

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

JOSHUA DUNN, ET AL.,)
)
Plaintiffs,)
)
v.)
)
JEFFERSON DUNN, ET AL.,)
)
Defendants.)

Civil Action Number:
2:14-cv-00601-MHT-TFM

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF A CLASS ACTION SETTLEMENT CONCERNING CLAIMS
ARISING UNDER THE AMERICANS WITH DISABILITIES ACT
AND §504 OF THE REHABILITATION ACT OF 1973**

The Parties to this action jointly move this Honorable Court for approval of the settlement and resolution of all claims and issues set for the Phase I trial of this case which is scheduled to begin trial on June 20, 2016. As grounds in support thereof, the Parties show the following:

1. In March 2016, the Parties reached an agreement to certify a settlement class and settle the claims raised and issues set to be addressed in the Phase I trial of the instant action.
2. Through this Joint Motion for Preliminary Approval of a Class Action Settlement (“Joint Motion”) the Parties request: (a) certification of the settlement class; (b) preliminary approval of the settlement agreement; (c) approval of notice to the class; and (d) scheduling of a final fairness hearing.
3. The Parties jointly request that the Court certify the settlement class under Fed. R. Civ. P. 23(b)(2) as “any current or future inmate in the physical custody of ADOC who has a disability as defined in 42 U.S.C. § 12012 and 29 U.S.C. § 705(9)(B), excluding those inmates

whose disabilities relate solely to or arise from mental disease, illness, or defect.” See Ex. 1 (fully executed Settlement Agreement) at 2.¹

4. Federal Rule of Civil Procedure 23(a) permits a case to be maintained as a class action if:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

5. The settlement class here meets the requirements under Rule 23(a) of numerosity, commonality, and typicality to justify certification, as well as the requirement that there is adequate and fair representation by counsel. Here, the proposed settlement class, as defined herein at ¶3 *supra*, may number in the thousands of inmates, and joinder is therefore impractical. The commonality and typicality requirements are met here because the class shares common questions of law or fact, as the Phase I claims challenge the policies and practices affecting ADOC inmates with disabilities as described in the Settlement Agreement, and the named class representatives have claims typical of the class, as they are or have been ADOC inmates who are subject or have been subject to the challenged policies and practices.

6. The requirement of adequate representation will be met here because class counsel will fairly and adequately represent the interests of the class, as they have done throughout this matter.

7. The Court should preliminarily approve the Settlement Agreement reached in this case, attached hereto as Ex. 1, as it is the product of arm’s-length, serious, informed and non-

¹ Due to typographical and printing errors, the pagination of the signature pages are misnumbered. Counsel realized this error shortly before the filing of this document. Despite these pagination errors, the Settlement Agreement is fully executed.

collusive negotiations between experienced and knowledgeable counsel who have actively prosecuted and defended this litigation.

8. The Parties further request that the Court approve the Notice to the Class, attached hereto as Ex. 2, as it meets the requirements of Fed. R. Civ. P. 23(c)(2) and 23(e)(1), that “the court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” The Notice will be posted in English and Spanish in prominent locations accessible to all prisoners in all ADOC facilities covered by the Settlement Agreement. It will also be made available in alternative formats. Additionally, full copies of the Settlement Agreement will be made available to inmates in all ADOC prison libraries.

9. Lastly, the Parties request that the Court enter the Proposed Order of preliminary approval of the class settlement, attached hereto as Ex. 3. The Proposed Order provides that members of the settlement class will have ____² days to communicate any comments to the Court. The Proposed Order further provides that the Court will then conduct a final fairness hearing to determine whether the proposed settlement of the Phase I claims and issues on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be finally approved by the Court.

10. ADAP is a Plaintiff in this case and has asserted claims in Phase I via its associational standing. ADAP’s Phase I claims, as defined by the Settlement Agreement, *see* Ex. 1, are settled and resolved by the execution of the Settlement Agreement.

11. The Parties recognize that a motion for class certification is customarily supported by briefing on class certification. Because the Parties have agreed to class certification as a result of a non-collusive, arm’s-length negotiation and in an effort to preserve the Court’s

² This space was left intentionally blank as the Court will set the time period for receiving comments from class members via entry of an Order of Preliminary Approval.

valuable time and resources, the Parties have not submitted such briefing with the instant motion. Should this Honorable Court require briefing on class certification, the Parties respectfully request that the Court enter a scheduling order setting forth a briefing schedule on the issue.

WHEREFORE, premises considered, the Parties jointly move this Honorable Court: (1) to certify the settlement class; (2) grant preliminary approval of the Settlement Agreement; (3) to approve the notice to the class; and (4) to enter an order scheduling a final fairness hearing.

Dated: March 15, 2016

Respectfully Submitted,

/s/ Maria V. Morris

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2016, a copy of the above and foregoing was filed with the United States District Court for the Middle District of Alabama using the CM/ECF system which sent notification to all counsel of record.

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