satisfaction of the following protocol:

a. If, prior to any finding of substantial compliance by a Monitor, Plaintiffs assert that Defendants are not in compliance with one or more of the obligations under this Settlement Agreement, Plaintiffs shall provide Defendants with a written notice to that effect. The written notice of non-compliance shall set forth the specific substantive provisions of this Settlement Agreement with which Plaintiffs contend the Commissioner is not in compliance, and shall provide a summary of the factual basis for the alleged non-compliance with sufficient specificity to allow Defendants to understand the precise nature of the alleged non-compliance. Such summary need not identify specific class members unless such identification is necessary to allow Defendants to understand the precise nature of the alleged non-compliance;

b. The notice required in subsection (a) shall be provided in writing to Defendants at least 30 days before the filing of any motion for enforcement by Plaintiffs, except in circumstances in which:

   i. Plaintiffs' counsel did not have the factual information regarding the violation in time to provide notice 30 days before the expiration of this Settlement Agreement; or

   ii. Plaintiffs' counsel believe in good faith, and after reasonable investigation, that their failure to file a motion for enforcement before the expiration of 30 days following notice to Defendants would subject class members to a substantial risk of irreparable injury. In such circumstances, Plaintiffs shall provide Defendants with as much advance notice as possible without subjecting class members to a substantial risk of irreparable injury from the delay in filing the motion for enforcement.

c. In those circumstances in which Plaintiffs' counsel is actively reviewing evidence of alleged non-compliance with a specific substantive provision of this Settlement Agreement and is seriously discussing the filing of a motion for enforcement, Plaintiffs shall notify Defendants of the substantive provision or provisions involved, and provide Defendants with a description of the evidence of non-compliance that Plaintiffs are reviewing. Such notice need not identify specific class members unless such identification is necessary to allow Defendants to understand the precise nature of the alleged non-compliance.

d. If, after a finding of substantial compliance by a Monitor as to a particular substantive provision, but before the provision has been terminated pursuant to paragraph 40, Plaintiffs' counsel reasonably

believe that there has been a new violation of the substantive provision at issue by the Commissioner that, if not addressed promptly, would subject class members to a substantial risk of irreparable injury, Plaintiffs' counsel may proceed in accordance with the terms of this paragraph 49, in parallel with any challenge brought pursuant to paragraph 41. However, if the substantive provision at issue is terminated pursuant to paragraph 40, any further proceedings relating to such provision shall be terminated.

50. The issue of liability has not been litigated. Defendants deny all the allegations in the complaint filed in this case. This Settlement Agreement does not constitute and shall not be construed or interpreted as an admission of wrongdoing or liability by any party.

51. The parties stipulate and jointly request that the Court find that, as of the Effective Date, this Settlement Agreement satisfies the requirements of 18 U.S.C. § 3626(a)(1)(A) in that it is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the federal right of Plaintiffs.

52. The parties jointly request that the Court grant preliminary approval to this Settlement Agreement, provide notice to the class, and schedule a hearing regarding the appropriateness of final approval pursuant to Fed. R. Civ. P. 23(e). The parties further request that, following a fairness hearing, the Court give final approval to this Settlement Agreement; expressly adopt it as an order of the Court; and retain jurisdiction for the purpose of enforcing this Settlement Agreement.

53. This Settlement Agreement may be modified at any time upon written agreement of the parties and approval by the Court.

[SIGNATURE PAGES FOLLOW]

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Date: Nov. 13, 2015

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Public Justice Center
One North Charles St., Ste 200
Baltimore, MD 21201

Counsel for Plaintiff Class

Date: 11/13/15

For the Defendants:

Brenda M. Shell Date: 11/18/15

Brenda M. Shell
Commissioner
Division of Pretrial Detention and Services

Stuart M Nathan Date: Nov 19, 2015

Stuart M. Nathan
Assistant Attorney General and
Principal Counsel
Department of Public Safety and
Correctional Services
Attorney for Defendants

Approved

_____ Date: _____

United States District Judge

NOTICE TO THE *DUVALL* CLASS
ABOUT PROPOSED SETTLEMENT

If you are held in the Baltimore City Detention Center ("the jail"), you are a member of the plaintiff class in a lawsuit, *Duvall v. Hogan*. The case seeks to improve conditions in the jail. The lawyers for both sides have asked the judge to approve a settlement. If the settlement is approved by the Court, it will set requirements for medical care, mental health care, sanitation and repair in the jail. The settlement will not result in the award of money to members of the class. If approved by the judge, it will be a federal court order. The order will require the jail to maintain the requirements. This settlement does not affect the right of class members to bring individual cases about conditions at the jail.

If the settlement is approved by the judge: Lawyers for the class will be able to inspect the jail. They will also be able to look at papers about the jail's compliance with the court order. Experts will be appointed as monitors of whether the jail is following the court order. When the jail has met a requirement for at least six months, that requirement will end. The Court will dismiss the case when all the requirements have been met, or in four years unless the Court finds that jail conditions still violate federal law. The state will also pay the Plaintiffs' lawyers between $450,000 and $550,000 in attorneys' fees and costs.

You may read the full proposed settlement and the motion for attorneys' fees by visiting the library. If you are not eligible to go to the library, you may write to the Assistant Warden asking for these papers. State your name, number, and cell number. You can put your request with the outgoing mail. A lieutenant will deliver the papers to you. You will have 5 business days to review the papers before you must give them back to staff.

You have the right to let the Court know whether you think that the settlement should be approved or not. All comments must be postmarked by _____and mailed to:

Duvall Settlement Response
Hon. Ellen L. Hollander
United States District Judge
101 West Lombard St.
Baltimore, MD 21201

For further information, you can contact the lawyers for the class at:

Duvall Settlement
ACLU National Prison Project
915 15th St. NW, 7th Floor
Washington, DC 20005

ATTACHMENT 2

NOTICIAS PARA LOS MIEMBROS DE LA DEMANDA COLECTIVA
DE *DUVALL* SOBRE EL ACUERDO SUGERIDO

Si usted está detenido en el Baltimore City Detention Center (Centro de detención de la Ciudad de Baltimore, o "la cárcel"), usted es miembro del lado del demandante en la demanda, *Duvall v. Hogan.* Este caso busca mejorar las condiciones de la cárcel. Los abogados de los dos lados han pedido a la jueza a aprobar un acuerdo. Si el acuerdo está aprobado por el Tribunal, pondrá en efecto requisitos para el cuidado médico, el cuidado de salud mental, y las instilaciones sanitarias y los arreglos de la cárcel. El acuerdo no va a resultar en la indemnización de dinero a los miembros de la demanda. Si aprobado por la jueza, será un mandato del tribunal federal. El mandato requerirá que la cárcel mantenga los requisitos. Este acuerdo no afecta el derecho de los miembros de la demanda colectiva de peticionar casos individuales sobre las condiciones en la cárcel.

Si el acuerdo está aprobado por la jueza: Los abogados de los miembros de la demanda podrán inspeccionar la cárcel. También podrán ver los documentos sobre el cumplimiento de la cárcel con el mandato del tribunal. Expertos estarán nombrados como supervisores de si la cárcel está cumpliendo con el mandato del tribunal. Cuando la cárcel ha cumplido con un requisito para seis meses, al mínimo, ese requisito se acabará. El Tribunal desestimará el caso cuando todos los requisitos han estado cumplidos, o en cuatro años a menos que el Tribunal encuentre que las condiciones de la cárcel todavía están en violación de la ley federal. Además, el estado pagará a los abogados de los demandantes entre $450,000 y $550,000 en honorarios del abogado y gastos.

Usted puede leer la versión completa del acuerdo sugerido y la petición para los honorarios del abogado por visitar la biblioteca. Si no está calificado a visitar la biblioteca, pueda escribir al Asistente Alcaide pidiendo estos documentos. Dígalo su nombre, número, y número de celda. Se puede enviar su solicitud con el correo saliente. Un teniente repartirá los documentos a usted. Tendrá 5 días laborables para revisar los documentos; después tendrá que devolverlos al personal.

Usted tiene el derecho de decir al Tribunal si piensa que el acuerdo debe estar aprobado o no. Todos los comentarios deben estar sellados por el _____ y enviado a:

Duvall Settlement Response
Hon. Ellen L. Hollander
United States District Judge
101 West Lombard Street
Baltimore, MD 21201

Para más información, puede contactar los abogados de los miembros de la demanda a:

Duvall Settlement
ACLU National Prison Project
915 15th St. NW, 7th Floor
Washington, DC 20005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*,	*	
	*	
Plaintiffs,	*	
v.	*	**Civil Action No. ELH-94-2541**
	*	
LAWRENCE HOGAN, *et al.*,	*	
	*	
Defendants.	*	
	*	
	*	

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DECLARATION OF ELIZABETH ALEXANDER

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Elizabeth Alexander makes the following declaration under penalty of perjury pursuant to 28 U.S.C. §1746:

A. The History of the *Duvall* Litigation

1. I first became involved in the *Duvall* case in August of 2002. At that time, I was the Director of the American Civil Liberties Union Foundation National Prison Project ("NPP").

2. I worked with a number of other lawyers who were concerned about conditions of confinement in the Women's Detention Center ("WDC") during a significant heat wave.

3. Because of the requirement of the Prison Litigation Reform Act ("PLRA") in 42 U.S.C. §1997e(a) that persons confined in prisons and jails exhaust any available administrative remedies, the lawyers decided that the only route to filing in federal court in time to afford relief to detainees in WDC would be to file a motion seeking a partial reopening of this case rather than to attempt to file a new case.

4. For that reason, the motion for temporary relief was filed under the *Duvall* caption and it sought partial reopening of the 1993 Consolidated Consent Decree as well as a temporary restraining order and other injunctive relief from the Court.

5. Ultimately Defendants agreed to the relief requested by Plaintiffs and a Consent Order was signed partially reopening the case. In that Consent Order, Defendants acknowledged that the requirements for injunctive relief imposed by 18 U.S.C. §3626(a) of the PLRA, which limits the scope of injunctive orders in federal court to those necessary to address a violation of federal rights, were met.

6. Subsequently, I monitored Defendants' compliance with the Consent Order regarding protection from heat injury at WDC. Following two evidentiary hearings, the compliance issues were resolved by Defendants' agreement to provide air conditioning to WDC.

7. In the course of monitoring compliance with the Consent Order, I became aware of a number of other concerns about conditions of confinement at the Baltimore City Detention Center ("BCDC").

8. As a result of those concerns, lawyers from the Public Justice Center ("PJC") and I began to explore the possibility of reopening additional portions of the *Duvall* case.

9. The PJC and the NPP sought reopening of the medical, mental health, and physical plant portions of the 1993 Consent Decree in December 2003.

10. The decision to attempt a further expansion of the reopened portions of the 1993 Consent Decree resulted from similar considerations as those that prompted the August 2002 partial reopening, that is, the advantage of class certification status for the Plaintiffs and the avoidance of PLRA's exhaustion requirement.

11. Defendants' response to the December 2003 motion for partial reopening included, as Plaintiffs' counsel expected, the filing of a motion for termination of the 1993 Consent Decree, pursuant to 18 U.S.C. §3626(b) of PLRA.

12. This response was useful to Plaintiffs because the motion for termination allowed Plaintiffs' counsel to obtain an order providing full discovery rights and setting a schedule for an evidentiary hearing on the existence of a violation of the constitutional rights of Plaintiffs.

13. After the Court rejected Defendants' motion for termination of relief, Defendants filed an appeal. Although Plaintiffs' counsel immediately sought a remand to the Court to fix a technical defect in the order denying termination, the court of appeals did not grant a remand until after the appeal had been fully briefed.

14. Following remand, the Court referred the parties to mediation before the Honorable Paul W. Grimm. That mediation was ultimately successful in producing the Partial Settlement Agreement ("PSA").

15. Plaintiffs' counsel agreed to the PSA because they concluded that, if Defendants fulfilled their undertakings in that agreement, the constitutional violations that concerned Plaintiffs' counsel would be eliminated in large part. The one exception would be the violation regarding protection from heat injury for class members confined in the Men's Detention Center ("MDC").

16. The PSA also provided Plaintiffs' counsel with several new avenues to monitor whether Defendants were in fact implementing their promises in the PSA. These included quarterly monitoring reports, access by Plaintiffs' counsel for inspections of the physical plant at BCDC, the ability to meet with members of the Inmate Council in a

group, and automatic access to the medical records of members of the class who died while in the custody of BCDC.

17. Following the approval of the PSA by the Court, Plaintiffs' counsel monitored Defendants' compliance with it, and that monitoring and subsequent negotiations produced a supplementary agreement on protecting from heat injury members of the class confined in parts of BCDC other than WDC. In addition, the parties agreed to several extensions of the length of time the PSA was to remain in effect. These various amendments were approved by the Court.

18. Ultimately, however, Plaintiffs' counsel concluded that Defendants had not complied with the PSA and that further efforts to extend the PSA were unlikely to accomplish the goal of eliminating the constitutional violations at BCDC absent any ability to enforce the agreement through the powers of the Court.

19. As a result, Plaintiffs' counsel, by the beginning of 2014, had reached the decision that we would not agree to any further significant extensions of the PSA absent Defendants' agreement to an enforceable court order comprehensively addressing the existing constitutional violations.

20. Plaintiffs' counsel conveyed this position to Defendants' counsel in their first settlement discussion in 2014, and we consistently thereafter took this position in negotiations with Defendants' counsel.

21. By late 2013, Plaintiffs' counsel began work on gathering evidence for a motion to reopen the medical, mental health, and physical plant provisions of the 1993 Consent Decree, to be filed if negotiations were unsuccessful in producing a comprehensive

enforceable agreement. Plaintiffs' counsel also used this information to inform their settlement discussions with Defendants.

22. Although negotiations were proceeding in the spring of 2015, it became clear to Plaintiffs' counsel that these negotiations were highly unlikely to result in an agreement on all the separate issues necessary to allow a comprehensive agreement by the date of the final expiration of the PSA. If that had happened, the litigation would have been dismissed absent a timely motion for reopening.

23. Plaintiffs' counsel, however, remained interested in pursuing a settlement consistent with their core concerns, and the parties continued to hold settlement talks following the filing of the June 2015 motion for reopening.

24. The pace of the discussions substantially quickened after mediation before the Honorable Timothy Sullivan began.

25. I am of the opinion, based on my experience in conditions of confinement litigation and particularly based on my experience in litigation affected by the obstacles posed for plaintiffs affected by the PLRA, that the strategy of Plaintiffs' counsel that resulted in the Settlement Agreement now before the Court was, in light of the history of this case, the shortest and most efficient route to an enforceable court order including the provisions for relief sufficient to address the violations affecting the class. I am further of the opinion that absent the employment of the various motions to reopen the 1993 Consent Decree and thus avoid exhaustion requirements and the need to have a certified class of plaintiffs, it is very unlikely that the relief embodied in the Settlement Agreement now before the Court could have been obtained.

B. The Fees Provision of the Proposed Settlement Agreement

26. As noted above, in 2002 when I first became involved with the *Duvall* litigation, I was the Director of the NPP.

27. In January 2009, I left the NPP and established Law Offices of Elizabeth Alexander. By agreement with the American Civil Liberties Union Foundation, *Duvall* was one of the cases in which I continued to serve as counsel.

28. I have litigated prison, jail, and juvenile conditions of confinement cases since 1975. Over the course of my career, my cases have included litigation that arose in at least 21 different states and the District of Columbia, as well as at least two dozen class actions. Among my appellate cases have been three that I briefed and argued in the United States Supreme Court, including *Farmer v. Brennan*, 511 U.S. 825 (1994). I have taught courses in prison litigation at three law schools and published in a number of law journals, including the main journals of the law schools of the University of Texas, the University of Southern California, and the University of California-Irvine.

29. In fees awards for work done subsequent to the passage of PLRA, I have always been awarded the highest available rate. Prior to the passage of PLRA, my rates were much higher than the highest rate available for counsel who bring successful litigation in which the rate is capped by PLRA.

30. The demands of my work in *Duvall* during 2015 were a significant factor in my decision not to accept any new cases.

31. I consistently record my time spent on litigation contemporaneously. My fees and expenses records correctly reflect time spent and the expenses incurred, except that I frequently reduced the time recorded because I decided that the actual time was excessive

in some particular. For example, in the vast majority of cases, I reduced the travel time to Baltimore to a fraction of the actual time incurred. I also reduced time spent on a number of litigation tasks, such as writing and research tasks.

32. I also retroactively excluded any charge for activities such as the first attempt to seek fees for work in this case, and the motion for permission to send medical records of a deceased detainee to his survivors.

33. My fees totals are summarized below by category:

	HOURS	RATE	FEES
MOTION PRACTICE	1351.5	$213	$287,656.50
CASE DEVELOPMENT	39.5	$213	$ 8,354.60
ADR	418.6	$213	$ 89,161.80
DEPOSITIONS	87.3	$213	$ 18,594.90
COURT	3.5	$213	$ 745.50
FEES	8.3	$213	$ 1,767.90
TOTAL	**1908.7**	**$213**	**$406,553.10**

34. I have incurred a total of $2,811.92 in costs in this case.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Elizabeth Alexander

Elizabeth Alexander

December 22, 2015