IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

CYNTHIA B. SCOTT, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	Case No. 3:12-cv-00036-NKM
v.	)	Sr. Judge Norman K. Moon
	)	
HAROLD W. CLARKE, *et al.*,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' CONSENT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules and Regulations

Other Authorities

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

INTRODUCTION

Plaintiffs Cynthia B. Scott, Belinda Gray, Toni Hartlove, Karen Powell and Lucretia Robinson, for themselves individually and as representatives of a class of additional unnamed plaintiffs similarly situated ("the Plaintiffs"), ask this Court to grant preliminary approval of a proposed settlement in this action because the settlement terms are fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(2). Plaintiffs and Defendants Harold W. Clarke, A. David Robinson, Frederick Schilling and Tammy Brown, each in their official capacities as representatives of the Virginia Department of Corrections ("the VDOC Defendants"), have reached a Settlement Agreement which the parties believe fairly and adequately resolves Plaintiffs' claims.

A certified class action cannot be compromised or settled without the approval of the Court. Fed. R. Civ. P. 23(e). The Court must follow a three-step process prior to granting final approval of a proposed settlement. *Domonoske v. Bank of America*, 790 F.Supp.2d 466, 472 (W.D. Va. 2011); *see also Levell v. Monsanto Research Corp.*, 191 F.R.D. 543, 547 (S.D. Ohio 2000). First, the Court must preliminarily approve the proposed settlement. *Domonoske*, 790 F. Supp.2d at 472*; Levell*, 191 F.R.D. at 547. In a Rule 23(b)(2) class action, notice to the class members before settlement is optional. Rule 23(c)(2)(A); *see also Luevano v. Campbell*, 93 F.R.D. 68, 85 (D.D.C., 1981); *Berry v. LexisNexis Risk & Information Analytics Group, Inc.*, Case No. 3:11-cv-0754, 2014 WL 4403524, at *1 (E.D.Va., 2014). Nonetheless, in this case both parties agree that each class member should receive notice of the settlement, in addition to notice being posted in common areas at FCCW. Third, the Court must hold a hearing, after which the Court decides whether the proposed settlement is fair, adequate, and reasonable to the

class as a whole, and consistent with the public interest. *Domonoske*, 490 F.Supp.2d. at 472*; Levell,* 191 F.R.D. at 547. These three steps protect the class members' procedural due process rights and enable the Court to fulfill its role as the guardian for the class's interests. For the third step, the decision to approve or reject a proposed settlement is committed to the Court's sound discretion. *City Partnership Co. v. Atlantic Acquisition L.P.*, 100 F.3d 1041, 1043-44 (1st Cir. 1996); *see also Scardelletti v. Debarr*, 43 Fed.App'x 525, 547 (4th Cir. 2001); *In re Fasteners Antitrust Litigation*, MDL Dkt. No. 1912, 2014 WL 285076, at *3 (E.D. Pa., Jan. 24, 2014).

As more fully set forth below, the relevant facts and circumstances amply demonstrate that the settlement is fair, reasonable and adequate. Therefore, Plaintiffs request that the Court grant preliminary approval to the terms of the settlement and order Notice of the terms of the proposed Settlement to be provided to all class members pursuant to Rule 23(e)(1).

I. DESCRIPTION OF THE LITIGATION AND THE PROPOSED SETTLEMENT

A. THE CLAIMS AND DEFENSES AT ISSUE

The Plaintiffs, prisoners residing at the Fluvanna Correctional Center for Women (FCCW), a facility of the VDOC, initiated this class-action lawsuit on July 24, 2012, pursuant to the Eighth Amendment to the Constitution of the United States and 42 U.S.C. § 1983, seeking declaratory and injunctive relief with respect to alleged constitutionally-deficient medical care afforded to themselves and all other women residing at FCCW, which the Plaintiffs contend reflects deliberate indifference on the part of the VDOC Defendants to the Plaintiffs' serious medical needs.

By Memorandum Opinion and Order dated November 20, 2014, the Court granted the Plaintiffs' Motion for Class Certification and certified a class consisting of "all women who currently reside or will in the future reside at FCCW and have sought, are currently seeking or

will seek adequate, appropriate medical care for serious medical needs, as contemplated by the Eighth Amendment to the U.S. Constitution," pursuant to Fed. R. Civ. P. 23(b)(2). (ECF Dkt. No. 188). Thereafter, the Court entered an Order granting Partial Summary Judgment in favor of the Plaintiffs and denying the VDOC Defendants' Motion for Summary Judgment in its entirety on November 25, 2014, holding, *inter alia*, that:

1. the Plaintiffs established, as a matter of law, that they fully and properly exhausted all pre-litigation administrative remedies available to them, as required by applicable provisions of the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e (*see* Memorandum Opinion dated November 25, 2014, at 23-33 & nn.8-10 (ECF Dkt. No. 201));

2. the Plaintiffs established, as a matter of law, that individually and as a class, they suffer from "serious medical needs" as a predicate to a viable cause of action for "deliberate indifference" under the Eighth Amendment (*id*. at 13-18 & n.7);

3. the Plaintiffs established, as a matter of law, that the VDOC Defendants have a non-delegable duty under the Eighth Amendment to provide constitutionally-adequate medical care to all prisoners within their custody, including the Plaintiffs (*id*. at 8-13); and that

4. the VDOC Defendants failed, as a matter of law, to demonstrate on the basis of material facts as to which there is no genuine issue in dispute, that they could not be found liable for providing insufficient medical care, or failing to provide medical care under circumstances in which such care was due, reflecting "deliberate indifference" to the Plaintiffs' and the class members' serious medical needs in violation of the Eighth Amendment (*id*. at 33-46).

The VDOC Defendants have denied liability for the Eighth Amendment violations alleged by the Plaintiffs in their original and amended Complaints.

B. <u>THE PROPOSED SETTLEMENT</u>

The parties negotiated the proposed settlement, first agreeing on an Memorandum of Understanding (MOU) in November 2014 regarding the content of the Settlement and the process by which a final agreement would be reached. The parties notified the Court that they had reached an agreement in principle on the eve of trial, November 25, 2014. (ECF Dkt. No.

204). Since that time, the parties have engaged in extensive communications by phone, email, and three in-person meetings involving counsel, VDOC officials, medical experts, and the proposed Settlement Compliance Monitor, Dr. Nicholas Scharff, in order to finalize the Settlement Agreement terms as well as changes to the VDOC Operating Procedures in effect and governing the provision of medical care at FCCW, as contemplated in the parties' MOU. The proposed settlement provides the following essential terms:

1. Changes to VDOC Operating Procedures for FCCW

Plaintiffs and Defendants, through medical experts of their choosing, reviewed the existing VDOC Operating Procedures and proposed revisions to those procedures to enhance the prospects for constitutionally-adequate medical care at FCCW. Where disagreements could not be resolved by the medical experts, the designated Compliance Monitor, Dr. Scharff, weighed in with suggestions to resolve the matter, and the parties have now agreed on a set of revisions to procedures that have been adopted and will be implemented at FCCW. These changes are identified and summarized in an attachment to the proposed Settlement Agreement. (Appendix A).

2. Additional Guidelines and Standards

In addition to the changes to specific Operating Procedures, the parties have negotiated and agreed upon a set of additional broader medical guidelines and standards addressing issues and problem areas that the Plaintiffs alleged in their Complaint and developed with the evidence supporting their Memorandum in Support of the Motion for Class Certification (ECF Dkt. No. 132) and their Memorandum in Support of their Motion for Partial Summary Judgment (ECF Dkt. No. 138). These subjects include, *inter alia*, standards for improving staffing levels, the medical intake process, comprehensive health assessments, the sick call process, the co-pay

policy, diagnosis and treatment, response to emergencies, infirmary conditions, chronic care, infectious disease control, utilization management, continuity of medications and treatment supplies, physical therapy, medical grievances, access to information regarding care, accommodations for prisoners with special needs, staff training, care and release of terminally-ill prisoners, conduct of mortality reviews, and criteria for measuring performance and quality improvement and contractor monitoring. These guidelines and standards are described more fully in Section III.b. of the Settlement Agreement, attached hereto as Exhibit 1, at pages 6 to 15.

3. Establishment of Additional Relevant Policies

In addition to the changes to Operating Procedures, VDOC's Medical and Nursing Guidelines and the agreed standards, the parties have agreed to create an additional Operating Procedure regarding reasonable accommodations for physical disabilities of incarcerated individuals consistent with the mandate of the Americans With Disabilities Act ("ADA"), 42 U.S.C. §§ 12131 *et seq*., and its implementing regulations and standards. Lastly, the parties have agreed that they will develop an operating procedure establishing concrete and definitive practices and procedures to govern VDOC's self-evaluation with respect to the quality and quantity of the medical care it provides to prisoners on an ongoing basis in accordance with widely-recognized Continuous Quality Improvement ("CQI") concepts. This procedure will be developed with consultation of the parties' respective medical experts and the Compliance Monitor within 120 days of the effective date of the Settlement Agreement. See Section III.c. of the Settlement Agreement at pg. 15 (Exh. 1 hereto).

4. Performance Monitoring Tools

The parties agree that the Compliance Monitor shall develop a set of Performance Measuring Tools which focus on each of the subjects identified on the list attached as

Appendix B to the Settlement Agreement, which he will then apply as the foundation of for his evaluation of VDOC's ongoing obligation to provide constitutionally adequate medical care at FCCW. Dr. Scharff, the parties' agreed Compliance Monitor, will work to develop these standards and is prepared to testify at the fairness hearing regarding the process for developing such standards, their content, and their application.

5. Monitoring

The parties jointly selected Dr. Nicholas Scharff, M.D., MPH, the former Chief Medical Officer of the Commonwealth of Pennsylvania Department of Corrections, to serve as the Settlement Compliance Monitor. The parties believe that Dr. Scharff is appropriate and qualified for this role. Dr. Scharff's *curriculum vitae* is attached as Appendix C to the Settlement Agreement, and he is prepared to testify at the fairness hearing with regard to his qualifications to serve as Compliance Monitor.

Pursuant to the Settlement Agreement, the Compliance Monitor shall visit FCCW a number of times each year, and shall have access to speak confidentially with personnel, prisoners, and review facilities, medical files, and grievances as he deems necessary. The visits shall occur over the period of a minimum of three years. The Compliance Monitor will prepare a report following each visit detailing his findings, and identifying any areas in which he finds that VDOC is not in compliance with the Settlement Agreement. VDOC will have 30 days to correct any areas of noncompliance of which it is notified, after which, if the problems persist, Plaintiffs will have the option of bringing an action in this Court to enforce the Settlement Agreement, seek contempt sanctions, or both.

6. Attorneys' Fees

Plaintiffs' counsel have spent a substantial amount of time preparing and litigating this case, and have fronted significant litigation costs for depositions, discovery, and the services of Plaintiffs' medical expert. The parties have agreed that the Plaintiffs will be compensated for their reasonable attorneys' fees and litigation costs. In the event that the parties cannot come to an agreement on the amount of fees and costs, Plaintiffs may submit a petition to the Court for the determination and awarding of fees and costs as prevailing parties under 42 U.S.C. § 1988.

II. THE COURT SHOULD PRELIMINARILY APPROVE THE TERMS OF THE SETTLEMENT

The principal underlying concern for the Court in reviewing a proposed class settlement is the protection of class members whose rights may not have received sufficient consideration in settlement negotiations. *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). In determining whether to grant preliminary approval to the Class Settlement, this Court must make a preliminary determination as to the fairness, reasonableness, and adequacy of the settlement terms. Fed. R. Civ. P. 23(e)(2); *see Annotated Manual for Complex Litigation (Fourth)*, § 21.632 (2015).

The Fourth Circuit has bifurcated the analysis into consideration of the fairness of the settlement negotiations of the settlement and the adequacy of the consideration to the class. *Jiffy Lube*, 927 F.2d at 158-59; *Scardelletti*, 423 Fed. App'x at 528; *Berry*, 2014 WL 4403524, at *14; *see also Beaulieu v. EQ Indus. Services, Inc.*, Case No. 5:06-cv-00400-BR, 2009 WL 2208131 (E.D.N.C. Oct. 9, 2009); *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1383-84 (D. Md. 1983). While the Court must assess the strength of plaintiffs' claims, it should "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands,*

Inc., 450 U.S. 79, 88 n.14 (1981). Moreover, where a settlement is the result of genuine arms'-length negotiations, it is presumed to be fair. *City P 'ship Co. v. Atlantic Acquisition Ltd P 'Ship*, 100 F.3d 1041, 1043 (1st Cir. 1996); *Rolland v. Cellucci*, 191 F.R.D. 3, 6 (D. Mass 2000).

A. FAIRNESS: THE PROPOSED SETTLEMENT WAS THE RESULT OF EXTENSIVE "ARMS' LENGTH" NEGOTIATIONS

Factors relating to the fairness of a proposed settlement are: (1) the posture of the case at the time the proposed settlement was reached, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the settlement negotiations, and (4) counsel's experience in the type of case at issue. *Jiffy Lube*, 927 F.2d at 158-59.

1. Posture At Time Of Settlement

At the time of settlement, the Court had heard and granted the Plaintiffs' Motions for Class Certification and Partial Summary Judgment (ECF Dkt. Nos. 189 and 202), and heard and denied the VDOC Defendants' Motion for Summary Judgment (ECF Dkt. No. 202). The parties had prepared for multi-week trial that was set to begin the first week of December 2014. The parties had conducted sufficient discovery and engaged in extensive motions practice over the two and a half years the case had been pending, and were well aware of the strengths and weaknesses of their respective legal and factual positions in the litigation.

2. Extent Of Discovery

The parties in this case exchanged tens of thousands of pages of documents pursuant to discovery requests in this case. Furthermore, the parties conducted 27 depositions, including depositions of the four original Named Plaintiffs, experts for each side, doctors, and other VDOC and contractor witnesses in this case. The discovery period had closed and all requested documents and depositions had been taken and exchanged by the parties.

3. Circumstances Surrounding Negotiations

As mentioned in section I(B), *supra*, the parties agreed in November 2014, following a meeting between counsel for both parties and VDOC representatives, to an MOU setting forth the scope of the final Settlement Agreement and a process by which that agreement would be reached. Over the past nine months, the parties have engaged in extensive discussions by telephone conference, email, and three lengthy in-person meetings with the counsel for each side and representatives of VDOC. One of the in-person conferences also included medical experts for each side and the designated Compliance Monitor, Dr. Scharff. Plaintiffs' counsel have repeatedly met with and consulted with the Named Plaintiffs and recently-added Class Representatives to advise them regarding the proposed settlement terms. The Agreement has been reached by thorough and detailed consideration of the terms by both sides, agreed to in protracted and sometimes contentious negotiations. The Settlement is arms'-length and has been carefully evaluated by all parties. These facts militate in favor of finding the circumstances of the Settlement are fair.

4. Opinion Of Counsel

Counsel for Plaintiffs and Defendants endorse the settlement as fair and adequate under the circumstances. Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration. *See Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *In re MicroStrategy Inc. Sec. Litig.*, 148 F. Supp.2d 654, 665 (E.D. Va. 2001); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981).

After initial discovery, contested motions practice and vigorous settlement negotiations, counsel for the parties have agreed to the proposed Settlement Agreement as a

just and appropriate resolution of all claims. Class counsel recommend this settlement to the Court based upon their collective experience as federal court litigators and experienced class counsel. The Settlement Agreement is the product of extensive arms'-length negotiations by experienced counsel, which were undertaken in good faith after factual investigation, discovery, and legal analysis. Thus, the parties in this litigation and their counsel have the best information available to evaluate the strengths and weaknesses of the parties' respective claims and defenses, and the costs and benefits of continued litigation versus compromise. Armed with this detailed knowledge, the parties entered into earnest settlement negotiations, and after months of continuous interaction, the parties reached an agreement to settle the claims.

B. THE CLASS SETTLEMENT TERMS IN RELATION TO THE STRENGTH OF PLAINTIFFS' CLAIMS DEMONSTRATE THAT THIS SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

In evaluating the proposed Class Settlement, the Court should also consider the strength of Plaintiffs' case on the merits. *See Scardelletti,* 43 Fed. App'x at 528. In this process, however, a court must "avoid deciding or trying to decide the likely outcome of a trial on the merits." *In re Nat 'l Student Marketing Litig.,* 68 F.R.D. 151, 155 (D.D.C. 1974). Prior to settlement, the Plaintiffs had defeated Defendants' Motion to Dismiss, and won both their Motion for Class Certification and their Motion for Partial Summary Judgment. The Court, by contrast, ruled against Defendants' Motion for Summary Judgment. This suggests that the Plaintiffs had presented a viable case capable of prevailing on the merits, though a trial on the merits had not commenced at the time of settlement. In light of the fact that the class members will receive the benefit of enhanced medical care in accordance with revised Operating Procedures and additional agreed upon medical guidelines and standards for the provision of medical care, as well as newly-developed Operating Procedures governing the treatment for

prisoners with disabilities and the VDOC's continuous quality improvement, as well as three years of monitoring by a medical doctor experienced in correctional health, the settlement is reasonable and is set up to adequately monitor and ensure VDOC's compliance with Eighth Amendment standards in providing medical care at FCCW.

In analysis of the adequacy of the settlement terms, relevant factors to be considered may include: (1) the relative strength of the plaintiffs' case on the merits, (2) any difficulties of proof or strong defenses the plaintiffs would likely encounter if the case were to go to trial, (3) the expected duration and expense of additional litigation, and (4) the degree of opposition to the proposed settlement. *See Berry*, 2014 WL 4403524, at *14; *see also In re Jiffy Lube*, 927 F.2d at 159; *Clark v. Experian Information Solutions, Inc.*, Case No. 6:03-mc-00120, 2004 WL 256433 (D.S.C. Jan. 14, 2004).

The parties reached an agreement in principle to settle this case six days before trial was set to begin, after the Court had ruled on the Motion for Class Certification and also cross motions for Summary Judgment and Partial Summary Judgment. All parties were as informed as they could be about the strength and weaknesses of their respective cases. Plaintiffs believe that the Settlement Agreement affords them substantially the same relief that they would have achieved if they had prevailed at trial, given the restrictions of the Prison Litigation Reform Act 18 U.S.C. § 3626, on the length and scope of any injunctive relief available to Plaintiffs. Furthermore, it is Plaintiffs' determination that this Agreement would bring relief in a more expedited manner than going to trial. Even had Plaintiffs prevailed at trial, the Court would still have needed to make findings and the parties would likely have had to give input into a final order. Furthermore, any final order could then have been appealed by the VDOC Defendants to the Fourth Circuit, lengthening substantially the time before Plaintiffs would have seen any final

order for changes to the medical system and monitoring of those changes go into effect. Given both the inherent uncertainty of an outcome at trial and the likelihood of a protracted process to reach a final order even had Plaintiffs prevailed, entering into this Settlement Agreement is a prudent and reasonable result for Plaintiffs and class members.

If the Court grants preliminary approval, class members will receive notice explaining the terms of the proposed Settlement Agreement and their right to object. While the degree of opposition to the proposed Settlement Agreement cannot be known with any certainty, the lack of any other competing classes supports the strength of the settlement and the likelihood that it will stand. For these reasons, the opinion of all counsel involved is that the terms of the Settlement Agreement represent a fair, reasonable, and adequate resolution of the claims alleged.

C. THE CLASS NOTICE IS REASONABLE IN FORM AND CONTENT

Reasonable notice *may* be provided to class members to allow them an opportunity to object to the proposed Settlement in a Rule 23(b)(2) class action. *See Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) ("Notice (and exclusion opportunity) is not required in Rule 23(b)(2) actions."); 7B Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 1793 (3d ed. 2006) (stating that while Rule 23(b)(3) classes require mandatory notice, notice is not as important for Rule 23(b)(2) classes "because the class typically will be more cohesive"). The parties in this case have agreed that notice will be provided to class members. The VDOC will provide a copy of the written notice attached hereto to each woman incarcerated at FCCW within seven days of the Court's preliminary approval of the Proposed Agreement and Notice to the Class. Rule 23(e) requires notice of a proposed settlement "in such manner as the court directs." In a settlement class maintained under Rule

23(b)(2), class notice should meet the requirements of both Federal Rules of Civil Procedure 23(c)(2) and 23(e). Rule 23(c)(2)(A) provides that in a 23(b)(2) class action, "the court may direct appropriate notice to the class."

In addition, the Manual for Complex Litigation sets forth several elements that a notice of settlement should include. *See Annotated Manual for Complex Litigation (Fourth),* § 21.312 (2015). A notice should, *inter alia*, describe the options open to class members and the deadlines for taking action; the essential terms of the settlement; the attorneys' fees; the time and place of the hearing to approve settlement; and the method for objecting to the settlement.

In this case, the proposed Notice (Exhibit 2) meets the requirements of Rule 23(c)(2) and 23(e), because it includes notice of the general terms of the settlement, notice of the right to object and the manner in which objections should be filed, notice of the date, time and place of the Fairness Hearing (once scheduled), and notice regarding how to contact class counsel for additional information regarding the settlement. *See also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 496 (D.N.J. 1997). Because each member of the class can be identified, actual notice will be provided to each prisoner currently incarcerated at FCCW, as well as posted at FCCW in common areas accessible to prisoners. No issue arises in this case of locating missing class members, as all prisoners currently incarcerated at FCCW are easily identified.

The proposed Notice and counsel's proposed methods of distribution at the Prison and posting in common areas constitute adequate notice to the class members, reasonably calculated to provide the class members with actual notice of their rights. In addition, class counsel will meet with women at FCCW who have questions about the Settlement; such meetings will be in

groups if ten women or more request a meeting. As such, the Court should approve the proposed notice methodology.

Under the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715, notice of the Settlement should also be given to the appropriate Federal and State Officials. Notice to a State Official under this section is not necessary in this case, because under 28 U.S.C. § 1715(a)(2), the appropriate State Officials in this case are the DOC or the Attorney General's office, which are respectively defendants and counsel in this case, and are already well aware of the settlement terms. Under 28 U.S.C.§ 1715(b)(7)(a), no notice to State officials in other states is necessary, since by definition of the class as all women incarcerated at FCCW, there are no class members in other states. Notice will be provided to the U.S. Attorney General by defendants pursuant to 28 U.S.C. § 1715(b), within ten days of the filing of this proposed Settlement.

III. PRISON LITIGATION REFORM ACT FINDINGS BY THE COURT

The parties request that the Court, upon independent review and consideration, find that this Settlement Agreement complies with the Prison Litigation Reform Act. The Parties agree that the prospective relief established by this Settlement Agreement is narrowly drawn, extends no further than is necessary to address and remedy the violations of federal rights alleged by the Plaintiffs in their pleadings in this action, is the least intrusive means necessary to correct these alleged violations, and will not have any adverse impact on public safety or the operation of the criminal justice system. Accordingly, the parties agree and they jointly request that the Court find that this Settlement Agreement complies in all respects with the provisions and requirements of 18 U.S.C. § 3626(a).

CONCLUSION

For all of the foregoing reasons, the Plaintiffs request this Court to preliminarily approve the terms of the Settlement Agreement, find that it complies with the PLRA, and order the proposed Notice to be provided to class members forthwith, and schedule this matter for a Fairness Hearing on the earliest practicable date mutually convenient to this Court and the parties.

DATED: September 15, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2015, a true and correct copy of Plaintiffs' Memorandum in Support of Their Consent Motion for Preliminary Approval of Settlement was served electronically upon the following:

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