

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

Amanda D., et al., and	)
others similarly situated,	)
	)
Plaintiffs,	)
	)
v.	)
	)
Margaret W. Hassan, Governor, et al.,	)
	)
Defendants.	)
_____	)
United States of America,	)
	)
Plaintiff-Intervenor,	)
	)
v.	)
	)
State of New Hampshire,	)
	)
Defendant.	)
_____	)

Civ. No. 1:12-cv-53-SM

**JOINT MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT**

The Parties jointly move for final approval of the Proposed Class Action Settlement Agreement, pursuant to Federal Rule of Civil Procedure 23(e) and Local Rule 23.1. Consistent with the Court’s order of January 3, 2014, memoranda of law in support of this motion will be filed by February 7, 2014. In support of the instant motion, the Parties state as follows:

1. The Parties submitted a proposed Class Action Settlement Agreement (“Settlement Agreement”) on December 19, 2013. The Court granted preliminary approval of the Settlement Agreement and approved the Parties’ Notice of Proposed Class Action Settlement on January 3, 2014. The Notice was posted and distributed, consistent with the Court’s order, beginning on January 6, 2014. The Court further

established a hearing schedule to determine whether the Settlement Agreement is fair, reasonable, and adequate, and therefore, whether the Settlement Agreement should be approved pursuant to Federal Rule of Civil Procedure 23(e). Class Notice Order, Doc. 97, Jan. 3, 2014. The hearing has been set for February 12, 2014.

2. Where a settlement agreement would bind class members, a hearing is required to determine whether the proposed settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *In re Tyco Int’l., Ltd. Multidist. Litig.*, 535 F. Supp. 2d 249, 259 (D.N.H. 2007). “In the First Circuit, this requires a wide-ranging review of the overall reasonableness of the settlement that relies on neither a fixed checklist of factors nor any specific litmus test.” *Tyco*, 535 F. Supp. 2d at 259 (citing *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 93 (D. Mass. 2005)); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 206 (D. Me. 2003); *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 72 (D. Mass. 1999).

3. In determining whether the terms of a class action settlement are fair, reasonable, and adequate, this Court has applied a comprehensive, but concise list of factors that are appropriate in this case: (1) risk, complexity, expense, and duration of the case; (2) comparison of the proposed settlement with the likely result of continued litigation; (3) reaction of the class to the settlement; (4) stage of the litigation and the amount of discovery completed; and (5) quality of counsel and conduct during litigation and settlement negotiations. *Tyco*, 535 F. Supp. 2d at 259-260 (crafting a more concise list of factors modeled on the factors identified in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) and *Compact Disc*, 216 F.R.D. at 206).

4. As described briefly below, and to be more fully discussed in the Parties' supporting memoranda, the Court should find that the Settlement Agreement is fair, reasonable, and adequate, with all the relevant factors weighing heavily in favor of approval.<sup>1</sup>

5. First, the risk, complexity, expense, and likely duration of this matter all favor approval of the Settlement Agreement. System-wide class action litigation, like the instant matter, is complex and necessarily involves significant risks to all parties with regard to myriad proof and defense elements. Thus far, discovery has been quite intense and expensive. The Plaintiffs and the United States have engaged multiple experts to conduct an extensive review the State's mental health system. Without a settlement, such extensive discovery would continue, merits experts would be retained by both sides, and expert discovery would begin, with subsequent dispositive motions practice. All of this would significantly add to the litigation costs, and delay or prevent collaboration on the critical development of community mental health reforms. In short, continued litigation would be extremely costly, lengthy in duration, and come with the risks associated with complex cases of this nature.

6. Second, the class-wide relief set forth in the Settlement Agreement achieves many of the service expansion and system reforms sought in the Plaintiffs' Complaint, and, therefore, represents a fair and adequate resolution of class claims. The systemic relief is also consistent with the relief the United States believes is necessary in order to avoid the unnecessary institutionalization of adults with serious mental illness.

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<sup>1</sup> Consistent with the Court's order of January 3, 2014, the Parties are to file memoranda of law in support of the instant motion on February 7, 2014, in order to enable the Parties to address any objections or comments to the proposed Settlement Agreement, which are to be submitted by January 31, 2014. As of today, no objections have been filed.

Specifically, the Agreement requires the State to significantly expand and enhance its community-based mental health system by making available additional supported housing, Assertive Community Treatment services, supported employment, and crisis services. Further, the Agreement requires the State to continue its family and peer supports system, provide appropriate transition planning for individuals at New Hampshire Hospital and the Glencliff Home, and implement a system for quality assurance and quality improvement. The Agreement also provides for an independent Expert Reviewer to assess and issue public reports to the Parties on the State's implementation of and compliance with the Agreement. The terms of the Agreement thus provide a significant and meaningful expansion of services to class members, without incurring the risk of litigation. Moreover, implementation of the Agreement will begin promptly and without the delays that would accompany a trial on the merits and potential appeals in this matter.

7. Third, although the period for objections and comments has not yet expired, many individuals and stakeholders have already come forward to express their significant support for the Settlement Agreement. The Named Plaintiffs and their guardians fully support the Settlement Agreement. Moreover, both of New Hampshire's public guardian programs, which represent and protect the interests of many of the class members, have expressed their support of this Agreement. New Hampshire's chapter of the National Alliance on Mental Illness ("NAMI"), which represents the interests of individuals with mental illness and their family members, similarly supports the Settlement Agreement. If there are any negative comments or objections submitted prior

to the expiration of the comment period, the Parties will address them in their memoranda of law to be filed in advance of the scheduled fairness hearing.

8. Fourth, the stage of litigation is advanced and the Parties have already engaged in extensive discovery. At the time the Parties made their voluntary stay request in late October 2013, hundreds of requests for production of documents had been propounded and hundreds of thousands of pages of documents and electronic records had been exchanged during months of simultaneous class-based and merits-based discovery. Moreover, Plaintiffs and the United States have had the ability to weigh the strength of their respective cases against the proposed relief, especially given that both Plaintiffs and the United States had already completed investigations of the State's mental health system prior to filing their complaints. Taken together, the advanced stage of the litigation combined with the volume of discovery is more than sufficient to allow the Court to assess the fairness, reasonableness, and adequacy of the proposed Agreement.

9. Lastly, with regard to the experience and competency of counsel and their conduct during litigation and settlement negotiations prior to approving the Agreement, Plaintiffs were well represented by experienced counsel from: the Disabilities Rights Center, New Hampshire's Protection and Advocacy System; a major private New Hampshire firm; and two nationally-known mental health and disability law firms. The United States was represented by attorneys with extensive experience in disability and civil rights litigation. Similarly, the State, represented by the Attorney Generals' office and private counsel, were well represented by competent and experienced attorneys. The proposed Settlement Agreement is the product of intensive, arms-length negotiations between all these parties, conducted over a period of several months. The result is a

thoughtful and considered framework within which the State can enhance and expand community mental health services for adults with serious mental illness.

10. A proposed order on final approval is attached to this motion consistent with Local Rule 23.1(b)(3). *Attachment A*, Order on Final Approval and Entry of Judgment. Importantly, and in addition to the requirements articulated in Local Rule 23.1(b)(3), the Parties have included a provision modifying this Court's class certification order to include class claims brought pursuant to the Nursing Home Reform Act. This modification is sought to bring finality to the systemic claims brought by the class in this matter. This will be addressed in greater depth in the memoranda in support of this motion.

11. Consistent with the Court's order of January 3, 2014, the Parties will submit supporting memoranda on or before February 7, 2014.

#### **Prayer for Relief**

WHEREFORE the Parties respectfully request that the Court grant the Parties' Joint Motion for Final Approval of Proposed Settlement, sign the Settlement Agreement, and approve and sign the proposed Order on Final Approval of Proposed Settlement.

Dated: January 17, 2014

FOR THE PLAINTIFFS:

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was filed electronically and served on all parties of record by operation of the Court's electronic filing system.

January 17, 2014

/s/ Amy Messer