UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

M.C. and T.G., on behalf of themselves and all similarly situated individuals,

Plaintiffs,

v.

JEFFERSON COUNTY, NEW YORK, et al.,

Defendants.

Case No. 6:22-cv-190 (DNH/ML)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' CONSENT MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CONSENT DECREE AND APPROVAL OF CLASS NOTICE

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

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New York, New York

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INTRODUCTION

In this case brought by a certified class of individuals with opioid use disorder challenging a routine practice at the Jefferson County Correctional Facility of denying prescribed treatment with agonist medications for opioid use disorder, Plaintiffs move for preliminary approval of a consent decree the parties have reached after two years of litigation and months of settlement negotiations. The proposed consent decree affords class members all the relief they have sought here: Under its terms, Defendants must provide class members in the custody of the Jefferson County Correctional Facility timely access to treatment with medication for opioid use disorder. In doing so, the consent decree effectively makes permanent the preliminary injunction this Court previously issued and ensures Defendants' compliance with provisions of the New York Correction Law governing treatment of substance use disorders.

The proposed consent decree satisfies Rule 23 of the Federal Rules of Civil Procedure because it is a fair, reasonable, and adequate resolution of the class claims. In the two years since the filing of this litigation, the parties have engaged in significant motion practice and negotiations to arrive at this agreement, which fully resolves all of Plaintiffs' claims. The proposed consent decree emerges from arm's-length negotiations between experienced counsel and confers significant benefits on all class members while allowing the parties to avoid the delay, costs, and risks inherent in further litigation and trial. Accordingly, Plaintiffs respectfully request that the Court preliminary approve the proposed consent decree; approve the proposed Notice of Proposed Settlement; and set a schedule for the next steps here, including a fairness hearing.

FACTS

On March 1, 2022, Plaintiffs M.C.[1] and T.G. filed a class-action complaint alleging that Defendants Jefferson County; Colleen O'Neill,[2] the Sheriff of Jefferson County; Brian McDermott, the Undersheriff of Jefferson County; and Mark Wilson, the Facility Administrator of the Jefferson County Correctional Facility ("Jail") maintained a practice of routinely denying prescribed, life-sustaining medical treatment to Plaintiffs and other individuals with opioid use disorder ("OUD") at the Jail in violation of the Americans with Disabilities Act, the Eighth and Fourteenth Amendments to the United States Constitution, the New York State Civil Rights Law, and the New York State Human Rights Law. *See generally* ECF No. 1.

Specifically, Plaintiffs alleged that Defendants maintained a categorical ban on agonist medications for opioid use disorder ("MOUD"), most notably methadone and buprenorphine, for nonpregnant people at the Jail without regard to individual medical need and routinely stripped individuals with OUD entering the jail of their prescribed medication, forcing them into life-threatening withdrawal. *See id.* ¶¶ 91–106. Ending MOUD treatment prematurely—especially in the abrupt manner that Defendants required at the jail—violated the standard of care and exposed class members to agonizing withdrawal symptoms and a markedly increased risk of relapse, overdose, and death. *See id.* ¶¶ 39–62. Broad consensus in the medical community confirms that agonist MOUD such as methadone and buprenorphine is the standard of care and necessary to treat opioid addiction. *See generally* ECF Nos. 1, 2-6, 48.

On May 16, 2022, this Court certified a class defined as "all non-pregnant individuals who are or will be detained at the Jefferson County Correctional Facility and had or will have

[1] Class representative M.C. passed away while this action was pending. *See* ECF No. 118.

[2] Peter Barnett is now the Sheriff of Jefferson County and, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, is automatically substituted for Colleen O'Neill as a defendant.

prescriptions for agonist medication for opioid use disorder at the time of entry into defendants' custody," as well as two subclasses, one each for class members subject to pretrial and postconviction custody, respectively; appointed Plaintiffs as class representatives; and appointed the New York Civil Liberties Union Foundation as class counsel ("Class Counsel"). *See* ECF No. 53 at 12–13.

On the same day, this Court preliminarily enjoined Defendants "immediately . . . to provide [class members] with agonist [MOUD] during their detention in defendants' custody" ("PI Order"). *Id.* at 13. In issuing the PI Order, the Court concluded Plaintiffs had established a "clear likelihood" that Defendants' practice of denying MOUD to incarcerated class members violates the Constitution and the Americans with Disabilities Act ("ADA"), and had made a "strong showing" that Defendants' challenged practice would cause irreparable harm to class members. *Id.* at 12. On November 10, 2022, this Court extended the PI Order pending final resolution of this action. ECF No. 89.

The parties began and completed substantial discovery following the PI Order. Affirmation of Antony Gemmell in Supp. of Pls.' Mot. for Prelim. Approval ("Gemmell Aff.") ¶ 4. Class Counsel reviewed thousands of pages of documents and deposed seven defense witnesses. *Id.* Class Counsel also consulted with and submitted expert reports from a medical expert, Dr. Richard Rosenthal, and a corrections expert, Edmond Hayes. *Id.* The parties filed reports updating the Court of the status of this litigation. *See* ECF Nos. 75, 76, 82, 90, 91, 96, 97.

Class Counsel has maintained meaningful communication with class members throughout this case. For over a year before filing this action, Class Counsel conducted a far-reaching investigation into systemic deficiencies at the Jail that gave rise to claims brought by the Class. Gemmell Aff. ¶ 11. Class Counsel also interviewed over a dozen class members while

preparing to file motions for class certification and class-wide preliminary injunctive relief. *Id.* And Class Counsel regularly spoke with class members while evaluating the Jail's compliance with the PI Order and preparing to request an extension of the PI Order. *Id.*

In the period after this Court's PI Order, the parties also began settlement discussions. The parties first participated in mandatory mediation on August 12, 2022, to no avail. *Id.* ¶ 5. Meaningful settlement discussions later began in October 2023 and largely concluded in January 2024. *Id.* The parties met on November 9, December 6, and December 12 to discuss the terms of a proposed consent decree. *Id.* On January 2, 2024, the parties submitted a joint letter to this Court advising that the parties had tentatively agreed to the terms of a consent decree, subject to this Court's approval. ECF No. 116. The Parties continued negotiating discrete terms of the consent decree until March 25, 2024, when the Parties reached final agreement on all terms. Gemmell Aff. ¶ 7. This motion follows.

THE PROPOSED CONSENT DECREE

The proposed consent decree applies to the class as defined in this Court's May 16, 2022, decision. *See* Gemmell Aff., Ex. A ("Consent Decree"). The terms of the consent decree provide that Defendants will continue to abide by this Court's preliminary injunction by agreeing to make MOUD treatment available to individuals detained at the Jail consistent with N.Y. Correction Law §§ 45(19) and 626.[3] *See* Consent Decree § B.1. The consent decree requires that Defendants ensure, both at intake and thereafter, that MOUD treatment—including, without

[3] N.Y. Correction Law § 626, which came into effect on October 7, 2022, mandates that correctional facilities provide "medication assisted treatment" to incarcerated individuals who require treatment for a substance use disorder. Specifically, the law provides that "[a]fter a medical screening, incarcerated individuals who are determined to suffer from a substance use disorder, for which FDA approved addiction medications exist shall be offered placement in the medication assisted treatment program." *Id.* § 626(2)(a).

limitation, evaluation and referral therefor—is available in a timely manner to class members in the Jail's custody. *Id.* § B.2. The consent decree also contains provisions pertaining to intake and screening procedures; timelines for medical treatment; requirements for appropriate medical assessments; protections against tapering or withdrawal of MOUD; protocols for administration of MOUD; and release planning. *See generally id.* § B. Under the consent decree, Defendants also agree to implement a comprehensive written policy governing access to MOUD treatment for individuals in the Jail's custody and to conduct related training each year that shall be attended by all correctional and medical workers at the Jail. *Id.* § C.

To ensure class members are aware of their rights under the consent decree, Defendants will post notices in areas prominently visible to class members at the Jail, including in the common area in each housing unit, each area used to conduct facility intake, the common area of the medical unit, and each medical examination room, and on Jefferson County's website pertaining to the Jail. *Id.* § D.1.a. Defendants will also provide a copy of the notice to each individual at the Jail who has self-identified or been identified as having OUD; or who has requested, been evaluated for, or been denied treatment for OUD while detained at the Jail. *Id.* § D.1.b. These notices will include information about which individuals are members of the class, class members' rights and protections under the consent decree, and instructions for contacting Class Counsel. *See id.*, Ex. 1.

The consent decree also contains reporting, monitoring, and enforcement provisions to ensure compliance. About three months after final approval by this Court, the Parties will meet and confer over the status of Defendants' implementation of the agreement. *Id.* § E. For three years following final approval by this Court, Defendants will provide Class Counsel with the names of individuals identified as having OUD, requesting OUD, or otherwise evaluated or

considered a possible candidate for MOUD treatment and related compliance data for each individual identified. *Id.* And this Court will retain jurisdiction to enforce the consent decree, such that Plaintiffs may move for enforcement of its terms should there be alleged material non-compliance by Defendants that the parties cannot resolve through a meet-and-confer process. *Id.* § F.

Lastly, Defendants agree to pay Class Counsel $352,310.10 in attorney's fees and costs in this action. *Id.* § G.

LEGAL STANDARD

Rule 23(e) requires court approval to settle or compromise a class action to ensure that any resolution is procedurally and substantively fair, reasonable, and adequate. Fed. R. Civ. P. 23(e). Following amendment in 2018, that rule specifies two procedural and two substantive factors for courts to consider in the approval decision: whether "the class representatives and class counsel have adequately represented the class"; whether "the proposal was negotiated at arm's length"; whether "the relief provided for the class is adequate"; and whether "the proposal treats class members equitably relative to each other." *Moses v. New York Times Co.*, 79 F.4th 235, 242 (2d Cir. 2023) (quoting Fed. R. Civ. P. 23(e)(2)). These four factors "were intended to supplement rather than displace the '*Grinnell*' factors" that courts in this circuit have long used to assess whether a class settlement is fair. *Reyes v. Summit Health Mgmt., LLC*, No. 22-CV-9916, 2024 WL 472841, at *2 n.2 (S.D.N.Y. Feb. 6, 2024); *see Pickard v. OnSite Facility Servs., LLC*, No. 5:22-CV-207, 2023 WL 7019256, at *5 n.4 (N.D.N.Y. Oct. 25, 2023) (same); *see generally City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974).

Courts examine procedural and substantive fairness in light of the "strong judicial policy in favor of settlements" of class action suits. *Wal-Mart Stores v. Visa U.S.A.*, 396 F.3d 96, 116

(2d Cir. 2005) (citation omitted). "Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." *Hanifin v. Accurate Inventory & Calculating Serv., Inc.*, No. 11-CV-1510, 2014 WL 4352060, at *4 (N.D.N.Y. Aug. 20, 2014) (alterations in original).

"A class action settlement approval procedure typically occurs in two stages: (1) preliminary approval—where prior to notice to the class, a court makes a preliminary evaluation of fairness, and (2) final approval—where notice of a hearing is given to the class members, and class members and settling parties are provided the opportunity to be heard on the question of final court approval." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 27 (E.D.N.Y. 2019) (cleaned up). At the preliminary approval stage, a court conducts "only an initial evaluation of the fairness of the proposed settlement" and "need only find that there is probable cause to submit the settlement to class members and hold a full-scale hearing as to its fairness." *Torres v. Gristede's Operating Corp.*, No. 04-CV-3316, 2010 WL 2572937, at *2 (S.D.N.Y. June 1, 2010) (cleaned up). If the court finds that the proposed settlement "appears to fall within the range of possible approval, the court should order that the class members receive notice of the settlement." *Id.*

ARGUMENT

The Court should preliminarily approve the parties' proposed consent decree—which resulted from vigorous, arm's-length negotiation after the completion of substantial discovery—because it will resolve this protracted litigation while affording class members precisely the relief they originally sought: access to treatment that the Constitution and ADA require.

I. CLASS CERTIFICATION REMAINS APPROPRIATE FOR FINAL DISPOSITION OF THIS CASE.

At certification, this Court found that the Plaintiff class satisfied all the prerequisites of Rule 23(a) and Rule 23(b)(2). *See* ECF No. 53 at 4–9. That remains the case now. The class is sufficiently numerous because "hundreds of people with OUD cycle through Jefferson Correctional annually" and because the class is open, such that "many additional class members will flow in as they continue to be detained by defendants." *Id.* at 5. The commonality and typicality requirements are also still satisfied because "Plaintiffs challenge a single policy barring MOUD that applies to all members." *Id.* at 6–7. Next, named Plaintiff T.G. continues to adequately represent the class as "their interests align closely . . . because they [are] subjected to the same [challenged conduct]" and "class counsel is adequately qualified and experienced for Rule 23 purposes." *Id.* at 8. Lastly, "because plaintiffs are challenging a systemic policy or practice by which all class members face denial of prescribed MOUD," this remains "a prime example of a Rule 23(b)(2) class action." *Id.* at 8–9.

Thus, the class this Court previously certified remains appropriate for the purpose of settlement.

II. THE PROPOSED CONSENT DECREE IS FAIR, REASONABLE, AND ADEQUATE.

Each relevant factor set forth in Rule 23(e) and *Grinnell* supports preliminary approval of the proposed consent decree.

A. The Consent Decree Is Procedurally Fair.

The consent decree is procedurally fair because it resulted from arm's-length negotiation between experienced counsel following significant discovery and because the named Plaintiffs and class counsel have effectively represented the interests of the class. *See* Fed. R. Civ. P. 23(e)(2)(A)–(B).

The parties agreed on the terms of the consent decree only after a months-long series of intensive negotiations. Those negotiations began in October 2023, shortly before the close of discovery, and largely concluded in January 2024, shortly after the close of discovery. Gemmell Aff. ¶ 5. During that time, the parties negotiated for a total of 3.5 hours over three meetings and exchanged several drafts of proposed terms. *Id.* And the negotiations were conducted by experienced and capable attorneys for both parties. Plaintiffs were represented by three attorneys from the New York Civil Liberties Union Foundation: Antony Gemmell, Terry Ding, and Gabriella Larios, who have eleven, four, and three years of experience in complex civil litigation, respectively. *Id.* ¶ 6. Defendants were represented by two attorneys from Barclay Damon, LLP—Mitchell Katz, who had more than three decades of litigation experience before he began serving as a federal Magistrate Judge this year, and Kayla Arias, who has nine years of litigation experience—as well as Jefferson County Attorney David Paulsen, who has extensive knowledge regarding the County and the Jail in his capacity as County Attorney. *Id.*

Moreover, the interests of the class have been adequately represented in reaching the consent decree. The named Plaintiffs had the same interests as the rest of the class in ending Defendants' challenged MOUD policies and practices, to which every class member was subjected. *See Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007) (noting that the adequacy inquiry assesses whether "plaintiff's interests are antagonistic to the interest of other members of the class"); *V.W. by & through Williams v. Conway*, 236 F. Supp. 3d 554, 577 (N.D.N.Y. 2017) (finding adequacy where named plaintiffs were "subjected to the same common course of treatment by the same officials on the basis of the same [practices]" as other class members). And, as detailed above, Class Counsel are "qualified, experienced and able to conduct the litigation." *Cordes & Co. Fin. Servs.*, 502 F.3d at 99. Their

competence is reflected in the fact that the proposed consent decree affords Plaintiffs full relief. *See Reyes*, 2024 WL 472841, at *3 (finding class counsel had "demonstrated the necessary qualifications and skill" through "their work on this case, which . . . resulted in a successful mediated settlement").

In view of these factors, the proposed consent decree is procedurally fair.[4]

B. The Consent Decree Is Substantively Fair.

The proposed consent decree is also substantively fair under the two other Rule 23(e)(2) factors and the relevant *Grinnell* factors.

1. The Substantive Rule 23(e)(2) Factors

The two substantive Rule 23(e)(2) factors ask, first, "whether the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class . . . ; [and] (iii) the terms of any proposed award of attorney's fees"[5]; and, second, whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(C)–(D). Here, the answer to both question is "yes."

As to the first Rule 23(e)(2) factor, Plaintiffs have secured relief that is more than adequate: The proposed consent decree affords them all the relief they have sought. Plaintiffs' complaint asked the Court to order "Defendants to ensure [class members] continued access to their prescribed agonist MOUD treatment during their detention" and to enjoin Defendants from enforcing any ban on MOUD treatment or otherwise interrupting class members' treatment. ECF

[4] Although courts in this circuit previously "applied a presumption of fairness to settlement agreements resulting from arm's-length negotiations," that presumption no longer applies following the 2018 amendments to Rule 23(e). *Moses*, 79 F.4th at 243.

[5] The first substantive factor also asks whether "any agreement required to be identified under Rule 23(e)(3)" exists. Fed. R. Civ. P. 23(e)(2)(C)(iv). There is no such agreement here.

No. 1 at 40. This consent decree effects that relief. It prescribes detailed procedures by which Defendants must "make MOUD treatment available . . . . in a timely manner to individuals in the Jail's custody." Consent Decree § B.1.–B.2. It also requires Defendants to implement new written policies and training for Jail staff to ensure class members are given access to the MOUD treatment they need. *Id.* § C.

The other considerations that Rule 23(e)(2) enumerates as part of the analysis for this substantive factor all confirm the consent decree would be an optimal outcome for all involved. *See* Fed. R. Civ. P. 23(e)(2)(C)(i)–(iii).

The costs, risks, and delay of trial and appeal. The proposed consent decree would avoid the costs, risks, and delay of extended litigation.[6] "Most class actions are inherently complex, and settlement avoids the costs, delays and multitude of other problems associated with them." *Edwards v. Mid-Hudson Valley Fed. Credit Union*, 1:22-CV-00562, 2023 WL 5806409, at *12 (N.D.N.Y. Sept. 7, 2023) (citation omitted); *Hill v. Cnty. of Montgomery*, No. 914-CV-00933, 2021 WL 2227796, at *3 (N.D.N.Y. June 2, 2021) (same). This case is no exception. If it continues, it likely would involve further discovery, including expert depositions and discovery-related motions; summary judgment motions; and, if the Court were to deny summary judgment, extensive preparation for trial. A trial here would be a time- and resource-intensive affair and would present potentially complex issues for the Court to resolve. A trial would involve the presentation of evidence about the named Plaintiffs and potentially scores of other class members. Given the scope of Plaintiffs' systemic claims against Jefferson County, Plaintiffs

[6] This Rule 23(e)(2) factor "overlaps with the *Grinnell* factors of 'complexity, expense, and likely duration of the litigation' along with 'the risks of establishing liability,' 'the risks of establishing [remedies]' and 'the risks of maintaining a class through the trial.'" *Reyes*, 2024 WL 472841, at *3 (quoting *Grinnell*, 495 F.2d at 463).

likely would need a week or more to present their case at trial, and Defendants would likely counter with their own witnesses. Even following the trial, it is likely the result would be the subject of post-trial motions and, potentially, appeal.

Each of these steps would take time. And in the interim, class members, who depend on access to prescribed MOUD to avoid irreparable harm, would continue to endure uncertainty about their legal entitlement to access life-sustaining treatment. What is more, both the Court and the parties would continue to incur costs in terms of time and other resources that inevitably result from extended litigation. *See Hill*, 2021 WL 2227796, at *3 (recognizing that "[p]resenting evidence on the complex factual and legal issues at [trial in a class action] would require significant amounts of time and resources for Plaintiffs—as well as Defendants—and would also require significant judicial resources").

Each of these steps would also increase the uncertainty as to the outcome of the litigation. *See Baudin v. Res. Mktg. Corp.*, No. 119-CV-386, 2020 WL 4732083, at *8 (N.D.N.Y. Aug. 13, 2020) (noting that in assessing the risks of further litigation, "the Court is not required to decide the merits of the case, resolve unsettled legal questions, or to foresee with absolute certainty the outcome of the case" (cleaned up)). Here, although Plaintiffs are likely to ultimately succeed on their claims, *see* ECF No. 53 at 10–12, uncertainty inheres in all litigation, *see, e.g.*, *Pickard*, 2023 WL 7019256, at *7. This is particularly so in cases, like this one, involving factually and legally complex claims. *See Baudin*, 2020 WL 4732083, at *8 ("In assessing the risks, courts recognize that the complexity of Plaintiff's claims *ipso facto* creates uncertainty." (cleaned up)); *see also Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 200 (S.D.N.Y. 2012) ("The Settlement eliminates that risk [of potential decertification] as well as the expense and delay

inherent in such process." (cleaned up)), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013).

By contrast, the proposed consent decree offers an expeditious, certain, and comprehensive solution to the issues that led to the filing of this class action. It ensures that Defendants will implement important reforms immediately, rather than years from now after a trial and appeals. *See Hill*, 2021 WL 2227796, at *3–4 (noting that "[t]he settlement of the pending claims instead ensures certainty of outcome" and makes "relief promptly available to Class Members"). And those reforms are embodied in a detailed agreement that affords class members the certainty of a comprehensive and beneficial remedy. *See Ingles v. Toro*, 438 F. Supp. 2d 203, 214 (S.D.N.Y. 2006) ("It is difficult to imagine that the Court would have imposed, following trial, significantly more extensive and detailed relief" than provided for in the proposed settlement); *In re Global Crossing Secs. and ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004) (instructing courts to "assess the risks of litigation against the certainty of recovery under the proposed settlement").

The effectiveness of any proposed method of distributing relief to the class. The proposed consent decree would effectively distribute relief to the class. It imposes on Defendants an affirmative obligation to identify class members who may need MOUD treatment, minimizing the burden to Plaintiffs of securing their treatment. Consent Decree § B.3. Even if Defendants were to fail to identify a class member, the notices required by the consent decree would alert Plaintiffs of their right to request evaluation for MOUD treatment. *See id.* § D.

The terms of any proposed award of attorney's fees. The proposed attorney's fees award under the consent decree is reasonable and does not diminish the relief for the class. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). The purpose of a court's review of a fees award is to "prevent

unwarranted windfalls for attorneys," such as when "unscrupulous counsel" seek to "quickly settl[e] a class's claims to cut a check." *Moses*, 79 F.4th at 244 (cleaned up). Here, because the consent decree provides injunctive relief, the proposed fee award does not come at the cost of any benefits to class members. *See Kurtz v. Kimberly-Clark Corp.*, No. 14-CV-1142, 2024 WL 184375, at *8 (E.D.N.Y. Jan. 17, 2024) ("Because the attorneys' fee award will not affect the Class's recovery, the Court finds this aspect of the Settlement adequately protects the Class's interests."); *In re Canon U.S.A. Data Breach Litig.*, No. 20-CV-6239, 2023 WL 7936207, at *5 (E.D.N.Y. Nov. 15, 2023) (same). The proposed award also reflects a modest discount from the actual fees and costs incurred by Plaintiffs' counsel in litigating this case. Gemmell Aff. ¶ 15. It therefore would not be an unwarranted windfall for counsel, especially in light of the robust relief Plaintiffs are receiving. *See Moses*, 79 F.4th at 244 ("[T]he relief actually delivered to the class can be a significant factor in determining the appropriate fee award." (quoting Fed. R. Civ. P. 23(e)(3) Advisory Committee's Note to 2018 Amendment)).

For similar reasons, the proposed fee award is consistent with Rule 23(h), which permits courts to award in a certified class action "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). In "[s]ettlements involving nonmonetary" relief for class members, "the court's Rule 23(e) review will provide a solid basis" for the Rule 23(h) evaluation as to whether a fee award is reasonable. Fed. R. Civ. P. 23(h) Advisory Committee's Note to 2003 Amendment. As explained above, the Rule 23(e) review here confirms the proposed award is reasonable given the robust relief secured for class members and the lodestar total of Class Counsel's actual fees and costs. *See id.* (noting that "[o]ne fundamental focus" of the Rule 23(h) inquiry "is the result actually achieved for class members"); *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 242 (E.D.N.Y. 2010)

(explaining that courts can use the lodestar method "to assess the reasonableness of the requested fee"). Moreover, in cases, like this one, where "money paid to the attorneys is entirely independent of money awarded to the class, the Court's fiduciary role in overseeing the award is greatly reduced, because there is no conflict of interest between attorneys and class members." *Dupler*, 705 F. Supp. 2d at 243 (quoting *McBean v. City of N.Y.*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006)).

As to the second substantive factor under Rule 23(e)(2), all class members receive equitable treatment under the proposed consent decree. This factor considers "the apportionment of relief among class members" and "the existence and extent of incentive payments" to the class representatives. *Moses*, 79 F.4th at 245 (citation omitted). Because this consent decree does not involve damages or incentive payments, the apportionment of monetary funds is not a concern. As for injunctive relief, the consent decree ensures that each class member will receive MOUD treatment in accordance with their medical needs while in Defendants' custody. *See generally* Consent Decree § B.

Thus, the two substantive Rule 23(e)(2) considerations strongly support approval of the proposed consent decree.

2. The *Grinnell* Factors

The two relevant[7] *Grinnell* factors not already addressed by Rule 23(e)(2) are the reaction of the class to the proposed settlement, and the stage of the proceedings and the amount of discovery completed. *Grinnell*, 495 F.2d at 463; *see Reyes*, 2024 WL 472841, at *6 (identifying

[7] Although there are nine *Grinnell* factors in total, the Court need not consider in this case the final three factors, which are relevant only in actions for damages. *See, e.g.*, *Marisol A. v. Giuliani*, 185 F.R.D. 152, 162 (S.D.N.Y. 1999).

the "*Grinnell* factors not expressly assessed" under Rule 23(e)(2)). Both these factors support approving the proposed consent decree.

Reaction of the Class to the Settlement. Although the first *Grinnell* factor need not be assessed in depth at this stage,[8] it nonetheless supports approval. Class representative T.G. approves of the settlement, Gemmell Aff. ¶ 13, and her "approval is probative of the Class's reaction at this time since notice has not yet been issued," *Sonterra Cap. Master Fund, Ltd. v. Barclays Bank PLC*, No. 15-CV-3538, 2023 WL 3749996, at *5 (S.D.N.Y. June 1, 2023). Further, because the proposed consent decree gives class members the full relief they sought in this action, it is unlikely they will object to it. The parties have arranged for class members to receive notice through several methods—including via postings at the Jail, on the Jail's website, and at Credo Community Center. Consent Decree § D. Class Counsel expects that, following the notice period, the Court will have sufficient assurance that this factor also favors final approval.

Stage of the Proceedings and Amount of Discovery Completed. The other relevant *Grinnell* factor favors approval because the parties had ample opportunity, through discovery and other informal fact-gathering, to evaluate the terms of the proposed consent decree. This factor "considers the amount of discovery completed, with a focus on whether the plaintiffs obtained sufficient information through discovery to properly evaluate their case and to assess the adequacy of any settlement proposal." *Baudin*, 2020 WL 4732083, at *7 (cleaned up).

[8] *See Caballero by Tong v. Senior Health Partners, Inc.*, No. 16-CV-0326, 2018 WL 4210136, at *11 (E.D.N.Y. Sept. 4, 2018) ("The reaction of the class to the settlement is an issue that can be addressed only after notice of the proposed Stipulation has been sent to the Class and the time for objections has passed."); *see also Hesse v. Godiva Chocolatier, Inc.*, No. 1:19-CV-0972, 2021 WL 11706821, at *4 (S.D.N.Y. Oct. 26, 2021) (finding it "premature to address this factor" at the preliminary approval stage where class members "have not yet had an opportunity to react to the Settlement").

Where, as here, the proposed consent decree affords Plaintiffs *all* the relief they sought, there can be little doubt as to adequacy. *See supra* Part II.B.1. And the extensive investigation and fact-gathering that Plaintiffs undertook in connection with this litigation more than suffices to have enabled them to evaluate the adequacy of the parties' proposed resolution. *See, e.g.*, *Palacio v. E*TRADE Fin. Corp.*, No. 10-CV-4030, 2012 WL 2384419, *4 (S.D.N.Y. June 22, 2012) (granting final approval where the parties conducted informal discovery but no depositions were taken); *Matheson v. T-Bone Rest., LLC*, No. 09-CV-4214, 2011 WL 6268216, *5 (S.D.N.Y. Dec. 13, 2011) (same). For over a year leading up to the filing of this action, Plaintiffs' counsel conducted a far-reaching investigation into systemic deficiencies at the Jail that gave rise to Plaintiffs' claims. Gemmell Aff. ¶ 11. Following the filing of the action and leading up to the filing of Plaintiffs' motions for class certification and class-wide preliminary injunctive relief, Plaintiffs' counsel interviewed over a dozen current and former class members, further deepening their understanding of the relief the Plaintiff class would need. *Id.* In discovery, Plaintiffs deposed seven defense witnesses and the parties exchanged and reviewed thousands of pages of documents. *Id.* ¶ 4. And throughout the litigation, Plaintiffs consulted their own medical expert, Richard Rosenthal, and corrections expert, Edmond Hayes. *Id.*

This thorough process has facilitated "an educated evaluation of the relative strengths and weakness of the parties' cases" so that "the parties are in a position to make informed settlement judgments." *Weil v. Long Island Sav. Bank*, 188 F. Supp. 2d 258, 263–64 (E.D.N.Y. 2002); *see, e.g.*, *Edwards*, 2023 WL 5806409, at *7 (concluding that this *Grinnell* factor favors approval where "Plaintiffs' counsel conducted a thorough investigation" and "engaged in formal discovery which involved Defendant producing hundreds of pages of documents"); *Pickard*, 2023 WL 7019256, at *7 (finding "sufficient discovery" conducted where "Class Counsel

investigated Defendant's . . . operation," "conducted legal research on the underlying merits of the potential class claims," and reviewed records produced by defendants (cleaned up)).

In sum, all the Rule 23(e)(2) and relevant *Grinnell* factors support preliminary approval.[9]

III. THE PROPOSED NOTICE PROVIDES ADEQUATE INFORMATION TO CLASS MEMBERS REGARDING THE CONSENT DECREE.

Notice to the class of a proposed settlement "must fairly apprise the . . . members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores*, 396 F.3d at 114 (citation omitted). Such a notice "will satisfy due process when it describes the terms of the settlement generally" and "provides specific information regarding the date, time, and place of the final approval hearing." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 58 (E.D.N.Y. 2019) (cleaned up). "Notice is adequate if it may be understood by the average class member." *Wal-Mart Stores*, 396 F.3d at 114 (citation omitted).

Plaintiffs' proposed notice provides thorough information on the proposed consent decree. The notice sets forth, in plain and clear terms, all the key information, including descriptions of this action, the class definition, the consent decree and class members' rights under it, the date and location of the final approval hearing, and instructions for contacting class

[9] For the same reasons, the proposed consent decree meets the standard set forth in *Kozlowski v. Coughlin* for the approval of consent judgments because it "springs from and serves to resolve a dispute within the court's subject-matter jurisdiction," "comes within the general scope of the case made by the pleadings," and "furthers the objectives of the law upon which the complaint was based." 871 F.2d 241, 244 (2d Cir. 1989) (cleaned up). The consent decree likewise comports with the Prison Litigation Reform Act's requirements that prospective relief in civil litigation over jail conditions be "narrowly drawn," "extend no further than necessary to correct the violation" of the plaintiffs' federal rights, and be "the least intrusive means necessary to correct the violation," 18 U.S.C. § 3626(a)(1)(A), because it provides that Defendants shall provide Plaintiffs with access to medically necessary MOUD treatment within the framework of the Jail's existing medical-care system.

counsel. *See* Gemmell Aff., Ex. B. The notice further explains how class members can object to the settlement agreement before the Court decides whether to grant final approval. *See id.*

IV. THE METHOD OF NOTICE OF IS REASONABLE.

Rule 23(e) provides that if a proposed class settlement will likely be approved, "[t]he court must direct notice in a reasonable manner" to class members. Fed. R. Civ. P. 23(e)(1)(B). Here, the certified class comprises of individuals with prescriptions for MOUD who are or will be detained at the Jefferson County Correctional Facility. ECF No. 53 at 12. The consent decree provides that the notice to these class members will be prominently posted in a range of visible locations: throughout the Jail, including the common area in each housing unit, each area used to conduct facility intake, the common area of the medical unit, and each medical examination room; the website for the Jail; and the Credo Community Center, where many class members have and will receive their MOUD treatment. Consent Decree § D.1.a. And Defendants are required to provide a copy of the notice to each individual at the Jail who has self-identified or been identified as having OUD; or who has requested, been evaluated for, or been denied treatment for OUD while detained at the Jail. *Id.* § D.1.b.

Thus, the proposed method of notice is reasonable and tailored to reach class members to inform them of the proposed settlement and their rights in connection with it.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court: (i) grant preliminary approval of the proposed consent decree; (ii) approve the form and manner of notice of the proposed consent decree; and (iii) schedule a final hearing on the proposed consent decree.

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NEW YORK CIVIL LIBERTIES UNION FOUNDATION

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