

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

MOISES MORALES, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 13-cv-07572
	)	
	)	Judge Amy J. St. Eve
CRAIG FINDLEY, et al.,	)	
	)	
Defendants.	)	

ORDER

The Court has reviewed twenty written objections to the proposed class action settlement in this case. (R.132-2, Written Objections; *see also* R.126 – R.130). The Court construes these submissions as motions for relief (the “Objection Motions”). In addition, the Court has received a request from class member William Evans to opt out of the class. (R.131, the “Opt-Out Motion”). For the following reasons, the Court denies all Objection Motions and denies the Opt-Out Motion.

BACKGROUND

Named Plaintiffs Moises Morales, Montreal Thomas, and Joaquin Rocha filed this 42 U.S.C. § 1983 lawsuit in October 2013, alleging that Defendants conducted parole revocation proceedings in violation of parolees’ due process rights. (R.1). In particular, the original complaint alleged that Defendants—including the chairman of the Illinois Prisoner Review Board (“PRB”) and the director of the Illinois Department of Corrections (“IDOC”)—systematically failed to consider whether parolees qualified for the appointment of counsel, and failed to appoint counsel to those parolees who did so qualify. (*Id.* at ¶¶ 3, 13, 17-18, 55). After initial, extensive settlement discussions failed, Plaintiffs filed an amended complaint in March 2015. (R.48). The First Amended Complaint added two named Plaintiffs—Shavonise Buchanan and Kelvin Perry—and added new allegations challenging, *inter alia*, Defendants’ practice of denying parolees the right to examine the evidence against them and the right to confront witnesses during parole revocation proceedings. (*Id.* at ¶¶ 11-12, 31). Specifically, the Amended Complaint alleged:

As a matter of policy and practice, the Defendants systematically fail to screen parolees to determine whether they are eligible for counsel, at cost to the State, as required under *Gagnon v. Scarpelli*. Defendants fail to appoint counsel to those parolees who do qualify.

The Defendants also fail to provide parolees with revocation proceedings that protect their rights to procedural due process. As a result of the Defendants' policies and practices, parolees are affirmatively barred from developing and/or accessing evidence that they are entitled to present during their revocation proceedings. Parolees are unable to speak on their own behalf, present evidence, and cross-examine adverse witnesses. Compounding these procedural deficiencies, the Defendants fail to provide parolees with a substantive hearing before a fair and unbiased decision maker. Instead Defendants supply the parolees with procedures that function as a little more than a meet and greet during which PRB members and hearing officers rubber stamp the recommendations of parole agents.

(*Id.* at ¶¶ 73-74). Plaintiffs sought declaratory and injunctive relief. (*Id.*).

During 2015-2016, the parties engaged in extensive discovery, including significant document production, fact-witness depositions, interviews with putative class members, the observation of parole hearings, and the production of an expert report by Plaintiffs' expert witness. Shortly before the close of expert discovery, the parties renewed settlement discussions and, on October 24, 2016, filed a draft settlement agreement with the Court. (R.123). The parties separately moved to certify the class. (R.121). On October 27, 2016, the Court granted the joint motion for class certification, as well as the joint motion for preliminary approval of the class action settlement. (R.124). The Court certified the class as "all people who, while on parole / Mandatory Supervised Release ('MSR'), are supervised by the IDOC and who now or in the future will be subject to parole revocation proceedings conducted by the IDOC and the PRB." (R.121, R.124).¹

The proposed settlement provides injunctive relief – namely, the implementation of the following measures to safeguard the due process rights of class members in parole revocation proceedings:

1. **Evidentiary and Adjudicatory Standards** – During the parole revocation process, parolees will receive notice of the charges against them, an opportunity to contest the charges, and the right to present a defense on their behalf. Parolees will also receive written findings at each stage of the parole revocation process. From an adjudicatory standpoint, the process will proceed in two stages. During the first—the preliminary revocation hearing—a fair, impartial, and independent Hearing Officer provided by PRB will consider the evidence presented and decide whether there is probable cause to believe that the violation may have occurred. Upon a finding of probable cause, the parolee will proceed to the second stage – the final revocation hearing. At that point, one or more PRB members will decide whether there is sufficient evidence to meet the "preponderance of the evidence" standard. If there is insufficient evidence to meet that standard, the parolee will be released from IDOC custody, unless there are other pending charges or outstanding warrants against the parolee.

¹ The Settlement Class excludes those persons covered by the class definition in *M.H. v. Monreal et al.*, 12-cv-8523 – specifically, "juvenile parolees in the State of Illinois who currently face or in the future will face parole revocation proceedings." (*Id.*).

2. **Appointment of Counsel for Qualified Alleged Parole Violators** – If a parolee cannot afford to hire an attorney, and has a timely and colorable claim that he or she did not commit the alleged parole violation, PRB shall appoint counsel, upon request and at no expense to the parolee, throughout the entire parole revocation process. In addition, if a parolee cannot afford to hire an attorney, and has committed the violation but has substantial reasons mitigating against revocation that are complex or otherwise difficult to develop or present, PRB shall appoint counsel, upon request and at no expense to the parolee, for the final revocation hearing.
3. **Timelines** – The parolee will receive a copy of the parole violation report and a Notice of Rights governing the parole revocation procedure (“Service”) within 5 days of the parole violation being lodged or placed on record with applicable law enforcement authorities. Unless the parolee opts to waive or postpone the hearing, parolees in Cook County will have a preliminary revocation hearing within 10 business days of Service, as will parolees outside of Cook County who do *not* request to be screened for attorney appointment. Parolees outside of Cook County who do request a screening for attorney appointment, however, will have a preliminary revocation hearing within 20 business days of Service, unless waived or postponed by the parolee. If, after screening, PRB concludes that a parolee is a Qualified Alleged Parole Violator, PRB will appoint counsel no less than 2 business days before the preliminary revocation hearing, or no less than 2 business days before the final revocation hearing, as applicable. Final revocation hearings will occur within 90 days of Service, subject to certain exceptions.
4. **Independent Monitor** – The parties agree to the appointment of an independent monitor to assist, assess, and report on Defendants’ implementation of and compliance with the Settlement Agreement.

(R.133-1, Final Settlement Agreement; R.134, Joint Br. at 3-5). The Settlement Agreement also contemplates an attorney fee award of \$225,000, paid to Class Counsel as compensation for the time and money expended in the litigation of this case. (*Id.*).

After the Court granted preliminary approval, Defendants posted a Notice of Settlement in a prominent area of each IDOC correctional center, accessible to putative class members. Defendants further provided a copy of the Notice of Settlement to each person whom Defendants released to MSR or parole from November 7, 2016 until January 6, 2017. In addition, IDOC allowed Class Counsel, and law students working under counsel’s supervision, to meet in-person with putative class members to discuss the proposed settlement. (R.125). Class Counsel then collected comments and objections from class members and others, receiving 123 letters in total. The vast majority of these letters either explicitly expressed support for the settlement or requested additional information about the litigation. (R.132, Summary of Objections and Responses). Class Counsel received 20 letters objecting to the settlement. (R.132-1, Summary of Objections).

LEGAL STANDARD

A district court may approve a class action settlement only “on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). In conducting this evaluation, the Court considers several factors, including “(1) the strength of the class’s case, (2) the complexity and expense of further litigation, (3) the amount of opposition, (4) the reaction of class members to the settlement, (5) the opinion of competent counsel, and (6) the stage of the proceedings and the amount of discovery that was completed.” *Martin v. Reid*, 818 F.3d 302, 306 (7th Cir. 2016).

The Court now addresses the Objection Motions and the Opt-Out Motion as part of its fairness evaluation. *See generally id.* The Court defers ruling on Plaintiffs’ motion for final approval of the class action settlement (R.133) until the final approval hearing in this case. That hearing is scheduled for January 25, 2017. (R.124, R.125).

ANALYSIS

I. Objection Motions

After reviewing the Objection Motions, the Court agrees with Plaintiffs that—with one exception—each seeks (i) injunctive or monetary relief that goes beyond the scope of the proposed settlement, and/or (ii) individual relief that is not available on a class-wide basis. The fact that a settlement does not provide “all the relief desired by particular, individual” claimants, however, does not render it unfair. *See Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996); *see also Mangone v. First USA Bank*, 206 F.R.D. 222, 230 (S.D. Ill. 2001) (“The pleadings frame the case, and, therefore, it is not surprising, nor does it render the settlement unfair, that claims not included in the lawsuit were not included in the Settlement Agreement”).

Several objectors, for example, request monetary compensation in connection with the proposed settlement. This class action, however, involves only widespread, injunctive relief, and the Court certified the class on such basis. *See* Fed. R. Civ. P. 23(b)(2) (“A class action may be maintained if Rule 23(a) is satisfied and if . . . the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole”). Class members remain free, in other words, to pursue damages claims on their own. Similarly, class members remain free to raise individual legal challenges—and to seek appropriate relief—to redress individual deficiencies in past parole revocation proceedings. These objections, in short, do not impact the fairness of the proposed settlement. (R.132-2, Written Objections by Bakalik, Evans, Hamilton, Henderson, Hunter, Moore, Nitz, Pike, Roberts, Singleton, and Upton).

In addition, several objectors raise concerns with the Settlement Agreement’s failure to cover *other* systemic deficiencies associated with the parole revocation and supervision process, including (i) the continued incarceration of individuals who cannot secure an approved host site, (ii) the continued incarceration of individuals throughout the revocation process, and (iii) the placement of individuals on house arrest. (*Id.*, Written Objections by Chatman, Foxx, Harper, Hill, Sigo, Veal, and Viens). The fact that the Settlement Agreement does not contemplate all due process safeguards desired by class members, however, does not render it unfair. Here, again, the Settlement Agreement does not preclude any objector from seeking injunctive relief to

redress such other, alleged constitutional deficiencies in the parole revocation system.² Similarly, that one class member would prefer to bind Defendants via a final judgment on the merits, instead of appointing an independent monitor to track Defendants' settlement compliance, (*id.*, Written Objection by Donaldson), does not render the settlement unfair, unreasonable, or inadequate under Rule 23. *See Isby*, 75 F.3d at 1200 ("the essence of settlement is compromise") (citation omitted).

Class Counsel did, however, receive one substantive objection to the proposed settlement. In particular, the Illinois State Bar Association and the Illinois Association of Criminal Defense Attorneys (collectively, the "Associations") interpreted the following draft language—"Defendant Prisoner Review Board ('PRB') may arrange to appoint counsel from public defenders' offices or private counsel who will serve pro bono"—as authorizing PRB to conscript unwilling attorneys into pro bono service. (R.132-2, Written Objections by the Associations). Concerned that such language implicated separation of powers concerns, the Associations proposed the following replacement language: "To reduce costs, Defendant PRB may arrange to secure volunteer private counsel and supervised 711 law students who may serve pro bono." (*Id.*). The parties, in turn, agreed to the replacement language. (R.133-1, Final Settlement Agreement at Section C-14). Accordingly, the Court denies this objection as moot.

In short, after reviewing each written objection in light of the Final Settlement Agreement, the Court finds that none precludes a finding that the settlement is fair, reasonable, and adequate under Rule 23. *See, e.g., Mangone*, 206 F.R.D. at 227-31. The Court, therefore, denies the Objection Motions.

II. Opt-Out Motion

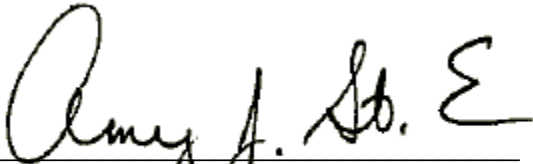
The Court next considers the Opt-Out Motion. In particular, class member William Evans requests to opt out of this class action in order to add allegations in his pro se lawsuit—currently pending in state court—concerning the "unfairness of the parole proceeding" to which he was subjected. (R.131). As a member of a Rule 23(b)(2) class, however, Evans does not have formal opt-out rights. *See Lewis v. City of Chicago, Illinois*, 702 F.3d 958, 962 (7th Cir. 2012) ("Rule 23(b)(2) does not require notice, because no one can opt out of a (b)(2) class"); *Jefferson v. Ingersoll Int'l Inc.*, 195 F.3d 894, 897-98 (7th Cir. 1999) ("Rule 23(b)(2) is designed for all-or-none cases in which final relief of an injunctive nature or of a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, is appropriate") (citation omitted). In any event, as discussed above, the Settlement Agreement does not preclude Evans from litigating his individual claim in the context of his individual lawsuit. (R.134, Joint Br. at 10 ("Nothing in the Settlement Agreement precludes individual litigants from seeking monetary damages stemming from the violation of their rights in the parole revocation process")). The Court, accordingly, Court denies this motion.

² Moreover, Plaintiffs represent that existing consent decrees entered in previous lawsuits, and/or the resolution of currently pending putative class action lawsuits, may address some of these systemic issues. *See, e.g., Downie v. Klincar*, No. 89-cv-2937 (addressing the issue of release pending a final revocation hearing); *Murphy v. Madigan*, 16-cv-11471 (addressing host site issues).

CONCLUSION

For the foregoing reasons, the Court denies all motions objecting to the proposed class action settlement (R.132-2) and denies class member William Evans' motion to opt out of the class. (R.131).

Dated: January 24, 2017



AMY J. ST. EVE
United States District Court Judge