

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

JOHN DOE, a minor, by and )  
through his Mother and next friend )  
SHARIEKA FRAIZER, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
BONNIE HOMMRICH, et al )  
 )  
Defendants. )

Docket No. 3:16-CV-0799  
JUDGE RICHARDSON/BROWN

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**ORDER GRANTING PRELIMINARY APPROVAL OF THE CLASS  
SETTLEMENT AGREEMENT, DISMISSING CERTAIN INDIVIDUAL  
DEFENDANTS WITH PREJUDICE, SETTING FAIRNESS HEARING AND  
APPROVING FAIRNESS HEARING NOTICE**

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Pending before the Court is the Parties' Corrected Second Agreed Motion for Preliminary Approval of Class Settlement Agreement (the "Motion"). (Docket No. 143.) In the Motion, which has been jointly filed and agreed to by all of the parties to this litigation, the parties request the Court to do the following: preliminarily approve the Class Settlement Agreement attached to the Motion; set a Fairness Hearing date for final consideration of the Class Settlement Agreement; approve the Notice of the Fairness Hearing presented by them; and, dismiss individual defendants Lynn Duke ("Duke") and Lieutenant Angela Istvanditsch ("Istvanditsch").

The Court has reviewed the Motion, as well as the exhibits thereto and makes the following findings:

1. All parties to the Class Settlement Agreement joined in the Motion and seek for the relief requested be entered. The parties are as follows: plaintiff John Doe, *a minor, by and through*

*his Mother and next friend, Sharieka Frazier*, and class representative; (2) the plaintiff class certified by the district court in this matter, consisting of “all juveniles detained in the Rutherford County Juvenile Detention Center who are or were placed in solitary confinement or isolation for punitive reasons, from April 25, 2015 to the present” (*see* Memorandum Order, Docket No. 100, p. 9); (3) defendant Bonnie Hommrich, *in her official capacity as the Commissioner of the Tennessee Department of the Children’s Services*; (4) defendant the Tennessee Department of the Children’s Services (the “Department”); and (5) defendant Rutherford County, Tennessee (“Rutherford County”) (collectively, these defendants will be referred to as the “Parties”).

2. This Court previously certified a class in this matter (Docket No. 100), and the class is “all juveniles detained in the Rutherford County Juvenile Detention Center who are or were placed in solitary confinement or isolation for punitive purposes, from April 25, 2015 to the present” (the “Class”). (Docket No. 100 at 9.) In certifying the Class, this Court noted that Plaintiffs were not seeking damages, only injunctive and declaratory relief. *Id.* at 2.

3. Following certification of the Class, the Court conducted an in-person case management conference, at which counsel for the Parties agreed that it made sense to schedule a mediation/judicial conference with a magistrate judge to determine whether the Parties could resolve the case. (*See* Order, Docket No. 122.) The Court thus referred this case to Magistrate Judge Brown. *Id.*

4. The terms of the Class Settlement Agreement (Docket No. 143-1) resulted from intense negotiations between the Parties under the supervision of Magistrate Judge Brown and then a private mediator. The Court concludes that the Class Settlement Agreement was the result of an arm’s length negotiation between experienced counsel for the Parties and not the product of overreaching or fraud.

5. The Parties submitted the Class Settlement Agreement to the Court in their Motion (the “Class Settlement Agreement”).

6. The Court preliminarily finds that on its face the Class Settlement Agreement provides the certified Class with the primary relief they sought, namely permanent injunctive relief. Specifically, if the Class Settlement Agreement is approved after the Fairness Hearing, a permanent injunction will be entered enjoining Rutherford County from using seclusion for punishment as provided in the Rules, as may be amended or revised by the State of Tennessee. (*See* Class Settlement Agreement, Section IV (the “Permanent Injunction”).)

7. In addition to the Permanent Injunction, the Class Settlement Agreement also requires the Department to provide, and indeed it is reported by the Parties in the Motion that the Department has begun providing, Plaintiffs’ counsel with copies of reports describing reviews the Department is conducting of Rutherford JDC relative to its implementation of the Rules of the Department of Children’s Services, Chapter 0250-04-08, Minimum Standards for Juvenile Detention Centers and Temporary Holding Services (the “Rules”). Among other thing, the Parties agree that the Rules prohibit the use of seclusion for punitive purposes and Rutherford County agrees in the Class Settlement Agreement that they are bound by the Rules. (*See* Class Settlement Agreement, Section II.) Moreover, Plaintiffs, by and through their counsel and experts, reviewed the Rules and agree that the “provisions relating to JDCs’ use of seclusion, and associated requirements, are appropriate and meet constitutional standards.” *Id.* These reports, which were provided in 2018 and will be provided 2019, allow Plaintiffs’ counsel to conduct appropriate oversight of Rutherford JDC’s ongoing use of seclusion.

8. For all these reasons, the Court preliminarily finds, subject to consideration of any objections timely filed by a Class Member, argument presented at the final approval or fairness

hearing (the “Fairness hearing”), and any other information appropriately provided to this Court, that the Class Settlement Agreement is fair, reasonable and adequate to all concerned.

9. The Class Settlement Agreement also describes the notice to be provided to the Class of the Fairness Hearing (the “Fairness Hearing Notice”), how the Fairness Hearing Notice will be published, and attaches the proposed notice as an exhibit. (Class Settlement Agreement, Section VII.E.) The Parties ask this Court to approve the Fairness Hearing Notice as part of this motion.

10. Following preliminary approval of a class settlement, putative class members must be notified of the settlement. *See* Fed. R. Civ. P. 23(e)(1). “The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” *Id.* “[N]otice must ... fairly apprise ... prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests.” *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 423 (6th Cir. 2012) (quoting *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 630 (6th Cir. 2007) (internal quotation marks omitted)). To meet this standard, a class notice should “inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, and that any class member may appear and be heard at the hearing.” *Kinder v. Meredith Corp.*, 2016 WL 454441, at \*3 (E.D. Mich. 2016) quoting Newburg on Class Actions § 8:17 (5<sup>th</sup> ed.).

11. The Fairness Hearing Notice is appropriate and reasonable. It includes the following information: a brief statement of the claims released by the Class; the date of the Fairness Hearing; a description of the proposed settlement; the deadline for submitting objections

to the settlement; information about how to obtain a copy of the Class Settlement Agreement; the information that must be contained in any objection; attendance at the Fairness Hearing, including the date; and, contact information for all counsel to the case, along with an invitation to contact Class counsel if they have any questions. (See proposed Fairness Hearing Notice, attached hereto as Exhibit 1.)

12. The method by which the Fairness Hearing Notice is proposed to be published also is reasonably calculated to reach members of the Class. The Parties seek Court approval to publish the Fairness Hearing Notice by several means. (See Class Settlement Agreement, Section VII.E.) When a case, like this one, is certified under Rule 23(b) of the Federal Rules of Civil Procedure, courts often do not require any notice to the class of motion to approve settlement, and even where notice is required often it is accomplished by publication. *Hart v. Colvin*, No. 15-CV-00623-JST, WL 9288252 at \*2 (N.D. Cal. Apr. 17, 2017) (citing *Green v. American Exp. Co.*, 200 F.R.D. 211, 212 (S.D.N.Y. 2001); see also *Cole v. City of Memphis*, 839 F.3d 530, 541 (6<sup>th</sup> Cir. 2016). The Parties request that this Court approve the publication of the Fairness Hearing Notice be published by several means. First, the Department and Rutherford County have agreed to post a copy of the Fairness Hearing Notice and proposed Class Settlement Agreement in a prominent place on their websites. *Id.*, Section VII.E.1. Moreover, Rutherford County shall post the Fairness Hearing Notice in the entrance lobby and the visiting areas of the Rutherford JDC until the deadlines for objecting has passed. *Id.*, Section VII.E.3. Further, Rutherford County also will mail the Fairness Hearing Notice to Juvenile Court Judge and Magistrates for the Juvenile Court of Rutherford County, as well as the Rutherford County Public Defender's Office and the Rutherford County District Attorney's Office. *Id.* Finally, Rutherford County is sending, by U.S. First-Class Mail, a copy of the Notice to the last known address of the one-hundred and twenty-eight (128) persons

identified by Rutherford County in the course of discovery and referenced by the Court in its Order certifying the class (Docket No. 100 at 4), unless excluded from potential class membership by agreement of counsel for Rutherford County and Plaintiffs.

13. Lynn Duke, who was named in the suit in her individual and official capacity as Director of the Rutherford County Juvenile Detention Center (“Duke”), and Lieutenant Angela Istvanditsch, who was named in the suit in her individual and official capacity as an officer of the Rutherford County Juvenile Detention Center (“Istvanditsch”) are not necessary parties for the relief contained the Class Settlement Agreement or this Order and may be dismissed with prejudice as jointly requested by the parties.

For the reasons stated herein, the Motion is **GRANTED** in whole and **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Class Settlement Agreement is preliminarily approved subject to the Court conducting a fairness or final approval hearing (the “Fairness Hearing”);
2. The Fairness Hearing to consider whether the Class Settlement Agreement will be finally approved is hereby set for July 19, 2019 at 1:00 p.m.;
3. The parties proposed notice of the Fairness Hearing (the “Fairness Hearing Notice”), attached to this Order as Exhibit 1 and incorporated by reference, is approved;
4. The parties are directed to publish and distribute the Fairness Hearing Notice and/or copies of the Class Settlement Agreement as follows:
  - a. Plaintiffs' counsel, the Department and the County shall each post in a prominent place on their respective websites a copy of the Fairness Hearing Notice and the proposed Class Settlement Agreement until the deadline for submitting objections has passed.
  - b. Following Final Approval, Plaintiffs' counsel and the County shall each post a copy of the final Class Settlement Agreement on their respective websites for a period of twelve (12) months.

- c. The County shall also post the Fairness Hearing Notice in the visitor areas and in the entrance lobby of the Rutherford JDC until the deadline for submitting objections has passed. The County shall also mail the Fairness Hearing Notice to the Juvenile Court Judge and Magistrates for the Juvenile Court of Rutherford County, the Rutherford County Public Defender's Office, and the Rutherford County District Attorney's Office. Finally, the County shall send, by U.S. First-Class Mail, a copy of the Notice to the last known address of the one-hundred and twenty-eight (128) persons identified by Rutherford County in the course of discovery and referenced by the Court in its Order certifying the class (Docket No. 100 at 4), unless excluded from potential class membership by agreement of counsel for Rutherford County and Plaintiffs.
- d. Nothing in this Class Settlement Agreement shall bar the Parties from further distribution of the Fairness Hearing Notice at their own expense.
- e. Each party shall bear their own cost of providing the notice set forth in Section VII E.1-4.
- f. At least fourteen (14) days before the Fairness Hearing, Counsel for the Department and Rutherford County will provide a declaration to the District Court attesting that they each disseminated notice consistent with this Class Settlement Agreement.

5. Defendants Lynn Duke and Lieutenant Angela Istvanditsch, in both their individual and official capacities, are hereby dismissed from this litigation with prejudice.

IT IS SO ORDERED, this 28th day of March, 2019.

  
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ELI RICHARDSON  
UNITED STATES DISTRICT JUDGE