IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez

Civil Action No. 13-cv-3399-WJM-KMT

RYAN DECOTEAU,
ANTHONY GOMEZ, and
DOMINIC DURAN,

Plaintiffs,

v.

RICK RAEMISCH, in his official capacity as the Executive Director of the Colorado Department of Corrections, and
TRAVIS TRANI, in his official capacity as the Warden of the Colorado State Penitentiary and Centennial Correctional Facility,

Defendants.

ORDER APPROVING SETTLEMENT AGREEMENT AND GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES AND COSTS

Before the Court is the parties' joint request for final approval of their proposed class action settlement. (ECF No. 162.) The Court held a Fairness Hearing on June 29, 2016. (ECF No. 180.) Having considered the arguments raised in the briefs and at the Fairness Hearing, and for the reasons set forth below, the Court grants final approval of the proposed settlement, and also grants Plaintiffs' Unopposed Motion for Reasonable Attorneys' Fees and Costs (ECF No. 145).

I. BACKGROUND[1]

This class action lawsuit challenges certain exercise policies of the Colorado Department of Corrections ("CDOC"). (ECF No. 1.) When this lawsuit began in

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[1] Many of these background facts come from the undisputed facts established in the parties' summary judgment cross-motions.

December 2013, some prisoners at the Colorado State Penitentiary, or "CSP," were living in "administrative segregation," commonly known as "Ad Seg" or "solitary." (Plaintiffs' Statement of Undisputed Material Facts ("Plaintiffs' Facts") (ECF No. 50 at 5–13) ¶¶ 2–9.) These Ad Seg prisoners were, as a matter of CDOC policy, denied all outdoor exercise. (*Id.*) This Court eventually granted Plaintiffs' motion to certify the following class: "All inmates who are now or will in the future be housed in administrative segregation at the Colorado State Penitentiary and who are now or will in the future be subjected to the policy and practice of refusing to provide such inmates access to outdoor exercise." *Decoteau v. Raemisch*, 304 F.R.D. 693, 691 (D. Colo. 2014).

Effective June 30, 2014, however, CDOC eliminated the term "administrative segregation" and replaced it with a new classification: "Restrictive Housing Maximum Security Status." (Plaintiffs' Facts ¶ 7.) The major difference between Ad Seg and Restrictive Housing is that inmates in Restrictive Housing have a presumptive limit on their stay—either six or twelve months, depending on the offense that warranted their placement in Restrictive Housing. (*Id.* ¶ 48; Defendants' Statement of Facts ("Defendants' Facts") (ECF No. 56 at 5–12) ¶¶ 12–13.) "Any extension beyond twelve (12) months must be approved by the Director of Prisons as well as the Deputy Executive Director, and must be based upon documented exigent circumstances." (ECF No. 50-3 at 14.)

At the time of the change from Ad Seg to Restrictive Housing, Restrictive Housing inmates still generally did not receive outdoor exercise. (Plaintiffs' Facts ¶¶ 10, 46.) The Court therefore granted Plaintiffs' motion to modify the class definition as

follows: "All inmates who are now or will in the future be housed at the Colorado State Penitentiary and who are now or will in the future be subjected to the policy and practice of refusing to provide such inmates access to outdoor exercise." (ECF No. 93.)

In late 2014, both parties moved for summary judgment. (*See* ECF Nos. 50, 56.) By that time, CSP was beginning to permit Restrictive Housing prisoners who had been in that classification for at least nine months to exercise in a small, completely enclosed courtyard with a metal mesh and razor wire ceiling, one hour per day, three days per week. (ECF No. 98 at 3.) Restrictive Housing prisoners could not roam the courtyard freely, but were instead confined to steel mesh cages measuring 10 feet long, 8 feet wide, and 8 feet tall. (*Id.* at 4.)

The parties disputed whether this exercise arrangement qualified as "outdoors," and whether CDOC could constitutionally deny outdoor exercise for up to nine months. The Court ultimately denied both parties' summary judgment motions, finding that various issues of fact and law required further resolution. These included the circumstances and safety considerations surrounding Restrictive Housing prisoners, as well as the minimum length of constitutionally permissible deprivation of outdoor exercise. The Court did agree with Plaintiffs, however, that categorical deprivation of outdoor exercise is a constitutional violation. (*Id.* at 5–8.)

As all of these proceedings played out, CDOC secured funding from the Colorado Legislature to build new outdoor exercise yards at CSP. (ECF No. 162 at 5–6.) CDOC did not intend these yards for Restrictive Housing inmates, but instead for inmates in two less restrictive (but still high-security) housing classifications known as Management Control Unit ("MCU") and Close Custody Transition Unit ("CCTU"). (*Id.* at 5.)

This matter was set for a bench trial in November 2015. (*See* ECF No. 86.) In September 2015, the parties participated in an all-day mediation guided by retired United States Magistrate Judge Boyd Boland, and reached a memorandum of understanding. (ECF No. 162 at 6.) The parties then drafted a formal class action settlement agreement ("Settlement Agreement") (ECF No. 115-1), on the basis of which the Court vacated the trial in favor of class settlement approval proceedings.

The Settlement Agreement sweeps more broadly than this lawsuit's original focus. It addresses outdoor exercise for prisoners in Restrictive Housing as well as for prisoners in MCU and CCTU classifications. (§ IV.A–H.)[2] The Settlement Agreement also covers both CSP and CDOC's Sterling Correctional Facility ("Sterling"). (*Id.*)

The basics of the settlement are that Restrictive Housing prisoners will be transferred from CSP to Sterling, where they will be permitted to exercise in newly constructed outdoor cages for one hour per day, three days per week. (§ IV.G.) These cages are in areas that all parties deem to be out-of-doors, are required to have at least 180 square feet of ground space, and must be at least 12 feet tall. (§ III.D.) Meanwhile, as previously planned, CSP is building the new outdoor exercise yards to accommodate MCU and CCTU prisoners. (§ IV.A–E.) The expected completion date of the construction is sometime in December 2016. (§ III.C.) "If by October 1, 2016, CDOC determines that it will not be able to complete construction of the Yards by December 31, 2016, it will file a status report to the Court, explaining the cause of the delay, and the Parties will meet and confer to establish a reasonable deadline for

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[2] All citations beginning with a "§" symbol are to the Settlement Agreement, ECF No. 115-1.

completion." (*Id.*) Once the new yards are complete, however, MCU and CCTU prisoners will receive one hour per day, three days per week, of outdoor exercise. (§ IV.A–E.) All of these agreements regarding exercise time are subject to safety and security needs and exigent circumstances. (*Id.*)[3]

The Settlement Agreement provides that, following approval by this Court, the parties will move to administratively close this case. (§ IX.A.) Following completion of the construction required by the Settlement Agreement, the parties will stipulate to dismiss this case. (§ IX.C.)

The parties provided notice of this proposed settlement to all potentially affected prisoners at CSP and Sterling. (*See* ECF Nos. 115–19, 162-2.) The Court received ten timely, written objections from current CSP and Sterling prisoners. (*See* ECF Nos. 120, 125, 133, 138, 143, 146, 149, 150, 151, 155.) The Court concluded that four of those objectors either lacked standing or failed to state a proper objection. (*See* ECF Nos. 167–69, 174.) As to the remaining six, the Court weighed their right to be heard against the security concerns created by transporting and supervising numerous high-security inmates in court, and ultimately permitted two of them to appear in court and state their objections personally, while the remaining four were permitted to state their objections by videoconference from their respective facilities. (*See* ECF No. 166.) Shortly before the June 29, 2016 Fairness Hearing, one of those videoconference objectors, Douglas

[3] The choice of one hour per day, three days per week, was not selected at random. Class Counsel and CDOC counsel had previously litigated an outdoor exercise case involving a single CSP prisoner, and U.S. District Judge R. Brooke Jackson, after a bench trial, ruled that the plaintiff was entitled to exercise one hour per day, three days per week, "in an area that is fully outside and that includes overhead access to the elements." *Anderson v. Colorado*, 887 F. Supp. 2d 1133, 1157 (D. Colo. 2012). (*See also* ECF No. 162 at 3, 13.)

Wilson, withdrew his request to speak (ECF No. 179), leaving two in-person objectors and three remote objectors.

Each of the objectors, whether appearing in court or appearing remotely, were informed that they would be permitted to speak for up to five minutes. All five objectors spoke as planned at the Fairness Hearing. Synthesizing their written objections and oral presentations, their objections may be summarized as follows:

- Chris Green (in-person) spoke regarding his belief that CDOC should pay damages; complained about uncleared snow and ice in the exercise cages at Sterling (which have already been constructed); described CDOC's apparent practice of requiring prisoners who choose to exercise outside to remain outside for their entire allotted hour, regardless of weather conditions; and alleged unspecified retaliation he has suffered from prison guards because of this lawsuit.
- Isaac Benavidez (videoconference) expressed his belief that construction of the exercise modules is happening too slowly; his belief that CDOC should not be able to avoid admitting fault; his belief that CDOC should pay damages; his concern whether the Settlement Agreement would affect future claims for damages; and his desire to ensure that the Settlement Agreement is fully enforced over time, rather than forgotten or ignored.
- Eric Lee Roberts (in-person) spoke regarding his request that the exercise yard schedule be controlled by CDOC's Security Threat Group Intelligence unit, to prevent violence; and his experience with snow and

ice in the exercise modules at Sterling.

- Emmanuel Theus-Roberts (videoconference) expressed his worry that compliance with the Proposed Settlement will not be monitored; that CSP exercise facilities would not be finished by December 2016; and alleged that, on outdoor exercise days at Sterling (which CDOC has already begun implementing according the Settlement Agreement), inmates must choose between taking their full hour outside or having no exercise at all that day, even on cold days.
- John James (videoconference) spoke regarding his worry that CDOC would not actually abide by the Settlement Agreement given that it has allegedly not complied with other settlements relating to him.

The Court also granted Class Counsel's request to have two of the named plaintiffs testify in favor of the Proposed Settlement. (*See* ECF Nos. 173–74, 178.) Each was allotted fifteen minutes to make a statement, testify, or both, and each appeared by videoconference. Their testimony and statements may be summarized as follows:

- Anthony Gomez, a current CSP inmate, described the medical consequences of being deprived of outdoor exercise for approximately eight years, including diminished eyesight, anxiety, and depression. He also described his participation by telephone in the September 2015 mediation leading to the Settlement Agreement. He worries that prison officials will abuse the safety/security/exigent circumstances exception to lock down prisoners and thereby deprive them of exercise privileges from

time to time, including for reasons as trivial as staff potluck parties. But he believes that the Settlement Agreement is still fair, reasonable, and adequate.

- Dominic Duran, a former CSP inmate, described the negative psychological effects of being deprived of outdoor exercise, including depression and inability to "cool off" when frustrated. He has since been transferred to a lower-security prison near CSP where he has many opportunities to be outside—including, as it happens, on the construction detail that is building the new CSP exercise yards. That "small freedom," as he describes it, often changes his day for the better. He also described his participation by phone in the September 2015 mediation leading to the Settlement Agreement.[4]

II. SETTLEMENT APPROVAL STANDARDS

When asked to approve a class action settlement, the Court must determine if the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Court reviews a proposed class action settlement by considering four factors:

> (1) whether the proposed settlement was fairly and honestly negotiated;
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> (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

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[4] Duran will not be affected by the Settlement Agreement given his new facility assignment. The Court nonetheless permitted him to remain a class representative because (a) when this lawsuit began, he was housed at CSP and deprived of all outdoor exercise, and (b) he can speak from personal experience regarding the contrast between deprivation of and access to outdoor exercise.

> (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
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> (4) the judgment of the parties that the settlement is fair and reasonable.

Gottlieb v. Wiles, 11 F.3d 1004, 1014 (10th Cir. 1993), *abrogated on other grounds by Devlin v. Scardelletti*, 536 U.S. 1 (2002). "[T]he power to approve or reject a [class action] settlement . . . does not authorize the court to require the parties to accept a settlement to which they have not agreed." *Evans v. Jeff D.*, 475 U.S. 717, 726 (1986). Thus, the Court may not modify the settlement, but must either approve or disapprove it in total. *See, e.g.*, *Dennis v. Kellogg Co.*, 697 F.3d 858, 868 (9th Cir. 2012).

III. RESPONSES TO OBJECTIONS

For the reasons that follow, the Court has ultimately concluded to overrule all objections presented to the Settlement Agreement.

A. Failure to Admit Fault

Although not raised at the Fairness Hearing, various written objections chided CDOC for failing to admit fault. Class counsel, named plaintiffs, and counsel for the CDOC ("settlement proponents") respond that refusal to admit fault is "a standard settlement provision, and it in no way diminishes or in any way affects the class members' ability to access the outdoor exercise that is provided for by the Settlement Agreement." (ECF No. 162 at 19–20.)

The Court further notes that the factors it must consider in this context assume that neither party admits fault. In particular, "whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt," and "whether the value of

an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation," *Gottlieb*, 11 F.3d at 1014, have little meaning if a defendant admits liability. Thus, lack of admission of liability is *expected* in the class action settlement process, and not something unusual that must be addressed.

B. Damages

Some objectors argue that the prisoners should receive damages for the alleged Eighth Amendment violation. "However," say the settlement proponents, "the Class Settlement explicitly excludes damages claims from the release and thus does not preclude inmates from raising damages claims in another setting." (ECF No. 162 at 21–22.) The proponents refer to Settlement Agreement § X.F: "Nothing in this Agreement releases any claims for damages." In fact, a damages lawsuit based on outdoor exercise deprivation is pending in this Court before a different judge. *See Apodaca et al. v. Raemisch et al.*, No. 15-cv-845-REB-MJW (D. Colo., filed Apr. 22, 2015).[5] Thus, the Settlement Agreement does not foreclose claims for damages based on outdoor exercise deprivation.

It is also important to note that the Complaint's prayer for relief does not request damages (*see* ECF No. 1 at 20), and that the class was certified under Rule 23(b)(2) ("the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole"). (*See* ECF No. 37 at 10–12.) Rule 23(b)(2) generally does not permit damages as part of classwide relief. *See Wal-Mart*

[5] Class Counsel is not involved in that lawsuit.

Stores, Inc. v. Dukes, 564 U.S. 338, 360–67 (2011). Thus, even if this case had proceeded to trial, this Court could not have awarded damages without reopening the class certification analysis. The Court therefore finds that failure to award damages is not an appropriate objection to the Settlement Agreement.

C. Monitoring and Enforcement

Some objectors worry that the Settlement Agreement will have no real teeth, and that Class Counsel will forget about this case once attorneys' fees are paid. However, the Settlement Agreement contains an inspection provision and a dispute resolution provision. (§§ V & IX(B).) "Class Counsel has every intention of conducting the required inspection and addressing any shortfalls in compliance. If a Class Member believes that CDOC is violating term(s) of the Settlement, he may write to Class Counsel," who will determine whether the dispute resolution process must be invoked. (ECF No. 162 at 18.) Given the undersigned's familiarity with Class Counsel's dedication to these sorts of structural reform lawsuits, the undersigned accepts Class Counsel's statement as sincere. Moreover, the requested award of attorneys' fees and costs includes an estimated amount of fees and costs needed to ensure compliance. (*See* ECF No. 145 at 9.) For these reasons, the Court finds that objectors' fears about lack of monitoring and enforcement are not a basis to disapprove the Settlement Agreement.

D. Discretionary Carve-Outs

Some objectors, and even the named plaintiffs, worry that CDOC will abuse the carve-outs to the various exercise policies ("absent safety and/or security concerns,

and/or exigent circumstances"). However, the Tenth Circuit has already stated that exercise may be restricted due to legitimate penological concerns. *See Perkins v. Kan. Dep't of Corrs.*, 165 F.3d 803, 810 n.8 (10th Cir. 1999) (agreeing with prior authority that "penological considerations may, in certain circumstances, justify restrictions" on out-of-cell exercise).

Moreover, nearly all matters in prison are influenced by "safety and/or security concerns, and/or exigent circumstances." It is not clear what sort of terms Class Counsel could have bargained for to prevent CDOC from abusing its discretion with this sort of carve-out. Nonetheless, the Settlement Agreement wisely requires CDOC to "document all recreation opportunities offered to inmates . . . by date, time, and unit to which recreation is offered, including any denials by CDOC of recreation time." (§ IV.J.) "Should a class member believe that CDOC is misusing the exigent circumstances exception, he may request that Class Counsel submit the matter to dispute resolution," and CDOC's documentation may assist this process. (ECF No. 162 at 14.) The Court therefore finds that the discretion left to CDOC as to these matters is not a reason to disapprove the Settlement Agreement.

E. Retaliation

Objector Chris Green complained of retaliation from prison staff based on either this lawsuit generally or the Settlement Agreement in particular. This is not a basis to disapprove the Settlement Agreement—if retaliation for this suit has taken place, it likely would have taken place anyway if this case went to trial. Nonetheless, counsel for CDOC stipulated on the record at the Fairness Hearing that he would cause a memorandum to be distributed to relevant prison staff at the facilities involved in this

litigation, reemphasizing that retaliation for exercising constitutional rights (actual or perceived) is itself a constitutional violation. The Court notes that this stipulation was made in the context of CDOC counsel concurring with Class Counsel and the Court that these rights included, but were not limited to, freedom from retaliation against inmates for being a member of the plaintiff class. The Court understood that this memorandum will advise staff that such retaliatory conduct would not be tolerated, and that violators would be subject to appropriate discipline. The Court expects CDOC counsel to abide fully with these representations made on the record at the Fairness Hearing.

F. Weather & Length of Time Outdoors

The most frequently raised objection was treatment of inmates and their outdoor exercise privileges during dangerous weather, and during very cold weather in particular. With respect to the one-hour exercise periods, some objectors have complained about being forced to choose between spending the entire hour outside or having no exercise at all that day, which is a difficult choice on cold days. Objectors have also expressed concern about going outside and then needing to come back in before the end of the allotted hour due to cold or sudden weather changes.

From CDOC's perspective, this apparently comes down to a matter of transport staff availability. The Settlement Agreement, by nature, addresses inmates with high-security classifications. These inmates—particularly inmates in Restrictive Housing, who exercise in the outdoor cages—are deemed too dangerous to be allowed to roam freely between day halls and exercise yards. Thus, CDOC must have transport staff available to escort prisoners to and from the outdoor exercise area. At the Fairness Hearing, CDOC counsel and Sterling's warden, John Chapdelaine, both represented

that these inmates can come inside early if they so request and transport staff is available to bring them in.

The settlement proponents acknowledge that this "raise[s] an important issue" but argue that it "do[es] not call into question the adequacy, fairness, or reasonableness of the Class Settlement." (ECF No. 162 at 16.) Ultimately, the Court agrees. The objectors' concerns raise significant questions regarding administration of the regime created by the Settlement Agreement, but they do not undermine the adequacy, fairness, or reasonableness of the Settlement Agreement itself. Moreover, CDOC counsel expressly stipulated at the Fairness Hearing that the Settlement Agreement in no way waives any inmate's future Eighth Amendment claim based on exposure to the elements. *Cf. Skelton v. Bruce*, 409 F. App'x 199, 208 (10th Cir. 2010) ("Exposure to inclement weather without proper clothing can meet the objective prong of an Eighth Amendment violation . . . ."). Thus, for example, neither an inmate's choice to exercise outside on a cold day nor unavailability of transport staff would excuse CDOC's failure to bring the inmate back inside if dangerous conditions develop, or even if it simply becomes clear in the middle of an exercise period that the day is too cold for a human being to safely spend a full hour outside.

Finally, the Settlement Agreement contains a dispute resolution mechanism that Class Counsel can invoke if serious complaints continue to arise regarding these matters. (§ V.) Given all of the foregoing, the Court finds that concerns about cold or other inclement weather do not undermine the fairness, reasonableness, or adequacy of the Settlement Agreement.

G. Snow & Ice in Certain Cages

Some objectors complained specifically about exercise cages 13 and 14 at Sterling. According to the objectors, these cages were built in what they describe as a drainage ditch, and they fill with snow and ice in the wintertime, making them either unusable or dangerously slippery. According to CDOC counsel and Warden Chapdelaine, these two cages were partially built over a grating that allows for water drainage. Apparently these grates did not drain as expected, but CDOC insists that it sends crews to shovel those cages, or, alternatively, CDOC will not place any inmates in those cages when it is not safe to do so.

As with concern about cold weather generally, the Court believe this raises an issue of administering the regime created by the Settlement Agreement, rather an issue with the Settlement Agreement itself. If cages 13 and 14 continue to be a problem and the problem prevents inmates from receiving exercise time as specified in the Settlement Agreement, the parties may invoke the Settlement Agreement's dispute resolution process. This issue does not undermine the entire Settlement Agreement.

H. Safety from Violence

Objectors raise general concerns about safety from violence in the new CSP exercise yards (which will not employ the individual cages, but allow inmates to roam freely). The settlement proponents respond that "[p]rison security is beyond the scope of the Class Settlement. That matter is governed by CDOC [administrative regulations] (as well as federal and state law)." (ECF No. 162 at 22.)

CDOC counsel also stipulated at the Fairness Hearing that the Settlement

Agreement does not waive any inmate's Eighth Amendment right to safety from violence inflicted by other inmates, including violence among inmates who choose to exercise outside in the new yards. In other words, by gaining the privilege to exercise outside the inmates do not lose the constitutional right to be protected from attacks by other inmates. Accordingly, this objection presents no basis to disapprove the Settlement Agreement.

I. Construction Timeline

Some objectors doubt that CDOC will complete the new CSP exercise yards by December 2016. CDOC counsel stated at the Fairness Hearing, however, that he believed it was "very likely that [CDOC] will meet that December 2016 deadline." Moreover, the Settlement Agreement specifically contemplates an October 1, 2016 checkpoint, so to speak, when CDOC must reasonably determine whether it can finish by the end of December and, if not, inform the Court and confer with Class Counsel "to establish a reasonable deadline for completion." (§ III.C.) In this light, the Court concludes that abstract worries that CDOC will not timely complete construction are not a reason to disapprove the Settlement Agreement.

IV. APPROVAL ANALYSIS

Having overruled all objections, and having thoroughly reviewed the Settlement Agreement, the Court finds that the settlement negotiated by counsel is fair, reasonable, and adequate. The Settlement Agreement was negotiated at arms' length by counsel who are experienced in these types of cases, and with the help of an experienced and respected mediator. It was also negotiated with input of named

plaintiffs Gomez and Duran, who have firsthand experience with the matters in question.

The notice procedures were appropriate. (*See* § VIII; *see also* ECF Nos. 117, 118, 118-1.) These procedures apparently worked well judging by the number of objections the Court received.

The settlement assures the class members of something they have never had before, namely, regular outdoor exercise regardless of security classification. Access to such exercise is subject to safety and security concerns, and exigent circumstances, but nearly all matters in prison are subject to the same qualifications. The important fact is that CDOC will now be required to make outdoor exercise a regular part of every inmate's life. In addition, such opportunities for exercise will come soon (and in some places, have already begun), rather than after a lengthy trial and appeals process. For all of these reasons, the Court finds that the Settlement Agreement achieves a laudable result on behalf of all affected inmates, and is therefore approved.

Although the Settlement Agreement says nothing about this Court retaining jurisdiction, the parties stated at the Fairness Hearing that this Court should do so subject to the Prison Litigation Reform Act, Pub. L. No. 104-134, Title VIII, 110 Stat. 1321–71 (1996) (codified at various locations in Titles 11, 18, 28, and 42 of the United States Code) ("PLRA"). CDOC's counsel specifically referred to 18 U.S.C. § 3626(b)(1)(i), which allows for prospective relief to be "terminable upon the motion of any party or intervener * * * 2 years after the date the court granted or approved the prospective relief." Although the Court is not granting prospective relief in the sense of a consent decree or similar injunctive order, CDOC counsel asserted at the Fairness

Hearing (and Class Counsel confirmed) that subjecting the Settlement Agreement to § 3626(b) (*see* § IX.D) was a material term for which CDOC negotiated, thus preventing the Settlement Agreement from becoming a vehicle for judicial supervision of CDOC exercise policies in perpetuity.

Given that this was a negotiated and agreed-upon term, the Court will retain jurisdiction to resolve disputes arising under the Settlement Agreement's dispute resolution process (§ V.D) subject to a motion to terminate the Court's continuing jurisdiction filed two or more years after the date of this Order and in conformity with the PLRA.

V. ATTORNEYS' FEES

A. Legal Standard

When considering the appropriateness of an attorneys' fees award, the Court should consider what have become known as the "*Johnson* factors": (1) the time and labor required by counsel; (2) the novelty and difficulty of the legal question presented; (3) the skill required to represent the class appropriately; (4) the preclusion of other employment by the attorneys due to the acceptance of this case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys, (10) the "undesireability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1979).

B. Analysis

Class Counsel filed an unopposed motion for reasonable attorneys' fees and costs, requesting an all-inclusive award of $410,000. (ECF No. 145.) "Defendants do not oppose the award of fees and costs to Class Counsel in the amount of $410,000, but otherwise do not join the content of [Class Counsel's] motion." (*Id.* at 2.)

According to the PLRA, "[n]o award of attorney's fees in an action [governed by the PLRA] shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of Title 18 [governing CJA panels] for payment of court-appointed counsel." 42 U.S.C. § 1997e(d)(3). The referenced hourly rate is set by the Judicial Conference. 18 U.S.C. § 3006A(d)(1). Class Counsel claims that the Judicial Conference rate for 2016 is $144, so the PLRA permits an hourly rate of up to $216. CDOC believes that the correct rate is $190.50, although Class Counsel's motion contains no explanation of CDOC's math. In any event, according to Class Counsel, "the result—even if this [lower] rate were used—would still be a lodestar of over $560,000, considerably more than Class Counsel request." (ECF No. 145 at 14 & nn.3–4.)

At the assumed hourly rate of $216, Class Counsel claims $576,503.22 in total fees already incurred, after exercising billing judgment to exclude some hours, and after reducing every attorney's hours by 5%. (*Id.* at 8, 9.) Class Counsel also estimated future fees and costs (to ensure compliance) of $27,816. (*Id.* at 9.) Finally, Class Counsel requested $13,611.28 in costs, mostly due to travel to and from prisons, depositions, and "technical assistance in managing data produced by Defendants in

different formats and in creating 3D renderings of the interior courtyard and exercise [cages] at CSP." (*Id.*) This totals $617,930.50, which was Class Counsel's first offer to Defendants. "Defendant[s] countered and a series of negotiations ensued in which the parties ultimately agreed on the figure of $410,000.00 in payment of Class Counsel's reasonable attorneys' fees and costs." (*Id.*)

The Court finds that the requested amount of fees and costs is reasonable considering the effort expended on this case by class counsel, the risks and difficulties inherent in this sort of litigation, the skill required, and the dedication displayed over the last few years. The Court specifically notes that, but for the PLRA, Class Counsel's total lodestar fee at market rates would be over $1 million. (*Id.* at 10.) Even at PLRA rates, but before exercise of billing judgment, Class Counsel's total fee would be approximately $850,000. (*Id.* at 1.) Thus, $410,000—inclusive of fees and costs incurred, and future fees and costs likely to be incurred in monitoring the Settlement Agreement—is certainly reasonable. In light of CDOC's agreement to that amount, and having considered all of the relevant *Johnson* factors, the Court approves the attorneys' fees and costs as requested.

VI. CONCLUSION

For the reasons stated above, the Court ORDERS as follows:

1. The Settlement Agreement (ECF No. 115-1) is APPROVED;
2. The Court retains jurisdiction to resolve disputes arising under the Settlement Agreement, subject to a motion to terminate this retention of jurisdiction filed two or more years after the date of this Order;

3. Plaintiffs' Unopposed Motion for Reasonable Attorneys' Fees and Costs (ECF No. 145) is GRANTED; and

4. Plaintiffs are hereby AWARDED $410,000.00 in attorneys' fees and costs.

Dated this 6th day of July, 2016.

BY THE COURT:

William J. Martínez
United States District Judge