

EXHIBIT 8

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

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

DECLARATION OF DAVID C. FATHI

I, David C. Fathi, declare:

1. Since 2010, I have been the Director of the American Civil Liberties Union (ACLU) National Prison Project, which brings challenges to conditions of confinement in prisons, jails, and other detention facilities throughout the United States. From 2007 to 2010 I was Director of the U.S. Program at Human Rights Watch, which works to defend the rights of particularly vulnerable groups in the United States, including prisoners. From 2000 to 2007, I was a senior staff attorney at the ACLU National Prison Project.
2. I received my B.S., *summa cum laude*, from the University of Washington in 1984 and my J.D. from the University of California at Berkeley Boalt Hall School of Law in 1988.
3. I am an attorney in good standing, licensed in the State of Washington since 1995. I have also been a member of the state bar of California since 1989 (currently inactive). I am also admitted to practice before the United States Supreme Court; the United States Courts of Appeals for the Fourth, Seventh, Ninth, and Tenth Circuits; and numerous United States District Courts.

4. In my work at the ACLU, I have participated in the litigation of several dozen cases challenging conditions of confinement in prisons and jails. Representative cases include:

United States Courts of Appeals

- a. *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014), *reh'g en banc denied*, 784 F.3d 571 (9th Cir. 2015) (affirming certification of statewide class of 33,000 Arizona prisoners) (argued in Court of Appeals).
- b. *Shook v. El Paso County*, 386 F.3d 963 (10th Cir. 2004), *cert. denied*, 544 U.S. 978 (2005) (reversing district court's denial of class certification in challenge to inadequate mental health care in El Paso County (Colorado) Jail; holding that Prison Litigation Reform Act does not affect class certification in prison conditions cases) (argued in Court of Appeals).
- c. *Jones'El v. Berge*, 374 F.3d 541 (7th Cir. 2004) (affirming district court's order to air condition cells in "supermax" prison to prevent injury or death during summer heat waves) (argued in Court of Appeals).
- d. *Hallett v. Stewart*, 287 F.3d 1193, *amended*, 296 F.3d 732 (9th Cir. 2002) (affirming in part and reversing in part district court judgment denying motion for further relief, denying contempt motion, and terminating decree in challenge to health care at Washington women's prison) (co-counsel in Court of Appeals).

United States District Courts

- a. *Parsons v. Ryan*, 289 F.R.D. 513 (D. Ariz. 2013), 2014 WL 388786 (D. Ariz. 2014), 2014 WL 3721030 (D. Ariz. 2014) (statewide class action challenge to inadequate health care and excessive use of solitary confinement on behalf of 33,000 Arizona state

prisoners).

- b. *Martinez v. Maketa*, 2011 WL 2222129 (D. Colo. 2011) and *Clay v. Pelle*, 2011 WL 843920 (D. Colo. 2011) (successful challenges to policies limiting prisoner mail to postcards in two Colorado county jails).
- c. *Flynn v. Doyle*, 2007 WL 805788 (E.D. Wis. 2007) (class action challenge to inadequate medical, mental health, and dental care in Wisconsin's largest women's prison).
- d. *Inmates of the Rhode Island Training School v. Martinez*, 465 F.Supp.2d 131 (D.R.I. 2006), 2007 WL 2031536 (D.R.I. 2007) (monitoring compliance with consent decree in challenge to conditions at juvenile correctional facility).
- e. *Hart v. Arpaio*, No. CIV 77-479 PHX EHC (D. Ariz.) (resisting sheriff's motion to terminate consent decree governing conditions of confinement for class of 5500 pretrial detainees in Maricopa County Jail).
- f. *Office of Protection and Advocacy v. Choinski*, Civil No. 3:03CV1352 (RNC) (D. Conn.) (challenge to conditions of confinement for mentally ill persons in Connecticut's "supermax" prison).
- g. *Canadian Coalition Against the Death Penalty v. Ryan*, 269 F.Supp.2d 1199 (D. Ariz. 2003) (invalidating Arizona statute that required punishment of prisoners whose names appear on internet web pages).
- h. *Jones'El v. Berge*, 172 F.Supp.2d 1128, 164 F.Supp.2d 1096 (W.D. Wis. 2001) (class action challenge to conditions in Wisconsin's "supermax" prison; resulted in preliminary injunction directing removal of mentally ill prisoners and ultimately in

comprehensive consent decree).

- i. *Caldwell v. District of Columbia*, 201 F.Supp.2d 27 (D.D.C. 2001) (jury trial in individual prisoner's challenge to conditions of confinement; resulted in award of \$175,000, including \$50,000 in punitive damages).
- j. *Joslyn v. Armstrong*, 2001 WL 1464780 (D. Conn. 2001) (challenge to transfer of Connecticut prisoners to Virginia "supermax" prison; prisoners were returned to Connecticut during pendency of litigation).
- k. *Prison Legal News v. Crawford*, No. CV-N-00-0373-HDM-RAM (D. Nev.) (challenge to censorship of publications in Nevada state prison system; resulted in consent decree substantially revising censorship policy).

5. In preparing this declaration, I have reviewed the following documents:

- a. Declaration of Alex Gulotta
- b. Declaration of Brenda Castaneda
- c. Declaration of Catherine Martin
- d. Declaration of April Wimberley
- e. Declaration of Ivy Finkenstadt
- f. Declaration of Sami Natour
- g. Declaration of Benjamin Spencer
- h. Declaration of Angela Ciolfi
- i. Declaration of Erin Trodden

- j. Declaration of Deborah Golden
 - k. Billing report from Legal Aid Justice Center
 - l. Billing report from Washington Lawyers' Committee for Civil Rights and Urban Affairs
 - m. Billing report from Wiley Rein, LLP
 - n. Memorandum Opinion Granting Class Certification (ECF Dkt. No. 188)
 - o. Memorandum Opinion on Summary Judgment (ECF Dkt. No. 201)
 - p. Consent Motion for Preliminary Approval of Settlement (ECF Dkt. No. 220)
 - q. Memorandum in Support of Motion for Preliminary Approval of Settlement, including all Appendices and Exhibits (ECF Dkt. No. 221)
 - r. Order Granting Consent Motion for Preliminary Approval (ECF Dkt. No. 222).
6. In my experience, there are very few private attorneys who are willing and able to take cases like this one. The clients are difficult to communicate with because they are incarcerated, and prison conditions cases are time-consuming and expensive to litigate. Moreover, as this case illustrates, the prospect of compensation is contingent on an award of statutory attorney fees, which depends entirely on success on the merits and comes, if at all, only after the litigation has been concluded, often years after it is filed. Thus, it is extremely rare that a private lawyer would agree to represent the plaintiffs in a case such as this under a traditional fee arrangement.
7. In determining an appropriate attorney fee, “the most critical factor is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Here, Plaintiffs’ counsel have obtained through the proposed settlement extensive relief for their clients: a wholesale

revision of the medical procedures at the Fluvanna Correctional Center for Women, with a new set of operating procedures, accommodation of disabilities, and the systematic monitoring of compliance by an independent medical expert. Framing and negotiating such a complex agreement itself required a significant investment of time and expertise by Plaintiffs' counsel and it demonstrates how much they have succeeded in accomplishing on behalf of their clients.

8. Litigating a case such as this one is difficult and time-consuming because all of the clients and class members and most of the witnesses were incarcerated at the Fluvanna Correctional Center for Women. Communications and visits with such clients are much more complicated than for non-incarcerated clients. The visits must be scheduled with correctional authorities and the clients' access to confidential telephone conversations is extremely limited. In this case, the necessity of developing detailed knowledge of the clients' medical conditions and needs further complicated the factual investigation. Because the central allegations of the complaint concerned "deliberate indifference to serious medical needs" of prisoners, *Estelle v. Gamble*, 429 U.S. 97, 104 (1976), this case demanded significant attention to individual details. The *Estelle* standard, of course, demands far more by way of proof than simple negligence, and thus increased the burden on Plaintiffs' counsel to assemble evidence to prevail on the merits or obtain a favorable settlement.
9. There are additional factors that increase the amount of attorney time required to litigate a case of this nature. The Prison Litigation Reform Act (PLRA) requires that prisoners exhaust available administrative remedies before they may file in federal court. 42 U.S.C. sec. 1997e(a). Thus, counsel must devote substantial time to assisting prospective

plaintiffs in navigating the multiple steps of the prison's grievance system. Once the action is filed, counsel must spend additional time litigating defendants' claim that exhaustion did not occur or was not sufficient to permit the litigation of plaintiffs' claims.

10. As a practical matter, prison conditions actions seeking injunctive relief must be brought as class actions; given the regular turnover in a prison population, it is overwhelmingly likely that individual plaintiffs would be transferred or released before the litigation was concluded. Thus, obtaining class certification is a critical stage of the litigation. Particularly since *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. ____ (2011), a motion for certification of a class of hundreds of prisoners is a highly labor-intensive undertaking, requiring a strong evidentiary showing on each of the elements of Fed. R. Civ. P. 23(a) and (b).
11. It is my opinion that the hours Plaintiffs' counsel expended on this case were reasonably and necessarily incurred due to the following considerations: 1) the difficulty of recruiting and cultivating potential plaintiffs who were willing and qualified to act as class representatives, 2) exhausting administrative remedies, as required under the Prison Litigation Reform Act, on a sufficiently broad range of issues to support an action challenging the provision of medical care on a class-wide basis, 3) the substantial nature of the motions practice in the case, 4) the breadth and duration of discovery and time necessarily spent reviewing tens of thousands of pages of discovery, including medical records, 6) the time spent advising and consulting with class representatives, 7) the time spent preparing for the class action trial which was set to begin just a few days after the settlement in principle was reached, 8) the time spent in settlement finalization, and 9) the time spent preparing the motion papers seeking approval of the settlement. Not only is

obtaining class certification itself a time-consuming undertaking, but a class action requires adequate representation of all class members as the case goes forward. All of this entails special attention and substantial efforts by Plaintiffs' counsel in their capacity as attorneys for the entire class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of October, 2015, at Washington, D.C.

/s/David C. Fathi
David C. Fathi