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

DAN DURAN, et al., **Plaintiffs,** **v.** **THOMAS J. 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**

MEMORANDUM RESPECTING THE PROPOSED VOLUNTARY DISMISSAL OF THESE CASES: RESPONSES TO THE RULE 23(e) NOTICE ADVISING PLAINTIFF CLASS MEMBERS OF THE PROPOSED DISMISSALS AND THEIR OBJECTIONS TO SUCH DISMISSALS

I. Introductory Statement

The history, the subject matter, and the current posture of these long-running cases (sometimes referred to herein as the "two cases") is summarily reviewed in Defendants' Motion for an Order Tentatively Approving the Voluntary Dismissal of *Duran* and *Harrington* etc. ("Motion Respecting Voluntary Dismissal") (Doc.1132 in *Duran*, Doc. 43 in *Harrington*), at ¶¶1-18.

Duran is the principal case. It is about all the conditions of confinement at the Cook County Jail ("Jail") except, principally, medical care, the focus of the litigation having involved the population of and the staffing at the Jail. *Harrington* concerns the delivery of mental health services

to pre-trial detainees at the Jail in need of mental health treatment. Plaintiff classes have been certified in both cases. [1]

By orders entered June 10 in *Duran* (Doc 1134) and June 13 in *Harrington* (Doc. 46), this court, pursuant to Fed. R. Civ. P. 23(e): (1) tentatively approved the voluntary dismissal of the two cases as fair reasonable and adequate; (2) approved a notice to plaintiffs of the proposed voluntary dismissal of the two cases, which notice invited objections to the dismissals; (3) directed the prompt posting of the notice at the Jail;(4) set August 19, 2011 at 10 a.m. for the conduct of a Rule 23(e) fairness hearing respecting the voluntary dismissals.

Exhibit A hereto is entitled "Table: Responses of Plaintiffs to Rule 23(e) Notice Advising Them of the Proposed Voluntary Dismissal of *Duran* and Harrington and Inviting Objections To Such Dismissals" ("Table of Responses" or "Table"). The Table: identifies by name each of the plaintiffs who mailed responses to plaintiffs' counsel (such plaintiffs therefore sometimes being referred to as "responders"); specifies the date each Response was mailed, *see* Rule 23(e) notice at vi (requiring that "objection letters . . . must be . . . postmarked [and mailed to plaintiffs' counsel]not later than July 22, 2011);[2] states whether or not the responders objected to the proposed

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[1] In this memorandum, references to "plaintiffs" refer to all the plaintiff class members in the two cases. The plaintiff class in *Duran* includes all pre-trial detainees at the Jail. *See* Motion Respecting Voluntary Dismissal at ¶2. The plaintiff class in *Harrington* includes all pre-trial detainees at the Jail in need of mental health treatment. *See id.*

[2] The letters of some responders were undated. These included the letters of eight responders (6, 40, 43, 46, 54, 60, 61, 62) whose mailing envelopes were mistakenly discarded by staff of plaintiffs' counsel--for which error counsel take responsibility. (The undated letters themselves were retained by plaintiffs' counsel and copies transmitted to the court). For these responders, the mailing date of their responses to plaintiffs' counsel is assumed to be July 6, 2011, as their letters were transmitted to the court on July 11, and so must have been mailed to plaintiffs' counsel and received by them prior to that date.

dismissals. [3] The responders are listed in alpha order, with the first name listed being responder "1," the second one listed being "responder "2" etc.

Section II below summarizes the information in the Table of Responses. Ir also describes what plaintiffs' counsel did to answer inquiries plaintiffs posed to them.

Section III below summarizes and answers plaintiffs' objections to the voluntary dismissal of the two cases.

II. The Table of Responses and Plaintiffs' Inquiries

The Table of Responses shows there to have been 66 responders, though three responders filed Responses not only on their own behalf but on behalf of other plaintiffs. Specifically, Cameron Delaney (responder 16) filed his response for himself and 12 other plaintiffs, Harold Harrington (responder 22) filed his response for himself and 32 other plaintiffs, and Brian Lewis (responder 32) filed his response for himself and 18 other plaintiffs.

Significantly, as the Table of Responses shows, the great percentage of the responders (52 of 68 or 76.4 %) did *not* object to the voluntary dismissal of the two cases. Plaintiffs' counsel note

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[3] Plaintiffs' counsel (Mssrs Lehrer and Bowman) have furnished the court and defendants' counsel with all the Responses they received from June 13 through August 3, 2011 inclusive. Mr. Lehrer transmitted four sets of such Responses (on June 17, July 13, July 27, and August 4, 2011)), Mr. Bowman two sets of them (on July 11 and July 2011).

The 11 responses transmitted by Mr. Lehrer on August 4, 2011 were all ones out of time under the June 10 and June 13 Orders, since those orders set a closing date of July 22, 2011 for the mailing of responses, including objections, and the postmarks on the envelopes containing those 11 responses were all after July 22. Plaintiffs' counsel nonetheless decided to treat those 11 responses as ones that had been timely mailed (and so mailed copies of the responses to the court and to defendants' counsel) because doing so for untimely responses received prior to their beginning work on the preparation of this memorandum and the Table of Responses did not impose any appreciable burden on them, and resulted in the provision to the court of a more complete accounting of the responses in fact received (whether timely or not) than would otherwise have been the case.

in this context that, in adjudging whether any particular response should be deemed to have raised an "objection" to the dismissal (responders who did object sometimes being referred to as "objectors" and responders who did not object sometimes being referred to as "non-objectors"[4]) they applied a generous understanding of the term. Thus, any response that included the word "object" or "objecting" or "objection," or any response that indicated that the responder did not want this court to approve the voluntary dismissals of the two cases was one plaintiffs' counsel deemed to be an objection, even if the responder did not explain the basis of the objection. Altogether, there were 16 objectors; they are denoted in the Table of Responses by a "yes' in the Objection column by their names..

The responses of the non-objectors are addressed in this section. The responses of the objectors are addressed in §III below.

Substantially all the non- objectors fall into one or both of two categories..

One category of non-objectors includes responders with inquires about the proposed voluntary dismissals of the two cases, including, in particular, the Rule 23(e) process attending these dismissals.. Typical inquiries include variants of the following: whether the responder was a class member in one or both of the two cases or how he might become a class member in them (*e.g.*, responders 21, 26, 27); whether the responder was entitled to money compensation in connection with the two cases or why he had not previously received such compensation (*e.g.*, responders 30, 57); how information relating to possible objections such as the Agreed Order in *United States v.*

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[4] Some responders were objectors because their responses objected to the dismissals, but also non-objectors because, for example, they complained about injuries they individually suffered as the result of past or present conditions at the Jail, *see* p. 5 below. Responders 36 and 37 are two such "dual capacity" responders.

Cook County (10 C 2946) might be accessed (*e.g.*, responders 18, 28, 64); what the "requirements" were to object, including whether special "forms" were necessary ito do so (*e.g.*, responders 24, 47)? Plaintiffs' counsel mailed every non-objector who raised such inquiries the memorandum attached hereto as Exhibit B. Some of the objectors also posed the same type of inquiries to plaintiffs' counsel, and counsel mailed them the same memorandum. Of the 66 responders (objectors and non-objectors alike) 48 or 72.7 % were mailed the Exhibit B memorandum.

The second category of non-objectors includes plaintiffs whose responses complain of injuries they had individually suffered or were currently threatened with. More often than not, the past or threatened injuries are ones responders in this category blame on conditions of confinement at the Jail that are the subject of the final orders in the two caes. But these responders also blame their past or threatened injuries on services, particularly medical services , at the Jail that (except for the provision of mental health services only to the *Harrington* plaintiffs) are not the subject of these final orders. Also, some of the responders complain about wrongdoing done to or threatened them in the criminal cases pending against them, or even in criminal cases against them that already have been adjudicated. These complaints are, in turn, sometimes coupled with requests (pleas) that plaintiffs' counsel here undertake to represent the responders in either civil cases against Jail officials, or in the underlying criminal proceedings.

The following eight responders are typical of non-objectors in this second category. Responder 21 complains about not having received his medications in the more than five months that he had been confined in the Jail in 2011, and also that , when he had been incarcerated in the Jail in 2007, he was "sleeping on the floor in Div. 11 with rats and roaches crawling all over me . . . ." Responder 26 complains that while previously confined in the Jail, she had "had to sleep on the

floor," and "was scared that two other women with whom she shared a cell would "team up and jump on me and I would not have had a away to be protected." Responder 26 also complains about having been being exposed to second hand smoke at the Jail. Responder 31 complains about injuries he and other plaintiffs suffered when, being transported to the Skokie court house on a Jail bus, the bus caught fire, resulting in plaintiffs on the bus, including him, having suffered from "chest pains, head aches, and smoke inhalation." Responder 44 complains about the failure of the Jail officials to provide him with needed "physical therapy" or to afford him "proper medical treatment" for his pain. He requests one of plaintiffs' counsel (Mr. Lehrer) to "handle my case in suing Cook County Jail for malpractice of medical treatment." Responder 46 complains about certain conditions of confinement (*e.g.*, no disinfectant, no mattresses, not enough tissues, "locked in" for unnecessarily long periods) that she and other female detainees on the "mental tier" are suffering, urging that "CCJ need to be shut down or major correction done." Responder 62 complains about having been (at some indeterminate time in the past) unjustly confined for many months at the Jail notwithstanding that he had been a juvenile at the time and also about his having been terminated from boot camp and sentenced to seven years in state prison, all of which resulted in his being "mentally disturbed." Responder 65 complains about "serious medical problem[s,]" including "serious stomach pains and often severe vomiting," that Jail officials ignored.

III. Plaintiffs' Objections

As noted, 16 of the 66 responders objected to the voluntary dismissals of the two cases.

Of the 16 objectors, five (responders 26, 36, 48, 54, and 57), while clearly stating that they object to the dismissals at issue, do not offer up any *specific* reasons for their objections. (Of these five responders responder 54 comes the closest to offering more than a conclusory objection when

he summarily asserts that: " I feel the dismissal: would be unfair; would be unreasonable; would be [i]nadequate and should not be approved by the court").

The remaining 11 objectors (responders 2, 3, 10, 12, 21, 22, 32, 37, 50, 60, 61) do offer up specific reasons for their objections, though the level of detail attending the presentations varies widely. Regardless of the level of detail, however, the responses of these 11 objectiors all sound a common theme. This theme is that is that the existing conditions at the Jail are so poor and give rise to and threat ensuch substantial injury to plaintiffs, violating their constitutional rights in the process, that dismissal of lawsuits that were brought precisely to correct poor conditions at the Jail, and to secure plaintiffs' constitutional rights, is unwarranted.

Responder 22 is Harold Harrington. As noted, he submitted his response (objections) not only for himself but for 32 other plaintiffs. For this reason and because his objections are the most detailed of any of those submitted, they are correctly understood as the objections to which the most attention should be paid.

As to *Duran*, Mr. Delaney says that "some of the conditions [at the Jail that the Decree in Duran was meant to correct] are about the same, but some have gotten worse." He says, for example, that there are "detainees through out the Jail [who] still sleep on the floor," that "the Jail is still Filthy and nasty,' and should be "sanitize[d]." Futher, he states, "bed linens and uniforms are not . . .exchange[d] on a regular basis in certain divisions," and the "safety and security of the detainees is stil not adequate." He further states that he has "witness[ed] many fights here in the mental health treatment units." Moreover, "new detainees are still not given any hygiene products (soap, toothpaste, . . .) . . . [and detainees in] certain Divisions .are still not able to personally groom themel[ves] (Hair-cut, Hands and toe nail clip, shave . . . .). Also, "[w]e are not given the proper

amount of calories allowed in a daily diet," and "are not given he proper amount of vitamins and minerals." In general, the "'medical system'" . . . is deplorable." So, in general, "our basi[ic] necessit[ies] are not being met here at the Cook County Jail and that is a violation of our Constitutional Right[s] under the Fourteenth Amendment to the United States Constitution."

Similarly, as to *Harrington,* Mr. Delaney says that "some of the conditions [at the Jail that the Agreed Order in *Harrington* was meant to correct are] still the same, but some have got[ten] wors[e]."

Fro these reasons, Mr. Delaney petitions the court "not to dismiss" plaintiffs " claim[s]" in the two cases.

Only two other objector (Brian Lewis, responder 32, for himself and 18 other plaintiffs, and Jorge Rodriguez, responder 50) offers detail approaching that of Mr. Delaney. As noted, however, all 11 of the objectors referred to above as having offered any specific reasons for their objections, grounded them on the persistence of inadequate conditions at the Jail, giving rise to continuing and substantial injury to plaintiffs. *See e.g.*, Responder 3 ("overcrowding"; "unclean condition"); Responder 12 ("as of 2011, same conditions at the County Jail currently exist") Responder 50 ("poor health care services"; "poor sanitary conditions"; "lacking security"); Responder 37 ("detainees should not have to be subject to living conditions that are less than adequate"); Responder 61 ("the same thing is still going on here").

Defendants would almost certainly dispute the basic import of the responders' objections, which is that conditions at the Jail have, on balance, *deteriorated* as a result of the two cases. On the other hand, defendants are in no position to dispute that "living conditions [at the Jail] . . . [remain] less than adequate," Responder 37, giving rise to a "violation of . . . [plaintiffs'] Fourteenth

Amendment rights," Responder 22. Thus, as defendants acknowledge (in Motion Respecting Voluntary Dismissal at ¶¶10-15), the proposed dismissals of the two cases are grounded precisely on the entry of the 2010 Agreed Order and the 2011 Supplementary Orders in *United States v. Cook County*. The critical point in this context is that these Orders arose from an extensive Department of Justice ("DOJ") investigation of conditions at the Jail under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997 ("CRIPA"), and that investigation concluded that conditions at the Jail *did violate* the due process rights of the plaintiffs here. The extended CRIPA negotiations (between the United States and defendants here, but with plaintiffs' counsel here being consulted to ensure that the rights the *Duran* and *Harrington* decrees secured for plaintiffs would not be compromised by any agreed order entered in any CRIPA decree ultimately entered, *see* Motion Respecting Voluntary Dismissal at ¶11)) and the filing of *United States v. Cook County* followed. So, immediately following that filing. did the entry of the (negotiated) 2010 Agreed Order, later buttressed by the 2011 Supplementary Orders. Significantly, these orders are "substantially more comprehensive than the *Duran* Consent Decree, and the *Harrington* Agreed Order, [since they] address[ ] all the issues that . . . .[the *Duran* and *Harrington* Orders] address[es], and other issues, such as medical treatment for physical illnesses and diseases and specific environmental and facility maintenance issues," *id.* "In general, the 2010 Agreed order subjects defendants [in *Duran* and *Harrington*] to many more obligations and more substantially described obligations [to be enforced by a far more extensive monitoring system than ever attended the orders in *Duran* and *Harrington*] than does the *Duran* Consent Decree and the *Harrington* Order taken together," *id.* at ¶12

It follows that this court, to pass on the question of whether responders' objections offer a sufficient basis for disapproving, under Rule 23(e), the voluntary dismissal of the two cases, does

not need to delve into their factual underpinnings, but may indeed accept the basic contention that conditions at the Jail remain constitutionally inadequate. For the United States, defendants here, and also plaintiffs' counsel, agree that, if that be so (conditions remain constitutionally inadequate) the 2010 Agreed Order and the 2011 Order fairly promise a substantial improvement in overall Jail conditions. Keeping in force the Consent Decree in *Duran* and the Agreed Order in *Harrington*, which is what disapproval of the dismissals of the two cases would accomplish, would therefore serve no useful purpose, whereas approval of the dismissals would in no way prejudice plaintiffs. Indeed, "the continuing duration of the Consent Decree in *Duran* and Agreed Order in *Harrington* . . . [would] complicate enforcement of the 2010 Agreed Order and the 2011 Supplementary Orders," Motion Respecting Voluntary Dismissal at ¶15.

IV. Conclusion.

This court should approve the voluntary dismissal of the two cases as fair, reasonable and adequate under Fed. R. Civ. P. 23(e).

Respectfully submitted,

s/Robert E. Lehrer

One of the Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned, an attorney certifies that he served the foregoing *Memorandum* upon all individuals on the attached service list, and on other individuals served via the ECF system. Service was effected by the ECF system on Friday, August 12, 2011.

S/ Robert E. Lehrer

Robert E. Lehrer

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SERVICE LIST

Duran v. Dart et al (74 C 2949)
Harrington v. Dart et al (74 C 3290)

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EXHIBIT A

Table
Plaintiffs' Responses to Rule 23(e) Notice Advising Them of the Proposed Voluntary Dismissal of *Duran* and *Harrington* and Inviting Objections to Such Dismissals

Name	Date of Mailing	Objection
1. Adekunle Adefeyinti	07/26/11	No
2. Dotun Adesina	06/13/11	Yes
3. Simon Alexander	06/13/11	Yes
4. Cameron Baker	06/14/11	No
5. Willie Baldwin	06/14/11	No
6. Jeffrey Bolden	07/06/11	No
7. Tracy Boyd	08/01/11	No
8. Henry Bush	08/02/11	No
9. Anthony Clemons	06/14/11	No
10. Jamson Coulter	07/06/11, 07/14/11	Yes
11. Tony Craft	07/12/11	No
12. Johnny Cross	07/22/11	Yes
13. James Currin	07/19/11	No
14. Walter Daniels	06/14/11	No
15. Jerome Davis	06/12/11	No
16. Cameron Delaney	07/21/11	No
17. Hasaan Echols	07/28/11	No
18. Rodney Edwards	06/13/11, 07/28/11	No

Name	Date of Mailing	Objection
19. Richard M. Flood	07/12/11	No
20. Gregory Thomas Green	07/28/11	No
21. Mario Hamilton	06/14/11	Yes
22. Harold Harrington	07/22/11	Yes
23. Henry Harris	07/06/11	No
24. Albert Herron	07/14/11	No
25. Clifton Hightower	06/12/11	No
26. Mary Hinton	07/07/11	Yes
27. Andre Holmes	07/19/11	No
28. Tylon Hudson	07/06/11	No
29. Michael Hunter	07/11/11, 07/13/11	No
30. BoShaun Jackson	07/20/11	No
31. Mario Jernagin	06/19/11	No
32. Brian Lewis	06/30/11	Yes
33. Kevin Long	07/29/11	No
34. Fernando Martinez	07/22/11	No
35. Reginald Massonburg	06/15/11, 06/21/11	No
36. Joseph McShan	07/16/11	Yes
37. Sterling McShane	07/16/11	Yes
38. Johnie Melton	06/24/11, 06/28/11	No
39. Orvid Miller	08/01/11	No

Name	Date of Mailing	Objection
40. Melvin Murphy	07/06/11	No
41. Darrion Nelson	06/20/11	No
42. Roberto Ortega	08/01/11	No
43. Belton Reed	07/06/11	No
44. Manuel Rivera	07/18/11	No
45. Tamilyn Robertson	07/19/11	No
46. Gary Robinson	07/06/11	No
47. Harvey Robinson	07/14/11	No
48. Ryishie Robinson	06/20/11	Yes
49. Dwight Rodgers	07/14/11	No
50. Jorge Rodriguez	06/21/11	Yes
51. Nathaniel Ross	06/12/11	No
52. Ernest R. Scoggins	07/12/11, 07/18/11	No
53. Shonne Smith	06/12/11	No
54. Larry Stimson	07/06/11	Yes
55. Gandy Suggs	07/28/11	No
56. Pierre Torres	07/28/11	No
57. Ted Velleff	06/22/11	Yes
58. Ricky Walker	07/12/11	No
59. Shauantier Walton	07/21/11	No
60. Jonathan Williams	07/06/11	Yes

Name	Date of Mailing	Objection
61. Ronald Williams	07/06/11	Yes
62. Theotis Willliams	07/06/11	No
63. Vashaun Williams	07/18/11	No
64. Sebe Woody	07/22/11	No
65. Angel Luis Yenkle	07/08/11	No
66. Roy Young	07/14/11	No

EXHIBIT B

To:

From: Robert E. Lehrer, attorney for the plaintiff class in *Duran* and *Harrington*; Locke E. Bowman, attorney for the plaintiff class in *Duran.*

Re: *Duran v. Dart*, 74 C 2949, *Harrington v. Dart*, 74 C 3290

Date:

This office is in receipt of your recent letter about the proposed voluntary dismissal of the above entitled cases ("*Duran*" and "*Harrington*"). Your letter, written in response to an explanatory notice ("Notice") posted throughout the Cook County Jail ("Jail"), was one of many received that asked one or more the following questions. This memorandum offers answers to those questions.

1. **Am I a member of the plaintiff class in *Duran* and/or *Harrington*?** If you are currently being held in the Cook County Jail as a pre-trial detainee, you are a member of the plaintiff class in *Duran*. If you are currently being held in the Jail as a pre-trial detainee, and are in need of mental health services, you are a member of the plaintiff class in *Harrington.* You do *not* need to do anything else to become a member of the plaintiff class in either case.

2. **As a plaintiff class member in *Duran* and/or *Harrington*, am I entitled to money damages (compensation) in connection with these cases, or in connection with the *United States v. Cook County* case, another lawsuit described in the Notice?** No. The court orders in these cases do not now provide and have never provided for the payment of money compensation to plaintiff class members because of alleged wrongs (inadequate mental health care, or being housed on the floor of the Jail, not in a cell, for example) they may have suffered. If you are to recover any money damages for such alleged wrongs, you must file a separate lawsuit.

3. **What information do I need to decide whether to object to the voluntary dismissal of *Duran* and *Harrington*?** The Notice at pages ii and iii summarizes the background of the *Duran* and *Harrington* cases and advises you that the 2010 Agreed Order and the 2011 Supplementary Orders ("2010 and 2011 Orders") in *United States v. Cook County* are available for your review in the Jail law library. These sources should be sufficient for purposes of deciding whether to object and what those objections, if any, should be. An objection should explain why the voluntary dismissal of *Duran* and *Harrington* is not "fair, reasonable and adequate" under the law. (In plaintiffs' counsel's view, such dismissal is fair reasonable and adequate because the 2010 and 2011 Orders in *United States v. Cook County* offer greater protection to plaintiff class members in *Duran* and *Harrington* than do the existing decrees in those two cases).

4. **If I want to object to the voluntary dismissal of the *Duran* and *Harrington* lawsuits, do I need to use any special forms?** No. You may set forth your objections in letter form and mail it to one or both of plaintiffs' counsel, whose names and addresses are listed on page iv of the Notice.