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

RALPH HOLMES, *et al.*, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	Case No. 11 C 2961
v.	)	Honorable Marvin E. Aspen
JOHN BALDWIN, Acting Director of Illinois Department of Corrections; *et al.*,	)	Magistrate Judge Young B. Kim
Defendants.	)	

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AGREEMENT

Plaintiff Ralph Holmes and the other named Plaintiffs, on behalf of themselves and the class of deaf and hard of hearing IDOC inmates certified by the Court ("the Class"), and Defendant John Baldwin (collectively, the "Parties"), submit this joint memorandum in support of their Motion for Preliminary Approval of Class Settlement Agreement ("Motion"). The proposed Stipulation of Settlement ("Agreement," attached to the Motion as Exhibit A) is fair and reasonable, and provides substantial benefits to the entire class while removing the delay, risk, and expense inherent in the trial on liability and remedy in a case such as this. The Parties ask the Court to grant preliminary approval of the Agreement, adopt the Notice Plan attached to the Motion, and proceed to set a date for a Fairness Hearing on the proposed Agreement.

BACKGROUND

I. Summary of the Litigation

Plaintiffs filed a Complaint for Declaratory and Injunctive Relief ("Complaint") on May 4, 2011, on behalf of themselves and a class of similarly situated deaf and hard of hearing inmates who are in the custody of the Illinois Department of Corrections (the "Department" or "IDOC").

Dkt. 1. Plaintiffs filed this action seeking declaratory and injunctive relief that (1) requires Defendant to provide the assistance necessary for inmates who are deaf or hard of hearing to adequately participate in programs and services and to enjoy equal rights as hearing inmates while incarcerated and (2) enjoins Defendant from denying equal rights to deaf or hard of hearing inmates as a result of their disabilities or punishing them because of their disabilities.[1]

Plaintiffs contend that while in IDOC custody, they and other deaf and hard of hearing inmates have been denied the assistance they need to effectively communicate and participate in IDOC programs and services, in violation of the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, the Religious Land Use and Institutionalized Persons Act ("RLUPA"), and the Constitution of the United States. Plaintiffs contend that, as a result of the IDOC's failure to provide the assistance inmates who are deaf or hard of hearing need in order to effectively communicate, deaf and hard of hearing inmates have been excluded from a variety of programs and activities offered by the Department as a result of their disabilities, and have suffered injury.

Defendant denies that the Department has violated any of the inmates' rights and contends the Department has policies, practices, and systems in place to reasonably address the needs of deaf and hearing inmates. Defendant moved for summary judgment and this Court denied in part and granted in part Defendant's motion. Dkt. 290. Summary judgment was granted on Plaintiffs' claim that their Constitutional right to free speech was violated (*Id.* at 98) as well as their equal protection claim (*Id.* at 106-07). Additionally, this Court granted summary judgment on Plaintiffs' claim of cruel and unusual punishment "to the extent the claim is based on Plaintiffs' allegations

[1] Plaintiffs initiated this lawsuit against Salvador A. Godinez in his official capacity as Director of IDOC. Pursuant to prior Court order and Rule 25(d) of the Federal Rules of Civil Procedure, Mr. Godinez, who is no longer the Director of IDOC, has been replaced as Defendant by John Baldwin, the current Director of IDOC. Thus, the parties have agreed that Mr. Baldwin is now the defendant in this action.

that IDOC placed them in communicative isolation and failed to notify them of non-emergency events." *Id.* at 110. Summary judgment was denied as to all other claims.

Over the course of many years of litigation, the Parties engaged in substantial written, oral and expert discovery. By the time they reached agreement on the proposed Agreement, hundreds of thousands of pages of documents had been produced and the Parties had conducted over 30 depositions. Plaintiffs worked extensively with two experts in related fields and submitted voluminous expert reports regarding the communication needs and IDOC's treatment of inmates who are deaf and hard of hearing. In July 2011, this Court referred the case to United States Magistrate Judge Shelia M. Finnegan for the purpose of holding proceedings related to settlement. Dkt. 25. Several conferences were held between the Parties under the supervision of Magistrate Judge Finnegan.[2] Around April 2015, settlement discussions discontinued.

In mid-2016, the Parties were preparing for trial and submitted to the Court a Final Pre-Trial order specifying over 250 trial exhibits and 50 potential trial witnesses. On May 19, 2016, Plaintiffs filed a number of motions in limine, including a motion to limit the evidence at trial to the conditions existing in IDOC facilities as of the close of discovery. Dkt. 324. On August 2, 2016, the Court denied this motion, and reopened discovery for Plaintiffs to take discovery on IDOC's conditions after the close of discovery. Dkt. 342.

[2] August 15, 2011 (Dkt. 27), October 12, 2011 (Dkt. 30), February 6, 2012 (Dkt. 40), February 16, 2012 (Dkt. 48), March 6, 2012 (Dkt. 49), March 22, 2012 (Dkt. 50), June 21, 2012 (Dkt. 62), August 23, 2012 (Dkt. 65), September 14, 2012 (Dkt. 66), September 19, 2012 (Dkt. 67), April 15, 2013 (Dkt. 77), April 29, 2013 (Dkt. 80), October 10, 2014 (ex-parte, Plaintiffs' counsel only) (Dkt. 206), October 14, 2014 (ex-parte, Defendant's counsel only) (Dkt 208), October 17, 2014 (ex-parte, Plaintiffs' counsel only) (Dkt 209), November 11, 2014 (ex-parte, Defendant's counsel only) (Dkt. 215), December 04, 2014 (ex-parte, Plaintiffs' counsel only) (Dkt. 217), December 5, 2014 (ex-parte, Defendant's counsel only) (Dkt. 218), January 21, 2015 (Dkt. 233), February 6, 2015 (Dkt. 245), March 9, 2015 (Dkt. 262), and April 13, 2015 (Dkt. 266).

After the order re-opening discovery was entered, on September 9, 2016, this Court referred a motion to compel filed by Plaintiffs to United States Magistrate Judge Young B. Kim. Dkt. 346. Plaintiffs filed a motion to stay the supplemental discovery period and to expand the referral to Magistrate Judge Kim. This Court granted Plaintiffs' motion and Magistrate Judge Kim's referral was expanded to include "the determination of the proper scope and order of any discovery into the post-September 12, 2014 period." Dkt. 353. After several months of motions and status hearings regarding the scope of supplemental discovery and related matters, the Parties reengaged in settlement discussions around the end of March 2017. Conferences supervised by Magistrate Judge Kim were held on several dates.[3] Those efforts successfully concluded on March 14, 2018 during a status hearing with Magistrate Judge Kim and the Parties (Dkt. 430) whereby the Parties completed the Agreement attached to the Motion. Accordingly, the Parties now jointly move this Court as set forth in that Motion and more fully explained here.

II. The Principal Terms of the Agreement

The Agreement fairly, reasonably and adequately affords relief to all class members. Plaintiffs brought this action to ensure that deaf and hard of hearing received the auxiliary aids and services they need for effective communication while incarcerated within the IDOC. The relief afforded by the Agreement achieves that goal. A description of the key provisions follows.

a. IDOC Will Implement a Process to Determine Who is Deaf and Hard of Hearing and What Auxiliary Aids and Services to Provide

The Agreement requires IDOC to implement a two-step process to determine if an inmate is deaf or hard of hearing. IDOC will conduct hearing screenings and, if the screening suggests that an individual is deaf or hard of hearing, will send the individual to an audiologist for an

[3] April 5, 2017 (Dkt. 400), May 5, 2017 (Dkt. 402), June 1, 2017 (Dkt. 405), June 15, 2017 (Dkt. 406), June 23, 2017 (Dkt. 407), August 1, 2017 (Dkt. 410), August 28, 2017 (Dkt. 411), September 25, 2017 (Dkt. 413), October 16, 2017 (Dkt. 414), November 16, 2017 (Dkt. 418), December 28, 2017 (Dkt. 423), and March 7, 2018 (Dkt. 429).

audiological evaluation. The audiologist will determine the level and nature of the inmate's hearing loss, and whether the individual would benefit from one or two hearing aids. If an individual is found to be deaf or hard of hearing (as defined by the Agreement), a qualified specialist (as defined by the Agreement) will conduct a communication assessment to evaluate the individual's communication abilities and determine what auxiliary aids and services IDOC must provide for each specific IDOC program, service and activity. Auxiliary aids and services are defined by the Agreement and include, but are not limited to, sign language interpreters, video phones, video remote interpreting, exchange of written notes in a quiet room. Per the Agreement, these determinations will be memorialized in an Auxiliary Aids and Services Assessment, and then documented in an ADA Communication Plan.

The Agreement requires the qualified specialist and IDOC to follow certain guidelines when deciding what auxiliary aids and services must be provided to deaf and hard of hearing inmates. *First*, if an inmate's primary language is American Sign Language, IDOC must make a qualified interpreter available for all high stakes interactions (as defined by the Agreement), which include most medical care and appointments, disciplinary investigations and hearings, educational and vocational programs with a verbal component, transfer and classification meetings, and meetings with IDOC to discuss accommodations. *Second*, IDOC must ensure that deaf and hard of hearing inmates are provided with the number of hearing aids recommended by the audiologist during the audiological evaluation. *Third*, primary consideration must be given for the expressed preference for a particular auxiliary aid or service by the deaf or hard of hearing inmate.

b. IDOC Will Provide Deaf and Hard of Hearing Inmates with the Auxiliary Aids and Services Necessary for Effective Communication Subject to Limited Exceptions

IDOC will provide the deaf and hard of hearing inmate, at no cost, the auxiliary aids and services specified in his or her Communication Plan. If an inmate needs an accommodation before

the qualified communication specialist's review is complete, IDOC will provide a preliminary accommodation, upon an inmate's request, if it is apparent that the accommodation is necessary and it is feasible to provide. The Agreement sets forth limited circumstances when the IDOC can decline to provide an auxiliary aid or service called for by an inmate's Communication Plan. If IDOC can show that the auxiliary aid or service would be an undue financial burden, as defined by the ADA (such that the determination is made by the head of IDOC or his/her designee based on all available resources), it may deny the accommodation but must take other action that would not result in an undue burden. IDOC may also refuse to provide a specific auxiliary aid or service if it would pose a clear and present safety or security concern; however, if an accommodation is denied on that basis, IDOC must provide the best alternative means of accommodating the deaf or hard of hearing inmate.

c. IDOC Will Make Available Specific Technology to Ensure Effective Communication

The Agreement requires IDOC to acquire certain technologies to ensure effective communication for deaf and hard of hearing inmates. Specifically, IDOC will ensure that all facilities that house deaf or hard of hearing inmates have at least one video phone, two teletypewriters (TTYs) or equivalent technologies, and two telephones that allow for amplification, as well as ensure equal access to such services with limited exception. IDOC will also ensure that deaf and hard of hearing inmates have access to television and movies with open or closed captioning and access to over-the-ear headphones at no cost. IDOC will provide an effective tactile notification system that will advise deaf and hard of hearing inmates about events such as the arrival of visitors, meals, showers, yard time, medical appointments, evacuations and emergencies. Every facility housing a deaf or hard of hearing inmate will have a Video Remote Interpreting, and the Agreement sets forth requirements for VRI.

d. Additional Requirements to Ensure Effective Communication and Non-Discrimination

The Agreement contains various other requirements to ensure effective communication and non-discrimination. IDOC will ensure its orientation is accessible by, among other efforts, using simple English in written materials, playing videos with closed captioning and in American Sign Language. If IDOC has reason to believe that an inmate is deaf or hard of hearing, IDOC will also meet separately with the inmate to review all orientation materials and, if the inmate communicates through American Sign Language, provide a qualified interpreter for this separate meeting. IDOC agrees not to deny prison employment to any otherwise qualified deaf or hard of hearing inmate who can perform the essential functions of the position with or without a reasonable accommodation. IDOC will modify its hand restraints policy to allow deaf and hard of hearing inmates to communicate, unless doing so will pose an undue financial burden to IDOC or a safety/security threat in a particular situation that could not otherwise be addressed. IDOC will continue to offer deaf and hard of hearing inmates an identification card that clearly indicates the inmate is deaf or hard of hearing, which inmates may choose to decline. IDOC will not transfer a deaf or hard of hearing inmate solely because of his disability to a higher security prison or one without comparable programming, and will consider requests for a deaf or hard of hearing inmate to be housed with another deaf or hard of hearing inmate. IDOC will use, and regularly update, a centralized database that will include information about every deaf or hard of hearing inmate's accommodations. IDOC staff will receive training on a number of topics related to deaf or hard of hearing inmates, including communication needs, using interpreters and telephone technologies.

e. Monitoring, Enforcement, Jurisdiction and Termination Provisions

The parties will consent to the Magistrate Judge for all proceedings following final approval of the Agreement. The Court shall retain exclusive jurisdiction to fully oversee and

enforce the terms of the Agreement following approval. The Agreement creates a process by which IDOC can show that it has complied with the terms after two years and seek termination of judicial oversight based on such compliance. The Court and Class Counsel will monitor this settlement with IDOC to ensure these changes are made. IDOC will be responsible for providing periodic reports to Class Counsel to assist their monitoring efforts.

f. Attorneys' Fees and Costs

In full settlement of attorneys' fees and costs incurred in the lawsuit, which Plaintiffs' counsel has worked on for over 8 years, Defendant will pay $1,500,000.00 to Class Counsel. This payment also offsets the cost of Class Counsel's work required to monitor the Agreement.

ARGUMENT

I. THE PROPOSED AGREEMENT MERITS PRELIMINARY APPROVAL

Preliminary approval of a proposed settlement is the first in a two-step process required before a class action may be settled. *See Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998). In considering preliminary approval, the court must first determine whether the proposed settlement is within the range of reasonableness that ultimately could be given final approval. *Id.* The court must review the settlement for fairness, adequacy, and reasonableness. *Id.* If the court finds that a settlement is "within the range of possible approval," it then proceeds to the second step in the review process, the fairness hearing. *Id.*; *see also* 4 Robert Newberg, Newberg on Class Actions § 13:10 (5th ed. 2017) (hereinafter "Newberg"). The fairness hearing provides interested parties an opportunity to be heard and for the judge to find whether the proposed settlement is fair and reasonable. *Gautreaux v. Pierce*, 690 F.2d 616, 621 (7th Cir. 1982).

Six factors determine whether a class action settlement should be given final approval:

1. the strength of the plaintiff's case on the merits;
2. the complexity, length and expense of continued litigation;
3. any opposition to the settlement among affected parties;
4. any collusion in gaining a settlement;
5. the opinion of competent counsel regarding the reasonableness of the settlement; and
6. the stage of the proceedings and the amount of discovery.

Synfuel Techs., Inc. v. DHL Express (USA), Inc., 463 F.3d 646, 653 (7th Cir. 2006)*; GE Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997); *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996). "The 'most important factor relevant to the fairness of a class action settlement' is ... 'the strength of plaintiff's case on the merits balanced against the amount offered in the settlement.'" *Kaufman v. Am. Express Travel Related Servs. Co., Inc.*, 877 F.3d 276, 284 (7th Cir. 2017) (quoting *Synfuel*, 463 F.3d at 653). The district court should refrain from resolving the merits of the case or resolving unsettled legal questions. *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also Kaufman*, 877 F.3d at 285; *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985). The approval process should not be converted into an abbreviated trial on the merits. *Van Horn v. Trickey*, 840 F.2d 604,607 (8th Cir. 1987); *Armstrong*, 616 F.2d at 315. Instead, the court's inquiry should be "limited to the consideration of whether the proposed settlement is lawful, fair, reasonable, and adequate." *Isby*, 75 F.3d at 1196.

1. Strength of the Plaintiffs' Case on the Merits

The terms of the Agreement are fair, reasonable and adequate. Plaintiffs allege that Defendant has failed to provide the assistance they need to effectively communicate and participate in IDOC programs and services, in violation of the ADA, RLUPA, and the Constitution of the United States. Plaintiffs have developed the necessary proof to support these claims through their extensive fact and expert discovery. Despite the strengths of Plaintiffs'

case, Plaintiffs are mindful of the potential hurdles to establish Defendants' liability, ensure an appropriate remedial order, and overcome any affirmative defenses. Plaintiffs also are mindful of the possibility of an adverse ruling on appeal if they prevail at trial.

Importantly, because the proposed Agreement ensures that inmates who are deaf or hard of hearing are provided adequate assistance to effectively communicate and have meaningful participation in IDOC programs and services, the Agreement fully implements the relief sought in Plaintiffs' Complaint, which Defendants acknowledge is appropriate for the inmates in its custody. In addition, without conceding the merits of the Plaintiffs' allegations, Defendants believe that the requirements of the Agreement are consistent with their goals in updating and implementing policies and procedures regarding inmates who are deaf or hard of hearing. Accordingly, all Parties jointly submit that the Agreement is fair, reasonable and adequate.

2. Complexity, Length and Expense of Continued Litigation

The Parties submit that if the proposed Agreement is not approved, expensive and protracted litigation will ensue. Any trial will be complex, contentious and cumbersome. Collectively, the Parties would likely call over forty witnesses, including two expert witnesses and numerous current and former State employees who reside throughout Illinois. The costs and expenses of preparing these witnesses, and for trial in general, would be enormous.

In addition, both Plaintiffs and Defendant submit that if they do not prevail at trial, they will likely appeal the matter to the Seventh Circuit Court of Appeals. An appeal would all but guarantee that this litigation would drag on for several more years without resolution or the implementation of any relief for class members, many of whom have been eager to see relief well-before Plaintiffs' Complaint was filed in 2011. One of the primary benefits of the Agreement is

that it provides reasonably prompt relief to the class, without these additional major expenditures of time and money. These factors strongly weigh in favor of approval of the Agreement.

3. Opposition to the Settlement

While some class members may object because it does not offer monetary relief to the class, this case was not brought to seek monetary relief, and the Agreement does not waive class members' right to monetary relief in any successful claim they may choose to bring on similar issues. Other class members may object because of the terms under which IDOC is not required to provide the auxiliary aids and services required by the ADA Communication Plan. However, such terms are largely consistent with defenses found in the ADA's statute, regulations and applicable case law. *See* 28 C.F.R. § 35.164. Accordingly, the Parties fully expect that they can and will successfully meet any challenge or objection to the Agreement.

4. Lack of Collusion

As a matter of law, a court should presume that negotiations were conducted in good faith and that the resulting agreement was reached without collusion in the absence of evidence to the contrary. *See Mars Steel v. Continental Ill. Nat'l Bank & Trust*, 834 F.2d 677, 681-84 (7th Cir. 1987); *Armstrong*, 616 F.2d at 325; Newberg at § 13.14. Nothing supports a different result here where the Parties have vigorously advocated their respective positions throughout the pendency of the case. The proposed Agreement took years to negotiate. Numerous in-person meetings and settlement conferences were conducted. Counsel for the Parties exchanged several drafts, advocating forcefully for language most advantageous to their clients. *See, e.g., Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 366 (S.D.N.Y. 2002). Further, the past year of settlement negotiations have been under the supervision of Magistrate Judge Kim. Thus, because the Agreement resulted from arm's length negotiations between experienced counsel, under

supervision of the Court, and after significant discovery had occurred, the Agreement should be presumed to have been reached without collusion. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005).

5. Opinion of Competent Counsel as to the Reasonableness of the Settlement

Counsel for the Parties, who are competent and experienced in class action, civil rights, prisoner rights, and disability rights litigation, all recommend acceptance of the proposed Agreement. The proposed Agreement provides a fair, reasonable, and adequate; it embodies the most important aspects of the relief sought by Plaintiffs—that all IDOC inmates who are deaf and hard of hearing are provided the assistance necessary to adequately participate in programs and services and to enjoy equal rights as hearing prisoners while incarcerated.

6. Stage of the Proceeding and Amount of Discovery Completed

Another factor strongly supporting approval of the Agreement is the extent of written, oral, fact and expert discovery and fact finding which had been completed in this case before settlement was reached. The Parties have thoroughly explored the factual and legal underpinnings, as well as the merits, of this case. The Parties reached final agreement regarding the Agreement after nearly seven years of litigation and most recently, almost a full year of settlement negotiations. The Parties have produced and reviewed hundreds of thousands of pages of documents, conducted over thirty depositions on the merits, and worked extensively with two experts in related fields. Thus, there was a complete factual record upon which experienced class counsel could evaluate what would be a fair resolution for Plaintiffs and the Class.

II. THE PROPOSED NOTICE PLAN SATISFIES THE REQUIREMENT OF RULE 23 AND DUE PROCESS

Rule 23(e)(1) requires the court to direct notice of a proposed settlement in a "reasonable manner to all class members who would be bound by the proposal." the extent of the notice is

discretionary, particularly with a Rule 23(b)(2) class with no right of opt-out. *See Walsh v. Great Atlantic & Pacific Tea Co.*, 726 F.2d 956, 962 (3d Cir. 1983) (Rule 23(c)(2)'s requirement of "the best notice practicable" is inapplicable for notice of settlement of a Rule 23(b)(2) class); *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987). In a Rule 23(b)(2) class action, mechanics of the notice process are left to the discretion of the court subject only to the broad reasonableness standards imposed by due process. *Fowler v. Birmingham News Co*., 608 F.2d 1055, 1059 (5th Cir. 1979).

In determining what type of notice is reasonable, courts consider whether the notice is sufficient to "bring the proposed settlement to the attention of representative class members who may alert the court to inadequacies in class representation, or conflicts among subclasses, which might bear upon fairness of settlement." *Walsh*, 726 F.2d at 963-64. Courts have routinely approved notice plans in Rule 23(b)(2) cases, such as this one, where notice consisted of publication and/or other reasonable forms of direct or indirect notice. *Van Horn*, 840 F.2d 606; *Fresco v. Auto Data Direct, Inc.*, 2007 WL 2330895, at *8 (S.D. Fla. May 14, 2007). For example, in *Austin v. Hopper*, 28 F. Supp. 2d 1231, 1236 (M.D. Ala. 1998), the court approved as adequate to inform the inmates who were interested class members "post[ing] [the settlement notice] on community bulletin boards in every dormitory in every prison, as well as in the law libraries and dining areas of each facility; it was also sent to county jails so as to facilitate notice to state inmates who were potential class members." *See also Lambertz-Brinkman v. Kaemingk*, 2012 WL 1339148, at *1-2 (D.S.D. Apr. 17, 2012) (same).

It is important to provide notice in the primary language of class members, especially in a case involving communication access issues. In *Hubbard v. Donahoe*, 958 F. Supp. 2d 116, 122 (D.D.C. 2013), a class settlement notice about employees' rights to accommodations, including American Sign Language interpreters, was provided to the class in both writing and in sign

language. The Parties submit that the proposed Notice Plan (Motion, Exhibit B) provides for reasonable notice. The Notice Plan requires: (1) IDOC to provide personal notice of the Long Form Class Notice (Motion, Exhibit B-1) to class members and potential class members currently known by the Parties; (2) IDOC to post the Short Form Class Notice (Motion, Exhibit B-2) in the law library and each living unit in each IDOC facility; and (3) IDOC to show all class members known to use American Sign Language a video produced by Class Counsel and approved by Defendant whereby the Long Form Class Notice is communicated through American Sign Language.

These three notice methods are necessary and, when viewed together, sufficient. While the Parties have a list of potential class members, neither party has a comprehensive list of every possible member so personal delivery to every class member is impossible. Posting in a communal setting is an important safeguard for unknown class members, although independently insufficient given the number of class members who do not have the ability to move around the correctional facility and/or may, as a result of their disability, not be able to understand the notice with a cursory review. Finally, because many class members use American Sign Language as their primary means of communication and are not fluent in English, providing notice via American Sign Language is critical to the effective communication of the notice, especially in light of the claims in Plaintiffs' Complaint. The Parties ask the Court to approve their proposed notice plan.

III. COMPLIANCE WITH THE PRISON LITIGATION REFORM ACT

The Parties agree and represent that the Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a). The Parties further agree that the prospective relief specifically contained in the Agreement is narrowly drawn, extends no further than necessary, is the least intrusive means necessary to address Plaintiffs' allegations, and is not intended to have an adverse impact on public safety or the operation of a criminal justice system.

The Parties respectfully request that, as part of its evaluation into the fairness of the Agreement, the Court find that the Agreement satisfies such requirements. *See* 18 U.S.C. § 3626(a).

CONCLUSION

For the foregoing reasons, and pursuant to Rule 23(e), the Parties respectfully request that the Court enter an Order (1) granting preliminary approval of the Settlement Agreement; (2) directing that the Class be provided notice in the form and method of the Parties' proposed Notice Plan; and (3) setting a date for a Fairness Hearing on the proposed Settlement Agreement.

Dated: April 23, 2018

Respectfully submitted,

/s/ Robert L. Michels

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