

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

DAN DURAN, et al.,

Plaintiffs,

v.

THOMAS DART, Sheriff of Cook County, et al.,

Defendants.

No. 74 C 2949

Judge Virginia Kendall

GARY HARRINGTON, et al.,

Plaintiffs,

v.

THOMAS DART, Sheriff of Cook County, et al.

Defendants.

No. 74 C 3290

Judge Virginia Kendall

**DEFENDANTS' MOTION FOR AN ORDER: TENTATIVELY APPROVING THE
VOLUNTARY DISMISSAL OF *DURAN* AND *HARRINGTON* AS FAIR, REASONABLE
AND ADEQUATE; APPROVING A PROPOSED NOTICE TO THE PLAINTIFF
CLASSES OF THE PROPOSED VOLUNTARY DISMISSAL; AND SETTING A
FAIRNESS HEARING RESPECTING SUCH DISMISSAL**

NOW COME the Defendants in *Dan Duran, et al. v. Thomas Dart, Sheriff of Cook County, et al.* (“Duran”), Case No. 74 C 2949, and *Gary Harrington, et al. v. Thomas Dart, Sheriff of Cook County, et al.* (“Harrington”), Case No. 74 C 3290, and pursuant to Fed. R. Civ. P. 23(e), respectfully move the Court for an order: tentatively approving the dismissal of *Duran* and *Harrington* and corresponding vacation of the Consent Decree in *Duran* and Agreed Order in *Harrington* as fair, reasonable and adequate within the meaning of Fed. R. Civ. P. 23(e)(2); approving a proposed notice of such dismissal (“Notice of Dismissal,”

attached hereto) directed to plaintiff class members in *Duran* and *Harrington*; providing for the posting of the Notice of Dismissal at the Cook County Jail (“Jail”) in accordance with ¶17 below; scheduling a fairness hearing respecting such dismissal on a date certain that will ensure that plaintiff class members in *Duran* and *Harrington* will have a reasonable time after the notice has been posted for the requisite period to object to the proposed agreed dismissal of *Duran* and *Harrington* and corresponding vacation of the Consent Decree in *Duran* and Agreed Order in *Harrington*. In support of this motion, Defendants state as follows:

1. *Duran* and *Harrington* were both filed in 1974, more than 35 years ago. Both cases (“Lawsuits”) are currently pending before the Honorable Virginia Kendall in the United States District Court for the Northern District of Illinois.

2. The plaintiff class in *Duran* includes all pre-trial detainees at the Jail. The plaintiff class in *Harrington* includes all pre-trial detainees in the Jail who are in need of mental health treatment. In this motion, the plaintiff classes in the Lawsuits are referred to as the “*Duran* class” and the “*Harrington* class” respectively. The two plaintiff classes together are referred to as the “plaintiff classes.”

3. The Defendants in the Lawsuits include the Cook County Sheriff, the President of the Cook County Board of Commissioners, and the Cook County Board of Commissioners.

4. The *Duran* class claimed that the conditions of confinement at the Jail violated their rights under the Fourteenth Amendment to the United States Constitution.

5. The *Harrington* class claimed that the systematic failure to provide adequate mental health services at the Jail violated their rights under the Fourteenth Amendment to the United States Constitution.

6. The courts in *Duran* and *Harrington* have entered numerous orders in the Lawsuits. But there were two specific orders (both entered many years ago) that, over time, have afforded the plaintiff classes their principal relief; the 1982 Consent Decree in *Duran* (“*Duran* Consent Decree”) and the 1978 Agreed Order in *Harrington* (“*Harrington* Agreed Order”).

7. The *Duran* Consent Decree ordered the Defendants in that case to adhere to specific requirements affecting conditions of confinement at the Jail. Arguably, the most important of these requirements had to do with prevention of overcrowding at the Jail (so that detainees were not required to sleep on the floor) and the provision of sufficient staff to ensure the safety of detainees.

8. Among other things, the *Harrington* Agreed Order ordered the Defendants in that case to follow certain procedures respecting the screening of plaintiff class members for mental illness and the treatment of class members for mental illness; to ensure that such screening and treatment were provided by qualified personnel; and to ensure adequate security staffing for mental health treatment units.

9. Following the entry of the *Duran* Consent Decree and the *Harrington* Agreed Order, Plaintiffs and the Defendants in *Duran* and *Harrington* focused their efforts on ensuring compliance with those court orders, and on modifying those orders to improve conditions of confinement at the Jail, including the provision of mental health services there.

10. On May 13, 2010, the United States, under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997 (“CRIPA”), filed suit against *Duran* and *Harrington* defendants identified above and also against Cook County, Illinois. The suit was entitled “*United States v. Cook County, et al.*” (No. 10 C 2946), and in it the United States alleged that conditions at the

Jail violated the constitutional rights of persons confined there, including all members of the plaintiff classes.

11. The parties to *United States v. Cook County, et al.* filed a proposed Agreed Order with the complaint in that case. The proposed Agreed Order (“2010 Agreed Order”) was substantially more comprehensive than the *Duran* Consent Decree and the *Harrington* Agreed Order. Specifically, the 2010 Order addressed all the issues that the *Duran* Consent Decree and the *Harrington* Agreed Order addressed, and other issues, such as medical treatment for physical illnesses and diseases and specific environmental and facility maintenance issues. The 2010 Agreed Order is attached hereto and made a part hereof as Exhibit “A.”

12. The 2010 Order was also extremely detailed, much more so than either the *Duran* Consent Decree or the *Harrington* Agreed Order. Illustratively, the 2010 Agreed Order in *United States v. Cook County, et al.* was 56 single-spaced pages; in contrast, the earlier orders in *Duran* and *Harrington*, together totaled only 38 pages double-spaced. In general, the 2010 Agreed Order subjects defendants to many more obligations and more specifically described obligations than does the *Duran* Consent Decree and the *Harrington* Order taken together.

13. On May 26, 2010, Judge Kendall approved the 2010 Agreed Order. Subsequently, on January 11, 2011, March 14, 2011 and March 29 2011, a three-judge panel (Circuit Judge Posner, District Judge Kendall and District Judge Coleman) entered three other orders in *United States v. Cook County, et al.* (the “2011 Supplementary Orders”). The 2011 Supplementary Orders each had to do with overcrowding at the Jail; they were designed to ensure that, insofar as practicable, every detainee in the Jail is assigned to a permanent bed in a cell, in an area of the Jail designed as sleeping quarters.

14. Fed. R. Civ. P. 23(e) requires that, when a plaintiff class has been certified, as they have been in *Duran* and *Harrington*, “[t]he claims . . . of . . . [the] certified class may be settled, voluntarily dismissed or compromised only with the court’s approval.” Further, Rule 23(e)(3) provides that “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal [to settle, voluntarily dismiss, or compromise].” Also, Fed. R. Civ. P. 23(e)(2) provides that “[i]f the proposal would bind class members, the court may approve it only after a hearing on finding that it is fair, reasonable and adequate.” The case law under Rule 23(e)(2) further establishes that the resulting “fairness hearing” must be preceded by a notice to the plaintiff class members respecting the terms of the proposed settlement, voluntary dismissal or compromise, following the district court’s “tentative approval” of the proposal as “fair, reasonable and adequate” within the meaning of Fed. R. Civ. P. 23(e)(2).

15. The Defendants and Plaintiffs are in agreement that the Consent Decree in *Duran* and Agreed Order in *Harrington* should now be vacated, and that *Duran* and *Harrington* should now be dismissed. The factors leading to this agreement are that: the 2010 Agreed Order and the 2011 Supplementary Orders have not only secured for the plaintiff classes all the relief that the *Duran* Consent Decree and the *Harrington* Agreed Order have afforded them, but also extend to them substantial additional relief; the 2010 Agreed Order and the 2011 Supplementary Orders reasonably promise to secure the rights of the plaintiff classes under the Fourteenth Amendment to the United States Constitution. These factors make the continuing duration of the Consent Decree in *Duran* and the Agreed Order in *Harrington* unnecessary (to secure the rights of the plaintiff classes provided for under that Consent Decree and that Agreed Order). The continuing duration of the Consent Decree in *Duran* and Agreed Order in *Harrington* also threatens to

complicate enforcement of the 2010 Agreed Order and the 2011 Supplementary Orders in *United States v. Cook County*. Plaintiffs and Defendants specifically agree that, under all the circumstances, as described above in this paragraph, the dismissal of *Duran* and *Harrington* and the corresponding vacation of the Consent Decree in *Duran* and the Agreed Order in *Harrington*, would be fair adequate and reasonable within the meaning of Fed. R. Civ. P. 23(e)(2).

16. Plaintiffs' counsel's agreement to the dismissal of *Duran* and *Harrington* makes any resulting dismissal of these cases, pursuant to that agreement, a "voluntary dismissal" within the meaning of Fed. R. Civ. P. 23(e). This motion, in turn, signifying that agreement (and stating it is grounded on the entry of the 2010 Agreed order and the 2011 Supplementary Orders, and that Plaintiffs' counsel considers the dismissal fair, reasonable and adequate under all the circumstances) constitutes the "statement" required by Fed. R. Civ. P. 23(e)(3). Further, the same circumstances as have given rise to the parties' agreement that the dismissal would be fair, reasonable and adequate, *see* ¶15 above, warrant this Court's tentative approval of the dismissal as fair reasonable and adequate. Finally, the parties' described agreement anticipates that, if and when the Court finally approves the agreed dismissal of *Duran* and *Harrington* (and the corresponding vacation of the Consent Decree in *Duran* and the Agreed Order in *Harrington*) as fair, reasonable and adequate within the meaning of Fed. R. Civ. P. 23(e)(2), it will then enter a final order in each case dismissing it and vacating the Consent Decree (in *Duran*) or Agreed Order (in *Harrington*).

17. Attached hereto is a proposed Notice to Plaintiff Class Members concerning the proposed dismissal of the lawsuits, previously denominated herein as the Notice of Dismissal. The case law under Fed. R. Civ. P. 23(e) dictates that such a notice be afforded to the plaintiff

class prior to, and in conjunction with, the conduct of the fairness hearing required by Fed. R. Civ. P. 23(e)(2). Since all of the current class members are pre-trial detainees at the Jail, the Defendants submit that posting the Notice of Dismissal in the intake area of the Jail, and in all living units at the Jail, and in Cermak Health Services will give proper notice to these individuals. Defendants represent that, if the Notice of Dismissal is approved by this Court, they will post it in all such living units and in Cermak Health Services for at least 30 consecutive days, meaning that at least one copy of the notice will be prominently displayed in every common area (including all day rooms) of every living unit (including living units at Cermak Health Services) and in every dormitory room at the Jail and in every indoor or covered recreational area at the Jail.

18. Since the proposed dismissal would bind all class members, the Defendants seek a Rule 23(e)(2) fairness hearing by this Court to determine whether the dismissal of *Duran* and *Harrington* and corresponding vacation of the Consent Decree in *Duran* and the Agreed Order in *Harrington*, is fair, reasonable, and adequate.

WHEREFORE, the Defendants move the Court for an order: tentatively approving the dismissal of *Duran* and *Harrington* and corresponding vacation of the Consent Decree in *Duran* and Agreed Order in *Harrington* as fair, reasonable and adequate within the meaning of Fed. R. Civ. P. 23(e)(2); approving the Notice of Dismissal; providing for the posting of the Notice of Dismissal at the Cook County Jail in accordance with ¶17 above; scheduling a fairness hearing respecting such dismissal on a date certain that will ensure that plaintiff class members in *Duran* and *Harrington* will have a reasonable time after the notice has been posted

for the requisite period to object to the proposed agreed dismissal of *Duran* and *Harrington* and corresponding vacation of the Consent Decree in *Duran* and Agreed Order in *Harrington*.

Respectfully submitted,

Thomas J. Dart,
Sheriff of Cook County

BY: s/Daniel F. Gallagher
One of the Attorneys for the Defendant,
Thomas J. Dart, Sheriff of Cook County

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Anita Alvarez
State's Attorney of Cook County

BY: s/Patrick T. Driscoll, Jr.

BY: s/Donald J. Pechous
On Behalf of Defendants, Toni Preckwinkle,
President of the Cook County Board of Commissioners
and the Cook County Board of Commissioners

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Defendants.

No. 74 C 3290

Judge Virginia Kendall

**NOTICE TO PLAINTIFF CLASS MEMBERS CONCERNING
THE PROPOSED DISMISSAL OF THE *DURAN* AND *HARRINGTON* LAWSUITS**

I. Introduction

The federal court cases with the captions above ("*Duran*" and "*Harrington*") were both filed in 1974, more than 35 years ago. Both cases (the "Lawsuits") are currently pending before the Honorable Virginia Kendall in the United States District Court for the Northern District of Illinois.

The plaintiff class in *Duran* includes all pre-trial detainees at the Cook County Jail ("Jail"). The plaintiff class in *Harrington* includes all pre-trial detainees in the Jail who are in need of mental health treatment. In this notice, the plaintiff classes in the Lawsuits are referred to as the "*Duran* class" and the "*Harrington* class" respectively. The two plaintiff classes together are referred to as the "plaintiff classes."

The defendants in the Lawsuits include the Cook County Sheriff; the President of the Cook County Board of Commissioners; and the Cook County Board of Commissioners.

This notice: (a) summarizes briefly the history of the Lawsuits, including Judge Kendall's tentative approval of the dismissal of the Lawsuits by the plaintiff classes as, under all the circumstances, fair, reasonable, and adequate, see §II below; (b) identifies the attorneys for the plaintiff classes, including their names, addresses, and phone

numbers, see §III below; (c) explains why this notice is being posted throughout the Jail and the opportunity plaintiff class members may have to object to the dismissal of the Lawsuits, see §IV below; (d) explains how plaintiff class members may object to the final dismissal of the Lawsuits, see §V below; (e) explains how plaintiff class members can get more information about the Lawsuits and the proposed dismissal of them, see §VI below.

Members of the plaintiff classes are encouraged to read this notice carefully.

II. The Lawsuits

In *Duran*, the plaintiff class claimed that the conditions of confinement at the Jail violated their rights under the Fourteenth Amendment to the United States Constitution.

In *Harrington*, the plaintiff class claimed that the systematic failure to provide adequate mental health services at the Jail violated their rights under the Fourteenth Amendment to the United States Constitution.

The courts in *Duran* and *Harrington* have entered numerous orders in the Lawsuits. But there were two specific orders (both entered many years ago) that, over time, have afforded the plaintiff classes their principal relief; the 1982 Consent Decree in *Duran* ("*Duran* Consent Decree") and the 1978 Agreed Order in *Harrington* ("*Harrington* Agreed Order").

The *Duran* Consent Decree ordered the defendants in that case to adhere to specific requirements affecting conditions of confinement at the Jail. The most important of these requirements had to do with prevention of overcrowding at the Jail (so that detainees were not required to sleep on the floor) and the provision of sufficient staff to ensure the safety of detainees.

Among other things, the *Harrington* Agreed Order ordered defendants in that case to follow certain procedures respecting the screening of plaintiff class members for mental illness and the treatment of class members for mental illness; to ensure that such screening and treatment were provided by qualified personnel; and to ensure adequate security staffing for mental health treatment units.

Following the entry of the *Duran* Consent Decree and the *Harrington* Agreed Order, plaintiffs' counsel in *Duran* and *Harrington* focused their efforts on ensuring defendants' compliance with those court orders, and on modifying those orders to improve conditions of confinement at the Jail, including the provision of mental health services there.

On May 13, 2010, the United States, under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997 ("CRIPA"), filed suit against *Duran* and *Harrington*

defendants identified above and also against Cook County, Illinois. The suit was entitled "*United States v. Cook County*" (No. 10 C 2946), and in it the United States alleged that conditions at the Jail violated the constitutional rights of persons confined there, including all members of the plaintiff classes.

The parties to *United States v. Cook County* filed a proposed Agreed Order with the complaint in that case. The proposed Agreed Order ("2010 Agreed Order") was substantially more comprehensive than the *Duran* Consent Decree and the *Harrington* Agreed Order. The 2010 Order addressed all the issues that the *Duran* Consent Decree and the *Harrington* Agreed Order addressed, and other issues, such as medical treatment for physical illnesses and diseases.

The 2010 Order was also extremely detailed, much more so than either the *Duran* Consent Decree or the *Harrington* Agreed Order. Illustratively, the 2010 Agreed Order in *United States v. Cook County* was 56 single-spaced pages; in contrast, the earlier orders in *Duran* and *Harrington*, together totaled only 38 pages double-spaced. Generally, the 2010 Agreed Order subjects defendants to many more obligations and more specifically described obligations than does the *Duran* Consent Decree and the *Harrington* Order.

On May 26, 2010, Judge Kendall approved the 2010 Agreed Order. Subsequently, on January 11, 2011, March 14, 2011 and March 29 2011, a three-judge panel (Circuit Judge Posner, District Judge Kendall and District Judge Coleman) entered three other orders in *United States v. Cook County, et al.* (the "2011 Supplementary Orders"). The 2011 Supplementary Orders each had to do with overcrowding at the Jail; they were designed to ensure that, insofar as practicable, every detainee in the Jail is assigned to a permanent bed in a cell, in an area of the Jail designed as sleeping quarters.

After entry of the 2011 Supplementary Orders, the Defendants in *Duran* and *Harrington* and the plaintiff classes, by their counsel, agreed that Judge Kendall should vacate the Consent Decree in *Duran* and the Agreed Order in *Harrington*, and dismiss both cases. The factors leading to the parties' agreement were that: the 2010 Agreed Order and the 2011 Supplementary Orders had not only secured for the plaintiff classes all the relief that the *Duran* Consent Decree and the *Harrington* Agreed Order had afforded them, but also extended to them substantial additional relief and protection; the 2010 Agreed Order and the 2011 Supplementary Orders reasonably promised to secure the rights of the plaintiff classes under the Fourteenth Amendment to the United States Constitution. Plaintiffs and defendants specifically advised Judge Kendall that they were of the view that the dismissal of *Duran* and *Harrington* and the corresponding vacation of the Consent Decree in *Duran* and the Agreed Order in *Harrington* (all together referred to here as the "dismissal") would be fair, reasonable and adequate. Plaintiffs' agreement to the dismissal means that, under the law, the dismissal of the Lawsuits, if approved by the court, would be a "voluntary dismissal."

On _____, 2011, Judge Kendall tentatively approved the dismissal of both *Duran* and *Harrington* as fair, reasonable and adequate, but subject to the right of the plaintiff classes to object to the dismissals. The right of the plaintiff classes to do so is discussed in §IV below.

III. The Attorneys Representing the Plaintiff Class

In *Duran*, the attorneys for the plaintiff class are:

Robert E. Lehrer
Law Offices, Robert E. Lehrer
36 S. Wabash Ave., Suite 1310
Chicago, IL 60603
312/332-2121

Locke E. Bowman
The MacArthur Justice Center
Northwestern University School of Law
357 E. Chicago Ave.
Chicago, IL 60611
312/503-0844

In *Harrington*, the attorney for the plaintiff class is Mr. Lehrer only.

No class members in the Lawsuits has ever been charged for the services of attorneys (including Mssrs. Lehrer and Bowman) since the Lawsuits were filed in 1974. Nor will any class members be charged for any such services in connection with the current proceedings in the Lawsuits, including the *Duran* and *Harrington* defendants' motion to dismiss the Lawsuits.

IV. This Notice and the Opportunity to Object to the Dismissal of the Lawsuits

Judge Kendall has ordered that this notice be posted throughout the Jail. She made this order because the law requires that, before any claims in class action suits like the Lawsuits here are voluntarily dismissed, the court must: (a) give "reasonable" notice to the plaintiff classes of the possible dismissal of the Lawsuits, based on a finding that, under all the circumstances, the dismissal of the lawsuits is fair, reasonable, and adequate; (b) afford plaintiff class members an opportunity to object to the dismissal of the Lawsuits, as not fair, reasonable, and adequate; (c) conduct a "fairness hearing" respecting the dismissal of the claims to consider any objections to the dismissals that class members file; and (d) decide whether or not to approve the dismissals as fair, reasonable, and adequate.

This notice, as published and posted as described just above, is the reasonable notice to class members that the law requires be given. Judge Kendall has approved the notice.

V. Objecting to the Dismissal of the Lawsuits and Court Approval of the Dismissal of the Lawsuits.

1. When and where will the Court decide whether finally to dismiss the Lawsuits. The Court will hold a fairness hearing at _____ .m. on _____, 2011 in Room 2319 of the Dirksen Federal Building (the federal court house) at 219 S. Dearborn St., Chicago, IL 60604. At this hearing, Judge Kendall will consider whether the proposed dismissal of the Lawsuits, is fair, reasonable and adequate and whether to approve it. If there are any objections from plaintiff class members to the dismissals, Judge Kendall will consider them. After the fairness hearing, the Court will issue its ruling as to whether the Lawsuits should be dismissed.

2. How to object to the dismissal. You can tell Judge Kendall that you object to the dismissal of *Duran* if you are a member of the plaintiff class in that case, and you can tell her that you object to the dismissal of *Harrington* if you are a member of the plaintiff class in that case. To object, you or your lawyer must send a letter to counsel for the plaintiff class (listed in §II above) in the appropriate Lawsuit. **DO NOT SEND YOUR OBJECTIONS TO THE COURT.** The letter must include the name and number of the Lawsuit(s) whose dismissal(s) you object to (either *Duran*, 74 C 2949, or *Harrington*, 74 C 3290, or both). The letter should include a statement of each objection you have, a summary of the reasons for the objection, and a description of any law or case supporting the objections. Also, if you or your lawyer wish to appear at the fairness hearing to present the objections orally, the statement should explain the reasons why you believe that you or your lawyers' personal appearance at the fairness hearing is necessary in order adequately to present the objections to the court and how long you or your lawyer will need to present such objections at the hearing. If the letter includes a request to appear at the fairness hearing, then Judge Kendall will rule upon the request prior to the hearing, and if she grants the request, you will be advised of that ruling at least five days prior to the hearing, and if appropriate, arrangements will be made to transport you to the hearing.

Your objection letter and any other material must be mailed and postmarked not later than _____, 2011, which is 21 days before the fairness hearing. Any objections that plaintiffs' counsel receives will be promptly submitted to the court and to defendants' counsel in *Duran* and *Harrington*.

VI. Getting More Information

This notice only summarizes the history of the Lawsuits and the terms of the 2010 Agreed Order and 2011 Supplementary Orders in *United States v. Cook County*. If any class member in either Lawsuit wishes to find out more about the history of the Lawsuits, they should direct their questions to the plaintiff class counsel (listed in §II above). Any class member may review at the Jail itself the 2010 Agreed Order and the 2011 Supplementary Orders in *United States v. Cook County*, as ten copies of these

Orders have been lodged at the Jail's Law Library. (Ask for the "Orders in *United States v. Cook County*," No. 10 C 2946).

Notice approved by:

Dated: _____

Virginia M. Kendall
United States District Court Judge