

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

D.W., by and through his next friend Devonsha Fairley; K.V. by and through her next friend Sina Matheny; A.R., by and through her next friend Laura Reed; J.P., by and through his next friend Theresa Pope; A.B., by and through her next friend Bernadette Brossett; W.R. by and through his next friend, Calista Blackmon; on behalf of themselves and all persons similarly situated; MISSISSIPPI PROTECTION AND ADVOCACY SYSTEM, INC.,	)	
	)	
Plaintiffs,	)	Case No. 1:09 cv 267 LG-RHN
	)	
	)	
v.	)	
	)	
HARRISON COUNTY, MISSISSIPPI,	)	
	)	
Defendant.	)	

**AMENDED JOINT MOTION FOR APPROVAL  
OF PROPOSED AMENDED SETTLEMENT AGREEMENT**

The Parties file this Amended Motion seeking approval of the attached Settlement Agreement which the Parties modified after a conference with the Court. Pursuant to Federal Rule of Civil Procedure 23(e), the Plaintiffs and Defendant jointly move the Court to issue an order approving the attached settlement agreement, certifying the class for settlement and monitoring purposes, and dismissing this litigation without prejudice.

1. The Settlement Agreement requires the Harrison County Juvenile Detention Center to reform its practices and procedures. The Agreement is the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly

grant preferential treatment to class representatives or segments of the class, and falls within the range of possible relief. Approval of this agreement will spare both the Court and the parties from expensive and protracted litigation. *See Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5<sup>th</sup> Cir. 1983). On August 17, 2009 the parties filed a Proposed Settlement Agreement that was executed on August 10, 2009. At the Court's request, the Parties have modified the Proposed Settlement Agreement to clarify certain provisions regarding monitoring, enforcement, and class members' right to decline to participate in the monitoring and enforcement of this agreement. (*See* Exhibit 1, Amended Settlement Agreement ¶¶ 14.1, ¶¶14.5, ¶¶14.7). The substantive provisions of the Settlement Agreement remain identical to those contained in the Agreement executed on August 10, 2009.

2. The Parties did not reach this agreement lightly. On June 11, 2009 this Court entered an Agreed Order proposed by the Parties that allowed Plaintiffs' counsel to access the Juvenile Detention Center. Pursuant to this order, counsel has interviewed youth at the detention center on an almost daily basis since this date. Also pursuant to this order, the Defendants have allowed Plaintiffs' counsel to examine all written policies and procedures, and hundreds of pages of incident reports and grievances collected by detention center staff over the past two years. On a regular basis, Plaintiffs' counsel view video tape of incidents that occur inside the detention center and review relevant records. In crafting the proposed settlement agreement, the Parties were guided by this information. The Parties were further guided by experts retained by the Plaintiffs. Paul DeMuro, a nationally renowned juvenile justice expert with experience working on juvenile facility conditions litigation in Mississippi, spent 48 hours advising Plaintiffs and the Defendant on the terms of the settlement agreement. Mr. Demuro's time included approximately 10 hours inside the detention center examining the facility and meeting with youth, 8 hours reviewing records, 4 hours facilitating a negotiation session

between the Plaintiffs' counsel and the current county contractor who operates the juvenile detention center and 5 hours reviewing and editing the proposed settlement agreement.

Additionally, Plaintiffs retained James Balsomo, Jr. an expert on environmental health, safety and sanitation. Mr. Balsomo spent approximately 10 hours examining the detention center, meeting with staff and reviewing relevant policies and procedures. (*See* Exhibit 2, Paul Demuro Curriculum Vitae and Invoice and Exhibit 3, James Balsomo Curriculum Vitae).

3. The Settlement Agreement resulted from no less than four formal negotiation sessions. Participating in the negotiations were representatives from the county, the county contractor who provides medical and mental health care at the juvenile detention center, the county contractor who operates the juvenile detention center, and Plaintiffs' counsel, who spend approximately 20-30 hours inside the juvenile detention center on a weekly basis. After extensive fact-finding and negotiation, the Parties agree that the Proposed Amended Settlement Agreement will spare the parties and the court from extensive litigation, and best serve the interests of the putative class.

4. The parties have distributed notice to class members in the following manner:

a. Since August 20, 2009, a notice describing the substantive provisions of the Settlement Agreement has been posted in the visitation room and on the living units of the Harrison County Juvenile Detention Center. Plaintiffs' counsel provided residents in isolation cells an individual copy of the notice and/or verbally explained the settlement to residents in isolation. (*See* Exhibit 4, Previously Posted Notice). At this Honorable Court's request, Counsel have recently posted an expanded posting that includes the terms of the amended settlement agreement and a more detailed description of the substantive terms of the settlement. (*See* Exhibit 5, Amended Current Notice)

b. In order to accommodate varying literacy levels of the class members, Plaintiffs' Counsel met individually with all youth who were detained in the facility on August 27, 2009 and thoroughly explained the settlement agreement to each youth. Counsel then documented any concerns, questions or objections expressed by the youth.

c. In order to protect the rights of future class members, the Parties propose to provide each youth who enters the detention center and his or her guardian with a notice that summarizes the proposed Settlement Agreement and provides information regarding how the youth and/or his or her guardian may decline to participate in the monitoring and enforcement of this agreement. The Detention Center will include this notice in the resident's orientation packets and will mail a copy to each residents' parents and/or guardians. (*See* Exhibit 6, Proposed Notice to Future Class Members).

d. During the past few months, approximately 22 youth have been detained in the juvenile detention center at any one time. Plaintiffs' counsel received 21 written responses from detained youth. (*See* Exhibit 7, Class Member Responses). All of the responses indicated approval of the agreement. Three responses concerned the quantity of the food provided to the detained youth—an issue that was not raised in Plaintiffs' complaint.

5. Both the notice to the class and the means of distributing the notice are adequate to inform all the interested parties about the provisions of the settlement. *See, e.g., Austin v. Hopper*, 15 F.Supp.2d 1210, 1219 (M.D.Ala. 1998) (approving similar notice to class and means of distributing notice in prison conditions litigation). The Parties thus respectfully submit that the requirements of Fed. R. Civ. P. 23 have been met.

6. At the pleasure of the Court, the Parties are prepared to proceed with a fairness hearing. But the Parties respectfully suggest that a fairness hearing is not necessary here. Fed. R. Civ. P. 23 (e)(2) only requires a fairness hearing “if the proposal would bind class members.” The proposed agreement merely requires that the Harrison County Juvenile Detention Center comply with federal law—the agreement in no way affects the rights of individual youth and/or their guardians to pursue claims arising from a youth's detention in any forum. Therefore, the settlement does not bind any class members. *See also Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)(“The growing rule is that the trial court may limit its proceeding to whatever is necessary to aid it in reaching an informed, just and reasoned decision.”); *Malchman v. Davis*, 706 F.2d 426, 434 (2nd Cir. 1983)( “If the record is adequate, an evidentiary hearing is not

required unless the objectors raise “cogent factual objections to the settlement.”); *Officers for Justice v. Civil Service Comm'n of City and County of San Francisco*, 688 F.2d 615, 624-25 (9th Cir. 1982). Further, for the duration of the agreement the Parties will provide notice to all future class members and ensure that they have the opportunity to decline to participate in the monitoring and enforcement of the agreement. For these reasons, the Parties respectfully request that the Court enter an order 1) Certifying the class for settlement and monitoring purposes; 2) Approving the proposed settlement; and 3) Dismissing this matter without prejudice.

Date: October 2, 2009

Respectfully submitted,

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**Certificate of Service**

I hereby certify that on October 2, 2009, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by email to all parties by the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

Dated: October 2, 2009

/s/ Sheila A. Bedi  
Sheila A. Bedi