

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

**ORDER GRANTING MOTION FOR
PRELIMINARILY APPROVAL OF 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 thereto¹ 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:

(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)"; and

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

(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

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;

(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 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 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

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

cbrancart@brancart.com

Fax: (701) 775-0524
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.

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.

26. The Court directs that a hearing for final approval of the proposed settlement, as set forth in the Settlement Agreement, be scheduled for Monday, November 23, 2020, at 9:00 a.m., (the "Fairness Hearing"), in Courtroom #1, Fourth Floor of the United States District Court, 655 1st 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 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.

(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 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:

Task	Deadline
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
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

Task	Deadline
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 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	Monday, November 23, 2020

IT IS SO ORDERED.

Dated this 22nd day of July, 2020.

/s/ Peter D. Welte
Peter D. Welte, Chief Judge
United States District Court