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

LOUIS HENDERSON, et al.,

Plaintiffs,

Vs.

CASE NO.: 2:11-cv-224-MHT

KIM T. THOMAS, et al.,

Defendants.

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FAIRNESS HEARING

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BEFORE THE HONORABLE MYRON H. THOMPSON, UNITED STATES
DISTRICT JUDGE, at Julia Tutwiler Prison for Women, Wetumpka,
Alabama, on Tuesday, September 24, 2013, commencing at 9:41
a.m.

APPEARANCES

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Proceedings reported stenographically;
transcript produced by computer.

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(The following proceedings were heard before the Honorable Myron H. Thompson, United States District Judge, at Julia Tutwiler Prison for Women, Wetumpka, Alabama, on Tuesday, September 24, 2013, commencing at 9:41 a.m.:)

1 THE COURT: The issue before the Court is whether to
2 approve the proposed settlement. This is a fairness hearing.
3 How do the plaintiffs suggest we proceed?

4 MS. WINTER: I would propose that I give a brief
5 summary of the provisions of the agreement, especially as they
6 relate to the women plaintiffs, and that then the Court hear
7 from class representative Dana Harley. There were two other
8 class members who filed objections but who have decided that
9 they don't want to speak, so there will just be one witness from
10 the plaintiff's side.

11 THE COURT: Okay. Go ahead.

12 MS. WINTER: Excuse me, Your Honor. One of the two
13 inmates who filed objections does want to speak.

14 THE COURT: Okay. Very good.

15 MS. WINTER: Your Honor, the plaintiffs propose that
16 the settlement is fair, reasonable, and adequate; in particular,
17 the women members of the class have received through this
18 settlement essentially 100 percent of what they asked for in
19 this lawsuit, and the ADOC has already fulfilled its promise and
20 has met and even exceeded deadlines. We are told by the class
21 representative they integrated Tutwiler at the end of July,
22 before the date called for by the agreement.

23 It's our understanding that isolation on intake has
24 ceased. Women with HIV who are newly admitted to the ADO system
25 no longer go into segregation, but go directly into a general

1 population receiving dorm so that from henceforth, prisoners
2 with HIV will not be stigmatized. The provision means that all
3 programs from which women with HIV were previously excluded,
4 that that exclusion is gone. Furthermore, the HIV specific work
5 release criteria have been eliminated. And the ADOC carried out
6 that provision of the agreement immediately when the
7 execution -- when the agreement was executed. That means that
8 there are already many more -- many, many more people,
9 particularly among the men, who are already in work release who
10 otherwise would not have been.

11 An important part of the agreement was the ADOC would
12 conduct -- will conduct training for all prisoners, all staff,
13 security staff, and all classification staff throughout the
14 system, and all staff and inmates were given educational
15 training before the integration occurred at Tutwiler. And you
16 will hear from Ms. Harley, the class representative, about how
17 that went at Tutwiler. You will also hear from her about how
18 the integration process has gone.

19 Other important provisions of the proposed agreement
20 are the classification staff will be trained that they are not
21 to inquire into any inmates's HIV status. And furthermore, they
22 are not to add information to their classification file about
23 any inmate's HIV status. Pursuant to the agreement, the
24 commissioner, Commissioner Thomas, issued excellent directives,
25 three separate directives, to staff, to inmates, and to

1 classification. And under these directives, the commissioner
2 underscored a zero tolerance policy for violence, for abuse by
3 any inmate against another based on HIV status, and directed
4 staff, all security staff, about the extreme importance of HIV
5 confidentiality and that deliberate breaches of that
6 confidentiality would be subject to discipline.

7 We feel like all of these are wise and prudent
8 safeguards that were undertaken before the integration at
9 Tutwiler. And as you'll hear from Ms. Harley, the process has
10 gone very well.

11 Another important provision for the women is that the
12 other -- there are two work release facilities in the system for
13 women, and hitherto women with HIV have only been admitted to
14 Montgomery Women's Center. Under the agreement, women with HIV
15 will now also -- are now also already eligible -- if they're
16 otherwise eligible for work release, they are eligible to go to
17 Birmingham if that's the better location for them. No one has
18 yet, of the HIV positive women, gone there, but we feel
19 confident that that will happen as soon as there is a candidate
20 for whom Birmingham is the right place and when there's an open
21 bed.

22 Notice to the class was accomplished in conformity with
23 the order that you entered preliminarily approving the
24 agreement. There was hand delivery by the ADOC with a sign-off
25 to every class member, as you'll also hear Ms. Harley testify.

1 And there were -- there was a meeting with class counsel.
2 Myself and Mr. Takei met, were allowed to meet with the women
3 for as long as we needed to to answer all questions relating to
4 the agreement. We urged all class members if they had a problem
5 with the agreement, if they wanted to be heard by the Court, to
6 speak at this hearing and that they -- and that we believed that
7 the Court would hear them.

8 There is a provision for attorney's fees, which we
9 believe is very important relief for the plaintiffs. In part --
10 I mean, of course, in future what it means, that plaintiff's
11 counsel can continue to take meritorious cases that other
12 lawyers might not be willing to take, but it also gives
13 plaintiff's counsel the wherewithal to monitor this agreement.
14 And there is a provision for monitoring up until the agreement
15 terminates. And the monitoring will -- according to the
16 monitoring provisions, the ADOC will provide plaintiff's counsel
17 with certain agreed-upon data points periodically that will
18 allow us then to communicate with class members and to be sure
19 that the provisions that are agreed upon are actually being
20 carried through. The parties have stipulated that the relief
21 that is -- that was negotiated and that we present to the Court
22 is the most closely, narrowly tailored relief that is needed to
23 address the violations that plaintiffs alleged in their lawsuit,
24 and the parties have stipulated to that as a fact.

25 I think that those are the salient points with regard

1 to the women. And from the meeting that Mr. Takei and I had had
2 with the women and correspondence with them, it is our strong
3 impression that the women very, very much favor the agreement,
4 and that at this point, there is -- so far as we know, no
5 opposition to the agreement from the members of the class at
6 Tutwiler.

7 THE COURT: All right. Now, I understand there are two
8 agreements?

9 MS. WINTER: Yes. There is the agreement that we've
10 asked this Court to enter as an order. There's also a private
11 agreement that is attached as an exhibit to the proposed order
12 that we gave you.

13 There is really only one reason why there is a private
14 agreement, and that is that the ADOC was unwilling to integrate
15 all 29 facilities under a federally enforceable agreement. They
16 were willing to have 14 facilities covered by the federally
17 enforceable agreement, and we carefully negotiated over which 14
18 facilities so that we thought it would cover a good geographic
19 distribution; a good distribution of programs. Some of them
20 were desirable facilities regarding programs, and the geographic
21 locations that we wanted to make sure were covered by the
22 federal agreement were based on a poll that we did in which we
23 attempted to find out the current county of commitment of most
24 of the class. Because our whole effort here is to have members
25 of the class be eligible to be assigned to facilities near their

1 families, which is -- it's been one of the most difficult things
2 for prisoners under the old regime.

3 THE COURT: What about the sunset provision? Does it
4 apply to both agreements?

5 MS. WINTER: Yes. The sunset -- under the sunset
6 provision, on June 15th, 2015, the agreement will terminate
7 unless there is then a pending motion to enforce or for
8 contempt. In that case, the agreement will continue until the
9 motion is resolved.

10 THE COURT: But as to the private agreement, I would
11 not have any responsibility for terminating that or enforcing it
12 or anything?

13 MS. WINTER: No. This Court will have no
14 responsibility for the private agreement. We were concerned
15 about the private agreement. It will have no effect on the
16 women, because Birmingham work release is the only other
17 facility to which they would be eligible in any event, and
18 that's covered by this agreement.

19 Our understanding is that -- we were very concerned not
20 to have all facilities covered, but we really do believe that
21 this is good faith on the part of the Alabama Department of
22 Corrections; that their motive in having a private agreement
23 covering 15 of the facilities was not so that they could evade
24 it or to make us go into state court to enforce it, but simply
25 because they were not willing to say that it was the most

1 narrow, least intrusive remedy to integrate all 29 facilities.
2 And we did think that stipulation was extremely important.

3 THE COURT: Is the private agreement subject to the
4 PLRA?

5 MS. WINTER: The private agreement is not subject to
6 the PLRA.

7 THE COURT: So I shouldn't analyze it under the PLRA at
8 all?

9 MS. WINTER: No. The Court does not need to analyze it
10 under the PLRA.

11 I believe that those are the salient features of the
12 agreement. And at this point, unless, of course, you have other
13 questions for me now, we could hear from class representative
14 Dana Harley.

15 THE COURT: Let me hear from defense counsel, if you
16 have any opening statements, before we hear from any witnesses.

17 MR. LUNSFORD: Your Honor, I was thinking I might speak
18 after the testimony, but I'll go ahead and just provide --

19 THE COURT: If you want to, that's fine, too.

20 MR. LUNSFORD: I'll go ahead and provide our comments
21 now.

22 Obviously, we're here today to discuss the settlement
23 agreement as applies to Tutwiler. And what's interesting -- you
24 were asking about the private settlement agreement and the other
25 settlement agreement or the primary settlement agreement. The

1 private settlement agreement in many respects doesn't even apply
2 to the women. So for today's purposes, it's a wholly separate
3 document. And I agree wholeheartedly with Ms. Winter's comments
4 that it is not subject to the PLRA. It's a private agreement
5 that would fall outside of its scope.

6 Your Honor, as you know from six weeks of trial
7 testimony, circumstances presented by HIV positive women in the
8 Alabama Department of Corrections system has always been a
9 different equation. It's very different from the men. They've
10 always been different. There are fewer women. As you notice,
11 today we have approximately, I believe, eight in the room with
12 us. At any point in time, just looking at the time the Court
13 has seen this population, when you toured the facility, there
14 were five. There have been as many as ten. That gives the
15 department a lot different ability to make adjustments and
16 changes to the way those individuals are housed than it would
17 with regard to the men, which we're going to talk about later
18 this week.

19 But I think it's important to recognize the difference,
20 not only in the population itself, but also in the facilities
21 where they're housed. We have one major female facility. We
22 have two work release facilities where women are housed in
23 Alabama. There are ten -- 20 times as many facilities and ten
24 times or 20 times as many men in the state at any given point in
25 time which, naturally, makes it more complicated. And that was

1 a challenge that, obviously, we felt we could take on and did
2 take on.

3 The differences in the population between the female
4 inmates with HIV and male inmates with HIV is reflected in the
5 settlement agreement as well. It was easy to compress the
6 timetable here. We heard loud and clear the Court's
7 encouragement to proceed with alterations in the housing, and we
8 did that, even before the settlement has been -- even before the
9 settlement has been approved, because we understood how
10 important that was. We wanted to go ahead and do that, and by
11 all accounts it has been a successful transition, due in large
12 part to the correctional staff here at Tutwiler.

13 As you will see, the structure of the settlement
14 agreement, regardless of whether it is being applied to the male
15 inmates or female inmates, is essentially the same, which is
16 that we have set up a process, and that process begins with,
17 one, training. That training is for inmates. That training is
18 for officers and DOC staff.

19 There is an additional training component that will be
20 more important when we talk about the men, but there's also a
21 medical training component. We believed it was very important
22 that before we made any specific alterations to any of the
23 housing arrangements that that training be completed. And that
24 training has been completed here at Tutwiler. It's also been
25 completed at Montgomery Women's Facility.

1 That training, essentially, says this: That we're
2 going to have UAB come in and train all of the officers. I've
3 sat through that training. The commissioner has sat through
4 that training. I know general counsel for the department has
5 sat through that training. And that training has been well
6 received among the correctional staff. It goes to some of the
7 issues that the Court expressed concern about during the course
8 of the trial or in its opinion, and we believe that training is
9 going to be effective. The Department of Corrections is
10 providing training to inmates. That training has also been well
11 received. While it does address HIV, it's also an opportunity
12 for us to address other critical issues that relate to sexually
13 transmitted diseases.

14 With regard to the women at Tutwiler, I think it's
15 important to recognize that while they have moved beds and are
16 housed in different dormitories, they are eating in the same
17 chow hall. They're seeing the same correctional staff. They
18 are seeing the same medical staff on a day in, day out basis.
19 That is a critical difference from the male inmates, which,
20 again, we're going to talk about later this week; but I think
21 that made this a perfect situation for us to compress the time
22 table and move forward. And by all accounts, I think we can
23 take what has occurred here at Tutwiler and apply it elsewhere
24 and, hopefully, see the same success at other facilities.

25 THE COURT: Thank you. Now, these settlement

1 agreements in no way compromise the treatment, if needed, for
2 inmates who are HIV positive; is that right? The medical
3 treatment?

4 MS. WINTER: The agreement provides two things
5 regarding medical treatment. One is that system wide, all staff
6 who are going to be providing primary care to prisoners with HIV
7 will receive preceptorships at UAB's 1917 Clinic. So we're
8 talking about very top-of-the-line training. And ADOC will
9 figure out who needs to or who should have that training. That
10 training will be provided by the Alabama AIDS Training and
11 Education Center, AATEC, which you've heard testimony about and
12 mentioned in your opinions. So we think that's important.
13 That's a part of the agreement.

14 The agreement also includes a provision that where
15 necessary to provide HIV specialty care, the department will
16 install telemedicine units at each facility where they believe
17 that that's needed to insure HIV specialty care.

18 There is a provision regarding monitoring, that if
19 prisoners do not receive their medication as prescribed,
20 plaintiff's counsel can communicate immediately with defendant,
21 with ADOC's counsel, with Ms. Hill. So it's like a direct
22 attorney-to-attorney communication so that we can make sure any
23 slip-ups are addressed right away.

24 There is -- of course, there can't be any guarantee
25 that medical care will be either as good as it is now at the

1 other facilities or that it will be the same. It could be
2 better. We don't know. This is not a medical case, of course.
3 If by any chance medical care is not adequate, which we don't at
4 all anticipate, there will no doubt be lawyers who will want to
5 help the plaintiffs make sure that medical care is
6 constitutionally adequate.

7 THE COURT: I guess because everyone here at Tutwiler
8 is concentrated in one facility, it's probably not going to be
9 as big an issue, I would think.

10 MS. WINTER: I don't think it's a big issue here, so I
11 didn't really address it in my opening. I think it's much more
12 of an issue with the men. But the women can be confident that
13 they will continue to get the same care that they have gotten.
14 And if there's any problems, they will communicate with counsel
15 and counsel will communicate with ADOC's counsel. We think that
16 there will be seamless continuity for the women.

17 THE COURT: I think at Tutwiler here, there's probably
18 not even any dramatic change in the delivery of medical care,
19 because everyone is at the same place and it's just a matter of
20 being in the general population rather than in one room.

21 MS. WINTER: I think that's right. Ms. Harley can
22 speak to that.

23 THE COURT: Right. I'll hear from Ms. Harley -- from
24 your witness.

25 DANA HARLEY

1 Q. And during the mediation -- that went on over a number of
2 days, didn't it?

3 A. Yes, ma'am.

4 Q. And over the course of that mediation, were you returning to
5 the prison in the evening after the mediation?

6 A. Yes, ma'am.

7 Q. During the mediation, were you communicating daily with the
8 other class members at Tutwiler about what was happening in the
9 mediation?

10 A. Yes, ma'am.

11 Q. And were you advising plaintiff's counsel on the positions
12 of the women regarding the settlement?

13 A. Yes, I were.

14 Q. Ms. Harley, did you ever receive a copy of the final, signed
15 settlement agreement and a notice to the class?

16 A. Yes, ma'am, I did.

17 Q. Could you tell the Court how you received that -- a copy of
18 that agreement and notice.

19 A. Warden Barrett called the dorm to the old dining room. And
20 he was in the classroom or group room, and he called us in one
21 by one and issued it to us.

22 Q. So you're aware that the other women also received their
23 copy?

24 A. Yes, ma'am, they did.

25 Q. After getting the notice and the copy of the settlement

1 agreement, did you have any discussions among yourselves with
2 the other members of the class at Tutwiler?

3 A. We talked about it.

4 Q. Did you ever have a meeting with Mr. Takei and me about the
5 settlement agreement?

6 A. About a month ago. August.

7 Q. That was after you received the notice and the copy of the
8 proposed agreement?

9 A. Yes.

10 Q. And could you tell the Court what that meeting was about
11 generally.

12 A. Well, we met in here. It was everybody that's in here now.
13 And it gave all of us a chance to voice any objections or
14 anything we didn't like about the settlement agreement, and all
15 of us were pretty much on one accord. So it gave us an
16 opportunity.

17 Q. Was there any discussion about whether class members could
18 file objections or testify in court if they wanted to?

19 A. Filing objections -- because we had the paper that came with
20 the settlement agreement. We had the objection papers separate.
21 So if we chose to fill them out, we could. If we didn't have
22 any objections, we didn't have to.

23 Q. To your knowledge, has HIV segregation ended at Tutwiler?

24 A. It has here at Tutwiler.

25 Q. When did that happen?

1 A. July, I want to say, 24th.

2 Q. Was that ahead of the schedule that you read in the
3 settlement agreement?

4 A. Yes, ma'am, because it said on or before August 1st.

5 Q. Could you describe to the judge how that process proceeded,
6 how --

7 A. The integration?

8 Q. How integration actually happened.

9 A. Well, they called us to ICS, gave us a bed number, and said,
10 move to a dorm. The first day they moved four of us out, and
11 the next day they moved the remaining people in the dorm out.
12 So we just received a bed number, a dorm and a bed number, and
13 moved.

14 Q. Did you experience any problems -- have you experienced any
15 problems with general population inmates since integration took
16 place?

17 A. I haven't with general population. Which here at Tutwiler,
18 we really never had a problem, because most everybody is
19 familiar with all of us anyway, so it was never a problem with
20 general pop. It was just a couple of issues. When A.D. moved
21 to a dorm, K dorm, you had some uneducated people --

22 Q. Before you go on, just for one second.

23 MS. WINTER: Could we have the -- could we have the
24 record refer to that inmate by the initials A.D.?

25 THE COURT: Very good.

1 Q. Is this an inmate who you testified about at trial --

2 A. Yes, ma'am.

3 Q. -- who had certain problems?

4 A. She had -- A.D., over the years, she has had history of
5 mental illness, and she was moved into a dorm by herself, in K
6 dorm. It's a pretty rough dorm. And she was having some
7 issues, and she -- I talked to a couple of people about it. And
8 just one of the comments I got from one of the officers were,
9 you asked to be put in population. And I was just explaining to
10 them, it's not about being in population; it's about being
11 treated right. So with her mental illness and some of the stuff
12 that she was hearing from the dorm, she just really didn't need
13 to be in a dorm, but Warden Barrett made her just be moved out.

14 Q. So she is -- do you have any information as to whether she's
15 doing well in the dorm she's in now?

16 A. She's doing exceptionally well. She's trying. So she's
17 doing good.

18 Q. Before the move actually occurred, what -- did you
19 participate in any training or education on HIV that was offered
20 by the ADOC?

21 A. They offered a training session. One was in the chapel, and
22 the second one was in the old dining room. They split us up.
23 They put -- let some go to the chapel for the training, and some
24 of us went to the old dining room. But the one I went to, it
25 was excellent.

1 Q. I used the word "offerred," but actually, that education
2 session was mandatory, was it not?

3 A. Uh-huh. Mandatory.

4 Q. And when you say you were split into groups, you don't mean
5 according to HIV and not?

6 A. Oh, no, ma'am. It was by dorms.

7 Q. What was the training about?

8 A. HIV, hepatitis C, genital herpes, syphilis, gonorrhoea,
9 trichomonas. It was STD training.

10 Q. And you said that the information offerred was excellent?

11 A. It was good.

12 Q. Since the integration process, are you aware of any problems
13 other than what you've mentioned about inmate A.D.?

14 A. It's an issue, but I think as we go on, it will get ironed
15 out; but the way that we're called or we're put on -- and I got
16 the newsletter in my pocket. The way we're grouped in the
17 newsletter for the HIV specialist -- which she's an infectious
18 disease specialist, too, and she treats hepatitis C, but
19 everybody knows all of us. So when we're put on the newsletter
20 to see Dr. Truett, they already know we go for HIV treatment.

21 Okay. Recently they had us -- got us on this
22 newsletter, and they have two other inmates that's in A dorm.
23 We don't even know them. But by them being on the newsletter
24 group with us to see Dr. Truett, I mean, that's exposing status
25 automatically.

1 Q. Is this a document that you just got?

2 A. I took it out of the daily newsletter.

3 MS. WINTER: We're just learning about this, Your
4 Honor. May I show this to Mr. Lunsford?

5 THE COURT: Yes.

6 (Brief pause in the proceedings)

7 MS. WINTER: Your Honor, may I hand you this document?

8 THE COURT: Yes. I don't understand the point.

9 MS. WINTER: I think the point Ms. Harley is making is
10 this. And it's not anything that we've raised to ADOC, so my
11 feeling is if there is a problem here, there would be a way to
12 address it. This list of inmates and the specialists they see
13 is issued to the entire prison population at Tutwiler, so
14 everybody sees that a certain number of inmates are -- have
15 specialty appointments with Dr. April Truett, who is known to be
16 the HIV specialist. And all of the women who are grouped
17 together as seeing Dr. Truett are -- most of those people are
18 already known to have HIV, but there are now more women coming
19 into the system who aren't stigmatized as having HIV. And
20 Ms. Harley's concern is that having a newsletter like this go
21 out to the entire inmate population, the entire population, not
22 just inmates --

23 THE WITNESS: Because actually, general population
24 inmates brought it to my attention. That's why I looked in the
25 newsletter, and I took it out.

1 THE COURT: This is not a newsletter, is it?

2 THE WITNESS: It's more than one page. We get a
3 newsletter, inmate newsletter, every day. It's about eight
4 pages.

5 THE COURT: Oh, and it says the daily appointment
6 schedule?

7 THE WITNESS: Yes, sir. That was just the page I tore
8 out.

9 MR. LUNSFORD: Your Honor, can I briefly explain kind
10 of the origination of this document? Because you are actually
11 familiar with where it probably began. This document arose
12 during the course of the *Laube* settlement. And the notion --

13 Well, first of all, let me clear one thing up. If
14 everyone thinks that Dr. Truett only treats HIV patients, that
15 is just not true. Dr. Truett is board certified in infectious
16 disease. And by virtue of the fact that we have a captive
17 population, infectious disease in our environment can be
18 serious, and is probably one of the most challenging issues we
19 face on a daily basis. MRSA can be a major issue, as well as
20 hep C, hepatitis C. So as Ms. Harley's already testified, there
21 are individuals on that list who do not have HIV.

22 And what is important, and what we understood as a
23 result of *Laube*, was that there would be occasions when an
24 inmate, for instance, saw -- let's say they went through the
25 sick call process, and they had a cold and received cold

1 medication. And they also had COPD, and therefore the nurse
2 practitioner or the RN at the time would say, if you're still
3 having symptoms a week from now, you need to see the physician.
4 So I'm going to put you in, and you'll see it in the newsletter
5 to see the physician. Then the newsletter would go out. And if
6 that particular inmate did not want to see the physician or did
7 not have symptoms, they would simply be taken off the list.

8 So the notion was a matter of efficiency more than
9 anything else to communicate to inmates, hey, if you have a
10 meeting with your classification specialist, you need to know
11 that this is an appointment. And there was confusion -- the
12 reason it arose in *Laube* was because there was confusion over
13 those appointments with the general practitioner or with the
14 OB-GYN that would sometimes come in. And so the decision was
15 made during that point in time that if there's an appointment,
16 we're going to let people know exactly who that appointment is
17 with.

18 So it's not -- A, it's not a disclosure of anyone's HIV
19 status simply because they're seeing Dr. Truett; B, that clearly
20 was not the intent at all. The intent was simply to insure that
21 inmates understood, you have an appointment with this particular
22 individual on this date. So if you have something else
23 scheduled, we need to work around it.

24 For example, I mean, a general practitioner appointment
25 for any one of these inmates is different than, obviously, if

1 the HIV specialist is here, because she's not here every day.
2 And so those have different importance. And we -- again, this
3 is the most efficient way we know to schedule those appointments
4 and to notify inmates that they're being scheduled.

5 MS. WINTER: Well, Your Honor, I -- my apologies to
6 Mr. Lunsford. We did not mean to blindside him with this. We
7 are just -- there literally was not a second to discuss it with
8 him. It just came up. And I'm quite sure that the intention of
9 this is not to disclose anybody's HIV status. There's no
10 question in my mind that is not why we have this list.

11 THE COURT: You can take it back.

12 MS. WINTER: Yes. It seems to me that there --

13 THE COURT: I think that's something that you-all are
14 going to work out. And I recognize that in setting up
15 appointments, you know, sometimes it's just evident that you're
16 going to a doctor for a certain reason.

17 MS. WINTER: It may be or it may not be that there is
18 some other way to do this, but that's something that I'm sure
19 the agency will be able to discuss with us.

20 BY MS. WINTER:

21 Q. Ms. Harley, I told the Court that I wasn't aware that
22 anyone, any class member has yet been assigned to Birmingham
23 work release. Do you know whether that's the case?

24 A. Yes, ma'am.

25 Q. Has someone been assigned there?

1 A. Somebody is in Birmingham.

2 Q. Pardon?

3 A. Yes, ma'am. One is in Birmingham now.

4 Q. That's good.

5 And one other question. There was a class member filed an
6 objection that she had not been admitted to the work release
7 program, even though she should be eligible for it, and she
8 wanted to know why the old -- she believed the old criteria were
9 being applied to her. Do you know whether that class member was
10 actually admitted to work release in Montgomery Women's Center
11 after she filed that?

12 A. Yes, ma'am. She went last week. She went Tuesday, came
13 back -- well, Monday and came back Thursday.

14 Q. To the best of your knowledge, did she come back of her own
15 free will?

16 A. Her own will.

17 Q. Okay. And was that -- and that was an inmate who had filed
18 an objection?

19 A. Yes.

20 Q. Okay. Is there anything else that you would like to say? I
21 don't have any other questions for you, but is there anything
22 else that you want to tell the Court about the basis for your
23 belief that this is a fair and adequate settlement of the class?

24 A. Because everything that me and the others have been fighting
25 for for years, we're getting it all, basically. And the

1 transition in the population, integrating the population, is
2 smooth due to mainly the inmates. Because we know each other.
3 We've been knowing each other for years. I know it's different
4 from us and the men. Like Mr. Lunsford said, it's that way, and
5 that's the way it's always going to be. But for the women,
6 we've been waiting for this for a long time. We've talked about
7 it over the years. And just being able to be looked at as an
8 individual and not based on where I live or where I sleep or
9 where I work due to my HIV status, that's a big change. And the
10 change from when I first got here in 2002, it's a change in the
11 correctional staff. Because the comments that I heard in 2002,
12 we still hear comments today, but it's nothing like it was in
13 '02 when we were segregated in the back of the medical unit and
14 everybody had a perception that something has to be wrong
15 because you're segregated. That's what was stuck in their
16 heads. Now it's so much easier with the change in
17 administration, and that's due to Warden Barrett and Deputy
18 Warden Tarrance. They are wardens that you can communicate
19 with. If you have a problem, Warden Barrett can't solve it,
20 then he'll tell you, okay, I'm going to look into it. And you
21 don't have to go on for days or weeks and wait. So with the
22 change in administration, it's making everything a lot easier
23 for the females.

24 We just want to thank you, Judge Thompson.

25 MS. WINTER: We have no further questions.

1 THE COURT: Do you have any questions, Mr. Lunsford?

2 MR. LUNSFORD: No.

3 THE COURT: How much time do you have left?

4 THE WITNESS: Parole, March 2015.

5 THE COURT: What are you going to do after that?

6 THE WITNESS: When I parole out? Living in -- I'll be
7 living in the Birmingham area. And I hope to start a
8 youth-based organization, youth accidents and prevention for HIV
9 and STD education and go from there.

10 THE COURT: Okay. The reason I was asking is,
11 obviously, I've heard you testify in court, and I've observed
12 you in court throughout the proceedings, and I'll have to say,
13 you're an incredibly impressive person.

14 THE WITNESS: Thank you.

15 THE COURT: And for you not to make something of
16 yourself would be such a waste and a loss to all of us. Thank
17 you.

18 THE WITNESS: Yes, sir. Thank you.

19 MS. WINTER: Your Honor, I believe that one of the
20 other inmates does -- Would you like to testify?

21 THE COURT: Certainly. I would like to hear from her.
22 Yes.

23 UNIDENTIFIED FEMALE

24 The witness, having first been duly sworn to speak the
25 truth, the whole truth and nothing but the truth, testified as

1 follows:

2 EXAMINATION

3 BY MS. WINTER:

4 Q. Did you file an objection in this case?

5 A. Yes, ma'am. I was telling Dana, I think I've got a
6 misunderstanding. I was just commenting about what my
7 classification officer, Ms. Johnson, said that we still had the
8 same old criteria.

9 Q. But you support the settlement?

10 A. Yes, ma'am.

11 Q. Is there anything -- and did you go to Montgomery last week,
12 Montgomery Women's Facility, to work release?

13 A. Yes, ma'am, I did.

14 Q. And then did you return voluntarily?

15 A. I came back on suicide watch.

16 Q. I see. Is there anything that you wanted to say to the
17 Court about the settlement?

18 A. Yes. I'm one of the ones who been doing time with Dana over
19 the years. And we've had to struggle with officers and, you
20 know, certain wardens and stuff, being harassed and everything,
21 and I support the lawsuit. And I want to thank you.

22 THE COURT: Thank you.

23 A. And Warden Barrett and Warden Tarrance has been great, too.

24 THE COURT: Thank you very much. I appreciate your
25 comments.

1 MS. WINTER: I'm hearing from a class member who did
2 not file an objection that she would like to be heard in support
3 of the settlement.

4 THE COURT: That's up to you and the counsel. I think
5 we said that if you didn't file an objection, you wouldn't be
6 heard, but it's up to you.

7 (Unidentified female was sworn)

8 UNIDENTIFIED FEMALE: Well, I appreciate everyone for
9 coming. I want to say one thing about HIV status inmates. We
10 were located in the chapel, and it was perfect. And after that,
11 I went to my dorm party and requested an officer to -- and
12 request something for me from the shift office. Instead, he
13 asked me, I hear that you are HIV positive. I'm from Kenya,
14 Africa. He asked me, did you come with it from Africa? I felt
15 so hot, because I was raped five times in Birmingham, and that's
16 how I contracted HIV. I found out on my free will because I had
17 trouble with sinus and allergy, and I went to one medical
18 center. I lived in Birmingham in Homewood. I went to one
19 medical center, and they drew blood after they treated me from
20 sinus and told me they are going to send it to Montgomery. Then
21 after two weeks, they called me and they followed me to UAB 1917
22 Clinic. So that's where I was going for my medical. I went
23 four times. And before I was arrested, they had sent my blood
24 to California for more studies. And I had an appointment, so --

25 MS. WINTER: Your Honor, may I interrupt the witness

1 for a moment?

2 I don't like to cut you off, but a special exception is
3 being made for you to testify because you didn't file an
4 objection. So my understanding was you wanted to speak briefly
5 in favor of the settlement. Would you like to do that?

6 UNIDENTIFIED FEMALE: Yes. I'm saying after that,
7 there's another officer who called me, not last Friday but
8 before, and he asked me, I hear there's an officer who is
9 minding about your business. Who is he? And I wrote to Warden
10 Barrett, and he replied back. He asked me who he was, and he
11 said he's trying his best to educate them. And I feel this is
12 very, very -- it's very respectable.

13 And then in my dorm, girls started picking me. Because
14 I went to take a shower, and I was on my cycle, all the shower,
15 and some blood flew to the drainage. And I tried myself to
16 clean it, and they called me back and I was made to clean all
17 the walls, everything, all the shower, for one and a half hour.

18 On Saturday one of the girls found me in the shower.
19 She came, threw water all -- and threw water to me when I was
20 already dressing. So I would like that to be considered.

21 MS. WINTER: You want that to be considered in support
22 of the settlement?

23 UNIDENTIFIED FEMALE: Yes.

24 MS. WINTER: Okay. Thank you.

25 UNIDENTIFIED FEMALE: Thank you.

1 MS. WINTER: We have no further witnesses.

2 MR. LUNSFORD: Your Honor, we would like to briefly
3 call -- you said you had someone else back there?

4 UNIDENTIFIED FEMALE: I had written just a letter to
5 you. Just if you could read my letter.

6 THE COURT: Do you want me -- you mean the objection?
7 The letter you wrote on the paper?

8 MS. WINTER: This class member did not file an
9 objection. So I believe that the issue that you raise doesn't
10 relate to the settlement. And that's what the judge is here
11 today --

12 THE COURT: That's right. I'm only here on this
13 matter.

14 THE WITNESS: On this matter?

15 THE COURT: Yes. That's it.

16 THE WITNESS: On this matter is -- it relates to me,
17 because I was given -- I was given the papers for it. As far as
18 what I've experienced was just police brutality that has gone
19 on. And I'm still sitting there without knowing when I could
20 parole out or when I could EOS --

21 THE COURT: I wouldn't have any control over that.
22 Thank you.

23 MS. WINTER: So we have no other witnesses, Your Honor.

24 MR. LUNSFORD: Your Honor, we would like to briefly
25 call Warden Barrett to address the notice issue.

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WARDEN BARRETT

The witness, having first been duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. LUNSFORD:

Q. Warden Barrett, would you please introduce yourself to the Court.

A. Bobby Barrett. I'm Warden 3 at Tutwiler.

Q. And warden, how long have you been the warden at Tutwiler prison for women?

A. Ten months.

Q. And at some point during the last ten months, Warden Barrett, were you asked to assist in the process of providing the class members in this case with documents pertaining to the settlement?

A. I was.

Q. Okay.

MR. LUNSFORD: Margaret, let me ask also for the record. I brought two copies of the signed documents. One is redacted and one is not. Because the redacted version is really useless -- it's hard to redact this and keep enough information to make it --

THE COURT: Do you want to file it under seal?

MR. LUNSFORD: Yes, sir.

1 THE COURT: Mark it, and it's filed under seal.

2 MR. LUNSFORD: I'm going to mark this as Defendant's
3 Exhibit 1.

4 THE COURT: Very good.

5 MR. LUNSFORD: May I approach?

6 THE COURT: Yes.

7 Q. Warden Barrett, do you recognize what I've handed you that's
8 marked as Defendant's Exhibit 1?

9 A. I do.

10 Q. And what is that document?

11 A. That's the signature sheet that I -- the inmates
12 acknowledged that I handed them the packet, and I witnessed it
13 and dated it.

14 Q. Who provided you with these sheets, if you recall?

15 A. The actual form?

16 Q. Yes, sir.

17 A. ADOC legal.

18 Q. And so you went around to each of the inmates whose
19 signatures appear in Defendant's Exhibit 1 and handed them a
20 copy of a packet; is that correct?

21 A. Marshalled them up in the dining hall and called them
22 individually one by one and handed them the packet.

23 Q. And at the time that they received the packet, did you have
24 them sign what's been marked as Defendant's Exhibit 1?

25 A. I did.

1 Q. And did you also witness that signature?

2 A. I did.

3 Q. Warden Barrett, during the course of that, did you have any
4 inmate refuse to accept the notification that had been prepared
5 by plaintiff's counsel?

6 A. No, sir.

7 Q. Did you have any problems of any kind in distributing what's
8 been marked -- well, in distributing the packets?

9 A. Not distributing the packets.

10 MR. LUNSFORD: Your Honor, we would offer Defendant's
11 Exhibit 1.

12 THE COURT: I think I've already admitted it.

13 MR. LUNSFORD: Any objection? I just want to make
14 sure --

15 MS. WINTER: That's fine.

16 MR. LUNSFORD: Your Honor, at this time we would also
17 offer -- well, let me back up.

18 Q. Warden Barrett, at any point in time did you actually see
19 the contents of the documents or the contents of the envelope
20 that you handed to the class members?

21 A. No, sir.

22 MR. LUNSFORD: Your Honor, just for the record,
23 plaintiff's counsel and defense counsel worked together to
24 obtain copies of a notice packet that I think is going to be
25 admitted by stipulation. May I approach?

1 THE COURT: Yes.

2 MR. LUNSFORD: It's marked as Defendant's Exhibit 2.

3 THE COURT: It's admitted.

4 MR. LUNSFORD: And that is the -- that's the Court --
5 that's the notice that was agreed upon as far as the
6 settlement. It includes, just for the record, a written notice
7 that was drafted by -- or with agreement of counsel, as well as
8 the primary settlement agreement dated July 30, 2013, and the
9 private settlement, as well as all exhibits thereto.

10 THE COURT: Okay.

11 MR. LUNSFORD: That's all we have at this time.

12 THE COURT: Let me just ask you this. And I don't know
13 if the warden can answer the question or not. What is your
14 turnover here with regard to guards? Is it pretty frequent?

15 THE WITNESS: When I first got here, we had several
16 that retired. As far as turnover, we are just trying to catch
17 up with where we need to be.

18 THE COURT: I know there's always a shortage.

19 THE WITNESS: Yes, sir.

20 THE COURT: I'm very aware of that.

21 THE WITNESS: Yes, sir.

22 THE COURT: As far as training goes, what are the plans
23 for making sure that the people who arrive after this initial
24 round of training are trained as well?

25 THE WITNESS: We give them -- we're going to make sure

1 that in orientation it's discussed and acknowledged by them and
2 about the zero tolerance for any discrimination or harassment
3 based on medical status.

4 THE COURT: Anything else?

5 MR. LUNSFORD: Your Honor, just to add to that
6 comment. Warden Barrett wouldn't be involved in this, but
7 there's a training component at the academy where officers
8 receive training on all kinds of issues, including HIV. We
9 have -- we videotaped the UAB training session so that if we had
10 officers -- for example, we still have a good number of officers
11 that are still serving overseas. And so when they come back,
12 they can receive -- they can watch the DVD, and it's essentially
13 the same training that everyone else will have received. But
14 there's an ongoing process of evaluating what's going on at the
15 academy to insure that all of the staff, not just the staff,
16 obviously, at Tutwiler, but across the state, will receive the
17 HIV specific component of training.

18 THE COURT: Anything else, counsel?

19 MS. WINTER: No. I would only like to add that from
20 everything we've seen about the integration process at Tutwiler,
21 it speaks to the good faith of the Department of Corrections and
22 Commissioner Thomas in everything getting done when it should be
23 done and even ahead of schedule and done very, very well; very
24 professionally. And I think you can hear from the testimony of
25 Ms. Harley and Ms. Graham that they are well pleased with how

1 things are going.

2 THE COURT: I can't remember. I was here in the *Laube*
3 case how many years ago?

4 MR. LUNSFORD: I went back to your opinion on the
5 fairness hearing, and I believe it was dated 2004.

6 THE COURT: 2004?

7 MR. LUNSFORD: And Judge Coody --

8 THE COURT: I was thinking about when I made a visit up
9 here.

10 MR. LUNSFORD: It was 2004.

11 THE COURT: It was 2004.

12 MR. LUNSFORD: It was the same year -- in fact, I think
13 within one year, you had the distinct honor of approving both
14 the *Gaddis* and the *Laube* settlements.

15 THE COURT: Right. I just remembered coming here. I
16 was going to mention this to the warden. And this was not a
17 part of the *Laube* issue; but at one point during the visit, an
18 inmate who was HIV positive had to come down the hall, and the
19 hall had to be cleared. I don't know if you remember that or
20 not. The entire hall was cleared. It's been a dramatic change
21 since then.

22 WARDEN BARRETT: Yes, sir.

23 THE COURT: And you're due a lot of credit. Thank you.

24 MS. WINTER: Plaintiffs have nothing else.

25 THE COURT: Anything else?

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MR. LUNSFORD: Nothing further, Your Honor.

THE COURT: All right. And I want to thank the commissioner, too. I'm very much aware of the good faith you've put into this.

COMMISSIONER KIM THOMAS: Thank you.

THE COURT: And it's clear that you have sincerely tried to do what the law required, and I really do thank you for it. Thank you. Anything else?

MS. WINTER: Nothing, Your Honor.

THE COURT: Thank you. Court's in recess.

(Proceedings concluded at 10:42 a.m.)

* * * * *

COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

This 2nd day of December, 2014.

/s/ Patricia G. Starkie
Official Court Reporter