

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

**ASHOOR RASHO, PATRICE DANIELS,)
GERRODO FORREST, LYNDA SMITH,)
LATERIAL STINSON, and KEITH)
WALKER,)**

Plaintiffs,

v.

**DIRECTOR ROGER E. WALKER, JR.,)
DEPUTY DIRECTOR ROBERTA FEWS,)
DR. WENDY NAVARRO, DR. SYLVIA)
MAHONE, EDDIE JONES, DR.)
WILLARD ELYEA, DR. JOHN)
GARLIC, DR. MICHAEL F. MASSA,)
and WEXFORD HEALTH SOURCES,)
INC.)**

Defendants

No. 1:07-CV-1298-MMM-JAG

Judge Michael M. Mihm

Magistrate Judge John A. Gorman

**STIPULATED MOTION FOR CLASS CERTIFICATION
FOR SETTLEMENT PURPOSES**

Plaintiffs hereby seek preliminary certification of a class for settlement purposes, and in support state as follows:

1. Plaintiffs are individuals with serious mental illness who are inmates in various adult correctional facilities operated by the Illinois Department of Corrections (“IDOC”). They allege that they have not received adequate or proper care for their mental illness and have received additional punishment as a result of their mental illness. They have brought this action on behalf of themselves and others similarly situated seeking declaratory and injunctive relief requiring Defendants to take prompt action to remedy the alleged violations of Plaintiffs’ and the

class members' rights under the Eighth and Fourteenth Amendments of the United States Constitution and the Americans with Disabilities Act, 42 U.S.C. §§ 12131 et seq., and the Rehabilitation Act, 29 U.S.C. § 794.

2. The original complaint in this matter was filed by Plaintiff Ashoor Rasho pro se. (Docket 1.) On May 4, 2009, Plaintiffs Rasho, Daniels, Forrest, Smith, Stinson, and Walker, by their undersigned counsel, filed an amended complaint. (Docket 54.)

3. Shortly thereafter, Plaintiffs' counsel entered into settlement discussions with counsel for the IDOC and Defendants Walker, Fewes, Navarro, Jones, and Elyea (the "State Defendants"). As a result of those discussions, Plaintiffs and the State Defendants ultimately agreed to seek (i) preliminary certification of a settlement class under Rule 23(a) and (b)(2), and (ii) entry of a Case Management Order (filed herewith) which would provide for expert review of the IDOC's policies, procedures, and care of mentally ill inmates, with the aim of creating concrete proposals for improving that system which could be the basis of a final settlement.

4. Pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, Plaintiffs now respectfully move this Court for preliminary certification of a settlement class consisting of:

all persons who are now or will be incarcerated in adult correctional facilities operated by the Illinois Department of Corrections ("IDOC") and who, while incarcerated, have a serious mental illness, defined as an Axis I disorder in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (hereafter "DSM-IV"), except that a diagnosis of alcoholism or drug addiction or any form of sexual disorder shall not by itself constitute a serious mental illness for purposes of this class definition.

5. Plaintiffs request that this class be certified for settlement purposes only. The State Defendants have agreed to certification for settlement purposes of a settlement class more

narrowly defined than the class sought by Plaintiffs in the Amended Complaint and Second Amended Complaint. (The Second Amended Complaint is filed herewith with a motion for leave to file.) In the event this case does not settle, Plaintiffs intend to request class certification for all purposes of a class as defined in Plaintiffs' Second Amended Complaint.

6. The State Defendants in their turn reserve the right to oppose class certification, or request a different definition of the plaintiff class, in the event this case does not settle.

7. Defendants Wexford Health Sources, Inc. ("Wexford"), and Drs. Mahone and Massa, who work for Wexford, have not participated in the settlement discussions described in paragraph 3 above and do not agree to the certification of a settlement class.¹ Wexford is a for-profit company which provides prison health care services, including mental health services, to the IDOC.

8. Plaintiffs respectfully request that the case continue to be stayed while the expert consultants described in the Case Management Plan completes their work. A stay of the claims, including those against the Wexford Defendants, will conserve the Court's time and energy, particularly since it is not currently clear whether Wexford will continue to be the IDOC's health care provider (the contract is currently out for bid), and thus the class claims for declaratory and injunctive relief against Wexford may be rendered moot.

9. Together with this motion, Plaintiffs submit a memorandum in support of this motion for certification of the settlement class which sets forth how the proposed class satisfies the requirements of Rule 23(a) and (b)(2), including the qualifications of Plaintiffs' counsel to act as class counsel.

¹ As directed by the Court at the October 29 status conference, Plaintiffs and counsel for the Wexford Defendants have discussed the status of the case; this is more fully described in Plaintiffs' Motion for Leave to File Second Amended Complaint filed herewith.

For the reasons set forth in this motion and the accompanying memorandum of law, Plaintiffs respectfully request that this Court (i) preliminarily certify for settlement purposes the class set forth in paragraph 4 above; (ii) appoint Plaintiffs Ashoor Rasho, Patrice Daniels, Gerrodo Forrest, Lynda Smith, Lateral Stinson, and Keith Walker as Class Representatives;² (iii) appoint Plaintiffs' counsel Marc R. Kadish and Daniel Herrera of Mayer Brown LLP, Alan Mills of the Uptown People's Law Center, Harold C. Hirshman and Camille Bennett of SNR Denton US LLP, and Barry Lowy of Equip for Equality, as Class Counsel; (iv) stay all matters in this case pending the completion of the expert consultant review; and (v) grant any such further relief as the Court may deem proper or necessary.

Respectfully submitted,

November 19, 2010

/s/ Harold C. Hirshman
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² In addition, if the Court grants Plaintiffs leave to file the Second Amended Complaint, Plaintiffs respectfully request that additional Plaintiffs Philip A. Abraham, Otis Arrington, Kenneth Bakalik, Donald Collins, Joseph Herman, Henry Hersman, and Rasheed McGee also be appointed as Class Representatives.

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on November 19, 2010, she caused the foregoing document to be filed with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to:

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/s/ Camille E. Bennett