IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SHAQUILLE HOWARD, BROOKE GOODE, JASON PORTER, KEISHA COHEN and ALBERT CASTAPHANY, on their own behalf and on behalf of all others similarly situated,	:	**Case No. 20-cv-1389**
	:	**ELECTRONICALLY FILED**
Plaintiffs,	:	
v.	:	**JURY TRIAL DEMANDED**
LAURA WILLIAMS, Chief Deputy Warden of Healthcare Services; ORLANDO HARPER, Warden of Allegheny County Jail; MICHAEL BARFIELD, Mental Health Director; ALLEGHENY COUNTY;	:	
Defendants.		

MEMORANDUM IN SUPPORT OF JOINT MOTION

FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

After years of litigation, substantial investigation and discovery (both fact discovery and expert discovery), and protracted, arms-length negotiations spanning several years and assisted by two separate mediators, the parties have agreed on a comprehensive settlement to address Plaintiffs' claims and improve mental health care offered at Allegheny County Jail ("ACJ"). As part of the proposed settlement, Allegheny County is committing to substantial changes relating to its mental health program, and its use-of-force and restricted housing practices. The County also is agreeing to mechanisms to monitor and enforce these commitments, as outlined in a detailed 38-page single-spaced Consent Order and Judgment. These agreed changes will ensure that incarcerated individuals at ACJ receive adequate, constitutionally-required mental health care,

minimize the risk of decompensation and deterioration of their conditions while in custody, help these individuals manage their symptoms and better position them to transition back into society, limit use-of-force against those with mental health conditions, and, it is anticipated, reduce recidivism. The Parties believe that the proposed settlement fully satisfies Rule 23(e), and is fair and reasonable, and they therefore request that the Court preliminarily approve their proposed settlement.

A. Statement of the Case

On September 15, 2020, Plaintiffs Shaquille Howard, Brooke Goode, Jason Porter, Keisha Cohen and Albert Castaphany filed a Complaint against Allegheny County and certain Allegheny County Jail ("ACJ") officials alleging that they were violating the constitutional and statutory rights of the Plaintiff Class and depriving them of appropriate and necessary mental health care. In particular, the Complaint alleged that Defendants did not have sufficient staff to provide the appropriate level of care, failed to adequately train Mental Health Staff, failed to adequately train Correctional Staff to be able to identify the signs and symptoms of mental illness, failed to provide a sufficient process to screen and diagnose individuals with mental health conditions, failed to provide any therapeutic counseling, failed to use problem lists or treatment plans, failed to provide any case management for mental health patients, failed to provide adequate medication management, failed to sufficiently and timely respond to requests for mental health care, and failed to maintain any quality improvement program for their mental health care "program." The Complaint further alleged that Defendants failed to maintain adequate and appropriate policies with respect to de-escalation and use of force, failed to train staff on de-escalation techniques, used excessive amounts of force on Plaintiff Class members, used force on Plaintiff Class members

more often than appropriate, punished individuals for requesting mental health care or for manifestations of their diseases, and inappropriately placed those with mental health conditions into isolated confinement, which exacerbated their conditions and caused them to decompensate. The Complaint set forth the following causes of action:

Count I: Fourteenth Amendment – Failure to Provide Adequate Mental Health Care
Count II: Fourteenth Amendment – Unconstitutional Use of Solitary Confinement
Count III: Fourteenth Amendment – Excessive Use of Force
Count IV: Americans with Disabilities Act, 42 U.S.C. 12132
Count V: Rehabilitation Act, 29 U.S.C. 794
Count VI: Fourteenth Amendment – Procedural Due Process
Count VII: Fourteenth Amendment – Substantive Due Process
Count VIII: Fourteenth Amendment – Failure to Train

The Complaint sought injunctive and declaratory relief on behalf of the Plaintiff Class.

B. Procedural History

Even prior to the filing of the above complaint, Class Counsel had been conducting an investigation into the practices at ACJ with respect to its mental health program and its treatment of individuals with mental health conditions. Class Counsel conducted hundreds of interviews, including meetings with currently incarcerated individuals, formerly incarcerated individuals, former employees of ACJ, and other individuals who formerly worked as part of the mental health system at ACJ. This investigation led to the filing of the above Complaint.

Subsequent to the filing of the Complaint, Class Counsel also conducted formal discovery on Defendants. Plaintiffs served a First Set of Interrogatories and Requests for Production of Documents in December 2020. This First Set was limited to ACJ policies, standards and trainings, in the hope that this limited discovery would enable the parties to explore early resolution. When

the parties were not able to reach a settlement, Plaintiffs served two more sets of Interrogatories and Requests for Production of Documents. In total, Plaintiffs served 38 interrogatories and 79 requests for production on the Defendants.

In response to those discovery requests, the Defendants produced over 100,000 pages of documents. In addition, Defendants made a production of electronically stored information of more than 750,000 pages of information. Finally, Defendants made ten individuals available for deposition, including now former Warden Harper, Chief Deputy Warden Jason Beasom, now former Chief Deputy Warden Laura Williams, now former Health Services Administrator Ashley Brinkman, now former Mental Health Director Michael Barfield, and others.

Class Certification Order

On October 31, 2022, the Court certified the Plaintiff Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). The certified Plaintiff Class is defined as:

> All individuals currently or in the future incarcerated at Allegheny County Jail and who have, or will in the future have, a serious mental health diagnosis, disorder or disability as recognized in the DSM-V, including but not limited to depression, anxiety, post-traumatic stress disorder, schizophrenia, bipolar disorder, or borderline personality disorder.

Expert Discovery

Upon completion of fact discovery, the Plaintiffs produced reports from three expert witnesses. Dr. Terry Kupers, a board-certified psychiatrist who has testified more than thirty times about the psychiatric effects of jail and prison conditions and the quality of correction management and mental health treatment, among other topics, issued a 128-page report addressing ACJ's mental health program and its treatment of incarcerated individuals with mental health conditions.

In particular, Dr. Kupers offered opinions that staffing at ACJ was inadequate, training was inadequate, the intake procedures were ineffective, individuals did not have sufficient privacy with respect to mental health treatment, ACJ offered inadequate treatment planning, ACJ offered no psychotherapy or therapeutic counseling and very little case management, had significant problems with medication management, lacked peer review or a quality improvement program, unreasonably punished individuals with mental health conditions and overused solitary confinement on those individuals.

Dr. Walter Rhinehart, Psy.D., a clinical psychologist with substantial experience working for the Federal Bureau of Prisons, examined many of the Class Representatives and issued reports outlining their conditions and their treatment while incarcerated at ACJ. In particular, Dr. Rhinehart concluded that each of the Class Representatives he examined had serious mental health conditions whose conditions could be substantially alleviated or managed appropriately with proper care, but that ACJ failed to provide proper care. Dr. Rhinehart reviewed the reasons for this conclusion and the various elements of ACJ's mental health program he found to be deficient. Dr. Rhinehart further concluded that each of the Class Representatives suffered substantial harm as a result of the lack of adequate mental health care, and that ACJ administration knew or should have known about the deficient care.

Mr. Brad Hansen, a retired prison warden and expert in correctional training and management, issued a 45-page report, in which he concluded that ACJ failed to comply with appropriate standards of care with respect to use of force against incarcerated individuals with mental health conditions, and even failed to comply with its own deficient policies. Mr. Hansen also reviewed ACJ's training materials and concluded that ACJ failed to adequately train its correctional staff.

Defendants produced an expert report of Dr. Barry Mills. Dr. Mills opined that ACJ "meets the required minimum standard of care based, hereinafter, on what is usual and customary in similar clinical correctional practices." He itemized several disagreements he had with Dr. Kupers' conclusions. He also concluded that the use of a restraint chair at ACJ did not breach the required standard of care and that the "use of solitary confinement among mentally ill persons is not ideal or a 'gold standard' practice but does not breach the minimum required standard of care." Dr. Mills also questioned the reliability of statements of incarcerated individuals regarding the mental health program.

Defendants also produced a report from Dr. Robert Morgan, who concluded that "although some inmates placed in [restricted housing] experience significant harm and deterioration in mental health functioning, these harms are not universally experienced. Specifically, it can be expected that the use of restrictive housing (such as administrative segregation) will, on average, produce mild to moderate health and mental health defects comparable to the effects of incarceration generally." Defendants also produced a report from Peter Perroncello commenting on correctional operations. Mr. Perroncello opined that ACJ's current practices with respect to use of force, restricted housing and correctional training are consistent with current correctional practices elsewhere.

The parties had the opportunity to depose these expert witnesses, and several motions to preclude expert testimony were filed and remain pending.

Settlement Negotiations and Mediations

The parties held an initial mediation session with the Honorable Kenneth Benson in early 2021. Although the parties remained far apart at the time, they continued their discussions in the

hope of narrowing the issues. As part of those early negotiations, Plaintiffs shared several outlines of potential settlement terms with the Defendants.

Although negotiations continued regularly, little progress was made until the summer of 2023, when fact discovery was closed and the parties were engaged in expert discovery. Beginning that summer, Plaintiffs shared with Defendants some additional outlines of proposed settlement terms, and counsel had a series of meetings with the Honorable Lisa P. Lenihan. Progress made during those sessions spurred additional meetings between counsel and representatives of the County, which ultimately led to the proposed Consent Order and Judgment.

C. Terms of Proposed Settlement

The proposed settlement is reflected principally in the proposed Consent Order and Judgment, attached to the accompanying Motion as **Exhibit 1**. Through that document, Allegheny County is committing to make certain changes that are intended to provide meaningful improvements in the mental health care at ACJ.

The Consent Order and Judgment articulates the specific commitments being made by the County. In particular, the County agrees to comply with Interim Required Staffing Levels to stabilize staffing within the mental health department, after which a more fulsome assessment can be done to determine the ongoing staffing that is required to meet the needs of the patient population. The Consent Order includes a mechanism for addressing any non-compliance with these requirements. The County further commits to enhancing the training provided to mental health staff, and the training provided to correctional staff and which relates to mental health

issues. In addition, the County commits to certain training on de-escalation and use of force, and agrees to specific mechanisms to assess the efficacy of those new training programs.

The County agrees to hire a number of licensed counselors so it can offer therapeutic counseling. The Consent Order and Judgment articulates specific requirements with respect to that counseling and the individuals who presumptively will receive that counseling. The County also agrees to develop a series of educational programming sessions on a variety of topics. The County also agrees to time frames in which mental health encounters with psychiatrists, mental health nurses or mental health specialists must occur, and agrees to certain requirements that will improve the effectiveness of segregation rounds. The County also is agreeing to develop confidential interview spaces in which therapeutic counseling and substantive mental health encounters can take place.

The County also agrees (a) to enhanced procedures with respect to receiving screenings and mental health screenings and evaluations, (b) that it will use individual treatment plans with respect to each mental health patient and make other changes with respect to clinical records, (c) to conduct a review of ACJ's medication management processes, and (d) to new requirements regarding clinical autonomy.

The County also agrees to a series of requirements regarding de-escalation and use of force designed to decrease the number of use-of-force incidents on mental health patients. These requirements include specific tasks that must be performed prior to any use of force (designed to promote de-escalation), enhanced review of use of force incidents, and a series of internal reviews to assess use of force and its frequency. The County also agrees to certain protections to limit the impact of isolation on those with mental health conditions.

The Consent Order and Judgment contemplates a series of mechanisms by which its requirements will be implemented and monitored. First, the County will designate a Compliance Coordinator, who will be responsible for monitoring compliance and conducting a series of audits or reviews to ensure compliance and report any non-compliance. Second, the Court would appoint an independent monitor to review the County's compliance and issue reports with recommendations. Third, the Court would retain jurisdiction to address any non-compliance issues if and when they arise.

The Consent Order and Judgment includes a provision addressing attorneys' fees and expenses. In particular, the Order contemplates that Class Counsel will submit a fee petition for the Court's consideration, and the County reserves the right to object to the reasonableness of the requested fees. The Parties have started discussing the possibility of an agreement on fees and expenses, and any such agreement will be included in Class Counsel's fee petition.

If the Court preliminary approves the proposed settlement, the Parties propose to provide notice to currently incarcerated class members via their electronic tablets at ACJ. In this way, each currently incarcerated class member will receive direct notice. The form of the proposed notice is attached to the accompany motion as **Exhibit 2**. The parties propose that class members have a period of at least 40 days in which to submit any objections to the proposed settlement, and that a Final Fairness Hearing be scheduled approximately sixty days after preliminary approval.

D. The Court Should Preliminarily Approve the Proposed Settlement

Under Rule 23(e)(2) of the Federal Rules of Civil Procedure, to the extent a settlement proposal would bind class members, the Court must find the settlement is "fair, reasonable and adequate." In so finding, the Court must consider whether:

> (A) The class representatives and class counsel have adequately represented the class;
>
> (B) The proposal was negotiated at arm's length;
>
> (C) The relief provided for the class is adequate, taking into account:
> (i) The costs, risk and delay of trial and appeal;
> (ii) The effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) The terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) Any agreement required to be identified under Rule 23(e)(3); and;
>
> (D) The proposal treats class members equitably relative to each other.

In reviewing a proposed class action settlement, courts first make a preliminary fairness evaluation. If the settlement is preliminarily acceptable, the Court directs notice be sent to class members who would be bound by the settlement and affords them an opportunity to be heard. *In re National Football League Players' Concussion Injury Litigation*, 301 F.R.D. 191, 197 (E.D. Pa. 2014); *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 438 (E.D. Pa. 2008). After notice, the Court then holds a final fairness hearing.

The standard for preliminary approval is whether:

> The proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.

Mehling v. New York Life Ins., 246 F.R.D. 467, 472 (E.D. Pa. 2007). A settlement falls within the "range of possible approval" if "there is a conceivable basis for presuming that the standard applied for final approval—fairness, adequacy, and reasonableness—will be satisfied." *In re NFL*, 301 F.R.D. at 198. In making this assessment, courts look for any "obvious deficiencies," whether the negotiations were conducted at arms-length, whether there was a significant investigation of Plaintiffs' claims, and whether certain individuals or subclasses receive preferential treatment. *Id.* Courts also look to whether the proponents of the settlement are experienced in similar litigation, and whether more than a small fraction of the class object. *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 439 (E.D. Pa. 2008).

The public interest favors settling litigation. Not only do settlements conserve judicial resources, but they are the preferred method of resolving legal disputes because they reflect the collective judgment of the litigants, who are in the best position to evaluate the strengths and weaknesses of their legal positions. *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2nd Cir. 1982) (quotation omitted). Courts recognize that the opinion of experienced counsel supporting the settlement is entitled to considerable weight. *See, e.g., Reed v. GMC*, 703 F.2d 170, 175 (5th Cir. 1983) ("In reviewing proposed class settlements, a trial judge is dependent upon a match of adversary talent because he cannot obtain the ultimate answers without trying the case."). Against this backdrop, preliminary approval of a settlement is warranted where there is "probable cause" to believe that the settlement is fair, reasonable, and adequate. *Id.*

Here, the proposed settlement satisfies each of the above requirements. Substantial investigation and discovery was conducted, such that the parties were fully able to evaluate the strengths and weaknesses of the claims and defenses. The proposed settlement was the result of arms-length negotiations and treats all Class Members equitably as to each other. The relief

provided to the Class through this settlement is adequate and is fair and reasonable considering the strengths and weaknesses of the parties' positions, the risk and uncertainty of trial, and the parties' ability to fashion a remedy that provides effective relief to the Class without overburdening the County. Thus, the proposed settlement meets all the requirements for preliminary approval as well as final approval.

1. Counsel conducted sufficient investigation or discovery

Counsel for Plaintiffs and the Class initiated an investigation into the mental health program at ACJ in the fall of 2019. This investigation involved hundreds of interviews with many current and former incarcerated individuals as well as former employees of ACJ. Those interviews formed the basis for Plaintiffs' Complaint, filed in September 2020.

Since the filing of that Complaint, Class Counsel has continued to investigate and to meet with and interview additional witnesses. In addition, the parties have conducted substantial formal discovery. In particular, Defendants have produced over 100,000 pages of documents, hundreds of thousands of pages of emails, and ten witnesses for depositions. Plaintiffs conducted sufficient investigation and discovery such that they were able to produce three lengthy and comprehensive expert witness reports addressing all aspects of their claims.

As to Defendants, most of the documentation relevant to Plaintiffs' claims have at all times been in the possession of the Defendants, so Defendants have had adequate time to evaluate Plaintiffs' claims. Defendants had the opportunity to depose Plaintiffs' experts, and produced three expert reports of their own on various aspects of Plaintiffs' claims.

The parties have had more than sufficient opportunity to investigate Plaintiffs' claims and the Defendants' defenses, so that they can evaluate the strength and weaknesses of their respective positions. This discovery has informed the positions taken in negotiations, and has assisted the parties in developing methodologies for addressing and resolving Plaintiffs' claims. A presumption of fairness attaches to the proposed settlement if it is reached after meaningful discovery and "arm's length negotiation." *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987); *Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 212 (S.D.N.Y. 1992). *See also* Annotated Manual for Complex Litigation § 21.6 (4th ed. 2006); Newberg on Class Actions § 11.42 (4th ed. 2008); 3B Moore's Federal Practice ¶ 23.160, et seq. (3d ed. 2009).

2. The proposed settlement was the result of arms-length negotiations

The parties started negotiating a potential resolution of this matter in early 2021. The Honorable Kenneth Benson facilitated the initial mediation session. Since that time, Counsel engaged in settlement negotiations regularly, including sharing outlines of potential settlement terms on certain issues and several in-person meetings. For a long time, little progress was made despite those efforts.

In the summer of 2023, once expert discovery was completed, the parties started having more in-depth discussions. Class Counsel provided to Defendants' Counsel additional outlines of proposed settlement terms on a number of separate issues. Counsel for all parties and representatives of the Defendants then met with the Honorable Lisa P. Lenihan for several lengthy meetings, to review these outlines and discuss potential mechanisms for resolution. Counsel for the parties also had a number of additional meetings, including one additional meeting at ACJ with Defendants' representatives.

In November and December of 2023, because it appeared that the parties were making substantial progress toward a resolution, Class Counsel drafted a Consent Order and Judgment that would implement the terms they were negotiating. Throughout January and February 2024, the parties continued to negotiate mechanisms for resolution and the terms of the anticipated Consent Order and Judgment. These negotiations required the parties to twice request from the Court short extensions of time in which to file certain pre-trial submissions.

The parties have been negotiating this agreement for years, and those negotiations have included two separate facilitators, both of whom are now retired Judges. These negotiations were arms-length and protracted. This history alone demonstrates a basis for finding that the settlement is fair and reasonable. 4 Alba Conte & Herbert Newberg, Newberg on Class Action, 11:41 (4th ed. 2010) (courts typically adopt "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval").

3. There is no preferential treatment among class members

The proposed settlement does not include any sub-classes. Further, all Class Members receive precisely the same relief—a new and more robust mental health program at ACJ and the cessation of actions that have caused the exacerbation of their symptoms and deterioration of their conditions. All Class Members share equally in the requested relief, so there is no basis for finding any preferential treatment or inequities among class members.

It is true that not every type of treatment will apply to each Class Member. For example, not every Class Member will obtain psychotherapy, but this is based on the recognition that psychotherapy is not always clinically indicated. The proposed settlement does empower the mental health staff to provide psychotherapy to any incarcerated individual for whom

psychotherapy is clinically indicated, and it starts with a presumption that psychotherapy is clinically indicated for the most severely ill. Further, all Class Members will benefit from the increased staffing, increased training requirements, new screening and evaluation procedures, the use of individual treatment plans, the provisions addressing delays in being seen by a mental health professional, improved privacy protections, the limitations on use of force, the introduction of de-escalation techniques and training, and the limitations on isolated confinement.

Thus, all Class Members are treated substantially equally.

4. The proposed settlement is within the range of possible approval

In assessing whether a settlement is "fair, reasonable and adequate" under Rule 23, courts sometimes look to the *Girsh* factors:

> " . . . (1) the complexity, expense and likely duration of the litigation . . . ; (2) the reaction of the class to the settlement . . . ; (3) the stage of the proceedings and the amount of discovery completed . . . ; (4) the risks of establishing liability . . . ; (5) the risks of establishing damages . . . ; (6) the risks of maintaining the class action through the trial . . . ; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery . . . ; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation . . .."

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975) (*citing City of Detroit v. Grinnell Corp*., 495 F.2d 448 (2d Cir. 1974)). A review of those factors supports the conclusion that the proposed settlement is reasonable.

Although Plaintiffs believe they have a very strong case, they recognize the risks of litigation. They have asserted claims under the Fourteenth Amendment for failure to provide adequate mental health care, for the unconstitutional use of solitary confinement, for excessive use of force against those with mental health conditions, for procedural and substantive due process and for failure to train. Plaintiffs' claims require that they prove defendants acted with objective

unreasonableness or deliberate indifference to their serious mental health conditions. They realize there is risk any time liability depends on an assessment of the defendants' state of mind or objectiveness, and that the result of a trial is uncertain.

Plaintiffs also make claims under the Americans with Disabilities Act, 42 U.S.C. §12132, and the Rehabilitation Act, 29 U.S.C. §794. Plaintiffs recognize that the success of these claims depends on an assessment of the reasonableness of accommodations and policy modifications, and that the result of trial is uncertain. Plaintiffs also recognize that the scope of any relief awarded to them is uncertain, that there is value in obtaining certainty with respect to some of their requested relief, and there also is value in establishing a system to ensure that the agreed upon changes are implemented and enforced.

Defendants believe they have strong defenses to Plaintiffs' claims, but recognize there is a risk of an adverse judgment. Defendants recognize that if they went to trial, the Court could order relief much more expansive than that included in the proposed settlement, and that such additional relief could have a substantial financial impact on Allegheny County.

The proposed settlement makes substantial changes to ACJ's mental health system, but is limited to the changes necessary to ensure that Class Members receive appropriate, constitutionally-mandated mental health care. The proposed settlement does not provide complete relief to the Plaintiffs, but provides significant relief, and does so in a manner that is consistent with the security needs of ACJ, minimizes the financial impact on the County, and complies with the Prison Litigation Reform Act, 18 U.S.C. §3626.

5. The Request for Attorneys' Fees is Reasonable.

Pursuant to the proposed Consent Order and Judgment, Class Counsel will submit a separate Fee Petition for the Court's approval. Of note, the requested fees do not impact in any way the relief afforded to the Class, and given that the Court will have the opportunity to approve such fees, the amount of fees requested cannot be said to render the proposed settlement unfair or unreasonable.

6. Conclusion.

Counsel for the Parties are very experienced in prison litigation and class action litigation and believe that the proposed settlement is a fair compromise of disputed claims. *Reed v. GMC*, 703 F.2d 170, 175 (5th Cir. 1983) ("In reviewing proposed class settlements, a trial judge is dependent upon a match of adversary talent because he cannot obtain the ultimate answers without trying the case."). They have conducted substantial investigation and discovery and have been able to fully vet Plaintiffs' claims and Defendants' defenses. Further, they negotiated the terms of the proposed Consent Order over several years and with the help of two mediators. A presumption of fairness attaches to the proposed settlement if it is reached after meaningful discovery and "arm's length negotiation." *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987); *Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 212 (S.D.N.Y. 1992). *See also* Annotated Manual for Complex Litigation § 21.6 (4th ed. 2006); Newberg on Class Actions § 11.42 (4th ed. 2008); 3B Moore's Federal Practice ¶ 23.160, et seq. (3d ed. 2009). In addition, all Class Members are treated substantially equally. The proposed settlement satisfies each factor that courts consider in evaluating the fairness of class action settlements.

Finally, the agreement is well within the bounds of reasonableness. Although it does not provide all the relief requested by the Plaintiffs, the commitments being made by Allegheny County are significant. These are meaningful changes that will have a substantial impact on individuals incarcerated at ACJ and their families. Moreover, the proposed settlement includes enforcement mechanisms designed to ensure the maximal impact on the Plaintiff Class and on Allegheny County as a whole. It is anticipated by all parties and counsel that this settlement will provide meaningful relief to individuals incarcerated at ACJ, will help them in managing their conditions and controlling their symptoms, will minimize decompensation and deterioration while at ACJ, will better position individuals to transition back into society after they are released, and will contribute to a reduction of recidivism.

The Parties submit that the proposed settlement is within the "range of possible approval," and thus should be preliminarily approved.

E. The Court Should Approve the Parties' Proposed Notice and Plan for Disseminating Notice.

For classes certified under Rule 23(b)(2) (such as the instant case), notice to class members is not required. See Fed.R.C.P. 23(c)(2)(A) ("For any class certified under Rule 23(b)(1) or (b)(2), the court *may* direct appropriate notice to the class" (emphasis added)). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362 (2011) ("The Rule provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige the District Court to afford them notice of the action"). Rule 23(e)(1), however, requires a court to "direct notice in a reasonable manner to all class members who would be bound by the proposal."

Where notice is required, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996) (to satisfy due process, notice must be reasonably calculated to apprise interested parties of the pendency of the actions and afford them an opportunity to present their objections). *See also Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1985) ("It is well settled that in the usual situation first-class mail and publication in the press fully satisfy the notice requirements of both Fed.R.Civ.P. 23 and the due process clause."). Rule 23 does not specify the form or contents of the notice, which are dictated by fundamental fairness and due process.

Here, the Parties propose to provide notice to all currently incarcerated individuals through their electronic tablets. In this way, each currently incarcerated Class Member will receive notice personally. The notice sets forth a brief summary, states the date, time and location of the hearing on final approval and that objections will be entertained, and provides the Class Member with contact information from which more information may be obtained. Upon request to ACJ, Class Members may obtain a copy of the Settlement Agreement.

The proposed notice is attached hereto as Exhibit 2. The Parties submit that this is an obvious and fair way to provide notice to the Class, and that the notice itself is reasonable, and jointly ask that the Court approve this plan.

F. Proposed Schedule

The Parties propose the following schedule:

- Notice to be provided to currently incarcerated Class Members within ten (10) days of entry of the preliminary approval order.
- Objections must be filed with the Court and received by counsel no later than fifty (50) days after entry of the preliminary approval order.
- Final Approval Hearing to be held approximately sixty (60) days after entry of the preliminary approval order.

A proposed order is attached to the accompanying Motion.

DATED: March 19, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March 2024, a copy of the foregoing was served via this Court's ECF as follows:

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