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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Victor Antonio Parsons, et al.,  
Plaintiffs,  
v.  
Charles L. Ryan, et al.,  
Defendants.

No. CV-12-0601-PHX-DKD

**ORDER**

This Order supplements the findings made on the record during the February 18, 2015 Fairness Hearing. At the Fairness Hearing, which occurred after the notice required by Rule 23(e)(1) of the Federal Rules of Civil Procedure, the Court ruled that the parties' settlement set forth in their signed Stipulation (Doc. 1185) was fair, adequate and reasonable. The Court set forth on the record its findings as required by Rule 23(e)(2) of the Federal Rules of Civil Procedure and applicable Ninth Circuit authority. The law of the Circuit instructs the District Court to conduct a balancing of several factors which may include:

1. The strength of the Plaintiffs' case;
2. The risk, expense, complexity, and likely duration of further litigation;
3. The risk of maintaining class action status during trial;
4. The amount offered in settlement;
5. The extent of discovery completed and the stage of the proceedings;

- 1           6.     The experience and views of counsel;
- 2           7.     The presence of a governmental participant; and
- 3           8.     The reaction of the class members to the proposed settlement.

4     *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9<sup>th</sup> Cir. 1998). The Court  
5     made findings on the record on each of these factors at the conclusion of the Fairness  
6     Hearing except that it did not specifically address factor No. 7, the presence of a  
7     government participant.

8           The Court believes it is appropriate for the Court to further comment on the  
9     objections. Although the Circuit does not require that the Court individually respond to  
10    each of the objections, the Court did review each of the objections. As stated on the  
11    record, many of the objections addressed contentions of inadequate medical care and  
12    conditions of confinement in the isolation units – the very issues which the proposed  
13    settlement seeks to address. Thus it seems incorrect to fault a proposed settlement for  
14    failing to correct perceived deficiencies which existed prior to implementation of the  
15    settlement. It appears to the Court that it is both parties’ views that the settlement will  
16    address many of the circumstances of the objections and this is a reasonable conclusion in  
17    light of the specific measures and benchmarks delineated in the Stipulation (Doc. 1185).  
18    This said, however, it is also reasonable to conclude that not every perceived deficiency  
19    will be resolved by the settlement. Some matters raised in the objections are beyond the  
20    scope of this lawsuit or address matters not subject to constitutional protection.  
21    Moreover, the Stipulation allows for graduated benchmarks that contemplate some  
22    margin of noncompliance. Nevertheless, the Stipulation includes the parties’ agreement  
23    to adopt substantial measures designed to address the provision of medical care and other  
24    conditions of confinement. No settlement is perfect. A compromise of hotly contested  
25    issues will leave each side wanting, receiving something less than their highest and best  
26    expectations. But those highest expectations can only be achieved with a complete  
27    litigation victory both at the trial court and before the court of appeals. And in light of  
28    the fact that neither plaintiffs nor defendants could say that such victories were a “sure

1 thing” in this case, the compromise which produced the “sure thing” of more limited  
2 results can still look wise and prudent. Both parties came to this understandable  
3 conclusion and reached a settlement that the Court can say, beyond any reasonable doubt,  
4 is fair, reasonable and adequate in light of the circumstances.

5 Finally the Court emphasizes a significant virtue of this settlement: it addresses  
6 many of the Class Plaintiffs’ goals in a vastly more expeditious period of time. The  
7 benchmarks and performance standards and substantive changes in policy set forth in the  
8 Stipulation as well as the Class Plaintiffs’ counsels’ monitoring and the Court’s  
9 supervision will start now, not two to three years hence, assuming Plaintiffs could have  
10 prevailed through trial and appeal.

11 Accordingly, the Court has determined that the Stipulation which seeks to resolve  
12 the litigation is fair, reasonable and adequate. The Court directed that the Stipulation be  
13 accepted as of February 18, 2015, and that as of that date the Parties’ Proposed Order was  
14 approved and shall be placed upon the docket of this case in the form set forth in  
15 Attachment 1 to this Order.

16 The parties’ Stipulation also addressed payment of Class Plaintiffs’ attorneys’  
17 fees. The notice of the proposed settlement included the provisions in the Stipulation  
18 which addressed attorneys’ fees and the Court’s notice provided for class members to  
19 comment on the fee award. A number of comments addressed the subject of attorneys’  
20 fees (Plaintiffs’ counsel set the total number at 37, not all of which object to the fee  
21 award).<sup>1</sup>

22 Plaintiffs’ counsels’ motion for fees and Defendants’ response to the fee motion  
23 explain that the parties agreed to the amount of the fee award in their Stipulation. The  
24 agreed upon fee award is substantially less than the total fees Plaintiffs’ counsel incurred.  
25 The Court’s review of the lodestar calculation set forth in counsel’s affidavit evidences

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26  
27 <sup>1</sup> It is noted that one of the objections includes the signatures of 105 other class  
28 members who object to the fee award as premature. They believe a fee award should be  
made only after the Stipulation has been performed. The Court disagrees because these  
fees and costs have already been incurred and they produced the settlement which  
resulted in the Stipulation.

1 that the fee requested is substantially less than the fees incurred based upon the number  
2 of hours reasonably expended multiplied by a reasonable hourly rate (in this case the  
3 hourly rate is set by Congressional command). Plaintiffs' counsel avowed that "[t]he  
4 amount of time and money actually expended by Plaintiffs' counsel in litigating this case  
5 far exceeds the amount Defendants have agreed to pay." Spector Affidavit at p. 7 (Doc.  
6 1207). Dividing the agreed upon fee award by the statutory hourly rate produces a  
7 quotient of 20,814 hours of attorney time. There can be no rational suggestion that these  
8 hours are excessive in light of the three-year history of this class action with 33,000 class  
9 members with its extensive discovery, motion practice and interlocutory appellate course.  
10 The Court is also aware that the \$4.9 million agreement was reached in part because this  
11 amount nearly matches the amount Defendants spent in payments to outside counsel in  
12 defending the case. Although such parity between what the two sides in a case spend on  
13 attorney time does not necessarily define a fair and reasonable fee – especially where the  
14 plaintiff carries the burden and where part of the defense of the case was performed by  
15 defendants' in-house counsel who did not bill their time – it is a benchmark which  
16 strongly suggests that Plaintiffs' fee award is reasonable. Accordingly,

17 **IT IS ORDERED** granting the Motion to Approve Stipulation (Doc. 1448) and to  
18 enter the proposed order tendered to the Clerk at the Fairness Hearing (which superseded  
19 the proposed order referenced at Doc. 1448). See Attachment 1 to this Order.

20 **IT IS FURTHER ORDERED APPROVING** \$4.9 million in attorneys' fees as  
21 fair, adequate and reasonable and **GRANTING** the motion for fees (Doc. 1206).

22 **IT IS FURTHER ORDERED** that Defendants shall pay \$4.9 million in  
23 attorneys' fees and non-taxable costs and up to \$250,000 per year in monitoring fees and  
24 expenses, consistent with the requirements of the parties' Stipulation.

25 **IT IS FURTHER NOTED** that the class members Zeke Floyd Smith #193241  
26 and James D. Jarrell #066219, sought exclusion from the class (Docs. 1224, 1451).<sup>2</sup> The  
27 Motion to Withdraw is **DENIED** (Doc. 1224).

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28 <sup>2</sup> As this case was certified as a class action pursuant to Rule 23(b)(2), the Rules of

1           **IT IS FURTHER ORDERED** that this Order and the transcript of the Fairness  
2 Hearing, attached as Attachment 2 to this Order, be distributed at the prison libraries so  
3 that it may be reviewed by the Class Plaintiffs.

4           **IT IS FURTHER ORDERED** denying Plaintiff Gomez' Motion for Court-  
5 Ordered Accommodations Providing Class Members Reasonable Notice of Proposed  
6 Settlement (Doc. 1195), as moot.

7           **IT IS FURTHER ORDERED** that the Request for Production of Documents  
8 (Doc. 1452) is **DENIED**.

9           **IT IS FURTHER ORDERED** that the Clerk shall close this case subject to the  
10 Court maintaining jurisdiction to supervise the enforcement of the settlement as provided  
11 in the parties' Stipulation.

12           Dated this 24th day of February, 2015.

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David K. Duncan  
United States Magistrate Judge

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Civil Procedure do not provide an "opt out" provision. *Ticor Title Ins. v. Brown*, 511 U.S. 117, 121, 114 S.Ct. 1359, 1361 (1994) (writ dismissed as improvidently granted).

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Attachment 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Victor Antonio Parsons, et al.,  
Plaintiffs,  
v.  
Charles L. Ryan, et al.,  
Defendants.

No. CV-12-0601-PHX-DKD

**ORDER RE: SETTLEMENT**

Based upon the entire record in this case and the parties' Stipulation (Doc. 1185), the Court hereby finds that the relief set forth therein is narrowly drawn, extends no further than necessary to correct the violations of the Federal right, and is the least intrusive means necessary to correct the violations of the Federal right of the Plaintiffs.

The Court shall retain the power to enforce this Stipulation through all remedies provided by law, except that the Court shall not have the authority to order Defendants to construct a new prison or to hire a specific number or type of staff unless Defendants propose to do so as part of a plan to remedy a failure to comply with any provision of this Stipulation.

Dated this 18<sup>th</sup> day of February, 2015.



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David K. Duncan  
United States Magistrate Judge

Attachment 2

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Victor Parsons; Shawn Jensen; )  
 Stephen Swartz; Sonia Rodriguez; )  
 Christina Verduzco; Jackie Thomas; )  
 Jeremy Smith; Robert Gamez; )  
 Maryanne Chisholm; Desiree Licci; )  
 Joseph Hefner; Joshua Polson; and )  
 Charlotte Wells, on behalf of )  
 themselves and all others )  
 similarly situated; and Arizona )  
 Center for Disability Law, )  
 Plaintiffs, ) No. CV 12-601-PHX-DKD  
 vs. ) Phoenix, Arizona  
 February 18, 2015  
 Charles Ryan, Director, Arizona ) 1:34 p.m.  
 Department of Corrections; and )  
 Richard Pratt, Assistant Director, )  
 Health Services Contract )  
 Monitoring Bureau, Arizona )  
 Department of Corrections, in )  
 their official capacities, )  
 Defendants. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE U.S. MAGISTRATE JUDGE DAVID K. DUNCAN

(Fairness Hearing)

Court Reporter: Gary Moll  
 401 W. Washington Street, SPC #38  
 Phoenix, Arizona 85003  
 (602) 322-7263

Proceedings taken by stenographic court reporter  
 Transcript prepared by computer-aided transcription



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P R O C E E D I N G S

1  
2  
3 THE CLERK: Civil case number 12-601, Parsons, et al.,  
4 versus Ryan, et al., on for fairness hearing.

5 THE COURT: Would counsel please state their  
6 appearances for the record. 13:33:54

7 MR. SPECTER: Certainly. Donald Specter from the  
8 prison law office, and with me is my colleagues David Fathi,  
9 Corene Kendrick, and other folks, a multitude of other lawyers.

10 THE COURT: Unnamed individuals, but for the record,  
11 they certainly are noted. 13:34:12

12 MR. STRUCK: Your Honor, Dan Struck, Tim Bojanowski,  
13 Nick Acedo, from Struck Wieneke & Love, and Mike Gottfried from  
14 the Attorney General's Office, and we also have some folks,  
15 other folks here. 13:34:27

16 THE COURT: All right. Thank you very much.

17 So this matter has been set pursuant to a stipulated  
18 agreement between the parties in this action to resolve it.  
19 The Court set a timetable for the consideration of comments on  
20 the settlement and has received many, many comments, all of  
21 which I have read through. I've also read what the -- what the  
22 parties have submitted throughout most of this litigation,  
23 especially after the time that I became involved in it. And I  
24 think I should take just a moment to comment about that fact,  
25 that the judge who was originally the settlement judge, or the 13:35:10

1 mediator in the case, is now, by the parties' consent, the  
2 presiding judge in the case.

3 I think at one level one could question whether or not  
4 a judge who had participated in the settlement could be the  
5 appropriate person to consider the fairness of the settlement. 13:35:32

6 There is, I think, an argument that could be made that perhaps  
7 somebody who was involved in the process would have a vested  
8 interest in the settlement. I hear sometimes that comment. I  
9 do conduct a large number of settlement conferences and I  
10 sometimes hear people say, "Well, Judge, you're just invested 13:35:55  
11 in the settlement."

12 The truth of it is I'm not invested. I get paid the  
13 same whether I settle the case or not. But almost always what  
14 is evident in any kind of mediation is that settlement is in  
15 both parties' interests, and so that reality seems to override 13:36:14  
16 that other concern.

17 The other aspect that overrides this concern of a  
18 judge being vested in it is I think that something that has  
19 certainly become clear to me over the almost 14 years that I  
20 have done this is that judging well is not accidental. You 13:36:36  
21 just don't avoid problems by staying out of places where you  
22 might run into problems. In fact, it's just the opposite. You  
23 have to be studied and careful to make sure that you follow the  
24 rules, the canons that apply to judges with respect to their  
25 ethical conduct, and that you make sure that you comport with 13:36:52

1 expectations of due process and fairness.

2 In the consideration of whether or not a settlement  
3 meets the standard for a class action, whether it is fair to  
4 all of the parties, it's the same kind of studied process.

5 There are factors that the Ninth Circuit has enumerated that 13:37:14  
6 the Court must consider in deciding whether or not the  
7 settlement is fair, and those criteria can be applied in a  
8 careful and explained way such that a reviewing court could see  
9 whether or not the standard had been complied with and could  
10 see whether or not there was an unreasonable application of 13:37:35  
11 decision-making in the process.

12 I have also had the benefit of the comments in my  
13 process of applying the law, the factors that the Ninth Circuit  
14 has told me that a judge should apply in considering the  
15 fairness of a settlement. I have my ability to read the 13:37:59  
16 applicable law and to look at the elements of the settlement  
17 and to consider the situation that is before me, in part  
18 greatly informed by the fact that I participated in the  
19 mediation process. I learned many things about the relative  
20 status of the respective views of the case because of my 13:38:24  
21 participation in that process that I believe better equips me,  
22 actually, to decide whether or not the settlement is fair.

23 But even if I had not had that benefit, what I do also  
24 have the benefit is the comments that have been produced by  
25 many of the -- by the class of plaintiffs which inform me about 13:38:49

1 their views on the settlement, and allow me to have the benefit  
2 of what they think that I should be thinking about in case I  
3 wasn't thinking about those things because of some reason. And  
4 I think that that, combined with the knowledge that I had in  
5 the mediation process, reduces any untoward risk that there  
6 would be some kind of participant bias that would vest me in  
7 finding that the settlement was fair without applying the  
8 standard.

13:39:11

9 I do actually think it's the opposite. I think I am  
10 in a better position because of the fortuity of the parties  
11 deciding to consent to have the mediating judge preside in the  
12 case, and I have the benefit of that knowledge that I acquired,  
13 and so as a preamble I make that statement.

13:39:28

14 The next step here will be that I will turn to the  
15 lawyers with respect to anything that they would like to say on  
16 the record, and also give anyone here in the courtroom who  
17 would like to address the Court on the subject of the  
18 settlement an opportunity to do that, but first I'll turn to  
19 the lawyers.

13:39:48

20 Mr. Struck?

13:40:02

21 I'm sorry, misspoke. It's because you all are at the  
22 wrong tables.

23 MR. SPECTER: My opposing counsel pointed that out to  
24 me.

25 THE COURT: Is it a California rule, or something like

13:40:14

1 that?

2 MR. SPECTER: This is Donald Specter for the  
3 plaintiffs. Most of what we believe is true is set forth in  
4 our moving papers so I won't belabor this proceeding by  
5 repeating all of those arguments. I just wanted to make a few 13:40:39  
6 brief comments, and then it will be followed by my colleague  
7 and co-counsel, Mr. Fathi, will address some of the issues in  
8 the case.

9 So the first question the Court has to answer is  
10 whether under Rule 23 the stipulation is fair, adequate, and 13:40:55  
11 reasonable, and plaintiffs and their counsel submit that that's  
12 the case, that this stipulation is abundantly fair, adequate,  
13 and reasonable. So we are going to ask the Court, if it so  
14 concludes, to sign the proposed order that the parties agreed  
15 to as well, which is found in docket 1185-2. 13:41:18

16 The second question before the Court is whether the  
17 Court should grant plaintiffs' motion for attorney fees, and we  
18 believe the Court should grant that motion, and Mr. Fathi will  
19 explain why briefly after I get done.

20 As far as the stipulation goes, the stipulation 13:41:40  
21 represents a compromise reached by the parties. It's a  
22 comprehensive document that aims to cure what plaintiffs  
23 believe and were prepared to prove were unconstitutional  
24 conditions of confinement. It has six separate parts.

25 The first one provides over a hundred different 13:42:02

1 performance measures that the ADC and its contractor, Corizon,  
2 must meet, and it also provides restrictions on the use of  
3 force and improvements in the conditions in the isolation  
4 units. Mr. Fathi will address those last two measures in more  
5 detail.

13:42:22

6 The performance measures are very comprehensive. They  
7 address staffing, medical records, pharmacy, medication,  
8 medical equipment, emergency response, timely access to  
9 diagnostic services, specialty care, clinician quality, chronic  
10 disease; the whole panoply, essentially, of what a  
11 health care -- medical health care system must have in order to  
12 perform its functions and reduce the risk of harm which we  
13 believe is now present in the Arizona Department of  
14 Corrections' facilities.

13:42:39

15 It's my belief, and our belief as plaintiffs' counsel,  
16 that any fair review of these performance measures must  
17 conclude that they are detailed, comprehensive, and if properly  
18 implemented, will substantially improve the quality and the  
19 amount of care that the class members receive.

13:42:55

20 The second part of the stipulation provides a detailed  
21 mechanism for determining whether in fact these performance  
22 measures are being met by ADC's contractor, Corizon, and ADC  
23 itself.

13:43:15

24 The third part is it sets -- the stipulation sets a  
25 threshold for compliance, which increases gradually as

13:43:35

1 the three years go by.

2 Fourth, to ensure that these improvements are being  
3 implemented, or to determine if they're not, the stipulation  
4 provides for plaintiffs' counsel to monitor ADC's performance  
5 and to tour the prisons to view the conditions in the units. 13:43:57

6 Fifth, it provides that for dispute resolution, in the  
7 event that the parties disagree about whether the ADC or its  
8 contractor are in compliance with the provisions of the decree.

9 And finally, and perhaps most importantly in the long  
10 run for its prophylactic effect and, if needed, for other -- 13:44:20  
11 for enforcement purposes, it provides that the disputes that  
12 can't be resolved by the parties are able to be resolved  
13 through the Court, and the Court retains jurisdiction to  
14 enforce the provisions of the stipulation in all respects  
15 provided by law, with two discrete exceptions, which are set 13:44:42  
16 forth in the stipulation.

17 So we believe, if implemented in good faith by the ADC  
18 and Corizon, the stipulation will provide the plaintiff class  
19 and the subclass with very substantial benefit, and in a very  
20 relatively short time frame compared to what would have 13:45:02  
21 happened if the case had gone to trial. And if the stipulation  
22 doesn't do that with the good faith efforts by the ADC and  
23 Corizon, then we will take all needed and legally sound efforts  
24 to enforce that compliance through the enforcement mechanisms  
25 of the decree. 13:45:29



1           As far as the comments go, the plaintiff class members  
2 submitted over 200 comments, as you well know. Even though  
3 it's less than 1 percent of the 33,000 prisoners, we believe  
4 that many of the comments represent a very accurate picture of  
5 the suffering that has gone on through the -- through the years 13:45:50  
6 for prisoners in isolation; for prisoners who can't receive  
7 adequate medical, mental health, and dental care. And some of  
8 those comments describe with particular accuracy, and we  
9 believe credibly, the types of results that happen when -- and  
10 harm that occurs when prisoners have to live under those 13:46:15  
11 conditions.

12           One of the reasons we believe the stipulation should  
13 be approved by the Court and is necessary to improve care is  
14 because of the fact that it would go into effect immediately  
15 upon approval by the Court. If this case had dragged out 13:46:37  
16 through trial, the proceedings there would have taken many  
17 months.

18           For all we know, we would have still possibly been in  
19 trial; it would have taken many more months for the Court to  
20 issue findings of fact and conclusions of law; then there could 13:46:54  
21 have been appeals and stays and development of plans and  
22 objections to those plans. So we believe that the stipulation  
23 has the ability to provide much quicker relief to our clients  
24 than if we had taken the litigation road in this case, and  
25 that's why we believe the Court should approve it. 13:47:19

1           And Mr. Fathi will now -- unless the Court has any  
2 questions, Mr. Fathi will now address some of the other  
3 subjects.

4           THE COURT: Thank you.

5           MR. FATHI: Good afternoon, Your Honor. 13:47:31

6           THE COURT: Good afternoon.

7           MR. FATHI: The Supreme Court has said that there is  
8 no Iron Curtain drawn between the Constitution and the prisons  
9 of this country. This case, and the settlement that is before  
10 the Court today, are an important reminder of that fundamental 13:47:50  
11 truth.

12           Mr. Specter has discussed the medical and dental care  
13 provisions of the settlement. I will briefly review the  
14 provisions governing mental health care and conditions in ADC's  
15 isolation units. 13:48:08

16           Many of the medical care provisions -- for example,  
17 those governing medical records, pharmacy, and health care  
18 staffing -- will also improve the delivery of mental  
19 health care. But there are also a number of provisions  
20 specifically addressing mental health care, such as mental 13:48:23  
21 health treatment plans, the frequency with which prisoners are  
22 seen by a mental health clinician, and access to individual and  
23 group therapy.

24           The settlement also includes several provisions aimed  
25 at preventing prisoner suicides. And these are particularly 13:48:37

1 critical in light of the fact that ADC continues to struggle  
2 with prisoner suicide, and, indeed, just last month experienced  
3 three suicides in a five-day period.

4 For prisoners in the isolation subclass, the  
5 settlement provides for additional out-of-cell time and access 13:48:57  
6 to programming, it provides that those in isolation will  
7 receive food of the same nutritional value as other ADC  
8 prisoners, and it provides special protections for those with  
9 serious mental illness who are particularly vulnerable to the  
10 damaging effects of isolated confinement. 13:49:16

11 Subclass members with serious mental illness are  
12 guaranteed a minimum of 19 hours out of cell per week,  
13 including at least three hours of out-of-cell programming.  
14 There are also restrictions on the use of chemical agents on  
15 prisoners with serious mental health illness and in housing 13:49:33  
16 units that hold the mentally ill.

17 Is the settlement perfect? Like any settlement, it is  
18 the offspring of compromise. But Mr. Specter and I agree that  
19 it is in the best interests of the plaintiff class and accords  
20 our clients more relief and quicker relief than if we had gone 13:49:56  
21 to trial and prevailed on all issues.

22 We believe that the defendants are genuinely committed  
23 to the improvements required by this settlement, but if they  
24 fall short for whatever reason, the Court retains the power and  
25 the duty to enforce compliance. President Reagan famously 13:50:15

1 counseled that one should trust but verify. I can assure the  
2 Court that we, as counsel for the plaintiff class, will do  
3 both.

4 I'd like to briefly address the motion for attorney  
5 fees that is also before the Court today. As the Court is 13:50:34  
6 aware, the parties have agreed both on the amount of fees and  
7 on the schedule for payment. Under the case law, the parties'  
8 agreement is entitled to great weight, and the Court's task is  
9 simply to determine whether the negotiated fee is facially fair  
10 and reasonable. 13:50:53

11 In light of the extraordinary amount of work required  
12 to successfully represent this class of 34,000 over the three  
13 years of this litigation, and for all the other reasons set  
14 forth in our brief, the fee agreement is fair and reasonable  
15 and the motion should be granted. 13:51:10

16 Thank you, Your Honor. And again, we are, of course,  
17 happy to answer any questions the Court has.

18 THE COURT: Thank you.

19 Mr. Struck.

20 MR. STRUCK: Thank you, Your Honor. 13:51:20

21 The defendants also support the stipulation and  
22 request that the Court grant an order finding that the  
23 settlement is fair and reasonable.

24 We believe that the stipulation essentially codifies  
25 what was already in the policies and procedures at A DC with 13:51:44

1 respect to medical, mental health, and dental care, with a few  
2 exceptions. It's something that ADC has all along strived to  
3 do, to follow their policies and procedures and their technical  
4 manuals, and will continue to do.

5           With respect to the attorneys' fees motion, it's the 13:52:08  
6 defendants' position that the Court does not have to grant  
7 plaintiffs' motion for attorneys' fees. I think under Rule  
8 23(h) the Court would be required to grant it if there was some  
9 operation of law which required it to do so. In this case, the  
10 Court simply has to find that the fees that are already -- have 13:52:25  
11 already been negotiated are fair and reasonable, and the  
12 parties agree and stipulate that the fees were fair and  
13 reasonable and a negotiated amount.

14           You had mentioned earlier at the beginning of the  
15 hearing that you were inviting members of the audience to 13:52:42  
16 speak. The defendants object to that unless -- we don't  
17 believe that there are any actual parties here. Typically, in  
18 fairness hearings parties are welcome to come up and testify  
19 with respect to that. We've already had 200 or plus comments  
20 that have been submitted to the Court with respect to -- from 13:53:02  
21 parties mostly with respect to the stipulation, and we don't  
22 believe that the individuals who are in the audience who might  
23 want to speak about the stipulation have any standing to do so.

24           Finally, we wanted to point out or let the Court know  
25 that the defendants are taking action even before the 13:53:26

1 settlement has been approved by the Court. There has been a  
2 request in the Legislature for 91 additional medical/mental  
3 health/dental positions within -- to include with the current  
4 contract with the -- with the provider, which is Corizon.

5 Thank you.

13:53:47

6 THE COURT: Thank you, Mr. Struck.

7 Regarding the objection to the ability of members of  
8 the gallery who may wish to address the Court, the objection's  
9 overruled because the matter is one that is of significant  
10 public concern. And because of the circumstances of the class  
11 plaintiffs being confined, and the difficulty in arranging  
12 for them to have an ability to be present in open court,  
13 whether by physical means or electronic means, the comments, I  
14 think, do address the opportunity for the class plaintiffs to  
15 be heard, but with respect to an action that affects the  
16 community in a larger sense, I do think it is appropriate to  
17 allow people to be heard if they wish.

13:54:04

13:54:27

18 And so we'll turn to that portion now, and I'll ask if  
19 there are those who would like to speak, if you'd raise your  
20 hand so that I could get a sense about how many people would  
21 like to.

13:54:42

22 So I see one, two, three, four, five, looks to me to  
23 five hands.

24 And so, ma'am, if you would please approach the  
25 lectern -- yes, ma'am -- and state your name for the record.

13:54:54

1           You'll be next.

2           Thank you, ma'am. If you could just come forward to  
3 the lectern and give your name, and spell it also for the  
4 record.

5           MS. DONNA FIRRELLO: Donna Firrello, F-i-r-r-e-l-l-o. 13:55:11

6           THE COURT: Thank you.

7           MS. DONNA FIRRELLO: My husband is currently  
8 incarcerated in Lewis on the Barchey Unit, and the medical  
9 issues, I have -- I have to fight to get him care. He has to  
10 fight to get care. It's -- it's horrible. 13:55:29

11           He has multiple medical issues, and I have been in  
12 touch with Chuck Ryan, Mr. Pratt, Corizon, to no avail.  
13 It's -- he's possibly facing prostate cancer right now. This  
14 has been going on for a year that we've tried to get him  
15 treated for it. 13:55:52

16           He had possibly pneumonia and he put in an HNR two  
17 weeks ago, still has not seen a doctor. And he had a stroke  
18 while he was in prison, and we have been trying for two years  
19 to get him to a cardiologist, which that is supposed to happen  
20 this month, but whether it does or not. It's -- it's horrible 13:56:10  
21 the care they're getting. They're treated worse than animals.

22           And it's just horrible that they have the lack of  
23 care, or possibly the lack of funds, I'm not sure what it is,  
24 or, you know, if it's just they don't care. And then the ones  
25 that are in -- you know, in confinement, that's -- it's even 13:56:31

1 worse. And I think something needs to be done. I really think  
2 something needs to be done.

3 And my husband is in there for nonviolent. He's  
4 bipolar and he was -- that's not getting treated. And the  
5 reason he's in there is because he was out of control for his  
6 bipolar. 13:56:50

7 And it's just a vicious battle that I have to fight on  
8 a daily basis with DOC and Corizon, and something needs to be  
9 done about the medical and mental issues with the prisoners,  
10 and that's all I have to say. 13:57:11

11 THE COURT: Thank you very much.

12 MS. DONNA FIRRELLO: Thank you.

13 (Pause in proceedings to clarify spellings for the  
14 court reporter.)

15 THE COURT: Thank you. Ma'am? 13:57:23

16 MS. DONNA LEONE HAMM: Good afternoon, Your Honor. My  
17 name is Donna Leone Hamm, and I'm the Executive Director of  
18 Middle Ground Prison Reform. Middle Ground is the oldest  
19 continuous prisoner rights organization in the state of  
20 Arizona. We've been here since 1983. 13:57:53

21 We had an opportunity to review the settlement offer  
22 when it was first published, and we certainly agree with both  
23 sides in this matter that it clearly has to be a matter of  
24 compromise. We are pleased that overall, there will clearly be  
25 some improvement in the delivery of medical services. The 13:58:19



1 treatment, the conditions of confinement for solitary  
2 confinement, the Department can call it whatever they want, but  
3 if you're in your cell the vast majority of hours per day seven  
4 days a week, that is solitary confinement. And we know that  
5 there are psychological studies which demonstrate the harm that 13:58:44  
6 comes for anyone who is subjected to those conditions,  
7 especially when you exacerbate the problem with a verified  
8 mental illness.

9 We did have some concerns about the threshold after  
10 three years being only at 85 percent -- we wish it could be 13:59:07  
11 95 percent -- for compliance with the performance requirements.  
12 But we understand that whatever will happen, if in three years  
13 there is 85 percent compliance, that that, in itself, will be a  
14 tremendous improvement over what is occurring at present.

15 We also express concern -- and I think some of the 13:59:34  
16 inmates who've written to you, members of the class, may have  
17 done the same thing -- that the site inspections are required  
18 to have a two-week notice. We think that at least some of  
19 those inspections by the plaintiffs' lawyers should be  
20 unannounced, so that there can be an opportunity for them to 14:00:01  
21 see firsthand what is happening without advance notice and  
22 preparation by the Department for a visit.

23 I heard the lawyers for the Department make a  
24 remarkable comment today that really this settlement represents  
25 merely a codification of the policies that are already in 14:00:28

1 existence in the technical manuals, and I find that astounding,  
2 because what it tells me is this settlement is really the  
3 Kool-Aid of mandatory compliance that is needed to get these  
4 folks to be in compliance with their own written policies.  
5 That hasn't happened. That's why we're here. 14:00:54

6 So to echo what I think, and I hear from inmates'  
7 families or inmates themselves easily a dozen times a week  
8 about serious medical problems, we're not talking about  
9 sniffles or ingrown toenails. We're talking about cancer that  
10 has gone undiagnosed and untreated for months at a time; we're 14:01:24  
11 talking about serious heart conditions, diabetes that's  
12 untreated properly.

13 So I think that most of the inmates, if they were here  
14 today, would tell you that any improvement, or anything that  
15 happens as a result of this settlement, is going to be an 14:01:43  
16 improvement over what is currently happening.

17 THE COURT: Thank you, Ms. Hamm.

18 MS. DONNA LEONE HAMM: Thank you very much.

19 THE COURT: Please, sir.

20 Is it -- or, is it -- I'm sorry, ma'am, you may. Yes. 14:01:59

21 MS. PATRICIA BORDEN: Thank you for allowing me the  
22 time to -- to speak with you. I really don't want to waste  
23 your time, and the only reason that I'm coming up is because  
24 this gentleman said that they have already started doing  
25 things? 14:02:22

1 Well, my son is in the Cook unit, or was in the Cook  
2 unit --

3 THE COURT: Can I interrupt just for a moment --

4 MS. PATRICIA BORDEN: Sure.

5 THE COURT: -- so that you can state your name, and -- 14:02:28

6 MS. PATRICIA BORDEN: Oh.

7 THE COURT: -- spell it for the record --

8 MS. PATRICIA BORDEN: Okay.

9 THE COURT: -- too, please.

10 MS. PATRICIA BORDEN: It's Patricia Borden, 14:02:32

11 B-o-r-d-e-n.

12 THE COURT: Thank you. Please go ahead.

13 MS. PATRICIA BORDEN: I'm sorry. And so there has  
14 been no -- nothing in the past year has shown that they're  
15 moving in this direction. Hopefully now, with this signed, 14:02:43  
16 there will be.

17 My son is now in a private prison so he's not entitled  
18 to the -- the same agreement that's in place. But I am a  
19 Registered Nurse, the Mayo Hospital, and I diagnosed one of his  
20 inmate -- one of his -- one of the inmates at the prison where 14:03:03

21 my son was with lymphoma, and it only took nine months for him  
22 to be seen by a doctor, finally then to have scans, and he

23 didn't -- and to get a port was another couple of months, and

24 then finally the chemo. And if he was a patient on the outside

25 world he would have been diagnosed, the port would have been 14:03:25

1 placed, the chemo would have been started within 10 days, not  
2 within 14 months. So I thank you for allowing me to speak.

3 THE COURT: Thank you, ma'am.

4 Yes, sir.

5 MR. JAMES NEUMAN: Good afternoon, Your Honor. 14:03:50

6 THE COURT: Good afternoon.

7 MR. JAMES NEUMAN: My name is James Neuman. Neuman is  
8 spelled N-e-u-m-a-n, for the record. I was not planning on  
9 speaking today so bear with me in that regard.

10 I'm here on behalf of my father, who is incarcerated 14:04:01  
11 currently, and some of the personal experiences I have. He has  
12 a pain pump that was installed prior to his incarceration that  
13 ran empty while he was incarcerated. This caused his blood  
14 pressure to skyrocket to nearly fatal levels, and since that  
15 time Corizon, the DOC, have done nothing to refill this pain 14:04:22  
16 pump or remove it, both of which could have serious  
17 ramifications.

18 I've written Corizon and the DOC almost on a weekly  
19 basis now just advocating and lobbying for basic health care in  
20 the meantime for prescriptions that he needs, and coming here 14:04:42  
21 today and seeing all these folks that are here supporting this  
22 I realize that I'm definitely not alone in this struggle, and I  
23 know that there's other individuals here that would probably  
24 like to get up and speak and maybe don't have the courage to do  
25 so. 14:04:58

1 I hope that you will take into account all of the hard  
2 work that these attorneys have done and Mrs. Hamm and everybody  
3 else that's worked hard to try and get more successful  
4 health care for the inmates there, not just for my father but  
5 for everybody. You know, nonviolent, violent, I don't think 14:05:13  
6 that matters; what I think matters is that we treat them  
7 humanely. And as one of the -- the ladies said earlier, it is  
8 worse than animals in some regard, and it's a shame.

9 So, you know, I really hope that you'd look at all the  
10 facts that are presented to you, and I want to thank you for 14:05:31  
11 the opportunity to speak here today, so thank you.

12 THE COURT: Thank you, Mr. Neuman.

13 Yes, sir.

14 MR. JAMES HAMM: Good afternoon, Your Honor. My name  
15 is James Hamm, H-a-m-m. I don't really have anything to add to 14:05:53  
16 what other people have said on the subjects, but I'd like to  
17 say something about the Court's role in the future, because  
18 there are a couple of issues that I think are hidden underneath  
19 this settlement.

20 One of them has to do with long-term confinement in 14:06:09  
21 isolation. We all know that the current state of affairs in  
22 terms of our understanding of what happens is in a state of  
23 flux. There are new reports that are coming out all the time.  
24 So when we settle things today with regard to how long people  
25 are going to be in there, what's going to happen while they are 14:06:29

1 in there, how many hours they're going to be out of their cell,  
2 whether they get medication and whether they get treatment, we  
3 are putting a band-aid on something that we don't really  
4 understand today.

5 And so I just want to caution us all that the state of 14:06:43  
6 affairs is going to change and we are learning that there are  
7 long-term almost irreversible effects from this sort of  
8 confinement.

9 And in the ADC we have this confinement on multiple  
10 levels. We have it because people are mentally ill and they 14:06:57  
11 are unable to conform to the rules and so they get written up  
12 and their classification changes and eventually they get to the  
13 highest possible custody; we get it because they have been  
14 involved in security threat group activities, and so they're  
15 classified to these kinds of situations, and they stay there 14:07:15  
16 essentially for an exceedingly long time unless they are  
17 willing to put their lives at risk by informing on other  
18 inmates, and this creates a question where the -- a situation  
19 where the person has to either put his own life at danger in  
20 order to obtain some kind of relief from the confinement that 14:07:34  
21 he subjected to.

22 We also have a question about medication when it is  
23 given to people in long-term confinement, because what we are  
24 learning from medical professionals is that many of the  
25 medications that are given for things like mental health and 14:07:49

1 depression, including clinical depression, really have effects  
2 that we don't really understand today, and that what's  
3 happening today is that beneath the surface of these  
4 medications, which are masking the problems, there are more  
5 serious long-term mental health issues that are coming -- that 14:08:09  
6 are still being developed.

7 So although there's nothing that you can do about it  
8 and there's nothing that this settlement can do about it, we  
9 applaud the settlement in terms of it being quicker than  
10 litigation, better than litigation in many ways, and certainly 14:08:24  
11 a significant improvement. We just want to put it on the  
12 record that there are some issues involved in this settlement  
13 that really don't -- can't possibly be resolved between these  
14 two groups of people today by this Court, and that we may be  
15 back here dealing with these situations in the future. 14:08:44

16 And it isn't just a matter of settling things legally,  
17 because this type of confinement what is being learned is that  
18 it is a risk to public safety. Not everyone who goes into  
19 long-term confinement in the prison -- and I should say  
20 long-term, close custody, isolation custody, solitary 14:09:02  
21 confinement; that's the kind of confinement I'm talking  
22 about -- when those people are -- not all of those people are  
23 going to be there. It's just not natural life people who go  
24 there. It's not just death penalty people who go there. When  
25 those people are released, we are essentially creating 14:09:20

1 time bombs and then releasing them into the community. And  
2 there are other ways to deal with these problems, and I  
3 understand that the prison system has the right to make its own  
4 decisions about how it's going to manage its population.

5 But it still is worth putting on the record that this 14:09:35  
6 settlement still does not resolve some of the underlying more  
7 serious issues that are going to face us all with regard to how  
8 we're dealing with solitary confinement for a long time in the  
9 Department of Corrections regardless of medication; regardless  
10 of mental health; regardless of the reason why they're there. 14:09:52

11 It is just the fact that they are there and for the length of  
12 time that they are there, and ultimately there needs to be some  
13 kind of resolution to that.

14 Obviously, all of the people who live in prison and  
15 who have serious medical conditions will be pleased if there is 14:10:07  
16 an improvement if it comes as a result of this, and all of us  
17 will be in support of both sides as they attempt to comply with  
18 this settlement as it is currently written.

19 But there is a -- there's still a -- there are still  
20 issues that are not resolved by this, and we just do -- we just 14:10:26  
21 want to put on the record that some of these things are of  
22 exceeding importance. Thank you.

23 THE COURT: Thank you, Mr. Hamm.

24 Yes, ma'am. Please.

25 MS. DAWN BIGELOW-INGRAM: My name is Dawn 14:10:46



1 Bigelow-Ingram, and my brother, Jimmy, was incarcerated and  
2 diagnosed -- he had a heart attack right after -- while he was  
3 still at Fourth Avenue Jail, and then he was diagnosed with  
4 liver failure.

5 Jimmy was learning disabled. He wasn't able to speak 14:11:01  
6 for himself or fill out papers. And with the help of Donna, I  
7 was able to get clemency for him, but before that happened it  
8 took a very long time.

9 Jimmy wasn't getting his medications in a timely  
10 manner, and because of that he was being taken by ambulance to 14:11:24  
11 the hospital. No one would let us know that Jimmy was in the  
12 hospital and that's why he wasn't calling.

13 Jimmy, because he was not receiving his medications in  
14 a timely manner, was sent to Housing Unit 9, and if you say  
15 that to any prisoner it strikes terror in their eyes. It is 14:11:47  
16 nothing more than solitary confinement.

17 Jimmie's risk level was almost nonexistent. He was  
18 placed in solitary confinement for no other reason than there  
19 wasn't enough staff to see to it that he got his medication  
20 around the clock. 14:12:09

21 Each time I would visit Jimmy -- and most of the time  
22 I went once a week at that stage -- his mental health  
23 deteriorated to the point where the last couple of visits I  
24 left sobbing. My brother would sit in a chair and say: "I'm  
25 going home today. I'm going home today." He was living in his 14:12:33

1 head.

2 He had a television set that he was allowed to bring  
3 with him, but during the move his headset, the earphones were  
4 lost. No one would get him another pair. They wouldn't let me  
5 buy him a pair, I couldn't bring him a pair. 14:12:49

6 So he was in this filthy cell with a bed, linens that  
7 had holes in it; cold; filthy plastic cup to drink out of with  
8 a TV set that just flickered pictures. It sounds like  
9 something out of Charles Dickens and it's happening down in  
10 Tucson. It's heartbreaking. My brother passed away three 14:13:17  
11 years ago. I did manage, he got clemency, but he didn't live  
12 for very long after.

13 Please, we can do more. These are human beings.  
14 Jimmy was learning disabled. He had an alcohol problem. He  
15 probably should have been programmed out, not sent to jail. 14:13:45

16 Thank you for hearing me.

17 (Pause in proceedings to clarify spellings for the  
18 court reporter.)

19 MS. DAWN BIGELOW-INGRAM: And thank you for hearing  
20 me. 14:14:10

21 THE COURT: Thank you, ma'am.

22 Is there anyone else who would like to speak?

23 I don't see -- oh, yes. Ma'am, please.

24 MS. PATTY JONES: Good afternoon, Your Honor.

25 THE COURT: Good afternoon. 14:14:33

1 MS. PATTY JONES: My name is Patty Jones. I'm the  
2 aunt to the late Anthony Clayton Lester -- "Tony" -- who lost  
3 his life on July 12th, 2010.

4 Tony was not able to be here because he was driven to  
5 sheer madness. Left in a detention cell. Could not fend for  
6 his own mental health needs. I was his advocate. I was his  
7 voice. I come here today after five -- almost five long,  
8 agonizing years, feeling a sense of justice and vindication  
9 from the settlement.

10 This has given everybody in Arizona a fight to fight  
11 through legislation to ensure that Tony's tragic story will  
12 never happen to any other severely mentally ill individual  
13 within the Department of Corrections. Thank you.

14 THE COURT: Thank you very much.

15 And any other hands? I don't see any.

16 Thank you all for your comments. And unless the  
17 lawyers have anything else to say, I'll speak for a moment  
18 about the matters that I need to address.

19 The fundamental question of whether or not the  
20 settlement is fair, adequate, and reasonable is one that, as I  
21 indicated earlier, is addressed by enumerated questions that  
22 need to be answered. And I will track through each one of  
23 those, but I will also start out by saying that one of the most  
24 compelling features of this settlement is that it provides for  
25 a rapid corrective action of problems that were identified by

14:14:48

14:15:08

14:15:26

14:15:47

14:16:14

1 the plaintiffs in a way that affords the opportunity for  
2 constructive relief.

3 The first question that the Court's required to  
4 analyze is the strength of the plaintiffs' case. It's fair to  
5 say that this was a hotly contested battle between two sides  
6 who believed that they had the law on each of their sides. 14:16:37

7 The plaintiffs presented compelling incidences of  
8 demonstrated harm. However, the defendants fought back with a  
9 belief that the law, as defined by the Eighth Amendment  
10 jurisprudence, would have meant that they would have succeeded 14:17:07  
11 at trial.

12 The difficulty that overlays every -- every prison  
13 health care case is that it's not the standard that is  
14 applicable to care that is afforded to people under the civil  
15 law outside of the arena of confinement. It's spoken in plain 14:17:29  
16 and very general terms. One comes to a notion of what is  
17 essentially malpractice and inappropriate conduct that would  
18 affect someone's rights such that you would think at the end of  
19 the day the jury would find in your favor if you brought this  
20 attention -- to the attention through the court process. 14:17:49

21 But that's not the standard that applies in a -- in a  
22 case necessarily that is in the court for the status of  
23 health care and issues of confinement. It's the standard as  
24 defined by the Eighth Amendment, and there are arguments about  
25 whether or not that's inclusive or exclusive of the common 14:18:11

1 notion that people have. But it's certainly an argument that  
2 the defendants could make, and it's an argument the defendants  
3 believed that would prevail at trial.

4 I cannot and do not have a crystal ball, so I can't  
5 foresee what would have happened at trial, but it's fair to say 14:18:28  
6 that in this greatly contested battle there was litigation risk  
7 on both sides. And what that, I think, counseled the parties  
8 to consider seriously was the benefit of settlement,  
9 understanding that no one would accomplish their highest and  
10 best expectations for the case. 14:18:48

11 And in that compromise there was always one looming  
12 advantage to everyone who had an interest in this case. It  
13 would be a diversion from the litigation road to a road that  
14 would work toward addressing what is, I think, in everyone's  
15 interest on both sides of the case, and that is providing for 14:19:11  
16 the needs of the people that are in custody in the State of  
17 Arizona's correction system.

18 And no one on the defendants' side would disagree with  
19 that. They had disagreements about exactly what was necessary  
20 to do. The plaintiffs had very strongly held views that the 14:19:31  
21 defendant -- that the Arizona Department of Corrections was  
22 falling below the standard that was required.

23 But by diverting from this litigation track, we do  
24 focus on what is the principal attraction of the settlement,  
25 and that is addressing harms that can certainly be ameliorated 14:19:55

1 by the measures set forth in the stipulation; not only by the  
2 injunctive provisions that will be put in place pursuant to the  
3 parties' agreement and the Court's order, but also the  
4 monitoring mechanism that will ensure going forward that there  
5 is compliance with the stipulation, and in that monitoring 14:20:13  
6 there will be identification of issues that will arise that in  
7 certain -- to a certain extent will be assisted by the  
8 mechanism that is in place because it is the hope of the  
9 stipulation, I think it's fair to say this, that the mechanism  
10 that will result in the monitoring will be one of cooperation 14:20:37  
11 between the monitoring plaintiffs' counsel and the Department  
12 of Corrections staff with respect to identifying needs and  
13 working toward resolving those needs. And so the settlement  
14 does afford a more rapid redressing of these needs and an  
15 implementation of a monitoring program. 14:21:00

16 If the case were not settled, I think it's fair to say  
17 that the past record of litigation would be a fair prologue for  
18 what would be expected down the road, and that is a very hotly  
19 contested pretrial period even yet, the trial would likely have  
20 been offset in light of the change of judge, and the litigation 14:21:19  
21 itself would consume a great number of resources.

22 Even in this very small way, it would divert people  
23 who are tasked with a very important job, and that is providing  
24 for the proper care of people within the custody of the  
25 Department of Corrections. If they are in court preparing to 14:21:42

1 testify or waiting to testify or testifying, they're not doing  
2 their job, and that takes away from the ultimate goal.

3           And then the resolution that would occur at the trial,  
4 if the past is the predictor, would not be the end. This case  
5 knows the way to the court of appeals, and it could travel that 14:22:04  
6 road again. If that happened, there would be further delay,  
7 and it is not unreasonable to conclude that this case that was  
8 started in March three years ago would be continuing for  
9 another two years past this time period. And so the settlement  
10 affords for a much more expeditious mechanism for addressing 14:22:25  
11 these needs.

12           The second point -- the first being the strength of  
13 the plaintiffs' case; the second being the risk, expense,  
14 complexity, and likely duration of further litigation -- is one  
15 that's so closely linked to the first point that you see that 14:22:42  
16 I've already alluded to many of the points that one would have  
17 to consider.

18           And that is that it is a hotly contested case, both  
19 sides with different views, expert opinions on both sides of  
20 the case, and a fair and reasonable expectation that it would 14:22:54  
21 take a long time to conclude; again, at each time expending  
22 more money on battle rather than redressing needs.

23           And that financial aspect of it is not one that can be  
24 lost on anybody who's aware of the circumstances in the state  
25 of Arizona just by reading the newspaper and what appears to be 14:23:18

1 the reality that the Arizona state budget is 10 to 20 percent  
2 off of where -- the revenue is 10 to 20 percent off of where  
3 they need to be to maintain the current budget. So what that  
4 means is dramatic cuts. And what that means is that there will  
5 be fewer dollars to do things that need to be done. 14:23:36

6 The litigation is expensive, and the settlement of the  
7 litigation means that those dollars can be used to redress the  
8 need. If the dollars are lost in litigation, it's reasonable  
9 to conclude that there are less dollars available to address  
10 what needs to be done. 14:23:56

11 The third factor, the risk of maintaining class status  
12 throughout the trial, is one that the plaintiffs,  
13 understandably, say in their memorandum is a low risk because  
14 the class status has already been before the court of appeals,  
15 but it is always a looming risk that something can happen at a 14:24:13  
16 trial where the -- the dissimilarities appear to predominate  
17 and -- and so that there is a risk I'll agree -- agree that it  
18 is -- is low.

19 The fourth factor, the consideration offered in  
20 settlement, this is one in which there is a plan that has been 14:24:29  
21 put in place to provide for particular benchmarks to be  
22 achieved, particular changes to be made, and for a monitoring  
23 program to enforce those first two. This is a remedy that some  
24 of the commentators objected to because of its limited --  
25 limited scope, and perhaps because it did not provide any 14:24:56



1 financial relief to any of the individuals who believe they  
2 suffered damages associated with the conduct.

3 This has never been a case, though, about those  
4 issues. It's been a case that has been addressing substantive  
5 and systemic changes in the mechanism of providing for the care 14:25:16  
6 and confinement of the class plaintiffs. And so like many of  
7 the objections, they are a little bit off of what was even  
8 within the realm of this case.

9 And I will say also that some good number of the  
10 objections are ones that seem reasonable to be made in light of 14:25:39  
11 the circumstances that brought the case about, but are also the  
12 kinds of things that one would reasonably believe could be  
13 addressed by the stipulation and the compromise settlement.

14 It may well be that they are the kinds of things  
15 that -- that are objections that perhaps are -- are premature, 14:26:03  
16 because they may reflect a prior status that is hoped to be  
17 addressed by the settlement and that would only be fair to use  
18 as -- as criticisms of the settlement if they were indeed  
19 situations that arose during the time that the settlement was  
20 in place. And so I think it's fair to say that a good 14:26:25  
21 number of the -- of the objections do articulate that point,  
22 and it is my hope that the settlement will address those very  
23 concerns.

24 The fifth factor, the extent of discovery completed  
25 and the state of the proceedings, it's fair to say that this 14:26:46

1 case was, on the one hand, regrettably, completely discovered  
2 and prepared for trial, meaning that both sides' lawyers knew  
3 virtually every thing about what was to go forward.

4 And I say "regrettably" because that meant that a  
5 great deal of energy and resources and time were devoted to 14:27:07  
6 this. But on the other hand, perhaps it was necessary.  
7 Perhaps it was only in that climate where the lawyers could  
8 fully evaluate the respective cases and decide that a  
9 compromise was the best way to proceed.

10 The sixth factor is linked to this somewhat, the 14:27:26  
11 experience and views of counsel, because if you have a fully  
12 discovered case that provides this information, it's probably  
13 of limited use if you don't have people who are skilled and  
14 able to take in this information.

15 That's not the case we have here. We have 14:27:46  
16 accomplished counsel on both sides of the case. Both sides'  
17 counsel have national reputations with respect to litigating  
18 these kinds of cases, and have the experience of being able to  
19 evaluate the circumstances that were presented in this case  
20 against their backgrounds and experiences in other cases, and 14:28:03  
21 their backgrounds and experiences in other states. I think  
22 that that's helpful as they evaluated how best to proceed in  
23 this case.

24 The seventh factor, the reaction of the class to the  
25 proposed settlement, is set forth in the comments, which I -- 14:28:20

1 and I have considered, but I fundamentally believe that they do  
2 not suggest that this settlement should be deemed to not  
3 satisfy the standard that the Court must follow.

4 And I do that for two reasons. One, I've already  
5 mentioned, and that is I do believe that many of the objections 14:28:41  
6 are objections to the current status of affairs, not the status  
7 of affairs that we hope will be in place once this settlement  
8 and the stipulation is active.

9 The second point that is one that I would echo that  
10 was made by plaintiffs' counsel, and that is that the -- that 14:29:01  
11 the proportion of criticism is, although each of the opinions  
12 is important, the overall number against those for whom the  
13 notice was provided is low. It is 1 percent, and so it would  
14 seem that it is not fair to say that there was an overriding  
15 outcry of protest. It's fair to say that there are people with 14:29:31  
16 significant concerns who raised those concerns in a process  
17 that the Court provided.

18 I will also say that with respect to those who  
19 provided the information in the Spanish language, those were  
20 interpreted for the Court and I reviewed them after they were 14:29:44  
21 interpreted into English.

22 And so I think, taken together, all of these factors  
23 do establish that the settlement that the parties reached --  
24 albeit, as Mr. Fathi said, no settlement is perfect -- it is,  
25 in light of the circumstances that were present, presented to 14:30:05

1 both of the parties in how best to proceed, one that for the  
2 class plaintiffs resulted in achievement of many measures that  
3 will resolve issues that have been identified in this lawsuit  
4 and have been presented.

5 And against the risk of going forward that they could 14:30:26  
6 lose the case, the compromise makes sense; and against the risk  
7 of even if the case could be won, the loss of perhaps life and  
8 injury and mental and physical damage that can occur to  
9 individuals over the life of the case as it worked its way  
10 through trial and through appeal, compellingly mandates that 14:30:52  
11 the settlement be approved, approved at this instant, so that  
12 the parties can move forward as expeditiously as possible, with  
13 no further delay interposed by the Court.

14 And so I will sign an order finding that the  
15 settlement is fair, adequate, and reasonable. I will provide 14:31:12  
16 written findings that will augment what I have said here on the  
17 record, but I do believe what I have said on the record does  
18 support the conclusion that the Court has made. I will sign  
19 the proposed order that is on the docket at 1185-2, and I will  
20 approve the motion for attorneys' fees. 14:31:33

21 The motion for attorneys' fees mirrors the agreement  
22 that the parties reached in the settlement, in the stipulation.  
23 It is a fair attorney fee amount in light of, I think, two  
24 overwhelming factors that evidence it.

25 One, the affidavit in support of it demonstrates that 14:31:55

1 it is a number about half the number that was expended by the  
2 plaintiffs in terms of costs and fees associated with the case.  
3 If the case had proceeded to trial, it would have even been a  
4 more robust figure.

5 And the other factor is that the amount of the fee 14:32:17  
6 award is approximately the same amount of money that the  
7 defendants expended to their outside counsel, even assisted by  
8 in-house counsel to a significant extent.

9 And so that benchmark seems to answer conclusively  
10 that this is a fair and reasonable attorneys' fees amount and 14:32:35  
11 also a necessary attorneys' fees amount, an attorneys' fees  
12 provision that the Congress has established because of its  
13 understanding that class plaintiffs can only oftentimes  
14 accomplish representation if there is a fee mechanism in place.  
15 And so consistent with the congressional authority for the 14:32:54  
16 awarding of fees in a case like this and the parties' agreement  
17 to it, I will approve the attorneys' fees order.

18 Turning now to counsel, if there's anything else that  
19 I need to address I look first to you, Mr. Struck, since you're  
20 closer to the jury. 14:33:14

21 MR. STRUCK: No, Your Honor.

22 THE COURT: All right.

23 Anything further, Mr. Specter?

24 MR. SPECTER: The proposed order had a blank in it for  
25 the document number for the stipulation, so we had another 14:33:24

1 order prepared.

2 THE COURT: You can tender that to me now, if you  
3 please.

4 MR. SPECTER: Yes.

5 THE COURT: Thank you. 14:33:40

6 And then there's one final matter, two final matters  
7 that I would like to address. I will need to identify and  
8 exclude from the settlement those who indicated their wish to  
9 be excluded from the settlement. I believe that number is  
10 presently two, is that correct, counsel? 14:33:59

11 MR. SPECTER: Yes, Your Honor.

12 THE COURT: And so just so the record's clear, I want  
13 to make sure that that is noted here.

14 And then the second factor --

15 Mr. Struck, I'll turn to you, perhaps. 14:34:12

16 What I would like to do is arrange for the transcript  
17 of this proceeding to be made available at the prison libraries  
18 in a way that the settlement was also made available.

19 Is that possible to do?

20 MR. STRUCK: Yes, Your Honor. 14:34:26

21 THE COURT: Okay. So the transcript would be prepared  
22 and tendered to the State of Arizona for that purpose as well.

23 So the proposed order regarding the stipulation is no  
24 longer a proposed order, it will be entered on the docket as an  
25 order of this Court, and the stipulation will be approved as 14:34:44

1 well.

2 Anything further?

3 MR. SPECTER: No, Your Honor.

4 MR. STRUCK: No, Your Honor.

5 THE COURT: All right. Thank you all.

14:34:52

6 (Proceedings concluded at 2:34 p.m.)

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