

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

RODNEY J. IRELAND, et al.,  
Plaintiffs,

-vs-

CHRISTOPHER D. JONES, Executive  
Director, North Dakota Department of  
Human Services, et. al.,  
Defendants.

Civil No. 3:13-CV-0003-PDW-ARS

**CLASS ACTION SETTLEMENT  
AGREEMENT**

**1. INTRODUCTION**

1.1 This Class Action Settlement Agreement (the "Settlement Agreement") is entered into as of \_\_\_\_\_, 2020, between Plaintiffs and appointed Class Representatives Rodney Ireland (Debt Class), Larry Rubey (Debt Class), Jeremy Johnson (Debt Class), Garrett Loy (Evaluation Class), Robert Lilley (SOTEP Class, Juvenile Subclass and RLUIPA Subclass), David Anderson (SOTEP Class and ADA Subclass), Jason Gores (SOTEP Class, ADA Subclass, Juvenile Subclass) and Oliver Wardlow III (SOTEP Class and ADA Subclass), Matthew Dyer (SOTEP Class), Terry Greak (SOTEP Class), Robert Hoff (SOTEP Class), Travis Wedmore (SOTEP Class) and John Westlie (SOTEP Class and Juvenile Subclass), on the one hand, and Defendants Christopher D. Jones, Executive Director, North Dakota Department of Human Services, in his official capacity,<sup>1</sup> State of North Dakota, North Dakota Department of Human Services (referred to here as "DHS"), North Dakota State

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<sup>1</sup> All personal capacity claims were dismissed with prejudice. ECF 244.

Hospital (referred to here as "NDSH") and Dr. Rosalie Etherington, Superintendent, North Dakota State Hospital, in her official capacity<sup>2</sup> (collectively referred to herein as "Defendants"), on the other, in order to settle all Released Claims in this action.

## **2. PERTINENT PROCEDURAL BACKGROUND**

2.1. On February 12, 2013, *pro se* Plaintiffs Rodney Ireland, Lester McGillis, and Gerald DeCoteau, persons civilly committed to the custody of the Executive Director of the DHS as sexually dangerous individuals pursuant to N.D.C.C. chapter 25-03.3, filed this action (the "Litigation") alleging that they were suffering violations of their constitutional rights relating to or arising from the Sex Offender Treatment and Evaluation Program ("SOTEP") operated by DHS/NDSH pursuant to N.D.C.C. chapter 25-03.3. ECF 1-1. On June 18, 2013, Magistrate Judge Karen Klein appointed attorneys Christopher Brancart and Joel Fremstad to represent Plaintiffs. ECF 27. Appointed counsel filed a first amended complaint on November 1, 2013, naming as defendants Maggie D. Anderson, Executive Director of the DHS, Alex Schweitzer, Superintendent of the NDSH, and Leann Bertsch, Director of the North Dakota Department of Corrections and Rehabilitation.<sup>3</sup> ECF 40. Plaintiffs subsequently amended their complaint several times to, *inter alia*, add and remove additional named Plaintiffs and remove certain claims for relief against Defendants, including to abandon monetary relief and to clarify and represent only equitable and declaratory relief was being sought against Defendants. ECF 368, p. 10, ECF 394, p. 35. Further, Defendant

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<sup>2</sup> All personal capacity claims were dismissed with prejudice. ECF 244.

<sup>3</sup> On May 14, 2019, pursuant to the request of the parties as part of the settlement of Plaintiffs' claims, the Court dismissed the claims against Leann Bertsch and the Department of Corrections and Rehabilitation. ECF 674. These former Defendants are not parties to this Settlement Agreement.

Christopher D. Jones was substituted for Maggie D. Anderson upon his appointment as Executive Director of DHS and Defendant Dr. Rosalie Etherington, Ph.D was substituted for Alex Schweitzer upon her appointment as Superintendent of the NDSH. ECF 188 and 514.

**2.2.** Following resolution of Defendants' motions to dismiss and Plaintiffs' motions to amend their complaint, Plaintiffs filed the final and operative Sixth Amended Complaint. ECF 246. In the Sixth Amended Complaint Plaintiffs, on behalf of themselves and persons similarly situated, sought equitable and declaratory relief against Defendants for (a) violations of their rights under the United States Constitution, including rights under the First, Fourth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and violations of due process and the equal protection of the laws or of equal privileges and immunities under the laws, all in violation of the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985(3) and 1986, (b) violations of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1, *et seq.* (RLUIPA), and (c) violations of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq* (ADA). Id. Defendants' answer to the Third Amended Complaint (ECF 184) was deemed the answer to the Sixth Amended Complaint. ECF 245. Defendants denied all material allegations of Plaintiffs' complaint. ECF 184.

**2.3.** On April 21, 2015, Plaintiffs moved for a preliminary injunction seeking an order protecting the exercise of their constitutional rights to access to counsel and the courts. ECF 170 through 173-2. Magistrate Judge Alice R. Senechal conducted a hearing on August 18, 2015. ECF 212. During the hearing, several matters raised by Plaintiffs' motion were either not in dispute or were matters that the parties determined

could be resolved. ECF 238, p. 92, ln. 5-11. At the conclusion of the hearing the parties agreed to attempt to reach an accord on certain issues. *Id.* The parties filed a joint report on October 14, 2015. ECF 261. Plaintiffs and Defendants then submitted post-hearing briefs. ECF 272, 277, 278 and 279. As set forth in Magistrate Judge Senechal's report and recommendation, Defendants amended or clarified SOTEP policies subsequent to the evidentiary hearing, specifically those dealing with "extended attorney visiting hours, permitting attorneys' staff to be present at visitations, permitting attorneys to use computers during visitations, conducting 'detailed' searches of SOTEP residents after attorney visits only for cause, making telephone service available for SOTEP residents to call their attorneys, and providing for 'prompt' return of legal mail confiscated during searches of SOTEP residents' rooms." ECF 284, pp. 3-4. Plaintiffs' briefing identified only three unresolved areas they contended were denials of their right to access to the courts: (a) Plaintiffs' attorneys not being allowed to use cell phones during in-person conferences with their SOTEP resident clients, (b) Plaintiffs' writings which identify SOTEP staff members by name being designating as contraband, and (c) SOTEP staff designating Plaintiffs' "internet legal materials" as contraband. *Id.* p. 4; ECF 279, p.1. Magistrate Judge Senechal recommended a preliminary injunction on the remaining issues presented by Plaintiffs be denied because "plaintiffs . . . do not have a fair chance of prevailing on their access to the courts claim.". ECF 284, p. 1. After Plaintiffs' objection to Magistrate Judge Senechal's report and recommendation, Chief District Judge Ralph Erickson adopted the report and recommendation and denied the issuance of a preliminary injunction. ECF 324.

2.4. On September 10, 2015, Defendants moved for partial summary judgment on certain aspects of Plaintiffs' claims. ECF 223-224 and 383. The deadline for Plaintiffs to respond was continued several times while Plaintiffs sought discovery. Plaintiffs filed their opposition to Defendants' motion on June 17, 2016, and cross-moved for partial summary judgment on issues regarding the facial validity of N.D.C.C. chapter 25-03.3. ECF 366-367 and 393. On September 22, 2016, Magistrate Judge Senechal issued a report and recommendation on the parties' cross-motions, recommending the granting in part and denying in part both motions. ECF 403. Magistrate Judge Senechal recommended that partial summary judgment be granted in favor of Defendants as to:

- (A) all claims based on allegations that Rodney J. Ireland, Matthew Graham, Christopher Simon, John Westlie, Michael Kruk, and Robert Lilley were minors during their SDI commitment proceedings;
- (B) plaintiffs' equal protection claim based on plaintiffs being similarly situated to persons incarcerated because of criminal convictions;
- (C) plaintiffs' equal protection claim based on plaintiffs being similarly situated to persons requiring treatment under chapter 25-03.1;
- (D) plaintiffs' claim that chapter 25-03.3 is unconstitutional on its face because it does not include a right to a jury trial in SDI commitment proceedings;  
and
- (E) allegations of the Sixth Amended Complaint that chapter 25-03.3's (1) allowing for indefinite commitment; (2) allowing for commitment without a

criminal conviction; or (3) allowing for commitment based on clear and convincing evidence violates substantive due process on its face.

ECF 403 at pp. 40-41.

**2.5.** Magistrate Judge Senechal also recommended granting Plaintiffs' motion for partial summary judgment on the ground that N.D.C.C. chapter 25-03.3 is unconstitutional on its face "because it does not require that the defendants initiate court proceedings for release of individuals who no longer meet SDI criteria." ECF 403 at p. 41.

**2.6.** Magistrate Judge Senechal further recommended denying plaintiff's cross-motion for partial summary judgment "insofar as it concerns a claim that chapter 25-03.3 is facially unconstitutional because it allows SDI commitment both without a prior criminal conviction and without requiring proof beyond a reasonable doubt of sexually predatory conduct." Id.<sup>4</sup>

**2.7.** After both Plaintiffs and Defendants filed objections to this report and recommendation, on March 22, 2017, Chief Judge Erickson issued an order that

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<sup>4</sup> Magistrate Judge Senechal also recommended the denial of Defendants' motion to dismiss the claims of Larry Rubey, which motion was based on Rubey having been released from DHS from commitment as an SDI by state court order. ECF 403, pp. 6 and 42. This recommendation was based on the Court's prior decision regarding others who had been released. Id., p. 6 (citing ECF 244, p. 4). Further, Magistrate Judge Senechal recommended denial of Defendants motion "as to plaintiffs' claims that application of chapter 25-03.3 to those whose only sexually predatory conduct occurred while they were juveniles constitutes unconstitutional cruel and unusual punishment." Id. at p. 42. Except as to the Juvenile Subclass, Plaintiffs have withdrawn all other claims under 42 U.S.C. §§ 1983, 1985(e), 1986 of cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. ECF 575-4, p. 17. Magistrate Judge also recommended denial of Defendants partial summary judgment "on any matter other than the plaintiffs' claim that chapter 25-03.3's annual examination requirement does not meet substantive due process standards." ECF 403, p. 42.

adopted the report and recommendation. ECF 519. In a subsequent order Judge Erickson denied reconsideration of his decision with respect to the part of the decision that held “[a]s a matter of law, North Dakota Century Code chapter 25-03.3 is unconstitutional on its face because it does not require that the defendants initiate court proceedings for release of individuals who no longer meet SDI criteria” and denied Defendants’ alternative request to stay the decision. ECF 535.

**2.8.** Meanwhile, on April 30, 2016, Plaintiffs moved for certification of several classes and subclasses pursuant to Fed. R. Civ. P. 23(b)(2). ECF 343 through 345-19 and 368. Defendants resisted this motion. ECF 361 through 362-1. On August 29, 2016, Magistrate Judge Senechal issued a report and recommendation to grant in part and deny in part Plaintiffs’ motion for class certification. ECF 394. After Defendants filed an objection to this class certification recommendation, on March 21, 2017, Chief Judge Erickson issued an Order adopting the report and recommendation for class certification under Fed. R. Civ. P. 23(b)(2). ECF 518.

**2.9.** The classes and subclasses, as certified by Judge Erickson, are as follows:

- (A) “SOTEP Class,” consisting of all persons civilly committed to the DHS pursuant to North Dakota Century Code chapter 25-03.3 and confined in the Sex Offender Treatment and Evaluation Program [“SOTEP”] at NDSH during the pendency of this litigation, with three subclasses consisting of:

- (1) “ADA Subclass,” consisting of “all SOTEP Class members with disabilities as defined under the Americans with Disabilities Act (ADA Subclass)”;
  - (2) “Juvenile Subclass,” consisting of “all SOTEP Class members whose civil commitment was based on ‘sexually predatory conduct’ (as defined by North Dakota Century Code section 25-03.3-01(9)) committed while they were minors (Juvenile Subclass)”;
  - (3) “RLUIPA Subclass,” consisting of “all SOTEP Class members whose religious exercise has been substantially burdened while civilly committed (Religious Land Use and Institutionalized Persons Act, or ‘RULIPA Class’);
- (B) “Evaluation Class,” consisting of all persons in custody at NDSH for evaluation as to whether they are SDIs pursuant to North Dakota Century Code section 25-03.3-11, during the pendency of this litigation; and
- (C) “Debt Class,” consisting of “all persons from whom DHS or NDSH has demanded payment [from] January 1, 2004, through the pendency of this litigation, for their civil commitment as SDIs pursuant to North Dakota Century Code chapter 25-03.3.”

ECF 394 at p.36, ECF 518.

**2.10.** Pursuant to the class certification order, the following Plaintiffs were appointed as representatives of the classes and subclasses:



SOTEP Class: David Anderson, Matthew Dyer, Jason Gores, Terry Greak, Robert Hoff, Robert Lilley, Oliver Wardlow III, Travis Wedmore, and John Westlie.

ADA Subclass: David Anderson, Jason Gores, and Oliver Wardlow III.

Juvenile Subclass: Jason Gores, Robert Lilley, and John Westlie.

RLUIPA Subclass: Robert Lilley.

Evaluation Class: Garrett Loy.

Debt Class: Rodney Ireland, Larry Rubey, and Jeremy Johnson.

ECF 343, ECF 394 at p. 26 n.12, ECF 518.

**2.11.** Pursuant to the class certification order, the Court appointed Brancart & Brancart and the Fremstad Law Firm as Class Counsel. ECF 394 at p. 37, ECF 518. Brancart & Brancart and the Fremstad Law Firm, and all attorneys in those law firms, shall be collectively referred to herein as “Class Counsel”

**2.12.** The class certification order did not direct Class Counsel to provide notice of the class certification order. ECF 394 and 518.

**2.13.** On November 9, 2017, Defendants filed a second motion for partial summary judgment. ECF 603, 603-1 and 628. Defendants contended the Eighth Circuit’s case law, including *Karsjens v. Piper*, 845 F.3d 394 (8th Cir. 2017), mandated dismissal of “all claims for which Plaintiffs seek to assert a constitutional right to treatment or that the treatment and assessment received is somehow inadequate, inappropriate, ineffective, or unreasonable.” ECF 603-1, p. 2.<sup>5</sup> Plaintiffs opposed the

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<sup>5</sup> Defendants’ partial summary judgment motion covered all allegations and claims made by Plaintiffs in their Sixth Amended Complaint of inadequate, ineffective and

motion. ECF 617 through 620-1 and 622-1 through 623-1. On July 30, 2018, Magistrate Judge Senechal issued a report and recommendation recommending granting in part and denying in part Defendants' motion for partial summary judgment. ECF 648.

Specifically, Magistrate Judge Senechal recommended that

- (A) Summary judgment be granted on plaintiffs' substantive due process claims that treatment is inadequate, inappropriate, ineffective, or unreasonable;
- (B) Summary judgment be denied as to plaintiffs' substantive due process claims based on withholding of treatment as violating a fundamental liberty interest to be free from unwarranted physical restraint;
- (C) Summary judgment be denied as to any procedural due process claim relating to adequacy, appropriateness, effectiveness, or reasonableness of treatment or assessment; and
- (D) Summary judgment be denied in all other respects.

ECF 648 at pp. 40-41.

**2.14.** Both Plaintiffs and Defendants filed an objection to Magistrate Judge Senechal's report and recommendation. ECF 652, 653 and 660.

**2.15.** On January 14, 2019, Chief District Judge Daniel Hovland issued an order that adopted the part of Magistrate Judge Senechal's report and recommendation granting partial summary judgment in Defendants' favor and rejected the part of the

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unlawful treatment and assessment, and including those set out in Sections 74-87 and 150-156 of the Sixth Amended Complaint (ECF 246), and Items II(A)(2)(a)-(d), (g)-(i) and (k) found in Class Counsel's statement of remaining issues (ECF 575-4).

report and recommendation denying partial summary judgment. Judge Hovland's decision resulted in granting Defendants' motion for partial summary judgment (found at ECF 603, 603-1 and 628) in its entirety. ECF 669.

**2.16.** Specifically, Judge Hovland granted partial summary judgment in Defendants' favor on Plaintiffs' substantive and procedural due process claims, ruling that the Eighth Circuit's case law, including *Karsjens v. Piper*, 845 F. 3d 394 (8th Cir. 2017), compelled a finding that Plaintiffs' as-applied due process claims must be dismissed, that there does not exist "a violation of a fundamental constitutional liberty interest or right, created under either federal or state law," and that there is no "conduct by the Defendants which shocks the conscience." ECF 669 at pp. 18 and 20. Because no liberty interest had been deprived, Judge Hovland also held that Plaintiffs' procedural due process claims must be dismissed. *Id.* at p. 20-21.

**2.17.** Judge Hovland in his January 14, 2019 order, noted that "[i]n light of the recently developed case law and the Court's ruling on the as-applied due process claims as set forth below, the Court would permit the parties an opportunity to file a renewed motion for summary judgment on the Court's previous granting of Plaintiffs' partial summary judgment motion that had concluded N.D.C.C. chapter 25-03.3 is "unconstitutional on its face because it does not require that defendants initiate court proceedings for release of individuals who no longer meet SDI criteria." ECF 669 at p. 3 n.3, referring to ECF 519 and 535.

**2.18.** During the course of this litigation Plaintiffs have conducted extensive written discovery and the Court has made multiple rulings on the scope of discovery. See, e.g., ECF 263, 287, 352, 416, 493, 548, 572, 573, 576, 581 and 601. Defendants

have produced approximately 900,000 pages of documents concerning the operation of SOTEP and treatment of individual SDIs and provided additional compilations of information in interrogatory responses and by way of data spreadsheets. Both Class Counsel and Plaintiffs' retained expert, Dr. Robin Wilson, toured the SOTEP facility. The case has been litigated for more than six years.

**2.19.** This Settlement Agreement was entered into after extensive arms-length negotiations between counsel for the parties over the course of over 18 months and with the assistance of Magistrate Judge Senechal who conducted settlement conferences on November 17 and December 13, 2017, and March 21, 2019. Between settlement conferences the parties continued their negotiations. Following the March 21, 2019 settlement conference, the parties continued to negotiate with the assistance of Magistrate Judge Senechal and reached the agreement set forth herein.

**2.20.** Defendants denied and continue to deny all liability with respect to all of the claims asserted against them and have asserted various defenses to those claims. Nothing herein shall constitute an admission of liability by Defendants or be used as evidence of liability.

**2.21.** Class Counsel believes that the settlement embodied in this Settlement Agreement is a fair and reasonable resolution of this action and considers it to be in the best interest of the Class Members, to enter into the Settlement Agreement, including but not limited to the releases and agreement to dismiss the Claims as described herein.

**2.22.** The parties desire and intend to seek Court approval of the proposed class settlement as set forth in this Settlement Agreement.

**WHEREFORE IT IS STIPULATED AND AGREED** by and among the undersigned that the Litigation and all the Released Claims shall be settled and compromised, subject to approval of the Court, and further subject to the all of the terms and conditions set forth below.

**3. SETTLEMENT TERMS**

**3.1 Incorporation of Introduction and Procedural Background.** The above Introduction and Procedural Background are hereby restated and incorporated into and made part of the Settlement Terms.

**3.2 Defined Terms.** In addition to the terms that have been defined herein, the following defined terms shall also apply to this entire Class Action Settlement Agreement:

**3.2.1** As used herein, the term Plaintiffs, shall mean all parties currently listed or who, at any time, during the pendency of this matter had been listed in the Court records as a plaintiff in this action.

**3.2.2** As used herein, the term “Absent Class Members” shall mean each and every person, who is not a Plaintiff, but who meets the criteria described in ECF 394 and 518 for the SOTEP Class, ADA Subclass, Juvenile Subclass, RLUIPA Subclass, Evaluation Class and/or Debt Class.

**3.2.3** As used herein, the term “Class Members” shall mean Plaintiffs, the Class Representatives and the Absent Class Members. The parties recognize and acknowledge that some Plaintiffs likewise serve as Class Representatives.

**3.2.4** As used herein, the term “Class Representatives” shall mean the SOTEP Class Representatives, the ADA Subclass Representatives, the Juvenile

Subclass Representatives, the RLUIPA Subclass Representative, the Evaluation Class Representative and the Debt Class Representatives.

**3.2.5** As used herein, the term “SOTEP Class Members” shall mean Plaintiffs and the Absent Class Members that meet the criteria of the SOTEP Class described in ECF 394 and 518.

**3.2.6** As used herein, the term “SOTEP Class Representatives” shall collectively mean David Anderson, Matthew Dyer, Jason Gores, Terry Greak, Robert Hoff, Robert Lilley, Oliver Wardlow III, Travis Wedmore, and John Westlie.

**3.2.7** As used herein, the term “ADA Subclass Members” shall mean Plaintiffs and Absent Class Members that meet the criteria of the ADA Subclass described in ECF 394 and 518.

**3.2.8** As used herein, the term “ADA Subclass Representatives” shall collectively mean David Anderson, Jason Gores, and Oliver Wardlow III.

**3.2.9** As used herein, the term “Juvenile Subclass Members” shall mean Plaintiffs and Absent Class Members that meet the criteria of the Juvenile Subclass described in ECF 394 and 518.

**3.2.10** As used herein, the term “Juvenile Subclass Representatives” shall collectively mean Jason Gores, Robert Lilley, and John Westlie.

**3.2.11** As used herein, the term “RLUIPA Subclass Members” shall mean Plaintiffs and Absent Class Members that meet the criteria of the RLUIPA Subclass described in ECF 394 and 518.

**3.2.12** As used herein, the term “RLUIPA Subclass Representative” shall mean Robert Lilley.

**3.2.13** As used herein, the term “Evaluation Class Members” shall mean Plaintiffs and Absent Class Members that meet the criteria of the Evaluation Class described in ECF 394 and 518.

**3.2.14** As used herein, the term “Evaluation Class Representative” shall mean Garrett Loy.

**3.2.15** As used herein, the term “Debt Class Members” shall mean Plaintiffs and Absent Class Members that meet the criteria of the Debt Class described in ECF 394 and 518.

**3.2.16** As used herein, the term “Debt Class Representatives” shall collectively mean Rodney Ireland, Larry Rubey, and Jeremy Johnson.

**3.2.17** As used herein, the term “Released Claims” shall mean any and all claims, causes of action, assertions or allegations for injunctive, declaratory relief or other equitable relief only and any and all claims, causes of action, assertions or allegations incidental to such injunctive, declaratory relief or other equitable relief that any Class Members now have or at any time ever have had, whether arising under federal, state, or local law, and that were asserted, required to be asserted, or that could have been asserted by or on behalf of the Class Members in the Litigation against any of Defendants under any legal theory, including all such claims, causes of action, assertions or allegations relating to or in any manner arising from Defendants’ policies, practices, procedures, acts or omissions in connection with the operation of the SOTEP and/or the conditions in or at the SOTEP. The term “Released Claims” includes, but is not limited to, all such claims, causes of action, assertions or allegations for injunctive, declaratory or other equitable relief only brought under the First, Fourth, Sixth, Eighth

and Fourteenth Amendments pursuant to the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985(3) and 1986, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1, *et. seq.*, and/or the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* The term “Released Claims” does not include any claim or cause of action which arises or accrues after the Final Effective Date of this Settlement as defined below in Section 11. As used in this Section 3.2.17, claims, causes of action, assertions or allegations incidental to the injunctive, declaratory relief or other equitable relief shall mean those that flow directly from liability to the class as a whole on the claims forming the basis of the injunctive, declaratory relief or other equitable relief.

**3.2.18** As used herein the term “SDI” shall be a person who has been found to be a sexually dangerous individual, as defined at N.D.C.C. § 25-03.3-01(8), and committed to the custody of the Executive Director of the DHS pursuant to N.D.C.C. chapter 25-03.3.

**3.2.19.** As used herein, the term “parties” refers to the Class Members and Defendants.

**3.3 Agreement as to the RLUIPA Subclass.** In full and complete resolution of any and all Released Claims of the RLUIPA Subclass and RLUIPA Subclass Members, the parties agree to the following:

**3.3.1 Possession and Use of Eagle Feathers.**

(a) Within 30 days after the Final Effective Date, DHS/NDSH will modify Section 1(a) of the Procedures portion of the DHS/NDSH SOTEP policy on “The Possession and Use of Eagle Feathers” so as to read as follows:



The person requesting to possess and use the eagle feather must present to chaplaincy and security either [a] the proper certification from the Fish and Wildlife Department stating that they are authorized to carry the feather or [b] a certification of tribal enrollment from the Bureau of Indian Affairs.

**(b)** The balance of “The Possession and Use of Eagle Feathers” SOTEP policy shall remain unchanged.

**(c)** From and after the adoption of the modified policy described in Section 3.3.1(a), the possession of eagle feathers by a person within ICU at SOTEP will be allowed upon the approval of a multi-disciplinary team's professional judgment regarding the specific situation, taking into account safety and security of other clients and staff. Without limiting the professional judgment that is to be exercised, in the event the person is in such a condition that possession of eagle feathers would be a risk of harm to the person or others, then the possession of eagle feathers within ICU may necessitate the presence of the chaplaincy. Further, in the event the person is in a condition where possession of any items of personal property would present an immediate risk of self-injury to the person or harm to others, the possession of eagle feathers would not be allowed.

**(d)** The terms of Section 3.3.1(c) above do not represent a change in application of SOTEP policy or procedure by DHS/NDSH, but DHS/NDSH agrees to incorporate said provision within the “Observation Area property allowance” SOTEP policy.

**3.3.2 Tobacco Free Environment Policy.** Within 30 days after the Final Effective Date, DHS/NDSH will modify its Tobacco Free Environment SOTEP policy to allow for tobacco use for prayer ties and sweat lodges so that the smoking materials used during prayer ties and sweat lodges may contain up to 1% tobacco. Obtaining such tobacco materials and creating the mixture for a prayer tie and sweat lodges will be through the chaplaincy.

**3.3.3 Sweat Lodges.**

(a) There will be no change in how DHS/NDSH request sweat lodges or reimburses/pays those that perform sweat lodges at SOTEP. DHS/NDSH, through the chaplaincy, has historically and will continue to request sweat lodges at least quarterly and it reimburses those that come to SOTEP to conduct them for their cost and expenses.

(b) DHS/NDSH is committed to and will continue to make quarterly requests for sweat lodges at SOTEP, whether the chaplaincy position is filled or not.

**3.3.4 Religious Materials.** From and after the Final Effective Date, DHS/NDSH will include, as part of the SOTEP client handbook, the document attached hereto as Exhibit "1."

**3.3.5 Personal Drumming.** From and after the Final Effective Date, DHS/NDSH agrees to post a schedule within the units at SOTEP as to when drumming of personal drums for religious purposes may be conducted.

**3.4 Agreement as to the ADA Subclass.** In full and complete resolution of any and all Released Claims of the ADA Subclass and the ADA Subclass Members, the parties agree to the following:

**3.4.1 ADA Resolution.** Defendants provide the following non-exhaustive list of changes that occurred within SOTEP since 2016:

- 2016 Community Transition Center expansion completed (See produced document bates stamped NDSH0653782).
- 2016 SOTIPS (Sex Offender Treatment Intervention and Progress Scale) implemented (See produced document bates stamped NDSH0653781).
- March 17, 2017 SOTEP Treatment Mall opens.
- May 15, 2017 Stage and Skills System changed into one level system (See produced document bates stamped NDSH0653521-NDSH0653526).
- June 5, 2017 Privileging System revised.
- July 1, 2017 Personal property policy revised.
- August, 2017 Secure 3 unit becomes an unlocked unit.
- September 29, 2017 SOTEP client outdoor time expanded.
- October 24, 2017 SOTEP Client representative appointed to SOTEP property committee.
- 2016-2017 NDSH clinicians within SOTEP have participated in continuing education provided by the Association for the Treatment of Sexual Abusers (ATSA) and ATSA's Minnesota Chapter (MnATSA) to reinforce progressive rehabilitation. This continuing education led to a change in the model of care within SOTEP, in

accordance with best practices, in March, 2018 to the Good Lives model of care.

**3.4.2 Plaintiffs' contentions.** Plaintiffs contend that due to, and without regard to the reasons for, the changes by DHS/NDSH within SOTEP in 2016 and 2017, including those listed above in Section 3.4.1, that the conditions at SOTEP which formed a substantial part of the basis for Plaintiffs' ADA claim have been ameliorated and Plaintiffs therefore agree to the settlement of Plaintiffs' ADA claim.

**3.4.3 Defendants' contentions.** Defendants contend that they have continuously complied with the mandates of the ADA and that the changes within SOTEP's policy, practice and programming, set forth in Section 3.4.1 above, were implemented as part of DHS/NDSH's continuing effort to update and revise its policies, procedures and practices to meet best practices and that none of these changes were a result of or caused by any litigation, including the case of *Ireland v. Jones*. Defendants further contend that any changes in policies, practices, or programming that have occurred in 2016 and 2017, including those set forth in Section 3.4.1 above, did not then render SOTEP compliant with the ADA because Defendants maintain SOTEP has continuously been in compliance with the mandates of the ADA regardless of any changes that may have occurred since 2016. Defendants expressly deny any and all liability under the ADA and enter into this agreement in settlement of a disputed claim.

**3.4.4 No Use of Listing.** It is agreed by the Class Members and Defendants that none of the changes listed above in Section 3.4.1 constitutes an admission, finding, conclusion or determination regarding compliance or non-compliance with the ADA.

**3.4.5 No Policy/Procedure Change.** Nothing in this Settlement Agreement for the Released Claims of the ADA Subclass and ADA Subclass Members requires a change or other modification to any policy, procedure or programming by Defendants.

**3.5 Agreement as to the Evaluation Class.** In full and complete resolution of any and all Released Claims for the Evaluation Class and Evaluation Class Members, the parties agree as follows:

**3.5.1 Evaluation Status Policy.** Within 30 days after the Final Effective Date, DHS/NDSH will adopt the Evaluation Status Policy attached hereto as Exhibit 2.

**3.6 Agreement as to the Debt Class.** In full and complete resolution of any and all Released Claims for the Debt Class and Debt Class Members, the parties agree to the following:

**3.6.1 Collection of expended sums and/or for services provided.**

(a) Any pre-judgment collection by DHS/NDSH for expended sums and/or for services provided by DHS under N.D.C.C. chapter 25-03.3 will not be through a collection agency.

(b) With respect to expended sums and/or for services provided by DHS under N.D.C.C. chapter 25-03.3, from and after the Final Effective Date DHS/NDSH may seek judgments pursuant to N.D.C.C. § 25-03.3-21, as may be amended.

(c) Any judgment obtained by DHS/NDSH pursuant to N.D.C.C. § 25-03.3-21, as may be amended, may be assigned by DHS/NDSH to a collection agency.

(d) DHS/NDSH may request a collection agency to pursue a judgment for expended sums and/or services provided by DHS under N.D.C.C. chapter 25-03.3, and in such a circumstance, DHS/NDSH will provide the collection agency with a notice of and require the collection agency to obtain the judgment pursuant to N.D.C.C. § 25-03.3-21, as may be amended.

(e) Nothing in this Settlement Agreement alters, modifies, limits or in any manner changes debt or claim recovery that may be pursued by DHS/NDSH under N.D.C.C. §§ 50-06.3-03 and 50-06.3-04 or subsequent to the death of any Class Member, including pursuing claims and recovery described in N.D.C.C. §§ 50-01-21, 50-06.3-07, 50-24.1-07, or any defenses that may be available to such debt or claim recovery, including provisions of N.D.C.C. § 25-03.3-21 when applicable.

**3.6.2 Collection Return Notice.** Within 30 days of the Final Effective Date, DHS/NDSH will send out a notice, in the form attached hereto as Exhibit 3, advising SDIs and those discharged from commitment at the NDSH as an SDI, who had the collection of expended sums and/or for services provided by DHS under N.D.C.C. chapter 25-03.3 turned over to a collection agency, that such accounts have been returned to DHS. The notice to be provided under this Section 3.6.2 shall be sent to the last address known to DHS/NDSH of the SDI and those discharged from commitment at NDSH as an SDI, as updated by the list of Class Member addresses provided by Class Counsel pursuant to Sections 6.4 and 6.5.

**3.6.3 Collection Agency Requests.** Within 30 days of the Final Effective Date, DHS/NDSH will request the collection agencies, who had been previously requested to collect unpaid amounts of expended sums and/or services

provided by DHS under N.D.C.C. chapter 25-03.3, to send out a notice to credit reporting agencies that they are no longer involved in such collections. Further, DHS/NDSH will request each of these collection agencies to send out a notice of retraction of any derogatory credit comments the collection agency may have made to a credit reporting entity regarding its collections of expended sums and/or for services provided by DHS under N.D.C.C. chapter 25-03.3.

**3.6.4 Notice on Admission.** No later than 30 days after the Final Effective Date, upon an admission to NDSH pursuant to N.D.C.C. chapter 25-03.3, each person will be provided a notice, in the form set forth at Exhibit 4. A copy of N.D.C.C. § 25-03.3-21, as amended, will be attached to this notice. Each person will be requested to sign an acknowledgment of having received this notice and copy of the statute.

**3.6.5 Periodic Expense Reports.**

(a) DHS/NDSH will continue to send periodic expense/expended sum reports to committed SDI's and those that have been discharged from commitment at NDSH as an SDI describing the amount of expended sums and/or for the services provided by DHS under N.D.C.C. chapter 25-03.3 that from and after the Final Effective Date will be substantially in the format set forth in Exhibit 5. Each periodic expense/expended sum report will clearly state, "This is not a bill," and contain a copy of the notice that was provided at the time of admission and N.D.C.C. § 25-03.3-21, as may be amended.

(b) Committed SDIs and those who have been discharged from commitment at NDSH as an SDI will receive periodic expense/expended sum reports,

pursuant to Section 3.6.5(a) above, prior to DHS/NDSH obtaining a judgment under N.D.C.C. § 25-03.3-21.

**3.6.6 Refund.** DHS/NDSH will refund a total of (but not exceeding) \$9,132.95 as described in this Section 3.6.6. The subset of Debt Class Members who will be receiving any portion of this refund will be referred to as the “Debt Refund Subclass Members.” The timeline and procedure for issuing refund payments to the Debt Refund Subclass Members is set forth in Section 10 below. In order to be eligible and to obtain any part of the refund under this Section 3.6.6, the respective Debt Refund Subclass Members must execute and deliver to Defendants a release in the form attached hereto as Exhibit 6 (the “Debt Refund Subclass Release”). Nothing herein, including the refunding described in this Section 3.6.6, shall require any further or additional refund or payment by DHS/NDSH of funds it may receive after the Final Effective Date (as defined in Section 11) for expended sums and/or for services provided by DHS/NDSH under N.D.C.C. chapter 25-03.3.

**3.7 Signature of Class Representatives.**

**3.7.1** The parties agree that this Settlement Agreement is valid and effective for all purposes when signed by the RLUIPA Subclass Representative, the Evaluation Class Representative, one of the SOTEP Class Representatives, one of the ADA Subclass Representatives, one of the Juvenile Subclass Representatives and one of the Debt Class Representatives. The signatures of each of the SOTEP Class Representatives, ADA Subclass Representatives, Juvenile Subclass Representatives and Debt Class Representatives is not required.



**3.7.2** The Class Members who do not sign this Settlement Agreement are and shall be subject to and bound by all of the terms and conditions of this Settlement Agreement, including the release, the Preliminary Approval Order issued pursuant to Section 8, and the Final Order issued pursuant to Section 9.

**3.7.3** In the event Class Counsel are unable to obtain a signature of the RLUIPA Subclass Representative, the Evaluation Class Representative, one of the SOTEP Class Representatives, one of the ADA Subclass Representatives, one of the Juvenile Subclass Representatives and one of the Debt Class Representatives, Class Counsel shall still move the Court to approve this Settlement Agreement pursuant to Fed. R. Civ. P. 23 and to authorize Class Counsel to sign the Settlement Agreement for and on behalf of said Class or Subclass. Upon the Court issuing an order authorizing Class Counsel to sign the Settlement Agreement for and on behalf of any Class or Subclass, each Plaintiff and the Class Members of said Class or Subclass, are and shall be subject to and bound by all of the terms and conditions of this Settlement Agreement, including the release, the Preliminary Approval Order issued pursuant to Section 8 and the Final Order issued pursuant to Section 9 and the Court shall be authorized to provide Preliminary Approval and Final Approval of this Settlement Agreement for such affected Class or Subclass.

**3.8 Motion to Vacate Order.** The Class Members and Class Counsel shall not oppose, or otherwise cause to be opposed, Defendants' motion to vacate that part of the Court's prior orders (ECF 519 and 535) and report and recommendation (ECF 403) which found N.D.C.C. 25-03.3 to be "unconstitutional on its face because it does not require that defendants initiate court proceedings for release of individuals who no

longer meet SDI criteria.” Defendants’ motion to vacate shall be made so as to be heard in conjunction with the Court’s hearing on final approval of this Settlement Agreement, as provided in Section 9 below.

**3.9 Petition for Attorneys’ Fees and Costs.** Defendants agree to pay Class Counsel’s attorneys’ fees and costs in the amount of \$320,000.00 upon and subject to Court approval as required by Fed. R. Civ. P. 23(h). Class Counsel shall petition the Court for approval of the award of attorneys’ fees and costs, in the total amount of \$320,000.00, by motion (“Fee Motion”) to be heard in conjunction with the Court’s hearing on final approval of this Settlement Agreement, as provided in Section 9 below. Defendants agree not to oppose or cause to be opposed Class Counsel’s Fee Motion so long as the amount requested does not exceed the total amount set forth in this Section 3.9. Defendants shall make payment of the amount awarded by the Court, (being in an amount up to but not exceeding \$320,000.00), made payable to Brancart & Brancart, within 30 days of the Final Effective Date.

**3.10 Release**

**3.10.1** Upon the Final Effective Date of this Settlement Agreement, as defined below in Section 11, the Class Members shall, for all purposes, have, and shall be deemed to have given, a full and complete release of the Released Claims, and shall forever discharge Defendants, and each of their respective present and former board members, employees, officers, directors, managers, principals, agents, representatives, administrators, predecessors, successors, affiliates, assignors, assignees, related entities and insurers from the Released Claims, which release and discharge shall forever bar the Class Members from asserting, alleging, filing, or prosecuting,

participating in or in any manner pursuing, for their own behalf, any of the Released Claims in any lawsuit, action, claim or charge in any federal, state or local court or administrative agency.

**3.10.2** If, on or after the Final Effective Date, any of the Class Members assert, allege, file, prosecute, participate in or in any manner pursue, for their own benefit, any of the Released Claims in any lawsuit, action, claim or charge against any of Defendants or any matter released and discharged under this Settlement Agreement, Defendants are authorized, without notice, to file a copy of this Settlement Agreement with the court or other forum where such lawsuit, action, claim or charge is filed, and seek an order to dismiss, with prejudice, any such lawsuit, action, claim or charge or any matter released by this Settlement Agreement.

**3.10.3** Nothing in this Settlement Agreement, however, shall be deemed a release of the parties' respective rights and obligations under this Settlement Agreement.

**3.10.4** The release described in this Section 3.10 shall not apply to Matthew Dyer's purported claims, if any exist, to seek a refund from DHS/NDSH of payments received from Dyer's Social Security Disability Income. Plaintiff Dyer contends that he is entitled to a refund of those payments. Defendants deny any such claim exists. Nothing in this Settlement Agreement releases, waives or otherwise alters or affects any claim of Dyer's or defense of Defendants to such purported claim.

**3.10.5 No Waiver of Res Judicata/Collateral Estoppel** Nothing herein is, nor shall it be deemed, construed or otherwise found to be a waiver, release, alteration, concession or admission regarding the effect of this Settlement Agreement

and/or the principles of res judicata or collateral estoppel upon any claim, cause of action, assertion or allegation that may be found to be excluded from the Released Claims, if any.

**3.11 Request for Dismissal.** Plaintiffs and Class Representatives, on behalf of themselves and all Class Members, and in consideration of Defendants' agreement to take the actions described herein, shall execute and file all necessary documents to cause the Litigation to be dismissed, with prejudice and in total, reserving jurisdiction solely for purposes of enforcement of the terms of this Settlement Agreement.

#### **4. DENIAL OF LIABILITY**

**4.1** By entering into this Settlement Agreement, it is understood that Defendants do not admit and, in fact, expressly deny that they have engaged in any wrongful or unlawful conduct or activity. Nothing herein shall constitute an admission of liability or be used as evidence of liability.

#### **5. NO EFFECT ON PROCEEDINGS UNDER N.D.C.C. CHAPTER 25-03.3**

**5.1** Nothing in this Settlement Agreement or the releases or dismissals resulting from the Settlement Agreement shall preclude any party subject to N.D.C.C. chapter 25-03.3, including, but not limited to, any of the Class Members or Defendants, from making any claim, defense or argument for or against civil commitment or continued civil commitment in any proceeding brought pursuant to N.D.C.C. chapter 25-03.3. Further, nothing in this Settlement Agreement may be used in making any claim, defense or argument opposing or in support of civil commitment or continued civil commitment in any proceeding.

**6. NOTICE TO THE CLASSES**

**6.1** Not later than 3 days after this Settlement Agreement is filed with the Court, Class Counsel shall provide to Defendants the state of residence for each of the Class Members, to the extent Class Counsel has such information, so as to permit Defendants to provide notice under 28 U.S.C. § 1715(b). No later than seven (7) days prior to the date of the Court's Fairness Hearing described in Sections 8 and 9 below, the attorneys for Defendants shall file a notice with the Court describing the content of the notices (See 28 U.S.C. § 1715(b)(1)-(8) and each "appropriate State official" and each "appropriate Federal official" (See 28 U.S.C. § 1715(a)(1)-(2)) who were provided the notice under this Section 6.1.

**6.2** Not later than 7 days after entry of the Court's Preliminary Approval Order, as defined and described in Section 8 below, Defendants shall provide Class Counsel with a complete list of persons currently civilly committed and those who have been on evaluation status in SOTEP at NDSH at any time during the pendency of the Litigation. Prior to providing the list under this Section 6.2, the currently existing qualified protective order shall be amended, if necessary, so as to allow for such list to be provided by Defendants.

**6.3** Not later than 14 days after entry of the Court's Preliminary Approval Order, as defined and described in Section 8 below, Defendants will cause this Settlement Agreement (along with all Exhibits referenced herein), the Preliminary Approval Order and the Class Notice to be placed within a secure location within each SOTEP unit at NDSH and made available for review upon request for review by residents under the conditions set out in the DHS/NDSH policies and SOTEP

handbook. NDSH will assure that a copy of those documents is available on each unit until the date of the Fairness Hearing that is described in Sections 8 and 9 below.

**6.4** Not later than 14 days after the entry of the Preliminary Approval Order, as defined and described in Section 8 below, the Class Counsel shall send the notice attached hereto as Exhibit 7 (the "Class Notice"), as approved by the Court, to the Class Members by first class mail, postage prepaid, with a copy of each addressed envelope used to transmit each mailed Class Notice being provided to Counsel for Defendants. Prior to mailing the Class Notice, Class Counsel will identify the most current available address of each of the Class Members who are not current residents of SOTEP.

**6.5** With respect to each Class Notice returned undelivered but with a forwarding address before the end of the time within which the Class Members may object to the Settlement Agreement, Class Counsel shall re-mail the Class Notice to that forwarding address, with a copy of each envelope used to transmit each re-sent Class Notice being provided to Counsel for Defendants. With respect to each Class Notice returned as undeliverable before the deadline for objections to the Settlement Agreement, Class Counsel shall promptly attempt to determine a more current address using a reasonable search method, such as a proprietary database (e.g., Accurint), and shall resend the Class Notice via first class mail to any more recent addresses reflected in those records.

**6.6** No later than seven (7) days prior to the date of the Court's Fairness Hearing described in Sections 8 and 9 below, the Class Counsel shall file an affidavit or declaration with the Court certifying that the Class Notice has been provided to the

Class Members pursuant to Sections 6.4 and 6.5 of this Settlement Agreement, and as directed in the Preliminary Approval Order.

## **7. OBJECTIONS TO THE PROPOSED SETTLEMENT**

**7.1** Any Class Member, except the Class Representatives that have signed this Settlement Agreement, may comment on or object to the terms of this Settlement Agreement and/or Class Counsel's application for attorneys' fees and costs by mailing a written "Objection to Settlement" to the Clerk of Court, United States District Court, 655 1st Ave. North, Suite 130, Fargo, ND 58102, with copies to Class Counsel and Counsel for Defendants at the addresses set forth in Section 13.2, below, postmarked by or filed with the Clerk of Court on or before the Objection deadline set by the Court in the Preliminary Approval Order issued under Section 8 below. Objections not postmarked or filed with the Clerk of Court, in writing, before the expiration of the Objection Deadline will not be considered by the Court.

**7.2.** To be considered, the Objection to Settlement must include the following:

- (i) a written document clearly labelled on the top of the first page "Objection to Settlement";
- (ii) a written document clearly providing on the top of the first page the case caption of "*Ireland v. Jones*" and the case number of Civil No. 3:13-CV-0003-PDW-ARS;
- (iii) include the name, address, telephone number, and signature of the person objecting;
- (iv) include a statement whether the objector intends to appear at the Fairness Hearing, described in Sections 8 and 9 below, either in person or through counsel, and, if through counsel, identifying counsel by name, address, and phone number;
- (v) include a statement of the grounds for his or her objection or comment; and
- (vi) include the basis upon which the objector claims to be a Class Member.

**7.3** Any Objection to Settlement that does not meet the requirements of the Preliminary Approval Order (issued under Section 8) shall not be considered by the Court.

**7.4** If a Class Member files a timely Objection, he or she may appear at the Fairness Hearing, described in Sections 8 and 9 below, either personally or through counsel. A Class Member seeking to appear personally at such Fairness Hearing must send a "Notice of Intention to Appear in *Ireland v. Jones*" to the Court postmarked by or delivered by no later than the Objection Deadline, with copies to Class Counsel and Counsel for Defendants at the addresses set forth in Section 13.2, below. A Class Member seeking to appear at the hearing through counsel may do so only if his counsel files a notice of appearance with the Court no later than the Objection Deadline and serves copies on Class Counsel and counsel for Defendants. Due to security and safety concerns and requirements of NDSH, the appearance at the Fairness Hearing by Class Members currently committed at the NDSH as an SDI may be by remote access.

**7.5.** No Class Member may contest the approval of the terms and conditions of the Settlement Agreement (including but not limited to the releases and orders requested and to be issued in accordance with the terms thereof), the Final Order, Final Judgment, any request for or award of attorneys' fees and costs to Class Counsel, except by filing and serving a written Objection to Settlement, in accordance with the provisions of the Preliminary Approval Order, issued under Section 8 below. Any Class Member who fails to provide an Objection to Settlement in the manner prescribed in the Preliminary Approval Order (to be issued under Section 8 below) shall, for all purposes have waived, and be deemed to have waived, and shall be foreclosed forever from



raising any objection to any term of the Settlement Agreement, or Class Counsel's application for attorneys' fees and costs.

## **8. COURT APPROVAL – PRELIMINARY**

### **8.1 Preliminary Approval Procedures**

**8.1.1** As soon as possible after the execution of this Settlement Agreement, counsel for the parties shall submit the proposed terms of this Settlement Agreement to the Court for a preliminary determination by the District Court Judge that the settlement is fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23(e).

**8.1.2** The parties shall seek issuance of an Order (the "Preliminary Approval Order") in the form attached hereto as Exhibit 8. The Preliminary Approval Order shall:

(a) Make a preliminary determination this Settlement Agreement is fair, reasonable, and adequate;

(b) Direct that notice be given to the Class Members of the proposed Settlement Agreement as specified in Section 6;

(c) Approve the form of the Class Notice attached hereto as Exhibit 7, to be sent by first class mail to the Class Members;

(d) Set a date for a hearing (the "Fairness Hearing") in order to determine:

(1) whether the Class Notice, as given constitutes the best notice practicable under the circumstances, constitutes due and sufficient notice of the settlement and the matters set forth in the notice to all persons entitled to receive notice, and fully satisfies the requirements of due process and of Fed. R. Civ. P. 23;

(2) whether the Settlement Agreement, and all of the terms and conditions hereof (including but not limited to the releases and orders requested and to be issued in accordance with the terms hereof), should be finally approved as fair, reasonable, adequate, and in the best interest of the Class Members, and all of the Classes and Subclasses and to provide that all of the Class Members, shall be subject to and bound by all of the terms and conditions of this Settlement Agreement, including the releases contained therein, and conclude that the Settlement Agreement should be and is approved;

(3) whether final judgment should be entered dismissing the Released Claims of the Class Members and the Litigation with prejudice, in total and on the merits, subject to the terms of this Settlement Agreement;

(4) whether a final judgment is to be entered that vacates, in total, that part of the Court's prior orders (ECF 519 and 535) and report and recommendation (ECF 403) which found N.D.C.C. chapter 25-03.3 to be "unconstitutional on its face because it does not require that defendants initiate court proceedings for release of individuals who no longer meet SDI criteria"; and

(5) whether to approve Class Counsel's application for an award of attorneys' fees, costs and expenses in an amount up to, but not exceeding, the \$320,000.00 amount described in Section 3.9 above;

(e) Set the date for mailing the Class Notice, the deadline for filing objections to the Settlement Agreement, and the filing of papers in connection with the Fairness Hearing and the Court's consideration of the approval or disapproval of the Settlement Agreement; and,

(f) Provide that the Fairness Hearing may, without further notice to the Class Members, be continued or adjourned by order of the Court.

## **9. COURT APPROVAL - FINAL**

**9.1** At the time set by the Court in the Preliminary Approval Order for the Fairness Hearing, the parties will move the Court for final approval of the settlement and issuance of a Final Approval Order by the District Court Judge that includes all of the terms and provisions described in Section 9.2 ("Final Order").

**9.2** The Final Order shall:

**9.2.1** Find that Class Notice as given constitutes the best notice practicable under the circumstances, constitutes due and sufficient notice of the settlement and the matters set forth in the notice to all persons entitled to receive notice, and fully satisfies the requirements of due process and of Fed. R. Civ. P. 23;

**9.2.2** Find that the notice given under Section 6.1 meets the requirements of and has been provided in accordance with 28 U.S.C. § 1715;

**9.2.3** Find that this Settlement Agreement is fair, reasonable, and adequate to the Settlement Class, provide that all of the Class Members, shall be subject to and bound by all of the terms and conditions of this Settlement Agreement, including the releases contained herein, and conclude that the Settlement Agreement should be and is approved;

**9.2.4** Award Class Counsel attorneys' fees and costs in an amount up to, but not exceeding, the \$320,000.00 amount described in Section 3.9 above;

**9.2.5** Direct the entry of and become the final order and judgment that vacates, in total, that part of the Court's prior orders (ECF 519 and 535) and report and

recommendation (ECF 403) which found N.D.C.C. 25-03.3 to be “unconstitutional on its face because it does not require that defendants initiate court proceedings for release of individuals who no longer meet SDI criteria”; and,

**9.2.6** Direct the entry of and become the final order and judgment dismissing the Released Claims of the Class Members and the Litigation with prejudice, in total and on the merits, pursuant to the terms of this Settlement Agreement.

**10. ADMINISTRATION OF DEBT REFUND SUBCLASS**

**10.1** Within fourteen (14) days of the Preliminary Approval Order issued under Section 8, Counsel for Defendants will provide Class Counsel with a list of Debt Refund Subclass Members entitled to refunds of monies paid as set forth above in Section 3.6.6 and the amount to be refunded to each (the “Debt Refund Subclass List”).

**10.2** Within fourteen (14) days of the Final Effective Date of this Settlement Agreement, Class Counsel will send the Debt Refund Subclass Release to each Debt Refund Subclass Member entitled to a refund under Section 3.6.6. Debt Refund Subclass Members, or if deceased, said Debt Refund Subclass Member’s duly authorized representative, who sign the Debt Refund Subclass Release will be entitled to receive the refund specified in the Debt Refund Subclass List. Upon receipt of a signed Debt Refund Subclass Release, Defendants shall issue to Class Counsel, payable to “Attorney-Client Trust Account of Brancart & Brancart,” a refund check in the amount for said Debt Refund Subclass Member, as described in the Debt Refund Subclass List.

**10.3** Within 180 days of the Final Effective Date, Class Counsel will file a report with the Court advising it of the distribution of the refunds to the Debt Refund Subclass

Members. If not all refunds to the Debt Refund Subclass Members have been made at the time Class Counsel files that report, Class Counsel will file a second report 360 days after the Final Effective Date advising it of the status of the distribution of the refunds to the Debt Refund Subclass Members. If, within one year (365 days) of the Final Effective Date, Class Counsel is unable to locate any Debt Refund Subclass Member who is entitled to a refund under Section 3.6.6 and this Section 10, or his estate or heirs, or is unable to obtain an executed Debt Refund Subclass Release from a Debt Refund Subclass Member, the funds allocated to said Debt Refund Subclass Member's shall be retained by Defendants.

#### **11. FINAL EFFECTIVE DATE**

**11.1** The "Final Effective Date" of the Settlement is the date the Final Order is issued pursuant to Section 9 approving this Settlement Agreement, is deemed final, which shall be the later of:

**11.1.1** Thirty (30) days after the entry of judgment if no pleadings are filed within the time limitation prescribed by the Federal Rules of Civil and Appellate Procedure seeking appeal, review or rehearing of the Final Order; or

**11.1.2** If such appeal, review or rehearing pleadings are filed, within 14 days after the date all appellate or other proceedings resulting from such pleadings (including the time for filing all petitions for rehearing and for review to the United States Supreme Court) have been finally terminated in such a manner as to permit the Final Order approving the Settlement Agreement to take effect.

**11.2** Subject to the provisions of Section 12 regarding termination and the effect of a termination under Section 12, all of the parties executing this Settlement

Agreement agree to waive any right to appeal, review or rehearing, including from the Final Order.

## **12. TERMINATION OF AGREEMENT**

**12.1.** This Settlement Agreement is expressly conditioned upon:

- (a)** Court approval of this Settlement Agreement,
- (b)** entry of the Preliminary Approval Order;
- (c)** entry of the Final Order,
- (d)** the Court, pursuant to Section 3.8, entering a final order and

judgment that vacates, in total, that part of the Court's prior orders (ECF 519 and 535) and report and recommendation (ECF 403) which found N.D.C.C. 25-03.3 to be "unconstitutional on its face because it does not require that defendants initiate court proceedings for release of individuals who no longer meet SDI criteria," and

**(e)** the Court, pursuant to Section 3.11, entering final order and judgment dismissing the Released Claims of the Class Members and the Litigation with prejudice, in total and on the merits, pursuant to the terms of this Settlement Agreement.

If the Court declines to approve this Settlement Agreement or to enter any of the orders/judgments described in this Section 12.1, or any of these events otherwise do not occur, any party shall have the independent right to terminate this Settlement Agreement by filing notice with the Court and serving upon the respective Counsel, at the address noted at Section 13.2, of such election to terminate and upon filing such election notice, this Settlement Agreement shall be terminated.

**12.2** If the Court modifies any aspect of this Settlement Agreement, the proposed Preliminary Approval Order, the proposed Final Order or other order/judgment described in Section 12.1 that any party executing this Settlement Agreement reasonably determines to be a material modification, such party shall have the independent right to terminate this Settlement Agreement. Any party seeking to terminate this Settlement Agreement under this Section 12.2 may do so by filing notice with the Court and serving on the respective Counsel, at the address noted at Section 13.2, of such election to terminate within 21 days after such modifying order has been issued by the Court. Within 21 days after the filing and service of such notice to terminate under this Section 12.2, the party that is served shall have the opportunity to respond and request a hearing and Court determination on such purported termination.

**12.3** If the Court of Appeals on review, in the event any such review occurs, declares unenforceable, reverses, vacates this Settlement Agreement, the Final Order or any other order/judgment described in Section 12.1, any party shall have the independent right to terminate this Settlement Agreement by filing notice with the Court and serving upon the respective Counsel, at the address noted at Section 13.2, of such election to terminate and upon filing such election notice, this Settlement Agreement shall be terminated.

**12.4** If the Court of Appeals on review, in the event any such review occurs modifies any aspect of this Settlement Agreement, the Final Order or any order/judgment described in Section 12.1 that any party who has executed this Settlement Agreement reasonably determines to be a material modification, such party shall have the independent right to terminate this Agreement. Any party seeking to

terminate this Settlement Agreement under this Section 12.4 may do so by filing notice with the Court and serving to the respective Counsel, at the address noted at Section 13.2, of such election to terminate within 21 days after such modifying decision by the Court of Appeals. Within 21 days after the filing and service of such notice to terminate under this Section 12.4, the party that is served shall have the opportunity to respond and request a hearing and Court determination on such purported termination.

**12.5** If this Agreement is terminated for any reason, other than the parties' failure to comply with the terms of the Final Order, then all issues and claims in the Litigation shall thereupon forthwith be deemed to have reverted to their respective status immediately prior to time of signature of the first party to have executed this Settlement Agreement, and the Litigation shall proceed as if this Settlement Agreement and related Orders and papers had not been executed at all, with all substantive and procedural claims, issues and defenses having been fully preserved.

### **13. ADDITIONAL TERMS**

**13.1** The terms and conditions set forth in this Settlement Agreement and Exhibits 1-8 hereto constitute the complete and exclusive agreement between the parties hereto and this Settlement Agreement supersedes and cancels all previous negotiations, agreements, commitments and writings in connection with the settlement of this Litigation. Exhibits 1-8 are incorporated into and made a part of this Settlement Agreement, and reference to the term "Settlement Agreement" herein also includes Exhibits 1-8.

**13.2** Unless otherwise specified in this Settlement Agreement or agreed to in writing by the party receiving such communication, all notices, requests, or other



required communications hereunder shall be in writing and shall be sent by one of the following methods: (a) by email attached in portable document format (pdf); (b) by personal delivery (including Federal Express); (c) by first class mail, postage prepaid; or (d) by facsimile. All such communications shall be sent to the undersigned persons at their respective addresses as set forth herein:

**Class Counsel:**

Christopher Brancart  
Elizabeth Brancart  
Brancart & Brancart  
P.O. Box 686  
Pescadero, CA 94060  
Tel: (650) 879-0141  
Fax: (650) 879-1103  
cbrancart@brancart.com

**Counsel for Defendants:**

Daniel L. Gaustad  
Joseph E. Quinn  
Pearson Christensen, PLLP  
24 North 4th Street  
P.O. Box 5758  
Grand Forks, ND 58206-5758  
Tel: (701) 775-0521  
Fax: (701) 775-0524  
dan@grandforkslaw.com

**13.3** This Settlement Agreement may be executed by signature of the parties hereto in counterparts, including copies transmitted by facsimile or by email in portable document format (pdf), and, upon being so executed by all parties hereto, shall be effective as if all signatures appeared on the original of this Settlement Agreement.

**13.4** Plaintiffs and Class Representatives and Defendants each represent, warrant and agree that each will fulfill and undertake their obligations under this Settlement Agreement, including, without limitation, taking all actions and executing and delivering all documents as are reasonably necessary to effectuate the terms of this Settlement Agreement.

**13.5** All procedural time periods and dates relating to the approval of this Settlement Agreement and the notification of the Class Members are subject to approval and change by the Court.

**13.6** Except as this Settlement Agreement may specifically set forth a time period for performance, all matters to be performed or agreed upon shall be performed, commenced or be deemed to have been performed and commenced from and after the Final Effective Date.

**13.7** This Settlement Agreement shall be interpreted in accordance with the laws of North Dakota.

**13.8** This Settlement Agreement may not be modified or amended, except in writing with the unanimous consent of the parties and with the approval of the Court.

**13.9** This Settlement Agreement shall be binding on the heirs, successors, assigns, representatives or grantees of the Class Members and Defendants.

**13.10** Each Class Representative and Defendant signing this Settlement Agreement acknowledges and represents that they have been given free, voluntary and sufficient opportunity to seek the advice of counsel and executes this Settlement Agreement being fully informed as to its terms, content and effect, and that they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations or statements not expressly contained or referred to herein. Each Class Representative, by signing this Settlement Agreement, acknowledges and expressly warrants and represents, that before executing this Settlement Agreement each has fully and completely read all of the terms thereof, has had a complete, full and adequate opportunity to seek advice from independently selected legal counsel, that no promise, inducement, or agreement not expressed therein has been made to him, and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by him, without duress or coercion of any kind or type.

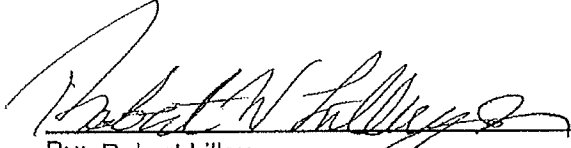
13.11 This Settlement Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that it may have been drafted or prepared by counsel for one of the parties, it being recognized that each of the parties signing this Settlement Agreement has contributed substantially and materially to the preparation of this Settlement Agreement.

13.12 Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

IN WITNESS THEREOF, the parties hereto have executed this Settlement

Agreement as follows:

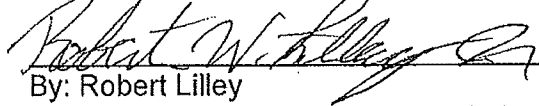
Dated: 6/22/20

  
By: Robert Lilley  
Representative of the SOTEP Class

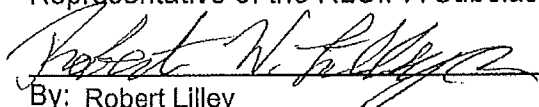
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the ADA Subclass

Dated: 6/22/20

  
By: Robert Lilley  
Representative of the RLUIPA Subclass

Dated: 6/22/20

  
By: Robert Lilley  
Representative of the Juvenile Subclass

Dated: \_\_\_\_\_

By: Garrett Loy  
Representative of the Evaluation Class

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the Debt Class

13.11 This Settlement Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that it may have been drafted or prepared by counsel for one of the parties, it being recognized that each of the parties signing this Settlement Agreement has contributed substantially and materially to the preparation of this Settlement Agreement.

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IN WITNESS THEREOF, the parties hereto have executed this Settlement

Agreement as follows:

Dated: 6/9<sup>TH</sup>/2020

Oliver Howard Wardlow III

By: Oliver Wardlow III  
Representative of the SOTEP Class

Dated: 6/9<sup>TH</sup>/2020

Oliver Howard Wardlow III

By: Oliver Wardlow III  
Representative of the ADA Subclass

Dated: \_\_\_\_\_

By: Robert Lilley  
Representative of the RLUIPA Subclass

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the Juvenile Subclass

Dated: \_\_\_\_\_

By: Garrett Loy  
Representative of the Evaluation Class

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the Debt Class

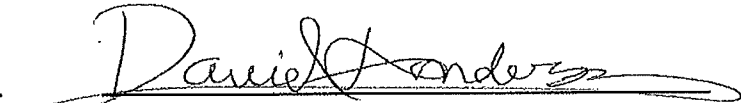
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13.12 Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.


IN WITNESS THEREOF, the parties hereto have executed this Settlement

Agreement as follows:

Dated: 5-28-20

  
By: David Anderson  
Representative of the SOTEP Class

Dated: 5-28-20

  
By: David Anderson  
Representative of the ADA Subclass

Dated: \_\_\_\_\_

By: Robert Lilley  
Representative of the RLUIPA Subclass

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the Juvenile Subclass

Dated: \_\_\_\_\_

By: Garrett Loy  
Representative of the Evaluation Class

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the Debt Class

13.11 This Settlement Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that it may have been drafted or prepared by counsel for one of the parties, it being recognized that each of the parties signing this Settlement Agreement has contributed substantially and materially to the preparation of this Settlement Agreement.

13.12 Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

**IN WITNESS THEREOF**, the parties hereto have executed this Settlement Agreement as follows:

Dated: \_\_\_\_\_

\_\_\_\_\_  
By:  
Representative of the SOTEP Class

Dated: \_\_\_\_\_

\_\_\_\_\_  
By:  
Representative of the ADA Subclass

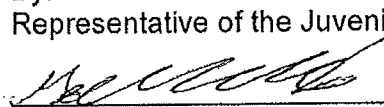
Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Robert Lilley  
Representative of the RLUIPA Subclass

Dated: \_\_\_\_\_

\_\_\_\_\_  
By:  
Representative of the Juvenile Subclass

Dated: 05-29-20

  
\_\_\_\_\_  
By: Garrett Loy  
Representative of the Evaluation Class

Dated: \_\_\_\_\_

\_\_\_\_\_  
By:  
Representative of the Debt Class

13.11 This Settlement Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that it may have been drafted or prepared by counsel for one of the parties, it being recognized that each of the parties signing this Settlement Agreement has contributed substantially and materially to the preparation of this Settlement Agreement.

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**IN WITNESS THEREOF**, the parties hereto have executed this Settlement Agreement as follows:

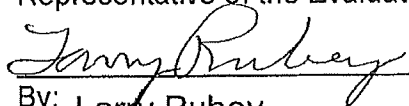
Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Representative of the SOTEP Class

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Representative of the ADA Subclass

Dated: \_\_\_\_\_  
By: Robert Lilley  
Representative of the RLUIPA Subclass

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Representative of the Juvenile Subclass

Dated: \_\_\_\_\_  
By: Garrett Loy  
Representative of the Evaluation Class

Dated: 5-27-2020  
  
By: Larry Rubey  
Representative of the Debt Class

13.11 This Settlement Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that it may have been drafted or prepared by counsel for one of the parties, it being recognized that each of the parties signing this Settlement Agreement has contributed substantially and materially to the preparation of this Settlement Agreement.

13.12 Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

**IN WITNESS THEREOF**, the parties hereto have executed this Settlement

Agreement as follows:

Dated: 5-27-2020



By: Travis Wedmore  
Representative of the SOTEP Class

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the ADA Subclass

Dated: \_\_\_\_\_

By: Robert Lilley  
Representative of the RLUIPA Subclass

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the Juvenile Subclass

Dated: \_\_\_\_\_

By: Garrett Loy  
Representative of the Evaluation Class

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the Debt Class

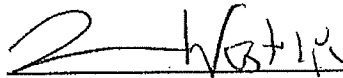


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13.12 Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

IN WITNESS THEREOF, the parties hereto have executed this Settlement Agreement as follows:

Dated: 5-26-2020

  
\_\_\_\_\_

By: John Westlie  
Representative of the SOTEP Class

Dated: \_\_\_\_\_

\_\_\_\_\_

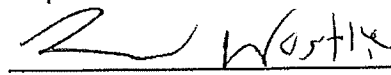
By:  
Representative of the ADA Subclass

Dated: \_\_\_\_\_

\_\_\_\_\_

By: Robert Lilley  
Representative of the RLUIPA Subclass

Dated: 5-26-2020

  
\_\_\_\_\_

By: John Westlie  
Representative of the Juvenile Subclass

Dated: \_\_\_\_\_

\_\_\_\_\_

By: Garrett Loy  
Representative of the Evaluation Class

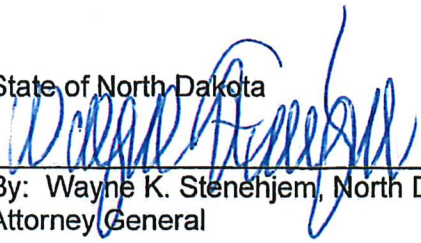
Dated: \_\_\_\_\_

\_\_\_\_\_

By:  
Representative of the Debt Class

Dated: June 3, 2020

State of North Dakota

  
By: Wayne K. Stenehjem, North Dakota  
Attorney General

Dated: \_\_\_\_\_

North Dakota Department of Human  
Services

\_\_\_\_\_  
By: Christopher D. Jones, Executive Director of  
the North Dakota Department of Human  
Services

Dated: \_\_\_\_\_

North Dakota State Hospital

\_\_\_\_\_  
By: Dr. Rosalie Etherington, Ph.D.  
Superintendent, North Dakota State Hospital

Dated: \_\_\_\_\_

\_\_\_\_\_  
Christopher D. Jones, Executive Director of the  
North Dakota Department of Human Services

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dr. Rosalie Etherington, Ph.D. Superintendent,  
North Dakota State Hospital

Dated: \_\_\_\_\_

State of North Dakota

\_\_\_\_\_  
By: Wayne K. Stenehjem, North Dakota  
Attorney General

Dated: 6-3-2020

North Dakota Department of Human  
Services

\_\_\_\_\_  
By: Christopher D. Jones, Executive Director of  
the North Dakota Department of Human  
Services

Dated: \_\_\_\_\_

North Dakota State Hospital

\_\_\_\_\_  
By: Dr. Rosalie Etherington, Ph.D.  
Superintendent, North Dakota State Hospital

Dated: 6-3-2020

\_\_\_\_\_  
Christopher D. Jones, Executive Director of the  
North Dakota Department of Human Services

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dr. Rosalie Etherington, Ph.D. Superintendent,  
North Dakota State Hospital

Dated: \_\_\_\_\_

State of North Dakota

\_\_\_\_\_  
By: Wayne K. Stenehjem, North Dakota  
Attorney General

Dated: \_\_\_\_\_

North Dakota Department of Human  
Services

\_\_\_\_\_  
By: Christopher D. Jones, Executive Director of  
the North Dakota Department of Human  
Services

Dated: 6-3-2020

North Dakota State Hospital

  
\_\_\_\_\_  
By: Dr. Rosalie Etherington, Ph.D.  
Superintendent, North Dakota State Hospital

Dated: \_\_\_\_\_

\_\_\_\_\_  
Christopher D. Jones, Executive Director of the  
North Dakota Department of Human Services

Dated: 6-3-2020

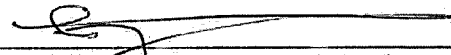
  
\_\_\_\_\_  
Dr. Rosalie Etherington, Ph.D. Superintendent,  
North Dakota State Hospital

Exhibit 1  
to Class Action  
Settlement  
Agreement

## EXHIBIT 1 TO CLASS ACTION SETTLEMENT AGREEMENT

### RLUIPA - Handbook Addition

NDSH possesses certain common religious materials that are available for clients<sup>1</sup>. For those religious items that are not immediately available, NDSH will assist the client to obtain such items. However, the religious item shall not be provided in the event SOTEP's multidisciplinary team determines that access to such religious item (a) would create a specific risk of harm to the client, other clients, staff or other persons the client may come into contact with, (b) would conflict with legitimate safety precautions, (c) would be counter-therapeutic for the requesting client or for another specific client or group of clients, or (d) the use or possession of such religious item would otherwise violate federal or state laws (e.g. if a person claims smoking or possessing marijuana is for religious purposes).

With respect to being "counter-therapeutic" for the requested client, or for another specific client or group of clients, the SOTEP multidisciplinary treatment team will describe the basis used in reaching its professional judgment and discretion decision that the religious item would be counter-therapeutic to the requesting client, another specific client or groups of clients. The description of the basis used in reaching its professional judgment and discretion decision to be provided by the SOTEP multidisciplinary team shall be made in a manner that complies with any and all applicable federal or state confidentiality laws, including but not limited to HIPAA.

A client who disagrees with any determination(s) made by the SOTEP multidisciplinary team on the denial of a religious item may seek review of such determination(s) through SOTEP's consumer concern process.

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<sup>1</sup> A list of available items is posted on each unit.

Exhibit 2  
to Class Action  
Settlement  
Agreement

## EXHIBIT 2 TO CLASS ACTION SETTLEMENT AGREEMENT

- TITLE:** EVALUATION STATUS POLICY
- SCOPE:** Sex Offender Treatment and Evaluation Program clients.
- PURPOSE:** To clarify procedure for clients on evaluation status regarding housing, privileges and educational and work opportunities.
- POLICY:** Clients on evaluation status will be considered for housing, privileges, and education and work dependent on assessed risk and need.
- DEFINITIONS:** Evaluatee – individual on evaluation status.
- Evaluation status – the status of persons admitted to SOTEP for evaluation as to whether they are sexually dangerous individuals under N.D.C.C. chapter 25-03.3.

### PROCEDURES:

1. All Evaluatees are admitted to Secure One for a period of observation and assessment. All Evaluatees are subject to applicable NDSH policies, including the admissions policy.
2. A psychosocial assessment is completed by a clinician within 7 days of admission. This will include educational and vocational histories.
3. NDSH staff will review accompanying collateral information (which may include DOCR records that SOTEP shall request if available) in regards to an Evaluatee's risks and needs, keeping in mind safety and security for all clients, staff, and other persons the Evaluatee may come into contact with.
4. An Evaluatee's Activities of Daily Living (ADL) and behavior will be tracked by staff.
5. A SOTEP multidisciplinary treatment team will consider ADL performance, assessments, collateral information (which may include DOCR records that SOTEP shall request if available) along with observable behaviors, and apply their professional judgment and discretion, when deciding whether access to a particular privilege: (a) would create a specific risk of harm to the Evaluatee, clients, staff or other persons the Evaluatee may come into contact with, (b) would conflict with legitimate safety precautions, (c) would be counter-therapeutic for a specific client or group of clients, or (d) should not be provided because the Evaluatee has not complied with behavior expectations (detailed in the client handbook as program rules and client responsibilities), unit postings and staff directives.
6. The following privileges are allowed upon admission, unless SOTEP's multidisciplinary team determines that access to a particular privilege (a) would create a specific risk of harm to the Evaluatee, clients, staff or other persons the Evaluatee may come into contact with, (b) would conflict with legitimate safety precautions, (c) would be counter-



**EXHIBIT 2 TO CLASS ACTION SETTLEMENT AGREEMENT**

therapeutic for a specific client or group of clients or (d) should not be allowed because the Evaluee has not complied with behavior expectations (detailed in the client handbook as program rules and client responsibilities), unit postings or staff directives:

- A. Personal clothing as detailed in Approved Personal Property list,
  - B. Personal property as detailed in Approved Personal Property list,
  - C. Activities,
  - D. Access to unit TV, radio, games, books, newspaper,
  - E. Access to library items,
  - F. Commissary from the same list and on the same schedule as commissary for clients committed to SOTEP that are within Secure 3/Secure 4 with the exception of items that may present a security risk,
  - G. Access to telephone and visitors that is equivalent to the access granted to clients committed to SOTEP.
7. Additional privileges may be earned after a period of at least 14 days of behaviors that meet expectations or removed for behaviors that do not meet expectations. Behavioral expectations are detailed in client handbook as program rules and client responsibilities, and unit postings. The following privileges shall be considered in incremental value based on continued demonstration of behaviors that meet expectations and absence of behaviors that do not meet expectations.
- A. Work
  - B. Crafts
  - C. Activities
8. After a period of observation, an Evaluee will be placed in the least restrictive housing unit available within the Gronewald Middleton building for committed residents unless SOTEP's multidisciplinary team determines the transfer to this less restrictive housing unit (a) would create a specific risk of harm to the Evaluee, clients, staff or other persons the Evaluee may come into contact with, (b) would conflict with legitimate safety precautions, (c) would be counter-therapeutic for a specific client or group of clients or (d) should not be made because the Evaluee has not complied with behavior expectations (detailed in the client handbook as program rules and client responsibilities), unit postings or staff directives.
9. With respect Paragraphs 5(c), 6(c) or 8(c) (relating to the matter under consideration pursuant to such Paragraphs being "counter-therapeutic for a specific client or group of clients"), the SOTEP multidisciplinary treatment team will describe the basis used in reaching its professional judgment and discretion decision that the matter being considered pursuant to such Paragraphs 5, 6 or 8 would be counter-therapeutic to a specific client or groups of client. The description of the basis used in reaching its professional judgment and decision to be provided by the SOTEP multidisciplinary team

## EXHIBIT 2 TO CLASS ACTION SETTLEMENT AGREEMENT

pursuant to this Paragraph 9 shall be made in a manner that complies with any and all applicable federal or state confidentiality laws, including but not limited to HIPAA.

10. An Evaluatee who disagrees with any determination(s) made by the SOTEP multidisciplinary team under Paragraphs 5, 6 or 8 above may seek review of such determination(s) through SOTEP's consumer concern process. Without limiting the review and matters that may be considered through the consumer concern process, the reviewing administrator is also to consider the Evaluatee is at NDSH for evaluation, the terms of the order issued under N.D.C.C. § 25-03.3-11, and any less restrictive alternative that may accommodate both the Evaluatee's and DHS's/NDSH's legitimate interests.
11. Subject to the SOTEP multidisciplinary treatment team determinations on safety and security for clients, staff or other persons the Evaluatee may come in contact with, an Evaluatee will be able to attend therapeutic educational opportunities that are offered by SOTEP to clients committed to SOTEP.
12. Clients committed to SOTEP will receive priority placement for work and therapeutic educational opportunities over Evaluatees. Work and therapeutic education will not be provided to an Evaluatee if it would result in a committed SOTEP client being displaced from work and/or therapeutic educational opportunities.
13. Any privileges, therapeutic educational or work opportunities accorded to Evaluatees while on evaluation status will end upon the Evaluatee's civil commitment pursuant to N.D.C.C. chapter 25-03.3 and thereafter will be available according to the applicable SOTEP treatment program. Privileges, therapeutic educational or work opportunities will cease in the event the Evaluatee is found not to have met the conditions for civil commitment pursuant to N.D.C.C. chapter 25-03.3.

Exhibit 3  
to Class Action  
Settlement  
Agreement

### EXHIBIT 3 TO CLASS ACTION SETTLEMENT AGREEMENT

Name of Committed/Discharged Individual:

This letter is to provide you with notice that, with regard to any claims that the North Dakota Department of Human Services has previously submitted to collection agencies seeking recovery from your property for expended sums or services it provided, pursuant to N.D.C.C. title. 25, the claims and all related documents have been returned to the North Dakota Department of Human Services from the collection agencies.

Please note that this action does not preclude the Department of Human Services from seeking civil recovery from your property for expended sums or services it provided pursuant to N.D.C.C. title 25, under North Dakota Century Code § 25-03.3-21, which reads, in total, as follows:

**25-03.3-21. Recovery of expense.**

The department of human services, to the extent it has expended sums or provided services pursuant to this title, may seek civil recovery from the property of the respondent or committed individual. The department of human services must commence the action within six years after the department paid the sums or provided the services to the respondent or committed individual. After notice and hearing, the court may order an individual to reimburse the department of human services for all or part of the expenditures made for that individual pursuant to this chapter. In establishing the amount of reimbursement ordered under this section, the court shall consider the ability of the respondent or committed individual to pay.

Sincerely,

Exhibit 4  
to Class Action  
Settlement  
Agreement

**EXHIBIT 4 TO CLASS ACTION SETTLEMENT AGREEMENT**

**NOTICE OF REPAYMENT STATUTE**

This notice is to inform you that the North Dakota Department of Human Services may seek civil recovery for repayment for sums expended or for services it provides to you as a respondent or committed individual under Title 25 of the North Dakota Century Code, subject to the requirements of North Dakota Century Code § 25-03.3-21, as amended.

North Dakota Century Code § 25-03.3-21 reads, in total, as follows:

**25-03.3-21. Recovery of expense.**

The department of human services, to the extent it has expended sums or provided services pursuant to this title, may seek civil recovery from the property of the respondent or committed individual. The department of human services must commence the action within six years after the department paid the sums or provided the services to the respondent or committed individual. After notice and hearing, the court may order an individual to reimburse the department of human services for all or part of the expenditures made for that individual pursuant to this chapter. In establishing the amount of reimbursement ordered under this section, the court shall consider the ability of the respondent or committed individual to pay.

Please sign and date below to indicate that you have received this notice and copy of the statute, and have read and understand this notice and the statute above.

\_\_\_\_\_  
Respondent/Committed Individual Signature

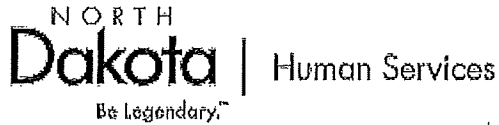
\_\_\_\_\_  
Date

\_\_\_\_\_  
DHS Staff Signature

\_\_\_\_\_  
Date

Exhibit 5  
to Class Action  
Settlement  
Agreement

EXHIBIT 5 TO CLASS ACTION SETTLEMENT AGREEMENT



Field Services Division  
Tina Eide  
Field Services Director

Doug Burgum, Governor  
Christopher Jones, Executive Director

To:

Mardi 20, 2019

**Expended Sum Report**  
**THIS IS NOT A BILL**

From: Accounts Receivable  
Field Services ND Department of Human Services

Telephone: Toll Free 1 / 866-275-2007

RE: [REDACTED]

Client ID: [REDACTED]

North Dakota Century Code states:

**25-03.3-21. Recovery of expense.**

The department of human services, to the extent it has expended sums or provided services pursuant to this title, may seek civil recovery from the property of the respondent or committed individual. The department of human services must commence the action within six years after the department paid the sums or provided the services to the respondent or committed individual. After notice and hearing, the court may order an individual to reimburse the department of human services for all or part of the expenditures made for that individual pursuant to this chapter. In establishing the amount of reimbursement ordered under this section, the court shall consider the ability of the respondent or committed individual to pay.

The people of the State of North Dakota through the North Dakota Department of Human Services have expended the following amounts on your behalf:

Period from 03/01/2019 to 03/31/2019 Service	Amount Expended
Total for Group Psychotherapy	87.00
Total for Hospital Subsequent Mod Complexity	211.00
Total for Sex Offender Residential R&E	759.98
Total for Period Ending: 03/31/2019	759.98
<b>Total expenditure on your behalf:</b>	<b>759.98</b>

[www.nd.gov/dhs/locations/regionalhsc/](http://www.nd.gov/dhs/locations/regionalhsc/)

Page 1 of 1

anks,

**Kriss Grinolds**  
Business Analyst II



EXHIBIT 5 TO CLASS ACTION SETTLEMENT AGREEMENT

ITS Division - Bismarck  
North Dakota Department of Human Services



P: 701-328-4609  
[kgrinolds@nd.gov](mailto:kgrinolds@nd.gov)

Exhibit 6  
to Class Action  
Settlement  
Agreement

**EXHIBIT 6 TO CLASS ACTION SETTLEMENT AGREEMENT**

**RELEASE OF COLLECTION CLAIMS**

This release (the "Release of Collection Claims") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between

**[INSERT NAME OF SDI RECEIVING FUNDS UNDER SETTLEMENT AGREEMENT]**

**AND**

**STATE OF NORTH DAKOTA, NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES, AND THE NORTH DAKOTA STATE HOSPITAL**

**DEFINITIONS**

**1.** As used herein, the term "Plaintiff" shall mean **[INSERT NAME OF SDI RECEIVING FUNDS UNDER SETTLEMENT]**, and all of his assigns, successors, agents, representatives, heirs, attorneys and administrators and any other party who obtains or claims to have any legal rights or claims from, by or through said parties.

**2.** As used herein, the term "Defendants" shall collectively mean the State of North Dakota, North Dakota Department of Human Services, North Dakota State Hospital, and all of their present and former related commissioners, executive directors (including Maggie D. Anderson and Christopher D. Jones), directors, superintendents (including Alex Schweitzer and Dr. Rosalie Etherington), officers, partners, members, employees, agents, brokers, auditors, accountants, attorneys, administrators, principals, predecessors, successors, affiliates, assignors, assignees, related entities and insurers.

**3.** As used herein, the term "Collection Claims" shall mean any and all of the claims, causes of action, allegations, suits, liabilities and/or demands the Plaintiff asserted, could have asserted or were required to be asserted against the Defendants that in any manner relate to or arise from the Defendants, (directly or indirectly through a collection agency), receiving, recovering, seeking or pursuing civil recovery or otherwise collecting funds from Plaintiff for expended sums or services provided to Plaintiff pursuant to N.D.C.C. chapter 25-03.3.

**RECITALS**

**A.** Plaintiff asserted that the receipt, recovery, seeking or pursuing civil recovery, or collecting of funds from the Plaintiff by the Defendants for expended sums or services provided to Plaintiff pursuant to N.D.C.C. chapter 25-03.3 was improper. The Defendants deny and continue to deny such assertions.

**B.** The Plaintiffs assert they suffered damages arising from or related to the alleged acts or omissions of the Defendants to receive, recover or collect funds from the Plaintiff for

## EXHIBIT 6 TO CLASS ACTION SETTLEMENT AGREEMENT

expended sums or services provided to Plaintiff pursuant to N.D.C.C. chapter 25-03.3, which the Defendants deny and continue to deny.

C. The Plaintiff and Defendants have determined independently that it is desirable and beneficial for each of them to settle, compromise and resolve their differences, and the parties have reached a settlement agreement with respect to the Collection Claims and the parties desire to memorialize their agreement.

**NOW, THEREFORE FOR A VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:**

### SETTLEMENT TERMS

1. **Incorporation of Definitions and Recitals.** The above Definitions and Recitals are hereby restated and incorporated into and made part of these Settlement Terms.

2. **Payment.** Within thirty (30) days after Defendants have received this Release of Collection Claims, signed by the Plaintiff, the Defendants agree to make payment to Plaintiff's attorney Brancart & Brancart in the total amount of **[INSERT AMOUNT THE RESPECTIVE SDI IS TO RECEIVE OF THE TOTAL \$9,132.95]**, (the "Settlement Proceeds").

Plaintiff acknowledges and agrees that he shall be solely responsible for the payment of all federal, state, city or local taxes, if any, which may be due and owing as a result of payment of the Settlement Proceeds made by the Defendants and/or due to any term contained in this Release of Collection Claims.

3. **Non-Litigation.** Plaintiff has not commenced a lawsuit relating to the Collection Claims, and in consideration for payment described herein, Plaintiff agrees he will not file and shall not in any way assist or encourage any other person or entity to file any action based on the Collection Claims released herein in any federal, state, local court or other forum against the Defendants relating to or otherwise arising from the Collection Claims. If Plaintiff attempts to prosecute any lawsuit or other type of action against the Defendants relating to or arising from the Collection Claims released herein, the Defendants are authorized, without notice, to file a copy of this Release of Collection Claims with the court or other forum where such lawsuit or action is filed, and seek an order to dismiss with prejudice any and all of the claims and causes of action released by this Release of Collection Claims.

4. **Release.** Upon execution of this Release of Collection Claims, the Plaintiff releases and forever discharges the Defendants of and from any and all manner and types of claims, demands, actions, causes of action, liabilities, suits, debts, sums of money, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, and judgments whatsoever, state or federal, in law or equity, including, not limited to, claims for personal injuries, emotional distress, mental anguish, damages and whether the injuries or damages are developed or undeveloped, known or unknown, foreseen or unforeseen, asserted or unasserted, suspected or unsuspected, anticipated or unanticipated, permanent or progressive, or from which

## EXHIBIT 6 TO CLASS ACTION SETTLEMENT AGREEMENT

recovery is uncertain and indefinite, and any and all consequences of any and all such injuries, emotional distress, economic damages and/or non-economic damages provided for in N.D.C.C. chapter 32-03.2 (or other state and federal statute), claims, damages or compensation under any other state or federal law, statute or regulation (or interpretation thereof), including without limitation under N.D.C.C. chapter 13-05, N.D.C.C. chapter 25-03.3, N.D.C.C. chapter 32-03, N.D.C.C. chapter 47-14, the Fair Debt Collection Practices Act, (15 U.S.C. §§ 1692, et. seq.); the Fair Credit Reporting Act (15 U.S.C. §§ 1681 et. seq.), 42 U.S.C. §§ 402, 407, 1983, 1985 and/or 1988, special damages, compensatory damages, punitive damages, costs, disbursements, expert witness fees, and/or attorneys' fees arising from or in any manner related to the Collection Claims which Plaintiff may now have, claim to have or was required to assert against the Defendants upon, or by reason of any matter, event, cause or thing whatsoever, arising out of, based in whole or in part upon, relating to, or existing by reason of the facts, circumstances, transactions, events, occurrences, acts, omissions or failures to act, of whatever kind or character whatsoever, with respect to any and all matters relating to the Collection Claims.

5. **Unknown Facts.** Plaintiff expressly acknowledges that he is aware that he and/or his attorneys may hereafter discover claims or facts in addition to or different from those that he now knows or believes to exist with respect to the subject matter of this Release of Collection Claims and/or the Collection Claims, but that it is Plaintiff's intention hereby to fully, finally and forever settle and release all of the claims, disputes and differences, known or unknown, asserted or unasserted, suspected or unsuspected, which do now exist or may heretofore have existed against the Defendants based on or arising out of the Collection Claims, without regard to the subsequent discovery or existence of different or additional facts. Plaintiff agrees, as a further consideration for the payment herein, to waive the provisions of N.D.C.C. § 9-13-02, that provides a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known, must have materially affected his or her settlement with the debtor and to waive the provisions of N.D.C.C. §§ 9-08-08 and 9-08-09. Plaintiff agrees and understands that no mistake, whether it be a mistake of fact or law, shall void, impair or otherwise affect the terms and finality of this agreement and the full discharge of the Defendants from any further liability to the Plaintiff.

6. **Third-Party Claims.** As further consideration for the payment made herein, in the event any judgment is rendered in favor of Plaintiff or any other party by reason of any matter, event, cause or thing arising out of, based in whole or in part upon, or in any manner relating to the Collection Claims, then Plaintiff shall satisfy such fraction, portion, or percentage the Defendants may be adjudged, either collectively or individually, to be of all causal negligence, fault, or responsibility of all parties adjudged negligent, at fault, responsible, or liable therefore as joint tortfeasors or otherwise. In the event Plaintiff fails to immediately satisfy any such judgment to the extent of the fraction, portion, or percentage of the negligence, fault, responsibility, or liability as found against the Defendants, Plaintiff hereby consents and agrees and Defendants are authorized to file a copy of this Release of Collection Claims, without notice, and seek an order from the Court in which said judgment is entered directing the Clerk thereof to satisfy said judgment to the extent of such fraction, portion, or percentage of the negligence, fault, responsibility, or liability as found against the Defendants. It is further understood and agreed that in the event any claim or cause of action is made against the Defendants, including, without limitation, any claim for indemnity, contribution, subrogation, or

**EXHIBIT 6 TO CLASS ACTION SETTLEMENT AGREEMENT**

any other claim or cause of action by any third party for damages or compensation by reason of any matter arising from or in any manner related to the Collection Claims, Plaintiff will indemnify and hold harmless the Defendants from all such claims, liabilities, causes of action and/or judgments thereupon, including attorneys' fees and all costs and expenses resulting from any aforesaid claim or suit.

7. **Performance of Additional Acts.** Plaintiff agrees to perform such acts and to prepare, execute, file or record any documents, instruments, or stipulations requested by the Defendants to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Release of Collection Claims.

8. **Non-Litigation Covenant.** Plaintiff agrees that he shall not, in any manner challenge this Release of Collection Claims or sue the Defendants with respect to any claim released herein. Plaintiff, on his own behalf, shall not sue or in any way assist or encourage any other person or entity in suing the Defendants with respect to any claim released herein. The release in this Release of Collection Claims may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the release contained herein.

9. **Non-Admission of Liability.** This Release of Collection Claims is entered into as a full, final and complete compromise of the Collection Claims, and it is not nor is any payment hereunder to be construed as an admission of liability or waiver of any defenses by the Defendants. The Defendants have expressly denied and continue to deny any and all liability and expressly reserve any and all rights to any and all available defenses of any nature whatsoever. It is expressly understood and agreed by the Plaintiff that this Release of Collection Claims is made as a compromise settlement of all of the aforesaid claims, demands and causes of action which have been, or could have been, made against the Defendants.

Plaintiff further acknowledges and agrees that except to the extent N.D.C.C. § 25-03.3-21 may apply nothing herein does, or shall be construed to, alter, modify, change, preclude or otherwise prevent the Defendants from seeking or pursuing a civil recovery or recovery from Plaintiff pursuant to N.D.C.C. § 25-03.3-21 and/or N.D.C.C. § 50-06.3-03.

10. **Entire Agreement.** This Release of Collection Claims contains the entire agreement between the parties. No statements, promises or inducements made by any party or any agent of any party that are not contained in this Release of Collection Claims shall be valid or binding. This Release of Collection Claims may not be enlarged, modified or altered, except in writing signed by all parties hereto expressly referencing it.

11. **Non-Waiver.** No delay or failure by the Defendants to exercise any right under this Release of Collection Claims and no partial single exercise of any right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

12. **Representation by Counsel/Voluntary Nature of Release of Collection Claims.** Plaintiff acknowledges and represents that he is represented by the law firm of Brancart & Brancart, as his legal counsel in connection with the consideration and execution of this

**EXHIBIT 6 TO CLASS ACTION SETTLEMENT AGREEMENT**

Release of Collection Claims. Plaintiff represents and declares that in executing this Release of Collection Claims, he relied solely upon his own judgment, belief and knowledge, and the advice and recommendation of his own independently selected legal counsel concerning the nature, extent and duration of his rights and claims, and that he has not been influenced to any extent whatsoever in executing this Release of Collection Claims by any representations or statements not expressly contained or referred to herein. In entering into this release Plaintiff acknowledges and expressly warrants and represents to the Defendants, as part of the consideration for the within stated sum of money, that before executing this Release of Collection Claims he has fully and completely read all of the terms thereof, that no promise, inducement, or agreement not expressed therein has been made to him, and that the terms of this Release of Collection Claims are fully understood and voluntarily accepted by him without duress or coercion of any kind or type.

**13. Contractual Nature of Release of Collection Claims.** The terms and conditions of this Release of Collection Claims are contractual in nature, and not a mere recital. This Release of Collection Claims, when fully executed, shall constitute a legal, valid and binding obligation of Plaintiff enforceable in accordance with its terms and shall inure to the benefit of the Defendants. The Plaintiff represents and warrants he has full right, authority and power to enter into this Release of Collection Claims and each agreement, document and instrument to be executed and delivered by Plaintiff pursuant to this Release of Collection Claims and to carry out the transactions contemplated hereby.

**14. Drafting.** This Release of Collection Claims will be deemed jointly drafted for purposes of construing the provisions and none of the parties, or their legal counsel, shall be deemed the drafter thereof. The language in all parts of this Release of Collection Claims shall be interpreted according to its fair meaning, and shall not be interpreted for or against any of the parties as the drafter thereof.

**15. Execution in Counterparts.** This Release of Collection Claims may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

**16. Choice of Law.** This Release of Collection Claims shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of North Dakota, without giving effect to the State's choice of law or conflicts of laws principles.

**17. Assignment.** The parties expressly agree that the rights granted herewith may not be assigned to any individual or entity without the prior written consent of the other parties.

**18. Singular and Plural.** Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.





Exhibit 7  
to Class Action  
Settlement  
Agreement

**EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT**

**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NORTH DAKOTA**

RODNEY J. IRELAND, et al.,

Plaintiffs,

-vs-

CHRISTOPHER D. JONES, Executive  
Director, North Dakota Department of Human  
Services, et. al.,

Defendants.

Civil No. 3:13-CV-0003-PDW-ARS

**NOTICE OF PROPOSED CLASS ACTION  
SETTLEMENT AND HEARING**

**IF YOU HAVE BEEN CIVILLY COMMITTED AS A SEXUALLY DANGEROUS  
INDIVIDUAL IN THE STATE OF NORTH DAKOTA OR REFERRED TO THE  
NORTH DAKOTA STATE HOSPITAL FOR EVALUATION FOR CIVIL  
COMMITMENT AS A SEXUALLY DANGEROUS INDIVIDUAL, YOU MAY BE  
AFFECTED BY A CLASS ACTION SETTLEMENT**

A written Class Action Settlement Agreement (the “Settlement Agreement”) has been proposed in a class action lawsuit about the rights of people who have been civilly committed as “sexually dangerous individuals” in the State of North Dakota or who have been referred to the North Dakota State Hospital for evaluation for possible civil commitment as “sexually dangerous individuals.” The Court will have a hearing to decide whether to approve the settlement. This Notice gives a summary of the proposed settlement and information about the hearing and your right to object to the settlement. The United States District Court for the District of North Dakota approved this Notice.

**ARE YOU A MEMBER OF ANY OF THE CLASSES?**

There are several classes and subclasses affected by the settlement. The following is a brief description of each:

**SOTEP Class:** You are a member of the SOTEP Class if you are currently, or at any time since February 12, 2013 were, civilly committed as a sexually dangerous individual (an “SDI”) under North Dakota Century Code chapter 25-03.3 and confined at the North Dakota State Hospital in the Sex Offender Treatment and Evaluation Program (“SOTEP”).

**EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT**

**Religious Land Use and Institutionalized Persons (RLUIPA) Subclass:** You are a member of the RLUIPA Subclass if you are currently, or at any time since February 12, 2013 were, civilly committed as an SDI and confined at the North Dakota State Hospital in the SOTEP and your religious exercise has been substantially burdened during this civil commitment.

**Americans with Disabilities (ADA) Subclass:** You are a member of the ADA Subclass if you are currently, or at any time since February 12, 2013 were, civilly committed as an SDI and confined at the North Dakota State Hospital in the SOTEP and you have a disability or disabilities recognized under the federal Americans with Disabilities Act.

**Juvenile Subclass:** You are a member of the Juvenile Subclass if you are currently, or at any time since February 12, 2013 were, civilly committed as an SDI and confined at the North Dakota State Hospital in the SOTEP and your civil commitment was based on “sexually predatory conduct” (as defined by N.D.C.C. § 25-03.3-01(9)) that you committed while you were a minor.

**Evaluation Class:** You are a member of the Evaluation Class if you are currently, or at any time since February 12, 2013 were, in custody at the North Dakota State Hospital for evaluation to determine whether you should be civilly committed as an SDI.

**Debt Class:** You are a member of the Debt Class if, at any time since January 1, 2004, the North Dakota Department of Human Services or the North Dakota State Hospital has demanded payment from you for expenses and services provided during your civil commitment as an SDI.

**WHO ARE THE DEFENDANTS?**

The Defendants are (a) Christopher D. Jones, Executive Director, North Dakota Department of Human Services, in his official capacity, (b) the State of North Dakota, (c) North

**EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT**

Dakota Department of Human Services (referred to as the “DHS”), (d) North Dakota State Hospital (referred to as “NDSH”) and (e) Dr. Rosalie Etherington, Superintendent of NDSH, in her official capacity.

**WHAT IS THIS CASE ABOUT?**

Persons who were civilly committed as SDIs and confined at NDSH in SOTEP filed this lawsuit in federal court in Fargo in 2013 claiming that their civil commitment violated the United States Constitution. The federal court appointed lawyers to represent the SDIs and those lawyers added claims that the State of North Dakota, DHS and NDSH violated SDIs’ constitutional rights and violated the Americans with Disabilities Act (the “ADA”) and Religious Land Use and Institutionalized Persons Act (the “RLUIPA”). In 2016 the federal court certified the classes and subclasses listed above.

**WHAT IS THIS CASE IS NOT ABOUT?**

**THIS CASE DID NOT SEEK PAYMENT OF MONEY DAMAGES FROM DEFENDANTS. RATHER, IT SOUGHT TO HAVE DEFENDANTS MAKE CHANGES IN THE WAY THEY OPERATE SOTEP.**

**THE DEFENDANTS DENY LIABILITY**

The Defendants deny that they violated any laws, or that they did anything unlawful. However, after many years of litigation, the parties agreed to settle the lawsuit without a trial.

**WHAT DOES THE SETTLEMENT DO?**

You should know several claims have already been dismissed by the Court because of motions or requests that were previously made by the Defendants. The settlement is directed at the claims that still remain and to cause this litigation to be ended.

## EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT

In exchange for releases from the claims and for this case to be dismissed in its entirety, the parties have made the following agreements:

### 1. RLUIPA Claims:

The State of North Dakota, DHS, and NDSH have agreed:

- To modify the DHS/NDSH policy in SOTEP on the possession of eagle feathers for religious use.
- To modify the DHS/NDSH policy in SOTEP for use of tobacco to allow for tobacco use for prayer ties and sweat lodges so that smoking materials used during prayer ties and sweat lodges may contain up to 1% tobacco.
- That DHS/NDSH will remain committed to making quarterly requests for sweat lodges at SOTEP, whether the chaplaincy position is filled or not.
- To add language to the SOTEP Client Handbook that sets forth a procedure for requesting religious materials.
- To post a schedule as to when drumming of personal drums for religious purposes can be conducted at NDSH.

### 2. ADA Claims:

It is plaintiffs' position that DHS/NDSH have made changes within SOTEP since 2016 and, regardless of the reasons for those changes, they have improved the conditions at SOTEP which formed a substantial basis for Plaintiffs' ADA Claims. Defendants' position is that they have continuously complied with the mandates of the ADA and that the changes within SOTEP made since 2016 were made as part of DHS/NDSH's continuing effort to update and revise its policies, procedures and practices to meet best practices and that none of these changes were a

## EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT

result of or caused by this case having been brought by plaintiffs. The non-exhaustive list of changes that occurred within SOTEP since 2016 include:

- Community Transition Center expansion completed.
- SOTIPS (Sex Offender Treatment Intervention and Progress Scale) implemented.
- SOTEP Treatment Mall opened.
- Stage and Skills System changed into one level system.
- Privileging System revised.
- Personal property policy revised.
- Secure 3 unit became an unlocked unit.
- SOTEP client outdoor time was expanded.
- SOTEP Client representative appointed to SOTEP property committee.
- NDSH clinicians within SOTEP have participated in continuing education provided by the Association for the Treatment of Sexual Abusers (ATSA) and ATSA's Minnesota Chapter (MnATSA) to reinforce progressive rehabilitation. This continuing education lead to a change in the model of care within SOTEP, in accordance with best practices, in March, 2018 to the Good Lives model of care.

The parties have agreed that none the changes listed above constitutes an admission, finding, conclusion or determination regarding compliance or non-compliance with the ADA and that nothing in the settlement of the ADA claims requires a change or other modification to any policy, procedure or programming by the Defendants. Nonetheless, lawyers for the Class believe that the changes listed above have gone a long way toward improving conditions at SOTEP such that this litigation should be settled and end.

### **3. Evaluation Claims:**

The State of North Dakota, DHS, and NDSH have agreed:

## EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT

- To adopt a revised Evaluation Status Policy that clarifies housing, the privileges that may be available upon admission, therapeutic educational activities that may be available, additional privileges that may be earned, (work, crafts, and activities) and the procedures for assessing the availability of these items for those persons admitted to NDHS for evaluation to determine whether they are sexually dangerous individuals under N.D.C.C. chapter 25-03.3 so that persons on evaluation status will be considered for housing, privileges, and education and work, dependent on availability, assessed risk and need.

#### 4. Debt Claims:

The State of North Dakota, DHS, and NDSH have agreed:

- DHS/NDSH will not use a collection agency to collect money from SDIs for expended sums and/or services provided by DHS to SDIs under N.D.C.C. Chapter 25-03.3 before obtaining a judgment.
- DHS/NDSH may seek judgments pursuant to N.D.C.C. § 25-03.3-21, as may be amended, for expended sums and/or services provided by DHS to SDIs.
- DHS/NDSH may ask a collection agency to pursue a judgment against an SDI for amounts spent by DHS/NDSH for services provided at SOTEP, but will require the collection agency to obtain a judgment pursuant to N.D.C.C. § 25-03.3-21, as may be amended.
- Any judgment obtained pursuant to N.D.C.C. § 25-03.3-21 may be assigned by DHS/NDSH to a collection agency.

**EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT**

- DHS/NDSH will send out a notice advising SDIs and those discharged from commitment at the NDSH as an SDI, whose accounts had been previously turned over to a collection agency, that their unpaid accounts have been returned by the collection agency to DHS.
- DHS/NDSH will request that the collection agencies, who had previously sought collection of unpaid amounts from an SDI or those discharged from commitment at NDSH as an SDI, send out a notice to credit reporting agencies that they are no longer involved in such collections. DHS/NDSH will also request that these collection agencies send out a notice retracting any derogatory credit comments the collection agency may have made to credit reporting entities regarding its SDI account collections.
- DHS/NDSH will provide persons admitted to SOTEP with a notice advising them that DHS/NDSH may seek repayment from SDIs for amounts spent by DHS/NDSH for services provided and money expended at SOTEP pursuant to N.D.C.C. § 25-03.3-21.
- DHS/NDSH will continue to send to committed SDIs and those that have been discharged from commitment at NDSH as an SDI periodic expense/expended sum reports describing the amount of expended sums and/or for the services provided by SOTEP, but those reports will clearly state “This is not a bill.”
- DHS/NDSH will refund a total of \$9,132.95 (which is an amount collected by DHS/NDSH from some SDIs for services provided at SOTEP pursuant to N.D.C.C. chapter 25-03.3, minus any collection agency fee). To be eligible for a refund of any payments you made, you must sign a release of all claims you



## EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT

have, including for money damages, against Defendants related to the charges and any collection attempts. No further refunding is required.

- The settlement does not alter, modify or limit debt or claim recovery that may be generally pursued by DHS/NDSH during or after the lifetime of the Class Members, nor any defense that may exist for such debt or claim recovery, including provisions of N.D.C.C. § 25-03.3-21 when applicable.

### 5. Attorneys' Fees:

- Under the settlement, Defendants will pay up to but not exceeding \$320,000.00 to the lawyers for the Class for Plaintiffs' attorneys' fees, litigation expenses, and costs, if the Court approves that amount. Class members will not pay any fees, expenses or costs.

### 6. Motion to Vacate Prior Order:

- The Class Members and Class Counsel have agreed not to oppose, or otherwise cause to be opposed, Defendants' motion to vacate the Court's prior orders which found N.D.C.C. chapter 25-03.3 to be "unconstitutional on its face because it does not require that defendants initiate court proceedings for release of individuals who no longer meet SDI criteria."
- A basis for that motion will be the decisions of the Eighth Circuit in *Karsjens v. Piper*, 845 F. 3d 394 (8th Cir. 2017) and *Van Orden v. Stringer*, 937 F.3d 1162 (8th Cir. 2019).

### WHAT DO I GIVE UP IN THE SETTLEMENT?

- In exchange for Defendants' agreement to make the changes outlined above and pay Class Counsel's attorneys' fees, expenses and costs up to but not

**EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT**

exceeding \$320,000.00 as approved by the Court, Plaintiffs will dismiss the claims and this lawsuit with prejudice and in total, and all Class Members, including those who are members of the SOTEP Class, ADA Subclass, Juvenile Subclass, RLUIPA Subclass, Evaluation Class and Debt Class will forever and completely release the Defendants and will be barred from filing another lawsuit based on the claims released in this action. The claims released are all claims for injunctive, declaratory relief or other equitable relief only, and those claims that are incidental to the injunctive, declaratory or other equitable relief claims, that any Class Members now have or at any time ever have had, whether arising under federal, state, or local law, and that that were asserted, required to be asserted, or that could have been asserted by or on behalf of the Class Members in the Litigation against any of the Defendants under any legal theory, including all such claims, causes of action, assertions or allegations relating to or in any manner arising from Defendants' policies, practices, procedures, acts or omissions in connection with the operation of the SOTEP and/or the conditions in or at the SOTEP. If any of the Class Members attempt to bring another lawsuit based on the claims that are released, the Settlement Agreement may then be filed in the later lawsuit and an order to dismiss such lawsuit with prejudice can be sought. Released claims do not include those which arise or accrue after the final effective date of this settlement.

- The settlement does not put any limits on arguments you can make in state court as to why you should not be found to be a sexually dangerous

## **EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT**

individual or why you should be released from civil commitment. Likewise, the settlement does not put limits on arguments by others who may claim you should be found to be a sexually dangerous individual.

- If you are eligible for any part of the \$9,132.95 refund, you will have to sign a release of all claims, including claims for money damages, related to the billing or collection of those funds before receiving your refund.

### **WHERE CAN I GET MORE INFORMATION?**

NDSH will have a copy of the complete Settlement Agreement, setting out the terms of the settlement, available in a secure location within the SOTEP unit at NDSH for review by residents, under the conditions set out in the DHS/NDSH policies and SOTEP handbook.

If you have access to the internet, you can see a copy of the Settlement Agreement on the website of the lawyers for the Class, Brancart & Brancart, [www.brancart.com](http://www.brancart.com).

You can also contact the lawyers for the Class, Christopher Brancart and Elizabeth Brancart, and request a copy of the Settlement Agreement or if you have questions about the lawsuit or settlement. Their contact information is Brancart & Brancart, P.O. Box 686, Pescadero, CA 94060; (650) 879-0141.

### **CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?**

Because the claims and this settlement are for injunctive relief, class members by law are not able to exclude themselves.

### **WHEN IS THE HEARING AND HOW CAN I OBJECT?**

The Court will hold a hearing in this case on \_\_\_\_\_, 2020 at \_\_.m. to decide whether to approve the settlement. The hearing will be held in Courtroom No. 1, Fourth Floor of

**EXHIBIT 7 TO CLASS ACTION SETTLEMENT AGREEMENT**

the United States Courthouse in Fargo, North Dakota, located at 655 1st Avenue North, Fargo, North Dakota 58102.

If you do not like the settlement, you may object to it. You may also object to the payment of any attorneys' fees, litigation expenses, and costs to the lawyers for the Class.

**If you want to object or if you want to go to the hearing, you must let the Court and the lawyers for the parties know by mailing your written objection or intention to appear at the hearing to each of them at the following addresses no later than \_\_\_\_\_, 2020:**

Clerk of Court  
U.S. District Court  
655 1st Ave. North, #130  
Fargo, ND 58102

Christopher Brancart  
Brancart & Brancart  
P.O. Box 686  
Pescadero, CA 94060

Daniel Gaustad  
Pearson Christensen, PLLP  
P.O. Box 5758  
Grand Forks, ND 58206

**Also, there are specific mandatory requirements in order for an objection to be considered by the Court and for attendance at the \_\_\_\_\_, 2020, which are described in detail in the Settlement Agreement.**

**Nothing in this Notice does or nor is it intended to modify or alter any term in the Settlement Agreement. Rather this Notice is to provide a summary of the proposed settlement and terms of the Settlement Agreement, information about the hearing and your right to object to the settlement.**

Exhibit 8  
to Class Action  
Settlement  
Agreement

**EXHIBIT 8 TO CLASS ACTION SETTLEMENT AGREEMENT**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

RODNEY J. IRELAND, et al.,

Plaintiffs,

-vs-

CHRISTOPHER D. JONES, Executive  
Director, North Dakota Department of  
Human Services, et. al.,

Defendants.

Civil No. 3:13-CV-0003-DLH-ARS

**[PROPOSED] ORDER PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT**

1. Before this Court is the parties' joint motion for preliminary approval of a proposed Class Action Settlement Agreement and Exhibits attached thereto<sup>1</sup> filed by the parties, approval of the proposed class notice and to set a hearing on final approval of the settlement.

2. **WHEREAS**, on March 21, 2017, the Court certified the following Classes and Subclasses:

(A) "SOTEP Class," consisting of all persons civilly committed to the DHS pursuant to North Dakota Century Code chapter 25-03.3 and confined in the Sex Offender Treatment and Evaluation Program ("SOTEP") at the North Dakota State Hospital ("NDSH") during the pendency of this litigation, with three subclasses consisting of:

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<sup>1</sup> The Class Action Settlement Agreement and all of the exhibits attached thereto shall be collectively referred to herein as the "Settlement Agreement."

**EXHIBIT 8 TO CLASS ACTION SETTLEMENT AGREEMENT**

(1) “ADA Subclass,” consisting of “all SOTEP Class members with disabilities as defined under the Americans with Disabilities Act (ADA Subclass)”;

(2) “Juvenile Subclass,” consisting of “all SOTEP Class members whose civil commitment was based on ‘sexually predatory conduct’ (as defined by North Dakota Century Code section 25-03.3-01(9)) committed while they were minors (Juvenile Subclass)”;

(3) “RLUIPA Class,” consisting of “all SOTEP Class members whose religious exercise has been substantially burdened while civilly committed (Religious Land Use and Institutionalized Persons Act, or ‘RULIPA Class’)”;

(B) “Evaluation Class,” consisting of all persons in custody at NDSH for evaluation as to whether they are SDIs pursuant to North Dakota Century Code section 25-03.3-11, during the pendency of this litigation; and

(C) “Debt Class,” consisting of all persons from whom DHS or NDSH has demanded payment [from] January 1, 2004, through the pendency of this litigation, for their civil commitment as SDIs pursuant to North Dakota Century Code chapter 25-03.3. ECF 394 at p. 36; ECF 518.

3. **WHEREAS**, the Court appointed representatives of the classes and subclasses as follows:

SOTEP Class: David Anderson, Matthew Dyer, Jason Gores, Terry Greak, Robert Hoff, Robert Lilley, Oliver Wardlow III, Travis Wedmore, and John Westlie.

ADA Subclass: David Anderson, Jason Gores, and Oliver Wardlow III

Juvenile Subclass: Jason Gores, Robert Lilley, and John Westlie

**EXHIBIT 8 TO CLASS ACTION SETTLEMENT AGREEMENT**

RLUIPA Subclass: Robert Lilley

Evaluation Class: Garrett Loy

Debt Class: Rodney Ireland, Larry Rubey, and Jeremy Johnson.

ECF 343; 394 at p. 26 n.12; ECF 518.

4. **WHEREAS**, the parties have reached a proposed settlement of this action, which has been memorialized by the Settlement Agreement, and seek preliminary approval of the terms of the settlement pursuant to Fed. R. Civ. P. 23(e),

5. **WHEREAS**, the terms of the proposed settlement are set forth in the Settlement Agreement filed by the parties,

6. **WHEREAS** the Court has read and considered those documents along with the papers filed in support of the motion for preliminary approval,

7. **IT IS HEREBY ORDERED**, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that:

8. The Court finds, on a preliminary basis, that the proposed settlement, as set forth in the Settlement Agreement, appears to be within the range of fairness, reasonableness and adequacy of a settlement that the Court will likely be able to approve and it appears to the Court, on a preliminary basis that the settlement, as set forth in the Settlement Agreement, is fair, reasonable, and adequate after considering:

(A) the Class Representatives and Class Counsel have adequately represented the Classes and Subclasses;

(B) the proposed settlement and Settlement Agreement were negotiated at arm's length;



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(C) the relief provided for in the proposed settlement is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the Classes and Subclasses, including the method of processing claims of Class Members and Subclass-members; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) the Settlement Agreement filed by the parties; and

(D) the proposed settlement treats Class Members equitably relative to each other.

9. The Court approves the method and process for disseminating notice to the Class Members set forth in the Settlement Agreement. The Court approves the form and content of the Class Notice, in the form attached as Exhibit 7 to the Settlement Agreement. The Court finds that the Class Notice is clear and readily understandable by the Class Members. The Court finds that the method and process for disseminating the Class Notice to the Class Members is reasonable and appropriate and satisfies any applicable due process and other requirements, and is the only notice to the Class Members that is required.

10. Not later than 3 days after the Settlement Agreement is filed with the Court, Class Counsel shall provide to Defendants the state of residence for each of the Class Members, to extent Class Counsel has such information, so as to permit Defendants to provide notice under 28 U.S.C. § 1715(b). No later than seven (7) days prior to the date of the Court's Fairness Hearing described in Section 26 below, the attorneys for the Defendants shall file a notice with the Court describing the content of the notices (See 28 U.S.C. § 1715(b)(1)-(8) and each "appropriate State official" and

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each "appropriate Federal official" (See 28 U.S.C. § 1715(a)(1)-(2)) who were provided the notice under this Section 10.

11. Not later than 7 days after entry of this Preliminary Approval Order, Defendants shall provide Class Counsel with a complete list of persons currently civilly committed and those who have been on evaluation status in SOTEP at NDSH during the pendency of this action (being since February 12, 2013). Prior to providing the list under this Section 11, the currently existing qualified protective order shall be amended, if necessary, so as to allow for such list to be provided by the Defendants.

12. Not later than 14 days after entry of this Preliminary Approval Order, Defendants will cause the Settlement Agreement, this Preliminary Approval Order and the Class Notice to be placed within a secure location within each SOTEP unit at NDSH and made available for review upon request for review by residents under the conditions set out in the DHS/NDSH policies and SOTEP handbook. NDSH will assure that a copy of those documents are available on each unit until the date of the Fairness Hearing, described in Section 26 below.

13. Not later than 14 days after the entry of this Preliminary Approval Order, the Class Counsel shall send the Class Notice, as approved by the Court, to the Class Members by first class mail, postage prepaid, with a copy of each addressed envelope used to transmit each mailed Class Notice being provided to Counsel for Defendants. Prior to mailing the Class Notice, Class Counsel will identify the most current available address of each of the Class Members who are not current residents of SOTEP.

14. With respect to each Class Notice returned undelivered but with a forwarding address before Objection Deadline (as described in Section 18 below), Class

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Counsel shall re-mail the Class Notice to that forwarding address, with a copy of each envelope used to transmit each re-sent Class Notice being provided to Counsel for Defendants. With respect to each Class Notice returned as undeliverable before Objection Deadline (as described in Section 18 below), Class Counsel shall promptly attempt to determine a more current address using a reasonable search method, such as a proprietary database (e.g., Accurint), and shall resend the Class Notice via first class mail to any more recent addresses reflected in those records.

15. No later than seven (7) days prior to the date of the Court's Fairness Hearing, as described in Section 26 below, the Class Counsel shall file an affidavit or declaration with the Court certifying that the Class Notice has been provided to the Class Members pursuant to Sections 6.4 and 6.5 of the Settlement Agreement and Sections 13 and 14 of this Preliminary Approval Order.

16. Any Class Member, except the Class Representatives that have signed the Settlement Agreement, may comment on or object to the terms of the Settlement Agreement and/or Class Counsel's application for attorneys' fees and costs by mailing a written "Objection to Settlement" to the Clerk of Court, United States District Court, 655 1st Ave. North, Suite 130, Fargo, ND 58102, with copies to Class Counsel and Counsel for Defendants mailed to the following addresses:

**Class Counsel:**

Christopher Brancart  
Elizabeth Brancart  
Brancart & Brancart  
P.O. Box 686  
Pescadero, CA 94060  
Tel: (650) 879-0141  
Fax: (650) 879-1103  
cbrancart@brancart.com

**Counsel for Defendants:**

Daniel L. Gaustad  
Joseph E. Quinn  
Pearson Christensen, PLLP  
24 North 4th Street  
P.O. Box 5758  
Grand Forks, ND 58206-5758  
Tel: (701) 775-0521  
Fax: (701) 775-0524

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[dan@grandforkslaw.com](mailto:dan@grandforkslaw.com)

17. To be considered, an Objection to Settlement must be in writing, and must be postmarked or filed with the Clerk of Court before the expiration of the Objection Deadline (described in Section 18 of this Preliminary Approval Order).

18. To be considered, an Objection to Settlement must be postmarked by or filed with the Clerk of Court no later than sixty (60) days after the date of this Preliminary Approval Order (the "Objection Deadline").

19. To be considered by the Court, the Objection to Settlement must include the following: (i) a written document clearly labelled on the top of the first page "Objection to Settlement" (ii) a written document clearly providing on the top of the first page the case caption of "*Ireland v. Jones*" and the case number of Civil No. 3:13-CV-0003-PDW-ARS (iii) include the name, address, telephone number, and signature of the person objecting; (iv) include a statement whether the objector intends to appear at the Fairness Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address, and phone number, (v) include a statement of the grounds for his or her objection or comment; and (vi) include the basis upon which the objector claims to be a Class Member.

20. Any Objection to Settlement that does not meet the requirements under Sections 16 through 19 of this Preliminary Approval Order shall not be considered by the Court.

21. If a Class Member files a timely Objection to Settlement, he or she may appear at the Fairness Hearing, described in Section 26 below, either personally or through counsel.

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22. A Class Member seeking to appear personally at the Fairness Hearing, described in Section 26 below, must send a “Notice of Intention to Appear in *Ireland v. Jones*” to the Clerk of Court postmarked by or delivered by no later than the Objection Deadline, with copies to Class Counsel and Counsel for Defendants, at the addresses described in Section 16 of this Preliminary Approval Order. Due to security and safety concerns and requirements of NDSH, the appearance at the Fairness Hearing by Class Members currently committed at the NDSH as an SDI may be by remote access.

23. A Class Member seeking to appear at the Fairness Hearing through counsel may do so only if his counsel files a notice of appearance with the Court no later than the Objection Deadline and serve copies on Class Counsel and counsel for Defendants at the addresses noted in Section 16 of this Preliminary Approval Order.

24. No Class Member may contest the approval of the terms and conditions of the Settlement Agreement (including but not limited to the releases and orders requested and to be issued in accordance with the terms thereof), the Final Order, Final Judgment, any request for or award of attorneys’ fees and costs to Class Counsel, except by filing and serving a written Objection to Settlement, in accordance with the provisions of this Preliminary Approval Order.

25. Any Class Member who fails to provide an Objection to Settlement in the manner prescribed in this Preliminary Approval Order shall, for all purposes waived, and be deemed to have waived, and shall be foreclosed forever from raising any objection to any term of the Settlement Agreement, or Class Counsel’s application for attorneys’ fees and costs.

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26. The Court directs that a hearing for final approval of the proposed settlement, as set forth in the Settlement Agreement, be scheduled for \_\_\_\_\_, 2020, at \_\_\_\_\_ a.m., (the "Fairness Hearing"), in Courtroom #1, Fourth Floor of the United States District Court, 655 1<sup>st</sup> Avenue North, Fargo, North Dakota 58102, which hearing shall be to assist the Court in determining whether:

(A) the Class Notice, as given constitutes the best notice practicable under the circumstances, constitutes due and sufficient notice of the settlement and the matters set forth in the notice to all persons entitled to receive notice, and fully satisfies the requirements of due process and of Fed. R. Civ. P. 23;

(B) the Settlement Agreement, and all of the terms and conditions thereof (including but not limited to the releases and orders requested and to be issued in accordance with the terms thereof) should be finally approved as fair, reasonable, and adequate, and in the best interests of the Class Members and all the Classes and Subclasses and to provide that all Class Members shall be subject to and bound by all of the terms and conditions of the Settlement Agreement, including the releases contained therein, and conclude that the Settlement Agreement should be and is approved;

(C) a final judgment should be entered dismissing the Released Claims of the Class Members and the Litigation with prejudice, in total and on the merits, subject to the terms of the Settlement Agreement;

(D) a final judgment is to be entered that vacates, in total, that part of the Court's prior orders (ECF 519 and 535) and report and recommendation (ECF 403) which found N.D.C.C. chapter 25-03.3 to be "unconstitutional on its face because it

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does not require that defendants initiate court proceedings for release of individuals who no longer meet SDI criteria;" and,

(E) to approve Class Counsel's application for an award of attorneys' fees, costs and expenses in an amount up to, but not exceeding, the \$320,000 amount described in Section 3.9 of the Settlement Agreement.

27. No later than thirty (30) days after the Objection Deadline:

(A) Class Counsel and Counsel for Defendants shall file a joint motion for final approval of the Class Notice and that the Class Notice constitutes the best notice practicable under the circumstances, constitutes due and sufficient notice of the settlement and the matters set forth in the notice to all persons entitled to receive notice, and fully satisfies the requirements of due process and of Fed. R. Civ. P. 23.

(B) Class Counsel shall file a motion for final approval of the Settlement Agreement, and all of the terms and conditions thereof (including but not limited to the releases and orders requested and to be issued in accordance with the terms thereof) as fair, reasonable, and adequate, and in the best interests of the Class Members and all the Classes and Subclasses and that all Class Members shall be subject to and bound by all of the terms and conditions of the Settlement Agreement, including the releases contained therein, and conclude that the Settlement Agreement should be and is approved.

(C) Class Counsel and Counsel for Defendants shall file a stipulation and joint motion to dismiss the Released Claims of the Class Members and the Litigation with prejudice, in total and on the merits, subject to the terms of this Settlement Agreement.

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(D) Counsel for Defendants shall file a motion to vacate that part of the Court's prior orders (ECF 519 and 535) and report and recommendation (ECF 403) which found N.D.C.C. chapter 25-03.3 to be "unconstitutional on its face because it does not require that defendants initiate court proceedings for release of individuals who no longer meet SDI criteria."

(E) Class Counsel shall file a motion for approval of attorneys' fees, costs and expenses in an amount up to, but not exceeding, the \$320,000.00 described in Section 3.9 of the Settlement Agreement.

28. No later than fourteen (14) days before the Fairness Hearing, the parties shall file any responses to any Objections to Settlement, and any replies in support of final approval of the Class Notice, final approval of the Settlement Agreement, Class Members and Defendants' stipulation and joint motion for dismissal of the Release Claims and this Litigation, the Defendants motion to vacate portions of the Court's prior orders (ECF 519 and 535) and report and recommendation (ECF 403) and/or Class Counsel's motion for an award of attorneys' fees, costs and expenses.

29. The Court reserves the right to continue the Final Approval Hearing or modify the deadlines set forth herein without further notice to the Absent Class Members.

30. If the Settlement Agreement terminates for any reason, other than the parties failure to comply with the terms of the Final Order, then all issues and claims in the Litigation shall thereupon forthwith be deemed to have reverted to their respective status immediately prior to time of signature of the first party to have executed the Settlement Agreement, and the Litigation shall proceed in all material aspects as if this



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Settlement Agreement and related Orders and papers had not been executed at all, with all substantive and procedural claims, issues and defenses having been fully preserved.

31. All of the terms defined in the Settlement Agreement are incorporated herein and have the same meaning as used in this Preliminary Approval Order.

32. This Preliminary Approval Order will not waive or otherwise impact the Parties' rights or arguments.

33. Pending the final determination of whether the Settlement Agreement should be approved, all proceedings in this Litigation, except as may be necessary to implement the Settlement Agreement or comply with the terms of the Settlement Agreement, are hereby stayed.

34. Without further order of the Court, the Parties may agree to make non-material modifications in implementing the Settlement Agreement that are not inconsistent with this Order.

35. The following chart summarizes the dates and deadlines set by this Order:

<b>Task</b>	<b>Deadline</b>
Last day for Class Counsel to provide states of residence of Class Members to Defendants	3 days after Settlement Agreement is filed with Court
Last day for list of persons currently civilly committed or on evaluation status in SOTEP at NDSH	7 days after entry of Preliminary Approval Order
Last day for Defendants to place Settlement Agreement within secure location within SOTEP units	14 days after entry of Preliminary Approval Order
Deadline for Class Counsel to mail Class Notice	21 days after entry of Preliminary Approval Order

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<b>Task</b>	<b>Deadline</b>
Last day for Class Counsel to provide states of residence of Class Members to Defendants	3 days after Settlement Agreement is filed with Court
Last date for: (a) joint motion to approve Class Notice (b) joint motion for final approval of the Settlement Agreement; (c) Class Members and Defendants stipulation and joint motion to dismiss Released Claims and Litigation, (d) Defendants to file motion to vacate portion of Court's prior orders (ECF 519 and 535) and report and recommendation (ECF 403); and (e) Class Counsel to file motion for attorneys' fees, costs and expenses	30 days after Objection Deadline
Objection to Settlement Deadline	60 days after Date of Preliminary Approval Order
Last day for parties to file any responses to objections, and any reply papers in support of motion for entry of final approval of Class Notice, final approval of the Settlement, Class Members and Defendants' stipulation and joint motion to dismiss, Defendants' motion to vacate prior orders and report and recommendation (ECF 519/535/403) and/or Class Counsel's application for attorneys' fees, costs and expenses	14 days before Fairness Hearing
Last day for Counsel to file affidavit or declaration regarding dissemination of Class Notice	7 days before Fairness Hearing
Last Day for Counsel for Defendants to file notice of contents of 28 USC § 1715 notice	7 days before Fairness Hearing
Final Approval Hearing	TBD

**IT IS SO ORDERED.**


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 Peter D. Welte, Chief Judge  
 United States District Court
**DATED:**