

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                            |          |                     |
|----------------------------|----------|---------------------|
| <b>ALLEN WOODS, et al.</b> | <b>:</b> | <b>CIVIL ACTION</b> |
|                            | <b>:</b> |                     |
| <b>v.</b>                  | <b>:</b> | <b>NO. 17-4443</b>  |
|                            | <b>:</b> |                     |
| <b>SEAN MARLER</b>         | <b>:</b> |                     |

**JUDGMENT ORDER**

**AND NOW**, this 24<sup>th</sup> day of September 2018, upon considering Plaintiffs’ unopposed Motions for final approval of a class settlement and voluntary dismissal (ECF Doc. No. 70) and for an award of reasonable attorneys’ fees and reimbursement of expenses (ECF Doc. No. 69), the Attorney Declarations of Jennifer R. Clarke, Amanda Pasquini, Jim Davy and Dana Bazelon (ECF Doc. Nos. 69-3, 69-4, 69-5, 69-6), after hearing argument during our noticed Hearing on Final Approval, and with no objections to the settlement or other relief, it is **ORDERED** Plaintiffs’ unopposed Motions (ECF Doc. Nos. 69, 70) are **GRANTED** and

**JUDGMENT** is entered in favor of Plaintiffs and against Defendant upon our findings:

***Findings of fair, adequate and reasonable settlement.***

1. We have jurisdiction over the subject matter and over all parties under 28 U.S.C § 1331, including over all members of the Settlement Class.<sup>1</sup>

2. On their own behalf and for those similarly situated, Allen Woods and Keith Campbell sued the Warden of the Philadelphia Federal Detention Center (FDC) in his official capacity challenging the FDC’s visitation policy restricting pre-sentence inmates’ ability to receive their minor children as visitors under the First and Fifth Amendments.

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<sup>1</sup> All capitalized terms not otherwise defined in this Order shall have the same meaning as defined by the Stipulation of Settlement and Release Agreement, as amended (“Settlement Agreement”) (ECF Doc. No. 61).

3. On January 11, 2018, we denied the Defendant's Motion to dismiss. On January 24, 2018, we set pre-trial obligations and scheduled trial for August 20, 2018.

4. On March 22, 2018, we certified a class action for trial consisting of: All current and future pre-sentence inmates at the Federal Detention Center in Philadelphia who, beginning on October 5, 2017, are subject to the Defendant's visitation policies, practices, and patterns affecting their ability to visit with their child younger than sixteen years' old who is not accompanied by an immediate family member approved by the child's non-incarcerated parent or legal guardian.

5. We appointed Allen Woods and Keith Campbell as Class Representatives and authorized Drinker Biddle & Reath LLP, the Public Interest Law Center, and the Pennsylvania Institutional Law Project to serve as Class Counsel.

6. Following discovery and extensive mediation efforts led by Judge Heffley, the parties moved for preliminary approval of a class action settlement.

7. Following filing of this suit, Defendants changed the visitation policy.

8. On August 2, 2018, we granted Plaintiffs' uncontested Motion for preliminary approval of the arms-length negotiated settlement.

9. Following our approval of posting of notice, the Parties posted the Notice to the Class in the FDC on August 10, 2018.

10. No Class Member objected or opted out of the Class either in writing or at our final approval hearing.

11. We certify the Settlement Class on all claims under Fed. R. Civ. P. 23(e)(2)<sup>2</sup>.

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<sup>2</sup> The Settlement Class consists of the trial Class certified on March 22, 2018. We review the Settlement Class at this stage even though it is identical to the trial Class. The Settlement Class satisfies the Rule 23 requirements: (1) the Settlement Class consists of over 40 members; (2) the

12. The Plaintiffs acted independently and Plaintiffs and Class Counsel fairly and adequately represented the Settlement Class in connection with the Litigation and the Settlement.

13. The Settlement arises from a genuine controversy between the Parties and is not the result of collusion, nor was the Settlement procured by fraud or misrepresentation.

14. All Settlement Class Members in the Class Period receive injunctive and declaratory relief.

15. As no Class Member opted out of the Settlement Class, this Settlement releases all claims.

16. After applying each of the factors reaffirmed by our Court of Appeals in *In re Nat'l Football League Players Concussion Injury Litigation*,<sup>3</sup> we approve the Settlement

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Settlement Class shares the common question challenging the FDC's visitation policy under the First and Fifth Amendments; (3) the "interests of the class and the class representative aligned" on the same facts and legal theories; and, (4) Class Counsel has proven to qualified, experienced, and generally able to conduct the proposed litigation and Plaintiffs' interests are not antagonistic to the Settlement Class. See *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 426-435 (3d Cir. 2016).

<sup>3</sup> 821 F.3d 410, 437 (3d Cir. 2016). When determining whether a proposed class action settlement is fair, reasonable, and adequate, we consider nine factors: "(1) The complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Id.* at 534-35 (citing *Girsh v. Jepsen*, 521 F.2d 153, 156-57 (3d Cir. 1975)). The first factor supports settlement because this constitutional challenge action is complex, involved several questions of standing and (as more fully described in our January 11, 2018 Order (ECF Doc. No. 16), complex issues of proof and possible disputed facts under the First and Fifth Amendments. Litigation of these issues would have likely resulted in significant expense but for the Settlement. The second factor supports settlement because the Class responded favorably to the settlement, as there are no objectors. The third factor supports settlement because the parties reached settlement after disputed motions to dismiss and class certification followed by several

Agreement and find the settlement is fair, reasonable, and adequate to all members of the Settlement Class.

17. The Settlement Class satisfies Fed. R. Civ. P. 23(a) and is maintainable under Rule 23(b)(2). We certify the Settlement Class for purposes of settlement in this case only as the same Class certified for trial: All current and future pre-sentence inmates at the Federal Detention Center in Philadelphia who, beginning on October 5, 2017, are subject to the Defendant's visitation policies, practices, and patterns affecting their ability to visit with their child younger than sixteen years' old who is not accompanied by an immediate family member approved by the child's non-incarcerated parent or legal guardian.

18. The Notice approved by this Court and provided to all members of the Settlement Class, including through the posting of the FDC Notice, adequately informed the Class Members of the terms of the Agreement, their right to opt out of and pursue their own remedies and their opportunity to file written objections and appear and be heard at our September 24, 2018 Final Approval Hearing. We find Class Notice satisfied Fed. R. Civ. P. 23(e)(1).

19. No members of the Settlement Class attended the September 24, 2018 Final Approval Hearing, notice of which was included in the Class Notice, to raise objections, advance questions, or oppose the settlement.

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rounds of negotiations aided, in large part, by Judge Heffley of this Court. The fourth factor supports settlement because although Plaintiffs' claims survived the pleadings stage, the Plaintiffs faced many issues at trial, especially proving the facts. The fifth factor involving damages did not apply. As to the sixth factor, settlement precludes the risk associated with trial and, in this context, the verifiable possibility of no change in policy of the FDC. The seventh factor is not applicable. The eighth and ninth factors do not affect this relief providing injunctive and declaratory relief.

*Approval of class counsel fee and costs.*

20. **We award \$20,000 in fees and \$400 in costs to Class Counsel.** Class Counsel provided highly competent representation for the Class and are awarded \$20,000 as substantially reduced from a lodestar of \$70,825 and \$400 filing fee in demonstrated expenses, to be paid by the Defendant in his official capacity no later than **November 26, 2018**.

a. Exercising our discretion,<sup>4</sup> we conduct a “thorough judicial review” to determine the amount of any award to counsel.<sup>5</sup> “Judicial deference to the results of private negotiations is undoubtedly appropriate for many settlements, but not for class action settlements, including their attorney fee terms. ‘That the defendant in form agrees to pay the fees independently of any monetary award or injunctive relief provided to the class in the agreement does not detract from the need carefully to scrutinize the fee award.’”<sup>6</sup>

b. Class Counsel conducted extensive investigation, research, focused discovery and evaluated respective risks of further litigation, including the risk of decertification of the certified class, additional costs, and delay associated with further prosecution of this action. The parties reached the Agreement as a result of intensive, arms-length negotiations with the able leadership of Judge Heffley. Counsel reached agreement on the settlement terms without addressing the attorney’s fees. Class Counsel’s fees are reasonable and necessary for the benefit of the Class.<sup>7</sup>

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<sup>4</sup> *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995).

<sup>5</sup> *In re Prudential*, 148 F.3d at 333; *In re Gen. Motors*, 55 F.3d at 819.

<sup>6</sup> *In re Southwest Airlines Voucher Litigation*, 799 F.3d 701, 713 (7th Cir. 2015) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003)).

<sup>7</sup> We consider seven factors to analyze the reasonableness of the requested fee: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial

c. As a cross-check, we reviewed Class Counsel's lodestar amount of \$70,825 for 563.40 hours of effort, at substantially reduced statutory hourly rates of \$125, and this award will be paid by Defendant (in his official capacity), in full compromise and satisfaction of all attorneys' fees and expenses incurred by Class Counsel as specified in the Agreement.

21. **Dismissal of Claims.** Claims of all Settlement Class members based on or arising out of any acts, facts, transactions, occurrences, representations, or omissions which are alleged, or which could have been alleged, in this Class Action Complaint, on the merits are **dismissed with prejudice** and without costs to any of the parties as against any other settling party, except as provided in the Settlement Agreement.


22. Defendant may remove our approved and posted Notices of class certification and of settlement after **October 24, 2018** as Defendant confirms the revised written policy compliant with

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objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. Many of these factors do not apply to this requested relief, although we measure the benefit. As to the first factor, the Settlement Fund fully addresses the claims under the approved Settlement Agreement providing an immediate benefit to each Settlement Class member. The second factor supports the proposed fee because there were no objectors. The third factor supports the proposed fee as Class Counsel possesses substantial experience prosecuting constitutional claims and particularly those pursued by incarcerated persons. The fourth factor supports the proposed fee because this First and Fifth Amendment action is complex, as it required resolving difficult issues previewed in our January 11, 2018 Order. Litigation of these issues would have likely resulted in an increasing and significant expense but for the Settlement. The fifth factor supports the proposed fee because of the risk inherent in Class Counsel's decision to take this case on a contingency fee basis. The sixth factor supports the proposed fee because Class Counsel spent over 563 hours on the case over several months. The seventh factor supports the proposed fee as consistent with the Equal Justice to Justice Act. All counsel in this matter performed in a manner which is a credit to Philadelphia lawyers.

this Order is available to all incoming inmates and available on the public website accessible by inmates' families.

23. The Clerk of Court shall **close this case** retaining jurisdiction only to enforce this Order under Local Rule 41.1.

  
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KEARNEY, J.