

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KATRINA MACK, et al.,)	
Plaintiffs)	
)	
v.)	Civil Action No. 98-12511-NG
)	
SUFFOLK COUNTY, et al.,)	
Defendants)	

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS’ MOTION FOR FINAL ORDERS PERMITTING
DISTRIBUTION OF THE REMAINDER OF SETTLEMENT FUND**

Plaintiffs petition this Court to distribute the amount remaining in the Mack Settlement Fund to Massachusetts Correctional Legal Services (“MCLS”) to be used for legal work to assist female prisoners at MCI–Framingham, the only state prison for women in Massachusetts. The Settlement Agreement in this case provides:

The settlement amount and any interest earned in the settlement fund account until the date of distribution shall belong to the plaintiffs. If there is any balance in the settlement fund account from additional interest earned after all of the settlement checks have been distributed and all expenses, bonuses and attorney’s fees have been paid, the plaintiff will petition the Court for instructions on the distribution of the remaining funds.

Settlement Agreement at ¶12. The agreement also provides this Court with the power to make any orders necessary to enforce the settlement agreement. ¶ 44. Counsel for the class recommends that this money go to MCLS, consistent with the *cy pres* doctrine which is used by courts to direct distribution of funds remaining in a class action.¹

¹ A Memorandum of Understanding between plaintiffs’ counsel and MCLS is attached to this memorandum.

MCLS is a non-profit corporation that provides legal services to prisoners. Founded in 1972, MCLS was established to provide legal and civil services to people in Massachusetts jails and prisons. MCLS is supported through government contracts, grants and private donations.

The cy pres doctrine allows for excess and unclaimed funds from a class action settlement to be disbursed to a charitable organization at the direction and under the supervision of the court. Under the cy pres doctrine, the funds should be used to benefit the “next best class.” Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission, 84 F.3d 451 (D.C. Cir.1996) (current bus riders found to be the next best class); In Re Three Mile Island Litigation 557 F. Supp 96 (M.D. Pa. 1992) (payment made to newly formed foundation to study the biological effects of radiation exposures from a nuclear plant accident). The National Association of Consumer Advocates Guideline for plaintiff’s lawyers on cy pres states:

class counsel should propose a disposition of the unclaimed portion of the award that will either (1) protect the interests of the persons injured by the illegal conduct and thus indirectly benefit absent class members or (2) promote the purposes of the statutory prohibitions sought to be enforced in the underlying litigation.

“Standards and Guidelines for Litigating and Settling Consumer Class Actions,” 176 F.R.D. 375, 393 (1997). Because this was a §1983 case on behalf of women in custody, it is most appropriate that the funds be used to protect the constitutional rights of women in prison in Massachusetts.

Under the Memorandum of Understanding, the funds will be used to further MCLS's current advocacy on behalf of women prisoners. MCLS will also receive cy pres money from another class action which it will use to investigate potential areas of litigation and of advocacy for prisoners at MCI -Framingham. The funds from this case will be used to implement the recommendations by litigation if necessary.

Incarcerated women suffer from a disproportionate rate of physical and mental illness. Initiatives for formulating and implementing sufficient programming, counseling and medical care for the female prison population are underfunded and generally unsupported compared to men's institutions. See 12 A.L.R. 4th 1219 §3. Due to the lack of funding for medical screening, preventative care and treatment, many incarcerated women have unwillingly and prematurely surrendered their lives to cervical and breast cancer. Kendra D. Arnold, Note, *The Right to Live: A Constitutional Argument for Mandatory Preventative Health Care for Female Prisoners*, 10 Wm. & Mary J. Women & L. 343, 343 (2004). Incarcerated women are also more susceptible than the general population to HIV, Hepatitis C, and reproductive diseases. Cynthia Chandler, Articles, *Death and Dying in America: The Prison Industrial Complex's Impact on Women's Health*, 18 Berkeley Women's L.J. 40, 42 (2003). Furthermore, studies show that a significantly high number of women who have been incarcerated are victims and survivors of male violence such as rape, incest or domestic violence and often times have chemical dependencies for illegal drugs or alcohol. Despite an overwhelming need for women's correctional facilities to provide health care, programming, child-care or parenting assistance, substance abuse

counseling and mental health counseling, prison administrations have neglected the area. Research by MCLS conducted with the aid of these funds may allow the organization to focus attention on these issues and help incarcerated women in this state.

By distributing the remaining settlement funds to MCLS, this Court is both complying with the terms of the Settlement Agreement and assuring that the funds will be used to promote respect for the constitutional rights of women prisoners in Massachusetts. Since many of the class members in this case were held at MCI-Framingham, the funds will serve to benefit members of the class.

RESPECTFULLY SUBMITTED,

The plaintiffs

By their attorneys,

/s/ Howard Friedman

Howard Friedman

BBO #180080

Myong J. Joun

BBO #645099

Law Offices of Howard Friedman P. C.

90 Canal Street, Fifth floor

Boston, MA 02114-2022

(617) 742-4100

CERTIFICATE OF SERVICE

I certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail if the attorney is not an CM/ECF participant.

/s/ Howard Friedman

Date: 3/18/05

CERTIFICATE OF CONFERENCE
PURSUANT TO L.R. 7.1(A)(2)

Pursuant to L.R. 7.1(A)(2), I certify that I have conferred in good faith with counsel for the defendant(s) in an attempt to resolve the issue that is the subject of the accompanying motion.

/s/ Howard Friedman

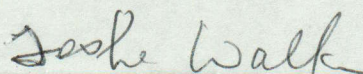
Date: 3/18/05

made available from other cases, MCLS would use that money to follow-up on the priorities developed as a result of the survey.

8. The use of the cy pres funds will be under the general supervision of Judge Nancy Gertner of the United States District Court.

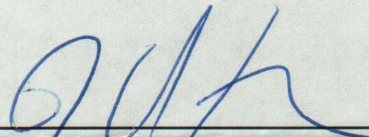
Signed this 10th day of March, 2005.

Massachusetts Correctional Legal Services



Leslie Walker
Massachusetts Correctional Legal Services
Eight Winter Street, Eleventh Floor
Boston, MA 02108-4705
(617) 428-2773

Law Offices of Howard Friedman



Howard Friedman
Law Offices of Howard Friedman P.C.
90 Canal St. 5th Floor
Boston, MA 02114
(617) 742-4100