

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

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|---------------------------|---|------------------|
| DEMONTRAY HUNTER, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | CIVIL ACTION NO. |
| v. |) | 2:16cv798-MHT |
| |) | (WO) |
| JAMES V. PERDUE, in his |) | |
| official capacity as the |) | |
| Commissioner of the |) | |
| Alabama Department of |) | |
| Mental Health, |) | |
| |) | |
| Defendant. |) | |

PRELIMINARY SETTLEMENT APPROVAL ORDER

Pursuant to Federal Rule of Civil Procedure 23(e), the parties jointly move the court (1) to grant preliminary approval to their proposed settlement agreement of this litigation (doc. no. 60-1) and (2) to approve the following: the form of notice to class members of the proposed settlement agreement (doc. no. 66-1); the form of notice to class members' defense counsel, family members, and legal guardians (doc. no. 66-2); the form of notice to be posted in Alabama circuit courts (doc. no. 66-3) and the letter to

circuit clerks requesting the posting of that notice (doc. no. 66-4); and the process for distributing these documents and collecting comments, as further set out below. Based on the entire record before the court, the court finds as follows:

First, the court finds that the proposed settlement agreement should be preliminarily approved, that notice should be provided to interested parties, and that a fairness hearing should be conducted.

The court further finds it appropriate to provisionally certify a Rule 23(b)(2) injunctive-relief settlement class (the "Settlement Class") composed of "All persons who have been, or will be during the period that this Agreement remains in effect, charged with a crime, within the meaning of Rule 1.4(b) of the Alabama Rules of Criminal Procedure, in a court of competent jurisdiction in the State of Alabama, and detained in an Alabama city or county jail or Alabama Department of Corrections facility while awaiting a court-ordered Mental Evaluation or court-ordered Competency Restoration Treatment; (a) for whom a Circuit Court has

determined that reasonable grounds exist for a mental examination into the person's competency to stand trial under Rule 11 of the Alabama Rules of Criminal Procedure and committed the person to the custody of the Alabama Department of Mental Health ("ADMH") under Rule 11.3 of the Alabama Rules of Criminal Procedure by court order for an inpatient evaluation, whether or not the court's order references any provision of law in so ordering; or (b) who is found incompetent to stand trial under Rule 11 of the Alabama Rules of Criminal Procedure and committed to the custody of ADMH under Rule 11.6 of the Alabama Rules of Criminal Procedure by court order for Competency Restoration Therapy, whether or not the court's order references any provision of law in so ordering." For reasons to be articulated in a final decision regarding whether to approve the settlement, the court preliminarily finds that the settlement class meets the requirements of Rule 23(a)--numerosity, commonality, typicality, and adequacy of representation--as well as the requirement of Rule 23(b)(2) that the issues involved "apply generally to

the class," such that "relief is appropriate respecting the class as a whole." The court preliminarily finds that plaintiffs' counsel in this case can capably serve as and should be appointed class counsel, based on the factors outlined in Rule 23(g).

Finally, the court finds that the notice and comment forms attached as exhibits to the Parties' Joint Proposal for Notice and Comment Regarding Proposed Settlement (doc. no. 66), and the process for distributing and collecting these outlined in that document, constitute sufficient notice of, and--together with the fairness hearing described below--opportunity to be heard on, the proposed settlement agreement, as is required by due process and Rule 23(e).

It is therefore ORDERED that the joint motion for preliminary approval (doc. no. 60) is granted as follows:

(1) The proposed settlement agreement (doc. no. 60-1) is preliminarily approved, with final approval subject to a hearing and to review by the court of any

objections to or comments about its terms submitted by class members and other interested persons, and to the court's resolution of certain outstanding issues set for briefing in the scheduling order (doc. no. 65).

(2) Pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), an injunctive-relief settlement class is provisionally certified, defined as "All persons who have been, or will be during the period that this Agreement remains in effect, charged with a crime, within the meaning of Rule 1.4(b) of the Alabama Rules of Criminal Procedure, in a court of competent jurisdiction in the State of Alabama, and detained in an Alabama city or county jail or Alabama Department of Corrections facility while awaiting a court-ordered Mental Evaluation or court-ordered Competency Restoration Treatment; (a) for whom a Circuit Court has determined that reasonable grounds exist for a mental examination into the person's competency to stand trial under Rule 11 of the Alabama Rules of Criminal Procedure and committed the person to the custody of the Alabama Department of Mental Health ("ADMH") under Rule 11.3 of

the Alabama Rules of Criminal Procedure by court order for an inpatient evaluation, whether or not the court's order references any provision of law in so ordering; or (b) who is found incompetent to stand trial under Rule 11 of the Alabama Rules of Criminal Procedure and committed to the custody of ADMH under Rule 11.6 of the Alabama Rules of Criminal Procedure by court order for Competency Restoration Therapy, whether or not the court's order references any provision of law in so ordering."

(3) The Alabama Disabilities Advocacy Program, Henry (Hank) F. Sherrod III, P.C., and the ACLU of Alabama Foundation are appointed as class counsel to represent the Settlement Class under Federal Rule of Civil Procedure 23(g).

(4) By May 26, 2017, the parties are to provide notice of the proposed settlement agreement to members of the Settlement Class and criminal defense counsel of Settlement Class members (and, through defense counsel, to family members and legal guardians) and to the clerks of court for Alabama's circuit courts for public

posting; the parties shall also provide notice by publication; and each form of notice shall be provided as outlined in the Parties' Joint Proposal for Notice and Comment Regarding Proposed Settlement (doc. no. 66). The parties are to collect comments from Settlement Class members and their defense counsel, family members, and legal guardians as further outlined in the Parties' Joint Proposal by the submission deadline of June 26, 2017. The Parties' Joint Proposal meets all due process and other legal requirements.

(5) The court supplements the Parties' Joint Proposal (doc. no. 66) as follows: Within two weeks of sending a copy of the "Notice of Proposed Class Action Settlement" to the clerks of court for Alabama's circuit courts (doc. no. 66-3), the parties are to conduct spot checks of at minimum 15 courthouses, either directly or through reports of non-party counsel, to ensure the Notice has been posted in a central location, and thereafter to conduct follow-up remediation as necessary. After conducting the spot checks, the parties should file a status report with

the results and, if necessary, plans for remediation.

(6) Under the scheduling order (doc. no. 65), a fairness hearing is set for August 3, 2017, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery Alabama, to determine whether the proposed settlement of this class action on the terms and conditions provided for in the settlement agreement is fair, reasonable, and should be finally approved by the Court. The hearing may be continued from time to time without further notice.

(7) Any member of the Settlement Class may enter an appearance on his or her own behalf in this action, but need not do so. Settlement Class members who do not enter an appearance will be represented by class counsel. Alternately, any member of the Settlement Class, as well as defense counsel, family members and legal guardians of Settlement Class members, may provide written comments to the court regarding the fairness of the settlement by completing the "Response

to Proposed Class Action Settlement" form attached to this order as Exhibit A. All comments by members of the Settlement Class, defense counsel, family members and legal guardians of Settlement Class members regarding the fairness of the proposed settlement using the form attached as Exhibit A shall be mailed to the Alabama Disabilities Advocacy Program ("ADAP") at 400 South Union Street, Suite 280, Montgomery, Alabama 36104. Comments must be postmarked no later than June 26, 2017, to be considered. All comments received by ADAP at the foregoing address will be consolidated and filed with the court. A member of the Settlement Class who desires to comment, but who fails to comply with the above objection procedure and timeline, shall be deemed to have not objected and the objection shall not be heard or considered by the court.

DONE, this the 9th day of May, 2017.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE